

Board meeting minutes (Part 1)

18 May 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)
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
Cheryl Lynch	DHSC Sponsor Team
Kausar Parveen	DHSC Sponsor Team
Julia Wellard	Executive Personal Assistant (Minutes)
Apologies	
Sam Everington	Non-Executive Director (Associate Board Member)

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair welcomed everyone to the meeting.

Apologies were received from Sam Everington for the Part 1 Board meeting.

1.2 Declaration of conflicts of interest of members

There were no conflicts of interest not previously noted.

1.3 Minutes of Board Meeting held on 9th March 2021

Subject to a minor amendment, the minutes of the Board meeting held on Tuesday 9th March 2021 were approved for signature by the Chair.

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:

- Managing concerns during the pandemic – Director of Advice and Appeals to circulate the publication from our website to Board members. This has been completed.

2 Operational items

2.1 Chief Executive's Report

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

The Director of Finance was pleased to report that the number of invoices paid within 30 days exceeded the target of 95% at 96% for the month of March which is attributable to the facilities within the new finance system and the investment in the team to address the issue.

The full year DEL budget for 2020/21 was underspent by £445m; much of this considerable amount is attributable to the impact of the pandemic, and has been reported on several occasions to DHSC as it developed across the year, the budget for the scheme being set in the summer before the year in question, in this case before the pandemic arose. The underspend reverts to DHSC in effect, rather than carrying over to NHS Resolution's next year.

Subject to the conclusion of the annual accounts process, it is likely that there will also be a substantial underspend on the AME budget (a non-fiscal budget). The budget is set with DHSC who are provided by NHS Resolution with a forecast range, from which a forecast of £8.2bn - against an outturn of minus £2bn – had been selected.

The Finance and Claims teams are undertaking work in relation to forecasting for the current and future years, aimed at ensuring that we seek no more than is required from our scheme members.

Claims

The number of Data Protection Act (DPA) claims received has increased year on year since 2017/18. This is likely to be as a result of recent judgements but remains under consideration. It was also noted that DPA claims may be attractive to some claimant lawyers as they are not subject to fixed recoverable costs, unlike employers' and public liability claims.

Practitioner Performance Advice

The Director of Advice and Appeals reported the continued increase in the number of new advice cases and the increase in demand for assessments and interventions which has continued into Q4.

The Advice team undertook its first virtual performance assessment of a general practitioner, which is due for completion in May. We are the first organisation to be undertaking a virtual performance assessment and there are a number of lessons learned from holding the performance assessment virtually.

It was noted that the number of Healthcare Professional Alert Notices (HPANs) continues to steadily fall which does not seem to correlate with the demand for assessments which appears to be rising. The new Directions mean that we are able to get HPANs out more quickly, enabling regulators to respond to them more quickly because they fill in the gap between an employer being concerned about a physician leaving and the regulators taking action. This is therefore appropriate in terms of how many we have. We are launching a new HPAN website in September which will allow us to track better and make sure people are checking every employment and contractual interaction.

Primary Care Appeals

BAU continues well within the team. There are some implications around the ability for NHS Resolution to award interest if it finds that a primary care contractor has been underpaid and the team are working through this.

External Impact

Safety and Learning

The Safety and Learning team produced six products out of eight during 2020/21. Most of the publishing has been held up by the pandemic because of the need for clinical input. It is likely that the team will over achieve the number of products in 2021/22 due to the number of thematic reviews which will be published.

The Safety and Learning team have undertaken a lot of engagement with members which has been achieved through different methods due to the pandemic, raising the possibility of a hybrid approach continuing beyond the pandemic.

Early Notification

A maternity advisory voices forum for parents has been set up and we are committed to doing some of our case stories in partnership with parents, which will be included on our website.

Membership and Stakeholder Engagement (MSE)

Work has been progressing on updating and tidying the website home page to make the website more user friendly.

The Director of Membership and Stakeholder Engagement paid tribute to staff for their involvement in the Pennies from Heaven scheme where salaries are rounded down to the nearest pound with the pennies donated to charity. We recently received a gold award for our involvement in the scheme. We, as the employer, nominate the charity which receives the donation each year and this year the charity selected by our staff is the London Air Ambulance.

