



## NMH Co-location Project - Frequently Asked Questions

*This document answers the most common questions people have been asking about the move of our National Maternity Hospital to St Vincent's Elm Park campus.*

*There are three main elements to the move – we need a company to operate the hospital, we need the right to occupy the new building and we need complete assurance that we have decision making power in relation to delivering all lawful medical procedures without outside interference.*

*We have therefore divided this FAQ sheet it into the following main topics:*

- I. General Context
- II. The new NMH operating company - who is going to control it?
- III. The land and new hospital building, who will own it and why does that matter?
- IV. Could there be any religious interference in delivery of health services in the new hospital?

### I. GENERAL CONTEXT

#### 1. Why is the new hospital needed?

It is needed because the existing hospital is no longer fit for purpose. Buildings of this vintage were never designed to provide modern healthcare and the new building design is world class.

#### 2. Is the current hospital dangerous?

No, it is not dangerous, but it is dated and it limits our ability to provide care to the modern standards we aspire.

#### 3. Why is co-location important?

Co-location with a Level 4 Hospital like St Vincent's gives the best opportunity of providing the highest and safest standards of care. This is universally regarded as best practice and one of the key reasons why the Elm Park site makes sense.

#### 4. What do you mean when you claim there is misinformation?

Concerns that the new maternity hospital will be curtailed by any religious ethos are inaccurate. The NMH currently has no constraints on the procedures it offers patients, and that this will continue when the hospital moves

#### 5. Why have the legal documents underpinning the arrangements only just been published?

The Department of Health, the Health Service Executive (HSE) St. Vincent's Healthcare Group and the NMH, together with their legal teams, have been working together to develop a set of legal documents that meet the requirements of delivering this multi-faceted venture in a way that safeguards the clinical and operational independence of the new maternity hospital.

These legal documents were approved in principle by the HSE board on 25 April 2022. The documents were published the following week on 4 May 2022.



## II. THE NEW NMH COMPANY

### 6. Why are people so concerned about who owns the new NMH company: the NMH at Elm Park DAC?

People are worried that whoever owns the new NMH company will be able to decide what happens in that company, including the types of healthcare services it will be able to deliver. There are concerns that a religious ethos could be exerted because of the structure used. These concerns are misplaced. The structure of this company has been specifically designed to operate a hospital that has complete operational and clinical independence, safeguarded by the Minister for Health. This is explained further at question 10.

### 7. Does it actually matter who owns the company?

No, because in this company, which will be a registered charity, the owners do not have the control. The directors have control over what happens in the new NMH company. The usual powers of a shareholder/owner are not given to the shareholders here because this is a charitable hospital, not a commercial private company.

Commentators who are referring to the new NMH company as a “private company” risk giving the impression that the new NMH company is not under State control. This is not the case. The new NMH is subject to all of the controls outlined in this document. This is explained further at question 16.

### 8. Who are the owners anyway?

Vincent’s hospital will have 99 ordinary shares. The other share will be held by the Minister for Health as a “Golden Share”.

### 9. Do Vincent’s have more power than the Minister for Health then?

No, it is not the number of shares that matters, it is the rights and powers that the different types of share have. The Minister’s Golden Share gives him a significant veto power and is therefore just as important as the 99 ordinary shares. It has more power with respect to ethics than all of the other shares combined.

### 10. What does a Golden Share do?

It is a type of company ownership. This is important because it means the Minister for Health is part owner of the Company on behalf of the State. The power of the Golden Share is that it enables the Minister to protect the company’s Reserved Powers and ensure that ***any maternity, gynaecological, obstetrics and/or neonatal services which are lawfully available in the State shall be available in the New NMH.*** This is a direct quote from the constitution of the company (5.3).

### 11. What’s a Reserved Power?

The powers given to the directors of the new NMH company to control the company are called its reserved powers. The company constitution is crystal clear that these powers are “reserved” to the company only (not to Vincent’s or to anybody else). The reserved powers enable the directors to govern and control the new NMH company

### 12. But what do these Reserved Powers actually say?



They are at pages 3 and 4 of the constitution. In summary they say that in furtherance of the company's principal object, the reserved powers are powers to:

- Operate the new hospital without religious ethos;
- Provide medical services without religious ethos;
- Control the hospital's finances;
- Agree the hospital's HSE contract for funding;
- Retain the mastership model that we have currently in Holles St;
- Have sole and exclusive protected use of the new maternity hospital building.

**13. So, it is the company directors and not Vincent's that will control the new NMH company then?**

Yes. This is how the company has been set up – to protect its independence under the governance of a board and with the Minister exercising his Golden Share so it can deliver all maternity, gynaecological, obstetrics and neonatal services which are lawfully available in the State.

