AGM Minutes (Part 1)

10 August 2017
10:00 – 11:00
Room G-2, Ground Floor, 151 Buckingham Palace Road, London

Present	
Ian Dilks	Chair
Helen Vernon	Chief Executive
Vicky Voller	Director of NCAS
Denise Chaffer	Director of Safety & Learning
Joanne Evans	Director of Finance & Corporate Planning
John Mead	Technical Claims Director (Associate Board Member)
In attendance	
NHS Resolution	
Alan Hunter	Director of Claims
Ian Adams	Director of Membership and Stakeholder Engagement
Tinku Mitra	Head of Governance
Nick Rigg	Corporate Communications Lead
Lorraine Hutchings	Membership & Stakeholder Engagement Manager
Nick Spears	Communications Officer
Julia Wellard	Executive Assistant (Minutes)
Guests	
James Doake	MDDUS
Kee Kras	MPS
Sian Goss	Department of Health
Cheryl Lynch	Department of Health
Apologies	
Andrew Hauser	Non-Executive Director
Keith Edmonds	Non-Executive Director
Mike Pinkerton	Non-Executive Director
Mike Durkin	Associate Non-Executive Board Member

1 Welcome and Apologies

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everybody to the first AGM under our

new name, NHS Resolution, and introduced members of the Board and Senior Management Team.

The main purpose of the AGM was to present the Annual Report and Accounts for the previous year. A full copy of the report is available on NHS Resolution's website. It was noted that we are required to hold the AGM within a set number of days of publication of the Annual Report and Accounts meaning the meeting had to take place during August when a number of people are likely to be on holiday. This included our Non-Executive Directors all of whom had given their apologies.

There were a number of changes to Board membership during 2016/17 as follows:

- Ros Levenson, Non-Executive Director, term ended on 31 October 2016.
- Vicky Voller was made an Executive Director on 1 July 2016.
- Mike Durkin joined as an Associate Non-Executive Board member on 1 November 2016.
- Mike Pinkerton joined as Non-Executive Director on 16 January 2017.

2 Ian Dilks, Chair

2.1 Introduction

NHS Resolution has published its Strategy to 2022 'Delivering fair resolution and learning from harm' together with a Business Plan for 2017/18. Both documents should be seen as evolution and not revolution and reflect changes that are already taking place. On behalf of the Board, the Chair thanked the Chief Executive and the Executive Team for their hard work in the production of the Strategy which is an excellent document. The Chair also thanked the Department of Health team and Ministers for their support. Previous reviews have determined that NHS Resolution is a well led and operationally efficient organisation but which we consider could and should do more. Our strategy sets out our strategic direction over the next five years on how we will build upon our combined strengths to transform the way in which we use valuable NHS resources to benefit patients and their families, NHS staff, resolve concerns and help to improve safety by focusing on prevention, learning and early intervention to address the rising costs of harm in the NHS.

Both our Strategy and our Business Plan can be found on the NHS Resolution website.

In terms of claims, it is encouraging that we are continuing to see a small decline in claim numbers although costs are continuing to increase. Our strategy makes reference to the increase in costs which is unsustainable, particularly given the financial challenges facing the NHS and that it is to a degree unavoidable without law reform.

Last year also saw a change to the Personal Injury Discount Rate (PIDR) from 2.5% to minus 0.75% which has had a major impact on our provisions going forward.

Of additional note is an upcoming National Audit Office (NAO) value for money study on managing the costs of clinical negligence in trusts, which is due to be published in September. We look forward to the report and any observations it may contain on

how we may contribute further.

3 Helen Vernon, Chief Executive

3.1 An overview

Our annual report for 2016/17 focuses on how we are moving to a more transparent approach both in the information we share on our activity and trends and what we are observing in the environment which we work in. The report illustrates a number of examples of how we continue to share information to drive improvement and activity which extends across all of our functions. This is also a feature of our strategy for the next five years, 'Delivering fair resolution and learning from harm' which recognises the responsibility that we have to share what we know. The strategy brings together our operating arms under a single purpose and a new name and draws upon the work we did throughout 16/17 to obtain feedback on all areas of our business and in particular to consult in some depth on the operation of CNST, our main indemnity scheme. The consultation was approached with an open mind as to how we might not only achieve a fair distribution of cost but also how we might use the scheme both as a platform for learning and a financial lever for change and achieve as far as we can a consensus across our members and stakeholders on a way forward. The multiple drivers of claims costs cannot be tackled in isolation and it was encouraging that through the consultation a strategy has been achieved which has the backing of our partners and customers as well as our own staff with the expectation that this is something we will deliver together.

Key points to highlight from the report are that:

There is some positive news on claims trends in that incoming clinical claims numbers (page 18) have continued to fall from a peak in 2013/14. This is attributed to a falling away of cases which were reported under the old funding arrangements for no-win no-fee. On the non-clinical side (primarily employers and public liability) there has been a steep fall in legal costs (page 24, figure 11) by 21% for claimant legal costs and 8% for defence costs. It is believed this is due to the continued impact of fixed recoverable costs in that environment and the efficiencies which have been achieved in the claims process. Page 27 of the report highlights the publication of plans to introduce fixed recoverable costs in clinical negligence. This is something we support as a way to ensure that claimants are able to secure compensation at a reasonable cost. Excessive and disproportionate claimant legal costs continue to be a problem (figures 15 and 16 on pages 39 and 40, and 42 and 43) and is the reason why we have been challenging legal costs whilst seeking a more proportionate approach.

