Transfer of neurosurgery services from the Royal Free London NHS Foundation Trust to University College London Hospitals NHS Foundation Trust

Monitor's advice to the Office of Fair Trading under Section 79(5) of the Health and Social Care Act 2012

6 March 2013

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EXECUTIVE SUMMARY

1. The Office of Fair Trading has notified Monitor that it has decided to carry out an investigation under Part 3 of the Enterprise Act 2002 of the proposed transfer of neurosurgery services from the Royal Free London NHS Foundation Trust to University College London Hospitals NHS Foundation Trust. Monitor is required to provide advice to the Office of Fair Trading on the relevant customer benefits of the transaction in accordance with the statutory framework set out in the relevant legislation. This document constitutes Monitor's advice.

2. Monitor's advice on relevant customer benefits is just one of a number of inputs into the decision to be taken by the Office of Fair Trading. The Office of Fair Trading's role is to assess whether there is a competition problem arising from the merger. If the Office of Fair Trading finds such a problem it will take into account Monitor's advice when considering whether there are relevant customer benefits which outweigh that problem. We note that the Office of Fair Trading's investigation is triggered because the transfer of neurosurgery staff from the Royal Free London NHS Foundation Trust to University College London Hospitals NHS Foundation Trust has been arranged in a way which qualifies for investigation as a merger for the purposes of the Enterprise Act 2002.

3. Monitor has given the parties to the transaction considerable opportunity to present a case for relevant customer benefits including providing questions directed at eliciting the information necessary for our assessment. However, we note that in this case we have received limited information from the parties directed at evidencing relevant customer benefits. Notwithstanding this, given the parties' submission that the Royal Free London NHS Foundation Trust will cease providing neurosurgery services regardless of the transaction, it would likely be very difficult for the parties to establish that any benefits were dependent on the merger (as opposed to the decision of the Royal Free London NHS Foundation Trust to cease providing neurosurgery services).

4. In order to be satisfied that a submitted potential benefit relating to improved services constitutes a relevant customer benefit for the purposes of the Enterprise Act 2002 we need to be satisfied that the potential benefit is likely to represent an improvement in the health outcomes or experience of patients; that those improvements are likely to be delivered as a result of the transaction; and that those improvements are dependent on the transaction. The last element, whether the improvements are dependent on the transaction, is particularly important to our assessment of the key potential benefit submitted in this case. In order to assess a potential benefit against this element Monitor considers whether the potential benefit would be unlikely to accrue but for the transaction.

5. The key potential benefit submitted by the parties is that, following the transaction, patients receiving neurosurgery treatment at University College London Hospitals NHS Foundation Trust who would previously have been treated at the Royal Free London NHS Foundation Trust will receive a higher quality of service. In assessing this potential benefit it is not sufficient for us to conclude that the neurosurgery services of University College London Hospitals NHS Foundation Trust are likely to be better than those of the Royal Free London

NHS Foundation Trust and that following the transaction patients are likely to receive the higher quality services of University College London Hospitals NHS Foundation Trust. It must be shown that patients would not receive those higher quality services but for the transaction. On that basis Monitor's view is that this potential benefit is unlikely to constitute a relevant customer benefit because the treatment of neurosurgery patients at University College London Hospitals NHS Foundation Trust rather than the Royal Free London NHS Foundation Trust is unlikely to be dependent on the transaction.

6. In particular, for elective neurosurgery services, patients together with their referring clinicians are already able to choose to receive treatment at University College London Hospitals NHS Foundation Trust. Also, University College London Hospitals NHS Foundation Trust has the ability and incentive to attract elective neurosurgery patients from the Royal Free London NHS Foundation Trust (or any other provider if the Royal Free London NHS Foundation Trust ceases providing neurosurgery services) in the absence of the transaction. For non-elective services, the transaction is unlikely to offer any additional patient benefit relative to transferring the Royal Free London NHS Foundation Trust's neurosurgery services to an alternative provider or the Royal Free London NHS Foundation Trust ceasing to provide neurosurgery services without a transfer, and the parties have not established that the potential benefit is dependent on the transaction in the event that Royal Free London NHS Foundation Trust continues to provide neurosurgery services. Therefore Monitor's view is that the submitted benefit is unlikely to be dependent on the transaction.

7. The parties also submitted the transaction would give rise to other benefits in the areas of: Improvements to service quality in neurosurgery services; financial benefits; and benefits to the Royal Free London NHS Foundation Trust from ceasing neurosurgery provision. As set out below in this document, in relation to these potential benefits we have not received information necessary for our assessment or the information we have received is insufficient to satisfy us to the necessary standard.

8. Monitor's view is that it is therefore not appropriate to treat the potential benefits submitted by the parties as relevant customer benefits for the purposes of the Office of Fair Trading's assessment under the Enterprise Act 2002. However, we note we have identified some other matters that may nonetheless have advantages for patients and taxpayers in a publicly-funded healthcare system. These are (i) the avoidance by the Royal Free London NHS Foundation Trust of possible redundancy costs and resultant cost to the taxpayer; (ii) advantages to patients who would have been treated at the Royal Free London NHS Foundation Trust of ensuring that the neurosurgery staff from the Royal Free London NHS Foundation Trust are transferred to another provider capable of delivering high quality care; and (iii) preservation of the expertise of the neurosurgery staff from the Royal Free London NHS Foundation Trust as a team and continuation of the services they provide in an organised and predictable way for those patients who would have chosen the Royal Free London NHS Foundation Trust. This additional certainty might also allow better planning of investment in these services by University College London Hospitals NHS Foundation Trust which would be an advantage to patients if it results in greater quality improvements than another provider would achieve.

INTRODUCTION

9. On 13 November 2012 the Office of Fair Trading (OFT) notified Monitor, under section 79(4) of the Health and Social Care Act 2012, that it had decided to carry out an investigation under Part 3 of the Enterprise Act 2002 (Enterprise Act) into the transfer of neurosurgery services from the Royal Free London NHS Foundation Trust (Royal Free) to University College London Hospitals NHS Foundation Trust (UCLH)(the transaction).

10. Under section 79(5) of the Health and Social Care Act 2012, Monitor is required to provide the OFT with advice on the following matters:

    a. the effect of the matter under investigation on benefits (in the form of those within section 30(1)(a) of the Enterprise Act (relevant customer benefits)) for people who use health care services provided for the purposes of the NHS, and

    b. such other matters relating to the matter under investigation as Monitor considers appropriate.

11. This document (including the appendix) constitutes the advice that Monitor must provide under section 79(5) of the Health and Social Care Act 2012. A non-confidential version of this advice will be published on Monitor's website in due course.

12. Monitor is providing this advice in accordance with the statutory framework set out in the relevant legislation. In this advice, Monitor is not expressing a view about whether mergers of hospitals (or hospital services) are appropriate or whether this transaction is appropriate. Nor is Monitor expressing any view about what might happen if this transaction does not go ahead as planned.