**14. It sounds like they'll have a lot of power, who are the new company's directors going to be?**

There will be nine directors, who will be nominated in equal numbers by NMH Holles St, Vincent's and the Minister for Health. In this way, the composition of the Board reflects that the new company is a collaboration between NMH, Vincent's, and the Department of Health. The Master of the hospital will be one of the directors. The other eight directors will all be skilled volunteers selected on the basis of agreed competencies. They will be legally required to act in the best interests of the new NMH and not any other company or purpose.

**15. But could Vincent's alter the NMH company's constitution and get control that way?**

No, because the constitution cannot be changed without the unanimous approval of every single director and the consent of the Minister for Health.

**16. What's your response to those who think there shouldn't be directors or a company at all – but that the State should directly operate the new hospital with no involvement from Vincent's or anyone else?**

This would mean that the NMH would become a HSE hospital. Some people think all hospitals should be HSE hospitals. NMH Holles Street has never been a HSE hospital. It is a different type of hospital, called a public voluntary hospital.

Public voluntary hospitals have been providing healthcare in Ireland for centuries. Currently, all three Dublin maternity hospitals are voluntary bodies, as are the Mater and St Vincent's and many others. Rather than being State-owned, these hospitals are run by their boards and provide public healthcare services under service level agreements entered into with the HSE.

To be clear, the State still has a lot of control over these public voluntary hospitals. There is an onerous contract entered into every year and the State (via the HSE) imposes very strict rules in the areas of finance, governance and operations. Functionally, patients do not experience any difference in their day-to-day treatments, but the presence of a dedicated board of directors whose only job is to serve their individual hospital, is seen as a very positive thing by the hospitals. The directors are volunteers and aren't paid for sitting on the board.



## **17. What about Vincent's itself? Is it still owned by the Religious Sisters of Charity?**

No. All of the shares in Vincent's are owned by a standard Irish company called St. Vincent's Holdings (SVH). It is not owned or run by any religious order. It has no Catholic ethos.

## **18. Why is the structure so complicated? This has worried people as it is difficult to understand.**

We are really familiar with and comfortable with the structure because this project has been so long coming. The apparent complexity is unfortunately necessary because the co-location involves a number of stakeholders. We have worked really hard to make sure that the collaborative and participative nature of this project is reflected across all the documents. We are really happy that this is the case, but it has made the documents more complex. The three stakeholders are:

- St Vincent's, as the owners and operators of the St Vincent's Campus
- NMH at Holles Street, the owners and operators of the National Maternity Hospital
- the State, as the provider of a majority of the funding for the construction of the new Hospital.

Each of the stakeholders is contributing to this new Hospital. Accordingly, the outcome reflects a collaborative solution which emerged from three mediation processes and Ministerial interventions.

## **19. Will all clinical procedures legal in Ireland be available?**

Yes. All obstetric, neonatal and gynaecological care permissible within Irish law will be available, including abortion, tubal ligation, gender affirming surgery and assisted reproduction.

All of these services are currently available in NMH at Holles Street and the constitution of the new NMH company guarantees that all of these services will continue to be available in the new hospital, without religious or ethnic or other distinction or ethos. The constitution states expressly and is abundantly clear on this point and outlines the role of the Minister for Health in safeguarding this.

## **20. Why do the documents speak to the subjective issue of making available procedures that are “clinically appropriate”, does that not give scope for a Doctor not to offer some legally permitted procedures?**

The legal documents state that the new maternity hospital will provide “all clinically appropriate and legally permissible healthcare services, including research, by a maternity, gynaecology, obstetrics and neonatal hospital, and a range of related health services in the community”.

Therefore, put in context, this wording provides that the new NMH will deliver all legally-permissible services that are clinically appropriate for a maternity hospital. This wording serves as future-proofing, to ensure that the new maternity hospital cannot be converted into any other type of hospital down the line. It guarantees that the new NMH will remain, throughout its lifespan, as a maternity, gynaecology, obstetrics and neonatal hospital, and in this way, this significant investment into world-class maternity care in Ireland is protected.

### **III. THE LAND AND THE HOSPITAL BUILDING**

#### **21. Who owns the lands at St Vincent's now?**



St. Vincent's Healthcare Group, the formal name for the Vincent's company, which is a registered charity with no involvement of any religious entity, currently owns the Campus which includes the site on which the new hospital facility is to be built.

## **22. Who will own the new hospital facility when it is built?**

The HSE will have effective ownership of the land and the new hospital facility pursuant to a long leasehold interest granted by St. Vincent's to the HSE for 299 years.

Some commentators are maintaining that the NMH hospital building will not be owned by the State. This is incorrect. The land and building are the subject of a 299 year transfer of leasehold ownership to the State. It is therefore inaccurate to say that building will not be owned by the State.

