Monitor
Making the health sector work for patients

To: The Board

For meeting on: 26 February 2014

Agenda item: 7

Report by: Executive Team

Report for: Information

TITLE: **Executive Report**

Summary:

This report summarises key developments at Monitor since the Board meeting held on 29 January 2014.

Recommendation:

The Board is asked to note the report.

Public Sector Equality Duty:

Monitor has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. In relation to the issues set out in this paper, consideration has been given to the impact that the recommendations might have on these requirements and on the nine protected groups identified by the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation).

As this report is for information, it is anticipated that the recommendations of this paper are not likely to have any particular impact upon the requirements of or the protected groups identified by the Equality Act.

Exempt information:

None of this report is exempt under the Freedom of Information Act 2000.

CHIEF EXECUTIVE'S REPORT

This part of the report focuses on key matters not addressed elsewhere in the Board papers.

Responding to Challenges Facing the Sector

1. As discussed in previous Board meetings, the NHS faces an unprecedented scale of challenge in coming years. Health sector costs are likely to continue to rise around 4% faster than general inflation, whilst allocations to the NHS are likely to remain flat. If current trends continue and no further action is taken, leaders across the sector agree that the gap between costs and revenues will reach about £30 billion by 2021.

2. The year 2015/16, in which a further £2 billion will be transferred to the Better Care Fund, will represent a particular challenge. Modelling undertaken by Monitor and NHS England suggests that in this year the gap between costs and revenues will represent approximately 6.6% of allocations. Historically, providers have delivered true productivity and efficiency gains in the region of 1-2% p.a., with the balance of financial pressures addressed through non-recurrent means – either additional in year income or one-off savings. This leaves a significant residual.

3. Delivering the requirement to achieve financial balance whilst maintaining or preferably improving the quality of care will be very challenging and requires a sufficient cohort of skilled and capable leaders. We know that NHS foundation trusts (NHS FTs), particularly those which face significant challenges compared to their peers, already struggle to recruit to board level posts, particularly Chairs, Chief Executives, Medical Directors and Directors of Finance.

4. A number of initiatives have been put in place by the Department of Health (DH) and the key Arm's Length Bodies working in partnership which seek to address the quality, financial and leadership gaps. These include:

    a) Considering options which would enable providers to operate at a scale which can mitigate the financial, clinical and leadership challenges which smaller and more isolated providers face whilst maintaining appropriate access to services for local communities. Solutions could include chains of hospitals, merger or acquisition, or management franchises. Work has commenced under the sponsorship of the Prime Minister's office, with the active involvement of Monitor, the NHS Trust Development Authority (NHS TDA), DH and a small number of NHS FT Chief Executives. Monitor is taking the lead in supporting this project. In addition, the Secretary of State has asked Sir David Dalton, Chief Executive of Salford Royal NHS Foundation Trust to "investigate 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." Naturally, we are keen to see this work aligned with the existing programme.

    b) Further work on how the provider landscape needs to evolve overall following the NHS Futures event led by Monitor and held in November 2013, the report of which is to be published shortly. I am particularly interested in developing some scenarios that describe what this landscape might look like in five to ten years so that we can promote further debate on the direction of travel and develop a shared sense of the scale and pace of change that will be needed. My aim would be to draw together many of the initiatives already underway - such as that on chains above, or the work on integrated care – to develop a coherent picture of what all this might mean.

c) Focusing particularly on the leadership needed to drive the required change, the Secretary of State has asked Sir Stuart Rose to advise him on how the NHS can build on existing work to recruit top talent from within and outside the NHS. Sir Stuart will consider the challenges faced by hospital leaders across the NHS including the 14 trusts currently in special measures. He will also advise on how strong leadership in NHS trusts can be used as a force for good to improve organisational culture. We are arranging a detailed briefing for Sir Stuart on the current issues facing the NHS as a whole and challenged trusts in particular. In early March he will be spending a day at King's College Hospital NHS Foundation Trust, where he will discuss with board members the similarities and differences for leaders in the NHS and industry, and the relationship between clinical leaders, managers and the Board. He will also hear about the challenges faced by a high performing organisation in acquiring a struggling hospital, and about the role of the wider system in leading and supporting change. Sir Stuart is expected to complete his review in December 2014. David Flory or I will be accompanying him on his visits to the special measures trusts.

d) Various initiatives that address the immediate financial challenge, including: the current commissioner and provider planning round being undertaken by NHS England, the NHS TDA and Monitor; the provision of additional support to 11 of the most challenged health economies as they develop their plans; and efforts led by DH and ministers to identify centrally-led opportunities for efficiency gains, such as in procurement. The challenge with all of these initiatives will be to translate them into real action on the ground, at pace.

