

Board meeting minutes (Part 1)

19 January 2022

10:00 – 15:00

MS Teams

Present	
Martin Thomas	Chair
Mike Pinkerton	Non-Executive Director
Charlotte Moar	Non-Executive Director
Nigel Trout	Non-Executive Director
Lesley Regan	Non-Executive Director
Janice Barber	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
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 in particular Janice Barber and Lesley Regan to their first NHS Resolution Board meeting as Non-Executive Directors.

The conscience of the meeting was Denise Chaffer.

It was noted that Keith Edmonds' term as Non-Executive Director ended at the beginning of December after just over six years' service. Unfortunately as there was uncertainty over Keith's leaving date, the November 2021 Board was his last meeting. Keith's contribution to the work of NHS Resolution was immense, wise and wholly supportive and we are highly appreciative to him.

1.2 Declaration of conflicts of interest of members

Given the Board report on Inquiries, Janice Barber declared an interest that she was involved in co-authoring the report of the West Suffolk review.

1.3 Minutes of Board Meeting held on 10th November 2021

The minutes of the Board meeting held on Wednesday 10th November 2021 were approved for signature by the Chair.

A question was raised on the reasoning behind a separate People Committee. The Committee was set up to give the time and space to focus on, and provide assurance to, the Board on all HR&OD related matters. The Committee will meet approximately four times a year and it will report into the Board. The Terms of Reference for the People Committee will be circulated to the two new NEDs (and are included in their induction papers).

Action: JW

It was noted that the NHS has been set a sustainability target and all NHS trusts have had to submit their sustainability plans. It was considered whether NHS Resolution should also have a sustainability committee so that it demonstrates an equal commitment. This is being considered within our strategy in terms of demonstrating action in relation to sustainability and the Chief Executive will look into this and bring a proposal back to the March Board meeting.

Action: CE

1.4 Review of actions from Board meetings

The following actions were rolled forward:

21.12 - ARC ALB meetings/DHSC ARC Chair - DHSC Rep to find out when the next ARC ALB Chairs meeting will take place and find out whether a new DHSC ARC Chair has been appointed. Update: Gerry Murphy is still the Chair of DHSC ARC and the next ARC ALB meeting is in the next few months.

21.13 – Counter Fraud – Director of Finance to 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 will be finished. Update: An update on the fraud work programme is scheduled for February ARC. Work is in progress with GIAA.

Actions 21.08, 21.10 and 21.11 were completed and removed from the action log. Action 21.14 was closed at the meeting.

2 Operational items

2.1 Chief Executive's Report

Update on Omicron Covid-19 variant and response by NHS and NHS Resolution

Following the letter from Amanda Pritchard and Professor Stephen Powis to the NHS dated 13th December declaring a Level 4 National Incident, NHS Resolution reviewed delivery of its core services in terms of the impact on the NHS and how we can reduce unnecessary burden on the NHS whilst continuing to deliver our services and meet our Directions. Business as usual is affected, in particular we continue to struggle to get witness statements from clinicians who are involved in claims, we are unable to deliver events in person and we are struggling to get experts clinical input into reports.

The working from home arrangements are having an impact on some employees which is a concern, however it is likely that the working from home instruction may be lifted and as soon as that is confirmed we will progress to move back to a gradual re-occupation of the office. The Safety and Learning team has been impacted where clinical secondments and clinical fellows have been asked to return to the front line.

On a positive note, there are a number of Safety and Learning reports which we will be publishing over the next few months and a plan is being developed to take these forward.

It was considered whether there was anything further we could do to change our ways of working with member trusts and we have recently written to trusts to give us permission to make admissions of liability on cases without reverting to them for a limited period of time. There have not been a huge number of responses but this is one way of releasing the blockages.

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 year to date financial position on DEL expenditure budgets has increased by £10m from the end of November 2021 to an underspend of £105m at the end of December 2021. Budgets for the general practice indemnity schemes and coronavirus schemes have now been agreed.

Claims

Operational challenges relating to the pandemic continue, in particular matters are taking longer to investigate and resolve due to operational pressures both internally and externally.

It was noted that CNSGP case numbers have increased by 59% since we have taken on GPI claims and it is expected that the scheme will not mature in totality until the next financial year. From 2019/20 onwards we have expected a linear increase through to 2022/23 as we take more and more claims on due to the time lags of notification. We have only part of the historic book and it is difficult to gauge whether we are seeing a true reflection of the number of cases. There will be a Covid impact as we have seen across other schemes.

