

## Minutes of the meeting

Held on Monday 11<sup>th</sup> July 2019

The Board Room, NWIS Offices, Tŷ Glan-yr-Afon, 21 Cowbridge Road East,  
 Cardiff, CF11 9AD

<b>Members</b>		
<b>Title</b>	<b>Representative</b>	<b>Present</b>
Chair of the Wales Information Governance Board	Patrick Coyle	Yes
Chair of Local Health Board		
Information Commissioners Office	Bethan Bonsall - Senior Policy Officer	Yes
Director of Social Services		
Primary Care Representative	Fraser Campbell - Assistant Medical Director, Primary Care (West), Betsi Cadwaladr University Health Board (BCUHB)	Yes
Pharmacy Representative		
Director of Nursing	Carole Bell - Director of Nursing	Yes (VC)
Policy Lead for Digital Health & Care, Welsh Government		
Welsh Government Official responsible for standards and governance	No representative	Apologies
Caldicott Guardian from the Independent Sector		
Patient / Public Representative	Trevor Davis - Lay member / Bevan Advocate / Patient	Yes
Association of Independent Healthcare Organisations		
Director, RCN Wales	Helen Whyley - Interim Director Royal College of Nursing (RCN) Wales	Apologies
Chair, BMA Council	Philip White - Member British Medical Association (BMA) Welsh Council	Yes

Senior specialist in medical law / Healthcare governance	Vivienne Harpwood - Specialist in Medical Law, Chair Powys Health Board	Yes
<b>Advisors</b>		
Member of the UK Council of Caldicott Guardians		
Medical Director, NWIS	Rhidian Hurle	Apologies
Head of Information Governance, NWIS	Darren Lloyd	Yes
Chair of the Information Governance Management Advisory Group (IGMAG)	Neil Stevens – Vice Chair of IGMAG. Information Governance Manager, Velindre Cancer Centre	Yes
<b>Secretariat</b>		
Lead for Supporting the Information Governance Assurance Framework, NWIS	Andrew Fletcher	Yes
Lead Information Governance Officer, NWIS	Marcus Sandberg	Yes

# 1. Welcome and Apologies

The Chair welcomed all attendees and noted apologies.

Members expressed concern at the number of members in attendance given the roles that were to be included in the Terms of Reference. It was queried whether the meeting was quorate and noted that the Terms of Reference required a minimum of 50% of members being in attendance. The Chair agreed for the meeting to proceed as many of the member roles on the Terms of Reference were not filled and many of the items on the agenda were for information only. It was noted that it was desirable to include absent members in any decisions would need further consideration. The view was expressed that attendance would need to be looked at (See item 5).

# 2. Declarations of Interest

There were no declarations of interest.

# 3. Minutes of the last meeting

The minutes were approved as a true and accurate record of the previous meeting.

# 4. Matters Arising

Members were made aware that there was currently no escalation route into Welsh Government as the people had left. It was noted the governance review within Welsh Government had not been settled.

## 5. WIGB Items of Business

### 5.1 Welsh Information Governance Board (WIGB) Terms of Reference for Approval.

It was noted that members had proposed some further changes to the WIGB Terms of Reference. It was noted some of the member positions were currently not in post and, in light of the numbers in attendance at the meeting in hand, it was queried whether the 50% quorum should apply to the potential membership or the number of people who were currently serving WIGB. It was noted that some members hadn't attended for some time. Vivienne Harpwood indicated she could invite a Chair of a Local Health Board to sit on the Board.

**Action:** Secretariat to clarify whether members who hadn't attended for some time were still able to be active on the Board and to relay to the Chair

**Action:** Vivienne Harpwood to invite Chair of a Local Health Board to sit on the Board.

**Action:** Terms of Reference to be amended in line with comments made by members.

### 5.2 Declaration of Interest form for Approval

Members requested that the Declaration of Interest form be amended to include a section for members to list their principal membership/substantive role of the board.

**Action:** Declaration of Interest form to be amended.

## 6. Nominations for Vice Chair

The Board were informed that, following the email in April 2019, there were no nominations made for Vice Chair. It was clarified that the Vice Chair position would need to be an existing member of the Board and was in place in case there was a need to deputise the Chair on a temporary basis. It was noted that there were outstanding queries with Welsh Government over issues surrounding membership and terms of office and the view was expressed that these should be resolved before nominations are sought.