<u>Recent National Audit Office Report on Waiting Times</u>

5. In January this year the National Audit Office (NAO) published a report on waiting times for elective care in England. They conducted a survey of all acute providers, and visited seven trusts including three NHS FTs. Their findings included:

- High frequency of errors in recording waiting times (both over and understating time waited);
- Poor application of levers which could improve performance; and
- Poor public understanding of their rights under the NHS Constitution.

6. In total the NAO made seven recommendations, all of which have been broadly accepted by NHS England, Monitor and the NHS TDA.

7. The recent Public Accounts Committee (PAC) hearing on the report, attended by myself, Una O'Brien, Sir David Nicholson and Dale Bywater from the NHS TDA, focused in particular on the issue of data quality. Una and I both proposed that an external audit of the sort previously undertaken by the Audit Commission should be reinstated. For NHS FTs, I also said that we would examine ways of strengthening the assurance that lies behind the Annual Governance Statement signed by each NHS FT board.

Medical Director Appointment

8. We expect to be in a position to make a formal announcement shortly.

REPORT FROM THE EXECUTIVE COMMITTEE (ExCo)

Tuesday 4 February 2014:

9. At its meeting on 4 February 2014 the ExCo conducted the following business:

November and December 2013 enquiries and complaints reports, and proposed access and escalation process

10. Considering information about the enquiries and complaints received by Monitor in November and December 2013.

11. Monitor has received notification from the Parliamentary and Health Service Ombudsman that it is proceeding with an investigation of a complaint about Monitor, relating to a decision not to take regulatory action against Berkshire Healthcare NHS Foundation Trust, following concerns raised by a whistleblower in 2012/13. It should be noted that the Ombudsman has recently changed its approach to such complaints and, as a consequence, more of them are being investigated.

Policy for dealing with unreasonably persistent and unacceptable behaviour

12. Agreeing the adoption of a policy to clarify what steps staff can take to deal with and address unreasonably persistent and/or unacceptable behaviour from individuals contacting Monitor. The policy is based on guidance provided by the Local Government Ombudsman and will be shared with the Parliamentary and Health Service Ombudsman.

Annual Report 2013/14

13. Reviewing the proposed approach, high level timetable and structure for Monitor's 2013/14 Annual Report and Accounts. Further information on this can be found under agenda item 7 (ref: BM/14/15).

Joint support package – outline approach

14. Scrutinising a proposed intense package of support to be delivered to the particularly challenged local health economies (LHEs) which Monitor, NHS England and the NHS TDA have identified as likely to struggle to produce sufficiently robust strategic plans by June 2014. Further information about this can be found under agenda item 17 (ref: BM/14/21(P)).

Corporate Strategy

15. Commenting upon Monitor's proposed corporate strategy. Further information about this can be found under agenda item 20 (ref: BM/14/24(P)).

Monday 10 February 2014:

16. At its meeting on 10 February 2014 the ExCo conducted the following business:

Q3 Performance Report – Delivery of Business Plan Actions

17. Scrutinising the status of the 2013/14 Business Plan actions as at the end of the third Quarter of 2013/14. There are currently 75 actions, plus eight additional projects. Further information about this can be found under agenda item 14 (ref: BM/14/18i(P)).

Q3 Risk Report

18. Scrutinising the status of Monitor's current corporate risk profile, as at the end of the third Quarter of 2013/14, including the top 15 risks identified as a result of the Board Risk Workshop in October 2013, risks escalated by directorates and project-level risk management. Further information about this can be found under agenda item 14 (ref: BM/14/18ii(P)).

Tuesday 18 February 2014:

19. At its meeting on 18 February 2014 the ExCo conducted the following business:

Project updates: Economics and Strategy and Policy teams

20. Reviewing the work being undertaken by the Economics and Strategy and Policy teams (see below).

Project on NHS capital regime

21. Considering a draft report summarising the findings and recommendations from work Monitor had commissioned to consider if and how the capital funding and reimbursement regime for NHS trusts and NHS FTs could be improved. Further information about this can be found under agenda item 18 (ref: BM/14/22(P)).

Briefing on Six Characteristics of Future Care Models

22. Receiving an update on the characteristics of future care models for the NHS that had emerged from the NHS Futures summit of 21 November 2013, following work with NHS England and the NHS TDA on how to develop these further. This information will be circulated in due course to the Board separately setting out the work that Monitor will be undertaking to progress it.

ECONOMICS UPDATE

Progress on current projects

23. The **"NHS FT sustainability"** project has kicked off its first pilot. The team is testing the clinical and financial sustainability of the Trust at a high level using a methodology developed together with the Assessment team, and with input from the clinical experts in the Co-operation and Competition directorate. The results of the first pilot, and next steps in terms of ongoing work and resources will be ready in March 2014.

