

Board meeting minutes (Part 1)

23rd January 2019

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
Nigel Trout	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
Vicky Voller	Director of Practitioner Performance Advice
John Mead	Technical Claims Director (Associate Board Member)
In attendance	
Ian Adams	Director of Membership & Stakeholder Engagement
Simon Hammond	Director of Claims Management
David Gurusinghe	Acting Director of Claims Management
Lisa Hughes	Head of Primary Care Appeals
Catherine O'Sullivan	Governance and Risk Manager
Julia Wellard	Executive Assistant (Minutes)
Apologies	
Joanne Evans	Director of Finance & Corporate Planning
Cheryl Lynch	Representative of DHSC Sponsor Team

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming Simon Hammond, who joined NHS Resolution as new Director of Claims on 7th January, and Lisa Hughes, Head of Primary Care Appeals.

Apologies for absence were received from Joanne Evans, Director of Finance and Corporate Planning.

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 14th November 2018

The minutes of the Board meeting held on Wednesday 14th November 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:

- Finance performance report – Director of Finance to make the Finance performance report more comprehensible to people who do not have a finance background. It was considered that the January finance report required further review.
- Learning from suicide related claims: A thematic review of NHS Resolution data – Director of Safety and Learning to bring a report back to Board in 6-9 months on what has happened since the report was launched.

The following actions were closed:

- 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. This is linked to the next point on Claims Management and is reflected in the current papers.
- Claims Management performance report – Acting Director of Claims Management to provide an explanation of what lies beneath claims numbers.
- Primary Care Appeals performance report – Chief Executive to ask the Head of Primary Care Appeals to confirm what the difference is between the new and old KPIs and whether they need approving by the Board. The new KPIs do need approving by the Board as reflected in the current papers. The KPIs have now been split between those cases that take longer than 15 weeks as they require legal advice and four weeks have been added.
- Appeals Unit panel appointments – Chief Executive to liaise with Head of Governance and Head of Primary Care Appeals whether panel members should be included on our website and the register of interests. It was considered that this required a review of the procedure across the organisation which was underway.
- Policies – Head of Governance to look at how review periods for policies are determined and whether they are all three years. The historic basis of time periods is not clear and varies from 2-3 years but we have developed a process document on policy development which will be referred to SMT and will provide guidance on consistency of review periods.
- Code of Conduct – Head of Governance to diarise a review of the Code of Conduct after one year to consider how useful and effective it is as it was considered not an easy read. Head of Governance has referred this to the Head of HR who is the policy owner to review content once the next review period is

due.

- DPA Policy – Head of Governance to check the date of SMT approval and that the DPA policy does not need JNC approval. The date of SMT approval was 31 October 2018. Not all policies require JNC approval. Where policies do not affect staff terms and conditions, but are a statement of the legal framework, JNC may note them but are not required to be consulted.

2 Operational items

2.1 Chief Executive's Report

The NHS Long Term Plan

The NHS Long Term Plan which was published on 7th January focuses on improving services outside hospitals and a move towards joined-up preventative and personalised care for patients with an ambition to establish integrated care systems throughout the country by 2021. We are working on integrating the NHS Long Term Plan into our own Business Plan as well as refreshing our five year strategy which should include closer working with NHS England and NHS Improvement.

Letter to trust CEOs

The Chief Executive circulated a New Year letter to Chief Executives of acute, foundation and community trusts highlighting the following:

- the recent reductions in total contributions to both the Clinical Negligence Scheme for Trusts and Liabilities to Third Parties Scheme;
- thank members for their support of NHS Resolution and the work to help reduce the cost of claims;
- describe the likely overall upwards trajectory of the CNST contribution;
- highlight some key publications; and
- publicise the imminent launch of our customer survey.

The letter also made reference to work we are taking forward with our clinical fellow in Emergency Care this year.

The Chair has also sent out similar correspondence to all Chairs of member organisations.

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 November 2018 was presented. It was considered the report continued to be difficult to read and needs to be clearer and more comprehensible to members and the public and the Chief Executive, Director of

Finance and Charlotte Moar will meet to discuss.