FRAMEWORK FOR ANALYSIS OF MERGER BENEFITS

13. In order to constitute a relevant customer benefit within the meaning of the Enterprise Act:

    a. the benefit must be a benefit to relevant customers in the form of: lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market or markets in which the substantial lessening of competition concerned has, or may have, occurred or (as the case may be) may occur); or greater innovation in relation to such goods or services.

    b. 'Relevant customers', as defined in the Enterprise Act, include customers of the parties to the transaction, customers of such customers, and future customers.

    c. In addition, the OFT must believe that the benefit has accrued as a result of the transaction or may be expected to accrue within a reasonable period as a result of the transaction, and the benefit was, or is, unlikely to accrue without the creation of the transaction or a similar lessening of competition.

14. In order for Monitor to assess whether a transaction is likely to give rise to relevant customer benefits, the parties to the transaction need to identify the benefits that potentially arise from

the transaction and provide evidence in support of these claims. This approach reflects the position of the parties to the transaction as the proponents of the transaction and the organisations responsible for ensuring that the intended benefits are realised. This approach is consistent with OFT Guidance which requires parties to a transaction produce detailed and verifiable evidence of any anticipated price reductions or other benefits.[1]

15. In this case, Monitor has given the parties to the transaction considerable opportunity to present a case for relevant customer benefits including providing questions directed at eliciting the information necessary for our assessment. However, we note that in this case we have received limited information from the parties directed at evidencing relevant customer benefits. In order for Monitor to advise that a transaction is likely to give rise to any relevant customer benefit, Monitor must be satisfied on the basis of the evidence provided that it is more likely than not that the transaction will give rise to that relevant customer benefit. Where we have not received information necessary for our assessment of any particular benefit, or where the information we have received is insufficient to satisfy us to the necessary standard, we have noted this in the text. The views expressed in this advice are based on the evidence which has been presented to Monitor to date.

16. For Monitor to conclude that a benefit attributed to a transaction represents a real improvement in quality of services to patients or value for money, the parties to the transaction should be able to describe in sufficient detail the pre-existing situation which the transaction will improve. For example, if it is suggested that a transaction will improve staffing and provide better coverage of staff absences, then the extent to which existing services suffer from staffing problems should be set out. In the absence of this information, Monitor will find it difficult to form a judgement as to the existence or size of the benefit in question.

17. In relation to clinical benefits arising from a transaction, Monitor will seek to evaluate the extent to which the benefit in question results in an improvement in the health outcomes or experience of patients. For example, if it is suggested that a transaction will allow a particular type of care or treatment to be carried out at home rather than in hospital, then evidence from the parties would need to explain why this is clinically better for patients, which outcomes this will positively affect, the number of patients this will affect (and which patient groups this improvement might not apply to) as well as the rationale for why this service improvement is not being delivered currently, but will be delivered as a result of the transaction.

18. In order to constitute relevant customer benefits under the Enterprise Act, the benefits must be dependent on the transaction, that is, they must be unlikely to accrue without the creation of the transaction or a similar lessening of competition. This is a question of fact to be determined on a case by case basis. In order to determine whether or not this is the case Monitor will examine whether there is evidence that the submitted benefits are likely to occur in any event, for example whether the parties would have the ability and the incentive to achieve the benefits independently. In circumstances where the parties and commissioners

[1] See OFT, Mergers: exceptions to the duty to refer and undertakings in lieu of reference guidance (December 2010 OFT 1122).

may have separate proposals to make changes to the same services, there is the question of whether any benefits which are claimed as dependent on the transaction by the parties are in any event likely to arise within a reasonable period by virtue of commissioner-led reconfiguration in the absence of the transaction. Monitor will consider whether commissioners would be likely to take action which would have the same effect as the claimed benefit, and how soon that action is likely to occur.

19. Monitor will have greater confidence that a particular benefit is likely to be realised where the parties to a merger have a clear and detailed post-transaction implementation plan that sets out how the parties' existing structures, processes and practices will be modified to realise the benefits in question. Monitor is likely to place greater weight on the credibility of post-merger implementation plans where these plans have not been developed specifically for the purpose of obtaining approval for the merger.

20. In assessing the credibility of any plans to realise benefits Monitor may also look to the experience of the parties in previous transactions and their success in realising benefits from those transactions. Monitor may also look at other similar transactions and consider whether the parties to those transactions have been successful in realising similar benefits. Monitor will also consider the incentives that the organisations have to carry out the implementation plans that are presented to it.

21. As part of our assessment of the relevant customer benefits, we contacted the Care Quality Commission (CQC) to learn if there were any issues regarding the overall quality of services delivered by UCLH or Royal Free, and neurosurgery services in particular. The information provided by the CQC did not disclose any concerns relevant to the transaction regarding the quality of services provided by either UCLH or Royal Free.

ANALYSIS OF BENEFITS OF THE TRANSACTION

22. UCLH and Royal Free (together, the parties) submit that the transaction is likely to give rise to several relevant customer benefits. These benefits can be categorised under three heads:

    a. Improvements to service quality in neurosurgery services;

    b. Financial benefits; and

    c. Benefits to Royal Free from ceasing neurosurgery provision.

23. The potential benefits are discussed further under each of these heads below.

IMPROVEMENTS TO SERVICE QUALITY IN NEUROSURGERY SERVICES

24. The parties submit that the transaction will give rise to a number of benefits in the form of improvements to service quality in neurosurgery services. In particular, they explained that patients who, prior to the transaction, would have received neurosurgery treatment at Royal Free would now receive treatment from UCLH which provides higher quality neurosurgery

treatment. They also submitted that the transaction would further improve the quality of UCLH's neurosurgery service. Below we assess each of these potential benefits.

IMPROVEMENTS FOR ROYAL FREE NEUROSURGERY PATIENTS TREATED AT UCLH

25. The parties submit that, following the transaction, patients receiving neurosurgery treatment at UCLH who would previously have been treated at Royal Free will receive a higher quality of service. The parties also submit that these patients will be considered for a wider range of clinical trials than if they had received treatment at Royal Free. We assess each of those potential benefits below.

Higher quality neurosurgery service at UCLH

26. The parties submit that UCLH currently provides higher quality neurosurgery services than Royal Free, and that following the transaction, patients receiving neurosurgery treatment at UCLH who would previously have been treated at Royal Free will therefore receive a higher quality service.

27. In accordance with the framework set out above, for us to be satisfied that this constitutes a relevant customer benefit the parties must show:

    a. the benefit attributed to the transaction is likely to represent a real improvement in services to patients or value for money for taxpayers;

    b. the benefit is likely, in practice, to be realised and that it is likely to be realised within a reasonable period as a result of the transaction; and

    c. that the benefit is likely to be dependent on the transaction (i.e. that it is merger specific).

28. Our assessment of this potential benefit turns on the issue of whether the benefit is likely to be dependent on the merger (see paragraphs 46 to 52). However, as this represents the key potential benefit submitted by the parties, we have set out our assessment of each of the above elements in turn below.

Whether the benefit is likely to represent an improvement in services to patients

29. In order to ascertain whether the transaction results in patients who would previously have been treated by Royal Free receiving a higher quality service, we first assessed whether UCLH's neurosurgery services are currently of higher quality than those provided by Royal Free.

