

## **SSCP SPRING TOPCO LIMITED ACQUISITION OF ACORN CARE 1 LIMITED**

### **Directions issued pursuant to paragraph 10 of the Initial Enforcement Order imposed by the Competition and Markets Authority on Stirling Square Capital Partners LLP, Stirling Square Capital Partners Holdings Limited, Stirling Square Capital Partners Second Fund Holdings Limited and Stirling Square Capital Partners Third Fund Holdings Limited and SSCP Spring Topco Limited on 8 September 2016**

On 3 August 2016, SSCP Spring Topco Limited, acting through its subsidiary SSCP Spring Bidco Limited, a holding company of the National Fostering Agency Group (**NFA**), acquired the entire issued share capital of Acorn Care 1 Limited and its subsidiaries (**Acorn**) (**the Merger**). NFA and Acorn are together referred to as the Parties.

On 30 January 2017, the Competition and Markets Authority (CMA) decided under section 22(1) of the Enterprise Act 2002 (the Act) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom (**the SLC Decision**). The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of fostering placement services by independent fostering agencies to Local Authorities at the framework level with respect to the All Wales framework, the framework agreement area comprising Luton, Central Bedfordshire and Bedford and the Norfolk framework.

The Parties, pursuant to section 73A(1) of the Act, offered undertakings (the **Undertakings**) to the CMA on 6 February 2017, for the purposes of section 73(2) of the Act. The CMA gave notice, pursuant to section 73A(2)(b) of the Act, to the Parties on 13 February 2017 that it considers that there are reasonable grounds for believing that the Undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 or section 33 of the Act as the case may be which might

prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference.

On 8 September 2016, the CMA made an Initial Enforcement Order under section 72(2) of the Act addressed to Stirling Square Capital Partners LLP, Stirling Square Capital Partners Holdings Limited, Stirling Square Capital Partners Second Fund Holdings Limited and Stirling Square Capital Partners Third Fund Holdings Limited (**Stirling Group**) and SSCP Spring Topco Limited (**SSCP Spring**) (the **Order**). The Order is still in force.

The CMA now issues written Directions under paragraph 10 of the Order that, for the purpose of securing compliance with the Order, Stirling Group and SSCP Spring must appoint a monitoring trustee in accordance with the terms provided for in the Annex and Acorn must comply with the obligations set out in the Annex.

**Alba Ziso**  
**Assistant Director, Mergers**  
**Competition and Markets Authority**  
**1 March 2017**

## Annex: Directions to appoint a monitoring trustee

### Interpretation

1. In these Directions:

**‘CMA’** means the Competition and Markets Authority.

**‘Derogations’** means any derogations granted whether before or after the appointment of the MT by the CMA by which Stirling Group and SSCP Spring may undertake certain actions that derogate from the Order.

**‘Divestment Business’** means the Luton Divestment Business; the Norfolk Divestment Business; and the Wales Divestment Business.

**‘LA’** means the local authority.

**‘Luton Divestment Business’** means Acorn’s business (including all relevant carer capacity and any related employees and assets that may be required by a purchaser) in relation to the Luton framework.

**‘Merger’** means the acquisition by SSCP Spring, acting through its subsidiary SSCP Bidco, a holding company of NFA, of the entire issued share capital of Acorn.

**‘MT’** means the monitoring trustee or trustees (jointly) as assisted by any consultants appointed in accordance with paragraphs 2 and 7 below.

**‘NFA’** means the National Fostering Agency Group which comprises Belton Associates (Group Holdings) Limited (Company 07875698) and all its subsidiaries.

**‘Norfolk Divestment Business’** means Acorn’s business (including all relevant carer capacity and any related employees and assets that may be required by a purchaser) in relation to the Norfolk framework.

**‘Order’** means the Initial Enforcement Order made by the CMA on Stirling Group and SSCP Spring on 8 September 2016 , together with any Derogations from the Initial Enforcement Order granted by the CMA, whether before or after the appointment of the MT. Terms and expressions defined in the Order have the same meaning in these Directions, unless otherwise specified or the context requires otherwise.

**‘Proposed Purchaser’** means a purchaser who has expressed an interest in purchasing the Luton Divestment Business, and/or the Norfolk Divestment Business; and/or the Wales Divestment Business.

