

Eileen Scrase
Head of Private Care
Royal National Orthopaedic Hospital

From: Alistair Thompson

9 November 2018

Dear Ms Scrase,

Breach of the Private Healthcare Market Investigation Order 2014 (the Order)

The CMA is writing to you to confirm the action being taken by the Royal National Orthopaedic Hospital (RNOH) to remedy a failure to comply with the Order, as since October 2017 RNOH has been offering incentives to consultants at less than a fair market rate.

Article 14 of the Order contains a general prohibition on incentives intended to induce a consultant to refer a patient to a private hospital. This general prohibition does not apply to services such as ‘contributions to professional indemnity insurance in respect of private patients’ (Article 16.1(c)) as long as certain conditions are met. One of those conditions is that ‘the relevant goods or services are charged to and paid by the relevant referring clinician at fair market value’ (Article 16.2(a)).

The RNOH arranged an indemnity policy for its consultants. The amount that consultants were required to pay back was much lower than the overall cost of the policy to the RNOH, and therefore they were not required by RNOH to pay it back at a fair market value. This is therefore a breach of the Order.

We examined these breaches in accordance with our duty to monitor and enforce the Order. This letter sets out the action that has been taken by RNOH to date to address this breach, and further actions agreed between RNOH and the CMA to prevent further breaches of the Order.

RNOH is making arrangements to remedy the deficiency in recovery in respect of the insurance year 2017/18. The Trust is also investigating further the position in respect of previous years from October 2015 with a view to establishing the extent of and recoverability of any further shortfall.

RNOH has committed to change its 'Agreement for the Provision of Services' contract between RNOH and consultants to ensure services are charged to and paid by the consultants at a fair market value. RNOH will also ensure that future contracts with consultants are checked thoroughly for compliance with the Order.

This letter has been published on our website.

Yours sincerely

Alistair Thompson
Director
Remedies, Business and Financial Analysis