

## **LICENSEE**

Wirral University Teaching Hospital NHS Foundation Trust ("the Licensee")  
Arrowe Park Hospital  
Arrowe Park Road  
Upton  
CH49 5PE

Any reference to "NHS Improvement" in these undertakings is to be taken as a reference to Monitor.

## **BACKGROUND**

On 5 August 2015 NHS Improvement accepted enforcement undertakings from the Licensee under section 106 of the Health and Social Care Act 2012 ("the Act"), having had reasonable grounds to suspect that the Licensee was providing healthcare services for the purposes of the NHS in breach of the conditions of its licence.

The Licensee has not fully complied with the 2015 enforcement undertakings. The undertakings that remain in effect are deemed to be no longer effective as a means of securing compliance due to the passage of time and intervening events.

In place of the 2015 enforcement undertakings, NHS Improvement has decided to take further regulatory action in the form of the undertakings set out below. These undertakings supersede the undertakings agreed on 5 August 2015, which cease to have effect from the date of these undertakings.

## **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").

## **GROUND**

### 1. Licence

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

## **BREACHES**

### 2. Financial Sustainability

2.1 NHS Improvement has reasonable grounds to suspect that the Licensee has provided and is providing health care services for the purposes of the NHS in breach of the following conditions of its licence: FT4(5)(a),(d) and (f), and CoS3(1).

2.2 In particular, the Licensee:

- 2.2.1 has accepted a control total for 2017/18 that required delivery of a challenging CIP target, plus a number of non-recurrent measures;
- 2.2.2 is forecasting financial performance £12.5m worse than control total for 2017/18;
- 2.2.3 has a draft annual plan for 2018/19 which does not currently meet the control total, and shows an underlying deficit of approximately £30m;

2.2.4 currently has a Use of Resources source of 3, which is the trigger level for concern under current Standard Operating Framework. The forecast for 2017/18 and 2018/19 is to remain on an overall score of 3.

2.3 The matters set out above demonstrate a failure of governance and financial management by the Licensee, including, in particular:

- 2.3.1 a failure by the Licensee to adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:
- (a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and
  - (b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern;
- 2.3.2 a failure to establish and effectively implement systems and/or processes:
- (a) to ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
  - (b) for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee's ability to continue as a going concern); and
  - (c) to identify and manage (including through forward plans), material risks to compliance with the Conditions of its Licence.

### 3 A&E Performance

3.1 NHS Improvement has reasonable grounds to suspect that the Licensee has provided and is providing health care services for the purposes of the NHS in breach of the following condition of its licence: FT4(5)(c).

3.2 In particular:

- 3.2.2 the Licensee's A&E performance throughout the entirety of 2016/17 was poor, and deteriorated further during Quarter 4;
- 3.2.3 the Licensee submitted a 2016/17 trajectory linked to Sustainability and Transformation Funding (STF) which forecast incremental improvement for A&E performance from 82% in April 2016 to 90% by December 2016, and for 90% to then be sustained throughout Quarter 4 of 2016/17. Although the Licensee demonstrated some improvement between April and November 2016, it was not sustainable and performance dropped to circa 80% post November 2016;
- 3.2.4 Delayed Transfers of Care significantly increased between May 2016 (0.85%) and June 2016 (4.55%), and varied in year between 4% and 6.7%;
- 3.2.5 Delayed Transfers of Care remained high in April 2017 at 4.6%, however performance has throughout the fiscal year improved to 1.7% in January 2018;
- 3.2.6 the Licensee managed 81% of patients in under 4 hours during Quarter 1 of 2017/18; their minimum target was 90% in order to meet STF plans;
- 3.2.7 the Licensee has sustained this level of performance against the 4 hour target in Quarters 2 and 3 of 2017/18, achieving 83.9% in Quarter 3. Quarter 4-to-date performance up to month 11 is 78.4%

3.3 These failures demonstrate a failure of governance arrangements, in particular:

- 3.3.2 a failure to establish and effectively implement systems and/or processes to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality

Commission, the NHS Commissioning Board and statutory regulators of health care professions.

