

**MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY
30 JULY 2014 AT 10.00 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, Deputy Chairman, Non Executive Director
Sigurd Reinton, Non Executive Director

In attendance:

Helen Buckingham, Chief of Staff
Amy Caldwell-Nichols, Project Director (Economics) (from item 17)
John Curnow, Project Director (Economics) (until item 17)
Catherine Davies, Executive Director of Co-operation and Competition
Jason Dorsett, Finance, Reporting and Risk Director
Philippa Harding, Board Secretary
Toby Lambert, Director of Strategy and Policy (from item 5)
Sue Meeson, Executive Director of Strategic Communications
Kate Moore, Executive Director of Legal Services
Rebecca Threlfall, Committee Secretary

One member of the public was 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 Sigurd Reinton (Non Executive Director), Miranda Carter (Executive Director of Provider Appraisal), Fiona Knight (Executive Director of Organisation Transformation), Ric Marshall (Director of Pricing) and Hugo Mascie-Taylor (Medical Director/Executive Director of Patient and Clinical Engagement).

2. Declarations of interest

2.1 No interests were declared.

3. Minutes and matters arising from the meeting held on 25 June 2014 (BM/14/75)

3.1 The minutes of the Board meeting held on 25 June 2014 were approved and the matters arising noted.

4. Public Accounts Committee report: *Monitor: regulating NHS Foundation Trusts* (BM/14/76)

- 4.1 David Bennett introduced the report which presented the Board with the Public Accounts Committee's report *Monitor: regulating NHS Foundation Trusts*, as well as providing information in order to assure the Board that the Executive took the issues identified in the report seriously and was committed to always challenging the organisation to do better. In practice, and consistent with Monitor's strong belief in continuous improvement, Monitor had already implemented a significant number of changes along the lines proposed by the PAC, or had plans to do so.
- 4.2 Board members suggested that the report highlighted the importance of Monitor continuing to pursue its regulatory approach, whilst emphasising that it needed to continue to increase the pace of its interventions. With regard to this challenge, Board members noted that troubled NHS foundation trusts (NHSFTs) often faced deep seated cultural and/or financial problems that took years to address and resolve. The interrelationship between challenges faced by local health economies and those faced by troubled trusts should also not be underestimated. In such circumstances, the importance of Monitor taking whatever action it could as early as possible was emphasised.
- 4.3 Consideration was given to the relationship between Monitor and the Care Quality Commission (CQC) and the respective regulatory roles of each organisation. Board members stressed the importance of being able to demonstrate that the regulatory interventions of such organisations were value for money. In discussing Monitor's use of external consultants in its regulatory activities, it was noted that consultants were engaged either in order to meet a short term need (where it would be more expensive to recruit full time staff) or because the organisation needed access to particular expertise that was not available internally. Board members were informed that, in those circumstances where the projected volume of work seemed sufficient to support a critical mass of people internally, active consideration was being given to how the organisation might build an internal capability to do some of the specialist work that was currently being outsourced.

5. Functional Conflicts and Balancing Competing Regulatory Interests Policy (BM/14/77)

- 5.1 Kate Moore introduced the report which presented the Board with the proposed “Functional Conflicts and Balancing Competing Regulatory Interests Policy”. A distinction was drawn within the policy between “functional conflicts” (those situations which, by virtue of the Health and Social Care Act 2012 constituted an actual or perceived conflict and so must be treated as such) and those situations which were operational manifestations of the balancing necessary between different Monitor functions.
- 5.2 Board members discussed the value of having a policy which distinguished between functional conflicts and the need to balance regulatory interests. The importance was emphasised of ensuring that a consistent approach was taken across the organisation and as the organisation’s experiences developed. It was anticipated that rigorous documentation and review would be required to achieve this and the role of the Conflicts Manager was considered to be key. Board members noted that, as a minimum, an annual report would be provided to the Board on the operation of the policy, as part of the organisation’s Annual Governance Statement.
- 5.3 A number of minor drafting amendments were proposed.

RESOLVED:

- 5.4 The Board resolved that, subject to the comments above, the proposed Functional Conflicts and Balancing Competing Regulatory Interests Policy should be adopted by the organisation.

6. Memorandum of Understanding with Healthwatch (BM/14/78)

- 6.1 The Board considered the report which presented a draft new Memorandum of Understanding between Monitor and Healthwatch.

RESOLVED:

- 6.2 The Board resolved to approve the proposed Memorandum of Understanding between Monitor and Healthwatch.

7. Co-operation and Competition Update (BM/14/79)

- 7.1 The Board noted the report which provided information about significant developments with regard to the work of the Co-operation and Competition directorate since the meeting of the Board on 25 June 2014.
- 7.2 Consideration was given to the further work being undertaken by Monitor on whether the commissioning and provision of general practice (GP) services operated in patients’ best interests. Board members were informed that a briefing note was due to be published by Monitor shortly, setting out the factors to

consider when developing frameworks for GPs to work together. The importance of working with GPs' professional bodies on such issues was noted, particularly in relation to consideration of possible changed models of health care provision.

