

LONDON CLINIC'S RESPONSE TO THE CC'S ANNOTATED ISSUES STATEMENT

HCA's reply, 3 June 2013

The London Clinic has made a number of false and unsubstantiated assertions in its response to the Competition Commission's ("CC") Annotated Issues Statement ("AIS"). HCA is concerned that the London Clinic is using the CC's market investigation as an opportunity to make spurious allegations about HCA and destabilise its good relations with consultants and patients. HCA takes particular objection to a series of groundless allegations concerning HCA's arrangements with consultants and its comments on these are as follows.

Pressuring or threatening consultants to increase referrals

The London Clinic writes:¹

"... We understand that [CONFIDENTIAL], HCA conducts quarterly reviews attended by the consultant and the CEO of the relevant hospital to assess levels of business referred by the consultant. Our belief [CONFIDENTIAL] is that the reviews are used to encourage consultants to achieve certain levels of referrals to HCA hospitals against the threat of termination of the agreement. The availability of detailed practice information as outlined above enables discussion regarding leakage of referrals."

- A comprehensive account of HCA's relationships with consultants is set out in section 8 of its response to the Market Questionnaire. As HCA has submitted, these arrangements do not contain any obligations on consultants to refer patients to HCA's hospitals, and require the consultant to act in the best interests of patients.
- With reference to the London Clinic's specific allegation above, HCA does not conduct quarterly meetings with consultants to review the levels of their referrals to HCA's hospitals. HCA engages in quarterly quality-review sessions with consultants, during which a number of patient-experience performance indicators are discussed (timeliness of service, patient feedback on the quality of care, and so forth). This review is based on patient survey findings.
- HCA has never used the "threat of termination" of any agreement with a consultant to ensure consultants achieve a certain level of referrals.
- HCA continuously engages in dialogue with consultants as to how it can improve the quality of its clinical environment, staff and infrastructure to optimise the patient experience and quality of care. Where it has entered into a specific collaborative arrangement with a consultant (for example, the consultant is assisting HCA in managing a clinical specialty unit), HCA conducts an annual review of the services provided.

Punishing or discouraging consultants who practise elsewhere

The London Clinic alleges that HCA is using a number of "mechanisms to punish or discourage consultants who also work for another private hospital".² These are listed at paragraphs 3.8.1 – 3.8.4 of its submission, to which HCA responds below.

¹ London Clinic AIS Response, Paragraph 3.7.5.

² London Clinic AIS Response, Paragraph 3.8.

Not allocating HCA-generated referrals to consultants

- The allocation of patient referrals to HCA on an "unnamed" basis (i.e. referrals that do not designate a named consultant) takes into account the patient's preferences and the availability of consultants. HCA's contact centre does not possess information on the proportion of time a consultant practices at other hospital facilities, and the London Clinic's allegation is groundless. The referral decision is, in fact, based on the patient's choice of time and location and the clinical expertise of the available consultants. Where this generates a number of different consultant options, the patient is given the ultimate choice.

Not providing regular theatre/outpatient capacity to consultants

- HCA has never refused theatre or outpatient capacity on the grounds that a consultant chooses to conduct a larger proportion of their practice with a different hospital operator.
- Consultants that conduct a significant proportion of their practice at HCA hospitals are naturally more likely to block-book theatre or outpatient capacity.
- Given the competitiveness of the private healthcare market, it is absurd to suggest that HCA would deter any consultant from practising at their hospital by refusing to provide spare theatre capacity to consultants as a means of punishing specific consultants.

Not promoting consultants to Embassies, PMIs and GPs

- HCA does not discriminate between consultants who split their patient lists versus those who practise only at HCA when promoting its services to any patient or customer. HCA's emphasis is on promoting the hospital group as a whole and informing customers of the benefits of choosing to be treated at a HCA hospital over one of its competitors. This includes marketing the fact that some of the most pre-eminent consultants in their field choose to practise at HCA hospitals.

Withholding or suspending payment of services fees to consultants

- HCA has never withheld or suspended payment of a service fee to a consultant because they have failed to achieve a set level of referrals to HCA hospitals or because they have split a larger proportion of their work at another hospital. These payments are set at a fair market value for designated clinical and/or management services.

Targeting consultants at the London Clinic

The London Clinic writes:³ "*HCA is targeting consultants engaged with the [London] Clinic with increasing frequency*".

- All London hospitals, the London Clinic included, compete vigorously to attract and retain leading consultants – as HCA indicated in its response to the Issues Statement, competition for consultants is an important competitive dynamic in private healthcare.
- The London Clinic is a substantial hospital facility located less than 400 metres from the Harley Street Clinic. It boasts an impressive service offering that closely competes with HCA's hospitals. It therefore goes without saying that HCA routinely competes with the London Clinic, and with numerous other London providers, to attract leading consultants.

