

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

Present:

Joan Hanham, Chairman
David Bennett, 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 (from item 14)

In attendance:

Helen Buckingham, Chief of Staff
John Curnow, Project Director (Economics) (deputising for John Hall, Director of Economics)
Miranda Carter, Executive Director of Assessment
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 (until item 13)
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 John Hall (Director of Economics).
Apologies for lateness had been received from Stephen Thornton (Non Executive Director) who was unable to attend due to a clash with a meeting of the Nursing and Midwifery Council, of which he was a Non Executive Director.

2. Declarations of interest

- 2.1 No interests were declared.

3. Minutes and matters arising from the meeting held on 26 February 2014 (BM/14/25)

- 3.1 The minutes of the meeting held on 26 February 2014 were approved and the matters arising noted.

4. Co-operation and Competition Update (BM/14/26)

- 4.1 Catherine Davies presented 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 March 2014.
- 4.2 Board members were provided with oral updates on the progress of ongoing cases, including the proposed acquisition of one NHS foundation Trust (NHSFT) by another. Board members stressed the importance of NHSFTs commissioning advice that was accurate and appropriate when contemplating actions that might have implications according to the rules on choice and competition within the NHS. In order to facilitate this Monitor was drafting guidance for both NHSFTs and their advisers, as well as engaging with the key providers of advice on competition law to NHSFTs.
- 4.3 The Board had held a workshop on competition issues earlier in the month, at which the provision of expert advice to Monitor on choice and competition issues had been considered. Board members endorsed the proposal that had been discussed, namely that the CCP would cease to exist from 1 April 2014, to be replaced by a small number of external experts who would be invited to attend and provide advice directly to Monitor's decision-making meetings on co-operation and competition-related issues. The Board emphasised the importance of noting the rationale for adopting this approach. It was confirmed that it would be included within the governance review that was in progress, the outcome of which would be reported to the Board at its meeting on 30 April 2014.

ACTION: DB/PH

5. Pricing Development Update (BM/14/27)

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

- 5.1 The Board considered the report which provided information about the significant developments with regard to the work being undertaken by Monitor's Pricing Development team, working closely alongside NHS England.
- 5.2 Consideration was given to the projects being undertaken to inform the policy proposals to be included in the 2015/16 National Tariff, specifically with regard to planned care and local payment design examples. In particular, the Board welcomed the development of a series of local payment design examples to support service development and reconfiguration, which could be adopted by local health economies in 2015/16, making use of existing conditions for local variations of national prices. The importance of using the National Tariff to encourage providers and commissioners to consider innovative patterns of care was emphasised. Board members noted the Health Select Committee's recent comments on this issue.
- 5.3 Board members discussed the process for the agreement of contracts between commissioners and providers for the provision of health care services. It was noted that there were technical and practical issues which could lead to this agreement taking place late in the financial year. Consideration of this would be required in Monitor's future tariff enforcement and assurance work. In light of the potential impact of such situations on

the quality of services provided (as a result of unplanned activity and agency costs), Board members emphasised the need for best practice in this area to be clarified.

6. National Audit Office Report on Monitor (BM/14/29)

Laura Brackwell (National Audit Office Study Director) and David Raray (National Audit Office Audit Manager) joined the meeting for the consideration of this item.

- 6.1 Representatives of the National Audit Office (NAO) provided the Board with a presentation about the approach taken by the NAO in its recent positive report on Monitor and whether its regulation of NHSFTs had been effective.
- 6.2 Consideration was given to the manner in which Monitor exercised its regulatory powers. It was noted that the NAO had found that, whilst Monitor's interventions had worked well when the underlying issues were internal to an NHSFT, its influence was less effective where the cause of the NHSFT's difficulties related to underlying issues in the local health economy. It was considered that this was due to the fact that Monitor had fewer regulatory powers to deploy in such a situation. Board members were provided with information about the work that was ongoing with regard to the manner in which Monitor was developing its regulatory approach to work with national and local partners in such situations, in order to achieve an outcome that was beneficial for patients. Consideration was given to the balance to be struck between providing NHSFTs with the freedoms that encouraged their success, whilst ensuring sufficient regulatory oversight to enable swift action should problems emerge.
- 6.3 It was noted that with regard to the majority of issues raised by the NAO where it was proposed that Monitor had further work to do, that work was already underway. In particular the focus was upon closing gaps in clinical expertise and improving understanding of frontline NHS operations. The value of being clear about what Monitor was doing in these areas, including the use of Quality Governance Associates, was noted.
- 6.4 Board members thanked the representatives of the NAO for attending to present their report. On behalf of the Board, the Chairman also expressed her thanks to the members of Monitor staff who had enabled such positive findings in the NAO's report.

