

**MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY 29
JANUARY 2014 AT 10.00 AT WELLINGTON HOUSE, 133-155 WATERLOO ROAD,
LONDON SE1 8UG**

Present:

David Bennett, Chief Executive
Heather Lawrence, Non Executive Director
Adrian Masters, Managing Director of Sector Development
Keith Palmer, Non Executive Director
Sigurd Reinton, Non Executive Director (in the Chair until item 11)
Stephen Thornton, Deputy Chairman and Non Executive Director (present and in the Chair from item 11)

In attendance:

Helen Buckingham, Chief of Staff
Miranda Carter, Executive Director of Assessment
Catherine Davies, Executive Director of Co-operation and Competition
Jason Dorsett, Financial Reporting and Risk (until item 12)
Philippa Harding, Board Secretary
Fiona Knight, Executive Director of Organisation Transformation
Ric Marshall, Director of Pricing
Sue Meeson, Executive Director of Strategic Communications
Kate Moore, Executive Director of Legal Services

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 Joan Hanham (Chairman) and Stephen Hay (Managing Director of Provider Regulation). Stephen Thornton (Deputy Chairman and Non Executive Director) was unable to attend the meeting until item 11 and submitted his apologies for his absence before that point.

2. Declarations of interest

2.1 No interests were declared.

3. Minutes and matters arising from the meetings held on:

- i) 18 December 2013 (BM/14/02(i))
- ii) 14 January 2014 (BM/14/02(ii))

- 3.1 The minutes of the meeting held on 18 December 2013 were approved and the matters arising noted.
- 3.2 With regard to the minutes of the meeting held on 14 January 2014, it was noted that reference should be made to the Board's discussion of the need for work to be undertaken on how Monitor should judge financial sustainability in the future. Subject to this amendment, the minutes of the meeting held on 14 January 2014 were approved and the matters arising were noted.

4. Co-operation and Competition Update (BM/14/03)

- 4.1 Catherine Davies presented the report which provided the Board with information on the significant developments with regard to the work of the Co-operation and Competition directorate and the Co-operation and Competition Panel in January 2014.
- 4.2 It was noted that Monitor had accepted a review of the proposed merger of pathology activities between Brighton and Sussex University Hospitals NHS Trust and Surrey and Sussex Healthcare NHS Trust. Reference was made to general moves across the country to consolidate back office services. Board members emphasised the importance of ensuring clarity with regard to the criteria for progressing such activities. It was proposed that, as the level of competition-related scrutiny required for mergers of administrative services differed to that required for clinical services, Monitor should ensure that there was clarity with regard to the definition of clinical and non-clinical services. It was anticipated that this would ensure that there was certainty about whether transactions would be subject to a merger review or not.

ACTION: CD
- 4.3 David Bennett had recently written to the sector about how Monitor intended to amend its approach to reviewing transactions such as mergers. Board members welcomed this and emphasised the importance of focusing on benefits for patients as well as increased efficiencies.

5. Assessment Update (BM/14/05)

- 5.1 Miranda Carter presented the report which provided the Board with an update on assessment activity in January 2014.
- 5.2 Board members noted that a project had been initiated to ensure that the recently published planning assumptions were appropriately implemented for future assessments and transactions. A further update on the progress of this work was provided and it was anticipated that the project would be completed by the end of the financial year. The Board was assured that Monitor was engaging regularly with the NHS Trust Development Authority (NHS TDA) and NHS England with regard to issues such as planning assumptions and how best to ensure that the health service as a whole was adequately prepared to respond to the challenges expected in 2015/16 and beyond. It had been proposed that a joint piece of work should be undertaken on behalf of these three organisations to support the most challenged local health economies in improving their strategic planning. Board members welcomed this initiative. It was noted that challenged providers could also benefit from the expertise and experience of well performing NHS foundation trusts (NHS FTs). Board members suggested that further work be undertaken to establish whether provider networks might be a viable way of facilitating the spread of good practice.

