

**MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY
25 FEBRUARY 2015 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
Miranda Carter, Executive Director of Provider Appraisal
John Curnow, Project Director (Economics) (from item 18)
Catherine Davies, Executive Director of Co-operation and Competition
Jason Dorsett, Finance, Reporting and Risk Director
Philippa Harding, Board Secretary
Steffan Jones, Project Director (Economics) (until item 17)
Fiona Knight, Executive Director of Organisational Transformation
Toby Lambert, Director of Strategy and Policy
Ric Marshall, Director of Pricing
Hugo Mascie-Taylor, Medical Director (Executive Director of Patient and Clinical Engagement)
Jeremy Mooney, Executive Director of Strategic Communications
Kate Moore, Executive Director of Legal Services
Peter Sinden, Chief Information Officer

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 Tim Heymann (Non Executive Director).

2. Declarations of interest

2.1 No interests were declared.

3. Minutes and matters arising from the meeting held on Wednesday 28 January 2015 (BM/15/15)

3.1 Subject to a number of detailed drafting amendments relating to paragraph 19.1, the minutes of the Board meeting held on 28 January 2015 were approved and the matters arising noted.

4. Quarterly report on the performance of the NHS foundation trust sector: 9 months ended 31 December 2014 (BM/15/16)

4.1 Jason Dorsett presented the report which provided the findings from a review of the Q3 2014/15 performance of the 149 NHS foundation trusts (NHSFTs) operating during this period. This included three newly licensed NHSFTs and the operation of Mid Staffordshire NHS Foundation Trust for part of the quarter.

4.2 Board members noted the level of unplanned agency staff costs being incurred by NHSFTs across the sector. Consideration was given to the possible impact of the number of locums and temporary staff being employed on the quality of services being provided by trusts. The Board was informed that there was no analysis to provide evidence to suggest that this had any other impact than enabling NHSFTs to meet the growing demands for their services.

5. Memoranda of Understanding with the Care Quality Commission and General Medical Council (BM/15/17)

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

5.1 Board members considered the report which presented draft memoranda of understanding (MoUs) with the Care Quality Commission (CQC) and the General Medical Council (GMC) respectively.

5.2 With regard to the MoU between Monitor and CQC, it was noted that revisions were being proposed to an existing agreement. Consideration was given to the question of whether the MoU should refer to the manner in which any disagreements between Monitor and CQC might be resolved. It was emphasised that, whilst each organisation had its own statutory functions, care was taken by each to reach a complementary approach in its regulatory activities. The statutory duty upon CQC and Monitor to co-operate with each other was noted. Should there be any significant issues upon which the views of the two organisations differed, it was noted that these would be managed on a case by case basis.

5.3 Board members noted that the two MoUs referred differently to the treatment of information received by Monitor about the respective organisations. They were informed that this reflected the different roles of CQC and the GMC and the different information sharing requirements that already existed.

RESOLVED:

5.4 The Board resolved that, subject to a number of minor drafting amendments, the draft MoUs with CQC and the GMC should be approved and published.

6. Annual report and accounts (BM/15/18)

Victor Smart (Editorial Director) joined the meeting for the consideration of this item.

6.1 Board members considered the report which proposed that Monitor should continue with the same format as the previous year for its 2014/15 annual report and accounts. It also set out the timetable and clearance processes for the document.

6.2 Board members emphasised the value of brevity with regard to formal publications such as the annual report and accounts. It was proposed that further consideration be given to the manner in which information was about Monitor's strategic aim of promoting change through high quality analysis and debate, and by encouraging innovation. Board members emphasised the impact of case studies and linking the work being undertaken by Monitor to the NHS Five Year Forward View. Subject to these and other more detailed comments, the Board was content with the proposed outline of content of the 2014/15 annual report and accounts.

7. Provider Appraisal Update (BM/15/)

7.1 The Board noted 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.

7.2 Further information was provided with regard to the project to ensure that lessons were learned from past significant transactions between both NHSFTs and NHS Trusts. It was noted that this would incorporate the realisation of anticipated patient benefits arising from such transactions.

8. Pricing Update (BM/15/)

8.1 The Board discussed the report which provided an update on the key issues being addressed by the Pricing team in the past month.

8.2 Board members noted that, on behalf of Monitor and NHS England, David Bennett and Simon Stevens had written to all providers of NHS services outlining

interim arrangements for operating the NHS payment system, pending a final decision on the way forward on the national tariff for 2015-16. It was noted that these interim arrangements were a commissioning, rather than a tariff action.

