

Board meeting minutes (Part 1)

12 May 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
Dianne Kennard	Representative of DHSC Sponsor Team
Tinku Mitra	Head of Corporate & Information Governance
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.

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 10th March 2020

The minutes of the Board meeting held on Tuesday 10th March 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 rolled forward:

- Ways of Working / office move - A session or detailed paper to be brought to Board for discussion. This is scheduled for July Board, after advisory audit and first phase of co-design.
- 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 will be included in the next HR Report in July 2020.
- 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 12.5.20: The Technical Claims Director contacted the Trust and an independent expert in clinical ethics was commissioned to undertake the work. However, the expert subsequently discovered that she had a conflict of interest as she has been appointed as an NED at the Mental Health Trust which is involved in the case. Mike Durkin will let the Technical Claims Director have details of experts in medical ethics he can contact.

There were no actions closed.

2 Operational items

2.1 Chief Executive's Report

Coronavirus pandemic

Business continuity arrangements have been put in place following government guidance to ensure the safety and wellbeing of NHS Resolution's staff. All staff have moved to home working arrangements. A number of external events and meetings have been cancelled or postponed or where possible are being held digitally.

We have been working with the legal market and justice system to ensure that NHS staff are not approached for witness statements at this time.

Indemnity – Coronavirus

NHS Resolution has launched a new Clinical Negligence Scheme for Coronavirus which has been established alongside new powers delivered under the Coronavirus Act 2020 to indemnify healthcare providers for any clinical negligence liabilities which arise where existing indemnity arrangements do not apply. Information on the scheme has been posted on our website. A joint letter from NHS Resolution, NHS England and Improvement and DHSC was sent to providers to provide assurance on indemnity arrangements which is also supported by FAQs on our website.

The Chief Executive and Technical Claims Director have been attending various meetings to discuss FAQs and ongoing indemnity issues.

Managing Concerns about practitioner performance

In consultation with NHS Employers, we have published general interim guidance to NHS organisations regarding the management of concerns in accordance with Managing High Professional Standards in the NHS (MHPS) during the coronavirus pandemic.

Investors in People

NHS Resolution was awarded 'Silver' status under the Investors in People framework which recognises the significant progress made by the organisation in developing and supporting staff.

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 March 2020 was presented.

Claims Performance

There has been a year on year increase in claims volumes and incidents reported. The increase in LTPS claims is largely attributable to orthopaedic injuries although there is no specific member contributing to this trend.

Practitioner Performance Advice Performance

An update on the advice requested by sector and professional group for the full year 2019/20 including information in terms of decisions in response to Covid-19 was presented. Professor Stephen Powis, National Medical Director for NHS England and Improvement, wrote to trusts to emphasise that only significant concerns should be dealt with during the crisis.

The KPI relating to education events rated by participants at least 4 out of 5 for effectiveness/impact is rated as Amber which is attributed to the end of year introduction of a new education programme. All other KPIs have been met.

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). An update was also provided on steps taken in light of the pandemic. The Board thanked the Director of Advice and Appeals for an excellent commentary.

Safety and Learning

All KPIs have been fully met and the team have over performed with engagement, particularly as events have now been paused.

Early Notification Performance

The Early Notification (EN) KPIs with a learning focus were presented which are currently in shadow form.

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.

During the current crisis, some events and direct stakeholder meetings have been cancelled or have gone ahead by phone or video-conference. More of our event activity is being moved into the digital delivery space.

There is an increased focus on online activity with new pages on the website around the new CNSC and ELSGP schemes. Information has also been included on Covid-19 related business continuity arrangements for members.

There has been an increased activity to support staff communication and engagement. Regular Senior Management Team business continuity meetings were put in place at the beginning of the crisis.

In terms of the Maternity Incentive Scheme, direct communications have been sent out to all members in relation to the pause on reporting whilst confirming that members need to continue to apply the principles of the ten safety actions, given the aim of the scheme is to support the delivery of safer maternity care. There have been a number of safety stakeholder conversations which confirm that the impact of the Scheme on maternity units is variable. However the evaluation of the scheme has been published and highlights the overall very positive feedback.

It was noted that some members of the Safety and Learning and Early Notification teams have been redeployed back to the front line to help with the crisis. During this time, the Safety and Learning team have been planning more webinars and joint working. The team are also looking at the materials on the website.

In terms of the engagement dashboard, we have been pragmatic and moved rapidly into a virtual world. For member/beneficiary engagement, there has been a lot of indirect communication to trusts and we have been very sensitive in trying not to disrupt the frontline response to the crisis. In terms of the overall indicators, there is a degree of subjectivity and but we will look at how we can move further into the Amber/Green space going forward. Board members found the dashboard very helpful and the Chair asked Board to let the Director of Membership and Stakeholder Engagement know if they wished to suggest improvements. In due course the dashboard should become a main element of the report rather than an appendix.

Action: All Board

The Board noted the Communications and Stakeholder Engagement Report.

