

Board meeting minutes (Part 1)

14th November 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
Nigel Trout	Non-Executive Director
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
David Gurusinghe	Acting Director of Claims
Tinku Mitra	Head of Governance
Sarah Pollock	Deputy Director of Finance & Corporate Planning
Julia Wellard	Executive Assistant (Minutes)
Apologies	
Sam Everington	Non-Executive Director (Associate Board Member)
Mike Durkin	Non-Executive Director (Associate Board Member)

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everybody, in particular Sarah Pollock who has joined NHS Resolution as Deputy Director of Finance and Corporate Planning and would be attending the whole meeting as part of her induction.

The Chair noted that the Chief Executive would be arriving late for the meeting as she was attending a roundtable meeting which had been arranged by the Secretary of State for Health.

The Chair reported that he had attended a meeting of London Trust Chairs on 12th November which generated positive feedback and identified that people had noted

how we are changing. The Chair is also attending a meeting of Northern Chairs in Leeds on 16th November.

Apologies for absence were received from Sam Everington and Mike Durkin. Cheryl Lynch, who normally attended as a representative of the DHSC sponsor team, had also given apologies for not being able to attend.

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 11th September 2018

The minutes of the Board meeting held on Tuesday 11th September 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 Claims 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 will be brought to the January Board.

The following actions were closed:

- Primary Care Appeals service – Chief Executive to ask the Head of Primary Care Appeals to produce a structure chart together with service descriptors. Chief Executive to also ensure that any future changes to the Appeals Scheme of Delegation should include a narrative of what has been changed rather than including both track changed and final copy documents.
- Primary Care Appeals performance – Chief Executive to liaise with the Head of Primary Care Appeals re the reviewed KPIs which should be approved by the Board. KPIs shown against both parameters in the performance report with a view to agreement of the revised parameter in the 19/20 business plan. Head of Primary Care Appeals will prepare a presentation for the January Board Education session and present any revised papers in the format requested.

2 Operational items

2.1 Chief Executive's Report

Research published on claimant motivation

Following research undertaken with the Behavioural Insights Team (BIT) which considered the experience reported by 728 patients who agreed to participate in a survey, the report together with a news item summarising the findings and press statement have now been published on our website.

It was noted that this was an important piece of work and that if people do not visit our website then people will not know of the report's existence, particularly frontline staff. The report is also mentioned in Resolution Matters, NHS Resolution's own newsletter, which goes out to 6,000 staff in trusts. It was considered that there are questions around how the conclusions will be perceived and work needs to be taken

forward on this. We have been saying for some time that the way patients are dealt with could be improved and therefore we need to ensure that we get the maximum benefit from the research. We understand that NHS Improvement are making a number of appointments of regional improvement directors and we will ensure that we meet with them as soon as possible in order to ensure this is on their agenda. The Safety and Learning Team are working on a set of slides looking at the headlines of the report with key messages which will be included in upcoming events. It was suggested we should also look at producing a summary which can be shared on exhibition stands at events. There is a meeting in Leeds on the 22nd November with the NHS Complaints Managers Forum which we are attending and will be talking about the key findings. It was suggested whether the HSJ would be interested in running an article, or whether the Royal Colleges would be interested, in particular the RCN. We have taken a decision not to do proactive media briefings at this stage but thought does need to be given to how we publish research which we take forward.

ISO 27001 certification

Our ISO auditor has recommended that our ISO 27001 certification is continued following an assessment in late October. The auditor identified four minor non-conformities which will be rectified quickly. NHS Resolution will undergo the three year audit for recertification in a year's time where all aspects of the business will be examined in detail against all the standards and technical controls in the ISO 27001 framework.

The Board congratulated the Head of IT and Facilities, Head of Corporate and Information Governance and her team for the work undertaken on achieving the continued certification.

Financial Times – Top 30 Global LGBT+ Public Sector Executives

The Board congratulated the Director of Membership and Stakeholder Engagement, Ian Adams, who was included in a list of the Top 30 Global LGBT+ Public Sector Executives to celebrate those who are not only successful in their careers but are also creating supportive workplaces for other LGBT+ people, which was published in The Financial Times in October.

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 September 2018 was presented. It was suggested whether the format of the report could be reviewed to make it easier to read by people without a finance background. The Director of Finance will take this forward.

