

Open Letter to private healthcare consultants and hospitals

From: David Stewart
Executive Director, Markets,
Remedies and Regulation

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Update - enforcement action under the Private Healthcare Market Investigation Order 2014

In October 2022 the CMA published my [letter](#) to the private healthcare industry warning hospitals and consultants who had made little or no effort to comply with the Order that we were commencing enforcement action against them. This letter provides an update on this work.

First, I would like to repeat my thanks to the hundreds of hospitals and thousands of consultants who are now submitting data to PHIN and appear on the website for patients.

For those that are not complying with their legal obligations, the CMA has agreed an escalation pathway with PHIN. PHIN's starting point is always to help hospitals or consultants progress towards compliance without the need to refer to us for enforcement. PHIN is in frequent communication with the CMA and provides regular updates on hospitals' progress.

Where insufficient progress is being made despite PHIN's support, the CMA is taking action to secure compliance with the Order.

PHIN and the CMA are continuing to contact hospitals that are not submitting the required data, and in response, most have quickly implemented plans to achieve full compliance with the Order in a timely fashion, thus avoiding public enforcement.

For hospitals that fail to take the necessary steps, public enforcement action follows. On 12 April 2023 the CMA published enforcement [letters](#) against two such hospitals. Both are now working towards full compliance later in 2023, and the CMA is monitoring progress closely. This enforcement work is continuing, and today the CMA has published an enforcement letter to [Phoenix Hospital Group](#) about its failure to comply with its legal obligations.

Our enforcement work with consultants started with the busiest individuals. So far, following engagement by PHIN and the CMA, all of the most active consultants (where 100 admissions per year were reported to PHIN) have submitted the required fees information to PHIN. As with hospitals, this work is ongoing and we are now engaging with consultants that carry out fewer than 100 episodes per year.

While it is reassuring that on receiving contact from the CMA, many hospitals and consultants are remedying these breaches, both groups are well aware of the legal responsibility to comply with the Order. It remains a concern that these businesses and individuals do not comply with their legal requirements in the absence of a specific threat of public enforcement.

The CMA expects all hospitals and consultants that are not compliant to take immediate action to end breaches of the Order by logging in to the [PHIN Portal](#) or speaking to PHIN on 020 7307 2862.

The CMA is committed to seeing full compliance across the sector. Working with PHIN we are stepping up our enforcement action. Those in breach will now be escalated more swiftly to the CMA's formal enforcement tools. This will deliver greater compliance across the sector more quickly, and give a level playing field, preventing hospitals and individuals gaining from not complying with the Order in full. Hospitals and consultants should be aware that, as well as publishing the names of hospitals and consultants, the CMA has the power to issue legally-binding Directions against them, which are enforceable in court.

Further information on the factors the CMA considers when prioritising public enforcement action can be found in our published guidance document [Merger and market remedies: Guidance on reporting, investigation and enforcement of potential breaches](#).

Yours faithfully

David Stewart
Executive Director, Markets, Remedies and Regulation