

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

**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  
Iain Osborne, Non Executive Director  
Keith Palmer, Deputy Chairman, Non Executive Director  
Sigurd Reinton, Non Executive Director

**In attendance:**

Helen Buckingham, Chief of Staff (until item 19)  
Miranda Carter, Executive Director of Provider Appraisal  
Catherine Davies, Executive Director of Co-operation and Competition  
Jason Dorsett, Finance, Reporting and Risk Director  
Philippa Harding, Board Secretary  
Steffan Jones, Project Director (Economics)  
Fiona Knight, Executive Director of Organisation Transformation  
Toby Lambert, Director of Strategy and Policy  
Ric Marshall, Director of Pricing  
Hugo Mascie-Taylor, Medical Director (Executive Director of Patient and Clinical Engagement)  
Sue Meeson, Executive Director of Strategic Communications  
Peter Sinden, Chief Information Officer  
Carla Wilson, Legal Director (deputising for Kate Moore, Executive Director of Legal Services)

One member of the public was 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 Kate Moore (Executive Director of Legal Services). The Chairman welcomed Peter Sinden (Chief Information Officer) who had recently joined Monitor.

## **2. Declarations of interest**

2.1 No interests were declared.

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

- i) 24 September 2014 (BM/14/107(i)); and**
- ii) 2 October 2014 (BM/14/107(ii)).**

- 3.1 The minutes of the Board meetings held on 24 September and 2 October 2014 were approved and the matters arising noted.
- 3.2 Board members were provided with an oral update on the joint work being undertaken by Monitor and the Care Quality Commission (CQC) with regard to the assessment of whether NHS providers were “well led”. A recent meeting had been held between the senior executives of each organisation and good progress was being made with regard to the alignment of various aspects of the two organisations’ work.

## **4. Mid Staffordshire NHS Foundation Trust Public Inquiry; The Francis Report (February 2013): progress report (BM/14/108)**

- 4.1 The Board noted the report which provided an update on Monitor’s progress in implementing those recommendations of the Mid Staffordshire NHS Foundation Trust Public Inquiry that were pertinent to it and its regulatory remit. Very good progress had been made in advancing and implementing the specific and detailed actions under each workstream included within Monitor’s Corporate Strategy and Annual Plan to address Sir Robert Francis QC’s recommendations.

## **5. Executive Report (BM/14/109)**

- 5.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 24 September 2014.
- 5.2 The conferences being organised by Monitor with regard to the work of the Economics team were noted. Board members requested further information on such events in future. It was suggested that thought should also be given to the nature of non-executive Board members’ involvement in such events.
- 5.3 The Board was provided with an oral update on the development of an Improvement function for Monitor. It was confirmed that a paper on this would be brought to the Board in due course.

**ACTION: PH**

**ACTION: DB**

- 5.4 The anticipated outcome of the Dalton Review was discussed. The review was considering the potential for providers of NHS services to develop different organisational forms and was due to recommend how to incentivise providers to work in new ways to provide better care, more efficiently.

## **6. Provider Appraisal Update (BM/14/110)**

- 6.1 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.
- 6.2 Board members discussed the nature and outcomes of the Quality Governance reviews undertaken by Monitor in relation to applicant NHS foundation trusts (NHSFTs).

## **7. Co-operation and Competition Update (BM/14/111)**

- 7.1 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 24 September 2014.
- 7.2 It was noted that Monitor had published the final report of its investigation into the complaint by Spire Healthcare Limited against Blackpool Clinical Commissioning Group and Fylde and Wyre Clinical Commissioning Group. A remedies consultation document had also been published, setting out what actions each clinical commissioning group had taken in relation to patient choice since the case was initiated and inviting interested parties to comment on whether these actions were sufficient or whether enforcement action was necessary.

## **8. Pricing Update (BM/14/112)**

- 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 It was noted that concerns had been raised in relation to the published draft national prices by two specific care areas – orthopaedic procedures and the care of people with renal impairment requiring dialysis. In response to the Board's query about what action had been taken as a result of these concerns, it was reported that a number of adjustments had been made. Board members stressed the importance of demonstrating how Monitor responded to the consultation responses it received.
- 8.3 Board members noted the number of local prices submissions that had been received from NHS providers and the number of local variations submissions received from commissioners. Consideration was given to Monitor's role with regard to these submissions and its approach to the health care sector's compliance with pricing-related licence conditions. Board members requested

further information on these and other pricing enforcement issues, for consideration at a workshop style session in the future.

**ACTION: AM, RM**

- 8.4 Board members noted that Monitor had taken its first decision to reject a local modification application and emphasised the importance of fully engaging with the board of the affected NHSFT, in order to ensure that Monitor's approach to local modifications was clear. The value of reviewing the process for arriving at such decisions was stressed, particularly with regard to the possibility of an appeals mechanism.

