

29th May 2017.

Mr. Jim Breslin,
Secretary General,
Department of Health,
Hawkins House,
Hawkins Street,
Dublin 2.

Dear Mr. Breslin,

Following the meeting of 11th May 2017 between myself, Prof. Michael Keane and Nicky Jermyn representing St. Vincent's Healthcare Group (SVHG) and yourself, the Minister for Health, Simon Harris TD and Tracey Conroy representing the Department of Health (DOH) I have had the opportunity to discuss the points we covered that day at a subsequent meeting of the Board of Directors of SVHG on 15th May 2017. I understand that Minister Harris will speak to the Cabinet on Tuesday 30th May about the project to relocate the National Maternity Hospital (NMH) to the SVHG campus at Elm Park and I felt it would be useful if I sent you this current summary of our observations on the project to assist him.



1. Commitment to the relocation agreement

We believe that the proposal to co-locate the NMH with an acute hospital will provide the best service for women and babies, especially patients who require speedy and effective treatment in cases of emergency. The agreement brokered by Kieran Mulvey on behalf of the DOH guarantees an integrated approach to patient care without restrictions based on physical location, separate care teams or transfer protocols that may cause delay. Both SVHG and NMH remain fully committed to this agreement, as we believe it puts patient care first at all times and it meets the four criteria that SVHG have required from the outset:

- a. that the efficiency and effectiveness of patient care in SVHG would not be adversely affected,
- b. that future campus development would not be disadvantaged,
- c. that no project cost would accrue to SVHG, and
- d. that the enlarged campus would be operated in line with best international practice.

From our discussions with you we understand that the Minister and the DOH also remain committed to the agreement, as it not only provides for a smooth transition to an integrated system of healthcare but also permits direct intervention by the Minister to ensure the services at all times reflect the will of the Government and, by implication, the public. This means that the services will be in line with the National Maternity Strategy.

2. The question of "ownership"

Most recently, certain parties have raised the question of "ownership" of the proposed new maternity facility. It has been suggested that since construction costs will be

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covered by public funds the facility should be placed in public ownership, including the land on which it is built. We believe that this argument is not correct in its interpretation of the facts, and also that it fails to recognise the extensive protection provided to the State regarding the use of the facility once it is built.

- a. SVHG and NMH are privately-owned voluntary hospitals that are each contributing significant funding to the project. SVHG is contributing land on its campus at no cost to the State and NMH is contributing an estimated €50m from the sale of its existing facility at Holles Street. This combined contribution comprises a significant proportion of the total project cost, reflecting the commitment of each hospital to public health services.
- b. The approach used by the State when funding privately-owned facilities that will provide public health services has consistently been to provide grant aid for construction and fitting out of each facility and to secure each grant with a legal agreement that guarantees each facility will be used only to provide the services for which it was put in place. This approach applies to significant investments made previously by the State on the SVHG campus and it applies equally to the proposed maternity development. The approach means that the State retains an indefinite right to use the facility for its intended purpose.
- c. Core principles in the agreement brokered by Kieran Mulvey were that the entire campus would come under single ownership, with an integrated system of operational and medical governance to enable the provision of seamless, safe and effective care services to patients. This has no connection with ownership or return on assets but rather it guarantees the highest quality services for all patients in all hospitals on campus. From the outset we knew that any separation of ownership or governance would disrupt the seamless care pathways that are planned for all patients on the enlarged campus, which would lead to concerns over responsibilities and liabilities in each hospital, separation of care teams by hospital, and the use of transfer protocols that could cause restrictions and delays on physical movement of patients between hospitals, with increased risk to patients. For this reason, any concerns that we hold over "ownership" are not monetary in nature, but rather they are concerns about the operation of a safe, integrated system of governance and medical protocols. This is why SVHG cannot countenance any sale or lease of part of the land on site, or any separate ownership of a hospital on site.
- d. The agreement brokered by Kieran Mulvey states explicitly that "The State will require a "lien" on the Hospital in accordance with whatever funding agreements are in place by the State for such capital projects." In line with similar liens agreed by SVHG previously this will prevent any alteration in use of the new hospital, any disposal of the hospital outside the SVHG group, or any use of the hospital facility as security for borrowings of any sort.

Therefore, we believe that there is no risk to the State caused by SVHG's "ownership" of the new maternity facility as the provision of public funding for its construction will be matched by a legal agreement that provides indefinite protection regarding the use of the facility - both medical and financial - and the services to be provided therein.

3. The question of religious influence

Concerns have been expressed over the possible influence on services in the new hospital by the current owners of SVHG, who are The Religious Sisters of Charity (RSOC). These concerns were fully discussed before agreement was reached between SVHG and NMH and it was made clear to all involved that in line with current policy



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and procedures at SVHG, any medical procedure which is in accordance with the laws of the Republic of Ireland will be carried out at the new hospital.

Related to the question of religious influence is the fact that over the years healthcare services have become highly specialised and focused, and are now subject to national and international regulation and influence in terms of both the standards of patient care expected and the research and education necessary to maintain a place at the leading edge of healthcare. This has meant that RSOC have had no direct involvement in the provision of healthcare services for some time and within SVHG's hospitals the operations are now fully managed and controlled by a skilled and experienced Board of Directors, and a team of highly-qualified professional management and staff who answer not only to the patients they serve, but also to national authorities such as the Department of Health and the Health Service Executive, to the Ireland East Hospital Group at a regional level, and to Joint Commission International (JCI) at an international level. Consequently, over the last two years RSOC have been actively working to find the best way to relinquish their shareholding in SVHG.