8. Provider Appraisal Update (BM/14/80)

Martin Smith (Provider Appraisal Director) joined the meeting for the consideration of this item.

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

8.2 The work being undertaken by the Provider Appraisal directorate in relation to risk rating of proposed NHSFT transactions was noted. Board members were also informed that Monitor's new approach to mergers was being received positively. It was anticipated that this approach would enable NHSFTs to address problematic issues at an earlier stage in the merger process and therefore improve the speed and effectiveness of Monitor's regulatory action.

9. Pricing Update (BM/14/81)

Yashwant Patel (Pricing Enforcement and Case Management Director)

9.1 Yashwant Patel introduced the report which provided information about the work of the Pricing team.

9.2 It was noted that the Tariff Engagement Document (TED) had been published on 18 July 2014. Engagement across the health care sector had commenced and included webinars, workshops and online feedback. The engagement period was due to close on 15 August 2014. The final proposals to be included in the statutory consultation would be submitted for Board members to consider in September 2014 to enable the publication of the statutory consultation notice in October 2014. It was anticipated that the final 2015/16 national tariff would be published in December 2014. The Board noted that there was little opportunity for slippage in the planned timetable; however, the value of being able to publish the national tariff in December was emphasised. This was in light of the need for health care providers and commissioners to agree contracts for the provision of services in the forthcoming financial year. It was hoped that the engagement with the sector in relation to the TED would facilitate the smooth progress of the statutory consultation.

9.3 Consideration was given to the manner in which Monitor and NHS England were required to work together in order to ensure the timely production of the national tariff.

9.4 Board members were provided with an oral update on the work of the Pricing Case Management and Enforcement team. The progress of the Pricing Development team in developing Local Payment Examples was also discussed.

It was noted that further work was required with regard to the methodology for evaluating the outcomes of these examples.

10. Executive Report (BM/14/82)

- 10.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 25 June 2014.
- 10.2 The Board noted the work that the Economics team had progressed on identifying the actions taken by health care providers in addition to efficiency improvement to improve their financial position. Consideration was given to the nature and impact of these actions. Board members also discussed the work of the Economics team with regard to local health economy diagnostics and international acute comparisons. The value of taking account of learning from health care provision in other parts of the United Kingdom, as well as in other countries was noted.

11. 2013/14 Business Plan actions (BM/14/83)

Amelia Gross (Risk and Performance Analyst), Das Mootanah (Risk and Performance Director) and Joe Romeo (Risk and Performance Manager) joined the meeting for the consideration of this item.

- 11.1 Das Mootanah introduced the report which set out Monitor's overall achievement of the actions set in its 2013/14 Business Plan. Monitor had set itself 75 actions to achieve and added another eight key projects during the course of the year. Out of this total of 83 actions, 67 had been successfully completed, including all of the additional eight projects. This amounted to 81% of the target. Where actions were partially completed, mainly as a result of external dependencies or resources constraints, most of these had been reprioritised into the 2014/15 financial year.
- 11.2 Board members noted the report. It was suggested that, in October 2014, a look forward to the Business Plan actions remaining for the 2014/15 financial year would be beneficial.

ACTION: DM

12. Report of the Audit and Risk Committee meeting on 2 July 2014 (BM/14/84)

- 12.1 Keith Palmer presented the report which provided the Board with an update on the key issues considered by the Audit and Risk Committee at its meeting on Wednesday 2 July 2014.
- 12.2 It was noted that from 2014/15 onwards, Monitor's internal audit function would be provided by the Department of Health's (DH's) Health Group Internal Audit Service.

13. Items considered in correspondence (BM/14/85)

13.1 Board members noted the items that had been circulated for consideration in correspondence.

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

14.1 There were no questions or comments.

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 The Board discussed the recent Board to Board meeting between Monitor and CQC. David Bennett provided his thoughts on the next steps.

16.2 Board members were provided with an oral update on recent meetings with the Secretary of State for Health.

16.3 An oral update was provided with regard to the work being undertaken by NHS England on a "five year forward view" of the NHS to be published in October 2014.

17. Frimley Park Hospital NHS Foundation Trust proposed acquisition of Heatherwood and Wexham Park Hospitals NHS Foundation Trust: risk rating and approval process (BM/14/86(P))

Martin Smith (Provider Appraisal Director) joined the meeting for the consideration of this item.

17.1 Martin Smith introduced the report which provided the Board with information about the proposed acquisition of Heatherwood and Wexham Park Hospitals NHS Foundation Trust by Frimley Park Hospital NHS Foundation Trust. As a significant statutory transaction under the Risk Assessment Framework, a transaction risk rating would be provided prior to both Trusts making a joint application to Monitor for approval of the application. The decision was one for the Board in light of the level of risk associated with the transaction and the fact that the application would be the first occasion on which Monitor had been asked

to use its powers under s.56A of the National Health Service Act 2006. It was also the first acquisition of one NHSFT by another.

