BOA background briefing for members: PHIN and the CMA's private healthcare market investigation

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This document is intended to provide BOA members with a background to the role and remit of PHIN (Private Healthcare Information Network). We are making this available online, with a number of other documents about PHIN, including new information about the 'Consultant portal' which launched in November 2017. See here for other PHIN/BOA documents.

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Investigations into competition in the UK private healthcare market

In 2011/12, a year-long investigation into the UK private healthcare market by the Office of Fair Trading found a number of features that "individually or in combination, prevented, restricted or distorted competition" and referred the issue to what was the Competition Commission (CC) in 2012. At the time, John Fingleton, chief executive of the OFT, said: "Our provisional findings suggest that private patients in the UK don't have access to easily comparable information on quality and costs and that competition is also restricted by barriers to new private healthcare providers entering and being able to offer private patients greater choice."

The Competition Commission, which became part of the new Competition and Markets Authority (CMA), then undertook a two-year investigation into the private healthcare market, and the final report was published in April 2014. The final report included a package of remedies that included a 'consultant fee information remedy' and a 'hospital and consultant performance information remedy'. Both these remedies required the publication of online information for private patients about performance and cost by a designated 'information organisation'. In December 2014, the

Private Healthcare Information Network (PHIN) was approved by the CMA to take on the role as the information organisation.

Both the 'consultant fee information remedy' and the 'hospital and consultant performance information remedy' affect consultants, and are covered in more detail below.

The full history of the CC and CMA inquiry can be found at: https://www.gov.uk/cma-cases/private-healthcare-market-investigation.

About PHIN

PHIN was originally established in 2012 and initially it was funded and supported on a voluntary basis by a group of private hospital operators comprising the majority of UK private hospitals. However, several changes occurred after it was approved as the Information Organisation, these include:

- All private healthcare providers are required to send PHIN data and fund their work (rather than this working on a voluntary basis); subscriptions are based on a fixed fee for every recorded episode of privately funded care.
- Changes to the structure of the PHIN Board, which now has representatives nominated by the CMA, the Association of the Independent Healthcare Organisations, the private medical insurers and FIPO, and two representatives with "significant experience and expertise in the collection and processing of healthcare performance data". As such, the board members now include Prof Sir Norman Williams, Prof Sir Cyril Chantler and Dr Gerard Panting.
- Membership of PHIN is open not only to private hospitals, but also to private medical insurers and organisations representing patients and medical professionals.

The PHIN website can be found at: https://www.phin.org.uk/#!/about

Hospital and consultant performance information remedy

The full text of this remedy can be found in Appendix 2 of this document.

In principle, this remedy requires hospitals to provide data to PHIN across a range of areas that will be used to publish information at both hospital and consultant level. The metrics to be collected and published include procedure volumes and performance measures (listed in full at para 21.1 in Appendix 2). The remit includes all inpatients episodes but excludes outpatients; it includes privately funded work at NHS PPUs.

Most of the data required by PHIN, both at hospital and consultant level, will be collected and submitted to PHIN by private hospitals. In addition, PHIN intends to republish information from the NJR that is already published via the NJR Surgeon Hospital Feedback site and annual report, which is derived from routine NJR data (the same will happen for other registries in other specialties).

Implementing the hospital and consultant performance information remedy

Since its approval as the Information Organisation, PHIN has been working on the implementation of this remedy.

The first publication of hospital-level information occurred in May 2017. This covered limited metrics; these were the volumes, average length of stay and 'friends and family test' for the different procedures that are performed at each hospital. The amount of information is being expanded over time, to cover the full CMA requirements. The expectation is that most information will be updated for publication quarterly.

You can view the hospital level information at the PHIN website: https://www.phin.org.uk/

Publication of consultant data

The first publication of consultant-level data was originally required by the CMA in April 2017 as for the hospital information. However, this was delayed; May 2018 is now the expected date when the first publication of surgeon-level data will occur.[1]

Matt James, PHIN CEO has previously discussed the role of consultants in checking of data prior to publication:

> "The CMA's Order actually places no direct obligations onto consultants in terms of producing outcomes measures. The duty to ensure that consultant-level performance measures are published falls on hospitals and PHIN. **But it would clearly be wrong to cut consultants out of a process of producing data that is about them and potentially material to their livelihood.** So PHIN has, through consultation with our members and stakeholders, interpreted this role so that all consultants will be asked to check their data and approve it for publication before we publish it. This should be an exercise in communicating the quality and value of private practice, and we want to ensure that every consultant's work is accurately reflected."

In November 2017, PHIN began contacting every consultant working in private practice to ask them to log into their secure online portal and check their data.

BOA discussions with PHIN have clarified that the process of checking data that consultants are asked to undertake will be in advance of the *first* instance of publication, and is not expected to be repeated for every refresh to the published data (which is likely to be quarterly). However, this is still under some discussions, and, for example, it is expected that there will still be a periodic process to re-approve data and/or a mechanism for flagging to consultants where a set of data differs in some significant way from that published previously.

