
Rt Hon Mr M Hancock
Secretary of State
Department of Health and Social Care
Richmond House
79 Whitehall
London
SW1A 2NS

Dear Secretary of State

Referral under section 30 of the Local Audit and Accountability Act 2014

We are the auditor appointed to the audit of University Hospital of Leicester NHS Trust for the year ending 31 March 2019.

Our responsibility

Section 30 of the Local Audit and Accountability Act 2014 states that:

A local auditor of the accounts of a health service body must as soon as reasonably practicable refer the matter to the Secretary of State if the auditor believes that the body or an officer of the body:

- (a) is about to make, or has made, a decision which involves or would involve the body incurring unlawful expenditure, or
- (b) is about to take or has begun to take a course of action which, if followed to its conclusion, would be unlawful and likely to cause a loss or deficiency.

We are writing to you in accordance with sections 30(b) and 30(a) of the Local Audit and Accountability Act 2014.

The duty of the Trust

Paragraph 2(1) of Schedule 5 of the National Health Service Act 2006 provides:

Each NHS trust must ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.

This duty is known as the 'break even duty'. The phrase '*taking one financial year with another*' has been interpreted by the Department of Health and Social Care and HM Treasury as meaning that the duty is met if income equals or exceeds expenditure over a three year rolling period, or exceptionally a five year rolling period with the agreement of NHS Improvement.

Reasons for making a referral under section 30 of the Local Audit and Accountability Act 2014

s30(b) referral

Taking into account the 'Statutory breakeven duty: a guide for NHS trusts' guidance issued by NHS Improvement in April 2018 University Hospitals of Leicester NHS Trust has taken a course of action that has led to a breach of the Trust's breakeven duty for the three year period ending 31 March 2019.

We made a referral under section 30(b) of the Local Audit and Accountability Act 2014 on 25 May 2018, regarding University Hospitals of Leicester NHS Trust breaching its break even duty over the three year period ending 31 March 2018. University Hospitals of Leicester NHS Trust had reported a cumulative deficit of £136.4 million at 31 March 2017 and was predicting a £34.5 million deficit for the year ended 31 March 2018. Its expenditure therefore exceeded its income for the five year period ended 31 March 2018. The Trust's actual deficit was £34.455 million.

The Trust originally set a £29.9 million deficit budget for the year ended 31 March 2019, which was subsequently revised to a £21.2 million deficit in line with NHS Improvement's revised Control Total. If delivered, this revised Control Total would have given the Trust access to provider sustainability funding (PSF) of £21.9 million giving a reported surplus of £0.7 million. The Trust has subsequently revised its financial outturn to a deficit of £41.7 million. As demonstrated in the Table 1 below, this results in a cumulative deficit of £212.5 million as at 31 March 2019.

Table 1

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
	£'000	£'000	£'000	£'000	£'000	£'000
Final In-Year Position	(39,655)*	(40,648)*	(34,051)*	(27,152)*	(34,455)*	(41,740)*
Cumulative Break-even Position	(34,502)*	(75,150)*	(109,201)*	(136,353)*	(170,808)*	(212,548)*

Source: * Note 32 of the 2018/19 audited financial statements

The Trust therefore continues to take a course of action that is unlawful and has caused a loss which gives rise to a duty on us to report to you under section 30(b) of the Local Audit and Accountability Act 2014 in respect of the three year period ended 31 March 2019.

s30(a) referral

At the date of this letter the University Hospitals of Leicester NHS Trust is reconsidering its medium-term financial plan and how it can return to in-year financial balance. It has agreed a control total deficit of £10.656 million for the 2019/20 financial year. This is after the receipt of £38.069 million in support via the Provider Sustainability Fund, the Financial Recovery Fund, and Marginal Rate Emergency Tariff. The updated medium-term financial plan will demonstrate that, alongside its reconfiguration plans and the ambitions set out within the NHS Long Term Plan, the Trust is expected to achieve financial balance by 23/24.

The Trust has made a decision for 2019/20 to incur unlawful expenditure which gives rise to a duty on us to report to you under section 30(a) of the Local Audit and Accountability Act 2014.

We understand that this is a matter which is already known to the Secretary of State, hence the brevity of this referral letter. Please do not hesitate to contact us if you need any further information.

Yours sincerely

Grant Thornton UK LLP, local auditors