Action: DoF

Claims Performance

The number of new claims received for 2018/19 to 31st October is 6,372 (CNST) and

2,072 (LTPS) compared with 6,183 (CNST) and 2,026 (LTPS) in the same period in 2017/18, showing that claims are increasing slightly, particularly on CNST.

It was noted that the graph showing longer term data in relation to the month on month volatility in claims received under CNST and LTPS, and other schemes, year on year since 2005/6 was extremely informative. The graph shows that CNST claims have increased from last year but within a tolerance and it was suggested that it would be helpful to see what the trend line shows, particularly running up to the LASPO change where claims volumes went significantly up. However, although they have now declined, we are still running at around 10,700 a year which is considerably higher than it used to be. Overall, whilst the level appears to be flattening there is uncertainty around whether this will stay stable or go up or down. It was suggested whether it would be possible to have the information related to NHS activity which would make claims levels more understandable to the public. It was noted that the National Audit Office undertook some analysis looking at NHS activity levels with incidents, complaints and data which concluded that there was little correlation, although there was correlation with what was going on in the legal market and claims data. Claims volumes have reduced in the last few years against rising activity levels which could reflect improved safety or mean that incidents and complaints are being managed better. Correlating activity with claims is not straightforward given the time lags in claims, however it would be possible to look at the year of the event versus the activity in that year rather than the year of the claim.

It was suggested that it would be helpful to have an explanation of what lies beneath the claims numbers so that people reading the report understand what is happening and do not draw the wrong conclusions.

Action: ADoC

Primary Care Appeals Performance

A number of new KPIs have been proposed to prevent skewing of cases which take longer than 15 weeks as previously they were all measured together at 33 weeks. These have now been broken down and a new target has been introduced of 19 weeks for those cases which require extra circulation beyond the usual procedure or which require legal input. This will be continually monitored and reviewed at the end of the year. The Head of Primary Care Appeals will be attending the Board meeting in January and will confirm what the difference is between the KPIs and whether they need approving by the Board.

Action: CE

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 Appeals Unit Panel Appointments

The current Appeals Panel member appointments end in January 2019 (lay members) and July 2019 (Committee Chairs). Following a joint recruitment process, which included a panel comprising of the Head of Primary Care Appeals, a Non-Executive Director and a partner at DAC Beachcroft, a number of appointments have been made to lay committee chairs and lay members.

It was considered that there needed to be more detail on the background of lay members and this will be included in future. It was also considered that as our

website has details of senior appointments, whether we should also include members of the Appeals Panel, and that they should also be included in the register of interests which is published. The register of interests is at present restricted to the Board, but given Panel members are decision makers it was questioned whether they should also be included. The Chief Executive will liaise with the Head of Corporate and Information Governance and the Head of Primary Care Appeals.

Action: CE

The Board approved the Appeals Panel member appointments.

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 report: 'Learning from suicide related claims: A thematic review of NHS Resolution data' was launched on World Suicide Prevention day. Dr Alice Oates, the author of the report, attended our panel firms' conference to talk to the report and we continue to work on disseminating the content. It was noted that a number of the recommendations from the report were IT related and how these were going to be taken forward, particularly the recommendation for mandatory training to all mental health staff which will be difficult to achieve. The Director of Safety and Learning confirmed that all the recommendations had been signed off by a number of organisations who gave their commitment to taking them forward. There have also been discussions around whether there is potential to incentivise this as we have done with the maternity incentive scheme which would be a way of drawing all the recommendations together. We have a meeting with NHS England in relation to the recommendation about claims in prisons which will be difficult to take forward. Overall, the response to the report has been very positive. The Director of Safety and Learning will arrange for a report to be brought back to Board in six to nine months on what has happened since the report was launched.

Action: DoS&L

Both our existing websites migrated to the new website on 17th October. The most viewed content on the website in the last two months was Dr Alice Oates' mental health report, closely followed by the 'Saying Sorry' leaflet. A four week snapshot of web stats has since been taken either side of the launch and for the four weeks prior to the launch we had 5,000 users per month which has gone up to 8,700 over the last four weeks. The average number of pages used for each visit session has gone up from just over 2 to 3.3, the average time per user has gone up from 1.25 minutes to 2.35 minutes and the bounce back has gone down from 60% to 50.71%. Katherine Ogilvy, Digital Communications Manager, was nominated by the Chair for employee of the month for the work undertaken on the new website which included her attending a Cabinet Office "Agile" course to develop her skills. She also met with key members of staff across the organisation to identify what they wanted to see on the website which showed her commitment to ensuring that the new website was a success. She was successful in being awarded employee of the month jointly with one other member of staff.

