MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY 27 NOVEMBER 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 (until item 16)
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 15)
Catherine Davies, Executive Director of Co-operation and Competition
Philippa Harding, Board Secretary
Fiona Knight, Executive Director of Organisation Transformation
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 one member 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 John Hall (Director of Economics).

2. Declarations of interest

2.1 With regard to competition-related issues, it was noted that Stephen Thornton was a Non-executive Director of the Transforming Pathology Partnership, which was currently being considered by the Office of Fair Trading for referral to Competition Commission.

2.2 No other interests were declared.

3. Minutes and matters arising from the meeting held on 30 October 2013 (BM/13/124)
3.1 The minutes of the meeting held on 25 September were approved and the matters arising noted.

4. **Performance of the NHS foundation trust sector for the six months ended 30 September 2013 (BM/13/125)**

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

4.1 Board members considered the report which provided information about the performance of the NHS foundation trust (NHS FT) sector for the first six months of 2013/14.

4.2 In discussing the financial performance of the NHS FT sector, Board members noted that, whilst it was in surplus, delivery of efficiency savings through cost improvement programmes (CIPs) was 17% below plan, compared to a 15% under delivery at the same point in the previous year. This was attributed to unplanned use of agency staff and deployment of additional staff to deal with operational pressures, as well as a failure to deliver savings in non-pay costs. The importance of NHS FTs continuing to ensure that their planning was sufficiently robust was emphasised in this context. It was noted that the work being undertaken jointly with NHS England on planning across the health care sector would be key to this.

4.3 Consideration was given to the question of what approach should be taken with regard to producing a similar report for the whole of the health care sector, rather than just NHS FTs. It was noted that Monitor planned to produce an annual report on the performance of the sector, through the lens of its core regulatory functions. The value of the Board having a quarterly report on the performance of the sector as a whole was noted, however, and Board members considered the information that was already collected across the sector which could be included in such a report. It was proposed that further discussions should take place with the NHS Trust Development Authority (NHS TDA) to further explore whether it might be possible to use information that it collected, even if at a high level.

4.4 Board members noted that the overall message of the report was that overall the NHS FT sector had been performing well in challenging economic circumstances, with clinicians and managers working hard to deliver the quality of services patients expected and to achieve a stable financial position.

5. **Assessment Update (BM/13/126)**

5.1 Miranda Carter presented the report which provided the Board with an update on assessment activity in November 2013.

5.2 Board members requested an oral update on the workshop that had taken place between Monitor and the Care Quality Commission (CQC) with regard to CQC’s work on the “well led” area of focus in its surveillance and inspection work. It was noted that CQC considered that Monitor’s quality governance review framework would be a valuable aspect of CQC’s approach in this area. Work was being undertaken to ensure that the two approaches to the assessment of providers were aligned and complementary. Board members emphasised that commissioners also had a role in ensuring the quality of care, by ensuring that they purchased care from well led providers.
6. Co-operation and Competition Update (BM/13/127)

6.1 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 November.

6.2 Board members noted the considerable media interest in the initial report on walk-in centres that had been published earlier in November. Consideration was given to the scope of work required ahead of the publication of the final report. It was noted that the manner in which walk-in centres were funded would be reviewed, as would the interactions between these centres and A&E departments and with patients that were registered with general practitioners. Monitor would also be working with NHS England with regard to Sir Bruce Keogh’s report on the first stage of his review of urgent and emergency care in England.

7. Executive Report (BM/13/128)

7.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 30 October 2013.

7.2 Consideration was given to the work that Monitor had been progressing with regard to the development of NHS FT governors. It was proposed that the Board should give further thought to Monitor’s approach to NHS FT governor support and development in the future.

ACTION: TL

7.3 On the project that Monitor was undertaking with regard how the NHS capital funding regime might be improved, it was noted that the Department of Health had a significant interest in understanding how NHS trusts and NHS FTs forecasted their demand for capital and made efficient investment decisions. The project had also been recommended by the Fair Playing Field Review. It was proposed that an additional workstream be described with regard to the consideration of changes in the manner that capital was funded through the National Tariff. This was already part of the work that was being undertaken; however it was considered sufficiently important to require a clear workstream.

