

VARIATION TO TERMS OF ENFORCEMENT UNDERTAKINGS

LICENSEE:

Blackpool Teaching Hospitals NHS Foundation Trust (“the Licensee”)
Whinney Heys Road
Blackpool
FY3 8NR

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 Licensee the enforcement undertakings specified below pursuant to its powers under section 106 of the Health and Social Care Act 2012 (“the Act”).

BACKGROUND

NHS Improvement accepted enforcement undertakings from the Licensee on 19 March 2019. A review of the Licensee’s progress in addressing the Undertakings has been completed, resulting in a revision to the undertakings that reflects the Licensee’s current position.

FOUNDATIONS

NHS Improvement accepted enforcement undertakings (“the Undertakings”) from the Trust on 19 March 2019, pursuant to section 106 of the Health and Social Care Act 2012 (“the Act”). Any reference to the “Undertakings” means the Undertakings, as may have been varied from time to time.

In this document, “NHS Improvement” means Monitor, which was abolished, and its functions transferred to NHS England on 1 July 2022 by the Health and Care Act 2022.

1. Licence

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

2. Breaches

2.1 NHS England 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:

2013 Licence	2023 Licence	Summary of condition
FT4(5)(a)	NHS2(5)(a)	Processes to ensure that the Licensee operates efficiently, economically and effectively
FT4(5)(c)	NHS2(5)(c)	Processes to ensure that the Licensee complies with healthcare standards, including but not limited to those outlined at NHS2(6) (see further below)
FT4(5)(d)	NHS2(5)(d)	Processes for effective financial decision-making,
FT4(6)(a)-(d) and (f)	NHS2(6)(a)-(d) and (f)	Particularly relevant are processes to ensure: (a) Board capability to provide effective leadership on quality of care (b) Board takes account of quality of care considerations (c) collection of accurate information on quality of care (d) Board use of such information (f) accountability for quality of care
FT4(7)	NHS2(7)	Appropriate Board members and staff to ensure compliance with the licence conditions
CoS3	CoS3	Standards of corporate governance and financial management

3. Quality

3.1 In September 2021, the CQC carried out an unannounced inspection of the Emergency Department (ED), Medicine and Surgery, followed by a Well-led Inspection of ED and Critical Care in October 2021. An inspection of ED, Medicine and Surgery took place in April 2022 and Maternity was inspected in June 2022.

3.2 In April 2022, the Care Quality Commission (CQC) issued a Section 31 Letter of Intent relating to rapid tranquilisation and sepsis.

3.3 CQC regulatory action detailed in the points above remains live. These matters demonstrate a failure to establish and implement processes to ensure that health care standards are complied with, including but not limited to processes to ensure:

3.3.1 there is sufficient capability at Board capability to provide effective organisational leadership on quality of care

3.3.2 the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations

3.3.3 the collection of accurate, comprehensive, timely and up to date information on quality of care

3.3.4 that the Board receives and takes into account such information

3.3.5 that there is clear accountability for quality of care throughout the Licensee's organisation including but not restricted to systems and/or processes for escalating

and resolving quality issues including escalating them to the Board where appropriate.

4. Finance

4.1 In particular, the Licensee:

4.1.1 has reported an annual deficit of £ (12.9) m for 2022/23.

4.1.2 set a deficit plan for 2023/24 of £ (24.3) m.

4.1.3 has a significant underlying deficit of concern.

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

4.2.1 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.

4.2.2 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; and

(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)

5. General

5.1 In addition, the matters outlined above demonstrate a failure to ensure the existence and effective operation of systems to ensure that the Licensee has in place personnel on the Board, reporting to the Board and within the rest of the Licensee's organisation who are sufficient in number and appropriately qualified to ensure compliance with the licence conditions.

6. Need for Action

6.1 NHS England 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.

7. Appropriateness of Undertakings

7.1 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 Licensee has agreed to give the following undertakings, pursuant to section 106 of the Act. These undertakings supersede any of the original Undertakings that remain in place.

1. Quality of Care

1.1 The Licensee will take all reasonable steps to rectify the concerns that have been identified in the CQC:

- 1.1.1 unannounced inspection of ED, Medicine and Surgery, carried out in September 2021.
- 1.1.2 Well-led Inspection of ED and Critical Care, carried out in October 2021.
- 1.1.3 inspection of ED, Medicine and Surgery, carried out in April 2022.
- 1.1.4 inspection of Maternity, carried out in June 2022.
- 1.1.5 Letter of Intent relating to rapid tranquilisation and sepsis, issued in April 2022.