RSOC have concluded that the best way to perpetuate the vision and values of their founder is to transfer ownership of the group to a newly formed company with charitable status, which will not be subject to undue influence by individuals or from any source. This transfer will be done for no consideration, and with no on-going links between RSOC and the company or group. Details of this change will be published imminently. Upon completion of this proposed transaction the requirement, set out in the SVHG Constitution, to conduct and maintain the SVHG facilities in accordance with *The Religious Sisters of Charity Health Service Philosophy and Ethical Code*, will be amended and replaced to reflect compliance with national and international best practice guidelines on medical ethics and the laws of the Republic of Ireland.

The SVHG Board, management and staff will continue to provide acute healthcare services that foster the core values of dignity, compassion, justice, quality and advocacy. This will ensure that the hospitals in SVHG can continue to meet the needs of their patients and families, so that every individual can always access the care and treatment they need to achieve health and well-being. This also means that patients and children born in the National Maternity Hospital will be provided with modern maternity and neonatal services that are women and infant centred and that are safe and world class.

We believe that RSOC have made a carefully considered decision in line with their steadfast dedication to providing the best possible acute healthcare to patients and their families since St. Vincent's Hospital was founded in 1834. Their action is guided by values that have always meant each patient is treated with dignity and respect. The Board and management within SVHG will work to ensure that SVHG remains a valuable part of an integrated Irish healthcare system, and that it continues to be known for the highest standards of patient care, clinical excellence, medical research and staff education.

RSOC have brought the timing of their announcement forward, in recognition of the concerns being expressed publicly regarding possible conflict between religious doctrine and the law of the land that could affect care available to patients. We welcome the action they have taken to remove these concerns from the public mind.



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4. Conclusion

I hope that this letter is helpful to you and to the Minister. In summary:

- All parties to the agreement brokered by Kieran Mulvey remain committed to what they each believe is the best solution for patients and their families, involving an integrated care system operating to the highest standards.
- There is no "ownership" risk assumed by the State in relation to its proposed investment in the new maternity facility, due to a comprehensive agreement that will accompany the investment.
- Any remaining questions about religious influence in the new facility have been removed by the decision taken by RSOC to transfer their shareholding in full to a new unrelated company that will be free from any vested interest.

Should you have any questions on the above points, or if any new issues should arise, please do not hesitate to contact me and we will seek to provide any help you need.

Yours sincerely,



James Menton
Chair/SVHG



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30th May 2017

Mr James Menton
Chair
St. Vincent's Healthcare Group
Elm Park
Dublin 4.

Dear Mr Menton

Many thanks for your letter of 29th May outlining the observations of your Board on the project to relocate the National Maternity Hospital to the Elm Park Campus.

I know that we have a meeting scheduled for tomorrow. I look forward to engaging with you and your colleagues and thank you for making yourself available.

I welcome your further confirmation that the Board remain committed to the project. You can be assured that the Minister, and indeed the Government, also remain firmly committed to the project which will ensure the provision of safe, high quality maternity services in line with the vision articulated in the National Maternity Strategy.

I also warmly welcome yesterday's historic and constructive announcement by the Religious Sisters of Charity. I know that the Sisters have been considering this initiative for some time and I am very grateful that they have brought forward the date of the announcement. The timing of the announcement is very helpful and I would ask that you extend my thanks to the Sisters for this intervention, which further underlines the very constructive role the Sisters have always played in this project.

It will be very helpful at our meeting to hear from you at first hand on the detail of the planned governance changes now that the Religious Sisters of Charity have made their decisions. We are obviously very interested in these plans as part of our on-going relationship with St.Vincent's Healthcare Group.

You will be aware that since your meeting with the Minister on May 11th last the Department has had very good engagement with St.Vincent's Healthcare Group on the issue of the protection of the State's interest in this major capital project. Notwithstanding the decision of the Sisters to withdraw from St.Vincent's Healthcare Group, we will need to conclude these discussions. The Minister is due to formally update Cabinet on this project next week and I would hope that we can make progress on this essential element.

As you have referenced, the Mulvey agreement provides under Section 5 that: "The State will require a 'lien' on the Hospital in accordance with whatever funding agreements are in place

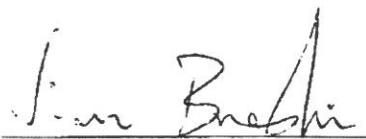
by the State for such capital projects.” There are a number of different types of such funding agreements and in our discussions we have identified from a technical perspective four different legal mechanisms which could be used; namely, Outright Site Transfer, Long Lease, Mortgage and Option to Purchase. We have teased out each of these arrangements in some technical detail. The Department has communicated its preferences. At the same time we are very cognisant of the four criteria that St. Vincent’s Healthcare Group has put forward as part of its participation in this project; namely:

- a. that the efficiency and effectiveness of patient care in SVHG would not be adversely affected,
- b. that future campus development would not be disadvantaged,
- c. that no project cost would accrue to SVHG, and
- d. that the enlarged campus would be operated in line with best international practice.

I strongly believe that the Department’s preferences can be fully reconciled with these four criteria. In particular, I am confident that your Board’s attention to the operation of a safe, integrated system of governance and medical protocols can be fully satisfied. As the Minister has said, I too remain hopeful that it will be possible to find a creative and acceptable way to accommodate each of our objectives.

I look forward to meeting with you and your colleagues tomorrow.

Yours sincerely



Jim Breslin

Secretary General

2nd June 2017.

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Mr. Jim Breslin,
Secretary General,
Department of Health,
Hawkins House,
Hawkins Street,
Dublin 2.

