EXPLANATORY MEMORANDUM TO

THE MID STAFFORDSHIRE NHS FOUNDATION TRUST (DISSOLUTION AND TRANSFER) ORDER 2014

2014 No. 2849

1. This explanatory memorandum has been prepared by Monitor and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order provides for the dissolution of Mid Staffordshire NHS Foundation Trust (MSFT) and the transfer of its property and liabilities, save for criminal liabilities, to the Secretary of State for Health. The Schedule referred to at Article 1(3) of the Order is available from Monitor or the Department of Health.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Order is the first to be made under section 65LA(3) of the National Health Service Act 2006 (the 2006 Act) and provides for the dissolution of MSFT on 1 November 2017 and the transfer of the trust's property and liabilities (except criminal liabilities) on 1 November 2014 – the reasons for this approach are set out in paragraph 4.7 below.

4.2 Chapter 5A of Part 2 of the National Health Service Act 2006 (the 2006 Act) enables Monitor to appoint Trust Special Administrators (TSAs) in relation to failing NHS foundation trusts. MSFT is the first NHS foundation trust to be placed into trust special administration.

4.3 The TSAs must prepare a draft report making recommendations to Monitor as to the action that Monitor should take in relation to the trust. The TSAs must then consult with the staff of the trust, commissioners of its services and any other person as directed by Monitor on the draft recommendations. Following the consultation, the TSAs submit a final report to Monitor, and Monitor must determine whether it is satisfied that the recommendations in the final report meet the objective of trust special administration. The Secretary of State has a right to veto the final report on certain limited grounds. During the period of administration the TSAs are responsible for ensuring that the trust continues to operate effectively, delivering quality healthcare promptly to its patients.

4.4 The TSAs may recommend that the trust is dissolved or alternatively that other action is taken to enable it to continue in existence and to come out of administration. Either way, the recommended solution must secure the continued provision of the essential services provided by the trust for the local population. Monitor and the Secretary of State must approve the TSAs' recommendation before it can be implemented.

4.5 The TSAs in this case submitted a draft report to Monitor which was laid before Parliament on 31 July 2013. Following consultation, the TSAs' final report was

submitted to Monitor and laid before Parliament on 18 December 2013. The draft report, consultation document and final report are available on Monitors at: https://www.gov.uk/government/groups/mid-staffordshire-nhs-foundation-trust.

4.6 The TSAs recommended the dissolution of MSFT and the transfer of staff, assets and liabilities to University Hospital North Staffordshire NHS Trust ("UHNS") and the Royal Wolverhampton NHS Trust ("RWT") respectively. Monitor, on being satisfied with the final recommendations, formally submitted them to the Secretary of State for consideration under section 65KB of the 2006 Act. The Secretary of State confirmed that he was satisfied and supported the action recommended by the TSA. The reasons for his decision and a written Ministerial statement were made in the House on 26th February 2014: https://www.gov.uk/government/speeches/mid-staffordshire-nhs-foundation-trust-special-administration.

4.7 The mechanism to give effect to the TSAs' recommendations is as follows. Monitor will use section 65LA to make a Dissolution and Transfer Order to transfer the property and liabilities of MSFT to the Secretary of State and dissolve the trust. In parallel, the Secretary of State will exercise powers at paragraph 9 of Schedule 4 to the 2006 Act to transfer the property and liabilities to UHNS and RWT respectively. Copies of the two draft Transfer Orders, which are not subject to any parliamentary procedure, are attached. Copies of the Transfer Orders which are expected to be signed in the week commencing 27 October 2014 will be available from: Department of Health, Room 2W41 Quarry House, Quarry Hill, Leeds LS2 7UE. Monitor's Order comes into force on 1 November 2014 and the Transfer Orders to be made by the Secretary of State will come into force immediately after. 1 November 2014, has been chosen, notwithstanding that it is a Saturday, because it is the beginning of the month, which simplifies the transfers (including the transfers to UHNS and RWT) from an administrative and accounting perspective. In addition, the weekend is typically a quieter period for hospitals and allows additional time to prepare for the first operational day after the weekend.

4.8 Section 65LA of the 2006 Act allows Monitor to transfer property and liabilities to a NHS foundation trust or to the Secretary of State, but not to an NHS trust. Criminal prosecutions might, if possible, continue to be investigated and brought against MSFT, and as it is not desirable that these have to lapse because no legal body is able to take on these criminal liabilities; this Order provides for dissolution to take effect on 1 November 2017. This is to allow criminal investigations and any criminal prosecutions to proceed to completion. Paragraphs 7.4 to 7.7 set out the policy background and rationale in further detail.

