

**To:** The Board

**For meeting on:** 30 April 2014

**Agenda item:** 9

**Report by:** Philippa Harding, Board Secretary

**Report for:** Decision

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**TITLE: Governance Review**

**Summary:**

At its meeting on 28 April 2011 the Board agreed that the Rules of Procedure and other appropriate governance documents should be reviewed at the end of each financial year, with the outcome of this review brought to the Board for agreement each April. This paper provides information about the outcome of this annual governance review.

**Recommendations:**

The Board is asked to confirm that it is content with the proposals set out in this paper.

**Public Sector Equality Duty:**

*Monitor has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. In relation to the issues set out in this paper, consideration has been given to the impact that the recommendations might have on these requirements and on the nine protected groups identified by the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation). It is anticipated that the recommendations of this paper are not likely to have any particular impact upon the requirements of or the protected groups identified by the Equality Act.*

**Exempt information:**

*None of this report is exempt under the Freedom of Information Act 2000.*

## **BACKGROUND**

1. Monitor's Rules of Procedure establish Monitor's Board, regulating its procedures and those of its committees; they should be reviewed by the Board on a regular basis to ensure that they are relevant and appropriate. The Board agreed at its meeting on 28 April 2011 that this should be undertaken on an annual basis, with the results being reported to the Board at its April meeting.

## **OBJECTIVES OF THE GOVERNANCE REVIEW**

2. Based upon the approach followed in 2012, which was established according to the appropriate aspects of guidance circulated by the Chartered Institute of Public Finance and Accountancy (CIPFA), the governance review has focussed upon the following objectives:

Objective 1 – establish that effective corporate governance arrangements are embedded across the organisation;

Objective 2 – identify principal risks to achievement of objectives;

Objective 3 – identify and evaluate key controls to manage principal risks; and

Objective 4 - obtain assurance on the effectiveness of key controls.

3. Achievement of these objectives will provide the Board with assurance that Monitor's governance framework is fit for purpose. In considering the assurance required in relation to these objectives, thought has also been given to any changes that might improve Monitor's suite of governance documents.

## **FINDINGS OF THE GOVERNANCE REVIEW**

4. Annex A sets out the assurance that was sought in relation to each of the objectives of the governance review and the nature of the evidence that was used to support this assurance. It also sets out detailed findings in relation to each of the objectives of the governance review.
5. The review confirms that Monitor has a clear and well established governance framework in place which conforms where appropriate to the best practice requirements and principles set out in the UK Corporate Governance Code and the Corporate Governance in Central Government Departments Code of Good Practice. This is, of course, a self assessment and Board members are invited to test the assurances provided in Annex A to this report. It should also be noted that the internal audit function will also be testing the outcome of this review and the outcome of the internal audit review will be presented to the Audit and Risk Committee in May 2014.

## **CHANGES TO BE MADE TO MONITOR'S GOVERNANCE DOCUMENTS**

6. As a result of the work undertaken for the governance review it is proposed that a number of amendments are made to Monitor's Rules of Procedure. The proposed amendments can be found highlighted in the Rules of Procedure attached as Annex B to this report. They can be summarised as follows:
  - Minor drafting changes;

- Addition of emergency powers (section 4.10), not previously included when the same person was acting as both Chief Executive and Chairman;
  - Increase of the delegated authority for approval of expenditure (paragraph 4.12.3) in light of the fact that the same person is no longer acting as both Chief Executive and Chairman; and
  - A clearer statement of the matters delegated to the Executive in the Scheme of Delegation (Annex D of the Rules of Procedure).
7. The organisation's Standing Financial Instructions require updating. It has not been possible to complete this in time for submission to the April Board meeting. Work will be undertaken in order to ensure that these are submitted for approval at the meeting of the Board on 28 May 2014.
  8. The Terms of Reference of each Board Committee will be presented to the next meeting of the Committee to take place. It is anticipated that a number of slight amendments may be required; these will be submitted to the Board with the report of that Committee. The proposed updated Terms of Reference for the Remuneration Committee are attached to the report of the Remuneration Committee meeting that took place on 25 March 2014 presented to the Board elsewhere on the agenda for this meeting (item 9 ref: BM/14/42).

## **OTHER ISSUES**

### Competition-related decision-making

9. At a workshop on competition issues in March 2014, the Board considered how to ensure that the organisation's decisions on issues relating to procurement, patient choice and competition benefited people who use health care services in England. The Board recognised that receiving expert advice was key to making decisions that were right for patients, based on sound economic analysis and a thorough understanding of the relevant law. However, the Board was keen to align the governance of decision-making on co-operation and competition with that of the rest of the organisation.
10. The governance framework agreed by the Board in 2012 was that responsibility for decisions to investigate issues and to make draft findings should be separated from the responsibility to make the final decision in relation to these findings. The responsibility for deciding to launch an investigation and to make draft findings lies with the Executive Director of Co-operation and Competition; final decisions on the action to take as a result of these findings sits with the Co-operation and Competition Executive (CCE) or, if the decision is considered to be high-risk or policy determining, with the Board. External expertise had previously been provided to these bodies by the Co-operation and Competition Panel (CCP). Rather than operating separately, Monitor's CCE and its Board determined that external experts should be in attendance at their decision-making meetings. This will be beneficial in a number of material ways. It will enable the external experts to understand and respond to concerns directly and in a fully integrated way. It will also give them the opportunity to shape and deepen decision-makers' understanding of matters upon which they are experts. Their advice will be clearly noted in the minutes of these meetings. In effect, the external experts will take the place of the Panel.

### Information presented to decision-making bodies

11. A consistent effort is being made across the organisation to improve the quality of information provided to decision-making bodies, including training for all members of staff in clear thinking and writing. In undertaking the governance review it has become clear that a significant amount of business is presented to the Board, its Committees and the executive decision-making forums of Monitor. In order to facilitate the most efficient use of these bodies' time more prescriptive requirements are due to be issued for the drafting of reports.

### Publication of information

12. Board members have emphasised the importance of conducting Monitor's business in as open and transparent a manner as possible. It has been suggested that, where it is not possible to take a report in the public session of a Board meeting (because publicity on the confidential nature of the business to be transacted would be prejudicial to the public interest), consideration should be given to the retrospective publication of this information. Having considered the implications of this, it is proposed that this approach should not be adopted. It is considered that it could lead to confusion about the decisions of the Board, particularly when they are different to proposals presented in Board papers. Instead, it is proposed that continued challenge should be provided by the Chairman and the Board Secretary with regard to the business that should be transacted in the private session of the Board meeting.

### Equality and Diversity statements

13. In August 2011 Monitor decided to adopt a statement on all reports to its decision-making bodies setting out the impact that the proposals contained within the report might have on the nine protected groups identified by the Equality Act 2010. It was considered that this would demonstrate that Monitor had given regard to its duties under the Equality Act in its decision-making. It has been noted that only very rarely have report authors identified any decisions that might have an impact on the protected groups. In light of this it is proposed that, whilst authors of reports should continue to consider and complete this statement (therefore demonstrating that they have given due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups) the statement should be shortened and made more concise.
14. Guidance will be developed for members of staff writing reports to decision-making bodies that will set out the expectations of them in the drafting of these reports. This will include the length of the report, whether the business of the report involves any operational conflicts of interest and how to think about the equality and diversity impact of the report content.

## **CONCLUSION**

15. Monitor's governance framework continues to operate appropriately. The governance review has enabled the identification of a number of relatively minor amendments to be made to the Rules of Procedure (as set out under paragraph 6). It has also identified a number of other issues addressed under paragraphs 9-13, upon which the comments of the Board would be welcomed.

**Philippa Harding**  
**Board Secretary**

## GOVERNANCE REVIEW ASSURANCES SOUGHT AND EVIDENCE

### a) Objective 1 – establish that effective corporate governance arrangements are embedded across the organisation

Assurance	Can be evidenced by	Monitor Governance Review 2014 finding
Code of corporate governance adopted	<ul style="list-style-type: none"> <li>• Principles of relevant code of corporate governance embedded within corporate governance frameworks and processes</li> <li>• Awareness of the relevant code of corporate governance</li> </ul>	<ul style="list-style-type: none"> <li>• The Governance Framework agreed by the Board on 31 October 2012 clearly references the UK Corporate Governance Code throughout.</li> <li>• The Main Principles of the UK Corporate Governance Code have been provided to all Board and ExCo members.</li> </ul>
Review and monitoring arrangements in place	<ul style="list-style-type: none"> <li>• Corporate governance arrangements are regularly reviewed</li> <li>• There are clear arrangements for monitoring compliance with corporate governance frameworks and processes</li> <li>• An annual report on compliance with corporate governance best practice is reviewed by non-executives</li> <li>• Regular internal audit reviews of corporate governance frameworks and processes take place</li> <li>• Any corporate governance weaknesses are identified and an action plan is prepared to address them</li> </ul>	<ul style="list-style-type: none"> <li>• The organisation's corporate governance arrangements are reviewed formally on an annual basis. In 2012, a wholesale review was undertaken and significant changes agreed in light of Monitor's move to a unitary Board and the new functions that it would be taking on in April 2013.</li> <li>• The Annual Governance Statement (AGS) which sets out Monitor's compliance with its own corporate governance frameworks and with the UK Corporate Governance Code is supported by an annual governance review.</li> <li>• Monitor's internal auditors review its corporate governance arrangements on a regular basis. The last review took place in early 2013 the latest is in progress.</li> <li>• The Board Secretary takes the operational lead on identifying and addressing any areas for development in corporate governance weaknesses.</li> </ul>
Committee charged with governance responsibilities	<ul style="list-style-type: none"> <li>• Responsibility for overseeing corporate governance has been formally delegated to an appropriate committee</li> <li>• Committee terms of reference clearly</li> </ul>	<ul style="list-style-type: none"> <li>• The Audit and Risk Committee (ARC) of the Board has delegated authority for the oversight of corporate governance. At the executive level the Executive Committee (ExCo) takes the lead.</li> <li>• The Terms of Reference of the ARC adhere to the best practice set out in the UK Code of Corporate Governance and guidance provided by the Treasury and the</li> </ul>

Assurance	Can be evidenced by	Monitor Governance Review 2014 finding
	<p>demonstrating responsibility for corporate governance issues have been approved by the Board</p> <ul style="list-style-type: none"> <li>• Terms of reference are sufficiently comprehensive to ensure that all appropriate aspects of corporate governance are covered</li> <li>• Agenda and minutes from the committee charged with corporate governance responsibility indicate that the responsibility is being discharged adequately</li> </ul>	<p>National Audit Office. They clearly set out the Committee's responsibilities in relation to financial reporting; internal controls, risk management systems and corporate governance; whistleblowing and fraud; internal audit; and external audit.</p> <ul style="list-style-type: none"> <li>• Reports of ARC meetings are provided to the Board by the Chair of the Committee after each meeting. The Board is also made aware of the forward plan for agendas of each meeting and received the minutes of each meeting in order to receive assurance that the Committee is discharging its duties adequately. The agendas, appropriate reports and minutes of the ARC are published on Monitor's website for full public scrutiny.</li> </ul>
<p>Governance advice and training available to key executives and non executives</p>	<ul style="list-style-type: none"> <li>• Induction training for key new executive and all non-executives incorporates suitable coverage on corporate governance issues according to responsibilities</li> <li>• Ongoing awareness training is provided as appropriate to key staff and all members to ensure that there is an appropriate awareness of the organisation's corporate governance frameworks and processes</li> </ul>	<ul style="list-style-type: none"> <li>• An induction plan is in existence for all new Board members. It is updated ahead of each new appointment and new members are made aware of it when they join Monitor. It includes meetings with the Chair and the Board Secretary who provide information and advice individuals' corporate governance responsibilities.</li> <li>• Information about Monitor's corporate governance framework is included in Monitor's induction programme. Induction meetings with the Board Secretary are organised for key new members of staff.</li> <li>• Information about Monitor's corporate governance framework is available to all staff on the intranet.</li> <li>• The Board Secretary and Committee Secretaries provide information about the operation of Monitor's corporate governance framework as necessary.</li> </ul>

