**BMA Response to the CMA Consultation on the Release of the British Medical Association 1994 Undertakings**

The British Medical Association (BMA) welcomes the Competition and Markets

Authority's (CMA) provisional decision to release the British Medical Association 1994 Undertakings, which have restricted the BMA from publishing guidance on private medical fees for more than three decades.

The BMA's view is that the market conditions which existed in 1994 have changed fundamentally. The private healthcare sector has undergone significant structural transformation, particularly through the increasing market power of private medical insurers (PMIs) and the growing alignment between insurers and private hospital providers. As such, the rationale for maintaining the Undertakings no longer reflects the realities of today's market.

While we strongly support the removal of the Undertakings, we believe the CMA should remain alert to a range of competition, transparency and patient choice concerns that continue to affect the private healthcare sector.

**Ongoing Concerns Regarding the Operation of the Private Healthcare Market Market Power of Private Medical Insurers ( PMIs)**

Since 1994, PMIs have acquired significantly greater influence over the delivery and pricing of private healthcare. Increasingly, insurers are able to determine which consultants patients can access and the fees that consultants can charge, creating a substantial imbalance in negotiating power.

This shift has contributed to sustained downward pressure on consultant fees and reduced the ability of clinicians to set charges that appropriately reflect their expertise, experience and the complexity of care provided.

**Impact on Patient Choice**

The BMA remains concerned that insurer-controlled consultant networks, preferred provider arrangements and managed referral pathways restrict genuine patient choice.

Patients may be directed towards consultants who meet insurer cost criteria rather than those who may be best placed to deliver care. The growing use of restricted consultant lists can limit patient autonomy and undermine the principle that treatment decisions should be driven primarily by clinical need and informed patient preference.

**Transparency and Accountability**

Consultants frequently report a lack of transparency in insurer decision-making processes, including network admission criteria, performance assessments and network removals.

There is insufficient clarity regarding how insurers utilise billing and activity data to assess consultants and determine eligibility for network participation. Greater transparency is required to ensure that consultants and patients understand the basis upon which these decisions are made.

**Use of Data and Fee Benchmarking**

The market has evolved considerably since 1994 through the widespread use of sophisticated data analytics and benchmarking tools.

Through access to extensive billing and reimbursement data via Healthcode, insurers are able to benchmark consultants against one another and identify the lowest fees accepted within a specialty. The BMA is concerned that this information asymmetry enables insurers to exert systematic downward pressure on reimbursement levels, further strengthening insurer market power.

**Access to Treatment**

The BMA remains concerned about inconsistent approaches to treatment authorisation and the classification of chronic conditions by some insurers.

Variations in policy interpretation can result in delays, restrictions or refusals of clinically appropriate treatment, creating uncertainty for both patients and clinicians and potentially undermining timely access to care.

**Restrictions on Patient Top-Ups**

The BMA questions the rationale for restrictions that prevent patients from making supplementary payments to access their preferred consultant.

Where patients wish to contribute towards treatment costs in order to receive care from a consultant of their choice, the BMA believes there should be a clearer justification for limiting that option. Such restrictions can reduce patient choice and further strengthen insurer control over treatment pathways.

**Impact on Clinical Practice and Standards**

Consultants continue to report that current PMI practices can adversely affect clinical independence, continuity of care and the doctor-patient relationship.

The BMA is concerned that increasing commercial pressures within the market may have unintended consequences for quality of care and professional autonomy.

**Hospital and Insurer Alignment**

The BMA has also observed the increasing use of bundled payment arrangements between hospitals and insurers, particularly in areas such as radiology and histopathology.

These arrangements, together with greater alignment between insurers and hospital groups, represent a significant structural change from the market that existed in 1994. They have contributed to a further concentration of bargaining power and may warrant continued scrutiny from a competition perspective.

**Transparency within Insured Care**

The BMA recognises the progress made by the sector in improving price transparency for self-pay patients through initiatives led by the Private Healthcare Information Network (PHIN).

However, equivalent transparency does not yet exist for insured patient pathways. The BMA believes there is an opportunity to improve patient understanding and support more informed decision-making through greater disclosure and consistency across the private healthcare market.

In particular, the CMA may wish to explore measures that promote:

Greater transparency regarding hospital fee structures and insurer reimbursement levels;

Clear differentiation between clinician fees and hospital charges;

Better visibility of outpatient and inpatient costs; and

Greater clarity regarding facility fees and professional fees.

**Conclusion**

The BMA welcomes the CMA's provisional decision to release the 1994 Undertakings and believes this change reflects the substantial evolution of the private healthcare market over the past three decades.

However, the removal of the Undertakings should not obscure the significant concerns that remain regarding insurer market power, patient choice, transparency, consultant reimbursement, and the growing alignment between insurers and hospital providers.

The BMA would encourage the CMA to continue monitoring these developments and to consider further measures that promote transparency, competition, patient choice and high-quality clinical care throughout the private healthcare sector.

For further enquiries, please do not hesitate to contact [REDACTED]