



Department
of Health &
Social Care

From the Rt Hon Matt Hancock MP
Secretary of State for Health and Social Care

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28 March 2019

By email

Jin Sahota
Chief Executive Officer,
Supply Chain Coordination Ltd
Skipton House,
80 London Road,
London SE1 6LH

Dear Jin,

ACT OF ENTRUSTMENT – SUPPLY CHAIN COORDINATION LIMITED

I am writing this letter to confirm the terms of your official mandate and to record my formal instructions in relation to the operation of Supply Chain Coordination Limited (SCCL) which was set up to administer a new operating model, introduced as part of the wider restructuring of the supply chain, through which the NHS would procure its goods and services (known as the “Procurement Transformation Programme”).

This letter of entrustment is one of various steps that have been initiated to ensure that SCCL has its governance arrangements formally documented. Two such steps have already been taken; namely, the issue of the “Accountability Letter” dated 7th December 2018 to Mr. James Spittle following his appointment as the non-executive chairperson of SCCL followed by the issue of the “2018-19 Director Accountability” letter dated 23rd January 2019 to yourself as the Chief Executive Officer of SCCL and the Senior Responsibility Officer of the Procurement Transformation Programme.

On 1st April 2019, SCCL will commence what will be the final and very significant phase of the set-up of its operations. The intention is that on that date the NHS Supply Chain model will move to a centrally funded model with a transparent pricing policy of “Buy Price = Sell Price” and the current arrangement with DHL for the operation of the Master Services Agreement (which provides procurement services for goods and services (except medicines) for the NHS) will come to an end.

I am sending this letter to you pursuant to the statutory powers vested in me by virtue of section 223(1) of the National Health Services Act 2006 (NHS Act). More specifically, the letter constitutes a formal act of entrustment for the purpose of Article 106(2) TFEU and Article 4 of the EU Commission’s Decision 2012/21/EU and/or their domestic equivalent as retained EU law in the European Withdrawal Act 2018. It also is intended to have binding legal effect in assigning and defining the scope and operational conditions of the public service obligations conferred upon SCCL in the general economic interest (“SGEI tasks”).

A. Establishment and Ownership of the Company

SCCL was established on the 25th of July 2017 as a private company limited by shares under the Companies Act 2006 with the intention that it should function as the in-house management function of the NHS Supply Chain. In my capacity as Secretary of State and sole shareholder I wholly own the company and have control over its activities.

SCCL's Board of Directors is constituted of representatives from the Department of Health and Social Care ("DHSC") and National Health Service Improvement ("NHSI") which are referred to as the "Departmental Directors". The Departmental Director employed by the DHSC (the "DHSC Departmental Director") is my representative on the Board. The Board cannot consent to any matter (which is reserved for consent by the Board in SCCL's Articles of Association) without a vote in favour by a DHSC Departmental Director. There are also 4 non-executive external directors whose appointments I was responsible for approving and who are not affiliated with the DHSC.

Further, pursuant to the powers granted under SCCL's Articles of Association, I exercise control and influence over both the strategic objectives and significant decisions of SCCL. Such powers include, but are not limited to:

- Article 4(1): shareholder powers, by special resolution, to direct the directors to take, or refrain from taking, specified action;
- Article 7: the shareholder's right to exercise a veto over certain reserved matters, including changes to the share capital or nature of the authorised business of the company;
- Article 20: the power of the Secretary of State as sole shareholder of SCCL to appoint Directors to the Board;
- Article 8(2): the requirement for Board consent by a simple majority to include the support of one DHSC Departmental Director prior to the adoption of decisions relating to specific strategic and significant transactions or the approval of the Company's Business Plan. That means in practice that no consent can be given by the Board without approval of the DHSC Departmental Director in respect of those matters reserved for the consent of the Board in SCCL's Articles of Association.

B. Purpose of the Company

The nature of business of SCCL as stated in its records at the Companies House is general public administration activities. Its "*Business*" as defined in its Articles of Association is "*the management and co-ordination of NHS supply chain services, including procurement, logistics, e-Commerce, reporting, analysis, quality control, communications, payments, supplier management, emergency response and consultancy services for the provision of everyday hospital consumables, clinical products, home-care and capital equipment and associated services and supplies*".

C. Entrusted SGEI Tasks of the Company

Following its incorporation in July 2017, SCCL became operational in 2018 and has been administering the NHS Supply Chain pursuant to an agency arrangement with the NHS Business Services Agency ("BSA"). With effect from 1 April 2019, SCCL will replace BSA as the principal administrator of the NHS Supply Chain. SCCL will also manage and coordinate the financial administration of the National Health Service Supply Chain.

