NHS Resolution

Board meeting minutes (Part 1)

11th September 2018
10:00 – 15:30
Room G-1, 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
Sam Everington	Non-Executive Director (Associate Board Member)
Mike Durkin	Non-Executive Director (Associate Board Member)
Helen Vernon	Chief Executive
Denise Chaffer	Director of Safety & Learning
Joanne Evans	Director of Finance & Corporate Planning
Vicky Voller	Director of Practitioner Performance Advice
John Mead	Technical Claims Director (Associate Board Member)
In attendance	
Ian Adams	Director of Membership & Stakeholder Engagement
Sanjay Sekhri	Joint Acting Director of Practitioner Performance Advice
David Gurusinghe	Acting Director of Claims Management
Cheryl Lynch	Representative of DH Sponsor Team
Tinku Mitra	Head of Governance
Julia Wellard	Executive Assistant (Minutes)
Apologies	
Nigel Trout	Non-Executive Director

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everybody, in particular Vicky Voller, Director of Practitioner Performance Advice, who attended the meeting whilst on maternity leave. Vicky will be returning to work full time at the end of October.

Apologies for absence were received from Nigel Trout.

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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 18th July 2018

The minutes of the Board meeting held on Wednesday 18th July 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:

- Claims Management Performance – Director of Membership and Stakeholder Engagement 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. As this narrative might be a useful external publication and support work arising from the cross-government strategy, the Chief Executive and Membership and Stakeholder Engagement team are considering how this can be taken forward.

The following actions were closed:

- 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 – This is included on the agenda. An earlier paper (Aug 2017) was circulated to the Board. An updated paper, reflecting inputs from the Senior Management Team and Non-Executive Directors was included on the Part 2 agenda.
- 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 have reviewed and 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. We would need to justify why we would need it for all complainants under DPA.
- 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.
- 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 – This was raised at the HR Director's conference call on 19th July. From the responses received it is reported that some ALBs do not use the absence sub-category. Other respondents are already using the ESR self-service module for reporting absence, where the secondary absence category is available for use, but this is not mandatory. None of the respondents reported that they were actively capturing, recording and reporting on the absence sub-category information.
- Finance report – Chief Executive to check why the CNST contributions were more than planned. This relates to an additional sum included in the overall collect to allow for corrections to some contributions as well as the additional cover relating to new independent sector member contracts in year.

- Prison Healthcare – Technical Claims Director's report and Alice Oates' report (when available) to be shared with the CQC and NHS England to make them aware of the issues. This will be shared as a package as part of the communications plan for Alice Oates' report.
- Claims Performance - Director of Claims to produce a paper with broader analysis on long term claims trends and specialty. This was included on the agenda in Part 2.

2 Operational items

2.1 Chief Executive's Report

Learning from suicide-related claims - A thematic review of NHS Resolution data
Alice Oates' report 'Learning from suicide-related claims - A thematic review of NHS Resolution data' was published on 10th September. The report has been well received with coverage in the media. There are a number of events and activities which are being taken forward following publication, including social media coverage. There is a recommendation in the report for us to work more closely with the health and justice system in relation to these claims. We are seeking to use the report to raise awareness with the Minister for Mental Health. The report also serves to reinforce the message within the system that our role has changed.

'Finding the words' training for health professionals
Following Board approval of a pilot for multi-disciplinary training to help health professionals develop the confidence and skills to prepare for difficult conversations, training sessions are scheduled on 21st September and 5th December, in partnership with Sarah Barclay, Medical Mediation Foundation and Bliss, focussing on maternity staff to support the aims of NHS Resolution's Early Notification scheme. It is likely that the pilot will be extended to a further four sessions. This offer has received positive feedback and the fact that it was oversubscribed suggests that it will be of value to health professionals.

The Chief Executive also reported that a number of our existing regulations have been consolidated and re-written following detailed work with DHSC and the Government Legal Department, and reported on publication of the Ombudsman's Clinical Standard which details how PHSO will judge complaints about NHS clinical care and treatment.