We understand that the lease will outlive the building.

## **23. Why is a long leasehold considered to be effective ownership?**

Long leasehold ownership – quite different from short term occupational leases – are a tried and tested legal ownership structure for centuries for land, and in more recent decades, multi-occupied buildings such as shopping centres, industrial parks (such as IDA Ireland's business and technology parks), university campuses, apartment blocks and hospitals.

Also called "ground" or "building" leases, the valuable interest is the leasehold interest, not the freehold interest.

Long leaseholds have covenants in them. This has been portrayed as a negative. We don't agree. The covenants regulate matters such as access, repair and the provision of shared utility services, as opposed to the medical operations to take place at the property.

A lease must have a duration and a rent. Very long lease terms of usually over 100 years (or the life span of a building) and minimal/nominal rents such as €10 (instead of real market value) underline the fact that the long leasehold gives effective ownership or freehold equivalent.

## **24. Could the land ownership structure allow religious interference at the new maternity hospital?**

No. The lease does not impact how the new NMH company behaves as a company. The company's behaviour is regulated by its company rules, set out in its constitution.

The lease cannot impact how clinicians in NMH make decisions and carry out their duties.

The lease to the HSE is a property document. It gives the necessary legal property rights for both the HSE and the new NMH DAC to provide the same services at the new maternity hospital as are currently provided at the existing Holles Street hospital.

The property documents only regulate property rights such as access, repair and the provision of shared utility services, as opposed to the medical operations to take place at the property.

## **25. Wouldn't it be better for all concerned for the State to own the freehold in the land and buildings?**



No, for the reasons set out above and below.

Where the new hospital facility will:

- physically adjoin existing buildings on the Elm Park Campus;
- contain an area to be used exclusively by St. Vincent's Healthcare Group (separate and apart from the area to be used exclusively by the new NMH DAC for the maternity hospital); and
- house critical shared property infrastructure to benefit all three stakeholders;

the transfer of the freehold in the land and buildings to any party would be neither legally appropriate nor practically workable.

The proposed legal structure is a well-established and sufficiently legally robust structure to protect the interests of both the State and the new NMH DAC.

## **26. What about the risk that the rent will rise from €10 per year to €850,000 per year?**

Concerns that the rent could rise from €10 per year to €850,000 per year are misplaced. The measure is there to ensure that the facility continues to be used for its agreed purposes as a dedicated maternity facility.

The rent can only increase to €850,000 per year if the HSE:

- no longer continues to own the leasehold interest;
- no longer uses the property for delivery of the healthcare services; or
- attempts to acquire the freehold interest.

It is entirely more normal for a suite of lease documentation to contain a reference to market rent but abate or discount that rent as happens here. Suggestions that this measure is designed to ensure Vincent's exerts special leverage over the NMH are wrong.

In the appendix, we have explained the reasons for each of the circumstances that could cause this rent increase.

## **27. Can Vincent's terminate the lease?**

St. Vincent's can terminate the lease in extremely limited circumstances if the HSE:

- no longer continues to own the leasehold interest;
- no longer uses the property for the permitted use under the lease;
- attempts to acquire the freehold interest;
- has not commenced construction of new hospital facility in accordance with the lease;  
or
- is subject to certain insolvency scenarios.

It is extremely uncommon for a long lease (in a shopping centre, industrial park, university campus and apartment block) not to contain a termination clause. These clauses exist only as a staple of a lease and are rarely if ever successfully invoked in practice as the law and



the Courts will always recognise that the long leasehold interest is the valuable interest and represents effective ownership.

#### **IV. COULD THERE BE ANY RELIGIOUS INTERFERENCE IN DELIVERY OF HEALTH SERVICES IN THE NEW HOSPITAL?**

##### **28. Is SVH a Catholic company?**

No. It is not owned or run by any religious order.

The new NMH company is not a Catholic company either. Its purpose is to deliver world-class maternity care, without religious ethos or ethnic or other distinction.

##### **29. Have the directors of SVH signed up to the values of Mary Aikenhead and committed to uphold catholic values?**

The constitution of St. Vincent's Holdings (SVH) – the new charitable company at the top of the Vincent's structure - contains no reference to Mary Aikenhead or any commitment to uphold Catholic values. The SVH constitution does state that the company will be true to its core values of human dignity, compassion, justice, quality, and advocacy.

The constitution of St. Vincent's Healthcare Group (SVHG) – which operates Vincent's hospital – makes reference to the fact that Vincent's hospital was originally founded by Mary Aikenhead in 1834 as part of a mission to provide service to the poor. It says that, in continuation of that mission, SVHG will strive to be true to its core values of human dignity, compassion, justice, quality, and advocacy.

