

Minutes of Board Meeting

PHIN 1711 Board Meeting held on 7th April 2017

Board Attendees*

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

Apologies

None received

Other attendees

Jonathan Finney, Member Services Director [JF]
Dr VJ Joshi, Clinical Informatics Director [VJ]
Geoff Green, Finance Director [GG]
Mona Shah, Office Manager [MS] Minutes

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

AVO welcomed the Attendees to the meeting.

1. Request for declarations of Conflicts of Interest

Attendees noted the following declarations;

- AVO continues as Senior Independent Director at The Royal Brompton & Harefield NHS FT
- NW continues as a NED on the Board St Georges NHS Trust
- NJM continues as NED on the Board of Nuffield Health

“Director’s conflicts” was an agenda item and Attendees deferred their discussion until later in the meeting.

2. Approval of Minutes from Board Meeting held on 26th January 2017

Referring to the notes of the workshop session held in the afternoon on 26th January 2017, DG requested clarification for the status of the notes from the workshop and suggested that main issues and actions relating to the Board should be included in the published minutes. Attendees discussed further and **agreed** that a reference to the workshop should be made in the main Board minutes and to add the agreed actions as an appendix to the minutes.

ACTION MS to list the action points from the workshop and add as appendix to the main Board minutes and add the NED contract paragraph to the main minutes.

MJ advised the Board that he was still reviewing the draft NEDs contract and in doing so, had realised that there may be points in PHIN's Articles of Association that may also need to be discussed further and would submit the draft contract to the May Board meeting.

ACTION MJ to submit the draft NED Contract of Services to the May Board meeting.

3. Chief Executive's report

MJ presented the report circulated in advance of the meeting and taking the report as read, MJ highlighted key points and issues.

Board noted that in line with the CMA's specified publication date of 30th April 2017, the official website launch will be on Wednesday 03 May 2017, taking in account the May Bank Holiday. The website has been stable since January 2017 and hospitals have had the opportunity to check their data via the pre-launch portal. Appropriate communications have taken place with hospitals to ensure that as many hospitals as possible are included on the website. It is expected that data for c.250 out of the 511 hospitals will be on website.

FB commented that the linkage between Portal access and organisations not returning their Subscription agreement, signed, may be an issue for some organisations. Attendees suggested to MJ that a discussion with Dr Kathy McLean, Executive Medical Director at NHS Improvement, may help with this issue for NHS Trusts. **ACTION CC to contact Dr Kathy McLean.**

MJ had met with Secretary of State's Special Adviser, who did not have prior knowledge of PHIN, to give an overview of aims and objectives and how that could be of assistance to the NHS and policymakers. They also discussed consent models and Caldicott requirements. Board raised and discussed a number of Department of Health developments, along the lines of PHIN's remit, which could impact on NHS Trusts' support of PHIN.

MJ reported that the CMA had been focused on the requirements for delivery of Article 22 and the amendment to the Order had yet to be finalised. A number of issues have been raised by PHIN during the consultation period and further discussions had taken place. Progress on enforcement actions against non-complaint organisations remains an issue with the CMA. Meeting noted that as a

matter of law, we know of no reason why the CMA cannot take action against individual Providers; Attendees wholly supported this and asked the CMA to consider. **ACTION MJ to speak to the CMA**

Board noted that NHS Digital had **agreed** the consent form wording and process, which was also acceptable for PHIN. This will be shared with Members and they will be asked to implement the wording and process. MJ voiced concerns relating to the practical viability of multiple consent forms being given to patients for the same episode of care, each of which denies the existence of the others; this has the potential to confuse patients, but for now PHIN must follow NHS Digital's specified requirements. Strategically PHIN should take an interest and champion the patients' right for information privacy. AVO added that he had met with Noel Gordon, NED on NHS England Board, and he was very interested in PHIN. MJ added that it was important to continue to pursue relationships with NHS Digital's Senior Executive to ensure continuous dialogue and improvement.

