AUDIT AND RISK COMMITTEE

# Confirmed minutes of the meeting held on 12 May 2021 via Zoom

## Present

Dr Rima Makarem Non-Executive Director (chair until item 10)

Tom Wright Non-Executive Director (chair from item 10)

Dr Mark Chakravarty Non-Executive Director

Alina Lourie Non-Executive Director

Dr Justin Whatling Non-Executive Director

Amanda Gibbon External Member

## In attendance

Professor Gill Leng Chief Executive

Jennifer Howells Director, Finance, Strategy and Transformation

David Coombs Associate Director – Corporate Office

Martin Davison Interim Associate Director - Finance

Barney Wilkinson Associate Director - Procurement

Jane Lynn Head of Financial Accounting

Elaine Repton Corporate Governance & Risk Manager (minutes)

Momotaz Begum Interim Management Accountant (observing)

Kelly Parry Head of Information Governance and Records Management (item 6.4))

Danielle Mason Associate Director – Brand and Marketing (item 10.1)

Kate Moring Project Accountant (items 8.1 and 8.2)

Niki Parker Government Internal Audit Agency (GIAA)

Andrew Jackson National Audit Office (NAO)

Andrew Ferguson National Audit Office (NAO)

Dan Spiller Ernst & Young (EY)

David Wright DHSC, NICE Sponsor Lead

## Welcome and introductions (item 1)

1. In the pre-meeting, the chair introduced the new members of the committee to the internal and external auditors.

## Apologies for absence (item 2)

1. Apologies for absence were received from Elaine Inglesby-Burke and Hassan Rohimun. The chair gave apologies for leaving the meeting at 4.00pm.

## Declaration of interest (item 3.1)

1. The committee noted the interests register. Mark Chakravarty advised that one of his recorded interests had ceased. There were no declarations of interest relevant to this meeting.

## Minutes of the last meeting (item 4.1)

1. The minutes of the meeting held on 20 January 2021 were agreed as a correct record.

## Action Log (item 4.2)

1. The committee reviewed the action log noting the matters which were completed and those still in progress.It was noted that a date for the follow up ‘black swans’ session has not been confirmed. A suggested option was for the Board to have a discussion of potential black swan risks when it next reviews the strategic risks in September. This was agreed.

## RISK MANAGEMENT

### Strategic risks 2021/22 (item 5.1)

1. The committee reviewed the strategic risk register which has been re-focussed to capture the high level internal and external risks to the delivery of the strategy and business plan.
2. Gill Leng highlighted risk 2.2 relating to current capacity to deliver core business outputs and transformational change, as the risk of most concern to the Executive Team (ET) at present.
3. The committee discussed whether there was also a potential risk to productivity and loss of innovation if staff opted to remain home workers rather than returning to the office, and what the longer term impact of this would be for occupation of the new London office. Gill Leng confirmed that staff surveys show that staff feel far more productive working at home, without the need for travel. However, Directors were keen to encourage staff into the office for collaborative working where this is appropriate but were awaiting Government advice on the lifting of travel restrictions.
4. The committee noted that NICE had always had flexible working arrangements pre-COVID, and staff regularly quote this as a benefit of working for NICE. However, Directors were taking a cautious view at present, being mindful of a possible COVID third wave. Jennifer Howells added that a flexible approach has been taken to returning to the office for those staff who wish to from 1 July, but many staff have concerns about travelling. Directors have committed to review the position again in September.
5. The committee discussed the implications of a larger percentage of the workforce becoming permanently home based in the future and therefore a greater need for flexible working arrangements. In addition to the potential risk around collaboration, the committee noted a potential risk of staff who chose to remain predominantly home workers being overlooked for promotion as they become less ‘visible’ compared to those staff who regularly attend the office. Jennifer Howells acknowledged there were equality and inclusion issues to consider in terms of attracting people from different groups, but stated that staff welcome greater flexibility as it also presents greater opportunities for people to apply for roles which they might not have in the past due to reasons such as travel or caring responsibilities. Jennifer confirmed that NICE was looking at different initiatives including collaborating with other health ALBs to learn and share experiences and undertook to add more actions to risk 2.2. to explain the work in progress.