PROMs

PROMs data collection is one area that particularly affects the BOA members, as hip, knee and shoulder replacement procedures are all included in the dataset PHIN is collecting. As from January 2016, hospitals should have been collecting pre- and post-operative PROMs for patients undergoing these procedures. The details for this are as follows:

Procedure	**EQ-5D**	**Specific PROM (required)**
Hip Replacement	Optional	OHS

[1] https://www.phin.org.uk/news/123/news-release-phin-delays-publication-of-consu

Knee Replacement	Optional	OKS	
Shoulder Replacement	Optional	OSS	

Quality and completeness of data submitted to PHIN by private hospitals and units

All hospitals providing private care should have data available on the PHIN website. At the time of writing, however, the number of hospitals appearing on the site was 286, out of a possible total of 517.

Most of the missing hospitals, do not appear because they have not yet submitted sufficient data to allow PHIN to publish their performance measures (these are 'coming soon'). The amount of data PHIN has received from these hospitals could be variable, and in some cases may impact on the quality and completeness of the data available in the consultant portal.

However, in a small number of cases, hospitals have not begun submitting any data. The CMA has now starting formal action against 7 such hospitals[2] that have failed to make sufficient progress in supplying data to PHIN (see press release[3]).

The PHIN site has a searchable map for the status of each hospital (status options are 'on website', 'coming soon' or 'subject to compliance action'): https://www.phin.org.uk/news/141/is-your-local-hospital-on-phins-website. BOA members may wish to check this, to review the status of the hospitals in which they practice. The BOA (and PHIN) are very mindful of potential issues in which individual consultants could be disadvantaged by practicing at hospitals that are not submitting data to PHIN; where such issues occur, we advise members to flag these to PHIN and seek information from that hospital about its progress in submitting data to PHIN.

Consultant fee information remedy

The full text of this CMA remedy can be found in Appendix 1 of this document.

This remedy relates to the publishing of fee information for individual consultants. This remedy went through an appeals process, but this appeal was not successful. This will still be implemented, but on a delayed timescale compared to those originally planned.

The timetable from the CMA for this remedy would require consultants to provide their fee information (both outpatient consultation fees and standard procedure fees, plus standard terms and conditions) to PHIN no later than 31 December 2018. Publication by PHIN of fee information is required to occur by the end of April 2019. The mechanism for submitting fee information to PHIN is an issue that PHIN are currently considering.

This fee remedy also relates to matters other than *publication* of fees, particularly requirements for private patients to be advised of costs through information letters, both prior to outpatient

[2] These are Kettering General Hospital NHS Foundation Trust, Royal Devon and Exeter NHS Foundation Trust, Western Health and Social Care Trust, Northern Health and Social Care Trust, Taunton and Somerset NHS Foundation Trust, Salford Royal NHS Foundation Trust, and Sandwell and Birmingham Hospitals NHS Trust.
[3] https://www.gov.uk/government/news/cma-demands-action-from-hospitals-on-private-healthcare-information

consultations and prior to further tests or treatment. Private hospitals in which consultants work should be able to advise further on these matters in case of any queries.

For more information

- PHIN website: https://www.phin.org.uk/#!/
- CMA website regarding the private healthcare market investigation: https://www.gov.uk/cma-cases/private-healthcare-market-investigation
- PHIN Article 'Checking private doctors' quality', Independent Practitioner Today, March 2016, available at: https://www.phin.org.uk:8443/PHIN_Service/webresources/resources/pdf/RESOURCE_PDF/142.pdf/download
- Contact the private hospital(s) at which you work if you have specific queries that relate to them.

Appendix 1: Extracts from the CMA Final Order relevant to the 'fee information remedy' for private healthcare

Full report available at: https://assets.digital.cabinet-office.gov.uk/media/533af065e5274a5660000023/Private_healthcare_main_report.pdf

Full order available at: https://assets.digital.cabinet-office.gov.uk/media/542c1543e5274a1314000c56/Non-Divestment_Order_amended.pdf

NB: PHIN has been approved by the CMA as the 'information organisation' for the purposes of the Order.

22. Information concerning consultants supplied to the information organisation and to private patients

22.1 Consultants providing private healthcare services shall provide to the information organisation, from a date no later than 1 December 2016, the following information in accordance with a format provided by the information organisation and shall keep such information up to date: (a) outpatient consultation fees, which may be expressed as either a fixed fee or an hourly rate; (b) the standard procedure fee for the 50 types of procedure most frequently undertaken by the consultant; and (c) standard terms and conditions, plus any exclusions or caveats, expressed in a standard form as determined by the information organisation.

22.2 The operator of a private healthcare facility shall, from the date this article 22 is brought into force, and as a condition of permitting a consultant to provide private healthcare services at that facility, require the relevant consultant to supply private patients with information in writing to be provided:

(a) prior to outpatient consultations, in accordance with article 22.3 and article 22.6; and

(b) prior to further tests or treatment, whether surgical, medical or otherwise, in accordance with article 22.4 and article 22.6; and shall provide the consultant with an appropriate template approved by the CMA for these purposes, in standard wording and in a clearly legible font.

