

4 August 2008

Brian Joakim  
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The logo for Monitor, featuring the word "Monitor" in a sans-serif font with a blue arc above the "o".

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MARS ID: RNHRD

Dear Brian

**National Health Service Act 2006 (the Act): exercise of section 52  
intervention powers**

I am writing further to our meeting on 23 July, to the Executive Chairman's letter of 25 July, to your response of 31 July, and to Monitor's Board meetings of 30 July and 1 August.

In summary, the Monitor Board has decided to exercise its formal powers of intervention under section 52 of the Act. The formal statutory Notice is attached. The terms of the Notice are in accordance with the recommendations of the Executive Chairman to his Board, as previously outlined to the Trust.

Following our recent meeting and other communications, you are aware that the Trust's failings in financial control and resulting financial performance are of serious regulatory concern to Monitor. Reflecting carefully upon all available information, including your said letter of 31 July, Monitor's Board decided at its meeting on 1 August that the failings amount to a significant breach of the Trust's terms of Authorisation. In particular, the Board resolved that there is a significant breach of Condition 2 which imposes upon the Trust the general duty to exercise its functions effectively, efficiently and economically.

In light of the significant failure by the Trust to comply with its Authorisation, the Monitor Board decided to exercise its discretion and formally require the Trust to undertake specific actions, as set out in the Notice, to Monitor's satisfaction in a controlled and timely manner. These actions are to ensure that the provision of mandatory services by the Trust is secured.

With regard to the financial performance failings, based on financial information submitted to Monitor by the Trust, the presentation by the Trust's Finance Director at our meeting on 23 July and subsequent discussion at the meeting, and the ISA 260 06/07 and 07/08 reports by the Trust's external auditors, Monitor's Board concluded that:

- there have been severe failings in financial management and control which have resulted in a requirement for a restatement of the Trust's accounts for 2006/07, reflecting an increase in losses from £40k to £650k, and further significant operating losses in 2007/08. These are detailed in the ISA reports. The Trust has as a result delivered financial losses over the period from April 2006 to March 2008, the full extent of which were not brought to the attention of the Trust Board or disclosed to Monitor until June 2008, following re-statement of the Trust's accounts by the external auditors;
- as a result of these failings, the Trust's Financial Risk Rating (FRR) has fallen to 1 in Q4 2007/08 (and would have been at that rating earlier had the true nature of the Trust's financial performance been known) representing the highest level of financial risk identified within the *Compliance Framework*; and
- without taking the required rectification actions, the Trust's liquidity position and cashflow over the next 12 months are uncertain and subject to significant risk. Our concerns include, but are not limited to, the build up over time of creditor balances (many of which are now significantly overdue), the continued erosion of cash balances through operating deficits and risks around the renewal of the Trust's current banking facilities.

This summary position was set out in our letter of 25 July. The Monitor Board noted that, in your response of 31 July, you state that our letter had been circulated to your Board and "*is an accurate reflection of the financial circumstances of the Trust*", and that the formal intervention which Monitor's Executive was minded to recommend to its Board "*is seen as an opportunity that will benefit the [Trust] Board in driving forward the recovery plan*".

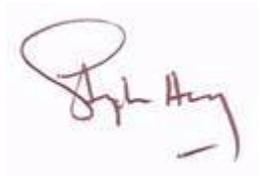
In reaching its decision to intervene formally, the Monitor Board took into account the fact that you and your non-executive colleagues are largely new to the role over the last six months, and that one non-executive is shortly to take up their position. Accordingly, you and your Board will not necessarily be cognisant of what action needs to be taken to address the severe financial risks facing the Trust in the legal and regulatory framework with which all NHS foundation trusts must comply. The Monitor Board also noted, however, your commitment both on your own behalf and that of your new non-executive colleagues to comply with Monitor's *Code of Governance*, and further your confidence both in the abilities of the Trust's new Finance Director and of those of the Trust to recover its position and develop strategically.

The enclosed Notice under section 52 of the Act should not be construed as providing any comment as to the capabilities and competencies, or otherwise, of the Trust's Board or the executive team, or of Monitor's confidence in them. Currently, Monitor has no concerns as to the quality of the clinical care provided by the Trust to its patients.

Formal intervention at this stage relates to matters of financial governance. In part, the aim of this formal intervention is to provide the opportunity for the Trust Board to formulate a strategy which is not dictated by immediate pressures. Intervention is a secure mechanism of ensuring that appropriate regulatory control is in place to assist in the maintenance of short-term stability, the successful recovery of the Trust and protection of the services it provides to patients. It is a matter for you, but it would seem important for you on behalf of your Board to reinforce this message to the Trust and its staff with clarity.

Please continue to liaise with Edward Lavelle, Regulatory Operations Director, in the first instance on this matter.

Yours sincerely

A handwritten signature in red ink, appearing to read "Stephen Hay", with a horizontal line underneath.

**Stephen Hay**

Chief Operating Officer

Enc. Notice dated 4 August 2008 under section 52 of the Act