4.9 As a consequence of implementation of the TSAs' recommendations, UHNS intends to change its name to the University Hospitals of North Midlands NHS Trust. This change is to be effected by the North Staffordshire Hospital Centre National Health Service Trust (Change of Name) (Establishment) Amendment Order 2014 (S.I. 2014/ 2844). The Order has been made and will come into force on 2 November. It will be published on the legislation website on 27 October 2014.

5. Territorial Extent and Application

5.1 This Order applies to England.

6. European Convention on Human Rights

As this instrument is not subject to either the affirmative or the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 A central objective for all NHS providers is to ensure they deliver to patients high quality services that are clinically and financially sustainable for the long term. There have been longstanding, and much publicised, failings of care at MSFT, as noted in the Mid Staffordshire public inquiry (www.midstaffspublicinquiry.com). The quality of care improved greatly in recent years, but MSFT was not able to achieve these improvements without financial support above the national tariff which has had to be provided by the Department of Health.

7.2 MSFT was not able to find a solution to achieve financial balance, without the additional funding, whilst maintaining high quality services. In October 2012, Monitor therefore appointed a Contingency Planning Team ('CPT') to MSFT to look at options for the future delivery of services. A report by the CPT to Monitor in January 2013 set out the CPT's conclusion that MSFT was neither financially nor clinically sustainable in its present form in the long term and it recommended that MSFT be placed into administration.

7.3 In April 2013, Monitor appointed three TSAs to MSFT. The TSAs' final report to Monitor in December 2013 recommended that MSFT should be dissolved as soon as practically possible and that UHNS and RWT should take over the running of the services provided from Stafford and Cannock Chase hospitals respectively. Further information about the precise clinical and managerial changes involved in the transfer of services from MSFT to UHNS and RWT can be found by accessing the UNHS website: www.itsourtimestaffordshire.co.uk

7.4 As noted in para 4.8, the criminal liabilities of MSFT cannot be transferred to the Secretary of State. They will instead remain with MSFT until its dissolution on 1 November 2017.

7.5 In February 2013, following the conclusion of the Mid Staffordshire public inquiry (www.midstaffspublicinquiry.com), the Secretary of State asked the police and Health & Safety Executive to carry out a review of historic cases to determine whether there were any that merited prosecution. This review is presently underway and is expected to conclude by January 2015. It is therefore possible that either the police or the Health & Safety Executive will want to initiate criminal prosecutions against MSFT.

7.6 Although section 65LA of the 2006 Act does allow for the transfer of criminal liabilities to another NHS foundation trust, in the present circumstances (where property and liabilities are to transfer to two NHS trusts) and given the particular history of the events at Stafford Hospital, both Monitor and the Department of Health agree that it would not be appropriate to transfer the criminal liabilities to another foundation trust. In this particular case it would be wrong for the board of another foundation trust to be criminally liable for events at Stafford Hospital it had absolutely no responsibility for. Any foundation trust taking MSFT's criminal liabilities could suffer reputational damage which could impact more widely on the trust. Further, the relatives of the victims may also feel that justice

has not been done if the HSE were to prosecute an FT with no connection to Stafford Hospital.

7.7 This matter has been given careful consideration by Monitor and the Department of Health, in light of the real possibility that criminal prosecutions might continue to be investigated and brought against MSFT. It is established Department of Health policy that these should not lapse because no legal body is able to take on these criminal liabilities. For these reasons, MSFT is not being dissolved on 1 November 2014, when the transfer of its property and liabilities takes place.

7.8 This Order provides for the dissolution of MSFT to take place on 1 November 2017, three years after the transfer of its property and non-criminal liabilities to the Secretary of State. The period of three years has been determined following consultation with the Health and Safety Executive, and is deemed to be an appropriate length of time to ensure that ongoing review of historic cases will not be prejudiced. Investigations and prosecutions can continue to be brought and lessons can be learnt and communicated to UHNS and RWT (who will have taken over the property, liabilities and staff of MSFT) and indeed the wider NHS if appropriate.

