

Board meeting minutes (Part 1)

15 July 2020

10:00 – 15:30

MS Teams meeting

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)
Sam Everington	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
Ian Adams	Director of Membership and Stakeholder Engagement
Tinku Mitra	Head of Corporate & Information Governance
Niamh McKenna	Observer (Chief Information Officer wef 17.8.20)
Naomi Assame	Observer (Associate Safety and Learning Lead (North))
Julia Wellard	Executive Personal Assistant (Minutes)
Apologies	

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming everyone, in particular Naomi Assame, Associate Safety and Learning Lead (North), and Niamh McKenna new CIO with effect from 17th August 2020 who joined the meeting as observers.

There were no apologies for absence.

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 12th May 2020

The minutes of the Board meeting held on Tuesday 12th May 2020 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.

The following actions were closed:

- ABC v St George's University Hospital NHSFT, SW London & St George's Mental Health NHST and Another (High Court, 28 February 2020 – Yip J.) – Technical Claims Director to contact the Trust to provide a narrative on the case highlighting the broader issues. Update 15/7/20: It has not been possible to find an expert willing to assist with this and therefore the action was closed.
- Equality, Diversity and Inclusion (ED&I) - The Head of HR&OD to bring a paper on the breakdown of ED&I figures split between the London and Leeds offices. The ED&I split for London and Leeds has been included in the HR Report.
- Stakeholder Engagement Dashboard – Board members to let the Director of Membership and Stakeholder Engagement know if they wished to suggest improvements. No comments received as at 15/7/20. Although the action was closed the Chair requested Board members to provide feedback in future if they had suggestions for improvement.

2 Operational items

2.1 Chief Executive's Report

New Neonatal Codes

The launch of the new series of learning codes on the 1st July received a lot of positive publicity and the Membership and Stakeholder Engagement team were thanked for their work on communications. In order to assist in this work we will be appointing a neonatal clinical fellow. HSIB have released a report on Group B Strep.

Mediation Service

Throughout the pandemic, mediations have continued virtually with 20 mediations held by one provider alone of which 16 settled. Feedback has identified that some claimants prefer this form of mediation because it makes the experience less intimidating and gives them more privacy. This also benefits attending clinicians as they do not have to travel or take a whole day away from clinical duties and is less stressful. Our evaluation shows that the attendance of clinical staff can make a difference to the outcome and so this is a good opportunity to promote the benefits of mediation to the medical profession. As we have proved that remote mediations work well, it is likely that these will continue to be held remotely post pandemic where necessary. It was considered whether we could do more to proactively advertise this going forward and this is already being discussed with claimant solicitors.

We have been made aware that a barristers' chambers are interested in our mediation service and want to incorporate the details of the service together with the benefits of remote mediation into one of their seminars.

Independent Medicines and Medical Devices Safety Review

The review into how the health system responds to reports from patients about harmful side effects from medicines and medical devices was published on the 8th July and details the distressing experiences of many patients and their families in relation to Primodos, sodium valproate and pelvic mesh. We gave both written and oral evidence (two sessions) and the report focuses on learning but also on the litigation experience. The report has made a number of recommendations including the appointment of a Patient Safety Commissioner who would be an independent public leader with a statutory responsibility. There are two other recommendations noted to be of direct relevance to NHS Resolution's work; namely a compensation fund to be set up for the affected patients and a new independent Redress Agency for those harmed by medicines and medical devices.

Other recommendations were discussed by the Board, including that for the GMC to hold a register of conflicts. It was agreed that NHS Resolution would work with DHSC and others to inform the response to the recommendations, where appropriate and where it held relevant evidence.

It was noted that Government has already responded to the recommendation in relation to issuing an apology to the families affected with a ministerial statement.

The Board noted the Chief Executive's Report and commended the Senior Management Team for continuing business as usual during the current crisis.