**b) Objective 2 – identify principal risks to achievement of objectives**

Assurance	Can be evidenced by	Monitor Governance Review 2014 finding
<p>There is a written strategy and policy in place for managing risk which:</p> <ul style="list-style-type: none"> <li>- Has been formally approved at political and risk management board (or equivalent) level</li> <li>- Is reviewed on a regular basis</li> <li>- Has been communicated to all relevant staff</li> </ul>	<ul style="list-style-type: none"> <li>• Existence of approved strategy and policy document</li> <li>• Evidence of formal approval (e.g. board/committee minutes)</li> <li>• Evidence of formal review (e.g. board/committee minutes, document version number and date)</li> <li>• Evidence of communication strategy, possibly covered in strategy document</li> <li>• Examples of dissemination e.g. induction, briefings, awareness sessions, policy and strategy published on intranet, strategic diagnostic questionnaire results</li> </ul>	<ul style="list-style-type: none"> <li>• Monitor’s Risk Management Framework is in the process of being developed. The ARC and the Board have been significantly involved in this work and are regularly updated about its progress. This can be evidenced by reports to the ARC and the Board (including a Board Workshop on Risk) and minutes of the meetings where these reports have been considered.</li> <li>• The Risk and Performance team have been working with individual directorates to disseminate the new approach and ensure awareness of the ongoing work in this area.</li> </ul>
<p>Clear structures and processes for risk management which are successfully implemented and:</p> <ul style="list-style-type: none"> <li>- Board sees risk management as a priority and support it by personal interest and input</li> <li>- Decision making considers risk</li> <li>- A senior manager has been appointed to “champion” risk management</li> <li>- Roles and responsibilities for risk management have been defined</li> <li>- Risk management systems are subject to independent assessment</li> <li>- Risk management is considered in the annual business planning process</li> </ul>	<ul style="list-style-type: none"> <li>• Board/committee minutes</li> <li>• Internal audit reports and external audit comments on risk management system</li> <li>• Annual business plans</li> <li>• Link between internal audit and risk management functions is clearly defined in terms of reference of internal audit</li> <li>• Responsibility for risk management function is set at appropriate senior level</li> <li>• Committee reports setting out options for change include an appropriate risk assessment, including the ‘no change’ option</li> <li>• The corporate business plan and financial plan assess risks as appropriate and in particular take account of new and emerging risks facing the organisation</li> </ul>	<ul style="list-style-type: none"> <li>• The ARC and Board review Monitor’s high level risks on a quarterly basis.</li> <li>• Internal Audit reports and External Auditors’ comments are presented to the ARC at each appropriate meeting.</li> <li>• The Internal Audit Strategy is based upon the risks identified through Monitor’s risk register.</li> <li>• The ExCo takes a collective responsibility for reviewing risk reports on a quarterly basis ahead of their submission to the ARC and the Board.</li> <li>• The Managing Director of Sector Development is the senior executive responsible for the risk management function and the Director of Strategy and Policy takes responsibility for more detailed risk reporting.</li> <li>• There has always been a clear link between the organisation’s business planning and its risk reporting. This continues in the development of Monitor’s business plan following the finalisation of its strategy.</li> </ul>

<b>Assurance</b>	<b>Can be evidenced by</b>	<b>Monitor Governance Review 2014 finding</b>
<p>The organisation has developed a corporate approach to the identification and evaluation of risk which is understood by all staff</p>	<ul style="list-style-type: none"> <li>• Systematic procedures for risk identification and evaluation have been agreed and published in a policy document and are consistently applied across all business units and partnerships</li> <li>• Examples of dissemination e.g. induction, briefings, awareness sessions, strategic diagnostic questionnaire results</li> </ul>	<ul style="list-style-type: none"> <li>• The procedures for risk identification and evaluation are identified within Monitor's Risk Management Framework.</li> <li>• The use of new consolidated director level risk registers enables deeper engagement and more focused discussions of the risks within the directorates, with the majority of directorates submitting their updated and signed-off registers by the due date.</li> </ul>
<p>The organisation has well defined procedures for recording and reporting risk</p>	<ul style="list-style-type: none"> <li>• Evidenced by review of risk management strategy and policy</li> <li>• Examination of corporate and partnership risk registers</li> <li>• Key risk indicators have been determined and there is evidence of monitoring against these risks</li> <li>• Evidence of regular and frequent reporting of risk to political and management board level</li> <li>• Evidence of risk based auditing being carried out</li> <li>• Evidence of risks not properly addressed identified in internal audit reports etc being fed into the risk management process</li> <li>• Environmental scanning reports are fed into the risk management process so as to identify new and emerging risks</li> </ul>	<ul style="list-style-type: none"> <li>• The quality of the risk descriptions has improved. There is greater alignment to the Board risks, as well as the performance reporting, and the mitigating controls and further actions are more defined and increased accountability from the directorates.</li> <li>• In the last quarter, the bottom up risks have been reviewed by the ExCo and were considered to be either appropriately covered in the Board top 15 risks or addressed via mitigating actions within the directorate level risk registers.</li> </ul>
<p>The organisation has developed a programme of risk management training for relevant staff</p>	<ul style="list-style-type: none"> <li>• Training programme for risk management</li> <li>• Training needs analysis (both specialist staff development and general awareness)</li> <li>• Regular newsletter or other means of communicating risk management issues to staff</li> <li>• Induction programme includes risk management</li> <li>• Appropriate responsibilities for risk management incorporated into job descriptions and appraisals</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant senior individuals receive briefings from the Director of Strategy and Policy and the Risk and Performance Director. This occurs both as part of their induction process and on an ongoing basis.</li> </ul>

<b>Assurance</b>	<b>Can be evidenced by</b>	<b>Monitor Governance Review 2014 finding</b>
<p>The committee responsible for risk management adds value to the risk management process by:</p> <ul style="list-style-type: none"> <li>- Advising and supporting management team on risk strategies</li> <li>- Identifying areas of overlapping risk</li> <li>- Driving new risk management initiatives</li> <li>- Communicating risk management and sharing good practice</li> <li>- Providing and reviewing risk management training</li> <li>- Regularly reviewing the risk register(s)</li> <li>- Coordinating the results for risk reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Risk management committee's terms of reference</li> <li>• Minutes of corporate risk management board</li> <li>• Reports to corporate management team</li> <li>• Low incidence of avoidable risk events occurring</li> </ul>	<ul style="list-style-type: none"> <li>• The ARC gives quarterly consideration to the corporate risk register and reports its conclusions to the Board.</li> <li>• Internal Audit makes its own regular reports to the ARC, based on its own work programme. The Board discusses the most significant risks and the actions identified to mitigate them. On an annual basis, the ARC evaluates the effectiveness of the risk management framework and approves the Annual Internal Audit Plan for the following year.</li> <li>• The following methodology is used by individual directorates for providing assurance over the management of their current risks: <ul style="list-style-type: none"> <li>• Review and update the current consolidated directorate risk registers</li> <li>• Identify and record any new/emerging risks</li> <li>• Consider the Board top 15 risks and align to directorate level risks (updating risk registers and mitigating actions where appropriate)</li> <li>• Consider their current mitigating controls and whether any further action that should be taken</li> <li>• Determine whether any risks or actions require escalation to the ExCo.</li> <li>• Provide assurance that the risk registers had been reviewed and signed off at the appropriate level Director.</li> </ul> </li> </ul>
<p>Managers are accountable for managing their risks</p>	<ul style="list-style-type: none"> <li>• Evidence of manager involvement in risk identification and analysis process</li> <li>• Risk owners detailed in corporate /departmental risk register(s)</li> <li>• Risk owners assigned in relation to key partnerships</li> <li>• Job descriptions of managers outline their risk management responsibilities</li> <li>• Evidence of (at least) annual review of risk at service/operational levels and of partnership risks</li> <li>• Analysis of completed control and risk self-assessment questionnaires</li> </ul>	
<p>Risk management is embedded throughout the organisation</p>	<ul style="list-style-type: none"> <li>• Evidence of a general risk management culture at all levels</li> <li>• Risk management training programme</li> <li>• Evidence of managers involvement in risk management aspects of business planning</li> <li>• Results of strategic diagnostic survey to ascertain the extent to which risk management is understood by each category of officer (senior management, operational managers etc) and members</li> </ul>	<ul style="list-style-type: none"> <li>• See above.</li> </ul>

**c) Objective 3: Identify and evaluate key controls to manage principal risks**

Example of assurance	Evidenced by	Monitor Governance Review 2014 finding
<p>There are written financial regulations in place which have been formally approved, regularly reviewed and widely communicated to all relevant staff.</p>	<ul style="list-style-type: none"> <li>• Financial regulations and instructions exist &amp; are reviewed &amp; updated regularly</li> <li>• Evidence of formal approval</li> <li>• Examples of dissemination e.g. induction, briefings, awareness sessions, accessible in finance manuals and/or on intranet site</li> <li>• Reports to audit committee or equivalent confirming compliance or identifying extent of non-compliance with regulations and instructions</li> </ul>	<ul style="list-style-type: none"> <li>• Standing Financial Instructions and delegated authorities are incorporated within the Rules of Procedure, which are reviewed and approved by the Board on an annual basis. Updated Standing Financial Instructions are to be submitted to the Board in May for approval.</li> <li>• These documents are available publicly on the Monitor website and to all members of staff on the organisation's intranet.</li> <li>• Where delegations are to specific individuals they are provided with formal written information about this.</li> <li>• Reports on these regulations are provided to the ExCo, the ARC and the Board on an ad hoc basis and annually as part of the governance review.</li> </ul>
<p>There is a whistle blowing policy in place which has been formally approved, regularly reviewed and widely communicated to all relevant staff</p>	<ul style="list-style-type: none"> <li>• Whistle blowing policy exists and has been reviewed and updated regularly.</li> <li>• Evidence of formal approval</li> <li>• Examples of communication and dissemination e.g. induction, briefings, awareness sessions, accessible on website and intranet site</li> <li>• Evidence of effectiveness of policy (e.g. reports on incidence of usage, evidence on annual declarations on fraud)</li> </ul>	<ul style="list-style-type: none"> <li>• Monitor's whistleblowing policy was approved by the Executive Committee and is published on the website.</li> <li>• It is referenced in the Code of Ethical Practice, which has been the subject of an all staff briefing.</li> <li>• The ARC has identified whistleblowing as a priority for 2014 and further work will be undertaken with regard to the manner in which the whistleblowing policy is operating.</li> </ul>
<p>There is a counter fraud and corruption policy in place which has been formally approved, regularly reviewed and widely communicated to all relevant staff</p>	<ul style="list-style-type: none"> <li>• Counter fraud and corruption policy exists and has been reviewed and updated regularly</li> <li>• Evidence of formal approval</li> <li>• Examples of dissemination (briefings, induction, awareness sessions, accessible on website and intranet site)</li> <li>• Evidence of effectiveness of policy (e.g. reports on identified frauds; annual AF70 returns to Audit Commission, reports on results of National Fraud Initiatives)</li> <li>• Review of register of gifts and hospitality</li> </ul>	<ul style="list-style-type: none"> <li>• Monitor's fraud policy was approved by the Management Committee and is published on the website.</li> <li>• It is referenced in the Code of Ethical Practice, which was the subject of an all staff briefing.</li> <li>• Gifts and Hospitality registers are reviewed on a quarterly basis.</li> </ul>

