

Board meeting minutes (Part 1)

Wednesday 18th January 2023

10:00 – 15:00

Hybrid Meeting: MS Teams / Room 8.05

Present	
Sally Cheshire	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
Simon Hammond	Director of Claims Management
Niamh McKenna	Chief Information Officer
David Gurusinghe	Deputy Director, Policy, Strategy and Transformation
Tinku Mitra	Deputy Director of Corporate & Information Governance
Cheryl Lynch	DHSC Sponsor Team representative
Naomi Assame	Head of Safety and Learning (observing)
Louisa Bradley	Associate Safety and Learning Lead, North (observing)
Janice Smith	Good Governance Institute (observing)
Peter Allanson	Good Governance Institute (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, in particular Louisa Bradley (Associate Safety and Learning Lead, North) and Naomi Assame (Head of Safety and Learning) who joined the meeting as observers, and Janice Smith and Peter Allanson from Good Governance Institute who joined the meeting in relation to the Board Effectiveness review.

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 November 2022

The minutes of the Board meeting held on Tuesday 15th November 2022 were approved for signature by the Chair.

1.4 Review of actions from Board meetings

Action 22.10 – Patient Safety Incident Response Framework (PSIRF).

The Director of Safety and Learning reported that Tracey Hurliey, lead at PSIRF, had been invited to the Panel Collaborative meeting in November and gave an excellent presentation on the framework. It was suggested that Tracey could be invited to a future Board meeting or Awayday. The Chair and Chief Executive have discussed inviting people to future Board meetings following the interesting presentation by Michele Upton, NHSE, at the November Board meeting.

Actions 22.10, 22.11 and 22.12 were closed at the meeting. Action 22.13 was carried forward.

2 Operational items

2.1 Chief Executive's Report

Personal Injury Discount Rate

A Personal Injury Discount Rate (PIDR) consultation was published on 17th January and focuses on different rates for different purposes. This is of interest to NHSR because our claims book is split between very high value with long term loss claims and very high volume with low value without long term loss claims. A project will be set up to take on this work required to inform our response which will be led by the Director of Claims Management and the Director of Finance and will be supported by our actuaries. We are considering whether we need to instruct an economist and we are also liaising with some of our panel firms on their approach. We have three months to respond. The discount rate is important to our spend because when it goes down, lump sums go up and vice versa. It was noted that this is a consultation on the dual rate aspect and the actual rate change consultation is not anticipated until June 2024 and will probably not be concluded until later in 2024.

There will be some consequences for the new core system and the scope for built in calculations. We will consider the operational impact moving to a split rate and whether we can accommodate that with the new system.

Primary Care Appeals - Panel Members

On 7 November 2022, the Ministry of Justice (MoJ) issued notice of an increase to fees of which Appeals Panel Members are paid in line with the MoJ's salary/fees schedule.

For tribunals that are of a similar standing to the work of our Appeals Panel Members, chair fees have increased from £521.80 to £537.46 and other panel member fees have increased from £296.62 to £305.52. This increase is backdated to 1 April 2022. The Chief Executive has agreed the increase and back payment.

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.

The performance reports are now aligned with the strategic aims within our new strategy. Feedback on the reports should be passed to the Deputy Director of Policy, Strategy and Transformation.

Finance

The year to date financial position on DEL net expenditure where budgets have been agreed is showing an overspend of £44m which is primarily in the clinical schemes. The position is still volatile but the rate of the increase from last year has reduced slightly and is moving in the right direction towards a balanced budget position. The position is continually being closely monitored.

Although the DEL net expenditure is in an overspend position, there is an underspend in relation to admin. This has arisen because recruitment has not gone at the expected pace and the operational impact of this is being considered. We continue to be careful and prudent in terms of managing the budgetary position and trying to reach a balanced position by year end. It was noted that we have also been underspending on the core systems programme. This has been a planned approach. As reported in programme updates, there were issues with the first release and the project was replanned. We are now in an acceptable position. The underspend for the claims evolution programme risks our not meeting delivery of the savings on the legal spend until later in the process and this is being carefully tracked.

In terms of the overspend against the DHSC schemes, we have signalled since summer 2021 when doing the spending review return for the three years, that we were expecting to exceed the £121 million budget envelope. Because the volatility and uncertainty, it was agreed with DHSC that we would contain the budget at £121 million coupled with an acknowledgment from DHSC of the risk that spend will be in excess of that. This means that we will be able to revisit the position closer to year end as the numbers begin to materialise and we will be looking to firm up our budgets for the DHSC schemes in the coming weeks.

