

Consent to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority on 23 May 2014

Completed acquisition by Spire Healthcare Limited of assets and business comprising St Anthony's private hospital at 801 London Road, North Cheam, Surrey, SM3 9DW

We refer to your letter of 20 May 2014 and related discussions asking the Competition and Markets Authority (**CMA**) to consent to certain derogations in connection with the obligations imposed on Spire Healthcare Limited and Spire Healthcare Group UK Limited (collectively defined as **Spire**) by the Initial Enforcement Order served on Spire on 23 May 2014 (**the Initial Enforcement Order**).

The Initial Enforcement Order obliges Spire to hold separate the business of St Anthony's, a private hospital located at 801 London Road, North Cheam, Surrey, SM3 9DW (**St Anthony's**) from the remaining business of Spire and its subsidiaries for the duration of the Specified Period (as defined in the Initial Enforcement Order). Prior to its acquisition by Spire on 22 May 2014, St Anthony's was owned by the Daughters of the Cross of Liege (**DoL**).

According to the Initial Enforcement Order, the CMA can give Spire prior written consent to actions which would otherwise put Spire in breach of its obligations. Spire submits that these requests aim at (i) compliance with Spire's and St Anthony's continuing external regulatory obligations; and (ii) the effective operation of St Anthony's during any CMA review.

After due consideration of Spire's request for derogations to the Initial Enforcement Order, the CMA consents that St Anthony's and Spire may carry out the following actions in respect of the specific paragraphs of the Initial Enforcement Order.

1. Paragraph 5(i) and 5(j)

Most of St Anthony's key staff has transferred with the business pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**). Spire does not intend to implement the envisaged changes to terms and conditions of employment of St Anthony's until after the CMA has completed its review of the merger and Spire proposes to continue to operate a separate payroll for St

Anthony's, but under a new Spire PAYE reference. However, Spire requests a derogation from the Initial Enforcement Order with respect to:

- provide a new PAYE reference number to St Anthony's
- obtain from St Anthony's some input data on staff to complete relevant HMRC forms on behalf of St Anthony's
- organise the logistical electronic banking requirements to proceed with the payment of salaries to St Anthony's staff.

The CMA consents that Spire provides St Anthony's with a Spire PAYE reference and that St Anthony's transfer the necessary information Spire requires for the payment of the payrolls and the fulfilment of its employment and tax obligations. These actions will be subject to the following conditions: (i) the IT systems of St Anthony's and Spire will not be integrated, (ii) the data will be consolidated into one file before being sent to a named individual at Spire, (iii) the named individual will be [X], the Treasury Manager who will be made aware of the restrictions under which he is operating in this regard, (iv) Spire's IT system's role is only to generate automatic payment instructions to the bank.

2.1 Regulated positions

The healthcare activities of St Anthony's and Spire are subject to regulatory provisions. This obliges both organisations to appoint and register with the relevant authorities and agencies named individuals to fulfil certain regulated roles.

Spire requests consent from the CMA to appoint Dr. Jean-Jacques De Gorter to fulfil the regulated roles related to the Care and Quality Commission and the Caldicott Guardian position (which relates to the protection of confidentiality of patients' information) with responsibility across the entire Spire group of hospitals, including St Anthony's. Spire submits that Dawn Wotton will continue to be the St Anthony's Caldicott Guardian at the actual site. Spire also requests consent from the CMA for the automatic transfer of the (i) St Anthony's Pharmacy Superintendent role to Naomi Wright, the Pharmacy Superintendent for all hospitals owned by Spire, and (ii) GMC responsible officer post to Dr. De Gorter for the doctors whose main place of work is St Anthony's. These named individuals fulfilling regulated positions must receive the information necessary for carrying out their regulatory roles.

2.2 Senior management

[REDACTED], Mr. Brian Clarke that he continues running the business [REDACTED] until the CMA has completed its review.

[REDACTED], Mr. Cooke would effectively be seconded to Spire for such time as is required to carry out the finance role at St Anthony's, with the costs of this arrangement to be covered by Spire.