- 8.3 Consideration was given to Monitor's longer term strategy with regard to NHS payment system. Board members requested a paper for submission to the next meeting of the Board setting out this longer term strategy and the actions that were being taken to achieve this, together with anticipated timescales.

ACTION: AM, RM

9. Executive Report (BM/15/21)

- 9.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 28 January 2015.

- 9.2 The Board welcomed the proposal that a Corporate Social Responsibility group be formally re-established within Monitor.

- 9.3 Board members were provided with an oral update on the reports that were due to be published in the near future on the themes and lessons learnt from NHS investigations into matters relating to Jimmy Savile and the independent investigation into maternity and neonatal services run by University Hospitals of Morecambe Bay NHS Foundation Trust

10. Report of the Remuneration Committee meeting on 30 January 2015 (BM/15/22)

- 10.1 The Board noted the report which provided information about the key issues considered by the Remuneration Committee at its meeting on 30 January 2015.

11. Report of the Technology Assurance Committee meeting on 12 February 2015 (BM/15/23)

- 11.1 The Board noted the report which provided information about the key issues considered by the Technology Assurance Committee at its meeting on 12 February 2015.

- 11.2 It was reported that Sigurd Reinton had recently had a positive meeting with the Chair of the Health and Social Care Information Centre (HSCIC). It was proposed that the HSCIC be invited to join a future Board discussion.

ACTION: PH

12. Report of the Audit and Risk Committee meeting on 19 February 2015 (BM/15/24)

- 12.1 The Board noted the report which provided information about the key issues considered by the Audit and Risk Committee at its meeting on 19 February 2015.

13. Items in correspondence (BM/15/25)

- 13.1 The Board noted the report which provided information about reports that had been circulated in correspondence.

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

- 14.1 No members of the public were present.

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 on recent meetings with the Secretary of State for Health and senior officials within the Department of Health (DH).
- 16.2 It was noted that DH was becoming increasingly focussed on delivery issues within the NHSFT sector.
- 16.3 An update was provided with regard to actions being taken to implement the NHS Five Year Forward View.

17. Risk and Performance

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

i) Q3 Risk Report (BM/15/26(i)(P))

17.1 The Board noted the report which provided an update on Monitor's strategic risk profile as at the end of Q3. It also provided an update on current risk management highlights and forthcoming priorities for Q4.

ii) Q3 Performance Report (BM/15/26(ii)(P))

17.2 The Board was presented with the report which provided an update on corporate performance and the status of the 2014/15 Business Plan actions, highlighting progress, key achievements and challenges.

17.3 Noting that a significant number of Business Plan actions were due to be delivered in the final quarter of 2014/15, the Board requested further information on the progress of these to be submitted to its next meeting.

ACTION: DM

17.4 Detailed consideration was given to the two Business Plan actions that had been identified as not possible to complete before the end of the year. It was proposed that, in working on the 2015/16 Business Plan, consideration should be given to the question of the prioritisation of resources to undertake such work in the forthcoming year.

18. Co-operation and Competition Update (BM/15/27(P))

Matt Hopper (Senior Enforcement Manager) and Mark Shires (Senior Enforcement Director) joined the meeting for the consideration of this item.

18.1 Board members considered 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 28 January 2015.

18.2 It was noted that the Competition and Markets Authority (CMA) had referred the proposed merger between Ashford and St Peter's Hospitals NHS Foundation Trust and Royal Surrey Country Hospital NHS Foundation Trust for an in-depth investigation, due to competition concerns regarding a number of inpatient and outpatient elective services. Consideration was given to the different methodologies used by Monitor and the CMA with regard to the assessment of competition-related issues within the healthcare sector.

19. Provider Regulation update (BM/15/28(P))

Matt Hopper (Senior Enforcement Manager) and Mark Shires (Senior Enforcement Director) were in attendance for the consideration of this item.