24. The **"LHE diagnostic"** project is working with Deloitte on developing a methodology and model for analysing local health economy performance, and drivers of that performance. So far, an approach to defining LHEs has been agreed, and a tool which defines LHEs across the country has been developed. The Economics team has agreed a list of performance metrics which will be collected for each LHE and are now at the start of a process of developing and testing hypotheses which explain this performance (e.g. underfunding, demographic factors, care configuration, access to primary and social care). The first pilot study is to be kicked off at the end of February 2014. The results of this pilot, and next steps in terms of ongoing work and resources will be ready by March 2014. It is suggested that the second LHE diagnostic pilot could be on an applicant trust chosen by the Assessment team.

25. The "**smaller acutes"** project is continuing the analysis of the information we have gathered. The team is aiming to deliver our draft findings at the end of March and are continuing to engage with stakeholders to test our thinking.

National Planning assumptions / Assessment assumptions

26. Following publication of the **national planning assumptions** with the NHS TDA and NHS England in December 2013, the Economics team will be working with the Pricing team regarding future planning assumptions.

Patient engagement

27. Our "**patient engagement**" project has developed a short-list of "common practice" ways in which other NHS bodies and sector regulators engage with patients and their representatives. We are testing out these "common practice" ideas with two roundtables in to identify a series of "best practice" recommendations.

Learning from other regulators

28. The team is launching a project on the lessons that can be learnt from other regulators and how this could help Monitor judge its own performance as a regulator (e.g. in the form of a framework). The first stage of this work will comprise primarily desk-based research.

STRATEGY AND POLICY UPDATE

Progress on current projects

29. The Strategy and Policy team is remodelling its projects around two core themes, namely, addressing the challenges of 2015/16 and setting the direction for the future of provision after 2015/16. Both are in conjunction with NHS England and the NHS TDA.

30. On 2015/16, the Strategy and Policy team is:

    - Revisiting the spending round estimates of the challenge to set a realistic baseline of what is achievable;

- Working with the Provider Regulation directorate on offering support to LHEs that are unlikely to submit a reasonable plan as part of the planning process (further information about this can be found under agenda item 17 (ref: BM/14/21(P));
- Supporting others on various savings initiatives (e.g., procurement);
- About to begin work on the implications for Monitor should there be widespread financial distress in the NHS FT sector;
- Thinking through how the development arm of the team (new director just started can support).

31. Beyond 2015/16, the Strategy and Policy team is:

- Working with NHS England and the NHS TDA on testing and implementing models of care based on the six characteristics;
- Working up a paper on what the six characteristics might mean for the configuration of providers;
- Working with others on the possibility/ desirability of chains of providers in the NHS;
- Kicking off work on how Monitor and others can best identify new models of care and support their adoption and diffusion through the NHS.

External partners

32. Monitor is working to establish a common governance framework with the Care Quality Commission (CQC) which will underpin both Monitor's work on governance at NHS FTs and applicants and the CQC's 'well-led' inspection agenda. This is currently awaiting the CQC's publication of its inspections handbook to progress, which is due in April.

33. Work is ongoing both internally and with external partners to support the integrated care pioneers, and Monitor plans to issue guidance on integration in the summer

Developing regulatory frameworks

34. Consultations were underway in January on proposals to assess Continuity of Services risk at independent providers of Commissioner Requested Services (CRS) and to implement regular reviews of governance at NHS FTs.

35. As independent sector providers of CRS will be licensed from April 2014, the Strategy and Policy team is working to identify what options are available to Monitor, in the absence of Health Special Administration, to protect key patient services should one go into fail financially. This is likely to involve external legal and insolvency advice.

Overseeing impact of Monitor's regulatory approach

36. The Strategy and Policy team's Risk and Performance teams are now in place and are monitoring performance across the organisation. Work is being undertaken to develop enhanced risk management and performance oversight frameworks, with implementation planned in spring (performance) & summer (risk).

Supporting provider development

37. A Development Director has now been appointed and we have a full agenda of development activities for Chairs, Chief Executives, Non-Executive Directors and Medical Directors planned for the coming months.

38. Monitor's guidance to help providers with development of five year strategic plans is behind original plan.

STRATEGIC COMMUNICATIONS UPDATE

Pricing in mental health and community services – crowdsourcing campaign

39. Monitor completed its second 'crowdsourcing' campaign, an online conversation on driving quality and efficiency in mental health and community services. More than 100 stakeholders participated over two and a half weeks, making 600 contributions to the discussion. As the Pricing team analyses the ideas, the emerging themes show that stakeholders would like a payment model that:

    - is linked to clinical outcomes (and they want work done to define a set of meaningful measures that can be easily measured);
    - promotes integration with both social and physical care; and
    - reflects the level of activity and complexity that providers face.

