

**INUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY 28  
MAY 2014 AT 9.30 AT WELLINGTON HOUSE, 133-155 WATERLOO ROAD,  
LONDON SE1 8UG**

**Present:**

Joan Hanham, Chairman  
David Bennett, Chief Executive  
Stephen Hay, Managing Director of Provider Regulation  
Heather Lawrence, Non Executive Director  
Adrian Masters, Managing Director of Sector Development  
Iain Osborne, Non Executive Director  
Keith Palmer, Non Executive Director  
Sigurd Reinton, Non Executive Director

**In attendance:**

Jonathan Blackburn, Legal Director, Co-operation and Competition (deputising for Catherine Davies, Executive Director of Co-operation and Competition, from item 18)  
Helen Buckingham, Chief of Staff  
Miranda Carter, Executive Director of Provider Appraisal  
Philippa Harding, Board Secretary  
Steffan Jones, Project Director (Economics)  
Fiona Knight, Executive Director of Organisation Transformation  
Toby Lambert, Director of Strategy and Policy  
Ric Marshall, Director of Pricing  
Hugo Mascie-Taylor, Medical Director/Executive Director of Patient and Clinical Engagements (from item 19 to item 22)  
Sue Meeson, Executive Director of Strategic Communications  
John Pigott, Competition Inquiries Director (deputising for Catherine Davies, Executive Director of Co-operation and Competition, until item 18)  
Simon Rogers, Legal Director (deputising for Kate Moore, Executive Director of Legal Services, until item 18)  
Carla Wilson, Legal Director (deputising for Kate Moore, Executive Director of Legal Services, from item 18)

No members of the public were in attendance for the public session of the meeting.

Executive officers attended the meeting as detailed under specific agenda items below.

## **1. Welcome and apologies**

- 1.1 Apologies for absence had been received from Stephen Thornton (Non Executive Director), Catherine Davies (Executive Director of Co-operation and Competition) and Kate Moore (Executive Director of Legal Services).
- 1.2 It was noted that Stephen Thornton's term of appointment came to an end on 30 May 2014. Board members expressed their appreciation for his work as Non Executive Director, Deputy Chairman and Senior Independent Director and asked the Chairman to write to him accordingly, as well as to wish him a speedy recovery.
- 1.3 Iain Osborne was welcomed to his first meeting of the Board.

## **2. Declarations of interest**

- 2.1 No interests were declared.

## **3. Minutes and matters arising from the meeting held on 30 April 2014 (BM/14/46)**

- 3.1 The minutes of the meeting held on 30 April 2014 were approved and the matters arising noted.

## **4. Quarterly report on the performance of the NHS foundation trust sector (BM/14/47)**

Jason Dorsett (Director of Finance, Reporting and Risk) and Stacey Raggett (Head of Sector Finance and Reporting) were in attendance during the consideration of this item.

- 4.1 Jason Dorsett introduced the report which set out the findings of Monitor's review of Q4 returns from all 147 NHS foundation trusts (NHSFTs), augmented by externally sourced data about the performance of the NHSFT sector in the period. Board members noted the usefulness of the report and discussed the possibility of receiving a similar report about the performance of the healthcare sector as a whole.
- 4.2 It was noted that a significant number of additional new staff had been recruited by NHSFTs across the sector, over and above the number that had been planned, in order to upgrade the quality of services to patients. Consideration was also given to the level of NHSFTs' capital expenditure. This was higher than at the same point in 2012/13 (NHSFTs had spent 83% of their planned capital expenditure in comparison to 72% in the previous year). In light of the importance of ensuring that capital expenditure remained at a reasonable level to properly maintain the infrastructure of health care providers, it was proposed that further information (particularly with regard to significant projects) should be provided in future reports.

**ACTION: JD**

4.3 Trends with regard to non-recurrent cost improvement plans and whether they represented sufficient focus within NHSFTs on sustainable productivity growth were examined. Board members emphasised the importance of health care providers making significant changes to the models of care provision in order to withstand the financial challenges that were expected to face the NHS in 2015/16.