Dear Mr. Breslin,

1. Introduction

I refer to my letter dated 29th May 2017, your response dated 30th May 2017 and our meeting on Wednesday, 31st May 2017. In addition I refer to the two press releases dated 29th May 2017 issued by Sister Mary Christian, Congregational Leader/RSC and myself as Chairman of SVHG.

In the light of our meeting on Wednesday I have up-dated the SVHG Board, at a special meeting held this morning, in relation to the main issues covered at that meeting and indeed at a number of recent meetings between DoH and SVHG representatives.

At the outset and for the avoidance of doubt, the Board remains committed to the NMH project and the full implementation of the Mulvey Report.

At this stage, there is only one remaining issue to be agreed between us in order to enable the full implementation of the Mulvey Report. This issue relates to ensuring that the State's proposed investment in the new facility at Elm Park is reflected in a way that complies with Section 5 of the Mulvey Report.

At our meeting we considered the contents of your letter dated 30th May and indeed the four options presented by the DoH to our representatives over the last three weeks in relation to the ownership issue. Upon due consideration, the Board believes that no one of these options is in accordance with the letter or the spirit of Section 5 of the Mulvey Agreement. However, as we both recognise the decision announced by our Shareholders last Monday was both historic and momentous and it included a recognition by our Shareholders of the need for the NMH project to proceed in the interests of women's and infants healthcare in Ireland. As always our RSC shareholders recognised the interests of the Irish public healthcare system above their own. In that regard and in the spirit of "it will be possible to find a creative and acceptable way to accommodate each of our objectives" the Board have formulated a bespoke proposal which we believe is in compliance with the letter and spirit of Section 5 of the Mulvey Report. This proposal is set out below and we believe that it will accomplish our mutual objectives.



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For completeness I also set out below the impact on governance of SVHG following the decision of the RSC to relinquish ownership of the group.

2. Governance - Effect of RSC decision

The Religious Sisters of Charity founded St. Vincent's hospital in 1834 and they have maintained ownership of SVHG as it grew since that date. The increasing complexity, specialisation and regulation of healthcare in recent decades changed the nature of the Sisters involvement in SVHG and they have taken a decision to relinquish their ownership of SVHG and resign their Directorships in the Group. This decision means that the RSC will no longer have any influence on the governance of SVHG including the new National Maternity Hospital at Elm Park DAC.

As stated in the press release from the RSC "the requirement set out in the SVHG Constitution, to conduct and maintain the SVHG facilities in accordance with *The Religious Sisters of Charity Health Service Philosophy and Ethical Code*, will be amended and replaced to reflect compliance with national and international best practice guidelines on medical ethics and the laws of the Republic of Ireland." This was also confirmed in the press release from the Board of SVHG.

Ownership of SVHG will reside with a new charitable company – 'St. Vincent's' – which will not be subject to undue influence by individuals or from any source.

3. Governance - Single System of Governance in SVHG

The matter of governance was addressed in detail in the report by mediator Kieran Mulvey to the Minister for Health, Simon Harris T.D. on the terms of agreement reached between the National Maternity Hospital Trust (NMH) and SVHG regarding the proposed new maternity hospital at Elm Park. This report was approved by NMH and SVHG and was subsequently endorsed by the Minister and the Taoiseach, Enda Kenny.

The three existing hospitals in SVHG (St. Vincent's University Hospital, St. Michael's Hospital and St. Vincent's Private Hospital) operate under a single system of operational and clinical governance that guarantees similar high standards of patient care in each hospital, as well as effective and efficient cooperation between the hospitals to achieve best outcomes for patients. The objective of relocating NMH to the campus at SVHG is to create an integrated healthcare group that will provide seamless service to all patients. This enlarged healthcare group must have a single system of governance to achieve its objectives for patient care in an effective manner. This principle was accepted in the Mulvey agreement.

This new Company "NMH at Elm Park DAC" (NMH DAC) will be established to operate the new facility on the SVHG campus and will include the following by reference to the Mulvey Report:

- Principal objectives (2.1, Page 9/25)
- Subsidiary objectives (2.2, Page 10/25)



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- Reserved powers exclusive to the NMH at Elm Park DAC (In particular Section 2.3.2, Page 11/25),
- The "Golden Share" (3.0, Page 13/25),
- Corporate/Clinical Governance (6.0, Page 21/25; 6.4, Page 21/25; 6.5, Page 21/25)

The NMH DAC will seek charitable status which is subject to approval by the Revenue Commissioners and the Charities Regulatory Authority. Any subsequent amendment to the NMH DAC Constitution will also require approval from the Revenue Commissioners and the Charities Regulatory Authority.

4. Protecting the State's Investment - The SVHG Proposal

Our proposal is to ensure compliance with four criteria which we have set out from the outset of this project:

1. That the efficiency and effectiveness of patient care in SVHG would not be adversely affected,
2. That the future campus development would not be disadvantaged,
3. That no project cost will accrue to SVHG,
4. That the enlarged campus will be operated in line with best international practice.