7.9 MSFT will remain in trust special administration until its dissolution in 2017 under the stewardship of at least one TSA and will continue to be regulated by Monitor. MSFT's board of directors and the council of governors, who were suspended on the first appointment of TSAs, will remain suspended until its dissolution in 2017. MSFT will cease to provide health care services on 31 October 2014. As part of their role the TSA will be required to take responsibility for handling MSFT's response to any criminal prosecutions or investigations. The TSA will be supported by a 'legacy management office' set up for MSFT and hosted by UHNS. The legacy management office will have access to, and/or be in control of, the relevant MSFT records that might be needed in the event of a criminal prosecution.

8. Consultation Outcome

8.1 The TSAs consulted widely on their recommendations for MSFT in 2013 as part of the statutory process of trust special administration. The outcome of that consultation is summarized in the TSAs' final report to Monitor. In implementing the recommendations the TSAs and other key national and local stakeholders (Monitor, DH, the NHS Trust Development Authority, UHNS and RWT) worked closely and consulted with local patients, clinicians and other staff and stakeholders to develop the transition plan to deliver the TSA clinical model. No further consultation will take place before making this Order.

9. Guidance

9.1 Monitor has published general guidance for TSAs of NHS foundation trusts and it is available from Monitor's website. (www.gov.uk/government/publications/trust-special-administrators-of-nhs-foundation-trusts-statutory-guide).

10. Impact

10.1 There will be a small ongoing cost to the public purse associated with MSFT for the period between 1 November 2014, the date of the transfer of its property and non-criminal liabilities, and the date of its dissolution on 1 November 2017. These costs will cover the continued need for a TSA (albeit with very limited duties), costs associated with dealing with criminal liabilities and the costs associated with fulfilling any residual legal requirements, for example, the preparation and filing of annual accounts. These costs are estimated to be £100,000 - £200,000 but will depend on the number of any criminal investigations or prosecutions.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Under section 144 of the Health and Social Care Act 2012, Monitor is required to conduct an annual review of trust special administrations in the preceding year.

13. Contact

Matt Hopper, Senior Enforcement Manager, at Monitor Tel: 020 3747 0000 or email: Matt.Hopper@Monitor.gov.uk can answer any queries regarding the instrument.

The Secretary of State for Health (Transfer of Property and Liabilities) to the University Hospital of North Staffordshire National Health Service Trust Order 2014

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 272(7) and (8) of, and paragraph 9 of Schedule 4 to, the National Health Service Act 2006 Act([1]).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Secretary of State for Health (Transfer of Property and Liabilities) to the University Hospital of North Staffordshire National Health Service Trust Order 2014 and comes into force immediately after the coming into force of the Mid Staffordshire Dissolution and Transfer Order([2]).

(2) In this Order—

"asset" means anything of value and includes property;

"Authority" means the National Health Service Trust Development Authority([3]);

"Mid Staffordshire Dissolution and Transfer Order" means the Mid Staffordshire NHS Foundation Trust (Dissolution and Transfer) Order 2014;

"Royal Wolverhampton NHS Trust Order" means the Secretary of State for Health (Transfer of Property and Liabilities) to The Royal Wolverhampton National Health Service Trust Order ([4]);

"Schedule" means Part A of the document entitled "Schedule of property and liabilities of Mid Staffordshire NHS Foundation Trust" dated and signed on 22nd October 2014 by the transferee, Mid Staffordshire NHS Foundation Trust and The Royal Wolverhampton NHS Trust([5]);

"transfer date" means 1st November 2014;

"Transferee" means the University Hospital of North Staffordshire National Health Services Trust([6]); and

"Transferor" means the Secretary of State for Health.

Transfer of property and liabilities

2.—(1) Subject to articles 4 and 5, on the transfer date, all the property including the trust property of the Transferor([7]) identified as property to transfer to the transferee in Parts 1 to 6 of the Schedule, is transferred to the Transferee.

([1]) 2006 c.41. Paragraph 9 of Schedule 4 to the National Health Service Act 2006 is amended by section 55 of, and Schedule 4 to, the Health and Social Care Act 2012 (c.7).

([2]) S.I. 2014/xxxxxx. The Mid Staffordshire NHS Foundation Trust (Dissolution and Transfer) Order 2014 comes into force on 1st November 2014.This Order makes provision to dissolve Mid Staffordshire NHS Foundation Trust (which was authorised as a Foundation Trust on 1st February 2008) on 1st November 2017 and for the transfer of its property and liabilities (excluding criminal liabilities) to the Secretary of State on 1st November 2014.