30. The parties told us that The National Hospital for Neurology and Neurosurgery at Queen Square is considered one of the world's leading neuroscience centres. In support of their submission that UCLH currently provides a higher quality neurosurgery service than Royal Free, the parties' submitted data on four outcome measures. These outcome measures showed that for the periods covered by the data UCLH's neurosurgery services had lower readmission, mortality and complication rates, as well as a lower summary hospital-level

mortality index (SHMI), than Royal Free's services.[2] The parties told us that a lower value across each outcome measure indicates better clinical outcomes for patients.

31. The parties explained that the differences in outcome measures are due to a number of factors, including UCLH:

    a. Being a larger service in terms of staff and facilities with associated scale benefits;

    b. Having high quality staff due to its specialist tertiary focus and academic links (which the parties claim are particularly valuable in a specialty such as neuroscience); and

    c. Having high quality facilities. UCLH has regularly upgraded its facilities and equipment, such as imaging.

32. The parties also submit that a certain minimum scale is necessary in order to deliver neurosurgery services to a high quality standard. The parties submit that Royal Free lacks this minimum scale but UCLH does not. The parties submit this both explains why UCLH has delivered better outcomes to date and demonstrates why UCLH will continue to deliver better outcomes following the transaction. In support of the importance of this minimum scale in specialist services generally and in neurosurgery specifically, the parties adduced commentary from practitioners and commissioners.

33. The parties provided us with the data underlying the outcome measures described above. We were unable to verify the aggregate measures submitted by the parties from that data (see Appendix 1 for further details). The parties subsequently provided us with revised outcome measures.[3] These revised outcome measures are set out in *Table 1* and show that for the periods covered by the data UCLH's neurosurgery services had lower readmission, mortality and complication rates than Royal Free's services. The revised outcome measures show the SHMI for 2011 and 2012 are the same for UCLH's and Royal Free's neurosurgery services. We note that while the revised outcome measures show the difference in outcomes between the two providers' neurosurgery services to be smaller than was indicated by the original data, the revised outcome measures (and our estimates based upon the original data) were consistent with the parties' submission that UCLH's neurosurgery services performed better than Royal Free in relation to readmission, mortality and complication rates.

[2] The submitted mortality, readmission and complication rates for neurosurgery include observations over the period April 2007 to September 2012. Summary hospital-level mortality indicators were submitted for 2011 and 2012 and the parties explained this was a better measure of mortality when comparing services on a like-for-like basis as it is adjusted for expected rates based on patients treated by a specific hospital.

[3] The parties noted that the original data may have been based on all activity at the National Hospital for Neurology and Neurosurgery. The parties told us that the revised outcome measures were drawn from publicly available sources but as they did not provide us with the underlying data we were unable to conduct analysis similar to that set out in Appendix 1 regarding the original data.

Table 1 Revised neurosurgery outcome measures submitted by parties

	UCLH	Royal Free	Outcome improvement[4]
Readmissions	2.7%	5.4%	2.7 percentage point reduction
Mortality	1.89%	2.59%	0.7 percentage point reduction
Complication rate	3.4%	4.1%	0.7 percentage point reduction
SHMI 2011	72	72	No difference
SHMI 2012	71	71	No difference

Source: Submission from parties

34. Our assessment of whether this potential benefit is likely to be delivered and whether this potential benefit is dependent on the transaction is set out below in paragraphs 35 to 45 and 46 to 52 respectively.

Whether the benefit is likely to be delivered

35. We next assessed whether any benefit in terms of Royal Free patients receiving higher quality treatment at UCLH would be likely to be delivered (i.e. whether it is likely this potential benefit would be likely, in practice, to be realised and whether it would be realised within a reasonable period following the transaction).[5] In carrying out this assessment we assessed two questions:

    a. Whether neurosurgery patients who would previously have received treatment at Royal Free are, following the transaction, likely to receive treatment at UCLH; and

    b. Whether the treatment those patients receive at UCLH is likely to be of the same quality that was provided to UCLH patients prior to the transaction (i.e. whether there are any risks to maintaining the current service quality levels at UCLH).

36. We note that the transaction does not guarantee the transfer of Royal Free's neurosurgery patients to UCLH. We therefore assessed whether neurosurgery patients who would previously have been treated at Royal Free would instead be treated at UCLH. UCLH told us that following the transaction it expects [✂] additional neurosurgery patients and the business case for the transaction indicates that it expects all of Royal Free's neurosurgery activity would transfer to UCLH following the transaction.[6] While we were not provided with any information as to the basis for this estimate, the parties' business case considered the risk that activity currently being undertaken by Royal Free would be referred elsewhere but stated this risk already exists and would be mitigated by plans to establish outreach clinics and expand the existing linked hospital network so as to incorporate Hertfordshire. We also note

[4] A 'reduction' in the 'Outcome improvement' column of Table 1 indicates that UCLH achieves a lower value than Royal Free against the particular measure which, the parties submit, demonstrates better outcomes for patients.

[5] Patients who would otherwise have been treated at Royal Free receiving a higher quality of service at UCLH represents the key benefit claimed by the parties. Therefore we have assessed each of the elements set out at paragraph 27 individually notwithstanding the conclusion on any other element that may be determinative of our overall assessment of the benefit. So, for example, even though we were unable to conclude that UCLH's neurosurgery services are of higher quality than those provided by Royal Free, we assess in this section whether the treatment patients receive at UCLH following the transaction is likely to be of the same quality that was provided to UCLH patients prior to the transaction. The latter assessment does not require that we conclude on the relative quality of treatment provided prior to the transaction.

[6] The parties' business case for the transaction used an alternative currency to record activity. This indicated the transfer is expected to increase UCLH's neurosurgery activity by [✂] elective spells, [✂] non-elective spells and [✂] critical care bed days.

that following a previous transaction in April 2011 involving the transfer of neuro-oncology services to UCLH from Royal Free activity increased in line with their expectations.

37. We considered factors that might affect the likelihood of Royal Free's neurosurgery activity switching to UCLH following the transaction. The way in which the provider of neurosurgery services to any patient is selected depends on whether the treatment is elective or non-elective. Non-elective services are services provided in unplanned circumstances and, in neurosurgery, this consists largely of emergency admissions. For emergency admissions the most important factor determining the provider of treatment to any patient is proximity to the patient at the time treatment is required. The National Hospital for Neurology and Neurosurgery is the nearest hospital to Royal Free offering neurosurgery treatment.[7] It is therefore likely that a large proportion of non-elective neurosurgery activity which, prior to the transaction, would have taken place at Royal Free is likely to take place at UCLH.[8]

38. For elective neurosurgery services patients and their referring clinicians are generally able to select their provider in accordance with NHS rules regarding patient choice.[9] Research suggests patients and GPs choose their provider of elective care largely on the basis of accessibility and quality.[10] Accordingly, to the extent any decisions to seek neurosurgery treatment at Royal Free were based on accessibility, UCLH's location is likely put it in a strong position to attract these referrals. In addition, we note that the transfer of Royal Free's clinicians to UCLH, and in particular its consultants, is likely to put UCLH in a strong position to attract referrals that prior to the transaction would have gone to Royal Free. This is because those clinicians will bring their well established reputations and on-going professional relationships to UCLH which will make UCLH more likely to be chosen by patients and their referring clinicians who would previously have chosen Royal Free to provide elective neurosurgery services.

