

**Approved Minutes of the Board Open Session meeting held on
13 June 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
Ruth Sawtell
Dr Julia Tabreham

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
Mick King

In attendance

Karl Banister, Director of Legal & Professional
Services
Andrew Dawson, Governance Officer (Minutes)
James Hand, Assistant Director, Business
Management
Abigail Howarth, Director of Operations and
Quality
Richard O'Connell, Director of Resources
Paula Woodward, Chief of Staff (Outgoing)
Maria Mansfeld, Chief of staff (incoming)

Carol Godwin, Operations Manager CMS Project
(Item 18)
David Mootamamby, Senior Caseworker (Item
18)
Stuart Ogden, Assistant Director , ICT &
Accommodation (Items 18 & 19)
Elliot Riley, Dispute Resolution Design Manager
(Item 23)
Jon Roper, Operations Manager, Review &
Feedback Team (Item 23)

7. Introduction

- 7.1 Rob Behrens welcomed members and others present to the meeting.

8. Declarations of Interest

- 8.1 There were no declarations of interest relevant to items on the agenda.
- 8.2 Elisabeth Davies said that she had been made an Honorary Fellow of the Royal College of Physicians, which might give the perception of a conflict of interest. However there was no actual conflict.

9. Minutes of the Board meeting held on 27 March 2019

- 9.1 The minutes of the Board Open Session Meeting held on 27 March 2019 were approved following minor corrections and one amendment:
- Par 11.2 - before “we may lose expertise from the organisation” insert *during the critical phase of change*.
- 9.2 In response to Par. 15.5, Rob Behrens asked if there had been any progress on developing a measure of impartiality. Amanda Campbell said that the recent audit of the Service Charter had considered impartiality. The matter had also been discussed by the Quality Committee. Rob Behrens said that he would still wish to see a defined measure. Whatever we did needed to be defensible before the Select Committee.

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

- 10.1 Amanda Campbell said that there had been a particular focus on mental health in the workplace. The organisation had signed the “Time to Change” pledge. Additionally, the Break the Stigma group would be running a stall at the All Staff Event. Board members welcomed these initiatives.
- 10.2 Dean Fathers asked whether non executive members could be involved in the mentoring scheme (Par 3.1 of the report). Dean Fathers added that his own Trust operated a scheme called Forward Mentoring. Amanda Campbell undertook to explore this further.
- 10.3 The Board **noted** the report.

Elisabeth Davies took the Chair

11. Ombudsman’s report to the Board (Report - Rob Behrens)

- 11.1 The Ombudsman said that there had been considerable media interest in the recently published investigation of our investigation onto complaints about the North Essex Partnership University NHS Foundation Trust. He said that, in interviews about the case, he had pressed the need for ‘own initiative’ powers, which would have allowed us to carry out a systemic investigation.
- 11.2 Rob Behrens said that his visits to/from several schools had been useful, interesting and challenging.
- 11.3 Elisabeth Davies congratulated Rob Behrens on his election as Vice Chair of the Ombudsman Association.

- 11.4 Dean Fathers noted that NHS Improvements do not supervise private health providers. He asked whether the commissioning of NHS work from private providers was within our scope, and whether we should be talking to the NHS Confederation about the private sector's role in NHS provision. Rob Behrens replied that our jurisdiction in respect of private providers was unsatisfactory. He said that he would welcome the opportunity to meet with the NHS Confederation.
- 11.5 Ruth Sawtell said that the Eating Disorders report demonstrated our relevance. She asked how we would ensure that our recommendations were fully implemented. Rob Behrens said that we would share our evidence on how the various organisations involved had responded with the Public Administration and Constitutional Affairs Select Committee. Unfortunately there was no single organisation with responsibility for implementing the changes we had asked for. Whilst we had no direct power to make organisations comply, we could apply pressure through Parliament or by placing information in the public domain.
- 11.6 Rob Behrens noted that there was currently a Private Members Bill which proposed to extend PHSO's powers to include the Government Actuaries Department. This was likely to time out but provides useful support.
- 11.7 The Board **noted** the Ombudsman's report.

