

Board Meeting Minutes

Part 1

Date and Time of Meeting:	Wednesday 17 th May @ 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 Representative of the DH Sponsor Team Tinku Mitra, Head of Governance Tracy Coates, Safety and Learning Lead Julia Wellard, Executive Assistant (Minutes)
Apologies	

1 Administrative Matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everyone, in particular Tracy Coates who attended the meeting as an observer as part of her Leadership Development Course.

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 22nd March 2017

The minutes of the Board meeting held on Wednesday 22nd March 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:

- Claims Performance – analysis to be undertaken on how long pre-LASPO cases will last for next meeting. This has been completed.
- FHSAU Succession Planning – Chief Executive to liaise with Head of FHSAU re appointing new people and staggering appointments for FHSAU panel members. Following discussion, Mike Pinkerton visited the FHSAU office and it was confirmed going forward that half the panel will be refreshed with a different date for other panel members.
- Sickness Absence Policy – Director of Finance to ensure that the trigger points in the policy are aligned with other ALBs. This has been completed.
- Board Governance – All Board to feedback on training requirements for the Board as a whole to be discussed at the next meeting. This has been completed.

2 Operational Items

2.1 Chief Executive's Report

Launch of NHS Resolution and publication of our 5-Year Strategy "Delivering Fair Resolution and Learning from Harm"

Since the last meeting, the Secretary of State announced the NHS LA's change in name to NHS Resolution on the 21st March 2017 which was shortly followed by the publication of our 5-Year Strategy setting out NHSR's future direction and focus. NHSR was launched on the 1st April with a staff briefing event, communications circulated to Arm's Length Bodies, and all Chairs, Chief Executives, Finance Directors and claims contacts of Trusts. The website has a new landing page which focuses on the Strategy and the early notification scheme.

The new rebranding and 5-Year Strategy has led to a number of constructive discussions and offers of support. The Chair attended the Bristol Conference "Mindful of the Gap" on the 21st April and received a number of positive comments.

The Business Plan for 2017/18 has also been approved by DH and a copy can be found on the website.

Launch of the Early Notification Scheme for cases of severe brain injury at birth

The Early Notification Scheme was launched on the 1st April 2017. The Scheme's purpose is to improve the experience of families who are involved in these tragic events as well as providing support to health care staff and facilitate actions such as candour and disclosure with the family. The Scheme also gives an early opportunity for a preliminary investigation of legal liability and greater visibility of the incidents in order to share learning.

A joint letter was issued with the RCOG setting out the criteria for reporting incidents of severe brain damage at birth and notifications are beginning to come through with 25 received so far. It is encouraging that trusts are exercising caution and notifying us of incidents that may potentially be of high value. A new team is being established to run the Scheme. It was considered that 25

cases was quite high for just over a month and whether there will be enough resource in the team going forward. The new Team Leader is currently in the process of recruiting case managers and in terms of clinical support, recruitment to a joint post for a lead obstetrician and a lead midwife have just been completed in order to bring clinical expertise to the Scheme. This work has also been included in the panel tender. Workload for the team will be kept under review.

An update on progress will be reported to the next Board.

Change to the Personal Injury Discount Rate and subsequent Ministry of Justice (MoJ) consultation

An announcement was made by the Lord Chancellor on the 27th February to reduce the personal injury discount rate from 2.5% to -0.75% which was implemented on 20th March 2017. Work has been taken forward to make adjustments to claims reserves and the impact will be accounted for in the year end accounts.

A consultation was published by the MoJ on the 30th March which examines what principles should guide how the rate is set, how often the rate should be set, who should set the rate and the issue of periodical payments orders which are used significantly in claims where there is a considerable ongoing future loss. A formal response was submitted by NHSR before the consultation closed on the 11th May 2017. We expect that it and other responses will be made public in due course.

NHS Resolution accredited by Investors in People (IIP)

The Chief Executive was pleased to announce that NHSR had achieved the Investors in People "Developed" standard on 24th March 2017 which is a credit to the high level of staff participation in the process. The IIP report concluded that the organisation had a high level of openness and transparency with a strong work ethic and strong beliefs in learning and development. The report also identified some areas for improvement which includes cross functional working.

