

Board meeting minutes (Part 1)

25th January 2018

10:00 – 15:30

Room G1, Ground Floor, 151 Buckingham Palace Road, London

Present	
Ian Dilks	Chair
Keith Edmonds	Non-Executive Director
Mike Pinkerton	Non-Executive Director
Charlotte Moar	Non-Executive Director
Helen Vernon	Chief Executive
Denise Chaffer	Director of Safety & Learning
Joanne Evans	Director of Finance & Corporate Planning
John Mead	Technical Claims Director (Associate Board Member)
Mike Durkin	Associate Non-Executive Board Member
In attendance	
Alan Hunter	Director of Claims
Ian Adams	Director of Membership & Stakeholder Engagement
Sanjay Sekhri	Acting Director of NCAS
Cheryl Lynch	Representative of DH Sponsor Team
Tinku Mitra	Head of Governance
Julia Wellard	Executive Assistant (Minutes)
Apologies	

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everybody, in particular Sanjay Sekhri who is Acting for the Director of NCAS while Vicky Voller is on maternity leave.

There were no apologies for absence.

1.2 Declaration of conflicts of interest of members

There were no conflicts of interest to note.

1.3 Minutes of Board Meeting held on 8th November 2017

The minutes of the Board meeting held on 8th November 2017 reflected comments made by Board members and were APPROVED and a copy signed by the Chair.

1.4 Review of actions from Board meetings

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

There were no actions to be rolled forward.

The following actions were closed:

- Policy for the Management of Fire and Emergency Safety – The Head of Governance made the changes to the policy.
- Summary Evaluation of ‘Let’s Talk Mental Health Matters’ – The Director of Safety and Learning to write to Mental Health Chief Executives who did not have representatives at the event to give a summary. The summary was included in the Newsletter which went out to members in November 2017.
- FHSAU Panel Member Appointments – The Chief Executive discussed with the Head of FHSAU whether the appointments can be staggered at four and six years and the Head of FHSAU advised that the stagger would be five and eight years and that the terms and conditions reflect this. This therefore meets the succession planning needed to stagger appointments and avoid being too burdensome in terms of recruitment.

2 Operational items

2.1 Chief Executive’s Report

Publication of the Public Accounts Committee Report (PAC)

The Public Accounts Committee published its recommendations following the NAO VFM study and the PAC hearing held in October 2017. We will be responding to the recommendations and work is already underway or planned as detailed in our strategy.

GP Indemnity

Following the Secretary of State’s decision to direct NHS Resolution to implement and administer the state backed indemnity scheme for general practice in England on 30th November, the Chief Executive has been working closely with DH on options for scheme design and operation.

Early Notification Scheme update

The Early Notification Scheme (ENS) came into effect on 1st April 2017 and requires trusts to report all relevant maternity incidents within 30 days. The ENS team comprises a Team Leader, three case managers (shortly to increase to four) and two clinical advisors (shortly to increase to four). The Scheme has generated a lot of interest from the claimant legal market. An update on activity was presented and it was noted that reporting is currently below expectation for the nine months into the Scheme although this is increasing. The ENS Team are currently engaging with non-reporters which has identified that trusts know what the criteria are for reporting but have not had any qualifying cases that meet the criteria. The next step will be that

we will want trusts to report those cases which they report to the Neonatal Database which may involve using similar levers to the incentive scheme.

Maternity Incentive Scheme

Following the Secretary of State's announcement on the 28th November on *Safer maternity care: progress and next steps*, maternity members have been provided with details on the maternity incentive scheme which saw an increase of 10% to the maternity element of contributions to create a maternity incentive fund where maternity services need to demonstrate achievement against a set of ten actions in order to receive a share of the incentive fund of at least 10% of their base contribution, together with a share of the balance of undistributed funds to be determined once the results from all services have been evaluated in the summer of 2018.

