

Board Meeting Minutes

Part 1

Date and Time of Meeting:	Wednesday 22nd March @ 9.00am
Venue	Room G-2, Ground Floor, 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) Dr Mike Durkin, NHS Improvement (Ex-Officio, Associate Non-Executive Board Member)
In Attendance	Alan Hunter, Director of Claims Ian Adams, Director of Membership and Stakeholder Engagement Representatives of the DH Sponsor Team Tinku Mitra, Head of Corporate and Information Governance Julia Wellard, Executive Assistant (Minutes)
Apologies	

1 Administrative Matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by referring to the Secretary of State's public announcement that the NHS LA will become NHS Resolution on the 3rd April 2017. The announcement gave credit to the NHS LA's leadership for putting forward the proposals around the new name and strategy which underpins the new focus.

The Board congratulated management across the organisation for their hard work in bringing together all aspects of the new name and strategy together.

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 Wednesday 25th January 2017

The minutes of the Board meeting held on Wednesday 25th January 2017 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 – a report to be submitted on the review of the Purchase Ordering process for the second half of the calendar year.

The following actions were closed:

- Review of FHSAU panel members – a paper was included on the agenda on succession planning for FHSAU panel members.
- Business Continuity Policy – to ensure that the policy/strategy includes how the plan will work in practice and ensure staff are aware of contacts. A business continuity test was undertaken by the Senior Management Team recently and any training needs are being identified. Contact cards are being issued for staff on who to contact when an incident occurs. The Corporate Governance team will also be looking at holding awareness sessions.
- Capability Policy – the reference to dismissal and the template letter in Stage 3 has been rectified and now tallies.

2 Operational Items

2.1 Chief Executive's Report

Discount Rate

The Lord Chancellor announced the change to the Court Discount Rate on the 27th February with a reduction from +2.5% to -0.75%. The announcement included a commitment to ensuring that the NHS LA has appropriate funding to cover the changes to hospitals' clinical negligence costs. A consultation was also announced to consider whether a better or fairer framework for claimant and defendants can be identified through options for reform. The Board recognised the serious impact on the NHS LA and its members, the considerable uncertainties that resulted and noted that work is continuing on estimating the impact on the NHS LA's provision and future cash-flows. Discussions continue with DH on how the additional funding will be arranged.

The new discount rate came into effect on 20th March 2017.

Legal Panel Tender

The tender for the provision of health related legal services was launched on the 21st February 2017 and is aimed to ensure value for money and high quality legal services for NHS LA members. The current contracts are due to expire in May 2017. The next step will be the evaluation phase.

The Board noted the Chief Executive's report.

2.2 Performance

Finance

Members of the Board referred to the underspend on administration and this relates to the organisation operating with a considerable number of vacancies over the course of the year.

The strategy highlights that we will be looking to increase staffing levels in the claims function. Recruitment is also underway in relation to some long standing vacancies in NCAS.

Claims

The month on month volatility in received claims year on year to 31st January 2017 was presented showing that claims have continued to level off, albeit remaining at a high level. It was suggested that further analysis could be undertaken to see how long the pre-LASPO tail is likely to last. It was noted that we were receiving increasing numbers of post-LASPO claims as a proportion of the book and that pre-LASPO claims would start to be statute barred.

Action: DoC

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 FHS AU Panel Members Succession Planning

Following a request at the previous Board meeting, the Head of FHS AU prepared a paper providing assurance to the Board that adequate arrangements were in place to ensure business continuity in the event that current panel members do not apply for re-appointment, leaving the FHS AU under resourced until a new pool of panel members is in place.

It was noted that if a panel member decides to terminate their contract that they are required, under the terms and conditions, to give no less than three months' notice.

Of the six existing Committee Chairs, five have indicated they wish to be reappointed for a further two years. Pharmacy and lay members are not barred from reapplying. As appointments are on a rotational basis there will always be at least two people on every three person Committee with the relevant experience.

It was considered that the paper gave an overview of the current process rather than what should happen going forward to give assurance that we are planning ahead, including bringing in new people.

The Chief Executive will take this forward with the Head of FHS AU. It was noted that previously a NHS LA Non-Executive Director had been involved in recruitment and Mike Pinkerton offered to be involved, which was agreed.

Action: CE

The Board noted the position.

3.2 FHS AU – delegation of Alternative Primary Medical Services Contracts (APMS) Dispute

Following 22 APMS applications for dispute resolution to the Secretary of State under the provisions of the NHS Act 20116, the Secretary of State has delegated special Directions for the NHS LA to process and determine the disputes. This work has been included in the FHS AU's establishment with no extra resource and the legal costs will be charged back to DH.

The Board recognised that this was a compliment to the FHS AU team that they have been asked by DH to undertake this work.

The Board noted the position.

4 Liaison with Key Stakeholders

4.1 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 the NHS LA.

