

Appendix A

REPLACEMENT ENFORCEMENT UNDERTAKINGS

LICENSEE:

Lancashire Teaching Hospitals NHS Foundation Trust ("the Licensee")
Royal Preston Hospital
Sharoe Green Lane
Fulwood
Preston
PR2 9HT

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

In June 2015, Monitor imposed additional licence conditions on the Licensee following concerns over leadership and governance evidenced, inter alia, by a forecast deficit of £46.8m for 2015/16.

In May 2018, NHS Improvement (acting as Monitor) accepted enforcement undertakings from the Licensee under section 106 of the Act following reported annual deficits of £25m in 2016/17 and £37.6m in 2017/18, with a forecast deficit of £46.4m for 2018/19.

Revised enforcement undertakings were accepted in December 2021 following annual deficits of £50.4m in 2018/19 and £58.4m in 2019/20 (excluding funding from the Provider Sustainability Fund). The financial position in 2020/21 and 2021/22 was distorted due to financial support provided by the government during the COVID-19 pandemic. However, the Licensee was still considered to have a significant underlying deficit during these years that would require addressing once the system returned to normal funding arrangements.

Since this point, the Licensee has reported an annual deficit of £35.6m for 2023/24 and has a planned deficit of £21.9m for 2024/25, which excludes the non-recurrent allocations. Additionally, there is evidence through triangulation by NHSE of quality, performance and patient safety intelligence that suggest fundamental and significant issues relating to governance and leadership.

The Care Quality Commission carried out an unannounced inspection May 2023 to July 2023 of urgent and emergency care at Royal Preston Hospital and Chorley and South Ribble Hospital, and medicine and surgery at Royal Preston Hospital. A focussed inspection of maternity services was also undertaken as part of the CQC national maternity inspection programme which looked at the safe and well led questions. CQC also inspected the well led key question for the Trust overall, with the inspection report published on 24 November 2023. The Licensee was rated as follows:

Overall trust quality rating:	Requires Improvement	
Are services safe?	Requires Improvement	
Are services effective?	Requires Improvement	
Are services caring?	Good	
Are services responsive?	Requires Improvement	
Are services well-led?	Requires Improvement	

The Licensee was found to have breached a number of the relevant regulations and the report sets out the action the Licensee must take to ensure compliance with the relevant legal requirements. The Licensee has remained in Requires Improvement since 2014.

NHS England is therefore now accepting revised financial undertakings and new quality undertakings to reflect the current position. The financial undertakings in this document replace the previous undertakings, some of which are no longer appropriate due to the passage of time and changes in the Licensee's circumstances.

GROUNDINGS

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:

2023 Licence	Summary of condition
NHS2(5)(a) to (d) and (f)	The Licensee shall 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 timely and effective scrutiny and oversight by the Board of the Licensee's operations; (c) 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, NHS England and statutory regulators of health care professions; (d) 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); ((f) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence.
NHS2(6)(a) to (d) and (f)	The systems and/or processes referred to in paragraph 5 should include but not be restricted to systems and/or processes to ensure: (a) that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided; (b) that the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations;

	(c) the collection of accurate, comprehensive, timely and up to date information on quality of care; (d) that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care; (f) 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.
NHS2(7)	Appropriate Board members and staff to ensure compliance with the licence conditions.
CoS3	Standards of corporate governance and financial management.

3. Finance

3.1 In particular, the Licensee:

- 3.1.1 has reported an annual deficit of £ (35.6) m for 2023/24.
- 3.1.2 set a deficit plan for 2024/25 of £ (22) m.
- 3.1.3 has a significant underlying deficit of concern.

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

3.2.1 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.

3.2.2 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)

4. Quality

4.1 The Licensee:

4.1.1 Has been subject to a series of quality concerns relating to patient safety, the environment, medical staffing levels and competency of staff as reflected at the CQC Inspection .

4.1.2 Was inspected by CQC between May to July 2023. The inspection included urgent and emergency care at Royal Preston Hospital and Chorley and South Ribble Hospital, and medicine and surgery at Royal Preston Hospital. A focussed inspection of maternity services was also undertaken as part of the CQC national maternity inspection programme which looked at the safe and well led questions. The Licensee was inspected overall in relation to the well led question. The Licensee was rated overall as Requires Improvement, with Safe, Effective, Responsive and Well led as Requires Improvement and Caring as Good. The findings from this inspection demonstrated a significant number of breaches of the relevant regulations.

4.2 The matters above and those specifically set out below, arising from the CQC inspection, demonstrate a failure to establish and implement effective governance arrangements including, in particular, a failure to establish and effectively implement systems and/or processes to:

- (a) ensure compliance with the Licensee's duty to operate efficiently, economically and effectively;
- (b) ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Care Quality Commission;
- (c) ensure that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;
- (d) ensure that the Board's planning and decision-making processes take timely and appropriate account of quality of care considerations;
- (e) ensure that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care.

4.3 The specific matters referred to above are:

- (a) a failure by the Licensee to ensure that patient identifiable information is not visible to visitors to the Urgent and Emergency Care Unit.
- (b) a failure by the Licensee to ensure that risk assessments are fully completed for patients attending the Urgent and Emergency Care Unit with mental health needs and mitigating actions to limit identified risks are implemented.
- (c) a failure by the Licensee to ensure patients receive antimicrobials in line with the national guidelines.
- (d) a failure by the Licensee to improve compliance for resuscitation training for medical and nursing staff and compliance for sepsis training for medical staff.
- (e) a failure by the Licensee to continue to take actions to improve referral to treatment waiting time performance in line with national standards.
- (f) a failure by the Licensee to take actions to improve the number of patients receiving clinical assessment and daily review by a senior decision maker within target timescales.
- (g) a failure by the Licensee to ensure that checks of consumables are completed including integrity of packaging and within expiry dates.