Following the communication which went out at the beginning of January, the response rate has been low to date and it is expected that the article which was published in the HSJ highlighting the incentive scheme will generate further interest. Trusts are required to self-certify their progress against the ten actions and submit their report and evidence by 29th June 2018. A governance group will be set up to go through the reports and verification checks will be undertaken on the evidence provided. Maternity services that do not demonstrate achievement against all of the ten actions may be allocated a smaller sum from the fund to support implementation. Once the full results are available, confirmation of the value of the credit will be made to members and a credit note will be issued and a payment made.

The incentive scheme is being trialled for 2018/19 and there will be a period of evaluation later in the year to identify whether the questions have captured the evidence required to demonstrate safer maternity services.

NHS Resolution and GIRFT

A joint letter from the Chief Executive and Professor Tim Briggs (National Director of Clinical Quality and Efficiency at NHS Improvement) was circulated on 21st December with GIRFT dashboards for all surgical specialties providing benchmarked claims data on a 'claims notified' basis based on a snapshot for individual surgical specialties over a five year period for 2012/13 to 2016/17. The benchmarking has been compiled as a collaboration between GIRFT and NHS Resolution which links to the 'intelligence' objective in our strategy.

Examples of trust dashboards will be circulated to the Board for information.

Action: HoG

It was noted that although the collaborative work with GIRFT is in the public domain, the dashboards are confidential to individual trusts and include a number of caveats meaning the data is not discloseable.

The Board noted the Chief Executive's Report.

2.2 Performance review

The performance review detailing financial performance and key performance indicators for the period under review was presented. The data which support the

measurement of our performance in relation to claims management are commercially sensitive and disclosure could adversely impact on our ability to manage claims effectively. Consequently, whilst claims activity is reported in Part 1, claims KPIs are reported and monitored in the Part 2 private Board session.

Claims Performance

For the year to 31st December 2017, the number of new clinical claims has increased by 91 to 7,951 compared with the same period in 2016/17 at 7,860 which is equivalent to a 1.2% increase. This will need to be continually monitored to identify where there is any evidence of a trend of increasing numbers. This does not include the Early Notification Scheme claims numbers which will be shown separately in future reports and not included in the clinical claims numbers.

A table was presented showing the number of claims received under all schemes year on year to 31st December 2017.

NCAS Performance

An update on the advice requested by sector and professional group to 31st December 2017, current live activity for the assessment and intervention services and Healthcare Professional Alert Notices (HPANs) was presented. It was noted that the number of advice requests is down by 5.8% compared with the same period last year, in particular for secondary care and the NCAS team are undertaking a piece of work to drill down into the figures to identify those trusts that are regarded as low referrers. There are some trusts which have made a number of referrals which has distorted the figures and the reasons for this are being investigated and a report will be brought back to Board once the work has been completed.

There is also work being undertaken looking at the correlation between the number of education events held for Medical Directors and HR Directors which often result in referrals being received and what this means in terms of referral rates.

It is considered that the new GP Indemnity Scheme may see much more awareness of the NCAS service meaning there will be an increase in primary care referrals and thought will need to be given to this in terms of business planning/resource.

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

2.3 HR and OD Report

Michael Humphris, Head of HR and OD, attended the meeting to present the report which provides information on the organisation's key workforce indicators, equalities characteristics and the HR and OD activities for the period November 2016 to October 2017.

Key activities of note are:

Establishment - the turnover rate has reduced from 10% in the previous reported period to 9% showing that the organisation is beginning to maintain a more stable workforce. There were a total of 53 new appointments in the reporting period and 24 leavers.

Agency Workers - A total of 49 agency workers were engaged during the reporting period, which is down from 54 in the previous period, 10 of which were active as at 30 October 2017. The period of assignments remains relatively low but there are a number of placements which have exceeded six months due to difficulties recruiting to positions delivering specific programmes of work, all of which have been approved by the Workforce Strategy Group. There are no placements which have exceeded 12 months.

