

**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

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 11.1 of the UILs Circle is under an obligation to minimise as far as possible any risk of loss of competitive potential of the Divestment Business, and in particular to ensure that:

- (a) Under paragraph 11.1(b), except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Divestment Business; and
- (b) Under paragraph 11.1(j), no Confidential Information shall pass from the Divestment Business to the Circle Business or vice versa, except where strictly necessary in the ordinary course of business or where required in specified circumstances.

We refer to your letter dated 8 March 2022 requesting that the CMA consents to derogations to paragraphs 11.1(b) and 11.1(j) of the UILs. In your letter, you state that:

- (a) [X] is currently the line manager of [X], [X] of Circle Birmingham Hospital (**CBL**). [X] was previously the [X] at Circle, and in this role he had operational oversight of the performance of the three legacy Circle hospitals,

with each of the Hospital Directors (now known as Executive Directors) reporting to him.

- (b) However, following the acquisition of BMI, in light of his clinical experience and reflecting his position as a [REDACTED], [REDACTED] role has changed, and he is now responsible for [REDACTED], including BMI Priory and BMI Edgbaston. Apart from [REDACTED], no other [REDACTED] currently reports to [REDACTED].
- (c) Due to these changes in [REDACTED] role and in light of Circle's obligations under the UILs, Circle no longer considers it appropriate or feasible for [REDACTED] to remain as [REDACTED] line manager.
- (d) Circle wishes to replace [REDACTED] with [REDACTED], the [REDACTED] in Circle's London and South East region.
- (e) Given that [REDACTED] responsibilities relate to the London South East Region, he has no involvement with any of Circle's hospitals or activities in the Birmingham region. He will therefore be able to ringfence any competitively sensitive information relating to CBL that is required to be shared as part of his line management of [REDACTED].
- (f) This change will have no impact on the competitive potential of CBL; indeed it aims to ensure there is no risk of loss of the business's competitive potential by ensuring that [REDACTED] and CBL continue to have an appropriate level of oversight and support.

Circle therefore requested a derogation from the UILs to permit [REDACTED] line manager to be changed from [REDACTED] to [REDACTED], and to permit the sharing of Confidential Information relating to CBL with [REDACTED] in order to enable him to carry out his role as [REDACTED] line manager.

After due consideration, based on the information available and in the particular circumstances of this case, the CMA consents to this derogation **to paragraphs 11.1(b) and 11.1(j) of the UILs**. Circle may carry out the following actions, in respect of the specific paragraphs:

- (a) [REDACTED] will no longer act as the line manager of [REDACTED]. [REDACTED] will be replaced as [REDACTED] line manager by [REDACTED].
- (b) [REDACTED] will enter into a confidentiality agreement. No Confidential Information regarding CBL shall be disclosed to [REDACTED] until that agreement has been

entered into. Once that confidentiality agreement has been entered into, Circle may disclose to [REDACTED] such Confidential Information relating to CBL as is necessary for [REDACTED] to perform his oversight and support role for [REDACTED] and CBL.

Steven Pantling
Assistant Director
18 March 2022