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 May 2020 was presented showing that year to date net expenditure on all DEL budgets, including PIDR and the GP indemnity scheme, is underspent by £16.2m. It was noted that to date we have only been given a partial budget of £100m for PIDR. The remaining element of the PIDR budget for 2020/21 will be centrally funded but has yet to be agreed. In addition, we have not yet agreed a full year budget for GPI or the Clinical Negligence Scheme for Coronavirus (CNSC). Indemnity scheme budgets overall, excluding the PIDR impact, GPI and CNSC are underspent against budget by £37m.

Work is being taken forward with the Claims Management team to identify what impact COVID-19 is having on the claims operation around volume and value of payments made in the first quarter of the financial year.

The underspend position on CNST at the end of June has continued to increase up to £54m on the baseline position and work is being taken forward with the Claims Management team to review the position at a more granular level.

Claims Performance

The number of claims and incident reports received for the three principal indemnity schemes for the financial year up to 30th May have fallen. In particular non-clinical claims have shown a dramatic drop which is attributable to the impact of COVID-19 and the shorter time lag between incident and claim. We are also aware from market intelligence that there is a drop in referrals to claimant lawyers and therefore fewer claims are being reported through to us although this is likely to change as we start to return to a more normal way of working.

Practitioner Performance Advice Performance

An update was provided on the advice requested by sector and professional group for April and May 2020, current live activity for the assessment and intervention services and Healthcare Professional Alert Notices (HPANs). The number of new advice requests decreased in the first two months of the financial year which was attributable to the impact of COVID-19, although this is beginning to increase. Existing requests continue and 200 letters were sent out in June which is approximately a 50% increase on the amount from March to May. Feedback from customers indicates that there is still awareness about the service and there are still conversations with link advisors. A number of clinical advisors were redeployed back to their clinical setting to support the pandemic and they are now beginning to return.

Primary Care Appeals

Performance on the average number of weeks to resolve appeals and disputes has fallen which is attributable to the suspension of site visits. Due to current pressures across all sectors in response to the COVID-19 pandemic, the requirement to publish renewed PNAs has been suspended until April 2022. Work has started with the collective group to understand the themes that were coming out in decisions which they can address as part of their PNAs.

The Primary Care Appeals function was recently audited and feedback from the team has been positive. The Director of Advice and Appeals took over the leadership of the Primary Care Appeals function six months ago. The auditor was complimentary in the direction of travel for the team, particularly the proposals around stakeholder engagement and the work being taken forward with NHS England and Improvement. The team have also responded well to the new ways of working during the pandemic.

Safety and Learning

Although members of the Safety and Learning Team were re-deployed back to the frontline, KPIs have continued to be met. COVID-19 has required us to work with trusts differently in terms of engagement and events which have been held virtually. In particular a successful event was held with the North Region trusts around scorecards and triangulation. There has also been positive feedback on the inquests videos, a lot of work being done on thematic reviews, and a number of case stories have been produced. It is unlikely that we will completely go back to face to face engagement post-COVID-19 and instead will continue with the virtual approach as far as possible, as engagement has been well received by trusts and the approach has been far more wide-reaching.

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

2.3 HR&OD Report

The Head of HR&OD joined the meeting to present the HR&OD report which provides information on the organisation's key workforce indicators, equalities characteristics and the HR&OD activities for the period June 2019 to May 2020.

A number of key points from the report were highlighted:

It was considered that the number of agency workers was high. We are increasing our establishment as part of the business planning and strategy process and some of the agency workers are short term whilst we recruit to permanent posts. Some agency workers are working on bespoke pieces of work where we require particular skills for the post. All agency appointments are overseen by the Workforce Strategy Group (WSG) on a monthly basis. It is likely that the number of agency workers will decrease over the year, particularly as new team structures begin to embed.

An update was provided on the annual appraisal process and 91% of appraisals have been held with 79% of paperwork returned and the process is near to completion which is a good achievement.

In terms of Mandatory and Statutory Training, the Fraud and Bribery Awareness is fairly new training and compliance is at 88%. It was recognised that compliance with this new module needs to be improved further. The HR&OD team are working on how this will be delivered going forward which may be through a combination of face to face and on-line training and is likely to increase compliance.

