

ME/6655/16

**COMPLETED ACQUISITION BY UNIVERSAL HEALTH SERVICES ("UHS") OF THE CAMBIAN
ADULT SERVICES DIVISION OF CAMBIAN GROUP PLC ("TRANSACTION")**

MAIN PARTIES' RESPONSE TO NOTICE OF POSSIBLE REMEDIES ("NOTICE")

8 September 2017

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1. INTRODUCTION

- 1.1 As explained throughout the CMA process, patient welfare is the Parties' primary concern in operating their business and, as the CMA has found, is also the primary concern of commissioners and relevant regulators. Limiting disruption to patients' care and maintaining quality standards of care for those patients is of paramount importance in the context of any remedy considerations. Accordingly, the Parties have reservations whether structural remedies may ultimately not be in the best interests of existing patients at any site(s) to be divested irrespective of the identity of the purchaser, given the inevitable disruption that will be caused by the sale. Divesting sites is likely to result in a change of clinical approach, which may mean that some patients will be impacted by changes in their clinical care part way through their treatment plan. Given the vulnerability of mental health patients, changes to their treatment can add significant time to recovery timescales.
- 1.2 This overarching concern aside, which is a factor which must be taken into account in weighing up the effectiveness of any possible remedy, and without prejudice to the submissions and evidence the Parties will provide in response to the CMA's Provisional Findings Report (the "**Report**"), the Parties consider that [X].
- 1.3 In particular and without prejudice to the Parties submissions in response to the Report, the Parties consider that any SLC would be effectively remedied by the divestment [X] in each of the SLC areas, and that the Parties should retain the discretion to choose which site is divested in each case. There are a number of reasons, many of which are linked to the welfare of patients, why the Parties should retain that choice. In particular, retaining that choice enables the Parties to take account of:
- the potential service disruption risk;
 - staffing structures, including proportion of permanent staff and degree of reliance on shared clinical staff;
 - stability/standalone nature of the clinical care approach/model;
 - the degree of integration with the stepdown facilities; and
 - extent of each site's reliance on other sites for administrative support.
- 1.4 In the remainder of this response, the Parties' set out their responses to the specific issues raised in the Notice in respect of:
- (a) the specification of the proposed structural remedy;
 - (b) potential implementation issues;
 - (c) suitable purchaser requirements; and
 - (d) ensuring an effective remedy process.

2. THE SPECIFICATION OF THE PROPOSED STRUCTURAL REMEDY

2.1 We refer to the provisional finding that the Transaction may be expected to result in an SLC within the market for the provision of LTMH rehabilitation services for:

- (a) male patients in the East Midlands; and
- (b) female patients in the West Midlands.

2.2 The specification of the proposed structural remedy to address each of these provisional SLC findings is considered in turn below.

Provisional SLC in respect of male LTMH patients in the East Midlands

2.3 In the Notice, the CMA has indicated that it considers an effective remedy in the East Midlands would require divestiture to a suitable purchaser of the Parties' male LTMH operations at one or more of the following sites.

- (a) CAS: Storthfield House, Sherwood House, The Limes, The Oaks and St Augustine's;
- (b) Cygnet: Derby and The Lodge (Brighouse).

2.4 As set out at paragraph 9.152 of the Report, a potential SLC has provisionally been identified in the East Midlands area as a result of analysing the overlap between Cygnet Hospital Derby and CAS' sites at Storthfield House, Sherwood House and The Limes.

2.5 Although the precise reasoning for the identification of the SLC is not summarised in the Report, it is clear from paragraphs 9.12 to 9.40 of the Report that the assessment of local competitive effects involves more than a simple consideration of market shares within a 60 mile drive.