39. In our view factors set out above mean that following the transaction UCLH would be likely to provide treatment to a number of patients who would have been treated at Royal Free prior to the transaction.

40. We next assessed whether the treatment those patients receive at UCLH is likely to be of the same quality that was provided to UCLH patients prior to the transaction (i.e. whether there are any risks to maintaining the current service quality levels at UCLH).

[7] According to the NHS Choices hospital finder the National Hospital for Neurology and Neurosurgery at Queen Square is 2.86 miles from the Royal Free Hospital in Hampstead. The next closest alternatives to Royal Free for neurosurgery treatment are St Bartholomew's Hospital (3.79 miles, operated by Barts Health NHS Trust) and Charing Cross Hospital (5.17 miles, operated by Imperial College Healthcare NHS Trust).

[8] Data supplied by Royal Free suggests that approximately 59% of neurosurgery activity at Royal Free between April 2011 and March 2012 was non-elective.

[9] Since 2000 a series of reforms to the NHS have aimed to strengthen patient choice, particularly in relation to elective care, with the aim of creating stronger incentives for healthcare providers to improve access to services and the quality of care they provide. Reforms have emphasised patient choice and competition as key drivers to improve efficiency and outcomes for patients. A patient's right to choose was enshrined in the NHS Constitution in 2009.

[10] See Beckert W, Christensen M and Collyer K (2011): 'Choice of NHS-funded hospital services in England', The Economic Journal, Vol. 122, Issue 560, pp. 400-417.

41. The parties did not provide any integration plan or other information suggesting what actions would be taken to ensure quality would be maintained following the transaction.

42. UCLH told us it expects [✂] additional neurosurgery patients following the transaction. One of the risks set out in the UCLH business case provided to us by the parties is that following the transaction a small portion of the volumes will not be able to be accommodated within the bed capacity being created at The National Hospital for Neurology and Neurosurgery leading to slightly longer waiting times. UCLH estimates that the increased volume of work will require 14 more neurosurgery beds. UCLH noted this will be achieved through creating 7 additional beds, and by reducing length of stay by one day through day-of-surgery admissions, creating the remaining necessary capacity.

43. The parties provided us with detailed plans setting out how the 7 additional beds would be realised following the transaction in order to avoid waiting times increasing. The parties told us the 7 additional beds are to be introduced in two phases. Phase one consisted of adding 2 inpatient beds and 3 daycare beds on the neurosurgical floor. The parties told us this phase of work was complete. Phase two consisted of adding 2 inpatient beds on the neurology floor and the parties told us this work is due to commence in March 2013 and will completed by end of March.

44. The parties submit that reducing length of stay is not a reduction in quality and provided information suggesting that UCLH has longer lengths of stay for neurosurgery than certain other providers. The CCP has, in performing merger assessments, previously accepted that implementation of best practice facilitating a reduction in length of stay for certain services is likely to represent a real improvement for patients.[11] However, in order to reduce length of stay to realise capacity equivalent to 7 neurosurgery beds UCLH needs to take action, in this case UCLH told us it intends to increase day-of-surgery admissions. UCLH told us that day-of-surgery admission is the default method for nearly all elective surgical admission in most developed healthcare systems and is a better model than pre-operative admission for a number of reasons. UCLH noted that improved pre-assessment, reduced risk of hospital acquired infection and increased patient comfort all result from day-of-surgery admissions. UCLH also noted that [✂]% of surgical patients at the National Hospital for Neurology and Neurosurgery are currently admitted on the day of surgery and it is planned to increase this to [✂]% in March 2013. UCLH did not specify for which particular procedures it intends to increase day-of-surgery admissions or provide details of best practice regarding day-of-surgery admissions for neurosurgery generally or particular neurosurgery procedures or subspecialties. Nevertheless, UCLH may well be able to realise the additional capacity necessary to deal with an increased volume of patients without significantly increasing waiting times or otherwise reducing quality through a combination of increasing beds and reducing length of stay.

[11] Refer to the CCP's report on the merger of Barts and The London NHS Trust, Newham University Hospital NHS Trust and Whipps Cross University Hospital NHS Trust. See in particular paragraphs 189 to 198. This report is available at: http://www.ccpanel.org.uk/content/cases/Merger_of_Barts_and_The_London_NHS_Trust_Newham_University_Hospital_NHS_Trust_and_Whipps_Cross_University_Hospital_NHS_Trust/111215_-_Barts_Final_Report_PUBLISHED.pdf

45. In summary, it appears a benefit in terms of Royal Free patients receiving higher quality treatment at UCLH may well be deliverable. However, it is not necessary for us to reach a conclusion on deliverability of the benefit as it does not change our overall assessment of this potential benefit. Our assessment of whether the potential benefit is dependent on the transaction is set out below in 46 to 52.

Whether the benefit is dependent on the transaction

46. For any improvement in the quality of treatment received by patients to constitute a relevant customer benefit, delivery of the benefit must be likely to be dependent on the transaction (i.e. it must be merger specific). This means that any improvement in treatment quality must be unlikely to accrue but for the transaction. We next assessed whether any benefit in terms of Royal Free patients receiving higher quality treatment at UCLH is unlikely to accrue without the creation of the transaction. We considered whether there is evidence that the submitted benefits are likely to occur in any event, for example whether the parties would have the incentive and ability to achieve the benefits independently.

47. The parties did not provide us with information demonstrating why treatment of patients at UCLH rather than Royal Free is dependent on merging the parties' neurosurgery departments. Since there is no activity guarantee as part of the transaction, much of the benefit seems to derive from removing Royal Free as an option for neurosurgery treatment rather than the transfer of staff to UCLH. This is especially so for non-elective neurosurgery admissions. In that context it appears that patients previously treated at Royal Free would be likely to be treated at UCLH by transferring Royal Free's neurosurgery service to any other provider or by Royal Free ceasing to provide neurosurgery services without a transfer. Therefore it seems that any higher quality of service received by patients at UCLH who would otherwise have been treated at Royal Free is caused by the cessation of neurosurgery services at Royal Free rather than the transaction.

48. The parties told us that if Royal Free's neurosurgery service ceased without the planned transfer there would be less capacity in the North Central London area and waiting lists would increase. The parties told us that if neurosurgery activity had moved to UCLH in an unplanned way then UCLH would have faced capacity issues because work UCLH is proposing to carry out to reduce length of stay would not have been focused on receiving the patients who had previously gone to Royal Free. The parties also told us that absent the transaction a new source of activity would not have been identified to support a business case for the additional investment required to develop neurosurgery capacity. In our view, UCLH would make this investment independently if it was confident it could provide a high quality service that would fulfil unmet demand. If UCLH did not expect such investment to attract additional patients, then this would indicate that either the unmet demand for the service was not significant, or that users did not consider that the quality of the service was such that they would choose it (see further discussion of choice in paragraphs 50 and 51 below). In our view, the investment in neurosurgery services is unlikely to be dependent on the transaction. This is particularly so in the context of Royal Free ceasing to provide neurosurgery services, or transfer of Royal

Free's service to another provider, resulting in a decrease in capacity in North Central London that is likely to reduce the risk of investment.[12]

49. Absent the transaction UCLH has additional incentive to ensure that it, rather than other neurosurgery providers, receives any patient volumes switching away from Royal Free. The UCLH business case provided to us by the parties notes a risk that without transaction the closure of Royal Free's neurosurgery service may lead to other providers receiving the patient volumes.[13] This suggests that UCLH has the incentive and ability to achieve any benefit resulting from it treating neurosurgery patients rather than any other provider in the absence of the transaction.

