

ACQUISITION BY UNIVERSAL HEALTH SERVICES INC. (THROUGH CYGNET HEALTH CARE LIMITED) OF THE CAMBIAN ADULT SERVICES BUSINESS

Directions issued pursuant to paragraph 10 of the Interim Order made by the Competition and Markets Authority pursuant to section 81 of the Enterprise Act 2002 (the Act) on 17 October 2017.

- A. On 28 December 2016 Universal Health Services, Inc. (UHS) through its wholly owned subsidiaries Cygnet Health Care Limited (Cygnet) acquired from Cambian Group and its subsidiary Cambian Educational Services the entire issued share capital of Care Aspirations Developments Limited, Cambian Healthcare Limited and Cambian Care Services Limited and their respective subsidiaries (together known as Cambian Adult Services (CAS)) (the Merger).
- B. The Competition and Markets Authority (CMA) on 3 May 2017 referred the Merger for a phase 2 investigation pursuant to section 22 of the Act (the Reference).
- C. On 17 May 2017 the CMA made an Interim Order in accordance with section 81 of the Act for the purpose of ensuring that no action is taken pending determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which may be justified by the CMA's decisions on the Reference and issued a direction for the appointment of a Monitoring Trustee (MT).
- D. On 16 October 2017 the CMA published a report (the Final report) concluding that:
 - (i) the completed acquisition by UHS of CAS has resulted in the creation of a relevant merger situation;
 - (ii) the creation of that situation may be expected to give rise to a substantial lessening of competition (SLC) within the market for the provision of hospital-based inpatient rehabilitation services (rehabilitation services) for male long term mental health(LTMH) patients in the East Midlands which may be expected to lead to adverse effects for customers and patients in

terms of prices being higher than they would otherwise be and quality being lower than it would otherwise be;

- (iii) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (iv) undertakings should be given to the CMA or where undertakings are not agreed an order made to give effect to the remedy identified by the CMA in chapter 14 of the Final Report (the Remedies).

E. On 17 October 2017 the CMA issued an Interim Order (the Interim Order) in accordance with section 81 of the Act for the purpose of ensuring that no action is taken in the East Midlands area pending determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which may be justified by the CMA's decisions on the Reference.

F. The CMA now issues written directions under paragraph 10 of the Interim Order that, for the purposes of securing compliance with the Interim Order, that UHS must appoint a monitoring trustee in accordance with the terms provided for in the Annex and shall comply with the obligations set out in the Annex.

Signed

Simon Polito
Group Chairman
17 October 2017

Annex

Directions to appoint a monitoring trustee

Interpretation

In these Directions:

- (a) 'the Act' means the Enterprise Act 2002;
- (b) 'CMA' means the Competition and Markets Authority;
- (c) 'the CAS business' means the business of Cambian Adult Services and its subsidiaries carried on as at the commencement date;
- (d) 'the CAS East Midlands Sites' means Storthfield House, Sherwood House, The Limes, The Oaks, St Augustine's
- (e) 'the Cygnet business' means the business of Cygnet Health Care Limited and its subsidiaries carried on as at the commencement date
- (f) 'the Cygnet East Midlands Sites' means Derby, Lodge Brighthouse
- (g) 'Directions' means the directions issued under paragraph 10 of the Interim Order;
- (h) 'Interim Order' means the interim order made by the CMA on 17 October 2017;
- (i) 'MT' means the monitoring trustee appointed in accordance with the Directions;
- (j) 'the two businesses' means the CAS business at the CAS East Midlands Sites and the Cygnet business at the Cygnet East Midlands Sites;
- (k) 'working day' means any day of the week other than a Saturday, Sunday or any other day that is a public holiday in England.

Terms and expressions defined in the Interim Order have the same meaning in these Directions, unless the context requires otherwise.

Appointment

1. UHS must appoint an MT in order to:

- (a) support the CMA taking any remedial action which may be required to maintain the CAS business at the CAS East Midlands Sites and the Cygnet business at the Cygnet East Midlands Sites as viable businesses; and
 - (b) monitor compliance by CAS and all its subsidiaries with the Interim Order.
- 2. 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.
- 3. UHS and Cygnet and all its subsidiaries must cooperate fully with the MT, in particular as set out below, and UHS and Cygnet and all of its subsidiaries 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 Cygnet and all of its subsidiaries as set out in these Directions.