It was noted that the reduction in the vacancy rate was beginning to approach where it should be and that given the current economic climate there is potential for this to continue to move in the right direction which is encouraging. A lot of work has been done around recruitment processes and vacancies are continually being tracked. A new Recruitment Team Leader post will be joining the HR&OD team in the next four weeks to oversee recruitment for the organisation. It was suggested that it would be helpful to have a report on the average onboarding time, i.e. the time taken from from vacancy being declared to the replacement being in post.

Action: HoHR&OD

The top priority for the HR&OD team at the current time is responding to the COVID-19 pandemic. There has been a huge amount of work undertaken around adapting policies and processes, continuing with recruitment at pace including changing our approach to how interviews have been conducted, and onboarding of new staff. Going forward, the HR&OD team will be focussing on the ED&I strategy and action plan, liP accreditation and outcome report, and how we continue to prepare the organisation through a busy period of change around the claims operating model, new ways of working, office move and systems.

As an organisation, we have responded well to the pandemic and continue to focus on the health and wellbeing of our staff. We recognise that staff are working incredibly hard and some teams have been affected by the pandemic through bereavements and

carer responsibilities whilst continuing to do their work, which has impacted on staff capacity both mentally and emotionally. We are undertaking a stock-take on the programme of work going forward to make sure that we focus on priority areas but also challenging ourselves to work in a sustainable way.

It was considered that it would be helpful to have visibility on the performance between functions e.g. on appraisal completion. This information is readily available as it is presented to SMT although it is a more operational level detail.

Action: HoHR&OD

The Board noted the HR and OD report and thanked the Head of HR&OD for presenting it.

2.4 EDI Strategy

The Head of HR&OD and the OD, Learning and Education Lead presented the EDI strategy which sets out the purpose and reasons that NHS Resolution is committed to embedding equality, diversity and inclusion (EDI) across the organisation and ensuring that fair treatment and social inclusion are at the heart of everything we do. The strategy includes key aims and objectives identified for the organisation to progress, and details how these will be monitored and reported in order to provide assurance to the Board.

The strategy is a living document with a number of equality, diversity and inclusion actions which have progressed to date. The strategy links with the Workforce Race Equality Standard (WRES) data. DHSC have also commissioned all ALBs to confirm what their priorities are in the ED&I space and how we are approaching this and a collective response has been shared back to ALBs. This flagged that we performed well compared to others in our workforce profile around ethnicity and appointing BAME staff.

It was noted that there is an inconsistency in how Indicator nine 'Board representation' is recorded which is now in two parts referencing separately the full Board and the Executive Board. The majority of the Board comprises the Chair and NEDs who are appointed by Ministers and therefore we have no control over its composition. We do have control for the Executive Board. It should be noted that although we compare ourselves to the NHS, we do not provide clinical care and therefore we are operating in a different and wider employment market.

It was also noted that we exhibit a gender disparity in the organisation and it was suggested that we should undertake some analysis to look at gender issues in the same way we have identified our BAME issues. It was confirmed that the management team do drill down into the level of detail around gender where there are disparities around pay grades and have undertaken work on this to make sure that we have specific actions to address those disparities. This will be made clear in the ED&I strategy.

In terms of our wider customer base, discussions have been progressing looking at the internal and external aspects of the ED&I strategy and action plan which is being considered across functions, and looking at the data available. The Advice team have already begun to progress examining termination of contracts, exclusions, variation by

organisation and internal processes around prejudices. The Safety and Learning team have been looking at the whole issue of maternity as well as work around learning disabilities. It was agreed that a paper be brought back to Board on the cross-functional customer base.

Action: DoCM/DoA&A/DoS&L/DoMSE

The Board approved the EDI Strategy and action plan and thanked the Head of HR&OD and OD, Learning and Education Lead for a well-written and action focussed report.

2.5 Workforce Race Equality Standard (WRES) Report

We are committed to publish our report on compliance with the Workforce Race Equality Standard (WRES) in line with our business plan. WRES provides a framework for NHS Trusts and national bodies to report on their ethnicity data as well as progress against the nine WRES indicators with the aim of improving the workplace experiences and opportunities for Black, Asian and Minority Ethnic (BAME) staff.