SCCL is hereby entrusted with services of general economic interest to manage and oversee the administration of the NHS Supply Chain in relation to NHS funded products and services. This means that, from the date of this Act of Entrustment (1st April 2019) until the 31st of March 2029 and

subject to ongoing review, SCCL will be expected to deliver specific exclusive tasks and key objectives within the territory of the United Kingdom, including but not limited to:

- Overseeing the procurement and delivery of clinically assured products focused on patient safety within the NHS;
- Coordinating the procurement of a range of medical devices and clinical consumables from suppliers for the NHS;
- Ensuring the provision of reliable logistics services for the delivery of products to NHS Trusts;
- Managing the provision of IT services to provide systems platforms that support the operations of NHS Supply Chain;
- Administering the provision of transaction processing services to ensure that suppliers are paid, customers (NHS Trusts) receive and pay their invoices and accurate financial/statutory accounting is performed in a timely manner;
- Enabling the provision of customer engagement services so that NHS Trust customers can make effective best value judgments in exercising their choice of products for use in the provision of health services;
- Ensuring the provision of clinical and product assurance services to give NHS Trust customers confidence that the products they are using are of good quality and clinically suitable for their intended use;
- Complying with public procurement principles (where applicable) so that the above services are procured through open competitive conditions ensuring equal access and opportunity to all suppliers; and
- Exercising performance management and supervision powers to ensure that the above services are all delivered efficiently and effectively, providing best value for money.

D. Key Performance Indicators

Specific KPIs in the SCCL Business Plan

- **Drive and Deliver system benefits:** Deliver a minimum of £150m incremental in year savings which NHS Trusts can apply in other needed areas to support and improve their services.
- **Serve NHS Trust customers efficiently:** Increase procurement volumes through the NHS Supply Chain to implement better informed procurement decisions in respect of products consumed.
- **Range Rationalisation:** Rationalise and centralise purchasing so as to reduce inefficient, fragmented and duplicative purchasing to maximise economies of scale, reduce spend and consolidate purchasing power.

E. Other Key Objectives of the Operating Model

- **Assure quality:** Clinically assure all new or re-procured framework agreements for the purchase of products for the NHS.
- **Balance finances:** Balance investment and operational expenses within resource allocation.
- **Build a capable organisation:** Proactively engage employees of the company.
- **Transform technology:** Transform the company's information technology systems to support the delivery of its objectives with modern digital infrastructure.
- **Ensure efficient use of taxpayers' money**
- **Efficient Cost management:**
 - Governing principle to manage the NHS Supply Chain on an efficient basis and at least cost to the community;

- Cost forecasts to be budgeted and approved by Board and Secretary of State for Health and Social Care as sole shareholder ;
 - All expenditure to reflect the actual efficiently incurred costs of the Category Tower Service Providers and providers of logistics and IT services (which facilitate the Category Towers), allowing them a reasonable profit margin;
 - Funding for SCCL's operating costs to be based on actual receipts and assessed by reference to efficiently incurred costs by a well-run provider;
 - It is under consideration whether, in order to achieve financial balance, SCCL can achieve this through the generation of additional income streams from trading outside of core NHS business and, if so, the precise terms on, and extent to, which such business may be conducted]
 - The general intention is that, save in exceptional circumstances, SCCL should not be paid or retain any profit or surplus profits nor receive a margin on the costs of management and administration services provided in respect of NHS funded products and services via the NHS Supply Chain.
- **Quality Requirements for discharge of SGEI functions**
 - Employment of best practice in respect of corporate governance including the effective functioning of appropriate committees for areas such as audit and remuneration;
 - Strong financial stewardship and effective financial management and reporting processes in place which function adequately;
 - Record activity, assure delivery by suppliers and payment to suppliers and recharge NHS customers and ensure that SCCL has robust delivery plans for implementing the necessary information systems and management processes;
 - Operational Budget must be on a break-even basis and must not generate a material surplus or deficit.
- **Competition and Freedom of choice**
 - Principle of open and non-discriminatory access by NHS providers to the NHS Supply Chain;
 - The products in the catalogues held by the Category Tower Service Providers from which NHS Trusts make their selection of what they would like to procure are the result of competitive tender exercises amongst suppliers of the products.
 - Contracts held by the Category Tower Service Providers, IT and logistic services contracts to be renewed every 3+1+1 years
 - Objective criteria for review of contracts at Y3, and Y4 to ensure best value for money if renewed and re-let if not;
 - NHS Trusts free to exercise choice of suppliers – either products offered by Category Service Providers or from other sources on basis of best value for money;
 - No appreciable restrictions to be put in place regarding NHS Trusts' choice of supplier.
- **Principles of non-discrimination and transparency:**
 - Aim of centralised procurement to ensure that all NHS providers benefit from economies of scale and product rationalisation and will receive equal treatment;

- No appreciable distortion of competition between the private healthcare sector and the NHS funded healthcare sector;
 - Precise mechanics to ensure equivalence of treatment of independent providers and NHS providers in both private healthcare and NHS healthcare sectors are under active consideration;
 - Principles of transparency and good administration to be observed by SCCL in its dealings with Category Tower Providers, IT and logistic service providers and independent and NHS providers.
- **Public service aims:**
 - Overall aim to improve the quality and efficiency of NHS services for the benefit of all members of society, regardless of their contribution to the NHS system or their state of health in line with the solidarity principle.
 - Aim to make NHS funded products and services more efficient to provide savings to NHS Trusts can apply in other needed areas to support and improve their services.
 - Ensure efficient use of taxpayers' money.
 - No less than 80% of SCCL's activities must be directed towards the administration of the procurement of facilities or services to persons or bodies who carry out healthcare services within the meaning of the NHS Act and which are funded by the Department of Health and Social Care.

