

Board meeting minutes (Part 1)

16 September 2020

10:00 – 15:30

MS Teams meeting

Present	
Ian Dilks	Chair
Keith Edmonds	Non-Executive Director
Mike Pinkerton	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 Advice and Appeals
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
Niamh McKenna	Chief Information Officer
Tinku Mitra	Head of Corporate & Information Governance
Disa Young	Deputy Director of Membership and Stakeholder Engagement (observer)
Julia Wellard	Executive Personal Assistant (Minutes)
Apologies	
Charlotte Moar	Non-Executive Director

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair welcomed everyone to the meeting, in particular Disa Young, Deputy Director of Membership and Stakeholder Engagement, who attended the meeting as an observer.

Apologies for absence were received from Charlotte Moar.

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 15th July 2020

The minutes of the Board meeting held on Wednesday 15th July 2020 were APPROVED and a copy signed by the Chair.

1.4 Minutes of the AGM on 13th August 2020

The minutes of the AGM held on Thursday 13th August 2020 were APPROVED and a copy signed by the Chair.

1.5 Review of actions from Board meetings

The actions from the last Board meeting were noted.

The following actions were rolled forward:

HR&OD Report - To be included in the next HR&OD Report: Onboarding time from vacancy being declared to the replacement being in post. Visibility on the performance between functions e.g.. appraisals etc. To be included in the next HR&OD report in January 2021.

ED&I Strategy - Claims/Advice/S&L/MSE to bring back a paper on the wider customer base looking at the internal and external aspects of the ED&I strategy across functions. Update – This is action sits with the operational areas. The Director of Finance and Director of Advice and Appeals will discuss co-ordinating the outputs from operational discussions.

No items were closed at the meeting.

2 Operational items

2.1 Chief Executive's Report

Annual Report and Accounts

The Annual Report and Accounts for 2019/20 were laid before Parliament on 16th July 2020, followed by our AGM being held on 13th August 2020. The Chair and Chief Executive jointly wrote to key contacts to highlight major points from the report.

Business Plan 2020/21

The Business Plan for 2020/21 has been approved by DHSC and published on our website. The Senior Management Team have had a number of sessions to discuss 2021/22 business planning and this will be discussed further at the Board Awayday on 13th October 2020 in terms of work undertaken to date and key priorities for the year ahead, taking into account the impacts of the COVID-19 pandemic.

Coronavirus Clinical Negligence protocol launched

A new Coronavirus clinical negligence protocol to manage claims during the pandemic has been agreed with Action against Medical Accidents (AvMA) and the Society of Clinical Injury Lawyers (SCIL). The Director of Claims Management was thanked for

the work undertaken in collaboration with the claimant legal market which is seen as a positive development for patients and healthcare staff, ensuring that claims can progress in a pragmatic way whilst managing the burden on NHS staff, and the courts system.

It was suggested whether we could do more to publicise the protocol through the media and work is already ongoing to look at the wider press and looking proactively how we can market our services to have maximum impact. The British Medical Journal and Royal Colleges may also be interested in the protocol as it is seen as a significant change in the system. The Director of Claims Management and Director of Membership and Stakeholder Engagement to consider wider engagement to publicise the protocol reached with the claimant legal community with mainstream media, not just health and legal.

Action: DoMSE/DoCM

The Chair recorded that following discussion at the Board session on 13th August, he is shortly writing to members highlighting what we have been doing since the pandemic to help. A copy of the letter will be circulated to the Board once sent.

Action: DoMSE

NHS Resolution shortlisted for national mediation award

We have been shortlisted for a national award for innovation in mediation. The awards take place virtually on 23rd September 2020. The Director of Claims Management and his team were congratulated for their efforts in driving mediation forward and noted that over 1000 mediations have taken place since the project was launched.

'Diversity Matters' staff network launched

NHS Resolution's first BAME staff network, 'Diversity Matters', was launched on 6th August and was attended by over 100 members of staff. The network is staff created, owned and led and is sponsored by the Director of Finance who gave a presentation to the network setting the scene. The network was attended by a diverse mix of staff from across the organisation and was well received. The issue of diversity on the Board and Board support for the network was discussed. There have also been a number of further activities, articles and cultural pieces included in This Week raising the profile. The next meeting is scheduled on 15th October and NEDs were encouraged to take part.

Equality Diversity and Inclusion (EDI)

NHS Resolution's EDI strategy and action plan was recently published to staff. Work is already progressing on the three strands: recruitment and retention, leadership and talent management, and capacity and capability. The strategy and action plan continues to develop over time and we are building on the action around coaching, development and offering support. The Advice and Appeals teams have started a programme of six different workstreams looking at the implications of inclusion within the Advice and Appeals service, in particular looking at the issue around suspension cases which appear mostly to relate to BAME doctors, and the high proportion of cases presented to us for assessment which relate to BAME practitioners. It was considered that the output from the workstreams will be interesting and it was suggested that this is brought to a future Board for discussion to also include what we have done in response to Black Lives Matter. This is also important for staff in terms of those who are working on these cases so that they are aware of what is going on and how this is applied to our casework. We have been working with the GMC who have shared data with us on the methodology around this. This is an important area and the biggest

discriminator is the point at which someone gets referred. It was suggested that we should triangulate the outputs with other areas of the system and this work will be taken forward through an external reference group which is being set up.