It was noted that the NHS LA customer survey went live on the 31st January and ran until the end of February. The results will be brought back to the May Board.

It was noted that at the time of writing the Communications and Stakeholder Engagement Report, there was no coverage to report on the Discount Rate.

The Board noted the Stakeholder Engagement Report.

4.2 Feedback from Voices from the Past event – 30th November 2016

The Safety and Learning Team provided an evaluation paper demonstrating the impact from the Voices from the Past educational event held in Birmingham on 30th November 2016. From the 146 people who attended the event, 48 evaluations were completed which identified that the event had been well received and delivered its intended outcome.

The event was entirely interactive with breakout sessions based around pre care, during care and after care thereby addressing the whole claims pathway. The event also formally launched 'Christine's story', a patient's story of their experience of being involved in a claim against the NHS. Christine was also present at the event and expressed that she was pleased that there was learning from her experience.

A programme of events is currently being planned through regions to raise the profile of the NHS LA with members, stakeholders and patients. The next event is being held in Bristol on 21st April titled 'Mindful of the gap' which has a mental health focus. We will be looking at feedback and lessons learnt after 2-3 events have taken place in order to see whether any modifications are needed to the content.

One of the key points to note is that the events are owned by the membership and that they work together to learn from each other.

The team are looking to see what other organisations are already doing work in this area so that we can work in partnership with them and we already have links with NHS England and NHS Improvement.

The Board noted the position.

5 Key Developments

5.1 Legal Developments

Fixed Recoverable Costs (FRCs)

The Department of Health's consultation on FRC was published on 30th January and closes on 1st May 2017. Sir Rupert Jackson is undertaking a wider review on FRC and whether it should be introduced across all classes of civil litigation.

Manna v Central Manchester University Hospitals NHS FT (Court of Appeal, 18/01/17)

This case is a quantum-only cerebral palsy case where a substantial award was made in respect of accommodation costs following the wish of both parents (who divorced some years ago) to resume the shared care arrangement and an award was made for the cost of two adapted properties. Although we appealed, the Court of Appeal upheld the ruling with the view that it was in the claimant's best interests to have two adapted properties in order to restore the relationship with his father.

This is the first time such a ruling has been made and it is likely that we will see other similar claims being brought. The Board asked to be kept informed and to ensure that other interested parties are made aware of the impact of this ruling.

The Board noted the position.

6 Oversight of Key Projects

6.1 NHS LA contribution to ATAIN programme

A programme was set up by NHS Improvement called ATAIN (avoiding term admissions into neonatal units) to reduce harm leading to avoidable admission to a neonatal unit for infants born at term by identifying themes that could alert clinicians to common consequences. A number of clinical experts across different organisations, including one of the NHS LA's Safety and Learning leads, have been working together to provide insights, recommendations and examples of good practice for healthcare organisations and professionals to prevent babies being admitted to hospital unnecessarily.

The outcome of the review has led to an article being published in a peer review journal in August 2016, an e-learning package being put together to support midwives and neonatal staff, work taken forward with the early notification team and a 'Did you Know' leaflet has been produced for front line clinical staff to make them aware of avoidable harm, associated financial costs and common risk factors.

Next steps will be to review the 'Did you Know' leaflet based on feedback received during 2017/18 and consider how future 'Did you Know' leaflets can be replicated in terms of raising awareness on specific issues.

It was noted that this is an excellent opportunity for joint working in partnership. Although it is difficult to understand what impact the programme will have, there are direct impacts in terms of building relationships leading to collaborative partnerships and shared objectives which have informed key policy work. If the data from this work is used appropriately, we should, after a while, be able to see what the impact has been.

The Board noted the position.

6.2 NHS LA response to UCLP Economic Evaluation of NHS LA Bid Incentivisation Scheme

In 2014, a bid incentivisation scheme was rolled out by the NHS LA in support of Sign up to Safety, which resulted in over £18.7 million being awarded, on behalf of the Department of Health, to successful bidding trusts. The NHS LA received a total of 249 bids from 114 member trusts of which 47 trusts received funds.

An economic evaluation of the scheme was commissioned by the NHS LA, via a formal procurement exercise, which was awarded to UCL Consultants Limited, a subsidiary company owned by University College London. The evaluation explored three themes:

- Collecting robust 'cause of harm' data – key findings have been used to develop clinical outcome indicators and shadow indicators and have helped progress the establishment of the early notification process for maternity which comes into effect from April 2017.
- Reducing missed fractures in A&E – joint working with the Royal Colleges has led to the development of joint guidance for missed fractures in A&E and plans for a follow-up workshop.
- Reducing intrapartum harm – key findings indicate that measuring the effectiveness of interventions in terms of improvement is limited due to the quality of data and possibly premature.