## **5. Integrated care – Programme update and workshop proposal (BM/14/48)**

Charlotte Goldman (Policy Adviser) and Catherine Pollard (Pricing Development Director) joined the meeting for the consideration of this item.

5.1 Board members considered the report which provided a summary of the work Monitor had undertaken and planned to undertake in the future, with regard to its duty in the Health and Social Care Act 2012 to enable integrated care.

5.2 It was noted that local health economies' ability to deliver integrated care depended upon the existence of appropriate infrastructure, such as information technology systems, and that this linked to the Board's previous discussion of the importance of good capital investments.

5.3 In consideration of the suggested areas for the Board's workshop discussion on integrated care that was due to take place in June 2014, it was proposed that this would benefit from the addition of a discussion on transition requirements and costs to enable the provision of more integrated care. This was a significant issue to be considered by Monitor, particularly when considering the potential impact that the acquisition of troubled providers by stronger NHSFTs could have on the acquiring body. New models of care provision could require additional funding in the short term to enable longer term efficiency and cost savings; it was unclear how this money would be accessed. The role of the Better Care Fund in relation to integrated care was also noted.

**ACTION: CP, CG**

## **6. Co-operation and Competition Update (BM/14/49)**

6.1 The Board noted the report which provided information about the significant developments with regard to the work of the Co-operation and Competition directorate in May 2014.

## **7. Provider Appraisal Update (BM/14/50)**

7.1 The Board considered the report which provided information about the significant developments with regard to the work being undertaken by Monitor's Provider Appraisal directorate.

7.2 It was noted that Monitor had published a joint statement with the Care Quality Commission (CQC) and the NHS Trust Development Authority (NHS TDA)

setting out how the three organisations were aligning their approach with regard to determining whether health care providers were “Well Led”. It was proposed that further consideration be given to Board involvement in this work in the future and further information was requested, for circulation in correspondence.

**ACTION: MC**

7.3 Consideration was given to the work being undertaken by the Provider Appraisal team with regard to the assessment of Frimley Park Hospitals NHS Foundation Trust’s proposed acquisition of Heatherwood and Wexham Park Hospitals NHS Foundation Trust. Board members considered some of the potential benefits and risks associated with the transaction.

## **8. Executive Report (BM/14/51)**

8.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 30 April 2014.

8.2 The work being undertaken by the Development team with regard to development activities for NHSFT Chairs, Chief Executives, Non-Executive Directors and Medical Directors was discussed. Consideration was given to the level of support and involvement that Monitor’s Non-Executive Board members could provide with regard to these activities. An outline of the team’s workplan was requested for consideration in correspondence.

**ACTION: TL**

8.3 Board members were provided with a further oral update on the projects currently being undertaken by the Economics team. Board members noted the update and information that had been circulated in correspondence. It was proposed that a workshop be held for Board members to discuss the work being undertaken by Monitor to better understand health care provider economics issues and provide steer on the best use of this work.

**ACTION: DB**

## **9. Report of the Technology Assurance Committee meeting on 13 May 2014 (BM/14/52)**

9.1 Sigurd Reinton presented the report which provided the Board with an update on the key issues considered by the Technology Assurance Committee (TAC) at its meeting on 13 May 2014.

9.2 As it was the first formal meeting of the TAC, the Committee had considered its Terms of Reference and proposed a number of minor changes. The TAC had also discussed in detail Monitor’s proposed Information Strategy. This would be presented to the next meeting of the Board.

### **RESOLVED:**

9.3 The Board resolved that the proposed changes to the Committee’s Terms of Reference should be adopted.

## **10. Report of Audit and Risk Committee meeting on 21 May 2014 (BM/14/53)**

10.1 Keith Palmer presented the report which provided the Board with an update on the key issues considered by the Audit and Risk Committee (ARC) at its meeting on 21 May 2014. The report also included the Annual Report of the ARC to the Board. It was noted that Iain Osborne had joined the ARC, bringing the membership of the Committee up to three Non-Executive Directors.