#### 4 Need for Action

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

#### 5 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**

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

#### 1 Finance

1.1 The Licensee will take all reasonable steps to achieve an understanding of the drivers of its deficit, improve its financial position and minimise its external funding requirement. The Licensee will take all reasonable steps to deliver its services on a financially sustainable basis, including but not limited to the actions outlined below:

- 1.1.1 As part of taking all reasonable measures within its control to achieve Control Total for 2017/18, the Licensee will develop and implement a financial recovery plan that details actions to be taken with clear timelines and accountability;
- 1.1.2 Put forward financial plans in line with NHS Improvement requirements for 2018/19 that demonstrate an improvement compared to the underlying deficit set out in the two-year annual plan submitted in 2017;
- 1.1.3 As evidence of effective financial decision-making and control, provide NHS Improvement with relevant internal audit reports addressing matters of financial governance, for the duration of these undertakings; including exercise of financial controls in accordance with Standing Financial Instructions, accurate reporting in finance papers (data is consistent, timely, accurate) to Board and relevant committees;
- 1.1.4 Provide NHS Improvement with assurance of engagement of operational managers in financial governance and Cost Improvement Programme;
- 1.1.5 The Licensee will demonstrate that it has adequate capacity and capability in place to deliver the financial plans; and
- 1.1.6 The Licensee will keep the plans under review and agree necessary amendment with NHS Improvement.

#### 2 A&E Performance

2.1 The Licensee will take all reasonable steps to achieve an understanding of the drivers of its performance against the A&E four-hour wait target and delayed transfers of care

targets, and to deliver A&E services on a sustainable basis that meets the trajectory agreed as part of STF funding, including but not limited to the actions outlined below:

- 2.1.1 The Licensee will provide evidence that it has taken all reasonable steps within its control to deliver the relevant sections of the Urgent and Emergency Care Improvement Plan agreed at A&E Delivery Board;
- 2.1.2 The Licensee will actively participate in keeping the Urgent and Emergency Care Improvement Plan and its delivery under review through the A&E Delivery Board;

Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 2.1.1 above, whether identified by the Licensee or another party, the Licensee will notify NHS Improvement as soon as practicable and update and resubmit the Urgent and Emergency Care Improvement Plan within a timeframe to be agreed with NHS Improvement.

### 3 Distressed Funding

- 3.1 Where interim support financing or planned term support financing is provided by the Secretary of State for Health to the Licensee pursuant to section 40 of the NHS Act 2006, the Licensee will comply with any terms and conditions which attach to the financing.
- 3.2 The Licensee will comply with any reporting requests made by NHS Improvement in relation to any financing provided or to be provided to the Licensee by the Secretary of State for Health pursuant to section 40 of the NHS Act 2006.

### 4 Spending Approvals

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

### 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, as required, to discuss its progress in meeting those undertakings. These meetings will 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.
- 5.2 The Licensee will provide NHS Improvement with the assurance relied on by its Board in relation to its progress in delivering these undertakings, upon request.
- 5.3 The Licensee will comply with any additional reporting or information requests made 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 THOSE CONDITIONS RELATING TO:**

- **COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**

- COMPLIANCE WITH ALL REQUIREMENTS CONCERNING QUALITY OF CARE.

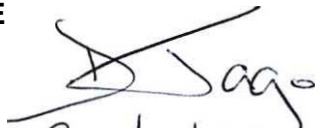
ANY FAILURE TO COMPLY WITH THE ABOVE UNDERTAKINGS WILL RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY NHS IMPROVEMENT. THIS COULD INCLUDE THE IMPOSITION OF DISCRETIONARY REQUIREMENTS UNDER SECTION 105 OF THE ACT IN RESPECT OF THE BREACH IN RESPECT OF WHICH THE UNDERTAKINGS WERE GIVEN AND/OR REVOCATION 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 UNDERTAKING.

LICENSEE

Signed

Dated

  
28/3/18

NHS IMPROVEMENT

Signed

  
(Delivery and Improvement Director, Cheshire and Merseyside)

Dated: 23.3.18