

Education Scotland Audit and Risk Committee (ARC)

Minutes of meeting held – 6 December 2017 – 10:30

Members:	Linn Phipps	Non-executive Board Member (Chair)
	Moi Ali	Non-executive Board Member
	Kate Dunlop	Non-Executive Board Member (private session only)
	Mike Ewart	Non-executive Board Member
Attendees:	Karen Reid	Interim Chief Executive
	Alan Armstrong	Strategic Director
	Graeme Logan	Strategic Director (until agenda item 6)
	Gillian Howells	Head of Finance and Procurement
	Roz McCracken	Head of Corporate Governance
	Janie McManus	Interim Strategic Director
	Iain Burns	Internal Audit
	Kate Moffat	Internal Audit
	Dave Richardson	Audit Scotland
	Richard Smith	Audit Scotland
	Nina Hyslop	Secretary
Apologies:	Kate Dunlop	Non-executive Board Member (present for the closed session)
	Gayle Gorman	Substantive Chief Executive
	Elizabeth Morrison	Interim Strategic Director
	Stuart Robinson	Assistant Director

Welcome and apologies

1. The first part of the meeting was taken in private with the Interim Chief Executive in attendance. Kate Dunlop had to leave after the private session. Apologies were also noted from Gayle Gorman, Elizabeth Morrison and Stuart Robinson.
2. The Chair requested that item 2 (Minutes of previous Board and action log), and item 7 (Self-evaluation of performance and draft Terms of Reference) be moved to the end of the meeting.

Declarations/Conflicts of interest

3. The Chair invited any new Conflicts/Declarations of Interest from the Board. No new Declarations of Interest were made. In addition, the Head of Governance confirmed that members had responded to the annual exercise, to register, in writing, their Interests.

Items for discussion

Procurement of Services for delivery of the National Improvement Hub

4. The Interim CE advised the Audit and Risk Committee (ARC) that there were issues surrounding the procurement and subsequent delivery of a contract for the National Improvement Hub. Following agreement from the DG Education, Communities and Justice (DG ECJ), the Director of Corporate Services was seconded from the Care Inspectorate to undertake a short focused review. The Interim CE noted that she had

since received a summary briefing on the review and following agreement with DG ECJ she had sought advice from Scottish Government (SG) Finance and Internal Audit.

5. Investigation of the issue had established that the contract had been designed to enable pre-payment for the delivery of services (£466k) from the 2016-17 budget as opposed to being phased in alignment with a schedule of deliverables. The actual delivery of the National Improvement Hub was now significantly later than the initial timescale and the most up-to-date position was that the hub would not be delivered until 22 December 2017.

6. The Interim CE emphasised that there was no suggestion of financial impropriety by the Finance and Procurement team regarding the payment. However, the nature of this pre-payment may be contrary to the Scottish Public Finance Manual and as such there would be an investigation into this specific contract by SG Internal Audit. The Interim CE invited questions from members and attendees.

7. The Chair noted the points made, and advised that this would play into the report from Internal Audit,. A number of questions were raised by members of the Audit Committee regarding the reasons why this had occurred and assurances sought around procurement and contracts more generally.

8. Internal Audit advised that risks had not emerged from the Internal Audit process and review of financial systems. However the focus of internal audit had not been to look at this specific issue and they could not therefore provide robust assurances in financial governance.

9. The Interim CE highlighted that the importance of cultural issues in implementing policy.. The Head of Finance confirmed that payment for goods and services requires the receipt of an invoice and authorisation from the procuring officer before the payment is made.

10. The Chair asked why the decision was made to use funding in this way, and who had ultimately made the decision. It was confirmed that Education Scotland had not sought explicit agreement from SG Finance on this matter.

11. It was agreed that a lessons learned would be necessary, including auditing issues from this process, our strategic financial management of budgets, as well as noting the reputational risk, should services not be delivered by 22 December 2017, as promised.

12. The Interim CE provided this update in the strictest confidence, and this information was not to be shared, at this time, beyond the attendees of this meeting, to allow a deep-dive investigation into the actions which had taken place. Internal Audit will present an initial review at the next Audit and Risk Committee meeting in February.