**ACTION: JH**

1. The committee questioned whether there was a need for a separate risk under workforce relating to the cultural change required to achieve the strategic aim of becoming a more dynamic and agile organisation. Gill Leng advised that there was a significant piece of work underway looking at NICE’s organisational design, supported by external consultants, which included cultural change as one of the seven key workstreams, but she would give further thought to whether it should be added as a separate risk.

**ACTION: GL**

1. The committee also queried whether the 3x3 scoring matrix enables sufficient nuance when evaluating risks, and it was noted that the merits of moving to a 5x5 matrix will be considered alongside the findings from the upcoming internal audit on risk management. The committee also highlighted the need to review the risk register to ensure that the further planned actions reduce the current risk levels.

**ACTION: ER**

1. Subject to the above comments and actions, the committee noted the strategic risks.

## INTERNAL AUDIT

### Technology Appraisals (TA)/Highly Specialised Technologies (HST) Charging 2020/21 (item 6.1)

1. Niki Parker presented the internal audit review of TA and HST charging in 2020/21 which received a substantial assurance rating. The committee welcomed the positive report. It was queried how the TA/HST methods and process review might impact charging in the future. Niki advised that the scope of the audit had not considered any impact of the review. Jennifer Howells added that NICE was required to undertake a full review of TA/HST charging this year, following two years of operation, and that the points raised will be considered as part of the review.
2. The committee noted the audit report.

### NICE Connect (item 6.2)

1. The committee noted the internal audit review of the NICE Connect programme which received a substantial assurance rating. It was queried whether the resource requirements to deliver the significant programme of transformation work risked diverting resources from NICE’s core business outputs. Niki advised that the audit had identified that controls to measure and monitor resource requirements had matured. Jennifer Howells advised that all the Connect deliverables had been mapped across to the strategic plan and business plan objectives to ensure they could all be resourced and delivered. Some gaps had been identified which were being addressed at present.
2. It was queried whether NICE had sought external validation of the transformation programme. Jennifer stated that the option of an external review group had been considered but not progressed due to the difficulty engaging external stakeholders during COVID-19.
3. The internal audit report was noted.

### Video conferencing roll out (item 6.3)

1. Niki Parker presented the internal audit review of the rollout of the video telephony tool (Zoom), which had been given a substantial assurance rating. The review had considered the decision to implement Zoom rather than MS Teams, and had reviewed staff training, communication of the roll out and access controls.
2. In response to a query as to whether the Zoom roll out had justified an internal audit review, Gill Leng confirmed that NICE had been challenged on its decision to implement Zoom as a collaboration tool, therefore the independent review gave the Executive Team a level of assurance.
3. The internal audit report was noted.

### Data Security & Protection Toolkit (item 6.4)

1. Niki Parker presented the internal audit review of the Data Security & Protection Toolkit (DSPT), which received a substantial assurance rating. The committee noted that the GIAA had completed similar reviews for other ALBs as it was a requirement of NHS Digital that organisations have an independent assessment of their DSPT submission. The audit review had tested the nationally defined sample of 13 assertions within the toolkit.
2. Kelly Parry joined the meeting and responded to questions about unsupported software and removable media. It was noted that NICE has very little unsupported software and that the risk level associated with it was considered to be low as it was self-contained within the IT network. NICE staff are advised not to use any personal removable media on their NICE issued laptops. The Information Technology policy provides guidance for staff.
3. The internal audit report was noted, and the committee wished Kelly Parry good luck in her new role when she leaves NICE at the end of May.

### Annual report and opinion 2020/21 (item 6.5)

1. Niki Parker presented her annual audit opinion giving a substantial rating for the overall adequacy and effectiveness of the organisation’s risk management, control and governance processes. The committee welcomed the very positive report and recognised the improvements achieved in recent years, partly attributed to the support and contributions of the current committee chair.
2. The chair stated that whilst NICE has robust policies in place, compliance with them was not always consistent, and suggested that this year’s audit plan should test more compliance. Niki agreed that it would be possible to look at this and confirmed that the current internal audit review of risk management was in fact looking at how the risk register is used in decision making and the process for escalating and de-escalating risks, rather than focussing on the policy and procedures.
3. The committee noted the internal audit annual opinion and received GIAA’s External Quality Assessment summary report for clients.