F. Financial Compensation

Funding

In order to facilitate the initial operation of SCCL in April 2018, I invested in the company through the purchase of 13,000, 001 ordinary shares of £1 each which are fully paid up. In March 2019 I invested a further £8,000,000 for the issuance and purchase of a further 8,000, 000 Ordinary Shares of £1 each. Furthermore, SCCL's operational costs are to be funded centrally, although the precise methodology for the allocation of that funding is subject to ongoing consultation. That financial provision is being made pursuant to my statutory powers in s.223(2) of the Act.

SCCL's designated funding shall be used for the following purposes:

- A minimum of 80% to fund contractual payments due to service providers by SCCL and so shall constitute reimbursement of actual costs incurred in the discharge of SCCL's entrusted obligations pursuant to this letter.
- A maximum of 20% to fund salaries and operating costs of SCCL.

The funding is not envisaged to exceed the net costs of discharging SCCL's entrusted obligations or efficiently incurred costs. To that end, the following checks and controls will be put in place:

- Appropriate Board control and scrutiny and shareholder's reservations, consents and vetoes over material expenditure, loans and investments as well as changes to the company business ;
- Duty to comply with public procurement in award of Category Towers Service Provider and subject any future contract awards to competitive tender;
- Onwards duty to ensure that Category Tower Service Providers, Logistics and IT providers comply with public procurement law where applicable and secure best value for money;

- Board scrutiny of invitations to tender and tender awards of contracts to the Category Tower Service Providers Logistics and IT providers.
- Scrutiny of Annual Business Plan and Budget by the Board of Directors.
- Shareholder's approval required for the setting of salaries of senior executive officers of SCCL in accordance with HMT's Guidance for the Approval of Senior Pay.
- Scrutiny of costs savings and targets set for the next financial year by the Board and ultimately the shareholder through their approval of the Annual Business Plan;
- Regular review by the Board of attainment of the specific KPIs and compliance with Key Objectives.

Avoidance and recovery of over-compensation

A key aim is that SCCL should not make any overall profit as its funding should be limited to its actual costs. To this end, a true-up exercise must be carried out in the final month of the Company's financial year.

That being said, should SCCL make any cost savings or surplus profits after discharging its obligations then consideration will be had on how best to invest these monies for the public interest in line with the objectives outlined above. The precise approach and methodology is subject to ongoing active consideration.

G. Annual Review

The DHSC shall review the operations of SCCL on a regular basis in line with its entrusted obligations under this letter. This will involve:

- Review and approval of the Annual Business Plan by the Board and by DHSC and NHSI through their Departmental Directors on the Board ;
- Review and approval of the Annual Budget by the Board and by, DHSC and NHSI through their Departmental Directors on the Board;
- Review of performance of the specific KPIs and attainment of Key Objectives by the Board;
- Review of Directors' performance – oversight of the performance of the executive and non-executive directors of SCCL with appropriate disciplinary measures for lack of performance;
- Review of Financial Compensation Mechanisms and oversight of reinvestment of any cost savings or profits;
- Appropriate arrangements to set remuneration for SCCL's executive and other senior staff that are fair and represent value for money and ensuring consistency with the Company's Articles and with HMT's "Guidance for the Approval of Senior Pay"; and
- Production of management information by SCCL, the content and timing of which will be agreed with you by the DHSC Departmental Director.

H. Informal review and adjustment

With any new operating model, I appreciate that there are likely to be initial unexpected developments which require slight adjustment to the model, the tariff or other mechanisms incorporated into the management and funding of SCCL. I therefore suggest that the funding for the new operating model is introduced as part of an iterative process, with the opportunity for review and adjustment, as necessary, after 6 and 12 months, in the light of the actual and forecasted savings generated.

As part of that process, the Board may be called upon to determine mechanics and safeguards to develop and refine the operating model. Examples include the mechanism to ensure that any surplus profits are invested for the public interest in line with the Key Objectives of the scheme. Another aspect will be to ensure parity of treatment between independent providers and NHS providers in terms of the contribution that they make towards SCCL's operating costs and thereby ensure a level playing field for the private healthcare and NHS healthcare sectors.

Once those mechanisms have been designed, it may be necessary to implement them after SCCL has come into operation, in which case I expect there may be a need for retrospective adjustments to the tariffs rebates or margin paid and/or prospective changes going forward or a combination of the two. DHSC should have discretion to resolve such matters in the way it sees most appropriate in line with the Key Objectives set out above.

A handwritten signature in blue ink that reads "Matt".

MATT HANCOCK