

DEROGATION LETTER

COMPLETED ACQUISITION BY CIRCLE HEALTH HOLDINGS LIMITED OF GHG HEALTHCARE 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 hospital located at 5 Pebble Mill Road, Birmingham, B5 7SA and operated by Circle Birmingham Limited (**CBL**), and in particular to ensure that:

- (a) Under paragraph 11.1(e), there is no integration of the Divestment Business with the Circle Business other than that which existed as at the Effective Date; and
- (b) Under paragraph 11.1(f), all existing contracts of the Divestment Business and the Circle Business continue to be serviced by the business to which they were awarded, except that the Divestment Business shall continue to benefit from existing contracts (and any renewals of such contracts) entered into by Circle for the benefit of the group prior to the sale of 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 23 September 2022 requesting that the CMA consents to derogations to the UILs which were accepted by the CMA on 23 June 2020. The terms defined in the UILs have the same meaning in this letter. In your letter, you state that:

- (a) prior to the acceptance of the UILs, a 3T MRI scanner was installed at CBL. The scanner has been maintained by CBL staff but has not been used for patient services as CBL has not opened to patients.
- (b) CBL proposes to provide 3T MRI scanner services to the Priory Hospital (**Priory**), consisting of portering, cleaning, and maintaining equipment (the **Services**).
- (c) existing CBL staff will provide the Services to Priory to facilitate access to and use of the MRI scanner by Priory for Priory patients, and no additional CBL staff will be employed.
- (d) Priory will retain responsibility for the patients, including patient records and billing. No confidential or sensitive data (whether commercial or patient level) will be shared with CBL or CBL staff.
- (e) all costs of providing the Services will be borne by Priory and/or Circle such that the arrangement will be cost-neutral for CBL; and
- (f) the provision of the Services will have no impact on the competitive potential of CBL, and will ensure that the CBL equipment is maintained.

Circle therefore requested a derogation from the UILs to permit CBL to provide the Services to Priory.

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(e) and 11.1(f) of the UILs. Circle may carry out the following actions, in respect of the specific paragraphs:

- (a) CBL staff may provide portering, cleaning and maintenance services to the Priory to facilitate access to and use of the 3T MRI scanner installed at CBL by Priory; and
- (b) CBL may provide Priory with non-exclusive access to use the 3T MRI scanner installed at CBL, in order that that Priory staff may provide services using this MRI scanner to patients of Priory.

This derogation is granted pursuant to the following conditions:

- (a) the Monitoring Trustee will be provided with oversight of the provision of the Services to Priory upon request; and
- (b) no confidential or sensitive data (whether commercial or patient level) will be shared with CBL or CBL staff as part of the Services.

Steven Pantling

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27 September 2022