

Board meeting minutes (Part 1)

20th March 2018

10:00 – 15:30

Room G4, 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
Vicky Voller	Director of NCAS (by telephone)
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	Joint Acting Director of NCAS
Karen Wadman	Joint 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 Dr Alice Oates, Clinical Fellow in Mental Health, who attended the meeting as an observer.

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 25th January 2018

The minutes of the Board meeting held on Thursday 25th January 2018 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.

The following actions were rolled forward:

- NHS Resolution and GIRFT – Head of Governance to circulate examples of Trust dashboards to the Board.
- Sickness absence – Head of HR to look into the possibility of breaking down illnesses of the category ‘anxiety/stress/depression/other psychiatric illnesses’. HoHR to raise with McKesson that the category reflects different illnesses and whether it could be changed.

The following actions were closed:

- NHS Resolution’s Customer Survey – All Board to provide any comments on the questions to the Director of Membership and Stakeholder Engagement – comments were provided.
- Complaints Policy – Head of Governance to check whether there needs to be an appeals process against the CE’s decision on complaints. The Chair raised this with the Ombudsman and it is not uncommon for complaints to be escalated to Chairs and it was agreed that the process would remain as is.

2 Operational items

2.1 Chief Executive’s Report

Cyber Essentials Plus certification

In order to publicly demonstrate our commitment to cyber security as well as to provide a benchmark for our stakeholders, NHS Resolution has successfully applied for certification under Cyber Essentials Plus. Currently, all bidders for central government contracts need to have at the very least, the basic Cyber Essentials certificate and going forward we will need to insist that any contractor that holds or processes our information have this certification as well as ISO 27001 or similar.

The Board congratulated the Head of IT and his team for this achievement and the Chair will send a note to the team.

Action: Chair

Court of Appeal win

NHS Resolution were successful in the Court of Appeal in relation to three test cases concerning the recovery of legal costs where claimants transferred their funding from legal aid to conditional fee agreements and after the event insurance. The Court of Appeal stated that the relevant lawyers had given inappropriate advice to their clients and were therefore not allowed to recover success fees on the cases. This is a good result which has saved the NHS £270,000 in legal costs with significant further savings expected on cases waiting in the wings. A press release has been issued.

The Board congratulated the Senior Management Team and those involved in the case including costs consultants, Acumension, on this achievement.

Civil Liability Bill

The Civil Liability Bill will be introduced in the House of Lords today. The Bill includes changes to the way the personal injury discount rate is handled in England and Wales. The Bill introduces the Government's proposals to reform the way in which the personal injury discount rate is set which until now has been based on returns on very low risk investments and which was cut in 2017 from 2.5% to minus 0.75%. The Bill will require parliamentary approval and if implemented, a committee of experts will be convened to advise the Lord Chancellor. There will be a requirement to review the personal injury discount rate every three years as a maximum, allowing the discount rate to accurately reflect changes in investment returns. It is expected that the process of implementing legislation will take some time.

Treasury Minute

The Treasury Minute with government's response to the PAC recommendations was published on the 1st March and a copy was made available to the Board.

A progress report will be expected every six months and it was suggested that an update be brought to each Board meeting. The work envisaged is included in the Business Plan.

Action: CE

In terms of the PAC conclusion that 'the NHS's culture when things go wrong appears to be predominantly defensive, rather than candid and transparent, which limits its ability to learn lessons', it was considered that it was not only the remit of NHS Resolution and DHSC to work with trusts and there is a lot of activity that will require an integrated approach.

The proposal for Fixed Recoverable Costs (FRC) continues to progress and a working party is to be convened to agree both a matrix of costs and a new procedure. It is expected that NHS Resolution will be invited to participate in the working party.

The Board were also provided with an update on the CNST Maternity Incentive Scheme 10 actions.

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

An update was provided on clinical claims volumes and with two weeks to year end, claim numbers have been levelling off and therefore unless things change, we are likely to be reporting a flat trend on incoming clinical claims in the 2017/18 Annual

Report and Accounts.

