Minutes of the Board Meeting

Location: In person and online meeting via Microsoft Teams

Chair: Andrew Vallance-Owen

PHIN PB2132 Board Meeting held on 22 September 2021

Board Directors*

Andrew Vallance-Owen (Chair) [AVO]
Professor Sir Cyril Chantler [CC]
Don Grocott [DG]
Nina Hingorani-Crain [NHC] online
Michael Hutchings [MH] online
Matt James (CEO) [MJ]
Nigel Mercer [NM]
Jayne Scott [JS]
Professor Sir Norman Williams [NW] online

Apologies

Kay Boycott [KB]
Jonathan Finney, Member Services Director [JF]

Other Attendees

Jon Fistein, Chief Medical Officer [JLF]
Jack Griffin, Finance and Commercial Director [JG]
Jessica Harcourt, Virtual Assistant (Minutes) [JH]
David Minton, Chief Technology Officer [DM]
Mona Shah, Director of People & Process (Company Secretary) [MS]

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

Welcome and introductions (Chair)

The Chair welcomed all attendees to the virtual meeting.

1. Governance

a. **Insurer nomination update**

The Chair had continued to follow up to obtain an Insurer nomination but for unknown reasons had not received a response. AVO planned to meet with several of the Insurers with the intention of increasing their involvement with PHIN.

b. Review & Consideration of the Directors' Register of Interests

The Register of PHIN Board Directors Declarations of Interests from January 2021 had been circulated prior to the meeting.

The Chair noted that he was now the Chair of Cerina.

NW advised that KB was on the Board of Eakin which had recently made an investment into Tsalys, a company to which NW provided consulting services. NW and KB had not identified a conflict of interest and the investment in Tsalys had occurred prior to KB being appointed to the Eakin Board.

JS had been appointed as an External Member of the Audit Committee for the Information Commissioners Office.

All other declarations of interest as recorded to date in the register still applied.

2. Approval of Minutes and Actions

a. Board meeting held on 1 July 2021

The minutes of the Board Meeting held on 1 July 2021 were approved as submitted.

Members Meeting notes

The notes of the Members Meeting held on 21 July 2021 were approved as submitted.

In the interests of transparency, it was **agreed** that the video and notes including the Q & A section of the Members Meeting would be published on PHIN's website.

ACTION: MS to arrange publication of the video and notes of the Q&A section of the Members Meeting

3. Matters Arising

All items had been added to the agenda and there were no additional matters arising from the previous meeting.

4. Finance

a. Finance Report, Management Accounts and Reserves – July YTD

The Board noted key highlights from the report.

JG summarised that the external audit was underway and therefore the year end management accounts position was subject to change. A YTD deficit of £(144)k had been realised and following conversations with the Auditors, this was expected to reduce by c. £30k once accrual calculations and bad debt provisions had been agreed. Aged debt level was the lowest it had been for the year. Some smaller, independent providers had requested more notice regarding fee increases which JG noted could be more readily provided once the Strategic Plan was finalised and there was more certainty over future funding levels. In response to a question, JG clarified that the smaller providers who were raising issues had seen year-on-year fee increases resulting from their increased market share relative to other providers in 2020.

A Director asked a question about PHIN as a going concern and JG confirmed that the Auditor had focused on this due to systemic risks in the economy and the private healthcare sector

from the Covid 19 situation in the prior year. PHIN's debt and cash at year end were in a strong position, invoices were being paid by providers for the current financial year. In addition, there was reduced economic and sector-wide uncertainty compared to the prior year, therefore the auditors were assured over PHIN's ability to continue as a going concern.

AVO commented the reserves were currently at 4.4 months operating expense cover and that the plan was to increase this to 5 months over the course of the next financial year.

5. **Information Governance**

An update was provided in the Executive Report and no additional items were submitted for discussion.

6. Reports of sub-committees

a. Audit & Risk Committee - 29 June 2021

The Board noted the contents of the draft minutes of the Audit & Risk committee.

The most recent meetings of the Strategic Implementation Group and the Customer Committee had been cancelled to enable the attendees to focus on strategic activities.

7. **PHIN Executive Report**

MJ advised that PHIN's new website had seen a new high in user numbers with 18,000 users recorded in August 2021.

The PROMS report was available in draft and once reviewed by the team, would be shared with the Board. MJ intended to have Michael Anderson (London School of Economics) present the report to several stakeholder groups.

