

## Board meeting minutes (Part 1)

22<sup>nd</sup> May 2019

10:00 – 15:30

Venue: CQC office, Third Floor, 151 Buckingham Palace Road, London  
SW1W 9SZ - Room: T.310

Present	
Ian Dilks	Chair
Keith Edmonds	Non-Executive Director
Mike Pinkerton	Non-Executive Director
Charlotte Moar	Non-Executive Director
Nigel Trout	Non-Executive Director
Sam Everington	Non-Executive Director (Associate Board Member)
Helen Vernon	Chief Executive
Denise Chaffer	Director of Safety & Learning
Joanne Evans	Director of Finance & Corporate Planning
Vicky Voller	Director of Practitioner Performance Advice
John Mead	Technical Claims Director (Associate Board Member)
In attendance	
Ian Adams	Director of Membership & Stakeholder Engagement
Simon Hammond	Director of Claims Management
David Gurusinghe	Acting Director of Claims Management
Cheryl Lynch	Representative of DHSC Sponsor Team
Tinku Mitra	Head of Information Governance
Annette Anderson	Clinical Fellow - Early Notification Team
Eva Beazley	WEVA
Julia Wellard	Executive Assistant (Minutes)
Apologies	
Mike Durkin	Non-Executive Director (Associate Board Member)

### 1 Administrative matters

#### 1.1 Chair's opening remarks and apologies

The Chair opened the meeting by welcoming Annette Anderson, National Obstetric Clinical Fellow - Early Notification Team, who attended to observe the Part 1 meeting.

Apologies for absence were received from Mike Durkin.

## 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 12<sup>th</sup> March 2019

Subject to an amendment to the Finance Report, the minutes of the Board meeting held on Tuesday 12<sup>th</sup> March 2019 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 and the closed actions removed.

The following actions were rolled forward:

- Learning from suicide related claims: A thematic review of NHS Resolution data – Director of Safety and Learning to bring a report back to Board in 6-9 months on what has happened since the report was launched – action due September 2019.

There were no actions to close.

## 2 Operational items

### 2.1 Chief Executive's Report

#### *General Practice Indemnity*

The Clinical Negligence Scheme for General Practice (CNSGP) successfully launched on 1<sup>st</sup> April 2019 supported by a written Ministerial Statement by the Minister of State for Care, Caroline Dinéage. NHS Resolution will be operating the scheme on behalf of the Secretary of State for Health and Social Care. The scheme regulations and NHS Litigation Authority (Arrangements for the Existing Liabilities Scheme) Directions 2019 have been posted on the Government's legislation website and we have issued guidance on our own website covering the scope and operation of the scheme which provides comprehensive cover to all GPs and their wider practice team/staff for clinical negligence relating to NHS services occurring from 1<sup>st</sup> April 2019. Additionally, GPs and their practice team/staff will also be covered for other types of NHS services as part of their GP Practice.

The scheme provides an opportunity to bring information on claims for both general practice and secondary care under one roof which in turn will assist with sharing learning for the benefit of patients and those who care for them.

#### *Fraudulent claimant jailed*

This case involved a claimant who alleged that following admitted negligence she suffered severe and unremitting pain which was exacerbated by movement and had to walk with the aid of a walking stick, crutches or wheelchair. She also claimed that she had not been on holiday since the surgery (save for a trip in October 2015), that she was unable to work from 2013 and that she required care and assistance during

the day and night. Surveillance was obtained in 2016 and evidence showed the claimant walking unaided to the shops as well as on holiday in Ibiza. The claimant sought to recover in excess of £2.3 million and was ultimately awarded £120,012 by the Court in 2016 following submission of surveillance evidence. The Judge concluded the claim was dishonest to the criminal standard and the claimant was sentenced to five months in jail on 5<sup>th</sup> April 2019 for attempting to defraud the NHS of in excess of £2.3 million in compensation.

### *Rapid Solicitors*

Following a complaint raised by us in 2013 in relation to over-charging by Rapid Solicitors, the Solicitors Disciplinary Tribunal (SDT) found that Rapid charged grossly excessive rates and that its principal Andrew Good had lacked integrity, albeit was not dishonest, and was fined £30,000. The Solicitors Regulation Authority (SRA) appealed against the ruling of the SDT on 10<sup>th</sup> September 2018. The High Court concluded on 2<sup>nd</sup> April 2019 that SDT had made a number of errors in its ruling, characterising the lack of integrity as serious and held that Mr Good had been dishonest and he was therefore struck off the Roll of solicitors. There is a possibility that Mr Good will appeal the decision.

The Technical Claims Director was thanked for the work he had undertaken on this issue.