The directors of the new NMH company are legally obliged to fulfil the objectives of the new NMH company. The constitution of the new NMH company makes no reference to Mary Aikenhead or any principles to which she may have committed herself.

Insofar as the historical values of the Sisters are replicated in any Vincent's document, they cannot infiltrate the governance of the new NMH company which is an independent, distinct and separately controlled entity. Some commentators may take the view that these values are influenced by a Catholic ethos. Again, while this issue is not relevant to the governance of the new NMH company, we note that, these are also core values of medical care. Either way, these values have no bearing on the operation and governance of the new maternity hospital, because the hospital will be independently and distinctly controlled by its own independent and distinct board of directors.

As explained above, the directors of the new NMH company will be legally required to act in the best interests of the new NMH and not any other company or purpose. Furthermore, the State, via the Minister for Health, is empowered with a Golden Share veto to ensure that any maternity, gynaecological, obstetrics and/or neonatal services which are lawfully available in the State shall be available in the New NMH.

##### **30. Is SVH a Vatican-approved company?**

No. A point to remember is that even if (which is not the case) there were Vatican influence on SVH, that cannot permeate into the new NMH company. The Roman Catholic Church and the Vatican will have absolutely no influence or control over the company that will run the new NMH.



**31. One commentator has referred to SVH being obliged to retain a Catholic ethos “on foot of Vatican directive”. Is that true?**

No. This claim is false. There is no Vatican directive. There was a Vatican permission, given to the Religious Sisters of Charity, allowing them to give away their shares in SVH. That request for permission was granted. That permission does not say anywhere that a Catholic ethos must be maintained.

**32. One commentator has referred to other transfers of hospitals or schools by religious congregations, where there was an obligation to retain a Catholic ethos. Why is this transfer any different?**

Some organisations may have decided that retaining an ongoing Catholic ethos was appropriate in their context. It is possible to make a transfer mandating that a Catholic ethos is carried forward after the transfer. It is also possible to make a transfer without mandating that a Catholic ethos be retained. The Religious Sisters of Charity have not mandated that a Catholic ethos be retained.

**APPENDIX - EXPLANATION OF RENT CLAUSES IN THE LEASE**

NO.	LEASE CLAUSE	MEANING	BECAUSE
1	<b>4(a)</b> <i>“the Tenant (or another State Authority with primary responsibility for the funding of Public Hospitals and the provision of public healthcare facilities) remains the tenant under the Lease;”</i>	The HSE must not sell or otherwise transfer its ownership interest under the long lease to any other entity.	This is a special arrangement by St. Vincent's in favour of the HSE and not any other party.  A reorganisation of the HSE is permitted provided the new party is a State body with primary responsibility for the funding of public hospitals and healthcare facilities (HSE equivalent).
2	<b>4(b)</b> <i>“the Lease is not assigned without the consent of the Landlord;”</i>	As above.	As above.  The HSE can give its ownership interest under the long lease to another party if St. Vincent's consents because it is satisfied that the new party can operate the new national maternity hospital.



NO.	LEASE CLAUSE	MEANING	BECAUSE
3	<b>4(c)</b> <i>"there is no change to the Permitted Use without the consent of the Landlord;"</i>	<p>The HSE must ensure that the new national maternity hospital is always used for the main objective of the new NMH company:</p> <p><i>"a public hospital primarily for the provision of all clinically appropriate and legally permissible healthcare services, including research, by a maternity, gynaecology, obstetrics and neonatal hospital, and a range of related health services in the community and any other public healthcare service or services"</i></p>	<p>N/A</p> <p>St. Vincent's, the HSE and the new NMH company will always be aligned on the matter of use.</p> <p>All parties are in agreement with the main objective of the new NMH company.</p>



NO.	LEASE CLAUSE	MEANING	BECAUSE
4	<b>4(d)</b> <i>"the Premises is actively used, throughout the Premises, for the provision of public health services save for any reasonable period of non-use due to repair reinstatement or other bona fide reason that means the Premises cannot be used temporarily for the Permitted Use,"</i>	As stated.	As stated.
5	<b>4(e)</b> <i>"the Tenant does not abandon use of a substantial part or all of the Premises;"</i>	As stated.	As stated.
6	<b>4(f)</b> <i>"the Tenant does not exercise a right pursuant to the Landlord and Tenant Acts to (i) extend the term of the Lease (ii) acquire a reversionary lease or (iii) seek to acquire the Landlords interest"</i>	The HSE must not assert any legal rights it may have to either extend the lease after the expiry of the term of 299 years or obtain St. Vincent's freehold interest.	That is the deal and the policy and strategic decisions made between St. Vincent's and the HSE.  This provision does not prevent any party from making an application for a compulsory purchase order or advancing vesting legislation at any time in the future.