



Minutes of Board Meeting

PHIN 1626 Board Meeting held on 29th September 2016

Board Attendees*

Andrew Vallance-Owen (Chair) [AVO]
Fiona Booth [FB]
Professor Nancy Devlin [ND]
Don Grocott [DG]
Michael Hutchings (MH)
Matt James (CEO) [MJ]
Gerard Panting [GP]
Jayne Scott (JS) (via conference call)
Professor Sir Cyril Chantler [CC]
Natalie-Jane Macdonald [NM]
Professor Sir Norman Williams [NW]

Apologies

John Rudkin, Finance Director & Company Secretary [JR]

Other attendees

Jonathan Finney, Member Services Director [JF]
Di Hendry, Acting Financial Director (DH)
Dr VJ Joshi, Clinical Informatics Director [VJ]
Mona Shah, Office Manager [MS] Minutes

**Note, Board members will be referred to as Attendees, for the purpose of these minutes.*

1. Declaration of Conflicts

There were no declarations of conflicts reported.

2. Minutes from previous board meeting

The Minutes of the previous Board meeting were approved subject to minor edits.

- Under section 4. Finances, first bullet point at the top of page five, add “*FB noted that any rise in fees would risk all the good work done to date by PHIN given that the message to date had been to members that fees would either stay the same or decrease.*”
- The Chair advised Attendees that the Director’s Liability Insurance was in place.

3. CEO update

MJ presented the CEO report and advised Attendees that the CMA's first milestone for the commencement of submission of data by private hospitals had passed. The Scottish Government had requested additional meetings in response and a letter had been received from NHS Lothian, presenting their case to not be included. PHIN was working with the CMA to employ the correct approach in dealing with the Scottish Boards. JS advised that she had been talking to Sheila Scobie (responsible at the CMA for all the devolved nations), who was very keen to help and had recently presented at a CMA meeting. Attendees **agreed** that this relationship needed to be managed carefully as private practice in Scottish hospitals had an impact on their funding streams. Further meetings had also been organised with the Welsh and Irish Boards to discuss engagement by their hospitals.

ACTION MJ to share the NHS Lothian letter with JS.

Governance

Attendees noted that the Members meeting following the July Board was well attended and good discussions took place on the main issues. Representatives from the Insurers and FIPO had also attended the meeting. MJ thanked the Board for their support.

Information Governance

MJ advised that following discussions with the CMA, per the paper shared at the July PHIN Board meeting, the CMA had agreed not to force submission of personal data, until PHIN suggested otherwise.

The Chair congratulated the team on achieving successful outcomes from two very difficult audits, ISO 27001 and NHS Digital, and thanked everyone for their hard work. MJ noted that neither audit criticised any of the fundamental data security processes and platforms that PHIN worked with, but rather suggested improvements to documentary evidence of procedures such as Standard Operating procedures (SOPs). PHIN will continue to improve in this area in coming months.

Attendees noted that work was continuing with the submission of our NHS IG Toolkit v14 application, following which a Privacy Impact Notice will be produced, following guidelines from the Information Commissioner's Office (ICO).

Meeting noted that NHS Digital and DAAG were finally engaging in reviewing PHIN's proposed approach to consent. The NHS Digital team had already submitted comments and DAAG were due to review PHIN's application on 04 October 2016. Attendees raised a concern in relation to patients who choose to "opt out" on their consent forms and requested that PHIN makes sure that processes are in place to respect this as it has gone wrong previously in other establishments.

In response to a question from the Board, MJ advised that the extent of PHIN's responsibility for ensuring that Providers have taken adequate steps to ensure that their systems handle data appropriately is covered by the Subscription Agreement. Attendees noted that some of the Providers have been requesting amendments to the Subscription Agreement and in one case, refusing to sign the agreement.

Subscription & Information Sharing Agreement

MJ gave the Board background to this issue and presented two requests for change raised by Spire Healthcare which, in his view, required Board consideration as they related directly to Board reserved powers.

The Board noted that Members had been consulted on and had participated in the drafting of the Subscription Agreement between November 2015 and April 2016. PHIN had adopted the Agreement as agreed in that process which has since been signed by over 45 organisations. In August four member organisations, all of which had been involved in the original drafting, requested a meeting and submitted a number of further requested changes. PHIN agreed with the revisions and amendments these were incorporated into a revised Agreement made available to those members for signing. Three had accepted that version.