Example of assurance	Evidenced by	Monitor Governance Review 2014 finding
There are codes of conduct in place which have been formally approved and widely communicated to all relevant staff	<ul style="list-style-type: none"> <li>• Codes of conduct have been agreed, including national schemes (e.g. police officers)</li> <li>• Evidence of formal approval</li> <li>• Examples of dissemination e.g. induction, briefings, awareness sessions, accessible on intranet site</li> </ul>	<ul style="list-style-type: none"> <li>• The Board approved the Code of Ethical Practice at its meeting on 27 March 2013. This is based upon best practice set out by the Committee on Standards in Public Life, the Cabinet Office and the Financial Services Authority.</li> <li>• The Code was the subject of an all staff briefing in 2013. It is available on Monitor's website and intranet.</li> </ul>
A register of interests is maintained, regularly updated and reviewed	<ul style="list-style-type: none"> <li>• Inspection of register of interests (members and staff)</li> <li>• Evidence of regular updating and review by senior officer(s)</li> </ul>	<ul style="list-style-type: none"> <li>• The Board Secretary maintains a register of interests which is reviewed on a quarterly basis.</li> <li>• Updates to the register should be provided by Board and ExCo members on a regular basis and formal requests for updates are circulated at least annually.</li> <li>• It is referenced in the Code of Ethical Practice, which was the subject of an all staff briefing.</li> </ul>
Where a scheme of delegation has been drawn up, it has been formally approved and communicated to all relevant staff	<ul style="list-style-type: none"> <li>• Scheme of delegation incorporates adequate controls and sanctions</li> <li>• Evidence of formal approval</li> <li>• Examples of communication and dissemination e.g. induction, briefings, awareness sessions, accessible on intranet site</li> <li>• Regular reports on the operation of the scheme (e.g. compliance, budget monitoring, year-end balances)</li> </ul>	<ul style="list-style-type: none"> <li>• The Scheme of Delegation is incorporated within the Rules of Procedure. It has been further expanded in light of experience of operating Monitor's corporate governance framework.</li> <li>• This is reported on an annual basis as part of the annual governance review.</li> <li>• It is available on Monitor's website and its intranet.</li> </ul>
A corporate procurement policy has been drawn up, formally approved and communicated to all relevant staff	<ul style="list-style-type: none"> <li>• Procurement policy exists and has been reviewed and updated regularly to take account of new initiatives e.g. drive towards wider consortia arrangements, shared services</li> <li>• Evidence of formal approval</li> <li>• Examples of dissemination e.g. induction, briefings, awareness sessions, accessible on intranet site</li> <li>• Evidence of effectiveness of policy (e.g. benchmarking results, best value review, internal/ external audit review)</li> </ul>	<ul style="list-style-type: none"> <li>• A procurement policy exists which was approved by the Management Committee.</li> <li>• Monitor has a Controls Committee for the approval of expenditure, in line with cross government expenditure controls and flexibilities granted to Monitor by the Department of Health.</li> <li>• Information about the Procurement Policy and the efficiency controls can be found on Monitor's intranet.</li> </ul>
Business/service continuity plans have been drawn up for all critical service areas and the plans:	<ul style="list-style-type: none"> <li>• Current business/service continuity plans exist covering all critical service areas and are readily accessible</li> <li>• Evidence of regular testing</li> <li>• Evidence of regular review in the light of the results of testing</li> </ul>	<ul style="list-style-type: none"> <li>• Business continuity plans exist which have been reviewed by the ExCo. The ExCo has approved the organisation's approach to business continuity, which establishes individuals' responsibilities in this area.</li> </ul>

Example of assurance	Evidenced by	Monitor Governance Review 2014 finding
<ul style="list-style-type: none"> <li>- Are subject to regular testing</li> <li>- Are subject to regular review</li> </ul>	<p>and for changes in structures, procedures, information systems, responsibilities etc</p>	
<p>The corporate/departmental risk register(s) includes expected key controls to manage principal risks</p>	<ul style="list-style-type: none"> <li>• Risk register sets out principal risks and sets out appropriate key controls to manage them.</li> <li>• Key controls are monitored, reviewed and updated regularly</li> <li>• Use of risk management workshops to underpin the process and review of register and key controls</li> <li>• Risk owners are assigned to manage principal risks</li> <li>• Partnership risks are considered</li> </ul>	<ul style="list-style-type: none"> <li>• See section on risk management above.</li> </ul>
<p>Key risk indicators have been drawn up to track the movement of key risks and are regularly monitored and reviewed.</p>	<ul style="list-style-type: none"> <li>• Appropriate key risk indicators are documented</li> <li>• Evidence of regular monitoring</li> <li>• Evidence of changes in risk indicators (and reasons for change) emanating from appropriate information sources (e.g. where internal audit findings are used to change the perceived level of risk)</li> </ul>	<ul style="list-style-type: none"> <li>• See section on risk management above.</li> </ul>
<p>The authority's internal control framework is subject to regular independent assessment</p>	<ul style="list-style-type: none"> <li>• Internal audit plans and reports</li> <li>• Annual report/opinion of Head of Internal Audit</li> <li>• External audit reports</li> </ul>	<ul style="list-style-type: none"> <li>• See section on risk management above.</li> </ul>
<p>A corporate health and safety policy has been drawn up, formally approved, is subject to regular review and has been communicated to all relevant staff</p>	<ul style="list-style-type: none"> <li>• Health &amp; safety policy exists and has been reviewed and updated regularly</li> <li>• Policy covers partnerships</li> <li>• Evidence of formal approval</li> <li>• Examples of dissemination e.g. induction, briefings, awareness sessions, inclusion of policy on website and intranet site</li> <li>• Evidence of effectiveness of policy e.g. number of cases investigated by Health &amp; Safety Executive – and the number of</li> </ul>	<ul style="list-style-type: none"> <li>• A health and safety policy exists which was approved by the Management Committee. This is reviewed on an annual basis.</li> </ul>

Example of assurance	Evidenced by	Monitor Governance Review 2014 finding
	cases proven <ul style="list-style-type: none"> <li>• Review of number of reported</li> <li>• incidences and 'near misses'</li> </ul>	
A corporate complaints policy/procedure has been drawn up, formally approved, communicated to all relevant staff, the public and other stakeholders is regularly reviewed	<ul style="list-style-type: none"> <li>• Complaints policy/procedure exists and has been reviewed and updated regularly</li> <li>• Procedure is compliant with all relevant statutory requirements</li> <li>• Evidence of formal approval</li> <li>• Examples of dissemination e.g.               <ul style="list-style-type: none"> <li>• induction, briefings, awareness sessions, inclusion of policy on website and intranet site</li> </ul> </li> <li>• Leaflets/posters highlighting complaints procedure</li> <li>• Complaints files</li> <li>• Committee reports summarising complaints dealt with analysed by outcome</li> </ul>	<ul style="list-style-type: none"> <li>• A complaints policy exists which was approved by the Executive Committee. Further information about this will be presented to the Board at its meeting on 30 April 2014.</li> </ul>

**d) Objective 4: Obtain assurance on the effectiveness of key controls**

<b>Example of assurance</b>	<b>Evidenced by</b>	<b>Monitor Governance Review 2014 finding</b>
The organisation has determined appropriate internal and external sources of assurance	<ul style="list-style-type: none"> <li>Minutes of committee at which report on assurances was considered</li> <li>Sources of assurance are appropriate to the organisation</li> </ul>	<ul style="list-style-type: none"> <li>This is the responsibility of the ARC. Consideration of these issues takes place at each meeting of the Committee.</li> </ul>
Appropriate key controls on which assurance is to be given have been identified and agreed	<ul style="list-style-type: none"> <li>Briefing notes, guidance, instructions etc given to appropriate managers regarding what is expected of them</li> </ul>	<ul style="list-style-type: none"> <li>Information about the organisation's key controls can be found on the intranet.</li> </ul>
Departmental assurances are provided	<ul style="list-style-type: none"> <li>Departmental heads sign off on adequacy of controls (i.e. provide annual governance assurance statements)                             <ul style="list-style-type: none"> <li>Supporting documentation provided by departmental heads re review and monitoring arrangements that key controls have been in operation for the period and will continue to operate until accounts signed off.</li> <li>Structured process and standard documentation to ensure consistency of coverage and common understanding of level of assurance given.</li> <li>Completed Control &amp; Risk Self- Assessment questionnaires</li> <li>Annual governance assurance statements evaluated by officer team or committee charged with the responsibility of preparing the AGS. Evaluation to include 'reality checking' of sample of assurance statements</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The Chief Executive requires direct reports to provide an annual statement of assurance on the adequacy of controls, which is incorporated into the Annual Governance Statement.</li> <li>Information about the operation of key controls is gathered through the Risk Assurance Framework.</li> </ul>
Internal Audit Arrangements	<ul style="list-style-type: none"> <li>Reports of Head of Internal Audit to audit committee or equivalent throughout the year</li> <li>Annual report of Head of Internal Audit, including opinion on internal control and risk management framework</li> </ul>	<ul style="list-style-type: none"> <li>The ARC receives regular reports from the Internal Auditors and an annual report from the Head of Internal Audit.</li> </ul>

Corporate Governance Arrangements	<ul style="list-style-type: none"> <li>• Annual corporate governance assurance statement</li> <li>• Internal or external audit review of corporate governance arrangements</li> <li>• Monitoring reports to committee on delivery of action plans in response to reviews of corporate governance</li> </ul>	<ul style="list-style-type: none"> <li>• There is an annual review of governance which feeds into the drafting of the organisation's Annual Governance Statement.</li> </ul>
Performance monitoring arrangements	<ul style="list-style-type: none"> <li>• Annual and in-year reports on delivery of key performance indicators by internal and/or external review agencies</li> </ul>	<ul style="list-style-type: none"> <li>• ExCo and the Board receive quarterly reports on the organisation's performance alongside the quarterly risk reports.</li> </ul>

# Monitor

Making the health sector  
work for patients

## **RULES OF PROCEDURE**

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# **RULES OF PROCEDURE**

## **INTRODUCTION**

Monitor, the Independent Regulator of NHS Foundation Trusts, came into being under the provisions of the Health and Social Care (Community Health and Standards) Act 2003. The Health and Social Care Act 2012 (the 2012 Act) established Monitor as the sector regulator for health, with a primary duty to protect and promote the interests of people who use health care services by promoting provision of health care services which is:

- (a) economic, efficient and effective; and
- (b) maintains or improves the quality of services.

Monitor, in the exercise of powers under paragraph 10(1) of Schedule 8 to the 2012 Act, has made these Rules of Procedure (“Rules”) to establish the Board and to regulate its procedures and that of its Committees (Schedule 8 to the 2012 Act is set out in full at Annex A).

## **1. DEFINITIONS**

- 1.1. Any expression to which a meaning is given in the 2012 Act or Regulations or Orders made under it shall have the same meaning in these Rules, unless the context otherwise requires and in addition:

“Accounting Officer” is the person appointed by the Secretary of State to assume responsibility for Monitor’s use of resources in carrying out its functions, as set out in Chapter 3 of *Managing Public Money*. Monitor’s Chief Executive acts [as](#) its Accounting Officer.

“Board” means the Members of the Board, as constituted at paragraph 2 below.

“Chairman” is the person appointed by the Secretary of State as Chairman of Monitor.

“Chief Executive” is the person appointed by Monitor’s Board.

“Committee” means a Committee appointed by the Board.

“Committee Chair” means the Chair of a Committee or a Sub-Committee, as the context requires, whether or not he or she is also a member of Monitor.

“Committee Member” means a member of the Committee or a Sub-Committee, as the context requires, whether or not he or she is also a member of Monitor.