ACTION: SH

5.3 Monitor was in the process of determining the most appropriate approach to be taken with regard to the authorisation as NHS FTs of NHS trusts providing high secure services (HSS). Board members noted the issues associated with the authorisation of these trusts. In addition to being subject to different regulatory regimes (continued direct oversight in some areas by the Secretary of State for Health and directions issued by the Secretary of State to NHS England and HSS providers), there were also issues relating to how best to determine that these trusts had appropriate security arrangements in place. Board members considered that additional specialist input would be appropriate, over and above Monitor's existing assessment processes, to inform the final decision to be taken with regard to the authorisation of these trusts as NHS FTs. In order to broaden the Board's existing knowledge of issues relating to these providers, it was agreed that an informal session should be arranged for all Board members on the subject of mental health and HSS.

ACTION: PH, MC

6. Executive Report (BM/14/06)

- 6.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 18 December 2013.
- 6.2 The Board was provided with an update on the development of the organisation's 2014/15 budget. Negotiations with the Department of Health (DH) were ongoing. Further details would be provided alongside the proposed Corporate Strategy and Business Plan for approval at the Board meeting on 26 March 2014.
- 6.3 It was noted that mental health campaigners had raised concerns about the 2014/15 National Tariff, in the belief that it would reduce the amount of funding available to mental health trusts, as compared with acute trusts. The 2014/15 National Tariff set out that providers were expected to make 4% efficiency savings, in order to enable commissioners to buy more services for patients. These savings would be partially offset by uplifts to cover rising costs for NHS services (which included implementing the recommendations of the Francis and Keogh Reports). NHS England had estimated that providers would need an additional £150m in 2014/15 to meet requirements linked to these recommendations, the costs of which related primarily to acute health services. In light of this NHS England had advised that the cost uplift should apply specifically to the acute sector; however the National Tariff did allow commissioners and providers to negotiate and agree local prices where there was no national price (which included mental health services). It was therefore open to commissioners to agree a price which reflected the particular costs of local providers of mental health services. It was anticipated that NHS England would be reviewing commissioners' plans to ensure this happens. Both NHS England and Monitor were working with all parts of the service, including mental health and community services, to understand cost pressures in developing next year's National Tariff.

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

- 7.1 There were no questions or comments.

8. Private session - resolution (oral item)

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

RESOLVED:

- 8.2 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.

9. Chief Executive's update (oral item)

- 9.1 David Bennett provided Board members with an oral update on the meetings that he attended with the Secretary of State for Health.
- 9.2 An update was provided with regard to the arrangements being made for the upcoming joint meeting of the Boards of Monitor and NHS England. Board members were content with the proposal that the focus of the meeting should be the manner in which the two organisations could work together to enable providers and commissioners to respond to the challenges facing the health service.

10. Provider Regulation Update (BM/14/06(P))

Paul Streat (Regional Director) and Mark Turner (Regional Director) joined the meeting for the consideration of this item.

- 10.1 Board members discussed the paper which provided an overview of the NHS FT sector's operational and financial performance and regulatory activity. Consideration was given to the reasons for the number of NHS FTs subject to formal enforcement action (25 as of 17 January 2014, or 17% of the sector). It was noted that the nature of formal enforcement action varied, as did the reasons for having to take this action. Board members emphasised the importance of ensuring that Monitor continued to take appropriate and timely regulatory action in a consistent manner across the sector.

- 10.2 Oral updates were provided with regard to the following individual NHS FTs:

- Medway NHS Foundation Trust;
- Tameside Hospital NHS Foundation Trust
- Kettering General Hospital NHS Foundation Trust;
- Royal National Hospital for Rheumatic Diseases NHS Foundation Trust;
- Sherwood Forest Hospitals NHS Foundation Trust;
- The Queen Elizabeth Hospital, King's Lynn, NHS Foundation Trust;
- Colchester Hospital University NHS Foundation Trust; and
- Mid Staffordshire NHS Foundation Trust.

11. Licensing of Independent Providers (BM/14/07(P))

John Ward (Independent Provider Licensing Project Director) joined the meeting for the consideration of this item.

- 11.1 John Ward introduced the paper which provided, in response to a previous request from the Board, an update on the project which had been established to ensure that Monitor was able to license independent providers of NHS funded health care services from 1 April 2014.
- 11.2 Board members considered the information provided with regard to when independent providers would require a licence; which providers would require a licence and which

were exempt; licensing application criteria and how licensed independent providers were likely to be monitored. The importance was emphasised of clear communications with the sector about which providers were exempt from requiring a licence; particularly in light of the fact that providers themselves were required to determine whether or not they were exempt from the licence. It was proposed that a “fact sheet” should be made available.