Leavers and Recruitment – Reports for leavers are broken down by non-voluntary and voluntary showing that by excluding non-voluntary leavers, the turnover rate is 6.3%. Work is to be undertaken to identify the performance of leavers through triangulating leavers and appraisal data.

Absence – Although the organisation is reporting below the national average rate, there has been a steady increase in sickness absence between July and September 2017 (with a small decrease in October) with just under 40% of absences relating to anxiety, stress, depression and other psychiatric illnesses. Measures are currently being put in place to look at this in more detail, in particular by promoting the Employee Assistance Programme which is providing a number of workshops for staff on life advice, counselling, finances, and relationship issues. A programme of health and wellbeing is also being taken forward in order to support the workforce in areas where they need support through a number of lunch and learn sessions. There is also a module on the Leadership Programme around managing stress.

In terms of absence descriptions, it was considered that the types of illnesses under 'Anxiety/stress/depression/other psychiatric illnesses' were very different to have under one description. It was noted that this is a national system wide category, but there may be an opportunity to break down the different absences locally which the Head of HR will look into. It was suggested that this should be raised with McKesson who are responsible for the national Electronic Staff Record (ESR) system.

Action: HoHR

Mandatory and Statutory Training – The level of compliance for three of the Mandatory and Statutory Training (MAST) requirements is 80% with equality and diversity slightly down. Employees are continually reminded to complete the MAST courses. Compliance for each of the courses is reported to the Operational Review Group on a monthly basis. A new appointment in the HR team will be managing this going forward.

It was considered that the organisation should make more use of employee self service opportunities on ESR which are of benefit to employees and which save time for the HR team and managers. The Head of HR will be taking this forward once all employee electronic records are up to date. There is a new portal (OLM) for ESR which is being rolled out and is expected to be up and running by June 2018 and details will be included in the next HR report to Board. It was suggested that this should be included on the agenda for team meetings and staff forums.

The staff survey was launched in November 2017 and closed on 11th December and it was encouraging to note that the survey received an 80% response rate showing that staff are willing to engage. We have asked for further breakdown on the full report which will be brought to the March Board for discussion. The Board thanked

the HR team for their work on the Staff Survey.

The leadership programme was rolled out in September 2017 over a 7 month period with 6 workshops and 6 action learning sets. Expressions of interest were received from 66 staff from different levels across the organisation and 45 have been recruited to the programme with the remainder being offered a place on the next programme. It was noted that participation on the programme seemed low from the claims function although this could be attributed to the cap on the number of attendees but otherwise there was a fair representation across all functions of the organisation.

The Board noted the HR and OD report.

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 Communications and Stakeholder Engagement Report

An update on recent communications and stakeholder engagement was presented detailing key activity relating to proactive/reactive media management, issues management, digital communications, stakeholder engagement and events across NHR.

A three year contract to take forward NHS Resolution's customer survey has been awarded to Social Market Research (SMR). The longer contracted period will assist in helping us to get a more sophisticated set of insights into our client base. SMR have met with the customer survey working group which has representation from all functions of the organisation and a draft questionnaire has been put together which has been shared with the Senior Management Team. User testing on the questionnaire is to be undertaken before the survey goes live. Browne Jacobson and their customer satisfaction research company have already delivered training on closed loop calling which involves following up survey responses 24 to 48 hours after the survey closes with a phone call from a member of the Senior Management Team or a Non-Executive Board member to understand better responders' scorings and what we can do to improve their satisfaction levels. Board members were asked to send any comments on the questions to the Director of Membership and Stakeholder Engagement.

Action: All Board

The Chief Executive gave an interview with the HSJ which was published in January on 'NHS Resolution will be 'bolder' to reduce patient harm'.

The website project is progressing and the work on the service line descriptors has fed into the last website development and the project remains on track. However, there may be a risk to the delivery of the website at the end of March if further work is required on the service line descriptors. A meeting between the branding agency, Senior Management Team and other colleagues is scheduled for 29th January to discuss further.

