

## **Agreed Minutes of the Board Open Session meeting held on 1 October 2019 at Millbank Tower, London**

### **Chair:**

Rob Behrens CBE, the Ombudsman

### **Non-Executive members:**

Sir Alex Allan KCB  
Elisabeth Davies  
Dean Fathers  
Balram Gidoomal CBE  
Mick King  
Ruth Sawtell

### **Executive members:**

Amanda Campbell CBE, Chief Executive  
Gill Kilpatrick, Executive Director of  
Corporate Services  
Alex Robertson, Executive Director of  
Strategy and Operations

### **Apologies**

Alan Graham MBE  
Dr Julia Tabreham

### **In attendance**

Karl Banister, Director of Legal & Professional  
Services  
Andrew Dawson, Governance Officer (Minutes)  
Abigail Howarth, Director of Operations and  
Quality  
Richard O'Connell, Director of Resources  
Warren Seddon, Director of Strategy and Insight  
Maria Mansfeld, Assistant Director of  
Governance

### **Observers**

Vivien Johnson, Operations Manager  
Sam Shepherd, Workflow Analyst

**7. Introduction**

- 7.1 Rob Behrens welcomed members and others present to the meeting. He noted that this was the first Board meeting to his knowledge where a complainant would be in attendance (Item 12).

**8. Declarations of Interest**

- 8.1 Elisabeth Davies informed the Board that as part of her MSc course in Dispute Resolution at Queen Mary University (QMU) she would be carrying out research looking at complainants' understanding of impartiality. She had agreed with the Ombudsman that she could carry out her research with PHSO complainants. Her role would be as an independent academic researcher and not as a PHSO Board member. It was essential to be transparent about this and to manage the risks. She had obtained the required ethical approval from QMU. An information sheet setting out her role will be sent to all participants. The research will be conducted using a QMU email address.
- 8.2 Elisabeth Davies said that the declaration at par 8.1 may be applicable to item 12 on the agenda.

**9. Minutes of the Board meetings held on 13 June 2019 and 11 July 2019 and matters arising.**

- 9.1 The minutes of the Board Open Session Meeting held on 13 June 2019 were approved following one amendment:
- Par 12.3 - First sentence to read *Dean Fathers said that the Quality Assurance Framework provided a set of transparent metrics.*
- 9.2 The minutes of the Extraordinary Board Meeting on 11 July 2019 were approved.
- Matters arising
- 9.3 Ruth Sawtell said that an Action Point from 11 July 2019 (par 3.11) had been omitted from the Matters Arising table. Alex Robertson said that the cost of the annual report process would be determined at the 'lessons learned' meeting, which had not taken place yet.
- Action: Alex Robertson to provide the Board with an estimated cost of preparing the 2018/19 Annual Report.
- 9.4 27 March 2019, 12.4: Gill Kilpatrick said that we were currently carrying out a survey on ED&I which included questions on staff's preferred gender. The results will be notified the Board when they are ready.
- 9.5 13 June 2019, 22.2. Gill Kilpatrick advised that the requested breakdown of staff turnover will be provided w/c 7 October 2019.

**10. Chief Executive's report to the Board (Report - Amanda Campbell)**

- 10.1 Amanda Campbell advised that the PCS ballot closed on Thursday 10 October, not 3 October as stated at par 1.2. She said that this was a challenging time for the organisation. The Executive Team will meet as soon as the ballot result is known.

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- 10.2 The 2019-20 Staff Survey would be launched in the next few days. It was possible that the pay and grading dispute could impact on some survey scores. The staff survey is aligned with the Civil Service Staff Survey and we have no influence over timing.
- 10.3 Amanda Campbell informed the Board that PHSO won the CIPD Award for Best Change Management Initiative (par 4). She circulated feedback from the judges (Annex 1 to these minutes). Board Members agreed that this was a significant achievement.
- 10.4 We were awaiting the outcome of a judicial review application against the Department for Work and Pensions in respect of the communication of state pension age changes. The outcome could potentially have a significant impact on our approach. We had received over 400 complaints, of which over 50 had arrived in the last week. We had identified six sample cases which covered all of the issues, but were examining each new complaint for further issues. We had made no decision to investigate at this stage. We would write to every complainant about our approach once we had decided whether to investigate.
- 10.5 Rob Behrens asked about the meeting with Mr H (Annex A). Amanda Campbell advised the Board of the purpose of the meeting and what was discussed.
- 10.6 Ram Gidoomal asked about the increase in demand (par 2) and whether we had adjusted our assumptions for future years. Amanda Campbell advised that the volume of complaints received this year had risen by 12-13% over the same period in 2018/19. We had adjusted our assumptions. Mick King confirmed that LGSCO had reported similar increases, as had SPSO.
- 10.7 Ram Gidoomal asked about the briefing from the Prime Minister on 31 July (Annex A). Amanda Campbell advised the Board that this had been a briefing for Public Sector leaders setting out what he hoped from the public sector in the coming months.
- 10.8 The Board **noted** the CEO's report.

