

## UNDERTAKINGS

### NHS INTEGRATED CARE BOARD

Nottingham and Nottinghamshire Integrated Care Board (“the ICB”)

Sir John Robinson House

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### DECISION

NHS England, on the basis of the grounds set out below, and having regard to its Enforcement Guidance, has decided to accept from the ICB the enforcement undertakings specified below in connection with NHS England’s functions under the National Health Service Act 2006, as amended (NHS Act 2006).

### GROUND

NHS England has reasonable grounds to suspect that the ICB is failing or has failed to discharge one or more of its functions properly, or that there is a significant risk that it will fail to do so, in particular its functions under sections 3, 14Z33, 223L, and 223M of the NHS Act 2006.

#### 1. Financial governance

1.1. Each integrated care board (including, in this case, the ICB) and its partner Trusts are subject to a duty to seek to achieve joint financial objectives set by NHS England (s233L NHS Act 2006). Further, each integrated care board and its partner Trusts have a duty to act with a view to ensuring that their combined resource use does not exceed the capital and revenue resource limits set by NHS England (s233M NHS Act 2006). Each integrated care board must also exercise its functions effectively, efficiently, and economically (s14Z33 NHS Act 2006).

1.2. The ICB is failing or has failed to discharge those duties properly, in particular:

1.2.1. The financial performance and reported net financial risk of the Nottingham and Nottinghamshire Integrated Care System (ICS) (the ICS refers to the ICB plus partner NHS Trusts and Foundation Trusts) does not demonstrate financial sustainability; the ICS has reported a significant year-to-date adverse variance against plan and a year-end forecast outturn deficit of £105.3m (excluding industrial costs) against a full year planned breakeven financial outturn.

- 1.2.2. The ICB is also showing significant risk to meeting duties to comply with ICB expenditure limits and ensuring controls are in place on resource use. The ICB has reported a significant year-to-date adverse variance against plan, due in part to primary care prescribing and continuing healthcare price and volume pressures offset by non-recurrent actions and efficiencies.
- 1.2.3. The ICS has reported significant growth in workforce costs which are not financially affordable and provider year-to-date pay costs are significantly above planned levels. Use of temporary staff in the system is significant. The ICS has failed to meet the planning target for agency costs.
- 1.2.4. These issues pose ongoing concerns regarding the sustainability of Nottingham and Nottinghamshire ICS's financial position and how quickly this can be resolved, and this is reflective of concerns regarding the extent to which the ICB is having regard to efficiency and sustainability when making decisions.

## **NEED FOR ACTION**

NHS England believes that the action which the ICB has undertaken to take pursuant to these undertakings, is action required to secure that the failure to discharge its functions properly does not occur, continue or recur.

## **UNDERTAKINGS**

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

### **2. Financial governance**

- 2.1. The ICB will work with its partner NHS Trusts and NHS Foundation Trusts (system providers) to develop a single Finance Recovery Plan (the "Recovery Plan") that brings together the ICB, provider, and additional system-wide, recovery initiatives. The Recovery Plan should:
  - 2.1.1. Reflect NHS England planning guidance, including for 2024/25;
  - 2.1.2. Demonstrate recurrent financial improvement to the system providers' underlying deficit, reduce the system monthly deficit run-rate, preserve cash and minimise the deficit;
  - 2.1.3. Include a high-level milestone plan for the system to return to a breakeven financial position by no later than 31 March 2026, or such date as agreed with NHS England;

- 2.1.4. Include actions to address the key financial issues, including expenditure on pay and efficiency delivery, with a high-level milestone plan for the system to return to a breakeven financial position;
  - 2.1.5. Establish immediate financial and operational grip and control actions, followed by transformational initiatives and options such as financially sustainable clinical services, clinical support services and corporate services;
  - 2.1.6. Reflect recovery plans which have been developed with and agreed with system provider organisations;
  - 2.1.7. Include details of how the system will deploy sufficient resources to ensure implementation of the Recovery Plan; and
  - 2.1.8. Include a description of systems and processes the ICB will use to gain assurance on the delivery of the Recovery Plan with governance arrangements for approval and delivery of the Recovery Plan.
- 2.2. The ICB will submit the Recovery Plan by a date to be agreed with NHS England. The Recovery Plan should be agreed with NHS England.
  - 2.3. When developing the Recovery Plan, the ICB will, working with its system providers, engage effectively with key stakeholders and will ensure their views are reflected appropriately in the Recovery Plan.
  - 2.4. The ICB will, working with its system providers, ensure that the system demonstrates to NHS England a period of successful implementation of the Recovery Plan and assurance of continued focus, capability and capacity to sustainably maintain financial recovery and deliver the Recovery Plan.
  - 2.5. The ICB will, working with the system providers, keep the Recovery Plan under continuous review and will update it as required. Any proposed updates will be subject to the review and approval by NHS England.
  - 2.6. The ICB will make reasonable efforts to provide whole system leadership, enabling and ensuring accountability for delivery of the Plan.
3. Financial Controls
    - 3.1. The ICB will:
      - 3.1.1. Commit to recurrent delivery of efficiency schemes from quarter 1 2024/25 to achieve a full year effect in year to compensate for any non-recurrent measures required to achieve 23/24 plans;
      - 3.1.2. Fully engage in national pay and non-pay savings initiatives, in particular around national agreements for medicines and other non-pay purchasing;

3.1.3. Monitor agency usage and compliance with usage and rate limits;and

3.1.4. Request prior approval from NHS England regional team for any revenue consultancy spend above £50,000 and non-clinical agency usage, based on agreed regional process.

3.2. Robust financial controls and processes and reporting must be in place and overseen through appropriate financial governance procedures and a track record of identifying and addressing financial issues when they arise.

3.3. The ICB should be able to demonstrate internal capabilities around financial resource management (grip and control), and the effectiveness of these controls.

#### 4. Programme management

4.1. The ICB will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.

4.2. Such programme management and governance arrangements must enable the ICB board to:

4.2.1. obtain clear oversight over the process in delivering these undertakings

4.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and

4.2.3. hold individuals to account for the delivery of the undertakings.

4.3. The ICB will provide to NHS England direct access to its advisors, programme leads, and board members as needed in relation to matters covered by these undertakings.

4.4. The ICB will ensure it has sufficient capacity and capability to deliver the improvement plans referenced above. Where deemed by NHS England to be necessary, the ICB will obtain external support from sources and according to a scope and timescale to be agreed with NHS England.

#### 5. Reporting

5.1. The ICB will provide regular reports demonstrating impact of actions and sustained improvements to NHS England on its progress in complying with the undertakings set out above and will attend meetings, or, if NHS England stipulates, conference calls, as required, to discuss its progress in meeting those undertakings.

- 5.2. The ICB will attend meetings or, if NHS England stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS England.
- 5.3. Upon request, the ICB will provide NHS England with the evidence, reports or other information relied on by its Board in relation to assessing its progress in delivering these undertakings.
- 5.4. The ICB will comply with any additional reporting or information requests made by NHS England.

The undertakings set out above are without prejudice to the requirement on the ICB to ensure that it meets its statutory duties.

Any failure to comply with the above undertakings may render the ICB liable to further formal action by NHS England. This could include directions given to the ICB under section 14Z61 of the NHS Act 2006.

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

## **6. THE INTEGRATED CARE BOARD**

Signed



**Chief Executive of Nottingham and Nottinghamshire Integrated Care Board**

Dated: 10 May 2024

**NHS ENGLAND**

Signed



Julie Grant

**Director of System Coordination and Oversight (East Midlands) and  
member of the Regional Support Group (Midlands)**

Dated: 10 May 2024