AUDIT AND RISK COMMITTEE

**Unconfirmed minutes of the meeting on 19 January 2023 in meeting room 8,**

**2 Redman Place, London and via Teams**

Present

Alina Lourie Non-Executive Director (chair)

Michael Borowitz Non-Executive Director

Mark Chakravarty Non-Executive Director

Elaine Inglesby-Burke Non-Executive Director (for part)

Justin Whatling Non-Executive Director

Amanda Gibbon External Member

In attendance

Sam Roberts Chief Executive

Boryana Stambolova Interim Director, Finance

Barney Wilkinson Associate Director, Procurement

Ehtisham Ramzan Head of Financial Accounts

Elaine Repton Corporate Governance & Risk Manager (minutes)

Alexia Tonnel Director, Digital, Information & Technology (item 5.6)

Malik Pervez Associate Director, IT Infrastructure (for item 5.6)

Matt Stevenson Senior Applications Manager, DIT (for item 5.6)

Niki Parker Head of Internal Audit, Government Internal Audit Agency

Andrew Jackson Engagement Director, National Audit Office

Andrew Ferguson Engagement Manager, National Audit Office

Stephen Ferris Engagement Director, National Audit Office

Laura Wright Engagement Manager, National Audit Office

Richard Lee Engagement Director, KPMG

David Wright DHSC Sponsor team lead (for part)

## Committee’s private meeting with the auditors (item 1)

1. The non-executive directors and external member held a short pre-meeting with the internal and external auditors.

## Welcome and apologies (item 2)

1. The chair welcomed everyone to the meeting and introduced Michael Borowitz, a member of the NICE board who has joined the committee, and also Stephen Ferris and Laura Wright who will be taking over as the NAO leads from 1 April 2023.
2. There were no apologies for absence, but Elaine Inglesby-Burke joined the meeting late due to technical problems.

## Declaration of interest (item 3)

1. The committee noted the interests register. Mark Chakravarty declared a new interest as a non-executive director of Health Innovation Manchester. Michael Borowitz agreed to add his current employment to the register.
2. It was confirmed there were no conflicts of interest in relation to the items to be discussed at the meeting.

## Minutes of the last meeting (item 4.1)

1. The minutes of the meeting held on 30 November 2022 were agreed as a correct record.

## Action Log (item 4.1)

1. The committee reviewed the action log noting the matters which were completed and closed.
2. The following open actions were discussed:
3. **Cyber security session** – The speaker from the National Cyber Security Centre had to cancel the planned session at short notice; it will now be re-scheduled for a later date in agreement with the chair.
4. Andrew Jackson offered that the NAO also have a team who could facilitate a cyber security session if required.
5. **Business continuity planning** – The committee asked that the business continuity exercise should involve a broad representation of teams across NICE, in addition to the core leads. It was requested that the action remains open, and the committee receives a report back in May on the outcome of the exercise planned for February.

**Action: Helen Brown**

# SUBSTANTIVE ITEMS

## Strategic risks (item 5.1)

1. Sam Roberts presented a revised strategic risk register which had been fully populated and scored by the Executive Team (ET), based on the feedback from committee members in November and the December board meeting. The committee agreed it was now possible to see the connection to the strategic priorities, and that the mitigations were sharper, and the actions better focussed on reducing the risk level.
2. The committee noted that the challenge to make strategic risks part of ‘business as usual’ discussions was being addressed through a revised format of monthly ET meetings from February onwards, which will include a 45 minute session on risks with a ‘deep dive’ into one risk. Additionally, every two months, directors will have a performance meeting with the CEO which will cover their specific risks and any outstanding internal audit actions. The committee was re-assured by the new arrangements for regularly reviewing the strategic risks.
3. The committee gave feedback on the current register, commenting that indicative timescales for the actions were helpful and should be included in all risks. Also, that some of the target scores still looked low. Specific comments for the ET to consider further were:
* Risks 1.4 & 1.5 – how do these risks this affect NICE; what is the implication for NICE? The implication is implied but not explicit in these two risks that NICE potentially becomes irrelevant to the health system and others take on its role.
* Risk 1.9 – whether this reputation risk is needed as reputational damage is a consequence throughout a number of other risks. It was noted that the mitigations and actions in 1.9 make it slightly different.
1. It was reported that the recent Quarterly Accountability Meeting (QAM) with the Department had discussed whether NICE could further support the NHS with its challenges. The ET felt this was covered in risk 1.1 to ensure NICE’s topic selection process was driven by what matters most to the health system, and also in 1.2, the development of Digital Living Guidelines (DLG) which are available rapidly, using real world evidence, and are easily accessible and useable for clinicians.
2. The committee requested that the wording of risks 1.1 and 1.9 be revised to make them more positive. The next version of the risks will be presented to the board for discussion in March.

**Action: Elaine Repton**

1. Elaine Inglesby Burke had raised her comments in an email to the chair, including whether NICE could look at including a risk score for controls, as gaps in controls are not captured. This would mean a 5+5+5 scoring system that has control + likelihood + impact. It was agreed that the board’s risk management session in March could explore this further.

