

Board meeting minutes (Part 1)

18th July 2018

10:00 – 15:30

Room G-3, 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
Nigel Trout	Non-Executive Director
Sam Everington	Non-Executive Director (Associate Board Member)
Helen Vernon	Chief Executive
Denise Chaffer	Director of Safety & Learning
John Mead	Technical Claims Director (Associate Board Member)
In attendance	
Alan Hunter	Director of Claims
Ian Adams	Director of Membership & Stakeholder Engagement
Karen Wadman	Joint Acting Director of Practitioner Performance Advice
Cheryl Lynch	Representative of DH Sponsor Team
Tinku Mitra	Head of Governance
Julia Wellard	Executive Personal Assistant (Minutes)
Apologies	
Joanne Evans	Director of Finance and Corporate Planning
Vicky Voller	Director of Practitioner Performance Advice
Mike Durkin	Non-Executive Director (Associate Board Member)

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everybody, in particular Nigel Trout and Sam Everington, new Non-Executive Directors.

Apologies for absence were received from Joanne Evans, Vicky Voller and Mike Durkin.

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 16th May 2018

The minutes of the Board meeting held on Wednesday 16th May 2018 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.

The following actions were rolled forward:

- Stakeholder engagement. Paper on engagement to be circulated to Board and a further paper to be brought back to a future Board meeting for discussion – confirmed for September Board.
- Claims Management performance – Director of Claims to arrange for a narrative to be produced on the number of new claims and what the information is showing for Board to use in discussions with stakeholders. The narrative to also include claims by specialty. The Director of Claims to produce a paper in the next two to three weeks. In terms of broader analysis on long term trends and specialty, this will be brought to the September Board.
- Complaints report – Head of Governance to produce a breakdown of complainants by age and ethnicity. Head of Governance to look at introducing feedback on complaints as there will be positive experiences which would be helpful to see. We do not currently capture all ages and gender of the complainant but we can start doing so, where this is about a claimant or an individual who has been referred to us although this is difficult for GDPR reasons. We would need to justify why we would need it for all complainants under DPA. There is also the issue of how accessible our complaints system is, whether we are allowing people the opportunity to complain and whether there is a better way of handling this. It was suggested that we should pick this up with PHSO to see what guidance they might be able to provide.
- Complaints Report – Head of Governance to consider triangulating our complaints with panel as it may identify a hidden level we may not be aware of. Reviewing our complaints log indicates that these are existing claimants who are already known to Panel, as some are already being managed as a file by Panel. Both actions to be included in the next complaints report to Board.
- HR and OD Report – Head of HR to raise the issue of breaking down sickness absence relating to anxiety, stress, depression and other psychiatric illnesses at the ALB HR Directors meeting. To be raised on the next HR Directors' conference call on 19th July.

The following actions were closed:

- Prison healthcare – Technical Claims Director to undertake a deep dive into prison healthcare claims and will bring a report back to the July Board meeting.
- Safety and Learning performance – Director of Safety and Learning to confirm the target met for the KPI 95% response rate to members following a request for contact within five working days – target confirmed as fully met at 98.3%.
- Complaints report - Head of Governance to ensure that the Complaints Policy is

easily accessible on our website - The complaints policy is on a link on the front home page of the website. We are also working with colleagues who are developing the new website to consider its placement on the new site.

- HR and OD Report – Head of HR to draft a note for the Chief Executive to send out re the importance of completing MAST courses – email was circulated to staff on 9th July 2018.

2 Operational items

2.1 Chief Executive's Report

Atwal v Calderdale and Huddersfield NHS FT

The sentencing hearing in relation to this case, involving a claimant who had been found in contempt of court for substantially exaggerating his clinical negligence claim, took place on 1st June. The claimant was sentenced to three months' imprisonment and was ordered to pay the trust's costs of £75,000. This is the first occasion where a claimant against the NHS has been jailed for exaggerating their claim which received a lot of publicity. It was considered that this helps to explain to people what NHS Resolution does. The Chief Executive has a meeting with the Chief Executive of the NHS Counter Fraud Authority in September and it is hoped that we will be able to take such action on similar cases going forward.

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.

Finance Performance

The summary financial report to the end of May 2018 was presented.