ACTION: TL

8. Report of the Audit and Risk Committee meeting on 20 November 2013 (BM/13/129)

8.1 Keith Palmer presented the report which provided Board members with an update on the key issues considered by the Audit and Risk Committee at its meeting on Wednesday 20 November 2013.

8.2 The progress being made in the implementation of the organisation’s new risk management framework was noted.

8.3 Board members endorsed the Audit and Risk Committee’s proposal that a full Board evaluation should be undertaken early in 2014.

ACTION: DB, PH

9. Items circulated in correspondence (BM/13/130)
9.1 The Board noted the report of items circulated in correspondence.

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

10.1 In response to a question from a member of the public asked about the organisation’s changed approach to risk management, it was confirmed that best practice in other regulators and other sectors had been reviewed ahead of deciding which framework to adopt. Plans to embed the new framework and develop a risk-appropriate culture would focus upon the need to enable individual members of staff to relate their areas of work to the risks faced by Monitor.

11. Private session - resolution (oral item)

11.1 The Chairman moved a resolution in order to move into private session to consider private items of business.

RESOLVED:

11.2 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.

12. Chief Executive’s update (oral item)

12.1 Board members received an oral update on the progress of work to identify and address the challenges that the NHS could be facing with regard to A&E over the winter period. The link between the measures that trusts should be taking in order to prevent problems in the short term and how they might address the anticipated challenges that were likely to materialise in 2015/16 was discussed. It was noted that Monitor would be focussing upon this work and looking to capture the experience of Board members and other senior stakeholders in the health care sector.

12.2 With regard to the work that the organisation was undertaking in relation to its co-operation and competition function, Board members were provided with an oral update on the progress of individual pieces of casework. It was proposed that a further Board discussion was required on the organisation’s approach to this work, the governance framework for making decisions on this work and the manner in which the organisation communicated with the sector on this.

ACTION: DB, PH

13. 2014/15 National Tariff Payment System (BM/13/132(P))

Jason Mann (Transition Policy Director (Continuity of Service and Pricing)) joined the meeting for the consideration of this item.

13.1 Board members considered the paper which set out the results of the formal consultation on the proposals for the National Tariff for 2014/15.

13.2 Monitor was required to consult formally on its proposals for the National Tariff for 2014/15 under s.69(7) and 118 of the Health and Social Care Act 2012. The consultation included a specific process for Clinical Commissioning Groups (CCGs) and providers to object to the method Monitor proposed to use to calculate national prices. If
a sufficient volume were to object, Monitor would be required to either modify its proposals and re-consult, or ask the Competition Commission to make a determination on its proposed approach. Board members noted that Monitor had received objections from 0.5% of CCGs (one CCG) and from 16.1% of all relevant providers (44 providers). This was below the threshold (of 51%) that would require Monitor to re-consult or seek a determination from the Competition Commission.

13.3 Board members noted that, despite the concerted and varied efforts that had been made to engage with these parties, the number of responses received from CCGs and providers had been low. It was suggested that further work be undertaken to understand the reasons for the low response rate and what CCGs and relevant providers felt about the issues in relation to the key aspects of the 2014/15 National Tariff, such as the efficiency factor.

13.4 Consideration was given to the marginal rate rule and feedback received on the operation of this, particularly in light of the additional payments that were to be made to providers in relation to A&E pressures over the winter period.

RESOLVED:

13.5 The Board resolved that, in accordance with Monitor’s duty under s.116 of the 2012 Act, the 2014/15 National Tariff Payment System should be adopted and published, as proposed.

14. GP Call for Evidence – update and proposed next steps (BM/13/133(P))

Paul Dinkin (Senior Policy Adviser) and Katherine Dinsdale (Inquiries Lead) joined the meeting for the consideration of this item.

14.1 Paul Dinkin presented the report which provided the Board with information about a publication that Monitor was preparing, in which the organisation set out what it had been told in response to its call for evidence on general practice (GP) services. Information about issues that had been raised, relevant ongoing work and proposals for further work was also provided.

