

ENFORCEMENT UNDERTAKINGS

LICENSEE:

Kettering General Hospital NHS Foundation Trust ("the Licensee")
Rothwell Road
Kettering
Northants
NN16 8UZ

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS Improvement has decided to accept from the Licensee the enforcement undertakings specified below pursuant to its powers under section 106 of the Health and Social Care Act 2012 ("the Act"). In this document, "NHS Improvement" means Monitor.

On 24th September 2019 NHS Improvement issued compliance certificates in relation to the following:

In respect of the undertakings accepted in April 2014 ("the April 2014 undertakings")

Paragraphs 2.1; 2.2;

In respect of the undertakings accepted in April 2015 ("the April 2015 undertakings")

Paragraphs 5.1; 5.2;

In respect of the undertakings accepted in September 2016 ("the 2016 undertakings")

Paragraphs 1.1-1.8; 2.1-2.3; 3.1-3.4; 4.1-4.2; 5.1-5.2

Whilst the Licensee has made progress in some areas as above and the s.111 additional licence condition as modified in September 2016 was removed on 24th September 2019, there are areas of concern in relation to quality, finance and operational performance against the A&E standard. As such, NHS Improvement is now taking further regulatory action in the form of accepting these undertakings

The undertakings in this document relate to quality, finance, and A&E 4-hour access standard performance (or

NHS England and NHS Improvement



equivalent national standards for delivery of Urgent and Emergency Care) but also replace and supersede the 2014, April 2015 and October 2015 undertakings (“the 2015 undertakings”) and 2016 undertakings in relation to those undertakings where a certificate of compliance has not been issued. This ensures that the undertakings which NHS Improvement has accepted and remain outstanding are set out in a single document and, where relevant, have been varied and / or updated.

1. GROUNDS

Licence

The Licensee is the holder of a licence granted under section 87 of the Act.

2. BREACHES

NHS Improvement has reasonable grounds to suspect that the Licensee has provided and is providing healthcare services for the purposes of the NHS in breach of the following conditions of its licence: FT4(2); FT4(5)(a),(b),(c),(d),(f),(g); FT4(6)(c); and FT4(7).

2.1. Operational Performance

2.1.1. The Licensee breached the A&E 4 hour waiting time target for 12 consecutive quarters from Q1 2015/16 and did not deliver its recovery trajectory in 2018/19.

2.2. Financial Performance

2.2.1. In 2017/18 the Licensee did not plan to meet its control total deficit of £13.6m (excluding provider sustainability fund) and reported a deficit of £34.2m.

2.2.2. In 2018/19 the Licensee planned to meet its control total deficit (excluding provider sustainability fund) of £15.3m but did not meet this plan and reported a deficit of £33.7m.

2.3. Quality Improvement

2.3.1. The Licensee was placed in to Special Measures in April 2017, following its CQC comprehensive inspection in October 2016 when the Licensee was rated ‘Inadequate’ overall.

2.3.2. The Licensee exited Special Measures in May 2019 following CQC well led and core services inspection in February and March 2019. The Licensee demonstrated improvement and achieved an overall rating of ‘Requires Improvement’, with no deteriorations in ratings and 3 of the 5

services inspected demonstrating improved ratings: However, there were a number of individual rating improvements which reflect the continuing focus on improvement.

2.3.3. The CQC inspection report published May 2019 identifies 14 'must do's', 33 'should do's', and 4 requirement notices.

2.3.4. The Licensee was rated as amber for infection prevention and control (IPC) in May 2019 following visit by NHS Improvement's Regional IPC Lead. Improvements in IPC demonstrated in 2018 had not been sustained

2.4. Need for action

2.4.1. NHS Improvement believes that the action which the Licensee has undertaken to take pursuant to these undertakings is action to secure that the breaches in question do not continue or recur.

3. Appropriateness of Undertakings

In considering the appropriateness of accepting in this case the undertakings set out below, NHS Improvement has taken into account the matters set out in its Enforcement Guidance.

UNDERTAKINGS

NHS Improvement has agreed to accept and the Licensee has agreed to give the following undertakings, pursuant to section 106 of the Act:

1. Operational Performance (Urgent and Emergency Care - 4 Hour Access Standard)

1.1. The Licensee will take all reasonable steps to recover operational performance to meet national standards for delivery of the 4 Hour Access Standard and/or the equivalent national standards for delivery of Urgent and Emergency Care, including the associated Clinical Quality Indicators (CQIs), including but not limited to those set out in paragraphs 1.2 to 1.4 below.

1.2. The Licensee will ensure that there is a robust Urgent and Emergency Care Improvement plan (the "Improvement Plan") in place to meet the requirements of paragraph 1.1 and will agree the Improvement Plan with NHS Improvement by date to be determined by NHS Improvement.

1.3. The Improvement Plan will, in particular:

- 1.3.1. include the actions required to meet the requirements of paragraph 1.1, with appropriate timescales, key performance indicators and resourcing;
- 1.3.2. describe the key risks to meeting the requirements of paragraph 1.1 and mitigating actions being taken;
- 1.3.3. be based on realistic assumptions;
- 1.3.4. reflect collaborative working with key system partners and other stakeholders;
- 1.3.5. set out the key performance indicators which the Licensee will use to measure progress;
- 1.3.6. be consistent with the Licensee's other key plans, including but not limited to those plans described elsewhere in these undertakings and the Long-Term Plan (LTP); and
- 1.3.7. support the Licensee in delivering the control totals set by NHS Improvement.