“Employee” means [an interim or](#) permanent member of staff, a member of staff who is on secondment to Monitor, and a contracted external consultant or adviser.

“Executive Committee” means Monitor’s Chief Executive and other senior executive directors.

“Executive Member” means a Member of Monitor who has responsibility for overseeing the organisation’s management.

“Member of the Board” means a Member (whether Executive or Non-Executive) of Monitor, as defined in paragraph 2.1 below.

“Monitor” means the body corporate known as the Independent Regulator of NHS Foundation Trusts, which is to be known as “Monitor” pursuant to Part 3, Chapter 1, paragraph 61 of the 2012 Act.

“Non-Executive Member” means a Member of Monitor who does not have any management responsibilities.

“Regulator” means Monitor.

“Secretary” means the member of Monitor’s staff appointed as Secretary to the Board.

“Secretary of State” means the Secretary of State for Health.

“Sub-committee” means a sub-committee appointed by the Board to report to a Committee.

“Sub-committee Chair” means the Chair of a sub-committee.

“Sub-committee Member” means a Member of a sub-committee, whether or not he or she is also a Member of Monitor.

- 1.2 References to any statute or statutory provision include a reference to that statute or statutory provision as from time-to-time is modified or re-enacted.
- 1.3 All generalised reference to the male gender should read as equally applicable to the female gender, and vice-versa.
- 1.4 In these Rules, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.
- 1.5 These Rules shall not be amended, revoked or replaced except by a resolution passed at a meeting at which at least three members are present.

## **2. STATUTORY FRAMEWORK**

- 2.1. Monitor consists of:
  - (a) A Chairman appointed by the Secretary of State;
  - (b) At least four other Non-Executive Members so appointed; and
  - (c) The Chief Executive and other Executive Members appointed by the Non-Executive Members (with the consent of the Secretary of State for Health). The number of Executive Members must be less than the number of Non-Executive Members.

- 2.2. The constitution and proceedings of Monitor are governed by Schedule 8 to the 2012 Act.
- 2.3. The functions of Monitor are set out in Part 3, Chapters 1 to 6 of the 2012 Act.
- 2.4. The principal office of Monitor is ~~4 Matthew Parker Street, London, SW1H 9NP~~ [Wellington House, 133-155 Waterloo Road, London SE1 8UG](#).

### **3. THE BOARD OF MONITOR AND EXERCISE OF STATUTORY POWERS**

- 3.1. Paragraph 10(1) of Schedule 8 to the 2012 Act provides that Monitor may regulate its own procedure and make any arrangements it considers appropriate for the discharge of its functions.
- 3.2. The Board shares responsibility for:
  - (i) ensuring that high standards of corporate governance are observed and encouraging high standards of propriety;
  - (ii) establishing the strategic direction and priorities of Monitor within the statutory framework in the 2012 Act;
  - (iii) the effective and efficient delivery of Monitor's plans and functions;
  - (iv) promoting quality in Monitor's activities and services;
  - (v) monitoring performance against agreed objectives and targets;
  - (vi) ensuring effective dialogue with the Department of Health and other stakeholders to best promote the continued success and growth of NHS Foundation Trusts [and other aspects of the health care sector](#); and
  - (vii) ensuring that Board members personally, and Monitor corporately, observe the seven principles of public life set out by the Committee on Standards in Public Life:
    - (a) Selflessness: holder of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or other friends;
    - (b) Integrity: holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
    - (c) Objectivity: in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit;

- (d) Accountability: holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;
- (e) Openness: holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands;
- (f) Honesty: holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest; and
- (g) Leadership: holders of public office should promote and support these principles by leadership and example.

- 3.3. The Board will take collective responsibility for the decisions made by it. A Member of the Board must obtain the prior approval of the Chairman or in his absence, the Deputy Chairman, before making public statements to the media on behalf of Monitor.
- 3.4. Members of the Board and Committee members shall be subject to the Code of Ethical Practice set out at Annex B.
- 3.5. Any member of the Board that who significantly or persistently fails to adhere to these Rules of Procedure may be judged as failing to carry out the duties of their office. Such failure might result in their removal from office further to paragraph 3(3)(a)-(b) of the Schedule 8 to the 2012 Act.

#### **4. MEETINGS AND PROCEEDINGS OF THE BOARD**

##### **4.1. Meetings of the Board**

- 4.1.1. Subject to paragraph 4.1.3 below, the Board shall hold meetings at such regular intervals as may be determined by the members of the Board.
- 4.1.2. The Board may invite any person to attend all or part of a Board meeting.
- 4.1.3. The Secretary to the Board will propose by the end of each calendar year a schedule of meetings for the financial year commencing the following April for the Board's approval.
- 4.1.4. Meetings will normally be held at Monitor's principal office, but may take place at any other convenient location.
- 4.1.5. Members of the Board are expected to attend not less than eight Board meetings (whether formal meetings or workshops) in any twelve month period.

##### **4.2. Admission of the Public and the Press**

- 4.2.1. The Board will operate in an open and transparent fashion, except where confidentiality requirements are concerned.

4.2.2. The Chairman will give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and members of the press, such as to ensure that the Board's business may be conducted without interruption or disruption. Depending upon the confidential nature of the business to be transacted, the public may be required to withdraw to allow the Board to complete its business in private.

4.2.3. Members of the public, or representatives of the press, shall not record proceedings in any manner whatsoever, other than in writing, or make any oral report of the proceedings as they take place, without the prior agreement of the Board.

4.2.4. Members of the public and press are not admitted to meetings of ~~committees~~Committees, except by specific invitation.

### **4.3. Board Meeting Agendas and Papers**

4.3.1. In normal circumstances, the agenda and any papers for meetings of the Board will be circulated to members of the Board five calendar days in advance of the meeting. The non-receipt of agenda or papers for a meeting by any member of the Board shall not invalidate the meeting or any business transacted at the meeting.

4.3.2. The order of business at Board meetings shall follow the agenda issued for that meeting unless otherwise directed by the Chairman, at whose discretion, or at the request of another member of the Board, the order may be altered at any stage.

4.3.3. Papers may only be tabled at a meeting of the Board with the permission of the Chairman.

4.3.4. No business other than that on the agenda will be taken except where the Chairman considers the item should be discussed.

4.3.5. Members of the Board should treat those papers identified as private as confidential to them and not discuss them with persons other than Board members or employees of Monitor, unless this is agreed with the Chairman. If so discussed, members of the Board should ensure that those with whom they have consulted are made aware of, and respect, the need for confidentiality.

4.3.6. Members must take care not to leave Board papers identified as private unattended or where others may obtain access to them.

### **4.4. Special Meetings of the Board**

4.4.1. Without prejudice to paragraph 4.1, where paragraph 4.5.2 applies or in the event of urgency, the Chairman may determine to hold a meeting to be known as a special meeting at such time and place as he may determine.

### **4.5. Power to Call Meetings of the Board**

4.5.1. Where, in the opinion of the Chairman, an urgent matter has arisen, the Chairman may call a meeting of the Board at any time.

4.5.2. Where two or more members of the Board submit a signed request for a meeting to the Chairman, the Chairman shall call a meeting in accordance with paragraph 4.5.3.

4.5.3. Where paragraph 4.5.2 applies, the Chairman shall, as soon as practicable but no later than seven calendar days from the date the request was submitted, arrange for the meeting to be held within ~~twenty-eight~~28 calendar days from the date the request was submitted.

#### **4.6. Chairing of Meetings**

4.6.1. Subject to paragraphs 4.7.2 to 4.7.10, the procedure at meetings shall be determined by the Chairman presiding at the meeting.

4.6.2. The Chairman shall, if present, preside at all meetings of the Board.

4.6.3. In the absence of the Chairman, the Deputy Chairman will preside.

4.6.4. Paragraph 5.5 sets out the provisions for the chairing of Committee meetings.

#### **4.7. Procedure at Meetings of the Board**

4.7.1. Subject to the provisions of these Rules, the Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as ~~they~~Board members think fit.

4.7.2. The Chairman or person presiding over a meeting of the Board will:

- (i) preserve order and ensure that all members of the Board have sufficient opportunity to express their views on all matters under discussion;
- (ii) determine all matters of order, competency and relevancy;
- (iii) determine in which order those present should speak;
- (iv) determine whether or not a vote is required and how it is carried out in accordance with paragraphs 4.7.4 to 4.7.6 below.

4.7.3. Written comments on agenda items submitted by any member of the Board who is not present when a particular agenda item is discussed may be circulated to those members of the Board who are present at the meeting and read out at the appropriate point in the meeting.

4.7.4. Decisions of the Board will normally be made by consensus rather than by formal vote. Failing consensus, decisions will be reached by means of a vote when:

- (i) the Chairman presiding at the meeting feels that there is a body of opinion among members of the Board at the meeting who disagree with a proposal or have expressed reservations about it and no clear consensus has emerged; or
- (ii) when a member of the Board who is present requests a vote to be taken; or
- (iii) any other circumstances in which the Chairman considers that a vote should be taken.

- 4.7.5. Where a decision of the Board requires a vote it shall be determined by a majority of the votes of the members of the Board present and voting on the question. The Chairman shall declare whether or not a resolution has been carried or otherwise.
- 4.7.6. In the case of an equality of votes, the Chairman, or in his absence the member of the Board presiding, shall have a second casting vote.
- 4.7.7. The minutes of the meeting will record only the numerical results of a vote, showing the numbers for and against the proposal and noting any abstentions. The minutes shall be conclusive evidence of the outcome. Votes will not normally be attributed to any individual member of the Board, but any member may require that their particular vote be recorded, provided that he asks the Secretary immediately after the item is concluded.
- 4.7.8. The Board may agree to defer a decision on an agenda item so that it can be provided with additional information or for any other reason. The decision to defer, together with the reasons for doing so, will be recorded in the minutes of the meeting together with a proposed time for returning the matter to the Board for its consideration.
- 4.7.9. The Board may decide to delegate decisions on agenda items to the Chairman. Any decision to do so shall be recorded in the minutes of the meeting.
- 4.7.10. Where in the opinion of the Chairman, and considering advice from the Chief Executive or any other of Monitor's most senior executive as appropriate, significant operational or other matters require approval by the Board between formal meetings, papers will be circulated by the Secretary for approval by correspondence. Any matter capable of being passed by the Board at a meeting may instead be passed by written confirmation given by a majority of the members of the Board, with the Chairman having the power to cast a second casting vote as provided for in paragraph 4.7.6 above.
- 4.7.11. Only exceptionally, where the process to reach a decision would not benefit from discussion in a meeting at which members' views would inform debate [or if the issue is time critical](#), will a Board decision be reached without a formal meeting.

#### **4.8. Quorum of the Board**

- 4.8.1. The quorum for a Board meeting shall be the Chairman (or Deputy Chairman) and four members of the Board. Non-Executive Board members should be in the majority.
- 4.8.2. Participation will usually be in person, but in exceptional circumstances, members of the Board may participate by telephone or video-conferencing facility and be deemed to be present and constitute part of the Board for that meeting.
- 4.8.3. Where a Board meeting:
- (i) is not quorate under paragraph 4.8.1 within half an hour from the time appointed for the meeting; or
  - (ii) becomes inquorate during the course of the meeting,

then the meeting shall [either](#) be adjourned to such time, place and date as may be determined by the members present [or shall continue as an informal meeting at which no decisions may be taken](#).