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 July 2018 was presented.

It was noted that the performance relating to the number of invoices paid within 30 days continues to remain below target (95%) at 85%. Although this appears to be improving, it has been below target for some time and questions remain as to whether we are measuring this in the right way. There is an ongoing project looking at replacing our financial accounting systems which will include the way things are purchased which may be a contributory factor. Another factor relates to managers not dealing with purchase orders on the system properly which the finance team will seek to correct.

Claims Performance
The number of new claims received under CNST and LTPS for 2018/19 to 31st July is 3,687 (CNST) and 1,217 (LTPS) compared with 3,607 (CNST) and 1,172 (LTPS) in the same period in 2017/18 showing that there is a slight upward trend in claims. This is being closely monitored to establish whether this is being prompted by the ongoing review of fixed recoverable costs and further analysis will be undertaken.

A graph showing the pattern of new claims received by financial year across all schemes and a graph on month on month volatility in claims received under CNST and LTPS year on year from 2013/14 was presented.

A comment was raised on whether the claims trends reflected what was happening in the system in terms of increase in volume of procedures. It was considered that it might be helpful to look at these figures in the context of activity and workforce trends.

Primary Care Appeals Performance
All KPIs for the reporting period have been fully met save for the KPI for the average number of weeks taken to resolve appeals and disputes (oral hearing) which are proving problematic to arrange due to the availability of parties and difficulties/delays in NHS England being able to find suitable accommodation.

It was noted that the Appeals team have reviewed their KPIs to prevent skewing of cases which take longer than 15 weeks as previously they were all measured together at 33 weeks. The Chief Executive will liaise with the Head of Primary Care Appeals as any KPIs which are to have their parameters reviewed should be approved by the Board.

Action: CE

Safety and Learning Performance
All the Safety and Learning KPIs have been fully met:

In relation to the KPI to produce eight safety and learning products for members during in 2018/19, it was noted that these are available on our website and electronically but there is also a demand for hardcopy leaflets from trusts.

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

3.1 Primary Care Appeals service – Scheme of Delegation

The Secretary of State for Health and Social Care directed new work to NHS Resolution relating to appeals against overpayment recoveries made by NHS England against pharmacists. The Scheme of Delegation has been updated to incorporate this area of work.

In addition to the delegation of new work, most of the amendments relate to changes of names and roles. It was noted that reference to NHS Litigation Authority in the document is because it is still our legal name and we have to retain this in certain documents. However, this will be checked to ensure the right name is documented appropriately. It was suggested that it would be useful to have a structure chart including service descriptors for the Appeals team.

It was also suggested that it would be helpful to have a narrative in future of changes which are made to schemes of delegation and policies.

Action: CE

The Board agreed the Scheme of Delegation.

3.2 Primary Care Appeals service – Extra Scheme of Delegation

The Secretary of State for Health and Social Care directed additional dispute resolution powers to NHS Resolution relating to some APMS contracts. An extra Scheme of Delegation which appoints relevant Primary Care Appeals staff to process and adjudicate on these specific matters has been produced which is a one off delegation only including the matters referred to in the Direction.

The Board agreed the Scheme of Delegation.

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 items to note were:

- NHS Resolution's Annual Report and Accounts 2017/18 – media coverage focussed on the cost of negligence and the increased use of mediation. This was followed by NHS Resolution's AGM on 26th July 2018.
- In collaboration with the Finance and Safety and Learning teams, notifications were sent out to trusts on the Maternity Incentive Scheme.
- Alice Oates' report on Learning from suicide-related claims: a thematic review of NHS Resolution data was published on 10th September to coincide with World Suicide Prevention Day.

Work on the new website continues apace working with colleagues across the organisation on content and it is hoped that this will be ready by the end of the month. It was suggested that the Digital Communications Manager attend the Board Awayday to give a 'show and tell' on the new website.