Action: DoA&A

A question was raised on how we are going to address the gap in Board membership. The Workforce Race Equality Standard (WRES) data has recently been published which outlines that there is a lack of diversity in senior positions in ALBs. The Executive Directors are responsible for ensuring that diversity in senior positions improves, however responsibility for the NEDs lies with DHSC and the Cabinet Office. There will be an opportunity to recruit for two NEDs early next year and we need to consider whether there is anything we can do as an organisation; for example we could mentor people who might be interested in becoming an NED and put their names forward. In terms of senior positions, there is a cohort of BAME employees at Band 8d and 9 who we need to focus on developing to director level so that they are ideally placed to apply for director positions in the organisation and externally. It was agreed that the Chair and Chief Executive would discuss further diversity recruitment to the Board and where there are key skills gaps. The Chair will also discuss with his successor who will be involved in appointments next year.

Action: CE/Chair

It was considered that when we move back to office working there are concerns around the risk of creating 'ingroups' and 'outgroups' and we should be mindful of the inclusion aspect.

The Director of Membership and Stakeholder Engagement reported that he is representing the organisation at a national conference focusing on LGBT.

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.

The performance reports are continually being developed and any feedback on the presentation and format should be directed to the Deputy Director of Policy, Strategy and Transformation.

Finance Performance

The summary financial report to the end of July 2020 was presented. It was noted that spending on the non-clinical schemes in particular has been impacted by the operational effects of the pandemic. We are aware that one of the key claimant firms on LTPS has been operationally challenged and we have seen a drop in claims volumes coming through which is linked with the level of spend over the last four months.

Claims Performance

The drop in claims volumes in LTPS not only relates to the operational challenges experienced by claimant solicitors but is also likely to be related to a fall in incidents incurred (e.g. a fall in visitors to hospitals) which is largely due to the lockdown measures. We are beginning to see an upturn in numbers but this will not be to the same extent as the previous year.

Practitioner Performance Advice Performance

It was noted that the Advice service had received its first HPAN case following COVID-19.

It was also noted that there has been a drop in activity in April and May, although requests for advice are moving back in line with the five year average figures. All our activities have been refocussed to take place virtually and the team have been given development opportunities around the EDI work. Five virtual behavioural assessments have taken place and the feedback from practitioners and assessors has been positive.

Primary Care Appeals

We have received the first Appeals case which has a COVID-19 context and regular meetings are taking place with NHS England and Improvement where we have been able to share the details and some of the regional variance which is proving helpful.

Safety and Learning

The Director of Safety and Learning commended the Safety and Learning team on the way they have transformed to remote engagement events. This is a real opportunity to look differently going forward in terms of there being more participation which is positive and we need to ensure that we progress the benefits of the new ways of working post COVID-19.

Membership and Stakeholder Engagement (MSE)

The engagement dashboard was presented. Meetings continue to be conducted virtually as a result of the pandemic and sharing insight on the impacts of COVID-19 has been a common feature in recent meetings.

It was suggested whether we should give more consideration around what conferences we should be represented at and that the Senior Management Team undertake a forward look on events which we want to be involved in, so that all the good work we are doing around patient safety is getting to the right people.

It was considered whether there was an alternative way of embedding our information i.e. the Safety and Learning leaflets, into the wider NHS technology system, for example where GPs are able to access immediately specialist leaflets for patients and medical practitioners. The Director of Membership and Stakeholder Engagement and Sam Everington will discuss this further off-line.

Action: DoMSE/SE

The Board noted how the organisation had been flexing the way it had been working since the pandemic and commended how agile the organisation had become.

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

Key activity over the reporting period:

- The summary of the Annual Report and Accounts has now been completed together with a comprehensive slide pack, both of which are intended to assist colleagues when speaking at conferences.
- The team are assisting with publicising the Coronavirus Clinical Negligence protocol.
- Following discussion at the August Board session around engagement with members, there will be a rolling series of engagements with key claims contacts within trusts which is being taken forward.
- The team are working with advisors in the Advice team in developing digital workshops to support handling concerns. We are looking at a more strategic approach to the use of digital technology to support our ongoing engagement.
- There has been an increased emphasis on our employee communications which the Deputy Director of Membership and Stakeholder Engagement will be focussing on going forward.

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

5.1 Case of Note

An update was provided on the case of *SP and MP v. Royal Wolverhampton NHS Trust (High Court, 4 June 2020 – Chamberlain J.)*.

