

3 March 2009
The Council of Governors
c/o The Trust Secretary,
Mid Staffordshire NHS Foundation Trust
Stafford Hospital
Weston Road
Stafford
ST16 3SA

Mid Staffordshire NHS Foundation Trust (the Trust): intervention by Monitor under section 52 of the National Health Service Act 2006 (the 2006 Act)

You will be aware that publication by the Healthcare Commission of its report following its investigation at the Trust is imminent. The investigation was statutory (conducted under section 52 of the Health and Social Care (Community Health and Standards) Act 2003) and was prompted by apparently high rates of mortality for emergency admissions and concerns over poor nursing care at the Trust.

During the investigation, the Healthcare Commission provided early feedback to the Trust in relation to the concerns identified. The Trust has since seen (and has commented on) drafts of the report and is on notice, therefore, of the seriousness and extent of the Healthcare Commission's probable findings. Monitor has also seen these drafts and, accordingly, is similarly aware of the likely conclusions of the Commission as to inadequacies in aspects of the quality of clinical and nursing care at the Trust, alongside broader governance and senior management failings. We believe that the Healthcare Commission may recommend that Monitor takes special measures, but this remains to be confirmed.

Yesterday afternoon, Monitor was notified of the intention of the Trust's Chair to resign her position immediately, and received notification by the Trust's Chief Executive of his intention to step down imminently. I understand that these matters are on the agenda for the annual governors' meeting today at 1.30pm.

The combined significance of these events and their immediate potential for very serious and damaging impact both on patient care and on the Trust's stability and reputation is clear. Local lobbying groups have made their concerns well known, and it is no exaggeration to say that the Trust is already facing a crisis of public confidence. This is why as Executive Chairman of Monitor, the Independent Regulator of the Trust as a foundation trust, I am writing directly to you in advance of your public meeting today. It is essential that I explain the regulatory action my Board of Directors has decided upon this morning at its specially convened, emergency meeting to ensure that the situation at the Trust is urgently stabilised and that any detriment to patient care is minimised. This letter should be made available to all governors, and to all other attendees at the meeting. I am also copying this letter to the Trust's directors to ensure that they too are fully briefed.

You will know that, as the regulator, Monitor has the statutory power to remove any or all of a trust's board of directors, including any or all of the non-executives, and to appoint interim directors in their place. This power is only to be exercised by Monitor where particular and serious circumstances exist: the trust must be failing to comply with a condition of its authorisation as a foundation trust, and the failure or failures must be considered by Monitor as "significant". Alternatively, the trust must have failed to comply with a condition of its authorisation, and is considered by Monitor as likely to do so again. The past failure must have been significant, and the likely repeat failure must also be significant. In both cases, Monitor has the discretion to act. It does not have to do so, and must decide whether intervening is lawful and will serve a proper purpose.

Throughout the extended period of the Healthcare Commission's investigation at the Trust, Monitor has been very careful to remain fully up to date with all issues and developments, and has held a series of meetings with all parties concerned. Monitor accepts that the Healthcare Commission has not yet published its final report and that, in consequence, the Trust has not formally responded. Further, we have yet to see the final independent report of PricewaterhouseCoopers (PwC) commissioned by the Trust, which reviews progress made by the Trust in addressing the concerns which the Healthcare Commission highlighted during the investigation. Again, we have been briefed by PwC as to their main findings. To the extent these demonstrate progress made by the Trust to remedy identified failings, we will continue to encourage the Trust to maintain momentum in this significant respect. Notwithstanding this, as a result of ensuring we have remained fully briefed on the critical evidence and in light of the timing and probable impact of the immediate resignation of the Chair and expected

departure of the Chief Executive, my Board decided that it was in a position to decide upon its appropriate regulatory response.

At its meeting earlier today, my Board determined that, under section 52(1)(a) of the 2006 Act, the Trust is in significant breach of two conditions of its authorisation and that discretionary intervention was required. My directors noted that the inevitable vacuum created by the immediate resignation of the Chair and expected departure of the Chief Executive, and the current Deputy Chair vacancy, was all the more serious given the context of the imminent report from the Healthcare Commission. Further, in such circumstances, it would be very unlikely that the Trust could make credible succession arrangements, interim or otherwise, within an acceptable timeframe. Accordingly, in light of those notifications, the Trust is in breach of condition 5(1) of its authorisation. This condition requires the Trust to have appropriate arrangements to provide comprehensive governance (in accordance with the relevant legislation) to maintain the organisational capacity necessary to provide mandatory healthcare goods and services for its patients. Put more simply, without the key and senior personnel in place to provide the necessary strategic and operational leadership and decision-making, there is a significant and unacceptable risk to the Trust's ability to deliver patient care to the required standards. As such, the Trust would also not be compliant with its general duty under condition 2 of its authorisation to exercise its functions effectively and efficiently.

Accordingly, my Board concluded that immediate statutory intervention is necessary to stabilise the position at the Trust and protect patient care. By formal notice under section 52(4) of the 2006 Act, Monitor has appointed with immediate effect David Stone (who is currently Chair of Sheffield Teaching NHS Foundation Trust) as Interim Chair of the Trust, for such period or periods, and on such terms with respect to remuneration and allowances, as Monitor may direct. In addition, under section 52(3) of the 2006 Act, my Board requires the Trust to appoint as Interim Chief Executive such person as Monitor may direct, for such period or periods, and on such terms with respect to remuneration and allowances as Monitor may further direct.

The governors will know that, by law, they have the power to appoint or remove the chair and the other non-executive directors. This power and that of Monitor to intervene at its discretion where there is a significant breach of the Trust's authorisation do not, however, conflict. It is essential for the governors to appreciate that, where justified by the evidence and the circumstances, Monitor will move very swiftly to use its regulatory powers to arrest failure, protect patient care and ensure the Trust returns to a stable and well governed position from which it may properly discharge its range of healthcare duties. Monitor may only use its formal powers in the circumstances outlined above and any appointments made in consequence are interim only. We will determine what interim term is appropriate in the context of the failings and in our discretion.

However, once the Trust is no longer in significant breach of its authorisation, and has remedied as we may require any associated failings, the task of making permanent non-executive appointments reverts to the governors to be exercised in the usual way and taking account of best practice, such as Monitor's *Code of Governance*. That said, given the context of the Trust's failings, Monitor may decide to have some defined involvement with the Governors in such permanent appointments.

The Trust must recognise the specific focus of Monitor's statutory intervention at this stage, and that this focus may shift as events unfold, particularly with the publication of final findings by the Healthcare Commission and PwC, and of the Trust's formal response.

Finally, the Trust should be aware that Monitor is obliged by law to make public the fact of this statutory intervention: the requisite notice under section 52 of the 2006 Act will be on Monitor's website today, together with a copy of this letter.

Any questions should go to Edward Lavelle, Regulatory Operations Director (direct line: 020 7340 2492).

Yours sincerely

William Moyes
Executive Chairman

Direct Line: 020 7340 2424

Cc Trust's Board of Directors