

**DRAFT MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON
WEDNESDAY 28 OCTOBER 2015 AT 10.00 AT WELLINGTON HOUSE, 133-155
WATERLOO ROAD, LONDON SE1 8UG – SUBJECT TO APPROVAL AT THE
MEETING OF THE BOARD ON 25 NOVEMBER 2015**

Present:

Ed Smith, Chairman
David Bennett, Chief Executive
Stephen Hay, Managing Director of Provider Regulation
Dr Timothy Heymann, Non Executive Director
Heather Lawrence, Non Executive Director
Adrian Masters, Managing Director of Sector Development
Keith Palmer, Deputy Chairman, Non Executive Director
Sigurd Reinton, Non Executive Director

In attendance:

Helen Buckingham, Chief of Staff (from item 7)
Miranda Carter, Executive Director of Provider Appraisal
Catherine Davies, Executive Director of Co-operation and Competition
Philippa Harding, Director of Operations and Performance
Fiona Knight, Executive Director of Organisational Transformation
Toby Lambert, Director of Pricing
Hugo Mascie-Taylor, Medical Director (Executive Director of Patient and Clinical Engagement)
Jeremy Mooney, Executive Director of Strategic Communications
Kate Moore, Executive Director of Legal Services
Adam Sewell-Jones, Executive Director of Provider Sustainability
Peter Sinden, Chief Information Officer
Georgia Toutziari, Governance Manager
Chris Walters, Chief Economist

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 Baroness Joan Hanham (Non Executive Director), Lord Ara Darzi (Non Executive Director), Jason Dorsett (Finance, Reporting and Risk Director) and Iain Osborne (Non Executive Director).

2. Declarations of interest

2.1 No interests were declared.

3. Minutes and matters arising from the meeting held on Wednesday 30 September 2015 (BM/15/95)

3.1 The minutes of the Board meeting held on 30 September 2015 were approved and the matters arising noted.

3.2 The Chairman notified the Board that he had agreed that item 11 of the agenda would be unstarred for discussion.

3.3 It was noted that the outstanding action regarding the Pricing Update (ref: BM/15/33 para 5.4) and the need for the arrangement of a Board workshop on the co-ordinated working between Monitor and NHS England on the longer term strategy for payment systems had been completed.

4. Provider Appraisal Update (BM/15/96)

4.1 The Board noted the report which provided information about significant developments with regard to the work being undertaken by Monitor's Provider Appraisal directorate since the last meeting of the Board.

5. Pricing Update (BM/15/97)

5.1 The Board noted the report which provided an update on the key issues being addressed by the Pricing team in the past month.

6. Executive Report (BM/15/98)

6.1 The Board noted the report which summarised key developments at Monitor since the Board meeting held on 30 September 2015.

7. Patient and Clinical Engagement directorate update (BM/15/99)

7.1 The Board noted the report which provided an update on the work of the Patient and Clinical Engagement directorate against agreed priorities for 2015/16.

7.2 Consideration was given to the directorate's work which included the following three key areas: supporting colleagues in Provider Regulation to engage with the clinical leadership of NHS foundation trusts (NHSFTs) facing significant challenges; supporting cross-Monitor and cross-Arm's Length Body work to develop the agency spending controls and guidance, and to engage with stakeholders and the sector on these proposals; and ongoing liaison with

counterparts across in other national bodies. A number of comments were provided with regard to working methodology and allocation of deployment of the directorate's resources. The significant added value to Monitor of having clinical expertise in-house was emphasised.

- 7.3 With regard to the directorate's work on supporting closure of the care and quality gap, it was noted that a steering group was being established to further scope the initiative on progressing the development of a more co-ordinated, system-wide approach to responding to both existing and new clinical service standards. It was also noted that the objective of the steering group's work was to develop a clear definition of clinical sustainability endorsed by the relevant professional bodies. The commissioners' role in this was discussed. The engagement of national stakeholders in the directorate's work was noted.
- 7.4 The Chair emphasised the need for instinctive collaboration, not just between the organisations and teams which would be part of NHS Improvement, but between NHS Improvement and NHS England.

8. NHS Improvement update (BM/15/100)

- 8.1 Helen Buckingham presented the report which provided the Board with information about progress with the establishment of NHS Improvement which would bring together Monitor, the NHS TDA, the Patient Safety function from NHS England, the Advancing Change Team from NHS Improving Quality, and the Intensive Support Teams from NHS Interim Management and Support to make a single integrated enterprise and health sector regulator.
- 8.2 The Board noted the appointment of Jim Mackey as the new Chief Executive of Monitor and the NHS Trust Development Authority (NHS TDA) and NHS Improvement Chief Executive-Designate, and John Wilderspin as the Integration Director. Jim Mackey would take up post on 1 November 2015.
- 8.3 Helen Buckingham presented the proposed business case, which requested approval for expenditure on the letting of contract for professional services consultancy support to help set up NHS Improvement with a value of up to £1.4m. The Board noted that approval of the business case for optional elements of the contracts would be delegated to the Controls Committee. The case had been previously approved in principle by the Controls and Executive Committees, and an invitation for tender had been issued to the market for provision of support. It was noted that the business case required further approval from the Department of Health.