NCAS Performance

In terms of new requests for advice, although there is a slight decrease, there are indications that we are seeing an increase of re-opened cases. However, there is currently no automated means to readily identify the number of reopened cases. The team are looking at how these cases can best be identified and categorised, and are undertaking an exercise to review why there appears to be an increase of cases being reopened. We have also seen an increase in practitioners contacting us. This is not captured in our activity and the team are looking at how this might be captured in future. The decrease in cases is fairly small as primary care is gradually increasing and we are at the same point as we were last year.

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

As reported earlier in the meeting, we were proactive in reporting the decision of the Court of Appeal in relation to three test cases concerning the recovery of legal costs where claimants transferred their funding from legal aid to conditional fee agreements and after the event insurance.

A sharing and learning event was held on the 8th March in Newcastle on 'Inquests: what lies beneath' at which the Chief Coroner presented. The event was well attended and is a good example of working closely with the Chief Coroner and responding to deaths. There is an appetite for us to do more in this area generally.

The second annual customer survey went live in February with approximately 4,000 invitations sent out to claims and legal contacts, medical directors and HR leads. The questionnaire was wide ranging and focussed on what people thought we were like to do business with and measuring awareness and understanding of our brand and expanded focus. A question was raised on how we raise engagement particularly with Finance Directors, CCGs, commissioners and the wider maternity community. There is a top 20 stakeholder engagement programme which is in place which is reviewed by the SMT and is reflected in the Business Plan in terms of prioritising our engagement. There is also an internal accountability process where the Chair and Senior Management Team meet with key stakeholders bringing back the intelligence from those engagement opportunities. The Chair suggested that a

short report or Board session is arranged to look at what the Senior Management Team feel is important and what is being done around engagement. The Chief Executive offered to share a report off-line from the Executive team on how we are approaching engagement so that the Board could provide views prior to a paper coming to the May Board.

We have been engaging with our Independent Sector colleagues via an event and meeting with NHS Partners. The Safety and Learning report, which is appended to the Communications and Stakeholder Report, provides further information on the extent of engagement undertaken by the Safety and Learning team. There are members of the team that have specific engagement responsibilities i.e. with CCGs, Independent Sector members, maternity etc.

Although we meet with maternity members and CCGs in terms of safety and learning, there was some question whether maternity members understood the financial side and whether CCGs understand the wider implications on provider insurance and that we should ensure that messages are tailored so they understand all areas of the business.

Action: DoMSE/CE

A just culture workshop was held with a number of HR Directors around the membership which was well received and brought an interesting lens particularly for the work which is progressing within the Faculty of Learning.

DAC Beachcroft are taking part in a BBC Radio 4 programme on 'Unreliable Evidence' about clinical negligence' which is looking at the legal landscape in which we operate.

The Board noted the Stakeholder Engagement Report.

5 Key Developments

5.1 Important Decision on Prison Healthcare - *Razumas v. Ministry of Justice (High Court, 12 February 2018 – Cockerill J.)*

This case involved a claimant who was in custody at six different prisons between November 2010 and January 2013. The claimant's healthcare needs appear to have slipped and his lawyers sued the MoJ alleging a non-delegable duty of care. However, the MoJ does not have a duty for commissioning healthcare in prisons, which is the responsibility of NHS England. The judge held that the claim for non-delegable duty failed. Furthermore, as the claimant had been 'fundamentally dishonest' in giving evidence in court, having lied about a number of aspects, the claim was struck out in its entirety.

There are increasing numbers of claims alleging non-delegable duty on the part of the NHS and this judgment makes clear that the full statutory background must be examined before a decision can be reached. The "fundamental dishonesty" issue is becoming a valuable argument in defendants' armoury where claimants are found not to be telling the truth, because it can result in the entire claim being struck out, even if parts of it might otherwise be valid.

There is a distinction between commissioning and providing. NHS England does not have a duty to provide prison healthcare and it cannot therefore have a non-delegable duty in relation to provision because it is not a provider of healthcare only a commissioner. It was considered that we should look further into the issue of responsibilities and claims trends in this area.

Action: TCD

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 Audit and Risk Committee minutes 31st October 2017

The minutes of the Audit and Risk Committee meeting held on 31st October 2017 were noted by the Board.

Recruitment of additional members to the Committee is continuing.