- (h) a failure by the Licensee to ensure patients with a mental health concern are cared for in a room that is free from objects that could be used to self-harm.
- (i) a failure by the Licensee to ensure equipment is secure, suitable for the purpose for which it is being used and properly maintained. This includes but is not limited to emergency equipment and firefighting equipment.
- (j) a failure by the Licensee to ensure that staff complete patient records accurately and in a timely manner.
- (k) a failure by the Licensee to ensure that patient records are kept secure.
- (l) a failure by the Licensee to ensure they have enough medical staff to keep patients safe.
- (m) a failure by the Licensee to ensure staff receive appropriate training as is necessary to enable them to carry out the duties they are employed to perform. This includes but is not limited to life support and pool evacuation training, resuscitation and sepsis training.
- (n) a failure by the Licensee to ensure staff complete mandatory training in accordance with the relevant schedule and receive sufficient training, supervision and appraisal to perform their duties competently.

5. General

5.1 In addition, the matters outlined above demonstrate:

- 5.1.1 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.
- 5.1.2 a failure to establish and effectively implement systems and/or processes for timely and effective scrutiny and oversight by the Board of the Licensee's operations.
- 5.1.3 a failure to establish and effectively implement systems and/or processes to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the conditions of its Licence, including but not limited to systems and/or processes for escalating and resolving quality issues.

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 undertakings agreed in December 2021 that remain in place.

1. Financial Planning

- 1.1 The Licensee will deliver the Licensee's 2024/25 Financial Plan unless otherwise agreed.
- 1.2 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.
- 1.3 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 (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 Financial Plan within a timeframe to be agreed with NHS England.

2. Distressed Funding

- 2.1 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.
- 2.2 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.

3. Quality of Care

- 3.1 The Licensee will take all reasonable steps to address and rectify the breaches identified in the CQC report dated 24 November 2023 within such timescales to be agreed with NHS England. The Licensee will agree any amendments to the Quality Improvement Plan with NHS England and the ICB.
- 3.2 The Licensee will develop and submit to Lancashire and South Cumbria ICB and NHS England, a Quality Improvement Plan detailing actions which it will take to ensure compliance with paragraph 3.1 above, including key milestones and timelines, for approval by NHS England and the ICB.
- 3.3 Specifically, and in line with the actions set out as required in the CQC report, the Licensee will ensure the Quality Improvement Plan includes actions that will ensure robust governance processes in relation to timely identification and management of risk including processes for shared learning.
- 3.4 The Licensee will, as part of the Quality Improvement Plan, set out a workforce strategy to ensure sufficient numbers of suitably qualified, competent and experienced staff are available to enable them to meet all regulatory requirements.

- 3.5 The Licensee will ensure that its oversight and assurance processes in relation to the delivery of the actions in the Quality Improvement Plan are robust. The Licensee will demonstrate progress against the Plan in line with the agreed timelines through the Licensee's internal governance arrangements and enabling external oversight by the ICB and NHS England. Progress against the Quality Improvement Plan will be presented monthly to the System Improvement Board (SIB) until otherwise agreed with NHS England and the ICB.
- 3.6 The Licensee will keep the Quality Improvement Plan and its delivery under review. Where matters are identified which materially affect the Licensee's ability to meet the requirements of paragraph 3.1, whether identified by the Licensee or another party, the Licensee will notify the ICB and NHS England as soon as practicable and update and resubmit the amended Quality Improvement Plan for NHS England and ICB approval within the timeframe agreed with NHS England and the ICB.
- 3.7 The Licensee will ensure that the Plan is updated as necessary, with the agreement of NHS England and the ICB, to include any quality related recommendations from external independent investigations.
- 3.8 The Licensee will take all reasonable steps to deliver the Quality Improvement Plan, in accordance with the timeframes set out in the Plan, unless otherwise agreed with NHS England.

The Licensee will work in partnership with the Provider Collaborative and ICB to support the timely delivery of the System Clinical Strategy.

4. Reporting

- 4.1 The Licensee will provide regular reports to NHS England on its progress in meeting the undertakings set out above.
- 4.2 The Licensee will attend SIB meetings, or, if NHS England stipulates, conference calls, at such times, and with such attendees, as may be required by NHS England, to discuss its progress in meeting the undertakings. The SIB 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.
- 4.3 Upon request, the Licensee 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.
- 4.4 The Licensee will comply with any additional reporting or information requests made by NHS England.

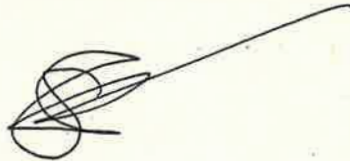
The undertakings set out above are without prejudice to the requirement on the Licensee to ensure that it is compliant with all the conditions of its licence, including any additional licence condition imposed under the Act and those conditions relating to:

- 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.

LICENSEE



Signed (Chair or Chief Executive of Licensee)

Dated: 22/7/24

NHS ENGLAND



Signed (North West Regional Director)

Michael Gregory

Dated:

23 July 2024