50. For elective neurosurgery services, patients together with their referring clinicians are currently able to choose to receive treatment at UCLH but many have chosen Royal Free. UCLH stated that any patient exercising informed patient choice, on the basis of quality of neurosurgery provision, is likely to have selected UCLH. The parties submit that in reality patients do not exercise patient choice or exercise it on grounds other than quality. There may be many reasons for patients and clinicians to choose a particular provider but we do not agree that patients, if properly informed of the relative service quality, would decline to choose on the basis of quality[14]. This is particularly so when the alternative providers in question are located very close together (in this case less than three miles apart).

51. The parties also submitted data showing that 21.9% of neurosurgery referrals to Royal Free are made through Choose & Book and suggested this shows that the ability for patients to choose UCLH for elective neurosurgery is limited. The parties also told us that the operation of patient choice had been affected because Royal Free operates on a block contract for neurosurgery services with North Central London commissioners while UCLH operates on payment by results. However, we note that within healthcare (and in particular within more complex tertiary services) clinicians play a key role in making choices in partnership with, or on behalf of, their patients. This means all referrals include someone making a choice of which provider to use. We also note the requirements on commissioners to implement payment by results in accordance with national guidance. Therefore neither the data on the limited use of Choose & Book nor the existence of a block contract indicates that the transaction is necessary to facilitate access to UCLH for elective neurosurgery treatment.

52. Accordingly we do not accept that any benefit in terms of Royal Free patients receiving higher quality treatment at UCLH is unlikely to accrue in the absence of the transaction. Receiving higher quality neurosurgery services by virtue of being treated at UCLH rather than Royal Free is unlikely to be dependent on the transaction. This is because any benefit would not be caused by the transaction and would not be unlikely to accrue but for the transaction. The

[12] We would expect that there would be competition for the experienced Royal Free neurosurgery staff (including from UCLH) if Royal Free were to cease providing neurosurgery services in the absence of the transaction meaning it is unlikely that the transaction would avert any overall reduction in neurosurgery capacity.

[13] In the event that Royal Free ceased to provide neurosurgery services, we would expect the remaining providers of these services to try and attract its patient volumes. They may seek to do this in a number of different ways. For example, they may seek to build and establish new relationships with clinicians who mainly referred to the Royal Free and may seek to expand their capacity to ensure they can accommodate any additional activity.

[14] As noted above, our research suggests patients and GPs choose their provider largely on the basis of access and quality

transaction is not necessary in order for patients who would otherwise receive elective neurosurgery treatment at Royal Free (or at any other neurosurgery provider if Royal Free ceases providing neurosurgery services) to instead receive treatment at UCLH and UCLH has the incentive and ability to attract those patients in the absence of the transaction. In relation to non-elective services in particular, the transaction is unlikely to offer any additional patient benefit relative to transferring Royal Free's neurosurgery service to any other provider or Royal Free ceasing to provide neurosurgery services without a transfer.

Conclusion on patients receiving higher quality neurosurgery services

53. In order to accept the parties' arguments that an increase in service quality for patients who would previously have been treated at Royal Free constitutes a relevant customer benefit for the purposes of the Enterprise Act we need to be satisfied that the submitted benefit is likely to represent an improvement in the health outcomes or experience of patients; that those improvements are likely to be delivered as a result of the transaction; and that those improvements are dependent on the transaction.

54. In this case Monitor's view is that a relevant customer benefit due to the treatment of patients at UCLH who would be treated at Royal Free prior to the transaction is unlikely to accrue as a result of the transaction. This is because in the absence of the transaction, UCLH has the incentive and ability to attract elective neurosurgery patients who might otherwise go to Royal Free or any other neurosurgery provider if Royal Free were to cease providing neurosurgery services. For non-elective patients, the transaction is unlikely to offer any additional patient benefit relative to transferring Royal Free's neurosurgery services to an alternative provider or Royal Free ceasing to provide neurosurgery services.

Consideration for a wider range of clinical trials

55. The parties' told us the transaction will result in benefits to patients who would otherwise be treated at Royal Free due to the higher level of research carried out at UCLH.

56. The parties noted that the academic centre for neurosurgery is based at The National Hospital for Neurology and Neurosurgery and that patients who would otherwise have been treated at Royal Free could be discussed at a shared multi-disciplinary team meeting held at The National Hospital for Neurology and Neurosurgery which would allow patients to be considered for a wider range of clinical trials. We assessed this against the three criteria set out in paragraph 27 above.

57. It may be that the potential to be considered for a wider range of trials is a benefit to patients where those trials might have some positive effect on their treatment. However, there are a number of ways in which access to clinical trials for Royal Free patients could be improved without transfer of the Royal Free's neurosurgery service to UCLH.

58. We note that both UCLH and Royal Free are founding members of the UCL Partners academic health science partnership (UCLP). UCLP operates a neuroscience programme which appears to include elements of neurosurgery. This suggests a pre-existing level of cooperation on

research and development related to neurosurgery. In our view it is likely that UCLP or another such research partnership arrangement could be used to ensure that patients are considered for a wider range of appropriate clinical trials. Accordingly we do not accept that any benefit resulting from patients being considered for a wider range of clinical trials is likely to be dependent on the transaction. Therefore Monitor's view is that the transaction is unlikely to result in a relevant customer benefit due to the opportunity for neurosurgery patients at UCLH who would have been treated at Royal Free prior to the transaction to be considered for a wider range of clinical trials.

IMPROVEMENTS FOR UCLH NEUROSURGERY PATIENTS

59. The parties submit that the transaction will lead to service quality improvements in neurosurgery at UCLH. These potential benefits relate to:

    a. Increased subspecialisation;

    b. Improved trainee rotas;

    c. The introduction of a dedicated spinal rota; and

    d. Larger catchment area for research participants.

Increased subspecialisation

60. The parties submitted that subspecialisation leads to service quality improvements. In support of this the parties adduced a study suggesting a number of benefits from subspecialisation in neurosurgery.[15] The parties submit that the extent of operations at The National Hospital for Neurology and Neurosurgery means the surgeons who transferred from Royal Free would have the opportunity to subspecialise in specific areas of neurosurgery. The parties told us that because Royal Free has only five neurosurgeons, subspecialisation was not possible. It may well be that subspecialisation of neurosurgeons results in higher quality treatment relative to a situation where neurosurgeons are not subspecialised. However, in order to determine whether the opportunity for surgeons transferring from Royal Free to subspecialise constitutes a relevant customer benefit we assessed whether an increase in the number of highly specialised surgeons at UCLH is likely to be delivered following the transaction resulting in service quality improvements for neurosurgery patients.