1.2 The Licensee will ensure that there is an overarching CQC Action Plan detailing actions which the Licensee will take to ensure compliance with paragraph 1.1; and that its oversight and assurance processes in relation to the CQC Action Plan are robust.

1.3 The Licensee will keep the CQC Action Plan and its delivery under review. 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 England as soon as practicable and update and resubmit the CQC Action Plan within a timeframe to be agreed with the NHS England.

1.4 The Licensee will take all reasonable steps to deliver the CQC Action Plan, in accordance with the timeframes set out in the Plan, unless otherwise agreed with the NHS England.

1.5 The Licensee will ensure a Senior Responsible Officer or an Executive Lead for Freedom to Speak Up (FTSU) is in place to ensure FTSU processes are fit for purpose. In addition, the Licensee should evidence the embedding of actions from the recent cultural diagnostic conducted by HR RealWorld.

1.6 The Licensee will commission a board review and development programme and take all reasonable steps to ensure learning from this is embedded and sustained.

1.7 The Licensee will ensure that it has effective systems and processes in place to ensure incidents are reported, reviewed, and investigated appropriately & in a timely way. Moreover, it will have effective processes in place to identify and share lessons learnt from incidents.

1.8 The Licensee will take all reasonable steps to comply with any recommendations and improvements identified through the Maternity Safety Support Programme

1.9 The Licensee will ensure that there is a Maternity Safety Improvement Plan detailing actions which the Licensee will take to ensure compliance with paragraph 1.7; and that its oversight and assurance processes in relation to the Maternity Safety Improvement Plan are robust. The Maternity Safety Improvement Plan will be subject to the agreement of NHS England.

1.10 The Licensee will keep the Maternity Safety Improvement Plan and its delivery under review. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 1.8, whether identified by the Licensee or another party, the Licensee will notify NHS England as soon as practicable and update and resubmit the Maternity Safety Improvement Plan within a timeframe to be agreed with NHS England.

1.11 The Licensee will take all reasonable steps to deliver the Maternity Safety Improvement Plan, in accordance with the timeframes set out in the Plan, unless otherwise agreed with NHS England.

2. Financial Planning

2.1 The Licensee will take all reasonable steps to achieve financial balance by the 2024/25 financial year.

2.2 The Licensee will deliver the Licensee's 2023/24 Financial Plan unless otherwise agreed.

2.3 Within the timeframe set by NHS England, the Licensee will submit a Financial Plan for 2024/25 that achieves financial balance. The Plan should be consistent with the medium-term system plan currently in production, which sets out a trajectory for the Integrated Care System to achieve underlying financial balance by 2026/27.

2.4 The Licensee will keep the Financial Plans and their delivery under review. Where matters are identified which materially affect the Licensee's ability to meet the

requirements of paragraph 2.1, whether identified by the Licensee or another party, the Licensee will notify NHS England as soon as practicable and update and resubmit the Financial Plan within a timeframe to be agreed with NHS England.

2.5 The Licensee will take all reasonable steps to deliver the balanced plan for 2024/25, including but not limited to compliance with any half year milestones.

3. Distressed Funding

- a. Where interim support financing or planned term support financing is provided by the Secretary of State for Health and Social Care 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.
- b. The Licensee will comply with any reporting requests made by NHS England in relation to any financing provided or to be provided to the Licensee by the Secretary of State for Health and Social Care pursuant to section 40 of the NHS Act 2006.

4. Reporting

- a. The Licensee will provide regular reports to NHS England on its progress in meeting 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. 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.
- b. The Licensee will provide NHS England with the assurance relied on by its Board in relation to its progress in delivering these undertakings, upon request.
- c. The Licensee 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 Licensee to ensure that it is compliant with all the conditions of its licence, including any additional licence condition imposed under 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 England. 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 England is satisfied that the Licensee has given inaccurate, misleading, or incomplete information in relation to the undertakings: (i) NHS England may treat the Licensee as having failed to comply with the undertakings; and (ii) if NHS England decides so to treat the Licensee, NHS England must by notice revoke any compliance certificate given to the Licensee in respect of compliance with the relevant undertakings.

This variation is agreed pursuant to paragraph 11 of Schedule 11 to the Health and Social Care Act 2012 (variation of terms).

These undertakings supersede any of the original Undertakings that remain in place.

LICENSEE

Signed: 
Maggie Oldham, Chief Executive

Dated: 10th June 2024

NHS ENGLAND

Signed 
(North West Regional Director)

Dated: 10 June 2024