

**DEROGATION LETTER IN RESPECT OF UNDERTAKINGS IN LIEU ACCEPTED
PURSUANT TO SECTION 73(2) ENTERPRISE ACT 2002**

**Completed acquisition of GHG Healthcare Holdings Limited by Circle Health
Holdings Limited**

Please note that [X] indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.

Consent to certain actions for the purposes of the undertakings in lieu of a reference accepted by the Competition and Markets Authority (“CMA”) pursuant to section 73(2) of the Enterprise Act 2002 on 23 June 2020 (the “UILs”).

As part of its investigation into the completed acquisition by Circle Health Holdings Limited (**Circle**) of GHG Healthcare Holdings Limited (a parent company of BMI Healthcare Limited) (together, the **Parties**) (the **Merger**), the CMA imposed an Initial enforcement order on 20 December 2019, as re-issued on 11 March 2020 (the “**Initial Enforcement Order**”).

We refer to your letter dated 9 June 2020 and email dated 19 June 2020 requesting that the CMA consents to derogations to the Initial Enforcement Order.

On 8 April 2020, the CMA decided that the Merger had resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom and that it would be referred for a phase 2 investigation unless the Parties offered acceptable undertakings to address these competition concerns.

On 23 June 2020, the CMA accepted Undertakings in Lieu (**UILs**) of a reference from the Parties under section 73(2) of the Enterprise Act 2002 (the **Act**). The terms defined in the UILs have the same meaning in this letter.

By operation of section 72(6)(b), the Initial Enforcement Order ceased to apply when the UILs were accepted. However, under paragraph 11 of the UILs, Circle remains under an obligation to minimise as far as possible any risk of loss of competitive potential of the Divestment Business.

After due consideration, based on the information available and in the particular circumstances of this case, the CMA consents to a derogation to the UILs. Circle may carry out the following actions, in respect of the specific paragraphs:

1. Temporary redeployment – Paragraphs 11.1(g) and 11.1(h) of the UILs

The CMA understands that certain employees of the Birmingham Divestment Business (namely the [X] collectively the "**CBL Employees**") currently have no operational role at Circle Birmingham pending completion of the divestment of Circle Birmingham and preparation for its opening under a new owner. The Parties have therefore requested a derogation to permit the temporary redeployment of the CBL Employees at Circle or BMI sites. In particular, the CMA understands that this would assist in enabling the CBL Employees to meet their professional development requirements.

Based on the information provided to the CMA, the CMA considers that, subject to the conditions set out below, the requested derogation would not result in a loss of competitive potential of the Divestment Business. On this basis, the CMA consents to:

- (a) Circle exploring with BMI whether there may be appropriate temporary roles at BMI for the CBL Employees;
- (b) Circle effecting the redeployment of the CBL Employees to appropriate temporary roles at BMI sites (through agreement with BMI) or Circle sites (including Circle Rehab) on a temporary basis pending the agreement of a divestment of the Circle Birmingham Hospital ("**Redeployment**"); and
- (c) the [X] deferring his start date with CBL [X] ("**Deferral**").

This derogation is granted pursuant to the following conditions:

- (a) any Redeployment or Deferral can only take place following consultation with, and with the consent of, the relevant employee;
- (b) subject to paragraph (d), the CBL Employees shall at all times continue to be employed by CBL;
- (c) subject to paragraph (d), the CBL Employees shall continue to be paid at a minimum at their current contracted salary and shall receive remuneration for any reasonable expenses incurred in respect of the Redeployment;
- (d) for the avoidance of doubt, if the [X] defers his start date with CBL in accordance with this derogation, condition (b) and (c) above will only apply to the [X] from [X];

- (e) any sharing of confidential information in relation to the Divestment Businesses with BMI will be strictly limited to that necessary to discuss and effect the Redeployment or Deferral;
- (f) prior to the disclosure of Divestment Business confidential information to Circle staff or BMI staff, such staff shall sign a non-disclosure agreement in a form agreed with the CMA;
- (g) for the avoidance of doubt, this derogation does not affect Circle's obligation under paragraph 11.1(i) of the UILs to take reasonable steps to retain Key Staff;
- (h) any Redeployment would terminate in advance of a sale of CBL and a Redeployment will not prevent the transfer of the CBL Employees to a purchaser of CBL; and
- (i) neither BMI nor any other Circle entity (including Circle Rehabilitation Services Limited) shall hire the CBL Employees during the Redeployment and prior to the completion of the divestment of CBL, unless agreed with the CMA following written confirmation from the purchaser of CBL that it does not wish the relevant CBL Employee to transfer with CBL or as otherwise agreed with the CMA.

2. Furlough – Paragraph 11.1(g) of the UILs

If no acceptable alternative temporary roles can be identified for the CBL Employees under the above Redeployment derogation, the Parties have further requested a derogation to permit Circle to furlough the CBL Employees under the Coronavirus Job Retention Scheme.

Based on the information provided to the CMA, the CMA considers that the requested derogation would not result in a loss of competitive potential of the Divestment Business. On this basis, to the extent that Circle in conjunction with BMI is unable to facilitate the Redeployment of the CBL Employees, the CMA consents to:

- (a) Circle exploring whether the CBL Employees may be eligible for furlough under the Coronavirus Job Retention Scheme; and
- (b) if appropriate, to place the CBL Employees on furlough.

This derogation is granted pursuant to the following conditions:

- (a) if any of the CBL Employees are furloughed, Circle shall top up the relevant CBL Employees' salaries to ensure that they continue to receive 100% of their contracted salary;
- (b) for the avoidance of doubt, this derogation does not affect Circle's obligation under paragraph 11.1(i) of the UILs to take reasonable steps to retain Key Staff; and
- (c) Circle shall keep the CMA updated in respect of any decision to place any of the CBL Employees on furlough and on the length of the furlough arrangements.

Clementine Messent

Assistant Director

1 July 2020