

ENFORCEMENT UNDERTAKINGS

NHS TRUST:

Walsall Healthcare NHS Trust ("the Trust")
Moat Road,
Walsall,
West Midlands,
WS2 9PS

DECISION:

On the basis of the grounds set out below and pursuant to the powers exercisable by NHS England and NHS Improvement under or by virtue of the National Health Service Act 2006 and the TDA Directions, NHS England and NHS Improvement has decided to accept undertakings from the Trust.

BACKGROUND:

NHS Improvement accepted enforcement undertakings from the Trust on 19 December 2017 in relation to Quality, Operational performance and Financial issues after the Trust was placed into special measures for quality.

In July 2019, the Trust exited special measures and NHS England and NHS Improvement accordingly issued a compliance certificate in respect of paragraph 1 (Quality), 4 (Buddy trust and other partnerships) and 5 (Leadership and governance) of the December 2017 undertakings.

Although the Trust made some progress against the remaining parts of the December 2017 undertakings, NHS England and NHS Improvement continues to have concerns about the Trust's finances and its operational performance in relation to sustained performance against the A&E 4-hour and diagnostics targets.

NHS England and NHS Improvement is now taking regulatory action in the form of these updated undertakings which replace and supersede the outstanding December 2017 undertakings.

DEFINITIONS:

In this document:

"the conditions of the Licence" means the conditions of the licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012 in respect of which NHS England and NHS Improvement has deemed it appropriate for NHS trusts to comply with equivalent conditions, pursuant to paragraph 6(c) of the TDA Directions;

NHS England and NHS Improvement





“NHS England and NHS Improvement” means the National Health Service Trust Development Authority;

“TDA Directions” means the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016.

FOUNDATIONS:

1. The Trust

The Trust is an NHS trust all or most of whose hospitals, facilities and establishments are situated in England.

2. Issues and need for action

NHS England and NHS Improvement has reasonable grounds to suspect that the Trust has provided and is providing health services for the purposes of the health service in England while failing to comply with the following conditions of the Licence FT4(5)(a) to (g), and FT4(6)(a) to (f).

In particular:

Quality Improvement

- 2.1. The Trust was placed into Special Measures in February 2016 following its comprehensive CQC inspection in September 2015 where the Trust was rated ‘Inadequate’ overall.
- 2.2. The Trust exited Special Measures in July 2019 following a further announced core services and well-led inspection in February and March 2019. The Trust was rated overall as ‘Requires Improvement.’ The CQC’s report of 25 July 2019 sets out the outstanding concerns on the Trust’s performance on quality issues.
- 2.3. A requirement of the Trust exiting Special Measures is that there is a comprehensive exit support plan in place which addresses the outstanding CQC areas of concern.

Financial issues

- 2.4. The Trust has reported a 2018/19 draft year-end deficit, before Provider Sustainability Fund (PSF) of £29.702m, which is £14.237m worse than planned. The year-end variance to plan is due to failure to control nursing and medical workforce pressures and some delays in outpatient productivity schemes. In particular, medical locum expenditure has not reduced as planned and ward nursing has overspent due to above plan fill rates, unfunded night posts and poor rota grip and control leading to high unpaid leave and sickness. The 2018/19 financial performance is a deterioration on the 2017/18 outturn deficit of £24.801m.
- 2.5. The Trust has submitted a control total compliant financial plan for 2019/20 which will deliver a deficit of £18.380m pre-PSF. The Trust remains in enhanced financial oversight led by the NHS England and NHS Improvement sub-regional finance team.

Operational performance

- 2.6. An urgent care system improvement plan has been developed and ECIST support has been provided, however there are ongoing challenges to deliver against the 4-hour emergency care standard and the improvement trajectory.
- 2.7. The impact of financial decisions made at the end of 2018/19 resulted in deterioration in the performance against the diagnostic standard.
- 2.8. During quarter 1 of 2019/20, the Trust saw deterioration against the 2-week wait, 2-week breast and 62-day cancer standards as a consequence of the diagnostic challenges.

3. Failures and need for action

These failings by the Trust demonstrate a failure of governance arrangements including, in particular:

3.1. Failure to establish and effectively implement systems or processes:

- 3.1.1. to ensure compliance with the Trust's duty to operate efficiently, economically and effectively;
- 3.1.2. for timely and effective scrutiny and oversight by the Board of the Trust's operations;
- 3.1.3. to ensure compliance with healthcare standards binding on the Trust.

3.2. Need for action:

NHS England and NHS Improvement believes that the action which the Trust has undertaken to take pursuant to these undertakings, is action required to secure that the governance failures in question do not continue or recur.

UNDERTAKINGS

NHS England and NHS Improvement has agreed to accept and the Trust has agreed to give the following undertakings.