**Elisabeth Davies took the Chair**

11. Ombudsman's report to the Board (**Report - Rob Behrens**)
- 11.1 Rob Behrens said that getting public bodies to comply with our recommendations was a daily challenge. He drew the Board's attention to his meeting with the Permanent Secretary of the Department for Work and Pensions (par 3) and the good outcome achieved at that meeting. He commended Karl Banister for his work on that case. Board Members welcomed the stand taken to secure compliance
- 11.2 Rob Behrens said that the international Peer Review seminar (par 4) had been very well received. Board Members who had been present agreed that it had been a useful and insightful day.
- 11.3 Rob Behrens gave the Board brief details of the four individuals who had been appointed to the Ombudsman's Advisory Panel (par 5). The panel was not intended to be a substitute Board, but would provide the Ombudsman with independent advice.

- 11.4 Alex Allan welcomed the Ombudsman's reference to pre-2017 casework where the integrity of the clinical advice was being challenged (par 2). Rob Behrens confirmed that Panel members had appropriate experience to consider clinical advice.
- 11.5 Alex Allan asked about evidence submitted to the Paterson Inquiry (Annex A). Rob Behrens said we had received 3-4 complaints, but that we had not yet investigated all of the cases.
- 11.6 Rob Behrens said that, following discussions with his international counterparts he was concerned that the UK's arrangements for whistleblowing were sub-standard. Our investigations of the Care Quality Commission were therefore a significant development.
- 11.7 The Board **noted** the Ombudsman's report.

**Rob Behrens resumed the Chair**

## **12. Complainant Feedback Survey (presentation - ORS)**

- 12.1 Kelly Locke and Sam Urbano from ORS gave a presentation on the findings from the first Focus Group meeting, where seven participants had discussed Impartiality and what this meant to complainants. ORS' presentation is attached as Annex 2 to these minutes.
- 12.2 A key theme identified by the Focus Group was the mismatch in power and access to resources between complainants and the organisations we investigate. Complainants felt that the Ombudsman needed to take this into account when evaluating complaints and evidence. It was not always impartial to treat both parties the same.
- 12.3 Dean Fathers suggested that an alternative approach would be to ensure a level playing field, as happened elsewhere in considerations of equality.
- 12.4 Alex Allan said that, following the Clinical Advice Review, PHSO had accepted the need for a balance of evidence between the organisation and the complainant, recognising that the complainant often had a far more detailed knowledge of the case than the clinicians involved.
- 12.5 ORS were accompanied by a complainant, Mrs W, who outlined her experience of complaining to PHSO following the death of her daughter following failings in NHS care and treatment.
- 12.6 Rob Behrens thanked Mrs W for agreeing to share her experience with the Board. He apologised for the delays Mrs W had experienced in our handling of her complaint. Amanda Campbell said that we would follow up the points made by Mrs W in the discussion about how her complaint was handled.
- 12.7 The Board **noted** the presentation.

## **13. Quality Committee 12 September 2019 (verbal update)**

- 13.1 Elisabeth Davies advised the Board that the draft minutes of the meeting had not been available at the time Board papers were sent out.
- 13.2 Elisabeth Davies said that the Committee's focus was on an integrated approach to quality performance. To that end all quality performance measures were now

collated into a single report containing less data. The non-executive members of the Committee believed that this was the correct approach.

13.3 Key points discussed by the Committee had included:

- Focus on Service Charter Commitments 8 (thoroughness) and 11 (explaining decisions);
- The link between quality and impartiality;
- Whether it was appropriate to report on Bodies in Jurisdictions' responses to our survey questions on impartiality before we asked complainants the same questions.
- The decision to defer the launch of PHSO's Quality Standards from June to September, and the implications of that on Transparency.

13.4 Alex Allan informed the Board that the Committee was now receiving a quarterly report on the implementation of the Clinical Advice Review. The following points were made in discussion:

- The Committee welcomed revised guidance allowing clinical advisers to raise issues outside of the caseworker's questions.
- The Committee looked forward to the issue of guidance to caseworkers on assessing the balance of evidence and discussed ways in which greater balance could be achieved.
- The Committee welcomed the proposals for pilot exercises on some of the review recommendations, in particular the sharing of provisional views with clinical advisors, noting that this had resource implications.

13.5 Alex Allan said that he would be interested in the Ombudsman's view of how the Expert Advisory Panel would interact with the Clinical Advice Review. Rob Behrens replied that at least one Panel member would advise on how clinical advice had been used in individual cases; another member would oversee the implementation of the Review.