It was considered whether it would be worth doing some forward looking work on scenarios rather than relying on the data that is coming in to better guide the position. It was confirmed that we are working with the actuaries and modelling scenarios. Following the Board assumptions session in November, we will be continuing those conversations going forward and building on some of the strategic scenarios.

The prompt payment performance has improved slightly from 86% to 87% for the reporting period with November seeing an improvement to 96% and exceeding the target, however performance has not been consistent. The team now has a permanent Head of Procurement in place who is working to enhance control over our contracts and spend whilst ensuring we have the right processes and that these are operating

as they should. There are also two new Finance Business Partners in place, increasing the resource to improve performance in this area to ensure that there is consistency of the application in the process, that the design is right and that people know what they are doing.

Claims

It was noted that our activity has been 10% down on claims for the last three years and our open book has gone up about 1500 cases which is attributed to pandemic related lags. It was queried whether at some point we might see backlogged matters coming in as claims.

The market position was discussed and in particular distinguishing between claims which have not been pursued by lawyers because of the pandemic and claims which may arise as a consequence of the pandemic itself and the aftermath. The Board was encouraged to make suggestions on data sources which might assist as this information was relevant for the modelling of the provision.

Resource planning, is also underway as part of the CEP programme with scenarios under consideration, including the impact on in-source / outsource and the associated legal costs.

We are also monitoring changes in insurance cover for covid related risks with the support of external partners in the NHS and escalating matters to DHSC where indicated.

Practitioner Performance Advice (Advice)

Reference was made to the positive news of the NHSE contract award to Advice to be a preferred provider for education work where the team are undertaking a significant amount of training in primary care.

Advice cases are 50% below where they would usually be and have been tracked against the pandemic effects. There are mixed messages from the frontline on the impact of the current pressures. The compassionate conversations work in the North West is still going ahead and it is encouraging that the trusts involved in the pilot want to prioritise it, however we are receiving some push back in terms of organisations having the capacity to be able to deal with some of our open book. This correlates with our exclusion cases where we are seeing a downward trend for our exclusions averages over the last few months which has been reported to Board. All but one of the cases in the 18 months plus category concern serious criminal cases and court dates are not until the end of the year which will likely see the average go up while we wait for the criminal work to complete.

Primary Care Appeals (Appeals)

It was noted that in the case of Dr Shashikanth v Hillingdon Clinical Commissioning Group, Dr Shashikanth has decided to appeal.

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](#)

Complaints activity during Q1 and Q2 for FY 2022/23 was presented.

Litigants in Person (LiPs) which feature prominently in the numbers of complaints. Some LiPs require a lot of time in order to understand the claims process and we are seeing more challenging and difficult conversations. The Senior Management Team are keen to see how staff are being supported in those conversations and there is work which is being taken forward to support staff.

It was considered whether we are doing the equivalent and seeking feedback from patients. This has been considered previously with the possibility of having a post claim questionnaire, but given the volume, this was considered not feasible. In addition, by definition the outcome of a claim will heavily influence the feedback and half of claimants do not receive compensation. On the EN scheme, as part of the evaluation, we will be assessing the experience of those families going through that scheme and trying to capture a comparator of how a family's experience is different to those going through the EN process. The role of the trust will be important in this regard as we know that there is variation in the way trusts respond. It was suggested that we distinguish between outcome and process i.e. if the questions are right we could make the process better regardless of the outcome. In response it was highlighted that process and experience are intertwined as people do not necessarily understand the process. In addition the vast majority of our claimants are legally represented and so do not necessarily get a service directly from us but rather from their own lawyers. We do meet with a number of claimant solicitors and representative bodies such as AvMA and receive feedback from them about how we are managing claims.

It was suggested that although the numbers are low, it might be worth bringing all the elements into a future report which tries to explore the context around the things we might do differently i.e. looking at the GP feedback, looking at the data around EN cases etc.

This also links to providers' compliance with duty of candour and it was suggested whether we could devise an audit for providers of GP practices on compliance with this because more often than not, it is rarely done and where it is done it is not done appropriately and this needs a national focus. Again, scale and resourcing was considered to be a challenge to this. It was noted that duty of candour is a requirement in MIS safety action ten and is part of the verification process. The issue with duty of candour in maternity is that there needs to be more than one conversation and although there is progress, there is more which needs to be done around behaviours in conversations. It was suggested whether duty of candour can be prioritised and weighted and also ensure that it is undertaken by someone senior and not a junior member of staff. The duty of candour animation produced by the safety and learning team has been well received. It was suggested that duty of candour could be a future awayday discussion around what we can do in the system.

