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Competition Commission 25 June 2012

Dear Sir,

I am a Consultant Surgeon with an established private practice of [✄] years standing. As a clinician, I recognize the sanctity of the relationship between a patient and their chosen clinician and I welcome the continuing role of the General Practitioner in guiding their patients in making their choice of Consultant and Hospital. My overriding desire is to see patients, as the principle consumers of private healthcare, able to acquire care by a Consultant of their choice at a hospital of their choice unfettered by perverse interference from external agencies such as private healthcare insurers.

I wish to express my concerns about the operation of the private healthcare market that now threatens this principle and which, over the last few years has sequentially distorted the market to the detriment of patients and Consultant providers. This has happened principally though the dominance in the market of two insurance companies, BUPA and AXA PPP who respectively have 41% and 25% of the market share of the insurance market. On the provider side, the presence of BMI Healthcare with over fifty hospitals, firmly places an excessive degree of control in the hands of three major players affording them the power to dictate the terms of the market to all other stakeholders. The consequences of this situation were demonstrated by the effects of the fall out between BUPA and BMI at the end of 2011 and early 2012 which was pursued by BUPA with total disregard for the welfare of their clients leaving many patients unclear as to how they could access treatment.

My main concerns however relate to the activities of purveyors of private healthcare insurance. I welcome the referral by the Office of Fair Trading (OFT) of the private healthcare market to the Competition Commission with a view to reporting in 2014, but like many of my fellow medical practitioners, I have immediate concerns about the escalating activities of insurance companies. I am concerned that this timescale is too long and I am alarmed at the stance adopted by the OFT in their Report which appears to offer support to Insurance Company's role as the self elected regulator of the private healthcare market. I note that Insurance companies make much mileage of the alleged support of their clients for their role in managing their pathway through the healthcare journey. In my experience, based on dealing with hundreds of patients over the years, this is unsubstantiated and patients engage with insurance companies only to finance their healthcare. They remain very happy with the traditional referral route via their General Practitioner to Consultant who are uniquely placed to advise on health matters and who are appropriately regulated by external agencies in undertaking that role. I nevertheless applaud the development of performance indicators for clinicians and hospitals, but would also call for greater transparency of insurers in relation to the conduct of their business, particularly with respect to their push for managed care.
My concerns with the activities of the private medical insurers fall into the following broad categories:

- Consultant reimbursement, insurance benefit maxima and fee schedules
- Insurer's consultant recognition criteria and practising privileges

- Managed care arrangements

Insurers “initiatives” in all these areas distorts the healthcare market and adversely affects access of patients to private healthcare. This is illustrated by the following:

The organization CCSD states on its web site (www.ccsd.org.uk) that it is constituted by representatives of BUPA, AXA PPP, AVIVA, PruHealth and Simplyhealth. Together they represent the majority of all private health insurance sold, probably more than 90%. Within the last twelve months, this organization has unilaterally orchestrated the recoding of many quite different surgical operations with “bundling together” of many procedures that might be, but not necessarily be, done in combination. These procedures have been bundled under one existing code with levels of reimbursement set at that of one procedure only, such that the only beneficiary is the insurance company whose costs are reduced. The corollary of this is that patients have seen their level of cover downgraded and Consultants have experienced a reduction in levels of reimbursement that have remained static for some twenty years. Billing along the lines traditionally used is met with the accusation of “unbundling” with the implication that one is acting unethically. This recoding process was not transparent, there was no consultation with any clinicians who understand what the procedures involve and it was driven solely by insurers. There are examples of this in many clinical areas. Whilst the CCSD website is at pains to state that they do not fix the actual levels of remuneration paid by insurers, the management of codes which are directly linked to levels of remuneration represents an important step in how claims are assessed for payment. It is my concern that by acting in this manner the insurance companies are acting as a cartel and in consequence have reduced patients’ level of cover and exposed them to increased risk of shortfalls.

The Insurance companies BUPA and AXA PPP are acknowledged as having the largest market shares of private medical insurance at over 41% and 25% respectively. For a Consultant, maintaining the ability to treat patients insured by BUPA and AXA PPP is key to maintaining a successful private practice and this ability is controlled by these insurers through a system of registration that is dependent on adherence to dictat and schedules. The relative power in this relationship is overwhelmingly in favour of the insurers.