7. Monitor's engagement with patient groups (BM/14/30)

Adam Harridene (Stakeholder Engagement Director) and John Ivory (Senior Economist) joined the meeting for the consideration of this item.

- 7.1 Adam Harridene presented the report which provided a brief overview of the patient and patient group engagement carried out by Monitor over the past six months and planned future activities. The Board was also provided with information about research commissioned by the Economics team into ways in which Monitor could ensure even better engagement with patients and their representatives.
- 7.2 Board members welcomed the report, noting the level of activity that was being undertaken. A number of further engagement groups were proposed. Emphasis was placed on the importance of ensuring that patients and their representatives were aware that Monitor carried out this work and wished to engage with them. Board members also stressed that, when Monitor engaged with individuals and organisations, it must be clear both that their contributions were properly taken account of and also about the outcomes of that engagement.

8. Executive Report (BM/14/28)

- 8.1 Board members considered the report which summarised key development at Monitor since the Board meeting held on 26 February 2014.
- 8.2 The progress of current projects being undertaken by the Economics team was noted and Board members asked for further information on these ahead of the submission of formal reports to the Board.

ACTION: AM

- 8.3 It was noted that the Executive Committee had been giving consideration to where the responsibility for delivering Monitor's integrated care duties should sit and the approach to be taken to investigating potential breaches of the licence condition relating to integrated care. The Board was provided with an oral update on the work that Monitor was progressing with regard to its duty to enable integrated care. It was proposed that further information about this should be provided to a future meeting of the Board.

ACTION: TL

- 8.4 Board members were provided with an oral update on the licensing by Monitor of independent sector providers of Commissioner Requested Services from 1 April 2014. It was noted that Monitor was working to identify what options were available to it, in the absence of Health Special Administration, to protect key patient services, should one fail financially. A further briefing would be provided to the Board in due course.

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

- 9.1 No questions or comments were raised.

10. Private session - resolution (oral item)

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

RESOLVED:

- 10.2 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.

11. Chief Executive's update (oral item)

- 11.1 David Bennett provided the Board with an oral update on a recent meeting with the Chair of the Health Select Committee.

12. Provider Regulation Update (BM/14/31(P))

- 12.1 Board members noted the paper which provided an overview of the NHSFTs subject to formal enforcement action. Stephen Hay provided the Board with an oral update on the progress of recruiting individuals to the posts of Senior Enforcement Director. Work was also being undertaken with regard to the organisational structure of the Provider

Regulation directorate, the outcome of which would be reported to the Board in due course.

12.2 Oral updates were provided with regard to the following individual NHSFTs:

- The Christie NHS Foundation Trust;
- Mid Staffordshire NHS Foundation Trust;
- Tameside Hospital NHS Foundation Trust; and
- Royal National Hospital for Rheumatic Diseases NHS Foundation Trust.

13. Supporting Clinical Commissioning Groups to improve community services (BM/14/32(P))

Alistair Brown (Competition Policy and Markets Director), Jessica Dahlstrom (Project Director, Economics), Yashwant Patel (Pricing Enforcement and Case Management Director) and John Pigott (Inquiries Director) joined the meeting for the consideration of this item.

13.1 The Board considered the paper which proposed a Co-operation and Competition directorate-led project with the aim of supporting local commissioners to improve community-based care. It was noted that many of the block contracts in place for the provision of community services as a result of the Transforming Community Services programme were due to expire in the near future. Careful consideration of what would work best for patients in this area was now required of commissioners. This work also linked to the findings of the Fair Playing Field Review.

