

## **Consent to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (CMA) on 17 February 2016**

### **Completed acquisition by Acadia Healthcare Company, Inc. (Acadia) of the entire issued share capital of Priory No.1 Limited (Priory)**

We refer to your letter of 4 February 2016 and related discussions regarding a request by Acadia that the CMA grant certain derogations to the Initial Enforcement Order served on Acadia and PiC on 17 February 2016 (the **Order**). Terms defined in the Order have the same meaning in this letter.

Under the Order, save for the written consent of the CMA, Acadia and PiC are required to hold separate the business of Acadia (and its subsidiaries) from the business of Priory (and its subsidiaries) and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your requests for derogations from the Order, based on the information received from you, and in the particular circumstances of this case, Acadia may carry out the following actions, in relation to the specific paragraphs of the Order listed below:

#### **Paragraph 6(l) of the Order**

##### ***Financial reporting and other filing obligations – SEC***

The CMA consents to certain financial information of Priory, subject to the safeguards listed below, being shared with certain individuals of Acadia for the sole purpose of permitting Acadia to meet its SEC financial reporting and filing obligations. The scope of the financial information that may be shared is limited to such information as is strictly necessary for these purposes, and may include some or all of the following monthly financial information in respect of each Priory facility:

- General ledger entity structure and listing, including general ledger entity name and number.

- Department listing, including department name and number.
- Chart of accounts (ie balance sheets, profit & loss).
- Listing of statistics accounts.
- Trial balance as of and for [✂].
- Entity organisational chart.
- [✂] actual data by general ledger entity – financial & statistics.

### ***Safety, quality and assurance***

The CMA consents to [✂] of Acadia, subject to the safeguards listed below, obtaining reports regarding any serious and/or dangerous health and safety incidents, including any CQC inspections carried out at the Priory and their overall recommendations and implications; as well as any steps being taken to manage the incidents. In particular, this individual may be informed of any such incidents, especially if this may result in any fines or penalties being imposed on a facility for which Acadia will be liable as the parent company and/or which might lead to significant reputational damage to Acadia.

In the event that Acadia becomes aware of a deficiency that creates a risk to patient or staff safety and Acadia were concerned that Priory were not taking steps to address the issue, Acadia will request a further derogation from the Order to commission any action to assess and remedy these issues.

### ***Insurance policies***

The CMA consents to Acadia being named as an ‘additional insured’ under Priory’s insurance policies in order to ensure Acadia is covered by the Priory insurance policies in the event of any claim (given Acadia may face civil liability as the parent company of Priory) and may require Priory to enter into suitable [✂] insurance coverage. The CMA also consents to [✂] and [✂], both of Acadia (subject to the safeguards listed below) obtaining any Priory information necessary to comply with Acadia’s insurance obligations (eg information about potential claims).

### ***Fiduciary duties and corporate reporting obligations***

#### ***Investor and analyst guidance***

The CMA consents to certain individuals of Acadia, subject to the safeguards listed below, receiving monthly financial and statistical [✂] budget and [✂] financial forecasts on an aggregated basis by service line from Priory, for the limited purpose

of providing guidance to public investors and analysts on the financial impact of the Priory acquisition to Acadia.

### *Business operations*

The CMA consents to the individuals from Acadia's accounting team listed below, receiving certain Priory information, subject to the safeguards listed below, for the sole purpose of meeting its legal, fiduciary and corporate governance obligations, and to determine that Priory is able to continue its business effectively and to protect the value of Acadia's investment. This includes the following monthly financial information in respect of each Priory facility:

- Monthly profit & loss.
- Monthly cash flow and weekly cash flow forecast.
- Monthly balance sheet.
- Monthly operating reports.
- Comparison of actual results to budget and prior year results.
- Commentary to financial information provided highlighting any material matters in the accounts and the reasons for any variances to budget together with actions being taken to address those variances.

Acadia will not use the information in any way to intervene in the management or day-to-day operation of the Priory. To the extent that the information received raises any concern with the recipients, Acadia would first inform [X] who is a member of Acadia's legal team (and is not involved in the day-to-day operations or the governance of the PiC business), and consider at that point, whether it would be necessary to seek a further derogation from the Order in order to take steps to preserve Priory as a going concern.

### **Material contracts**

The CMA consents to certain individuals of Acadia, subject to the safeguards listed below, being notified and receiving information on any proposed Priory contracts with a duration in excess of [X] or contracts with an annual contracted value in excess of £[X] (ie material contracts) [X] provided these relate to [X] only.

This is for the sole purpose of allowing Acadia to oversee that the Priory business is able to operate its business effectively and to protect the value of Acadia's investment. In respect of these contracts, Acadia shall only receive such information as is strictly necessary for these purposes.

Should Acadia wish to act in any way on the information it receives in this regard, it will first consult with the CMA to determine whether a further derogation is required and, if so, whether it is appropriate.

## **Safeguard measures**

The derogations granted (as outlined above) are subject to the implementation of the following safeguard measures listed below.

### ***Designated recipients***

Information will only be provided to the designated individuals at Acadia listed below. This is strictly on the basis that none of these individuals are involved either in the day-to-day operations or the governance of the PiC business.

As regards information required for financial reporting obligations, Acadia investor and analyst guidance and business operations, the following individuals who form part of Acadia's accounting team:

- [REDACTED];
- [REDACTED];
- [REDACTED]; and
- [REDACTED].

As regards information required for insurance policies:

- [REDACTED]
- [REDACTED]

As regards information required for safety, quality and assurance and material contracts:

- [REDACTED]

As regards information required for Acadia investor and analyst guidance, the following individuals who form part of Acadia's Executive Team:

- [REDACTED];
- [REDACTED];
- [REDACTED]; and

- [X].

### ***Confidentiality undertakings***

Information will only be provided to each of the above named individuals once Priory has received appropriate signed written undertakings (in a form approved in advance by the CMA) to preserve the confidentiality of the information and to use the information only for the purposes specified in this letter. In particular, the individuals will undertake not to discuss or otherwise share Priory information with any individual other than those listed above as permitted to receive that information or use the information for any purpose other than that specified above.

### ***Firewalls***

Acadia will ensure that robust firewall measures are put in place to prevent any other Acadia employee from accessing Priory information, including:

- restrictions on designated individuals' email accounts to prevent unauthorised access; and
- all documents containing Priory information to be password protected, those passwords only to be known to those designated individuals entitled to access the Priory information in question (as listed above).

### ***Destruction and return of Priory information***

In the event that the transaction is prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the Priory business to which they relate and any copies destroyed.