It is my concern however, that BUPA and AXA PPP in particular are abusing their position of market dominance to implement a range of initiatives detrimental to patients’ choice and enforced by overt threat of non recognition or covert threat of derecognition against clinicians. These initiatives are distorting the private healthcare market. These activities include:

- The recent unilateral reduction in levels of reimbursement by BUPA for certain common procedures by up to fifty per cent from levels that have been accepted for many years, whilst at the same time increasing reimbursement for a handful of rarely performed procedures as an unconvincing attempt to give a veneer of fairness. In fact levels of Consultant remuneration have not increased for about twenty years, notwithstanding substantial increases in insurance premiums and other overheads. At the same time BUPA customers who have experienced substantial increases in their premiums, have not been forewarned that the level of their cover has been downgraded. A clinician might claim the deficit from the patient with whom they are in a contractual relationship, but this is clearly unfair on patients who are not aware that their level of cover has been downgraded and a clinician faces a possible threat of derecognition as a BUPA provider with consequent loss in

earning potential. Attempts by professional bodies to question these alterations have met with a lack of willing on the part of BUPA to engage in any discussion.

- The setting of benefit maxima, which were intended to be used by patients to identify levels of reimbursement, but are now used by PMI as a basis to limit Consultant reimbursement with compliance maintained through threat of derecognition. This has allowed the introduction of the so called "Fee Assured Consultants " which is clearly anticompetitive and leads to reduced patient choice.

- The implementation of managed care, such as the introduction of "Outpatient Investigation Provider Status" requiring clinicians who have treated BUPA patient for many years to register to undertake outpatient diagnostic tests. This is a new initiative implemented within the last two months without any prior warning to clinicians or BUPA customers that their level of financial cover has been compromised. Although BUPA claim that this initiative is based on quality assurance, it is of course not their role to regulate quality of clinical services, which is appropriately the statutory duty of regulatory bodies, the GMC and the Royal Colleges. The reality is that the scheme is a further attempt to force clinicians to accept reduced levels of reimbursement with the tacit threat of derecognition. Failure to accept this registration and its limited level of remuneration renders that clinician unable to claim reimbursement from BUPA. There is inherent in this process an interference with clinical decisions since a clinician will not wish to undertake a test for which they are not remunerated. The alternative, that is, claiming the shortfall from the patient, is again unfair to the patient.

- BUPA is implementing an "Open Referral" process whereby patients might be redirected away from the Consultant of their choice to another clinician of BUPA's choice, determined by financial parameters as opposed to clinical appropriateness. Traditionally General Practitioners have been the gatekeeper of referrals to secondary care based on local knowledge of expertise and specialization. It would not be in the patient's best interests that this referral pathway should be managed by insurance companies who are driven by financial as opposed to clinical considerations and who are therefore in a position of conflicting interests.

- BUPA will only allow newly established Consultants to register as a private practitioner if they sign up to onerous regulatory conditions and lower levels of reimbursement compared to those offered to previously registered clinicians. Similarly, AXA PPP will only recognize new clinicians if they agree to sign up to lower levels of reimbursement than that offered to established Consultants for identical work. It is entirely inappropriate that a clinician, who has satisfied the properly constituted regulatory bodies of this country as to their appropriateness to practice, should suffer a restraint of trade imposed by an insurance company who are usurping the role of regulator. Many newly appointed Consultants are now considering it is not worth setting up in private practice from a financial perspective and this threatens the future existence of the private healthcare market.

- BUPA has set itself up as an authority to interfere in clinical decisions. It has done this by declining to cover procedures during the preauthorization

process at the same time contradicting the recommendations of certified clinicians.

- AXA PPP has an established record of derecognizing Consultants who question their practices. These clinicians have been denied the rights of natural justice to have their case heard by an independent third party. Apart from the unfairness of this situation with regard to clinicians, this has resulted in scenarios whereby patients have been unable to maintain treatment with Consultants with whom they already have an established relationship.

Private hospital providers must also bear some responsibility for distortion of the healthcare market. BMI Healthcare openly claims to be the largest provider of private healthcare and they have openly abused this position in certain areas to distort market factors. They have both openly and tacitly put pressure on Consultant providers, by threatening their so called “admitting privileges”, not to cooperate with new hospital providers such as Circle trying to enter the market in an attempt to protect their market dominance. The same is also true of Nuffield Health who threatened to derecognize consultants in Warwick when Circle tried to enter the market. The entry of new private providers is clearly in the best interest of patients, patient choice and improving quality of service.

Hospital providers have also offered favorable terms such as free or subsidized consulting facilities to some clinicians in an attempt to monopolise their services at the expense of other providers. Preferred provider agreements with insurance companies have led to restriction in patient choice and distorted local markets. Pricing agreements with insurance companies have created many situations where patients’ hospital charges are not transparent.

I am grateful to your for giving consideration to these matters. I would be very happy to meet you to discuss these issues further and to furnish you with specific examples to illustrate my concerns.