

**MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY
24 SEPTEMBER 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
Miranda Carter, Executive Director of Provider Appraisal
John Curnow, Project Director (Economics) (from item 15)
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) (until item 15)
Fiona Knight, Executive Director of Organisation Transformation (until item 15)
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
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 No apologies for absence had been received.

2. Declarations of interest

- 2.1 Hugo Mascie-Taylor declared his interest as a Trust Special Administrator (TSA) at Mid Staffordshire NHS Foundation Trust, in relation to item 18 (“Mid Staffordshire NHS Foundation Trust regulatory approach”). His participation in the discussion would be as TSA and not as Monitor’s Medical Director (Executive Director of Patient and Clinical Engagement).
- 2.2 No other interests were declared.

3. Minutes and matters arising from the meeting held on 30 July 2014 (BM/14/75)

- 3.1 The minutes of the Board meeting held on 25 June 2014 were approved and the matters arising noted.

4. Quarterly report on the performance of the NHS foundation trust sector: 3 months ended 30 June 2014 (BM/14/92)

Yin Shi (Head of Sector Reporting) joined the meeting for the consideration of this item.

- 4.1 Jason Dorsett introduced the report which provided the Board with information about the performance of the NHS foundation trust (NHSFT) sector over the three months to the end of June 2014. The report highlighted that an increase in the number of patients being treated, combined with high use of contract and agency staff and a need to make cost savings, had put NHSFTs under unprecedented financial and operational pressure. This had led to a sharp deterioration in the sector’s overall performance in the first quarter of 2014/15.
- 4.2 Board members were informed of the steps taken by Monitor in response to the financial and operational pressures faced by the sector to support NHSFTs in addressing the associated risks. It was noted that investigations were in progress at trusts where major concerns had been identified and further evidence was being gathered to determine whether other formal investigations were to be opened.
- 4.3 Consideration was given to what Monitor and the NHS Trust Development Authority (NHSTDA) could do to promote improved performance in all health care providers. In addition to focussing upon trusts that were not performing as expected, Board members noted that the aggregate performance of the sector would be improved by well performing trusts improving their performance even further. The value of having performance data from across the health care sector, rather than solely about NHSFTs, was noted and Board members requested that future reports include information about NHS trusts.

ACTION: JD

5. Executive Report (BM/14/93)

- 5.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 30 July 2014.
- 5.2 It was noted that the Executive Committee (ExCo) had given consideration to the importance of an employee value proposition (EVP). It was noted that the organisation's current EVP required refreshing and further work was to be undertaken. Board members discussed the link between the EVP and other initiatives being undertaken in response to the findings of the employee survey earlier in the year. The key actions being undertaken to enable strategy alignment, cross team working, and improved performance management and development were noted. The value of such work in relation to staff retention was considered.

6. Provider Appraisal Update (BM/14/94)

- 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 Particular consideration was given to 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". Board members also discussed the approaches taken by Monitor and CQC in relation to the assessment of NHSFTs' board members' and governors' capacity and capability, particularly the application of the "fit and proper person test". The possibility for overlap between the processes of the two organisations was explored and it was proposed that care should be taken to ensure that there was clarity with regard to this in the joint guidance.
- 6.3 Joint guidance in relation to the Well Led Framework would be launched by Monitor and CQC in due course. Board members noted that there was also a joint programme of work already underway to explain how Monitor and CQC worked together. The value of a clear joint launch of this work was also emphasised.

7. Co-operation and Competition Update (BM/14/95)

- 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 30 July 2014.
- 7.2 It was noted that Monitor had published a suite of guidance documents on mergers at the end of July 2014. These had included a transactions guide, guidance on merger benefits and joint short guide to NHS mergers with the Competition and Markets Authority. Consideration was given to the work being undertaken by Monitor to ensure that its stakeholders were aware of this

guidance. The importance of clarity with regard to the rules and regulations governing competition and procurement in the NHS was emphasised and Board members discussed ways in which this might be achieved. The role of public commentators in this context was noted.

8. Standing Financial Instructions (BM/14/96)

- 8.1 The Board considered the report which proposed a number of changes to the organisation's Standing Financial Instructions (SFIs). The SFIs formed part of the Rules of Procedure and set out the financial responsibilities, policies and procedures adopted by Monitor.

RESOLVED:

- 8.2 The Board resolved to approve the proposed amendments to Monitor's SFIs.

9. Report of the TAC meeting on 12 September 2014 (BM/14/97)

- 9.1 Board members noted the report which highlighted the key issues considered by the Technology Assurance Committee at its meeting on 12 September 2014.

10. Report of the ARC meeting on 18 September 2014 (BM/14/98)

- 10.1 The Board noted the report which provided an update on the key issues considered by the Audit and Risk Committee at its meeting on 18 September 2014.

11. Items in correspondence (BM/14/99)

- 11.1 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.

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

- 12.1 The Board was asked when the decision on Royal United Hospital Bath NHS Trust's application for NHSFT status was due to be decided. It was anticipated that it would be on the agenda of the meeting of the Board on 29 October 2014.