### *Bereavement Damages*

Under current legislation, Bereavement Damages are not payable to long-standing partners, whereas a spouse is entitled to receive an award. This contrasts with the position in relation to dependency where a partner of at least two years can obtain damages for any proven losses. Following settlement of a claim involving a man who died following clinical negligence by two NHS trusts, his partner commenced proceedings against the government to challenge the legislation.

In November 2017, the Court of Appeal ruled in *Smith v. Secretary of State for Justice and Others* that the legislative provisions in respect of Bereavement Damages were incompatible with the European Convention on Human Rights. On 8<sup>th</sup> May 2019 the government published proposals to amend the law, which in broad terms mean that cohabitants of two years or longer would become entitled to Bereavement Damages if their partner dies owing to negligence. In cases where both a spouse and partner of two years plus survive, the award will be divided between them. It is likely that this proposal will be implemented later this year following parliamentary scrutiny and representations for a period of sixty days.

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.

### *Finance Performance*

The summary financial report to the end of March 2019 was presented and year to date the net expenditure on all budgets is £123m underspent, including PIDR budget and expenditure.

The Annually Managed Expenditure (AME) budget is currently underspent by £4.6 billion.

The audit of the accounts is still underway.

### *Claims*

Claims volumes have remained stable over the past three years, particularly for clinical claims. The clinical volume and value by specialty split is reporting as expected with emergency medicine, orthopaedic surgery and obstetrics being the top three categories. The non-clinical volume and value split by injury type shows that orthopaedic injuries account for the largest number of claims by both volume and value.

In terms of emergency medicine and orthopaedic surgery, a question was raised on why the value of settlements for emergency medicine is higher than orthopaedic surgery particularly as emergency attendances have gone up in number. It is expected this is because emergency medicine claims can result in catastrophic injury whereas orthopaedic surgery tends to be planned. It should be noted that the figures in the performance report are indicative until the audit has been completed.

It was noted that there was discussion at Board last year about whether claims trends reflected what was happening in the system in terms of activity particularly given the trends in emergency care. It was noted this is featured in the report which is being developed by our Clinical Fellow for Emergency Medicine.

### *Practitioner Performance Advice Performance*

An update on the advice requested by sector and professional group at 31<sup>st</sup> March 2019, current live activity for the assessment and intervention services and Healthcare Professional Alert Notices (HPANs) was presented.

At the end of March 2019, there were 12 active HPANs, which is down from 25 in the same period last year, and the team have looked at whether they are proportionate. Five requests were received in the first week of the financial year which reflects what is happening externally and they are being turned around quicker than previously which is being monitored. It is anticipated that new HPAN Directions will be available shortly which will provide an opportunity to highlight HPANs and their purpose.

### *Primary Care Appeals*

All KPIs for the reporting period have been fully met save for the KPI for the average number of weeks taken to resolve appeals and disputes – oral hearing, which related to parties being unavailable for hearing dates. Overall for 2018/19, all KPIs were met.

### *Safety and Learning*

All KPIs have been fully met as follows:

- 95% response rate to members following a request for contact within five working days. The KPI compliance is 95%.

- Participation in 18 regional engagement events for members which include two national sharing and learning events. There is an over achievement of this KPI with compliance over 100% at the end of the financial year.
- Eight safety and learning products to be made available for members in 2018/19. Eight products were achieved therefore meeting 100% compliance.
- Positive feedback from trusts visited on recognition of products. The KPI target is at least 60% and is on track at 72%.

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

The Membership and Stakeholder Engagement team worked with colleagues across the organisation, DHSC, NHS England/NHS Improvement and our panel firms for the launch of the CNSGP, the state indemnity scheme for general practice, on 1st April 2019.

We have been working closely with DAC Beachcroft marketing team, as part of their value adds, and an external engagement plan has been agreed for the CNSGP which looks at electronic channels including webinars and using events such as the RCGP conference in October 2019. It was suggested that we should try to get on to the programme for speaking or hold a workshop at the conference and the Director of Membership and Stakeholder Engagement will take this up with the RCGP. We are also looking at constructing a CNSGP sounding board working with professional groups to provide advice and look at how we engage with the GP market. A core slide pack is being developed to support engagement with the general practice community.

**Action: DoMSE**

A number of contacts were suggested for us to approach to discuss the CNSGP scheme:

- Dame Donna Kinnair, Chief Executive of the RCN.
- New President of the RCOG when they are in post.
- BMJ – relevant contact in terms of educational courses.
- Red Whale who are one of the leading providers of primary care medical education in the UK.

- RCNGPN – Royal College of Nursing General Practice Nursing Forum. The Deputy Director of Safety and Learning has already made contact with them.