13. Moi Ali highlighted the failure to follow due process. The Chair proposed that the internal audit plan would require to be updated in due course, following an investigation into this specific issue.

14. Audit Scotland auditors would take advice, but it was noted that the Interim CE may be required to speak with senior officers within Audit Scotland.

Action: Forward the seconded Director of Corporate Services' oversight report to SG Internal Audit by 13 December 2017

Action: Present an internal review at the next Audit and Risk Committee meeting in February – Internal Audit

Internal Audit

15. Iain Burns advised that the planned Annual Inspection Programme Review has been postponed due to strategic changes within the sector. Internal Audit had, instead, undertaken a review of The Scottish Funding Council Enhancement and Scrutiny Activity. The draft report had since been issued with the final report due in February 2018. The planning for the Annual Corporate Governance review was on-going.

16. In relation to the issues identified with the National Improvement Hub, Internal Audit would be looking for evidence about whether this was an isolated issue or a wider systemic or cultural issue. Depending on findings, it might be necessary to carry out retrospective reviews on previous contracts. The substantive Chief Executive would agree the scope of the review, as Accountable Officer.

17. Graeme Logan and Alan Armstrong asked members to note that they were unsighted and therefore not aware of any agreement that had led to the current situation.

Finance report

18. The tabled Finance Report was based on a core budget of £32.5m. The deadline for SDR transfer was 8 December 2017, therefore additional financial transfers would likely take place.

19. There was a discussion about the budget required to support the integration of SCEL into ES. This would be agreed once it was clear what the overall resource requirement would be.

20. There was a discussion about the budget underspend and it was noted that this was partly the result of the Digital inspection and review work being put on hold. The Interim CE briefed members on work which she had undertaken in her role as Chief Executive of the Care Inspectorate for digitisation of their inspection process. From discussions which had taken place, it was clear ES had proceeded directly to developing a bespoke system, without fully scoping out the range of options available, including options for collaboration with other areas of the public sector. DFM and DG ECJ had requested that work stop immediately, and that an options appraisal be undertaken to identify the full scope of the work including a focus on intelligence and data. A further budget appraisal would be necessary to ensure sufficiency of funding for this project. This would require involvement of Digital Transformation Services (DTS) and Office of the Chief Information Officer (OCIO) in SG. The Interim CE noted that from her recent experience the funding aligned to this work in the budget was substantially underprovided. She also noted concern at the approach to procuring this work without undertaking appropriate options appraisals around public sector collaboration; the lack of involvement of DTS and OCIO; lack of analysis of current and future need and infrastructure available; and the lack of agile development approaches.

21. Non-Executive Board Members supported these concerns. The Interim CE confirmed that collaborations of this sort were still fairly new to the SG due to the fast pace of change in this area and that this demonstrated exactly why we could do better working with other areas to share knowledge and expertise.

22. In addition, the Interim CE shared that Audit Scotland and NHS NES have developed a good governance guide, sharing their experience of developing a new business system. The Care Inspectorate had brought in a member of DTS into their organisation to provide assistance in overseeing the governance of this strategic project and to ensure that it met all the necessary tests and thresholds required by OCIO in terms of digital developments .

23. The Interim CE further updated members and attendees about a possible £1m increase to the organisation's underspend, bringing it potentially to £1.9m. This was related to the VAT refunds which would follow settlement of the HMRC case. This matter would require further investigation, and as such was not yet detailed in the Finance Report.

Corporate and Portfolio Board Risk Registers

24. Graeme Logan left the meeting at this point.

25. There was a discussion about the format of the Corporate and Portfolio risk registers. It was not clear from the Portfolio Board (ESPB) guidance tab, whether residual risk scores related to residual risk after all mitigating actions had been taken. Nor was it clear what the difference was between next actions and mitigating actions. In addition, it was noted that following the departure of a number of the Executive Team members, new risk owners needed to be identified for a number of corporate risks. It was further agreed that the inclusion, in the corporate risk register, of the date of the most recent update, would be useful.

26. Ownership of risks would be updated in due course, following a review of the Executive Team member remits.

27. There was a wider discussion about how risk was managed across the organisation with a recognition that the Agency needed to develop and strengthen its approach to risk management. It was further agreed that the failure to manage risk appropriately was as much a cultural issue rather than a process or system issue. Behavioural change was required and where there were no red risks within a programme, this should be challenged.