**ACTION: RM**

## **9. Items in correspondence (BM/14/113)**

- 9.1 The Board noted the report which provided information about reports that had been circulated in correspondence since the Board's meeting on 30 July 2014.

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

- 10.1 A member of the public highlighted the importance of ensuring that there were opportunities for members of local communities to become involved in the governance of the NHS. The importance of public involvement in both health care providers' and commissioners' activities was stressed. Whilst it was noted that it was not in Monitor's power to change NHS governance models, the Board recognised the importance of public involvement.
- 10.2 Other observations were made with regard to the role of competition and pricing in improving the quality of health care.

## **11. Private session - resolution (oral item)**

- 11.1 The Chair 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 The Board was informed that the inquiry into poor care at University Hospitals of Morecambe Bay Foundation Trust would not publish its final report until February 2015.

12.2 David Bennett provided the Board with an oral update on the publication of the NHS Five Year Forward View and the work of NHS England and Monitor in developing this.

12.3 The Board was provided with an update on recent meetings between David Bennett and the Secretary of State for Health.

### **13. Progress on Business Plan actions for 2014/15 (BM/14/114(P))**

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

13.1 The Board considered the report which provided an update on the progress of the 2014/15 Business Plan actions as at the end of the second quarter of the financial year. It was noted that a full report would be provided to the Board meeting on 26 November 2014.

### **14. Reallocation of Strategic Information Platform (BM/14/115(P))**

Simon Martin (SIP Programme Director) joined the meeting for the consideration of this item.

14.1 Simon Martin presented the paper which proposed a reallocation of costs within the approved Strategic Information Platform (SIP) budget, in order to deliver the programme's benefits earlier and make best use of the incumbent supplier. It was proposed that the original budget should remain unchanged, but that the funds should be spent over three years, rather than five, and that more funds should be reallocated to development and infrastructure.

14.2 Board members considered whether Monitor had the capital resources to enable the proposed expenditure. Whilst the Department of Health had yet to confirm Monitor's budget for 2015/16, it was anticipated that it would be set at the same level as the current year. The possible risks associated with the proposed procurement approach were also discussed.

#### **RESOLVED:**

14.3 The Board resolved to approve the proposed reallocation of SIP costs set out in the paper.

### **15. Provider Regulation Update (BM/14/116(P))**

15.1 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;
- Heart of England NHS Foundation Trust;
- King's College Hospital NHS Foundation Trust; and
- The Christie NHS Foundation Trust.

15.2 The Board had approved the expenditure associated with the appointment of a Contingency Planning Team for Tameside Hospital NHS Foundation Trust at its meeting on 30 July 2014. It was reported that Monitor was nearing completion of the procurement exercise for this appointment and a preferred bidder would be selected very soon. Bids had been received within the expenditure range approved by the Board and it was not anticipated that additional budget would be required.

## **16. Supporting commissioners to improve community services (BM/14/117(P))**

Jonathan Blackburn (Legal Director (Competition)), Kerrie-Anne Bradley (Competition Inquiries Lead), Clare Collyer (Clinical Healthcare Adviser), John Pigott (Competition Inquiries Director), Daria Prigioni (Economics Director (Competition)) and Dennis Berg (Competition Policy Adviser) joined the meeting for the consideration of this item.

16.1 Board members discussed the report which described the outcome of Monitor's project examining the commissioning of community services. The final report was due to be published in December 2014. Consideration was given to the key messages to be included within the report with a view to helping commissioners make thoughtful decisions for patients.

16.2 The inclusion of information about the types of activities that commissioners were undertaking to review and re-design community services was welcomed by the Board. The value of being able to disseminate good practice was emphasised.

16.3 Board members confirmed that they were content with the proposed approach and content of the report.

## **17. Anticipated merger of Ashford and St Peter's NHS Foundation Trust and Royal Surrey County NHS Foundation Trust (BM/14/118(P))**

Jonathan Blackburn (Legal Director (Competition)), Kerrie-Anne Bradley (Competition Inquiries Lead), Clare Collyer (Clinical Healthcare Adviser) and John Piggott (Competition Inquiries Director) were in attendance during the consideration of this item.

17.1 The Board was presented with the proposed advice to be provided by Monitor to the Competition and Markets Authority (CMA) with regard to the relevant patient benefits that were expected to arise from the anticipated merger of Ashford and St Peter's NHS Foundation Trust and Royal Surrey County NHS Foundation Trust. The CMA would be responsible for determining whether the merger was likely to reduce quality and/or innovation by reducing choice and competition between providers. When the CMA identified a substantial reduction in choice

and competition, it would assess whether the relevant patient benefits arising from the merger outweighed this reduction. In line with its statutory duty to advise the CMA on the relevant patient benefits of NHS mergers subject to CMA review, Monitor had undertaken work to assess whether proposals for improvements for patients submitted by merger parties could be taken into account as relevant patient benefits.

