

Board meeting

Minutes of meeting

18 January 2017



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Present

George Jenkins (Chair)
Harry Cayton (Chief Executive)
Moi Ali
Renata Drinkwater
Frances Done
Tom Frawley
Ian Hamer
Antony Townsend

In Attendance

John McDermott
Mark Stobbs
Christine Braithwaite
Graham Mockler
Teena Chowdhury
Marija Hume
Majida Serroukh (secretariat)

Observers

Mike Andrews (Nursing and Midwifery Council)
Donna O'Boyle (Scottish Government)
Paul Ghuman (General Chiropractic Council)

1. Welcome and Introductions & Declarations of Interest

- 1.1 The Chair welcomed everyone to the meeting including observers. He particularly welcomed the new members of the Board, Frances Done, Audit and Risk Committee chair, Moi Ali and Tom Frawley.
- 1.2 The Chair explained that as it had not been possible to make an appointment to the Board in Wales the Welsh Assembly Government had asked Ian Hamer to continue to attend meetings until a new Board member was appointed. This was expected to be in March.
- 1.3 The Board had reviewed the Register of Interests and an up-to-date declaration obtained from all members. This would be published on the Authority website.

2. Apologies

- 2.1 There were no apologies for the meeting.

3. Minutes of meeting held on 16 November 2016

- 3.1 The minutes were approved as an accurate record of the meeting subject to two amendments.

4. Matters arising from meeting held on 16 November 2016

- 4.1 Para 9.7 The Chair noted that as the full performance review cycle for 2016-17 was not complete, a report on the new process would be brought to the March meeting.

5. Chair's report

- 5.1 The Chair reported on the workshop hosted by the Nursing and Midwifery Council for Chairs and Chief Executives in December 2016, which had discussed the Government's forthcoming consultation on regulatory reform, the authority's paper *Regulation Rethought* and the scope for collaborative change between the regulators. It had been a constructive and positive meeting and he was hopeful of more joint working by the regulators.

6. Executive report

Scrutiny and Quality

- 6.1 The Director of Scrutiny and Quality updated the Board on the progress of section 29 Appeals. The Authority's appeal to the Court of Appeal against the Administrative Court's decision in Doree would be heard on 26 January.
- 6.2 There are currently eight appeals outstanding.
- 6.3 The Authority continued to work with the General Medical Council to resolve practical and jurisdictional problems with its new power of appeal.
- 6.4 There had been a good uptake for the conference for panel chairs which the Authority was hosting in February. Sixty-five people were attending from six of the nine regulators. Board members should let the Director of Scrutiny and Quality know if they wished to attend.

Standards and policy

- 6.5 The policy team are preparing work to respond to the anticipated government consultation on regulatory reform. In particular, the team are looking at the role of regulators in education and examining fitness to practise.
- 6.6 The Authority is working with the Department for Education to support their establishment of the new social work regulator for England.

Governance and operations

- 6.7 The Privy Council has written to the Authority and the regulators to indicate it accepts the Authority's budget for 2017-18 and to inform the regulators of the fee they will have to pay. The Privy Council must issue its final determination before the end of February.
- 6.8 The Governance and Operations team have started work on their development plan and progress will be reported to Directors Group and the Audit and Risk Committee throughout the year.

7. Finance Report

- 7.1 We have received part of the agreed subvention for the Accredited Registers programme and are awaiting the other part which is still going through the Department's internal process. It was noted that if we did not have reserves, the programme would not be able to operate.

- 7.2 At the end of month eight there was a slight underspend but this was primarily due to the profiling of the budget. The anticipated modest overspend by the end of the financial year was noted. The primary reasons for this were higher legal costs than anticipated and lower staff vacancy rate than allowed for in the budget. This has been off-set in part by reducing expenditure in other areas.
- 7.3 The Director of Governance and Operations explained that any remaining overspend would be covered by reserves and that this would be adjusted in the 2018-19 budget proposals.

8. Minutes of the Audit and Risk Committee held on 17 November 2016

- 8.1 The minutes had been approved by the members and signed by the Chair.
- 8.2 The Board noted and accepted the minutes.
- 8.3 The Director of Governance and Operations reported that the Committee had received reports from both internal and external audit.
- 8.4 The Committee had also approved some improvements to the risk management process and register, following a review against industry best practice.

9. Membership of Board Committees

- 9.1 The Chair said that he had discussed membership of committees with members of the Board. They would be:
- 9.2 Audit and Risk Committee; Chair, Frances Done, members, Ian Hamer, Moi Ali.
- 9.3 Scrutiny Committee; Chair, Antony Townsend, members, Renata Drinkwater, Tom Frawley.
- 9.4 Remuneration Committee; Chair, George Jenkins, members, Frances Done, Tom Frawley.

10. Performance Review update

- 10.1 The Board noted the performance review update.
- 10.2 The Chair noted that comments from the regulators to him suggested they felt the new process had led to more constructive dialogue. The Director of Scrutiny and Quality said that he believed that to be so.
- 10.3 The 2017-18 cycle had already begun and the team were talking to the Health and Care Professions Council and would start with the General Osteopathic Council shortly.
- 10.4 A member of the Board asked if the Authority published a shorter summary of the reviews as they were long and dense for members of the public to read. The Director confirmed that a 'snapshot' was published alongside each report.
- 10.5 A member of the Board asked if the performance reviews should more directly reflect the activities of the regulators in each of the four UK countries. This was an issue that might be considered in the review of the Standards of Good Regulation.