ACTION MJ to arrange a follow up meeting with Noel Gordon via AVO.

Board noted that following long-standing involvement with work on the regulation of cosmetic surgery including on the Breast Implant Registry Steering Group, PHIN's representatives (AVO and VJ) had sufficiently serious concerns about the BIR approach, specifically in relation to consent, that they felt we should consider withdrawal of PHIN's support and formal escalation of concerns. It was noted that leading surgeons share similar views. MJ suggested that he would attempt to raise these concerns again informally with key stakeholders one more time, now that the consent work with NHS Digital had concluded. **Board Supported this course of action.**

ND joined the meeting at this point

Governance

Board was advised by FB that a representative of the Medical Directors from the top five Providers had approached her and voiced concern that PHIN was becoming more of a "comparison site" and PHIN was asking for data that may be outside its remit from the CMA Order; specifically relating to PROMs as the key point of concern. The main issue related to hospitals being required to make additional investment in their infrastructure and funding and could not see the benefit of this data from the patients' perspective.

MJ expressed disappointment that any concerns had been raised to the Board without first being raised with the executive. Board questioned whether PHIN's position was fully defensible in the event of challenges on the point of due process.

MJ reminded Attendees that all members have ample opportunity to input into PHIN's process or raise issues but unfortunately participation has been inconsistent. For example, on PROMs specifically, the five main providers all participated in the six-month consultation and design process in 2014 and formally signed off arrangements in PHIN's Strategic Plan at the AGM in 2015, only thereafter expressing concerns, and then really only from one party (Spire Healthcare). However, no concerns had ever been raised in an actionable fashion, e.g. in writing, or with evidence, despite repeated invitations to do so. PHIN had convened a review process (the Outcome Measures ERG) in

early 2017, but had closed that group after two meetings as no substantial issues or concerns were tabled by the Members; MJ had reported this to the AIHO Board (comprising the CEOs or alternates of the major providers), encouraging participants to raise concerns if they had any; again, nothing was forthcoming at that point. MJ noted that the rather vague concerns now expressed remained unactionable, but noted that he would be happy to speak with the medical directors group or any other stakeholder or member group if approached.

Board **agreed** that the Medical Directors should approach MJ with properly detailed and evidenced objections, and only then a response will be provided. The Board **agreed** to not respond to the message received via FB, and requested that FB ask the Medical Directors to formally approach PHIN through the correct channels.

Attendees also suggested that the CMA should step in and communicate to the Members that PROMS data is not only a requirement but, will in fact do a lot of good to the Members' profiles.

ACTION MJ to discuss informally with the CMA and/ or lawyers

ACTION FB to revert to the Medical Directors.

CC advised that he had spoken to Chris Streather, Chief Medical Officer at HCA International, who was unfortunately leaving HCA to return to the NHS. Chris Streather fully supported PHIN and can see how it will benefit patients and suggested that a clinical member of the PHIN Board could attend the quarterly Medical Directors' dinner to present PHIN's work and progress. Meeting noted that NW was speaking to 120+ Medical Directors in June 2017.

NJM added that it was important to flush out the objections and to reinforce that the Medical Director's role is to ensure that their individual organisations are providing patients with the best care possible, for the benefit of the patients; it was disappointing if the primary concerns of leading medical directors were commercial.

Board also noted that among the group of leading members, few of the Chief Executives who had originally supported PHIN's creation and led the strategic response to the CMA's Investigation remained in post, meaning that several current key stakeholders had no history prior to the CMA's Order making participation mandatory. MJ expressed his intention to meet with senior executives of all major providers before the summer, emphasising the collective strategic vision that underpinned PHIN as a counterpart to the requirement for compliance with the CMA's remedies.

MH left the meeting at this point

4. Reports of sub-committee

RemCom

FB advised the Board that a meeting had taken place earlier that morning and Attendees had discussed remuneration for Chair and Deputy Chair. It was agreed that a review was required and adjusted accordingly; requiring formal benchmarking. The Committee also reviewed the remuneration envelope and had **agreed** to support the recruitment proposals.

