

# Answers to Questions from the Trust Board meeting on 1<sup>st</sup> November 2017

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## How did the board decide to choose Ryhurst to work with in terms of the Board's morale obligations to the community in respect to Ryhurst's connection to Rydon, and Rydon's connection to the Grenfell fire?

Steve Hitchins, Whittington Health NHS Trust Chairman says:

“The Trust followed a formal procurement process which complied with procurement law. The Trust Board made its decision under commercial confidentiality, standing orders, and in consideration of its obligations to patients, staff and the local community to provide buildings and conditions fit for 21st Century health services.

## What is the connection between Ryhurst and Rydon Group?

Ryhurst is one of the operating companies of the Rydon Group. Ryhurst has its own Managing Director, Board of Directors and staff.

Rydon is a privately owned, £270m turnover construction, development, maintenance and management group operating throughout England. Formed in 1978, with headquarters in Forest Row, East Sussex, and regional offices in Bristol, Dartford and Preston.

## How did the Trust choose its Strategic Estate Partner?

The Trust published an OJEU notice, (2016/S 207-375472), in October 2016 for a Strategic Estate Partnership to “deliver innovative estate proposals (including commercial and income generating opportunities) at pace to maximise the value of the estate to support clinical strategy and integrated health and social care objectives that will improve the quality of care for patients and drive efficiencies in the Trust’s operations, maximise income or reduce costs to the Trust”.

Ryhurst were selected following an open competition, overseen by the Trust’s procurement services partner and a process of competitive dialogue with announcement of the Preferred Bidder on 2<sup>nd</sup> June 2017. The bids were scored by a panel to select a partner with the intention of using that partnership to improve quality, drive down costs, increase income and to deliver even better care to the patients of the Trust and beyond.

## What is Competitive Dialogue?

Competitive Dialogue is a way to procure a service or product. Whittington Health NHS Trust entered dialogue with a number of bidders directly with the aim of developing alternative solutions to meet its requirements.

The dialogue was conducted in successive stages, and at each stage the number of bidders was reduced through the use of sophisticated scoring mechanisms, that comply with procurement law.

Bidders were scored at each stage of the tender and were invited to continue dialogue. Following several stages and narrowing down of bidders, the final stage is scored, and announcement of preferred bidder is awarded.

## What is OJEU?

OJEU stands for the Official Journal of the European Union. This is the publication in which all tenders from the public sector which are valued above a certain financial threshold according to EU legislation must be published.

The EU public procurement directives (EU Directives) set out the legal framework for public procurement. The primary objective of these directives is to open up sufficient competition between supplier with a secondary objective to ensure that public contracts are awarded fairly, transparently and without discrimination.

In the UK these EU Directives have been implemented into law by regulations, specifically for this form of procurement is the **Public Contract Regulations 2006**. The regulation covers organisations and projects that receive public money. Organisations such as Local Authorities, NHS Trusts, MOD, Central Government Departments and Educational Establishments are all covered by the legislation.

OJEU can use a variety of procurement routes. For NHS projects these have tended to be focused around the use Private Finance Initiatives (PFI), Frameworks such as Pro Cure 21+, Local Improvement Finance Trust (LIFT) and Joint Ventures (JV).

Further information can be found at [www.ojeu.eu](http://www.ojeu.eu)

## **Did Ryhurst receive a fee for submitting a tender?**

No, Ryhurst did not receive any reward at any point in the bidding process. The bid process is carried out by each qualifying bidder 'at risk', meaning each bidder is responsible for all costs associated with submitting their bid tender at each stage.

## **What is the Board's response to Defend the Whittington requesting that Whittington Health do not “sign up” to work with Ryhurst?**

Steve Hitchins, Chairman says:

“The Trust has confirmed Ryhurst as its preferred bidder, to partner with through a Strategic Estates Partnership Joint Venture. The contract will be awarded following approval by the Trust's regulator, NHSI.

Having undertaken the procurement, if the Trust did not proceed with the SEP, the Trust would be at risk of a long delay to the essential works required to improve its estates, and a potential serious legal challenge, with associated costs. If there was a delay, the Department of Health may exercise their legal powers through the Care Act 2014 to dispose of empty or redundant buildings and retain any capital receipt. This could impact on Whittington Health and its partners being able to fully benefit from the future development of its estate.”

