

# Board meeting minutes (Part 1)

10 November 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 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
Nick Rigg	Corporate Communications Lead (Observing)
David Gurusinghe	Deputy Director, Policy, Strategy and Transformation
Julia Wellard	Executive Personal Assistant (Minutes)
Apologies	

## 1 Administrative matters

### 1.1 Chair's opening remarks and apologies

The Chair welcomed everyone to the meeting, in particular Nick Rigg who attended as an observer and David Gurusinghe who attended in his policy, strategy and transformation role.

The Chair reported that his successor, Martin Thomas, had now been announced and joins the organisation on 1<sup>st</sup> January 2021.

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 16<sup>th</sup> September 2020

The minutes of the Board meeting held on Wednesday 16<sup>th</sup> September 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:

- 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. An update was provided in the Chief Executive's report. A report will be brought back to January Board.
- Scope of eligibility to claim – Technical Claims Director to produce a paper on whether the scope of what people claim for is increasing which could be fed into wider work on cost reduction. This will be brought to the January 2021 Board meeting.

The following actions were closed:

- Coronavirus Clinical Negligence protocol – 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. Director of Claims Management is considering as a wider collaboration piece with the Membership and Stakeholder Engagement team as part of proactive publication strategy. Update: this is ongoing and feedback will be included within the next MSE Board report. The team are also looking at the journals we can engage with more widely to promote our services in the wider claims space. A fuller report will be brought to Board in the future.
- Chair's letter to members – Director of Membership and Stakeholder Engagement to circulate the Chair's letter to the Board once sent to members. This has been completed.
- ED&I Strategy – Director of Advice and Appeals 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. An update was provided in the Chief Executive's Report. A report will be brought back to January Board with other directorates (merged with wider action).

- BAME representation on Board – Chair and Chief Executive to discuss how to address BAME representation on the Board going forward. Update: The Chair and Chief Executive discussed and the Chair will pick up with the new Chair and a report will be brought back to a future Board meeting.
- Availability of NHSR products through the wider NHS technology systems – Director of Membership and Stakeholder Engagement and Sam Everington to discuss how NHS Resolution products could be included in the wider NHS technology systems. Update: Discussions have been taken forward with Red Whale, a provider of online learning for GPs, including CNSGP content in some of their offerings.

## 2 Operational items

### 2.1 Chief Executive's Report

#### *Health and Social Care Select Committee Inquiry into the Safety of Maternity Services in England*

Following our submission to the Inquiry, the Chief Executive gave evidence at an oral evidence session on 3<sup>rd</sup> November. The hearing focused on law reform, the potential merits of an avoidable harm system, and whether or not litigation was a barrier to candour and transparency in terms of fair and equitable treatment of patients. We are considering a follow-up submission, potentially once further evidence sessions have taken place.

Dr Jenny Vaughan's (Consultant Neurologist, Learn Not Blame) evidence was very relevant to NHS Resolution's work and the Chief Executive has made contact to see if our respective organisations can work together.

It was considered that the inquiry hearing covered important issues raised by families in relation to the response they receive. However there is a risk that this is confused with the right approach to the financial support. These are two very different elements which are likely to require different solutions

The Board commended the Chief Executive for the evidence put forward at the HSC and the Board agreed that we should consider making a further written submission.

#### *Relaunch of year three of the maternity incentive scheme*

Year three of the maternity incentive scheme has now gone live. There are two major changes: firstly in relation to the COVID-19 actions and secondly in enhancements to what is required in relation to certification.

It was noted that in terms of the Board declaration, this is signed off by the Chief Executive on behalf of the Board.

We have had approaches in the last two weeks in light of COVID-19 pressures to consider whether we will be pausing the scheme again. This is scheduled to be discussed with the maternity champions and at the Collaborative Advisory Group meeting on the 25<sup>th</sup> November which is also discussing year four of the scheme.

#### *Update re Early Notification Scheme*

An update was provided on the operation of the scheme year to date.

### *Equality, Diversity and Inclusion Programmes*

All directorates are all taking forward work to incorporate our approach in relation to EDI into our external work. Practitioner Performance Advice have started a programme of work to ensure that their services are fair to all who can potentially benefit.

Claims Management are looking at the issues connected with collecting data on the ethnicity of claimants. It would be useful to have the information so that we can look at the data in more depth to identify trends but currently we have no right to collect the information. The data may provide relevant information in relation to equitable access to justice and it was suggested that a way to take this forward might be to identify a research area where we can gain permission to collect data for a specific reason which would then define whether a further programme is required.

Evidence given to the HSCC suggested that that more BAME practitioners are struck off by the GMC than white practitioners and also that when practitioners are investigated, the team should also be investigated. This is being considered in the work which Advice are undertaking where we collect the diversity information of practitioners. The information from the GMC draws a distinction between referrals from patients and referrals that come from the system. We are researching whether we have the same data that correlates with the GMC which is also reflected in the learning from exclusions research that is coming out next year. This is complex and goes beyond ethnicity. There is also a distinction from GMC held information as Advice only makes a limited number of decisions. This is also important for the Appeals service where we collect similar data.

