

# Board meeting

Minutes of meeting

18 November 2015



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## Minutes of Board meeting, 18 November 2015

### Present

Jill Pitkeathley (Chair)  
Harry Cayton (CE)  
Renata Drinkwater  
Ian Hamer  
Andrew Hind  
Antony Townsend  
Jayne Scott  
Stuart MacDonell

### In Attendance

Linda Allan  
Christine Braithwaite  
Rosalyn Hayles  
Douglas Bilton (items 7 – 16)  
Philip Hallam (items 1 – 16)  
Dinah Godfree (item 1 – 16)  
Majida Serroukh (secretariat)

### Observers

Michael Warren, Policy Adviser

## 1. Welcome and Introductions & Declarations of Interest

- 1.1 The chair welcomed everyone to the meeting, noting that it was Philip Hallam's first meeting as Assistant Director for Scrutiny and Quality (Performance).
- 1.2 There were no members of the public present at the meeting.

## 2. Apologies

- 2.1 There were no apologies for the meeting.

## 3. Minutes of meeting held on 17 September 2015

- 3.1 The minutes were approved as an accurate record of the meeting.

## 4. Matters arising from meeting held on 17 September 2015

- 4.1 There were no matters arising not otherwise on the agenda.

## 5. Chair's report

- 5.1 The Chair will be meeting with the Chair of the General Medical Council (GMC) and Nursing and Midwifery Council (NMC) in the coming weeks.
- 5.2 The Chair informed the Board that the Parliamentary Under-Secretary of State for Care Quality will be convening a meeting with chairs of the regulators and the Chair of the Authority to brief the group about future legislative reforms, we

expect that the meeting will be before Christmas but are yet to receive confirmation of a date.

- 5.3 The Chair reminded the Board of the importance of ensuring attendance at all Board and applicable Committee meetings. Dates are pre-fixed a year in advance to allow Board members to make necessary arrangements to ensure dates are secured in diaries. The Executive Secretary will be in touch with Board members to fix dates for 2017. It was acknowledged that many of the current Board will have reached the end of their tenure as Authority Board members but it is imperative to get the dates set, and we would expect new/future members to accommodate the meetings.

## **6. Chief Executive's report**

- 6.1 Para 1.1 – the Chief Executive alerted the Board that due to an oversight on the part of the Department of Health (DH) they have failed to commence section 26(2A) of the 2012 Act which means that the UK governments are currently unable to commission policy advice or other work from the Authority. We have been assured by the DH that they are working to remedy the situation as soon as possible.

### **Performance review**

- 6.2 Philip Hallam has now taken up employment as Assistant Director of Scrutiny and Quality (Performance) effective from 9 November 2015, and has started implementing the new Professional Standards Authority performance review process.
- 6.3 We have published a report on the outcome of our consultation on changes to our performance review process. The report consists of a summary of responses, consideration of the matters raised and changes made to the proposed process by our Board and an annex with the full responses. This has been published on our website. The Chief Executives of the regulators were also separately emailed on Thursday 12 November 2015 and provided with this information.
- 6.4 The Chief Executive and Assistant Director also attended the Chief Executive's Steering Group (CESG) on 16 November 2015, and gave a verbal update to the Chief Executives. The Assistant Director has offered to meet with the individuals at the regulators who are responsible for providing data to the Authority to talk them through the revised dataset and how this will be taken forward.
- 6.5 On 20 October 2015, we issued a request to the regulators for copies of their existing documented procedures and policies, so that we can ensure we understand their existing processes before we begin assessing what type of review is appropriate for each regulator, this letter was also shared with our Board for information. With the exception of two regulators, all have asked for an extension of time to provide these documents.

### **Legislative reforms**

- 6.6 DH have informed us that the remaining provisions of the GMC section 60 Order, which includes changes to our section 29 appeal threshold and the GMC's ability to appeal MPTS decisions, are due to come into force on 31

December 2015. This will mean that the section 29 threshold which we apply will change. In addition, the overarching objective of the GMC will change and will not be the same as that of the eight other regulators. DH officials have informed us that there is currently no timetable for implementing the Safety and Quality Bill, which would have aligned the overarching objectives of all of the regulators. We are seeking advice on the impact that the change in our section 29 threshold will have on the Authority, but ultimately this will depend on how the Courts interpret the new legislation.

