

**MINUTES OF A MEETING OF THE MONITOR BOARD HELD ON WEDNESDAY
28 JANUARY 2015 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:

Miranda Carter, Executive Director of Provider Appraisal
Jason Dorsett, Finance, Reporting and Risk Director
Philippa Harding, Board Secretary
Steffan Jones, Project Director (Economics)
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 (until 30 January 2015)
Jeremy Mooney, Executive Director of Strategic Communications (from 30 January 2015)
Kate Moore, Executive Director of Legal Services
Peter Sinden, Chief Information Officer

Two 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 Helen Buckingham (Chief of Staff), Catherine Davies (Executive Director of Co-operation and Competition) and Fiona Knight (Executive Director of Organisational Transformation).

1.2 The Chairman welcomed Jeremy Mooney, who was replacing Sue Meeson as Monitor's Executive Director of Strategic Communications. The Board expressed its appreciation for the efforts of Sue Meeson whilst Executive Director of Strategic Communications and wished her well for the future.

2. Declarations of interest

2.1 No interests were declared.

3. Minutes and matters arising from the meeting held on Wednesday 17 December 2014 (BM/15/01)

3.1 The minutes of the Board meeting held on 17 December 2014 were approved and the matters arising noted.

4. Provider Appraisal Update (BM/15/02)

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/15/03)

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

5.2 Board members emphasised the importance of clarity with regard to the reporting of pricing-related issues. It was considered that the information provided within the report was at too technical a level to identify the strategic issues that the Board should be aware of.

5.3 The Board considered the collection and use of data relating to patient level information and costing systems (PLICS), in particular Monitor's aim to extend PLICS across the whole of the healthcare sector. It was noted that, whilst PLICS were well used in the acute sector, more work was required to facilitate this elsewhere, for example with regard to community services. The value of linking costs, prices and outcomes was discussed. Board members emphasised the importance of clarity with regard to the benefits of using PLICS and suggested that further thought be given to how best to support their wider adoption.

5.4 With regard to enforcement and compliance with the 2014/15 National Tariff, the Board considered the action that was being taken to improve clinical commissioning groups' (CCGs') compliance with Marginal Rate Emergency Tariff rules. The importance of working closely with NHS England on such issues was emphasised.

6. Executive Report (BM/15/04)

- 6.1 Board members considered the report which summarised key developments at Monitor since the Board meeting held on 17 December 2014.
- 6.2 The Board discussed the scope and expected outcomes of the Economics team's 'workforce' project to understand the clinical workforce challenges faced by healthcare providers and potential responses. It was reported that the focus of this work would be at the local, rather than the national level, in order to enable the possible development of tools for use by healthcare providers in addressing these issues.
- 6.3 Monitor's engagement with the Dalton Review and the implications of its recommendations were considered. It was noted that there was a link between the Review's recommendations and work about to be undertaken by Monitor on the lessons to be learned about the challenges involved in current and recent major transactions.

7. Report of the Technology Assurance Committee meeting on 8 January 2015 (BM/15/05)

- 7.1 The Board noted the report which provided information about the key issues considered by the Technology Assurance Committee at its meeting on 8 January 2015.

8. Board Review Outcome (BM/15/06)

- 8.1 The Chairman introduced the report which provided the Board with a summary of the key outcomes of the independent review of the Board's performance that had taken place at the end of 2014. The report also suggested the actions that might be taken in response to these outcomes.
- 8.2 Board members noted that much had been done with regard to ensuring that the Board's time was used in a suitably strategic manner. The suggestion that more informal workshop discussions should be scheduled was welcomed and Board members requested a suggested forward plan for the workshops to take place over the next six months.

ACTION: PH
- 8.3 The importance of achieving an appropriate balance between detailed and more strategic discussions was noted. It was considered necessary for Board members to have a reasonable grasp of the details of Monitor's work in order to be able to have a strategic input. A reasonably detailed understanding was also required in order to determine whether the Board was receiving appropriate assurances with regard to the work of the executive. Often oral updates to or presentations of reports provided a level of background that was not present in the report itself. In order to ensure that the Board considered the information

provided to it in the appropriate level of detail it was proposed that updates should be provided in greater depth on a regular basis, beginning on a rolling quarterly basis, rather than at every meeting. An Awayday would also be organised to take place to discuss the issues raised by the Board performance review and how best to take them forward.

