

## UNDERTAKINGS

### NHS INTEGRATED CARE BOARD

NHS Black Country Integrated Care Board (“the ICB”)  
Civic Centre  
St Peters Square  
Wolverhampton  
WV1 1SH

### DECISION

NHS England, on the basis of the grounds set out below and pursuant to its powers under the National Health Service Act 2006 as amended (NHS Act 2006), has decided to accept these undertakings from the ICB.

### DEFINITIONS

In this document:

“The general duties” means the general duties of integrated care boards under the NHS Act 2006 (sections 14Z32 – 14Z44) which NHS England, acting in exercise of its functions under section 14Z61 NHS Act 2006, expects ICBs to comply with.

### BACKGROUND

Integrated Care Boards are, when exercising their functions (including their commissioning functions under sections 3 and 3A of the NHS Act 2006), required by the NHS Act 2006 to comply with their general duties. NHS England has seen sufficient evidence to have reasonable grounds to suspect the ICB is potentially failing, or is at risk of failing, to comply with these general duties. The details of these concerns are set out in the grounds below.

Given the grounds set out below are linked to the broader management of financial risk across the system, NHS England has also decided to accept undertakings in parallel to those set out below from several individual NHS providers and Foundation Trusts across the Black Country system, pursuant to its powers under the Health and Social Care Act 2012.

### GROUNDINGS

#### 1. Financial governance

1.1. NHS England has reasonable grounds to suspect that, in its leadership of the Black Country system, the ICB is failing or has failed to discharge one or more of the following general duties, or that there is a significant risk that it will fail to do so:

1.1.1. Duty as to exercise its functions effectively, efficiently and economically (Section 14Z33 of the NHS Act 2006).

- 1.1.2. Duty to have regard to the wider effect of decisions, in relation to the efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England (Section 14Z43(c) NHS Act 2006).

1.2. In particular:

- 1.2.1. In May 2023, the ICB submitted a 2023/24 ICS financial plan with a deficit of £68.801m, which it deemed to be achievable. This deficit is a significant forecast overspend when compared to other systems across the Midlands and nationally.
- 1.2.2. In December 2023 as part of the H2 planning process, the ICB submitted a revised ICS deficit position for 2023/24 of £90.01m.
- 1.2.3. The 2023/24 outturn for performance measurement purposes of the ICS (ICB and Partner Trusts) was a £90.0m deficit. Following the national technical adjustment to fund the plan deficit, the outturn for annual accounts purposes was a £21.2m deficit.
- 1.2.4. The ICB as an individual organisation submitted an original surplus plan for 2023/24 of £5m and delivered a higher surplus than originally planned, at £18.2m in the 2023/24 outturn.

Given there was an improvement in the forecast surplus for the ICB, the grounds above are not in relation to the ICBs own financial performance, but in regard to its leadership role in managing the overall financial performance of the Black Country system.

- 1.2.5. Work to review the underlying financial position of the Black Country system and individual providers was completed in January 2024. As part of this exercise the ICB reported a £4.9m underlying deficit and a £312.1m overall ICS deficit (in the lowest risk scenario, including the impact of Midland Metropolitan University Hospital (MMUH)).
- 1.2.6. The failure to deliver the ICS 2023/24 financial plan submitted in May 2023 is a potential failure of the ICB to comply with its general duties, given that the plan was designed and submitted by the ICB, implicitly indicating that it was deliverable. As such, NHS England considers the ICB may have breached its duty to have regard to the wider effect of decisions about the exercise of its functions, in relation to the efficiency and sustainability in the use of resources by relevant bodies for the purposes of the health service in England (Section 14Z43(c)).
- 1.2.7. Despite establishing a Productivity and Value Group within the ICB financial governance structure, the ICB has overseen under-delivery of system efficiency plans in 2023/24. The 2023/24 outturn efficiency shortfall for the ICS was £3.9m (1.63%) below plans. The ICB as an individual organisation in the system did deliver its £64m efficiency plan, with 85.5% on a recurrent basis.

- 1.2.8. Although external support has been procured by the ICB and progressed in-year to develop schemes that will deliver recurrent efficiency savings for the system, the system has made relatively limited progress in implementing these schemes to reduce financial costs during 2023/24.
- 1.2.9. Further, there has been a significant growth in workforce since 2019/20. From Month 12 2019/20 to Month 12 2023/24, there has been 20.9% growth in whole-time equivalents (WTE) across the ICS. Across the ICS, the actual WTE in post is above plan, with 2,159 WTE more in the ICS than planned (5.48%). This level of growth is not financially affordable and has not been subject to sufficient scrutiny by the ICB, post-establishment, to intervene ahead of mandated controls being placed on the system by NHS England.
- 1.2.10. This poses ongoing concerns regarding whether the ICB, in its decision-making, has had sufficient regard to the impact of those decisions on efficiency and the sustainability of the system's financial position (and it therefore a potential breach of the ICB's s.14Z43(c) duty).
- 1.3. These failings by the ICB demonstrate a failure of financial governance arrangements including, in particular, a failure to establish and effectively implement systems or processes to identify and manage material risks to compliance with the ICB's general duties.
- 1.4. 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 does not occur, continue or recur.