### Draft internal audit plan 2021/22 (item 6.6)

1. Niki Parker presented the draft internal audit plan for 2021/22 and sought approval of the seven planned audits. The committee questioned whether there were sufficient audits planned, specifically as there were important topics on the reserve list, for example the combined IT/Digital function which had been deferred from 2020/21. Niki confirmed that the proposed plan would be sufficient for her to give an audit opinion, however her team would be able to support more audits if required, and it was good practice to review the plan in-year.
2. The committee commented that it would be helpful to have an external view on the combined IT/Digital function ahead of some major pieces of work such as the SharePoint implementation. Jennifer Howells responded stating that she had requested an additional audit this year compared to last year for her own assurance. The reason for deferring the combined IT/DIT function review was the significant organisational design work currently underway which could potentially change how functions are set up in future, therefore the Executive Team had agreed to postpone the audit review until the organisational design work was completed. Jennifer added that there needs to be a balance between the number of audits undertaken to provide assurance and management capacity to support the audit reviews.
3. A suggestion was made to think about using internal audit to give an independent view of areas of concern or major projects upfront in an advisory capacity, such as the combined IT/DIT function and the CHTE methods and process review. It was agreed that this approach might be appropriate for the recruitment audit planned for Q3/4, in order to get an external view before procuring a new recruitment system. Jennifer agreed to re-visit the timing of the recruitment audit.

**ACTION: JH**

1. The committee supported the internal audit plan 2021/22.

## EXTERNAL AUDIT

### NAO audit progress update (item 7.1)

1. Dan Spiller gave a brief update on progress with the year end audit which started on 10 May and will continue for two weeks. No issues had come to light at this early stage, and he confirmed that NICE staff had provided all the information requested. In response to a question from the chair, Dan confirmed that EY’s work on the underlying going concern assessment was finalised and any remaining work would be focussed on the disclosures made by management in the annual report and accounts in relation to going concern. Martin Davison added that the month 9 interim audit had been positive.
2. The external auditor’s verbal update was noted.

### Committee effectiveness review (item 7.2)

1. Andrew Ferguson presented a summary of the committee’s effectiveness review measured against the NAO’s recommended checklist. The report concluded that there had been year on year improvements in the committee’s feedback therefore the recommendations reflected the areas discussed last year around induction for new committee members, communications with the DHSC and assurance mapping.
2. The chair added that she was content that new members were being supported with their induction including being offered an external training course to support them in their role. She advised that there was communication with the DHSC through the ALB chair’s forum and through the attendance of the DHSC sponsor team at committee meetings. In relation to assurance mapping, the committee was satisfied that the Directors had agreed an approach which they would use for assessing areas of concern where they felt it was needed.
3. The new members asked if assurance mapping could be re-visited. Niki Parker advised that GIAA was looking at it in other ALBs and would be willing to share the results later in the year but recommended a proportionate approach. The chair added that the committee had previously concluded that it could become quite an onerous exercise for a limited return, and also supported a proportionate approach.
4. The committee thanked Andrew for facilitating the annual review.

## FINANCE

### Financial accounting performance (item 8.1)

1. Jane Lynn presented the financial accounting performance report at 31 March 2021, confirming that NICE had met all its financial duties, and highlighting key points for the committee’s information. Reference was made to the overdue debt position, specifically amounts outstanding from NHS England (NHSE) relating to the managed access programme. It was noted that NICE was moving from a Memorandum of Understanding to a collaboration agreement with NHSE which it was hoped would speed up future payments.
2. Gill Leng thanked the finance team for their hard work during the year to ensure all NICE’s financial commitments were met during a difficult time working remotely.
3. The report was noted.

### IFRS16 Leases briefing paper (item 8.2)

1. The committee was updated on the progress made in adopting International Financial Reporting Standard (IFRS) 16 Leases which will be effective from 1 April 2022 and apply to NICE’s annual report and accounts for 2022/23. NICE has operating leases but no financial leases. The value of the non-current assets and the corresponding liability was currently estimated to be £21.8m, which will be capitalised, and an offsetting liability will be created, meaning that there will be no overall impact on net assets in the Statement of Financial Position. A register of leases has been created and the committee will receive regular updates at future meetings.
2. The committee noted the briefing paper.