The website has seen an increase in users, which have doubled, and the number of page views from the previous reporting period which is largely due to the launch of the CNSGP with the majority of top content for the period relating to CNSGP. The level of engagement on the CNSGP web page has seen a lot of interest alongside the queries which have been received through the CNSGP mailbox. The Director of Membership and Stakeholder Engagement and his team were thanked for the work they have undertaken on putting together the information on the webpage.

The Chair and Chief Executive participated in the Westminster Health Forum cross-government seminar on 'Next steps for reducing clinical negligence in the NHS: patient safety, legal reform and implementing the cross-government strategy' on 21 March.

There has been considerable engagement by the Safety and Learning team including 22 national engagements and 26 regional engagements with an additional 17 visits to members. The team are receiving increasing requests to speak at events and over the last few months the team have attended the Bristol Patient Safety Conference and the Royal College of Nursing conference, and have also recently attended and presented at a number of seminars relating to consent including our own conference on consent which received good feedback and is being repeated in July. All our events are evaluated which indicates that people have made changes and do things differently as a result of the engagement.

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 Audit and Risk Committee Meeting Minutes – 13<sup>th</sup> February 2018**

The minutes of the Audit and Risk Committee Meeting held on the 13<sup>th</sup> February were noted by the Board.

### **7.2 Audit and Risk Committee Annual Report and Terms of Reference**

*ARC Annual Report*

The Audit and Risk Committee (ARC) Annual Report sets out the work of the Committee from June 2018 to May 2019 and provides assurance to the Board that the ARC has carried out its obligations in accordance with its terms of reference.

The Committee met on four occasions in the reporting period and overall reported a positive year with two additional lay members joining the Committee with insurance and risk backgrounds.

During the reporting period, the Committee considered the following matters:

- Internal audit plan was completed and reports received on corporate governance, fraud awareness, key financial controls, information governance – ISO 27001, HR key controls, legal compliance, data quality – claims, contract management, cyber security and follow-up of outstanding internal audit recommendations. The overall opinion given was Moderate assurance to the Accounting Officer which was discussed at length and the Committee have reinforced managing and targeting internal audit on identifying areas that need to be reviewed. The internal audit follow-up report has been received and 48 out of 50 of the actions have been completed.
- Local Counter Fraud services – good progress has been made in terms of proactive work which the team have been taking forward and all policies are up to date.
- Risk and assurance – the Committee have been reviewing the operational and strategic risks and have undertaken a number of deep dives.
- Reviewed ARC Terms of Reference – the Committee will be working on making some changes to the terms of reference which will be discussed in October.
- The DHSC representative attends all ARC meetings and the Chair of the DHSC ARC attends the June ARC meeting.

#### *ARC Terms of Reference*

A number of changes to the ARC Terms of Reference are recommended to ensure that they remain fit for purpose and reflect the role of ARC and its relationship with the Board. Further research into best practice is to be undertaken and it is therefore recommended that the Terms of Reference are rolled over and will be amended following discussion at the October ARC.

The Board noted the ARC Annual Report and approved the current Terms of Reference as fit for purpose.

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

### **8.1 Policies for approval/noting**

#### *8.1.1 Travel Expenses and Reimbursement Policy*

It was noted that in future certain members of the Board could be impacted by the proposed changes. This was not considered to be a conflict of interest but the

proposal was presented by the Chief Executive who was unlikely to be impacted and one Board member who could be impacted was recused from the discussion.

This policy has been updated to set out the procedure for the processing of expenses for dual office workers and NEDs to ensure that we are compliant with HMRC tax requirements. All employees are designated with a main base of work, whether at home or one of our office locations. Where employees regularly travel to another NHS Resolution location to perform normal duties, they are described as dual office workers and are liable to tax on their expenses. It has been agreed that these employees and NEDs will be allowed to claim their travel and subsistence expenses to locations other than their main base on a gross basis with NHS Resolution paying the tax liability on their behalf ensuring that staff are not out of pocket. It was noted that the proposals are consistent with normal practice in other public and private sector bodies.

HMRC require organisations to demonstrate that they have set their expenses policy to pick up any instances of dual office working and apply sensible rules to ensure tax is deducted appropriately. Finance and HROD have identified all staff members affected and reviewed the expenses for 2018/19.

It was noted that some of the new/revised text would require amendment and details have been provided to the policy team.

The policy change has been agreed in principle with JNC and final clearance is being sought following updated text to the policy and the policy will then be approved by the Senior Management Team and brought to Board for noting. The policy will be reviewed again in October 2019.

The Board approved the Travel Expenses and Reimbursement Policy subject to incorporating previously advised changes.

