

**DRAFT MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY
26 FEBRUARY 2014 AT 9.30 AT WELLINGTON HOUSE, 133-155 WATERLOO ROAD,
LONDON SE1 8UG – SUBJECT TO APPROVAL AT THE MEETING OF THE BOARD ON
26 MARCH 2014**

Present:

Joan Hanham, Chairman
David Bennett, Chief Executive (from item 14)
Stephen Hay, Managing Director of Provider Regulation (from item 14)
Heather Lawrence, Non Executive Director
Adrian Masters, Managing Director of Sector Development
Keith Palmer, Non Executive Director
Sigurd Reinton, Non Executive Director
Stephen Thornton, Deputy Chairman and Non Executive Director

In attendance:

Amy Caldwell-Nichols, Project Director (Economics) (until item 13)
Miranda Carter, Executive Director of Assessment
Laura Carstensen, Co-operation and Competition Panel Member (until item 13)
Catherine Davies, Executive Director of Co-operation and Competition
Philippa Harding, Board Secretary
Toby Lambert, Director of Strategy and Policy
Ric Marshall, Director of Pricing
Sue Meeson, Executive Director of Strategic Communications
Kate Moore, Executive Director of Legal Services

One member of the public and two members of staff 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 Helen Buckingham (Chief of Staff) and Fiona Knight (Executive Director of Organisation Transformation).
- 1.2 It was noted that David Bennett and Stephen Hay had been unavoidably detained by urgent business and would join the meeting as soon as possible.

2. Declarations of interest

- 2.1 As a Non-Executive Director of Transforming Pathology Partnership, a venture established by seven trusts in the East of England to consolidate and modernise pathology, Stephen Thornton declared an interest with regard to item 19 (Merger of parts

of Brighton and Sussex University Hospitals NHS Trust and Surrey and Sussex Healthcare NHS Trust).

2.2 No other interests were declared.

3. Minutes and matters arising from the meeting held on 29 January 2014 (BM/14/10)

3.1 With regard to the minutes of the meeting held on 29 January 2014, it was noted that the Board had been informed that the Ministry of Justice would provide some of the external assurances in relation to the assessment of applicants for NHS foundation trust (NHSFT) status which provided high secure services. Subject to this comment, the minutes of the meeting held on 29 January 2014 were approved and the matters arising noted.

3.2 Oral updates were provided with regard to the outstanding actions on the action log.

4. Performance of the NHS foundation trust sector for the nine months ended 31 December 2013 (BM/14/11)

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

4.1 Jason Dorsett introduced the report which provided the Board with information about the performance of the NHSFT sector for the nine months to 31 December 2013. The report showed that fewer NHSFTs had missed the four hour accident and emergency (A&E) waiting time target than in the same period in the previous year. Whilst NHSFTs had met performance standards for all three elective waiting time targets, more NHSFTs had breached the targets than in the previous quarter of the current year and in the same quarter of the previous year. Whilst NHSFTs continued to make a surplus, this was less than planned at the current stage of the financial year. The number of NHSFTs in deficit was also greater than plans had indicated would be the case, as was the combined total of the deficit itself.

4.2 Consideration was given to the efficiency savings that NHSFTs had been able to make and how these compared to their plans. It was noted that the level of savings was behind plan. It was also noted that the level of income anticipated by NHSFTs to be received by the end of the financial year was greater than the level of payments that commissioners expected to make. Board members were informed that this was likely to be as a result of the structural changes across the health care sector caused by the Health and Social Care Act 2012. Board members expressed concern about the increasing number of trusts in deficit and the impact of receiving less income than planned for. It was emphasised that Monitor should not just focus on taking regulatory action against failing trusts, it should also give consideration to how best to work with NHSFTs to prevent them from falling into financial difficulties, which could have an impact upon the quality of care they provided to their patients. The Board was informed of work that was in train to support health care providers and improve the quality of their strategic planning. Monitor was leading this work, alongside NHS England and the NHS Trust Development Authority (NHS TDA). The importance of working together with commissioners to ensure that strategic plans were as accurate as possible was emphasised.

5. Co-operation and Competition Update (BM/14/12)

- 5.1 The Board noted the report which provided information on the significant developments with regard to the work of the Co-operation and Competition directorate and the Co-operation and Competition Panel (CCP) in February 2014.