## **Is the Board “ashamed” that they are not finding an alternative to Ryhurst?**

Siobhan Harrington, Whittington Health CEO says:

“The Trust Board is committed to securing high quality health services for local people now and into the future. The Board has wanted to develop its estate for the past 17 years. Our staff want to provide modern services from state of the art facilities. Our current estate does not always help our staff to do this

and some of our buildings are not fit for purpose and do not provide value to tax payers. The Trust Board has a responsibility to ensure it supports its staff to deliver the best quality services to local people, in the most efficient way. We believe Ryhurst will assist Whittington Health to improve performance and efficiency by bringing new ideas and lessons learnt from experience elsewhere.”

The procurement process identified Ryhurst as the market leader in developing and delivering this form of strategic estates partnership with the NHS, having formed the first whole estates partnership in 2010. Ryhurst has specialised in assisting health and social care providers find solutions to help them best improve their estates and facilities. Through these partnerships Ryhurst has developed significant expertise. The Trust does not have the necessary capacity or expertise to fully optimise the development of the whole Whittington Estate. Significant capital redevelopments require a multitude of experience, and contracting what is required from specialist providers will ensure the Trust maximises value for the NHS pound. “

### **What exactly did the Trust Board consider when it paused the procurement between June and October 2017?**

The Trust Board made the decision to award preferred bidder to Ryhurst before the tragic Grenfell Tower fire. Following the fire, the Board paused the procurement. As part of the pause the Board took legal advice about procurement law.

In deciding to proceed with the procurement, the Board took into account the following:

- If the procurement did not go ahead, the process would be required to start again, further delaying the essential estate works on buildings that are very old and unfit for purpose
- If the procurement did not go ahead, there may have been a risk that the Trust could face financial penalties under procurement law
- If the Trust further delayed the development of its estate, there is a potential impact on Whittington Health being able to fully benefit from the future development of its estate.

The Trust Board carefully considered all the options available, against the risks with not proceeding. During the pause further due diligence tests were undertaken, and the Board made significant deliberations on these and the legal advice obtained from a QC. With all the information and evidence in front of them, the Trust Board made the decision that it should proceed with the procurement and Ryhurst as preferred provider.

### **Who did the Trust get the legal advice from?**

The Trust obtained legal advice from a QC, specialising in procurement law.

### **Why can't the NHS or the Whittington appoint their own team to advise on development projects rather than partnering with a private sector company?**

The reason for establishing a Strategic Estates Partnership is that the Trust does not have the necessary capacity or expertise to fully optimise the development of the whole Whittington Estate. Significant capital redevelopments require a multitude of experience, and contracting what is required from specialist providers is a more efficient use of NHS resources.

### **Is the Trust viable?**

The Trust is viable. The Trust has the usual financial challenges, facing all NHS organisations, of ensuring efficient operation and delivering its annual control total. Its finances are reported at every Board meeting,

and the most recent finance report can be found here:

<http://www.whittington.nhs.uk/default.asp?c=20208>

### **Is it the case that Whittington Health would only be able to pay Ryhurst for its services through the sale of land or property?**

This is not the case. The Trust will pay Ryhurst fees for specific pieces of work related to a project and will only pay fees if the project is successfully delivered. To guarantee value for money further, and to prevent escalating costs, the Trust can negotiate an upfront payment cap for project management costs.

### **A company has already been set up on companies house, Whittington SEP LLP – what is the significance of this if the contract has not yet been approved?**

The Whittington SEP LLP has been set up by Ryhurst. It will not be linked to the Strategic Estates Partnership until a joint venture contract has been signed and the SEP established.

### **How long will the SEP last?**

In the case of Whittington's partnership, the contract, when signed, will be for 10 years with the potential to extend it by a further 5 years.

### **Will clinical services form part of the deal?**

No. The Strategic Estate Partnership (SEP) is focussed on the delivery of the estate master plan and the priority development projects. Clinical services will continue to be provided by Whittington Health NHS Trust.

### **Is this a “sell-off”?**

No this is not a sell off. Unlike some models which seek to secure ownership of land and buildings, Whittington's Strategic Estates Partnership has been specifically designed to ensure that the valuable Trust estate is retained.

The SEP is not a form of privatisation, in fact it is the opposite as it helps to ensure services stay firmly in the public sector.

### **The Trust had “issues with its PFI”, what makes this different?**

The SEP is not like a PFI. The Trust does not pass any of its assets to the SEP. A SEP ensures services stay firmly in the public sector. The Trust is in full control over what happens through the SEP and either partner of the SEP can end the agreement at any stage if it is not working.

The partnership is non-exclusive and, as such, if the Trust believes that using the SEP will not provide benefit to a project there is no requirement to use it.

### **Are all SEPs the same?**

No. SEPs are designed according to a Trust's specific set of requirements. In Whittington's case, the SEP is about planning the estate master plan and priority developments.

