

# Board meeting minutes (Part 1)

19 January 2021

10:00 – 15:30

MS Teams meeting

Present	
Martin Thomas	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
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, commented that he had met with all Board members and Directors as part of his induction process and thanked everyone for making him feel welcome. The Chair commended Ian Dilks for his chairmanship of NHS Resolution and positioning the organisation to be able to meet the needs of the NHS in the future.

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 10<sup>th</sup> November 2020

The approved minutes of the Board meeting held on Tuesday 10<sup>th</sup> November 2020 were noted by the Board.

## 1.4 Review of actions from Board meetings

The actions from the last Board meeting were noted.

There were no actions to roll forward.

The following actions were closed:

- 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. This was included in the HR&OD Report.
- 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. A report had been included in the Part 2 (private) meeting.
- Scope of eligibility to claim – Technical Claims Director 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. This had been included in the Part 2 (private) meeting
- Chair/CE stakeholder engagement programme - Chair to discuss with DoMSE how the meetings should be presented in the report. This was completed.

## 2 Operational items

### 2.1 Chief Executive's Report

#### *The Framework Agreement*

The Framework Agreement has now been agreed and is due to be published on gov.uk. It will also be available on the NHS Resolution website.

#### *COVID-19 Vaccinations – indemnity arrangements*

It was noted that a letter has been issued to providers from NHS Resolution, NHSEI and DHSC to reassure healthcare professionals and others working and volunteering in the NHS in England about the indemnity arrangements for the COVID-19 vaccination programme. Specific information is provided for community pharmacy. It has been agreed that the Clinical Negligence Scheme for Coronavirus (CNSC) will indemnify all eligible cohorts under the terms of the community pharmacy local enhanced service agreement for clinical negligence until 31 March 2021. Non-clinical tasks will be covered under the contractors' own third party liability insurance.

#### *Impact of COVID-19 pandemic*

Reference was made to articles in the media relating to cancer operations being deferred and the potential for litigation going forward. This is being discussed with

DHSC in terms of the claims risk. We are also discussing with DHSC recent publicity concerning clinicians having to make decisions and choices about certain patients which indicates some confusion about the distinction between criminal, regulatory and civil liability.

It was commented that the BMA Council Chair has written to the Secretary of State on the issue of criminal prosecution and in particular referring to the Bawa-Garba case. It was proposed that this be added to the agenda for an upcoming discussion with Raj Patel, Deputy National Medical Director of Primary Care at NHS England and Improvement. In addition it was suggested that it would be helpful to raise the issue of support to practices with remote consultations. The legal aspects of remote consultations has also been raised with the RCGP and we are working with them on this issue.

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 November 2020.

### *Finance*

The indemnity scheme budgets, including the PIDR impact but excluding General Practice Indemnity arrangements and CNSC are underspent against budget by £172m which has increased as at the end of December. The level of spend this financial year is comparable with the last financial year.

### *Safety and Learning*

It was noted that the dates for the production of thematic reviews will change due to the impact of the pandemic as it is proving difficult to arrange meetings of the clinical advisory groups who review the final versions of the reports. The Director of Safety and Learning and the Director of Membership and Stakeholder Engagement are working together to look at refining the dates taking into account when the reports will receive greatest impact balanced against ensuring that the work done does not go out of date.

Given the cost of clinical negligence in maternity is a huge issue, it was suggested that it would be useful to have a deep dive board strategy session to identify if there is anything else which can be tried which would have an impact. It was considered that it would be useful to have insight from someone working on the front line, as well as with a patient safety focus on what is happening, what is going wrong and how it can be avoided going forward. There are multiple players in this field and it would be helpful to have some insights in preparation for the meeting which can be distilled into relevant points for discussion. The impact of COVID-19 on maternity claims is also an issue which we will not see for some time. It was suggested that the Board session could build upon the work which culminated in our national maternity conference held in

December 2019 and the ongoing work of the system wide Collaborative Advisory Group advising on our Early Notification and Maternity Incentive schemes. The work on financial incentives and the use of CNST to leverage improvements in the reduction of harm is of particular interest currently and is linked to the cross government strategy work on reducing clinical negligence costs. A date will be arranged for the session later in the summer.

**Action: EPA**

### *Claims*

The impact of the pandemic continues to have an effect on activity with claims levels continuing to reduce as well as an impact on clinical reporting which will feed into time lag factors moving into quarter one and quarter two next year. Non-COVID-19 claims are likely to see a delay in reporting patterns however because incidents are not happening due to people not being on hospital sites it is not expected that this will return to pre COVID-19 levels in the short term. In relation to clinical, COVID-19 will generate its own claims and we already have group codings for this. The number of COVID-19 claims is starting to increase. It was considered whether there is anything further we can do to mitigate some of the risks around non-COVID-19 claims. It was confirmed that we currently cover the independent sector under the Clinical Negligence Scheme for Coronavirus (CNSC) for non-COVID related incidents and we are engaging with our legal panel to identify risks and mitigations within our control which we are in turn sharing back to DHSC.

Primary care is also a risk as they are having to manage far greater acuity and diagnostics particularly with GPs who are not used to dealing with these issues. There is also the added risk that GPs are not able to examine patients properly and doing consultations remotely and patients are being referred much later than they would previously have been because the processes which allow them to be diagnosed are being delayed.

A non-clinical Fellow has been appointed from an ambulance trust who will be doing a thematic review on assault claims.

### *Practitioner Performance Advice*

The number of new cases in the Advice service for January is down which is not surprising due to the impact of the pandemic although we are continuing to receive urgent patient safety calls.