40. The Pricing team will use the ideas to inform how Monitor could use the tariff to increase quality and cost-effectiveness in community and mental health care in 2015/16.

Stakeholder engagement

41. Following Monitor's joint announcement with the NHS TDA on progress at trusts in special measures further information has been offered to all relevant MPs.

42. During a Nuffield Trust panel discussion on the sector one year on from the Francis Inquiry, Kate Moore, Monitor's Executive Director of Legal Services, set out how Monitor is taking the Inquiry's recommendations forward. The audience was particularly keen to know whether Monitor was improving how it worked with its partners.

Complaint about Monitor

43. An individual has complained about Monitor's decision not to take further his concerns on governance, quality of care and safety issues at an NHS FT. He believes that Monitor failed to carry out a timely and thorough investigation, did not share information with other regulators promptly enough and failed to share information with him so that he could comment on it. Monitor has now reached a provisional decision and is considering the complainant's comments on it. A decision will then be taken on whether to investigate further or reach a final decision.

Choice and competition

44. The HSJ interviewed David Bennett, Monitor's Chief Executive, about Monitor's approach to choice, competition, mergers and other issues. This generated various articles and the Strategic Communications directorate also provided a substantial comment piece in

David's name on plans for a better merger regime. The editor, Alastair McLellan, wrote an editorial that examined David's efforts to resolve "competition confusion".

45. The Stakeholder Engagement team is helping the Co-operation and Competition directorate explain the Section 75 guidance to leading commissioners and their support units. In addition, ten events for commissioners are planned for March and April, run jointly with NHS England.

Review into GP services

46. The Strategic Communications directorate's media handling approach for the findings of Monitor's review of GP services focused on the GP magazine, Pulse, which interviewed Paul Dinkin, one of Monitor's Senior Policy Advisers. This generated a broadly supportive news story and a second critical comment piece that described the review as a missed opportunity, was carried on the Pulse website as part of its newsroom blog.

Licence for independent providers

47. The Strategic Communications directorate arranged for the Commissioning Review magazine to interview Jason Dorsett, Monitor's Financial Reporting and Risk Director, on a range of topics related to the licence for independent providers. A favourable article was published on the publication's website and in its print edition which has 27,000 readers involved in commissioning NHS services.

48. Some community interest companies may come under the new licensing regime from 1 April 2014. They have been engaged through Monitor briefings and by opening a dialogue between them and the Licensing team about concerns on the designation of CRS.

Regulatory action

49. There was interest from local, regional and trade publications when Monitor took regulatory action at Medway NHS Foundation Trust, where Monitor appointed an interim Chair and interim Chief Executive.

Major stakeholder perception survey

50. To be an effective organisation, it is essential that Monitor's role and functions are well-understood externally. The Strategic Communications directorate plans to carry out new quantitative and qualitative research among Monitor's key stakeholders to establish views about Monitor and the issues that interest and concern them. The fieldwork will take place in May and early June. The objectives include:

    - improving our understanding of our stakeholders' current awareness and views of Monitor;

    - enabling us to identify the gap between each stakeholder group's current level of awareness and buy-in to Monitor's work and the level we need them to have;

- enabling us to further develop the detailed communications and engagement process for each stakeholder group, by establishing their preferences, and provide the benchmark against which we will measure our future success in engaging with them;

- getting as much evidence as possible about each of our stakeholder group's concerns on particular topics relevant to our role (such as choice and competition, pricing, and the need for major change in the NHS); and exploring what they feel the major risks and opportunities currently are for them;

- tracking perceptions since the previous survey in 2012; and

- benchmarking Monitor against similar public sector organisations and regulators (within and outside health).

51. Monitor will carry out the research with leaders from across each of the following groups: providers; commissioners; patient representative groups; opinion-formers; key partners; clinicians and NHS staff; and government and parliamentary committees (parliamentarians will be covered by buying into a separate omnibus survey, as this is the most effective way to reach them).

52. In some cases, notably commissioners and providers, we will interview a range of job holders and explore particular issues with various sub groups. For example, Monitor will contact finance directors in providers to drill down into its Pricing function and commissioning leads in Clinical Commissioning Groups to explore their views on choice and competition.

53. This survey, which Monitor plans to carry out annually, will provide an important benchmark and consideration is also being given to ways to gather qualitative and quantitative data throughout the year in a systematic and cost-effective way.

Executive Committee