### 8.1.2 *Incident Reporting Policy*

This policy has been rewritten to include:

- changes introduced by the General Data Protection Regulations (GDPR) and consequent timeframe requirements for reporting certain serious incidents to the Information Commissioner's office within 72 hours of the awareness of an incident. These timeframes are reflected in the Data Protection Security toolkit hosted by NHS Digital which is a mandatory reporting requirement for all NHS bodies.
- introduction of a single policy for all incidents with more generic incident form, with less focus on just IG issues.
- more examples as a way of explaining the types of incidents to be reported.

SMT have reviewed and agreed the policy.

The Board approved the Incident Reporting Policy and Procedure.

## 9 **Any Other Business**

### 9.1 *Board Effectiveness Review*

Eva Beazley (Weva Limited) attended to provide a summary of the review undertaken on Board effectiveness. The last Board effectiveness review was undertaken three years ago.

The purpose of the review was to conduct an external evaluation of the performance of the Board in line with the Government's Corporate Governance in Central Government Departments Code of Good Practice and Financial Reporting Council: The UK Corporate Governance Code and Guidance on Board Effectiveness 2018. The review observes how the Board works together as a team as well as looking at the strengths and weaknesses, and areas for development. The NHS Resolution Board is a unitary Board of Non-Executive Directors (NEDs) and Executive Directors (EDs). The EDs meet on a weekly basis, however the NEDs meet rarely other than at Board meetings.

The February 2019 ARC and March 2019 Board were observed as part of the preparation of the review. Confidential interviews were held with all members of the Board and a number of others who have a role in the governance of NHS Resolution. In summary, there was a high degree of commonality of views with agreement in a number of areas which need to be taken forward for development with a template for future measurement. The review identified that the Board performs well as a team and in comparison with other Boards. The Board recognises the rapid development of the organisation and its desire to lead the organisation into the next stage of its development and maturity as well as playing its part as an equal partner in the NHS system.

In terms of strengths under Board leadership, the Board has a clear sense of purpose and role within the NHS system and delivery of its strategy whilst being aware of the changing NHS and political landscape. The Board has developed an effective approach to risk management and the emerging risks around digital health and primary care. The EDs are appreciative of the support and input they receive from the NEDs.

Both NEDs and EDs role model the organisation's values in their interactions and decision-making with staff, although it is noted that the NEDs could engage more with staff.

The key areas for development are around connecting more with the outside world and engaging more with stakeholders, nurturing the identity of the organisation, and developing the Board as a team to take the organisation forward. The Board needs to build, maintain and strengthen connections with key stakeholders across the primary and secondary sector, and the judiciary, to take a 'whole system' perspective as well as being more aware of emerging risks and opportunities to influence change and improve insights from NHS Resolution's own data. The Board should act as a 'system leader' to enhance an understanding of NHS Resolution's strategic and operating landscape and ensure a holistic 'left to right' approach to improving safety in the patient pathway as well as drawing upon NEDs with subject matter expertise (SME) to further reach across the system.

In terms of the strengths around Board's effectiveness as a team/ways of working, the Chair and Chief Executive are highly regarded for their strong leadership of the organisation. The Board, as a unitary team, demonstrates positive team dynamics with disciplined ways of working and through the unitary structure identifies ways to

continuously develop and improve the organisation which will also help articulate and oversee the delivery of the strategy. The Board is confident it is well informed by the EDs on other Board committees through agenda papers. The Board need to consider what is feasible in terms of time and energy they can offer so that their time can be allocated effectively with maximum impact, including consideration of operational risk. An example of good practice includes the involvement of two NEDs on the GPI Steering Committee. There are ways of maximising resource through using conferences and events to reach our stakeholders rather than arranging individual visits.

Further work is needed on improving engagement with staff. The Board, in particular NEDs, needs to consider its role in nurturing and developing the identity and culture of the organisation through being more visible to, and engaging with, staff. By way of example, Mike Pinkerton presented at the Staff Celebration Day and spoke to staff and has also presented to the leadership programmes, both of which were well received.

We are currently in the process of refreshing our five year strategy which will identify what is emerging from a strategic perspective.

Board members were very positive regarding the overall tone of the report and accepted it as a platform for taking forward the actions. The Chair and Chief Executive will review the actions which will be considered as part of the strategy refresh and through discussions with Board and a proposal will be brought back to Board before the end of the year on how the actions will be taken forward.

**Action: Chair/CE**

The Board reviewed the wording to be included in the governance statement in the 2018/19 Annual Report and Accounts. The wording will be amended to:

- Reflect how we address the drivers of claims in a holistic way
- Capture the balance of patient safety, resolution of concerns and claims costs.

The Board thanked Eva Beazley for the work undertaken on the Board Effectiveness Review.

**10 Date and Venue for next meeting**

- 10.1 The next Board meeting is scheduled for Wednesday 17<sup>th</sup> July 2019 at 10.00am, venue tbc.

Signed .....

Date .....