The next step will be to publish the report and agree a number of recommendations which have been put forward which will be incorporated into the 2017/18 Business Plan objectives. Key learning will also be shared to support any future proposed initiatives. The outputs in terms of the work on identifying indicators and work on early notification for obstetric harm have been extremely useful.

The Board noted the report.

7 Board Committee Reports and Minutes

7.1 Audit and Risk Committee minutes from meeting held on 16th October 2016

The Board noted the minutes of the Audit and Risk Committee meeting held on 16th October 2016.

8 Other matters requiring Board attention

8.1 Policies for Approval

The Sickness Absence and Promoting Attendance Policy has been reviewed and updated as part of an internal governance review on policies and procedures to ensure that managers are aware of their responsibilities in terms of dealing with sickness absence. The key changes are:

- Removal of the Bradford Score and introduction of trigger points (3 stage process)
- Paid phased return period amended from 12 weeks to 6 weeks (longer periods can still be supported by temporarily reducing hours or using annual leave)
- Clarifying manager and staff responsibilities within the process
- Clarification of appeals process
- Audio recording of final review hearings
- Contents page, equality impact assessment and flow chart for process added.

It was considered that the trigger point of 10 days was quite generous. This had been discussed at length with the Joint Negotiating Committee (JNC) and the figure is in line with other organisations across the NHS and more widely across government. The trigger points are used as a basis for monitoring attendance. This will be kept under review going forward to ensure that the policy is working fairly. The HR team are also ensuring that ongoing legacy cases are being managed appropriately. We are aware that there will be one off incidences where, for example, a member of staff has broken a leg or is in hospital for an operation and the policy is

more around helping managers to identify any patterns of sickness absence. The Director of Finance will check with the Head of HR whether the policy is in line with other ALBs.

Action: DoF

The Board approved the Sickness Absence and Promoting Attendance Policy.

8.2 Policies for Noting

The following policies have been reviewed and updated as part of an internal governance review on policies and procedures. The policies have already been reviewed and approved by the Senior Management Team and by JNC.

Retirement Policy

The key changes are:

- Added detailed general guide for completion of Form AW8
- Inclusion of EAP single access information
- Removed need for flexible retirement options to be signed off by WSG i.e. reduced hours. Retire and return still to be passed via WSG.

Annual Leave Policy

The key changes are:

- Removed example calculations
- Removed leave card template (now on intranet and to be updated annually)
- Removed reference of the need to use leave when returning from sick leave. Taking leave in the current leave year is the default position, with processes already in place for requesting carry over into a new leave year.

Maternity Leave Policy and Procedure as well as Maternity Support, Parental and Adoption Leave Policy and Procedure

The key changes relate to clarification of entitlement on pay during Paternity Leave, eligibility and entitlement of leave and pay under the NHS Contractual maternity pay scheme.

The Board noted the Maternity Leave Policy and Procedure as well as Maternity Support, Parental and Adoption Leave Policy and Procedure, Annual Leave Policy and Retirement Policy.

It was noted that a programme of training is being rolled out from February 2017 around the launch of all new policies.

The Board were reminded that policies which require Board Approval are those which relate to areas where the role of the Board is to ensure that the organisation is compliant with relevant legislation, or where the policy is a key operational control to manage risks against strategic objectives.

Policies which are referred to the Board for noting are those which relate to areas for which the Board seek assurance that SMT have controls in place to manage business processes and for which authority to approve has been delegated to the SMT.

8.3 Governance Update

An update was provided on two governance issues as follows:

It was noted that amendments in relation to Board membership and Board quorum requirements have been made to the NHS LA's (Establishment and Constitution) Order 1995 and the NHS LA

Regulations 1995 which will come into effect on 1st April 2017.

It was noted that the regulations had been amended to state that there should be up to five Non-Executive Directors and five Executives on the Board membership. This has already been progressed and we have been given agreement to appoint a new Non-Executive Director with the skills necessary to take over from Andrew Hauser as Chair of the Audit and Risk Committee when he leaves at the end of November 2017. We will also recruit for another Non-Executive Director before the end of October 2017 giving us a total of 4 Non-Executive Directors on the Board once Andrew's term ends.

The Chair noted that although not specified in the Regulations the intention was that we should aim for a Board with an equal number of Non-Executive Directors and Executive Directors.

A NAO evaluation questionnaire of Board effectiveness was undertaken by the Corporate Governance Team and a report has been produced setting out the positive findings and areas for improvement. Internal Audit were also asked to review the findings and confirm that they were consistent with their findings. There were no matters of concern raised or gaps identified. Effectiveness evaluations will be taken forward annually.

It was noted that Training requirements for Board members was considered in the review. The Chair asked Board members to feedback comments in relation to training needs which can be brought back to a future Board for discussion.

Action: All Board

The Board noted the position.

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 17th May 2017 at 9.00am and will be held in BR1, First Floor, 151 Buckingham Palace Road, London.

Signed

Date