MJ advised that a new Head of Insights & Analytics had joined PHIN and that the role had been offered prior to the agreement at the Members Meeting in July to freeze any additional recruitment or new spend. The intention stated in the Strategic Plan was to have 2 senior roles reporting into the Chief Medical Officer (CMO) – one to focus on the portal and internal insight/BI and the other to be focused on future Measures production.

The Data Explorer tool was being used internally in PHIN and was working well. Whilst there had been extensive media interest in the notion that private hospitals were seeing greatly increased self-pay activity, this was not reflected in PHIN's data.

Regarding the Paterson Enquiry, the Task & Finish Group that PHIN were part of had been aiming to have a finalised set of recommendations by October but this would be dependent on timely DHSC input.

The Board discussed sources of support that could be leveraged to help ensure that the recommended solutions were implemented.

MJ updated the Board that the ADAPt pilots were moving forward and additional NHS trusts were participating. Fran Woodard had been promoted and had deputised the ADAPt Co-Chair role to her replacement.

The Chair drew attention to the hospital and consultant engagement tables (see Appendix I) in the standing Executive Report and asked for questions. The Chair referred to the low volume of consultant data coming into PHIN and it was noted that PHIN continued to focus on engaging with high volume consultants.

The Board discussed the recent Members Meeting and the statement made by a Consultant that their data on the PHIN website was incorrect. A Director suggested that the Q & A section should

reflect that a subsequent investigation had shown that the Consultant in question needed to check and approve their data. The Board agreed that the notes and the Q&A section of the Members' Meeting should be published on the PHIN website.

8. PHIN Strategy & Implementation

a. IHPN Partnership Forum

MJ summarised the process that had been followed and the progress that had been made to date with the IHPN Partnership Forum.

At the August 2021 meeting, a concern was expressed regarding the marketing spend in PHIN's Strategic Plan, which MJ noted was in fact minimal. The attendees wished to understand at the next meeting what PHIN had done to contain costs. Some of the Partnership Forum attendees had not fully read the business case submitted to them by PHIN in June 2021.

Several Members had chosen to bring General Counsel to the Partnership Forum meeting in August. PHIN had elected not to do this for financial reasons and in recognition of the fact that it would ultimately be a matter for the Courts to decide in the event of a dispute. The General Counsel kept bringing the discussion back to the question of what was stated in the CMA Order. MJ commented that this view was unhelpful and reductive and noted that if the definition of what was in the CMA Order was taken to mean what was explicitly written, then a lot of activity that was vital would be left out. A more realistic approach was to make a reasonable interpretation of the CMA Order.

At the meetings to date, Members had queried the detail of the Strategic Plan which required PHIN to give detailed answers which had then frustrated the Members.

MJ clarified that the process being followed was not intended to be a negotiation but rather was an opportunity for the Members to interrogate the Strategic Plan and understand the detail.

AVO, JS and KB from the PHIN Board had joined the Partnership Forum meeting on 8 September 2021 for the first time. The Members attended again with General Counsel. Some of the Members had again not read the business case from June in any detail and had not discussed it with their colleagues. The same topics and questions were revisited from earlier meetings.

After the 8 September Forum Meeting, MJ had suggested to Members that they use the meeting on 15 September to discuss PHIN's business plan and submit their issues for the Board to consider at this meeting.

MJ reminded the Board that the original hope had been that the Partnership Forum discussions would have reached a satisfactory conclusion by the end of September enabling the PHIN Board to set the agenda and motions to be put forward at the AGM in December.

The Board discussed that, in law, PHIN was a company of Members and as such PHIN was not an external entity, separate from the Members, whose job it was to deliver the requirements of the Order in isolation. PHIN and its Members had significant obligations under the CMA Order.

b. **To discuss and decide PHIN's negotiation & finalisation approach**

The Chair asked MJ to present his thoughts on the way forward.

MJ noted that there was the option of continuing the discussions with the Partnership Forum, responding to the issues raised to date and then bringing the debate and discussions to a close. MJ did not believe that this approach would succeed.

NHC joined the meeting.

A reset was therefore required and MJ suggested several different approaches for the Board to consider.

The Chair then highlighted some key points from his paper on the promotion of the Strategic Plan. The Chair agreed with much of the assessment made by MJ and commented that he had been surprised by the lack of an integrated approach from Members when he attended the 8 September Partnership Forum meeting.