A meeting was also held recently with the RCM to take forward work on 'Being Fair' with the BMA and RCN, particularly as there is variation around who is likely to be suspended. Feedback from frontline staff is that there is a fear of their own organisations. The 'Being Fair' work has been influenced by the HR Director at Mersey Care and there are a number of HR professionals participating in the 'Being Fair' group.

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.

Performance reports were provided with data to the end of September 2020.

### *Finance Performance*

In terms of the process for the Spring supply estimation of the AME budgets and the potential impact of COVID-19, the team are already looking at data gathering and at what it means and the outputs will be used in preparing AME forecasts for the beginning of December. These will be discussed with DHSC in terms of how the AME estimate is to be taken forward. The DoF reminded the board that we do not have a symmetrical risk i.e. an overspend on this budget has worse consequences than an underspend. We are taking a cautious approach given that we are in a particular

position of the unknown this year and undertaking work around the potential impact of COVID-19. This will be difficult to quantify with a reasonable degree of accuracy at the moment.

### *Claims Performance*

It was noted that following a drop in LTPS reports since restrictions relating to the pandemic were put in place, these are now starting to increase again and return to normal. We do not envisage there being a dramatic spike in increased reports, rather this is likely to be over a period of time and into the next financial year.

### *Primary Care Appeals*

The Ministry of Justice (MoJ) recently issued notice of the increase of fees for panel members for 2020/21. For 2020-21 tribunals that are of a similar standing to the work of our Panel Members, chairs' daily fees have been increased from £511.56 to £521.80 and other panel member daily fees from £290.80 to £296.62. This increase is backdated to 1 April 2020 and has been approved by the Chief Executive.

The Board approved the increases.

### *Early Notification Performance*

Reference was made to a maternity surveillance meeting moving from being convened by NHS Resolution to NHS England and Improvement. Over the last few years we have had our own EN concerns group. However when the pandemic hit in March this year, it was agreed that we would convene a wider maternity surveillance group on a temporary footing and the responsibility for this group is now transferring back to NHS England and Improvement under the leadership of the Chief Nursing Officer from November 2020. They have adopted our terms of reference and will be putting in place a regional structure. We will be a member of the national group as well as participating in the regional groups. We will be continuing with our own internal concerns group as part of managing the EN scheme.

### *Membership and Stakeholder Engagement*

Executive engagement activity was presented largely involving the Chair and Chief Executive. The Chair will liaise with the Director of Membership and Stakeholder Engagement about how the meetings should be presented in the report.

**Action: Chair**

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

## **3 Management proposals requiring Board input or approval**

### **3.1 Responsible Officer's Report**

The Responsible Officer's annual report was presented which provides the Board with assurance and oversight of the work of the RO during the year to support the Board to discharge its oversight function and to meet the expectations of regulators. The report includes the Statement of Compliance which must be submitted to NHS England and Improvement. Given changes to appraisals this year, there is no formal requirement

to approve the report. All the actions which we committed to have been completed and all the relevant directors have had oversight of the report for their functions.

It was felt that in future more information would be beneficial in terms of the RO's remit and the data in relation to the practitioners that we employ full time. This will ensure we record that all practitioners who work for us have been appraised.

Separately, it was noted that as we no longer employ solicitors on the record (as opposed to employed solicitors who handle cases) we are not required to submit to audit by the SRA.

The Board noted the Responsible Officer's Annual Report and Statement of Compliance

## 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.

It was noted that the reference to East Kent Hospitals in relation to the prosecution by the CQC was sourced from the press and was not a comment from NHS Resolution. It was agreed that this will be made clear for any reference to future prosecutions within the report going forward.

An update was provided on the status of the thematic reviews where advisory group meetings are planned to consider the recommendations. It was noted that GIRFT (Getting It Right First Time) has a report on Emergency Departments - this is a helpful document which reflects on performance and demand. We have agreed with GIRFT that we will follow their report with our own report when it is published. The CNSGP year one report is about to be reviewed and we are moving the Clinical Advisory Group meeting to December to consider the recommendations before the report will be published which is likely to be in the New Year. We are considering what topic to report on for next year.

It was noted that the CIO had been approached with interview requests around the challenges and problems currently facing CIOs in healthcare, and another focusing on female leaders in technology within the NHS, both of which are considered a good opportunity to raise the profile of the organisation.

In terms of the website, it was noted that it has been a few years since the website had been comprehensively updated and whether there was content that may now be out of date. The Membership and Stakeholder Engagement team have recently undertaken a deep dive on the Advice content and updating of the website is being taken forward on a rolling basis in terms of content and presentation. There are also information and content owners across the functions of the organisation who review what is on the website as there is a limit to what can be done centrally.

The Board noted the Communications and Stakeholder Engagement Report.

