

9 December 2013

Mr Stuart Heys
Chair
Lancashire Teaching Hospitals NHS Foundation
Trust
Royal Preston Hospital
Sharoe Green Lane
Fulwood
Preston
PR2 9HT

Dear Stuart

**Lancashire Teaching Hospitals NHS Foundation Trust (“the Trust”) -
Notification of decision to open a formal investigation**

1. Further to our discussion with Karen Partington on 3 December 2013, I am writing to inform you of Monitor’s decision to open a formal investigation into the Trust’s compliance with its licence. This investigation has been opened due to governance concerns arising out of the Trust’s self-certified failure to meet the Referral to Treatment (admitted) 18 week target (“the RTT target”) and the number of cases of C.difficile exceeding the maximum threshold for three successive quarters at Q3 2013/14. We also have concerns about the Trust’s performance in relation to the A&E four hour wait target and cancer targets, as set out below.
2. The purpose of this letter is to:
 - 2.1 State the issues which have led to our concerns; and
 - 2.2 Confirm the process Monitor will adopt in assessing the extent of these concerns, whether there is a breach of the Trust’s licence, and what, if any, regulatory action may be appropriate in consequence.
3. We expect you to share the content of this letter with the Board and the Trust’s Lead Governor.
4. **Monitor’s concerns**
 - 4.1 Monitor is concerned that the Trust will have failed the RTT target for the third successive quarter at Q3 2013/14. This is an indicator of governance concerns under Monitor’s *Risk Assessment Framework*. We understand that pressures experienced over the 2012/13 winter resulted in the Trust reaching agreement with Commissioners to breach the RTT admitted target in Q1 2013/14 while it

addressed resultant waiting list backlogs. The Trust's expected date of return to compliance has subsequently continued to slip and the Trust has reported that it does not anticipate recovering the RTT position to compliance until the end of Q4 2013/14.

- 4.2 The Trust will also breach its C.difficile trajectory for the third successive quarter in Q3 2013/14, reporting 32 cases at the end of November against a cumulative trajectory of 31 cases in Q3. This is also an indicator of governance concerns under Monitor's *Risk Assessment Framework*.
- 4.3 The Trust also breached the A&E four hour wait target in Q4 2012/13 and Q1 2013/14 and the Trust has reported that this target continues to be under pressure during Q3 2013/14. The Trust has also reported that cancer targets have continued to come under pressure, with the 31 day surgery and 62 day urgent GP referral targets breached in Q4 2012/13 and the 2 week waits from referral to date first seen (symptomatic breast patients) target breached in Q2 2013/14.
- 4.4 Monitor is concerned that these issues could be indicative of governance failings at the Trust, indicating a potential breach of the Trust's licence.
- 4.5 Monitor also has concerns that there is risk to the Trust's financial position. The Trust only had around £240k headroom to an FRR 2 at Q2 and may be impacted by the financial position of the CCG.

5. Monitor's process to determine whether there is a breach of the licence and what, if any, regulatory action is appropriate

- 5.1 Monitor will consider all relevant factors in assessing what, if any, regulatory action is appropriate in relation to its concerns, including:
 - information gathered from the Trust and relevant third parties;
 - Monitor's published guidance relating to the requirements of the licence; and
 - the factors set out in Monitor's *Enforcement Guidance*.

As part of the above, we will consider, amongst other things, the evidence provided as a result of the Trust's work with the NHS Intensive Support Team ("the IST") on RTT and Cancer; the Trust's plans to address underperformance against the C.difficile target; and the Trust's response to the other concerns, including A&E and Cancer targets.

- 5.2 As part of the investigation, we will also seek further information from the Trust and may consider relevant information from third parties such as the Care Quality Commission ("CQC"), the Trust's commissioners and the Lancashire Area Team.
- 5.3 Following our consideration of relevant information, we may explore our concerns relating to Board governance at a meeting with you and other members

of your Board. The purpose of this is to help us consider whether the matters outlined in section four above could indicate a breach of the Trust's licence and, if so, what, if any, regulatory action is appropriate in response.

6. Next Steps

- 6.1 We will publish the Trust's revised Governance Risk Rating. The rating will change from its current narrative to the following narrative: "Monitor is investigating governance concerns at the Trust, following breaches of the Referral to Treatment (RTT) target and the C.difficile target."
 - 6.2 We will notify the Quality Surveillance Group, Lancashire Area Team and Clinical Commissioning Groups of our decision to investigate.
 - 6.3 We will speak to the Trust's Lead Governor to explain the action we are taking and provide an opportunity to speak to us directly.
 - 6.4 The Trust should provide the information requested in Appendix A by 5pm, Monday 6 January 2014.
 - 6.5 Following receipt of this evidence and initial consideration, we will be able to confirm potential next steps and associated timings. Should formal enforcement action be considered, the Trust will be afforded further opportunity for engagement or representations as appropriate, in line with our *Enforcement Guidance*.
 - 6.6 Monitor expects the Trust to continue to work at pace to progress the work with the IST, and address the concerns identified in relation to the breaches of the targets referred to above.
 - 6.7 The Trust's Governance Risk Rating will be 'narrative' until the investigation has concluded.
7. If you have any queries relating to the matters set out in this letter, please contact your relationship manager, Kate Sutherland, on 020 7340 2519 or by email Kate.Sutherland@monitor.gov.uk.

Yours sincerely



Robert Davidson
Regional Director – North

cc.: Ms Karen Partington, Chief Executive
Mr Paul Howard, Trust Secretary

Appendix A

Information requested from the Trust by 6 January 2014 (5pm)

1. The key reasons, in the Trust's view, underlying the target breaches set out in the letter, the reasons why the target breaches were not prevented, and any steps taken by the Trust to rectify any deficiencies in Board governance identified as a result of these target breaches;
2. Timetable detailing work with the IST, results of the work with IST and the latest version of the actions plan to address issues identified;
3. Details of work planned to reduce cases of C.difficile;
4. A copy of the latest action plan in place to address findings in the KPMG Urgent Care Services review;
5. Any governance reviews commissioned by the Trust from 2012/13 to date;
6. Copies of reports from any external assurance reviews commissioned around operational issues from 2012/13 to date;
7. All Board and Board sub-committee papers relating to operational issues in relation to RTT, C.difficile, A&E and cancer targets from 2012/13 to date; and
8. Any other information considered relevant by the Trust Board. Where the Trust provides other information please provide an explanation of what it is and the reason for providing it to us.