5. Finances

a. Finance Report & Management Accounts -December year-to-date

GG presented the finance paper and advised the Board that subscription fee invoicing was now up to date to Q3 for the current financial year and Q4 invoices had been drafted. Revenue was very healthy for the first two months of 2017 and the Q4 draft invoices are showing a value of about £100k more than Q3. Meeting noted that although the Staff expenditure to date was below budget, this will increase in the latter half of this financial year. Both recruitment and marketing costs will increase as SHED has now been appointed as PHIN's PR company. Attendees noted that the draft budget forecast for the next financial year will be reviewed at May Board meeting.

GG advised that the Debtors list had decreased substantially; Aspen Healthcare remains the single largest debtor and MJ advised that he had agreed to give Aspen some more time, acknowledging their strong history of support for PHIN and previously timely payment; Board noted. The Chair thanked GG and MS for their continued effort to pursue the debtors to ensure that PHIN's finances remain up to date. In response to a comment that NHS PUs may be impacted on by the NHS deficit, MJ highlighted to the Board that in our understanding NHS trusts are required to keep accounts for private patient units separate and indeed are required to make a profit to ensure that private care is not cross-subsidised by the NHS, which would contravene both NHS policy and competition law (state aid). As such, it is reasonable for us to assume that NHS Trusts and FTs only provide private healthcare services where they can do so profitably and competitively.

FY17/18 Forecast will include the proposed increase in staff and the increase in expenditure due to SHED being appointed for marketing. Meeting also noted that an increase for legal services provision may also be required to address any challenges to PHIN.

JS advised that once the proposed budget for the next financial year is nearer completion, she will review it with GG, prior to the budget discussion at May Board meeting.

ACTION MS to arrange a conference call for the A & R committee prior to the May Board meeting

6. Matters arising

- a. Venue change from May 2017 meeting – Attendees were reminded that this would be the last Board meeting to be held at PHIN's office; going forward the meetings will take place at an alternative venue. The venue may be at the King's Fund or the Royal Society of Medicine; MS to advise in due course.
- b. Date changes for latter half of year (*to note changes listed below in italics*) – Attendees noted the revised dates, as listed on the agenda and no objections were raised.
- c. Director's Declarations of Conflicts of Interest (Jan meeting)

Referring to NMJ's declaration at the Jan 2017 Board meeting regarding her appointment as an NED on Nuffield Health's Board, NMJ confirmed that she had spoken to the PMI's and they had congratulated her and fully supported her appointment. Attendees noted that AVO, NW and NMJ held NED roles on NHS Hospital Trusts.

MJ presented the paper and advised that it had also been reviewed by AVO and FB. Referring to Article 6 of PHIN's Article of Association, AVO commented that the Board may want to consider whether a change to the Articles is required. MJ added that when the Articles were written, there was no definition between voting and non-voting members and at the time Insurer groups were not members. Attendees noted that the Board has the power to vary the Articles, and does not need to convene a General Meeting of voting Members.

Attendees, referring to Article 6, asked whether NMJ's declaration was a conflict or not, and the Chair commented that it a complex issue, hence the paper. FB commented that it could be perceived as a conflict by the AIHO Board, although the AIHO Board had not objected to Nuffield being effectively represented on PHIN's Board via NMJ when other parties were not so represented.

Attendees further discussed how best to handle conflicts going forward and suggested that Attendees could absent themselves from discussions relating to their Member hospitals. Most Board meetings manage conflicts post declaration on the agenda by asking the conflicted Attendee to step out of the meeting. **Agreed** that a Protocol setting out how conflicts will be handled by the PHIN Board should be drawn up and published on the website for transparency. Attendees **agreed** that it would **not** ask AVO/NW/NMJ to step down but where appropriate, they can step out of the room and absent themselves from specific discussions. Board **agreed** that an amendment may be required to Article 6.