**‘SSCP Bidco’** means SSCP Spring Bidco Limited.

**‘Undertakings’** means the undertakings offered to the CMA by Stirling Group and SSCP Spring on 6 February 2017, for the purposes of section 73(2) of the Act including any modifications agreed prior to final acceptance.

**‘Wales Divestment Business’** means Acorn’s Pathway Care Limited business (including all relevant carer capacity and any related employees and assets that may be required by a purchaser), a stand-alone business that is currently active on the Wales framework.

## **Appointment**

2. Stirling Group and SSCP Spring must appoint an MT in order to:
  - (a) monitor and report to the CMA on compliance by Stirling Group and SSCP Spring with regard to paragraphs 5 (b), (e) and (h) to (l) of the Order with respect to the Divestment Business;
  - (b) support the CMA taking any remedial action which may be required to maintain the Divestment Business as a viable business; and
  - (c) assess and report to the CMA in relation to the arrangements made by SSCP Spring for divestment of the Divestment Business, and what changes to those arrangements, if any, are necessary to ensure the divestiture process is carried out in accordance with the terms of the Undertakings.
3. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
4. Stirling Group and SSCP Spring must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Stirling Group and SSCP Spring as set out in these Directions.

## **General**

5. The MT must possess appropriate qualifications and experience to carry out his or her functions.
6. The MT must neither have nor become exposed to a conflict of interest that impairs the MT’s objectivity and independence in discharging his or her duties

under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.

7. Stirling Group and SSCP Spring shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to carry out his or her functions effectively and properly.
8. The appointment of an MT by Stirling Group and SSCP Spring must be subject to the approval of the CMA as to the identity of the MT and his or her terms and conditions of appointment in their entirety.
9. Stirling Group and SSCP Spring must inform the CMA as soon as reasonably practicable and in any event by 5pm (UK time) on 27 February 2017 of the identity of the MT that Stirling Group and SSCP Spring propose to appoint and provide the draft terms and conditions of appointment in their entirety. If Stirling Group and SSCP Spring fail to do so, the CMA may notify them of the identity of the MT that Stirling Group and SSCP Spring must appoint.
10. Stirling Group and SSCP Spring must appoint the MT as soon as is reasonably practicable and in any event within 2 working days of the CMA giving its approval of the identity of the MT and his or her terms and conditions of appointment.
11. The MT must be appointed to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act).
12. Once the MT has been approved by the CMA and appointed, Stirling Group and SSCP Spring must provide the CMA with a copy of the agreed terms and conditions of appointment.

## **Functions**

13. The functions of the MT will be to:
  - (a) Ascertain, and report to the CMA, the current level of compliance by Stirling Group and SSCP Spring with paragraphs 5 (b), (e) and (h) to (l) of the Order with respect to the viability of the Divestment Business, including based on the performance of the Divestment Business and with regard to the retention of key staff;
  - (b) Assess, monitor and report to the CMA, on the arrangements made by Stirling Group and SSCP Spring to ensure compliance with paragraphs 5 (b), (e) and (h) to (l) of the Order with respect to the viability of the

Divestment Business, including based on the performance of the Divestment Business and with regard to the retention of key staff, and what changes to those arrangements, if any, are necessary and proportionate to preserve the possibility of the CMA taking remedial action if required;

- (c) Assess, monitor and report to the CMA in relation to the arrangements and progress made by SSCP Spring for divestment of the Divestment Business, and what changes to those arrangements, if any, are necessary and proportionate to ensure the divestiture process is carried out in accordance with the terms of the Undertakings. This will include monitoring, assessment and reporting in relation to:
  - (i) The performance of the Divestment Business (and supporting business activities), including any factors that might impair the ability of the Divestment Business to compete effectively including, in particular, any asset deterioration through the depletion of the relevant carer capacity and related employees (including social workers);
  - (ii) Discussions and negotiations with Proposed Purchasers of the Divestment Business;
  - (iii) Whether Stirling Group and SSCP Spring are complying with the obligation to use all reasonable efforts to ensure that all relevant carers and any related employees (including social workers) transfer with the Divestment Business; and
  - (iv) With regard to the Luton and Norfolk Divestment Business, whether Stirling Group and SSCP Spring are complying with the obligation to use all reasonable efforts to ensure that relevant written in principle LA and carer consent is obtained for the transfer of the Divestment Business prior to signing the Asset Purchase Agreement; and
  - (v) Whether any carers that do not or will not transfer to the Proposed Purchaser of the relevant Divestment Business should be substituted with NFA carers.
- (d) If requested, provide an opinion on requests for derogation from the Order; and
- (e) Without prejudice to the right of Stirling Group and SSCP Spring to contact the CMA, respond, in consultation with the CMA, to any questions which Stirling Group and SSCP Spring may have in relation to compliance with the Order.

14. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively.
15. The MT must comply with any written requests made by the CMA for the purpose of ensuring the full and effective compliance by Stirling Group and SSCP Spring with the Order.

### **Obligations of Stirling Group and SSCP Spring**

16. Stirling Group and SSCP Spring, their subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
  - (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Divestment Business as the MT may reasonably require (save to the extent that such books, records, documents, or information are protected by legal privilege);
  - (b) the provision of such office and supporting facilities as the MT may reasonably require;
  - (c) where reasonably practicable, Stirling Group and SSCP Spring providing advance notice of, including advance sight of any agenda, and right to attend any proposed meeting relating to compliance with the paragraphs 5 (b), (e) and (h) to (l) of the Order; and
  - (d) complying with any reasonable request by the MT to be copied into correspondence between Stirling Group and SSCP Spring in relation to compliance with paragraphs 5 (b), (e) and (h) to (l) of the Order and/or to enable the MT to fulfil his or her functions as set out in these directions (save to the extent that such correspondence is protected by legal privilege);
17. If Stirling Group and SSCP Spring or any of their subsidiaries is in any doubt as to whether any action or communication would infringe the Order, it is permitted to contact the MT for clarification.
18. If Stirling Group and SSCP Spring or any of their subsidiaries has any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

## Reporting

19. The MT is required to prepare a report on the key initial findings relating to the functions set out at paragraph 13(a) to 13(c) above, to the CMA no later than one week following the date of his or her appointment .
20. Following the MT's key initial findings referred to in paragraph 19 above, the MT must notify the CMA immediately where, in his or her view: (a) Stirling Group and SSCP Spring has failed, or is likely to fail, to comply with paragraph 5 (b), (e) and (h) to (l) of the Order, the Undertakings; and/or (b) there are grounds to consider that there is a reasonable prospect of a future breach of these paragraphs as set out with respect to the MT's functions in paragraph 13(a) to 13(c) above.
21. In addition to providing the initial report referred to in paragraph 19 above, the MT must provide an update to the CMA once every two weeks thereafter (or otherwise as required by the CMA) relating to the functions set out at paragraph 13(a) to 13(c) above.
22. Where necessary the MT may also be required as part of this assessment to consider and report on:
  - (a) the extent to which Stirling Group and SSCP Spring has cooperated with the MT in his or her task of monitoring its compliance with paragraphs 5 (b), (e), and (h) to (l) of the Order, the Undertakings and details of any aspects of the cooperation of the Parties that he or she considers could be improved;
  - (b) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance with paragraphs 5 (h) to (l) of the Order, the Undertakings and if there is anything that the MT considers would assist him or her in monitoring compliance;
  - (c) any current or anticipated requests for consent to grant any derogation from the Order;
  - (d) any information which causes him or her to be concerned that the possibility of the CMA taking any remedial action, if required, is or may be put at risk, with an explanation of any such concern; and
  - (e) the information he or she used to compile the update.
23. When reporting to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Stirling Group and



SSCP Spring or Acorn would be entitled to withhold from the CMA on the grounds of legal privilege.

24. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order has been breached, or if he or she considers that he or she is no longer in a position to carry out his or her functions effectively. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 23 above).
25. All communications between the MT and the CMA (including the statements and reports referred to in paragraph 19 to 22 above) are confidential and should not be disclosed to third parties, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.
26. The MT will report each month to the CMA the fees that he or she has charged to Stirling Group and SSCP Spring for his or her services.