

Minutes (APPROVED)

NHS NATIONAL SERVICES SCOTLAND (NSS)

B/21/15

MINUTES OF THE NSS AUDIT AND RISK COMMITTEE MEETING HELD ON 02 DECEMBER 2020 COMMENCING AT 1400 HRS

Present: Ms Julie Burgess, Non-Executive Committee (Chair)
Mr John Deffenbaugh, Non-Executive Director
Mrs Kate Dunlop, Non-Executive Director
Mrs Alison Rooney, Non-Executive Director

In Attendance: Mr Martin Bell, Director of Practitioner and Counter Fraud Services [Item 9]
Ms Lisa Blackett, Non-Executive Director
Ms Rachel Brown, External Auditor, Audit Scotland
Mr Lee Dobbing, Service Auditor – KPMG
Ms Inire Evong, External Auditor – Audit Scotland
Mr Gordon Greenhill, Non-Executive Director
Ms Laura Howard, Associate Director - Finance Operations
Professor Arturo Langa, Non-Executive Director
Mrs Carolyn Low, Director of Finance
Mr James Lucas, Internal Auditor - KPMG
Mrs Eilidh McLaughlin, Associate Director of Information Security and Governance [Items 14 & 15]
Mr Deryck Mitchelson, Director of Digital and Security [Items 1 - 12]
Mrs Mary Morgan, Director of Strategy, Performance, and Service Transformation [Items 1 - 4]
Mrs Lynn Morrow, Corporate Affairs and Compliance Manager
Mr Matthew Neilson, Associate Director
Dr Lorna Ramsay, NSS Medical Director and Caldicott Guardian [Items 14 & 15]
Ms Trish Ruddy, NSS Privacy Advisor [Item 15]
Mr Colin Sinclair, NSS Chief Executive
Mr Neil Thomas, Partner - KPMG
Mrs Marion Walker, Risk Manager Lead [Items 11-13]

Apologies None

ACTION

1. WELCOME, APOLOGIES AND IN ATTENDANCE

1.1 Ms Burgess welcomed everyone to the meeting, noting the apologies and those in attendance. Before starting the formal business of the meeting, Ms Burgess asked Members if they had any interests to declare in the context of the Agenda items to be considered. No interests were declared.

2. DRAFT MINUTES OF THE NSS AUDIT AND RISK COMMITTEE [ARC] MEETINGS HELD ON 15 SEPTEMBER 2020 [paper AR/20/53 refers]

2.1 Following a brief discussion, Members approved the minutes of the ARC meeting held on 15 September 2020 as a true and accurate record, subject to the inclusion of Mr Dobbing's clarification of minute 10.1 on the potential qualification of the Service Audit being subject to the control framework not being amended for the areas identified previously as exceptions. **Action: Mrs Bailey L Bailey to update minute 10.1 of 15 September 2020 ARC draft minutes per Mr Dobbing's feedback.**



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Chair: Mr Keith Redpath
Chief Executive: Mr Colin Sinclair

3. MATTERS ARISING [paper AR/20/54 refers]

- 3.1 Members noted the updates provided which showed that that all actions were completed, incorporated into business as usual, or covered by the other items on agenda.

[**SECRETARY'S NOTE:** The following item was brought forward on the agenda to accommodate the availability of Mrs Morgan]

4. COMPLETED INTERNAL AUDIT: PROCUREMENT INVESTIGATION [paper AR/20/59 refers]

- 4.1 Members were taken through the report, which laid out the findings of an internal audit of the management of a specific contract, resulting from allegations in an anonymous letter. Members discussed the use of the emergency planning clause and were assured that the use of extensions to the contract had been within the guidelines. Members noted that the emergency planning needs had initially related to concerns over Brexit, with COVID-19 then taking hold as the initial extension had come to an end. Members noted that there had been prior discussions, with an options appraisal having previously been undertaken, and understood that an extension under emergency provisions was sensible at the time. In response to the issue of the tender not being subject to scrutiny, Members noted that the Central Legal Office had involvement at an earlier stage but not specifically with the tender document in 2013.