#### **4.9. Minutes of the Board**

- 4.9.1. A member of Monitor's staff shall act as Secretary to the Board.
- 4.9.2. The Secretary shall record the minutes of every meeting, or nominate a deputy to do so.
- 4.9.3. The Secretary shall submit the draft minutes to the Board in advance of its next meeting for agreement, confirmation or otherwise.
- 4.9.4. The record of the minutes shall include:
- (i) the names of:
    - (a) every member of the Board present at the meeting;
    - (b) any other person present; and
    - (c) any apologies tendered by an absent member of the Board;
  - (ii) the withdrawal from a meeting of any member on account of a conflict of interest; and
  - (iii) any declaration of interest.
- 4.9.5. Minutes of any meetings of the Board will record key points of discussion. They will not however attribute comments to specific members unless this is specifically requested by the Board member concerned or required by the Chairman. Where personnel, finance or other restricted matters are discussed, the minutes will describe the substance of the discussion in general terms.
- 4.9.6. Once agreed, the record of the minutes shall be published on Monitor's website, [www.monitor-nhsft.gov.uk](http://www.monitor-nhsft.gov.uk).

#### **4.10. Emergency Powers**

4.10.1. The functions exercised by the Board may, in an emergency, be exercised by the Chairman after having consulted the Chief Executive or another Executive Member of the Board.

4.10.2. The exercise of such powers by the Chairman must be reported to the next formal meeting of the Board in public session for ratification. The reasons for why an emergency decision was required must be clearly stated.

#### **4.10.4.11. Delegation of Powers**

4.10.1.4.11.1. Paragraph 11(2) of Schedule 8 to the 2012 Act provides that:

"Monitor may arrange for the exercise of its functions on its behalf by -

- (a) a non-executive member;
- (b) an employee (including the chief executive);

(c) a committee or sub-committee.”

~~4.10.2~~4.11.2. The matters listed at Annex C are reserved to the Board. They are generally matters for which it is accountable to Parliament. The fundamental objective is to ensure that the work of Monitor is managed effectively within the policies laid down by the Board.

~~4.10.3~~4.11.3. The schedule at Annex D sets out those specific matters which the Board has formally agreed to delegate.

~~4.10.4~~4.11.4. The Board remains accountable for all of Monitor’s functions, even those delegated to Committees, sub committees, the Chairman, Chief Executive, individual senior executives or employees and will require information about the exercise of delegated functions to enable it to maintain a monitoring role.

~~4.10.5~~4.11.5. The list of matters reserved for decision by the Board does not however preclude other matters being referred to the Board for decision. All powers delegated by the Board can be reassumed should the need arise and the Board reserves the right to deal with any matters previously delegated. The Board may also revoke or vary such a delegation.

~~4.10.6~~4.11.6. In accordance with paragraph 5.1 of these Rules of Procedure, there is delegated from the Board to each Committee of Monitor the discharge of those functions that fall within their respective Terms of Reference other than any matter reserved to the Board.

~~4.10.7~~4.11.7. Any delegation made by the Board may be subject to any conditions the Board may impose and may be revoked or altered by the Board.

~~4.10.8~~4.11.8. All powers of Monitor which have not been:

- (i) reserved by the Board under paragraph 4.10.2 of, and Annex C to, these Rules of Procedure;
- (ii) delegated to a Committee or to named senior executives further to Annex D to these Rules of Procedure; or
- (iii) implied by the provisions of Monitor’s Rules of Procedure, Standing Financial Instructions, and Scheme of Delegation

shall be exercised on behalf of Monitor by the Chief Executive.

~~4.10.9~~4.11.9. The Chief Executive shall prepare a Scheme of Delegation identifying which functions he shall perform personally and which functions have been delegated to Committees, sub committees and individual employees.

~~4.10.10~~4.11.10. All powers delegated by the Chief Executive can be re-assumed by him should the need arise.

~~4.10.11~~4.11.11. Powers are delegated to the Committees, sub committees and individual employees on the understanding that they will not exercise delegated powers in a matter which in their understanding was likely to be a cause for public concern or which might have an effect on the reputation of Monitor.

~~4.10.12~~~~4.11.12.~~ The exercise of all delegated powers is on the basis that appropriate expert advice will be sought as necessary and that any costs involved can be met within the authorised budget.

~~4.10.13~~~~4.11.13.~~ The Secretary shall keep a record of the powers, authorities and discretions delegated by the Board.

~~4.10.14~~~~4.11.14.~~ In the absence of an employee to whom powers have been delegated those powers shall be exercised by the relevant Executive Committee member unless alternative arrangements have been approved by the Board. If the Chairman is absent, the powers delegated to him may be exercised by the Deputy Chairman, in relation to the Board, and the Chief Executive (or the Managing Director of Sector Development or Managing Director of Provider Regulation) after taking advice as appropriate from the Board and Executive Committee members.

#### ~~4.11~~~~4.12.~~ **Role of Accounting Officer and Standing Financial Instructions**

~~4.11.1~~~~4.12.1.~~ The Chief Executive acts as Monitor's Accounting Officer. As Accounting Officer, he is responsible for ensuring that the public funds for which he is personally responsible are properly safeguarded and are used in line with Monitor's statutory functions and responsibilities, including the duty to exercise functions effectively, efficiently, and economically.

~~4.11.2~~~~4.12.2.~~ The Standing Financial Instructions, set out at Annex E to these Rules of Procedure, detail the financial responsibilities, policies and procedures to be adopted by Monitor. They are designed to ensure that financial transactions are carried out in accordance with the law and Government policy in order to achieve probity, accuracy, economy, efficiency and effectiveness. They provide a framework of procedures and rules for employees to follow.

~~4.11.3~~~~4.12.3.~~ All proposed expenditure of above ~~£750,000~~£1m must be formally approved by the Board.

#### ~~4.12~~~~4.13.~~ **Personal Conflicts of Interest**

~~4.12.1~~~~4.13.1.~~ If a member of the Board or a Committee or sub-committee member knowingly has any interest or duty which is material and relevant, or the possibility of such an interest or duty, whether direct or indirect and whether pecuniary or not, that, in the opinion of a fair-minded and informed observer would suggest a real possibility of bias in any matter that it brought up for consideration at a meeting of the Board or any Committee or sub-committee of Monitor, he shall disclose the nature of the interest or duty to the meeting. The declaration of interest or duty may be made at the meeting at the start of the discussion of the item to which it relates or in advance in writing to the Secretary. If an interest or duty has been declared in advance of the meeting, this will be made known by the chair of the meeting prior to the discussion of the relevant agenda item. In the event of the person not appreciating at the beginning of the discussion that an interest or duty exists, he should declare such an interest as soon as he becomes aware of it.

~~4.12.2~~~~4.13.2.~~ If a member of the Board or a Committee or sub-committee member has acted in accordance with the provisions of paragraph 4.12.1 above and has fully explained the nature of their interest or duty, the members of the Board or Committee or sub-committee present will decide unanimously whether and to what extent that

person should participate in the discussion and determination of the issue and this will be recorded in the minutes and the extent to which the person concerned had access to any written papers on the matter. If it is decided that he should leave the meeting, the chair may first allow them to make a statement on the item under discussion.

~~4.12.3~~4.13.3. Where the chair of the meeting has a relevant interest then he must advise the Board or the Committee or sub-committee accordingly, and with their agreement and subject to the extent decided participate in the discussion and the determination of the issue. This will be recorded in the minutes and the extent to which he had access to any written papers on the matter. If it is decided that the chair should leave the meeting because of a conflict of interest, another member or Committee or sub-committee member will be asked to chair the discussion of the relevant agenda item in accordance with the procedure set out in paragraph 4.12.1 above.

~~4.12.4~~4.13.4. Monitor employees who are not members of the Board or a Committee or sub-committee, but who are in attendance at a meeting of the Board or a Committee, should declare interests in accordance with the same procedures as for those who are members of the Board or Committee or sub-committee. Where the chair of a meeting rules that a potential conflict of interest exists, any Monitor employee so concerned should take no part in the discussion of the matter and may be asked to leave the meeting by the chair.

~~4.12.5~~4.13.5. A member of the Board, Committee or sub-committee, or Monitor employee shall be subject to the procedural arrangements for dealing with conflicts of interest as set out in the Code of Ethical Practice at Annex B.

#### ~~4.13.~~4.14. **Allowances for Non-Executive Members of the Board**

~~4.13.1~~4.14.1. Non-Executive members of the Board are entitled to seek reimbursement of reasonable expenses incurred in the exercise of the duties in accordance with the policy that was approved by the Board in February 2005, together with any subsequent duly approved changes, a copy of which is available from the Secretary on request, and will be provided to members on joining the Board.

## **5. MEETINGS AND PROCEEDINGS OF COMMITTEES**

Where no specific provisions are specified for Committees, these are the same as the principles and provisions for the Board, as set out above. Where there is any inconsistency between the said provisions and any provisions in the Terms of Reference for any Committee or sub-committee, then the latter shall prevail.

### **5.1. Appointment of Committees**

5.1.1. The Board may establish a Committee for any purpose within its functions and the 2012 Act, and shall determine the powers and functions of any such Committee.

5.1.2. The Board shall appoint members of the Committees.

5.1.3. The Board shall appoint, for every Committee, a chair who shall be a member of the Board, unless there is a specific requirement that the Chief Executive, as Accounting Officer, should be chair.

5.1.4. The Board shall keep under review, the structure and scope of activities of each Committee.

5.1.5. The Board shall set out the Terms of Reference for each Committee.

5.1.6. The Board may at any time amend the Terms of Reference of any Committee or sub-committee.

## **5.2. Meetings of a Committee**

5.2.1. Subject to paragraph 5.3 and such indicative schedule of meetings as may be specified by the Board, a Committee or sub-committee shall hold meetings at such regular intervals as may be determined by the members of the Committee or sub-committee.

5.2.2. The Committee shall determine the time and place of the meetings to be held under paragraph 5.2.1.

## **5.3. Special Meetings of a Committee**

5.3.1. Without prejudice to paragraph 5.2, in the event of urgency, the Committee chair may determine to hold a meeting to be known as a special meeting at such time and place as he may determine.

## **5.4. Attendance at Committee Meetings**

5.4.1. Subject to paragraph 5.4.2, a member of the Board may attend and speak, with the permission of the Chair of the Committee, at any meeting of a Committee.

5.4.2. A member of the Board who is not a member of the Committee shall not vote on any matter before the Committee.

## **5.5. Chairing of Committee Meetings**

5.5.1. Subject to paragraphs 5.5.2 to 5.5.3, the procedure at meetings shall be determined by the Committee chair presiding at the meeting.

5.5.2. The Committee chair shall, if present, preside at all meetings.

5.5.3. In the absence of the Committee chair, a Non-Executive Board Member who is also a member of the Committee or a Board member nominated by the Committee chair shall preside.

## **5.6. Quorum of Committees**

5.6.1. The quorum for a Committee meeting shall generally consist of one half of the total membership of the Committee of which, at least, one Non-Executive Member of the Board is present.

## **5.7. Minutes of Committees**

5.7.1. A Member of Monitor's staff shall act as Secretary to all Committees, or nominate a deputy.

5.7.2. The Secretary shall record the minutes of every meeting of a Committee or nominate a deputy.

5.7.3. The record of the minutes shall be submitted to the Committee at its next meeting for agreement, confirmation or otherwise.

5.7.4. Minutes will be circulated to all Board members.

**5.8. Prohibition on Delegation of a Committee's Function**

5.8.1. A Committee shall not delegate its functions to a sub-committee established by the Committee or to any other person unless authorised by the Board in the Committee's Terms of Reference.

MONITOR

**Membership**

1

- (1) Monitor is to consist of—
  - (a) a chair appointed by the Secretary of State,
  - (b) at least four other members so appointed, and
  - (c) the chief executive and other members appointed in accordance with paragraph 2.
- (2) The number of executive members must be less than the number of non-executive members.
- (3) In this Schedule—
  - (a) references to non-executive members of Monitor are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and
  - (b) references to executive members of Monitor are references to the other members.

