

Board meeting minutes (Part 1)

Tuesday 13th September 2022

10:00 – 15:00

Hybrid Meeting: MS Teams / Room 8.05

| Present | |
|-----------------|---|
| Mike Pinkerton | Interim Chair |
| Charlotte Moar | Non-Executive Director |
| Nigel Trout | Non-Executive Director |
| Janice Barber | Non-Executive Director |
| Lesley Regan | Non-Executive Director |
| Sam Everington | Non-Executive Director (Associate Board Member) |
| Mike Durkin | Non-Executive Director (Associate Board Member) |
| Helen Vernon | Chief Executive |
| Vicky Voller | Director of Advice and Appeals |
| Joanne Evans | Director of Finance & Corporate Planning |
| Denise Chaffer | Director of Safety & Learning |
| John Mead | Technical Claims Director (Associate Board Member) |
| In attendance | |
| Ian Adams | Director of Membership and Stakeholder Engagement |
| Niamh McKenna | Chief Information Officer |
| David Gurusinge | Deputy Director, Policy, Strategy and Transformation |
| Kamal Bedi | Deputy Director of Claims Management |
| Tinku Mitra | Deputy Director of Corporate & Information Governance |
| Cheryl Lynch | DHSC Sponsor Team representative |
| Sally Cheshire | Incoming Chair (observing) |
| Julia Wellard | Executive Personal Assistant (Minutes) |

1 Administrative matters

1.1 Chair's opening remarks and apologies

The Chair welcomed everyone to the meeting, including Sally Cheshire, Chair designate for NHS Resolution, who joined the meeting as an observer.

A minute's silence was held in honour of Her Majesty Queen Elizabeth II who died on Thursday 8th September 2022.

Apologies noted from Simon Hammond, Kamal Bedi Deputising

The meeting began with a video of an interview with a claimant lawyer giving their experiences of why claimants come to them to act on their behalf in medical negligence claims as well as the firm's experience of dispute resolution and NHS Resolution. The following comments were raised following the video:

It was notable that the patient's voice appears stronger in dispute resolution processes than the more traditional methods.

The experience recounted reinforces the work we have undertaken on duty of candour and saying sorry. It was noted that a recent NHS Resolution webinar on duty of candour, which was done in collaboration with a group of claimant representatives, was oversubscribed and there is a demand for more webinars.

It was suggested that we could do more to educate more junior staff on 'saying sorry', and in educating managers to help them feel supported in their organisations to be open, honest and transparent, and developing a culture of safety. It was noted that work is being taken forward through regional forums. In addition, candour is covered in the Maternity Incentive Scheme (MIS) and there is also follow up with the trust on concerns via the EN scheme. The importance of support, training and resources locally was acknowledged and candour should be seen as an essential part of providing care to the patient.

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 12th July 2022

Subject to minor amendments, the minutes of the Board meeting held on Tuesday 12th July 2022 were approved for signature by the Interim Chair.

1.4 Minutes of AGM Meeting held on 28th July 2022

The minutes of the AGM meeting held on Thursday 28th July 2022 were approved for signature by the Interim Chair.

1.5 Review of actions from Board meetings

Action 22.05 is rolled forward to the November 2022 Board.

Action 22.06 and 22.07 were closed at the meeting.

Action 22.08 relates to NHS Resolution's interface with the Independent sector as a follow on from the narrative of the Responsible Officers meeting. A paper is planned for the November Board.

2 Operational items

2.1 Chief Executive's Report

New Chair appointed for NHS Resolution

Sally Cheshire CBE joins NHS Resolution as its new Chair on 19 September 2022.

Mike Pinkerton was thanked for his support to the organisation and for stepping up as interim chair at short notice earlier in the year. Mike will continue as a Non Executive Director on the Board until January 2023.

Patient Safety Incident Response Framework

NHS England has published its Patient Safety Incident Response Framework (PSIRF) and supporting guidance which sets out the NHS's approach to developing and maintaining effective systems and processes for responding to patient safety incidents for the purpose of learning and improving patient safety.