2.6 In particular, the Parties note that:

- (a) it appears in respect of the East Midlands that the key concern for the CMA relates to the close geographic proximity of the Parties' sites within 20 miles of Storthfield House (Report paragraph 9.174) and the high market share of the Parties ([~~8~~] per cent) within this area; and
- (b) two of the remaining sites included in the list (namely Cygnet Lodge Brighouse, and CAS' site at St Augustine's) are closer to the periphery of the 60-mile catchment area applied. In particular:
 - (i) Cygnet Lodge Brighouse, located near Huddersfield in West Yorkshire, is 57 miles from CAS' Storthfield House. No SLC has provisionally been found when considering this site as part of the CMA's assessment of local competition in Yorkshire [~~8~~];
 - (ii) similarly, CAS' St Augustine's site is 52 miles from Storthfield House in Stoke-on-Trent (Staffordshire) in the West Midlands. The Report comments at footnote 334 that *"The market shares when centred on CAS St Augustine's were not identified by our filtering as requiring further analysis"*; and
 - (iii) in paragraph 9.153 of the Report, the CMA states that whilst Cygnet Brighouse, CAS ST Augustine's and the Oaks are within a 60 mile catchment area and therefore included in the market share calculations, *"our assessment here is not primarily focussed on the overlaps with these wards"*.

- 2.7 The addition of Cygnet Hospital Derby adds 16 male LTMH beds to the existing CAS position in the East Midlands. Whilst Cygnet Hospital Derby has 3 step down flatlets at Wyvern Court in addition to the 16 beds on Wyvern ward (both of which have been included in the Parties' combined market share),¹ the CMA has excluded similar step-down self-contained flatlets from its assessment in other areas. For example, in respect of the West Midlands, the CMA has excluded Priory 255 Lichfield Road on the basis that it comprises flatlets (Report, paragraph 9.195 and footnote 367).
- 2.8 Accordingly, should the CMA's Provisional Findings in respect of the East Midlands become final, the Parties consider that the sites that would effectively address the SLC identified are those sites which provide an effective constraint [X].
- 2.9 In light of the above, the Parties consider that [X]:
- [X]
 - [X]
- 2.10 As explained further below, given the availability of these alternative divestment options which the Parties consider would be effective in addressing an SLC finding in this area, any divestment remedy related to [X].
- 2.11 At this stage of the process, the Parties consider that the most appropriate and proportionate [X], on the basis that:
- [X]
 - [X]
 - [X]
 - [X]
- 2.12 The Parties therefore consider that the risk of disruption to patients would be expected to be lower if [X].

Provisional SLC in respect of female LTMH patients in the West Midlands

- 2.13 In the West Midlands, the CMA considers that an effective remedy to this SLC would require divestiture to a suitable purchaser of the Parties' female LTMH operations at either of the following sites:
- (a) CAS: Raglan House; or
 - (b) Cygnet: Coventry.
- 2.14 Based on the CMA's frame of reference, the Parties agree that, should the Provisional Findings in this area become final, the CMA's list of sites in scope for divestment is comprehensive as the Report identifies both of the sites operated by the Parties within the 60 mile catchment area. However, as will be set out in the Parties' response to the Report, the Parties' strongly believe that the CMA has erred in its provisional conclusions in this area.
- 2.15 The Parties consider that the divestment of [X] would be the most appropriate and proportionate structural remedy to address any SLC concerns in the West Midlands, as opposed to any structural remedy involving [X].[X] to a suitable purchaser would

¹ <https://www.cygnethealth.co.uk/content/uploads/2016/02/Wyvern-Brochure.pdf>

remove any increment to the Parties' combined share of female LTMH beds created as a result of the transaction.

2.16 [X]

Composition of the divestiture package

2.17 The Parties have considered the manner in which any divestiture package would need to be configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor, and are willing to work with a potential purchaser in order to minimise any disruption to patient care as far as possible. In this respect, as noted above, the Parties consider that the SLCs the CMA has provisionally identified could be effectively remedied by the divestiture of [X].

2.18 [X], the Parties consider that an effective purchaser would likely be [X] (for further comments regarding potential purchasers, see section 4 below).

2.19 Cygnet has previous experience of purchasing operating sites (both single sites and small packages of sites) and of the integration of such sites, for example, its recent acquisition of Taunton. Cygnet therefore considers it has a good understanding of what is required in order to acquire and integrate any divestment sites, and the nature of transitional support required to assist the process.

2.20 In addition, the Parties consider that the most effective transaction structure is likely to comprise an asset sale rather than a share sale. This is driven by a number of factors, including, but not limited to, the following:

- the Parties do not operate each of their sites through separate legal entities;
- a share sale is likely to be more time consuming to implement;
- an asset sale would result in less uncertainty and disruption for staff; and
- a share sale would require the Parties to hive off divestment assets into separate newly incorporated legal entities, which would trigger additional de-registration and re-registration of sites.

