

Board meeting minutes (Part 1)

12th March 2019

10:00 – 15:30

Venue: DAC Beachcroft, 100 Fetter Lane, London EC4A 1BN

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
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
Simon Hammond	Director of Claims Management
David Gurusinghe	Acting Director of Claims Management
Cheryl Lynch	Representative of DHSC Sponsor Team
Tinku Mitra	Head of Information Governance
Michele Golden	Deputy Director of Safety & Learning
Eva Beazley	WEVA
Julia Wellard	Executive Assistant (Minutes)

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming Michele Golden, Deputy Director of Safety and Learning, who attended as an observer as part of her induction, and Eva Beazley (WEVA) who is undertaking a Board effectiveness review.

The Board congratulated Dr Denise Chaffer who had recently been awarded a PhD.

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 23rd January 2019

Subject to a minor amendment, the minutes of the Board meeting held on Wednesday 23rd January 2019 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:

- 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 six-nine months on what has happened since the report was launched – action due September 2019.

The following actions were closed:

- Finance performance – Chief Executive/Director of Finance/Charlotte Moar to meet to talk through how the Finance performance report can be made more comprehensible to members and the public. Meeting took place and the finance report has been changed to reflect feedback.
- Claims performance - All Board to feed back to Director of Claims/Acting Director of Claims what they would like to see in the claims performance report on a routine basis, and whether there are any specific issues which need a deep dive which can be discussed at an informal Board meeting.
- Exit Policy – Head of HR and OD to ensure that the Exit Policy includes that all leavers should be invited to have an exit interview before they leave the organisation. The current policy is clear that this applies to all staff and workers. This includes those on fixed-term contracts and agency workers.
- Work Placement Policy and Procedure – Head of HR and OD to ensure that the policy is explicit in explaining how placements are advertised. Policy will be updated to reflect how placements will be advertised although like the recruitment to substantive roles this is likely to vary depending on the specific requirements. Policy to be updated by April 2019.

2 Operational items

2.1 Chief Executive's Report

GP Indemnity

NHS Resolution has now been confirmed as the scheme operator and administrator for the Clinical Negligence Scheme for General Practice (CNSGP) which will commence on 1st April. The scheme aims to provide a more sustainable system of indemnity for general practice, contribute to improving retention and recruitment, remove the administrative burden of organising personal clinical indemnity cover and support new models of care. The CNSGP regulations have now been laid in

Parliament.

Independent Medicines and Medical Devices Safety Review

The Chief Executive and Technical Claims Director recently gave evidence at a Review hearing which discussed alternative compensation systems as well as a range of issues around compensation and the history surrounding Sodium Valproate claims. These claims mostly occurred in the late 1990s and were eventually withdrawn and diverted to the manufacturers. The outcome of the review is to be published on the Inquiry website.

NHS Resolution and the Parliamentary and Health Services Ombudsman (PHSO)

Following work undertaken with the PHSO to collectively support organisations in handling incidents that may escalate into a complaint and/or compensation claim, joint guidance on our respective roles has been published on both websites which includes recognition of overlap when the PHSO makes an award in respect of injury or damage that falls under one of our schemes, and explains the circumstances under which we might reimburse a trust, wholly or partly, when an award has been made. It also highlights that such awards can in some circumstances be set off against damages claims, to prevent double recovery. The guidance is helpful and easy to understand.

Response submitted to draft patient safety strategy

We submitted our consultation response to NHS Improvement's draft patient safety strategy which highlighted the need for any patient safety measures to be aligned with the top five areas that result in high value claims as well as inviting support to further develop incentive schemes and draw on key priorities in our business plan and provide opportunities for further collaboration. A meeting was held with NHS Improvement recently to talk about the top five areas and take forward some of the aspects within our response. It was noted that the strategy does not make reference to joining up of information from complaints, serious incidents and claims as mentioned in the PAC recommendations. The plan is to try to adopt a taxonomy in order to make more sense of incident reporting and how that feeds into the claims environment. Dr Durkin recently attended a global summit and the new taxonomy will be a key factor in linking all information systems around the world which is something we could be involved in. It was suggested that we should invite Aidan Fowler from NHS Improvement back to give an update to the Board in the summer or early autumn after the consultation.

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 January 2019 was presented.

In terms of the Prompt Payment Policy and the reporting of performance relating to the number of invoices paid within 30 days, this continues to remain below target (95%) at 85%. This is referred to in the Business Plan and it was suggested that there needs to be a trajectory and commitment in place as to when the target might be achieved. Processes have been reviewed to improve performance and changes have been implemented which have increased performance year on year, however the target will not be achieved until the new financial accounting system has been implemented later in the year and work will be undertaken, using the contributory factors associated with not reaching the target, to identify how the new system will generate a better process. It is expected that performance against the target will not considerably improve until the new system has been in place for approximately six months. It was noted that some suppliers have charged us interest on invoices for late payment and it was suggested that we have some assurance in place to ensure that those suppliers who are particularly vulnerable to cashflow are prioritised in our system.

Following a recent review by HMRC around VAT recoveries relating to professional and legal services, we have received confirmation that the work provided is predominantly of an advisory nature and therefore VAT has been correctly recovered.

Claims Performance

In terms of the number of new clinical claims under the Clinical Negligence Scheme for Trusts (CNST) for 2018/19 to 31st January 2019, the overall pattern shows that volumes generally appear to be plateauing. As reported at the last meeting, A&E represents the highest number of new claims received and we have appointed an A&E fellow to help look into this area in depth and identify some sub specialties for a deep dive.

It was noted that for CNST the report makes reference to there appearing to be a strong volatility around claims reported in CNST over the last 18 months as well as the overall pattern being more stable than the preceding periods. This is because over a period of three years, the position appears to be stable but there are some spikes over the last 18 months.

