

**MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY 18
DECEMBER 2013 AT 9.30 AT WELLINGTON HOUSE, 133-155 WATERLOO ROAD,
LONDON SE1 8UG**

Present:

David Bennett, Chairman and Chief Executive
Stephen Hay, Managing Director of Provider Regulation
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:

Helen Buckingham, Chief of Staff
Miranda Carter, Executive Director of Assessment
Lord Carter of Coles, Co-operation and Competition Panel Chair (until item 6)
Catherine Davies, Executive Director of Co-operation and Competition
John Hall, Director of Economics
Philippa Harding, Board Secretary
Toby Lambert, Director of Strategy and Policy
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 Fiona Knight (Executive Director of Organisation Transformation) and Ric Marshall (Director of Pricing).

2. Declarations of interest

2.1 No interests were declared.

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

- i) 27 November 2013 (BM/13/138(i))**
- ii) 4 December 2013 (BM/13/138(ii))**

3.1 The minutes of the meetings held on 27 November and 4 December 2013 were approved and the matters arising noted.

4. Assessment Update (BM/13/140)

- 4.1 Miranda Carter presented the report which provided the Board with an update on assessment activity in December 2013.
- 4.2 Consideration was given to the work that was being undertaken with regard to the enhanced monitoring of King's College Hospital NHS Foundation Trust, in relation to its acquisition of the Princess Royal University Hospital. This monitoring related to the Board's requirement for an external review and assessment to be made of the Trust's progress in delivering the planned cultural change and clinical improvements associated with the transaction. Board members were content with the progress that was being made.
- 4.3 It was noted that Monitor had been requested by HM Treasury to undertake a Appointment Business Case (ABC) review of the Papworth Hospital NHS Foundation Trust private finance initiative scheme, following the ABC review conducted in April 2013.

5. Co-operation and Competition Update (BM/13/139)

- 5.1 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 December 2013.
- 5.2 The progress that was being made with regard to the walk-in centres project was noted. Board members requested that the draft final report be brought to the January Board meeting.

ACTION: CD
- 5.3 Consideration was given to the interactions between Monitor and its key stakeholders with regard to co-operation and competition issues.
- 5.4 Board members explored the relationship between co-operation and competition issues and the need for reconfiguration of services within local health economies (LHEs) in order to ensure long term clinical and financial sustainability. Within this context, Board members emphasised Monitor's duty to ensure that choice and competition operated in the best interests of patients and to prevent anti-competitive behaviour where it was against patients' interests.

6. Executive Report (BM/13/141)

- 6.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 27 November 2013.
- 6.2 It was noted that a complaint had been made against Monitor. In response to a request for further information, Board members were informed that this was in relation to a decision not to take regulatory action in response to a complaint made about an NHS foundation trust (NHS FT). More detailed reporting on such issues was requested in the future.
- 6.3 Non Executive Directors who had attended the "Making a Difference for Patients" Monitor staff event reported that it had been very successful and thanked those who had

organised it. The importance of considering as an organisation how each member of staff could and did make a difference for patients was emphasised.

- 6.4 An update was provided on the progress of work on the project that Monitor was undertaking with regard to how the NHS capital funding regime might be improved. It was suggested that the approach to be taken with regard to the outputs of this work should be considered by the Board.

ACTION: TL

- 6.5 The Board was provided with an update on the progress of recruiting Independent Members of the Technology Assurance Committee.

- 6.6 Board members requested further information with regard to the work that was being undertaken to ensure that Monitor would be able to issue licences to independent health care providers from 2014.

ACTION: SH, JD

- 6.7 Heather Lawrence reported that she had been requested by the Care Quality Commission (CQC) to act as the Chair of a CQC review team. Board members considered any potential conflicts of interest associated with undertaking such a role. Subject to confirming that the subject of the review was not an NHS FT, involved in a proposed merger with an NHS FT, or subject to any other type of regulatory action by Monitor, Board members considered the proposal to be extremely beneficial.

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 Chairman 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 There was no further information to be provided by the Chief Executive in addition to that which had been included in the Executive Report.

10. Mid Staffordshire NHS Foundation Trust (BM/13/142(P))

Katherine Cawley (Enforcement Director) and Matthew Hopper (Senior Enforcement Manager) joined the meeting for the consideration of this item.

- 10.1 Board members considered the report which provided a briefing on what the Final Report of the Trust Special Administrators (TSAs) at Mid Staffordshire NHS Foundation Trust was expected to contain and the next steps that would be requested of the Board.