Action: CE/DoF/CM

In terms of PIDR, it was noted that we are yet to receive confirmation of the PIDR budget for the current year from DHSC.

Claims Performance

Analysis was undertaken on claims by tranche and graphs showing the month on month volatility in claims volumes were presented. There are a number of external factors influencing claims trends, in particular the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which resulted in claims being notified to us before the introduction of costs recoverability reforms, and new firms entering the clinical negligence market to pursue claims as a result of the introduction of fixed fees in other areas of personal injury law.

Analysis was also undertaken on matters notified under CNST and LTPS in the financial year 2018/19 to 30th November 2018. Under CNST, this identified that Casualty/A&E claims accounted for 13.1% of new claims, followed by orthopaedic surgery at 11.5%, obstetrics at 10.2%, and general surgery at 8.8%. If the pattern continues, Casualty/A&E will be the largest specialty by volume of claims received in 2018/19. This provides further justification for our strategic decision to deep dive Casualty/A&E claims in 2019/20 with the assistance of clinical expertise. Claims received by NHS Resolution in 2018/19 will, due to the incident to claim creation time-lag, relate to a range of previous incident years. This means that most of the Casualty/A&E claims received in this financial year will relate to incidents that occurred in the 2017/18 and prior financial years and are not, therefore, reflective of care standards in 2018/19. A&E is a clear headline for us and it was considered that this was an interesting piece of work that we should deep dive to understand what it means i.e. whether it relates to more visits to A&E or performance which needs feeding back to the system and it would be helpful for the information to be used externally with stakeholders

Board members considered that the level of detail in the claims report had improved and would like to see more on what the claims data are showing i.e. as identified above on A&E, which would provide the vehicle for influencing Chief Executives and Directors of Finance in trusts as to where they could concentrate efforts to reduce claim costs. The clinical fellow who will be working on A&E is a consultant and will also be working across the system with NHS Improvement and NHS England around how this can be taken forward. It was noted that it would be helpful to have updates on how the A&E work is being taken forward in the claims report but it would also be helpful to see what else is coming through the data which needs specific focus and what we are going to do about it. Board members were asked to provide specific comments or questions to the Director of Claims and Acting Director of Claims on what they would like to see in the claims report on a routine basis to understand what is happening overall and whether there are any specific issues which need a deep dive which can be discussed at an informal Board meeting.

Action: All Board

It was suggested that it would be interesting to see the long term trend in new claims in terms of high value claims against low value claims which can then be analysed by specialty and linked across to reserving and pricing.

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 proved problematic to arrange due to the availability of parties during the summer.

A list of existing and new KPIs was presented for Primary Care Appeals and the Board approved the changes.

The Board noted the performance report for the Finance, Claims, Practitioner Performance Advice, Safety and Learning and Primary Care Appeals functions.

2.3 HR & OD Report

Michael Humphris, Head of HR and OD, attended the meeting to present the HR and OD report which provides information on the organisation's key workforce indicators, equalities characteristics and the HR and OD activities for the period November 2017 to October 2018.

There was a noted increase in agency workers for the period with a total of 46 engaged which is mainly as a result of a rise in activity within the IT and Facilities department in order to support the roll-out and delivery of a number of key projects within the department, in particular the Windows 10 project.

Sickness absence for the reporting period remains relatively low and the organisation continues to report below the national average rate.

There continues to be a large proportion of sickness attributed to anxiety, stress, depression and other psychiatric illnesses, and the HR and OD team are continuing to do more work in this area to analyse the information. This is not a huge issue and they are being managed appropriately with three cases concerning non-work related matters and others being a combination of both work and personal matters. There was some concern that of the 12 people that were reported as having anxiety and stress, five had left and whether there was anything the organisation needed to be worried about but there was nothing of significant concern which needed addressing. It was also noted that the Exit Policy mentions that exit interviews are only given to staff who had left voluntarily and the Head of HR will look into this as this should not be the case.

