

# Board meeting

## Minutes of meeting

16 March 2016

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### Present

George Jenkins (Chair)  
Harry Cayton (CE)  
Renata Drinkwater  
Ian Hamer  
Andrew Hind  
Antony Townsend  
Jayne Scott  
Stuart MacDonnell

### In Attendance

Linda Allan  
Christine Braithwaite  
Rosalyn Hayles  
Philip Hallam (items 1 – 14)  
Elizabeth Taheri (items 1 -14)  
Majida Serroukh (secretariat)

### Observers

Kate Robinson, Senior Scrutiny Officer  
Michael Humphries, Senior Scrutiny Officer  
Silvia Dominici, Performance Reporting Manager,  
NMC

## 1. Welcome and Introductions & Declarations of Interest

1.1 The Chair welcomed everyone to the meeting.

## 2. Apologies

2.1 There were no apologies for the meeting.

## 3. Minutes of meeting held on 20 January 2016

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

## 4. Matters arising from meeting held on 20 January 2016

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

## 5. Chair's report

5.1 The Chair has now met with the majority of the Chairs of the regulators and has been made to feel welcome. There is recognition amongst the Chairs of the regulators that there will be significant changes to legislation and that there will be a need to work more collaboratively.

5.2 The Chair will meet Ben Gummer MP, Parliamentary Under-Secretary of State, in April 2016.

- 5.3 The Chair attended the Academic Conference on 11 March 2016 and thought it was an excellent event. The speakers were outstanding and the level of debate was fascinating.

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

### **Section 29**

- 6.1 There has been significant section 29 activity and the legal team are receiving a high number of cases to review from the regulators.
- 6.2 Since January 2016, we have lodged four appeals. Two appeals relate to NMC and the two remaining appeals relate to HCPC decisions. A further case meeting in respect of an NMC case was held on 4 March 2016 and the decision was made to appeal. This has yet to be lodged.
- 6.3 We have four case meetings scheduled in the next two weeks (one NMC case, one HCPC case and two GMC cases).
- 6.4 The Board appreciated the nature of short deadlines regarding organising case meetings but asked the team to consider whether there might be a way of allowing more notice for Board members to be involved in case meetings, for example by reserving provisional case meeting slots during any periods of time where we can anticipate needing the involvement of Board members other than the Chief Executive.

### **Action: RH/ET**

### **Legislative reforms**

- 6.5 On 22 February 2016, the Chief Executive attended a meeting at the Department of Health (DH) with all the regulators to discuss the planned consultation on regulatory reform. Some radical proposals were put forward by some of the attendees.
- 6.6 The intention continues to be that the DH will produce a document in autumn 2016 which it will consult on with a view to producing a white paper. It was agreed that that the Authority may consider at its strategy meeting in May 2016 how best to express the ideas the Authority has for improving regulation through new possible legislation.

### **Meeting and Events**

- 6.7 We have recently held two successful events. Our Annual Symposium on 12 February 2016 and our Academic Conference on 11 March 2016. Feedback from both events has been very positive.
- 6.8 Our Annual Symposium took place on 12 February 2016. It was an interesting programme, with good speakers. The Board wanted to put on record their thanks to the policy team, and particularly Dinah Godfree, Senior Policy Adviser and Michael Warren, Policy Adviser for organising such a successful event.
- 6.9 The Academic Conference took place on 11 March 2016 and was a great success. Eighty-five people attended, they included people from 22 academic and research institutions, a number of regulators in health and social care, consultants interested in the field, those involved in regulation outside health and social care, for example the Legal Services Board and the Independent

Press Standards Organisation. We had people attending from Ireland, Belgium, Canada, USA and Australia.

- 6.10 The quality of the presentations was exceptional and forward thinking. Presentations from the event will be shared.
- 6.11 The Board also wanted to put on record their thanks to Douglas Bilton for organising such a great event.
- 6.12 The Public Engagement event which took place on 14 March 2016 also went very well. The aim was to have a wide ranging conversation on how we currently communicate with the public about our work and the work of the regulators we oversee - and how we can improve. We received some really helpful and useful feedback from the event.

## **7. Finance Report**

- 7.1 We have received a £50k subvention from DH for the Accredited Registers programme.
- 7.2 There is still an underspend in the accounts and as previously mentioned in other Board meetings, this is due to lower staff costs and a lower than expected expenditure on section 29 cases. The decision to deliberately delay staff recruitment was taken as it was felt that it would not be appropriate to recruit staff before the new performance review process had been finalised.
- 7.3 A question was raised regarding our cost recovery from Court cases. It was confirmed that we always aim to recover 75% of recoverable costs, subject to the strict rules about costs recovery set by the Courts.
- 7.4 We received a letter from the Department of Health relaying thanks from the Minister for reducing our budget for 2016/17 by 8% compared to our fee submission for 2015/16.

## **8. Accredited Registers update**

- 8.1 The Board was presented with a tabled paper which included a different annex to the one circulated to the Board. The Board welcomed the new format of the annex.
- 8.2 The Accreditation team have been busy raising awareness of the Accredited Registers programme:
  - The team met with Professor Kamila Hawthorne, Vice-Chair of the Royal College of GPs to discuss how Accredited Registers could support GPs and work with them to help patients find the services they need in their area. The meeting was positive and led to an article about the programme in the RCGP's Chair newsletter to all members.
  - We had a productive meeting with officials from the Department of Health and NHS England to discuss how the programme could support Government's commitment to expand personal health budgets and provide more choice to patients and service users when planning their care.
  - We also had a helpful meeting with colleagues responsible for NHS Choices and agreed to work with them in the re-development of their site to incorporate the programme in all relevant areas.