***The chief executive and other executive members: appointment and status***

2

- (1) The chief executive and the other executive members of Monitor are to be appointed by the non-executive members.
- (2) A person may not be appointed as chief executive or as another executive member without the consent of the Secretary of State.
- (3) The non-executive members may not appoint more than five executive members without the consent of the Secretary of State.
- (4) The chief executive and the other executive members are to be employees of Monitor.

***Non-executive members: tenure***

3

- (1) A person holds and vacates office as a non-executive member of Monitor in accordance with that person's terms of appointment.
- (2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.
- (3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds—
  - (a) incapacity,
  - (b) misbehaviour, or
  - (c) failure to carry out his or her duties as a non-executive member.
- (4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (3).

(5) A person may not be appointed as a non-executive member for a period of more than four years.

(6) A person who ceases to be a non-executive member is eligible for re-appointment.

### ***Suspension from office***

#### **4**

(1) This paragraph applies where a person is suspended under paragraph 3(4).

(2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.

(3) The notice may be—

(a) delivered in person (in which case, the person is taken to receive it when it is delivered), or

(b) sent by first class post to the person's last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).

(4) The initial period of suspension must not exceed six months.

(5) The Secretary of State may at any time review the suspension.

(6) The Secretary of State—

(a) must review the suspension if requested in writing by the person to do so, but

(b) need not review the suspension less than three months after the beginning of the initial period of suspension.

(7) Following a review during a period of suspension, the Secretary of State may—

(a) revoke the suspension, or

(b) suspend the person for another period of not more than six months from the expiry of the current period.

(8) The Secretary of State must revoke the suspension if the Secretary of State—

(a) decides that there are no grounds to remove the person from office under paragraph 3(3), or

(b) decides that there are grounds to do so but does not remove the person from office under that provision.

#### **5**

(1) Where a person is suspended from office as the chair under paragraph 3(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair's functions.

(2) Appointment as interim chair is for a term not exceeding the shorter of—

(a) the period ending with either—

(i) the appointment of a new chair, or

(ii) the revocation or expiry of the existing chair's suspension, and

(b) the remainder of the interim chair's term as a non-executive member.

(3) A person who ceases to be the interim chair is eligible for re-appointment.

### ***Payment of non-executive members***

**6**

- (1) Monitor must pay to its non-executive members such remuneration and allowances as the Secretary of State may determine.
- (2) Monitor must pay or make provision for the payment of such pensions, allowances or gratuities as it may, with the approval of the Secretary of State, determine to or in respect of any person who is or has been a non-executive member.
- (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, Monitor must pay compensation to the person of such amount as the Secretary of State may determine.

### ***Staff***

**7**

- (1) Monitor may appoint such persons to be employees of Monitor as it considers appropriate.
- (2) Employees of Monitor are to be paid such remuneration and allowances as Monitor may determine.
- (3) Employees of Monitor are to be appointed on such other terms and conditions as Monitor may determine.
- (4) Monitor may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of Monitor.
- (5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), Monitor must obtain the approval of the Secretary of State to its policy on that matter.

### ***Superannuation***

**8**

- (1) Sub-paragraph (2) applies where a person who is an active or deferred member of a scheme under section 1 of the Superannuation Act 1972 is appointed as chair.
- (2) The Minister for the Civil Service may determine that the person's office as chair is to be treated for the purposes of the scheme as service in the employment by reference to which the person is a member (whether or not any benefits are payable by virtue of paragraph 6(2)).
- (3) Employment with Monitor is among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply; and, accordingly, in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of "Other Bodies" insert— "Monitor".
- (4) Monitor must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (2) or (3) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

## **Committees**

**9**

- (1) Monitor may appoint such committees and sub-committees as it considers appropriate.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of Monitor.
- (3) Monitor may pay such remuneration and allowances as it determines to any person who—
  - (a) is a member of a committee or sub-committee, but
  - (b) is not an employee of Monitor,whether or not that person is a non-executive member of Monitor.

## **Procedure**

**10**

- (1) Monitor may regulate its own procedure.
- (2) The validity of any act of Monitor is not affected by any vacancy among the members or by any defect in the appointment of a member.

## **Exercise of functions**

**11**

- (1) Monitor must exercise its functions effectively, efficiently and economically.
- (2) Monitor may arrange for the exercise of its functions on its behalf by—
  - (a) a non-executive member;
  - (b) an employee (including the chief executive);
  - (c) a committee or sub-committee.

## **Assistance**

**12**

- (1) Monitor may arrange for persons to assist it in the exercise of its functions in relation to—
  - (a) a particular case, or
  - (b) cases of a particular description.
- (2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

## **Borrowing**

**13**

- (1) Monitor may, with the consent of the Secretary of State, borrow money temporarily by way of overdraft.
- (2) But subject to that, and subject to sections 145 and 146 (power to borrow for exercising functions in relation to financial assistance and power of Secretary of State to lend etc), Monitor may not borrow money.

## **Acquiring information**

**14**

- (1) Monitor may obtain, compile and keep under review information about matters relating to the exercise of its functions.

- (2) Where Monitor exercises the power under sub-paragraph (1), it must do so with a view to (among other things) ensuring that it has sufficient information to take informed decisions and to exercise its other functions effectively.
- (3) In exercising the power under sub-paragraph (1), Monitor may carry out, commission or support (financially or otherwise) research.

### **General power**

**15**

Monitor may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions.

### **Finance**

**16**

- (1) The Secretary of State may make payments to Monitor out of money provided by Parliament of such amounts as the Secretary of State considers appropriate.
- (2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State considers appropriate.

### **Accounts of NHS foundation trusts**

**17**

- (1) Monitor must prepare in respect of each financial year a set of accounts which consolidates the annual accounts of all NHS foundation trusts.
- (2) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare a set of accounts in respect of such period as may be specified in the direction which consolidates any accounts prepared by NHS foundation trusts by virtue of paragraph 25(1A) of Schedule 7 to the National Health Service Act 2006 in respect of that period.
- (3) In preparing any consolidated accounts under this paragraph, Monitor must comply with directions given by the Secretary of State with the approval of the Treasury as to—
  - (a) the content and form of the consolidated accounts;
  - (b) the methods and principles according to which the consolidated accounts should be prepared.
- (4) Monitor must send a copy of any consolidated accounts under this paragraph to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General—
  - (a) accompanied by such other reports or information as the Secretary of State may direct, and
  - (b) within the relevant period.
- (5) In sub-paragraph (4)(b), the relevant period is—
  - (a) in relation to consolidated accounts under sub-paragraph (1), such period after the end of the financial year concerned as the Secretary of State may direct;
  - (b) in relation to consolidated accounts under sub-paragraph (2), such period as the Secretary of State may direct.
- (6) Before giving a direction under sub-paragraph (5), the Secretary of State must consult Monitor.

- (7) The Comptroller and Auditor General must—
- (a) examine, certify and report on any consolidated accounts sent under this paragraph,
  - (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and
  - (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.
- (8) Monitor must act with a view to securing that NHS foundation trusts—
- (a) comply promptly with requests from it or the Secretary of State for information relating to their accounts, and
  - (b) otherwise act so as to facilitate the preparation of accounts by the Secretary of State.
- (9) This paragraph does not apply to the financial year specified for the purposes of section 155(7) (which provides for the order that commences section 155, which itself relates to the preparation of the accounts of NHS foundation trusts, to specify the first financial year to which that section will apply) or to the subsequent financial years.

### ***Accounts of Monitor***

#### **18**

- (1) Monitor must keep proper accounts and proper records in relation to the accounts.
- (2) The Secretary of State may, with the approval of the Treasury, give directions to Monitor as to—
- (a) the content and form of its accounts, and
  - (b) the methods and principles to be applied in the preparation of its accounts.
- (3) In sub-paragraph (2), the reference to accounts includes Monitor's annual accounts prepared under paragraph 19 and any interim accounts prepared by virtue of paragraph 20.

#### **19**

- (1) Monitor must prepare annual accounts in respect of each financial year.
- (2) Monitor must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on the annual accounts, and
  - (b) lay copies of them and the report before Parliament.

#### **20**

- (1) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare accounts in respect of such period or periods as may be specified in the direction (“interim accounts”).
- (2) Monitor must send copies of any interim accounts to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General within such period as the Secretary of State may direct.

- (3) The Comptroller and Auditor General must—
  - (a) examine, certify and report on any interim accounts sent by virtue of subparagraph (2),
  - (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and
  - (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

### **Reports and other information**

**21**

- (1) As soon as practicable after the end of each financial year, Monitor must prepare an annual report on how it has exercised its functions during the year.
- (2) The report must, in particular—
  - (a) set out the measures that Monitor has taken to promote economy, efficiency and effectiveness in the use of resources for the exercise of its functions,
  - (b) include a statement of what it did to comply with the duty under section 63(2) (duty to have regard to Secretary of State's guidance on duty under section 62(9)), and
  - (c) include a statement of what it did to comply with the duty under section 66(2)(h) (duty to have regard to Secretary of State's guidance on relevant parts of document on improving quality of services).
- (3) Monitor must—
  - (a) lay a copy of the report before Parliament, and
  - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) Monitor must provide the Secretary of State with—
  - (a) such other reports and information relating to the exercise of Monitor's functions as the Secretary of State may require;
  - (b) such information about NHS foundation trusts that Monitor has in its possession as the Secretary of State may require.

### **Recommendations by Committees in Parliament**

**22**

Monitor must respond in writing to any recommendation about its exercise of its functions that a Committee of either House of Parliament or a Committee of both Houses makes.

### **Seal and evidence**

**23**

- (1) The application of Monitor's seal must be authenticated by the signature of the chair or any other person who has been authorised (generally or specifically) for that purpose.
- (2) A document purporting to be duly executed under Monitor's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

### **Status**

**24**

- (1) Monitor must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) Monitor's property must not be regarded as property of, or property held on behalf of, the Crown.

## ANNEX B

### CODE OF ETHICAL PRACTICE

#### Introduction

1. Monitor expects the highest standards of its Board members and its staff. It recognises that the seven principles of public life apply to anyone who works as a public office holder. This includes all of those who are appointed to public office and all people appointed to work in Non Department Public Bodies. All public servants are both servants of the public and stewards of public resources. This Code provides a high level statement of the standards of practice expected of Monitor's Board members and its staff. It should be read in conjunction with the relevant organisational policies (as set out in each section), which are developed and agreed in line with the principles set out in this Code.

#### Statutory context and commitment to the values of the NHS as set out in the NHS Constitution

2. The Health and Social Care Act 2012 states that the main duty of Monitor is to protect and promote the interests of people who use healthcare services, by promoting provision of health care services which is economic, efficient and effective and maintains or improves the quality of the services. In light of this and the findings of the Mid Staffordshire NHS Foundation Trust Public Inquiry, this Code must also be implemented within the framework of the "Statement of Common Purpose" (Appendix C). In particular Monitor's recognises the importance of the principles and values identified within the NHS Constitution and is committed to taking account of the Constitution in its decisions and actions. All of the expectations set out within this Code should be considered within this context.

#### General Propriety and Public Service Values

3. Monitor's Board members and staff in their activities and actions will have regard to the seven principles of public life (Appendix A) and the following principles of good regulation:
  - Transparency;
  - Accountability;
  - Proportionality;
  - Consistency; and
  - Proper targeting of regulation to achieve defined goals.
4. Everyone at Monitor has duty to act in good faith and in the best interests of Monitor. They should play a full and active role in the organisation and not use their position to promote their personal interests or those of any connected person or organisation.
5. No Board member or employee should engage in activity which is, or could be perceived to be, politically controversial or inappropriate in the context of Monitor's statutory functions and corporate plan.
6. The highest standards of propriety, involving integrity, impartiality and objectivity must be maintained in relation to the stewardship of public funds and the management of Monitor. Any conflict between personal interests and the discharge of public duties must be avoided. No-one to whom this Code applies must seek through the performance of their duties to gain material benefit for themselves, their families or their friends.

