

 **MiP advice to members on ‘Planning for a secure transition to the new health and care system’, letter of 13 August 2012 from Sir David Nicholson**

**Purpose**

This note provides members with MiP’s advice on the letter, its implications for their employment and next steps.

**General**

Better than anyone else, MiP members and their union understand that the transition to the new system is unprecedented in its complexity and uncertainty and leaders must be dynamic in managing resilience and the security of the system in the interests of the public. MiP has worked closely with the DH and employers to help manage this complexity and uncertainty and its impact on our members’ employment, all within the principles of the NHS HR transition framework.

The timing of this particular letter, however, has surprised people at all levels in the system and created significant confusion about the employment status of some MiP members between 1 October 2012 and 1 April 2013.

PCT cluster chief executives have contacted MiP to register their strong concern about the lack of consultation and information about the HR consequences of the proposed transfer of management responsibilities. For many members the proposal disrupts their plans to give leadership to their teams up to 1 April 2013.

We understand some non executive directors are seeking legal advice about what the proposals may mean for their statutory duties including their duties as an employer.

**Issues**

The HR consequences of the proposals will be discussed at a meeting of the HR strategy group on 4 September, to which MiP is invited. DH and SHA colleagues have agreed that it is critical that no decisions that affect the employment status of our members are taken until after this meeting and the issuing of further guidance.

The letter does not spell out the HR consequences of the proposals other than to refer to ‘a particular impact’ on SHA and PCT leaders. We want to establish as soon as possible the impact on members’ employment contracts, in particular:

* accountable officer status
* notice of termination
* payment in lieu of notice and the suitability of any alternative duties in notice periods
* the relationship with redundancy rights.

The letter states that ‘Discussions will continue over the coming weeks as I work with SHA and PCT leaders to agree how these transition arrangements will work at a local level – there is no ‘one size fits all’. MiP believes, however, that *the HR consequences* of these proposals must be consistently managed across the country.

It is unclear how directors other than cluster chief executives may be affected.

Some members have asked whether the letter gives rise to a potential claim of constructive dismissal. It is too early to make any legal assessment, given the lack of information about what is proposed, but depending on how this issue is now managed there may be a strong claim for constructive dismissal.

On a wider policy front there is a need to be clear about the legal basis for any delegation of management responsibilities from SHAs and PCTs.

**Next steps**

Members are advised to seek as much information as possible from their employers and, in the case of PCT cluster chief executives, from SHA chief executives. Go into listening mode. Members should refer employers to the issues in this note, and in particular our request that no decisions are taken that affect the employment status of members until after the meeting on 4 September and further guidance.

Where you are comfortable with the discussions with the SHA chief executive or the DH, it is reasonable to indicate agreement in principle to any changes in your status. We strongly advise, however, that you make any agreement conditional on seeking advice from MiP and seek any proposal concerning your employment in writing.

Where there is doubt or pressure to take earlier decisions, MiP would urge non executives to take legal advice about the implications of the proposals for the duties of PCT and SHA boards, including as employers.

If you wish to discuss your personal circumstances, please contact your MiP national officer and he or she will be able to help advise you.

It would be very useful to keep tabs on what’s happening. It seems clear that different regions are interpreting the letter and acting on it in different ways. If you would like to feed in information then please send in confidence to Marisa Howes (m.howes@miphealth.org.uk) with a copy to your national officer.