The SVHG proposal, which recognises the State's requirement to retain ownership of the new building, which reflects the investment of €300 million in the NMH DAC, can be summarised as follows:

- (i) The State/DoH will retain ownership of the new building to be deployed within the NMH DAC on the Elm Park campus.
- (ii) The State will licence this building (licence period of 999 years) to the NMH DAC at a peppercorn licence fee of €1 per annum,
- (iii) SVHG will licence the land and site, upon which the new building is erected, to the NMH DAC,
- (iv) The Licence from the DoH to the NMH DAC shall provide for the following:
The State shall be responsible for all repairs and renewals;
The Licence will contain inter alia three schedules which clearly designate the following within the NMH DAC building:
 - NMH facilities,
 - SVHG facilities,
 - Shared facilities; andThis licence would also include other conditions that are both reasonable and practical.
- (v) There will be agreements between SVHG and the DoH regarding the construction and commissioning of the new building within the NMH DAC. The key documents under these agreements will include (a) the "Licence to Build Agreement" between SVHG and DoH. I understand that there is a draft

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“Licence to Build Agreement” that is close to finalisation and SVHG will need to be satisfied that this agreement will ensure that any risks to the operation of patient care on the SVHG campus during the construction and commissioning phases will be managed to our satisfaction, (b) the Builders Contract will be between the DoH and the appointed contractors.

This proposal obviates the need for any amendments to the current SVHG Protection of State's Interest Agreement that was signed on 14th December 2010.

5. Conclusion


The Board recognises that the 'lien' as referred to in the Mulvey Report does not meet the Government's wishes and hence we are showing further flexibility congruent with that demonstrated by the RSC in transferring their shareholding in the interests of furthering healthcare on the campus. The SVHG Board believe that this bespoke proposal complies with the spirit and letter of Section 5 of the Mulvey Report; the wishes of our Shareholders and should be a creative and acceptable solution to you and the Minister. The Board also notes that this is a bespoke solution for the NMH project only and asserts that all future State investment in our acute healthcare facilities on the Elm Park campus will be in accordance with the Grant Agreement signed by SVHG on 14th December 2010.

In addition, I would reiterate the following:

- All parties to the agreement brokered by Kieran Mulvey remain committed to what they each believe is the best solution to patients and their families involving an integrated care system operating to the highest standards. In the Board's view the SVHG bespoke solution represents the final outstanding matter in relation to any and all interpretations of the Mulvey Report.
- Any remaining questions about religious influence in the new facility have been removed by the historic decision taken by the RSC to transfer their shareholding in full to a new unrelated company which will be free from any vested interest.

Should you have any further questions, please do not hesitate to contact me and I will seek to provide any additional help which you may require.

Yours sincerely,



James Menton
Chair/SVHG



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The Religious Sisters of Charity Will End Our Involvement in Saint Vincent’s Healthcare Group and Will Have No Involvement in the New National Maternity Hospital

Statement by Sr Mary Christian, Congregational Leader of the Religious Sisters of Charity

“The Religious Sisters of Charity will end our involvement in St Vincent’s Healthcare Group and will not be involved in the ownership or management of the new National Maternity Hospital.

“For the last two years we have been actively working to find the best way to relinquish our shareholding of the St Vincent’s Healthcare Group (SVHG). It includes three hospitals; St. Vincent’s University Hospital, St. Vincent’s Private Hospital and St. Michael’s Hospital, Dun Laoghaire.

“Although the Sisters of Charity no longer have any direct involvement in the provision of healthcare services we remain dedicated to preserving the legacy of Mary Aikenhead, whose mission in life was to heal and care for the sick and poor. We believe that the future continued success of SVHG can best be ensured by our transferring ownership of the group to a newly formed company with charitable status to be called “St. Vincent’s”. The Religious Sisters of Charity will have no involvement in this new company.

“Upon completion of this proposed transaction, the requirement set out in the SVHG Constitution, to conduct and maintain the SVHG facilities in accordance with *The Religious Sisters of Charity Health Service Philosophy and Ethical Code*, will be amended and replaced to reflect compliance with national and international best practice guidelines on medical ethics and the laws of the Republic of Ireland.

“The SVHG Board, management and staff will continue to provide acute healthcare services that foster Mary Aikenhead’s core values of dignity, compassion, justice, quality and advocacy. They will ensure that the three hospitals in SVHG can continue to meet the needs of their patients and families, so that every individual can always access the care and treatment they need to achieve health and well-being.”

“St. Vincent’s” will replace the Sisters of Charity as the shareholders in SVHG and will meet the following criteria:

- The shares in SVHG will be transferred to St. Vincent’s for a nominal/“peppercorn” consideration in return.
- Consistent with the transfer of ownership, the Religious Sisters of Charity will no longer have a right to appoint Directors to the Board of SVHG, and the present two Sister Directors will resign from the Board with immediate effect.
- “St. Vincent’s” will not be subject to undue influence by individuals or from any source.
- “St. Vincent’s” will not seek to generate any profit or surplus, or to remunerate Directors for their work.
- “St. Vincent’s” Directors will have required skillsets in law, finance, healthcare and social care. They will be true to the values of our Foundress, recognising the right of everyone to access the care and treatment they need to achieve the best possible health care outcomes, regardless of race, ethnicity, religion, gender or personal means.
- In the event of the liquidation or wind-up of St. Vincent’s at any time in the future, any surplus assets arising therefrom will be vested with the Charitable Regulator and utilised for healthcare purposes and facilities with similar values. This is in accordance with the provisions of the RSC Constitution.

“Just as our Founder Mary Aikenhead saw the need in 1834 to establish a hospital to meet the needs of the sick and poor, we believe that it is in the best interests of the patients and children born in the National Maternity Hospital today that they be provided with modern maternity and neonatal services that are women and infant centred and integrated within the Elm Park campus”.

“It is now time for us to relinquish completely our involvement in SVHG. We are confident that the Board, management and staff of SVHG will continue to maintain a steadfast dedication to providing the best possible acute healthcare to patients and their families in line with the values espoused by Mary Aikenhead”.

This proposal has the full support of the Board of SVHG. It is subject to implementation of all necessary legal, financial and regulatory matters.