- 4.2 Members discussed the issues around pricing. They were advised that the price per pallet had been agreed on an informal basis with Stamford for a period of 6-12 months in respect of Brexit, and Procurement had queried it when the discrepancy was discovered. In respect of any conflicts of interest, the report provided assurance that the relationships which had been referred to had not unduly impacted on the decision making process. Members also briefly discussed the issues with the map, acknowledging the disparity between what had been drawn up and the agreed four-hour response time. However, Members' main concern was now for the individuals who had been the subject of the allegations and investigation. They agreed that while it was assuring that recommendations had been made around areas for improvement (which were already being taken forward), there needed to be absolute clarity that no active wrongdoing had taken place. Mrs Morgan provided an overview of everything that had been done, and the additional work, for presentation to Police Scotland, and how the individuals involved had been supported through it. Ms Browne clarified that Audit Scotland had not investigated but had been involved in collating the information for Police Scotland.

- 4.3 Members agreed that there was real merit in having greater clarity around roles and responsibilities, and noted that work on this had already started before it had been recommended in the report. The other recommendations had been taken on board and been responded to positively. Members agreed that, although they were completely satisfied that everything had been done pragmatically and reasonably at the time, it was difficult to feel entirely assured without seeing the full nature of the original complaint letter. It had been agreed, during an earlier in-camera session, for the letter to be shared in confidence to Members only. Going back to the earlier discussion about the nature of "relationship" in the context of this, Members received clarification that these were professional relationships being referred to and had been found to be appropriate. While the letter had been labelled by the anonymous author as 'whistleblowing' Members were advised that, on consideration by the Board Whistleblowing Champion, it had not met the whistle blowing criteria and was therefore handled as a complaint. Members were happy to accept the Audit Investigation Report, subject to seeing a copy of the complaint letter.

5. INTERNAL AUDIT STATUS REPORT [paper AR/20/55 refers]

- 5.1 Mr Lucas spoke to the paper, which provided a summary of progress against the internal audit plan. Members noted that there had been some reports expected which had unfortunately just missed being ready for this meeting. Mr Lucas highlighted the HR reviews, which were being moved to Quarter 4 of 2020/21. This meant that the plan was now up to 243 days with the additional work and KPMG would be discussing that with Mrs Low and Mrs Morgan. Members were given an overview of the proposed approach for drafting the audit plan for 2021/22, acknowledging the difficulties of planning in the current circumstances. Members expressed concerns about the potential impact on HR of moving the audits into the next quarter and suggested it could be worth considering this at Staff Governance Committee. Some of the other audit reports mentioned staff morale being low so Members felt it was important this was kept at the forefront of the organisation's thinking. Members also noted that there had been a discussion in the recent Board Development Session about looking at what the future NSS workforce would look like, and this work would be critical in informing that. Mr Sinclair advised that the biggest concern at the Chief Executives' Group was tired staff and ensuring that the importance of taking breaks and using leave was not lost. Members were also keen to consider how people could continue to work and lead in a different environment and how to keep staff engaged. Mr Lucas assured Members that there would be plans around the various points they had raised.

6. COMPLETED INTERNAL AUDIT: CLINICAL WASTE [paper AR/20/56 refers]

- 6.1 Members discussed the report, which summarised the findings from the audit of the financial elements of the clinical waste contingency arrangements. Members commended the amazing job done by staff on this. Following some points of clarity regarding the long-term overall interest through contract management, capacity issues and budgeting, Members were content with the approach.

7. EXTERNAL AUDIT UPDATE

- 7.1 Ms Browne spoke to the impact of COVID-19 on the audit plan and gave an overview of the expected timescales for the draft 2020/21 External Audit Plan. Members were advised that the Auditor General had requested a review of PPE and once the scope of this was known, Audit Scotland would liaise with NSS on how to progress it. Members fed back that they would be interested to see if part of the PPE review could involve benchmarking against performance in other countries. Mrs Low strongly advocated that, from a planning perspective, the Finance department's preference would be to revert to the usual reporting timelines as delays this year had a significant impact on Finance staff and similar delays in the coming year could have a disproportionate impact. Members were keen to see the lessons learned from the work previously done being taken forward to help with this, rather than going over old ground. Ms Browne assured them that this would form part of the discussions.

8. SERVICE AUDIT PLAN 2020/21 [paper AR/20/60 refers]

- 8.1 Members were updated on the progress made and on the areas where there was some work still to be done. Members were given assurance that the position had much improved from the previous year. Members were advised that some of the testing might need to be revisited in areas where the control wording had been changed. IT was the one area slightly behind in confirming its control framework. Members discussed the service audit opinion and whether an unqualified opinion was in reach but were advised that it was not possible to predict at this point, although NSS was definitely now in a better place to achieve that. Members asked if there was anything of major concern which could prevent an unqualified opinion. They were advised that there would be an exception noted if there was a control in the control framework which could not

ACTION

be tested, or was not available for the whole year, but, at this point, the wording could be considered to ensure the controls would be auditable.