### **RESOLVED:**

10.2 The Board resolved that the proposed changes to the Committee's Terms of Reference should be adopted.

## **11. Employee Survey – update on findings and proposed response (BM/14/54)**

11.1 Fiona Knight introduced the report which provided the Board with information about the key findings of the Monitor 2014 employee survey report, management's proposed response and progress to date on related actions.

11.2 Consideration was given to the themes arising from the employee survey, particularly in relation to cross-team working and the need to develop greater interaction between directorates. The importance of ensuring that teams across the organisation were aware of each other's work was emphasised. It was noted that this was an area of priority focus for the Executive Committee. Actions to facilitate cross team working and understanding included ensuring that all staff briefings were used as an appropriate communication tool and helping line managers to cascade relevant information to their teams.

11.3 Board members emphasised the importance of all employees acting as ambassadors for Monitor. It was noted that this was one of the organisation's values and a further specific priority.

## **12. Revision of Memoranda of Understanding/Partnership Agreements with the NHS Trust Development Authority and Parliamentary Health Service Ombudsman (BM/14/55)**

Nicola Meheran (Policy Adviser) joined the meeting for the consideration of this item.

12.1 Nicola Meheran introduced the report which presented the Board with a draft revised Partnership Agreement between Monitor and the NHS TDA and a draft revised Memorandum of Understanding (MoU) between Monitor and the Parliamentary and Health Service Ombudsman (PHSO).

12.2 In considering the proposed revised Partnership Agreement with the NHS TDA, Board members noted the importance of Monitor and the NHS TDA working together to encourage new models of health care provision. The value of setting out the shared purpose and objectives of the two organisations with regard to this was emphasised. It was proposed that a meeting between the Boards of Monitor

and the NHS TDA should be sought in order to discuss this and the manner in which the visions and missions of the two organisations interacted.

**ACTION: PH**

- 12.3 With regard to the proposed revised MoU with the PHSO, it was suggested that consideration be given to the inclusion of a provision for the PHSO to refer whistleblowers to Monitor, should it be the relevant regulatory body for the issue being raised.

**RESOLVED:**

- 12.4 The Board resolved to agree that, subject to the comments set out above, the proposed revised Partnership Agreement with the NHS TDA and the MoU with the PHSO should be agreed.

**13. Items considered in correspondence (BM/14/56)**

- 13.1 Board members noted the report about the items which had been circulated to the Board for consideration in correspondence.

**14. Questions and comments from the public (oral item)**

- 14.1 No questions or comments were raised.

**15. Private session - resolution (oral item)**

- 15.1 The Chair moved a resolution in order to move into private session to consider private items of business.

**RESOLVED:**

- 15.2 The Board resolved that representatives of the press and other members of the public should be excluded from the meeting, having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest.

**16. Chief Executive's update (oral item)**

- 16.1 David Bennett provided the Board with an oral update with regard to Monitor's engagement with the UK Regulators' Network (UKRN). It was confirmed that Monitor would participate in the network and its projects as appropriate (consistent with Monitor's strategy and statutory role) and on this basis had signed up to the UKRN Statement of Intent that was due to be published soon. It was anticipated that the UKRN would be publishing its workplan later in the week.

16.2 The Board was provided with an oral update with regard to the progress of the Trust Special Administration at Mid Staffordshire NHS Foundation Trust. A further update would be provided to the next meeting of the Board.

**ACTION: SH**

### **17. Possible investigations under the Competition Act 1998 (BM/14/57(P))**

Jonathan Blackburn (Legal Director, Co-operation and Competition) and Kristy Domitrovic (Senior Legal Adviser, Co-operation and Competition) joined the meeting for the consideration of this item.

17.1 Board members considered the report. The Board noted that Monitor had concurrent, or shared, powers with the Competition and Markets Authority (CMA) to enforce provisions of the Competition Act 1998 (CA98), where conduct concerned the provision of health care services in England. Under the concurrency arrangements, the Board expected that Monitor and the CMA would work closely together in relation to any possible CA98 investigation.