6. Assessment Update (BM/14/13)

- 6.1 Miranda Carter presented the report which provided the Board with an update on assessment activity in February 2014.
- 6.2 Board members noted the number of NHS trusts that were in the pipeline to be assessed for NHSFT status. A number of assessments had been paused and were awaiting the outcome of work to determine the quality of their services by the Care Quality Commission (CQC). The Board was provided with an update on the manner in which the CQC process was feeding in to Monitor's assessment process. It was anticipated that Monitor would have the appropriate level of resources in place to manage the assessment of applicant NHSFTs once they had been inspected by CQC and found to be providing services at an appropriate level of quality.
- 6.3 The Board emphasised the importance of ensuring that the health care sector understood the nature of the interaction between Monitor and CQC in the assessment process. Consideration was given to the work that was being undertaken to ensure that the respective roles of each organisation were clear and well understood. In addition to clarity of communication through publications, it was also vital that frontline staff were able to provide this.

7. Report of the Audit and Risk Committee meeting on 19 February 2014 (BM/14/17)

- 7.1 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 19 February 2014.
- 7.2 It was noted that the Committee had discussed how best to increase its membership. A previous attempt to recruit an independent Audit and Risk Committee member had not been successful and it was proposed that one of the non-executive directors that Monitor was in the process of recruiting should become a member of the Committee upon their appointment. Board members noted the importance of expanding the membership of the Committee and it was suggested that consideration be given to launching a further attempt to recruit an independent member.

8. Monitor's Annual Report and Accounts 2013/14 (BM/14/15)

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

- 8.1 Victor Smart introduced the report which set out the proposed approach, high level timetable and structure for Monitor's 2013/14 Annual Report and Accounts.
- 8.2 Board members were generally content with the proposed approach, but noted the value of a shorter and focused document. It was agreed that all efforts should be made to ensure that the report was as succinct as possible.

9. National Audit Office Report on Monitor (BM/14/16)

- 9.1 Toby Lambert provided an oral update on the National Audit Office (NAO) report on Monitor that had recently been published. Board members were informed that the NAO had concluded that Monitor had done a good job in regulating NHSFTs, that its processes for assessing applicant NHSFTs were robust and its judgements had mostly been sound, and that it had helped NHSFTs in difficulty to improve. The NAO had also identified challenges ahead for Monitor, including the need for it to change the manner in which it worked with other bodies to tackle underlying weaknesses that increased the risk of individual trusts failing.
- 9.2 The Board noted that the Public Accounts Committee would be reviewing the NAO report and holding Monitor to account in relation to its findings. It was proposed that the report and Monitor's proposed response should be brought to the next meeting of the Board.

ACTION: DB

10. Executive Report (BM/14/14)

- 10.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 29 January 2014.
- 10.2 An oral report was provided with regard to the outcome of the NHS Futures Summit that Monitor had hosted in November 2013, together with NHS England and the NHS TDA. The summit had significantly shaped the development NHS England's planning guidance, which identified six characteristics of high quality, sustainable health and care systems. A further report on the six characteristics, which provided a useful framework for Monitor's thinking on sustainable care models going forward, would be circulated to the Board in correspondence.
- 10.3 Board members noted the work which the Secretary of State for Health had asked Sir Stuart Rose to undertake with regard to how the NHS could build on existing work to recruit top talent from within and outside the NHS. Linkages were noted between this work, the work being undertaken on the six characteristics of high quality, sustainable health and care systems and the work being undertaken by Sir David Dalton on how to enable the best performing NHS organisations and most successful chief executives to establish national groups of hospitals or services as beacons of excellence.
- 10.4 With regard to the recent NAO report on waiting times for elective care in England, Board members noted with concern the NAO's finding that there was a high frequency of errors in recording of waiting times. It was noted that David Bennett had written to Una O'Brien, Permanent Secretary of the Department of Health (DH), to emphasise the value of re-instating external audit of this information, as carried out previously by the Audit Commission. Consideration was given to the action that Monitor might take in order to address this issue and it was noted that it was possible that Monitor could use the licence to take action in this area, if it chose to do so.
- 10.5 The Board noted that Monitor had received notification from the Parliamentary and Health Service Ombudsman that it was proceeding with an investigation of a complaint relating to Monitor's decision not to take regulatory action following concerns raised by a whistleblower in 2012/13. It was reported that the Audit and Risk Committee was minded to adopt as one of its priorities for 2014/15, consideration of the manner in which Monitor's internal and external whistleblowing processes were operating.

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

Jason Dorsett (Finance, Reporting and Risk Director) was present for this item.

