

CYGNET/CAS MERGER INQUIRY

Summary of hearing with Elysium on 3 July 2017

Background

1. Elysium said that the market for locked rehabilitation (rehab) services and personality disorder (PD) was largely localised. While there may be an undersupply of beds in the South West, there was oversupply in the North West and in some areas of the Midlands. Hence a national view could not be taken for the rehab market, but it may be possible for the secure market. It pointed out that NHS England had recently done a capacity review.
2. Elysium said it was in three quite distinct geographical areas and that it was interested in reviewing areas where it was not currently operating. It also said that it needed to focus on completing some pathways. For example, it may have a secure site that did not have any locked rehab nearby to help patients step down into, or some rehab sites that were missing the community care home element.
3. There was a very big drive to make sure patients were as close to home as possible and NHS England and local area Service Transformation Plans had looked at the full care pathway and Commissioners were keen to repatriate patients back into their home areas and move them through the pathways within those relevant areas. Hence NHS England had spent significant time trying to identify where everybody's patients were and then working out where gaps would be if everyone was moved around to be closer to home.
4. Elysium stated that there may be good reasons not to be placed locally, for example specialised treatment, a shorter length of stay or continuity of care in the step down service if the patient was moving from secure through into rehab. One reason why out of area placements were needed was for forensic patients who are not allowed back into a particular area due to exclusion orders.
5. For patients going in to rehab, Commissioners had always looked closer to home first, unless the patient required specialised services. In general, it was patients who needed secure services who had been placed further away.
6. Elysium said that facilities that were very specialised would continue to attract people from a large geographical area and there may only need to be two to

four in the whole country as there was not enough demand to have one in every local area.

7. It stated that because there was a push towards more community care for those with learning difficulties (LD), and so moving those patients out of secure care and hospital settings into smaller community settings, it would be very difficult to create large LD hospitals or facilities. However, whilst one could not register an LD hospital bed, an LD hospital could be changed into a mental health hospital by changing the statement of purpose. To do this, no re-registration would be necessary and this process would be the same for PD.
8. Elysium had always focused on working with local commissioners to identify local needs before creating or acquiring a service. Therefore, it had always tried to ensure that it had well-positioned, local services that were integrated in the community. It stated that the more it worked with local teams to understand the demand, the better that demand could be met. It did not believe in increasing supply and hoping that demand would follow.
9. It said that it would be straightforward to change an LD facility into a Mental Health (MH) one as MH facilities had LD nurses and if the ward was empty, it could be done within a week. Some processes and policies would have to be altered to change it from LD to MH, but it was straightforward, unlike changing the level of security. No permission would be needed from CQC as changing the statement of purpose was a document that needed to be resubmitted.
10. Elysium said it talked to Commissioners about what they needed, and if there was a strong demand, it may look for a site. Otherwise, if it had a site where there was an empty ward, it may change its purpose. A lot of MH wards would take people with PD. On the whole, there was not such a strict designation between PD and MH and Elysium tended to mix MH and PD on wards where clinically appropriate. It would rely on clinical judgement to make sure the patient mix was right and said where it took such patients it was, in general, due to dual diagnosis.
11. When deciding whether or not to take a patient, Elysium said that consideration was given to whether they would fit on the ward. Some patients may have a primary diagnosis of PD, but would fit comfortably on a MH ward. Others would have a dual diagnosis and may be better placed in a 'pure' PD ward due to their presentation.
12. Most Elysium wards were mixed MH/PD and who was admitted depended on the clinical judgement of the psychiatrist responsible for that ward.

Barriers to entry

13. Elysium said that it was harder to establish a MH PD LD hospital than a care home as Commissioners would want to be sure that the owner of the facility was reputable, financially secure and clinically credible. When Elysium started, it was an unknown brand, but Commissioners were reassured by the long-term nature of the team. It said that if there was a brand new company that wanted to set up a highly specialised PD hospital, it would be extremely difficult without some very good, well known clinicians that the Commissioners would feel confident could look after the patients.
14. Larger companies had larger amounts of capital and could take a longer-term view of their finances, so for a large company it would be easier to not make a profit for three to four years. Elysium thought that a smaller company would need to make a profit much quicker and hence anyone would need a large amount of capital initially to build the facility and then make a loss for the first 12 months because the full multidisciplinary team would be needed from day one. It felt that the team needed financial credibility and stated that financial backing was key.
15. Elysium said that it was easier for a larger company to deal with financial risk. The new provider would have to have evidence to show local Commissioners that there was proven clinical success and experience. It thought that a small hospital would find it difficult in terms of resource to take half of the staff from a well-run hospital and try to set up in a brand new area, with only evidence from one hospital. However, smaller companies had succeeded. That said, Elysium had not seen many new entrants in the past few years and it thought it was getting increasingly hard.
16. Many clinicians preferred to be part of a network and had said before that not having such a network within the same company made it harder to ensure a high quality clinical service. Clinically doctors and psychologists preferred to be part of a larger network and share practice with each other, as this helped them build up an evidence base.
17. Elysium felt that recruiting qualified staff was a potential barrier to entry, especially as the biggest issue across all the services was nursing recruitment. Qualified LD and MH nurses were very hard to come by and some facilities had been closed down because they were unable to recruit staff.

