NHS Commissioning Board

Minutes of the Board meeting held in private on 28 February 2013

Present

- Professor Malcolm Grant (chair)
- Sir David Nicholson – Chief Executive
- Lord Victor Adebowale – Non-Executive Director
- Mr Ciaran Devane – Non-Executive Director
- Dame Moira Gibb – Non-Executive Director
- Mr Ed Smith – Non-Executive Director
- Mr Paul Baumann – Chief Financial Officer
- Ms Jane Cummings – Chief Nursing Officer
- Sir Bruce Keogh – National Medical Director
- Mr Ian Dalton – Chief Operating Officer/Deputy Chief Executive
- Dama Barbara Hakin – National Director: Commissioning Development
- Mr Tim Kelsey – National Director: Patients and Information
- Mr Bill McCarthy – National Director: Policy

Apologies

- Ms Margaret Casely-Hayford – Non-Executive Director
- Mr Naguib Kheraj – Non-Executive Director
- Ms Jo-Anne Wass – National Director: HR

In attendance

- Mr Jon Schick – Head of Governance and Board Secretary

Item	
	Declarations of interest in matters on the agenda
	The Chair declared an interest related to item 3 on Proton Beam Therapy and had therefore requested Ed Smith to chair the meeting for that discussion.
1	**Minutes of the previous meeting**
	The minutes of the meeting held on 14 December 2012 were accepted as an accurate record. <u>There were two matters arising</u>: Bill McCarthy provided an update on Section 75 regulations on choice and competition. Although the NHS CB had expressed the view that regulations would have best been laid after agreement of a clear collective statement with Monitor, about the appropriate role for competition in support of benefits to patients and improved outcomes, they had been laid in advance of such a statement. However, there was an agreement with Monitor to publish a short joint policy statement to this effect in March, with a more detailed follow up in May. DH were supportive of this approach.

	Barbara Hakin raised an emerging matter arising about the quality premium for CCGs. Regulations needed to be laid over the coming week in order to effect this, but it had required considerable negotiation to reach an acceptable position. The main issue remaining was a proposed requirement for the NHS CB to commit to inclusion of a mental health indicator in the quality premium from 2014-15; it was agreed this would be desirable although there were concerns about the feasibility of identifying an evidence-based and robust indicator over the next 12 months. The Board agreed to the proposal to include such an indicator from 2014-15, on the basis that it would need to ensure a robust process to identify the indicator was undertaken, backed up by a proper evidence base.
Action	BH to feed back to HMT, enabling the regulations to be placed. BH and BK to agree process to identify suitable mental health indicator for 2014-15
2	**Programme status, State of Readiness Review and Transfer of Assets**
	<u>Programme status report</u> Bill McCarthy introduced the NHS CB Programme Status report and it was agreed to tackle the issues arising through discussion of the State of Readiness Review, which covered similar ground in significant detail. <u>State of Readiness Review</u> Moving on to the State of Readiness Review, Bill outlined the context of 161 different statutory organisations being brought into one, the introduction of the single operating model and requirement to halve running costs, and importance of maintaining smooth running of predecessor functions until transition was complete. The Review provided a comprehensive update to follow December Board discussions, and had been shared with the National Audit Office as well as with DH and the PAC, the latter planning a hearing on implementation of the NHS Reforms in June 2013. He highlighted the executive summary which provided a summary of key messages and areas for focus. In addition to issues around financial systems which had been discussed in some detail at the Audit Committee and challenges around safe transfer of systems, knowledge, records and understanding of safety and quality issues residing in the current system, he drew attention to work related to: • Basic building blocks including estates, corporate IT and governance arrangements. These would be in an adequate position from April but a considerable development programme was required over the coming year to reach the desired position, especially for corporate IT. Contingency plans for all buildings would be signed off by the end of the coming week to enable safe communications across the whole organisation from 1 April 2013. A SWOT team would be in place to cover emerging issues during the first few months of operation. • Recruitment and HR remained an area of high risk. There had been progress with 80% of appointments made, but there was a backlog in sending offer letters and concerns about accuracy of the payroll. At this stage, the Board could not be given significant assurance about

payroll accuracy but could have confidence that staff would be paid; this was an area likely to require significant further work during quarter 1 next year.