## 7. NHS Digital Welsh Resident Information Flow

Members were informed that NHS Digital had stopped sending Secondary Use Service (SUS) data for those Welsh patients being treated in England citing concerns that there was no legal basis to provide this. It was noted that there was no affect to the flow of data from Wales to England for England domiciled patients treated in Wales as this legal basis was already accepted.

Members noted that NWIS does not have a legislative footing like NHS Digital in England and all data was provided by approvals made under section 251 of the NHS Act 2006. Members commented that Welsh Government needed legislation in this area and that the Board had expressed this opinion in previous WIGB meetings and to Welsh Government officials present at the Board over the last few years.

Members were made aware that the provision of this information for direct patient care was not an issue and that it is the use of information for secondary purposes that presented the issue.

Members were made aware the Head of Information Governance in NWIS had been in discussions with the Director of Information Governance in NHS Digital to work toward providing assurances that a legal basis for providing this data existed. Members were assured that the data was now being supplied again, however this was conditional on a series of provisions being satisfied. Members were informed that in order to meet these expectations, there was a commitment to ensure there are agreements between NWIS and all the Health Boards in Wales were in place. In addition, there was a requirement that all Health Boards make amendments to their privacy policies to reference the receipt of data relating to the care of patients domiciled in Wales that have been treated in England.

It was noted that an application had been submitted to the Confidentiality Advisory Group (CAG) in order to seek separate Section 251 approval for the flow of Welsh Resident Information from England back into Wales via NHS Digital and NWIS.

It was observed that NHS England can rely on a number of statutory and regulatory provisions, including the Health and Social Care Act 2012 to allow them to use data, however these provisions did not apply to Wales. Members noted that the legal system in Scotland was different and therefore they did not to rely on the same regulatory obligations as defined within the control of the Patient Regulations 2002. It was commented that there is a significantly smaller flow of information between NHS England and NHS Scotland.

## 8. Section 251 IG Working Group

Members were informed that NWIS had been taking the lead on a section 251 IG working group to assist Welsh Government in understanding required legislation to resolve the issues that were being experienced in Wales as a result of not having a more comprehensive solution to setting aside the common law duty of confidence for the use of certain data.

Member noted that in passing legislation / regulation to put Wales on a similar footing to England, this would release Wales from the requirement to obtain CAG support to use data for specific and defined purposes. Mainly those larger set of data that describe patient episodes care.

It was noted Chris Newbrook did some preparatory work to start create new regulation and legislative gateways.

## 9. Information Commissioner's Office (ICO) Update

The Information Commissioner's Office (ICO) provided an update to the Board as follows:

### ICO annual report

Members were made aware that the ICO had published their annual report, which contained evidence that suggested that individuals were becoming more aware of their rights. It was noted that the ICO had received a 66% increase in requests for written and verbal advice and that Data Protection complaints to the ICO had also increased from 21,000 in 2017/18 to just over 41,000 in 2018/19.

Members were informed that a new casework approach was being trialled, which it was hoped would assist the ICO deal with complaints. Where it was evident that the organisation hadn't addressed the

concern appropriately, these complaints were returned back to the organisation (via letter to the Data Protection Officer (DPO) and the Chief Executive). However it was noted this would not be a blanket approach.

It was emphasised that, as with all complaints, individuals (including organisations) have the right to ask for a case review if they are not satisfied with the ICO's decision.

Members noted that the ICO had been using their new powers of inspection and had undertaken their biggest investigation to date into data analytics for political parties. Members were made aware that eleven assessment notices had been issued to enable the ICO to audit certain organisations. Members were also made aware that the ICO have also been using other new powers such as warnings and reprimands.

Members were informed that the ICO's plan for the next year was to assist organisations to move their focus from baseline compliance to a real-evidence demonstration of accountability. This was particularly relevant to the completion of Data Protection Impact Assessments, which remained a key tool for demonstrating accountability.