An action plan from the assessment is being developed.

The Board commended the Senior Management Team for their hard work in achieving this accreditation.

Update on launch of NCAS' Assisted Mediation Service

The NCAS Assisted Mediation Service was formally launched on the 24th April which aims to bring together the parties concerned in order to help them find a mutually acceptable way forward enabling a professional working relationship. The service will be evaluated going forward for effectiveness by seeking feedback from all parties after each mediation and learning will be taken forward in order to develop the service.

Cyber Security Incident – 12th May 2017

The Head of IT attended the meeting to update the Board on the large scale ransomware "infection" which has been spreading through a number of NHS systems but had not directly impacted NHSR. The Board commended the IT Department for responding proactively to the warnings which were sent out prior to the incident. Steps have been taken by NHSR to tighten security and apply stricter controls on emails being received throughout the organisation which has meant that all hyperlinks in emails have been blocked. The IT team will be implementing a workflow to allow access to blocked hyperlinks where there is a business need and hyperlinks from organisations which we liaise with on a regular basis have been reactivated, however all hyperlinks are checked against a national database before they are released to staff. It was considered that it is likely that further variations of the virus will appear and the Head of IT is confident that sufficient controls have been put in place and we have had confirmation from our

endpoint security providers that the anti-virus on NHSR's workstations actively block this virus. Further steps are being taken to continue to review our IT systems for readiness to deal with variants of the Wanna Cry virus, double check our firewall rules, and audit IT staff member workstations to ensure compliance with policy and ensure security is not being circumvented in any way.

Notification of the incident was received via the NHS Digital portal which we have access to. This is included on the Strategic Risk Register and is scheduled to be discussed further at a risk workshop for the Senior Management Team on the 24th May and at the Audit and Risk Committee on the 8th June.

It was noted that cyber liabilities cover was offered to members under the schemes a few years ago but there was limited interest and we therefore decided not go ahead with the cover. If requests for cover are received as a result of the cyberattack incident, this will be brought to the Board for further discussion Before any decision is made.

The Board thanked the Head of IT and his team for the speed and effort in reacting to the incident.

The Board noted the Chief Executive's report.

2.2 Performance

A report on financial performance and key performance indicators was presented which was discussed at the recent annual review meeting with DH together with a report on key features and challenges for the year. Positive feedback was received from DH with particular emphasis on the pricing consultation and the launch of the rebrand and strategy which has been cascaded to staff.

For the month on month volatility in received claims year on year, it was noted there had been a considerable increase in the last few months of the financial year which may be attributable to the limitation period on pre-LASPO funded claims coming to an end.

The NCAS number of referrals by specialty graph makes reference to medical students and it was noted that we do receive referrals for medical students which largely relates to conduct around social media issues.

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

Corporate Governance

A year-end summary for information requests under the Data Protection and Freedom of Information Act and information incidents for FY16/17 was presented which will be included in the Annual Review and Accounts.

The Head of Corporate Governance will ensure that all reports which are required to be seen by the Board have been reported over the last year.

Action: HoG

The Board noted the Data Protection and Freedom of Information requests and information governance incidents reports.

3 Management proposals requiring Board input or approval

None.

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 corporate communications and media relations, digital communications, stakeholder engagement, events across NHSR and NCAS educational events.

The key items to note were that the NHS Resolution Business Plan, Five Year Strategy and a refreshed Saying Sorry leaflet have now been published. In addition, the new NHS Resolution website was launched on 7th April. Work will continue on developing the website during the first half of the 2017/18 financial year. It was noted that when entering NHS Resolution into Google search engine that the organisation now appears near the top of the list from the search results. The website which has been built around the new URL is a holding site and has principally been constructed around the new strategy. It was noted that the bounce rate had also gone down. It is expected that migration from the old website will be completed in the first half of the financial year.

As reported at the last meeting, an emergency contact card for the Senior Management Team and Board has been completed and circulated.

The Board noted the Stakeholder Engagement Report.