The baseline position is showing an underspend across all schemes, the majority relating to CNST which is £37.7 million underspent. However, there is an overspend when PIDR is taken into account as we have not yet received the budget for PIDR.

In relation to the comment in the report on CNST contributions being more than planned, the Chief Executive will check the position.

Action: CE

In terms of performance relating to the number of invoices paid within 30 days, this continues to remain below target (95%) at 86%. It was noted that this had been below target for a couple of years. There is an internal audit being undertaken on procurement this year which will look into this to see if we are measuring things in the right way and any system changes will be included as part of an action plan.

Claims Performance

The numbers of new claims received under CNST and LTPS for 2018/19 to 31st May

have decreased to 1,790 and 588 respectively compared from 1,889 and 644 in the same period in 2017/18. A query was raised whether more data points could be added in.

It was noted that claims numbers tend to vary per quarter. Also that activity is going up in trusts and the demand on NHS services is ever increasing and therefore claims may actually be decreasing as a proportion of overall activity, thus it might be helpful to add a narrative on this in the report. For example, it would be helpful to build in to the report what we actually know of the volume of activity as well as getting underneath the trend and what it means particularly in the context of the legal market. This will be included in the claims performance report for September. It was noted that activity in A&E has gone up and it was noted that our next clinical fellow will be undertaking a deep dive into A&E.

Action: ADoC

The Board noted the performance report for the Finance, Claims, Practitioner Performance Advice, Safety and Learning and Primary Care Appeals functions.

3 Management proposals requiring Board input or approval

There were no items to consider.

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 NHS Resolution.

Key points raised:

The new service titles have now been fully deployed internally and externally which continue to be embedded within the organisation. A new set of brand guidelines together with a reminder on desktops have also been issued to support the new titles.

A successful conference took place on 'Mental health matters - Learning from the frontline' which preludes Alice Oates' report which is due to be published in September. Mike Pinkerton attended the conference and found the event interesting, highlighting the practical problems practitioners are facing in the field.

Maternity Incentive Scheme – a final call for submissions was issued and a survey was undertaken to gather feedback on how the scheme is operating.

Feedback is also been addressed from the staff survey and there are monthly briefings to staff which are being led by individual members of the Senior Management Team. The most recent briefing focussed on publication of the Annual Report and Accounts. Alongside the briefings is an internal downward and upward

cascade reinforcing messages via line managers to staff and then back to the Senior Management Team.

The website is still on track to be launched in September and a number of templates have been created. The former websites will be archived and date stamped with a link to the new website. It is interesting and encouraging to note that more and more views are coming through the new website.

The Annual Report and Accounts 2017/18 has been published and overall press coverage has been positive.

There has been considerable engagement and activity by the Safety and Learning team particularly a number of regional events which are having an impact in driving change. The next national conference is planned in Ipswich with a focus on Consent which was a request that came through from feedback from members.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

5.1 Prison Healthcare Claims

Following discussion at the March Board, a deep dive has been undertaken into prison healthcare claims with a particular focus on the types of claims received, trends, practical issues and conclusions which has identified that many of the claims involved alleged delays in the provision of treatment.

NHS England is currently the commissioner of prison healthcare and there are a number of new claims being brought against NHS England. However, their function is to commission and not provide and the provision of services is split between a number of organisations i.e. NHS trusts, GP practices, independent companies and dental practices.

Detailed analysis undertaken has revealed interesting conclusions. There are currently 248 open clinical claims and by value they are relatively low with the success rate between 25-30%. There are far fewer non-clinical claims which relate to the prison environment rather than healthcare, as these will mostly be against the organisations responsible for prison buildings. The clinical claims do take a lot of time and resource to investigate due to the complex legal and contractual background.

A key feature of many of the claims is that prisoners are moved between locations on a frequent basis which accounts for records becoming misplaced and appointments being lost even where these are recorded electronically. Prison staff are required to accompany prisoners to medical appointments and if guards are not available then appointments need to be rebooked. By the time the new appointment is rebooked the prisoner could have moved to a different prison and thereby the appointment is overlooked. This is why a lot of the claims are based on allegations of delay, relating to treatment, referrals to hospital and diagnosis.