Private involvement exists across the NHS. Ryhurst SEP principles and values are still those of the NHS, which is one of the reasons Whittington chose Ryhurst as the SEP partner. Private skills fill gaps, offer additional value or provide resources and knowledge that might not be available in the NHS.

Stephen Collinson, Ryhurst Managing Director says:

“Our job is to help the Trust Board provide a sustainable future for Whittington Health, whilst maintaining the principles and values that are core to the NHS. We are committed to working together to offer our skills, resources and experience to deliver improved quality and utilisation of the Trust’s estate, supporting the delivery of outstanding clinical services and improved patient experience.”

## **Why did the Trust’s previous Chief Executive, Simon Pleydell leave shortly before the announcement of the SEP?**

Simon Pleydell announced his retirement on 5th June 2017. Below is a quote from Simon at the time of his retirement:

### **Simon Pleydell, Chief Executive of Whittington Health said:**

“I arrived at Whittington Health in April 2014 to provide leadership of the trust whilst the new chief executive and leadership team was appointed. This was supposed to be for a limited time, a matter of a number of months.

I decided to stay on permanently because I was impressed by the values and dedication of the staff, the tremendous potential and challenge of making further steps in terms of the delivery of integrated healthcare services and the importance of creating some badly needed leadership stability for colleagues in the trust.

However, after over 3 years of trying to split my life between working in London and my home and family in the north and also twenty years as a trust chief executive in the NHS, I have decided to step down from my leadership role at Whittington Health and return to my home in the north. Although this may be seen as retirement, I have a number of part time opportunities open to me in the NHS which I am looking forward to and will give me an improved balance to my life.

I will continue to give my role and the organisation my full energy and commitment until it is time to handover to the new chief executive, potentially in September.

My conviction about the importance of what we are trying to do for the communities in Islington and Haringey remains undiminished. It is now the right time for the organisation to pursue this endeavour with a leader who can see this through over the next strategic period.

Leading Whittington Health has been a great privilege. It has been a great opportunity to work with so many committed and hard-working colleagues and to participate in and support what is a very special and unique culture here at Whittington Health. I have been very proud to do so and thank all my colleagues for their help in all that we have achieved over the last 3 years.”

### **Jim Mackey Chief Executive at NHS Improvement said:**

“I’ve known, and worked alongside Simon in various guises, over many years. Throughout this time, Simon has been nothing short of an outstanding, professional and honourable colleague, and NHS leader. He epitomises NHS values every day, and understands how clinical minds and services work, as well as anyone I have ever worked with.

He is one of those leaders who cares deeply about his staff, and the patients they look after, along with that organisation’s role in the locality.

He will be greatly missed, but like all good NHS people, I am sure he will continue to contribute to and shape the NHS in some form or another. I wish him a long, happy, healthy (and busy) retirement."

### **What are the Health and Safety assurances for any future development projects undertaken at Whittington?**

As part of any future tender process, bidders will be required to submit a Health and Safety Policy alongside an ISO 18001 certificate which evidences an appropriate Occupational Health and Safety Management system that complies with BS OHSAS 18001:2007.

### **Who is eligible to submit construction project tenders?**

Any qualifying organisation can submit a tender for redevelopment works. Qualifying organisations are those that can provide evidence of involvement in similar projects, appropriate financial status, relevant insurances, policies and examples of good practice in areas such as Health and Safety, Environmental, Human Resources, Data Protection and Quality. Each procurement exercise will also have specific clinical quality and safety criteria.

### **How will Ryhurst make a return?**

The Trust will only spend funds on Ryhurst that it would spend anyway as part of its redevelopment.

The Trust will pay Ryhurst a fee for a specific piece of planning work. Ryhurst will receive fee payment when the project is successfully delivered. To guarantee value for money, and to prevent escalating costs, the Trust can negotiate an upfront payment cap for project management costs.

If the Trust is procuring a project, and Ryhurst helps the Trust to reduce the cost that any future provider may charge, the Trust may agree to sharing the savings identified with Ryhurst.

The Board has ensured that we are not entering any financial mechanism that may not prove value for money in the future.

### **What happens if Ryhurst or its parent company Rydon go out of business during the contract term?**

The details of the contract are commercially confidential. However, the Trust did undertake the necessary due diligence that would be expected in such contracts. The contract will be awarded following approval by the Trust's regulator, NHSI.

### **What was Rydon's involvement at the Chalcot estate in Camden?**

<http://www.rydon.co.uk/what-we-do/refurbishment/case-studies/refurbishment-case-studies/the-chalcots>