Rob Behrens resumed the Chair

12. Quality Committee meeting held on 23 May 2019 (Verbal update)

- 12.1 Elisabeth Davies informed the Board that the minutes of the meeting were not yet available. The meeting had considered the Quarterly Quality Report and Quality Review, and had received an accreditation update. It had also agreed the Quality Assurance Framework. In the afternoon, members had attended a session on Early Dispute Resolution.
- 12.2 Julia Tabreham said that the Quality Review had focussed on several main areas:
- The maturity of data and its usefulness;
 - Whether targets were set appropriately high;
 - Areas for future work, including outcomes from the Clinical Advice Review.
- 12.3 Dean Fathers said that the Quality Assurance Framework provided a set of transparent metrics. This enabled deep dives and gave a sense of momentum and energy within the organisation. However it was not clear that we could say that we had a fully balanced scorecard. This would develop further over time.
- 12.4 Alex Allan said that he had not been at the committee, but welcomed the development of the Quality Assurance Framework, the continuing senior level Quality Assurance process, and the Committee's interest in the Clinical Advice Review. He questioned whether it was appropriate for the Committee to focus on what were relatively small movements in data which may not be statistically significant.
- 12.5 The Board **noted** the update.

13. Audit and Risk Assurance Committee Meeting held on 9 May 2019 (Minutes and verbal update)

13.1 Ruth Sawtell queried the accuracy of the action point at paragraph 4.4 of the minutes, as the DAO letter concerned contingency planning rather than succession.

Action: Governance Officer to check and amend paragraph 4.4 of the ARAC minutes as appropriate.

13.2 Ruth Sawtell provided a strategic update in the absence of Alan Graham:

- The Committee had considered KPMG's Internal Annual Audit Report. The draft Head of Internal Audit Opinion was *significant assurance with some improvements required*.
- The Committee had also received the Internal Audit report on the Transformation Programme, which was *significant assurance with minor improvement opportunities*. Ruth Sawtell commented that this reflected well on James Hand.
- The Committee had received the annual Assurance Report (which had not been submitted in 2018). This was a positive development which provided a good level of assurance. The Committee had noted the report, and suggested some additions.
- Under *Any Other Business* the Committee had agreed that there was a need for the organisation to set a formal target on paper reduction.

13.3 In discussion the Board endorsed the need for a paper reduction target and considered how the organisation was accountable for Sustainability. Although this is included in the Annual Report there was arguably a need for greater scrutiny and review, which could fall to ARAC. The Ombudsman and several others present offered to go paperless for future Board and Committee meetings.

Action: Gill Kilpatrick & ICT to look at software solutions to support paperless meetings and report back to the September Board.

Action: Gill Kilpatrick/Governance team to add responsibility for Sustainability to the ARAC terms of reference.

13.4 The Board **noted** the update.

14. Financial Monitoring Report - 2018-19 P12 EOY (Paper, Richard O'Connell)

14.1 Richard O'Connell reported we were within control totals at the End of Year, having underspent by £268k on Resources and £88k on Capital. These were prudent levels of underspend.

14.2 Richard O'Connell invited Board members to attend the ARAC technical walkthrough of accounts on 28 June 2019.

14.3 Elisabeth Davies asked if there had been any progress on the standardisation of annual leave years (par 2.2). Amanda Campbell confirmed that this formed part of the pay and grading offer; the Trade Union side were also in favour of standardisation.

14.4 The Board **noted** the Financial Monitoring report.

15. Budget 2019-20 update (Paper, Richard O'Connell)

- 15.1 Richard O'Connell advised that the paper at Item 15 presented a revised budget. The main change was an increase in funding of £512k (to £26,453k) to partially offset increases in employer pension contributions. This left a shortfall of £354k. We had written to HM Treasury about this.
- 15.2 The revised budget included a proposed increase of £165k to the cost of the Capita Exit project to include a 20% contingency.
- 15.3 Board members expressed concern about the levels of headroom and contingency if additional funding was not forthcoming. Gill Kilpatrick acknowledged these concerns and confirmed that the financial risks were recorded on the Corporate Services risk register.
- 15.4 Richard O'Connell confirmed that the additional funding was for the final year of the current financial settlement so we would need to formalise the funding in our next CSR bid.
- 15.5 Board members noted the ongoing impact of the error in 2015 by HM Treasury, which required a further adjustment of £196 for non-voted RDEL.
- 15.6 The Board:
- i. **Noted** the increase in the 2019-20 resource budget of £512k, to £26,453k;
 - ii. **Noted** the ongoing discussions with HM Treasury to secure further resource funding of £354k to cover the shortfall in the cost of employer pension contributions;
 - iii. **Agreed** to increase the funding for the Capita Exit project by £165k.