ENDS

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Background - The Founding of St Vincent's Hospital in 1834

St. Vincent's Hospital was founded in 1834 by Mary Aikenhead, Foundress of the Religious Sisters of Charity, as part of her mission to heal and care for the sick and poor. Over the years it developed schools of medicine, nursing and diagnostic imaging, and in 2001 SVHG was incorporated to include St. Vincent's University Hospital, St. Vincent's Private Hospital and St. Michael's Hospital.

Since St. Vincent's Hospital was founded it has always maintained an atmosphere of compassion towards its patients and their families, and is guided by values that mean each patient is treated with dignity and respect:

- *Human Dignity* – We respect the dignity and uniqueness of each person.
- *Compassion* – We accept people as they are, bringing empathy and caring to all.
- *Justice* – We act with integrity that respects the rights of all.
- *Quality* – We seek excellence in all aspects of care.
- *Advocacy* – We speak for the voiceless, acting with and for them to achieve the right quality of care.

Mary Aikenhead had a dream and that was: ‘the establishment of a great hospital in which the sick poor should receive all the aid that the physician’s skill could provide and all the ministrations that the Sisters of Charity could afford’.

In preparation for the fulfillment of her dream, Mary Aikenhead, in 1833, sent three Sisters of Charity to Paris to train in hospital administration. Her dream became a reality with the purchase of a house on St. Stephen's Green, bought for that purpose with the dowry of a Sister. On the 23rd January 1834, the Sisters of Charity took possession of the house. The work of adapting the house to the needs of a hospital was then undertaken and in the spring of 1835 all the arrangements were completed and St. Vincent's Hospital opened with one ward, containing twelve beds for women. The beds were soon filled and with the increase in the number of applicants a second ward was opened and then a third and finally a ward for children.

The opening of St. Vincent's attracted much interest among the general public. It was the first hospital in these islands to be organised and staffed by women. Nursing, as in the modern sense, was unknown and it was one of the first great works of Mary Aikenhead to break down prejudices and to raise care of the sick to a profession in her native country. It is recounted that the first surgery performed in St. Vincent's Hospital was on a little boy who was comforted by Mary Aikenhead while it was being performed.

Over the many years St. Vincent's outgrew the site at St. Stephen's Green. In July 1934 there was great excitement at the purchase of the new green field site at Elm Park by the Sisters of Charity as a site for their proposed new hospital. However, hopes of commencing work on the site for the new hospital were dashed by the outbreak of World War II (1939-1945). There had been many false dawns in the history of the coming into operation of the hospital in Elm Park. On Saturday 31st October 1970, the hospital on

the Green was closed to all patients and on the 1st November 1970, with the help of a fleet of twelve Order of Malta ambulances, seventy-three critically ill patients were transferred to the new St. Vincent's Hospital, Elm Park.

In 1999 St. Vincent's changed its title to St. Vincent's University Hospital. By this time it had become a major academic teaching hospital, affiliated to University College Dublin.

In 2003 St. Vincent's Healthcare Group Limited was formed and at this time the property of St. Vincent's University Hospital was transferred into the Company. The Sisters of Charity became the Shareholders and two Sisters of Charity were members of the Board of Directors. In compliance with the Companies Act 2014, a new Designated Activity Company, *St. Vincent's Healthcare Group*, was set up in 2016.

The hospitals in SVHG have had a long and successful heritage of providing acute healthcare services to the people of Dublin and indeed people from many parts of the country. When we first established hospitals and hospices during the nineteenth century they were operated and staffed by sisters from the Sisters of Charity, with the help of truly supportive staff in our daily work.

www.rsccharitas.org

29th May 2017

Statement by the Board of SVHG

Proposed transfer of SVHG ownership by the Religious Sisters of Charity

St. Vincent's Healthcare Group (SVHG) is a designated activity company (DAC) limited by shares, and the hospitals in the Group – St. Vincent's University Hospital, St. Vincent's Private Hospital and St. Michael's Hospital – have a long and outstanding heritage of providing acute healthcare services to the people of Dublin and many other parts of the country.

The origins of SVHG go back to the founding of St. Vincent's Hospital in 1834 by Mary Aikenhead, Foundress of the Religious Sisters of Charity (RSC). The nature of the Sisters' involvement in their healthcare operations has altered significantly in recent decades, from predominantly unsalaried healthcare professionals to the situation today where they have no direct involvement in the provision of healthcare.

Consequently, the Sisters have for many years been engaged in an on-going strategic review of their healthcare facilities, especially SVHG. This has involved finding the way forward that best perpetuates the vision and values of Mary Aikenhead, which are dignity, compassion, justice, quality and advocacy. That process has accelerated over the past two years and has also involved consideration of these issues by the Board of SVHG over the same period.

The outcome of the process is that the Religious Sisters of Charity believe the future continued success of SVHG, and perpetuating the vision and values of Mary Aikenhead, can best be ensured by relinquishing their shareholding in SVHG, and transferring ownership of the group to a newly formed company with charitable status to be called "St. Vincent's".

The Sisters wish to make the following changes;

- St. Vincent's will replace the Sisters of Charity as the shareholders in SVHG and, consistent with the transfer of ownership, the Sisters will no longer have the right to appoint Directors to the Board of SVHG. The Congregation's two representatives on the current Board will resign with immediate effect.
- Upon completion of this transaction, the current requirement, set out in the SVHG Constitution, "to conduct and maintain the SVHG facilities in accordance with our (RSC) current ethical code" will be amended to reflect compliance with national and international best practice guidelines on medical ethics, and the laws of the Republic of Ireland.
- The shares in SVHG will be transferred to St. Vincent's for a nominal/"peppercorn" consideration in return.

