

Undertakings (section 106)**GROUNDINGS**

1. Licence

The Licensee is the holder of a licence granted under section 87 of the Health and Social Care Act 2012 (the Act).

2. Breaches

2.1. NHS England has reasonable grounds to suspect that the Licensee has provided and is providing healthcare services for the purposes of the NHS and is in breach of the following conditions of its licence: NHS2(4)(a) to (c), NHS2(5)(b) and (c), NHS2(6)(a) to (f) and NHS2(7).

2.2. In particular:

2.2.1 The CQC carried out an inspection of the elective Upper Gastrointestinal (UGI) surgical service in August 2022 following concerns raised to them, which found serious safety and leadership issues. This resulted in the CQC urgently imposing conditions on the registration of the Licensee, suspending the UGI elective surgical service to protect patients from the potential risk of harm.

2.2.1. On 4 and 5 October 2022, due to the ongoing safety concerns identified by the inspections and staff, the CQC undertook a Well-led inspection of the Licensee to review their concerns about the quality of the Licensee's leadership, organisational culture and lack of progress against the enforcement action taken in the surgical core service at the Royal Sussex County Hospital (RSCH). At the same time, in response to concerns, it carried out a focused inspection of the neurosurgical service at RSCH. The inspection resulted in a report published on 15 May 2023 which gave the Licensee an overall trust quality rating of 'Requires Improvement' and an 'inadequate' under the Well Led domain. Reasons given for the significant improvement needed were:

- 2.2.1.1. Current communication and engagement methods were ineffective.
- 2.2.1.2. Staff felt leaders were not visible and felt unsupported by senior leaders.
- 2.2.1.3. Staff reported low levels of satisfaction and high levels of stress and work overload.
- 2.2.1.4. Not all staff felt they could raise concerns without fear of reprisal. Others experienced 'concern fatigue' from raising the same concerns repeatedly with no action taken.
- 2.2.1.5. Some examples of bullying and harassment were found.
- 2.2.1.6. Some staff were not able to identify the Freedom to Speak Up Guardian (FTSUG) and were unable to say how they would access the FTSUG or raise a concern.

2.2.1.7. Risk, issues and poor performance and behaviours were not always dealt with quickly enough.

2.2.2. The focused CQC inspection of the neurosurgical service at RSCH identified that:

2.2.2.1. The service did not always have enough staff to care for patients and keep them safe. Shortage of radiography staff resulted in delays of surgical procedures.

2.2.2.2. Staff did not always work well together for the benefits of patients. Some consultants did not engage with patient discharge processes or with sharing prognosis with patients.

2.2.2.3. The environment and availability of equipment did not always support safe and effective patient care and treatment. There were incidents of surgery being delayed due to lack of imaging equipment. Lack of an emergency theatre capacity meant planned surgery was often cancelled to accommodate emergency cases.

2.2.2.4. Staff did not always feel respected, supported and valued. Some consultants did not demonstrate respectful behaviours.

2.3. These breaches demonstrate a failure of governance arrangements by the Licensee including, in particular, failure to:

2.3.1 establish and implement (NHS2(4)(a) to (c):

2.3.1.1 clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and

2.3.1.2 clear reporting lines and accountabilities throughout the organisation.

2.3.2 establish and effectively implement systems or processes (NHS2(5)(b) and (c)):

2.3.2.1 for timely and effective scrutiny and oversight by the Board of the Licensee's operations;

2.3.2.2 to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the CQC; and

2.3.2.3 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;

2.3.3 to address matters relating to quality of care (NHS2(6)(a) to (f))

2.3.4 ensure the existence and effective operation of systems to ensure that it 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 conditions of its licence (NHS2(7)).

2.4. Need for action

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.

3. Appropriateness of Undertakings

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:

1. Quality

1.1. The Licensee will develop and agree a comprehensive improvement plan with Board level accountabilities, incorporating (as appropriate) feedback from NHS England and any external reviews commissioned as part of its improvement work.

1.2. The plan will:

1.2.1. set out the Licensee's priorities and actions in relation to the areas for improvement including: the findings identified by the CQC in its inspection report dated 15 May 2023; in the s.31 notice in relation to oesophageal re-sectional surgery imposed in August 2022; the residual actions needed to address the October 2021 S29A Warning Notices in Maternity and Surgery in full; and to deliver on the Licensee's wider improvement priorities including 4-hour performance and planned care;

1.2.2. set out a clear approach and plan for engaging and supporting staff in the improvement plan;

1.2.3. ensure transparent internal processes and reporting is available to provide staff with the confidence to raise concerns without fear of detriment and feeling supported in doing so;

1.2.4. respond effectively to staff feedback including Staff Survey findings, grievances, complaints and whistleblowing concerns;

1.2.5. ensure effective mechanisms for all staff to provide feedback and respond effectively to this feedback, including staff survey, complaints, and whistleblowing concerns; and

1.2.6. include ongoing triangulation of the impact of improvement actions with wider quality metrics including patient and staff feedback incidents and complaints.

1.3. The Licensee will demonstrate ongoing delivery of the comprehensive improvement plan through an open and transparent reporting framework.

2. Governance

2.1. The Licensee will:

2.1.1. ensure there is sufficient capacity and capability to lead and oversee the successful delivery of the comprehensive improvement plan and ensure

effective Board oversight and accountability for incidents, clinical harm, complaints and patient feedback; and

2.1.2. ensure it has effective Board-level governance arrangements to oversee planned delivery, including response to whistleblowing cases, complaints, staff feedback and serious incidents.

3. Meetings and reports

3.1. The Licensee will attend joint meetings or, if NHS England and the ICB stipulates, conference calls, at such times and places, and with such attendees, as may be required by NHS England and the ICB.

3.2. The Licensee will provide such reports in relation to the matters covered by these undertakings as NHS England and the ICB may require.

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 section 111 of 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.