

**MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY
26 NOVEMBER 2014 AT 10.00 AT WELLINGTON HOUSE, 133-155 WATERLOO
ROAD, LONDON SE1 8UG**

Present:

Joan Hanham, Chairman
David Bennett, Chief Executive (except items 5, 6, 7)
Stephen Hay, Managing Director of Provider Regulation
Heather Lawrence, Non Executive Director
Adrian Masters, Managing Director of Sector Development (except items 5, 9, 14, 15 and 16)
Iain Osborne, Non Executive Director
Keith Palmer, Deputy Chairman, Non Executive Director
Sigurd Reinton, Non Executive Director

In attendance:

Miranda Carter, Executive Director of Provider Appraisal (from item 9)
John Curnow, Project Director (Economics) (from item 14)
Catherine Davies, Executive Director of Co-operation and Competition (from item 5)
Jason Dorsett, Finance, Reporting and Risk Director
Philippa Harding, Board Secretary
Steffan Jones, Project Director (Economics) (until item 14)
Ric Marshall, Director of Pricing (except items 5, 9, 14, 15 and 16)
Hugo Mascie-Taylor, Medical Director (Executive Director of Patient and Clinical Engagement)
Sue Meeson, Executive Director of Strategic Communications
Kate Moore, Executive Director of Legal Services
Peter Sinden, Chief Information Officer (except items 6 and 7)

One member of the public was in attendance for part of 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 Toby Lambert (Director of Strategy and Policy).
- 1.2 It was noted that the Board was being observed as part of a review of its effectiveness. Board members welcomed those observing the meeting.

2. Declarations of interest

2.1 No interests were declared.

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

- i) Wednesday 29 October 2014 (BM/14/123(i)); and**
- ii) Thursday 13 November 2014 (BM/14/123(ii)).**

3.1 The minutes of the Board meetings held on 29 October and 13 November 2014 were approved and the matters arising noted.

4. Performance of the NHS foundation trust sector for the 6 months ended 30 September 2014 (BM/14/124)

Helen Buckingham (Chief of Staff) and Yin Shi (Head of Sector Reporting) joined the meeting for the consideration of this item.

4.1 Jason Dorset and Yin Shi introduced the report which set out the Finance, Reporting and Risk team's findings from a review of the Q2 2014/15 performance of all 147 NHS foundation trusts (NHSFTs). NHSFTs continued to experience significant financial and operational pressures, which had resulted in a further deterioration in the overall performance of the sector.

4.2 It was noted that the sector had reported a deficit of £254 million compared with a planned deficit of £59 million. A deficit of £271 million was projected at the end of the 2014/15 financial year. This comprised a gross deficit of £531 million at 60 NHSFTs (£115 million worse than planned), offset by a £260 million surplus at 87 NHSFTs (£136 million worse than planned). Consideration was given to the impact of NHSFTs' spending on contract and agency staff, which was double the amount originally planned. Board members also considered the impact of various commissioning arrangements.

4.3 On NHSFTs' performance in relation to the accident and emergency (A&E) four hour waiting time targets, Board members noted that 2.7 million patients had received emergency care and more than 490,000 had received non-emergency inpatient treatment, an increase of 124,000 and 6,000 respectively compared with the same period last year. The relationship between unplanned attendances and primary care provision was explored.

4.4 Board members discussed the actions that Monitor could take in response to the challenges facing NHSFTs. It was noted that there was a significant amount of good practice across the sector. Monitor would seek to ensure that this was disseminated to those trusts that were finding it more difficult to adapt to the environment than others. It was emphasised that, in order to ensure the continued provision of services at an appropriate level of quality, NHSFTs had to

take action to address current challenges whilst planning for more significant change over the next two to five years. Board members stressed the importance of ensuring that concentration upon current challenges did not divert attention from future needs.

5. A review of the Monitor licence for NHS foundation trusts (BM/14/125)

David Barron (Senior Policy Adviser) and Lisa Collins (Project Director (Policy)) joined the meeting for the consideration of this item.