Spire Healthcare has continued to refuse to sign the amended Agreement and raised three further change requests on 24 August (7 days before the CMA's deadline for data submission). MJ noted that Spire Healthcare had in practice proceeded to submit data from 31 August, without the protections afforded by the Agreement. PHIN had subsequently accepted one of the change requests leaving the two below.

The Board **agreed** that it did not want any exceptions to the standard Subscription Agreement for Members and all Subscription Agreement **must** (wherever possible) be the same. MJ said that PHIN would seek advice on how to bring the three extant versions of the Agreement together.

Spire Healthcare's remaining change requests were:

1. *That PHIN should commit to applying any revenue raised from the licensing of data to third parties (per Article 24.3 of the Order) to the reduction of subscription fees.*

The Board discussed this matter at length.

The Board felt very strongly that it had been appointed to ensure that PHIN is managed appropriately and should be allowed to continue independently to oversee the business. It was noted that PHIN is a "not-for-profit" organisation and has always maintained that subscription fees will be kept under review and that the Board had a fundamental responsibility to set a budget that meets the needs of the business. If the Board was considering developing processes and guidelines to initiate any commercial activity, then members would be involved. It would not be helpful to create different classes of income subject to specific restrictions, which was the natural consequence of Spire's requested change.

Board **agreed** that it should not give away its right to decision making and also **agreed** that the appropriate action would be to respond by letter to the points raised by Spire Healthcare.

FB requested clarification of how PHIN proposed to interpret the phrase “with the agreement of its members” per s24.3 of the Order in relation to the potential licensing of PHIN’s database to 3rd parties. MJ noted that this could be interpreted alternatively requiring approval of *all* members (subscribers), of a representative group through consultation, or of voting Members (per PHIN’s wider governance under Company Law). MJ noted that any matter made subject to approval by all members (subscribers) through the Subscription Agreement would effectively create a veto for each of 200 organisations, since it would be practically impossible to apply different rules for different organisations. This would be wholly unmanageable. As such, PHIN has chosen to use the more restrictive interpretations, focusing on voting Members or consultation of a representative group as appropriate.

FB suggested that as the clause related to commercial activity was simply an interpretation of the Order, in the absence of which such interpretation could be deferred until it was needed, that it might be better removed altogether; Board **agreed** to remove the clause from the Subscription Agreement.

ACTION MJ to check with the lawyers to ensure that there are no issues with removing the commercial clause.

The second issue raised by Spire Healthcare was;

2. *That PHIN should give providers a right to audit its accounts annually for ‘reasonableness’ with regard to the requirement on hospital operators at Article 21.4 of the Order: “to cover the reasonable costs of the information organisation in processing this information”.*

FB asked that the PHIN Board recognise that members have all incurred substantial costs in implementing the CMA requirements. In particular, the main funders feel they have little say in or control over whether PHIN is run efficiently and any increase in fees should not only be justified to the PHIN Board but also to the funders of the organisation.

MJ noted that any contractual right given in the Subscription Agreement would again apply to 200 members and would in practice be impossible to administer. MJ tabled an alternative proposal for implementing the essence of Spire’s request by allowing voting Members at each AGM to nominate representatives to engage with PHIN during the preparation of annual budgets and formally raise any concerns.

The Board discussed this matter at length.

The Board felt that the members, especially voting Members, already enjoy significant opportunities for insight into and influence over PHIN’s finances. Existent checks and balances include:

- i. PHIN undergoes a full external audit each year principally to provide reassurance to members since PHIN falls below the size at which this is a requirement.
- ii. PHIN’s annual accounts are discussed at the AGM and published.
- iii. PHIN’s Board is accountable to its voting Members at that AGM.