In addition, ownership of the specific piece of land at the Elm Park campus, the site of the former St. Vincent's Private Hospital, which is currently subject to a rental agreement, will be sold to SVHG at commercial terms to be agreed, and the rental agreement will cease.

The Chairperson of SVHG, Mr. James Menton, said: “These are major developments, and reflect the wonderful legacy to Irish healthcare of the Sisters of Charity. The Sisters have always held the highest ambitions for the provision of world class healthcare services in Ireland and have successfully achieved and sustained this. They also see the need for the proposed development of the new National Maternity Hospital integrated within the Elm Park campus and want to do everything possible to ensure this vital facility for mothers and babies is developed as quickly as possible.

“The Board, management and 4,000 staff of SVHG are also absolutely committed to upholding the vision and values of Mary Aikenhead – namely dignity, compassion, justice, quality and advocacy – which result in the best possible outcomes for our patients and their families”, he added.

Mr. Menton also said that the Board remains steadfast in upholding the vision for SVHG as follows:

- SVHG is an independent, voluntary organisation with charitable status. It invests all of its funds in treatment and care for patients, both public and private. No funds are diverted to those who own or govern the organisation.
- SVHG is a valuable part of an integrated Irish healthcare system, that seeks to achieve best outcomes for patients and their families, through expert, caring teams that work efficiently and innovatively to put patients first.
- SVHG is known for the highest standards of patient care, clinical excellence, medical research and staff education. The Elm Park hospitals have internationally-recognised JCI accreditation, and all hospitals treat patients with warmth, empathy and understanding, and with respect for their concerns, feelings and expectations.
- SVHG will always be true to the values of its Foundress, recognising the right of everyone to access the care and treatment they need to achieve the best possible health care outcomes, regardless of race, ethnicity, religion, gender or personal means.

St. Vincent’s will initially have a “Transition Board” for a limited period (maximum one year) and its first members will include James Menton (Chairperson of SVHG), Sharen McCabe, John Compton and Frank O’Riordan, Directors of SVHG. Given the proposed company limited by guarantee legal structure for St. Vincent’s under the Companies Act 2014 these Directors (upon incorporation the first members) will effectively act as shareholders during their tenure as Directors (as will be the case for all Directors in the future). During this period a full Board of Directors will be appointed and as indicated elsewhere will have required skill sets in law, finance, healthcare and social care. They will be committed to upholding the vision and values of Mary Aikenhead. Upon completion of this process the four members of the “Transition Board” will resign from the Board of St. Vincent’s.

These proposals are subject to implementation of all necessary legal, financial and regulatory matters.

29th May 2017



20th June 2017

Mr James Menton
Chair
St. Vincent's Healthcare Group
Elm Park
Dublin 4.

Dear Mr Menton

I refer to your letter of 2nd June last outlining the SVHG proposal to protect the State's interest, consequent to the planned investment of some €300m in the development of the new maternity hospital on the St Vincent's campus.

I very much appreciate the work that has been undertaken by your Board to develop this considered proposal. I greatly appreciate the fact that the Board and the Department continue to demonstrate our collective interest in effectively working together to develop priority healthcare services.

The Department has examined your Board's proposal in detail and it is acknowledged that it goes some way to address the Minister's concerns in relation to ownership. However, we believe that there are still some issues which appear not to be adequately addressed and we have considered how this might best be done. Taking account of the advices we have received, and building on the SVHG proposal, I set out below two alternative proposals which I would ask you to consider.

Lease Option

I think the lease option is worth exploring further. Bearing in mind your reservations regarding the granting of a long lease of the land to the State, I ask that you consider granting a lease of a shorter duration, as follows;

- SVHG grants State/HSE (or its successors) a 99 year lease to the NMH site, at a nominal rent.
- State/HSE (or its successors) appoints the contractor to construct the NMH.
- State/HSE (or its successors) grants a lease/licence to NMH DAC to operate a publicly funded maternity hospital for such period as reflects the expected whole life of the building.
- The lease/licence will reference the reserved powers of the NMH DAC and compliance with same.
- The operation of the NMH will be subject to a SLA in respect of annual funding arrangements.



- The clinical independence of the NMH and the obligation to perform medical procedures, as permitted under Irish law, will be captured in the lease/licence or SLA.
- Agreement will be put in place to acknowledge that certain healthcare activities in the NMH will be co-located or shared with SVHG. Issues in relation to acting as “good neighbours” in a shared campus environment, cooperation, not interfering with the activities of the other party, interface, access on the campus generally, will be addressed.
- It will be necessary for SVHG to engage with Bank of Ireland (for example to get consent to grant the lease). In addition, as part of the development loan with Bank of Ireland, there is a structure with tax investors and engagement with the tax vehicle Dubki Limited will also be required.