ACTION: PH

9. Items in correspondence (BM/15/07)

- 9.1 The Board noted the report which provided information about reports that had been circulated in correspondence.

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

- 10.1 The Board was asked for further information with regard to the work being undertaken on understanding the financial impact of moving care out of hospital. This would be discussed further outside the meeting.

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 David Bennett provided an oral update on the outcomes of recent meetings with the Secretary of State for Health and with the Department of Health's (DH's) Director General, Finance and NHS. Consideration was given to the implications for Monitor of the challenges being faced by the healthcare sector more generally.
- 12.2 The impact of information governance requirements on Monitor's data handling and processing and the nature of its relationship with the Health and Social Care Information Centre were discussed.

13. Provider Regulation update (BM/15/08(P))

13.1 Board members noted the paper which provided an overview of the NHS foundation trusts (NHSFTs) subject to formal enforcement action. Information was provided with regard to the following NHSFTs:

- Medway NHS Foundation Trust;
- Royal National Hospital for Rheumatic Diseases NHS Foundation Trust;
- Royal University Hospital Bath NHS Foundation Trust;
- Colchester Hospital University NHS Foundation Trust; and
- Heart of England NHS Foundation Trust.

14. Co-operation and Competition Update (BM/15/11(P))

David Furness (Competition Policy Adviser), Tuomas Haanpera (Senior Economic Adviser), Chris Pike (Economics Director (Competition)) and Daria Prigioni (Economics Director (Competition)) joined the meeting for the consideration of this item.

14.1 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 17 December 2014.

14.2 Particular consideration was given to the report that Monitor had recently published on commissioning community services. It was noted that, in addition to the publication of this report, Monitor would continue to provide advice on how the Procurement, Patient Choice and Competition Regulations applied to decisions about community services contracts.

14.3 The Board discussed the forthcoming publication of the report on choice in adult hearing services. The engagement undertaken with Action on Hearing Loss was noted and the Board was informed of the workshop that had taken place with the charity and Co-operation and Competition Executive members.

15. Supporting and enabling patient choice (BM/15/12(P))

David Furness (Competition Policy Adviser), Tuomas Haanpera (Senior Economic Adviser), Chris Pike (Economics Director (Competition)) and Daria Prigioni (Economics Director (Competition)) were in attendance for the consideration of this item.

15.1 David Furness introduced the report which set out a proposed project to support and enable patient rights to choice.

15.2 Board members welcomed the proposal to work with and support local commissioners in strengthening patient choice. It was noted that the project would be led by Monitor in partnership with national partners, including DH and NHS England.

16. GP services project expected outcomes (BM/15/13(P))

David Furness (Competition Policy Adviser), Tuomas Haanpera (Senior Economic Adviser), Chris Pike (Economics Director (Competition)) and Daria Prigioni (Economics Director (Competition)) were in attendance for the consideration of this item.

- 16.1 Tuomas Haanpera presented the report which described the expected outcomes of Monitor's project to examine whether the commissioning and provision of general practice was working well for patients. The clear link between this project and that with the aim of supporting and enabling patient choice was noted.
- 16.2 Board members noted the key role that the changes envisaged in the provision of primary care played in the NHS Five Year Forward View. The Board was content with the proposals set out in the report.

17. Medway NHS Foundation Trust – regulatory approach (BM/15/09(P))

David Dean (Senior Enforcement Director), Paul Streat (Regional Director) and Ailsa Willens (Senior Enforcement Manager) joined the meeting for the consideration of this item.