28. Members and attendees agreed to hold a special ARC meeting to review the strategic risks of the organisation.

29. Non-Executive Board Members raised whether risks identified for the Regional Improvement Collaboratives should be noted on the Agency risk register given that the risk may lie within the local authority.

Action: Issue a Doodle Poll to members for a suitable date to review the strategic risks of the organisation for early 2018 - Nina Hislop

Action: Review the Corporate Risk Register further in advance of the risk meeting and identify, where possible, risk owners for each corporate risk – Roz McCracken

Health, Safety and Sustainability Report (HSSR)

30. There was a discussion about home working and the head of Finance noted that whilst ES didn't currently have specific procedures for homeworking, we were adopting SG procedures.

31. Members asked about progress with the development of a business continuity plan. It was noted that while we had interim plans in place, we continued to work on a longer term plan for individual teams and emergency resource.

32. The Interim CE asked that future reports should include absence reporting to help identify absence trends, and mental health absences due to occupational stress.

Self-evaluation of performance (agenda item 7)

33. The Head of Governance highlighted that it was good practice to have an annual self-evaluation on the performance of the ARC. A questionnaire had been issued last year, following which, some amendments to the processes surrounding ARC had been implemented. The questionnaire this year had been updated to include questions about behaviours and impact. Members were asked to return completed forms to the Head of Governance,

34. In addition, draft Terms of Reference (TOR) for the Committee had been issued with the Committee papers, and the Head of Governance asked that members feedback any comments they may have. The intention was to update the TOR on receipt of feedback and to then table an updated draft for approval at the February meeting.

Action: To return completed self-evaluation forms by 15 January 2018 - All

Action: On receipt of members feedback, update the Terms of Reference for formal approval at the February meeting – Roz McCracken

Any other business

Glow

35. Members were updated on suspicious online activity which had been identified by the Glow team on Thursday 30 November 2017.

36. Following thorough investigation, Education Scotland's Glow team had identified a 'brute-force' automated attack on Glow. It was initially unknown whether Glow had been compromised.

37. The Scottish Government were advised and agreement reached to close Glow from 17:00 on 30 November for further investigation. The Glow team worked through the weekend to investigate and manage the incident. They quickly established that of 300k regular users, 59 accounts had been compromised. The affected users had all been running an earlier version of the software, pre-2013, which did not support recent

software updates. The 59 accounts have since been closed and a message issued through Glow requesting users to update their passwords. Glow has since reopened to all users and the event did not attract any media interest.

38. The attack did not result in a data breach and it was noted that the Cyber Security team in Scottish Government have since called the ES response 'exemplary'.

39. The Interim CE extended her thanks to Alan Armstrong and all the team, who had worked through their public holiday and weekend to manage the risk. To have the Agency's response described as exemplary was due to their efforts. This was supported by the Non-executive Board Members.

40. Mike Ewart asked whether any of the accounts belonged to pupils, and if there were any child protection issues to consider. It was confirmed that while some were indeed pupil accounts, there were no child protection issues in regards to this attack. It was recommended that cyber security be considered as part of the risk session.

Action: To add Cyber security to the Risk session – Roz McCracken

Board meetings

41. Moi Ali noted it had been six months since the last ARC meeting, which was of concern. Momentum was being lost and we should commit to ARC meeting at least four times per annum. The Head of Governance acknowledged this point and confirmed that the Committee will have met four times by the end of the financial year, in light of the session to discuss risk in early 2018.

Action: Dates for Board meetings in 2018-19 to be issued as soon as possible to all – Nina Hislop

Minutes of previous meeting and action log: 6 June 2017

42. The minutes of the meeting held on 6 June 2017 were approved as a true record of the meeting with the exception of:

- Gillian Howells to be recorded as an attendee at Audit and Risk in June 2018

43. All actions from the June meeting of the Audit and Risk Committee have been completed.

Date of Next Meeting

44. Next meeting of the group to held on 28 February 2018, in the Boardroom, Denholm House.

Nina Hyslop (Secretary)
10 December 2017