We also continue to contain defence and administration costs in order to achieve value for money for the tax payer delivering the highest possible quality of service and this year we retendered our legal services contract with contracts awarded earlier this year in May.

In terms of our staff, the report (page 109 onwards) illustrates how we have grown and developed our teams and provides a more detailed analysis on how we are changing our organisation in order to respond to the challenges which the report outlines.

In contrast to the position on volumes, the costs attached to clinical negligence claims continue to grow and the money we paid out in 2016/17 largely represents the costs flowing from incidents which have occurred in previous years. In particular, maternity (from page 50) accounts for 10% of the claims we receive by volumes and 50% by value. This reflects a small number of cases where tragically, babies suffer brain damage at birth and the very high value of these cases reflects the complex nature of the injuries and the subsequent care required. The report highlights the work we have undertaken to incentivise improvements in maternity care through CNST pricing with shadow indicators being put in place based on CQC ratings and data on neonatal harm. In addition, the report features work we have undertaken to share learning from maternity claims, working closely with our NHS partners in this area such as NHS Improvement and the 'Getting it Right First Time' programme.

From 1st April this year, trusts are required to report to us all incidences of potential brain damage at birth so that we can start to work with trusts to support families and healthcare staff when incidences occur. This is how we hope to play our part in the reduction of these very rare and tragic events which overwhelmingly drive the costs detailed in the report.

The report details some of the cases we have taken to trial over the year including some important legal precedents for the NHS. NHS Resolution continues to have an important role in ensuring that in cases where there has been no negligence or there is an important point of principle to be tested that these are contested appropriately. We increased our success rate at trial to 65% and in line with our historic experience also saw a larger proportion of cases settling without court proceedings and 66% of cases settled without formal court involvement. We launched and tendered for a mediation service which is already showing encouraging early signs of take-up with positive feedback on the opportunity mediation provides for face to face explanations and apologies when things go wrong.

NHS Resolution has strong links with the health service through its 100% NHS Trust membership for the indemnity schemes as well as by virtue of the expert support provided by our advice and assessment service (NCAS), in relation to which our strategy is similarly to shift upstream in the services we provide and to provide early support and intervention. The report describes the development of the advice and assessment service which is core to our wider ambition to support the NHS in improving safety.

In addition, NHS Resolution delivers a tried and tested, impartial Tribunal Service (FHSAU) with decisions which have been proven to be robust over the years. We have built our training offer in this area in order to support decision making and reduce the need for an adjudication.

The Chief Executive thanked all NHS Resolution staff who have made a tremendous contribution and worked hard to meet both the challenges which we have been presented with over the course of the year and also been involved in creating our strategy and drive forward the changes we need to make. In addition, this year we received Investors in People accreditation and certification under ISO 27001 both of which reflect the professionalism and commitment of our teams to our objectives.

4 Joanne Evans, Director of Finance

4.1 Annual Accounts 2016/17

The key point to note for the 2016/17 accounts has been the change in the Personal Injury Discount Rate (PIDR) from 2.5% to minus 0.75% the impact of which has seen an increase in value of the provision (the estimated cost in today's prices of settling known claims, and those claims we may receive in the future arising from incidents that took place on or before 31 March 2017) by £4.7 billion across all of the schemes that NHS Resolution operates, This means that the total provision has increased from £56.4 billion to £65 billion (by 15%) just over half of which accounted for the PIDR change. This is a less dramatic increase than the previous year when the HM Treasury long term discount rate changed from 2.2% to minus 0.75%.

The change in the PIDR for the current financial year has had a more pressing effect on our cashflows which has seen the amount of cash we need to pay out on settlements in respect of lump sum payments for future losses increase. As a result, the Department of Health has committed to fund these additional costs for 2017/18 meaning we will not have to go to members for additional funding this year.

Looking forward, it is expected that the underlying trend of annual spend will continue to grow as many of the liabilities relate to long term care which continue to be added to every year, and the additional cost of new claims is not being offset by those ongoing liabilities coming to an end in the short term at an equivalent rate.

The uncertainties and sensitivities around estimates in the accounts are considerable prompting the Emphasis of Matter in the Audit Opinion (pages 120 to 121) and are set out in both the Finance Report (pages 70 to 73) and in the commentary to Note 7 to the accounts (pages 140 to 158). Note 7 sets out the basis on which the provision is estimated and the considerations taken into account when determining the assumptions to be used.

In terms of in-year financial performance, overall the schemes spent within budget (pages 74 to 77). The rate of growth in expenditure on both clinical and non-clinical schemes has slowed to 15% and 3% respectively (page 14 Table 1), compared to 27% and 11% overall in the previous year, where there has been a steady tailing off in volumes of new claims (page 18 figure 4), but continued high levels of inflation in damages and claimant legal costs compared to inflation in the general economy.

5 Questions and Answers

James Doake, MDDUS
My question was answered during the meeting around there being more requests for lump sum settlements post PIDR than periodical payment orders.

NHS Resolution are keeping an eye on this going forward.

Kee Kras, MPS
Do you know whether the funding from DH to cover the impact of the PIDR will be enough?

We provided estimates to DH on what the impact was going to be and we are continuing to monitor this on a month by month basis.

6 Close

6.1 The meeting closed at 10.35am.

Signed ……

Date ……