2.21 In light of the above and the assumption that the divestiture process would involve one or more asset sale transactions, the Parties' view is that an effective divestiture package would need to include the following elements identified in paragraph 18 of the Notice:

- (a) **Freehold site:** an attractive divestiture package is likely to include the transfer of any freehold property interests relating to a divestment site. [X]
- (b) **Physical facilities relating to the provision of the relevant mental health services provided at the site:** the Parties consider that an effective divestiture package should include all the physical premises, fixtures and fittings and equipment normally present at the site, and that are required for the provision of the services.
- (c) **Transfer of skilled staff:** [X]
- (d) **Transfer of existing customer contracts in respect of patients admitted to the facilities and the rights to fulfil these, including with relevant commissioners:** the Parties recognise that, to the extent possible, existing customer contracts for patients should be transferred to the purchaser, and the Parties would be willing to facilitate the novation of customer contracts where possible. However, the CMA should be aware that the Parties do not have sole control over the relevant consents. In this regard, the Parties note that:

- transfer of some contracts will be subject to relevant regulatory authorisations etc. being transferred/updated or granted, as applicable;
 - [X]; and
 - [X].
- (e) **Transfer of existing contracts with clinical staff including visiting consultants:** [X].
- (f) **Transfer of existing supplier contracts:** the Parties would be willing to novate contracts which serve only the site(s) in question to any purchaser (assuming the consent of the service supplier is obtained). However, the Parties recognise that some purchasers may prefer to negotiate their own supply arrangements and flexibility should be included to accommodate this.
- (g) **Rights to use the relevant site or ward name (without the name of the Parties):** the Parties would make available the rights to use the names of the divestment assets if the Buyer wishes to retain them.
- (h) **Access to relevant customer and patient data and patient records for the purposes of ensuring continuity of treatment:** the Parties would provide access to all core patient history records as would be required by a purchaser to discharge its statutory and regulatory obligations. [X]
- (i) **Rights to receive services and utilities currently being provided at the divested sites, such as gas, electricity, building access and services etc.:** the Parties recognise that assistance may be required to transfer services and utilities to the purchaser.

2.22 In this connection, the Parties also consider that:

- (a) [X]
- (b) [X]
- (c) as noted above, where capable of being transferred, the package should include all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit of the divestment sites. However, as previously noted, these transfers are not solely at the discretion of the Parties, and will require regulatory approval. In this context, the Parties note that the change of registration to the Buyer would need to be completed before effective ownership could transfer and would therefore be expected to be a condition to completion of any divestment, as would be standard practice for transactions in this sector; and
- (d) the transfer of any shared vehicles should be subject to negotiation with the buyer depending on its own fleet requirements.

Transitional support services

2.23 Depending on the identity of the purchaser, an effective divestiture package may also need to include certain transitional measures, including in relation to existing supplier contracts. In particular, a number of significant supplier contracts at the Parties supplies are agreed [X]. Where a purchaser wishes to ensure continuity of supply on Day 1, the Parties would be willing to consider putting in place certain transitional arrangements for a short period (the Parties consider that any purchaser is unlikely to need such support for more than [X] months).

2.24 However, given the number of [X], the Parties do not consider that there is likely to be any need to provide extensive support services on a transitional basis to any acquirer. In the Parties' experience, the areas where some transitional support may likely to be necessary is in relation to:

- (a) Finance: [X] month limited scope transitional services agreement may need to be entered into to enable full migration of relevant data onto the buyer's systems;
- (b) IT and communications: limited site specific IT continuity support may need to be offered during the [X] following completion;
- (c) HR: the Parties do not anticipate that any transitional services would be required, with the exception of [X] payroll assistance under Finance above;
- (d) Procurement: the Parties do not anticipate that any transitional services would be required, with the exception of the supplier contracts mentioned above;
- (e) Quality: other than general hand over and guidance, [X] months if this was of use to the Buyer

No additional measures

2.25 The Parties are not aware of any significant additional measures that would be necessary to ensure high quality of patient care at the divested sites other than those already identified above.