13.2 Board members welcomed the proposed project, emphasising that it was a useful companion piece to the work that Monitor had already undertaken on GP services. In order to ensure that the work was undertaken at the appropriate level of detail it was considered appropriate that the work should have two phases – information gathering, followed by the development of a support package for commissioners to facilitate good commissioning. It was anticipated that the outcome of the first phase would determine the work to be undertaken in the second.

RESOLVED:

13.3 The Board resolved to approve the proposed project to support local commissioners to improve community-based care.

14. Monitor's Corporate Strategy (BM/14/33(P))

Jessica Dahlstrom (Project Director, Economics), Jon Hibbs (Director of Media Relations) and Nick Ville (Project Director, Strategy and Policy) joined the meeting for the consideration of this item.

14.1 David Bennett presented the paper which provided the Board with the final draft of Monitor's corporate strategy. It was noted, with apologies, that the report had been circulated late and Board members were encouraged to provide any detailed comments that they might have via correspondence after the Board meeting.

14.2 Board members welcomed the content, language and tone of the document. They were provided with information about how it would be launched and its target audiences. The importance of ensuring that those of Monitor's stakeholders who had been invited to comment on an earlier draft were aware of how their comments had been responded to was noted.

RESOLVED:

14.3 The Board resolved to approve Monitor's Corporate Strategy.

15. Proposed 2014/15 budget (BM/14/34(P))

Jason Dorsett (Finance, Risk and Reporting Director) and Steve Murray (Head of Internal Finance) were in attendance for the consideration of this item.

- 15.1 Jason Dorsett presented the report which summarised the proposed budget allocation for 2014/15.
- 15.2 It was noted that there remained several uncertainties which the budget addressed, including normal contingencies that might arise during the year, but particularly the fact that Monitor did not yet have a final agreed business plan which would allow for a complete prioritisation of resources. In order to retain budget flexibility and to respond to changing priorities throughout the year, it was proposed that not all budget bids would be allocated to directorates, instead central budgets had been proposed, which could be allocated at the Executive Committee's discretion during the year.
- 15.3 Board members emphasised the importance of taking appropriate steps to ensure that Monitor did not allocate resources in excess of the funding received by the organisation from the Department of Health. The importance of ensuring the funding of the organisation's high priority projects and those to which it had already committed to was also emphasised. It was noted that a reforecast would be undertaken early in the financial year, alongside a prioritisation of the business plan, ahead of its submission to the Board at its meeting on 28 May 2014.

RESOLVED:

- 15.4 Subject to the comments above, the Board resolved to approve the proposed budget allocation for 2014/15.

16. 2015/16 National Tariff Methodology discussion paper: proposed key messages (BM/14/35(P))

Greg Perret (Pricing Methodology Adviser), Catherine Pollard (Pricing Development Director), Igor Popovich (Pricing Delivery Director) and Ben Shafran (Editor-in-Chief for the 2015/16 National Tariff) were in attendance for the consideration of this item.

- 16.1 Igor Popovich introduced the report which sought the Board's views about the proposed content of the 2015/16 National Tariff Methodology discussion paper. This publication would trigger the first stakeholder engagement phase for the 2015/16 National Tariff and would prepare the sector for a much more detailed engagement phase in July 2014.
- 16.2 Board members discussed the views of the Health Select Committee with regard to the manner in which Monitor was carrying out its pricing responsibilities. The Board stressed the importance of addressing questions raised by the Committee, as well as other stakeholders within the health care sector. Further information was provided with regard to the manner in which it was proposed that the 2015/16 National Tariff should change from the 2014/15 National Tariff, as well as those aspects it was proposed should be maintained. Board members considered that further work was required in order to ensure that the publication of the 2015/16 National Tariff Methodology discussion paper fully addressed the issues being raised across the sector. In light of the planned

publication of the document in April 2014, Board members confirmed that they were content that the amended proposals could be considered in correspondence, if necessary.

ACTION: IP

17. Any other business

- 17.1 Stephen Thornton provided the Board with an oral update on the recent meeting of the Remuneration Committee. A formal report would be submitted to the meeting of the Board on 30 April 2014.
- 17.2 It was noted that, in light of the time required to recruit additional Non-Executive Board members, Stephen Thornton's Term of Appointment had been extended to 31 May 2014.

Close

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