General

- 4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
- 5. 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.
- 6. UHS 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 effectively and properly carry out his or her functions.
- 7. UHS must appoint the MT as soon as is reasonably practicable and in any event by 20 October 2017 and the MT will continue to act either until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or directs that the MT is no longer required.
- 8. The appointment of a MT by 20 October 2017 is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and;
 - (a) the name of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by 19 October 2017 along with draft terms and conditions of appointment; and

(b) once the MT has been approved by the CMA and appointed UHS must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. The functions of the MT will be to:

(a) ascertain the current level of compliance by UHS and Cygnet the Interim Order;

(b) assess the arrangements made by UHS and Cygnet for compliance with the Interim Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;

(c) identify and supervise if necessary the arrangements made by UHS and Cygnet for ensuring compliance with the Interim Order;

(d) monitor compliance by UHS and Cygnet with the Interim Order; and

(e) without prejudice to the right of UHS and Cygnet to contact the CMA, respond to any questions which UHS and Cygnet may have in relation to compliance with the Interim Order, in consultation with the CMA.

10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including the monitoring of communications within and between the CAS business at the CAS East Midlands Sites and the Cygnet business at the Cygnet East Midlands Sites business, such as written and electronic communications, telephone conversations and meetings as may be required.

11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by UHS and Cygnet and all its subsidiaries with the Interim Order.

Obligations of UHS and Cygnet

12. UHS and Cygnet and its 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 CAS business at the CAS East Midlands Sites or the Cygnet business at the Cygnet East Midlands Sites as the MT may reasonably require; and

(b) the provision of such office and supporting facilities as the MT may reasonably require.

13. If UHS and Cygnet or any of its subsidiaries is in any doubt as to whether any action or communication would infringe the Interim Order, it is required to contact the MT for clarification.

14. If UHS and Cygnet or any of its subsidiaries has any reason to suspect that the Interim Order may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

15. The MT is required to provide a report to the CMA no later than 6 November and every two weeks thereafter giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Interim Order, and including among other things:

(a) details of the current extent of compliance with the Interim Order;

(b) a description of the current arrangements made for the operation of the two businesses and for the preservation of the assets required to operate the two businesses; and

(c) recommendations as to what changes to those arrangements, if any, are necessary.

16. In addition to providing the reports referred to in paragraph 15 above, the MT must provide (or otherwise as required by the CMA) a statement to the CMA stating whether or not, in his or her view, UHS and Cygnet and all its subsidiaries has complied with the Interim Order. At the same time, the MT must provide the CMA with a report setting out the following:

(a) the basis for the MT's view that the Interim Order have or have not, as the case may be, been complied with and in particular whether:

(i) anything has caused him or her to be concerned as to whether UHS and Cygnet and all its subsidiaries has complied with the Interim Order, and if it has, whether those concerns have been resolved and why;

- (ii) he or she has any remaining doubts or uncertainties as to whether UHS and Cygnet and all its subsidiaries has complied with the Interim Order; and
 - (iii) anything that causes him or her to be concerned about a possible future breach of the Interim Order (whether deliberate or inadvertent);
- (b) details of the performance of the two businesses, including any factors that might indicate asset deterioration;
- (c) whether appropriate steps are being taken to maintain the two businesses as going concerns;
- (d) the extent to which UHS and Cygnet and all its subsidiaries has cooperated with the MT in his or her task of monitoring its compliance with the Interim Order and details of any aspects of the cooperation of UHS and Cygnet and all its subsidiaries that he or she considers could be improved;
- (e) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of UHS and Cygnet and all its subsidiaries with the Interim Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
- (f) any current or anticipated requests for consent to vary the Interim Order; and
- (g) the information he or she used to compile the report.
17. When providing reports to the CMA the MT must ensure that he or she does not disclose any information or documents to the CMA which UHS and Cygnet or any of its subsidiaries would be entitled to withhold from the CMA on the grounds of legal privilege.
18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Interim Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. 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 17 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to UHS and Cygnet or any of its subsidiaries or to the CAS business at the CAS East Midlands Sites, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.