



Board Meeting Minutes

Part 1

Date and Time of Meeting:	Wednesday 25 th January 2017 @ 9.00am
Venue	Room Mauve 1, First Floor, NHS LA Office, 151 Buckingham Palace Road, London SW1W 9SZ
Present	Ian Dilks, Chair Andrew Hauser, Non-Executive Director Keith Edmonds, Non-Executive Director Mike Pinkerton, Non-Executive Director Helen Vernon, Chief Executive Vicky Voller, Director of NCAS Joanne Evans, Director of Finance Denise Chaffer, Director of Safety and Learning John Mead, Technical Claims Director (Associate Board Member)
In Attendance	Alan Hunter, Director of Claims Ian Adams, Director of Membership and Stakeholder Engagement Julia Wellard, Executive Assistant (Minutes) Tinku Mitra, Head of Governance
Apologies	Dr Mike Durkin, NHS Improvement (Ex-Officio, Associate Board Member) Representative of DH Sponsor Team (delayed)

1 Administrative Matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everyone, in particular Mike Pinkerton as the newly appointed Non-Executive Director to the Board and Tinku Mitra in her new role advising the Board on governance.

Apologies for absence were received from Dr Mike Durkin.

Proposal for Board Effectiveness Review

A paper was presented with a proposal to undertake a Board effectiveness self-assessment and a review of the findings of an assessment against the Corporate Governance in Central Government Departments: Code of Good Practice 2011.

The Board noted the actions from the paper and agreed to the proposal.

1.2 Declaration of conflicts of interest of members

Mike Pinkerton declared an interest in his role as Chief Executive of Doncaster and Bassetlaw

Hospitals NHS Foundation Trust until 31st January 2017.

1.3 Minutes of Board Meeting held on Wednesday 2nd November 2016

Subject to a minor amendment the minutes of the Board meeting held on Wednesday 2nd November 2016 were APPROVED and a copy was signed by the Chair.

3 Actions from Board meetings

The actions from the last Board meeting were noted and the closed actions were removed.

The following actions were rolled forward:

- Finance performance – Director of Finance to ensure a date is provided for performance relating to the number of invoices paid within 30 days to be addressed. A new Head of Financial Accounts & Operations is now in post who will be undertaking a review on the Purchase Ordering process in the second half of the calendar year.
- Review of FHSU Panel Members – Further clarification needed on the proposal for succession planning for Panel Members to include details of the cycle of appointments and renewals. The Chief Executive will ask the Head of FHSU to produce a paper for March Board.

Action: CE

2 Operational Items

2.1 Chief Executive's Report

The Chief Executive extended a welcome on behalf of the executive team to Mike Pinkerton, new Non-Executive Director, and to Tinku Mitra at her first meeting in her capacity as advisor to the Board on governance issues.

NHS LA Awarded ISO 27001 certification

Following a rigorous formal compliance audit at the end of November 2016 on how well the NHS LA manages its information security and confidential information, the Chief Executive was pleased to report the NHS LA had received ISO certification which is attributable to the hard work of all staff, in particular the Information Governance Manager and Head of IT. The outcome of the assessment will be posted on the website and the ISO mark will be added to our publications. We will need to ensure that there is a continual programme going forward to ensure that procedures and processes are followed as the accreditation includes a yearly audit and certification every three years.

The Board formally congratulated staff on this achievement.

Mediation scheme –promotion to claimant representatives

Following its launch, the NHS LA's mediation service has received considerable interest from the claimant legal market, in particular it has been suggested by some claimant lawyers that claimants are disadvantaged in securing a settlement on fair terms, which is not the case. It is therefore important that claimant lawyers are made aware of the benefits offered by the scheme and in order to promote the service a number of articles and interviews with publications are being placed, including an interview with an APIL publication.

It was noted that during the pilot there had been a disappointing take-up of mediation however this was in part due to the fact that the pilot had been restricted to a specific group. It was considered whether there was anything we could do further to promote the service and its

advantages, which could be taken forward through engaging with members.

The mediation service will continue to be monitored through feedback from users of the service, together with reasons why mediation has been declined.

The Board noted the Chief Executive's report.

2.2 Performance

A meeting of the DH/NHS LA quarterly review meeting is scheduled for next week which will be the first time the new Director General for the DH Acute Care and Workforce division will see the performance report for the NHS LA.

It was noted that claims volumes in clinical and non-clinical are levelling out and during the first eight months of the 2016/17 financial year, 7,091 new clinical negligence claims were received compared with 7,308 in the same period in 2015/16 and 2,817 new LTPS claims compared with 2,914 in the previous year.