The findings for the 2018/19 and 2019/20 WRES data were presented together with next steps. The 2018/19 WRES data will be published internally to staff. The 2018/19 data have been submitted to the national WRES team at NHS England and Improvement who unfortunately, were unable to include our contribution in the main body of the report, even though we met the deadline. We received an apology for this and an offer to include the 2018/19 data as an annex to the report. The 2019/20 data will be submitted by the deadline in the usual way. The outcomes of the 2019/2020 report are to be reviewed against the actions in our ED&I plan and actions will be amended or re-prioritised enabling the organisation to make further improvements to experiences and opportunities of BAME staff.

Indicator four implied that more people had accessed the training than the headcount and it is likely that this is due to the same people accessing the training multiple times. This will be investigated and an explanation will be included in the report.

It was noted that for indicators five to eight we have not been able to answer the questions as we did not get the breakdown by ethnicity in the staff survey and therefore we were unable to respond directly to those indicators. However, this has been captured in the 2018/19 data with narrative from our survey results. As part of the 2019/20 data, we will be including questions which reflect the WRES data in our staff survey so that we can ensure that we are able to answer those questions in the March 2021 return.

A number of amendments are needed to the 19/20 WRES report including clarification around the number of people accessing the CPD training which the Head of HR&OD will review.

The Board noted the 2018/19 WRES data report and annex and approved the internal and external publication of the 2019/2020 WRES data, subject to the report being reviewed for accuracy before it is published.

2.6 Complaints Report

The Head of Corporate and Information Governance gave an update on complaints activity received for the past three years (FY 2017/18 to 2019/20). Complaints which are deemed outside scope of the complaints policy are now recorded separately.

Many of the complaints recorded within the claims function are from litigants in person. We work with Action against Medical Accidents (AvMA) and signpost litigants in person to them to obtain legal advice. We also provide litigants in person with a flowchart to help them understand what our remit is.

The Head of Corporate and Information Governance is a member of the Cross Government Complaints Forum which is attended by ALBs and shares feedback on general issues and where there are specific complaints which would benefit from input across the group.

The Chair noted that although the report correctly stated that there had been no complaints to the PHSO in the year, one has been made recently which is the first for many years.

The Board noted the Complaints 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.

Strategic engagement with the Chair and Chief Executive has continued with on-line meetings. Work is progressing on a strategic finance engagement programme for the Director of Finance.

A set of actions has been developed and agreed to address feedback gained from the online customer survey and indepth interviews. An update on the customer survey action plan will be brought to the September Board.

It was noted that the details of trusts approached for further information during and following the verification process have been published on the website for both years one and two of the Maternity Incentive Scheme. This has also been referenced in the 2019/20 Annual Report and Accounts which is scheduled to be laid before Parliament on 16th July.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

There were no key developments to update.

6 Oversight of Key Projects

6.1 There were no issues to report.

7 Board Committee Reports and Minutes

7.1 ARC minutes of meeting held on 7th May 2020

The approved minutes of the ARC meeting held on 7th May 2020 were noted by the Board.

8 Other matters requiring Board attention

8.1 *Hospitality and Gift Register*

The hospitality and gift register was noted by the Board.

8.2 Policies for noting/approval

8.2.1 *Capability Policy and Procedure*

A number of changes have been made to the Capability Policy and Procedure which was due for review in January 2020. The policy has been reviewed by JNC and SMT.

The Board approved the Capability Policy and Procedure.

8.2.2 *Business Continuity Policy*

The Business Continuity Policy has been revised following an internal audit and a business continuity exercise carried out by an external expert. The policy has been reviewed by the Operational Review Group and agreed by the Senior Management Team. The policy has been reviewed by JNC and SMT.

The Board approved the Business Continuity Policy.

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 16th September 2020 at 10.00am, the location to be kept under review and if necessary this will be a virtual meeting.

Signed

Date