16. Annual Report and Accounts, 2019-20 (Paper, Alex Robertson)

- 16.1 Alex Robertson said that the report and accounts were on track for completion according to the timetable at Annex 1, although timings were very tight. Comments made by the Board at previous meetings had been taken into account in the revised version of the Annual Report at Annex 2.
- 16.2 Ruth Sawtell said that the 'Our Board' section (p49) needed to be updated in line with the action agreed at Par 7.3 of the Remuneration and Nomination Committee minutes (9 May 2019).
- 16.3 Board members made the following comments and suggestions:
- Page 15: Under *Improving front line complaint handling* (3rd bullet) insert *complaints before advocacy*.
 - Page 25: review the descriptors used on the bar charts; ensure that the accompanying narrative properly explains trends within the data.
 - Pages 18-19: make the language around strategic risks easier to understand.
 - Pages 57-59: Review and expand the activities of the Quality Committee.
- 16.4 The Board noted the draft Annual Report.

17. Comprehensive Spending Review (Presentation, Richard O'Connell)

- 17.1 Richard O'Connell said that current intelligence from HM Treasury is to expect a one year CSR settlement. However we should also plan for three years. There was currently no clarity on the type of settlement.
- 17.2 Alex Robertson said that under a one year CSR we would only be in a position to deliver the final year of our current strategy. But for a longer CSR we required Board input on our future priorities. He asked for the Board's view on the suggested future CSR themes (page 6).
- 17.3 In discussion, Board members made the following comments and suggestions:
- Neither the current themes nor future priorities made sufficient reference to the commitment to supporting improvement across the public sector.
 - Assumptions about demand and the impact of Early Dispute Resolution needed to be made explicit.
 - Our priorities needed to align with issues that the Government is interested in.
 - We would also need to demonstrate that we could deliver value for money.
 - An Ombudsman Bill in the next 2-3 years would have significant implications for anything other than a one-year CSR.
 - The removal of the MP filter could result in a significant increase in demand.
 - Increasing awareness of your role among BAME complainants should be a key priority.
 - It was important to secure the support of the Chair of the Public Administration and Constitutional Affairs Committee.
- 17.4 Alex Robertson thanked Board Members for their comments. He said he would be in a position to bring a more developed proposal to the September Board meeting.

18. Casework Management System Replacement (Demonstration, Carol Godwin)

- 18.1 Carol Godwin gave Board members a demonstration of a 'proof of concept' version of the CMS replacement system. Phase 1 of the new system is expected to be ready in October. Features under development include:
- A single high-level view of the case on the front page;
 - All casework processes and stages are in a single display, avoiding the need for a manual process to move between key stages;
 - A timeline of documents and events in a single location;
 - A 'no activity since' function;
 - All contact information will be held in a single location;
 - Aspects of cases can be categorised to enable searches for similar cases;
 - All advice will be stored in a single location;
 - Information and documents will be fully searchable.

- 18.2 David Mootamaby said that the system under development was a significant improvement on the current system. It was clear, intuitive and logical. Caseworkers would in particular benefit from the search function and the inclusion of a single screen with all key case information.

18.3 Board members raised the following concerns and queries:

- Training implications. Carol Godwin said that as the new system is on the same platform as the existing system staff will be broadly familiar with it. She estimated that staff would be comfortable using it within 2-3 hours.
- Signposting. Carol Godwin confirmed that it would be possible to include signposting information.
- Would the software be tested independently of the developers? Carol Godwin said that we had appointed a software testing contractor.
- Where would the data be stored? Stuart Ogden confirmed that data would be held on a secure Microsoft platform owned by a UK Government organisation. It would only be accessible via our network.