The CMA consents to the above requested derogations and proposed interim appointments for regulated positions and senior management roles subject to the following conditions: (i) Spire will ensure that Mr Clarke complies with the detailed list of safeguards included in his [REDACTED] agreement to ensure that St Anthony's is managed independently of Spire and is maintained as a going concern as it was on 22 May 2014 (date of completion); (ii) Mr. Cooke will be subject to a confidentiality agreement with Spire; and (iii) any confidential information relating to St Anthony's is kept confidential to St Anthony's and is not shared with Spire (and/or vice-versa) with the exception of information strictly necessary to fulfil the above regulatory positions which can be shared with the above named individuals for the sole purpose of fulfilling their regulatory roles.

2. Paragraph 5(I)

Spire requires to obtain during the Specified period some financial and other commercially sensitive information which could fall under this paragraph. Such information is required to comply with the necessary insurance policies held by Spire and which will cover St Anthony's and financial reporting and funding obligations under existing legislation and Spire UK Finance Senior Facilities Agreement.

First, this data and information is required to ensure that St Anthony's is properly insured during the Specified period. Spire does not consider that this will create any risks of pre-emptive action.

Second, [REDACTED]. On this basis, from completion, Spire will also be required to report on St Anthony's financial performance (and any consequent material risks to the financial performance of Spire) as one of its hospitals. In addition, Spire must ensure that the St Anthony's business is adequately funded to continue operation as a going concern.

Spire therefore requests a derogation from the Initial Enforcement Order with respect to the receipt of the certain high level financial information about St Anthony's. Spire does not consider that this would create any risks of pre-emptive action because the information is required for compliance with Spire's external obligations and to ensure the continued independent operation of the hospital. This information would comprise:

- i. Monthly P&L;
- ii. Monthly cash flow and weekly cash flow forecast; and
- iii. Monthly balance sheet.

Third, since for tax purposes, from completion St Anthony's automatically became subject to Spire's current VAT registration, Spire also requests a derogation from the Initial Enforcement Order for the monthly receipt of data in relation to St Anthony's services to allow compilation of Spire's HMRC reports.

Fourth, to the extent necessary, Spire also requests a derogation from the Initial Enforcement Order with respect to the receipt of St Anthony's working capital statement and stock schedule as at completion for the calculation of the final purchase price following necessary adjustments, in accordance with Clause 4 and Schedule 4 of the St Anthony's Business Sale Agreement. Spire does not consider that receipt of this limited financial information from St Anthony's for the sole purpose of calculating the final purchase price will create any risks of pre-emptive action.

The CMA grants the consents requested in connection to Paragraph 5(l) subject to the following conditions.

With respect to information necessary to comply with Spire's insurance obligations, the information would only be provided to Senior Solicitor, [X], and [X], litigation assistant, in the Spire legal team. These individuals will sign confidentiality undertakings to prevent the flow of commercially sensitive information between Spire and St Anthony's.

With respect to Spire's financial reporting and funding obligations, the information would only be provided in a form similar to the samples presented to the CMA on 22 May 2014 and to three individuals at Spire: [X] (CFO), his secretary [X], and [X], the Treasury Manager. These individuals will send the St Anthony's information directly on to Spire's banks without consolidating that information into the Spire

Group accounts. In addition, Spire will implement measures to ensure that this information is not provided to any other individual at Spire, including requiring the recipients, [X], his secretary [X], and [X] to sign written undertakings to that effect, and introducing 'measures' to prevent the information being available to any other individual. Spire proposes that those measures include preventing any other Spire employee (except [X]'s secretary) from having access to the named individuals', [X] and [X], email account, and requiring that the information is not stored on any shared drive accessible to other Spire employees.

With respect to Spire's HMRC reporting obligation, information relating to St Anthony's output VAT by month will only be provided to the CFO, [X], (his secretary [X]) and [X], the Treasury Manager, who will all sign confidentiality undertakings agreeing not to share the received information with any other individuals at Spire.

Other derogation requests-

Compliance with external obligations

As stated above, St Anthony's needs to have in place all necessary licences and registrations to continue operating the hospital lawfully. Licences ceased on completion and need to be renewed / re-authorised under the relevant Spire Group licence or registration. Such obligations can include to appoint a 'named individual' responsible for compliance with those regulatory regimes. Spire submits that all of these steps are easily reversible and so do not represent pre-emptive action within the meaning of the Enterprise Act 2002.

