



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

## Minutes of HSE Board Meeting

A meeting of the Board of the Health Service Executive was held on Friday 27 March 2020, 10:00am via video conference

Present: Ciarán Devane (Chairperson), Deirdre Madden (Deputy Chairperson), Aogan Ó Fearghail, Brendan Lenihan, Fergus Finlay, Fergus O' Kelly, Fiona Ross, Yvonne Traynor, Sarah Mc Loughlin, Tim Hynes

In Attendance for Board Meeting:

Paul Reid (CEO), Colm Henry (CCO), Dean Sullivan (CSO), Stephen Mulvany (CFO), Anne Marie Hoey (ND HR), John Kelly (Corporate Affairs), Dara Purcell (Secretary), Niamh Drew.

Joined Meeting: Ciarán Breen (State Claims Agency), Mairead Dolan (Assistant Chief Financial Officer, Damian Mc Callion; Cathal Morgan (Head of Disability Operations).

Please note minutes are recorded in the order as per the agenda

### **1. Governance & Administration and Chairperson's Remarks**

The Chairperson, Ciarán Devane welcomed a quorum of members and the meeting proceeded to business. The Board was reminded of its role and responsibilities in line with legislation and the principles of the Code of Practice for the Governance of State Bodies.

No conflict of interest was noted.

The minutes of the Board meeting of 28<sup>th</sup> February 2020 were approved

The Board had also held a number of additional Board Meetings with regards to the COVID 19 health emergency. These meetings were held on the 6<sup>th</sup> March 9<sup>th</sup> March 12<sup>th</sup> March and 16<sup>th</sup> March. The minutes of these meetings were presented and approved by the Board. Prof Deirdre Madden reserved her position on approval of these minutes due to absence of the normal formalities associated with Board meetings. The procedure and practice for holding meetings at short notice was discussed. It

was agreed that if decisions are required to be made at these additional meetings without opportunity for either advance notifications or formal texts in advance, then they should be validated as soon as possible after the meeting by the consent of all Board members (including consent to short notice of meeting and to the text of the decision). It was noted the decision taken at the meeting on 16<sup>th</sup> March (**Decision No. 160320/16**) providing amendments to the delegated power of the CEO had been documented and circulated to the Board by the Secretary and the decision was reaffirmed.

## **2. CEO Report**

### **2.1 Supreme Court Judgement**

The Chairperson welcomed Ciaran Breen Director of the State Claims Agency to the meeting. Mr Breen set out to the Board an overview of the implementations of the judgement of the *Morrissey* case for the HSE, noting that firstly the judgement comes during a litigious period for screening services and that to date there have been multiple settlements on cervical screening cases and further cases pending. In addition, the first breast screening case has just concluded in the High Court. There are also 11 more breast screening cases pending. Prior to the crisis there were only a very small number of cases in both programs.

He briefed the Board in relation to the two grounds of appeal to the Supreme Court: -

#### **Absolute Confidence Test**

The SCA welcomed the Supreme Court's clarification of the position in relation to the "absolute confidence test" as it confirmed that the High Court judgment is not to be interpreted as introducing a new test in clinical negligence cases.

The Supreme Court reaffirmed that the *Dunne* principles are the only applicable test for the determination of professional negligence.

The judgement also clarified that the level of conviction required for a cytologist to declare a cervical smear test as negative is specific to the interpretation of cervical smear slides and does not have wider application to other clinical negligence cases.

### **Primary Liability & Vicarious Liability**

The Supreme Court found that the HSE, in the manner in which it adopted and promoted CervicalCheck, could be assumed to have undertaken responsibility for the Scheme irrespective of whether actual screening or other elements of the scheme were to be performed by others, and was therefore primarily liable for any negligence which might be found against the laboratories.

However, the Supreme Court overruled the High Court's finding that the HSE is not vicariously liable for any negligence established against the laboratories. This finding is an important one for the HSE and for the State generally, which outsources medical and other services to independent contractors. Practically, the HSE is entitled to continue to rely on the contractual indemnities with the Laboratories, obviously where it is not a Coombe case.

The Board agreed that the greatest risk going forward relates to Breast Screening. This is based on the nature of the test, existing recruitment challenges, impact of the recent High Court case on clinical staff, forthcoming recommendations from the expert group and the impact of this judgement.

Going forward, the introduction of the HPV test for cervical cancer has much higher accuracy and therefore will reduce the level of risk of false negatives in the future. As an automated test it reduces some of the current manual screening risks and will not retain a sample in circa 85% of the cases. All of this improves the risk profile considerably but there are several 'legacy' cases still in the pipeline awaiting judgment/settlement. The financial exposure in these legacy cases is very significant. The HSE will also have to ascertain the view of the Coombe as this could impact on the implementation of a National Cervical Screening Laboratory and key to that is the view taken by Quest as the last remaining external laboratory provider.

Professor D Madden expressed the view that the implications for other screening programmes, particularly BreastCheck, could also be very significant because the potential application of the principle of 'absolute confidence' to mammography would cause a lot of anxiety to those working in the breast screening programme as well as financial exposure if cases were to proceed along similar lines. She also requested that a review of the interval cancer audit report and the actions, including historic practices is carried out. She expressed concern in light of the ruling.