MJ referred to the election and removal of Directors in PHIN's Articles of Association and highlighted that both Board and Members are able to remove Directors. PHIN sets out to work with its Members but at some point, in the process, conflicts will arise. A clear set of rules need to be established that will allow PHIN to fairly deal with any such conflicts.

ACTION Agreed to amend Article 6 and draw up a Protocol to deal with conflicts to revert to the May Board meeting. Action delegated to a sub-committee membership of AVO/MJ/DG/MH.

d. Risk register Review (Jan meeting)

MJ presented the top ten risks with a mitigated score of eight or more. MJ spoke to the paper and Attendees **agreed** to keep the current format and let it evolve over time. Attendees noted that some risks will be static and some will be fully resolved, yet others will be more dynamic. MJ requested that he be able to report any Ad Hoc risks that may not have a high score but, may need to be brought to the Board's attention urgently and Attendees **agreed** to this request.

Board noted that the Risk Register will be reviewed and updated by the Executive Team at the next Information Security Management Team meeting.

Attendees suggested the following two risks be added to the register;

1. Delayed actions by the CMA.
2. Prejudicial actions by larger dominant Member that could impact on PHIN's reputation.

ACTION MS to agenda the Risk Register review by the Board, twice a year.

e. PR & Communications planning (SHED PR)

Phil Sheldon (PS), Sebastian Stokes (SS) and Jonathan Evans (JE) were invited to join the meeting. The Chair welcomed them to the meeting and asked the Attendees to introduce themselves. MJ summarised that following on from the January Board meeting when Attendees had requested support with messaging, communications and PR, SHED had been appointed as PHIN's Marketing & PR company. JE introduced PS and SS from SHED, and advised the Board that two workshops regarding "Comms Messaging" and "Risk Planning" had already taken place with the PHIN team; the Chair and FB had also attended the Risk Planning session. PS gave a brief overview from two workshops and continued to explain how the PR and Marketing will be handled by SHED.

The Board were advised of the key milestones and the agreed actions from April 2017 to September 2018 and noted that SHED will issue written briefs to all key people to ensure that the correct message is collectively shared.

Proactively, everyone was requested to use PHIN's full name "Private Healthcare Information Network" with SHED setting the news agenda for PHIN and targeted communications with each milestone.

Reactively, the Media will set the news agenda; when appropriate key people will be asked to engage, and issue a reactive comment, respond to enquires as appropriate and deflect "PEST" distractions.

SS shared "PHIN Elevator Speech", key messages formulated to be used all the time and DG requested that "making patient first always" should be added as a key message; SHED noted and **agreed** to add to the messages.

NW advised that audience specific key messages shared will help to get people on board, such as patient groups. PS responded that this could be easily addressed as the contacts were available.

Board noted that Risk Planning workshop planned the key risk over the next few months and this will help SHED to plan the comms for the next few months. In response to a question, SS advised that "perceived progress" would be monitored via social media; Twitter will be good as the data develops and better content will be offered via Twitter. In due course, SHED will also work with specific sector related bloggers.

The Board thanked JE, PS and SS for the work to date.

7. AOB

No other agenda items were raised.

Dates for Future Meetings

- Meeting dates for 2017

PHIN Board meeting dates for 2017

Thursday 25 May 10.30am-1.00pm

Thursday 13 July 10.30am-1.00pm, followed by Members meeting 2.30pm – 4.30pm

Thursday 28 September 10.30am-1.00pm

Thursday 16 November 10.30am-1.00pm

Thursday 07 December – AGM -10.30am followed by lunch.

PHIN RemCom meeting dates for 2017

Thursday 25 May 2017 – 9.00am – 10.00am

PHIN Audit & Risk Committee meeting dates for 2017

Wednesday 12 July 2017 – 2.30pm – 4.30pm

Thursday 26 October 2017 – 10.30am-12.30pm