- 11.1 A question was asked with regard to how Monitor had been able to establish the difference between the income anticipated by NHSFTs by the end of the financial year and the level of payments expected to be made by commissioners. It was reported that this had been as a result of the regular agreement of balances exercise undertaken in relation to the compilation of the NSHFT consolidated account.
- 11.2 A question was also asked about the progress of the application for NHSFT status of the Royal Liverpool and Broadgreen University Hospitals NHS Trust.

12. Private session - resolution (oral item)

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

RESOLVED:

- 12.2 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.

13. Monitor's Risk and Performance:

David Hunt (Project Director, Policy) and Das Mootanah (Risk and Performance Director) joined the meeting for the consideration of this item.

i) Q3 Performance Report – Delivery of Business Plan Actions (BM/14/18i(P))

- 13.1 David Hunt presented the report which showed the status of Monitor's 2013/14 Business Plan actions at the end of the third quarter of the year. Of 75 actions and eight additional projects, a total of 11 actions and one additional project had been completed.
- 13.2 It was reported that one action had been rated as "red". This related to Monitor's work with national partners to contribute to and influence national policy. Monitor continued to work together with regulatory partners such as NHS England and the NHS TDA to agree a system approach for the challenges expected to be faced in 2015/16; however the nature and impact of the challenges anticipated were such that it was considered to require further action. Board members recognised that this issue was not totally within Monitor's control.
- 13.3 The Board considered the progress of other actions, the ratings for which had changed since the previous quarter of the financial year and noted the Executive Committee's decision to approve a number of change control requests.

ii) Q3 Risk Report (BM/14/18ii(P))

- 13.4 Das Mootanah introduced the report which provided an update on the progress made in the third quarter of 2013/14 on Monitor's overall risk management framework and the status of the organisation's current corporate risk profile as at the end of the quarter.

- 13.5 The Board considered the list of top risks faced by Monitor which had been refined further since their identification following the Board workshop on risks held in October 2013. The possibility that Monitor might not receive from DH the level of funding that it believed it required to carry out its 2014/15 Business Plan was discussed. Board members proposed that this risk should be reflected in the top five risks faced by the organisation, noting that it was already in the organisation's top 15 risks.
- 13.6 Board members were content with the work that had been undertaken on the organisation's top 15 risks, the conclusions from the directorates' own bottom-up risk self assessments and the findings of the project risk review.

14. Chief Executive's update (oral item)

- 14.1 David Bennett provided the Board with an oral update on the Secretary of State's position with regard to the recommendations of the Trust Special Administrators (TSA) at Mid Staffordshire NHS Foundation Trust.

15. Provider Regulation Update (BM/14/19(P))

- 15.1 Board members noted the paper which provided an overview of the NHSFTs subject to formal enforcement action.
- 15.2 Oral updates were provided with regard to the following individual NHSFTs:
- Medway NHS Foundation Trust;
 - Tameside Hospital NHS Foundation Trust
 - Sherwood Forest Hospitals NHS Foundation Trust;
 - University Hospitals Morecambe Bay NHS Foundation Trust; and
 - Kettering General Hospital NHS Foundation Trust.
- 15.3 Consideration was given to the question of whether the nature of NHSFTs or their size might have an impact upon the sustainability of their services. It was noted that Monitor was undertaking work to analyse whether smaller acute providers (or those with other characteristics) faced greater challenges in delivering high quality, sustainable care. The initial findings of this work were expected within the next few months.

16. Queen Elizabeth Hospital Kings Lynn NHS Foundation Trust Regulatory Approach (BM/14/20(P))

Paul Chandler (Senior Regional Manager), Jonathan Guppy (Senior Enforcement Director) and Mark Turner (Regional Director) joined the meeting for the consideration of this item.

- 16.1 Board members considered the report which proposed that Monitor should launch a Contingency Planning Team (CPT) process at the Queen Elizabeth Hospital Kings Lynn NHS Foundation Trust. This would determine how to establish a sustainable configuration of acute services for patients within the local catchment area.
- 16.2 Lessons learned from the experience of appointing the TSA at Mid Staffordshire NHS Foundation Trust, following a CPT process, indicated that Monitor should require tenders for the provision of a CPT at the Queen Elizabeth Hospital Kings Lynn NHS Foundation Trust to include the option of extending the CPT exercise into a TSA exercise. The Board discussed the estimated costs associated with the CPT process and turnaround work more generally. It was noted that Monitor was seeking to develop its own resource

to undertake local health economy diagnostic work. It was anticipated that this resource would also be made available to DH and other regulatory partners.