The Board noted the performance report for the Finance, Claims, NCAS, Safety and Learning and FHS AU functions.

3 Management proposals requiring Board input or approval

3.1 There were no management proposals requiring Board input or approval.

4 Liaison with Key Stakeholders

4.1 Stakeholder Engagement Report

An update on recent communications and stakeholder engagement was presented detailing key activity across all functions of the NHS LA.

Communications

Following the tender process for the customer survey project, the contract was awarded to Enventure Research and the first meeting with them took place on the 9th January to discuss themes for the survey questions which have now been drafted. The survey is due to go live in the next few weeks. The FHS AU is not included in the survey as they have their own separate survey and non-users of NCAS have been included to identify why they are not taking up the service. Actions and recommendations from the survey will be discussed at the next Board Awayday.

Safety and Learning

The Safety and Learning Team have undertaken a number of activities with the wider NHS, through regional fora working with panel firms and through engagement with individual trusts, in particular:

- The Safety and Learning team have been collaborating with key national safety partners in the NHS such as NHS Improvement, CQC, National Quality Board, HSE, AvMA and local incident providers as well as contributing to national initiatives such as Getting it Right First Time.
- In the last quarter the Safety and Learning Team have worked in collaboration with panel firms on three regional events which were attended by over 140 senior clinical leaders.

- The Safety and Learning Team continue to engage with trusts on an individual basis and there has been a notable increase in requests for the team to present scorecards and how these can be navigated and triangulated with incidents and complaints.
- Additionally, there are a number of materials and products which have been produced by the Safety and Learning team including a number of case stories.

There are four Safety and Learning Leads in the team demonstrating this is a huge amount of work they have undertaken in engaging with so many members and stakeholders.

The strategy work has helped the Senior Management Team to consider where best to focus attention in terms of working with ALBs and trusts. We are also looking at what impact and difference we have already made and noted in particular that some members are beginning to become more interested in their scorecards and want more information. We continue to meet with Trusts individually and through joint panel meetings with groups of Trusts which are particularly beneficial for buddying up Trusts with one another to share experiences. Member Boards are also beginning to show an interest in the offer of help.

The Board noted the Stakeholder Engagement Report.

5 Key Developments

5.1 Important Legal Cases

EH v Dorset Healthcare NHS Foundation Trust

This is a case where, on the 25th August 2010, a claimant, who was suffering from paranoid schizophrenia, stabbed her mother to death and it was admitted on behalf of the Trust that the incident would not have occurred if the Trust had responded in an appropriate way to the claimant's medical collapse. The Trust applied to strike out the claim on the basis it arose from an illegal act. The claimant pleaded guilty to manslaughter on the grounds of diminished responsibility. Mr Justice Jay held that the nature of the criminal conviction was conclusive evidence that the claimant's mind was not totally impaired but her personal responsibility was low when the killing occurred. Mr Justice Jay considered the case of *Clunis v Camden and Islington Health Authority (1998)* in which an individual with mental health problems stabbed a man and pleaded guilty to manslaughter on the basis of diminished responsibility. The claimant's lawyers argued that subsequent rulings of the House of Lords and Supreme Court called into question the judgment in *Clunis* however Mr Justice Jay disagreed with the argument and held that the claim should be struck out. This is an important ruling for the NHS and demonstrates that the conclusion of the Court of Appeal in 1998 remains good law.

Fixed Recoverable Costs (FRCs)

We understand that the launch of the fixed recoverable costs consultation is imminent. We have been invited to contribute to a review which Lord Justice Jackson is leading for the judiciary on whether there should be fixed recoverable costs across all types of civil litigation up to a value of £250,000. A seminar is being held on 7th February in Manchester covering clinical negligence and other categories of personal injury claims.

The Board noted the position and the summary of key themes.

6 Oversight of Key Projects

6.1 Local Incident Reporting Provider

An update was provided on the Datix project which has been expanded to incorporate those organisations that use local incident reporting providers other than Datix. The broader scope of the project aims to examine the strength of links between incident and complaint reports generated by Datix, Ulysses and others with the claims management system by testing and exploring the extent to which they demonstrate common contributory factors between claims, incidents and complaints by enabling earlier detection, prevention and where learning can be identified to support prevention of harm.

The pilot is being led by the Safety and Learning team and supported by panel members and includes four trust members across England. The pilot is expected to run until April 2016 and a summary of the report will be brought to a future Board meeting.

The Board noted the position.