3. IMPLEMENTATION ISSUES THAT MIGHT ARISE

Multi-treatment facilities

3.1 In each of the areas where the CMA has provisionally found an SLC, at least one of the relevant sites comprises a multi-treatment facility. This is captured in the table below.

Area	Multi-treatment sites	Single treatment sites
East Midlands	<p>Cygnets Hospital Derby (Wyvern Ward would need to be separated from Litchurch Ward and Alvaston Ward)</p> <p>Storthfield House Derby (Storthfield House would need to be separated from The Sycamores)</p> <p>Sherwood (Sherwood House would need to be separated from Sherwood Lodge and Sherwood Lodge Step-Down)</p>	<p>Cygnets Lodge Brighthouse</p> <p>The Limes</p> <p>Cambian Oaks</p> <p>St Augustine's</p>
West Midlands	<p>Cygnets Hospital Coventry (Ariel Court and Middlemarch Ward would need to be separated from Dunsmore Ward and Ariel Ward)</p>	<p>Raglan House</p>

3.2 The Parties consider that divestment [X] is likely to pose the lowest risk from a composition perspective and to be most proportionate (amongst equally effective remedies) on the basis that:

- (a) in each area the CMA's provisional SLC finding [X]:

- Male LTMH rehabilitation services in the East Midlands; and
 - Female LTMH rehabilitation services in the West Midlands;
- (b) [REDACTED]:
- firstly, [REDACTED];
 - secondly, a site consists of a wide range of shared common areas such that a 'ward' is not a standalone operational business. [REDACTED];
 - in the case of the Cygnet facilities in particular, [REDACTED];
- (c) in any event, [REDACTED];
- (d) [REDACTED].

Shared clinical staff

3.3 Some of the Parties' sites share clinical staff. In other words, clinical staff are not necessarily allocated to a single site; some staff will divide their time across multiple sites. For example:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

3.4 [REDACTED] Retaining this flexibility is therefore also important in order to manage the impact of divestment from the perspective of individual staff members so that the Parties' have the opportunity to give due and proper consideration to the rights and wishes of employees.

3.5 Where necessary, the Parties consider that appropriate interim arrangements for a period of [REDACTED] months would be sufficient to ensure continuity in patient treatment plans in accordance with the terms of a transitional services agreement.

4. IDENTIFICATION OF SUITABLE PURCHASER(S)

Experience of providing mental health rehabilitation services

4.1 The Report identifies a potential SLC in two markets:

- Male LTMH rehabilitation services in the East Midlands; and
- Female LTMH rehabilitation services in the West Midlands.

4.2 In view of these circumstances, the Parties consider it [REDACTED].

4.3 Accordingly, the Parties expect that [REDACTED]. The Parties do not consider, however, that it is necessary to require the purchaser to have experience of providing mental health rehabilitation services in the area in which any divestiture site is located. [REDACTED] The potential timeline for completion of a divestment will be impacted by the readiness of a purchaser to fulfil the regulatory obligations, which will of course include relevant sector experience.

The profile of a suitable purchaser

4.4 The Parties consider that the divestiture process should be open to all prospective purchasers that meet the requirements as stated at paragraphs 21 and 22 of the Notice.

Accordingly, the Parties do not consider that it is necessary to state any additional pre-qualification requirements. In this regard, the Parties note that:

- The CMA has not given any indication in its Provisional Findings that its provisional SLC findings have come about as a result of a lack of choice in the relevant areas such that the SLC in question would not be remedied by making a divestiture to an existing competitor;
- The CMA has not given any indication to date that having national coverage is important to particular categories of customers such that there is a need for another competitor with national coverage to compete with the parties in the areas where the CMA has provisionally identified an SLC;
- The CMA has not given any indication that the size of a provider's business is particularly important to customers such that there is a need for prospective purchaser to operate a specified minimum number of beds or sites, or to generate a minimum level of revenue in order to be an effective competitive constraint; and
- The CMA has found that local knowledge is less of a barrier for entry in relation to LTMH than more specialised services and, in any event, [X].