13.6 Dean Fathers provided Board members with feedback from the Workshop on Transparency for Committee members, which had been led by the Assistant Director of Policy and Service Quality. A useful presentation had been followed by a good narrative discussion about the data the Committee needed, and the expected behaviours to support transparency.

13.7 The Board **noted** the update.

**14. Audit and Risk Assurance Committee 11 July 2019 (minutes) and 13 September 2019 (verbal update); Audit and Risk Assurance Committee Annual Report 2019-20**

14.1 Ram Gidoomal provided the Board with an ARAC update in the absence of Alan Graham. He said that he had received a working draft of the minutes from 13 September 2019. These had also been shared with the Committee Chair.

14.2 Matters discussed by the Committee included:

- Internal audit reports had been received on Risk Management and Casework Management (Policy Change Implementation). Both of these recorded reasonable assurance.
- The planned internal audit on Payroll had been deferred due to staff absence at PHSO. This had been agreed with the Committee Chair.
- In their internal audit progress reports, RSM had reported no concerns about their relationships with PHSO.
- The Information Assurance report raised concerns about the increasing number of Freedom of Information requests being received; attempts by complainants to use the Data Protection Act to reopen their complaints;
- A further concern was the increasing incidence of threats and abuse to staff. In response the Chief Executive had made it clear that we would take a robust approach to all such abuse. The Committee had endorsed that approach.
- The Freedom to Speak Up Guardian was reviewing the Whistleblowing Policy.

14.3 The Board **noted** the minutes and update.

14.4 The Committee's Annual Report for 2018-19, by Alan Graham, had been circulated. The Board **noted** the report.

14.5 Elisabeth Davies noted that the report mentioned regular monitoring of Value for Money (VFM). She was concerned that VFM should not be measured in terms of cost per complaint and asked whether there was a more detailed update on VFM. Gill Kilpatrick said that she agreed. There was much more to VFM than just cost. A proposal for a VFM scorecard would be put to the Committee in November.

## **15. ICT Strategy Update (Report, Richard O'Connell)**

15.1 Richard O'Connell highlighted significant progress on both main projects. The Capita Exit project was now at the testing stage. The new Casework Management System (CMS) will go live on 2 December 2019.

15.2 Alex Robertson said that the CMS was being tested very carefully in a real time environment. He was confident that the go live date was achievable.

15.3 Elisabeth Davies asked about the amount of CMS training staff would receive and the impact on other work. Alex Robertson said that the initial assumption was that staff would need one day. However feedback from the testing team was that a full day may not be needed. The Project Board would make a decision w/c 7 October. There would be a minimal impact on casework.

15.4 Mick King asked to what extent ICT change would drive new business processes or behaviours. Alex Robertson replied that the CMS system was designed around ease of use and was expected to simplify some processes. Phase two of the project would look more closely at the way we work. But there would be no major change in our processes.

15.5 The Board **noted** the report.

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**16. Digitising Board Meetings (paper, Maria Mansfeld & Stuart Ogden)**

- 16.1 Maria Mansfeld invited Board members to comment on the proposals to digitise future Board meetings.
- 16.2 Alex Allan welcomed the proposal but was concerned we were trying to go too far too quickly and that he would prefer to see a simpler solution. One change he would welcome would be if Board papers were sent out as separate files rather than as one large PDF file.
- 16.3 Ram Gidoomal suggested that an off the shelf solution, such as Diligent, would resolve the issue of large files and enable Board members to make electronic notes. Ruth Sawtell agreed.
- 16.4 Ruth Sawtell said that requirements F3, F5 and 57 were most important to her. She was also concerned that it was difficult to chair a meeting using only electronic copies of papers.
- 16.5 The Board **agreed** that hard copies of Board papers should be available on request to Board and Committee Chairs.
- 16.6 Gill Kilpatrick said that she had received feedback directly from Alan Graham which would be fed into the project.
- 16.7 Gill Kilpatrick assured the Board that the policy would be operated flexibly. New devices should not be required and hard copy papers would be available on request.
- 16.8 Dean Fathers asked whether it would be possible to receive papers through an 'app' on his own device rather than to have a PHSO device. He said it was a challenge to operate multiple devices and keep them charged. Amanda Campbell agreed that we should look at this, but that there were security implications.
- 16.9 Rob Behrens said that he agreed that we should aim for a proportionate solution.
- 16.10 Maria Mansfeld thanked the Board for their feedback and would take this into account. The next update will be in January 2020.

**17. Strategic Risk Report and Register (P4 2019/20) (report, James Hand)**

- 17.1 Richard O'Connell presented the paper in the absence of James Hand.
- 17.2 Ram Gidoomal asked about the new risk SR21 *Perception of Casework Quality*. He asked how we proposed to identify and mitigate this risk. Alex Robertson said that the risk had arisen as we closed more casework at assessment. We were monitoring feedback very carefully and had a strategy to communicate our approach and the reasons for it. Abigail Howarth added that much of the data around this risk already went to Quality Committee, but that we need to look more closely at how we track it.
- 17.3 Ruth Sawtell noted that we were outside tolerance on cases older than 52 weeks and asked if we were confident that we would get back within tolerance. Abigail Howarth said that the report was from P4. At the end of P5 we were only 5 cases over tolerance. She expected that we would be within tolerance in two weeks.