6.2 Digital communications 'think piece'

A digital communications 'think piece' was presented for developing digital channels, consolidating web assets and opportunities which are being identified to provide direction on bringing the organisation's communications channels into the 21st century through the use of digital technology as set out in the Membership and Stakeholder Engagement Strategy 2016/17. Additional digital expertise has been recruited to the Communications Team to assist in taking this forward.

The key recommendations are:

1. Consolidation of web assets – merging two websites into one and five intranet sites into one. This will be taken forward with DH through a formal procurement route following approaches to other ALBs to benefit through best practice which can then be benchmarked. Bringing the two websites together will mean that there will be more resilience and more people will be given the capability across the organisation to edit and add content.
2. Develop an effective social media strategy, building on the recent refresh of the social media policy
3. Create a suite of engaging communications
4. Develop an internal training offer to improve digital literacy among staff
5. Digitise key elements of our events, including NCAS education and training workshops
6. Develop our extranet and embed a CRM solution
7. Digitise scorecards
8. Digital support for safety and learning events

A SWOT analysis has been undertaken to inform the strategy moving forward and a number of actions have already been taken forward. A number of risks and mitigation against those risks have been identified. Over the course of quarter 4 of 2016/17 and quarter 1 of 2017/18, the next steps will be to work on:

- Redevelopment of the intranet sites into one intranet
- Redevelopment and consolidation of the external facing website into one website
- Development of an effective social media strategy
- Create a suite of engaging communications

Further work will be required with members to ensure that they get the best service from the NHS LA, in particular through the use of the extranet by ensuring that the system is enhanced and is fit for purpose.

The organisation needs to take stock of what has been done in the past, where we are now and

where we want to be going forward which is to bring operational functions together, share learning, working with NCAS Advisers and capturing education and learning events digitally in order to ensure we reach those people on the front line who are pressured and can make more use of gaining knowledge digitally. There is huge appetite for this but we do need the tools to take this forward and it is also recognised this is a cultural change as well as an organisational one. It was suggested that reference to efficiency gains should be included in the proposal.

The Board strongly supported the proposal to enhancing the organisation's communications channels through improved use of digital technology.

7 Board Committee Reports and Minutes

7.1 RemCo Annual Report

The Chair presented the Remuneration Committee Annual Report for 2016. The Committee had reviewed its performance during 2016 and was satisfied that it had discharged its obligations in accordance with the terms of reference.

The Board noted the 2016 Remuneration Committee Annual Report.

7.2 RemCo Terms of Reference

The terms of reference for the Remuneration and Terms of Service Committee (Remco) have been reviewed as part of the annual review of internal governance and two minor changes have been made as follows:

- Reference that the recently appointed Associate Non-Executive Director does not form part of the committee membership.
- The Head of HR attends the Remco meetings at the request of the Chair and as secretariat support to the committee.

The Board noted and approved the Remuneration and Terms of Service Committee terms of reference.

7.3 Reserving and Pricing Committee (RPC) Annual Report

The Chief Executive presented the RPC Annual Report for 2016

During 2016 the Committee considered the following key items:

- Annual Report and Accounts for 2015/16
- Total Required cash flows 2017/18
- Approved the proposed changes arising from the CNST consultation on pricing for 2017/18 and the updated cash forecasts for schemes, in particular the removal of gap/excess adjustments, removal of older claims from the experience element of contributions, increasing the experience weighting from 50% to 60%, and taking into account recent trends, reducing the total collect for LTPS in 2017/18 by 10 %.

The Committee has also reviewed and amended its terms of reference in line with a recommendation from the NAO.

The Board noted the RPC 2016 Annual Report.

7.4 Reserving and Pricing Committee (RPC) Terms of Reference

Following a recommendation by the NAO, the RPC reviewed its terms of reference and these have been updated to include clarification of the role of the actuaries in the reserving process. It has also introduced a materiality framework in order to make key judgements and assumptions in setting the valuation of the liability in respect of the indemnity schemes. The materiality framework was approved at the meeting in December and has been shared with the NAO. The materiality framework will be presented to the Audit and Risk Committee in February.

The terms of reference also make reference to Macpherson (Macpherson Report 2013) in view of the NHS LA's business critical models which are subjected to appropriate review and governance.

The Board noted and approved the revised terms of reference for the RPC.

8 Other matters requiring Board attention

8.1 Policies for Approval

As part of an internal governance review on policies and procedures the following policies have been reviewed and updated as necessary as well as clarification of managers' and staff responsibilities within the policies.