7. Suspicion that a decision might be influenced in the hope or expectation of future employment with a particular firm or organisation must be avoided. Accordingly, during their term of office no-one to whom this Code applies must seek any consultancy contracts, directorships or other form of employment in a healthcare sector body that brings them into conflict with their role at Monitor. Any potential conflicts of interests must be managed appropriately.

***See Code of Conduct for Board Members (Cabinet Office 2011)***

8. Monitor has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. In their decision-making, Board members and staff must give consideration to the impact that it might have on these requirements and on the nine protected groups identified by the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation).

***See: Equality and Diversity Policy***

9. Monitor has made a clear statement of its Vision, Mission and Values (Appendix B). It has also adopted a behavioural competency framework which is driven by various performance management policies. All members of staff are expected to comply with these policies, which will be reviewed and updated as appropriate.

***See: Grievance Policy, Harassment Policy, Discipline Policy etc.***

### **Use of Public Funds**

10. Those to whom this Code applies are required to maximise value for money through ensuring that Monitor operates in the most efficient and economical way, within available resources, and with independent validation of performance achieved where practicable.

***See: Anti Fraud Policy, Business Expenses Policy***

### **Gifts and Hospitality**

11. Those to whom this Code applies have a responsibility to ensure that they are not placed in a position that risks, or appears to risk, compromising their role or Monitor's public and statutory duties. They should not, nor should they be perceived to, secure valuable gifts and hospitality by virtue of their role at Monitor. They should not accept or provide any gift or hospitality if this would give the impression that they have been influenced or are deemed to be influencing whilst acting in an official capacity.

***See: Gifts and Hospitality Policy***

### **Conflicts and Declarations of Interests**

12. It is important for Monitor to:

- (i) ensure that no member of the Board, Committee member or employee is involved in taking a decision or participates in a discussion on any matter where that person has a conflict of interest;

- (ii) ensure that those providing information to Monitor can be confident that it will be properly handled; and
- (iii) avoid any impression that any member of the Board, Committee member or employee has used his relationship with Monitor to their personal advantage.

13. Every member of the Board, independent member or employee should avoid situations in which their duties and private interests may conflict or where there would be a suspicion of conflict and ensure that, before he becomes involved in taking a decision or participating in a discussion, there are no conflicts of interest that, in the opinion of a fair-minded and informed observer, would suggest a real possibility of bias.

~~13.~~14. [The Health and Social Care Act 2012 requires Monitor to act to ensure that there is neither an actual nor a perceived conflict between the exercise of its functions. All members of staff should bear this in mind and take appropriate action if they think that their involvement in a matter or presence at a decision-making committee might represent such an interest.](#)

**See: [Rules of Procedure \(personal conflicts\), Operational or Functional Conflicts of Interest Policy \(operational conflicts\)](#)**

### **Access to Information**

~~14.~~15. Monitor Board members and employees may receive information which is not in the public domain, relating to individuals, organisation or commercial-in-confidence matters. It is the responsibility of each individual to ensure that this information is treated appropriately.

**See: *Freedom of Information Policy***

~~14.~~16. Monitor is committed to identifying and preventing any malpractice or wrongdoing within the organisation. As part of this commitment, Monitor takes whistleblowing very seriously. It recognises and encourages those to whom this Code applies to consider whistleblowing, if necessary, an aspect of good citizenship. It provides Monitor with the chance to identify and investigate concerns and put them right.

**See: *Whistleblowing Policy***

### **Media, public speaking and use of social media**

~~16.~~17. Special care should be taken about any invitation to speak publicly, including speaking to journalists. Care must also be taken in the publication of any articles or expression of views on social media. In any such instance, the Chairman and/or the Chief Executive should be informed in good time before such an article is submitted, or, in their absence, the Director of Strategic Communications, as appropriate. The Chairman, Board members and independent members are not however restricted from access to the media in their personal non-Monitor capacity, or in pursuit of a professional interest, for example, as experts. These considerations should not prevent any member of staff or Board member from exercising their whistleblowing rights or their duty of candour, should they be aware of poor quality care being provided to patients.

## THE SEVEN PRINCIPLES OF PUBLIC LIFE

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## **MONITOR'S VISION, MISSION AND VALUES**

**Monitor's mission is to make the health sector work for patients.**

### **Our values**

Our mission describes in simple terms what we're trying to achieve. Our strategy describes what we plan to do to achieve our mission. Our values, however, are more fundamental. They describe the sort of organisation we want to be in the long term. They serve to remind ourselves and others what we see as of central importance to Monitor.

In the light of Monitor's much expanded responsibilities and the significant changes to the architecture of the health system in England we have redefined what we want our values to be:

#### **Patients first**

Our primary duty - and therefore our mission - focuses on patients. This is a significant and welcome emphasis for Monitor. Making a difference for patients will govern all that we do. It means we will be guided by what the evidence shows works for patients, not by ideology. We will not enforce rules for their own sake but because we believe they will lead to better outcomes for patients. Similarly, when we need to balance the use of different levers – for example, improving sector efficiency through the tariff and securing the viability of individual FTs, or maintaining patient choice and consolidating services for improved quality – our guiding principle will be to do what is in the best interests of the people who use the services.

#### **Work with partners**

The new architecture of the NHS means that responsibilities are divided amongst many bodies. This is not necessarily a bad thing. Making explicit, even public, the inevitable trade-offs between different responsibilities can lead to better decisions. Exposing for all to see how well different parts of the system are working together should make us all work together better. To be an effective organisation Monitor must reach out to and work closely with our many partner organisations, in particular NHS England, the NHS Trust Development Authority, the Care Quality Commission (CQC), the Competition and Markets Authority (CMA) and the Department of Health. Not only must we work together collaboratively, we must also have a common vision for what we're trying to achieve and a shared approach for how we will get there. Consistent with this, everyone in Monitor should have a network of collaborators from partner bodies and other stakeholders.

#### **Support the front line**

Monitor does not deliver care. It is our job to support those who do – the nurses, doctors, carers, managers and many more who work inside and beyond the NHS. This means recognising and respecting the challenges they face every day and their commitment to do the best for their patients. It means helping them do the right thing rather than waiting for them to do the wrong thing. It means giving them as much freedom as possible to do what they are good at; to innovate and make changes at a local level that are in the best interests of the people they serve.

**One team**

Even within Monitor there are many different levers we can pull to play our part in helping to ensure that patients and service users get the best possible care, delivered as efficiently as possible. So we too must work together, establishing a culture of collaboration and support that values helping a colleague achieve their objectives and develop as much as taking personal accountability for achieving our own goals. This will help us focus on what is best for patients as we look for the right balance between the different levers we can pull.

**Professional**

At Monitor we are proud of our reputation for being professional in the way we do things. We don't want this to change. We will bring evidence, analytical rigour and objectivity to bear on all our decisions. We will be open and transparent about how we make decisions. We will focus on what works, being pragmatic in pursuit of the patients' interests. We will always try to make sure people understand what we intend to do, and then do it. We will try to do all of this whilst consuming as little of the NHS's resources as possible.

## STATEMENT OF COMMON PURPOSE

In the light of the findings of the report into the Mid Staffordshire NHS Foundation Trust Public Inquiry, we the undersigned make the following commitments.

### 1. We renew and reaffirm our personal commitment and our organisations' commitment to the values of the NHS, set out in its Constitution:

- **Working together for patients**<sup>1</sup>. Patients come first in everything we do. We fully involve patients, staff, families, carers, communities, and professionals inside and outside the NHS. We put the needs of patients and communities before organisational boundaries. We speak up when things go wrong.
- **Respect and dignity**. We value every person – whether patients, their families or carers, or staff – as an individual, respect their aspirations and commitments in life, and seek to understand their priorities, needs, abilities and limits. We take what others have to say seriously. We are honest and open about our point of view and what we can and cannot do.
- **Commitment to quality of care**. We earn the trust placed in us by insisting on quality and striving to get the basics of quality of care – safety, effectiveness and patient experience – right every time. We encourage and welcome feedback from patients, families, carers, staff and the public. We use this to improve the care we provide and build on our successes.
- **Compassion**. We ensure that compassion is central to the care we provide and respond with humanity and kindness to each person's pain, distress, anxiety or need. We search for the things we can do, however small, to give comfort and relieve suffering. We find time for patients, their families and carers, as well as those we work alongside. We do not wait to be asked, because we care.
- **Improving lives**. We strive to improve health and well-being and people's experiences of the NHS. We cherish excellence and professionalism wherever we find it – in the everyday things that make people's lives better as much as in clinical practice, service improvements and innovation. We recognise that all have a part to play in making ourselves, patients and our communities healthier.
- **Everyone counts**. We maximise our resources for the benefit of the whole community, and make sure nobody is excluded, discriminated against or left behind. We accept that some people need more help, that difficult decisions have to be taken – and that when we waste resources we waste opportunities for others.

### 2. We apologise to every individual affected by this deeply disturbing and tragic failing in a service that means so much to us all. What happened in Mid Staffordshire NHS Foundation Trust was, and is, unacceptable and collectively we

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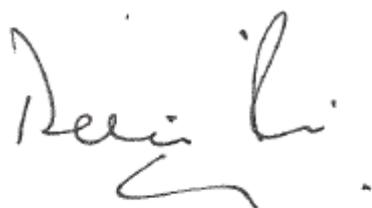
<sup>1</sup> As the tragic events the Inquiry investigated occurred in a hospital, this statement refers to "patients". These principles and commitments apply equally to all people in other care settings

take responsibility for putting things right. We recognise that while the depth, scale and duration of the failings at this hospital were unprecedented every day the NHS is responsible for care that is poor as well as care that is good or excellent. **Our commitment to the NHS and our pride in the good that it does each day will not blind us to its failings.** It compels us to resolve them.

3. **We will put patients first**, not the interests of our organisations or the system. **We will listen to patients**, striving to ensure the quality of care that we would want for ourselves, our own families and our friends.
4. **We will listen most carefully to those whose voices are weakest and find it hardest to speak for themselves.** We will care most carefully for the most vulnerable people – the very old and the very young, people with learning disabilities and people with severe mental illness.
5. **We will work together**, collaborating on behalf of patients, combining and coordinating our strengths on their behalf, sharing what we know and taking collective responsibility for the quality of care that people experience. **Together, we will be unflinching in rooting out poor care and unflinching in promoting what is excellent.**
6. Whilst this poor care was in a hospital, poor care can occur anywhere across the health and social care system. Whether in a care home, at the family doctor, in a community pharmacy, in mental health services, or with personal care in vulnerable people's homes, **we will ensure that the fundamental standards of care that people have a right to expect are met consistently, whatever the settings.**
7. **Every one of us commits to ensuring a direct connection to patients and to the staff who care for them.** We will ensure that our organisations and our staff look outwards to the people they serve, taking decisions with patients and local communities at the forefront of their minds. **We will shape care in equal partnership with the people who depend on it.** We will do the business of the patient, before that of our organisation or the system.
8. **We will work together to minimise bureaucracy, enabling time to care and time to lead, freeing up the expertise of NHS staff and the values and professionalism that called them to serve.** Caring is demanding as well as rewarding, and depends on the personal and professional values of everyone who works in the NHS. We know well-treated staff treat patients well, so as the NHS become busier we need to ensure time to care and time to recover from caring. We will recruit, appraise and reward staff for their care, as well as their skills and their knowledge.
9. Healthcare is complex and we are part of a complicated system. Building on a foundation of fundamental and inviolable standards, **we will build a single set of nationally agreed and locally owned measures of success, focussed on what matters most to patients.** They must be credible and independently assessed so that patients, the public, Parliament and those who work for NHS patients have a single version of the truth about local services and organisations and their staff have a single set of standards of care to which they aspire. **Blind adherence to targets or finance must never again be allowed to come before the quality of care.** We need to use public money well and we need to be efficient and productive, but these are a means to an end – safe, effective and respectful care, compassionately given. We will be balanced in what we do and what we expect, with the patient interest at

the heart of it. We must all do our best to maintain and raise quality within the resources we have.