- 6.7 The Department of Health is currently preparing a section 60 Order that would remove statutory midwifery supervision from the NMC's legislation and make a number of changes to their fitness to practise regime. We have written to the Department of Health to express our concerns about a number of aspects of the proposals. We are also surprised and disappointed that the Department is pressing ahead with an s60 Order for the NMC but not introducing an amendment that would prevent NMC registrants from lapsing from the register either before the period of time we have for considering whether to appeal has expired, or before any appeal lodged has been decided upon.
- 6.8 The Chief Executive alerted the Board to a claim in Bury County Court for damages by a former registrant of the NMC who was struck off following a successful Authority appeal against the NMC panel's decision. The damages are sought for loss of earnings, as a result of the Authority allegedly breaching the registrant's human rights. We have instructed the solicitors who originally acted for us on the appeal to apply to have the claim struck out. We already have a costs order in place against the former registrant, which we may now seek to enforce if they pursue this claim. The Board confirmed they were happy to approve this approach.

### Meeting and Events

- 6.9 There are three key future events the Board were updated on:
- On 25 November 2015 we will host a seminar on regulating for positive outcomes in collaboration with the Centre for Values Based Practice, St Catherine's College, Oxford.
  - We are also happy to announce that the Centre for Values Bases Practice have also agreed to be our partner for the Academic Conference which is taking place on 10 March 2016.
  - Our Symposium which is taking place on 12 February 2016 is progressing well and the title will be, 'The future of professional regulation; supporting innovation and protecting the public'. Dinah Godfree, Senior Policy Adviser will be project managing the event and will be supported by Michael Warren, Policy Adviser. Board members fed in comments which were noted.

### International Activity

- 6.10 Members of staff will be travelling to Vancouver, Canada to carry out a performance review of the College of Registered Nurses of British Columbia.
- 6.11 The program review of the Ontario Personal Support Workers Registry is underway. A preliminary report was submitted to the Ontario Ministry of Health

and Long-Term Care by the agreed deadline (6 November 2015). A final report is due on 8 January 2016.

- 6.12 The Chief Executive was in Canada from the 21-28 October as a guest of the College of Registered Nurses of Alberta and the College of Registered Nurses of British Columbia. He ran a day conference for the Federation of Health Professional Regulators of Alberta in Edmonton, a governance workshop for the Council of the College of Nurses and a seminar on right-touch regulation for their staff team. In Vancouver, he ran a day conference for the Federation of Health Regulators of British Columbia, he met with government officials in the Ministry of Health in Victoria and with representatives of the Care Aide and Community Health Worker Registry of British Columbia.

## **7. Finance Report**

- 7.1 The Chief Executive wanted to draw to the Board's attention a small reversal in the numbers in the table relating to Accredited Registers in the last finance report that went to the Board in the September 2015 meeting, this has now been corrected and correctly presented in the finance paper brought to the Board in this meeting.
- 7.2 The Director of Governance and Operations advised that we have drawn down money from the credit facility that we have in place with the Department of Health (DH). We are unlikely to need to use the facility again but this is dependent on when we receive money from the regulators.
- 7.3 A question was raised regarding the Third party commissions 2015/16 graph showing a negative. This is because the graph represents information up until the end of September 2015. At this point in time money from the commission from the Royal College of Nurses of British Columbia had yet to be received. The year in year information is showing as negative because it represents travel arrangements already purchased. When the income is received this will revert to positive.
- 7.4 The Board noted the significant underspend in this year's budget and acknowledged that this would be worked into next year's budget.
- 7.5 A more detailed conversation about the fee consultation for 2016/17 will be discussed later in the meeting.

## **8. Audit and Risk Committee update**

### **Unconfirmed minutes of Audit and Risk Committee meeting on 4 November 2015**

- 8.1 The Chair of the Audit and Risk Committee updated the Board on the key areas discussed at the Audit and Risk Committee that took place on 4 November 2015.
- 8.2 Para 1.1 – The Chair informed the Board of the changes to the team from Grant Thornton undertaking our internal audit. The Chair and members of the Executive have had very positive meetings to date, and we feel we will have great contacts and knowledge we can draw from the new team, and feel positive about the changes.

- 8.3 Para 6.4 and 6.5 – our internal auditors will be carrying out audits of our fees consultation and new performance review process consultation, Grant Thornton will be in touch with relevant members of the executive to discuss timelines.
- 8.4 Para 6.7 – the third audit review we have commissioned will be into the Authority’s adherence to our business principles, this will look into whether we have fulfilled our commitment to reporting annually on our key business principles as outlined in our business plan, this will start in the first quarter of 2016 with a view to publishing the report by the end of the financial year in march 2016.
- 8.5 The Committee had a good discussion about risk, which will be covered in more detail under item 10.

#### **Audit and Risk Committee Terms of Reference**

- 8.6 The Chair drew the Boards attention to the addition of adherence to our business principles under the responsibilities of the Audit and Risk Committee. This is a new activity since the Authority has moved to the new fee regime.
- 8.7 The Board approved the Audit and Risk Committee Terms of Reference.