## 5 Key Developments

### 5.1 Case of Note

An update was provided on the following notable cases:

- *HXC v. Ms Tracy Hind and Dr Andrew Craze (High Court, 5 October 2020 – Judge Cotter QC)* – it was noted that this was the first case under the ELSGP scheme which went to trial and with a successful outcome for General Practice.
- *Swift v. Carpenter (Court of Appeal, 9 October 2020)* – this was not an NHS Resolution claim but the outcome has had an impact on us as it has changed the way claims for alternative accommodation are quantified. There has been a shift to reversionary interest and the Court of Appeal have laid down a formula. These claims will now therefore be quantified in a different way and will be more expensive for defendants when there is a long life expectancy.
- *EH v. Dorset Healthcare University NHS FT (Supreme Court, 30 October 2020)* – this is the first successful case for NHS Resolution in the Supreme Court and an interesting case both legally and ethically, albeit tragic. There was a breach of duty by the trust in failing to recall the daughter to hospital in time, which the trust admitted. Had the trust done so, she would not have killed her mother. However, the claim was not from the mother's estate but from the daughter who sought to recover her own losses, including loss of liberty as a consequence of being sentenced to a Hospital Order by the criminal court. She also claimed for not being able to inherit part of her mother's estate owing to the Forfeiture Act which precludes a person who has unlawfully killed another from inheriting their estate. The daughter's claim was deemed not recoverable by reason of public policy which was due to the fact that at her criminal trial the daughter pleaded guilty to manslaughter by reason of diminished responsibility, and therefore she accepted partial responsibility for her actions based upon assessments by two psychiatrists. We resisted these claims and our position was supported by the High Court and the Court of Appeal, and most recently in the Supreme Court who held that the criminal law and civil law have to be congruent. This is repercussive for other cases we have received where we adopt a similar line.

The Board noted the cases of note.

## 6 Oversight of Key Projects

6.1 There was no items to report.

## 7 Board Committee Reports and Minutes

### 7.1 *Audit and Risk Committee minutes*

The Board noted the Audit and Risk Committee minutes of the meetings held on the 4<sup>th</sup> June and 15<sup>th</sup> June 2020.

## 8 Other matters requiring Board attention

### 8.1 Policies for noting/approval

#### 8.1.1 *Conflict of Interest Policy and Guidance*

This policy is pending a full review to include the findings from a counter fraud advisory audit on our handling of conflict and declarations of interest once the report is available. The policy has therefore had minimal revisions to reflect changes to service names and role descriptions.

The Board approved the Conflict of Interest Policy.

#### 8.1.2 *Raising Concerns Policy*

This policy which was formerly the Freedom to Speak Up: Raising Concerns policy, has been reviewed by the Freedom to Speak Up Guardians, Operations Risk Review Group (ORG), Joint Negotiating Committee (JNC) and Senior Management Team (SMT). The policy has been amended following our experience of implementation where we recognise that further work is required, including guidance and training for the Freedom to Speak Up Guardians. We are shortly to be audited by the Office of the National Guardian and therefore although the policy has been updated, it was considered important to keep the review period to six months to include findings from the audit.

The Board approved the Raising Concerns Policy.

#### 8.1.3 *Anti-Fraud Bribery and Corruption policy*

The Anti-Fraud, Bribery and Corruption policy has been reviewed which has included an update by our Local Counter Fraud Specialist (LCFS) to ensure the policy is fit for purpose and in line with our requirements of a zero tolerance approach to fraud, bribery and corruption.

The Board approved the Anti-Fraud, Bribery and Corruption policy.

#### 8.1.4 *Risk Policy and Procedure*

NHS Resolution's risk management framework was given a substantial opinion on an internal audit which recognised the policy documents as fit for purpose. The Risk policy and procedure has undergone a review and a number of changes have been made. The policy has been reviewed by ORG and SMT and has been endorsed by ARC.

The Board approved the Risk Policy and Procedure.

### 8.2 *Board Schedule 2021*

The Board schedule sets out core reports for the Board for the 2021 cycle of meetings and where these are for noting and approval. The document also provides a summary of additional reporting which will be added to the schedule during the year. The

schedule is informed by reviewing Board accountability as set out in a number of core documents.

Feedback from Board has been received which has been included. In addition, it was considered that the annual reports from committees should include a forward plan of work priorities which will be included going forward.

The Board noted the Board schedule for 2021.

## **9 Any Other Business**

### **9.1 *Ian Dilks' last meeting***

This was Ian Dilks' last formal Board meeting before he leaves at the end of December. The Chief Executive thanked Ian for his chairing of the organisation and the tremendous contribution he has made over the last six and a half years, seeing the organisation through considerable change which is testament to his chairmanship, to which the Board concurred.

## **10 Date and Venue for next meeting**

- 10.1** The next Board meeting is scheduled for Tuesday 19<sup>th</sup> January 2021 at 10.00am, the location to be kept under review and if necessary this will be a virtual meeting.

Signed



Date 29<sup>th</sup> December 2020