61. The parties noted that subspecialisation at UCLH already occurs[16]. We did not receive any evidence that, given the existing level of neurosurgery subspecialisation at UCLH, acquisition of further subspecialised consultants would further improve treatment quality. Nor did we receive any evidence that there were any particular areas where UCLH was lacking in subspecialisation that could be addressed by the merger (note discussion of dedicated spinal rota at paragraphs 67 to 69 below); or that UCLH had any developed plans to increase subspecialisation. Accordingly, we are unable to conclude that increased subspecialisation is

[15] Ashkan, K., Guy, N. & Norris, J. (2003) Sub-specialisation in neurosurgery: perspective from a small specialty. *Annals of the Royal College of Surgeons of England*, 85: 149-153.

[16] The parties cited examples of two surgeons that predominantly carry out deep brain stimulation surgery, one surgeon (soon to increase to two) who carries out all epilepsy surgery cases and five surgeons who only carry out complex spinal procedures.

likely to be delivered following the transaction. Therefore Monitor's view is that the transaction is unlikely to result in a relevant customer benefit due to increased subspecialisation.

Improved trainee rotas

62. We assessed whether movement of training posts from Royal Free to UCLH was likely to represent a real improvement in services to patients. We first considered the pre-existing situation which the parties submit the transaction will improve.

63. The parties told us that the London Deanery[17] had removed funding for neurosurgery training posts at Royal Free because of concerns over safety due to the scale of the Royal Free services. In support of this the parties supplied us with a report of the London Deanery's Annual Quality Visit to Royal Free (Deanery Report). However, it is not clear to us that the content of the Deanery Report supports the parties' submission.[18] Even in the case that the London Deanery did have concerns over the quality of training received by neurosurgery trainees at Royal Free, it does not appear that the transaction is related to remedying the issue. If the London Deanery moved training posts from Royal Free to UCLH independently of the transaction then any improvements to trainee rotas are a result of the London Deanery's decision and not the transaction.

64. The parties do not submit that the decision of the London Deanery to move neurosurgery training posts from Royal Free to UCLH was a consequence of the transaction. Even if this were the case we have not received any information suggesting that the movement of the trainee posts will result in an improvement to trainee rotas that are likely to yield real improvements for patients; that there are plans to ensure this improvement is likely to be delivered following the transaction; or that such improvement is likely to be dependent on the transaction.

65. We note that neurosurgery training in North London takes place by means of the North London Neurosurgery Rotation[19] in which both parties currently participate. The parties confirmed to us that because both trusts were part of the North London Neurosurgery rotation, neurosurgery trainees might rotate through both UCLH and Royal Free. Therefore those trainees receiving neurosurgery training at Royal Free would also have the opportunity

[17] The London Deanery is a clinically-led organisation with responsibility for around 12,500 doctors and dentists in foundation, core and higher specialty training programmes as well as offering significant support for those in established practice. The London Deanery is constituted in two parts (London Commissioner for Medical and Dental Education and London Deanery - Provider Support). It is accountable to the professional regulators: the General Medical and Dental Councils. See: www.londondeanery.ac.uk

[18] Having consulted our Clinical Reference Group, in our view, while the Deanery Report does identify issues with neurosurgery training at Royal Free, we do not agree that it discloses concerns over safety. We would characterise the Deanery Report as expressing concern about the potential impact on training quality if more neurosurgery services are transferred away from Royal Free, having already lost neuro-oncology work. The mandatory recommendations noted in the Deanery Report relate to Royal Free expediting a decision as to whether or not to reconfigure neurosurgery services to UCLH. The Deanery Report states if the service and training are not reconfigured, the number of trainees should be reduced to 2 on non-resident rota.

[19] In a system of this kind trainees rotate between units, usually being attached to a unit for one year. Over their six (or eight) year programme they work in 6 units and rotate between posts in that unit. The programme director has to ensure that each trainee has exposure to all subspecialties needed for general training before they can be awarded a CCT. In general each deanery will have sufficient providers with trainee attachments to sustain the number of training numbers awarded to the Deanery – if they do not, then training numbers can be reallocated to a different Deanery in a different part of the country.

to receive training at UCLH. This suggests that the quality of training of neurosurgery trainees is unlikely to improve as a result of the transaction.

66. Accordingly, we consider that any improvement to trainee rotas are likely to be a result of the London Deanery's decision to move training posts from Royal Free to UCLH and are not a result of the transaction. We also note that, even if the movement of trainee posts is considered part of the transaction, we have not received information suggesting that the movement of the trainee posts is likely to result in an improvement to trainee rotas; how the improvement is likely to be delivered; or that such improvement is likely to be dependent on the transaction. Therefore Monitor's view is that the transaction is unlikely to result in a relevant customer benefit due to improved trainee rotas.

Dedicated spinal rota

67. The parties submit that the transfer would allow for the implementation of a dedicated spinal rota[20]. We assessed whether this is likely to represent an improvement in the health outcomes or experience of patients; whether those improvements are likely to be delivered following the transaction; and whether those improvements are likely to be dependent on the transaction.

68. The parties told us that the increase in spinal surgeons resulting from the transaction means that UCLH would be close to being able to provide a dedicated spinal rota while maintaining a strong intracranial rota. The parties told us that six surgeons capable of performing complex spinal procedures are required to provide a spinal rota and following the transaction UCLH would have that number. However the parties told us two of the surgeons are on-call for other trusts which would currently prevent implementation of the dedicated spinal rota. The parties told us that UCLH is currently working on this with a view to moving the on-call commitment or recruiting a seventh surgeon.

69. The parties did not provide us with information on how patients might benefit from a dedicated spinal rota. However, we note that patients have benefited from specialised care out-of-hours in other areas[21]. Having consulted our Clinical Reference Group, it is our view that patients would be likely to benefit from having access to a dedicated spinal rota. However, the creation of a dedicated spinal rota at UCLH is uncertain and will not occur as a result of the transaction. While it is possible that the transaction would facilitate the implementation of a dedicated spinal rota, we were not provided with sufficient evidence regarding UCLH's plans to implement a dedicated spinal rota to conclude that a dedicated spinal rota is likely to be delivered following the transaction.

[20] As we understand it, a dedicated spinal rota is an out-of-hours on-call rota which is made up of clinicians who are spinal consultants and are confident in dealing with the entire range of spinal emergencies. These consultants will therefore participate in an on-call rota which is exclusively for spinal emergencies. An on-call rota is a rota providing out-of-hours (weekends and after 6.00pm on weekdays) clinician (in this case a consultant) cover for a particular service or speciality, the clinician may be off site but will be called upon if patient requires his or her clinical opinion and input, medical or surgical intervention, and expertise.

[21] See, for example, vascular surgery: Vascular Society and the Royal College of Physicians clinical standards unit (2005) UK Audit of Vascular Surgical Services, commissioned by The Healthcare Quality Improvement Partnership (HQIP): http://www.ncepod.org.uk/2005report2/vascular_services.html; also Royal College of Surgeons (2011) Emergency surgery. Standards for unscheduled care. Guidelines for providers, commissioners and service planners.