It was considered whether the 3% reduction in claims is due to there being less claims because of activity or less claims because of delays which will have an impact on future cashflows. There are delays on clinical but for non-clinical this is different because there are less people on site and therefore there are less slips, trips and manual handling incidents and for this reason it will be some time before LTPS will see a full recovery. There may also be changes to working patterns meaning there will not be as many employers' liability claims. In terms of clinical, as surgeries re-commence, we may see that catch-up in due course and this will need to be factored into discussions on what the elective recovery programme looks like.

Discussions have been taking place relating to claims around delay in referral, delay in treatment, and delayed diagnosis because of covid restrictions. It was commented that there is an ongoing issue of delayed diagnosis and mis-diagnosis which is due to the issues between primary care and secondary care of managing the referral processes. There is a steering group in NHSX, which includes NHSE&I on its membership, which is looking at redesigning the referral process.

With regard to the Paterson review, it was considered whether we have robust systems in place to identify when we have concerns in an individual negligence case or when there is a series of cases. We have a significant concerns process in place which identifies if we see a group of claims or an issue arising from our Advice service which also comes up in our claims portfolio, and there is a process which determines whether or not this is referred to one of the regulators.

Practitioner Performance Advice

The Practitioner Performance Advice Service open case book has increased which is mainly as a result of Medical Directors not being available to have discussions about routine cases. This is changing in terms of geography where there are particular areas of the country which are significantly hit by the pandemic. The clinical performance assessment is not going ahead which is to do with a regulatory action.

Engagement Overview

Safety and Learning

It was noted that despite the pandemic there continues to be a demand for education and events which the team have continued to deliver. In terms of products, the three Emergency Department reports will be published soon. Being mindful of the pressures on the NHS, and following discussions with the Royal College of Emergency Medicine, the reports will proceed to publication as soon as possible as they consider the reports will help staff and it is hoped they will be published by February. The CNSGP report is also more or less ready for publication. All the reports will be supported by a communications strategy.

In relation to the EN maternity concerns, we are part of the National Maternity Surveillance group working with HSIB and the system is maturing and moving into a regional approach. We have our own operational EN concerns group and we work with trusts and are making sure that this reflects with the national position in terms of structures. One of the challenges is making sure that we have membership of the regional groups which we are working towards.

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 Complaints Report

Activity during Q1 and Q2 for FY 2021/22 was presented against a comparative summary of complaints received for Q1 to Q2 for the past three years. It includes details of numbers of complaints received during the year, performance in responding to complaints, learning points and areas to be taken forward.

It was considered whether we identify if there are any emerging themes or demographics and specifics of complainants received. Complaints are reviewed but it is difficult to identify trends. There are a number of litigants in person which can be resource intensive. One of the difficulties we have is that claimants or other complainants who are unhappy about decisions being made on their claims, or in the Advice service cases relating to interventions, are difficult to handle because they are out of scope in the policy of any professional decisions being made, but this is balanced with giving complainants the right to make a complaint if they wish to do so.

The Board noted the Complaints Report.

2.4 Inquiries Update

An update was presented on our current engagement with Statutory Inquiries and reviews.

The Director of Claims Management was commended for his approach in giving evidence at the recent Health Select Committee hearing.

The Board noted the inquiries update.

3 Management proposals requiring Board input or approval

3.1 Customer survey findings presentation

Donal Mcdade from SMR gave a presentation on the key points arising from the stakeholder interviews.

The feedback from the interviews has been extremely useful in helping us to build on our strategy from 2022 onwards. In particular, feedback from DHSC in relation to which direction they encourage us to take, as well as the message to continue doing what we do well and that we are not required to do anything radically different at this point in time was encouraging.

CCGs and ICSs were not interviewed but NHSE&I were interviewed. The senior management team have been discussing mapping future links to the emergence of ICSs and the new regional structure going forward.

It was suggested whether we should undertake an internal exercise on what we think are the strengths and weaknesses of our senior stakeholders which might be valuable to identify whether it resonates with the external piece. There are a number of different views expressed which contradict particularly around the use of incentives and in particular, financial incentives which have come from different stakeholders. This is being explored in the strategy but the feedback demonstrates the differing views amongst our stakeholders which we need to revisit. We will need to manage the conflicting views particularly around incentives which is a difficult topic and formulate some lines as part of the strategy but we do need to be cautious when responding to stakeholders. The research data is to be used for further debate and has been built into the strategy development because it gives us another lens to have further discussions.

