

**ANTICIPATED ACQUISITION OF HEATHERWOOD AND WEXHAM PARK HOSPITALS NHS
FOUNDATION TRUST BY FRIMLEY PARK HOSPITAL NHS FOUNDATION TRUST**

**ADVICE TO THE COMPETITION AND MARKETS AUTHORITY UNDER SECTION 79(5) OF THE HEALTH
AND SOCIAL CARE ACT 2012**

2 MAY 2014

On 31 March 2014, the Office of Fair Trading (OFT) notified Monitor, under section 79(4) of the Health and Social Care Act 2012 (Health and Social Care Act), that it had decided to carry out an investigation under Part 3 of the Enterprise Act 2002 (Enterprise Act) of the proposal by Frimley Park Hospital NHS Foundation Trust (Frimley Park FT) to acquire Heatherwood and Wexham Park Hospitals NHS Foundation Trust (Heatherwood and Wexham FT). On 1 April 2014, the competition functions of the OFT were formally transferred to the Competition and Markets Authority (CMA).¹

Under section 79(5) of the Health and Social Care Act, as soon as reasonably practicable after receiving a notification under section 79(4), Monitor is required to provide the CMA with advice on the following matters:

- a. the effect of the matter under investigation on benefits (in the form of those within section 30(1)(a) of the Enterprise Act (relevant customer benefits)) for people who use health care services provided for the purposes of the NHS, and
- b. such other matters relating to the matter under investigation as Monitor considers appropriate.

This document constitutes the advice that we must provide under section 79(5) of the Health and Social Care Act.

Summary

Monitor believes that the proposed acquisition is the best available solution to the problems faced at Heatherwood and Wexham FT and the most likely way to achieve the necessary improvements to services for patients. Frimley Park FT and Heatherwood and Wexham FT have told us that they are of the view that the transaction does not give rise to competition issues and that therefore it will not be necessary for the CMA to reach a view on relevant customer benefits for the purposes of the

¹ CMA is the UK's lead competition and consumer body. It brings together the competition and certain consumer protection functions of the OFT and the responsibilities of the Competition Commission.

Enterprise Act. They have not made submissions to Monitor on the subject of relevant customer benefits. We are nevertheless required to advise the CMA and our advice is that on the information available to us we are not able to determine that any relevant customer benefits for the purposes of the Enterprise Act will arise. We have set out below why we think this transaction is the best available solution to the problems at Heatherwood and Wexham FT and the most likely way to achieve the necessary improvements for patients.

Monitor's advice on relevant customer benefits

Frimley Park FT explained to us the rationale for the proposed acquisition and how it expects the transaction to result in improved outcomes for patients. Frimley Park FT informed us that it is working on detailed implementation plans which will set out how it will achieve these improved outcomes. It explained that these implementation plans have yet to be finalised.

Frimley Park FT and Heatherwood and Wexham FT told us they are of the view that the proposed acquisition does not raise competition concerns. Therefore they believe it is unlikely that the CMA will need to reach a view on whether there are any relevant customer benefits for the purposes of the Enterprise Act. Frimley Park FT and Heatherwood and Wexham FT informed us that, because of this, they had decided not to demonstrate at this stage how the improved patient outcomes expected as a result of this acquisition will give rise to relevant customer benefits (as defined under the Enterprise Act). We are nevertheless required to advise the CMA and our advice is that on the information available to us we are not able to determine that any relevant customer benefits for the purposes of the Enterprise Act will arise.

Monitor's advice on matters relating to the proposed acquisition

Heatherwood and Wexham FT has faced significant sustainability, quality and management issues for a long time and has been subject to numerous regulatory interventions by us. The Care Quality Commission issued several notices to the trust earlier this year² and has now recommended that the trust be placed in 'Special Measures', the most severe sanction short of placing a trust into special administration. We believe that the proposed acquisition is likely to deliver a quicker and more sustainable solution to these issues than further regulatory intervention by Monitor could achieve.

Heatherwood and Wexham FT has been in significant breach of its Terms of Authorisation³ since July 2009. This is one of the longest periods of breach of any foundation trust. Throughout this period of breach, Heatherwood and Wexham FT has been subject to numerous regulatory interventions by us, none of which has led to a sustainable recovery. We believe that the underlying cause of these failures is the long standing problem with staff and culture at the trust. Heatherwood and Wexham FT's leadership has been in flux, with Monitor and successive Chairs of the trust experiencing difficulties in recruiting permanent senior executives to the trust. There are currently a large number of interim staff currently in executive management positions. We have been concerned about the absence of a permanent management team especially following the resignation of the trust's most

² Copies of the Care Quality Commission's inspection reports can be found [here](#).

³ The trust's terms of authorisation are on Monitor's website at <http://www.monitor-nhsft.gov.uk/about-your-local-nhs-foundation-trust/nhs-foundation-trust-directory-and-register-licence-holders/heatherwood-and-wexham-park-ho>. On 1 April 2013, Heatherwood and Wexham FT's terms of authorisation were replaced by the NHS provider licence. Heatherwood and Wexham FT continues to be in breach of licence conditions CoS 3(1), FT4(5)(a), (c), (f), (d) and (h) and FT4(6).

recent interim CEO (in March this year). In our view, while the trust is under-managed there is an ongoing risk of service deterioration.

A solution is urgently required to address the leadership issues at Heatherwood and Wexham FT and to improve the quality of care for patients. In our view, any such solution will require the injection of new, strong and effective leadership, and given the problems of recruiting individual leaders it now seems that this means finding a whole leadership team that is capable of addressing the trust's problems. Frimley Park FT is a high performing trust with a stable and consistent leadership team, and has a high performing team of consultants which have been responsible for delivering high quality care over a significant period of time⁴.

For these reasons the proposed acquisition appears to us to be the best available solution to the problems at Heatherwood and Wexham FT and the most likely way of achieving the necessary improvements to services for patients. Indeed no convincing alternative solution to the problems has been identified even though Heatherwood and Wexham FT has been subject to regulatory intervention for some considerable time.

⁴ Frimley Park FT, authorised in April 2005, was one of the first foundation trusts to be authorised. It has had the same Chairman since 2006 and the same CEO since 1991.