10. We believe that patients are best served and our values nurtured by a spirit of candour and a culture of humility, openness, honesty and acceptance of challenge. Things do go wrong, but when they do we must learn from mistakes, not conceal them. **We will seek out and act on feedback, both positive and negative.** We will listen to patients who raise concerns, respond to them and learn from them. We will listen to staff who are worried about the quality of care, praising them for speaking up, even if a concern was misplaced. **We have a duty to challenge ourselves and each other on behalf of patients and we will do so.**
11. Signing up to principles in offices in national organisations is easy. **Changing ourselves, our behaviour, individually and institutionally, is difficult, but we pledge to do so.** Health and care is not like any other job. It touches the hearts of people's lives, can do immense good but also immense harm – it is a matter of life or death. This is both a privilege and a great responsibility. Together, we will make ourselves accountable and responsible for what we do, not what we say, in striving to make real, for every patient, the values to which we recommit ourselves today. Over the coming months, each of us will set out our plans for making these commitments a reality. In delivering those plans, we will be judged by the difference that they make to the people whom we serve.
12. The organisations signing this pledge have different responsibilities within our healthcare system, but whatever our role we pledge to learn the lessons from Mid Staffordshire NHS Foundation Trust, help to build better care for every patient and do everything in our power to ensure it does not happen again. We invite all organisations in the health and care system to join us in signing up to this statement of common purpose.



David Prior, Chair,  
Care Quality Commission



Una O'Brien, Permanent Secretary,  
Department of Health



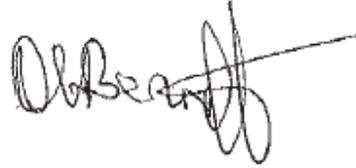
Professor Sir Peter Rubin, Chair,  
General Medical Council



Sir Keith Pearson, Chair,  
Health Education England



Sir Merrill Cockell, Chair,  
Local Government Association



Dr David Bennett, Chair,  
Monitor



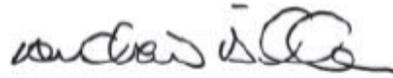
Professor Malcolm Grant, Chair,  
NHS Commissioning Board



Michael O'Higgins, Chair,  
NHS Confederation & NHS Employers



Jan Sobieraj, Managing Director,  
NHS Leadership Academy



Sir Andrew Dillon, Chief Executive,  
National Institute for Health  
and Clinical Excellence



Sir Peter D Carr, Chair,  
NHS Trust Development Authority



Mark Addison, Chair,  
Nursing and Midwifery Council



Alan Perkins, Chief Executive,  
Health and Social Care Information Centre



Professor David Heymann, Chairman,  
Public Health England

## **Matters Reserved for Board Decision**

### **Strategy and Management**

- The establishment and maintenance of Monitor's strategic direction – reviewing, contributing to and approving Monitor's vision, mission and values.
- The approval of Monitor's Corporate and Business Plans, including the distribution of Monitor's financial allocation as set out in the annual business plan and any subsequent material change to this.
- The approval of Monitor's risk management strategy/framework, including the determination of Monitor's risk appetite
- The approval of all of Monitor's significant regulatory policies prior to consultation with stakeholders and any material amendments following responses received in response to consultation
- The review of performance in light of Monitor's strategy, objectives, business plans and budgets with a view to ensuring that any necessary corrective action is taken
- The continuous appraisal of the affairs and effective management of Monitor by means of the receipt of reports from committees and officers, including the review of the top level /strategic risks facing Monitor and their mitigations.

### **Operational decision-making**

- The determination of any operational decision considered to be policy-determining (i.e. having strategic implications) and/or very high risk

### **Organisation and internal controls**

- The approval of Monitor's high-level organisational design and control structure
- The approval of any significant change to the level and nature of insurance cover held by Monitor
- The approval of corporate policies
- The approval of all proposed expenditure of above ~~£750,000 (to be revised once separate individuals occupy the position of CEO and Chairman)~~ [£1m](#)
- The approval of the instigation, or defence of legal proceedings
- The approval of the opening or closing of any bank account\*

- The approval of audit arrangements and the receipt of reports from the Audit & Risk Committee meetings with a view to taking any appropriate action\*
- To consider and approve Monitor's Statutory Annual Report and Accounts (paragraphs 19 and 21 of Schedule 8 to the 2012 Act)\*
- The determination of the remuneration policy for executive members of the Board, subject to cross-Government controls\*\*\*

### **Board governance, committee membership and other appointments**

- The approval of Monitor's Rules of Procedure (including the schedule of matters reserved for board decisions) and Standing Financial Instructions (Paragraph 10 of Schedule 8 to the 2012 Act)
- The establishment of formal committees and sub-committees, agreeing Terms of Reference and membership thereof (Paragraph 9 of Schedule 8 to the 2012 Act)
- The receipt of reports detailing the decisions and recommendations made by Monitor's formal committees and sub-committees (as appropriate)
- The approval of the delegation of the Board's powers (Paragraph 11(2) of Schedule 8 to the 2012 Act)
- The division of responsibilities between the Chair, the Chief Executive and other executive directors, which should be put in writing
- The evaluation of the performance of the Board at least once a year, including a review of Monitor's overall governance arrangements
- The review of succession planning for the Board and senior management, with a view to ensuring its adequacy\*\*
- (Non-executive Board members only) The appointment of the Chief Executive and the other executive members of the Board (with the consent of the Secretary of State) (Paragraph 2 of Schedule 8 to the 2012 Act)\*\*
- The approval of recommendations to the Secretary of State with regard to changes to the structure, size and composition of the Board\*\*
- The appointment of the Senior Independent Director
- The appointment of Monitor's principal professional advisers

\* Indicates that the matter is the responsibility of the Audit and Risk Committee, with final decision taken by the Board as a whole

\*\* Indicates that the matter is the responsibility of the Nomination Committee, with final decision taken by the Board as a whole

\*\*\* Indicates that the matter is the responsibility of the Remuneration Committee, with final decision taken by the Board as a whole

## **Scheme of Delegation (DS)**

### **Delegations to Board Committees and sub-Committees:**

#### **Audit and Risk Committee**

- The approval of the annual set of accounts which consolidates the annual accounts of all NHS foundation trusts (paragraph 17 of Schedule 8 to the 2012 Act)
- The approval of Monitor's annual and long-term internal audit programme

**Delegations to the executive (subject to the caveat that the Board has reserved to itself the determination of any operational decision considered to be policy-determining (i.e. having strategic implications) and/or very high risk):**

The Chief Executive Officer [\(where appropriate through the Executive Committee\)](#)

All responsibility for the day-to-day management of Monitor is delegated to the Chief Executive. Where a matter is not specifically reserved to the Board, the Chief Executive has authority to act.

Responsibilities to be exercised by the Chief Executive include:

[\(Where appropriate, through the Executive Committee\)](#)

Corporate Governance:

- Acting as Monitor's Accounting Officer (as appointed by the Principal Accounting Officer of the Department of Health);
- The development and approval of operational policies and business processes; and
- Approval of Monitor's detailed financial policies.

Strategy:

- Approval of the organisation's Strategic Plan for recommendation to the Board; and
- Oversight of the successful delivery of the programme of work required by the strategic objectives set out in Monitor's Corporate and Business Plans

Business Plans and Budget:

- Preparation of the annual Business Plan and budget and determination on budget and planning assumptions in advance of each financial year;
- Approval of the medium term financial plan for recommendation to the Board;

- Variations to the approved budget within limits delegated by the Board (less than [£750,0001m](#), or if recurring expenditure less than £250,000); and
- Approval of directorate business plans to deliver the Strategic Plan.

#### Annual Report and Accounts:

- Approval of annual accounts and annual report for Board consideration, and signing the annual accounts.

#### Performance Management:

- Approval of corporate targets for recommendation to the Board.

#### Risk Management:

- Approval of the Statement on Internal Control; and
- Approval of overall risk management arrangements for Board consideration.

#### Human Resources:

- Making recommendations on the remuneration of senior executives to the Remuneration Committee;
- Approval of all major human resources policies; and
- Approval of overall establishment and staff terms and conditions for recommendation to the Board.

#### Publications and Communications:

- Identification of significant publications requiring Board approval and discussion of these with the Chairman;
- Approval of reports and publications by Monitor and Monitor's responses to major consultations, where appropriate for recommendation to the Board;
- Approval of press releases and press statements where the release or statement is of public, political or reputational significance; and
- Approval of evidence to Parliamentary Committees.

The Board may choose to delegate to the Chief Executive specific matters which would otherwise be reserved to the Board (as set out in the Matters Reserved to the Board).

The Chief Executive may appoint another of Monitor's executives to act on his behalf.

(Where appropriate, through the Provider Appraisal Assessment Executive)

- Decisions on applications for NHS FT status (where the decision is not considered to be a marginal one);
- Decisions on the risk ratings of significant transactions proposed by NHS FTs; and
- Delivery and development of Monitor's high level assessment policy and processes.

(Where appropriate, through the Provider Regulation Executive)

- ~~Decisions on proposed enforcement action in relation to breaches by NHS FTs of their licence conditions; and the enforcement of conditions of NHS FTs' terms of Authorisation~~
- ~~Decisions on the risk ratings of significant transactions proposed by NHS FTs~~
- Delivery and development of Monitor's high level provider regulation policies and processes.

(Where appropriate, through the Pricing Executive)

- ~~TBC~~ Decisions on Monitor's response to provider applications and provider and commissioner requests for Local Modifications;
- Delivery and development of the annual National Tariff; and
- Determining breaches by NHS FTs of their pricing-related licence conditions.

(Where appropriate, through the Co-operation and Competition Executive)

- ~~TBC~~ Delivery and development of Monitor's high level co-operation and competition-related policies and processes; and
- Determining breaches by NHS FTs of their co-operation and competition-related licence conditions.

Managing Director Provider Regulation

- The operation of the monitoring, compliance and intervention regime for NHS FTs

Managing Director Sector Development

- The development and maintenance of a fit-for-purpose regulatory framework for Monitor
- The development of a coherent, long term pricing strategy, including building operational capability in this area

Executive Director of ~~Assessment~~ Provider Appraisal

- The assessment of applications from NHS trusts for NHS FT status
- The assessment of proposed mergers and major transactions involving NHS FTs

Executive Director of Co-operation and Competition

- The prevention of anti-competitive behaviour in those organisations regulated by Monitor through the enforcement of licence conditions, commissioning regulations and competition law

- The promotion of effective commissioning through the enforcement of commissioning regulations

#### Executive Director of Legal Services

- Ensuring that Monitor is a legally compliant organisation, in all internal and external undertakings

#### Executive Director of Organisational Transformation

- The provision of a best in class working environment for Monitor staff (including corporate policies, office environment, facilities and ways of working) to support a high performing culture and effective organisation delivery

#### Executive Director of Strategic Communications

- The delivery of the objectives identified within Monitor's communications strategy

#### Executive Director of Patient and Clinical Engagement

- The development and management of strong and effective clinical and patient engagement activities across all of Monitor's regulatory functions

## ANNEX E

### Standing Financial Instructions – to follow

## ANNEX F

**Committee Terms of Reference (to be circulated separately as considered by each individual committee).**