- We will meet with the Healthwatch England's National Director and with Hospice UK this month to discuss areas where Accredited Registers and their wider workforce could be a helpful resource.

8.3 Since the Board last met we lifted the suspension of the accreditation of a register and renewed its accreditation. There are six annual reviews and three notifications of change going through assessment.

8.4 We received two new applications in February 2016. They are from Treatments You Can Trust and Save Face, both related to cosmetic treatments.

## **9. Performance Review update**

9.1 An HCPC assessment panel meeting took place on 17 February 2016. The assessment panel have made a decision as to the level of review, and the HCPC have now been contacted with the decision of the panel. We will be working with the HCPC to discuss next steps. We will also be seeking feedback from the HCPC regarding how the process has operated from their end.

9.2 Provisional dates for assessment panel meetings in March 2016 and April 2016 have now been set for the General Osteopathic Council and General Pharmaceutical Council.

9.3 Analysis and evidence gathering has now commenced for the assessment panel meeting concerning the General Chiropractic Council and Nursing and Midwifery Council. It is anticipated that these panel meetings will take place in April 2016 and May 2016 respectively.

9.4 We have now published the anticipated assessment panel meetings schedule for 2016 on our website.

9.5 The team will be considering how to develop further the risk assessment tool.

## **10. Review of Section 29 process and guidelines**

10.1 The Board were asked to consider changes to our section 29 process and guidelines.

10.2 A first draft of the review of the guidelines has been reviewed by members of the Scrutiny Committee, and where appropriate comments have been incorporated into the version the Board were asked to review.

### **Key changes**

10.3 Several changes are necessary to the content of the guidelines and its annexes, to reflect current legislation, namely:

10.4 The new threshold for a s29 referral, introduced on 31 December 2015 – changing from consideration of 'undue leniency' to 'not sufficient for public protection'<sup>1</sup>;

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<sup>1</sup> The revised guidelines reflect the advice the Authority received from Joanna Glynn QC about the correct interpretation of the new s29 referral threshold.

- 10.5 The new GMC right of appeal against MPTS decisions, also introduced on 31 December 2015<sup>2</sup>.
- 10.6 The Authority sought advice from Counsel about the approach to be taken in future in deciding whether to refer a case to a section 29 case meeting. Recommendations were presented to the Scrutiny Committee at its meeting on 4 February 2016 and accepted. The Chief Executive wanted to put on record that an unapproved minute of this meeting should have been shared with the Board at this meeting, but this was not possible due to staffing matters. An approved version of the minutes of the Scrutiny Committee that took place on 4 February 2016 will be shared with the Board at its meeting in May 2016.
- 10.7 It was acknowledged that the new approach may result in more section 29 case meetings and that this would have a cost implication.
- 10.8 The Board also discussed the option of removing the need to hold a s29 case meeting in circumstances where the Chief Executive, acting pursuant to the statutory deadline decision-making process (previously called 'the emergency s29 decision-making process') and having received legal advice, decides to make a referral to Court. In those cases, the decision of the Chief Executive (or other officer appointed for the purpose) would stand as the decision of the Authority. Counsel has confirmed that the Authority's statutory scheme does not require appeal decisions to be made or ratified by way of a case meeting and that it is a matter for the Authority to determine the procedure to be followed in exercising its appeal functions under section 29. Delegation to a single member or employee is permitted. It was agreed that this needs further consideration by the staff team. The Board discussed the implications of such a change and asked the Chief Executive to think further about how this might work in practice and give an update on any further considerations.
- 10.9 It was agreed that a flow diagram should be produced in due course to illustrate the s29 process.
- 10.10 The Board generally felt that the Authority had taken a very cautious approach and that the proposed changes were defensible and have been well thought out and balanced.
- 10.11 The Board were asked to note that changes to Annex 2 were being drafted by external solicitors and would be incorporated into the final version.
- 10.12 The Board were happy to approve the changes subject to further consideration of the statutory deadline decision-making process.

## **11. GDC response to investigation report**

- 11.1 We published our report, '*A report on the investigation into the General Dental Council's handling of a whistleblower's disclosure about the Investigating Committee*' on 21 December 2015.
- 11.2 On the 16 February 2016, the Chair of the General Dental Council wrote to the Chair of the Authority setting out their action plan in response to our report. We will be monitoring the GDC action plan through our performance review process.

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<sup>2</sup> The revised guidelines reflect the process the Authority has developed for considering decisions made by the MPTS in light of the GMC's right of appeal.

- 11.3 The Chief Executive and Chair of the Authority also met with the Acting Chief Executive and Chair of the General Dental Council on 10 March 2016. At the meeting the Chair of the GDC outlined some criticisms of the investigation process. We will discuss his views.
- 11.4 We will be reviewing the information currently on our website regarding our investigation process.

## **12. Any other business**

- 12.1 There was no other business to report.

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

- 13.1 Silvia Dominici asked for clarity about the new test for whether to refer a case to a section 29 case meeting. It was confirmed that we will be publishing the revised guidelines on our website in due course.
- 13.2 Kate Robinson thanked the Board for allowing her to observe the meeting and felt it was a very valuable experience that has facilitated her induction, and is not an opportunity she had experienced at previous organisations.

## **14. Private session of Board**

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

**Approved by the Board at its meeting on 26 May 2016.**