

Board meeting minutes (Part 1)

10 November 2021

10:00 – 15:00

Hybrid Meeting - Room 8.05 10SC/MS Teams

Present	
Martin Thomas	Non-Executive 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	Executive Director (Chief Executive)
Denise Chaffer	Executive Director (Director of Safety & Learning)
Vicky Voller	Executive Director (Director of Advice and Appeals)
Joanne Evans	Executive director (Director of Finance & Corporate Planning)
John Mead	Executive Director (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
David Gurusinghe	Deputy Director, Policy, Strategy and Transformation
Tinku Mitra	Head of Corporate & Information Governance
Cheryl Lynch	DHSC Sponsor Team representative
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.

The Chair drew the Board's attention to the fact that the organisation continues to operate under difficult circumstances due to the ongoing impact of the COVID-19 pandemic.

Hybrid working and hybrid meetings will continue into the future particularly given we have offices in different parts of the country. It was suggested that going forward a member of the Board who joins the meeting virtually will act as the "conscience of the meeting" to advise whether we have met our PEER values and complied with our hybrid working arrangements. This will be on a rotational basis. Nigel Trout kindly volunteered for this 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 15th September 2021

The minutes of the Board meeting held on Wednesday 15th September 2021 were approved for signature by the Chair.

1.4 Review of actions from Board meetings

The following actions have been closed and will be removed from the action log: 21.08; 21.10; 21.11.

2 Operational items

2.1 Chief Executive's Report

Community pharmacy vaccination programme – risk sharing

NHS Resolution has been issued with Directions to exercise the Secretary of State's functions of administering any reinsurance arrangements entered into by the Secretary of State in connection with the community pharmacy vaccination Covid-19 programme. This is a risk sharing agreement where the insurance market acts as the primary insurer, and DHSC, supported by NHS Resolution as the administrator, provides top-up cover in the event that the insurance is not sufficient. The purpose of this is to allow the market to continue to function but to deal with the unacceptable risk. The programme is estimated to run until March 2022. The contingent liability is expected to be very low and it is running under reinsurance arrangements which are capped and therefore the insurance market will still be writing the risk. The expected volume of risk is minimal.

The Chief Executive thanked the Director of Claims Management and Technical Claims Director for the work undertaken on this.

Health and Social Care Select Committee (HSCC) Inquiry

DHSC has submitted evidence to the HSCC inquiry into NHS litigation reform. NHS Resolution contributed substantially to the evidence. We are currently waiting to hear when oral hearings will take place. We expect to be giving evidence alongside DHSC Ministers and officials, and potentially other government departments.

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.

Primary Care Appeals

The Board commended the Appeals team on the work undertaken with NHSE&I on dental disputes where contract holders have found NHSE&I's approach to be fair and proportionate.

Safety and Learning

Dr Alex Crowe, the new Deputy Director of Incentive Schemes and Academic Partnerships, started on 8 November. Alex will be providing support on the thematic reviews and the academic contract. Michele Golden, Deputy Director of Safety and Learning, is on secondment to Croydon Health Services NHS Trust and Lorraine Cardill will be acting up in the post for the next five months.

The final drafts of the Emergency Department reports have gone to the Royal College of Emergency Medicine and the President has been asked to write the foreword. There are a number of potential issues around publication of the reports at the same time and we are reviewing publication dates including alignment with reports planned by other bodies, including the Royal Colleges. It would be better to phase publication of the reports but that carries a risk that the content will go out-of-date. We are aware that the Emergency Department report will be published at a time when the system is under massive pressure and we will be taking advice from the Royal College of Emergency Medicine on publication.

It was noted that HSIB have produced a series of reports on maternity which relate to the period of Covid. There is an insights group which is led by NHSE&I to look at all the maternity recommendations for the system to see how they can be finessed and prioritised. We are connecting some recommendations with the maternity incentive scheme actions. Discussions are being held with HSIB about a joint report however there is the question of how a joint report interplays with HSIB's independence. We are working closely with HSIB on concerns and themes. The final draft of the second EN report is in its final stages and there will be a small number of recommendations from the report where we will be working with the system on implementation. We do need to be sensitive not to overburden front-line providers at this time.

Keith Edmonds announced that he is due to join the RCOG as a senior adviser. From a meeting he recently attended, the RCOG reported that they have had 385 different pieces of advice; this shows how overwhelmed the system is with information. Many of the recommendations overlap and there is a need for this to be co-ordinated and brought under one umbrella so when there is a series of recommendations they only go out under one guise. DHSC will be talking to colleagues in maternity to see what can be done in relation to the volume of recommendations in the maternity space.

The draft chapter on maternity in our draft strategy 2022-2025 has been shared with a number of maternity contacts and stakeholders to gauge their feedback.

In terms of overburdening the system, it was considered that we should not shy away from our unique contribution to the debate particularly around our analysis of claims.

The thematic reviews will have a shelf life but this needs to be balanced against the impact they are expected to have and we need to make sure they are shared with the system in an appropriate way. We need to amplify our work through our partners and with others in the system to get the messaging and timings right.

The Board noted the performance reports 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 Board Schedule

The Board schedule sets out the core reports for the Board for the 2022 cycle of meetings including where these are for noting and approval, and a summary of additional reporting which will be added to the schedule during the year. The schedule also sets out the dates of the Audit and Risk Committee and Reserving and Pricing Committee as minutes of these meetings are presented to the Board for noting.