Towards the end of last year we were asked by NHS England and Improvement on our reflections on managing concerns during the pandemic. This was published on our website and a copy will be circulated to the Board.

**Action: DoA&A**

The themes from management of concerns have included delays, stress, impact on staff and the importance of supporting staff and keeping staff working.

We have been supporting members of the team who are clinically trained to be redeployed back to the front line.

This year we have provided further advice on 141 pre-existing cases which had previously been closed but have now been reopened. These may relate to a different performance concern. There is no threshold for coming to us for advice and although it might be the same practitioner it might not be the same concern.

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

## 2.3 HR&OD Report

Michael Humphris, 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 December 2019 to November 2020.

As requested information had been included in the report around onboarding time from vacancy being declared to the replacement being in post, as well as visibility on the annual appraisal uptake.

An update was provided on the seven Mandatory and Statutory Training (MAST) courses. Compliance rates have continued to improve with Fire Safety at 87%, Health and Safety at 94%, Manual Handling at 96%, Equality and Diversity at 95%, Information Governance at 88%, and Fraud and Bribery awareness at 93%. It was considered that given equality and diversity has been at the top of the agenda whether the Equality and Diversity MAST training should be more frequent than every three years. It was confirmed that we have contact with ALB networks and benchmark against what others are doing, including on the frequency of modules. It was considered whether the MAST training modules reflect the new ways of working around people working from home and whether the information is being refreshed to reflect home and more agile working. It was confirmed that we have completed individual risk assessments for home working environments and DSE assessments which have been completed for all staff which gives an up to date and accurate picture of what people need to make their working environment safe and supportive of their wellbeing. All the MAST training packages are reviewed regularly and they are aligned with the programmes through the Health Education England (HEE) portal.

There continues to be concern that a significant proportion of sickness is attributable to mental health related absences and whether there is anything we can do to help those individuals. There is a breakdown of mental health absences in terms of how many are long and short term, the number of people and whether it is the same person having multiple absences and we are ensuring that support measures are put in place for those people including referring people to occupational health where necessary. We are also working with the line managers of those individuals to ensure conversations are being held. We have identified that some of the mental health absences are related to working from home as a consequence of the pandemic through a risk assessment process and 21 people were identified who for a number of reasons requested a partial return to office working. However, this has been put on hold due to the national lockdown. Despite a particularly challenging year in terms of the pandemic and the associated extended home working arrangements, there has been a low level of absence across the organisation

Ongoing support continues in relation to wellbeing and management through the pandemic. Further guidance is due to be shared with line managers in relation to how they can support staff through the next phase of the national lockdown including a

checklist to support managers having conversations and frequently asked questions around managing performance, flexibility and wellbeing. In addition, there are weekly drop-in sessions which are being run by Deputy Directors and HR&OD to share issues and concerns. HR&OD continue to provide the weekly workforce reports to the Operational Review Group (ORG) and Senior Management Team.

It was noted that the number of agency staff engaged in the Finance and Corporate Governance function was high which relates to difficulties in recruiting and retaining staff particularly in the Corporate Governance Team and following implementation of the finance system and expansion of the operations. We have now successfully appointed good quality candidates in the Corporate Governance Team. A consultation is about to be launched in the Finance team which will see permanent roles appointed to new posts.

NHS Resolution's 2018/19 Workforce Race Equality Standard (WRES) data was published in the NHS England Arm's Length Bodies' (ALB) national report. We have also submitted our 2019/20 data to the WRES national team and expect this to be published nationally in February next year. In December 2020 we were contacted by the national team and advised that the calculation applied for indicator 4, relative likelihood of staff accessing non-mandatory training and CPD, was not correct. Internal publications are being amended with the correct figures and our 2019/2020 WRES submission will also be amended ahead of the external publication on the NHS England website in February. We are also exploring with the WRES national team whether our 2018/2019 can be amended and re-published. We have checked with the national team to ensure that our interpretation of all the other indicators have been calculated in accordance with expectations and the findings and the outcomes are fundamentally the same.

The Board noted the HR and OD report.

## 2.4 Complaints Report

Activity during Q1 and Q2 for FY 2020/21 was presented detailing the number of complaints received during the year, performance in responding to complaints, learning points and areas to be taken forward.

The Board noted the Complaints Report and actions to be taken forward.

## 3 Management proposals requiring Board input or approval

3.1 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.

The level of media interest continues to be relatively low due to the pandemic. The Senior Management Team continue to review what, if any, external communications we ought to be sending out to members whilst being acutely aware of not wishing to burden the system which is under massive strain with the pandemic whilst targeting messaging in a supportive way by focussing on how we might be able to help with the operational day to day issues including extending the remit of our 24/7 helpline to support GPs to indemnity queries.

We are continuing to work with DHSC on the various extensions of cover related to the pandemic and updating information on our website.

The Board noted the Communications and Stakeholder Engagement Report.

## **5 Key Developments**

5.1 There were no items to consider.

## **6 Oversight of Key Projects**

6.1 There were no items to consider.

## **7 Board Committee Reports and Minutes**

7.1 *RemCo Annual Report and Terms of Reference*  
Performance and compliance of the Remuneration and Terms of Service Committee for the period January 2020 to December 2020 was presented.

The Committee considered its performance as satisfactory for the reporting period and that it had discharged all its responsibilities as detailed in the Terms of Reference.

The Board approved the revised Remuneration and Terms of Service Committee Terms of Reference.

## **8 Other matters requiring Board attention**

There were no items to consider.

## **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 Tuesday 9<sup>th</sup> March 2021 at 10.00am, the location to be kept under review and if necessary this will be a virtual meeting.

Signed .....

Date .....