The Policy, Strategy and Transformation Team have produced a read out of the PSIRF launch event which will be circulated to Board.

Action: CEO

The framework aims to reduce the burden of incident investigation reports at a local level but at the same time become a responsive system for the benefit of staff, patients and their families who are involved in incidents. The PSIRF promotes a proportionate approach to responding to patient safety incidents by ensuring resources allocated to learning are balanced with those needed to deliver improvement.

There was discussion of new framework and a range of views shared.

There was a query on how the Framework will work with the Learning from Patient Safety Events (LFPSE) (formerly the National Reporting and Learning System (NRLS)) which is about to be launched. This will be a central service for the recording and analysis of patient safety events that occur in healthcare, including primary care and social care, and a dedicated service for patients and families to use will also be developed. It was noted that the Healthcare Safety Investigation Branch (HSIB) and Maternity and Newborn Safety Investigations (MNSI) also manage incidents and collect data from incidents.

It was commented that it is essential to look at all incidents in real time i.e. the engagement and the approach to patients in real time, so that we learn in real time and the people involved learn in real time. It was suggested that there also needs to be more support for staff involved in coroners inquests.

It was noted that the framework when fully implemented will not be supported by a definition of a Serious Incident (SI) and Trusts will have individual discretion on whether or not to individually investigate matters that would formerly have been classified as an SI. This would be in circumstances where an issue was already being investigated in a thematic manner. This may affect how NHSR operates as SI Reports are part of the background usually available when a claim is made in relation to that category of incident.

It was noted that although we commented on a draft of the PSIRF, NHS Resolution does not have a hands on role. It was suggested that one of the references in the framework, which has been lifted from our strategy may be taken out of context. It was agreed that we would ensure clarity on our role is and is not in relation to the framework.

Action: DoMSE/DoS&L

NHS Resolution will be working with the new Special Health Authority for independent maternity investigations and considering how processes will interact with those of the Early Notification (EN) Scheme.

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 financial position as at the end of August has moved to a slight overspend on our scheme spend. There has been a slight increase in the year on year growth to around 7%.

It was noted that GP Indemnity (GPI) is increasing in line with expectations as was clearly explained in the Annual Report and Accounts, namely that it is a maturing scheme.

Claims

There has been a slight reduction in the reported cases, particularly on Clinical Negligence Scheme for Trusts (CNST) for this year. The Liability to Third Party Schemes (LTPS) and GPI schemes have seen an increase, however numbers are largely down across the CNST and LTPS compared with the pre-pandemic picture.

Practitioner Performance Advice

The Advice KPI performance is mostly on track. The number of absolute exclusions is down from the last reporting period, with the median and the mean lengths also down. The impact metrics for education is up, which is likely as a result of the revival of some of the materials that have been developed as well as an increased focus on QA.

Primary Care Appeals

We have received eight pharmacy Covid cases, five of which are what was expected, two relate to lateral flow and one about a medicine delivery service during lockdown. We are flagging the potential issue around resourcing for lateral flow and there are ongoing discussions happening with DHSC to discuss this further.

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 Inquiries Update

An update was provided on the current engagement with Statutory Inquiries and Reviews.

We are currently working with DHSC on a response to the Health Select Committee in connection to the litigation reform inquiry and once this has been finalised, it will be shared with the Board.

We have been notified of the impending publication of the East Kent Review. It is understood that the families who were affected by the incidents at East Kent Hospital will see the report first.

We expect to contribute to the upcoming Nottingham Inquiry as we have with others.

The Board noted the inquiries report.

3 Management proposals requiring Board input or approval

3.1 Responsible Officer's Annual Report

Sally Pearson, NHS Resolution's Responsible Officer (RO), joined the meeting to present the fifth RO annual report which sets out the work of the Responsible Officer during the year, to support the Board to discharge its oversight function and to meet the expectations of regulators.