### **9. Scrutiny Committee update**

#### **Unconfirmed minutes of Scrutiny Committee on 8 October 2015**

- 9.1 The Chair of the Scrutiny Committee told the Board that at the Committee’s last meeting on 8 October 2015, members had a useful discussion around a sample of Section 29 cases which had been referred and not referred for case meetings, and felt satisfied that the appropriate decisions and action had been taken in all of the cases.
- 9.2 Para 6.4 – The Chair pointed out that decisions about whether or not to hold case meetings are often finely-judged, depending on the particular factors in the case. With this in mind the Scrutiny Committee accepted the recommendation that was made to seek a review of these decisions by external Counsel in order to establish whether:
  - a) we are making the right decisions about whether or not to hold case meetings, and;
  - b) whether Counsel may be able to offer any useful suggestions about how we apply the test for progressing cases for consideration to case meetings. Counsel may be able to make recommendations about criteria/a framework that we could build into our process to ensure consistency.
- c) Para 6.6 – the ongoing work of the Scrutiny and Quality team to consider how we better use learning points is still being considered. The option that the team intends to do further work on is a proposal to categorise types of learning points and periodically send information to the regulators about the number of learning points in each category identified – rather than feeding back a detailed comment in every case where a learning point has been identified .
- 9.3 The team are also considering how legislative changes will impact on the team and our section 29 jurisdiction.

## **10. Risk Register**

- 10.1 At the Audit and Risk Committee on 4 November 2015 the Committee asked the Executive to consider separating operational and strategic risks on the risk register. It was noted that five risks have been taken off the register and three added, all other risks have remained the same.
- 10.2 The Chief Executive explained that since the paper was sent to the Board the risk relating to risk 3, 'DH failure to commence S26(2A) of the 2012 Act means we cannot be paid for commissions by UK governments', has been downgraded to amber as we have received a letter from DH confirming that they will commence this part of our legislation before the end of January 2016, we are therefore assured that this is being remedied.

## **11. Fee consultation update**

- 11.1 The Director of Governance and Operations talked the Board through some of the challenges the Authority has faced regarding the fee consultation process for 2015/16.
- 11.2 Unfortunately delays in the 2015/16 process have impacted on the timeline for the 2016/17 consultation. DH has now written to the Authority on 5 November 2015 expressing concern about the timeline for the 2016/17 fee process and the risk that the Privy Council may not make the determination in time for the fees to be collected by the Authority by April 2016.
- 11.3 We will work closely with DH to ensure the timeline is workable and therefore will not impact on our ability to collect the fees.
- 11.4 We do have some concerns that having seen the steps that the Department of Health have advised it needs to take when acting for the Privy Council, which are different and more time consuming than those set out in the plan for 2015/16. We have discussed this with Department and there has been some consideration as to where the process could be expedited.
- 11.5 The Board understands that part of the Department of Health's role acting on behalf of the Privy Council is to ensure due process is followed but their job is to also ensure that the Authority has the money it requires to carry out its statutory duties and ensure we are protecting the public. Any delay to the Authority receiving its fees as a result of any delays from the Department is a risk to that outcome.
- 11.6 The Fee Consultation document will be discussed by the Board in the private session of the meeting, and subject to approval will be sent to the regulators on Friday 20 November 2015.

## **12. Accredited Registers update**

- 12.1 The team plans to publish the Education and Training consultation this month.
- 12.2 Our professionally produced film to showcase the wider workforce covered by the Accredited Registers programme will be published on our website and Youtube channel this month, this will be shared with the Board.

- 12.3 Since the Board last met we renewed accreditation of three registers. There are six annual reviews going through assessment and three annual review applications expected between December/January 2016. We are currently assessing two applications for initial accreditation, including a new application from the Human Givens Institute submitted in October 2015.
- 12.4 We continue to liaise with the Veteran's Council regarding their application to join the Accredited Register. They now have new management and we are awaiting a decision as to whether they would like to continue with their application.
- 12.5 The Director of Policy and Standards reiterated that the Authority does not make a judgement on the efficacy of therapies and we do not make value judgements about people's choice of therapy. Our role is to ensure that Accredited Registers are meeting standards to ensure members of the public using their services are protected.

### **13. Revision of the performance review update**

- 13.1 There were no further updates regarding the revision of the performance review not already covered in the meeting.

### **14. Any other business**

- 14.1 The Board noted that this was the last meeting of Baroness Jill Pitkeathley as Chair of the Authority. The Board expressed their deepest thanks to the Chair for her excellent service and commitment to the Authority during her tenure, and thanked her for her excellent Chairmanship and wished her the best for the future.
- 14.2 The Chair also thanked the Board and Executive for all their hard work during her time as Chair at the Authority, and expressed her commitment to assist the Authority in the future.

### **15. Questions from members of the public**

- 15.1 There were no members of the public present at the meeting.

### **16. Private session of Board**

- 16.1 The Board went into the private session of the meeting.

**Approved by the Board on 20 January 2016.**