([3]) The National Health Service Trust Development Authority is established by the National Health Service Development Authority (Establishment and Constitution) Order 2012, S.I. 2012/901 as amended by S.I. 2013/235 and 2013/260.

([4]) The Secretary of State for Health (Transfer of Property and Liabilities) to the Royal Wolverhampton National Health Service Trust Order 2014 is signed on xxx.

([5]) A copy can be obtained from Department of Health, Room 2W41, Quarry House, Quarry Hill, Leeds LS2 7UE.

([6]) Established by S.I. 1992/2559, amended by S.I.1993/713 (which changed the trust name from the North Staffordshire Hospital Centre National Health Service Trust to the North Staffordshire Hospital National Health Service Trust), S.I. 2003/792 (which changed the trust name to the University Hospital of North Staffordshire Health Service Trust), S.I. 2009/3085, S.I. 2013/593 and S.I. 2014/XXX (which changes the name of the trust to University Hospitals of North Midlands Health Service Trust on 1st[t] November 2014).

([7]) See the Mid Staffordshire NHS Foundation Trust (Dissolution and Transfer) Order 2014 S.I. 2014/XXXX.

(2) Subject to articles 4 and 5, on the transfer date all the liabilities of the Transferor relating to the property identified under paragraph (1) are transferred to the Transferee.

Transfer of residual property and residual liabilities

3.—(1) Subject to articles 4 and 5, on the transfer date, any property and any liabilities of the transferor existing after the coming into force of the Mid Staffordshire Dissolution and Transfer Order and to which Mid Staffordshire NHS Foundation Trust was entitled or subject immediately before the transfer date, which were not transferred in accordance with—

(a) article 2; or

(b) article 2 and 3 of the Royal Wolverhampton NHS Trust Order;

are respectively transferred to the Transferee.

(2) In paragraph (1), the reference to property and liabilities includes and excludes the property and liabilities specified respectively in paragraphs (3) and (4).

(3) The specified property—

(a) includes the property relating to the provision of services formerly provided by Mid Staffordshire NHS Foundation Trust and identified as services to be provided on or after the transfer date by the Transferee as specified in Part 7 of the Schedule; and

(b) excludes the property relating to the provision of services formerly provided by Mid Staffordshire NHS Foundation Trust and identified as services to be provided on or after the transfer date by The Royal Wolverhampton NHS Trust([8]) and transferred to that trust in accordance with article 3 of the Royal Wolverhampton NHS Trust Order.

(4) The specified liabilities—

(a) include—

(i) actual or contingent liabilities; and

(ii) liabilities relating to the provision of services formerly provided by Mid Staffordshire NHS Foundation Trust and identified as services to be provided on or after the transfer date by the Transferee as specified in Part 7 of the Schedule; and

(b) exclude—

(i) liabilities relating to the provision of services formerly provided by Mid Staffordshire NHS Foundation Trust and identified as services to be provided on or after the transfer date by The Royal Wolverhampton NHS Trust and transferred to that trust in accordance with article 3 of the Royal Wolverhampton NHS Trust Order; and

(ii) criminal liabilities.

Third Parties

4. Insofar as this Order provides for the transfer—

(a) of land on lease from a third party; or

(b) of any other asset leased or hired from a third party or in which a third party has an interest,

the transfer is binding on the third party notwithstanding that apart from this article, it would have required the third party's consent or concurrence.

Apportionment of property and liabilities

5.Where the Schedule, either expressly or by implication, requires the apportionment of any property or liabilities, the property or liabilities are apportioned as specified in the Schedule.

([8]) Established by The Royal Wolverhampton Hospitals National Health Service Trust (Establishment) Order 1993 (S.I. 1993/2574), amended by S.I. 2009/ 3086, S.I. 2012/1837 (which changed the name of the trust to The Royal Wolverhampton National Health Service Trust) and S.I. 2013/593.

Compensation: land or assets leased or hired from a third party

6.—(1) Where any property apportioned in accordance with article 5 falls within paragraph 9(5) of Schedule 4 to the National Health Service Act 2006 and a third party has suffered a loss, the Authority may on application, supported by such evidence as the Authority may reasonably require, pay compensation to that third party equal to the amount of any loss which it is satisfied that the third party has suffered.