5 Key Developments

5.1 Ian Paterson – Breast Surgery at Heart of England NHS FT

The Heart of England NHS FT commissioned an external review in 2007 following concerns raised about breast surgery procedures for cancer patients undertaken by Mr Paterson, specialist breast surgeon. The review concluded that Mr Paterson was using an unrecognised technique for mastectomies “cleavage sparing mastectomy” (CMS) where an amount of residual tissue is left for cosmetic effect even though it was agreed that he would not perform these procedures in December 2007. Mr Paterson was subsequently referred to NCAS (which was not then part of the NHSR) in July 2007. The review resulted in a number of patients being recalled and further treatment offered.

The Trust subsequently commissioned an independent review led by Sir Ian Kennedy and the report was published in December 2013 which was critical of the Trust and its response to concerns raised.

There are currently 281 cases against the NHS which have been settled with 25 claims still outstanding, in some of which liability has not been accepted as there are a number of activities which Mr Paterson undertook which were not negligent. One of the main issues relates to the fact the MDU, to which Mr Paterson belonged, have ceased cover meaning there is no indemnity in existence in relation to private claims against Mr Paterson. Claimants’ lawyers are looking at alternative ways of involving a solvent party and in those claims allege that the trust owed a duty of care to Mr Paterson’s private patients and the trust failed to inform the private sector in a timely manner of the concerns. Spire commissioned an independent report which found that Spire had failed to independently audit Mr Paterson’s activities and deal with his non-compliance. The Trust’s position is that it does not owe a duty of care to private patients and letters to this effect have been issued stating that private claims will not be paid by the NHS.

There are a number of test cases which are proceeding to trial commencing 30th October 2017 where this point in law will be tested.

The Secretary of State has announced he wants to commission an inquiry into the Paterson affair.

A question was raised in relation to the appraisal of Mr Paterson undertaken by the trust and revalidation. However, revalidation is based on the assumption that the information provided to the trust is correct. The processes for the private sector are unclear.

The sharing and linking of information across the system and how NHSR's information contributes to this is an area which we will be examining and which would be brought back to the Board for further discussion.

Action: SMT

The Board noted the position.

5.2 Darnley v Croydon Health Services NHST

This case involved the claimant being taken to A&E at Mayday Hospital following a violent blow to the head during an assault. The Hospital receptionist recorded the claimant's details and that there was a 4 to 5 hour waiting time to be seen. Although the claimant was in pain he decided to go home leaving 19 minutes after arriving at the Hospital. The claimant's condition deteriorated whilst at home and an ambulance was called and he returned to hospital where he received a scan which revealed an extradural haematoma and was too late to prevent serious injury leaving the claimant permanently brain damaged.

During the claimant's first attendance at hospital, the receptionist failed to inform the claimant that he would be seen by a triage nurse within 30 minutes who would have determined the urgency of him being examined by a doctor and had this process taken place the permanent injury would have been prevented. A claim was subsequently brought against the Trust on the basis that the receptionist had been negligent in not giving the claimant adequate information.

Leading judgment was given by Lord Justice Jackson who was satisfied that there is no general duty upon A&E receptionists to keep patients informed about likely waiting times and therefore it is not fair, just or reasonable for a receptionist to be held liable in this situation.

Unfortunately the claimant now has incurable brain damage. This is the first case where it was alleged that the receptionist in A&E owed a duty of care to the health of the patient. The claimant's lawyers are seeking to appeal to the Supreme Court.

The Board noted the position.

5.3 Safe Space Consultation

A public consultation was launched by the Department of Health on the 17th October 2016 on whether "safe spaces" should be introduced into investigations in the healthcare sector. The consultation received a 60% response rate in favour of creating a safe space for national investigations by the Healthcare Safety Investigation Branch (HSIB) and this was implemented on the 1st April 2017. The law that is to be introduced to require applications to the High Court to get access to information shared in safe space is still subject to process. A Bill to introduce a safe space is going through to support this. There are some reservations expressed on extending safe spaces to investigations by NHS trusts and the government will not consider extending this until the experience of HSIB is known. The Government has also stressed that these principles will not replace existing policy on openness and whistleblowing, the statutory duty of candour or professional codes of conduct on candour.

The Board noted the outcome to the Safe Space Consultation.