14.2 Board members emphasised the importance of liaising with Monitor’s health care sector regulatory partners with regard to the issues that had been raised and potential further work. It was noted that the work that had been completed so far was an initial step towards better understanding the work that was required in the primary care sector to ensure that patients were able to make the choices that facilitated their receipt of the best possible care. Consideration was given to the question of whether the information gathered through the call for evidence should be used by Monitor to focus further work on one or more particular priority area for the health sector. Board members were content that further work should focus upon one of the following issues: patients’ ability to access GP services; the ability of new or existing providers of GP services to develop the scope of their offer to the NHS; or barriers to the delivery of more integrated care.

14.3 It was proposed that further work should be done to shape the proposed publication in light of the Board’s discussion. Board members requested sight of the revised document ahead of its publication, either at a Board meeting or in correspondence.

ACTION: PD

15. Provider Regulation Update (BM/13/131(P))
15.1 Stephen Hay presented the report which provided the Board with information on the NHS FTs subject to enforcement action at 7 November 2013 and which had been defined as high risk, together with a report of the Provider Regulation Executive meeting on 11 December 2013.

15.2 Board members were provided with an oral update on the regulatory action that Monitor was taking with regard to Medway NHS Foundation Trust and Colchester Hospital University NHS Foundation Trust. It was noted that an update on the progress of the Trust Special Administrators (TSAs) at Mid Staffordshire NHS Foundation Trust would be provided to the next meeting of the Board. The TSAs’ report was due to be laid before Parliament and published on 18 December 2013.

16. Q2 Performance Report – Delivery of business plan actions (BM/13/134(P))

Fiona Bennett (Interim Senior Risk Officer) and Lisa Collins (Senior Policy Adviser) joined the meeting for the consideration of this item.

16.1 Board members considered the report which showed the status of 2013/14 actions as at the end of Q2. Consideration was given to the cross-cutting drivers of delays and improvement actions agreed by the Executive Committee (ExCo).

16.2 Board members discussed the progress of work being undertaken to develop a framework to understand the dynamics of local health economies. The importance of progressing this work at pace was emphasised, in light of its value and the impact that it would have on the organisation’s regulatory approach. The links between this work, the work being undertaken in relation to the NHS capital funding regime and the work on the challenges faced by smaller acute hospitals were noted and discussed. Consideration was also given to the progress of work on ensuring that Monitor had appropriate patient engagement in its decision-making. It was noted that, whilst much of this was dependent upon the appointment of Monitor’s Medical Director (Executive Director of Patient and Clinical Engagement), work on this had to progress as swiftly as possible. In light of this it was suggested that an additional action to this effect should be added to the report.

ACTION: TL

16.3 Subject to the comments above, Board members were content with the manner in which the ExCo was handling the actions set out in Monitor’s Business Plan. The Board endorsed the proposal that new success measures should be trialled at Q3 and revisited following an ExCo workshop early in 2014, at which point the means of delivering the corporate strategy and specific outcomes would be further analysed.

17. Q2 Risk Report (BM/13/135(P))

Fiona Bennett (Interim Senior Risk Officer) and Lisa Collins (Senior Policy Adviser) were in attendance for the consideration of this item.

17.1 Lisa Collins introduced the report which provided the Board with an initial draft of the critical risks faced by the organisation, following the Board Risk Workshop in October 2013. The report also set out information about the roll out the organisation’s new risk management framework and interim risk assurance undertaken in Q2.

17.2 Board members considered the initial draft risks faced by the organisation. The importance of ensuring that these were framed in such a way that they focussed upon issues that were Monitor’s responsibility, whilst highlighting the wider impact that they might have, was emphasised. Board members were also of the opinion that each risk
should be very clear about the impact that it might have on patients. It was noted that further work would be undertaken on the drafting to address these points and to ensure that the risks were suitably strategic.

**RESOLVED:**

17.3 The Board resolved to approve:

a) that the draft critical risks for 2014/15 required further drafting;

b) the proposed approach for Q3 risk reporting and the roll out of the future risk management approach from Q4 should be adopted; and

c) the conclusions from directorates’ self assessment of risk

**18. Any other business**

18.1 No other business was raised.

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