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 David Bennett provided the Board with information about the expectations of public sector organisations with regard to their operation during the period immediately ahead of a general election. It was noted that Monitor would continue to conduct its day-to-day regulatory business as usual, within the appropriate guidelines when issued by the Cabinet Office.
- 14.2 Board members were provided with an update on Monitor's work to support commissioners to improve community services. The link between coherent data from the providers of community services and fair and transparent costing within the National Tariff was noted.
- 14.3 Board members were informed of the appointment to the role of Monitor's Chief Information Officer and were provided with an update on the relationship between Monitor and the Health and Social Care Information Centre.
- 14.4 David Bennett provided the Board with an update on recent individual meetings that had been held with key stakeholders.
- 14.5 The Board was provided with information about the progress of the "NHS forward view" project.

15. Q1 Risk and Performance Report

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

i) Q1 Risk Report (BM/14/100(i)(P))

- 15.1 Board members noted the report which provided an update on the risks faced by the organisation and the progress made in relation to the management of these.

ii) Q1 Performance Report (BM/14/100(ii)(P))

- 15.2 The Board noted the report on the status of the 2014/15 Business Plan actions. Progress against these actions and key challenges were noted.

16. Provider Regulation Update (BM/14/101(P))

- 16.1 Board members noted the paper which provided an overview of the NHSFTs subject to formal enforcement action.

17. Pricing Update (BM/14/102(P))

Catherine Pollard (Pricing Development Director) and Igor Popovich (Pricing Delivery Director) were in attendance for the consideration of this item.

- 17.1 Ric Marshall presented the report which provided the Board with an update on responses from the key stakeholders regarding the published draft relative national prices published in the 2014/15 National Tariff Payment System Engagement Document, the publication of a review of the 2012/13 Patient Level Information Costing System collection, the publication of analysis by York University of the costs of specialised care, and the proposed publication format for the long term design of the payment system.

- 17.2 Board members requested greater detail in relation to information provided about pricing enforcement and case management in future reports.

ACTION: RM

18. Mid Staffordshire NHS Foundation Trust regulatory approach (BM/14/103(P))

Katherine Cawley (Enforcement Director) was in attendance for the consideration of this item.

Hugo Mascie-Taylor highlighted his role as a TSA at Mid Staffordshire NHS Foundation Trust and that his contribution to the discussion on this item would be in that capacity, rather than as Monitor's Medical Director (Executive Director of Patient and Clinical Engagement).

- 18.1 Katherine Cawley introduced the report which outlined Monitor's proposed approach to the assurances required in order to provide for the dissolution of Mid Staffordshire NHS Foundation Trust, in addition to the proposed transfer of its assets, on 1 November 2014. These assurances were intended to enable the Board to be satisfied that the timing of the dissolution and transfer was appropriate.

- 18.2 It was noted that the decision to accept the TSAs' recommendations to dissolve Mid Staffordshire NHS Foundation Trust had been taken by the Board on 14 January 2014. At that meeting the Board had confirmed that it was satisfied that the actions recommended by the TSA would secure the continued provision of Location Specific Services at such levels as commissioners had determined necessary.

18.3 In order to determine whether the transfer of Mid Staffordshire NHS Foundation Trust's assets and its dissolution, Board members highlighted the importance of clarity with regard to the likely outcome of not proceeding with the transfer and dissolution. The risks associated with each option were noted. The Board emphasised that ultimately, it would require assurance that the proposed approach was in the best interests of patients. In this context, Board members confirmed that they were content with the scope of the proposed assurances and the proposed means of obtaining them ahead of their final decision on the dissolution and proposed transfer of assets of Mid Staffordshire NHS Foundation Trust.

19. Frimley Park hospital NHS Foundation Trust proposed acquisition of Heatherwood and Wexham Park Hospitals NHS Foundation Trust (BM/14/104(P))

Martin Smith (Provider Appraisal Director (M&A)) was in attendance for the consideration of this item.

19.1 Board members considered the report which recommended a risk rating of the proposed acquisition of Heatherwood and Wexham Park NHS Foundation Trust by Frimley Park NHS Foundation Trust. The Board was asked to consider the risk rating of the proposed transaction and determine whether or not to approve a joint application from the two NHSFTs to grant the acquisition.

19.2 The Board was provided with an oral update to confirm that all necessary documentation for the approval of the transaction had been satisfactorily received.

RESOLVED:

19.3 The Board resolved to:

- a) Agree a final transaction risk rating of "amber" with regard to the proposed acquisition of Heatherwood and Wexham Park NHS Foundation Trust by Frimley Park NHS Foundation Trust;
- b) Approve the joint application for the transaction from Frimley Park NHS Foundation Trust and Heatherwood and Wexham Park NHS Foundation Trust and to issue a Grant of Acquisition;
- c) Approve Frimley Park NHS Foundation Trust's application for a finance investment adjustment; and
- d) Approve Frimley Park Hospital NHS Foundation Trust's application for a governance investment adjustment in respect of accident and emergency, referral to treatment time and cancer targets and CQC compliance notices, subject to recovery plans being agreed and submitted to Monitor within two months of the transaction date.

20. Approval of the 2015/16 National Tariff consultation

Catherine Pollard (Pricing Development Director), Igor Popovich (Pricing Delivery Director) and Simon Rogers (Legal Director) were in attendance for the consideration of this item.

- 20.1 A paper was tabled, providing an update on the progress being made in discussion with NHS England on the remaining key factors of the National Tariff for 2015/16. Board members noted that further discussion would be required at a special meeting of the Board in October 2014.

21. Any other business

- 21.1 Board members noted Monitor's "Values Week".

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