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

2.3 Policy Review

The 'Process for the development and implementation of procedural documents' (CG13) sets out the process for the review and approval of policies and procedures and includes the list of policies and procedures for Board approval and those delegated by Board to the Senior Management Team (SMT). Both the Operations Risk Review Group (ORG) and SMT have considered the review dates for policies which are overdue for review within the next three to six months and have supported extensions to these policies.

ARC undertakes an annual check of policies in terms of whether the right policies are in place and that they are in date. It was queried whether we need so many policies and whether they need to be reviewed so often. The HR&OD policies are reviewed regularly because of potential legislative changes however there was a question as to whether the change should prompt the review and not the other way around. The amount of change within the organisation (such as the office move) will prompt more reviews as well as external developments. The Corporate Governance team will undertake a review to identify whether all the policies are still needed and how often they should be reviewed.

Action: HoC&IG

It was noted that, due to resource issues within the HR&OD function, the need to ensure that we had an external perspective, and to check for consistency and potential areas of challenge, the solicitors Capsticks had been commissioned to undertake a review of some of our key of HR&OD policies.

We have recently moved to a new counter fraud provider (GIAA) and this is a good opportunity for them to bring insight to the policies given the changed ways of working and the heightened risk of fraud.

It was noted that CG13 sets out that every policy and procedural document will be screened by the person responsible for its development to consider whether there is

an equality dimension or whether any adjustments are necessary to comply with the duty to promote equality and diversity. It was suggested that the equality and diversity dimension should always be considered and that the wording in the document should be changed to reflect that.

Action: HoC&IG

The Board noted the policies requiring review and the process in place, approved the required extensions and agreed to a review being undertaken on whether all policies are required and how often they need to be reviewed.

3 Management proposals requiring Board input or approval

3.1 Board Effectiveness Review

The Board is required to review its effectiveness annually and undertake an effectiveness review with external facilitators once every three years. For 2021/22, the effectiveness review will be undertaken internally. The Head of Corporate and Information Governance will circulate a set of questions for Board members to respond and an anonymised collation of the responses will be brought to Board for consideration.

It was suggested that the externally facilitated effectiveness review take place in 2022/23. The same external facilitator should be used for all Board sub-committees.

The Board noted the position.

4 Liaison with Key Stakeholders

4.1 Maternity Day - plan

The agenda for the Maternity Day, which is scheduled for Wednesday 2nd June, was presented. The aim of the session is to consider whether NHS Resolution is doing everything it can to reduce birth injury and consider what messages and learning it can share.

The first session will focus on what is happening outside NHS Resolution and a number of key subject matter experts have been invited to attend the day to present. Material used by presenters will be circulated in advance for consideration in order to give time for debate at the session. It was agreed that the presenters be asked to put forward their ideas on what they think NHS Resolution should be doing in the maternity space. It is important that the session focuses our thinking around what are our choices and the speakers will be asked to provide only four to five key points that they want to deliver and what they consider needs resolving or questioning so that we can build up those points and create a narrative as we move through the session.

The second session focuses on what is happening within NHS Resolution, where we are now, what we are proposing and planning and to map out next steps.

A further session, addressing whether there is more that we can do after an injury has occurred, may take place next year.

The Board approved the agenda for the Maternity Day.

5 Key Developments

5.1 Case Report

Calderdale v Metcalfe

The *Calderdale v Metcalfe* case illustrates how the judge approached the sentence that he handed down by including among his reasoning that it was a fraud against the NHS.

The Chief Executive was interviewed by BBC for their Defenders series which primarily focused on the *Calderdale v Metcalfe* case and what we do in relation to fraud. We have yet to be advised when the programme will be aired.

The Board noted the position.

6 Oversight of Key Projects

6.1 There were no items to consider.

7 Board Committee Reports and Minutes

7.1 *ARC minutes of meeting held on 16th February 2021*

The minutes of the ARC meeting held on 16th February 2021 were noted by the Board.

It was noted that the IT incident was reported to Board through the minutes of the ARC and the comments raised in relation to the incident management process have now been covered. It was suggested that major incidents should be recorded as such in order to reflect clearly their impact on the organisation. All major incidents are reported to ARC in any event.

7.2 *ARC Annual Report*

The Board noted the ARC Annual Report.

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 13th July 2021 at 10.00am, the location to be kept under review and if necessary this will be a virtual meeting.

Signed

Date