### **ICO Blog**

Members were informed that the ICO were continuing to develop their framework for auditing Artificial Intelligence and had appointed a Post-Doctoral Research Fellow to assist in developing the ICO's understanding of how Artificial Intelligence/Machine Learning interacted with data protection law. Members noted that the ICO had published a series of blogs focusing on aspects of AI/Machine Learning that impact on Information rights, such as discrimination together with the accuracy of that data known security risks.

### **ICO Guidance**

Members noted that the ICO were due to issue an updated Data Sharing Code of Practice for consultation.

### **ICO fines**

It was noted that British Airways and Marriott International had been issued with notices of the intention to levy substantial fines. It had been proposed that British Airways receive a fine of £183 million and Marriott International a fine of £99 million. Members were made aware that the ICO were keen to stress that both these incidents had a global impact, and both affected large numbers of data subjects and this is why the proposed fines were so substantial. It was further noted that these figures were not necessarily the fines these organisations would receive as organisations are allowed to make representations to the ICO before they make their final decision and that these figures do not represent an intention to fine huge amounts by default.

## **10. Information Governance Management Advisory Group Update**

The Board were provided with a paper outlining the key discussions that took place at the Information Governance Management Advisory Group (IGMAG) meeting that took place on the 6<sup>th</sup> June 2019. Members noted the following:

- **IG Toolkit for GP and Health Boards and Trusts:** IGMAG had commended the work that had been undertaken in establishing an IG toolkit for Health Boards and NHS Trusts. Members noted that this was now 'live' for Health Boards and Trusts to complete by 31<sup>st</sup> December 2019.
- **Breach reporting guidance:** – Members noted that breach reporting guidance was currently in development. The guidance was being produced in collaboration with the ICO and would maintain reporting consistency across Health Boards and Trusts. Members were informed that the final draft of the guidance would be considered by IGMAG and that WIGB approval would subsequently be sought.
- **Patient Knows Best:** Members were made aware that IGMAG were provided with a presentation and demonstration on the patient portal system Patient Knows Best (PKB). Members noted that PKB's DPO attended by conference call to enable him to answer any questions at IGMAG had. It was noted that concerns had been raised about the governance of the system by IGMAG members and it was felt that these concerns should be escalated to WIGB.

It was noted that PKB was not a system that was being fully implemented nationally, and that organisations were implementing PKB on a Health Board by Health Boards basis. Members were informed that IGMAG had observed that different Health Boards were relying on different legal basis for its use. Members were made aware of concerns raised as to how PKB dealt with individual rights. Members noted that other concerns had been aired as to would happen to the patient information when the contract ended. IGMAG had been informed that PKB had stated that they could not delete or return certain data to controller at the end of the contract as they intended to stored the information for at least 8 years to ensure that they could meet their own legal obligations.

Members noted that a further complication was that patients uploaded their information to the system and an organisation had no control over this. It was observed that PKB were both a controller and processor depending on what PKB was being used for. It was noted that whilst PKB are receiving information, they do not write back into other systems.

Whilst PKB has attended WIGB previously, members requested that PKB return to WIGB to explain their governance arrangements. It was suggested that the paper that was provided to WIGB when PKB made their last presentation should be provided to WIGB members in advance, along with a copy of the relevant minutes from the meeting. This would allow enable members to monitor progress since the meeting.

Members commented that there were outstanding concerns that PKB did not align with the My Health Online systems. Members were of the view that there needed to be better alignment between the systems.

Members noted that Helen Thomas from the ICO would raise PKB as a topic of discussion with colleagues in England following IGMAG and will feedback through IGMAG.

**Action:** PKB to be invited to the next meeting.

## 11. Data Protection Officer Function for GMPs - Update

Members were reminded that the Data Protection Officer service for GMPs had been officially launched at the end of 2018 and it had been the intention to undertake an incremental approach to develop the

fully functioning service. Members were reminded that the service is subscription based with the service reliant on GPs signing up and funding the service.

Members were informed that experienced staff in providing NHS Services had been recruited to the service. Its is the intention to utilise the results of the IG Toolkit for GMPs to identify the areas of work that needed to be prioritised. Members noted that over 85% of all GP practices in Wales had subscribed to the Service. It was explained that some of those GMPs that had not signed up were either Health Board managed, had assigned the DPO function to a private company, had appointed an internal DPO or had not appointed a DPO at all.