It was noted that rebuttals are sent to publishers where articles which have already been published are incorrect.

The Board noted the Stakeholder Engagement Report.

4.2 Feedback on Inquests – what lies beneath – Manchester 12.10.17

Feedback was presented on the 'Inquests – what lies beneath' event which took place on the 12th October in Manchester. The purpose of the event was to explore the issues and impact of harms that lead to an inquest i.e. what does an inquest invoke?; helping members learn from each other; identifying what families want; and maximising learning opportunities. The intended outcomes were:

- To bring together the various elements that lead up to and contribute to the coronial process
- Greater understanding of how family and staff can be affected by harm to patients leading to an inquest.
- Identifying what families want
- Helping members learn from each other
- Sharing learning between different agencies e.g. police and Coroner

There were 148 attendees represented by Trusts, CCGs, panel firms, NHS England, NHS Resolution, patients, speakers and students. Evaluations were collected via an on line survey monkey questionnaire and 55% of respondents were satisfied with the quality and content of the event and 57% felt the objectives had been achieved. Negative comments related to the logistics of the event rather than content. There was a small focus on the Manchester bombing which brought together clinicians who were traumatised from the incident and looked at the support they were given. Actions from this and future events will be considered by the Safety and Learning Reference Group to ascertain whether the intentions stated at the event have been implemented and sustained. 81% of respondents have already made changes following the event.

The event is being repeated in March 2018 in Newcastle and the Chief Coroner is attending to give a presentation. An event is also scheduled with independent providers. It was suggested whether we could hold more events and where possible this will happen but there are some resource constraints. The team were requested to consider whether it was appropriate to live within the constraints or whether the benefits of further events would justify the allocation of more resource. The team are also looking at the possibility of using webstream for events.

The Board noted the feedback on the event.

5 Key Developments

5.1 *Personal Injury Discount Rate (PIDR) – Justice Select Committee Report*

As reported at the November Board meeting, following the change to the Personal Injury Discount Rate (PIDR) to minus 0.75% which took effect in March 2017, the

Ministry of Justice (MoJ) consulted on the methodology and basis of the calculation and on 7th September 2017 the Secretary of State for Justice made a written statement to the House of Commons with accompanying Command Paper “The Personal Injury Discount Rate: How it should be set in future: Draft Legislation”. The paper contained a draft clause which, if enacted, will give effect to the proposed new means for setting the personal injury discount rate and the three main proposals are as follows:

- The discount rate would be set by reference to expected rates of return on a “low risk” diversified portfolio of investments (and having regard to actual investments made and returns available), rather than very low risk investments (with no regard to actual investment) as at present;
- The current discount rate will be reviewed within 90 days after the legislation comes into force and, thereafter, at least every three years; and
- The future discount rate will be set by the Lord Chancellor following consultation with an expert panel (other than on the initial review which would be by the Lord Chancellor with advice from the Government Actuary and HM Treasury)

Following publication of the paper, the Justice Select Committee were invited to undertake pre-legislative scrutiny of the draft clause and report by the end of November 2017. They published a report on 30th November with a number of recommendations and comments that government should proceed with caution by ensuring that adequate mechanisms are in place for safeguarding vulnerable claimants and balancing the needs of claimants and tax-payers. The report also makes reference to the collation and analysis of data.

The Board noted the position.

6 Oversight of Key Projects

6.1 There were no key project reports to note.

7 Board Committee Reports and Minutes

7.1 [Remuneration and Terms of Service Committee Performance and Compliance Report for 2017 and revised committee Terms of Reference](#)

A performance and compliance report for the Remuneration and Terms of Service Committee for 2017 was presented.

The Committee, which is a sub-committee of the Board, held four meetings during 2017 in January, May, September and December which were all quorate.

