

Board meeting minutes (Part 1)

13th November 2019

10:00 – 15:30

Venue: Thomas House, 84 Eccleston Square, London SW1V 1LP

Present	
Ian Dilks	Chair
Keith Edmonds	Non-Executive Director
Mike Pinkerton	Non-Executive Director
Charlotte Moar	Non-Executive Director
Nigel Trout	Non-Executive Director
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
Joanne Evans	Director of Finance & Corporate Planning
John Mead	Technical Claims Director (Associate Board Member)
In attendance	
Simon Hammond	Director of Claims Management
Cheryl Lynch	Representative of DHSC Sponsor Team
Paul Butler-McLees	Associate Safety and Learning Lead (South)
Tinku Mitra	Head of Information Governance
Julia Wellard	Executive Personal Assistant (Minutes)
Apologies	
Sam Everington	Non-Executive Director (Associate Board Member)

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everyone, in particular Paul Butler-McLees who attended the meeting as an observer.

Apologies for absence were received from Sam Everington. Ian Adams was also unable 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 2019

The minutes of the Board meeting held on Wednesday 11th September 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:

- Sharing learning from claims related to specific cases - Explore what further mechanisms could be used for sharing learning from claims related to specific incidents.
- One year on - evaluation of our publication 'learning from suicide related claims' - Stakeholders to be reminded of the recommendations they are signed up to.

There following actions were closed.

- Emergency care report - Freya Levy to be invited to present the draft report to the November Board Meeting. This is included on the November Board agenda.

2 Operational items

2.1 Chief Executive's Report

Regional 'Keeping patients and your workforce safe' events

An inaugural regional event on 'Keeping patients and your workforce safe' was held between functions across NHS Resolution and NHS England/Improvement colleagues on 10th September. The event provided a platform for NHS Resolution to raise awareness within the primary care community of its remit in relation to the primary care agenda and to undertake early conversations with primary care providers. A further six events are to be held across England over the course of the next three months with the aim of reaching out to many new primary care providers and commissioners that have not had prior contact with NHS Resolution, with the expectation of engaging with five to six hundred individuals working in the primary care sector. Delegates range across GPs and CCGs. It was noted that Sally Pearson, Responsible Officer and HPAN Lead, attended the Acute and General Medicine Conference and high numbers of GPs attended our stand.

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 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 2019 was presented. It was also noted that there has been movement in the CNST budget from an overspend of £19m at the end of September to a £19m underspend at the end of October. The Finance and Claims Management teams are working together to monitor the position as we move into the second half of the financial year.

Claims Performance

There has been a slight increase in the number of claims received for CNST and LTPS. LTPS claim numbers have stabilised following a spike in July. In clinical, orthopaedic surgery continues to be the largest reported specialty year to date with emergency medicine following. In terms of the spread of specialties and the average number of claims, a query was raised whether we have any data that would show how this might shift in general practice, particularly in relation to the elements of claims that will need further evaluation e.g. delay in diagnosis and misdiagnosis. CNSGP numbers are currently small with only 27 claims, however misdiagnosis is the highest feature by volume. Once we get more granular data we will be able to report further and it will be interesting to see the difference in the taxonomy for claims for primary care and secondary care. We are also working with PSIMS which will enable us to see incident reporting for claims coming through and we will shortly have access to the MDDUS claims data. We are in the process of going out to advertise for a GP and GP Nurse support to help with the work we are doing in primary care and a copy of the advert will be shared with the Board.

Action: DoS&L

Practitioner Performance Advice Performance

Numbers of requests for advice are moving up and down as they have gone from 20% against previous YTD to 14% and then back up to 16% and this is being monitored. The team have been looking at the organisations which are using the service which is around 70%. The open case load and activity are stable. The number of requests for assessments is going up and this is being monitored.

The Advice Service recently had an internal audit and received a substantial assurance rating which was reflective of how the service is changing, how it is progressing and the understanding of the environment.

Primary Care Appeals

All KPIs for the reporting period have been fully met save for the average number of weeks taken to resolve appeals and disputes (oral hearing) which was missed in August.

Safety and Learning

All KPIs have been fully met. The team have been extremely busy running and attending events and requests for events are increasing.

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.

This has been a busy period with the publication of a number of products including Resolution Matters and the Early Notification Scheme progress report: collaboration and improved experience for families which reports on the first year of the scheme. The HSJ included an exclusive article on the main findings of the report and this set the tone for subsequent coverage for other national press. The Head of EN Legal undertook an interview for HfMA Healthcare Finance which highlighted the financial benefits of the scheme as well as the Maternity Incentive Scheme. The report received support from the Minister and the Royal Colleges and has also featured at many conferences.

In terms of digital communications, Twitter activity has increased over the last few months which is reflective of the number of events we have been running and participated in.