It was considered that we should reflect on the opportunities the legal panel tender contracts arrangements give us in terms of moderating and supporting activities both formally within the contract but also when formulating relationships as the legal firms directly interface frequently with our members.

The Board noted the customer survey findings.

4 Liaison with Key Stakeholders

4.1 There were no items to consider.

5 Key Developments

5.1 Case of Note

Evie Toombes v Dr. Philip Mitchell (High Court 21/12/2020 – Lambert J.; and 1/12/2021 – Judge Coe QC)

A summary was provided on this unusual case which involved two High Court rulings within a year. The claimant was able to recover damages in relation to a consultation which on the evidence, occurred before she was conceived. The case has attracted a lot of interest amongst the medical profession and a summary of the case is being included in the next publication to members.

It was commented that there is a risk with the shortage of doctors that the absence of detailed note taking has consequences. What is considered safe in the system is difficult which does not only relate to note taking but communication with the hospitals, notes coming in and the way they are uploaded and coded. There is guidance which could go out to GPs about how to keep safe in this area. This is also an issue in maternity and gynaecology and it was suggested that it would be helpful if a summary of the case is disseminated with our views on what clinicians should be doing. It was suggested that we should include NICE in terms of amending the tech appraisals and also the patient safety team at NHSE&I for links to their patient safety alert mechanism

which could be a useful resource to disseminate this information. It was agreed that the report be shared with Dr Mitchell prior to circulating to members.

Action: TCD

Secondary Victim Claims

It was noted that we received a ruling from the Court of Appeal last week in the secondary victim claims where the injury to the secondary victims occurred a long time after the initial negligence. We were successful in all three of the cases, however the Master of the Rolls has given the claimants permission to appeal to the Supreme Court because the Court of Appeal was clearly concerned about conflicting previous opinions from itself and therefore want the Supreme Court to clarify the law.

A full report on the cases will be brought to the March Board.

The Board noted the cases report.

6 Oversight of Key Projects

6.1 There were no items to consider.

7 Board Committee Reports and Minutes

7.1 [RemCo Performance and Compliance Report for 2021](#)

A report was presented on the performance and compliance of the Remuneration and Terms of Service Committee (RemCo) as set out in section nine of the Committee's terms of reference.

The Board noted the 2021 performance and compliance report and agreed that the RemCo terms of reference remain appropriate and fit for purpose.

8 Other matters requiring Board attention

8.1 [Policies Update](#)

An update was provided on the position in respect of a number of policies which are designated for approval by the Board. The Board last considered this in November 2021 where extensions were sought for six months. At that time, the Board expressed their concerns about the extensions being sought after review dates had passed and requested a legal review to determine whether there are any risks in seeking an extension to the review deadlines. The reason for the delays have been due to workload pressures and capacity particularly in the HR team.

It was noted that the extension to the review of the Conflicts of Interest policy relates to work outstanding by the new counterfraud supplier, GIAA, and work is being taken forward with them to review their various products. There are new government functional standards and we will be working with GIAA to make sure that we are complying with the standards in terms of fraud.

The Board noted the policies update.

8.1.1 Complaints Policy and Procedure Review

It was suggested that it would be helpful to include a paragraph of the role of the Senior Independent Director (SID) in the policy.

It was also suggested that it might be worth adding reference to complaints coming through via social media which is starting to emerge. It was suggested that we should look at our social media policy to make sure there are no conflicts in this regard.

It was noted that the Complaints policy refers to ‘service user’ and it was suggested that we should define what is meant by ‘service user’ which will be actioned.

The Board approved the Complaints Policy and Procedure subject to the final drafting points raised being actioned.

8.2 APMS Directions – Scheme of Delegation

Directions for NHS Resolution to exercise the Secretary of State’s function of making a determination in relation to a dispute between a GP Practice (holding an Alternative Provider Medical Services contract) and a Clinical Commissioning Group were issued on 7 January 2022. This function will be discharged by the Appeals team.

The Board approved the Scheme of Delegation.

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 22nd March 2022 at 10.00am – details TBC

Signed

Date