17.2 Certain key information required to provide a final proposed risk rating for the transaction remained outstanding (including confirmation of funding, commissioner support and reporting accountant opinions). In order to facilitate a decision on the transaction as soon as possible, something which Monitor and both Trusts considered to be in the best interests of patients, an indicative risk rating was provided for the Board's consideration. It was anticipated that the outstanding information could be provided for a final decision to be made via correspondence at the end of August 2014.

17.3 Board members considered the indicative risk rating and other salient issues relating to the proposed transaction. An oral update was provided with regard to the negotiations ongoing with the DH, NHS England and clinical commissioning groups with regard to the final structure and amount of funding to be associated with the transaction. The legal risk associated with the possible decision to grant a statutory acquisition was noted.

18. Provider Regulation Update (BM/14/87(P))

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

18.2 Further oral updates were provided with regard to:

- Colchester Hospital University NHS Foundation Trust;
- Mid Staffordshire NHS Foundation Trust;
- Stockport NHS Foundation Trust; and
- Medway NHS Foundation Trust.

19. Tameside Hospital NHS Foundation Trust (BM/14/88(P))

Katherine Cawley (Enforcement Director), David Dean (Senior Enforcement Director) and Frances Shattock (Regional Director) were in attendance for the consideration of this item.

19.1 Katherine Cawley introduced the report which set out the proposed regulatory approach to be taken with regard to Tameside Hospital NHS Foundation Trust and requested approval for the level of expenditure associated with commissioning a Contingency Planning Team (CPT) process.

19.2 Consideration was given to the estimated level of expenditure with regard to the commissioning of a CPT process. It was noted that this was based upon Monitor's previous experience of such exercises; however the scope for each of these had been different and it was not yet possible to identify a standard rate of expenditure. Board members requested further information about the proposed terms of reference, outputs, milestones and a cost analysis with regard to the implementation of a CPT at Tameside Hospital NHS Foundation Trust.

19.3 The Board discussed the services that were expected to be provided by a CPT. It was noted that work had already been undertaken with regard to the identification of a proposed solution in relation to the issues being experienced by the Trust. There was broad stakeholder agreement that the development of an Integrated Care Organisation (ICO) was the most appropriate way to ensure clinically and financially viable services to the local population served by the Trust in the context of the wider local health economy. Board members discussed how the work of a CPT might link to the work already undertaken to identify this solution and whether this might have an impact upon the award of a CPT contract. It was noted that a CPT would be required to provide early and continued assurance with regard to the validity of the ICO model. Board members proposed that, if necessary, consideration should be given to this assurance work being carried out by a third party which had not been involved in the production of the ICO model.

RESOLVED:

19.4 The Board resolved, subject to the provision of further information with regard to the scope of a CPT, to approve the proposed (estimated) expenditure associated with commissioning a CPT at Tameside Hospital NHS Foundation Trust.

20. Milton Keynes and Bedfordshire Healthcare Review (BM/14/89(P))

Katherine Cawley (Enforcement Director), David Dean (Senior Enforcement Director), Paul Dinkin (Enforcement Director) and Jonathan Guppy (Senior Enforcement Director) were in attendance for the consideration of this item.

20.1 Paul Dinkin presented the report which provided the Board with information about the review being undertaken to determine how to establish a clinically and financially sustainable configuration of services for the populations serviced by Bedford and Milton Keynes Clinical Commissioning Groups. Monitor had taken a whole health economy approach to this work, testing and developing a collaborative approach to solving NHSFT and local health economy problems by working with NHS England and the NHS Trust Development Authority to support local commissioners in finding a solution.

20.2 Board members noted that local commissioners were planning to publish the recommendations from the review in the near future. However, the date of the public consultation was still to be determined. The risks associated with delaying this consultation were noted.

21. Queen Elizabeth Hospital, King's Lynn NHS Foundation Trust (BM/14/90(P))

Katherine Cawley (Enforcement Director), David Dean (Senior Enforcement Director) and Paul Dinkin (Enforcement Director) were in attendance for the consideration of this item.

21.1 Katherine Cawley introduced the report which provided an update with regard to the appointment of a CPT at Queen Elizabeth Hospital, Kings Lynn NHS Foundation Trust.

21.2 The process being used to identify the preferred supplier was a competitive one, with a view to ensuring value for money. Although an indicative budget had been approved by the Board, no information about the size of this budget had been provided to bidders, with an expectation that they would compete on both price and quality. However, Monitor had received a number of bids for this work that were in excess of the approved indicative budget. As all of the bids that had been received were currently being assessed and the procurement process was ongoing, the Board was asked to approve an increase to the previously agreed budget. It was envisaged that this would ensure that Monitor had the flexibility to appoint, from the widest pool, the most appropriate firm to carry out this work. Board members requested that the criteria for the appointment of the successful bidder be circulated in correspondence.

ACTION: KC

21.3 In order to ensure that they fully understood the market for the provision of CPT work, Board members requested a paper to be presented to a future Board meeting.

ACTION: PD

RESOLVED:

21.4 The Board resolved to approve the additional budget requested with regard to the expenditure associated with commissioning a CPT at Queen Elizabeth Hospital, King's Lynn NHS Foundation Trust.

22. Any other business

22.1 No other business was raised.

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