The report follows a standard template by NHS England and confirms compliance with the requirements for NHS Resolution as a designated body against all the requirements for a Responsible Officer. The report identifies an area where action is needed in 2022/23 to maintain compliance. This concerns a change in the guidance nationally about appraisals. We are no longer able to use 'free to use' appraisal tools to support appraisals for doctors and we will need to secure access to a recognised toolkit to maintain their appraisal documentation and to support their appraisals. We will also need to strengthen our approach to appraisals through a system which allows us to quality assure the appraisals that take place for our doctors. We are currently exploring using the existing NHS England toolkit which is already part of an established quality assurance system which will incur a small cost. A paper will be brought to the Senior Management Team meeting on the toolkit once the arrangements have been clarified with NHS England. This only applies to those doctors that we employ and are not connected to another designated body and therefore do not have access to another toolkit.

It was considered that given that we only have a small number of doctors and that other ALBs will be in a similar position whether we could buddy up with them and share resource. We have had discussions with CQC and we know that NHS England has a new lead for medical standards amongst the medical directors and the indication is that they recognise that this is a challenge for organisations like us and are likely to put in place a more robust approach to support us which is being explored with them.

Appraisals are resource intensive and it was suggested whether there could be a proforma which could be added to doctors annual appraisals. We are not introducing additional appraisals for the purposes of NHS Resolution, it is for the small number of doctors who would not be able to access their professional medical appraisal through another route because they are connected to us and so it is a part of their professional appraisal which demonstrates that they are competent to complete their scope of work

and as a consequence make a recommendation about revalidation at the end of a five year cycle.

The Board noted and endorsed the Responsible Officer's Annual Report and the statement of compliance for submission to NHS England.

4 Liaison with Key Stakeholders

4.1 Liaison with key stakeholders

The non-KPI related information on strategic stakeholder engagement activity co-ordinated by the Membership and Stakeholder Engagement (MSE) and Safety and Learning teams for the current reporting period was presented.

The MSE team continue to work closely with the Safety and Learning and Advice teams. In Safety and Learning, MSE helped to produce an animation on duty of candour which has received over a thousand views, and in Advice the exclusions materials have received over 7,000 views. A podcast was also recently introduced on spinal injuries. The Clinical Negligence Scheme for General Practice (CNSGP) report has now been published. The Early Notification (EN) report was due to be published on 19th September, but given the funeral of the late Queen Elizabeth II, this is being postponed. It was suggested that when reports and materials are made available that the Non Executive Directors are made aware.

Members of the Safety and Learning Team are speaking at the Baby Lifeline conference on 22nd September. NHS Resolution's National Maternity conference is being held on 28th November and it is hoped that the EN report will have been published by then.

In terms of social media, the system is increasingly engaging with us i.e. there has been an increase on Twitter over the last quarter with content reflecting the hard work of colleagues across the organisation.

It was noted that the members survey was suspended due to a wish to reduce service burdens during the pandemic but an in depth survey with our system partners and key stakeholders was undertaken.

It was questioned whether we should be engaging more with the Royal Colleges and the Board of Science at the BMA.

Personalisation of communication was again raised around how we input into the digital systems to make it more intuitive.

It was noted that there are often cases referred to in the media which refer to individual trusts. We do respond to them when required but it is difficult to comment on particular cases.

The Board noted the liaison with key stakeholders report.

4.2 Engagement with Integrated Care Systems

An update was provided on the implementation of integrated care systems (ICSs) across England together with NHS Resolution engagement activity.

We are looking to undertake a pilot engagement over the next few months with Chairs and Chief Executives of ICBs and ICSs and within that activity we will be reflecting on the variation of ICBs and ICSs.