The Committee considered the following issues:

- Approved the appointment of an associate Non-Executive Director from 1st June 2017 on a 12 month rolling basis;
- Annual Directors performance reviews (presented by the Chief Executive);
- The annual pay award and performance related payments;
- A special payment approval (which was approved by DH and Treasury);

- Approval of a temporary additional responsibilities allowance for an Executive Director; and
- Performance and objectives of the Chief Executive.

The Committee considered its performance during 2017 as satisfactory and that its obligations had been discharged as detailed in the terms of reference.

The Committee considered the terms of reference in December 2017 and that they remain appropriate and fit for purpose with minor changes made relating to changing NHS Litigation Authority to NHS Resolution and Very Senior Managers (VSM) pay framework to the Executive and Senior Managers (ESM) pay framework.

The Board noted the report and approved the updated terms of reference. .

7.2 Reserving and Pricing Committee Terms of Reference

The Reserving and Pricing Committee (RPC) terms of reference were presented as part of the annual review of internal governance. The terms of reference have been amended slightly to account for the frequency that the RPC will meet and that the Head of Reserving and Pricing will act as Secretariat to the Committee.

The Board approved the updated RPC Terms of Reference.

7.3 NHS Resolution proposal to appoint independent lay member to ARC

The Chair of ARC presented the proposal to co-opt an external member to the Audit and Risk Committee (ARC). The post would be advisory and not a Non-Executive Director (NED) post and would complement the skills and experience of the current Non-Executive Directors on ARC. The ARC meets four times a year.

HMT ARC guidance states that in addition to having skills in governance, risk and control, and recent and relevant financial experience, ARC members should also consider what other skills are required for the committee.

The current ARC terms of reference state that there should be a minimum of three NED members and independent external members as agreed by the Chair of ARC. This is under review and may change. A recent self-assessment of ARC effectiveness supported increasing the membership of ARC to four. Recruitment of two further NEDs is planned, one of whom will be asked by the Chair to join the membership of ARC with a further member being sought externally with a specific background in risk and governance in large, complex organisations and preferably with experience in the public sector. It is expected that recruitment will be progressed over the next few weeks with additional members being in post by early 2018/19.

It was considered that the term of the external member should be for two or three years in order to get full value from membership.

The Board noted the position.

8 Other matters requiring Board attention

8.1 Policies for Approval/Noting

The following policies were circulated to the Board outside of the meeting which require approval by the Board. It was noted that all policies have been approved by the Senior Management Team and Joint Negotiation Committee.

Standing Financial Instructions

A few minor amendments have been made to the policy which is reviewed annually. It was noted that the policy is only an interim position as it will need to be further amended to take into account:

- Local Counter Fraud team risk assessments -the team are currently reviewing the document in line with the NHS Counter Fraud Authority standards and recommendations from this will be incorporated into the document.
- Inclusion of a process for prompt payment.
- Updated Framework Agreement.
- DH Finance and Procurement are in the process of reviewing the ALB delegations and efficiency controls which will likely require a revision of the SFI's. Any changes will be incorporated into the document.

It was suggested whether the document could be made less complex for staff to understand and that key financial instructions are included in the finance induction for staff.

It was considered that single tender actions have a relatively low profile and this is a standing item on the ARC agenda.

In terms of funding, the document refers to 'prior to the start of each financial year submit to the Board for approval a report showing the total allocations/contributions confirmed and their proposed distribution including any sums to be held in reserve'. It was agreed that past practice would continue for the approval process given the need to agree contributions and allocations with others in the system well in advance of the beginning of the year and that sums held in reserve relates to the small contingency held in reserve for data errors.

The Board approved the interim Standing Financial Instructions.

Standing Orders

A few minor amendments have been made to the policy relating to establishment and changes to updates in directions across the organisation. It was noted that there needed to be reference to the Reserving and Pricing Committee under the Committees section. The policy will need to be reviewed for any material changes once the Framework Agreement has been finalised.

The Board approved the Standing Orders.

