

**MINUTES OF THE BOARD MEETING OF
HEALTH INFORMATION AND QUALITY AUTHORITY**

**26 February 2018, Teleconference
8.30 am – 9.30 am**

Present:

Name	Details	Initials
Brian McEnery	Chairperson	BMcE
Martin Sisk	Board Member	MS
Judith Foley	Board Member	JF
Stephen O’Flaherty	Board Member	SOF
Paula Kilbane	Board Member	PK

In Attendance:

Phelim Quinn	CEO	PQ
Kathleen Lombard	Board Secretary & Chief Risk Officer	KL
Mary Dunnion	Director of Regulation	MD
Mairin Ryan	Director of HTA and Deputy CEO	MR
Aoife McCann	Senior Legal Advisor	AMcC
Marty Whelan	Head of Communications	MW
Bala Krishna	Chief Information Officer	BK

Apologies:

Barbara O’Neill	Board Member	BON
Molly Buckley	Board Member	MB
Mary Fennessy	Board Member	MF

1. Quorum

The Chairperson thanked the Board members for making themselves available at short notice for the meeting, the purpose of which is to consider developments in recent days relating to request by the Minister for Health for an investigation into the safety, quality and standards for the safe conduct of obstetric and gynaecological surgery outside of core hours and response to major emergencies at the National Maternity Hospital (NMH). The Chairperson welcomed Eddie Evans and Ed Lyons from Beauchamps Solicitors who had provided the legal advice on the matter which was circulated to the Board in advance of the meeting. Aoife McCann, HIQA’s advisor was also in attendance.

KL advised that the meeting was quorate. She conveyed the apologies of Molly Buckley (MB) and Bairbre O'Neill (BON) but advised that BON had provided her views to KL as Board Secretary, on the matter under discussion and had asked KL to communicate these views to the Board.

2. Conflict of Interest

No conflicts of interest were declared.

3. Developments relating to the request by the Minister for a Section 9 Investigation into the safety, quality and standards for safe conduct of obstetric and gynaecological surgery outside of core hours and response to major emergencies at the National Maternity Hospital

The Chairperson updated the Board on recent developments in relation to the request from the Minister to undertake a Section 9 investigation into the NMH. In this context a number of items of correspondence had been circulated to the Board together with legal advice from Beauchamps solicitors dated 23 February 2018 in advance of the meeting. The correspondence related to the NMH's seeking a judicial review in respect of the Minister's decision for HIQA to undertake the investigation. In that context, the NMH has sought assurances that HIQA will not take any further steps in the investigation until the outcome of the High Court hearing on 20th March has emerged.

The Chairperson informed the Board that he had spoken with officials from the DoH (the Chief Medical Officer and the Secretary General) on three occasions since receipt of the legal advice. While the matter had not been discussed directly with the Minister, the Chairperson was advised that the view of the Minister remained unchanged and therefore his initial communication of 3rd November requiring HIQA to undertake the investigation also remains unchanged. The Chairperson stated that the Board should now consider the various items of information before the Board, together with the legal advice provided to HIQA and decide whether HIQA should proceed with the investigation given the exceptional circumstances contained therein.

PQ set out the sequence of correspondence from and on behalf of the three entities involved; the NMH, the DoH and HIQA. As a result of this correspondence, PQ had, in line with his delegated authority given under the scheme of delegation approved for the investigation dated 24 January 2018, sought legal advice. He had also advised the Chairperson of these developments and the Chairperson decided that the Board should meet and decide how to proceed.

EE from Beauchamp solicitors set out the legal advice to the Board.

Key considerations of the Board in relation to this matter included:

- The risks to users of NMH services currently
- The risk of a serious adverse event happening following a decision by HIQA not to proceed

- The question of what discretion HIQA has in undertaking an investigation requested by the Minister.

In response to the points raised, it was clarified that:

- the Executive considers that the reviews carried out by the NMH and subsequently by Dr McKenna were robust and accepted by the NMH with learnings for NMH to implement as a result of those reviews. HIQA's view of maternity services generally and NMH particularly was that no service was without risk. Current intelligence on the NMH would not suggest evidence of systemic failures at the hospital and therefore the investigation should be deferred until the outcome of 20th March hearing.
- It was noted by the Board that a statutory investigation would involve HIQA examining the hospital's systems and methodologies in a way that is more in-depth and comprehensive to its routine monitoring activities and would demonstrate independence of judgement.
- Beauchamps considered that in line with the Minister's letter that HIQA does have discretion in relation to the timing and the conduct of the investigation and therefore has the discretion to defer proceeding with the investigation at this time.

EE and EL of Beauchamp's solicitors left the meeting at this point.

The Chairperson advised that a decision was required of the Board and sought a vote from members. KL advised the Board of the process for Board voting, where a decision is determined by the majority of those members of the Board who are present, with the Chairperson having a second casting vote in the case of an equal division of votes.

KL also advised that BON, although unable to attend the meeting, had conveyed her views. KL relayed these views to the Board.

The Chairperson clarified that during his discussion with the DOH he had been assured that the Minister's views remained the same as those outlined in his initial communication to HIQA in November and should action be taken against HIQA, that the Board were indemnified. He believed that there are two options i.e. for HIQA to proceed with the investigation notwithstanding the potential for injunction, or defer the investigation process until the outcome of the judicial review.

Of the members present, four agreed that HIQA should progress with the investigation and 2 voted against progressing. The Chairperson noted the views conveyed from BON (absent from the meeting). Therefore the decision to proceed with the investigation was carried. It was noted that Beauchamps solicitors will now write to the NMH advising them that the Board had met and it is their decision to proceed with the investigation.

It was recognised by the Board that the function for carrying out this investigation had been delegated to the CEO at the Board meeting of the 24 January. In that

context, it was agreed by the Board that a decision by the Board at this meeting to proceed with the investigation, would effectively rescind that delegation.

4. Future investigations

The Chairperson suggested that given the potential for HIQA to be approached by individuals more frequently in the future to undertake an investigation, that a formal protocol for addressing such requests is developed for Board approval. This will be included on the agenda for the next formal meeting of the Board.

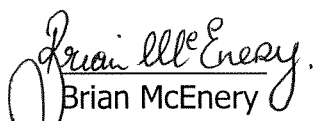
5. Appointment of new Board members


The Chairperson advised the Board that new members had been appointed by the Minister.

6. Any other Business

There was no other business and the meeting was concluded.

Signed


Brian McEnergy
Chairperson


Kathleen Lombard
Board Secretary

Actions arising from the Board meeting on 26th February 2018

No	Action	Person Responsible	Timeframe
1	Include protocol for undertaking investigations on the March Board agenda	KL	March Board meeting