

## Executive Summary

### Report to the Board of Directors

Held on 29 November 2022

<b>Subject</b>	Enforcement Undertakings and Exit Criteria
<b>Sponsor</b>	Kirsten Major, Chief Executive
<b>Author</b>	Sandi Carman, Assistant Chief Executive
<b>Status</b>	Approve

### PURPOSE OF THE REPORT

The paper confirms the Trust's regulatory position with NHS England and asks the Board of Directors to discuss and approve the enforcement undertakings and note the actions required by the Trust in response.

### KEY POINTS

#### NHS England regulatory action

As a foundation trust Sheffield Teaching Hospitals is required to operate within the standard conditions of the NHS Provider Licence, any suspected breach of these conditions is managed under the arrangements set out in the [Monitor Enforcement Guidance 2013](#).

The findings from the CQC inspection published in April 2022, and earlier inspection outcomes, led NHS England to take the decision to initiate formal regulatory action. This has included an assessment by NHS England that there were reasonable grounds to suspect that the Trust was in breach of its Provider Licence, and there is therefore the subsequent requirement for enforcement undertakings to be put in place to set out the actions required by the Trust.

Following the NHS England Board to STH Board meeting held in June 2022, the Trust received a draft summary of the enforcement undertakings which outlines the commitment required from the Trust to ensure that the suspected breach does not continue or recur. The draft enforcement undertakings were received on the 4 October 2022 and are attached at Appendix I.

Given the passage of time the contents do not consider the unannounced CQC inspection undertaken in September 2022. However, the contents are not materially incorrect for the period referenced.

Discussions with NHS England colleagues have advised that the improvement work completed to date and submitted to the NHS England Regional Quality Board aligns with the requirements detailed in the undertakings.

#### Improvement programme

Following the receipt of the April 2022 CQC Inspection Report, the Trust has been working on improving the 17 Outcomes identified through analysis of the *must do* requirements of the CQC report. This has enabled focused improvement on the key areas of risk and good progress has been made.

As we move to the next phase of our improvement journey, five improvement workstreams and three areas of intensive support have been identified which enable renewed focus on these important areas of delivery. This approach aligns to the Trust's overarching Getting Back on Track recovery programme and was first described to the Board in its private session in October 2022.

Since June 2022, five NHS England Regional Quality Board meetings have been held and the Trust has reported updates regarding actions and improvements undertaken in Maternity Services and for the 17 Outcomes pertaining to the main CQC inspection. These matters have also been reported to the Board of Directors through the Maternity and Neonatal Safety report and the CQC Action Plan updates, along with other associated papers.

The Trust understands that the CQC Action Plan, the Maternity Improvement Programme actions and the 'plan on a page' improvement workstreams align to the requirements identified as the 'Recovery Plan' detailed in the Enforcement Undertakings.

### Exit criteria and enforcement undertakings

The requirement for the Trust to support these enforcement undertakings sits alongside the [NHS Operating Framework 2022/23](#) exit criteria agreed at the NHS England Regional Quality Board on the 20 July 2022, attached at appendix II. These exit criteria set out the improvements required to exit from NHSE Quality Board enhanced surveillance, it should be noted that the South Yorkshire Integrated Care Board may wish to put in place additional surveillance requirements once the Quality Board meetings have been stepped down.

Compliance with the exit criteria will support the NHSE Regional team considerations when assessing if the Trust should move from Segment 3 to Segment 2 within the NHS Operating Framework. For the avoidance of doubt, it should be noted that compliance with the exit criteria does not automatically mean that the Trust will move from Segment 3 to Segment 2.

NHS England colleagues will undertake a review at a point in the future (usually 12-18 months). This review will seek to confirm that the Trust is no longer in breach of the provider licence, is compliant with the enforcement undertakings agreed with NHSE and will be centred primarily around an assessment of the impact of the actions taken in response to the CQC report. The assessment will also consider other delivery and governance domains of the Trust to ensure no material risks in other areas of the Trust have emerged.

We have been advised by NHS England colleagues that there is read across between the enforcement undertakings and the exit criteria, although due to the legal requirements the language is different. Minor non material changes to the proposed narrative are marked in yellow.

Segment 3 of the NHS Operating Framework enables the Trust to access 'mandated support'. Since June 2022 the Trust has been working closely with NHS England colleagues in this respect.

The Trust will

- a) Ensure the actions we take continue to align with the enforcement undertakings.
- b) Work towards compliance with the exit criteria agreed with NHS England Regional Quality Board.
- c) Work with colleagues to maximise the benefits of the mandated support provided as a result of moving to Segment 3.

## IMPLICATIONS

Aim of the STHFT Corporate Strategy		✓ Tick as appropriate
1	Deliver the Best Clinical Outcomes	✓
2	Provide Patient Centred Services	✓
3	Employ Caring and Cared for Staff	✓
4	Spend Public Money Wisely	✓
5	Create a Sustainable Organisation	✓
6	Deliver Excellent Research, Education and Innovation	✓

## RECOMMENDATIONS

The Board of Directors is asked to:

- APPROVE the Enforcement Undertakings as drafted in Appendix I, to be accepted and signed by the Trust and NHS England
- AGREE the approach outlined above and ensure sufficient action is taken to meet the requirements of the Undertakings.

## APPROVAL PROCESS

Meeting	Date	Approved Y/N
STH Trust Executive Group	9 Nov 2022	Y
NHSE Regional Quality Board	16 Nov 2022	Y
STH Board of Directors	29 Nov 2022	

## ENFORCEMENT UNDERTAKINGS

### LICENSEE:

Sheffield Teaching Hospitals NHS Foundation Trust  
Northern General Hospital  
Herries Road  
Sheffield  
S5 7AU

### DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, NHS England 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. Issues and need for action

##### Quality and Governance 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 in breach of the following conditions of its licence: FT4(5)(c) and FT4(6)(c) - (f).