Anti-Fraud, Bribery and Corruption Policy and Procedure

The Policy has been revised to reflect the NHS Counter Fraud Authority (previously

NHS Protect) Anti-Fraud, Bribery and Corruption Standards for Providers which we are required to follow. The Policy has also been updated to reflect the roles and responsibilities in line with the Standards and lists the contact details for NHS Resolution's Local Counter Fraud Specialist.

It was suggested that the first page of the policy should detail in simple terms what staff need to do in the event they suspect fraud together with contact details rather than this appearing at the back of the policy. There should also be a page on the intranet for staff with a brief introduction on policies with links to the documents particularly as policies are reviewed by different functions across the organisation.

The policy will be reviewed every two years, subject to internal processes and be submitted to ARC before being approved by the Board.

The Board approved the Anti-Fraud, Bribery and Corruption Policy and Procedure.

Complaints Policy

The Complaints Policy has been reviewed to take into account guidance and best practice from the Parliamentary and Health Service Ombudsman and the Cross Government Complaints Forum with a particular emphasis on conduct as the Ombudsman has ceased to identify complainants as vexatious. JNC have reviewed the policy and found this section helpful in terms of dealing with difficult conversations with claimants. The policy has also been tweaked to ensure that we are aligned to NHS complaints processes.

A question was raised on the appeal process and whether it was necessary to have an appeals process against the Chief Executive's decision which is not normal practice in other organisations and could elongate the process. It was agreed the Head of Governance will look into this. The policy will be reviewed every two years.

The Board approved the Complaints Policy but that the Head of Governance look at whether the appeals process from Chief Executive to Chair is necessary.

Action: HoG

Policy on Openness

Following discussion on the Policy on Openness at the September 2017 Board meeting, feedback has been incorporated into the policy together with the previously approved criteria which has been adopted for referral to Part 2 Board inclusion. The policy will be reviewed in one year's time to see how it is operating.

The Board approved the Policy on Openness.

Health and Safety Policy

The Health and Safety Policy has been reviewed with minor amendments as follows:

- Updated with new logo, name change adjusted throughout document
- HR/OD team included in section 4 for oversight of compliance with mandatory training
- HR/OD team in section 4 for the provision of monthly reports to line managers and Operational Review Group

- Update to section about use of mobile phones whilst driving and business insurance
- Update to section about violence and harassment in the workplace

The Board approved the Health and Safety Policy.

Freedom to Speak Up: Raising Concerns Policy

The previous Whistleblowing Policy has been reviewed in order to ensure that it adheres to the principles set out in the standard integrated policy prepared by NHS Improvement in April 2016 which are aimed at improving the experience of whistleblowing in the NHS. As a result, the policy has been renamed to Freedom to Speak Up: Raising Concerns Policy which is in line with the Public Interest Disclosure Act 1998. It is aimed at NHS Resolution staff, agency workers and contractors rather than external individuals and protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they blow the whistle on wrongdoing. Other key changes to the policy include:

- The focus is on NHS Resolution's commitment and approach to handling concerns raised internally by NHS Resolution workers. Work is underway separately on a statement in respect of NHS Resolution's approach to responding to whistleblowing concerns raised by external parties.
- The policy introduces the role of Freedom to Speak Up Guardians for NHS Resolution, the scoping and appointment of which are being taken forward by the Head of Corporate Governance. There is further work to be undertaken on what the Freedom to Speak Up Guardians; role is which the Head of Governance is looking into.

It was considered that the role of ARC should also be included in the policy in terms of whistleblowing.

The Board approved the Freedom to Speak Up; Raising Concerns Policy and thanked Mike Pinkerton for his support on the policy.

It was suggested that all policies when being reviewed should be reformatted to give a brief introduction on the first page of what the policy is about.

9 Any Other Business

- 9.1 There was no other business to note.

10 Date and Venue for next meeting

- 10.1 The next Board meeting is scheduled for Tuesday 20th March 2018 at 10.00am and will be held in Room G4, Ground Floor, 151 Buckingham Palace Road, London SW1W 9SZ.

Signed

Date