St Anthony's requires to be registered with the Care and Quality Commission (CQC), the Information Commissioner's Office (on data protection), HM Revenues and Customs (with regard to taxes and VAT) and the Home Office (in connection with the Controlled drugs licences). Other necessary re-registrations or notifications of change in ownership involved the Medical and Healthcare products Regulatory Agency (MHRA) (in relation to hospital blood banks), the Clinical pathology accreditation which assess and supervise clinical pathology services, and obtaining an alcohol licence.

In view of these legal requirements, Spire requests derogations from the Initial Enforcement Order to cover the above registrations, applications and the Controlled Drugs Policies and Procedures; Also to allow the change of the 'named individuals' registered with those organisations. Spire does not consider that these actions would

give rise to any risk of pre-emptive action since they are all readily reversible and are directed at ensuring St Anthony's continued independent operation. [REDACTED].

Health and safety (H&S)

H&S risk assessment and management

[REDACTED]. Spire intends to commission any necessary services from third parties to assess and (if necessary) to remedy any issues. Spire does not anticipate direct involvement during the Specified period but wishes receive confirmation from St Anthony's that any urgent matters raised by those independent third party consultants have been addressed.

H&S regulatory reporting obligations

Spire is required to comply with its regulatory obligations, including reporting certain serious workplace accidents, occupational diseases and specified dangerous occurrences pursuant to a so-called RIDDOR notification (under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) to the HSE. Spire therefore requests a derogation from the Hold Separate to allow St Anthony's to notify [REDACTED] (Spire's National Clinical Governance Co-Ordinator) and [REDACTED] (Head of Corporate Risk) of any such occurrences so that Spire can comply with its regulatory reporting obligations. Again, these Spire individuals will sign confidentiality undertakings to ensure that no information that would be caught by the template CMA order passes between the businesses.

Spire does not consider that any of the above H&S issues contained in this section (Health & Safety) will create any risks of pre-emptive action. First, information on H&S matters is not competitively sensitive. Second, the identification and remediation of any H&S risks would not create any risks to St Anthony's ability to compete independently from Spire, but would in fact ensure that the hospital is being run safely.

Contracts for the supply and procurement of goods and services

The benefits of St Anthony's contracts for the supply and procurement of goods and services have transferred to Spire on completion but they will be managed on a day-to-day basis by St Anthony's management without interference from Spire. St Anthony's will therefore continue to provide and procure the contract goods and services itself. Some of those contracts may need to be assigned or novated to

Spire. Subject to the DoC's consent, Spire has proposed that no deeds of assignment or novation be entered into during the CMA's review. Instead, Spire proposes to prepare a template notification letter for the St Anthony's local management to complete and send to all contract counterparties to advise them of the formal change in the hospital's ownership and of the new St Anthony's bank details for payments. [REDACTED]. For the avoidance of doubt, any contracts that do need to be re-negotiated, are to be negotiated by St Anthony's independently and without interference from Spire.

In the event that the DoC does not consent to the delay in the assignment/novation of contracts until after the CMA's review, Spire will need to ask St Anthony's for its list of contracts. The list would be provided to a circumscribed group of individuals ([REDACTED], [REDACTED] and [REDACTED]) in the Spire legal team for the sole purpose of effecting the necessary assignments and novations to relieve DoC of their contractual obligations, and would not therefore create risks of pre-emptive action.

Transitional support Services

[REDACTED]. These services will therefore be in the name of Spire but will be operated locally at St Anthony's.

To the extent that the CMA considers that Spire's provision of these services may constitute integration steps, Spire requests a derogation from the Hold Separate. Spire does not consider that provision of these essential services for the continued operation of the hospital will create any risks of pre-emptive action. These services will facilitate continued operation of the business and ensure the hospital can carry on operating on a standalone basis. Nor could this interfere with any remedy that the CMA could consider necessary following its review.

To the extent that any of the actions contained in this section (Other derogations requests) are covered by the scope of the provisions in paragraphs 5 (a)-(l) of the Initial Enforcement Order, the CMA also grants a derogation from those provisions in order for the actions above to be carried out subject to the conditions stated above. For the sake of completeness, the CMA stresses that it consents to St Anthony's or a third party consultant to confirm to Spire that any urgent H&S issues have been addressed. However, if the intervention required to address those issues is deemed to require the involvement of Spire, for example because material changes to the premises are required, this further material building work is not covered by this consent and ad-hoc consents should be requested.

The CMA also confirms that the requirements for Compliance Statements in relation to the Initial Enforcement Order will not require any reporting of consequences of actions covered by the above derogations.