## 2. Appropriateness of Undertaking

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

## **UNDERTAKINGS**

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

### 1. Financial governance

#### 1.1. Recovery Plan

- 1.1.1. The ICB will work with its partner NHS Trusts and NHS Foundation Trusts (system Trusts) to develop a single ICS Recovery Plan that brings together the ICB, provider and additional system wide recovery initiatives. The ICS Recovery Plan will:

- 1.1.1.1. Reflect NHS England planning guidance for 2024/25;

- 1.1.1.2. Demonstrate recurrent financial improvement to the ICS's agreed underlying deficit, reduce the ICS monthly deficit run-rate, preserve cash and minimise the actual deficit;
    - 1.1.1.3. Provide a high-level milestone plan which includes actions to address the key financial issues (including actions to deliver efficiency plans) for the ICS to return to a breakeven financial position in accordance with timeframes agreed with NHS England;
    - 1.1.1.4. Establish immediate financial and operational grip and control actions, as required by NHS England, followed by transformational initiatives and options such as financially sustainable clinical services, clinical support services and corporate services;
    - 1.1.1.5. Reflect Recovery Plans which have been developed with and agreed with provider organisations within the ICS;
    - 1.1.1.6. Include details of how the ICS will deploy sufficient resources to ensure implementation of the Recovery Plan;
    - 1.1.1.7. 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;
  - 1.1.2. When developing the Recovery Plan, the ICB will, working with its system Trusts, engage effectively with key stakeholders and will ensure their views are reflected appropriately in the Recovery Plan.
  - 1.1.3. The ICB will, working with its system Trusts, 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.
  - 1.1.4. The ICB will, working with the system Trusts, 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.
  - 1.1.5. The ICB will make reasonable efforts to provide whole system leadership, enabling and ensuring accountability for delivery of the Plan.
- 1.2. Financial Controls
  - 1.2.1. The ICB commits to recurrent delivery of efficiency schemes from quarter 1 to achieve a full year effect in 2024/25 to compensate for any non-recurrent measures required to achieve 23/24 plans.
  - 1.2.2. The ICB will fully engage in national pay and non-pay savings initiatives, in particular around national agreements for medicines and other non-pay purchasing.

- 1.2.3. The ICB will monitor agency usage and compliance with usage and rate limits.
- 1.2.4. Any ICB revenue consultancy spend above £50,000 and non-clinical agency usage will continue to require prior approval from the NHS England regional team based on the agreed regional process.
- 1.2.5. The ICB must have robust financial controls and processes and reporting in place, overseen through appropriate financial governance procedures. The ICB must demonstrate a track record of identifying and addressing financial issues when they arise.
- 1.2.6. The ICB must be able to demonstrate internal capabilities around financial resource management (grip and control).

## 2. Programme management

- 2.1. The ICB will implement sufficient programme management and governance arrangements to enable delivery of these undertakings.
- 2.2. Such programme management and governance arrangements must enable the ICB board to:
  - 2.2.1. obtain clear oversight over the process in delivering these undertakings;
  - 2.2.2. obtain an understanding of the risks to the successful achievement of the undertakings and ensure appropriate mitigation; and
  - 2.2.3. hold individuals to account for the delivery of the undertakings.
- 2.3. 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.
- 2.4. 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.

## 3. Meetings and reports

- 3.1. The ICB (in conjunction with system Trusts) will provide quarterly reports to NHS England on its progress in complying with the undertakings set out above.
- 3.2. 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. These meetings will take place once a month unless NHS England otherwise stipulates, at a time and place to be specified by NHS England and with attendees specified by NHS England.
- 3.3. Upon request, the ICB (in conjunction with system Trusts) 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.

- 3.4. 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 for Black Country ICB to ensure that it meets its general duties and appropriately discharges its statutory functions more generally.

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 will by notice revoke any compliance certificate given to the ICB in respect of compliance with the relevant undertakings.

## **THE INTEGRATED CARE BOARD**

Signed



Name: Mark Axcell

**Chair / Chief Executive of The Black Country Integrated Care Board**

Dated: 11 07 24

## **NHS ENGLAND**

Signed



Name: Rebecca Farmer

**Director of System Co-ordination and Oversight (West Midlands) and member of the Regional Support Group (Midlands)**

Dated: 13 June 2024