(2) In paragraph (1), "loss" means financial loss which is a direct and reasonably foreseeable consequence of the apportionment made in accordance with article 5, excluding any loss in respect of which there is a remedy against the Transferee.

Investigations by the Health Service Commissioner and the Care Quality Commission

7.—(1) A complaint made in relation to Mid Staffordshire NHS Foundation Trust under the Health Service Commissioners Act 1993 to the Health Service Commissioner([9]) whether made before, on or after the transfer date, may be investigated by the Commissioner, notwithstanding the Mid Staffordshire Dissolution and Transfer Order and this Order as if it had been made in relation to the Transferee.

(2) The Commissioner may send a copy of the report of the investigation referred to in paragraph (1) to the Transferee.

(3) A review or investigation in relation to the Mid Staffordshire NHS Foundation Trust by the Care Quality Commission([10]) whether commenced before, on or after the transfer date, may be conducted by the Care Quality Commission, notwithstanding the Mid Staffordshire Dissolution and Transfer Order and this Order, as if it had been or was to be conducted in relation to the Transferee.

(4) The Care Quality Commission may send a copy of the report of any review or investigation referred to in paragraph (3) to the Transferee.

Handling of complaints

8.—(1) This paragraph applies to a complaint made in accordance with the provisions of the National Health Service (Complaints) Regulations 2004([11]) ("the 2004 Regulations") or the Local Authority Social Services and the National Health Service complaints (England) Regulations 2009([12])("the 2004 Regulations") in relation to Mid Staffordshire NHS Foundation Trust, whether made before, on or after 1st April 2009.

(2) The Transferee must, in co-operation with The Royal Wolverhampton National Health Service Trust where appropriate, on or after the transfer date, handle any complaints to which paragraph (1) applies, in accordance with the 2004 Regulations or, as the case may be, the 2009 Regulations, as if the complaint has been made in relation to it.

Records, information

9.—(1) This paragraph applies only in relation to the transfer of any documents, data and records ("relevant property") effected by articles 2 and 3.

(2) The Transferee must allow access on reasonable notice to all relevant property to—

(a) Mid Staffordshire NHS Foundation Trust; or

(b) The Royal Wolverhampton National Health Service Trust,

for the purpose of inspecting such relevant property and to take or to be supplied with, and to use, copies of such relevant property.

([9]) 1993 c.46.The Health Service Commissioner is established by section 1. See also section 14 of the Health Service Commissioners Act 1993, relevant amendments are section 2 of, and Schedule 1 to, the Health Authorities Act 1995 (c.17), sections 3, 10 and 13 of, and Schedule 1 to, the Health Service Commissioners (Amendment) Act 1996 (c.5), section 147 of, and Schedule 9 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) and sections 55 and 201 of, and Schedule 5 to, the Health and Social Care Act 2012 (c.7).

([10]) Established by section 1 of the Health and Social Care Act 2008 (c.14).

([11]) S.I. 2004/1768, revoked with savings by S.I. 2009/309 as of 1st April 2009.

([12]) S.I. 2009/309, relevant amendments made by S.I 2009/1768 and S.I. 2013/235.

Provision for continuity in exercise of functions

10.—(1) This paragraph applies only in relation to the transfer of property and liabilities effected by articles 2 and 3.

(2) Anything done by or in relation to, and any application made by, or any authorisation or notice or direction given to or by, Mid Staffordshire NHS Foundation Trust before the transfer date is deemed to have been done by or in relation to or made by or given to or by the Transferee.

(3) Any instrument made by Mid Staffordshire NHS Foundation Trust before the transfer date continues in force in relation to the transferee until it is varied or revoked by the Transferee.

(4) Any form supplied by Mid Staffordshire NHS Foundation Trust, or any form supplied by the Secretary of State in relation to Mid Staffordshire NHS Foundation Trust before the transfer date, continues to be a valid form in relation to the transferee until it is cancelled or withdrawn by the Secretary of State or the Transferee, as if any reference contained in that form to Mid Staffordshire NHS Foundation Trust were a reference to the Transferee.

Signed by authority of the Secretary of State

Name
Member of the Senior Civil Service
Department of Health

Date

The Secretary of State for Health (Transfer of Property and Liabilities) to The Royal Wolverhampton National Health Service Trust Order 2014

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 272(7) and (8) of, and paragraph 9 of Schedule 4 to, the National Health Service Act 2006 Act(**13**).