- 8.2 Members were keen to see every effort made to avoid a qualified opinion again and encouraged all involved to keep the dialogue going and work to legitimately come up with something that worked for both NSS and KPMG. Members suggested that one of the main issues was potentially to do with perceptions of the language and phrasing used (e.g. did a qualified opinion in this context equate to “significant assurance with some improvement opportunities”), and this could be overcome by having a fuller explanation of that to provide more clarity when it was presented to stakeholders. KPMG advised if there was felt to be utility in having that, then they could look into how that could be provided.

9. PCFS SERVICE AUDIT UPDATE [paper AR/20/70 refers]

- 9.1 Mr Bell spoke to his paper updating on progress on the improvement plan developed in response to the 2019/20 Service Audit. Members were pleased to note the huge amount of work done to implement all the recommendations, and the improvement in relationships. Mr Bell advised he would like to take up the offer from Mr Thomas to add some commentary to page 4 of the report to share with stakeholders. Members discussed the comment on morale being low and the many factors to that. They acknowledged it stemmed from a feeling of being judged by a different standard than before, which made it vital to avoid a second qualified opinion.

10. INTERNAL AUDIT ACTIONS REPORT [paper AR/20/61a refers]

- 10.1 Mrs Morrow spoke to her report, which provided an overview of NSS performance against Internal Audit Actions. Members were provided with an overview of the extension requests and were advised that there were no areas of concern. In respect of the Environmental Management Review, Members queried whether the extension timescale was realistic and Mrs Morrow agreed to take that back to the lead SBU. **Action: Timescale for the extension of the Environmental Management Review to be reconsidered and adjusted if necessary.** Members sought and received clarity on the statement about the maturity of the Travel Group. Members were content to approve an extension to this review, subject to assurance that the lead SBU had fully considered and agreed what the appropriate extension time should be and that no further extension would be required.

L Morrow/PCF

11. RISK MANAGEMENT UPDATE [paper AR/20/62 refers]

- 11.1 Mrs Walker took members through the paper, which provided details of all Red risks and any new Amber Reputational risks recorded on the NSS Risk Register as at 31 October 2020. Members noted that there were five red risks (which included two new risks) and 16 amber reputational risks on the risk register. Members were pleased to see that the two new red risks were reflecting the current financial uncertainty. Members briefly discussed the risks relating to Brexit and noted that they needed to be updated. Ms Walker assured Members that she was working with risk champions to get further updates for the upcoming Board meeting.

12. RISK APPETITE [paper AR/20/63 refers]

- 12.1 Mrs Walker assured Members that NSS still had an existing risk appetite in play and there had been no change to each of the appetite levels the proposed update. However, some of the wording had been changed to align better with the strategy etc. Following a brief discussion, Members agreed they were content to recommend this for the Board’s approval.

ACTION**13. BOARD ASSURANCE FRAMEWORK (RISK) [paper AR/20/71 refers]**

- 13.1 Members were taken through the paper, which proposed an assurance framework around NSS's strategic risks that could also provide greater assurance around corporate risks. Members asked whether having this information collated centrally was a requirement or providing a solution to a problem that did not really exist. Members were advised that although a lack of a centralised information point was not a problem, having one would make life easier. It would hopefully provide a way to show some of the value added, as well as link in to internal controls and the benefits of that. Members were supportive and agreed that there was merit in it. They also suggested looking at merging this with the Standing Financial Instructions, which usually provided the assurance framework, and Mrs Low advised that she was content to work to build that in. In principle, Members were committed to this kind of approach and thanked Mrs Walker and all those involved for their work on the paper. **Action: Mr Sinclair was asked to come back with a timetable for this work.**

C Sinclair

[**SECRETARY'S NOTE:** The following two items were brought forward on the agenda to accommodate the availability of Mrs McLaughlin]