22.3 Consultants must supply the following information to a patient prior to an outpatient consultation:

(a) the estimated cost of the outpatient consultation or consultations, which may be expressed as a range, so long as the factors which will determine the actual cost within the range are explained;

(b) details of financial interests of any kind, which the consultant has in the medical facilities and equipment used at the premises;

(c) a list of all insurers which recognise the consultant;

(d) a statement that insured patients should check with their insurer the terms of their policy, with particular reference to the level and type of outpatient cover they have; and

(e) the website address of the information organisation, and a statement in standard wording as agreed with the information organisation indicating that this website will give patients useful information on the quality of performance of hospitals and consultants.

22.4 The following information must be disclosed by a consultant to a patient prior to further tests or treatment:

(a) the reason for the relevant further tests or treatment;

(b) an estimate of the cumulative consultant cost of the treatment pathway which has been recommended. This should either include all consultant fees that will be charged separately from the hospital fee, or should include contact details for any other consultants whose fees are not included in the quote or, where applicable for self-pay patients, the total package price for treatment, where the consultant has agreed this with the operator of the relevant private healthcare facility;

(c) a statement of any services which have not been included in the estimate, such as those resulting from unforeseeable complications. Where alternative treatments are available but the appropriate treatment can only be decided during surgery, the estimate should set out the relevant options and associated fees; and

(d) the website address of the information organisation, and a statement in standard wording as agreed with the information organisation indicating that this website will give patients useful information on the quality of performance of hospitals and consultants.

22.5 For tests or treatment given on the same day as the consultation, the information specified in article 22.4 may be given orally rather than in writing.

22.6 Consultants shall supply patients with information in accordance with article 22.3 at the same time as the outpatient consultation appointment is confirmed with the patient, and other than in case of emergency shall supply patients with information in accordance with article 22.4 either within the two working days following the final (pre-treatment) outpatient consultation or prior to surgery, whichever is sooner.

22.7 The operators of a private healthcare facility shall ask every privately-funded admitted patient to sign a form confirming that the relevant consultant provided the information required by this article, and shall take appropriate action if there is evidence that a consultant has failed to do so. Alternatively, private hospital operators shall take equivalent measures, as approved by the information organisation and its members to monitor and enforce compliance with article 22.

Appendix 2: Extracts from the CMA Final Order relevant to the 'performance information remedy' for private healthcare

Full report available at: https://assets.digital.cabinet-office.gov.uk/media/533af065e5274a5660000023/Private_healthcare_main_report.pdf

Full order available at: https://assets.digital.cabinet-office.gov.uk/media/542c1543e5274a1314000c56/Non-Divestment_Order_amended.pdf

NB: PHIN has been approved by the CMA as the 'information organisation' for the purposes of the Order.

21. Information concerning performance

21.1 Every operator of a private healthcare facility shall, subject to article 21.3 and article 21.5, supply the information organisation, quarterly from a date no later than 1 September 2016, with information as regards every patient episode of all private patients treated at that facility, and data which is sufficiently detailed and complete to enable the information organisation to publish the following types of performance measures by procedure at both hospital and consultant level:

(a) volumes of procedures undertaken;

(b) average lengths of stay for each procedure;

(c) infection rates (with separate figures for surgical-acquired and facility-acquired infection rates);

(d) readmission rates;

(e) revision surgery rates;

(f) mortality rates;

(g) unplanned patient transfers (from either the private healthcare facility or PPU to a facility of one of the national health services);

(h) a measure, as agreed by the information organisation and its members, of patient feedback and/or satisfaction;

(i) relevant information, as agreed by the information organisation and its members and, where available, from the clinical registries and audits;

(j) procedure-specific measures of improvement in health outcomes, as agreed by the information organisation and its members to be appropriate; and

(k) frequency of adverse events, as agreed by the information organisation and its members to be appropriate.

21.2 Operators of private healthcare facilities shall, subject to article 21.3, include in the information supplied to the information organisation in accordance with this article:

(a) the General Medical Council reference number of the consultant responsible for each patient episode occurring in the relevant facility;

(b) the National Health Service or equivalent patient identification number or alternative information from which an NHS number may be derived or a pseudonymised equivalent, or, in the case of patients from outside the UK, a suitable equivalent identifier, as determined by the information organisation;

(c) appropriate diagnostic coding, using the International Statistical Classification of Diseases (ICD) or other internationally recognised standard, as determined by the board of the information organisation, including full details of patient co-morbidities, for each episode; and

(d) appropriate procedure coding, using the OPCS Classification of Interventions and Procedures, or other internationally recognised standard, as determined by the board of the information organisation, for each episode.

21.3 Any processing of personal data shall be made in accordance with the Data Protection Act 1998.

21.4 Subject to article 24.3, operators of private healthcare facilities shall pay an amount, calculated by reference to the number of private patients admitted by each relevant private hospital operator in the preceding calendar year, to cover the reasonable costs of the information organisation in processing this information into a format, which enables comparison of the data and is likely to be comprehensible to patients.

21.5 The duty in article 21.1 does not require a private hospital operator to supply the information organisation with information concerning any outpatient activity

[…]

24.6 The information organisation shall publish performance information on its website, as specified by this Order, in stages during the three years following the publication of the report, and shall publish all such information no later than 30 April 2017.