³ London Clinic AIS Response, Paragraph 3.12.

- It is well understood that efforts made by hospital operators to attract consultants to practise at their facilities are an inherent part of the competitive process in the private healthcare market. If consultants at the top of their respective fields have opted to move their private practise to the London Clinic, HCA makes every effort to understand why that is and how it can improve and invest in its own hospital operations to attract the consultant back to its own hospital.
- HCA is completely candid about the fact that it makes every effort to attract consultants practising at the London Clinic to bring more of their practice to HCA. The fact that some of the London Clinic's consultants do in fact decide to move their practice to HCA is evidence of this process at work.
- Equally, the London Clinic, which enjoys the tax subsidies which come with its charitable status, similarly targets HCA's consultants.
- [X]
- The CC's recently published case study concerning the London Clinic refers to the fact that the London Clinic offered a substantial loan (and additional payments for diagnostic referrals) to the (then) London Oncology Clinic (LOC) partners in order to incentivise these consultants to admit their patients to the London Clinic. After rejecting an approach by the London Clinic, the LOC partners subsequently entered into a joint venture with HCA. They elected to work with HCA over the London Clinic because HCA was willing to allow the LOC to preserve clinical and managerial autonomy over the practice, including the ability to freely decide where to refer patients. Indeed, notwithstanding the partnership with HCA, some of the LOC partners continue to admit the vast majority of their patients to the London Clinic.
- We also further note that paragraph 54 of Appendix E of the CC's AIS refers to the fact that the London Clinic's agreements with two clinicians specifically prevented them from working at any HCA facility.⁴
- [X]
- It is therefore not credible for the London Clinic to complain about targeting of consultants by HCA while ignoring its own targeting of HCA consultants.

The level of payment

The London Clinic considers that payments to consultants made by HCA under service agreements are a *"loyalty payment"* which is *"disproportionate to the services being provided under the agreement"*.⁵

- In section 8 of its response to the Market Questionnaire, HCA described to the CC the nature of the collaborative agreements it has in place with some consultants. Payments made to consultants in respect of such agreements (e.g. as part of Fully Managed Practice Agreements ("FMP") or Professional Service Agreements ("PSA")) are in return for specific clinical and managerial services. There are stringent, internal approval processes which must be followed before these are entered into.
- Whilst the agreement is ongoing, HCA's standard procedure is that the consultant must submit an invoice to it detailing the services he/she has provided before any payment is made to the

⁴ We understand that this restriction was subject to a 'best and clinical interests' caveat.

⁵ London Clinic AIS Response, Paragraph 3.7.2.

consultant. In addition, these payments are fair market value assessed and therefore not disproportionate.

- HCA does not, as a matter of course, enter into such arrangements with consultants. As indicated in section 8 of HCA's response to the Market Questionnaire, the number of consultants that have entered into such agreements with HCA compared to those practising at HCA hospitals is relatively small.
- Furthermore, there must be a legitimate case for each agreement. In the past, HCA has elected not to continue a number of agreements because the underlying rationale no longer applies. For example, HCA recently ended an FMP with two consultants ([redacted]) because the new clinical unit was fully developed and so no further services were necessary under the FMP arrangement.

The provision of consulting rooms

The London Clinic writes:⁶ *"HCA provides some consultants with free of charge access to consulting rooms..."*

- As the CC is aware, HCA offers this benefit for the first [redacted] of a consultant's practice at a HCA facility.
- Around [redacted] of consultants practising at HCA hospitals pay a fair market value payment for administrative support services.
- [redacted]

The level of disclosure to patients

The London Clinic suggests there is a lack of disclosure to patients of the existence of such service agreements between HCA and the consultants.⁷

- HCA strives to be as transparent as possible with patients. To that end, HCA requires consultants to disclose their financial interests to their patients and mandates consultants to always act in the best clinical interests of their patients. This is in line with the GMC's Good Medical Practice Guidelines which stipulate that consultants must be honest about their financial dealings and must not allow any such interests affect the way they prescribe for, treat, refer or commission services for patients.⁸
- By way of example, HCA requires that consultants who have entered into FMP agreements must declare their interest in the clinical unit to patients, referrers, payors and any other individuals or organisation with whom they interact in respect of services being delivered at HCA facilities. This includes within all administrative, educational, promotional and other materials and at any events in which they may be involved. Clinical units established under FMP agreements also have signage indicating HCA's involvement in the unit.

⁶ London Clinic AIS Response, Paragraph 3.7.3.

⁷ London Clinic AIS Response, Paragraph 3.14.1.

⁸ GMC's Good Medical Practice Guidelines, 2013, paragraphs 77 and 78.