- iv. PHIN has each year called an additional meeting for members in July to outline strategy and budget for the coming 12 months and to enable questions or issues to be raised and addressed prior to the AGM in October or November. (MJ noted that whilst fees had been discussed at the meetings in 2014 and 2015, disclosure on the planned increase to fees at the meeting of July 2016 had passed without comment.)
- v. FB is the hospitals' appointed representative on the Board and chairs the Remuneration Committee.
- vi. An Audit & Risk Committee is now in place.
- vii. MJ attends AIHO Board whenever invited and is happy to discuss budget and other issues.
- viii. PHIN engages with a senior representative group of members through the Implementation Forum on a monthly basis and financials are discussed when required.
- ix. PHIN has historically responded openly to requests from members for further insight into costs, budgets and fees.

The Board noted members' concerns but felt that any perceived lack of oversight possibly derived more from lack of understanding of and engagement with existing governance processes by members than from lack of opportunity.

The Board **agreed** that it would be inappropriate to grant any right of audit through the Subscription Agreement and **rejected** MJ's alternative proposal as excessively intrusive. The Board did however, suggest that a professional 3rd party audit on the issue of reasonableness might be acceptable if it were workable. MJ suggested that this could probably be incorporated into the brief for the existing auditors, noting that there would be little value in two separate external audits to reassure members.

The Board additionally **agreed** that the Chairman should write to Members to clarify PHIN's position on this issue. This should emphasise the importance of members ensuring that the right people attend meetings such as IF and AGM so that they take the existing opportunities to gain reassurance and information. Additionally, the letter should note that PHIN is responsible to the law and convey that the PHIN Board is doing its best to comply with the law. The checks and balances in place for the Board to approve the annual budget should also be stated.

ACTION AVO/FB/MJ to draft a letter to Members.

ACTION MJ/DH to discuss extending the brief to Auditors to encompass 'reasonableness'.

People

The Board received an update from MJ on the current position regarding the continued absence of the Finance Director. The Board noted that an employee assistance service had been engaged in addition to the medically-led Occupational Health Service.

Attendees also noted the recruitment plan to bring PHIN website development in-house.

Member Engagement

Attendees noted that the IF meeting was held on 13 September and the AIHO Board scheduled for 26 September was cancelled due to a fire alarm.

Compliance Reporting

MJ advised that PHIN was now reporting on “Compliance” and not “readiness”, following the 01 September milestone. The process of gathering and reporting data had been more complicated than originally anticipated.

PHIN shared a list of providers, highlighting their stage of compliance, with the CMA and the CMA drafted letters, with support from PHIN, which have been included in the Board papers. The CMA issued 122 letters to non-compliant private hospital operators in England and Scotland, Ireland and Wales. In response to the CMA letters to the units who have not submitted data, 20 of the 50 non-engaged group have now contacted PHIN. The Board further discussed consultant data and compliance reporting and noted that PHIN will report names to the CMA and it will be the CMA that will write to the hospitals.

MJ advised that in terms of the publishing requirements for April 2017, the hospital data will be mixed as data quality being submitted was very poor and many establishments have not yet submitted anything. Views of consultants within the data submitted by hospitals was by extension also poor. Attendees **agreed** that PHIN should focus on hospitals data first to ensure that it is correct and of good quality and then address the consultant data issue.

Website Development

MJ thanked JF for ensuring that the new website development was complete and could be launched in October. It was anticipated that the data submitted for publication on the website would be for 2015, however, in reality the data quality is poor and hospitals were not focused on launching a website as they are more focused on compliance. MJ advised that it would be more prudent to withhold the launch. DG requested that the message on the front page of the current website should be changed as the message was not appropriate for the ongoing issue.

ACTION JF change the message.

Portal Development

Board noted that Portal v1.2 was due to be launched imminently, comprising minor changes to close the consultant pilot launched in May.

Portal v2.0 is scheduled for release to hospitals and consultants in November, intended to introduce 2016 private data, NHS HES data, and new analysis of that data. PHIN has significantly improved product orientation, release documentation and approval processes.

Article 22: Consultant Fees

Board noted that, following the conclusion of a long-running appeals process, the CMA was now able to bring into force Article 22 of the Order concerning publication of consultants' fees. The CMA was expected to launch a consultation on the process imminently, proposing a timetable for implementation.

MJ advised that publishing fees will be far more complex than is commonly imagined and Attendees noted the briefing papers, circulated for reference, provided by PHIN to the CMA. MJ informed the Board that he had engaged Mark Bassett as a consultant to support the early stages of the process.