There has been considerable activity by the Safety and Learning team including 12 national engagements and 25 regional engagements. An event around conversations on consent is taking place on 28th November which is oversubscribed and a repeat of the event is being arranged as it is a subject which is continually requested.

The Early Notification team have been engaging with a number of maternity partners on network and workstream events, collaborative meetings with ALBs and other stakeholders regarding the completion of the ten action points for the maternity incentive scheme.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

Reports were provided on two decisions of the higher courts with far-reaching implications for the NHS. Both cases have the same theme where the courts are increasingly focussed on a solvent employer against whom to pronounce judgment. We will be drawing the attention of our scheme members to the implications of both cases.

5.1a Darnley v Croydon Health Services NHS Trust

This case involves the claimant, Mr Darnley, being struck over the head and was subsequently taken to A&E at the Mayday Hospital by his friend. The claimant was told by the A&E receptionist that he would have to wait four or five hours and he decided he did not want to wait and left after 19 minutes without seeing a clinician. The receptionist did not tell him that he would be reviewed by a triage nurse within 30 minutes. His condition deteriorated at home and he collapsed and was taken back to hospital by ambulance arriving back in A&E two hours after his initial departure where a scan revealed he had a large extra-dural haematoma and now suffers from permanent brain damage. Medical experts determined that had he remained in A&E when he collapsed, he would have received medical attention immediately and would have made a good recovery.

This is the first time ever a hospital receptionist has been found guilty of negligence in dealing with a patient and therefore trusts will need to review their practices to ensure that accurate information is provided and that patients are not misled about waiting times. We have disseminated information to members on the Supreme Court's decision and given instructions on what trusts should do going forward. It is questionable whether any times should be given to patients in A&E because there could be other emergencies that come in which could take precedent. We have flagged the issue with NHS Improvement and NHS England. The CQC also need to be involved as they review triage arrangements for trusts and they will include something in their inspections.

The Board noted the position and the concern about the possible unintended consequences of this judgement.

5.1b [Employers vicariously liable for consequences of employee's data theft: Various Claimants v. WM Morrison Supermarkets PLC \(Court of Appeal, 22/10/2018\)](#)

This case relates to Andrew Skelton, a senior IT internal auditor at Morrisons, who was subject to a disciplinary hearing through unauthorised use of the company's postal facilities. Skelton developed a grudge and subsequently downloaded data containing personal details of nearly 100,000 Morrisons employees onto his laptop and posted the data onto a file sharing website. Skelton was convicted and sentenced to eight years' imprisonment for offences under the Data Protection and Computer Misuse Acts.

Civil proceedings were commenced against Morrisons by over 5,000 employees claiming damages for misuse of private information, breach of confidence and breach of the DPA. The High Court held that Morrisons were not directly liable as they were not data controllers at the relevant time. However, the judge found that Morrisons were vicariously liable for the various breaches despite the fact that Skelton had stolen the data because there was a sufficient connection between the position in which Skelton was employed and his wrongful conduct. Morrisons appealed the decision. The Court of Appeal agreed with the trial judge.

This case has worrying implications for all employers where they are likely to be found liable to pay damages in circumstances where an employee maliciously disseminates confidential personal data. This is a concern for the NHS given the large numbers of NHS employees. It was suggested that this needed to be taken into account when looking at risk appetite.

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 [ARC minutes from meeting held on 16th June 2018](#)

The minutes of the ARC meeting held on 16th June 2018 were noted by the Board.

8 [Other matters requiring Board attention](#)

8.1 [Policies for noting/approval](#)

The following six HR 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. Standard example letters have also been added, where relevant, to assist managers in implementing the policy.

A question was raised on how we monitor effectiveness of policies and this is work in progress. It was suggested that when reviewing policies we should consider whether

we are getting the right information which drives the right behaviours.

It was also considered how we determine review periods and whether they are all three years and the Head of Corporate and Information Governance will look into this.

