
T R A N S F E R O R D E R

**The Pennine Acute Hospitals National Health Service Trust
(Transfer of Staff, Property, Services and Liabilities to Salford
Royal NHS Foundation Trust) Order 2021**

The Secretary of State for Health and Social Care makes the following Order in exercise of the powers conferred by section 272(7) and (8) of, and paragraph 29 of Schedule 4 to, the National Health Service Act 2006^(a).

The Pennine Acute Hospitals National Health Service Trust has completed the consultation with each relevant Local Healthwatch organisation and staff interests^(b).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Pennine Acute Hospitals National Health Service Trust (Transfer of Staff, Property, Services and Liabilities to Salford Royal NHS Foundation Trust) Order 2021 and comes into force on 1st October 2021.

(2) In this Order—

“the Manchester Transfer Order” means the Pennine Acute Hospitals National Health Service Trust (Transfer of Staff, Property and Liabilities to Manchester University NHS Foundation Trust) Order 2021^(c);

“asset” means anything of value and includes the property identified in article 3(1);

“the Schedule” means the document entitled “Schedule of property, services and liabilities transferring from the Pennine Acute Hospitals National Health Service Trust to Salford Royal NHS Foundation Trust” and signed by the transferor, the transferee, Manchester University NHS Foundation Trust and the National Health Service Trust Development Authority on the respective dates specified therein;

“the transferee” means Salford Royal NHS Foundation Trust^(d);

“the transferor” means the Pennine Acute Hospitals National Health Service Trust^(e);

“the transfer date” means 1st October 2021.

Transfer of staff

2.—(1) This paragraph applies in relation to any person who is—

- (a) employed by the transferor immediately before the transfer date; and
- (b) not transferred to the employment of the Manchester University NHS Foundation Trust by virtue of the Manchester Transfer Order.

(2) Any person to whom paragraph (1) applies is, on the transfer date, transferred to the employment of the transferee.

(a) 2006 c.41 (“the 2006 Act”). Paragraph 29 is amended by paragraph 22 of Schedule 4 to the Health and Social Care Act 2012 (c. 7).

(b) See paragraph 29(4) of Schedule 4 to the 2006 Act and regulation 3 of the NHS Trusts (Consultation on Establishment and Dissolution) Regulations 2010 (S.I. 2010/743).

(c) [insert web reference to where the Manchester Order may be located].

(d) Salford Royal NHS Foundation Trust was authorised on 1st August 2006.

(e) Established by S.I. 2002/308 and dissolved by S.I. 2021/1085.

(3) The contract of employment of a person whose employment transfers to the transferee under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) has effect on and after the transfer date as if originally made between that person and the transferee.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the transferor under, or in connection with, its contract of employment with a person transferred under paragraph (2), are transferred to the transferee on the transfer date; and
- (b) any act or omission before the transfer date of or in relation to the transferor, in respect of that person or that person's contract of employment, is deemed to have been an act or omission of or in relation to the transferee.

(5) Paragraphs (2) to (4) do not operate to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with that contract, if, before the transfer date, that person informs the transferee or the transferor that they object to becoming employed by the transferee.

(6) Where a person to whom paragraph (1) applies has objected as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with the transferor.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with paragraph (6) is not to be treated, for any purpose, as having been dismissed by the transferor.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have transferred under paragraph (2), that person may treat the contract of employment as having been terminated, and that person shall be treated for any purpose as having been dismissed by the employer.

(9) No damages are payable by the transferor as a result of a dismissal falling within paragraph (8) in respect of any failure by the transferor to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3) and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

Transfer of property and liabilities to transferee

3.—(1) On the transfer date, all the property of the transferor, identified as property to transfer to the transferee in the Schedule, is transferred to the transferee.

(2) On the transfer date all liabilities of the transferor relating to—

- (a) the property identified in paragraph (1);
- (b) the transferor's provision of the services identified as services to be provided on or after the transfer date by the transferee in the Schedule,

are transferred to the transferee.

(3) On the transfer date, that proportion of the outstanding public dividend capital of the transferor which is represented by the assets transferred by paragraph (1), less the value of liabilities transferred by paragraph (2), transfers to the transferee.

(4) In paragraph (2), "liabilities" includes the criminal liabilities of the transferor.

Transfer of property and liabilities not otherwise transferred

4.—(1) Any property and liabilities of the transferor existing immediately before the transfer date and not transferred to—

- (a) the transferee by virtue of article 3; or

- (b) Manchester University NHS Foundation Trust by virtue of the Manchester Transfer Order,

are transferred on the transfer date to the transferee.

(2) For the purposes of paragraph (1), “liabilities” includes—

- (a) any actual or contingent liabilities;
- (b) any criminal liabilities.

Obligation to prepare accounts

5. The obligation to prepare the outstanding accounts of the transferor transfers to the transferee(a).

Third parties

6. Insofar as this Order provides for the transfer—

- (a) of land held on lease from a third party; or
- (b) of any other asset leased or hired from a third party or asset 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.

Investigation by the Health Service Commissioner and Care Quality Commission

7.—(1) A complaint made in relation to the transferor under the Health Service Commissioners Act 1993 to the Health Service Commissioner whether made before, on or after the transfer date, may be investigated by the Commissioner, notwithstanding the dissolution of the transferor, as if it had been made in relation to the transferee.

(2) The Commissioner must 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 transferor by the Care Quality Commission, whether commenced before, on or after the transfer date, may be conducted by the Care Quality Commission, notwithstanding the dissolution of the transferor, as if it had been or was to be conducted in relation to the transferee.

(4) The Care Quality Commission must 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 Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (“the 2009 Regulations”)(b) in relation to the transferor, whether made before, on or after 1st October 2021.

(2) The transferee shall, on or after, the transfer date, handle any complaint to which paragraph (1) applies, in accordance with the 2009 Regulations as if the complaint has been made in relation to it.

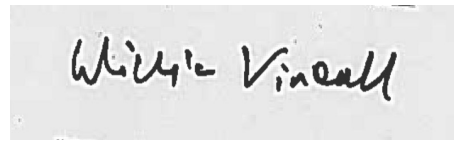
Provision for continuity in exercise of functions

9. In so far as it relates to the property and liabilities transferring under article 3 or 4—

(a) The obligation to prepare the accounts transfers to the Legacy Management Office, hosted by the transferee.
(b) S.I. 2009/309; relevant amendments made by S.I. 2009/1768 and 2013/235.

- (a) anything done by or in relation to, and any application made by, or any authorisation or notice or direction given to or by, the transferor is deemed to have been done by or in relation to or made by or given to or by the transferee;
- (b) any instrument made by the transferor continues in force in relation to the transferee until it is varied or revoked by the transferee; and
- (c) any form supplied by the transferor, or any form supplied by the Secretary of State in relation to the transferor, 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 the transferor were a reference to the transferee.

Signed by authority of the Secretary of State for Health and Social Care

A rectangular box containing a handwritten signature in black ink that reads "William Vineall".

William Vineall
Director – NHS Quality, Safety, Investigations
Member of the Senior Civil Service
Department of Health and Social Care

29 September 2021