RESOLVED:

- 8.4 The Board resolved that the business case be approved.

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

- 9.1 No members of the public were present.

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. Co-operation and Competition Update (BM/15/101(P))

11.1 Board members noted the report which provided information about significant developments with regard to the work of the Co-operation and Competition directorate since the meeting of the Board held on 30 September 2015.

11.2 The directorate continued to work with colleagues within Monitor and the New Care Models team from NHS England to develop support for vanguard providers and commissioners. A main area of support included advising commissioners on how their procurement process could be designed to achieve the best results for patients, and advice on patient choice issues arising from their plans. The Board noted that many vanguard sites proposed to make one or more providers responsible for delivering improved outcomes for a local population.

12. Provider Regulation Update (BM/15/102(P))

12.1 Stephen Hay presented the report which provided a summary of the NHSFTs subject to enforcement action at 15 October 2015. The report also provided an overview of the NHSFT sector's financial performance and regulatory activity at month five and a summary on the development and introduction of a new performance framework to improve the speed of the Provider Regulation directorate's regulatory actions to secure a prompt return to compliance of NHSTs in breach of their licence. A further oral update was provided with regard to the following NHSFTs:

- Heart of England NHS Foundation Trust;
- Cambridge University Hospitals NHS Foundation Trust; and
- Sherwood Forest Hospitals NHS Foundation Trust.

13. Chief Executive's update (oral item)

David Bennett provided the Board with his views on some of the challenges that would be faced by NHS Improvement.

- 13.1 The outgoing CEO observed the potentially significant impact of the 2015 Spending Review on providers and was concerned that Monitor ensured that the provider voice continued to be heard. He noted that there were severe recruitment challenges at leadership level at NHSFTs and called for a robust government policy response to address the imminent and serious problem.
- 13.2 With regard to the Care Quality Commission, the CEO welcomed its new inspection regime but observed that there was a need to continue focusing on consistency and realism as the approach evolved.
- 13.3 On Monitor's provider appraisal function, the CEO considered that the benefits of the FT assessment process should be retained as it was a mechanism for across-the-board improvement of provider performance. There were, however, two aspects of FT policy that should be reformed. First and potentially building upon and adapting the CQC regime, there could a sliding scale of performance from outstanding through to inadequate/special measures which would each carry different degrees of autonomy. In addition, the FT governance system should be radically overhauled so that FT membership was replaced by a new structure of commissioners being accountable to their local communities, thereby helping commissioners of healthcare discharge their core function of representing and meeting the needs of their local populations. The risk assessment of transactions should continue to properly balance the various risks of each proposal with the need for a pragmatic approach to change.
- 13.4 With regard to Monitor's pricing function, the CEO noted that the core parameters of the efficiency factor and cost base were both ongoing significant and difficult issues. The overall price level should set a stretching but fundamentally achievable target for providers. Appropriate incentives for, and consequential motivation of, providers was crucial.
- 13.5 With regard to competition and patient choice, it was imperative for the government to decide whether or not it wished to support the relevant legislation. Should the uncertainty in this respect continue, the potential flight risk of the staff whose role it was to explain and enforce the rules would correspondingly increase.
- 13.6 On stakeholder engagement, Dr Bennett emphasised the need to strengthen relationships with NHS England.

14. Chairman's report (oral item)

- 14.1 Ed Smith provided the Board with an oral update on progress on the start date of Jim Mackey, the incoming Chief Executive, and on some arrangements for future Board meetings.
- 14.2 The Chair note that the potential impact of the 2015 Spending Review was a significant challenge that would be faced by NHS Improvement. The degree of change associated with the establishment of NHS Improvement was also noted.

15. Section 118 Statutory Consultation Notice

Igor Popovic (Pricing Delivery Director) and Zephan Trent (Deputy Director – CoE Intelligence & Analytics, Pricing) joined the meeting for the consideration of item.

i) 2016/17 Section 118 Tariff Engagement Document feedback and proposed policies (BM/15/103(i)(P))

15.1 The Board noted the report which provided a summary of the changes to policies proposed for the 2016/17 National Tariff following feedback from Monitor's summer engagement events. The proposed changes related to currency design, the method for setting relative prices, national variations and the rules for locally determined prices. The Board noted that the changes had been agreed by both Monitor and NHS England.

RESOLVED:

15.2 The Board ratified the proposals set out in the report.

ii) 2016/17 efficiency factor and cost base (BM/15/103(ii)(P))

15.3 Board members welcomed the report which provided information about the ongoing negotiations with NHS England on agreeing the overall price level for the 2016/17 National Tariff.

15.4 Consideration was given to the key parameters that would determine the overall price and which included uplift to the cost base, cost inflation, service development and the efficiency factor. It was Monitor's view, supported by the Board in June 2015, that the overall price level should set a stretching but achievable target for providers. The current difference between Monitor's and NHS England's positions in relation to these parameters was considered.

16. Any other business

16.1 The Chairman thanked David Bennett for his service as a Chair and Chief Executive at Monitor.

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