Action: HoG

8.1.1 HR14 Maternity Leave Policy and Procedures

Key changes to the policy and procedures are:

- Updated to include current legislation
- Responsibilities section added on page 4.
- Time off for ante-natal care for fathers and partners added on page 5, point 6.3.
- Insertion of option to give employees opportunity to spread maternity pay over 52 weeks on page 6 point 7.2.
- Right to decide on length of maternity leave to take on page 6 point 7.3.
- Maternity leave start date amended should the baby come earlier than expected on page 8 point 11.1
- Annual Leave 14.1, page 9 removed and replaced by 14.1, 2, 6 and 7 for more clarity and easy reading.
- 14.3 on page 10 amended to reflect annual leave policy. Carry over of leave should be avoided and there is a limit of 5 days.

The Board noted the policy and procedure.

8.1.2 HR15 Maternity Support, Parental and Adoption Leave Policy and Procedure

Key changes to the Policy and procedure are:

- Three yearly review
- Reformat with standard equality assessment form
- New curtailment notice form
- New forms and Adoption checklist are added on Appendices 2 to 6.
- Responsibilities outlined
- Legal requirements added on section 5 page 6 to comply with other legislation.
- Section 4, page 18 the average weekly earnings is amended to £116.
- Five new forms and Adoption checklist are added on Appendices 2 to 6

The Board noted the Policy and Procedure.

8.1.3 HR18 Secondment Policy (New)

Key changes to the policy are:

- New policy
- Written to cover internal and external opportunities
- The policy is linked to our HR&OD strategy as a means of providing development opportunities, retaining staff and part of our talent management
- Also written to link in with IIP, enabling staff to meet their career goals and contributing to their engagement at work

The Board noted the policy.

8.1.4 HR20 Probation Policy

Key changes to the policy are:

- Three yearly review and reformat
- Standard equality assessment updated
- Purpose and scope added
- Setting out clearly the three distinctive probation review stages ie one, three and six months
- Clarifying the timescale for final stage review
- Standard letters added
- Roles and responsibilities amended and moved to the beginning of the policy
- Extension of Probation section added

A question was raised on why we have a probation policy and whether this sends out the wrong message to staff and it was pointed out that this was a standard policy for all organisations and it helps with the settling in period and ensures that staff are monitored as well as picking up performance issues so that they are supported and given appropriate training. Staff see the procedure as positive because it is an opportunity to demonstrate that they are doing well.

The Board noted the policy.

8.1.5 HR04 Hospitality & Gifts Policy and Procedure

Key changes to the policy are:

- Table of Content added
- Donations heading added
- Hospitality heading added
- Meals and refreshments added
- Travel and accommodation added
- Sponsored events added
- Gifts added
- The Bribery Act updated
- Declaration form added
- Equality Impact Assessment added

The policy has been reviewed by the Local Counter Fraud Specialist Team

The Board approved the policy and Procedure.

8.1.6 HR34 Code of Conduct (New)

Key changes to the code are:

- Three yearly review
- Reformat with standard equality assessment form
- New section added including legislation (Section 4) and Nolan principles and The 7 Principles of Public Life.
- Responsibilities on point 5 page 5 amended and broken down into three sub-sections: Managers, employees and HR&OD.
- Breach of Conduct Form is added Appendix 3

Resolution

It was considered that the code was not an easy read and was confusing. It was suggested that as this was a new policy it should be reviewed in 12 months to consider how useful and effective it is and whether it can be written in a more user friendly way.

Action: HoG

This policy has been reviewed by the Local Counter Fraud Specialist Team.

The Board Approved the Code of Conduct on the basis it would be reviewed after 12 months.

8.1.7 DPA Policy

Following the implementation of GDPR and DPA 2018 in May, minor amendments were made to the policy to reflect the new legislation but a more substantive review was deferred until the policy was due for its formal review date. The intention of the substantive review was to make the appropriate amendments in terms of compliance with the GDPR and DPA 2018 and there is more detail in relation to data privacy rights for individuals aligned to the new legislative framework. It is a requirement under the new framework that data controllers set out the way in which this will be complied with and the policy is one aspect of this implementation, which will also include our annual e-learning and reinforcement through other mechanisms of communication.

The policy has been reviewed by our legal advisers.

It is intended that a shorter note to support implementation will be provided to staff on the key points from the document. The document has been reviewed by SMT and the date of approval will be added to the front page. The document does not appear to need JNC approval but the Head of Corporate and Information Governance will check this.

Action: HoG

The Board approved the policy subject to confirming the date of SMT approval and whether JNC approval is required.

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 23rd January 2019 at 10.00am, venue tbc.

Signed

Date