- 5.1 David Barron introduced the report which provided the Board with information about the review undertaken by Monitor of its licence and the feedback received in response to this review. The aim of the review had been to identify any areas of the licence which were inadvertently affecting beneficial change for patients and/or having a distorting effect on NHSFTs' behaviour. Feedback was also sought with regard to any positive changes for patients as a consequence of the licence.
- 5.2 Board members noted the low number of responses to the review and considered the possible reasons for this. It was noted that the licence had only been in operation since April 2013. An early review of the licence had been implemented following an agreement with the Foundation Trust Network, which had also conducted its own review shortly before Monitor's.
- 5.3 A consistent theme from Monitor's review was that little progress had been made in identifying and confirming Commissioner Requested Services (CRS). The main challenges identified in this regard related to the lack of commissioner awareness of the issues and potential benefits of CRS. Board members emphasised the importance of identifying CRS ahead of any problems occurring at providers. It was proposed that Monitor and NHS England should co-ordinate to encourage commissioners to view the designation of CRS as a priority.

6. Co-operation and Competition Update (BM/14/126)

- 6.1 Board members considered 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 on 29 October 2014.
- 6.2 It was noted that the directorate was working informally with a number of parties with regard to actual and potential complaints. Board members highlighted the length of time that had been spent on some of these informal actions and consideration was given to the question of whether timescales should be identified in such cases. The importance of being able to resolve such issues in a timely manner was emphasised.

7. Provider Appraisal Update (BM/14/127)

David Hoppe (Director, Provider Appraisal) and Martin Smith (Director, Provider Appraisal) were in attendance for the consideration of this item.

- 7.1 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.
- 7.2 Consideration was given to the different types of project that were being undertaken by the Provider Appraisal directorate and the manner in which each project was to be approached. Particular attention was paid to Monitor's role in relation to private finance initiative proposals and the impact that these might have on NHSFTs.

8. Pricing Update (BM/14/128)

- 8.1 The Board discussed the report which provided an update on the key issues being addressed by the Pricing team in the past month.
- 8.2 Board members noted that the proposed changes to the NHS payment system for 2015/16 were due to be published for statutory consultation later that day.
- 8.3 The information being gathered as a result of Monitor's pricing enforcement activities was considered. The Board welcomed the fact that local variation and local modification submissions were generally indicating a reasonable level of consistency with the payment rules.

9. Executive Report (BM/14/129)

Fiona Knight (Executive Director of Organisation Transformation) joined the meeting for the consideration of this item.

- 9.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 29 October 2014.
- 9.2 The results of the Monitor employee engagement "Pulse" survey that was conducted in October were noted. Consideration was given to the question of how the organisation might improve staff views in relation to "leadership", as the results were below the benchmark norm in that category. It was suggested that specific personal objectives for individuals might have a positive impact. Board members were also informed of leadership development work that was already being undertaken.
- 9.3 The Board was provided with further information on the work currently under way to understand the financial impact of moving care out of hospital. The linkage between this and the Five Year Forward View for the NHS was noted. It was reported that further thought was being given to how best to segment the local

health economies in existence, in order to understand how best to work with them and support them in implementing the Forward View.

10. Report of the Nomination Committee meeting on 30 October 2014 (BM/14/130)

- 10.1 Heather Lawrence introduced the report which provided the Board with information about the meeting of the Nomination Committee on Tuesday 30 October 2014 and proposed a number of minor changes to the Committee's Terms of Reference.
- 10.2 The anticipated appointment to the Board of an additional non-executive director at the beginning of January 2015 was noted.

RESOLVED:

- 10.3 The Board resolved that the proposed changes to the Nomination Committee's Terms of Reference should be adopted.

11. Report of the Remuneration Committee meeting on 30 October 2014 (BM/14/131)

- 11.1 Iain Osborne presented the report which provided an update on the key issues considered by the Remuneration Committee at its meeting on Tuesday 30 October 2014.

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

- 12.1 There were no questions or comments.