11. Accredited Registers update

- 11.1 The Board received the Accredited Registers update.
- 11.2 The Head of Accreditation reported on the recent judicial review of the British Association of Counselling and Psychotherapy. The implications for the programme were that registers would likely have to accept the disciplinary decisions of each other if they related to registrants practicing the same occupations. This ruling has provided clarity to the Authority's requirement under Accreditation Standard 10e) that accredited registers recognize decisions by statutory regulators and accredited registers about practitioners on their registers.
- 11.3 In light of that judgement the Authority has issued revised guidance to registers. If Board members had any comments on the guidance they should send them to the Head of Accreditation.

12. Review of the section 29 decision making process

- 12.1 The Authority had introduced a new test last year to assist the Authority's decision-maker in deciding which cases would go forward to a case meeting.
- 12.2 The new test had introduced the legal concept of 'arguability'. This is a test used by judges in deciding whether or not to allow judicial review proceedings. The effect was that if it was arguable that the decision was insufficient to protect the public it had to go forward to a full case meeting. This had resulted in a slightly increased number of cases going to a case meeting but not to an increase in the number of appeals. The test reduced discretion for the decision-maker to take account of public interest matters.
- 12.3 The Director of Scrutiny and Quality introduced his paper which set out an adjusted process which would in effect allow the Chief Executive, when considering whether a case meeting should be held to take into account the wider issues that would also be considered at a case meeting. Rather than whether the decision was arguably insufficient he would consider whether it was likely to be insufficient.
- 12.4 The Board agreed to the new process.
- 12.5 The Board decided that the Chief Executive, as decision-maker, should not be able to refer cases to court without holding a case meeting, except when the deadline for appeal was imminent. That decision is always subsequently reviewed by a panel.
- 12.6 The Board also confirmed that non-executive members of the Board should continue where possible to act as decision-makers on panels.
- 12.7 New members of the Board were invited to observe section 29 panel meetings should they wish to do so.

13. Review of the Standards of Good Regulation

- 13.1 The Scrutiny Manager introduced her paper on the proposed review of the Standards of Good Regulation and the issues which had been raised in the pre-consultation with stakeholders.

- 13.2 There had been valuable contributions made by the regulators and by many professional and other organisations. There were some disagreements both as to the purpose of the Standards and the methodology of the Authority but there were also areas of significant agreement.
- 13.3 The Board discussed the proposed scope of the consultation and agreed it was important to confirm the Authority's statutory objectives and purpose. The Board confirmed that the performance review was not an improvement process but an auditing and reporting process. The Authority's role was to assess the performance of regulators of their core functions and their success in protecting the public. It was the regulators themselves who improved their performance, albeit the Authority could assist them by reporting on strengths and weaknesses and enabling them to benchmark themselves against others.
- 13.4 The Board discussed the use of principles in the description of performance across functions. This was an attractive idea but had many practical difficulties. In particular, there would inevitably need to be some descriptions of what meeting those principles looked like. The Board noted the Right-touch regulation principle, 'Keep it Simple' but was content for this issue to be considered in the consultation paper.
- 13.5 The Board also cautioned against approaches to performance review that were likely to be resource intensive for both the Regulators and the Authority.
- 13.6 The Board noted the value in the paper of the comments about the Authority by other organisations. It was important that we knew and understood how we were viewed by others.
- 13.7 The Scrutiny Manager asked the Board to give guidance specifically on measurement of performance and on the focus of the standards.
- 13.8 The Board agreed that Standards should continue to be met/not met. All sorts of difficulties and complexities arose with developmental standards. However, consideration should be given to how to report when performance met or didn't meet the standard but also if it was getting worse or improving.
- 13.9 The Board noted that there was a view from some that the Standards were overly focused on fitness to practice. The Board noted it was important to have a balance across regulatory functions but that fitness to practice processes had the most direct impact on patient safety and public protection which was the Authority's purpose.
- 13.10 The Board thanked Teena Choudhury for her work on this project.

14. Government consultation on regulatory reform

- 14.1 We had hoped we would have the Department of Health's consultation on regulatory reform in time for the Board meeting, however, we still have no certainty about when the consultation will be published.
- 14.2 There is some concern that the announcement of an election in Northern Ireland will delay matters further because the consultation needs to be agreed by all four UK governments.

15. Any other business

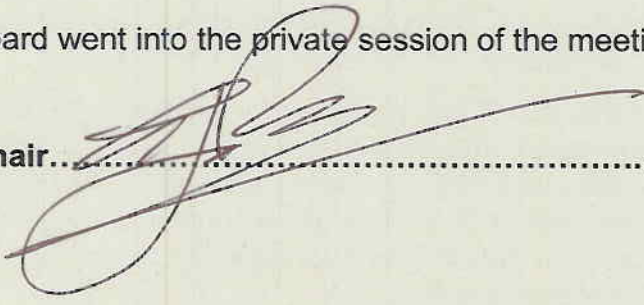

15.1 The was no other business to report.

16. Questions from members of the public/observers

16.1 There were no questions from observers.

17. Private session of the Board

17.1 The Board went into the private session of the meeting.

Signed by Chair.......... Date..........