5 Key Developments

5.1 Case Updates

An update was provided on four recent decisions of the higher courts, two being NHS Resolution cases and all of which have important implications for the NHS and the management of other claims:

- *XX v. Whittington Hospital NHS Trust (Supreme Court, 1 April 2020)*
- *Various Claimants v. Barclays Bank (Supreme Court, 1 April 2020)*
- *Various Claimants v. WM Morrison Supermarkets (Supreme Court, 1 April 2020)*
- *XDE v. North Middlesex University Hospital NHS Trust (Court of Appeal, 25 April 2020)*

The Supreme Court handed down rulings in three cases in one day. They have clarified the law on vicarious liability which is important particularly as the two rulings of the Court of Appeal in the Morrisons Supermarket and Barclays Bank cases had extended the law of vicarious liability. The Supreme Court pulled back on the rulings commenting that the Court of Appeal went too far and that vicarious liability is particularly limited where the individual is not an employee.

In *XX v Whittington Hospital*, we took the case to the Supreme Court and we now know what the law is on the question of the recoverability of damages for commercial surrogacy arrangements, there having been conflicting decisions from the Court of Appeal.

In *XDE v North Middlesex*, the Jackson reforms abolished the recoverability of success fees from defendants which has resulted in considerable savings for NHS Resolution. However, we still have some old cases funded under the pre-Jackson regime and we have made a saving of over £1m in this case where the claimant lawyers switched funding from legal aid with no success fee to a conditional fee agreement where there was a success fee. The Court of Appeal decided this was not clearly the best outcome for the claimant and therefore held that the success fee was irrecoverable.

The outcome in three of the four cases is positive for the NHS.

The Board noted the case reports.

6 Oversight of Key Projects

6.1 There were no issues to report.

7 Board Committee Reports and Minutes

7.1 RPC Annual Report

The RPC annual report was presented as part of the annual review of internal governance covering the period May 2019 to April 2020. The annual report has been reviewed by RPC and comments incorporated.

The Board noted the RPC annual report.

7.2 ARC Annual Report

The ARC annual report was presented as part of the annual review of internal governance covering the period May 2019 to April 2020. The annual report had been reviewed by ARC at its meeting on the 7th May.

NHS Resolution received a moderate opinion on overall controls for the internal audit which is predominantly attributable to management continuing to point internal audit at areas where there are risks or concerns. The Practitioner Performance Advice Service and GP Indemnity internal audits received a substantial assurance both of which were significant achievements, particularly GP Indemnity which was a challenging programme and received a very commendable report.

The Annual Report and Accounts is on track subject to challenges and risks relating to Covid-19.

An ARC self-effectiveness review was undertaken in year and nothing major was identified. An action plan has been developed which has been put on hold whilst the Covid-19 crisis is ongoing.

The Board noted the Audit and Risk Committee annual report.

The approved minutes of the ARC meeting held on 12th February were noted by the Board.

8 Other matters requiring Board attention

8.1 There were no items to consider.

9 Any Other Business

9.1 Board Effectiveness Review

The Head of Corporate and Information Governance undertook an effectiveness review of internal Board and related governance documentation and obtained individual Board member feedback to assess compliance with its responsibilities. She also analysed where the Board has spent its time in comparison to its priorities, together with an assessment of progress against the Weva framework issued last year.

The general consensus is that we are improving. There were a few omissions including the challenge of getting the balance of time right between strategy and operations. We have made progress in raising our profile and reputation with stakeholders which has improved significantly over the last two to three years.

The report feeds into the Accounting Officer's consideration of overall governance of Board effectiveness in the Annual Report and Accounts.

The Board agreed with the assessment and review of Board effectiveness. The Head of Corporate and Information Governance was thanked for a comprehensive and thorough report.

The Board noted progress on the 2018/19 Board Effectiveness Review recommendations.

10 Date and Venue for next meeting

- 10.1 The next Board meeting is scheduled for Wednesday 15th July 2020 at 10.00am, at Thomas House, 84 Eccleston Square, London SW1V 1LP but the location will be kept under review and if necessary this will be a virtual meeting.

Signed

Date

Board Actions – May 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
20.01	21.1.20	Part 1	Ways of Working / office move	A session or detailed paper to be brought to Board for discussion.	July Board	DoA&A	CLOSED	Included in Part 2. September Board meeting scheduled to take place in 10SC, subject to social distancing requirements.
20.02	21.1.20	Part 1	E,D&I	The HoHR&OD to bring a paper on the breakdown of E,D&I figures split between the London and Leeds offices.	To be included in next HR report in July 2020	HoHR&OD		The EDI split for London and Leeds will be included in the next HR Report in July 2020.
20.04	10.3.20	Part 1	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.)	TCD to contact the Trust to provide a narrative on the case highlighting the broader issues.	ASAP	TCD		The independent expert in clinical ethics has informed us she has a conflict of interest and therefore is unable to do the work. Mike Durkin will advise of alternative experts which the TCD will take forward.
20.05	12.5.20	Part 1	Stakeholder Engagement Dashboard	Board members to let the DoMSE if they wished to suggest improvements.	ASAP	All Board		No comments received as at 29 June 2020; however DoMSE and DDPST working together on incorporating some MSE performance data into the corporate performance report in future.