Users of the Extranet were recently made aware of the switch over to the new Extranet. The most visible change for users is the look and feel of the Extranet as the technology the Extranet uses has been upgraded. As part of this release, some content has been upgraded and new information included detailing how benchmarking on the system works. It was considered that the Extranet would be a good opportunity to see how well we are communicating by looking at who we interact with and whether there is any opportunity for improvement particularly as there are people who would benefit from the information on the system as it gives the ability for trusts to look at their own claims. The Extranet is predominantly used by the legal services teams in trusts for reporting claims and we do not know to what extent the teams are informing others of the information available there. It was noted that the scorecards are going to be revised and we will be asking people what might be useful to them and how they might use it in different ways. We are working closely with GIRFT on this.

In terms of direct marketing, we should look at how our communications are being received. In particular for the EN scheme progress report, it was noted that 56% opened the email and clicked on the link. It was considered that this type of report should be presented to trust Boards and therefore it is disappointing that only half of the Chief Executives who were sent the communication appeared to read it. Considered whether there is any way that we can impress on the senior staff in trusts to ensure that this type of communication gets to the right people. It was suggested that this could be added to the customer survey.

The team continue to work collaboratively with a wide range of national and international stakeholders as well as meet with a high number of members, and participate in and lead on a number of events.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

5.1 Case Report – *Mordel v. Royal Berkshire NHS Foundation Trust*

In this recent High Court judgment, trust staff were held to have been negligent in dealing with an expectant mother who later gave birth to a child with Down's syndrome. The mother (EM), whose first language was Polish but had reasonable English, claimed that had the trust performed appropriate screening, she would have opted for a termination. However, the hospital notes indicated that EM was offered screening for Down's Syndrome to which she replied "No" and subsequently gave birth to a child with Down's. We argued on behalf of the trust that it was clearly indicated in the notes that EM had refused screening for Down's, that a patient's decisions must be respected and that it would be improper for staff to bring pressure to change a patient's opinion. The Judge took a different view and concluded that EM failed to understand the question when offered screening and answered "No" because of her misunderstanding and that the sonographer and midwife should have enquired further to establish if EM understood the position. The Judge accepted EM's evidence that she would have proceeded to diagnostic testing which would have revealed the presence of Down's and consequently undergone a termination. As a result, judgment was pronounced against the trust for damages to be assessed.

The Judge took the view that with a patient, whose understanding of English was not perfect, and where an answer totally contradicted a previous indication in the notes, further enquiry by clinicians was needed in order to be sure that there was no misunderstanding. This ruling in some respects parallels a decision of the High Court last year where a London trust was held negligent for failing to ensure that a new mother, who had only a few words of English, was given comprehensible advice about breast-feeding which resulted in the wrong technique being applied and the baby suffering brain damage. Both these cases provide a clear indication to clinicians that where a patient has imperfect English, it is essential that insofar as practicably possible they ensure the patient has understood advice given, without exerting undue pressure on the patient which is a very difficult balance to achieve. It is considered that this may become a trend where patient's first language is not English.

We are currently looking at how the learning from these cases can be communicated back into the system. One of the key areas we need to look at is around consent and there are some animated videos in different languages. HSIB are also looking at themes coming out of cases and the different elements. There are also difficulties where a clinician's first language is not English.

It was suggested that this issue should be included on the website and in Resolution Matters.

The Board noted the case report.

6 Oversight of Key Projects

6.1 There were no issues to report.

7 Board Committee Reports and Minutes

7.1 Audit and Risk Committee minutes – 5th June 2019

The minutes of the Audit and Risk Committee meeting held on 5th June 2019 were noted by the Board.

8 Other matters requiring Board attention

8.1 Policies for noting/approval

8.1.2 Records Management Policy

Business areas have reviewed their retention schedules for records as required under both Data Protection and records management requirements under the Freedom of Information Act 2000. Further work to implement the policy will be progressed once the National Archives report has been reviewed following their gap analysis. The main changes to the policy are to add the records held in Practitioner Performance Advice, Safety and Learning, Informatics and GPI unique records to the policy.

The Board noted the Records Management Policy.

8.1.3 Complaints Policy

The Policy has been reviewed and a number of changes have been made to the document including the narrative and flow of the policy. Further suggested changes to the draft have been advised by Board members but these are not substantive.

The Board approved the Complaints Policy subject to the changes advised.

8.1.4 Sickness Absence and Promoting Attendance Policy and Procedure

The Policy and Procedure has been reviewed and updated with a number of changes to the document.

The Board approved the Sickness Absence and Promoting Attendance policy and procedure.

8.1.5 Organisational Change Policy and Procedure

The Policy and Procedure has been reviewed and updated with a number of changes to the document.

The Board approved the Organisational Change policy and procedure.

8.2 **Other Items**

8.2.1 *Standing Financial Instructions*

Standing Financial Instructions (SFIs) detail the financial responsibilities, policies and procedures to be adopted by NHS Resolution and are designed to ensure that its financial transactions are carried out in accordance with the law and Government policy in order to achieve probity, accuracy, economy, efficiency and effectiveness.

The SFIs have been reviewed with a number of key changes which have gone through the Audit and Risk Committee.

