

**DEROGATION LETTER
IN RESPECT OF UNDERTAKINGS IN LIEU OF A REFERENCE
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 2020 on 23 June 2020.

Following 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 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. 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 hospital located at Foxcote Ave, Peasedown St John, Bath BA2 8SQ and operated by Circle Hospital (Bath) Limited (**CHBL**) (the **Circle Bath Hospital**) and the hospital located at 5 Pebble Mill Road, Birmingham, B5 7SA and operated by Circle Birmingham Limited (together the **Divestment Business**).

On 25 June 2020, the CMA issued directions to appoint a monitoring trustee pursuant to paragraph 11 of the UILs accepted on 23 June 2020 (the Monitoring Trustee).

We refer to your letter dated 4 August 2020 requesting that the CMA consents to derogations to the UILs.

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. Paragraphs 11.1(b) and 11.1(j) of the UILs

The CMA understands that [X] (Circle's Director of Hospitals) is currently a director of CHBL, the Responsible Officer for the Circle Bath Hospital (a statutory duty requiring that [X] monitor quality and medical performance across the Circle organisation, including at CHBL) and the line manager of the hospital director, [X].

In light of Circle's obligations under the UILs in relation to the Circle Bath Hospital, Circle has requested a derogation to permit changes to the management and company director structure of Circle Bath Hospital. Circle understands that it is not appropriate for [X] to continue to exercise this level of oversight over Circle Bath, and it will prove difficult to balance [X] obligations as a result of these functions, in particular his statutory obligations as a Director, with the requirement to ring-fence confidential information relating to Circle Bath.

On this basis, the CMA consents to the following:

- (a) [X] will resign as a director of CHBL, and [X] (Circle's General Counsel) will be appointed as director of CHBL during the Divestment Period as defined in the UILs. In order to perform his duties as a director of CHBL, [X] will get access to the information necessary in the ordinary course of business to enable him to fulfil his statutory duties as a director. [X] is also the company secretary of CHBL and will continue to fulfil this role until completion of a divestment of CHBL.
- (b) [X] will no longer act as the direct line manager of [X]. In his place, and in order to ensure the continued support for [X] during the divestment period, the following arrangements will be put in place:
 - (i) [X] and [X] shall attend scheduled monthly performance meetings with [X] and have access to the monthly performance packs prepared in relation to Circle Bath. Circle considers that [X] is well-placed to fulfil this role alongside [X] and to provide the necessary oversight and support to [X] given her former role [X];

- (ii) members of the hospital management team at Circle Bath and [redacted] direct reports are permitted to contact or notify [redacted] or [redacted] directly in the event that they have any concerns in relation to the performance or governance of Circle Bath Hospital or [redacted]; and
 - (iii) ad hoc meetings and discussions may be arranged with (i) [redacted]; (ii) [redacted], (iii) [redacted], and (iv) [redacted], collectively the "Oversight Individuals". Such meetings or discussions may take place at the request of either [redacted] or the Oversight Individuals.
- (c) [redacted] will remain as the Responsible Officer of Circle Bath Hospital. As Responsible Officer, [redacted] has a statutory duty to monitor quality and medical performance across the organisation and this is encompassed within the clinical/governance sections of the monthly performance pack. In his capacity as Responsible Officer, [redacted] will be entitled to continue to receive and access information relating to clinical aspects of Circle Bath's performance, including clinical aspects of the monthly performance pack to be provided by Circle Bath to Circle and to be informed of any serious clinical incidents, and any other matters related to the General Medical Council with respect to both doctors who are connected to Circle as the designated body and doctors who have Practising Privileges.
- (d) Following the integration of the governance structures of each of Circle and BMI, it is intended that [redacted] will take over the sole position of Responsible Officer for the combined group. At this point, [redacted] will replace [redacted] as Responsible Officer for Circle Bath Hospital. As a result, [redacted] will get access to the clinical governance information anticipated to be provided to [redacted] under paragraph (c) above in place of [redacted], who will no longer require to see this information.

This derogation is granted pursuant the following conditions:

- (a) [redacted], each of the Oversight Individuals and [redacted] will enter into a confidentiality agreement in a form agreed with the CMA and no confidential information regarding CHBL (which is not already permitted to be disclosed under the UILs) shall be disclosed to these individuals until then;
- (b) Only confidential information regarding CHBL that is strictly necessary for the purpose of fulfilling their statutory function as Responsible Officer shall be disclosed to [redacted] (and subsequently to [redacted] when he replaces [redacted] in this role);

- (c) [X] will only disclose confidential information regarding CHBL to the Oversight Individuals insofar as strictly necessary for the purposes described in paragraph 1(b) above;
- (d) Any information pertaining to CHBL that is provided under this derogation shall be held separately and securely;
- (e) Upon completion of the divestment all information pertaining to the Circle Bath Hospital will be returned to any purchaser and/or deleted (except as may be necessary for compliance with relevant financial, regulatory, accounting or tax reporting obligations);
- (f) Upon request, the Monitoring Trustee will be given access to any information provided from the Circle Bath Hospital to Circle or any of its subsidiaries (the **Circle Group**); and
- (g) Circle will provide the Monitoring Trustee with a description of the confidential information that is exchanged between the Circle Bath Hospital and the Circle Group pursuant to this derogation letter on a periodic basis (at least once fortnightly).

Steven Pantling
Assistant Director
11 September 2020