ACTION: JW, SM

- 11.3 Board members tested whether Monitor was operationally ready to issue independent providers with licences from 1 April 2014. Monitor was currently consulting the sector on its proposed approach to regulating these providers. It was reported that, whilst not many formal consultation responses had been received as yet, Monitor had also undertaken a significant amount of informal engagement. This had been received positively. As a result of this it was considered that the sector was broadly content with the proposals and that Monitor was operationally ready to deliver these. However, there was still some uncertainty in the absence of the risk pool and health special administration (HSA). Monitor could not place an independent provider into HSA and would therefore need to liaise with any administrator appointed under the Insolvency Act 1986 in the event that this happened before a solution could be developed with a provider identified as being at risk. Further information on this would be brought to the Board in due course.

ACTION: JW, JD

12. Monitor’s Review of Walk-in Centre Services – outline of recommendations for final report (BM/14/08(P))

Sondra Roberto (Competition Inquiries Lead) joined the meeting for the consideration of this item.

- 12.1 Sondra Roberto introduced the report which summarised the aims and proposed recommendations of the final report to be published by Monitor with regard to walk-in centre provision in England. Board members considered the proposed recommendations in detail.
- 12.2 It was noted that one of the proposed recommendations related to the need for commissioners to clarify responsibilities for walk-in centres. In this context, Board members emphasised the importance of also referring to potential conflicts of interest and how these required management in a transparent manner. This had been a theme within Monitor’s report with regard to GP services.
- 12.3 Board members noted that a general theme arising from the recommendations related to the importance of commissioners carrying out what was considered to be good commissioning practice. It was emphasised that this was important not just in relation to commissioning of walk-in centres, but all other aspects of health care.
- 12.4 With regard to the longer term work that was being undertaken across the sector to develop solutions that would make the health sector work better for patients, Board members noted the level and breadth of this work. In light of this, the need for some co-ordination of this activity across and within different organisations was emphasised.
- 12.5 Subject to these and other more detailed comments, the Board was content with the proposed structure and content of the final report of Monitor’s review of walk-in centres.

13. Complaint by Thornbury Radiosurgery Centre Limited into the commissioning of radiosurgery services by NHS England (BM/14/09(P))

Dipen Gadhia (Competition Inquiries Lead) and John Pigott (Competition Inquiries Director) joined the meeting for the consideration of this item.

- 13.1 John Piggott presented the paper which asked the Board to consider whether Monitor should close its investigation into NHS England's commissioning of radiosurgery services and publish informal guidance based on its investigation, or whether it should continue its investigation and publish provisional findings.
- 13.2 Board members considered the advantages and disadvantages of pursuing an early resolution with informal action. It was considered that this was possible in light of the fact that NHS England had revisited its decision not to enter into a contract with Thornbury Radiosurgery Centre Limited. The importance of acting in a proportionate manner in the best interests of patients was emphasised.

RESOLVED:

- 13.3 The Board resolved to agree that Monitor's investigation into the complaint by Thornbury Radiosurgery Centre Limited into the commissioning of radiosurgery services by NHS England should be closed and that informal guidance should be issued to create wider awareness of points that arose during the investigation.

14. Any other business

- 14.1 It was noted that the National Audit Office was undertaking a study of Monitor's assessment of applicant NHS trusts; how it supported NHS FTs to improve their financial management and governance; and its interventions if a trust got into financial difficulties. It was anticipated that this would be reviewed in detail by the Audit and Risk Committee and the Board in due course.
- 14.2 Board members were informed that a Letter of Intent was required for Ernst & Young with regard to the provision of services to implement the recommendations of the Trust Special Administrators at Mid Staffordshire NHS Foundation Trust. This was as a result of the time taken for a business case for the funding of the implementation phase to be approved by DH. Board members emphasised the importance of receiving written assurance from DH that this expenditure would be covered. Subject to the receipt of this written assurance, the Board was content to delegate authority to the Chief Executive to sign a Letter of Intent up to the value of £1.5m.

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