Option to Purchase

Alternatively, and building on your proposal, I would ask you to consider the following proposal which involves the State retaining ownership of the building but receiving an option to purchase the NMH site in certain circumstances;

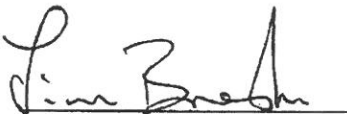
- SVHG grants the State/HSE (or its successors) a 99 year licence to undertake the construction and operation of a publicly funded maternity hospital on the NMH site.
- State/HSE (or its successors) appoints the contractor to construct the NMH.
- The contractor will get a licence to build for the construction period from State/HSE (or its successors).
- State/HSE (or its successors) grants a lease/licence to NMH DAC to operate a publicly funded maternity facility in the constructed building, for such period as reflects the expected whole life of the building.
- The lease/licence will reference the reserved powers of the NMH DAC and compliance with same.
- The operation of the NMH will be subject to a SLA in respect of annual funding arrangements.
- The clinical independence of the NMH and the obligation to perform medical procedures, as permitted under Irish law, will be captured in the lease/licence or SLA
- State/HSE (or its successors) will retain ownership of the public maternity hospital building constructed on the NMH site.
- SVHG grants State/HSE (or its successors) an option to purchase the relevant site, as well as an option over the shares in the NMH DAC, which will be exercisable in certain circumstances including insolvency, breach of funding agreements, where the facility is not used for its intended purpose or in the event of the infringement of the reserved powers of the NMH DAC. Where the options are exercised, the State/HSE will pay a consideration based on the market value of the site unbuilt upon, on the date of the option agreement.
- Agreement will be put in place to acknowledge that certain healthcare activities in the NMH will be co-located or shared in the NMH. Issues in relation to acting as “good neighbours” in a shared campus environment, cooperation, not interfering with the activities of the other party, interface, access on the campus generally, will be addressed.

- There is existing security granted in favour of Bank of Ireland over the site. It will be necessary for SVHG to engage with its bank (for example to get it to consent to the granting of the option). In addition as part of the development loan with Bank of Ireland there is a structure with tax investors and engagement with the tax vehicle Dubki Limited will also be required.
- A priorities agreement will be necessary involving both the Bank and Dubki Limited.

I would be very happy to meet with you again to discuss these proposals further. For my own part, I think it is worth pointing out that I believe that these options include requirements necessary to enable me to provide the Minister, and the Government, with important assurances necessary regarding the State's investment.

I do appreciate your Board's commitment to reaching a mutually satisfactory solution. I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jim Breslin". The signature is written in a cursive style with a horizontal line underneath it.

Jim Breslin
Secretary General

5th July 2017



Mr James Menton
Chair
St. Vincent's Healthcare Group
Elm Park
Dublin 4.

Dear Mr Menton

I refer to previous correspondence in relation to the need to protect the State's interest following the planned financial investment in the new maternity hospital on the St Vincent's campus.

Following very constructive and useful exploratory discussions with representatives of the St Vincent's Healthcare Group, I have now further developed the proposals set out in my letter of 20th June last - see below.

I acknowledge that it has been communicated that SVHG does not favour the granting of a lease to the State. However, I would appreciate some clarity as to why you are opposed to a lease. The Department continues to believe that this option merits further consideration and that a long lease, suitably curtailed, has the potential to form the basis of an effective solution and may also be capable of finding favour with relevant parties. A lease is a more robust structure and would provide legal certainty to all parties. The respective interests of the State and SVHG would be secured by including mutual easements and rights for the benefit of the campus generally. The interests of SVHG's banks would not be impacted and indeed the certainty afforded by the structure should benefit its security. I have therefore retained this option, with modification.

Lease with an option to purchase on a specified default event

- State/HSE (or its successors) will retain ownership of the public maternity hospital building constructed on the NMH site.
- SVHG grants State/HSE (or its successors) a 99 year lease to the NMH site, at a nominal rent, to undertake the construction and operation of a publicly funded maternity hospital. SVHG will be represented on all relevant construction related working groups.
- State/HSE (or its successors) appoints the contractor to construct the NMH. SVHG will be involved in this process through their representation on the Project Board.

- The contractor will get a licence to build for the construction period from State/HSE (or its successors).
- State/HSE (or its successors) grants a licence to NMH DAC to operate a publicly funded maternity facility in the constructed building, for such period as reflects the expected whole life of the building.
- The licence to the NMH DAC will reference the reserved powers of the NMH DAC and require compliance with same. The clinical independence of the NMH and the obligation to perform medical procedures, as permitted under Irish law, will be captured in the licence and SLA (see below).
- State/HSE (or its successors) grants a licence to SVHG to operate publicly funded healthcare services, and shared services, in specific parts of the constructed building, for such period as reflects the expected whole life of the building.
- All leases / licences granted to and by the State/HSE (or its successors) in relation to SVHG and NMH DAC will reference the need for cooperation, to act as "good neighbours" in a shared campus environment, to not interfere with the activities of the other party, and will address issues such as interface and access across the campus generally.
- SVHG grants State/HSE (or its successors) an option to purchase the relevant site and the shares in the NMH DAC in the event of a default. This option will be exercisable in certain circumstances which will be clearly defined, but will include circumstances such as insolvency on the part of SVHG and/or NMH DAC, change of control, where the facility is not used for its intended purpose or in the event of the infringement of the reserved powers of the NMH DAC. Where the option is exercised, the State/HSE will pay a consideration based on the market value of the site unbuilt upon, calculated as of the date of the option agreement.
- The operation of the NMH will be subject to a SLA in respect of annual funding arrangements.
- It will be necessary for SVHG to engage with its bank /investors. A priorities or side agreement is likely to be necessary.

Licence with an option to purchase on a specified default event

- State/HSE (or its successors) will retain ownership of the public maternity hospital building constructed on the NMH site.
- SVHG grants the State/HSE (or its successors) a 99 year licence to the NMH site to undertake the construction and operation of a publicly funded maternity hospital. SVHG will be represented on all relevant construction related working groups.