A reset was required to bring the focus onto outputs and outcomes and what the CMA Order was originally intended to achieve: collecting, processing, and publishing data that would encourage competition in the sector. The whole sector should be focused on delivering the requirements of the CMA Order, especially considering this was already 4 years behind target.

The Chair referenced the potential licencing and syndication of PHIN's data and felt that this would only be feasible once there was more comprehensive consultant coverage in the data.

The Chair believed that PHIN should hold firmly to the overall budget envelope and to the principles of the agreed Strategic Plan. He suggested it could be considered what virement could be undertaken within that budget. One option discussed was if the Members themselves took on more of the work in complying with the Order themselves, and that an SLA or Memoranda of Understanding (MoU) could be useful in that regard. MJ clarified that the budget included the assumption that the Members would be picking up more of the work themselves so this was not an area where budget could be reduced. In fact, if the Members did not pick up more of the work, an increase in budget would be required. The Chair commented that this was then a very important area for clarification with the Members.

The Chair saw delivery of a website and increasing visitor numbers as key to the delivery of the CMA Order. To really influence the market, PHIN needed to dramatically increase the number of users of the website.

The Chair opened the discussion to the Board to determine how to move forward.

MJ clarified that if the budget were to be reduced, it would not be a case of removing items from the current Strategic Plan, rather, it would be determined what could be delivered within any new financial arrangement.

MJ advised that if the budget were reduced; PHIN would not be able to commit to delivering the full scope of the Order within the 5-year time frame.

A Director asked for clarification regarding the references to a MoU and MJ clarified that this had not been put in place yet and the intention would be to clarify roles and responsibilities required by all parties to deliver the CMA Order.

A Director asked for clarification on whether the Forum was an oversight Board or a forum for discussions and the Chair confirmed it was the latter. It was discussed that the CMA Order required PHIN's Members to approve the Strategic Plan yet the definition of Members in the Order was unclear. MJ clarified that the voting members will be asked to approve the Strategic Plan at the AGM.

A Director asked whether there should be a conversation with Members regarding adding a levy onto patient invoices to fund PHIN's work. MJ commented that whilst this was a good idea, it was not within PHIN's remit to impose. It was agreed that it would be a good idea to suggest it to Members.

A Director noted that it was crucial to reach agreement by December 2021 and suggested several options for clarifying the way forward including working closely with the CMA. A clear Board decision on the way forward was required.

MJ commented that PHIN could choose not to publish a second 5-year plan, as it was not obliged to do so and that the only legal responsibility that PHIN had was to share retrospective accounts.

A Director clarified that the obligations under the CMA Order were clear, the primary obligation was on Members to provide the information and the obligation on PHIN was to publish what was supplied. The Director believed that PHIN had gone above and beyond what was required in consulting with Members.

The Board discussed at length alternative options for moving forward, including how PHIN could elicit further support from the CMA and other influential bodies in the government and healthcare sector. The Board also felt strongly that Member representation was urgently needed on the PHIN Board.

The Board explored the merits of phasing the plan differently and MJ felt that this would not materially affect the issues on the table particularly regarding the immediacy of additional funding requirements. A Director pointed out that this would simply mean the same issues would need to be revisited at a later date.

c. Communication & Engagement

A Director commented that the Strategic Plan had the full support of the Board and what was being discussed was how to achieve the support of Members for that plan .

MJ commented that if the suggestion was to stick to the Strategic Plan and continue engaging through dialogue, the experience to date suggested it would be very difficult to achieve the proposed timelines and would generate more frustration. The Chair commented that it would become apparent quickly if this was the case and in the interests of moving forward a new way was needed.

Directors noted that there was a package of things that PHIN could employ going forward and that a step-by-step approach would be unlikely to enable PHIN to reach a firm decision on the Strategic Plan in December.

The Chair felt the MoU idea was particularly important to focus discussions on outcome, output and delivery and that the use of an independent Facilitator should also be discussed with the Partnership Forum.

In summarising the discussions, the Chair commented that it felt that the way forward was to carry on talking with the Forum members, with the discussions being reset. It was important to refocus discussion on outputs and outcomes and that the MoU point was crucial as if Members did not fulfil their part in complying with the CMA Order, there would not be sufficient money in PHIN's budget to deliver the requirements of the Order. The discussions needed to be refocused toward strategy rather than being continually side-tracked by points of detail.