4. Finances

MJ presented the Finance update and responded to queries raised by Attendees.

DH presented the draft Profit & Loss statement and the Balance Sheet and highlighted specific categories for Attendees to note. Board also noted that the year-end audit was scheduled to start on 03 October.

DH advised that the "Bad Debt" provision related to unpaid subscription invoices from the period April – July 2016, at the end of PHIN's financial year. DH and MJ explained that this had been treated in the same way as income risk in the budget for 2016-17 and was consistent. This forecast bad debt was based on prudent assumptions but had a major impact on the forward budget, driving the proposed increase in fees.

Attendees suggested that a debt-recovery approach be considered in preference to a forecast bad debt, looking at the cost of active pursuit of unpaid invoices, relying on the powers made available under the Order.

ND asked whether PHIN's operating costs could be benchmarked and MJ advised that the closest establishment to PHIN was the National Joint Registry (NJR), who charged £12 per record (per joint), having brought that down from £25 over a 15-year period. The Board noted that although PHIN's current £3.12 and proposed £3.65 were very favourable by comparison, members were understandably unhappy with the proposed increase.

JS suggested to leave the in depth discussion to the Audit & Risk (A&R) Committee as it was responsible for reviewing the finances in detail.

ACTION – Board agreed to delegate to A&R committee.

In response to a question, MJ explained that the migration of the business banking to Lloyds had been suspended after consideration of issues related to changing bank details with all the providers, specifically the NHS PPU's. Board **agreed** with this decision.

MJ presented the budget, detailing the income and difficulty experienced in obtaining the subscription fees from NHS PPU's. The proposed increase in subscription fees was £3.65 per case (up from £3.12). Attendees commented that this increase of 17% will need to be conveyed positively to Members.

JS informed the Board that MJ has undertaken a robust process to arrive at this figure and it could be said that the initial assumptions made about reducing the subscriptions costs were not prudent as unforeseen costs continue to come on board.

FB advised that further detailed information needed to go to members regarding the expected new cost base and a request that members ensure that they get the right people to PHIN meetings so they can take the opportunity to question PHIN directly.

Board advised that the letter should show the PHIN fees comparison with the NMJ charges to demonstrate value for money and a positive message about progress made so far.

DG left the meeting at this point.

Board agreed and approved the subscription fees increase to £3.65.

MJ added that bearing in mind this is a new process, PHIN has obligations to publish data and manage an efficient business but, Members also needed to comply to the CMA order and submit good quality data. To date PHIN has had to put in considerable effort to support and ensure that organisations submit good quality data.

5. Matters arising for discussion

MJ advised that Chandos House had been secured for 24 November 2016, for the AGM and the Chair requested that all Attendees make arrangements to enable them to attend this meeting.

ACTION MJ to draft a letter for Members that addresses all the issues raised and discussed at this meeting.

Attendees were advised that JF started to draft the Annual Report and a report on progress was required per the CMA order.

6. Additional Documents

Following on from the verbal update given at the July Board meeting, a draft version of the Audit & Risk Committee Minutes 28 July 2016 was circulated in advance of this meeting; Attendees noted the minutes and no further questions were raised.

MJ informed Attendees that the next meeting of the A&R Committee was scheduled for 20th October and the Risk Register will be reviewed.

ACTION MS to add the Risk Report to the November Board meeting agenda.

7. AOB

ACTION MS to arrange the “Consultant seminar” for Board members following the January 2017 meeting.

No other AOB's items raised

8. Dates for Future Meetings

Thursday 24 November 10.30am-1pm; 1pm-4pm (AGM/Members' Meeting)

- Proposed meeting dates for 2017

Thursday 26 January 10.30am-12.30pm (Audit & Risk Comm 9.00am-10.30 am)

Thursday 30 March 10.30am-12.30pm

Thursday 25 May 10.30am-12.30pm

Thursday 27 July 10.30am-12.30pm (Audit & Risk Comm 9.00am-10.30 am)

Thursday 28 September 10.30am-12.30pm

Thursday 30 November 10.30am-12.30pm

AGM/Members' Meeting & RemCom – Dates to be confirmed