

6 February 2014

Dear Ms Kent,

RE: Competition Commission - Private Healthcare Market Inquiry

I am writing further to the publication of the Provisional Findings Report of this investigation and the publication of the Provisional Remedies Report.

Both reports are very disappointing. They are both also surprisingly alien to the experience of staff in this Hospital, many of whom, like myself, have been working here for almost 30 years. The reason is the predisposition of the Competition Commission to lay emphasis on the views of the well subscriber and his agents, rather than the ill one who is the *raison d'être* of private health care.

Not only has the Commission misunderstood who is the primary consumer, but it has also failed to grasp the real, as opposed to hypothetical, detriment suffered by patients. Much evidence has been provided to the Commission about patient detriment arising from the practices of the private healthcare insurers. This is here-and-now evidence. By contrast the Commission has preferred to give precedence to its competition theory which suggested that weak competitive constraints and high barriers to entry **was likely to** lead to higher prices. The "known" has been ignored in favour of the "hypothetical".

The Commission has misdiagnosed the problems facing the private health care market and has done so in a way which is disturbingly partial and demonstrates a bias which should have no place in an investigation of this kind. The language of the reports is also concerning; reading them carefully, it is not possible to avoid an impression of a tendency on the part of the Commission to agree with the arguments put forward by the insurers and to disagree with those put forward by the hospitals. The phraseology is subtle but the impression unmistakable.

Many representations have been made to the Commission about the comparative power in the market of hospital providers on the one hand and private medical insurers on the other. These show quite clearly that the private medical insurer market is more consolidated than the provider market, that there are higher barriers to entry in the insurance market than in the provider market and that fewer insurers have actually entered the market than have hospital providers. The market power demonstrated by BUPA is far greater than anything seen by the providers. BUPA and PPP not only set the prices, but also exert sanctions, delist consultants and hospitals and direct patients to their own choice of provider. The Provisional Findings Report of the Competition Commission was completely silent on this point. I believe however that it is incumbent on the Competition Commission to address an issue which is self-evident and over which there can be no argument. If the Commission can find equivalent market power manifest amongst the providers, it should demonstrate it. It is very much to its discredit that it does not.

The Commission's Provisional Findings Report concentrates entirely on the party in the marketplace with the lesser power, despite the many examples sent to the Commission of unreasonable demands made by the dominant player. The Provisional findings have increased the detriment to patients, as the report has handed a big stick to BUPA and to PPP who have not hesitated to use it in the most discriminatory and unprofessional manner. BUPA and PPP effectively now do precisely what they want, knowing that they have, in effect, the blessing of the Competition Commission. This is a deplorable situation.

Let me tell you what this leads to. A 90 year old patient paying an insurance premium of more than £10,000 per annum has great trust in her consultant here at St. Anthony's. He has had occasion to admit her recently and has improved her condition, almost without recognition. However, without the patient knowing, the insurer has gone behind the back of that patient and informed the consultant that in future he must refer this patient to the NHS. The patient does not know that this has happened. I regard this as little short of fraud. The consultant objects to the demands of the insurer and the consultant is struck off.

Very many patients have been referred by the insurer to the wrong consultant. There is evidence of the wrong operation having been performed. We know of patients with gynaecological cancer being referred to an inappropriate consultant, who is not an authorised gynaecological cancer surgeon at his NHS Trust. The insurers have prevented patients from being reviewed by their surgeon after having had an operation. The insurer is determining that a patient should have one consultant for an outpatient consultation and a different consultant for any subsequent procedure. The insurer's clerical staff ask for medical report and do not understand the medical terms used, leaving the patient in distress, waiting for admission; when the request is made to speak to an insurer's doctor, the hospital is told that the insurer may not give out the name of any medical staff. These are anecdotes, but there are very many of them. There is absolutely no doubt in my mind that the actions of the private medical insurers is damaging patient care. Of that I am certain and I say this as probably the longest-serving CEO in the country. The predicament of the suffering patient at the hands of the private medical insurance company is substantially worse than the suffering of the buyer of the corporate insurance at the hands of the provider. Unfortunately the Competition Commission does not understand this.

The bias in these reports is perturbing. The Report talks, for example, about the need for greater rivalry amongst private hospitals. But that need is eclipsed by the need for greater rivalry amongst the more consolidated, and more powerful player in the market, the insurer. Hospitals are criticised for clinician incentive schemes; but the PMIs are doing the same, the only difference being that the hospitals do it to raise revenues and BUPA and PPP do it by lowering their costs. BUPA fixes prices, with no evidence that any saving is passed to its subscribers. It is very surprising that in a country like Britain, with an authority like the Competition Commission, no adverse comment is made on insurer price-fixing. Not only has the Commission ducked this issue, but it has refused to grasp the nettle of top up fees. In too many cases, patients are being denied the opportunity to pay from their own pocket any shortfall in a consultant or hospital charge. The fact that the patient is perfectly happy to do this and regards it as a small price to pay for continuity of care and confidence in the expertise offered, is of no consequence to the insurers and, apparently, to the Competition Commission. By remaining silent on this matter, the Competition Commission is endorsing this reprehensible behaviour and this denial of patient choice. So long as the Competition Commission retains this insouciant approach towards the PMI bodies, the private health market deteriorates. Far fewer consultants now choose to take up private medicine as it becomes increasingly unattractive, on account not only of the very low fees now demanded by BUPA / PPP but also on account of private practice requiring more time spent arguing the toss with insurers than with patients. A leading cardiologist at St Anthony's has just retired from private practice because of this. A leading orthopaedic surgeon has stated that it is more worth his while to do extra cases for the NHS than to see BUPA patients. This is becoming a public interest issue insofar as the NHS is increasingly taking patients whose continuation of cover has been made impossible by their dominant insurer.

There is a particularly egregious failure of the Commission to address those issues which its own survey of patients suggests is of overriding importance to the consumer. That is the issue of quality of care. At several points in the Provisional Findings Report, the point is made that patients make their decision on clinical and reputation grounds. Extraordinarily enough, however, the report also acknowledges that the issue of quality is unknowable to the Competition Commission and that its assessment has been made purely on a financial basis. Private healthcare is like no other market, yet

it is being treated by the Commission as though it were a commodity, simply to be bought and sold at the lowest price.

With the apparent blessing of the Competition Commission BUPA is now increasingly defying its own legal department and the requirements of the FSA on the issue of pre-authorisation. As I have previously mentioned, pre-authorisation may not be used as grounds for an insurer failing to reimburse a subscriber the provider's charges. The only thing which matters are the Rules, the agreement between the insurer and the insured. Yet, this happens all the time. Enormous amounts of time disruption and anxiety to patients is caused by the request for pre-authorisation. So untouchable does BUPA feel that it is blithely ignoring its own, and the FSA, requirements.

The Competition Commission has a responsibility to improve matters for patients in this market. At all costs, it should avoid damaging the interests of patients. Should the Commission not rethink its approach, I fear that the Market will prove to be in a worse state after the intervention of the Competition Commission than before. I urge you to reconsider.

Yours sincerely,

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