Action: HoHR

In terms of leavers, it was noted that there had been 35 leavers in the reporting period with four leaving due to incompatible working relationships and whether there is any learning to be taken forward for managers. However it was noted that the incompatible working was not necessarily with the line managers but with colleagues and it is not always possible to resolve these issues. Managers undertake training in dealing with difficult conversations as well as receiving development on leadership skills.

In terms of employee relations, since the last reporting period, there have been nine new cases which are being managed to resolution in a timely manner and on an informal basis where possible with mediations being taken forward before they become formal.

Following the staff survey, the HR and OD team continue to implement and deliver a number of workstreams to support the delivery of the strategy including a mentoring scheme and leadership programme

There are six Mandatory and Statutory Training (MAST) courses which all staff are required to comply with and compliance has improved since last summer from 60% to 90%. It was proposed that the Non-Executive Directors (NEDs) should be required to complete the information governance and equality and diversity training, however, NEDs can submit certificates for completion of these courses which they have undertaken within other organisations. It was considered that NEDs are not required to complete fire safety and health and safety management as they are almost always accompanied by other NHS Resolution staff which therefore mitigates any potential risks. However, it was pointed out that some NEDs have attended the office to work and therefore do not consider themselves as guests. This will be kept under review. The Board therefore approved the approach in relation to MAST for NEDs.

It was encouraging to note that we now are able to provide fraud and bribery awareness training to new starters which has been developed by our Local Counter Fraud Specialist (LCFS). Renewals on this training will be provided by multiple annual drop in sessions which all staff will be invited to attend and compliance monitored in the same way as MAST requirements.

In terms of the staff survey, a question was asked whether we benchmark ourselves against other equivalent bodies and whether others are doing well and how we can learn from them. It was considered that the range of activities that the organisation is taking forward for staff in terms of development etc speaks of a positive culture in the organisation. The Senior Management Team are also taking forward some specific work on equality and diversity and Roger Kline has agreed to facilitate that session.

One of the HR and OD objectives relating to developing an Equality, Diversity and Inclusion (E,D&I) Agenda mentions that the next step is that there is to be a facilitated session on E,D&I with SMT in early 2019 and this is around broadening our agenda rather than dealing with a specific issue which has been raised.

A report has been produced on Race Equality and Ethnicity Pay and one of the three recommendations as part of the implementation plan is for the organisation to voluntarily publish its race data in accordance with the Workforce Race Equality Standards (WRES) along with other ALBs. The report will be considered as wider development of our E,D&I agenda and, as mentioned above, a facilitated session is to be run for SMT and other key stakeholders across the organisation. The general view is that we support the proposals to introduce ethnicity pay reporting internally. The Race Equality and Ethnicity Pay Report will be used as a basis for the sessions with Roger Kline.

The Board thanked the Head of HR and his team for the report which the Board noted.

2.4 2018 Gender Pay Gap Report

NHS Resolution is required to publish its gender pay gap (GPG) data by March 2019 in accordance with recent requirements set out in the Equality Act 2010.

A report was provided on the organisation's GPG data which shows that there has been a positive reduction in the organisation's mean gender pay gap over the last 12 months. Work has been undertaken by the team looking at starting salaries following an issue raised at SEG and there has also been an internal audit around recruitment. We have a fair, transparent and open recruitment process but there have been some issues around whether we have been consistently applying Agenda for Change conditions appropriately. We are therefore looking at whether we are implementing best practice in our recruitment process and it was suggested that we could benchmark ourselves against those organisations who do really well in meeting the right standards.

Reference was made to Roger Kline's The "Snowy White Peaks" of the NHS report which is a survey of discrimination in governance and leadership and the potential impact on patient care in London and England and the SMT will look into this.

The Board noted the Gender Pay Gap Report.

3 Management proposals requiring Board input or approval

3.1 There were no items to consider.

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.

The new website has been fully operational since 17th October 2018 and has seen a high increase in visits with longer viewing times, more pages being viewed and return visits. In terms of the most popular areas of the website, the top most visited pages relate to the Maternity Incentive Scheme and the article on *Darnley vs Croydon* with visits on average lasting for approximately three and a half minutes. There is a remarkable improvement with the number of users doubled in the last three months compared with the previous website which reflects the improved functionality of the site and increased access of relevant information.