19. ICT and Digital Strategy - Quarterly Update (paper - Stuart Ogden)

19.1 Stuart Ogden reported that both the CMS Replacement and Capita Exit projects are progressing well and were rated 'green'.

19.2 Stuart Ogden said that the Capita Exit project had moved from design to implementation, which would take place simultaneously in Manchester and London. Recent developments included:

- All required contracts had been procured;
- Equipment had been purchased and had started to arrive;
- The Executive Team had agreed the proposed staffing structure;
- We have confirmed that there is only limited liability under TUPE, affecting one individual.

19.3 Board members raised the following concerns and queries:

- Risks around data migration: Stuart Ogden explained that our network would need to be joined temporarily to Capita's network to facilitate a one-off transfer of data. Capita were being co-operative. However, there were technical risks, which were being kept under review.
- Challenges: The main challenge was funding, which was now in place.
- Equality, Diversity and Inclusion implications: These had been identified at an early stage and built into the project design.
- Stuart Ogden said that he was confident that the project would be implemented on time, in budget and to a good quality.
- Reductions in paper use: This had not been evaluated, but it was essential that the project achieved efficiencies.

19.4 The Board **noted** the update.

20. Strategic Risk Report and Register, Period 12, 2018-19 (Report, James Hand)

20.1 James Hand highlighted the key points of the Strategic Risk Register and Report, including:

- All but one strategic risks remained unchanged since the previous quarter;
- *Future Finances* had worsened slightly due to concerns about a reduction in funding in the next CSR round;
- Under Corporate Issues, the *Inadequate Capital* had been closed.
- All mitigation under *Accessibility of ICT* was now in place. However the issue would be kept open until the CMS replacement was delivered.

20.2 Board members asked whether we were confident in the risk ratings. James Hand said that he believed that the correct mitigations were in place. On ICT and Strategy Implementation, we were in a good place. Gill Kilpatrick said that she expected risks to reduce further once the Capita Exit and CMS Replacement projects were delivered.

20.3 Rob Behrens asked about the metrics in Table 2 which were outside of tolerance. James Hand explained that this was a legacy of the former casework queue. These cases were slow-moving; however there was a plan to deal with them. We were now broadly on track with the forecasting plan.

20.4 Dean Fathers suggested that to improve transparency, our Strategic Risks should be aligned directly to our strategic objectives. The Risk Register should say which objective(s) a risk related to. This was **agreed**.

Action: Strategic Risk Register to be amended to include the Strategic Objective to which the risk relates.

21. Operational Performance Report, Period 12, 2018-19 (Report, Abigail Howarth)

21.1 Alex Robertson presented the report in the absence of Abigail Howarth.

21.2 Alex Robertson said that the casework performance had been broadly positive. There was a legacy of aged cases which impacted on our overall performance, particularly the time taken to complete cases. However case numbers had remained broadly within forecast. Looking forward, he was confident that the replacement CMS system would have a positive impact. ET had also agreed that the business could retain fixed term contract caseworkers.

21.3 Alex Robertson referred to Table 2, which detailed the action taken or underway to implement the Clinical Advice Review. He confirmed that we had appointed an implementation manager for the Clinical Advice workstream, and that all deliverables were now in place. Future updates would be provided to the Quality Committee. Alex Allan welcomed the progress made.

21.4 Julia Tabreham asked what mitigation was planned to prevent State Pension Age complaints developing into a queue. Amanda Campbell said that we had selected six cases which covered all of the issues. We would only investigate these cases.

21.5 Elisabeth Davies welcomed the inclusion of information about Early Dispute Resolution. She said that it would be useful to monitor customer satisfaction in these cases, which could be taken forward by the Quality Committee.

21.6 The Board **noted** the report.

22. Corporate Health Performance Report, Period 12, 2018-19 (Report, James Hand)

22.1 James Hand reported that there were significant improvements against several of the metrics. He highlighted the following:

- Learning and development - training days per member of staff had increased to 5.1 from 4.7 (2017-18), against a target of 5.0.
- Sick absence had reduced from 10.5 days (2017-18) to 7.6, below the public sector benchmark of 8.5. In particular, long term sick absence had reduced.
- 94% of Freedom of Information requests had been processed on time, against the ICO benchmark of 90%.
- There were no significant concerns about progress against the business plan.
- We continued to make good progress against Equality, Diversity and Inclusion targets.