A further oral update was provided to the Board, following the publication of the TSAs' Final Report earlier the same day.

10.2 The Board undertook a brief initial consideration of the TSAs' proposals, mindful of the fact that a Board meeting had been arranged to take place on 14 January 2014 in order to enable a formal decision to be taken on whether Monitor could accept the Final Report of the TSAs, based on the statutory criteria set out in the National Health Service Act 2006 (as amended). Monitor was required to determine whether it was satisfied that the recommended actions within this Final Report would secure the continued provision of the "Location Specific Services" at such levels as the commissioners had determined, so that it became unnecessary for the TSAs to remain in place. In order to enable the Board to determine these matters, Board members requested specific information about the impact of the model of care being proposed by the TSAs and the legal risks associated with the proposals, particularly with regard to the legal definition of the sustainable provision of services.

ACTION: KC

10.3 The importance was stressed of ensuring that all of the lessons to be learned from Monitor's first experience of the TSA process were comprehensively captured. It was confirmed that a full log of learnings had been kept throughout the project, in order to ensure that nothing was lost in the passage of time.

10.4 Board members noted that, should Monitor and the Secretary of State accept the TSAs' Final Report recommendation to dissolve the Trust, the current TSAs' contact would end at the point of the Secretary of State's decision. Consideration was given to the arguments for making a direct award to the current TSAs for the provision of the next stage of the TSA process (provision of the operational and financial oversight in respect of running Mid Staffordshire NHS Foundation Trust and the implementation of the TSAs' recommendations until such time as TSAs were no longer required). Board members were content that the risks associated with making a direct award of a contract for the provision of the next stage of the TSA process were outweighed by the risks associated with not doing this. It was noted that, in light of Monitor's experience of undertaking the Contingency Planning Team and TSA process at Mid Staffordshire NHS Foundation Trust, it was expected that, should it be required again, the full process would be procured as one contract, rather than in phases.

RESOLVED:

10.5 The Board resolved that:

- a) the report should be noted;
- b) the contact for the second phase of the Trust Special Administration at Mid Staffordshire NHS Foundation Trust should be awarded directly to Ernst & Young LLP; and
- c) David Bennett (or a nominated deputy from the Executive) should have the delegated authority to approve the submission of the business case to the Department of Health to request funding to implement the second phase of the Trust Special Administration at Mid Staffordshire NHS Foundation Trust.

11. Joint Planning Assumptions (BM/13/143(P))

Amy Caldwell Nichols (Project Director (Economics)) joined the meeting for the consideration of this item.

- 11.1 The Board considered the report which outlined the core assumptions and underlying evidence for the Joint Planning Guidance (with the NHS Trust Development Authority and NHS England) and Assessment Assumptions.
- 11.2 Board members considered the size of the affordability challenge facing LHEs and the assumptions which had the greatest impact on the size of this challenge. These included the path of wage inflation, activity growth, pensions reform and the Better Care Fund. The response required from the health care system to these pressures was also discussed.
- 11.3 Consideration was given to the manner in which health care providers could improve their efficiency and make savings within this challenging context. It was estimated that all NHS providers would be required to make real efficiency savings of at least two per cent every year for the next five years, in order to respond to the wider financial challenge facing the NHS. These efficiency savings would have to not only involve the provision of the same treatments at a lower cost; Board members emphasised that changes would also be required with regard to the patterns of care provided, so that the same or a better health benefit was provided at a lower cost. In order to achieve this, robust strategic planning would be required from NHS providers, working together with commissioners.

12. 2015/16 National Tariff – a *Statement of Intent* (BM/13/144(P))

Catherine Pollard (Pricing Development Director) and Igor Popovich (Pricing Delivery Director) joined the meeting for the consideration of this item.

- 12.1 Catherine Pollard introduced the report which set out the proposed structure and content of a short *Statement of Intent* to be published by Monitor and NHS England in order to provide an early signal to commissioners and providers of how the payment system could help local health economies to manage the significant financial challenge expected in 2015/16.
- 12.2 Board members were supportive of the outline content of the document. It was suggested that greater clarity could be provided with regard to the principles upon which the 2015/16 National Tariff would be based. With regard to the development of the 2016/17 National Tariff, it was considered valuable to set out that Monitor would be working with the sector on this.

13. Any other business

- 13.1 No other business was raised.

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