- 17.2 Consideration was given to the manner in which relevant patient benefits could be assessed and quantified, as well as the most appropriate manner of balancing these with regard to any potential loss in choice and competition. Board members confirmed that they were content with the outline findings presented within the report.

**RESOLVED:**

- 17.3 The Board resolved to approve that authority for finalising the detailed advice to be provided to the CMA with regard to the anticipated merger of Ashford and St Peter's NHS Foundation Trust and Royal Surrey County NHS Foundation Trust should be delegated to David Bennett, and that this should be in line with the summary advice presented in the paper to the Board.

**18. Authorisation decisions:**

Ruth Bevacqua (Senior Manager, Provider Appraisal), Linzi Holden (Senior Manager, Provider Appraisal) and Ruth Nolan (Senior Manager, Provider Appraisal) joined the meeting for the consideration of this item.

- 18.1 The Board considered the applications before it to become an NHSFT pursuant to the National Health Service Act 2006 (the 2006 Act). In advance of the meeting, the Board had received and read a detailed briefing pack on each applicant.

- 18.2 The Board agreed that, unless an issue was specifically raised on the basis of a cause for concern, which would have been highlighted in the briefing pack, it would be assumed that:

- (a) the applicants' constitutions were compliant with Schedule 7 to the 2006 Act and otherwise appropriate;
- (b) the Directors and Governors of the applicants had been appointed in line with the constitution;
- (c) the applicants had taken steps to ensure representative membership;
- (d) all elections were compliant;
- (e) all statutory consultations had been held; and
- (f) the applicants would be able to provide mandatory goods and services.

18.3 Presentations were made to the Board by the Provider Appraisal team on the background to each Trust and the key issues and any concerns surrounding its application. This was followed by a question and answer session and decision on the application by the Board.

**(i) Royal United Hospital Bath NHS Trust (BM/14/119(i)(P))**

18.4 The Board considered the report which related to Royal United Hospital Bath NHS Trust's application for NHSFT status. The Trust was an acute district general hospital providing services to a catchment population of around 500,000 people in Bath and the surrounding towns and areas. It had been first assessed by Monitor during late 2012 and early 2013. In April 2013, its application was deferred for up to 12 months, primarily because CQC had not provided Monitor with the requisite assurances.

18.5 It was noted that the Trust had breached the four hour accident and emergency (A&E) target in four of the past six quarters. Under Monitor's Risk Assessment Framework this would trigger a potential governance concern. However, since the beginning of August, the Trust had developed an action plan that had been reviewed and assured by the Emergency Care Intensive Support Team in October 2014 and a trajectory showing how it could achieve sustained compliance with the four hour performance target by the last quarter of 2014/15. The importance of the Trust achieving this plan was emphasised. In light of this it was considered appropriate that a side letter be sent to the Trust noting its A&E performance, referring to the improvement plan and confirming that the Trust would be expected to provide Monitor with formal assurances that progress was being made towards meeting the A&E four hour target on a sustainable basis.

**RESOLVED**

18.6 The Board resolved that Royal United Hospital Bath NHS Trust be authorised as an NHS Foundation Trust from 1 November 2014.

**(ii) Derbyshire Community Health Services NHS Trust (BM/14/119(ii)(P))**

18.7 The Board considered the report which related to Derbyshire Community Health Services NHS Trust's application for NHSFT status. The Trust was a community services trust providing clinical services to a catchment population of c.1m people across Derbyshire and a range of commissioned services in adjoining counties. The Trust's application for NHSFT status had been deferred in July 2013 as CQC had not been able to confirm judgement of compliance with regulations until an inspection had been completed.

18.8 Board members were content that the Trust was financially viable in the mitigated downside and met Monitor's governance and quality governance criteria for authorisation.



## **RESOLVED**

- 18.9 The Board resolved that Derbyshire Community Health Services NHS Trust be authorised as an NHS Foundation Trust from 1 November 2014.

### **(iii) Bridgewater Community Healthcare NHS Trust (BM/14/119(iii)(P))**

- 18.10 The Board considered the report which related to Bridgewater Community Healthcare NHS Trust's application for NHSFT status. The Trust was a community trust providing 127 clinical services to a catchment population of 1.8m people across Wigan, Warrington, Halton, St Helens and Greater Manchester.
- 18.11 Board members were content that the Trust was financially viable in the mitigated downside and met Monitor's governance and quality governance criteria for authorisation.

## **RESOLVED**

- 18.12 The Board resolved that Bridgewater Community Healthcare NHS Trust be authorised as an NHS Foundation Trust from 1 November 2014.

## **19. 2015/16 National Tariff**

- 19.1 Board members noted the paper which provided information about changes to the timetable for the publication of the s.118 consultation notice with regard to the 2015/16 National Tariff.

## **20. Any other business**

- 20.1 It was confirmed that a special Board meeting had been arranged to consider the 2015/16 National Tariff on Thursday 13 November 2014.

**Close**