It was noted that the Board self effectiveness discussion will take place with Board members only.

There will be a deep dive of each function at each Board meeting going forward.

It was noted that the AGM dates in August 2022 will need to be reconsidered as the meeting needs to take place within a certain timeframe and the August dates will potentially be too late. The team are working on the timetable for next year and will advise when we should be looking at holding the AGM.

The Board noted the schedule for 2021/22.

3.2 People Committee

Following Board approval to implement a People Committee as a sub-committee of the Board, the committee membership has now been confirmed.

Following discussions internally, the proposal is to appoint a lay member to the committee to ensure that there is sufficient HR expertise and challenge external to the organisation for the committee to function in the way that other governance committees function. It was suggested that these members be called independent members rather than lay members. It was noted that the ARC independent members' terms expire in December 2022 and it was suggested whether the recruitment campaigns could be brought together, utilising specialist networks and channels to ensure the maximum diversity of candidates in line with our EDI strategy.

It was considered that the People Committee could look into making proposals to the Board on who should be invited to Board meetings in order to ensure different perspectives from the staff body e.g. the Diversity Matters Network.

The Board approved the People Committee membership, the appointment of an independent member to the committee, and committee meeting frequency.

4 Liaison with Key Stakeholders

4.1 There were no items to consider.

5 Key Developments

5.1 Case of Note

AKC v. Barking, Havering and Redbridge University Hospitals NHS Trust - High Court, 29 September 2021 - Steyn J. and Master Brown

An update was provided on the case which involved the treatment of a cerebral arterio-venous malformation in 2012. This ruling sets out that there should be far greater transparency in claimant bills so that we are able to scrutinise them and reduce costs overall for the National Health Service. There is the prospect of appeal to the Court of Appeal. Once the time for appeal passes it was suggested that we should publicise the outcome more widely.

It was noted that claimant legal costs are a significant proportion of our total costs.

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 June 2021

The Chair of ARC has been in discussions with Gerry Murphy, Chair of DHSC Audit and Risk Committee, about awareness of risks across the ALB network. This was briefly touched upon at the NHS Resolution ARC meeting. Conversations continue around developing a systematic way of reviewing ALB risks across DHSC and across ALBs. It was noted that there had not been an ALB ARC Chairs meeting for some time and that Gerry Murphy's term is soon due to end. The DHSC representative will check where this has got to and provide an update to Board.

Action: DHSC Rep

The Board noted the ARC minutes of the meeting held on 16th June 2021.

8 Other matters requiring Board attention

8.1 Policy Review

In May 2021, the Board considered a number of policies where extensions were sought for some six to nine months. It was decided then that a broader review of policies be undertaken by the Corporate Governance team to include the frequency of review. The Corporate Governance team have duly reviewed the policies in place and will be making changes to reduce the length of policies where possible. It is proposed, as part of a review of internal approval process, that a three year cycle of reviews is undertaken, unless any legislative or business process changes requires them to be made sooner.

It was confirmed that the delays to reviews of policies has been consequent upon the disruption brought by the pandemic with pressures on the team as well as ensuring that we have the right information in order to update the policies.

An external review had been commissioned of the HR policies with the aim of ensuring that the policies were consistent, compliant with current legislation and to highlight any urgent issues to be addressed. This has now been completed. The Grievance Policy needs particular attention e.g. it still refers to 'NHS Litigation Authority' and the way the processes are articulated also requires some attention to ensure that it reflects best practice. We are looking to re-engage with the panel firm to take forward their comments and support us with extra capacity to update the HR policies.

There have been a number of occasions on which we have had to seek further extensions from the Board, in particular the Raising Concerns policy which was revised recently and which was awaiting the outcome from the national audit of the Freedom to Speak Up (FTSU) office. This was discussed with the FTSU officers, the Director of Safety and Learning and Mike Pinkerton and it was established that the outcome of that audit has no impact on our policy and it is proposed that the Board agree that the policy continues to its usual review period of three years.

The Senior Management Team have discussed progress of the reviews and are seeking to ensure that we get additional support to manage the review process. We are currently looking in detail at the budget for next year and the resourcing for the corporate functions is being prioritised as part of the governance workstream. There are particular challenges in the HR space which we are still working through to ensure that we are properly resourced and not exposing the organisation to risk. The Board was sympathetic on the impact the pandemic has had on the teams. The Board were assured that the policies will continually be reviewed to ensure that any legal changes are taken on board and not put the organisation at risk, and ensure that we have governance and corporate support services in place to do these reviews.

The Chief Information Officer reassured the Board that the two IT policies, the Information Security Policy and the Policy for the management of fire and emergency safety, are regularly updated but are being extended to take into account the Leeds office move and the outcome of an internal audit.

In terms of counter fraud, the Director of Finance will find out when the counter fraud work programme will get back on track and whether the work to be completed by the end of November 2021 will be finished on time.

Action: DoF

The law is continually changing and it was agreed that the Chair, Head of Corporate and Information Governance, Director of Finance and others as necessary work up an assessment of whether the law has changed in a way which will materially impact individual policies.

Action: Chair

The Board approved the extensions to the policies subject to confirmation that there are no legal changes of material impact. Any extensions to policies required beyond May 2022 should be sought from Board in March 2022.

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 Wednesday 19th January 2022 at 10.00am – details TBC

Signed

Date