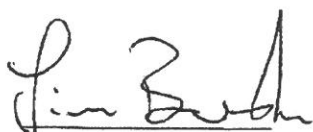
- State/HSE (or its successors) appoints the contractor to construct the NMH. SVHG will be involved in this process through its representation on the Project Board.
- The contractor will get a licence to build for the construction period from State/HSE (or its successors).
- State/HSE (or its successors) grants a licence to NMH DAC to operate a publicly funded maternity facility in the constructed building, for such period as reflects the expected whole life of the building.
- The licence to NMH DAC will reference the reserved powers of the NMH DAC and require compliance with same. The clinical independence of the NMH and the obligation to perform medical procedures, as permitted under Irish law, will be captured in the licence and SLA (see below).
- State/HSE (or its successors) grants a licence to SVHG to operate publicly funded healthcare services, and shared services, in specific parts of the constructed building, for such period as reflects the expected whole life of the building.
- All licences granted to and by the State/HSE (or its successors) in relation to SVHG and NMH DAC will reference the need for cooperation, to act as "good neighbours" in a shared campus environment, to not interfere with the activities of the other party, and will address issues such as interface and access across the campus generally.
- SVHG grants State/HSE (or its successors) an option to purchase the relevant site and the shares in the NMH DAC in the event of a default. This option will be exercisable in certain circumstances which will be clearly defined, but will include circumstances such as insolvency on the part of SVHG and/or NMH DAC, change of control, where the facility is not used for its intended purpose or in the event of the infringement of the reserved powers of the NMH DAC. Where the option is exercised, the State/HSE will pay a consideration based on the market value of the site unbuilt upon, calculated as of the date of the option agreement.
- The operation of the NMH will be subject to a SLA in respect of annual funding arrangements.
- It will be necessary for SVHG to engage with its bank /investors. A priorities or side agreement is likely to be necessary.

In respect of the options set out above, we will need to clearly define the default events which will trigger the option to purchase, but I think our starting point should be equivalent events to those specified in the 2010 grant agreement and the related option agreement. We would need to amend those events which were linked to the grant of capital, rather than the structure as is envisaged here, but nonetheless I think the earlier grant agreement would provide a very useful context for our further consideration. As set out above, we would also wish to have regard, in this agreement, to the Mulvey Agreement.

We will also need to reflect on issues relating to the car park and the pharmacy. These issues could perhaps be the subject of one or more separate agreements.

I would appreciate if you would consider my revised proposals. I am happy to meet to discuss, if you would think that would be helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jim Breslin". The signature is written in a cursive style with a large initial "J" and "B".

Jim Breslin

Secretary General

Grenham, Patricia (PA to SVHG Board)

From: Tracey_Conroy@health.gov.ie
Sent: 06 July 2017 19:55
To: Grenham, Patricia (PA to CEO)
Cc: Joan_Regan@health.gov.ie
Subject: NMH at Elm Park

Patricia

Grateful if you could bring the text below to James Menton's attention.

Regards

Tracey

There has been intensive engagement between the Department of Health/HSE and SVHG to agree arrangements regarding the building and ownership of the new National Maternity Hospital in Elm Park. Good progress has been made. The Department has sought to agree an arrangement where neither a capital grant nor a grant of a newly constructed building would be made to SVHG. Instead the HSE would construct and retain ownership of the building. SVHG is in principle agreeable to facilitating this approach. To achieve this outcome it is considered that either lease of the land (upon which the new NMH will be constructed) or a licence to build and operate a maternity facility on this land would need to be granted by SVHG to the HSE. Both options are currently receiving detailed consideration by the parties.

The HSE would in turn provide an operating licence to the new NMH DAC to enable the provision of maternity services in the newly constructed building.

The Department is also seeking to have a right for the HSE to purchase the land from SVHG in the event of certain events including insolvency on the part of SVHG, change of control, where the facility is not used for its intended purpose or in the event of the infringement of the reserved powers of the NMH DAC, including those relating to clinical and operational independence. Such an event, although recognised as improbable, would see the HSE take full control of the facility and the land in order to allow alternative arrangements to be made for the appropriate delivery of publicly funded maternity services.

Completion of a detailed legal agreement between SVHG and the State/HSE will require further engagement between SVHG, NMH and the Department/HSE. It will also require detailed legal advices and drafting and approval by the SVHG Board, the HSE and the Minister. It is intended that this process will conclude over the coming weeks. Based upon the progress achieved to date, both the Department and SVHG consider that this is realistic.

The Minister intends to update the Government further in September and prior to the approval of any legal agreements.

Tracey Conroy
Assistant Secretary
Acute Hospitals Policy
Department of Health
Hawkins Street, Dublin 2

Elm Park
Dublin 4
Tel +353 1 221 4000
Web www.stvincents.ie

St. Vincent's Healthcare

GROUP

7th July 2017.

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██████████
██████████

Mr. Jim Breslin,
Secretary General,
Department of Health,
Hawkins House,
Hawkins Street,
Dublin 2.

Re: NMH Project

Dear Jim,

Many thanks for your letter dated 5th July 2017 re NMH project.

Whilst I am not in Ireland at the moment I have been in regular contact with Nicky Jermyn /Director of Strategy, in relation to the status of discussions concerning the SVHG's letter to you of 2nd June.

As you may be aware the SVHG Board meets on Thursday 27th July where we will have a detailed consideration of the options raised in your letter and revert to very shortly thereafter to move the process forward and keep the momentum at the appropriate pace.

Best regards,

James Menton

James Menton
Chair/SVHG

Mr. James Menton
Chair

Dr. David Brophy
Mr. John Compton
Mr. Gerard Flood
Prof. Michael Keane
Mr. Myles Lee
Ms. Sharen McCabe
Prof. Patrick Murray
Mr. Frank O'Riordan
Mr. William Shannon