Members were informed that face-to-face sessions were currently being held to keep subscribers up to date in describing what the service provision would be and to describe the work that has been undertaken to provide the full service in line with the service support schedule. Members noted that the approach of the service at its conception was reactive to the needs of the practices and advisory, but that as the service matures, it was intended that the service would be more proactive in providing additional guidance and supporting documentation. Members were made aware that a webinar had already taken place and that another was scheduled to take place in collaboration with the ICO.

It was noted that the Service had received good feedback to date.

Members noted that areas of particular concern for practices included information sharing as clusters and rights of patients including Subject Access Requests, which were to be the focus of the service in the coming months.

## 12. IG Toolkit Strategy

Members were provided with a paper outlining the proposed IG Toolkit Strategy. It was explained that the strategy would include the ongoing work to deliver a toolkit for pharmacies, dentists and optometrists. Members noted that completion of a toolkit by the various disciplines would provide a consistency of approach across Wales and provide IG assurance to Welsh Government.

It was noted that timescales were to be established. The Board were in favour of the proposals to create an IG Toolkit strategy as this would enable relevant bodies, including WIGB, to measure information compliance.

## 13. WASPI Update

Members were reminded that Version 5 of the Wales Accord on the Sharing of Personal Information (WASPI) framework had been published in 2018.

Members were informed that a short survey had been issued in April 2019 to obtain feedback on the framework. It was noted that the results of the survey had been positive and that despite a lower number of responses than had been hoped for, there were enough responses to give the Management Board broad feedback. Member were informed that particular compliment had been made in respect of the new templates and guidance and how much easier these were to use.

Following a review of the survey findings, the WASPI Management Board had concluded that further minor changes were required to the ISP template, particularly to the legal basis boxes in Section 4. The aim of the changes was to ensure that there was more clarity on how Article 10 (Processing of personal

data relation to criminal convictions and offences) of GDPR and Law Enforcement Purposes under Part 3 of the Data Protection Act 2018 applied.

Members were informed that a strategic plan was being developed with the intention that the WASPI service had a clear strategy for the next 5 years. This would ensure that specified targets were achieved and that the framework maintained continued relevance. The strategy would take into account continued scrutiny, engagement with stakeholders and explore whether WASPI could make better use of technology. Members were assured WASPI would return to WIGB to update them on the progress being made.

## 14. WCCIS Update

Members were informed that the interim Programme Director for the Welsh Community Care Information System (WCCIS) had been looking at reviewing the WCCIS governance structure. It was noted that the current governance structure consisted of an Information Governance Delivery Group (IGDG), which holds monthly meetings to which all Health Boards, Trusts, and Local Authorities were invited. Members were informed that under the proposed governance structure, an Information Governance Advisory Board would be established to undertake most of this work. This Board would consist of subject matter experts and would report to an overarching Information Management Board.

Members were informed that further discussions were being held with the Programme Board to establish how the new Information Governance Advisory Board should be constituted and how National IG risks should be escalated. It was noted that Information Governance Delivery Group meetings would continue to be held where there were substantive items to discuss. It was noted that that the risk and issue register was continuing to be updated.

## 15. NIIAS Update

Members were provided with an update on the developments relating to the National Intelligent Integrated Audit Solution (NIIAS).

Members noted that NIIAS was now connected to a significant number of systems.

Members were informed that work had been undertaken to provide access to the Welsh Clinical Portal to GPs and monitoring the GP access to WCP is a key consideration. Members were informed there were also ongoing operational changes underway that would enable the workflow transfer of NIIAS notifications between organisations to facilitate access to the All Wales instance of Welsh Clinical Portal to organisations such as the Air Ambulance. Changes were also underway to reduce the number of duplicate notifications being produced by the system.

It was noted that nearly five years had passed since the supplier of the system was awarded the contract. Members were reminded that the initial contract was for a term of five years with an optional two year extension. The 2 year extension has now been agreed and therefore NWIS will need to look at creating a new business case in advance of the 2 year extension expiring. This business case will again need to look at the requirements of a proactive audit system. NWIS was asking for WIGB's support which was provided previously when the other business case was constructed.

It was queried whether connection to NIIAS was a pre-requisite for all new systems. It was clarified that whether NIIAS was required was considered as part of the DPIA process and that the requirement was considered with any new national system, which allows for the sharing of information across



organisational boundaries. Members were informed that PKB was not connected to NIIAS as this was not a system that allowed the sharing of information from one Health Board or Trust to another.