There has been considerable engagement by the Safety and Learning team, in particular the Conversations on Consent event which was held on 28th November in Ipswich and this event is being repeated.

There have also been a number of joint events between the Safety and Learning

team and the Practitioner Performance Advice team.

Michele Golden has joined the Safety and Learning Team from CQC as new Deputy Director of Safety and Learning.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

5.1 Legal Update

Civil Liability Act 2018

The Civil Liability Act 2018 received Royal Assent on 20th December and introduces a new basis for setting the Personal Injury Discount Rate (PIDR).

XX v Whittington Hospital NHS Trust (Court of Appeal, 19.12.2018)

This claim demonstrates the propensity of higher courts to extend the scope of liability to increase damages in personal injury litigation. The case relates to a claimant developing cancer of the cervix following failure to detect signs of cancer from both smear tests and biopsies. The claimant required chemo-radiotherapy which led to infertility and severe radiation damage to parts of her lower body. Liability was not disputed and at a quantum trial in the High Court in 2017, the judge limited the claimant's recovery of damages for the cost of surrogacy arrangements and the claimant appealed against this element of the ruling. The Court of Appeal decided that it would be appropriate to award damages for commercial surrogacy, including fees payable to the birth mother, on the basis that the arrangement was being taken forward in California where it was lawful to do so and it would be inappropriate to deprive the claimant of damages when she personally proposed no wrongdoing. The first instance judgment was overturned and the recovery of full commercial surrogacy costs was approved. As a consequence of this ruling, it is likely that NHS Resolution will see further claims of this type and given the important issues of principle involved we are therefore contemplating an appeal to the Supreme Court. It was suggested that we should look at obtaining costings from Surrogacy UK rather than settling on the American costs. The TCD confirmed that the first instance judgment endorsed settlement on UK costs.

The Board noted the legal update.

6 Oversight of Key Projects

6.1 There was nothing to report.

7 Board Committee Reports and Minutes

There were no committee reports and minutes to note.

8 Other matters requiring Board attention

8.1 Policies for noting/approval

The following policies have been updated to reflect a consistent approach with other recently updated HR policies, including the addition of a contents page, standard equalities statement and an equality impact assessment tool.

8.1.1 Work Placement Policy and Procedure

Key changes to the policy are:

- Contents page added
- EQIA added
- Approval for applications changed to appropriate Director
- Timescales removed

A question was raised on how we advertise for placements and they are advertised to everyone and the Head of HR will ensure that this is explicit in the policy.

Action: HoHR

The Board noted the Work Placement Policy and Procedure.

8.1.2 Dress Code and Appearance Policy

Key changes to the policy are:

- Three yearly review
- Updated introduction and monitoring section
- Include equality assessment form

The Board noted the Dress Code and Appearance Policy.

8.1.3 Drugs and Alcohol Policy

Key changes to the policy are:

- Three yearly review
- Update Section 5 Legislation - GDPR
- Revised sections 7 – EAP link.
- Include equality assessment form

The Board noted the Drugs and Alcohol Policy.

8.1.4 Exit Process and Exit Interviews Procedure

Key changes to the policy are:

- Table of Content added
- Section 7 - GDPR – use of data

- Section 8 – provision of factual reference
- Flowchart

The Head of HR to ensure that the policy includes that all leavers should receive an exit interview.

Action: HoHR

The Board noted the Exit Process and Exit Interviews Procedure.

8.1.5 Agency Workers

Key changes to the policy are:

- Contents page added
- EQIA include
- Introduction added
- Purpose and scope added
- IR35 compliance added
- WSG approval added
- ID & Right to Work checks added
- Induction added
- Internal vacancies added
- Exit process added

The Board noted the Agency Workers Policy and Procedure.

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 Tuesday 12th March 2019 at 10.00am, venue tbc.

Signed

Date