- Parliamentary business, where much progress had been made – and recognised by DH - since the January Board to Board. Protocols had been signed with the Department and there had been close work between policy and communications teams. The absolute necessity now was to connect into area teams, with scenario training for key staff taking place during March. It was noted that senior staff would be aware of the need for them to respond to requests for such briefings, sometimes at short notice or during unsociable hours.

The Board's attention was drawn to feedback from partner organisations, which had been very good and reflective of the priority given to building good relationships. This would provide a sound platform to build upon.

In summary, Bill concluded that the organisation would achieve its key requirements for 1 April, with adequate basic building blocks in place and a good platform to enable focus on development over the coming year, which would continue to be one of transition. The report provided reassurance, but the risks should not be understated.

Paul Baumann provided further briefing on payroll issues, noting that the larger payroll – related to CSUs – was in good shape with data deposited on time and of adequate quality, resulting in a high level of assurance. The NHS CB payroll had proved more challenging because of issues related to flow from offer letter through to appointment and addition to the payroll. Although 4,000 staff were expected to be on the payroll by the end of February, a further 2,000 would need to be added before April and it was not possible to provide the Board with a high degree of confidence in this area. In recognition of its importance, Jo Anne Wass had brought in additional resource and was providing significant personal focus to ensure operational issues were addressed, with the right controls in place.

Barbara Hakin noted the additional assurance related to CSUs that had come from an independent assessment by RSM Tenon, which had concluded the CSUs posed low risk in terms of their operational ability and handling of financial issues over the next 12 months. For CCGs, there was also a high degree of confidence about recruitment and payroll, as well as their ability to access and use the financial spine. Barbara provided an update on the state of readiness of CCGs and CSUs, which showed the vast majority were considered to pose low risk but a small number CCGs – around ten – had given cause for concern and were receiving tailored support from the Operations directorate.

In follow up discussion, concerns were raised about the final tranche of staff yet to be added to the payroll, with discomfort about the potential that individuals would not be allocated to the correct cost centres from day one and reassurance requested that all staff would be paid. Bill McCarthy explained there was high confidence that all staff would be paid and contingency arrangements were in place in case of any emerging issues. However, allocation of staff to the correct cost centre was an acknowledged area of high risk which may require follow-up remedial action.

	The Board welcomed and received this comprehensive report and noted the key areas and risks described within it, which would form the basis of the next upcoming Board to Board discussion. <u>Transfer of assets</u> Bill McCarthy explained the complexities of ensuring that all assets in existing bodies would have a future home. Unlike previous reorganisations, the transition this time was much harder as there were not designated successor bodies and timescales were very challenging. Sending organisations were being relied upon to provide information on the assets to be transferred and, although there was significant confidence about the highest value assets (staff, buildings), the position was more variable for the huge volume of smaller assets - and the quality of returns from sender organisations had been very poor. As a result, the NHS CB had been very squeezed in terms of ability to undertake a due diligence and assess potential risks, which were considered to be likely in two areas: (1) Liabilities that could be carried on to the balance sheet – with concerns about how the NHS CB would know what they are and questions about what would happen if they did not emerge until a later date – for example potential future litigation. The bigger risks were considered to be around continuing care liabilities (c£800m of liability had been identified through a recent exercise) and although the NHS CB's position was that these risks should sit with the DH, there were indications that DH may want them to rest with the NHS CB – but with the offer of support from the DH if surpluses and contingency funds could not cover them. Executives continued to pursue this with the DH as it was not the position which had been agreed. (2) Concerns that positive conversations with DH colleagues were not subsequently translating into written commitments. The Audit Committee had expressed its preference that the DH should hold assets where there was lack of clarity about where they reside, or at least provide a clear written letter to provide cover. This was an issue which could be raised at the forthcoming Board to Board, although the Board were also reminded that the legal position was that Ministers could sign off whatever transfer schedules they wish and the NHS CB would have no right of appeal or ability to reject. Ed Smith agreed these risks – and especially the second – presented a significant issue that had caused significant concern at the Audit Committee. He considered the NHS CB should robustly defend its position and that, as an absolute minimum, the accounts to end March 2013 would need to fully disclose the situation the NHS CB may find itself in during the following year in relation to unknown assets. The Board noted the position and risks outlined.
Actions	Bring up issues about DH handling of unknown assets at Board to Board.
3	**Proton beam therapy service and investment framework**
	Ed Smith chaired this session, and Malcolm Grant left the room.