Number of purchasers

- 4.5 To the extent that the Parties will be required to divest more than one site, they wish to retain the discretion to choose whether to sell all relevant sites to a single purchaser or to sell each site to a different purchaser. The Parties would exercise that discretion based on the best overall outcome, incorporating the outcome for patients, staff and the [X], subject to the relevant purchaser(s) demonstrating that they have the necessary experience, financial resources and reputational capability to compete.
- 4.6 In addition, the Parties note that each of the CMA's provisional SLC findings has been reached independently of one another. Therefore, there is no reason why any divestiture site [X] would need to be under common ownership.
- 4.7 Finally, as noted above, the Parties consider that the SLC in the East Midlands should be capable of being remedied through [X]. However, to the extent that the CMA were to require the [X], the Parties can identify no reason why they should be prevented from divesting those sites to a single or multiple purchasers given that the provisional SLC finding in the East Midlands does not appear to have been driven by a lack of choice.

Regulatory approvals

- 4.8 Other than potentially being subject to obtaining merger control approval, the purchaser will need to ensure that the Care Quality Commission ("**CQC**") is notified of changes in ownership of any registered services, and would need to approve the re-registration under new ownership. It is expected that the sequencing of the regulatory aspects of any divestment would be finalised in consultation with the CQC.

5. EFFECTIVE DIVESTITURE PROCESS

The appropriate timescale for achieving a divestiture

- 5.1 The Parties are aware that the CMA's preference is to minimise the duration of the divestiture period. In determining that duration, we note that the CMA is generally required to balance:
- its requirements in so far as reducing asset risk and giving rapid effect to the remedy; and

- the need to ensure that the Parties have enough time to achieve an effective disposal.

5.2 In view of the above balancing act, the Parties consider that a period of [X] months would be appropriate to canvass suitable purchasers, and to facilitate adequate due diligence, in order to create an effective and appropriate divestiture package. Such period is not expected to result in appreciable asset risk given that:

- the Parties have demonstrated their ability to maintain the value of the CAS business since it was acquired on 28 December 2016;
- given that the Parties operate in a highly regulated sector, they would have limited incentive or ability deliberately to operate any of the potential divestiture assets in a manner in which might cause appreciable asset risk;
- any potential asset risk would be further mitigated by providing the Parties with greater discretion to decide which sites need to be divested; and
- the Parties would be willing to put in place appropriate procedural safeguards to minimise the risk associated with a divestiture process.

Comments on procedural safeguards

5.3 UHS/Cygnnet are willing to put in place procedural safeguards needed to minimise the risk of loss of competitive potential of the divestment sites and in particular ensure that:

- (a) the divestment sites' sales or brand identity is maintained, including, in particular, that the CAS sites in the SLC areas are carried on separately from the Cygnnet business;
- (b) the sites of each of Cygnnet and CAS in the SLC areas are maintained as a going concern and sufficient resources are made available to those sites on the basis of their respective pre-Transaction business plans;
- (c) except in the ordinary course of business no substantive changes are made to the organisational structure of, or the management responsibilities within, the sites in the SLC areas;
- (d) the nature, description, range and quality of services supplied in the UK at each of the sites in the SLC areas are maintained and preserved;
- (e) except as required in the ordinary course of business:
 - (i) the material assets of the sites in the SLC areas are maintained and preserved, including facilities and goodwill;
 - (ii) no material assets of the sites in the SLC areas are disposed of; and
 - (iii) no interest in the material assets of the sites in the SLC areas is created or disposed of;
- (f) pending disposal of the divestiture sites:
 - (i) all existing key contracts of the sites in the SLC areas continue to be serviced by the business to which they were awarded;
 - (ii) all reasonable steps are taken to encourage clinical staff and management staff to remain with the sites in the SLC area

- (g) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to any of the SLC areas shall pass, directly or indirectly, from CAS to Cygnet (and *vice versa*), except where strictly necessary in the ordinary course of business
- (h) the CMA is kept informed of any material developments relating to the sites in the SLC areas.

5.4 In the event that the CMA were to decide that the Parties are required to divest one or more sites to remedy any SLC findings, the Parties consider that there would be a number of potential purchasers for any such sites. In this regard, a number of potential purchasers have registered expressions of interest in purchasing any divestment sites since the publication of the Report. Consequently, the Parties are confident that they would be able to sell any divestment sites to suitable purchaser(s) within the timeframe set by the CMA. Therefore, the Parties do not consider that any particular concerns would arise as regards maintaining the attractiveness and viability of any divestment sites pending completion of sale.