Citation, commencement and interpretation

11.—(1) This Order may be cited as the Secretary of State for Health (Transfer of Property and Liabilities) to The Royal Wolverhampton National Health Service Trust Order 2014 and comes into force immediately after the coming into force of the Mid Staffordshire Dissolution and Transfer Order(**14**).

(2) In this Order—

"asset" means anything of value and includes property;

"Authority" means the National Health Service Trust Development Authority(**15**);

"Mid Staffordshire Dissolution and Transfer Order" means the Mid Staffordshire NHS Foundation Trust (Dissolution and Transfer) Order 2014;

"Schedule" means Part B of the document entitled "Schedule of property and liabilities of Mid Staffordshire NHS Foundation Trust" dated and signed on 22nd October 2014 by the transferee, Mid Staffordshire NHS Foundation Trust and University Hospital of North Staffordshire National Health Service Trust([16]);

"transfer date" means 1st November 2014;

"Transferee" means The Royal Wolverhampton National Health Service Trust(**17**);

"Transferor" means the Secretary of State for Health; and

"the University Hospital of North Staffordshire NHS Trust Order" means the Secretary of State for Health (Transfer of Property and Liabilities) to the University Hospital of North Staffordshire National Health Service Trust Order(**18**).

Transfer of property and liabilities

12.—(1) Subject to articles 4 and 5, on the transfer date, all the property including the trust property of the Transferor(**19**) identified as property to transfer to the transferee in Parts 1 to 6 of the Schedule, is transferred to the Transferee.

([13]) 2006 c.41. Paragraph 9 of Schedule 4 to the National Health Service Act 2006 is amended by section 55 of, and Schedule 4 to, the Health and Social Care Act 2012 (c.7).

([14]) S.I. 2014/xxxxxx. Article 3 of the Mid Staffordshire NHS Foundation Trust (Dissolution and Transfer) Order 2014 comes into force on 1st November 2014. This Order makes provision to dissolve Mid Staffordshire NHS Foundation Trust (which was authorised as a Foundation Trust on 1st February 2008) on 1st November 2017 and for the transfer of its property and liabilities (excluding criminal liabilities) to the Secretary of State on 1st November 2014.

([15]) The National Health Service Trust Development Authority is established by the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012, S.I. 2012/901, amended by S.I. 2013/235 and 2013/260.

([16]) A copy can be obtained from Department of Health, Room 2W41, Quarry House, Quarry Hill, Leeds LS2 7UE.

([17]) Established by S.I. 1993/2574, amended by S.I. 2009/3086, S.I. 2012/1837 (which changed the name of the trust to The Royal Wolverhampton National Health Service Trust) and S.I. 2013/593.

([18]) The Secretary of State for Health (Transfer of Property and Liabilities) to the University Hospital of North Staffordshire National Health Service Trust Order is signed on xxx

([19]) See the Mid Staffordshire Dissolution and Transfer Order 2014 S.I. 2014/XXXX.

(2) Subject to articles 4 and 5, on the transfer date all the liabilities of the Transferor relating to the property identified under paragraph (1) are transferred to the Transferee.

Transfer of residual property and residual liabilities

13.—(1) Subject to articles 4 and 5, on the transfer date, any property and any liabilities of the transferor existing after the coming into force of the Mid Staffordshire Dissolution and Transfer Order and—

(a) to which Mid Staffordshire NHS Foundation Trust was entitled or subject immediately before the transfer date; and

(b) which relate to the provision of services formerly provided by Mid Staffordshire NHS Foundation Trust and identified as services to be provided on or after the transfer date by the Transferee as specified in Part 7 of the Schedule,

are transferred to the Transferee.

(2) In paragraph (1), "liabilities"—

(a) includes actual or contingent liabilities; and

(b) excludes criminal liabilities.

Third Parties

14. Insofar as this Order provides for the transfer—

(a) of land on lease from a third party; or

(b) of any other asset leased or hired form a third party or in which a third party has an interest,

the transfer is binding on the third party notwithstanding that apart from this article, it would have required the third party's consent or concurrence.

Apportionment of property and liabilities

15. Where the Schedule, either expressly or by implication, requires the apportionment of any property or liabilities, the property or liabilities are apportioned as specified in the Schedule.