13. Private session - resolution (oral item)

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

RESOLVED:

- 13.2 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.

14. Chief Executive's update (oral item)

- 14.1 It was noted that, together with NHS England, Monitor would be publishing proposals for the long term payment system design imminently.

15. Q2 Risk and Performance Report

Das Mootanah (Risk and Performance Director) joined the meeting for the consideration of this item.

i) Q2 Risk Report (BM/14/132(i)(P))

- 15.1 The Board noted the report which provided an update on key risk movements in the second quarter of 2014/15, together with highlights and priorities for the third quarter. It was noted that the Board was due to have a workshop discussion of the high level risks facing Monitor and the actions to be taken in response on 3 December 2014.

ii) Q2 Performance Report (BM/14/132(ii)(P))

- 15.2 Board members noted the report which provided an update on corporate performance and the status of the 2014/15 Business Plan actions; highlighting progress, key achievements and challenges.
- 15.3 It was noted that many Business Plan actions were not due to be completed until the last quarter of 2014/15. The Board requested that, in the future, actions be timed to be completed throughout the year wherever possible.

16. Provider Regulation Update (BM/14/133(P))

- 16.1 Board members noted the paper which provided an overview of the NHSFTs subject to formal enforcement action. Information was provided with regard to the following NHSFTs:
- Medway NHS Foundation Trust; and
 - Heart of England NHS Foundation Trust.
- 16.2 It was noted that consideration was being given to the manner in which Monitor's Risk Assessment Framework (RAF) enabled it to make sure that NHSFTs were well run and could continue to provide good quality services for patients, particularly with regard to trusts' compliance with the continuity of services requirements of their provider licence. It was noted that Monitor would be consulting soon on proposed changes to the RAF.

17. National Information Board: Information Framework (BM/14/134(P))

Neil Stutchbury (Director of Business Engagement) was in attendance for the consideration of this item.

- 17.1 The Board considered the report which summarised the key points of the National Information Board Information Framework document and the associated possible opportunities, risks and implications for Monitor. It was noted that the Framework had been announced by the Secretary of State on Thursday 13 November 2014.
- 17.2 Board members noted the need for the health care sector to make better use of data and technology in order to transform the quality of the service it provided. It was emphasised that much of what was proposed within the Information Framework would enable the Five Year Forward View to be implemented. It was proposed that Monitor should play an active role in key programmes of work to ensure that system level priorities took appropriate regard of its priorities and that any ongoing risk was managed appropriately.
- 17.3 The Board was content that Monitor should sign the Information Framework to demonstrate its commitment to working collaboratively for patients' benefit and, in doing so, that the organisation should support the specific actions outlined in the Framework.

18. Learning from other regulators (BM/14/118(P))

Paul Devenish (Senior Economist) and Edward Kendall (Economic Analyst) joined the meeting for the consideration of this item.

- 18.1 Paul Devenish introduced the report which summarised the key findings of the Economics team's work on lessons from other regulators. The outcomes of this work suggested that Monitor should consider the importance and challenge of maintaining its regulatory independence and credibility, how Monitor might approach distortions and other unintended problems created by multiple, overlapping regulatory interventions, the appropriate balance between ex ante regulation and reliance on ex post powers, the benefits of regulatory independence in price setting and the potential to increase Monitor's regulatory legitimacy through greater patient and public involvement in regulatory decisions.
- 18.2 Board members discussed the requirements of Monitor in its twin roles of sector regulator and regulator of NHSFTs. The importance of acting in such a manner as to provide the health care sector with stability was noted. In order to achieve this it was considered that Monitor required not only credibility, legitimacy and transparency to operate effectively, it also needed consistency. The Board emphasised the importance of Monitor acting in such a way to ensure that its regulatory framework was clear.

19. Any other business

- 19.1 Board members noted David Bennett's recent appearance before the Public Accounts Committee to provide evidence with regard to the financial sustainability of the NHS.
- 19.2 David Bennett and Joan Hanham would be appearing before the Health Select Committee at Monitor's annual accountability hearing on 2 December 2014.

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