

## MEDICAL EQUIPMENT SOLUTIONS LIMITED

### COMMENTS ON MONITOR STATEMENT OF ISSUES PUBLISHED ON 30 AUGUST 2013

#### INTRODUCTION

1. These comments are provided by Medical Equipment Solutions Limited (in here, "MESL") in relation to the statement of issues published by Monitor on its website on 30 August 2013 (the "Thornbury statement of issues"). In paragraph 6 of that document, Monitor invited comments on the Thornbury statement of issues.
2. MESL is a 50% shareholder (along with BMI Healthcare Limited) in The Thornbury Radiosurgery Centre Limited ("TRC"), and has, through its appointees to the board of TRC, been involved in the preparation of the submission to Monitor by TRC on 8 April 2013 that led to Monitor issuing the Thornbury statement of issues. MESL has been given consent by TRC to use and refer to the submission made by TRC.

#### MESL AND QSRC

3. MESL established (in a similar manner to TRC at Thornbury) its own gamma knife centre at the premises of University College Hospitals NHS Foundation Trust ("UCLH") at the National Hospital for Neurology and Neurosurgery (the "NHNN") in Queen Square, London WC1. (It did so through the medium of a single purpose company, QSRC Limited.)
4. These comments are not to be construed in any way as a separate complaint to Monitor on behalf of MESL; but are merely comments on the situation as regards gamma knife surgery elsewhere in England and Wales and NHS England's attitude towards new providers of such services. No decision has been made by MESL as to whether to make a separate, formal complaint to Monitor in respect of NHS England's treatment of MESL; and it reserves all its rights to do so at any stage in the future.

#### CHRONOLOGY

5. UCLH has for some years wanted to be able to provide Stereotactic Radiosurgery services ("SRS") at the NHNN. This was discussed with stakeholders, including previous commissioners, as the idea provided the opportunity for a new centre, which would cover all neurological diseases that could be treated with SRS and, given the clinical research expertise available at the NHNN, it would seek to ensure that all patients were offered the opportunity to participate in clinical trials. From operational start a range of clinical trials has been devised and UCLH is in the process of data capture from these trials.
6. UCLH and MESL commenced commercial discussions in 2011 and a commercial agreement detailing the basis upon UCLH would work with MESL to install and operate a gamma knife at NHNN was signed on 31 January 2012.
7. Immediately thereafter MESL and UCLH entered into discussions with the London Specialist Commissioning Group, the then relevant authority for gamma knife treatments. The lead clinical commissioner for UCLH/QSRC (at the time, North Central London or "NCL") gave its approval to the opening of the gamma knife unit in October 2012 (approval from all other

relevant authorities, including the Care Quality Commission and the Environment Agency, was also obtained). MESL opened the gamma knife for business at the end of October 2012.

8. It is important to note that, in addition to the formal approvals obtained by MESL, it was aware through its relationship with UCLH and the staff at the NHNN of the specialist services clinical service specifications that were due to come into force on 1 April 2013 and at all relevant times complied with the specifications.
9. In the period between 31 October 2012 and 31 March 2013, MESL (a) had approval from NCL and other clinical commissioning groups to treat patients approved for gamma knife treatment and (b) treated 59 patients; and (c) as a result of obtaining Individual Funding Request approvals has been paid for such treatments.
10. In January 2013 the London Specialist Commissioning Group (acting through Simon Williams) made MESL aware that MESL needed to provide a full business case in order to be allowed to carry out operations in 2013/14. MESL provided a business case, endorsed by UCLH, on 12 February 2013 with a full analysis of the market and likely volume expected. (Despite being requested, no response to or feedback on this business case has been received by QSRC from anyone connected with NHS England.) In March 2013, UCLH attempted to agree with the London Specialist Commissioning Group a financial pathway for the gamma knife for 2013/14; but was told that MESL should continue to submit Individual Funding Requests for treatments at the NHNN using the gamma knife.

#### EVENTS AFTER 1 APRIL 2013

11. Since 1 April 2013 MESL/UCLH has done as suggested in paragraph 10. A further 54 Individual Funding Requests have been submitted to NHS England and 44 have been approved (a further 10 cases all of which fall within the clinical service specifications are pending; and are likely to be approved in the next week or so). In every case, the approval has been granted (or, in the case of the pending cases, expected to be granted) on the basis that the treatment has been approved but that NHS England will only agree to pay for the treatment if carried out at one of two other London-based gamma knife centres (at the BUPA Cromwell Hospital and at the HCA run centre located at Bart's Hospital).
12. The patients who are affected by this decision have been advised in writing of the decision by NHS England and have had it discussed with them.
13. MESL has attempted to discuss with NHS England why it is that it was approved as a provider of gamma knife treatments prior to 1 April but not afterwards, with limited success. No substantive reply has been received by MESL, although it has seen copies of responses sent by the Secretary of State for Health (the Right Honourable Jeremy Hunt), the chief executive of NHS England (Sir David Nicolson) and other NHS England staff to third parties. None of these letters specifically addresses the point that MESL seeks to have clarified.
14. In addition, a request to Sue McLellen of NHS England to (a) provide details of when and how the contracts with HCA and BUPA were awarded and (b) explain why this was not done in an anti-competitive way has gone unanswered since being sent in early July (some two months ago).

## FORMAL POINTS TO BE MADE BY MESL

15. Although (see paragraph 4 above) this paper is merely comments on the TRC statement of issues (and not a formal complaint) there are common themes in both instances and it is worth highlighting these and the particular principles that they relate to:

***Principle 1: Commissioners should commission services from the providers who are best placed to deliver the needs of their patients and populations.***

The gamma knife service is run by MESL (a private company) under a similar contract with UCLH as HCA has with Barts. The BUPA Cromwell is a purely private hospital which does not specialise in particular services. The MESL service is based at NHNN and is run with NHNN consultants. NHNN is a national centre for excellence, is a centre for brain cancer referrals and one of the largest neurosciences centres in the country. NHNN has worked to put a contract in place so that its patients can all be treated at the same location, providing greater continuity of care.

***Principle 2: Commissioning and procurement should be transparent and non-discriminatory and follow the procurement guide issued in July 2010.***

NHS England has – like in the TRC case – refused (to date) to give any details of how and when it awarded contracts to BUPA and HCA, nor disclose the form of those contracts. Indeed it has refused to deal with this issue in any substantive manner at all.

***Principle 5: Commissioners and providers should promote patient choice, including – where appropriate – choice of any willing provider, and ensure that patients have accurate and reliable information to exercise more choice and control over their healthcare ; and***

***Principle 6: Commissioners and providers should not reach agreements which restrict commissioner or patient choice against patients' or taxpayers' interests.***

Patient choice has been restricted in both in terms of timing (NHNN approved prior to 1 April but not thereafter) and provider (why exclude the service where the patients have been treated to date at NHNN).

MESL has received no indication that its prices for gamma knife treatments were more costly to the NHS than those provided by others; and has argued that the decision by NHS England is likely to (a) to increase the cost to NHS England (because of a need to duplicate consultant appointments and multi-disciplinary team approvals) and (b) delay the treatment for a patient (because MESL can treat the relevant patient sooner than the alternative treatment centres).

16. In MESL's view the stance taken by the relevant part of NHS England in the TRC case is not an isolated incident. There appears to be a more general disregard by it for the principles of competition and cooperation.