- 17.4 The Board discussed negative comments on social media. Ram Gidoomal suggested we should find ways of projecting good news. Warren Seddon said that we regularly did so, for example through our Feedback Friday items.
- 17.5 Richard O'Connell said that there was one new corporate issue, relating to the PCS strike ballot. He informed the Board that we were planning for all outcomes.
- 17.6 The Board **noted** the Strategic Risk Report and Register.

**Elisabeth Davies took the Chair**

- 18. Corporate Health and Operational Performance Report P4 2019/20 (report, James Hand/Hazel Waddington)**
- 18.1 Elisabeth Davies noted that this was now a combined report covering operational and corporate health performance issues.
- 18.2 Alex Robertson said that the key operational issue was an increase in casework demand of 12% over the predicted level. We had revised our current year assumptions and would also build the increase into our forecasts for 2020/21. Abigail Howarth advised the Board of the action being taken to mitigate the increase.
- 18.3 Elisabeth Davies asked about the increase in unallocated cases. Abigail Howarth detailed the impact for complainants.
- 18.4 Dean Fathers noted that the % of BAME staff in Manchester was higher than for the NHS in the same region.
- 18.5 Ram Gidoomal asked whether the target of 250 aged cases should be adjusted given the increased volume of complaints. Abigail Howarth said that the increase impacted on all targets, which would be reviewed for the 2020/21 business year. Amanda Campbell said that the aged cases target was an absolute number rather than a percentage.
- 18.6 Elisabeth Davies asked where State Pension Age campaign cases were counted. Amanda Campbell said that they did not appear in the casework totals as most are not being investigated. However they do represent a significant volume of work.
- 18.7 Gill Kilpatrick said that we were doing further work on two corporate health indicators. Informal learning days were not always captured. The Learning and Development Team were exploring ways to resolve this. We are also reviewing our BAME key performance indicators. We will report back to the December Board.
- 18.8 Ruth Sawtell asked whether the actions being taken to manage demand were linked to any increased perception of bullying. Abigail Howarth said that we were being clear with staff about why we need to take action. The changes were simply to improve performance in the face of increased demand and were not intended as negative comments about individuals.
- 18.9 Alex Allan commented that the reduction in staff turnover suggested that the organisation was stabilising.
- 18.10 The Board **noted** the report.

**Rob Behrens resumed the Chair**



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**19. Business Plan, Equality Action Plan and Insight Update (Report, Warren Seddon)**

- 19.1 Richard O’Connell advised the Board that most business plan activities were on track. The resourcing issues identified in Q1 had been resolved, and the CMS was due to go live in December.
- 19.2 Warren Seddon highlighted two items from the insight update:
- i. The Government’s response to the Public Administration and Constitutional Affairs Committee on our Eating Disorders report had been very positive.
  - ii. NHS Improvements had agreed to set up the enquiry we recommended in our Missed Opportunities Report.
- 19.3 Alex Allan asked whether we had started to publish our casework online, or when we expected to do so. Warren Seddon replied that we are publishing monthly case summaries.
- 19.4 Elisabeth Davies commented on the Equality Action Plan, saying that the Quality Committee had discussed how research methods could be more representative, and would be discussing this further at the November meeting.
- 19.5 The Board **noted** the update.

**20. Review of Financial Regulations (paper, Richard O’Connell)**

- 20.1 Richard O’Connell asked the Board to approve proposed changes to the Finance Code, Scheme of Delegation and Procurement Code. These had been discussed in detail by ARAC at the September meeting.
- 20.2 Ruth Sawtell said that one change to the Procurement Code requested by ARAC was missing. ARAC had asked for all Single Tender Actions to be reported to them (Procurement Code par 8.3).
- 20.3 Subject to the amendment at 20.2 above, the Board **approved** the changes to the Finance Code, Scheme of Delegation and Procurement Code.

**21. Review of meeting**

- 21.1 Vivien Johnson said that the meeting had been useful and interesting. It was particularly good to hear the Board’s high level perspective, as well as external perspectives on our work.
- 21.2 Sam Shepherd said that the meeting had been very honest and open. As she had expected, discussions had been at a very high level. However she had been surprised by the open environment.
- 21.3 Rob Behrens said that it had been particularly useful to hear Mrs W’s account of her dealings with the office (item 12). Ruth Sawtell agreed, saying that hearing her account made the work of PHSO seem very much alive.

**The meeting ended at 15:25**