70. The parties told us that it is proposed that a dedicated spinal rota will exist between the Royal National Orthopaedic Hospital[22] and the National Hospital for Neurology and Neurosurgery. This also suggests that, in order to implement a dedicated spinal rota, UCLH could recruit the required spinal surgeons in the absence of the transaction or negotiate on-call arrangements with surgeons employed at other trusts. Therefore we do not think that any benefit resulting from implementation of a dedicated spinal rota is likely to be dependent on the merger.

71. Accordingly, we consider that patients would be likely to benefit from having access to a dedicated spinal rota. However, while it is possible that the transaction would facilitate the implementation of a dedicated spinal rota, we were not provided with sufficient evidence to conclude that a dedicated spinal rota is likely to be delivered following the transaction. Moreover, we note the current proposal is to implement a dedicated spinal rota together with the Royal National Orthopaedic Hospital which suggests that a dedicated rota of this kind could be implemented by negotiating with other providers and is not dependent on a merger. Therefore Monitor's view is that the transaction is unlikely to result in a relevant customer benefit due to implementation of a dedicated spinal rota.

Increased population base for research and sharing of expertise

72. The parties submit that quality of research depends on having the expert teams to carry it out and also an adequate patient base. We assessed whether the transaction will result in relevant customer benefits due to a larger population base from which to draw research participants and sharing experience between the two formerly separate neurosurgery teams. We were not provided with any information on how any enlarged population base or sharing of experience would represent a real improvement in services to patients or value for money for taxpayers; or how any such improvement would be delivered following the transaction.

73. A merger of the two neurosurgery services is not necessary to jointly design and deliver a research program. We understand that many research programmes and clinical trials are led by one research centre but with others acting as satellite centres, working collaboratively with other care providers, for example providers of primary care. Certain research studies may involve numerous catchment areas and population or patient groups, and this can be facilitated or co-ordinated by local research networks. Again, we note the pre-existing research cooperation between the parties as evidenced by their founding membership of UCLP. In the absence of any information suggesting that the transaction is necessary to delivery specific improvements to research, our view is that any potential gains are not dependent on the transaction.

74. Therefore Monitor's view is that the transaction will not result in a relevant customer benefit due to a larger population base from which to draw research participants and sharing experience between the two formerly separate neurosurgery teams.

[22] Located in Middlsex and operated by the Royal National Orthopaedic Hospital NHS Trust.

FINANCIAL BENEFITS

75. The parties submit that the transaction would have benefits due to financial savings and efficiencies relating to: consolidation of consultant and specialist registrar rotas; rationalisation of administrative support; a revised clinical model incorporating length of stay efficiencies and productivity gains as a result of critical mass; and lower readmission rates.

76. In relation to each of these:

    a. Consolidation of consultant and specialist registrar rotas and rationalisation of administrative support are benefits that could result from economies of scale. The parties told us the financial benefits were described the business case for the transfer. However, the business case document we were supplied with did not contain a base case and therefore savings could not be estimated.[23] Accordingly we do not have any information as to the extent of these benefits. We were also not provided with any information on how these savings would be achieved. For these reasons we cannot conclude that this constitutes a relevant customer benefit.

    b. A revised clinical model incorporating length of stay efficiencies was not further described and the extent of any financial benefit was not quantified. It seems unlikely that revision to clinical models incorporating length of stay efficiencies is dependent on the transfer of Royal Free's neurosurgery service. For these reasons we cannot conclude that this constitutes a relevant customer benefit.

    c. We were provided with no information on what constituted productivity gains as a result of critical mass, or the extent of these benefits, or how they would be achieved. For these reasons we cannot conclude that this constitutes a relevant customer benefit.

    d. The parties submit that UCLH would expect [✂] fewer readmissions following the transaction than if patients were treated at Royal Free. The parties told us that using an average of £[✂] per case, [✂] fewer readmissions per year would equate to a saving for commissioners of approximately £[✂] per year. The figure of [✂] fewer readmissions appears to have been calculated by taking UCLH's expected number of additional patients [✂] applying Royal Free's readmission rate as submitted by the parties (8.4%) then subtracting the number resulting from applying UCLH's readmission rate (2.9%) to the same number of patients. However, the parties subsequently submitted revised outcome measures for the two neurosurgery services (see paragraph 33 above). The revised measures showed that Royal Free had a readmission rate for neurosurgery of 5.4% while UCLH had a readmission rate for neurosurgery of 2.7%. Application of these readmission rates would appear to suggest approximately [✂] fewer readmissions rather than [✂]. Given the uncertainty around these numbers we cannot conclude with sufficient certainty on the existence and scale of these potential savings.

[23] The business case provided (Annex 11 to submission of 3 August 2012) contains discounted cash flows for (a) stage 1 transfer (intracranial and complex spinal) and (b) stage 1 & 2 transfer (intracranial, complex & routine spinal). However, it is unclear whether these represent the increment from the transfer or are the total following the transfer. In any case, there is no base case with which to compare these with and so it is not possible to identify any financial efficiencies from the transfer.

77. Therefore Monitor's view is that the transaction is unlikely to result in relevant customer benefits due to financial savings or efficiencies.

BENEFITS TO ROYAL FREE

78. The parties told us the transaction would result in benefits to Royal Free in the form of released intensive care unit (ICU) bed capacity and reduced duplication of clinical support costs related to neurosurgery.

79. The parties told us Royal Free has a clear idea of the number of ICU bed-days used by neurosurgery patients and the ability to release these bed-days is clearly linked to the transfer of the service.

80. The parties also told us that Royal Free further anticipates a reduction of clinical support costs and out of hours services. The parties submit that the out of hours requirement for the service is understood and removable as a result of the transfer and the clinical support costs have been removed from specific budgets.

81. In our view the parties' assertions are not sufficient to support these potential benefits. The ICU capacity released, and cost savings made, have not been quantified. Further, we do not accept that release of bed capacity and savings from the reduction of clinical support costs and out of hours services are likely to be dependent on a transfer of neurosurgery services to UCLH. In our view, these savings could be delivered in a number of ways, for example by transfer of neurosurgery services to an alternative provider or by Royal Free ceasing to provide neurosurgery services without a transfer.

82. Therefore Monitor's view is that the transaction is unlikely to result in a relevant customer benefit due to released ICU bed capacity and reduced duplication of clinical support costs related to neurosurgery at Royal Free.