14. INFORMATION SECURITY AND GOVERNANCE UPDATE [paper AR/20/66 refers]

- 14.1 Mrs McLaughlin spoke to her paper, which updated on key aspects of information governance and security activity since the previous report in early September 2020. The key highlights were: the Senior Information Risk Owner could be assured that all risks were being managed appropriately; the strategy had been updated following review; COVID-19 work continued and was accelerating; and that the new staff previously mentioned had recently taken up post, and their impact on the red risk would be seen by the next ARC meeting. Members briefly discussed the highlighted issue on unstructured and unclassified data, noting that this had been included for early sight at this stage and a full report would be provided in the next update. Members discussed the two reported information governance breaches, noting the Information Commissioner's Office was not taking these further and NSS was already taking robust action in response to these breaches. Members noted the update on preparations for a potential no adequacy decision regarding GDPR legislation following the EU exit, recognising the decision would be linked to the outcome of the trade talks. Finally, Members discussed the areas which were not yet demonstrating appropriate compliance and received assurances about the work being done to close any compliance gaps.

15. DATA PROTECTION OFFICER'S PRESENTATION ON LEGISLATIVE DUTIES IN RELATION TO REPORTING [paper AR/20/67 refers]

- 15.1 Ms Ruddy spoke to her paper summarising the obligations under the General Data Protection Regulations (GDPR) and the Data Protection Officer's role, as well as updating on NSS's status against the GDPR obligations. Members noted there were some areas where NSS was not yet demonstrating appropriate levels of data protection compliance. However, they were assured that work was ongoing to resolve that. Members thanked Ms Ruddy for her update.

16. FRAUD UPDATE (INCLUDING ACTION PLAN REVIEW)

- 16.1 Ms Howard began by providing an overview of the action plan being updated into a policy [paper **AR/20/69** refers]. Members asked for more clarity on what triple tracking would entail. Members discussed Ms Burgess's role as Counter Fraud Champion and what needed to be put into place to support that. Members commended Ms Howard's work on this and suggested including a reference to whistleblowing in paragraph 3.2. **Action: Ms Howard agreed to speak with**

Ms Howard

Professor Langa to agree the wording of reference to whistleblowing in the policy. Members were content to approve the policy as it stood for the current year but asked for the additions suggested to be included for the following year. Members were then taken through the overall fraud update [paper AR/20/64 refers] which updated on the National Fraud Initiative (NFI) work within NSS, the status of fraud investigations within NSS, key activities, and NSS's fraud awareness training statistics. Members were pleased to note there had been no new fraud cases. Two previously reported cases were open and still under wider investigation. Members were advised that fraud awareness training was being organised and that the Anti-Fraud training was tailored from Counter Fraud Services.

17. NSS FEEDBACK, COMMENTS, COMPLAINTS AND CONCERNS QUARTERLY REPORT [paper AR/20/65 refers]

17.1 Members noted the report, which updated on the decision taken about the alignment of the Head of Equality and Engagement role and the associated reporting and governance arrangements. This meant that quarterly updates on complaints would be integrated into existing reports at the relevant committees (e.g. People Report to Staff Governance for staff complaints, Adverse Events to Clinical Governance for clinical complaints etc.) but the Annual Report would still come to this Committee. Members wished for more clarity around how trends or cross-cutting issues would be picked up.

18. COMMITTEE HIGHLIGHTS REPORT [paper AR/20/68 refers]

18.1 Members agreed the following items for the Committee Highlights Report to the Board:

- The Committee had a robust discussion on internal audit of the procurement investigation and were content to approve the report.
- In respect of Service Audit, the Committee were keen that KPMG work with NSS to either get to a wholly unqualified opinion, or agree how the opinion could be presented to the stakeholders to align more closely with previous language and phrasing used.
- Audit Scotland notified the Committee that the timetable for the audit of final accounts is likely to be delayed again but they would seek to minimise that delay as far as possible.
- The Committee were advised by the Internal and External Audit Teams that, due to the ongoing demands of the COVID-19 response on NSS, the timescales for development of the draft audit plans had needed to be altered. However, they would still be finalised within the normal deadlines.
- The Committee received an overview of the development of a Board Assurance Framework around risk, and looked forward to seeing the proposed approach being taken forward.
- The Committee approved the Fraud Management Policy for 20/21, subject to a minor clarification

19. ANY OTHER BUSINESS

19.1 Members had no other business to raise at this point.

20. DATE OF NEXT MEETING

20.1 Members noted the next meeting was scheduled for Tuesday, 2 March 2021 at 0930hrs.

There being no further formal business the meeting finished at 1704hrs