It was commented that NHS Resolution is very rarely referenced in provider Board papers. Options for presentation of information at an ICS level were to be considered and there was a suggestion that this should be a proactive approach e.g. a league table, an ICS level scorecard and information which enables and ICS to compare their performance with other ICSs. Every ICS will have a finance report at every meeting and it was suggested that we could take the opportunity when we send out the contribution letters to trusts to also send a letter to the ICSs. This was particularly so given the context of quite significant year on year increases in the total collect as well as the move away from block funding. The number of ICBs and ICSs means that there is a more manageable number of relationships. One way to build communication channels would be to publish MI which we can use in partnership.

It was noted that we work closely with Getting it Right First Time (GIRFT) on benchmarking which packs which focus on specialty and it was suggested that we could work with GIRFT to do something with commissioners.

The Board noted the position.

5 Key Developments

- 5.1 There were no items to consider.

6 Oversight of Key Projects

6.1 Strategic activity update

An update was provided on NHS Resolution's key strategic change programmes which was noted by the Board.

The Board noted the strategic activity update.

7 Board Committee Reports and Minutes

7.1 People Committee minutes held on 22nd June 2022

The minutes of the People Committee meeting held on 22nd June 2022 and the People Committee report were noted by the Board.

The People Committee will be considering governance and risk related aspects for the Committee and the Chair of the Committee and Chair of the Audit and Risk Committee have discussed understanding what the appropriate relationship is towards those risks.

The People Strategy is to be considered at the next People Committee which will thereafter be brought to Board.

The Committee has a new independent member to help with our work in the whole area around our people.

Board commended the management team on the results of the staff survey.

8 Other matters requiring Board attention

8.1 Health, Safety and Wellbeing Policy (ITFA04)

The Health, Safety and Wellbeing policy has been reviewed by our legal advisers, corporate and information governance, HR&OD, Joint Negotiating Committee (JNC), Operational Delivery Group (ODG) and Senior Management Team (SMT). A number of changes have been made to the policy including updating roles, responsibilities and post titles and inclusion of mental health.

There was a presentation to the Audit and Risk Committee (ARC) and there was a lot of assurance around health and safety.

It was noted that the policy refers to health and well-being, access to freedom to speak up and HR methods for raising concerns and whether this needed to be broadened out to all types of health and safety incidents and having other routes to report things.

Subject to a number of amendments, the Board approved the Health, Safety and Wellbeing policy.

8.2 Standing Financial Instructions

The Standing Financial Instructions have been reviewed by corporate and information governance, procurement and finance teams in line with the policy review date and the publication of the DHSC ALB Schedule of Delegations which are reflected in the SFIs.

The update in the delegated authorities which we work within was received from DHSC in May 2022. There was an issue of how previously imposed Cabinet Office controls, which pre-dated this, were communicated. This meant there were some issues for our year-end report around regularity which have now been addressed and the Standing Financial Instructions needed to be updated. The policy was not due for review until 2023 and should go to the Audit and Risk Committee initially, but given the urgency of the policy needing to be updated as a result of the schedule of delegations, it has been submitted to Board.

There has been some slowing with approvals processes over the summer whilst DHSC consider tightening of processes. Updated guidance has now been received which does not change the delegated authorities, but means that we have to give more information and there is a guide indicating what is acceptable and what is likely not acceptable for individual organisations. This will be incorporated into our processes and our process documentation.

It was suggested when bringing reviewed policies to Board, that a clean document and a track changed document be provided so that it is easy to see the changes that have been made and this will be taken forward.

The Standing Financial Instructions, Standing Orders, scheme of matters reserved for the Board and scheme of delegation are reviewed by the Audit and Risk Committee every three years and recommendations of any changes are made to the Board and these will be reviewed in February 2023. The Audit and Risk Committee will also consider the understanding of what sits below this in terms of delegation from the Chief Executive into the team and the level of assurance we have of those arrangements in place.

The Board approved the Standing Financial Instructions.

9 Any Other Business

9.1 There was no other business to note.

10 Date and Venue for next meeting

10.1 The next Board meeting is scheduled for Tuesday 15th November 2022 at 10.00am – details TBC

Signed

Date