The forthcoming publication of the review of interval cancer audit in the breast screening programme will need to be considered and discussed further in light of this judgment. The value and importance of the screening programmes to the population and the trust and confidence of those tested must be preserved by our communication strategy on these issues.

## **2.2 COVID -19**

The CEO and CCO provided an update in relation the number of COVID-19 cases. The CEO set out the number of cluster areas and the pressures on these points. He also highlighted the HSE's serious concerns on the challenge to ICU capacity arising from the confirmed number of cases of patients admitted to ICU. It was also highlighted to the Board that up to midnight on the 24 March the data was showing that 23% of confirmed cases were associated with healthcare workers.

The CEO provided the Board with an update on the following areas;

### Procurement of PPE

The CEO informed the Board that the HSE would normally procure product to the value of €15m per annum but that orders in excess of €32m have been placed and that the first shipment was expected to arrive from China on Sunday 29 March, with a continuous supply valued in excess of €200m having also been agreed and due to arrive over the coming week.

The Board welcomed the procurement of the shipments of PPE and sought reassurances from the CEO that the standard and quality of what had been purchased was in line with WHO specifications. The CEO confirmed that, this was the case.

### Ventilators

The HSE has secured 300 ventilators and a further 700 due over the coming weeks. The CEO confirmed that negotiations are ongoing for a further 700 in the coming weeks and that he will update the Board on this once more information is available.

### Contact Tracing

To date, the HSE has received over 126,595 referrals for testing and 23,740 tests appointments have been made. However effective from the 25 March, the COVID-19 definition has been changed, in -line

with the WHO case definitions and as a result of the case definition, fewer patients will meet the criteria for testing. This will reduce the rate of referrals and allow for prioritisation of the confirmed cases healthcare workers at-risk and staff or residents in a long-term care facility.

Over 1,161 individuals have been trained up to carry out contact tracing and this will increase by an additional 1,400 individuals in the coming weeks and will continue to increase.

#### Testing kits / Clinics

Capacity for testing is constrained by limited availability of testing kits. Over 10,000 kits will be distributed from 27 March 2020 (8,500 to community testing sites and 1,500 to acute hospitals and NAS), with further supplies of 100,000 per week secured. Community Testing Clinics are now open in 44 testing centres nationally with four more planned to open.

The CEO informed the Board the HSE had secured the City West Campus (hotel and convention centre). Work is under way to install and kit out the campus to the required standards which when finished will provide rooms for isolation in the hotel and approx. 600 beds as a “step down” facilities to be used as and when needed.

#### Hospital Laboratories

The CEO confirmed that 12 Hospital laboratories are now processing COVID -19tests.

#### ICU Beds

The Board welcomed the ongoing engagement with private hospitals with regards to the allocation of beds, laboratories and treatment of COVID-19patients. The Board acknowledged that the need for ICU beds may be challenging for the system.

The Board thanked both the CEO and the CCO for the update

#### Ethical Framework

CCO provided a high-level overview of the draft guidance document “Ethical considerations relating to critical care in the context of COVID-19 as issued by NPHET/Department of Health, which had been circulated to the Board members prior to the meeting

The CCO advised this guidance is directed at clinical staff who may be involved in making decisions regarding the prioritisation of critical care resources in the context of COVID-19.

The Board considered the Ethical Framework, the process by which it was developed the need for consistency and transparency, and how it is going to be communicated to the public.

The Board discussed the process by which the Ethical Framework was developed, mindful that it too has a governance role to protect the health of the population. It noted that, as the HSE is a participant in the NPHET/DoH led process the Board expects it can input into important matters being considered by NPHET which are connected to its governance role.

It was noted that the document is a broad ethical framework not a policy or guidance document. The process by which the framework has to be implemented is key and the Board will need to ensure that employees have workable guidelines. It was agreed that the Chair and the CEO would discuss the Board's view with the Minister to ensure the Board can engage with the NPHET working group on ethical considerations and input appropriately into further necessary guidance documents.

#### **Reserved Functions of the Board as set out in Section 36 of the Health Act 2004**

### **3. Annual Financial Statements**

An outline of the position on the Annual Financial Statements was provided by CFO and the Board were briefed on the requirement for the adoption of the Annual Financial Statements (AFS) in accordance with the requirements of S36 of the Health Act 2004. S36 of the Health Act requires the AFS to be adopted by the Board on or before the 1st April annually. Once these are adopted and signed by the Chairperson on behalf of the Board they are then submitted to the Minister for Health and to the Comptroller and Auditor General for formal audit.

It was noted that as the AFS are draft and unaudited and the audit is on-going. On the basis that there will be no material changes arising from the audit, the Board were asked to nominate the Chief Executive Officer and the Chairperson of the HSE Board to sign the final audited final financial statements and associated governance documentation on behalf of the HSE.