19.1 Board members noted the paper which provided an overview of the NHSFTs subject to formal enforcement action. Information was provided with regard to the following NHSFTs:

- Medway NHS Foundation Trust;
- Colchester Hospital University NHS Foundation Trust; and
- Sherwood Forest Hospitals NHS Foundation Trust

19.2 It was noted that a growing number of NHSFTs faced significant operational and financial challenges. Monitor continued to focus its regulatory responses on minimising concerns about quality, financial and operational performance which may adversely impact patient care, taking both formal and informal actions. Currently, 28 trusts were subject to formal regulatory actions. Of these, four were due to access and outcome metrics, four were for financial concerns, 16 were for both and four for other reasons. Investigations were in progress at seven trusts where major concerns had been identified, which might lead to formal regulatory actions. Further evidence was being gathered at 17 trusts to determine whether a formal investigation should be opened. At other NHSFTs, Monitor was taking informal regulatory action such as reviewing and challenging recovery plans or escalating via the National Tripartite. Consideration was being given to the resourcing implications of this additional activity in business planning for 2015/16.

20. Mid Staffordshire NHS Foundation Trust – lessons learned from Monitor applying the failure regime for the first time (BM/15/29(P))

David Hoppe (Director, Provider Appraisal), Matt Hopper (Senior Enforcement Manager), Ruth Nolan (Senior Manager, Provider Appraisal) and Mark Shires (Senior Enforcement Director) were in attendance for the consideration of this item.

20.1 Mark Shires presented the report which described the regulatory procedure followed with regard to Mid Staffordshire NHS Foundation Trust, the lessons Monitor had learned and actions being taken to apply these lessons elsewhere.

20.2 Board members welcomed the fact that the exercise had been undertaken and that actions were already being taken to apply the lessons learned in Monitor's ongoing regulatory activity. The importance of making information about these process lessons available publicly was noted; however the Board considered that further work was required with regard to the drafting of the report. The Chief Executive would take responsibility for the finalisation of this aspect of the report.

20.3 With regard to the lessons learned in relation to the engagement of stakeholders. It was proposed that the report should highlight the importance of early engagement of national stakeholders as well as local stakeholders.

21. Nottinghamshire Healthcare NHS Trust (BM/15/30(P))

David Hoppe (Director, Provider Appraisal) and Ruth Nolan (Senior Manager, Provider Appraisal) were in attendance for the consideration of this item.

21.1 The Board considered the application before it to become an NHSFT pursuant to the 2006 Act. In advance of the meeting, the Board had received and read a detailed briefing pack on the applicant.

21.2 The Board agreed that, unless an issue was specifically raised on the basis of a cause for concern, which would have been highlighted in the briefing pack, it would be assumed that:

(a) the applicants' constitutions were compliant with Schedule 7 to the 2006 Act and otherwise appropriate;

(b) the Directors and Governors of the applicants had been appointed in line with the constitutions;

(c) the applicants had taken steps to ensure representative membership;

(d) all elections were compliant;

(e) all statutory consultations had been held; and

(f) the applicants would be able to provide mandatory goods and services.

21.3 The Provider Appraisal team presented the Board with the background to Nottinghamshire Healthcare NHS Trust and the key issues and any concerns surrounding its application. This was followed by a question and answer session and decision on the application by the Board.

21.4 Nottinghamshire Healthcare NHS Trust provided mental health and community physical health services to the local Nottingham area, and specialist mental health and forensic services to a wider regional and national market. It was one of only three trusts in England to provide high secure psychiatric services (HSS) as part of its forensic services. It currently delivered services from 135 properties, in addition to patients' homes, schools and prisons, employing 8,548 whole time equivalents with a turnover of £436.9m in 2013/14.

21.5 Board members were informed that the Trust would be the subject of an upcoming report regarding the findings of an investigation into alleged historical activities of Jimmy Savile at Rampton Hospital. Whilst acknowledging the seriousness of the potential findings, due to the time elapsed and the fact that these were legacy allegations from a previous organisation, this was not considered pertinent to the Board's decision on whether to authorise the Trust as an NHSFT.

21.6 The Board was informed about the risk management and governance processes in place for high risk decisions in relation to the Trust's HSS. It was noted that the Provider Appraisal team has performed additional work over these to gain the required assurances about their robustness. The Trust's overarching strategy, however, had not been refreshed since 2011.

RESOLVED:

21.7 The Board resolved that:

- (a) Nottinghamshire Healthcare NHS Trust be Authorised as an NHS Foundation Trust from 1 March 2015; and
- (b) that a side letter be sent to the Trust noting the need for the Trust Board to undertake a strategic development exercise in order to refresh the strategy and provide clarity to the Trust's medium to long term focus.

22. Any other business

22.1 Noting that an implicit authority already existed, the Board resolved to formally delegate authority to authenticate the application of Monitor's seal to the Chief Executive.

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