5.4 Summary of legal and health service developments

A summary of the key legal and health service developments from the legal panel was presented. The key points related to the emerging experience on the Court Discount Rate, FRC, Rapid Resolution and Redress Scheme for Severe Avoidable Birth Injury, Deprivation of liberty, NHS staff survey 2016, and lawyers ban from advertising in health service premises.

The Board noted the summary.

6 Oversight of Key Projects

6.1 Mediation Update

The NHSR mediation service was launched on 5th December 2016 to support patients, families and NHS staff in working together towards the resolution of incidents, complaints, legal claims and costs disputes avoiding the need for the expense and potential emotional stress of going to court. The first quarter data for 2017/18 was presented showing that a total of 20 mediations have been completed with just over half successful at 55% with 15 scheduled to take place.

A programme of promotional activity and training/presentations is being taken forward with the claims teams to promote uptake of mediation. A mock mediation was undertaken on 28th February, which was well attended, to see how a mediation runs in practice. Case managers have also been set objectives to undertake a number of mediations throughout the year.

The data is being reviewed in order to identify what the financial value and benefits of the service are including comparing the mediated settlement cohort against the control group in order to get a measure of the financial benefits, time to resolution and other outcomes. It was considered that it would be helpful to measure the financial value however it may need the full life cycle of a case in order to properly assess the benefits and savings. It was suggested that reference to the mediation service should be included in the Annual Report to demonstrate the outcomes and savings from the service as well as the learning which has been a key element from the family's perspective.

It was agreed that a paper on the benefits of the mediation will be brought back to a future Board meeting.

Action: DoC

It was noted that incentivising panel firms to put forward cases for mediation by placing this on to hourly rates has been included in the panel tender. Panel firms are also being monitored in terms of performance on mediations.

The Board noted the position.

7 Board Committee Reports and Minutes

7.1 Minutes of the Audit and Risk Committee meeting held on 7.2.17

The minutes of the Audit and Risk Committee meeting held on 7th February 2017 were noted.

8 Other matters requiring Board attention

8.1 FHSAU Panel Member Appraisal Scheme

An annual report was provided on the FHSU panel member appraisal scheme which was approved by the Board in December 2013. The key points to note are:

- Five out of six Committee Chairs have all had their second successful appraisal; the sixth person is no longer sitting. All five will be eligible for an extension to their appointment for a further two years, extending their appointment period to five years in accordance with their Terms and Conditions.
- All six Pharmacy Panel Members had their second appraisal, prior to an extension to their appointment for a further two years in May 2016.
- All eight Lay Panel Members had their second appraisal, prior to an extension of their appointment for a further two years in January 2017
- All appraisals undertaken have received satisfactory outcomes.

The Board noted the position.

8.2 Incident Reporting Policy and Procedure

The Incident and Reporting Policy and Procedure has been updated following outcome from internal audit, recommendations from the ISO27001 audit and input from the Operations Review Group (ORG). The policy and procedure has been approved by SMT.

The Board noted the policy.

8.3 Whistleblowing Policy Update

Following recommendations by Sir Robert Francis' Freedom to Speak Up review published in 2015, a "Freedom to speak up: raising concerns (whistleblowing) policy for the NHS" is expected to be adopted by all NHS organisations in England. NHSR already has its own whistleblowing policy and procedure which was approved by the Board in September 2014. However, following discussions between the Director of NCAS and the National Guardian for Speaking up Freely, NHSR's policy is currently being reviewed to ensure that it demonstrates full compliance with the standard integrated policy proposed by the new framework which will include the appointment of a Freedom to Speak Up Guardian.

Mike Pinkerton, Non-Executive Director, has been appointed interim whistleblowing officer while the review of the policy and procedure is undertaken and will work with the team carrying out the review. .

The Board noted the position.

9 Any Other Business

The Board congratulated Ian Adams, Director of Membership and Stakeholder Engagement, on his appointment as Lord Mayor of Westminster. Ian will continue his role with NHS Resolution.

10 Date and Venue for next meeting

- 10.1 The next Board meeting is scheduled for Wednesday 12th July 2017 at 9.00am and will be held in BR1&2, 151 Buckingham Palace Road, London.

Signed

Date