It was confirmed that the HSE is not aware of any material adjustments but should that arise these financial statements will be brought to a further HSE Board meeting for discussion and approval.

It was noted that due to COVID -19 there may be some concerns with regards to the C&AG being able to finalise and complete work, but work was on going to ensure that this would not be the case.

The Board proceeded with their adoption of the financial statements and related documents on the grounds that they have been recommended by the Audit & Risk Committee and nominated the Chairperson and the CEO to be the signatory on these documents.

**(Decision No: 270320/17)**

#### **4 Approval Contracts & Property Transactions**

The Board considered approvals under its reserved functions based on the comprehensive briefing papers provided in the pack circulated prior to the meeting with members being given an opportunity to ask questions and seek further clarification in relation to the particular transactions.

The Board considered and approved the following property transactions as it was above the €2 million property approval threshold.

Reference No. 1695 - Sub lease – Lombard Street, Dublin 2 **(Decision No: 270320/18)**

The Board considered and approved the following three property transactions as they were under market value:

Ref 1731- Lease Birr Road, Roscrea, Co Tipperary **(Decision No: 270320/19)**

Ref 1769 – Lease Carrig Road, Roscrea, Co. Tipperary **(Decision No: 270320/20)**

Ref 2032- Lease Old Garden, Lisnagry, Limerick **(Decision No: 270320/21)**

#### **5.0 Committees of the Board**

The Chairpersons of the Committees each provided an update on the on-going activities by each Committee.

##### **5.1 Audit and Risk Committee**

- Minutes of Committee meeting 14 February 2020 were noted.

- B Lenihan briefed the Board on the meeting that had taken place on the 13 March and specifically on a paper that was reviewing the HSE's role as a charity and on the DoH/ HSE Model of Engagement.
- B Lenihan also invited the Chairs of the Boards sub-committees to participate in the next ARC meeting where the Committee would be discussing COVID -19 risk with members of the EMT.

## **5.2 Safety and Quality Committee**

The Committee has not met since the update at the February Board meeting therefore no minutes were presented to the Board.

## **5.3 People and Culture Committee**

The Committee has not met since the update at the February Board meeting therefore no minutes were presented to the Board.

T Hynes requested that consideration be given to what staffing levels would look like at the end of the COVID-19 emergency and Chair of the Committee Y Traynor confirmed that the next meeting which was due to be held on Friday 3 April would be a short meeting primarily to discuss recruitment in the first instance.

The CFO confirmed that this is continuously being monitored and that it should be noted that some of the costs occurred are once off costs. Overall gross costs are high however net cost low due to the redeploying of resources.

## **5.4 Performance and Delivery Committee**

The Committee has not met since the update at the February Board meeting therefore no minutes were presented to the Board,

Clarification was also sought from the Board with regards to the development and building of the Children's Hospital. D Sullivan provided an update to the Board noting that due to COVID-19 limited work remains ongoing

## **6 Disabilities Services**

The Chairperson welcomed C Morgan to the meeting. C Morgan provided an overview to the Board on the current disability rates in Ireland noting that the rate of people with disabilities has risen in Ireland over the last number of years with (13.5%) of the population now reporting at least one disability since 2011. The rate of reported disability has risen to 5.9% for those aged 0 -14 year and



9.3% for those aged 15 to 24 years. This has led to an increased demand across all services for children and young people. Over the past nine years, registrations on the National Disability Database (NIDD) has increased to over 2,000 to a current total of 28,275

The key policy framework that guides the HSE approach to Disability Services is “Transforming Lives” which contains six priority strands of activity and associated key areas of reform. These are strategic planning, implementing policy, community inclusion, quality and standards, management and information, governance and accountability

C Morgan proceeded to present to the Board further insight under the headings of;

- Disability policy, reform and legislation
- Services provided and resources committed
- Demography, unmet need and resource planning
- Challenges and opportunities

The Board welcomed the presentation and a detailed discussion was held focusing on the aligning of functions and needs in order to support person-based solutions. It was highlighted that it is key that all aspects needed to be coordinated in an intergraded way linking in with local authorities along with health care support.

The Board also discussed the importance of forward planning as due to the ageing population in Ireland family supports will be reduced over the coming years and planning for that now is extremely important. The Board also discussed the impact and effect of the implementation of the Assisted Decision Making (Capacity) Act 2015 when commenced noting however that the United Nations convention may change this.

B Lenihan confirmed in his capacity as a Board member and a member of the DoH’s Section 38/39 Dialogue Forum under task to take back the key messages discussed for further discussion at the Forum.

The Chairperson thanked C Morgan for the presentation which provided the Board with an initial understanding of the challenging issues to be addressed with in the Disability Sector. Disability Services would be an agenda item in the future

The Chairperson thanked the Board Members, CEO, Secretariat and members of the EMT for their contributions.

**Any other Business**

The next meeting of the Board is scheduled for 24 April at 10:00am. Location tbc

After the Board met in the absence of HSE Executives, the meeting concluded at 3:30 pm.

Signed: Ciarán Devane

**Ciarán Devane**

**Chairperson**

**Date:** 13/05/2020