#### 2.2 In Particular:

- 2.2.1 The CQC undertook an inspection of the acute and community services provided by the Licensee between 5 October 2021 and 11 November 2021. The CQC report, published on 5 April 2022 (“the CQC Report”) rated the Licensee as overall ‘requires improvement’. The report rated the effective, responsive, caring, and well-led areas as ‘requires improvement’ and the safe areas as ‘inadequate’. The Licensee was previously rated as ‘good’ overall in the report published in November 2018.
- 2.2.2 The CQC issued the Licensee with one section 29A warning notice (“the Warning Notice”), and a requirement notice in relation to 86 breaches of legal requirements in five core services and in relation to overall governance of the Licensee.
- 2.2.3 The CQC report included the following findings:
  - 2.2.3.1 The Licensee did not have enough staff to care for patients and keep them safe;
  - 2.2.3.2 The Licensee did not always control infection risk well;
  - 2.2.3.3 The Licensee did not always manage safety incidents well and actions were not always robust;
  - 2.2.3.4 The Licensee did not always plan care to meet the needs of local people, which, took account of patients’ individual needs, and made it easy for people to give feedback;
  - 2.2.3.5 The Licensee did not always engage well with staff, patients and the community to plan and manage services;
  - 2.2.3.6 The delivery of high quality care was not assured by the governance of the Licensee.

2.2.4 These breaches by the Licensee demonstrate a failure of governance arrangements in particular but not limited to a failure by the Licensee to:

2.2.4.1 Establish and effectively implement systems and/or processes to:

- a) Ensure compliance with care health standards specified by the CQC;
- b) identify and manage material risks to compliance with the Conditions of its Licence; and
- c) ensure the matters relating to quality of care specified in FT4(6)(c) (collection of accurate, comprehensive timely and up to date information), FT4(6)(d) (the Board receives and takes into account such information), FT4(6)(e) (Board actively engages on quality of care), and FT4(6)(f) (clear **accountability** for quality of care).

### 3. Need for action

NHS England believes that the **actions**, which the Licensee has undertaken to take pursuant to these undertakings, **are actions** to secure that the breaches in question do not continue or recur.

### 4. Appropriateness of Undertaking

In considering the appropriateness of accepting 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 and Governance

- 1.1 The Licensee will, in a timely manner, take all reasonable steps to meet the applicable quality standards overseen by the CQC. This includes taking the actions outlined in paragraphs 1.2 to 1.7 below;
- 1.2 The Licensee will take immediate steps to address the patient safety concerns identified in the Warning Notice, to the satisfaction of the CQC, and any further action necessary to ensure the warning notice **expires** as soon as reasonably practicable;
- 1.3 The Licensee will, within a timeframe to be agreed with NHS England, submit to NHS England a recovery plan (“the Recovery Plan”) setting out the steps it will take to achieve the objective outlined in paragraph 1.1 above, including how it will address the issues and recommendations outlined in the CQC Report; and any risks and mitigations to its achievement. The Recovery Plan must specify timescales for completion of identified actions.
- 1.4 The Licensee will periodically assess and, where necessary, revise the Recovery Plan to ensure it remains deliverable and sufficient to address the objective outlined in paragraph 1.1. The Licensee will submit any proposed amendments to the Recovery Plan to NHS England in a timely manner and will implement such amendments as NHS England approve.
- 1.5 The Licensee will deliver the Recovery Plan in accordance with the timescales specified in the Recovery Plan.
- 1.6 The Licensee will provide, at a date to be agreed with NHS England, a report demonstrating how the board is assured that the objective in paragraph 1.1 has been met.
- 1.7 The Licensee will ensure that the delivery of the Recovery Plan, and other measures to improve quality and operational performance, do not compromise its overall financial position. The Licensee will keep the financial cost of its quality improvements under close review and will notify NHS England

as soon as practicable of any matters which are identified as potentially having a material impact on the Licensee's overall financial position.

## 2. Programme Management and governance

- 2.1 The Licensee 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 Licensee's Board to:
  - 2.2.1 obtain clear oversight over the progress in delivering the undertakings;
  - 2.2.2 obtain an understanding of the any risks to the successful achievement of the undertakings and ensure appropriate mitigation of any such risks; and
  - 2.2.3 hold individuals to account for the delivery of the undertakings.

## 3. Meetings and reporting

- 3.1 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 these undertakings.
- 3.2 The Licensee will provide NHS England with the evidence relied on by its Board in achieving assurance in relation to its progress in delivering these undertakings.
- 3.3 The Licensee will comply with any additional relevant 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 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 these undertakings: (i) NHS England may treat the Licensee as having failed to comply with these 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 (Chief Executive of Licensee)**

**Dated:**

## **NHS ENGLAND**

**Signed**

**Regional Chief Nurse, Member of the Regional Support Group (North East and Yorkshire)**

**Dated:**

## Exit from Quality Board Criteria

1. The trust has delivered all actions required in response to the Section 29a Warning Notice with evidence that actions have addressed the issues, are embedded and sustained
2. There is no ongoing enforcement action by CQC
3. Significant progress has been made against each of the CQC 'Must Do' actions and trust identified outcomes (17 original CQC Outcomes) over a sustained period of time (6-12 months)
4. There are no enforcement conditions on the registration of the Trust with CQC
5. A minimum Trust wide rating of Requires Improvement across the safe, effective, response and well led domains
6. A minimum Trust wide rating of Good for caring
7. A Governance review has been commissioned and completed. The recommendations from the review have been accepted and implemented with evidence that the required actions have been embedded
8. There is a credible plan and agreed trajectory for the Trust to move to segment 2 of the NHS Oversight Framework