## CONTRACTS

### Annual Waiver analysis 2020/21 (item 9.1)

1. The annual report on contract waivers approved in 2020/21 was reviewed and noted. The committee asked whether there was a control issue as the overall value of all contracts entered into during the year had reduced compared to last year, but the number of waivers had increased. Barney Wilkinson confirmed that the controls were adequate, but there was an element of teams wanting to remain with the same supplier for consistency and reasons of trust. The committee noted that the NICE standing orders and standing financial instructions were being reviewed, which will include consideration of the procurement thresholds.
2. The annual report on contract waivers was noted.

### Waiver report January to April 2021 (item 9.2)

1. The report on contract waivers approved between January and April 2021 was reviewed and noted.

## ANNUAL REPORT AND ACCOUNTS

### Draft annual report and accounts 2020/21 (item 10.1)

1. The committee was invited to provide feedback on the draft annual report and accounts 2020/21. It was agreed that any suggested amendments be emailed to Elaine Repton who will arrange for them to be incorporated.

**ACTION: ALL**

1. It was queried who the Freedom to Speak Up (FTSU) Guardian was at board level. Whilst there was not a specifically nominated FTSU board lead, the committee was advised that the chair of the Audit and Risk Committee was the named individual at board level for staff to raise any concerns regarding whistleblowing and counter fraud, bribery and corruption.

## CORPORATE OFFICE

(The next item was taken after item 9.2 while the chair was still present)

### Audit and risk committee annual report to the Board 2020/21 (item 11.1)

1. The chair introduced the committee’s draft annual report to the board for 2020/21 and sought any comments, questions and suggestions for additions. The committee said the report gave a very reassuring review of its activities.
2. Proposed updated committee terms of reference were attached in an appendix, recommending minor changes to the membership and meeting dates.
3. The report and the amended terms of reference were approved for submission to the May board meeting.

### Breaches of the declarations of interest policy (item 11.2)

1. The committee reviewed the annual report on breaches of the declarations of interest policies. No breaches of the employee and board member policy were identified. One breach of the advisory committee policy was reported in the year which related to a clinical expert giving evidence to a technology appraisal committee. Following an internal investigation, it was concluded that the breach was an accidental oversight and low risk as the expert had not been involved in the committee’s decision making discussions, and the full interests were declared before they gave evidence to the committee. The lessons learned will be taken forward as part of the CHTE process review.
2. The committee noted the report.

### Complaint report 2020/21 (item 11.3)

1. David Coombs presented the annual report on complaints considered under the general complaints policy and procedure in 2020/21. In total four complaints were reviewed and responded to in timescale. Two of the complaints related to the same issue, otherwise there were no other common themes identified.
2. The committee noted the report.

### Counter fraud functional standard – Q4 return (item 11.4)

1. The committee noted the Q4 consolidated data return (CDR) for the Cabinet Office, which was submitted to the DHSC Counter Fraud Unit on 27 April 2021. The return included a loss due to error following a staff salary overpayment made at the end of March which was returned in full by the individual. This will be reported in the Q1 CDR for 2021/22.
2. The committee also noted the supporting action plan, risk assessment and annual compliance checklist which had been updated for internal assurance purposes. An action plan for 2021/22 was proposed.
3. The committee noted the Q4 CDR and approved the action plan for 2021/22.

### Internal audit recommendations (item11.5)

1. Elaine Repton reported good progress in addressing outstanding audit actions with nine having been closed in agreement with Niki Parker.
2. The report was noted.

### Use of the NICE seal (item 11.6)

1. The NICE seal had not been used since the last meeting.

### Committee annual plan 2021 (item 12.1)

1. The committee noted its annual work plan for 2021. The future deep dive risk topics were considered. For September it was agreed to discuss data analytics. Elaine Repton agreed to provide the new members with details of deep dive topics from past meetings and they were asked to think about any issues they would like to cover in a future deep dive risk discussion.

**ACTION: ER**

### Other business

1. There were no further items of business.

## Future meeting dates

1. The committee confirmed its future meetings would take place on:

* 16 June 2021
* 8 September 2021
* 24 November 2021

1. The June meeting will be held at either the Royal College of Physicians or Redman Place, subject to the AV kit having been installed. Elaine Repton agreed to canvas opinions on whether attendees will travel to London or join via Zoom.

**ACTION: ER**

The meeting closed at 4:25pm.