A Director suggested asking the Chief Executive of the CMA to speak at the AGM in December and the Board thought that this was a good idea, if possible. The Board agreed that MJ/MH and JS could approach the CMA to arrange a meeting to discuss the challenges faced by PHIN and possible resolutions.

MJ summarised that whilst it was agreed that a reset was required, the Board had not agreed to change expectations or to make any fundamental changes in approach to date. A Director clarified that the Board would continue to support MJ in the conversations going forward.

A Director commented that it was clear that relationships had become strained with the Partnership Forum and agreed that a reset was needed. The Order could only be achieved in both letter and spirit through far more sophisticated relationship management, stakeholder engagement and in a spirt of genuine collaboration. In addition, a collective view on the Strategic Plan was needed from the Members. The Director concluded that the CMA Order went beyond any individual and was about delivering the right outcome for patients and consumers. As a CMA mandated organisation, there needed to be formality, structure and transparency in all proceedings.

The Chair commented that notes needed to be taken of conversations going forward and that if the conversations were restructured, to consider whether Terms of Reference were required.

The Chair closed the meeting.

Appendix I : Executive Report – Hospital & Consultant Engagement

Hospital and consultants on PHIN's website

Hospitals	Previous report	Current status	Change
Total Private **Hospitals** Identified	642	650	+8
Profile info on website	446	471	+25
Volume and LoS measures	300	263	-37
Patient satisfaction/experience	194	194	0
Infections	254	237	-17
Never events	254	237	-17
PROMs (hips and knees) including variations		254	
PROMs score	125	134	+9
Hospitals yet to submit any data (including newly identified)	94	98	+4

Consultants	Previous report	Current status	Change
Total identified **Consultants** (APC data)	13,147	11,204	-1,943
Profile info on website	6,072	6,449	377
Measures on website	2,613	2,552	-61

Refresh Date: 10 September 2021

Hospitals:

- The figures provided in the table are for the data period April 2020 to March 2021 which includes two waves of Covid. Despite best efforts, we have seen a decline in hospitals published with most measures this quarter.
- The PROMs figure has been calculated using a revised approach and is not comparable with the previous report
- A compliance campaign with the 'medium sized' organisations is being planned with the CMA

Consultants:

- The decline in the number of consultants appearing in our data is consistent with reports that fewer consultants are returning to private practice post-Covid
- While there is an overall decline in consultants published with measures this quarter, we have published 250 more consultants with the new patient feedback measures
- A campaign with the high-volume consultants who are not engaging with PHIN is being planned with the CMA
- Consultant level datasheets have been published on the Portal and will appear on the website early in October

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Data maturity status update

- Status of sites as in accompanying table:
  - Based on published data maturity report.
  - The figures are based on the latest data submitted for the period 01 April 2020 to 31 March 2021.
  - The figures demonstrate a small decline in hospitals submitting data to publish all measures.

	May-18	June-21	September-21	Change from previous update
Total sites	640	642	650	+8
1. Registration complete	540	541	543	+2
2. Data submission commenced	546	546	552	+8
3. Data sufficient to publish volume & length of stay measures	348	342	318	-24
4. Data sufficient to publish site level patient feedback*	247	247	247	0
5. Participating in health outcomes measures	228	224	211	-13
6. Data sufficient to publish raw measures for all adverse events	94	109	100	-9
7. Data sufficient to publish health outcomes measures	128	101	89	-12
8. Data sufficient to publish adjusted measures for all adverse events	68	87	73	-14

Key reports – website fees and prices

Consultants	Previous/Current	Current/Next	Change (±%)
Consultants submitting consultation fees	8,324	8,595	+3%
Consultants submitting procedure fees	6,706	6,966	+3%
Consultants with SP packages info			
Total consultants published with fees	7,177	7,487	+4%

Hospitals	Previous/Current	Current/Next	Change (±%)
Hospitals with SP package prices submitted	0	0	±%
Hospitals approved SP packages approved	0	0	±%
Hospitals with SP packages on website	0	0	±%
Total SP Package prices on website	0	0	±%

Refresh Date: 10 September 2021

Top five specialties for fees	% submitting
Trauma and Orthopaedics	64%
Ophthalmology	59%
ENT	56%
Plastic Surgery	55%
Gastroenterology	55%

- We continue to have no data submitted from hospitals for package prices, but are having productive conversations with Kinvara Clinic and PracticePlus Group to collect the information

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