- 16.3 The importance of establishing a dialogue with commissioners in the local health economy was emphasised. It was anticipated that this would ensure that work on improving the sustainability of the services offered by the Trust was fully integrated with local commissioning strategies. Board members advised that these discussions should begin as soon as possible, in order that they could be reflected in the scope of work, if necessary.

RESOLVED:

- 16.4 The Board resolved to approve in principle the proposed (estimated) expenditure associated with commissioning a CPT process at Queen Elizabeth Hospital Kings Lynn NHS Foundation Trust and the proposed approach to commissioning this work. Final approval of the expenditure was expected to be sought from the Board in June 2014.

17. Joint Support Package – update, scope and sign off (BM/14/21(P))

Jason Dorsett (Finance, Reporting and Risk Director) and Mark Turner (Regional Director) were present for the consideration of this item.

- 17.1 Toby Lambert presented the report which provided information about the proposed package of joint planning support to be delivered by Monitor, NHS England and the NHS TDA to 11 particularly challenged local health economies.
- 17.2 The importance of working together with the health care providers and commissioners to enable appropriate strategic planning was emphasised. It was noted that the providers with whom Monitor had discussed the proposed joint support package had been supportive of the approach. Board members highlighted the limited timescales available within which the work would be carried out. The importance of clarity with regard to the outcomes that could be expected from the work was emphasised. The Board also referred to the significant amount of similar work that had already been undertaken in relation to such issues in the past. It was stressed that this work should be accessed wherever possible, in order to ensure that the most efficient approach was taken.

RESOLVED:

- 17.3 The Board resolved to approve in principle the proposed (estimated) expenditure associated with the proposed Joint Support Package Programme. Final approval of the expenditure would be sought from the Board in correspondence.

18. Update on project on NHS capital regime (BM/14/21(P))

Jessica Dahlstrom (Project Director, Economics), Paul Dinkin (Senior Policy Adviser), Jason Dorsett (Finance, Reporting and Risk Director) were present for the consideration of this item.

- 18.1 Paul Dinkin introduced the report which summarised the findings and recommendations from work that had been commissioned by Monitor to consider if and how the capital funding and reimbursement regime for NHS trusts and NHS FTs could be improved.
- 18.2 Consideration was given to the implications of the cost of capital with regard to how this could incentivise its efficient use. Board members also discussed issues relating to backlog maintenance and “legacy estate” issues being experienced by NHS providers

across the health service and how best to address these. There was a general consensus that the NHS capital funding and reimbursement regime could be improved; however it was considered that further work was required in order to establish how this might best be achieved. A further update on the work would be presented to the Board in due course.

19. Merger of parts of Brighton and Sussex University Hospitals NHS Trust and Surrey and Sussex Healthcare NHS Trust (BM/14/23(P))

Michal Lurka (Inquiries Lead, Co-operation and Competition) joined the meeting for the consideration of this item.

In light of his declared interest, Stephen Thornton excused himself from the consideration of this item and left the room.

19.1 The Board considered the report which summarised Monitor's proposed view on the impact for patients or taxpayers of any effect on choice or competition arising from the proposal to merge the pathology services of Brighton and Sussex University Hospitals NHS Trust and Surrey and Sussex Healthcare NHS Trust.

RESOLVED:

19.2 The Board resolved to agree that Monitor should advise the NHS TDA that the merger was not likely to result in an adverse effect for patients or taxpayers as a result of a loss of choice or competition.

20. Monitor's Draft Strategy (BM/14/24(P))

Jon Hibbs (Media Relations Director) was in attendance for the consideration of this item.

20.1 David Bennett presented the report which provided the Board with a draft document setting out Monitor's strategy. The document built on the Board's thinking, feedback from individual Monitor directorates, the ExCo and staff events. It had also been the subject of informal discussions with Monitor's key stakeholders. The final document was due to be submitted to the Board for approval at its meeting on 26 March 2014.

20.2 Board members provided a number of detailed comments on the content of the draft strategy document, including the title, the executive summary, the importance of making integrated care more explicit and the value of both clear examples and case studies to support assertions. With regard to the language of the document, consideration was given to how personalised this should be.

20.3 Proposed changes to Monitor's values were noted and Board members confirmed that they were content with the direction of travel on these.

21. Any other business

21.1 No other business was raised.

Close