The Board approved the Standing Financial Instructions.

9 **Any Other Business**

9.1 **Board Effectiveness Review update on actions**

The Senior Advisor to the Chief Executive and the Head of Corporate and Information Governance provided an update on the Board effectiveness review recommendations and next steps.

The Board accepted the outcomes of the Board effectiveness review in May 2019. The Review determined that the Board had a clear sense of common purpose and were in agreement on the areas of growth for the organisation. The review also highlighted areas for development in terms of operating as a unitary Board and its role in shaping the culture of the organisation to support its vision and strategy. The Senior Management Team discussed the recommendations from the review during September which was followed up by a discussion at the Board Awayday and further separate interviews with the Non-Executive Directors during October.

There is already a lot of work underway. The three key areas for us to focus on are system leadership, partnership working, and how we build on our approach of working together as a team and working on shared challenges. There have also been insights around governance.

Discussion highlighted that we are challenging ourselves, that we are effective and that we should take time to think about how we take things forward. One specific action agreed is that we should make more use of awaydays to deep dive into areas.

Non-Executive Directors are all inducted into the organisation, but it was considered that the induction needed to include attendance at meetings across the organisation, including attending one ARC meeting. We are developing staff in terms of them coming to Board meetings to present reports from their area and therefore we should be giving staff more opportunities to meet members of the Board and engage with them. It was noted that Keith Edmonds had attended the Advice team meeting which had a welcome impact in terms of explaining what the Board did. It was suggested that Board members should make every effort to attend the upcoming staff celebration

day. It was agreed that the Executive Directors take forward an action on ensuring that Board members are invited to attend meetings across the organisation.

Action: Executive Directors

In terms of Board papers, it was considered that coversheets needed to be properly completed to clarify what is being asked of the Board together with a brief summary of the report. Coversheets are to be updated to include where items align with risks on the strategic risk register and whether they are within or outside appetite.

The Board noted the Board effectiveness review update.

9.2 Board Planning Schedule

The Board planning schedule sets out the core reports for Board for the 2020 cycle of meetings and details of what are for noting and approval. The schedule is informed by reviewing Board accountability.

The schedule has been changed to include two opportunities for the Board to consider the strategic risks as part of a risk assurance report in May and November 2020. The operational risk register is not brought to Board. The strategic risk register is considered by the Senior Management Team quarterly which is then discussed at the Audit and Risk Committee before it is reported to Board. If there are any areas which appear out of appetite these should be brought to the Board's attention together with actions management are taking to bring it back within appetite. It was suggested that the strategic risk register should be mapped to our key objectives. The schedule also includes reviewing progress against strategy and the business plan in accordance with regular reporting as set out in the Framework Agreement.

Action: DoF

It was considered that there needed to be a Freedom to Speak Up Guardian report and this will go to Audit and Risk Committee and be included in the Committee's report to Board.

The Responsible Officer report should be moved from May to September so that it fits in with the National Framework for Responsible Officers.

The Board planning schedule achieves a reasonable balance across the year and gives the Board assurance that we are reporting on our obligations.

The Board agreed the Board planning schedule as a way of working.

10 Date and Venue for next meeting

10.1 The next Board meeting is scheduled for Tuesday 21st January 2020 at 10.00am, at Thomas House, 84 Eccleston Square, London SW1V 1LP.

Signed

Date

Board Actions – November 2019

Part 1

Action Ref No.	Date of Board Meeting	Part 1 or Part 2	Reference	Action	Date action due	Officer responsible	RAG rating	Status of action
19.10	11.9.19	Part 1	Sharing learning from claims related to specific cases	Explore what further mechanisms could be used for sharing learning from claims related to specific incidents	ASAP	DoCM with DoS&L	Closed	Discussion taken place and ongoing work continuing in conjunction with the TOM work.
19.11	11.9.19	Part 1	Emergency care Report	Freya Levy to be invited to present the draft report to the November Board Meeting.	November Board	DoS&L	CLOSED	Dr Levy is attending the November Board to update on her report
19.12	11.9.19	Part 1	One year on - evaluation of our publication 'learning from suicide related claims'	Stakeholders to be reminded of the recommendations they are signed up to.	ASAP	DoS&L	Closed	This report was recirculated via social media and stake holders are being followed up during next few weeks, and plans being developed to explore incentive scheme linked the report's recommendations
19.13	13.11.19	Part 1	GP support recruitment adverts	DoS&L to share the adverts with the Board.	ASAP	DoS&L	Closed	Appointment offer made
19.14	13.11.19	Part 1	Board members attendance at team meetings	Executive Directors to ensure that Board members are invited to attend team meetings across the organisation.	ASAP	Executive Directors	Closed	
19.15	13.11.19	Part 1	Strategic Risk Register mapping with key objectives	DoF to ensure that the strategic risk register is mapped with the organisation's key objectives.	For next ARC meeting	DoF	Closed	Has been completed, but will review for Strategy Refresh for ARC on 12 th February