Comment was raised around data sharing with our stakeholders, what they communicate and whether there was any opportunity to share communicating of information out to hospitals and GPs with our stakeholders by personalising information and ensuring we get the best benefit of communicating to hospitals and GPs. NHS Resolution's newsletter is receiving an increasing amount of recognition and as the audience grows there may be an opportunity to segment it. The website is an ideal way of segmenting webpages to specific audiences and we will be able to include case studies which are GP specific. There is a lot more we can be doing with our stakeholders and we already have joint initiatives with the RCOG and RCM as well as the Faculty of Learning. From those initiatives there will be a number of recommendations which will be taken forward in collaboration with our stakeholders. We are also linking up with the RCOG to see if there is an opportunity to share learning from claims via their podcasts and education channels.

It was noted that only approximately 50% of GPs are members of the Royal College of General Practitioners. NHS Resolution's new role in relation to GP Indemnity could enable this to be a test-bed for a more segmented approach to the market and to personalising engagement. Greater use of social media should also be considered. It was suggested that we could discuss this further with NHS England as we will want to target where we will have the maximum impact. Another way of targeting individuals, particularly GPs, would be to request data from them before they enter the website.

There has been considerable engagement by the Safety and Learning team including the 'Mental Health Matters – Learning from the Frontline' event which was the first of two annual national events. The focus was on improving safety in the acute care setting for those in mental health crisis and the event was well received and included stories from families and clinicians. An evaluation report will be brought to the next Board meeting. The next event will focus on consent.

There were also 26 regional engagements across the Safety and Learning and Early Notification teams working collaboratively with Datix, an incident reporting provider, and the focus was sharing learning from the local incident reporting pilot by raising awareness of interrelationship between incidents, complaints and claims with members to promote earlier resolution as well as offering practical improvement strategies to adopt.

The scorecards have also been refreshed and work is being taken forward by GIRFT focusing on claims data around clinical specialties and claims. Scorecard analysis has been increased to a ten year portfolio.

It was noted that trust Boards have to complete a CQC assessment against the 'well led' criteria every three years and it was suggested that we should attempt to be referenced in the review as where trust Boards are not discussing issues which relate to NHS Resolution, this could be an indication of poor governance. It was suggested that we could ask the Kings' Fund to look into this on our behalf. There is also a

PwC programme and engagement event for Chairs and NEDs of trusts and the Chief Executive is speaking at the next event. The Good Governance Institute trains NEDs on NHS Board governance and this was another opportunity to tap into. It was suggested that we could produce a one page template for trust Boards to use at each Board meeting with information including scorecards and claims information which they should be discussing at meetings.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

5.1 EH v Dorset Healthcare NHS Foundation Trust

An update was provided on the Court of Appeal ruling on illegality.

EH suffered from paranoid schizophrenia and whilst experiencing a serious psychotic episode killed her mother in 2010. EH was under the care of a community health team which was managed by the trust and following an investigation, failings were found by the trust in her care and treatment and it was concluded that although the killing could not have been predicted, a serious untoward incident was foreseeable and therefore the trust admitted breach of duty.

The Official Solicitor put in a civil claim on EH's behalf for damages for loss of liberty and loss of amenity arising from the consequences of killing her mother. However, we consequently argued that the claim should be dismissed in its entirety as it stemmed from an illegal act. The Official Solicitor appealed the decision and the Court of Appeal took a relatively robust review that someone should not benefit from their own illegality. EH pleaded guilty to manslaughter on the ground of diminished responsibility that equated to accepting some responsibility for her actions.

Although the Trust admitted failings in its care of the patient, individuals are not permitted to gain from their own illegal acts.

The Board noted the position.

6 Oversight of Key Projects

6.1 There was nothing to report.

7 Board Committee Reports and Minutes

7.1 There was nothing to report.

8 Other matters requiring Board attention

8.1 There was nothing to report.

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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 Wednesday 14th November 2018 at 10.00am, venue tbc.

Signed …………………………………………………………..………

Date ……………………………………………………………………