- 17.1 Board members considered the report which proposed the regulatory approach to be taken with regard to Medway NHS Foundation Trust. This trust had been placed in special measures in July 2013; however further effort were required to accelerate the trust's progress. In light of this Monitor had developed an extensive buddy arrangement with Guy's and St Thomas' NHS Foundation Trust, the scope and scale of which was significantly larger than other buddy arrangements.
- 17.2 Board members were convinced of the need to take the proposed action with regard to Medway NHS Foundation Trust. Consideration was given to the scope of the work that it was proposed Guy's and St Thomas' NHS Foundation Trust would undertake as part of the buddy arrangement, particularly with regard to the managerial and human resources support required to implement the required transition strategy. Whilst this was implicit in the detail provided with regard to each workstream associated with the buddy arrangement, Board members considered it necessary to emphasise this. Subject to this observation and in light of the advice provided within the report, the Board was content with the proposed approach.
- 17.3 The Board requested feedback on lessons learned from the implementation of the new buddy arrangements being implemented at Medway NHS Foundation Trust.

ACTION: PS

RESOLVED:

- 17.4 The Board resolved that Monitor should enter into the proposed buddy arrangement with Medway NHS Foundation Trust and Guy's and St Thomas' NHS Foundation Trust with the associated level of expenditure that this entailed and within the limits set out in the paper.

18. Ensuring the effectiveness of Monitor's interventions

Adam Cayley (Director, Provider Regulation), Jon Hibbs (Director of Media Relations) and Yvonne Mowlds (Director, Provider Regulation) joined the meeting for the consideration of this item.

(i) Provider Regulation directorate organisational design (BM/15/10(i)(P))

- 18.1 Board members noted the report which set out a summary of the key changes proposed for the operating model and organisational design for Monitor's Provider Regulation directorate.
- 18.2 The Board welcomed the move which was considered necessary to enable the Provider Regulation directorate and regional teams in particular to take on a role in sector engagement for Monitor. It was envisaged that this would facilitate a better knowledge of when to engage with specialists across Monitor on regulatory issues and so enable more accurate and timely interventions and interactions with the sector.
- 18.3 It was noted that the implications of the changes would be further considered through Monitor's budgeting and business planning processes.

(ii) Driving performance and sustainability in NHS foundation trusts (BM/15/10(ii)(P))

- 18.4 The Board considered the report which described the proposed development of a new directorate within Monitor to address failures in operational and financial performance in the worst performing NHSFTs, to support improvement in the operational performance of all other NHSFTs, to improve Monitor's own ability to understand and drive better performance across the sector and to develop the in-house capability to undertake Contingency Planning Team (CPT) work (i.e. the assessment of the long term sustainability of NHSFTs and the development of options for the restructuring of providers and/or wider health economies).
- 18.5 The role of this directorate and the manner in which it would interact with Monitor's regulatory functions was considered. It was noted that the team would be primarily an advisory function, which would be very clearly demarcated from the Provider Regulation function. Clear steps would be taken, as they were currently, to avoid any potential conflicts of interest between Monitor functions. The importance of co-ordinating the activities of this directorate with those of Monitor's national partners was also noted.

18.6 Subject to these comments, the Board was content with the proposed new directorate.

19. 2015/16 National Tariff: s.118 consultation outcome (BM/15/14(P))

Jon Hibbs (Director of Media Relations), Igor Popovich (Pricing Delivery Director), Andrew Rawstron (Senior Legal Adviser) and Simon Rogers (Legal Director) were in attendance for the consideration of this item.

19.1 Board members noted the report which set out the results of Monitor's consultation on the proposed 2015/16 National Tariff and proposed next steps. Section 118 of the Health and Social Care Act 2012 required Monitor to consult CCGs, relevant providers and other parties before a new tariff could take effect. If objections from CCGs or relevant providers to the proposed method for determining national prices exceeded certain statutory thresholds, Monitor could not impose the tariff. It would be required to either refer the method to the Competition and Markets Authority (CMA) for review, or make changes to the method and then re-consult.

19.2 Approximately 13% of CCGs, 37% of relevant providers by number and 75% of relevant providers by share of supply objected to the proposed method for determining national prices for NHS services. As the share of total tariff income received by the objecting providers exceeded 51%, the National Tariff could not be introduced in its current form and its implementation would have to be delayed. Board members discussed the next steps available to Monitor and NHS England in light of this feedback. A decision would be brought to the Board in due course.

20. Any other business

20.1 It was noted that the Secretary of State for Health had decided to appoint Dr Timothy Heymann to the Board of Monitor.

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