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11 March 2013

**Monitor's Regulatory Approach at Royal National Hospital for Rheumatic Diseases NHS Foundation Trust (the Trust) under the provider licence**

Dear Peter,

As you will be aware, under the terms of the Health and Social Care Act 2012 (the Act), Monitor's new provider licence will come into effect on 1 April 2013, replacing the current Trust terms of Authorisation. This provider licence will form the basis of Monitor's regulation of foundation trusts thereafter. As explained in the December 2012 FT bulletin, Monitor has been reviewing the outstanding issues in foundation trusts in significant breach of their terms of Authorisation ahead of the introduction of the new licensing regime. The purpose of this review is to identify if the situation giving rise to the trusts' status of significant breach of their terms of Authorisation could give rise to potential breaches of their provider licences. This is in order for Monitor to take the appropriate regulatory action as soon as the licence comes into effect, to ensure continuity of regulatory supervision and support for those trusts.

Monitor will initiate action under the licence once it comes into effect. In preparation for this, and only for the trusts currently in significant breach of their terms of Authorisation, we intend to share our views on our proposed draft regulatory approach in advance of formally issuing any statutory enforcement notices under the Act as required. We intend to take into account the trusts' views as appropriate at this stage.

**Types of regulatory action**

Where an actual or potential licence breach is identified, Monitor may take formal or informal enforcement action to address this breach. The key tools available to Monitor are to impose discretionary requirements on a provider, accept enforcement undertakings from a provider or, for FTs only, to add additional conditions to the licences. These tools are explained in more detail in Appendix A to this letter.

### Next steps

I will contact you shortly to arrange a meeting or conference call to discuss Monitor's proposed regulatory approach for the Trust. In advance of the discussion, you will receive a letter outlining the draft regulatory approach and actions considered appropriate for your Trust at this stage. During March it is our intention to provide the opportunity for the Trust to provide its views and representations on the draft approach.

After the provider licence comes into effect, Monitor will write to the Trust to provide formal statutory notification of its proposed enforcement action having taken feedback and representations into account as appropriate.

Following receipt of this formal notification, there will be a 5 day period during which the Trust may make its representation on the notice as prescribed by statute. Monitor expects to make its final decision on any enforcement action during April.

If you have any questions on the above, please contact me on 0207-340 2463 or by email at [john.plumer@monitor-nhsft.gov.uk](mailto:john.plumer@monitor-nhsft.gov.uk).

Yours sincerely



John Plumer  
Relationship Manager

cc. Kirsty Matthews, Chief Executive  
Rachel Hepworth, Finance Director

## Appendix A – Monitor’s Key Licence Regulatory Tools

### ***Discretionary requirements under the Act***

Where Monitor finds that a provider is breaching, or has breached, one or more of its licence conditions, or has not met a requirement to hold a licence, or has failed to provide Monitor with information we require, Monitor may impose one or more of the ‘discretionary requirements’ specified in section 105 of the Act. Monitor may also impose such requirements on others in breach of a requirement to provide us with information.

The discretionary requirements that Monitor may impose are:

- **compliance requirements** which require a provider to take such steps as we may specify to ensure that the breach in question does not continue or recur;
- **restoration requirements** which require a provider to take such actions as we may specify to restore the situation to what it would have been, were the breach not occurring or had not occurred; and
- **variable monetary penalties** which require a provider to pay a penalty.

The power to impose monetary penalties will not be available to Monitor at this stage.

### ***Enforcement undertakings under the Act***

If Monitor has reasonable grounds to suspect that a provider is breaching, or has breached, one or more of its licence conditions, or has not met a requirement to hold a licence, or has failed to provide Monitor with information we required, we may accept ‘enforcement undertakings’, as described in section 106 of the Act. Monitor may also accept such undertakings from others in breach of a requirement to provide us with information.

An enforcement undertaking may include one or more of the following commitments:

- action to ensure that the breach does not continue or recur;
- action to ensure that the position is, so far as possible, restored to what it would have been were the breach not occurring or had not occurred;
- action, including the payment of a sum of money, to benefit any other licensee affected by the breach, or any commissioner of NHS health care services affected by the breach; or
- action of such a description as may be prescribed.

### ***Powers to impose additional licence conditions on NHS foundation trusts***

Monitor has additional specific powers to take action where the governance of an NHS foundation trust is such that it is failing, or will fail, to comply with one or more of the conditions in its licence.

There are two parts to these powers:

- i. where Monitor is satisfied that an NHS foundation trust’s directors and/or governors are failing to (a) secure compliance with conditions in the foundation trust’s licence or (b) take steps to reduce the risk of a breach of a condition in the foundation trust’s licence under section 111 of the Act, Monitor may include in the licence such conditions relating to governance as Monitor considers appropriate; and

- ii. where Monitor is satisfied that the NHS foundation trust has breached, or is breaching, an additional licence condition that was included under section 111 of the Act, we may use our powers to require the foundation trust to remove, suspend or disqualify one or more of the foundation trust's directors and/or governors or, if the foundation trust does not do so, Monitor may make such changes.