## 16. Any other Business

### January 2020 Meeting

It was noted the meeting in December was moved to January 2020 at the request of members. The secretariat were in the process of exploring an appropriate date.

## Annex 1 – Actions from this meeting

*[A summary of the Actions from the present meeting is included below]*

Action Ref	Description	Action	By
5.1.1-07/19	<b>WIGB Terms of Reference</b>	Secretariat to clarify whether members who hadn't attended for some time were still able to be active on the Board and to relay to the Chair	Secretariat
5.1.2-07/19	<b>WIGB Terms of Reference</b>	Vivienne Harpwood to invite Chair of a Local Health Board to sit on the Board	Vivienne Harpwood
5.1.3-07/19	<b>WIGB Terms of Reference</b>	Terms of Reference to be amended in line with comments made by members.	Secretariat
5.2.1-07/19	<b>Declaration of Interest form</b>	Declaration of Interest form to be amended.	Secretariat
10-07/19	<b>Information Governance Management Advisory Group</b>	PKB to be invited to the next meeting	Secretariat

## Annex 2 – Actions from previous meetings

*[Actions from previous meetings which haven't been closed, remain in Annex 2 with a brief description of any progress made. Upon closure, they are copied into Annex 3 as a closed action]*

Action Ref	Description	Action	By	Progress
11-12/18	<b>Our Data Driven Future in Healthcare</b>	Invite authors of report to future WIGB meeting	Secretariat	
14-12/18	<b>Any Other Business</b>	Social Services Representative is needed on the Board– Speak to Welsh Government	Darren Lloyd	
5.1.2-10/18	<b>Updated WIGB Terms of Reference for approval</b>	Chris Newbrook to clarify the requirements relating to the terms of office for WIGB members	Chris Newbrook	Deferred until Welsh Government representative present
5.1.3-10/18	<b>Updated WIGB Terms of Reference for approval</b>	Secretariat to create a draft Declaration of Interest form to for approval at the next meeting	Secretariat	Deferred until Welsh Government representative present
6.1-10/18	<b>Data Protection Officer (DPO)</b>	Welsh Government to raise internally the	Chris Newbrook	Deferred until Welsh Government

Action Ref	Description	Action	By	Progress
	<b>Function for General Medical Practices (GMPs)</b>	concerns of the Board in relation to the lack of DPO support for primary care providers who were not within the scope of the service.		representative present
<b>13.1-10/18</b>	<b>IGMAG Update – Risk Register</b>	Chris Newbrook to discuss the ownership of national IG risks with the Chair of IGMAG outside of meeting	Chris Newbrook	Deferred until Welsh Government representative present

## Annex 3 – Closed Actions

*[These actions are retained on the minutes 'for information' for one meeting following closure]*

Action Ref	Description	Action	By	Progress
<b>5-12/18</b>	<b>Matters Arising</b>	Draft letter for Chair to send to Welsh Government to Request presence of temporary replacement	Secretariat	Closed
<b>6.1-12/18</b>	<b>WIGB Items of Business</b>	Speak to Chair about IGMAG Quorum	Neil Stevens	Closed
<b>6.2-12/18</b>	<b>WIGB Items of Business</b>	Make necessary changes as agreed to the Terms of Reference	Secretariat	Closed
<b>8-12/18</b>	<b>My Health online (MHOL)</b>	Make enquiries to seek information on arrangements in place to ensure MHOL is available via new GP software from new supplier to GP framework contract	Secretariat	Closed
<b>8-12/18</b>	<b>My Health online (MHOL)</b>	Seek clarification from project as to who made recommendation referred to as being made by "NHS Wales"	Secretariat	Closed
<b>16.1.1-10/18</b>	<b>Patient Knows Best</b>	Secretariat to inform PKB that further clarification as to what specialities were to be implemented prior to approval and requesting further details on these proposals.	Secretariat	Closed

Action Ref	Description	Action	By	Progress
16.1.2-10/18	<b>Patient Knows Best</b>	Clarification on the specialities to be implemented to be circulated to members on receipt.	Secretariat	Closed