22.2 Alex Allan noted that permanent staff turnover had increased to 15% (from 14.5%). James Hand said that the regretted attrition rate was around 10%. Ram Gidoomal asked if there was a breakdown by grade. James Hand said that he did not have a detailed analysis.

Action: HR to provide the Board with a detailed breakdown of staff turnover, including by location and grade.

22.3 Julia Tabreham noted that the figure for staff who had experienced bullying was unchanged at 13%. She asked who investigated complaints of bullying. This was the responsibility of HR and line management. Rob Behrens said that we had now appointed a speak up guardian.

22.4 Ruth Sawtell queried whether the Finance and Governance metrics were adequate. James Hand said that, for 2019-20, Control totals would be added to the report. There was a wider range of finance metrics at Corporate Services level.

22.5 Ram Gidoomal asked whether reasons could be given where business plan activities were delayed, and any risks assessed. James Hand confirmed that the plan would be rephrased for the current year. There were no strategic risk implications.

22.6 The Board **noted** the report.

Elisabeth Davies took the Chair

23. Early Dispute Resolution and Early Consideration (Presentation, Elliot Riley and Jon Roper)

23.1 Jon Roper gave a presentation on the Early Consideration process, which had been implemented in April following a successful pilot.

- The Early Consideration Team considers straightforward complaints which would otherwise progress to standard assessment.
- Since April the team (5 caseworkers) have resolved over 200 cases, mostly within a few days of allocation.
- Only one formal review request has been received. The team aims to work with the organisation to resolve the complaint quickly and proportionately.

23.2 Elliot Riley gave a presentation on his work to develop an Early Dispute Resolution process.

- informal resolution session led by the caseworker, involving the complainant and the organisation;
- could be by telephone; skype or face to face;
- takes place before assessment - we facilitate, but do not evaluate the complaint;
- requires consent of both parties;
- not suitable for high risk cases, or where it would be important to investigate.
- We are now looking to recruit a pilot team, who will receive formal training in mediation.
- We are looking for feedback from organisations as well as complainants, and will test cases with a number of NHS Trusts and with some Parliamentary organisations.

23.3 For both processes, we are looking to improve operational efficiency, user satisfaction and staff satisfaction. We have developed metrics for these.

23.4 In discussion the Board considered the following issues:

- Staff burnout was a real concern. It was important to rotate staff between roles. External support, e.g. from training providers, may be available.
- Complainants may not welcome resolutions which do not involve an investigation. However our general experience is that complainants do recognise that they have done some good by complaining.
- Staff engagement. However staff do recognise the importance of the right action at the right time.
- The inequality of power between complainants and organisations. This was an issue in some complaints and required careful communication with complainants about what we expect to achieve.

Rob Behrens commented that, compared to other Ombudsman schemes, we are significantly behind in developing alternatives to investigation. Alex Robertson commented that, whilst we had referred to some previous processes as resolutions, the proposed pilot was very different.

Rob Behrens resumed the Chair

24. Any Other Business

- 24.1 Rob Behrens expressed his thanks to Abi Howarth for arranging speakers for the recent NHS Providers Conference. This was a useful organisation to be involved with.
- 24.2 Rob Behrens informed the Board that it was Paula Woodward's last attendance at a Board meeting before leaving on secondment. He thanked Paula for her contribution to the work of the Board and to the wider organisation.

25. Review of meeting

- 25.1 Rob Behrens invited Maria Mansfeld to give her views on the meeting and how it had been conducted. Maria Mansfeld said that it had been a very useful and interesting meeting. There had been a significant amount of constructive challenge.
- 25.2 Rob Behrens said that the quality of the presentations had been excellent.

26. Next meeting

- Extraordinary meeting (Annual Report and Accounts) - London, 11 July 2019 at 11:00.
- 1 October 2019; Manchester, 10:00

The meeting ended at 16:00