4. Quality Improvement (post Special Measures)

- 4.1 The Trust will work with NHS England and NHS Improvement to ensure that the post Special Measures exit support plan as agreed with NHS England and NHS Improvement is fully implemented within 12 months of the date of these undertakings.
- 4.2 The Trust will provide progress updates against the exit support plan as part of the NHS England and NHS Improvement regular oversight arrangements.
- 4.3 The Trust should continue to develop and take all reasonable steps to implement Quality Improvement Plans to address the concerns identified in, but not limited to, CQC reports. The Trust will provide progress updates on the progress with their

plans, advising NHS England and NHS Improvement of any matters that materially affect their ability to deliver the plans within agreed timelines.

4.4 The Trust will ensure that it has sufficient capacity at both executive and other levels of management to enable delivery of quality improvements, and ensure that these measures do not compromise its overall financial position.

5. Finance Performance

2019/20 Performance

5.1. The Licensee will ensure that robust financial plans are in place to:

5.1.1. deliver the 2019/20 control total and planned CIPs; and

5.1.2. minimise the revenue cash support requirement.

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

5.3. 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. The Licensee will have in place financial recovery plans as part of the five-year system level strategic plans by December 2019. These plans will demonstrate recurrent financial improvement as measured by I&E run-rate and planned financial outturn, and which return the Licensee to sustainable financial balance.

5.4. The Licensee will develop a long-term financial model (LTFM) to achieve a sustainable financial position that aligns with the Black Country and West Birmingham Sustainability and Transformation Plan (the STP); the Licensee's strategic direction and the STP strategic and financial context. The Licensee will work constructively with STP partners to develop a long-term plan in line with guidance issued by NHS England and NHS Improvement in June 2019. The Licensee will agree the long-term plan with system leads and partners by mid-November 2019 and publish the plan in December 2019.

Governance

5.5. The Trust should ensure that appropriate governance arrangements are in place to deliver both the submitted 2019/20 plan and the medium-term financial strategy. These structures will be reviewed and approved by the NHS England and NHS Improvement regional team.

6. Operational Performance

6.1 The Trust will take all reasonable steps to recover operational performance to meet national standards in relation to the 4 hour Urgent and Emergency care standard and the diagnostic standard, including but not limited to those set out in paragraphs 6.2 to 6.4, below.

6.2 The Trust will ensure that there are robust improvement plans in place to meet the requirements of paragraph 6.1, which has been agreed with NHS England and NHS Improvement.

6.3 The improvement plans will, in particular:

- 6.3.1 include the actions required to meet the requirements of paragraph 6.1, with appropriate timescales, key performance indicators and resourcing;
- 6.3.2 describe the key risks to meeting the requirements of paragraph 6.1 and mitigating actions being taken;
- 6.3.3 be based on realistic assumptions;
- 6.3.4 reflect collaborative working with key system partners and other stakeholders;
- 6.3.5 set out the key performance indicators which the Trust will use to measure progress.

6.4 The Trust will keep the improvement plans and their delivery under review and provide appropriate assurance to its Board regarding progress towards meeting the requirements of paragraph 6.1, such assurance to be provided to NHS England and NHS Improvement on request. Where matters are identified which materially affect the Trust's ability to meet the requirements of paragraph 6.1, whether identified by the Trust or another party, the Trust will notify NHS England and NHS Improvement as soon as practicable and update and resubmit the performance plan within a timeframe to be agreed with NHS England and NHS Improvement.

7. Programme management

7.1 The Trust will develop and implement or where appropriate, strengthen, Trust-wide governance and programme management processes to manage and deliver sustained performance covered by these enforcement undertakings. Such programme management and governance arrangements must enable the board to:

- 7.1.1 obtain clear oversight over the process in delivering these undertakings;
- 7.1.2 obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
- 7.1.3 hold individuals to account for the delivery of the undertakings.

7.2 In the event that successful delivery of the financial and operational improvement plans do not result in corresponding sustained improvements, the Trust will consult with NHS England and NHS Improvement and other stakeholders on alternative course of actions.

8. Access

8.1. The Trust will provide to NHS England and NHS Improvement direct access to its advisors, programme leads and the Trust's board members as needed in relation to the matters covered by these undertakings.

9. Meetings and reports

9.1. In addition to the action in paragraph 4.2 (reporting in relation to the special measures exit plan) the Trust will:

- 9.1.1 attend meetings or, if NHS England and NHS Improvement stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS England and NHS Improvement; and
- 9.1.2 provide such reports in relation to the matters covered by these undertakings as NHS Improvement may require.

Any failure to comply with the above undertakings may result in the NHS England and NHS Improvement taking further formal action. This could include giving directions to the Trust under section 8 of the National Health Service Act 2006.

THE TRUST



Richard Beeken
Chief Executive

4th October 2019

NHS ENGLAND AND NHS IMPROVEMENT



Signed (Acting Director of Strategic Transformation (West Midlands) and member of the Midlands Regional Support Group)

Dated 8/10/2019