	Sir Bruce Keoghexplained that the clinical case for this therapy had grown in recent years, and it was of particular value for children with brain tumours, but also with a growing evidence base for other parts of the body and other patient groups. Currently patients were sent abroad but capacity was limited and cost was increasing. The service could potentially be delivered at a third of the cost in the UK. Proton beam therapy had been agreed as part of the 2007 cancer reform strategy, and the Government had agreed funding for two units – Christie and UCLH - financed through a mix of public capital, Foundation Trust funds and public philanthropy. The Board was asked to sign up to the service and investment framework for the next 20 years – to avoid providers factoring in a significant risk premium. In doing so, the Board would also implicitly be confirming it was content to contract to the level of activity indicated in the papers, although the volumes proposed were considered to be conservative. In discussion the Board: • Were concerned that, as pressure increases on capacity abroad, if no action was taken then children would not be able to access proven treatment. • Sought reassurance that the proposed technology would not soon become obsolete. Sir Bruce Keogh explained how difficult it was to speculate in this area but the sense was that this technology would be around for at least the next ten years. • Were reassured the proposed volumes were conservative and the equipment may well be used for other patients as outlined above. The Board approved the cooperation agreement and service and investment framework for signature, and endorsed the proposals for management of the programme. Malcolm Grant returned for the remainder of the meeting.
4	**Nursing strategy update**
	Jane Cummings introduced this update on progress since the last Board discussion and explained plans to launch the next stage of implementation at the NHS Expo in March (subject to the Government response to the Francis Inquiry). She noted that a key issue for the Board was that this is a multi-agency plan, and as a result she would be chairing a federation of nurse leaders to drive its implementation. The Board noted the progress and agreed the launch arrangements.
5	**Draft NHS Commissioning Board business plan**
	Bill McCarthy introduced this draft plan, which had been informed by previous Board discussions about principles for incorporation. The final version would be published with April 2013 Board papers. A proposed scorecard of high level measures would be regularly updated to support delivery of *Everyone counts* and concentrate on the key areas for which the Board needed to hold itself to account. The most important

	priorities related to the measurement of patient and staff satisfaction, and Sir David Nicholson described in further detail how the combination of empowered and satisfied staff, with the range of other measures being introduced to place patients at the centre of decision making about their care, should lead to improved outcomes and patient satisfaction. Further key measures in the scorecard would concentrate upon the outcome domains, NHS Constitution, equalities and creation of an excellent organisation. The draft plan also set out an operating model with eight components to deliver change, and associated measures to track delivery. Further information in annexes would cover finances and resourcing, responses to the Francis and Winterbourne View reports, and a synopsis of all measures for which the NHS CB would be held to account (including those from the Mandate, *Everyone Counts* and other commitments). In discussion, the draft document was warmly received, and: • The Board discussed the radical concentration upon staff and patients within the proposals, including those on the way in which it was planning to hold itself to account. The central importance and risks associated with the Friends and Family test were debated – with a potential that the Board would receive significant feedback through this route, including on issues related to equality and race; its response would be an important determinant of its on-going brand; • It was suggested that the NHS CB needed to consider in more detail how it would commission for greater transparency. It was also agreed that more detail needed to be incorporated on finance, value and accountability; • Drafting comments were received, in particular related to life expectancy on page 4. It was agreed that these points would be addressed in the final version of the plan. In addition, the Board agreed to delegate authority to the Chair and Chief Executive to sign-off the document once it had been completed.
Actions	Bill McCarthy to ensure feedback from the Board discussion is reflected in the final version of the business plan.
6	**Ensuring the NHS Commissioning Board is adequately resourced**
	<u>NHS Commissioning Board budgets 2013/14</u> Paul Baumann introduced the proposed budgets, which were brought to the meeting in private because they related to the as-yet unpublished business plan, discussed under the previous item. He drew attention to the budget analysis presented in Appendix 1, and explained that he felt the priorities which had informed the planned distribution of the c£1.5bn budget would ensure it would be focused in the right areas. Clearly, it would also be key to ensure planned investments generated the required outcomes. There remained uncertainty about some DH budgets and possible risks that additional commitments would emerge, about which the NHS CB was