Practitioner Performance Advice Performance

An update on the advice requested by sector and professional group at 31st January 2019, current live activity for the assessment and intervention services and Healthcare Professional Alert Notices (HPANs) was presented. In terms of new requests for advice by sector, in particular primary care which seems to have gone down, it was considered whether we should look to relaunch the advice service given the CNSGP is about to be launched on 1st April and the Advice team are looking at the primary care offer. It is possible that the reason why requests for advice have gone down may relate to the restructure in primary care and also the customer survey has indicated there are a lot of skills in primary care around dealing with concerns and therefore the sector has less demand for the service.

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 (CMR valuation input

required) which related to one case which missed the target given it was a particularly complex case requiring additional circulations.

Safety and Learning Performance

All the Safety and Learning KPIs have been fully met.

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 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.

Following launch of the new website in October 2018, numbers are beginning to level out on our website statistics. However it is encouraging to see the high number of users and page views. NHS Resolution's newsletter, Resolution Matters, February 2019 edition, was published on our website and there is relatively high engagement for the newsletter with 33% clicking on the link.

There has been a relatively high volume of events, in particular Practitioner Performance Advice held 51 income-generating events which is higher than the corresponding period last year.

It was noted that in a joint submission with our design agency, Studio North, we have been shortlisted for three awards by Transform Awards Europe in the categories of Best naming strategy and Best brand consolidation. The awards focus on recognising brand development and rebranding projects, recognising excellence and reward innovation in branding across Europe. The winners will be announced on 28 March in London.

Reference was made to previous discussions on the top 20 stakeholders and it was considered that these should be revisited as CNSGP is about to be launched and now that we have deputy directors in post. It was agreed that the top 20 stakeholders should be discussed on a regular basis and the Senior Management Team will bring back to a future Board.

There has been considerable engagement by the Safety and Learning team: in particular the national ambulance event took place on 31st January and was well received. Sessions included a presentation by a paramedic who had been working for three years and had been attacked three times and we will be working with other

ALBs to see what can be done to support paramedics. A pilot is currently being taken forward where paramedics wear cameras which has helped to reduce assault.

The Safety and Learning team have also been doing a lot of engagement around maternity and have been working with Practitioner Performance Advice team at RO events which has been extremely well received.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

5.1 Post-Implementation Review of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was implemented on 1st April 2013. Following a call for evidence by the Ministry of Justice in 2018, this review assesses the impact of the changes and concludes in broad terms that their objectives have been met. The main impact of the changes to NHS Resolution relate to:

- Non-recoverability of success fees from defendants
- After the Event (ATE) Insurance
- Qualified One-Way Cost Shifting (QOCS)
- Referral Fees for Personal Injury Cases
- Costs Budgeting

We have been fully supportive of the change in law regarding abolition of the recoverability of success fees from defendants. However there are some elements which have not been resolved such as the recoverability of ATE premiums in clinical negligence and costs budgeting, both of which require further reform in our view. We are continuing to advise government and the MoJ on both these aspects. The report gives no indication that either of these elements are likely to be addressed in the near future. We have asked the Civil Justice Council to address ATE insurance premiums as part of its review of fixed recoverable costs in clinical negligence cases but they have taken the position that ATE reform is not within the review's terms of reference.

It was noted that ATE insurance is a real anomaly in the context of claimant costs in clinical negligence cases and needs addressing. There has been an overall reduction in claimant costs in comparison to pre-LASPO but nevertheless reform is still needed in relation to ATE recoverability.

It was suggested that this should be referenced in the Annual Report and Accounts.

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 Audit and Risk Committee Meeting Minutes – 11th October 2018

The minutes of the Audit and Risk Committee meeting held on 11th October 2018 were noted by the Board.

It was noted that Oracle Learning Management is the platform to the national Electronic Staff Record.

A meeting of the Audit and Risk Committee meeting was held on the 13th February which considered the [month 9 interim accounts, and the plan for the](#) end of year accounts and internal audit which are ~~both~~ on track.

8 Other matters requiring Board attention

8.1 RemCo Performance and Compliance Report and Terms of Reference

The RemCo Performance and Compliance Report was presented covering the period January 2018 to December 2018.

RemCo meetings were held in May, September and November 2018 with all meetings quorate and full attendance by all members (with Nigel Trout attending one meeting as he joined NHS Resolution on 1st July 2018). The report does not make reference to the appointment of two Associate Non-Executive Directors but this is now included in the terms of reference.

In terms of compliance, RemCo considered its performance as satisfactory and that it had discharged all its obligations as detailed in the terms of reference which the committee considers remain appropriate and fit for purpose.

There have been some minor revisions to the terms of reference as follows:

- Reference to the Department of Health (DH) replaced with the Department of Health and Social Care (DHSC).
- The job title of the Head of Human Resources updated to Head of Human Resources and Organisational Development.
- Reference to the role of the Remco in the appointment of Associate Directors

The Board noted the RemCo Performance and Compliance Report and approved the revised Terms of Reference.

9 Any Other Business

- 9.1 The Chair referred to a letter he had received from the Secretary of State for Health and Social Care relating to the launch of the Lord Holmes Review on opening up public appointments to disabled people which is exploring why few disabled people apply for appointments and fewer are appointed. The recommendation states that “Government should gauge interest from the existing body of public appointees to

create a cross-public appointment network for disabled public appointees” and asks for thoughts on how we can ensure there is a meaningful and supportive network and whether this is something that could be led from within the public bodies landscape. The Chair will circulate the letter to Board members for views.

Action: Chair

10 Date and Venue for next meeting

- 10.1 The next Board meeting is scheduled for Wednesday 22nd May 2019 at 10.00am, venue tbc.

Signed

Date