8.1.1 *Business Continuity Policy and Strategy*

Following a programme of review of business continuity, a new Business Continuity Policy and Strategy has been developed setting out the NHS LA's objectives for 2017 for a business continuity programme. As a result, the policy has been amended with a number of changes and a testing plan for 2017 has been included. The policy applies to all activities undertaken by the NHS LA and to all employees whether working from offices and/or at home.

It was considered that there needed to be clarification around who was accountable so that staff are clear who they should approach and what level of response is triggered when incidents occur. There was also uncertainty around how this will work in practice and a business continuity testing exercise has been arranged for the Senior Management Team in February following which an action plan will be produced.

A credit card has been produced for all managers and deputies of contact details in the event of an incident occurring which will also be extended to the Board.

The Board approved the Business Continuity Policy and Strategy subject to the strategy clarifying how it will work and who staff should call.

Action: DoF

8.1.2 *Grievance and Disputes Procedures*

The Grievance Policy has been reviewed and the key changes are:

- Three stage approach
- Intended timeframe for dealing with the informal stage added
- Clarification of Appeals process
- Audio recording of formal procedures i.e. meeting and hearings held under the policy
- Process included for notifying groups and individuals following the outcome of the Formal Grievance Resolution Meeting.
- Contents page and equality impact assessment added.

The Board approved the Grievance Policy.

8.1.3 *Disciplinary Policy*

The Disciplinary Policy has been reviewed and the key changes are:

- Clarifying where informal records should be held
- Timescales associated with the investigation process and notification of outcomes added
- Detailing authority to dismiss
- Audio recording of all formal procedures i.e. meetings and hearings
- Outlining process of disciplinary hearings and appeals
- Contents page, sample letters and equality impact assessment added.

The Board approved the Disciplinary Policy.

8.1.4 *Capability Policy*

The Capability Policy has been reviewed and the key changes are:

- Review structure of policy to be more supportive i.e. no sanctions until the final stage of the process and right of appeal.
- Clarifying managers and staff responsibilities within the policy
- Three stage approach
- Contents page, Sample letters, action plan template and equality impact assessment added
- Clarification of Appeals process.

It was noted that Stage 3 refers to dismissal which does not tally with the template letter and that this needed reviewing.

Action: DoF

Subject to the amendment mentioned above, the Board approved the Capability Policy.

8.1.5 *Recruitment and Selection Policy*

The Recruitment and Selection Policy has been reviewed and the key changes are:

- Clearer explanation on each stage of the process and removal of individual responsibilities in order to avoid duplication
- Confirmation of the identify checking process required at the interview stage
- Removal of HR on-boarding process and personal file information
- Reference to internal Job Evaluation process
- Removal of need to advertise internally before going externally
- Revised Request to Recruit Form to include appropriate sign-off and interview arrangements
- Contents Page and Equality Impact Assessment added.

The Board approved the Recruitment and Selection Policy

8.1.6 *Sickness Absence and Promoting Attendance Policy and Procedure*

The Sickness Absence and Promoting Attendance Policy and Procedure has also been reviewed, however, due to the significant changes being made to the policy, the HR team are still working through the proposals with the Joint Negotiation Committee (JNC) and the policy will be brought to the March Board.

The Board noted the position.

8.2 *Policies for Noting*

8.2.1 *Records Management Policy*

Following publication of NHS Digital's new Records Management Code of Practice for Health and Social Care in July 2016, a review of the Records Management Policy and retention schedule has been undertaken. Although the new Code primarily is aimed at frontline NHS Services, there are a number of recommendations that are relevant to ALBs.

One of the main changes relates to the retention of claims files where a change is proposed from the Code which recommends 10 years for litigation records to 75 years on the basis that recently we have been asked to provide information relating to records on historic abuse inquiries and others such as the Gosport Inquiry and it is considered that such files should be held for the lifetime of the individual. Retention of such files will also enhance learning around the causes of claims across the NHS and prevent harm occurring in the future.

The Board noted the Records Management Policy.

8.2.2 Workforce Development Policy

The Workforce Development Policy has been reviewed to be more inclusive and aligned to the NHS LA's vision to become a supportive, learning organisation and includes the creation of the OD function as well as clarity around how budgets are managed and handled by Directors.

The Board noted the Workforce Development Policy.

9 Any Other Business

There was no other business to note.

10 Date and Venue for next meeting

10.1 The next Board meeting is scheduled for Wednesday 22nd March 2017 at 9.00am and will be held in BR1&2, 151 Buckingham Palace Road, London.

Signed

Date