	currently unaware. In addition, the Board may decide in the future to prioritise some investments not currently planned. Therefore, the proposed budget included an element of contingency, with some flexibility also available from the setting of budgets on the assumption that the organisation would have recruited in full from 1 April 2013. The Board endorsed the proposed budgetary allocations and associated approach to reserves and contingency management, noted the budget may require some further realignment as the business plan was finalised, and agreed to delegate the final approval in line with the delegation for the business plan noted above. <u>NHS Commissioning Board Authority accounts/annual report for period ending September 2012</u> Paul Baumann introduced this item, which needed to be considered in private because the accounts had not yet been laid before Parliament. The Audit Completion Report by the NAO had been amended to correct a small number of inaccuracies, but their report was complementary, the accounts had been endorsed by the Audit Committee, and were ready to be signed off and laid in front of Parliament. <u>Procurement services</u> The Board agreed to award a contract for travel management services to Redfern Travel.
7	**National tariff**
	Paul Baumann introduced this paper, which was the product of matrix working across the directorates, in parallel with engagement with Monitor and links to the Commissioning Assembly. The strategy sought to balance the need to support ambition and radicalism on the one hand, with the desirability of manageable pace of change on the other. It described proposals in three phases, ranging from the approach to developing the tariff for 2014/15, through the development of medium term priorities, to more strategic longer term work on the pricing strategy over the next ten years. Clinical colleagues had been asked to identify areas where immediate change was required or existing flexibilities could be used, and feedback was also requested on the proposed themes for medium term work identified in paragraph 14 of the report. The Board supported the direction of travel and requested a future report to update them on progress. As the work was further developed, it was also agreed that more energy needed to be put into engagement with patients and their representatives, who had not been afforded the opportunity to contribute to the tariff discussions thus far.
Actions	Paul Baumann to ensure feedback on patient engagement was addressed, and to bring back a progress update to a future meeting.
8	**Support and intervention assurance regime**

	It was agreed to defer discussion of this item.
9	**Cross border protocol between England and Wales**
	The draft cross border protocol between England and Wales was agreed, and the Board delegated authority to sign off the final text of the protocol to executive directors, following its approval by the Health Minister in the Welsh Government.
10	**GP contract 2013/14**
	Barbara Hakin provided an update on the position with the GP contract and explained the difficulties in reaching a negotiated settlement. The Board welcomed the paper, agreed the outline specification for proposed new directly enhanced services (DES's), agreed the approach to the uplift for Personal Medical Services (PMS) funding and agreed a broad approach to reviewing PMS contracts. The Board also gave delegated authority to the Executive team to agree the final specification of the new DES's and to make a final decision on the uplift for the PMS contract, following the recommendations from the Pay Review Body and the Government's subsequent decision on their application to the General Medical Services contract.
11	**NHS Leadership Academy – National Centre for NHS Leadership**
	Paul Baumann introduced this paper outlining proposed next steps to support development of a National Centre for Leadership. The Board discussed important links between this proposal and the actions required to respond to the Francis Inquiry, noted the proposed development would also link to anticipated announcements by the Secretary of State, and agreed it should be supported even if that required the expenditure of some political capital. The Board agreed to the establishment of a task and finish group of Executive and Non-Executive Directors to review the outline business case and agreed delegated authority to this group for the business case approval and allocation of capital from 2013-14 NHS CB funding. The Board also requested that a further discussion about the operation of the proposed Centre should come to a future Board development session.
Actions	Paul Baumann and Bill McCarthy to propose timing of future Board development discussion on the Leadership Centre, and establish the task and finish group as agreed by the Board.
12	**Any other business**
	There was no other business.
Date of next meeting	12 April2013, Maple Street, London