1.4. The Licensee will keep the Improvement Plan and its delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraph 1.1, such assurance to be provided to NHS Improvement on request. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 1.1, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the performance plan within a timeframe to be agreed with NHS Improvement.

2. Financial Performance

2.1. The Licensee will ensure that robust financial plans and governance arrangements are in place to:

- 2.1.1. deliver the 2019/20 control total and planned CIPs; and
- 2.1.2. minimise the revenue cash support requirement.

2.2. The Licensee will take all reasonable steps to ensure that the 2019/20 CIP plan for £10.5m, as set out in plans submitted to NHS Improvement in May 2019, is fully delivered with full assessment being completed on the impact of schemes on quality and the Licensee's underlying financial position.

2.3. The Licensee will comply with planning guidance issued by NHS England and NHS Improvement in January 2019 and June 2019 related to receipt of the financial recovery fund in 2019/20.

2.4. The Licensee will work constructively with Northamptonshire STP partners to develop a long-term plan in line with guidance issued by NHS England and NHS Improvement in June 2019. This long-term plan will demonstrate recurrent financial improvement as measured by I&E run-rate and planned financial outturn, and will return the Licensee to sustainable financial balance.

2.5. The Licensee will develop a 2020/21 financial plan that aligns with the Northamptonshire STP's agreed long-term plan, the Licensee's strategic direction and the STP's strategic and financial context. The Licensee will agree the financial plan with its Board, system leads and partners and share it with NHS England and NHS Improvement within 3 months of the publication of the STP's long term plan, and in accordance with national guidance issued on 20/21 operational planning.

2.6. The Licensee will take all reasonable steps to ensure that appropriate governance arrangements are in place to deliver its financial improvement trajectories 2020/21 to 2023/24 and work towards delivery of the STP's long term plan.

3. Distressed Finance and Spending Approvals

3.1. Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee under Schedule 5 to the National Health Service Act 2006, the Licensee will comply with any terms and conditions which are attached to the financing.

3.2. Where the Licensee receives payments from the Provider Sustainability Fund the Licensee will comply with any terms and conditions which attach to the payments.

3.3. The Licensee will comply with any spending approvals processes that are deemed necessary by NHS Improvement.

4. Quality Improvement (post special measures)

4.1. The Licensee will engage constructively with NHS Improvement (Intensive Support Team) for a period of 6 months post special measures, as set out in the agreed support plan

4.2. The Licensee will create and implement a leadership development plan for the triumvirates for each of the divisions.

4.3. The Licensee will engage with NHS Improvement regional team in a formal table top review of all available quality indicators and address any areas for

improvement identified through this process. This will take place 6 months following exit from special measures

- 4.4. The Licensee will engage with NHS Improvement regional team, 6 months following exit of special measures, to facilitate a table top review of divisional governance arrangements.
- 4.5. The Licensee will keep the Quality Improvement Plan (QIP) and its delivery under review, through NHS England and NHS Improvement Progress Review Meetings or equivalent meetings. Where matters are identified which materially affect the Licensee's ability to deliver the QIP, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the QIP within a timeframe to be agreed by NHS Improvement.
- 4.6. The Licensee will participate in two post special measures Oversight meetings, chaired by NHS Improvement, to ensure stakeholders are sighted on achievement of the required improvements. The meetings will take place during the 6 month period following exit from special measures.
- 4.7. The Licensee will put in place an action plan that addresses the issues identified in the May 2019, and subsequent, NHS Improvement IPC visits which includes actions the Licensee will take to sustain improvements across the organisation and ensure consistent compliance with IPC standards.
- 4.8. The Licensee will take all reasonable steps to address the concerns which are identified in the 2019 CQC report, including carrying out the actions set out in the CQC report in accordance with such timescales as determined by the CQC.
- 4.9. The Licensee will take all reasonable steps to ensure that robust quality governance systems and processes are in place to maintain the required standards to meet the conditions of their CQC registration.

5. Reporting

- 5.1. The Licensee will provide regular reports to NHS Improvement on its progress in meeting the undertakings set out above and will attend meetings or, if NHS Improvement stipulates, conference calls, to discuss its progress in meeting those undertakings. These meetings shall take place once a month unless NHS Improvement otherwise stipulates, at a time and place to be specified by NHS Improvement and with attendees specified by NHS Improvement.

The undertakings set out above are without prejudice to the requirement on the Licensee to ensure that it is compliant with all the conditions of its licence, including any additional licence condition imposed under section 111 of the Act and those conditions relating to:

- compliance with the health care standards binding on the Licensee; and
- compliance with all requirements concerning quality of care.

Any failure to comply with the above undertakings will render the Licensee liable to further formal action by NHS Improvement. This could include the imposition of discretionary requirements under section 105 of the Act in respect of the breach in respect of which the undertakings were given and/or revocation of the licence pursuant to section 89 of the Act.

Where NHS Improvement is satisfied that the Licensee has given inaccurate, misleading or incomplete information in relation to the undertakings: (i) NHS Improvement may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS Improvement decides so to treat the Licensee, NHS Improvement must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

LICENSEE

Signed



Chief Executive of Licensee

Dated: 9 January 2020

NHS IMPROVEMENT

Signed



Member of the Regional Support Group (Midlands)

Dated: 20/1/20