It was noted that 50% of complaints are not within our complaints process and it was queried whether we have assurance that the 50% of complaints which go through the informal complaints process are being dealt with appropriately at a local level. It was confirmed that these are monitored by the local complaints manager and a report on the themes and decisions together with any learning is fed back to corporate governance.

The Board noted the Complaints Report.

3 Management proposals requiring Board input or approval

3.1 There were no items to consider.

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.

Safety and Learning

The NHSR national Maternity Conference was held on the 28th November which was followed by a meeting on Maternity Clinical Negligence Indemnifiers: sharing the best practice in learning and prevention of maternity harm.

Work continues on the 'Recommendation to Implementation' workstream which is focusing on maximising the improvements that can be made as a result of the insights shared in safety and learning. This work is being supported by the Royal College of Emergency Medicine. The launch of the Maternity Recommendation Register was recently discussed at the recommendations group meeting.

It was noted that the evaluation of the work of the academic partners will be brought to the March Board.

Action: DoS&L

It was noted that the MIS declarations deadline for year four has been extended to February 2023 due to the requirement to pause the scheme. Action five is being looked at further.

It was proposed that it might be worth suggesting the idea of linking medical and legal academic departments in universities so they understand clinical negligence as a group. It was noted that we used to get a delegation of students from Newcastle University come to visit us on a yearly basis where we talked to them about what we do. There is, however, a resource issue with this but there may be a way of engaging with them as a group and this will be taken off-line to give some thought to how this could work going forward.

Membership and Stakeholder Engagement (MSE)

The strategic stakeholder feedback programme is about to commence with 15 in depth interviews with our key stakeholders and a report will be brought back to the May Board meeting on the results of that programme.

It was noted that our social media channels have doubled in rates of engagement which is encouraging in terms of us organisationally amplifying our agenda with others.

It was suggested that it would be helpful if there was a centralised place for sending out communications as there are so many silo communications in the NHS which means there is a lot of duplication. There needs to be a strategy around communications and an understanding of what is happening on the coalface so that

people know what communications need to be circulated. The Director of Membership and Stakeholder Engagement will raise this at his peer group of ALB Communications Directors.

Action: DoMSE

The Secretary of State's social media representative has asked to meet with each of the ALB Communications Directors.

In terms of ICSs, we need to make sure that we are aligned with them and understand what they need from us and vice versa. As previously reported to the Board, there is a specific engagement programme which is in place for engaging with ICSs and ICBs. It is very early days in terms of the data we have but there are two in depth conversations planned with North East London and South Yorkshire.

The Board noted the report on liaison with key stakeholders.

5 Key Developments

5.1 Cases of Note

Cases of note are brought to the Board where they are of interest e.g. those cases that are in the Court of Appeal where a precedent has been set. The fraud cases are of interest particularly where the claimant has been imprisoned as a result of being found guilty of contempt of court. It was suggested that it would be helpful to have a forward look programme of things that are interesting to the Board.

Action: TCD

NHS Employee exposed to asbestos dust: White (deceased) v. Secretary of State for Health and Social Care (High Court, 2 December 2022 – Jeremy Hyam KC)

It was noted that although we do not have a large book of industrial disease claims, this is a case of ours that went to trial. The case is a Secretary of State inherited liability because asbestos related disease has a long life span of 40 to 50 years from the actual breathing in of the asbestos fibre and that person developing a fatal disease. That is problematical both for the claimants to prove their case and for us to defend the claim. We obtained expert opinion on the case which is largely a reconstruction of what did happen rather than evidence of what actually happened as sadly the claimant died before trial and there were no other witnesses of fact. The judgment clearly illustrates that liability is dependent on a whole raft of factors i.e. the volume of dust and the circumstances of the dust created. In this case, the medical experts all accepted and agreed that this man had died because of the breathing in of asbestos dust but the quantity of breathing in would have been minimal.

Our publication, Resolution Matters, includes a case report which is of interest to members.

The Board noted the case of note.

6 Oversight of Key Projects

6.1 Strategic activity update

An update was provided on NHS Resolution's main strategic change programmes.

The Board noted the strategic activity update.

7 Board Committee Reports and Minutes

7.1 RemCo Annual Report & Terms of Reference

The Board noted the RemCo performance and compliance report and approved the RemCo terms of reference.

8 Other matters requiring Board attention

8.1 There were no items to note.

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 21st March 2023 at 10.00am – details TBC

Signed

Date