This case has been publicised by a number of claimant lawyers as an important step forward for claimants. However, the judge only decided that the case should be reinstated, not that the claim would be successful. There is no final outcome as yet. We are considering our next steps and have lodged notice of appeal with the Court of Appeal. We are currently obtaining an opinion from Leading Counsel on the merits of an appeal. There is a continuing theme that the scope of what people claim for is increasing. The law itself is stretching the boundaries of the eligibility criteria. There are constraints but the general move is to extend the scope of recoverability. It was suggested whether the Technical Claims Director could produce a paper making clear these points which could be fed into wider work on cost reduction.

Action: TCD

The Board noted the case of note.

6 Oversight of Key Projects

6.1 Governance Update

The Board effectiveness review was carried out in 2019. This identified that some board members felt there was a lack of clarity in our responsibilities and it was agreed to ensure that all associated governance documentation would be updated. A paper included on our website summarising the principal governance structures for NHS Resolution has been updated and is included in the Board papers. Some comments concerning minor corrections have been received and will be incorporated. Board members were asked to pass any further points back to the Head of Corporate and Information Governance.

A number of papers were approved by the Board in 2015 concerning the role of the Board, and the respective roles of the NEDs and Executive Directors. These have been summarised and incorporated into one document which is for internal use only. The Chair noted that the responsibilities shown for Executive Directors related only to their position on the Board and do not encompass other executive responsibilities, which will be clarified.

The Board noted the governance summary (which is included on the website) and the role of the NEDs and Executive Directors.

7 Board Committee Reports and Minutes

7.1 There were no items to consider.

8 Other matters requiring Board attention

8.1 Policies for noting/approval

8.1.1 *HR10 Disciplinary Policy*

A number of changes have been made to the Disciplinary Policy which was due for review in January 2020. It was agreed that the appeal panel should be attended and probably chaired by an NED particularly where a dismissal is warranted and this will be updated in the policy.

Subject to the change being made, the Board approved the Disciplinary Policy.

8.1.2 *CG14 Data Protection Policy and Guidance*

The Data Protection Policy and Guidance have been reviewed to ensure that they continue to reflect changes in legislation and any updates to roles within the organisation. The Policy has been reviewed by our legal advisers as well as by the Operations Risk Review Group (ORG), the Information Governance Group (IG) and Senior Management Team.

The Board approved the Data Protection Policy and Guidance.

8.1.3 *CG15 Freedom of Information Policy and Guidance*

The Freedom of Information Policy and Guidance have been reviewed to ensure that they continue to reflect changes in legislation and any updates to roles within the organisation. The Policy has been reviewed by our legal advisers as well as by the Operations Risk Review Group (ORG), the Information Governance Group (IG) and Senior Management Team.

The Board noted the Freedom of Information Policy and Guidance.

9 Any Other Business

9.1 There was no other business to note.

10 Date and Venue for next meeting

10.1 The next Board meeting is scheduled for Tuesday 10th November 2020 at 10.00am, the location to be kept under review and if necessary this will be a virtual meeting.

Signed

Date

Board Actions – September 2020

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
20.06	15.7.20	Part 1	HR&OD Report	To be included in the next HR&OD Report: Onboarding time from vacancy being declared to the replacement being in post. Visibility on the performance between functions e.g.. appraisals etc.	To be included in the next HR report in January 2021.	HoHR&O		
20.07	15.7.20	Part 1	ED&I Strategy	Claims/Advice/S&L/MSE to bring back a paper on the wider customer base looking at the internal and external aspects of the ED&I strategy across functions.	Tbc	Claims/Advice/S&L/MSE		Brief update on Advice in CE Part 1.
20.08	16.9.20	Part 1	Coronavirus Clinical Negligence protocol	DoCM/DoMSE to consider wider engagement to publicise the protocol reached with the claimant legal community with mainstream media not just health and legal.	ASAP	DoMSE/DoCM	CLOSED	DOCM considering as a wider collaboration piece with MSE as part of proactive publication strategy.
20.09	16.9.20	Part 1	Chair's letter to members	DoMSE to circulate the Chair's letter to the Board once sent to members.	ASAP	DoMSE		This action is complete
20.10	16.9.20	Part 1	EDI Strategy	DoA&A to bring back a paper to a future Board on the outputs of the workstreams across the Advice and Appeals service, and including what we have done in response to BLM.	Tbc	DoA&A		Brief update on Advice in CE Part 1. Aiming for update to Board in November (for Advice).
20.11	16.9.20	Part 1	BAME representation on Board	Chair/CE to discuss how to address BAME representation on the Board going forward. C	ASAP	Chair/CE		
20.12	16.9.20	Part 1	Availability of NHSR products through the wider NHS technology systems	DoMSE and SE to discuss how NHSR products could be included in the wider NHS technology systems.	ASAP	DoMSE/SE		We have started discussions with Red Whale, a provider of online learning for GPs, about including CNSGP content in some of their offerings
10.13	16.9.20	Part 1	Scope of eligibility to claim	TCD to produce a paper on whether the scope of what people claim for which is increasing which could be fed into wider work on cost reduction.	January 2021 Board meeting.	TCD		