There are some claims which relate to attempted suicides or actual suicides and approximately 23% of all our clinical claims involve fatalities in prisons. There is also

an issue with the portability of information when prisoners move from prison to prison.

The real tension between these cases is the need to keep prisoners locked up and the conflicting need to ensure they receive adequate and appropriate NHS care, which is government policy. This has also been discussed with the Practitioner Performance Advice service and the Head of Governance.

It was noted that there is no specific body which oversees the standard of care in Prisons because it is so disparate, however the CQC do undertake inspections and therefore there is an opportunity to share the claims information with the CQC as well as with NHS England as the commissioner.

The Director of Safety and Learning referred to Alice Oates' (clinical fellow) report which is to be published in September and has a chapter on prison health and suicide. Although the numbers are small they are significantly higher in value and are referenced in coroners' reports on preventing future deaths. One of the recommendations from Alice's report will be to work with the CQC, NHS England and the justice system and it would be helpful for them to have the information which sits behind the report.

There has been an increase in claims against NHS England in the past year alleging a non-delegable duty of care. However, the distinction between commissioning and providing healthcare is critical with the argument that NHS England cannot owe a non-delegable duty to provide healthcare in prisons due to their function as a commissioner.

There is a clear overlap which should be discussed with the ALBs once Alice's report is available and this should also be shared with the CQC and NHS England along with the Technical Claims Director's Board report. The Chief Executive will also be meeting with the CQC Chief Executive and will take that opportunity to highlight the findings. The mental health and justice team would be the best contact point at NHS England.

Action: TCD/DoS&L

The Board thanked the Technical Claims Director for the interesting paper and noted the Prison Healthcare Claims Report.

6 Oversight of Key Projects

6.1 There was nothing to report.

7 Board Committee Reports and Minutes

7.1 [Audit and Risk Committee minutes held on 10th May 2018](#)

The minutes of the Audit and Risk Committee meeting held on 10th May 2018 were noted by the Board.

8 Other matters requiring Board attention

8.1 Hospitality and Gift Report

The Hospitality and Gift Register was presented. The register is published on NHS Resolution's website.

The Board noted the Hospitality and Gift report.

8.2 Policies for approval/noting

8.1.1 Procurement Policy and Procedure

The Procurement Policy and Procedure has been reviewed and sets out the organisation's statement of intent for procurement to ensure we are complying with the Procurement Regulations 2015 and ensure the safety of staff from the purchase of unreliable, untrustworthy or dubious goods, services or works. The document also takes into account recommendations made by the Local Counter Fraud Team.

The procedure gives an overview of the procurement process as well as an explanation of the key steps involved for the different types of procurement. A high level procurement milestone guide, with indicative timings to support projects where procurement is required, is also included.

It was noted at a recent internal audit that we have a strong framework of controls in place across procurement processes.

The Policy and Procedure has been approved by the Senior Management Team.

The documents have been combined into one document.

The Audit and Risk Committee approved the policy and procedure on 8th May 2018.

The Board noted the updated Procurement Policy and Procedure.

8.1.2 Risk Policy and Procedure

The Risk Policy and Procedure has been reviewed and has been combined into one document. Key changes are:

The policy section:

- Updated the statement of intent to reflect the NHS Resolution strategy – page 3
- Updated the paragraph in relation to assurance to reflect the new Board Assurance Framework purpose and process – page 5
- Updated the roles and responsibilities as agreed with the Chair and ARC chair –

Appendix E page 22

The procedure section

- Updated appendix C – changed IS risk category to GDPR as agreed with the Head of Governance- page 19

The Senior Management Team have approved the Policy and Procedure and the Audit and Risk Committee endorsed the document on the 8th May.

Implementation of the policy and procedure will be discussed at the Operational Review Group. Work on embedding risk management across the organisation will be discussed at a future Senior Management Team meeting.

The Board approved the Risk Policy and Procedure and thanked Catherine O’Sullivan for the work undertaken on reviewing the documents.

9 Any Other Business

9.1 There was no other business.

10 Date and Venue for next meeting

10.1 The next Board meeting is scheduled for Tuesday 11th September 2018 at 10.00am, venue tbc.

Signed

Date