Compensation: land or assets leased or hired from a third party

16.—(1) Where any property apportioned in accordance with article 5 falls within paragraph 9(5) of Schedule 4 to the National Health Service Act 2006 and a third party has suffered a loss, the Authority may on application, supported by such evidence as the Authority may reasonably require, pay compensation to that third party equal to the amount of any loss which it is satisfied that the third party has suffered.

(2) In paragraph (1), "loss" means financial loss which is a direct and reasonably foreseeable consequence of the apportionment made in accordance with article 5, excluding any loss in respect of which there is a remedy against the Transferee.

Investigations by the Health Service Commissioner and the Care Quality Commission

17.—(1) A complaint made in relation to Mid Staffordshire NHS Foundation Trust under the Health Service Commissioners Act 1993 to the Health Service Commissioner(**20**) whether made before, on or after the transfer date, may be investigated by the Commissioner, notwithstanding the Mid Staffordshire Dissolution and Transfer Order and this Order as if it had been made in relation to the Transferee.

(2) The Commissioner may send a copy of the report of the investigation referred to in paragraph (1) to the Transferee.

(3) A review or investigation in relation to Mid Staffordshire NHS Foundation Trust by the Care Quality Commission(**21**) whether commenced before, on or after the transfer date, may be conducted by the Care

---

([20]) 1993 c.46. The Health Service Commissioner is established by section 1. See also section 14, relevant amendments are section 2 of, and Schedule 1 to, the Health Authorities Act 1995 (c.17), sections 3, 10 and 13 of, and Schedule 1 to, the Health Service Commissioners (Amendment) Act 1996 (c.5), section 147 of, and Schedule 9 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) and sections 55 and 201 of, and Schedule 5 to, the Health and Social Care Act 2012 (c.7).

([21]) Established by section 1 of the Health and Social Care Act 2008 (c.14).

Quality Commission, notwithstanding the Mid Staffordshire Dissolution and Transfer Order and this Order, as if it had been or was to be conducted in relation to the Transferee.

(4) The Care Quality Commission may send a copy of the report of any review or investigation referred to in paragraph (3) to the Transferee.

Handling of complaints

18.—(1) This paragraph applies to a complaint made in accordance with the provisions of the National Health Service (Complaints) Regulations 2004(**22**) ("the 2004 Regulations") or the Local Authority Social Services and the National Health Service Complaints (England) Regulations 2009(**23**)("the 2009 Regulations") in relation to Mid Staffordshire NHS Foundation Trust, whether made before, on or after 1st April 2009.

(2) The Transferee must, in cooperation with University Hospital of North Staffordshire NHS Trust where appropriate, on or after the transfer date, handle any complaints to which paragraph (1) applies, in accordance with the 2004 Regulations or, as the case may be, the 2009 Regulations, as if the complaint has been made in relation to it.

Records, information

19.—(1) This paragraph applies only in relation to the transfer of any documents, data and records ("relevant property") effected by articles 2 and 3.

(2) The Transferee must allow access on reasonable notice to all relevant property to—

(a) Mid Staffordshire NHS Foundation Trust; or

(b) University Hospital of North Staffordshire National Health Service Trust,

for the purpose of inspecting such relevant property and to take or to be supplied with, and to use, copies of such relevant property.

Provision for continuity in exercise of functions

20.—(1) This paragraph applies only in relation to the transfer of property and liabilities effected by articles 2 and 3.

(2) Anything done by or in relation to, and any application made by, or any authorisation or notice or direction given to or by, Mid Staffordshire NHS Foundation Trust before the transfer date is deemed to have been done by or in relation to or made by or given to or by the Transferee.

(3) Any instrument made by Mid Staffordshire NHS Foundation Trust before the transfer date continues in force in relation to the Transferee until it is varied or revoked by the Transferee.

(4) Any form supplied by Mid Staffordshire NHS Foundation Trust, or any form supplied by the Secretary of State in relation to Mid Staffordshire NHS Foundation Trust before the transfer date, continues to be a valid form in relation to the Transferee until it is cancelled or withdrawn by the Secretary of State or the Transferee, as if any reference contained in that form to Mid Staffordshire NHS Foundation Trust were a reference to the Transferee.

Signed by authority of the Secretary of State

Name
Member of the Senior Civil Service
Department of Health

Date

(22) S.I. 2004/1768, revoked with savings by S.I. 2009/309 as of 1st April 2009.

(23) S.I. 2009/309, relevant amendments made by S.I 2009/1768 and S.I. 2013/235.