### **18. Provider Regulation Update (BM/14/58(P))**

18.1 Board members noted the paper which provided an overview of the NHSFTs subject to formal enforcement action.

### **19. 2014/15 Annual Plan Review (BM/14/59(P))**

Amy Caldwell-Nichols (Project Director (Economics)), Jason Dorsett (Director of Finance, Reporting and Risk), Igor Popovic (Pricing Delivery Director), Simon Rogers (Legal Director), Ben Shafran (Impact Assessment Manager) and Mark Turner (Regional Director) joined the meeting for the consideration of this item.

19.1 Jason Dorsett introduced the paper which set out Monitor's initial report on the 2014/15 Annual Plan Review (APR) process, based on findings from a review of 146 NHSFTs' two year operational plans, covering 2014/15 and 2015/16. It was noted that a further report would be provided to the Board later in the summer.

19.2 Consideration was given to the approach taken by NHSFTs in completing their operational plans and the accuracy of this planning. It was noted that work was currently being undertaken by Monitor with regard to supporting and developing strategic planning capabilities within NHSFTs. Board members also gave consideration to the incentives provided to both health care providers and commissioners to plan accurately. The importance of alignment between commissioner and provider planning was stressed.

## **20. Pricing Update (BM/14/60(P))**

Igor Popovic (Pricing Delivery Director), Simon Rogers (Legal Director) and Ben Shafran (Impact Assessment Manager) were in attendance for the consideration of this item.

20.1 The Board noted the report which provided an update on the key developments with regard to the Pricing team since the last meeting of the Board.

20.2 Board members considered the high-level pricing policy proposals that would make up the maximum scope of the 2015/16 June Tariff Engagement Document (TED), including the efficiency factor. It was noted that a more detailed discussion of these issues would take place at the meeting of the Board on 25 June 2014.

## **21. Q4 Risk and Performance update (BM/14/61(P))**

Das Mootanah (Risk and Performance Director) joined the meeting for the consideration of this item.

21.1 Das Mootanah introduced two reports which updated the Board on the risks faced by Monitor and the performance of the organisation.

21.2 In considering the key risks faced by the organisation, Board members discussed the question of how much risk they were willing to tolerate. It was noted that information about the most significant risks faced by the organisation was presented to the Board with ratings that took account of the application of mitigations and controls and it could be useful to disaggregate this information. The question was also raised with regard to how the most significant risks were identified.

21.3 The importance was stressed of ensuring that the key risks considered by the Board and the Executive Committee were suitably strategic. It was noted that the Board had responsibility for the overall risk profile of the organisation; however the Audit and Risk Committee supported the Board in this by considering the risks and risk management process in detail. Care needed to be taken to avoid duplication in this area. In light of this discussion it was considered appropriate that the Risk and Performance team should engage with individual Non Executive Directors outside Board and Audit and Risk Committee meetings, in order to ensure that all aspects of risk management were being appropriately addressed.

**ACTION: DM**

21.4 Board members noted the status of the 2013/14 Business Plan actions, including the organisation's key achievements in the final quarter of the 2013/14 financial year.

## **22. 2014/15 Business Plan and Budget (BM/14/62(P))**

David Hunt (Project Director) joined the meeting for the consideration of this item.

22.1 David Hunt presented the report which included Monitor's Business Plan for 2014/15 and information about revised budget allocations in line with the content of the Business Plan.

### **RESOLVED:**

22.2 The Board resolved to approve the 2014/15 Business Plan.

## **23. Monitor's 2013/14 Annual Report and Accounts (BM/14/63(P))**

Victor Smart (Editorial Director) was in attendance for the consideration of this item.

23.1 Board members considered the paper which provided a near final draft of the 2013/14 Annual Report and Annual Governance Statement, for comment and approval. It was proposed that detailed comments should be provided in correspondence.

### **RESOLVED:**

23.2 The Board resolved to approve the drafting of Monitor's 2013/14 Annual Report.

## **24. Any other business**

24.1 No other business was raised.

**Close**