OTHER CONSIDERATIONS

83. As well as relevant customer benefits, the Health and Social Care Act 2012 obliges Monitor[24] to provide the OFT with advice on such other matters relating to the matter under investigation as Monitor considers appropriate. Having set out above our assessment of the relevant customer benefits under the statutory framework provided for in the Enterprise Act, we also identified some other matters that may nonetheless have advantages for patients and taxpayers in a publicly-funded healthcare system. The parties did not provide evidence in support of these points but nonetheless we decided they merited consideration. In particular:

    a. If in the absence of merger the Royal Free were to close its neurosurgery department rather than transferring staff to another organisation, it would be likely to incur the redundancy costs of terminating the contracts of 55 FTE members of staff. In our view this cost would be substantial given the number of staff affected. The avoidance of this

[24] Health and Social Care Act 2012, section 79(5)(b).

cost would be beneficial to Royal Free and to the system overall, assuming that the cost would ultimately be passed on to the taxpayer. The merger avoids these costs arising.

b. We have noted that UCLH provides a high quality neurosurgery service. In our view patients who would have been treated at Royal Free (whether as a result of patient choice or otherwise) would be more likely to be treated at UCLH if former Royal Free staff transfer there as a team as a consequence of the merger. There is therefore an advantage to patients who would have been treated at Royal Free of ensuring that Royal Free staff are transferred to another provider capable of delivering high quality care.

c. If in the absence of merger the Royal Free were to close its neurosurgery department rather than transferring staff to another organisation, there is a risk that the staff of Royal Free could disperse and their expertise as a team could be lost. In our view there is an advantage to a timely and seamless transfer of the Royal Free staff as a single cohort and the neurosurgery services they provide. This would be likely to ensure the continuation of the services provided by Royal Free in an organised and predictable way for those patients who would have chosen Royal Free. There is also some advantage to UCLH in the additional certainty the transaction would bring to allow better planning of investment in neurosurgery services by UCLH and there would be an advantage for patients if UCLH is able to deliver greater quality improvements from such investment than another provider would.

CONCLUSION

84. Monitor's views on the relevant customer benefits submitted by the parties are as follows:

a. The transaction is unlikely to result in relevant customer benefits for patients receiving neurosurgery treatment at UCLH who would otherwise have been treated at Royal Free. In particular:

i. UCLH already has the ability and incentive to attract elective neurosurgery patients from Royal Free in the absence of the transaction and, for non-elective services the transaction is unlikely to offer any additional patient benefit relative to transferring Royal Free's neurosurgery services to an alternative provider or Royal Free ceasing to provide neurosurgery services without a transfer; and

ii. While some neurosurgery patients might benefit from being considered for a wider range of clinical trials, it is unlikely achieving this is dependent on the transaction;

b. The transaction is unlikely to result in relevant customer benefits due to neurosurgery service quality improvements at UCLH. In particular:

i. We are unable to conclude that further subspecialisation will be delivered following the transaction;
ii. Any improvement to trainee rotas are likely to be a result of the London Deanery's decision to move training posts from Royal Free to UCLH and are not a result of the transaction. Even if the movement of trainee posts is considered part of the transaction, we have not received information suggesting that the movement of the trainee posts is likely to result in an improvement to trainee rotas; how the improvement is likely to be delivered; or that such improvement is likely to be dependent on the transaction;
iii. It is possible that the transaction would facilitate the implementation of a dedicated spinal rota at UCLH. However, we were not provided with sufficient evidence to conclude that a dedicated spinal rota is likely to be delivered following the transaction or that the merger is necessary to enable its implementation; and
iv. The parties have not detailed how improvements to research and development might yield improvements for patients and taxpayers via the transaction and any benefit resulting from an enlarged population base for research participants or bringing together of expertise are likely to be achievable without the transaction;

c. We were not provided with sufficient information to conclude that any relevant customer benefits in the form of financial efficiencies are likely to result from the transaction. The extent of each benefit was not estimated and detail on how these efficiencies would be achieved was not submitted.

d. The benefits to Royal Free the parties submit will result from the merger do not constitute relevant customer benefits. The capacity released and cost savings have not been sufficiently evidenced. In addition to this, both the capacity release and savings submitted by the parties may be delivered by transferring Royal Free's service to an alternative provider or by Royal Free ceasing to provide neurosurgery services without a transfer.

85. We note we have identified some other matters that may nonetheless have advantages for patients and taxpayers in a publicly-funded healthcare system. These are (i) the avoidance by Royal Free of possible redundancy costs and resultant cost to the taxpayer; (ii) advantages to patients who would have been treated at Royal Free of ensuring that Royal Free staff are transferred to another provider capable of delivering high quality care; and (iii) preservation of the expertise of Royal Free staff as a team and continuation of the services they provide in an organised and predictable way for those patients who would have chosen Royal Free. This additional certainty might also allow better planning of investment in these services by UCLH which would be an advantage to patients if it results in greater quality improvements than another provider would achieve.

APPENDIX 1 – ANALYSIS OF OUTCOME MEASURES

86. This appendix sets out how we used the data provided by the parties to verify the four outcome measures that were initially submitted as evidence on the quality of the neurosurgery services provided by UCLH and Royal Free. The parties provided us with a number of outcome measures on the neurosurgery services provided by UCLH and Royal Free. These are set out in *Table 2 - Comparison of the parties' outcome measures and those generated by the CCP* below. The measures for readmission, mortality and complication rates covered the period from April 2007 to September 2012, while the Summary Hospital-level Mortality Indicators are for the individual years indicated. We note that the parties subsequently told us that this data may have been based on all activity at the National Hospital for Neurology and Neurosurgery and provided us with revised outcome measures. The revised outcome measures are set out in *Table 1* in the body of this report. The parties noted that the data used to generate the revised measures was publicly available but as they did not provide us with the underlying data we were unable to conduct analysis similar to that set out below regarding the original data.

87. The parties provided us with the monthly data which they told us was used to generate these aggregate outcome measures (as well as for other providers of neurosurgery services in London and the wider south east area). However, they did not provide details on the source of this data or the methodology they had used and so we were unable to verify the submitted aggregate outcome measures.

88. We therefore tried to develop our own aggregate outcome measures from the data provided. As we were not provided with a methodology, or any information on monthly patient volumes, we could only calculate a simple average of the parties' monthly data. The results are presented in *Table 2 - Comparison of the parties' outcome measures and those generated by the CCP*

Table 2 - Comparison of the parties' outcome measures and those generated by the CCP

	Aggregate measures provided by parties			Aggregate measures developed by CCP		
	UCLH	**Royal Free**	**Difference (UCLH -R)**	**UCLH**	**Royal Free**	**Difference (UCLH-Royal Free)**
Readmission rate	2.9%	8.4%	-5.5pp	1.98%	4.49%	- 2.51 pp
Mortality	1.27%	2.59%	-1.32pp	2.60%	3.84%	- 1.24 pp
Complication Rate	0.9%	1.6%	-0.7pp	2.98%	3.47%	- 0.49 pp
SHMI (2012)	50	60	-10.0	92.9	135.7	- 42.78

Source: Submission from parties and CCP analysis of parties underlying data

Note: The aggregate measures developed by the CCP exclude nil observations

89. *Table 2 - Comparison of the parties' outcome measures and those generated by the CCP* shows that the outcome measures we generated were different from those submitted to us by the parties. However, our estimates were consistent with the parties' submission that UCLH's neurosurgery services performed better than Royal Free on each of these outcome measures.

90. There could be a number of reasons explaining the difference in level (rather than direction). In particular, the parties may have calculated aggregate outcome measures using a weighted average of the monthly data (with weights based on patient volumes in each month) rather than a simple average which assumes that the same volume of patients is treated each month.

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