7.2 Audit and Risk Committee Terms of Reference

The ARC Terms of Reference were reviewed at its meeting on 22nd February which took into account the HM Treasury Audit and Risk Assurance Committee handbook which sets out good practice for Audit and Risk Committees in line with the corporate governance in central government departments: Code of Good Practice 2011. There are no significant changes and the review included clarification of ARC responsibilities and its reporting requirements to the Board as well as a cycle of matters to be considered throughout the financial year and replaces the previous section on information requirements.

It was noted that quorum for meetings should include two Non-Executive Directors, one being the Chair.

The Board approved the updated Audit and Risk Committee Terms of Reference.

8 Other matters requiring Board attention

8.1 Policies Update

An update on policies which are currently under review or proposed to roll forward with little or no change was provided as follows:

Hospitality and Gifts Policy - date of review November 2017

Work is underway but the draft has to incorporate the recommendations from the Local Counter Fraud Team and the aim is to bring it to the May 2018 Board meeting for approval.

Workforce Development Policy - date of review January 2018

This was a new policy which was issued 12 months ago. Given that there are no changes, it is proposed to roll this forward for 12 months to January 2019. This policy requires SMT approval and noting by Board.

IG Strategy - date of review November 2017

Information Security policy - date of review March 2018

Both these policies are impacted by GDPR and the new DP Bill. It is intended to refer these to the IG Group and SMT for approval and then to the May Board for noting. This is because there is further work to be done to review current asset owners in light of our GDPR mapping exercise and policies reference them, as well as changing responsibilities and roles to align to GDPR and the new DP Bill.

Risk management policy and procedure - date of review November 2017

This policy will be informed by the findings of the current audit on internal risk management which is currently under review. It is proposed that the policy will go to ARC in May 2018 and to the next available Board for approval.

Procurement policy and procedure - date of review March 2018

This policy will be informed by feedback from the RSM counter fraud team and current internal audit review update. It is intended to take the policy to the May ARC meeting and then next available Board for noting following SMT approval.

Business Continuity strategy and policy - date of review January 2018

It is proposed to bring the policy to the May Board for approval as reviews are being undertaken with business areas to inform revised business impacts and these will inform the business continuity plan which sits under the strategy and policy.

The Board approved rolling forward the above policies.

8.2 Governance Update

In order to ensure that the Board regularly reviews its performance and that the right governance arrangements are in place, a Board self-evaluation has been undertaken through the use of an NAO Board Evaluation Questionnaire in line with the Corporate Governance in Central Government Departments: Code of Good Practice 2011 which will inform the Governance Statement by the Accounting Officer. The questionnaire was completed by the Corporate Governance Team by reviewing the Board agendas and papers throughout the year.

A summary of the findings was presented, most of which were positive. It was noted that in terms of improvement, further reporting was needed on delivery chain and project management i.e. the Board should receive robust post-evaluation reviews of all major projects and programmes to enable an assessment of whether all the benefits were realised. No major projects were completed in the year but it is recognised that ensuring and monitoring benefits realisation is an area for improvement in future.

The Board confirmed they agreed with the findings of the Board self-evaluation but that the Board should undertake an independent Board effectiveness review as the last review was undertaken three years ago. Therefore a Board effectiveness review

will be planned for next year and consideration given to who could best do this, including incorporating this in the internal audit plan. This could most usefully be undertaken later in 2018/19 once the proposed new Non-Executive Board members have been in post for a few months. It was suggested that the review could be undertaken through a facilitated session.

The Board noted the Board governance update.

9 Any Other Business

9.1 AGM

Due to diary commitments, the two dates in August which were put on hold for the AGM are now not convenient. A new date of Thursday 26th July will be put on hold for the AGM and a note will be sent out to confirm.

Action: JW

Information Governance e-learning

Once per year all staff must complete Information governance e-learning and a tailored e-learning programme which looks at the specific challenges we face at NHS Resolution, which is followed by an assessment, has been built. The Chair considered that this should also be completed by Non-Executive Directors and will arrange for the information to be circulated.

Action: Chair

10 Date and Venue for next meeting

10.1 The next Board meeting is scheduled for Wednesday 16th May 2018 at 10.00am and will be held in 151 Buckingham Palace Road, London SW1W 9SZ – room tbc.

Signed

Date