Competition with NHS providers in rehabilitation services

18. Elysium said it was all about geography. If the NHS had got the right facilities in the right areas and everything was fully integrated with their community services, Commissioners would choose to use those first and then the independent sector would fill the gaps. Some local health economies would not have any NHS rehab facilities and so the independent sector would have created capacity there and hence patients would be placed there because it was the only option.
19. Elysium thought that some NHS Commissioners viewed the independent sector as out of area and would only use it as a last resort when everything else was full. However, depending on availability in certain geographical locations, the independent sector may be their first choice due to the quality, the average length of stay and the price. Therefore, CCGs could be very different in their approach and a lot would depend on what was available in the local area.
20. Elysium said that it had created specialties to encourage Commissioners to use its facilities, rather than going to a non-specific NHS facility. It thought that some extremely specialised services may be seen as the first place to go, instead of disrupting a local generic NHS service.

The impact of capacity constraints on competition

21. In undersupplied areas, specialisation was less relevant than the relationship with the local Commissioners because the relationship allowed it to identify what the need was. Elysium said that if there was oversupply, a provider would try to create specialised and niche services and then actively market and sell them. If there was undersupply, a provider would work with the local Commissioners to work out what their need was and it would then try to plug the gap. Hence Elysium would constantly be thinking about how to introduce new services or reconfigure them.
22. Often if there were not enough beds in an area, the local Commissioners would work with the provider to keep the beds open and improve the quality of the provision. If there was oversupply, the Commissioners would be happy for the facility to close.
23. Receiving an outstanding rating would not necessarily lead to more referrals. In fact, often a service could receive 'requires improvement' and it would have no financial impact at all. Hence there was limited evidence of a direct correlation between CQC ratings and the financial success of a MH hospital. Local supply and demand imbalances were what was important.

24. Elysium said that it did not take into account the occupancy or bed availability of its competitors as it was not aware of them, only of things it had heard anecdotally.

Setting prices and competition

25. Elysium said that if it were consistently losing referrals to a particular competitor, [redacted].
26. Elysium stated, in its experience, that the NHS did not always choose the lowest price, it was more concerned with quality and if a provider dropped the price because it could not get referrals, the Commissioner may be as put off by that as if someone had put the price up.
27. If a new purpose built unit opened, Elysium may review the environmental facilities of its service if operating from a converted facility to ensure they remained fit for purpose. If it were using part time doctors and the competitor had full time doctors, it may look to change to provide a comparable service. However, basic quality was always maintained, so it was only if there was a major differentiator, that it would alter its offering.
28. It also said that its customers were sophisticated and that if it dropped its bed day price to get more referrals, Commissioners would be suspicious and expect that in a year's time the facility would be financially unviable and hence the price would go up to continue to operate. As the patients would already be there, the Commissioners could feel that they had to keep patients in the more expensive facility whilst they were part way through treatment.

Closeness of competition

29. Whilst companies may have knowledge about the business and marketing of their competitors, they would not know about the clinical treatment side and therefore if their facility was in direct competition with another or not. As clinical treatment was key, the price and location may not be important. Hence on the surface two facilities may compete, but in reality they could be very different.
30. In Yorkshire, Cygnet and Cambian had a lot of facilities and a very large number of beds, with limited other services in the area. Elysium said that if the Parties wanted to change the services they provided at certain units, these could be made by only changing their statements of purpose. The Parties could realign the services so they had a significant number of beds and if they had a broad range of services, it would be easier for them to negotiate with Commissioners. The Parties had a history of re-aligning services. Being so

big in the North around Yorkshire and the Humber, would mean they could easily construct patient pathways over to the North West and have a significant presence across the whole of the North.

31. If Commissioners were required to refer patients as close to home as possible, and all the units in the local area were Cygnet/CAS, Commissioners would have to have a good reason to take someone further out of area to use a different provider.
32. Elysium said that Cygnet and CAS had a large number of MH sites around London, and there were very few independent sector units within London. Lots of patients from London moved out of area and were not looked after in London. Therefore, CAS and Cygnet had a large number of beds with limited other independent sector beds within the London region because most facilities were NHS. Elysium said it was difficult to get in to the London market as there are few sites with the necessary planning permissions. A standalone new player would find London difficult to get in to, especially as the sheer capital cost of finding the location would put most off. This was the reason Cygnet Stevenage and some of the Elysium sites outside London took a lot of the London patients.
33. It stated that Cygnet and CAS had a large number of secure services within the M25 and Elysium were concerned because it was a relatively easy step-change from secure to rehab and this had been the direction of travel in the last few years.

The merger

34. Elysium said that this merger would create the second largest provider at a national level, but it thought that it would have little impact in areas where there was oversupply of available beds with various different competitors. Its concern was where the merger would result in having only one competitor, instead of two, as it would be harder to compete in the market.
35. Elysium stated that it was all to do with choice. If customers already had an extensive choice, it would not matter so much, but in areas where demand met supply, if there were fewer providers it may cause difficulties. It would depend on how easy it was for competitors to come in. For example, in Elysium's opinion London was a harder market to enter than perhaps South Wales.