**Action: Elaine Repton**

## Internal audit progress report (item 5.2)

1. Niki Parker gave an update on this year’s internal audit plan, reporting good progress with four of the seven audits completed, the business planning report issued in draft, and the field work underway on equality, diversity and inclusion. The data security and protection toolkit (DSPT) will be scoped in Q4 to align with the submission date. In view of the next committee meeting being in May, it was agreed that the committee should have sight of the business planning and EDI audit reports as soon as the final versions are available. Niki Parker agreed to circulate them on email in advance.

**Action: Niki Parker**

1. It was noted that the position with outstanding recommendations from previously presented audit reports was also positive with four overdue actions still to be addressed. The committee asked for a further update on actions in May. Sam Roberts added that outstanding audit actions will now be discussed with directors at the monthly ET meetings.
2. The progress report was noted, and the committee welcomed the positive performance.

## Internal audit report – cyber security (item 5.3)

1. The committee discussed the findings of the cyber security audit report which received a moderate assurance rating with five recommendations for improvement (3 medium and 3 low), although one medium has not been accepted. Alexia Tonnel has agreed to provide the committee with a full explanation for this decision, which balances the risk against the resource requirement and the cost of implementing the recommendation.
2. The committee discussed the audit findings, and requested an update in May on whether the recommended actions had been completed.

**Action: Niki Parker**

1. The audit report was noted.

## Internal audit draft plan 2023/24 (item 5.4)

1. The committee was asked to review the proposed business areas for inclusion in the 2023/24 audit plan. The view was that overall, there was a good spread of topics. In relation to payroll, it was queried whether this would include committee members as well as employees. Boryana Stambolova advised that it would not as there was a piece of work in progress looking at current payment levels for the different committee member roles, to achieve consistency, so this could be a potential topic for 2024/25.
2. It was also queried whether Technology Appraisals – methods and processes, would include appeals as part of the TA process. Niki Parker said she would raise this with the relevant ET members at the audit scoping meeting to agree whether it includes the full end to end process, including appeals.
3. There was a view that all the proposed audits were internal facing, but next year’s ‘reserve’ list had a good range of external topics. Sam Roberts advised that four ET members had recently joined NICE, so consideration has been given to allowing them time to formulate their strategies and priorities for 2023/24, so exclude their specific areas until the following year.
4. The committee agreed the proposed audit areas for 2023/24.

## External audit planning report 2022/23 (item 5.5)

1. Andrew Jackson introduced the NAO’s report on its proposed approach to the audit of the 2022/23 financial statements and handed over to Richard Lee and Stephen Ferris who will be leading the audit work.
2. Richard Lee took the committee through the scope of the audit, the proposed fee and the respective responsibilities of the Accounting Officer and the auditor. Reference was made to reviewing approvals and transactions early in the audit to avoid any delays at year end, and also the additional work which will be required due to changes in auditing standards which are effective from 2022/23.
3. The proposed audit fee was questioned in light of the cumulative percentage increase in the last two years, for a small ALB. Stephen Ferris acknowledged the increase which he said was driven by the increase in auditing standards set by the Regulator, the Financial Reporting Council, and sub-contractor costs, but undertook to take the committee’s views back to the NAO to see of there was any room for negotiation.
4. The committee was asked to consider the following statements and concluded that:
* There were no other matters that those charged with governance considered may influence the audit of the financial statements
* They were not aware that any of the entity's objectives and strategies, and the related business risks will result in material misstatements
* The possibility of, knowledge of and process for identifying and responding to the risks of fraud were adequate
* They have oversight of the effectiveness of internal control
* No issues of non-compliance with any laws or regulations (including regularity) that have been reported to those charged with governance (e.g. from staff, service organisations or other sources)
* Policies, procedures and systems for recording non-compliance with laws, regulations and internal policies are adequate
* Members have no knowledge of any actual, suspected or alleged fraud affecting the entity.
1. The external audit plan was noted.

## Annual cyber security report (item 5.6)

1. Matt Stevenson presented the annual cyber security report covering the key areas of on-premise IT, cloud based (AWS) infrastructure, supply chain management, staff support and cyber awareness activities and business continuity arrangements.
2. The committee referred back to the earlier cyber security audit report, including the recommendation 3, which was not accepted, and commented that the annual report was very positive but there were areas of ‘limited’ assurance in the audit report. Alexia Tonnel explained in more detail why the decision was taken to accept the risk level. The team concluded that it would require a dis-proportionate amount of time and resource to produce and monitor a privileged user access log. This would have to be a manual process, which balanced against the level of risk, was not considered to be best use of resources. The committee challenged that privileged access rights was a high risk area. Alexia Tonnel agreed to provide the committee with an assessment of the number of privileged users, what the risk level is, what monitoring can be done currently by manual processes, the costs of resourcing this, balanced against other DIT priorities. This assessment was to be circulated to the committee in the coming weeks.

**Action: Alexia Tonnel**

1. The committee sought assurances that the out of hours IT support was sufficient. It was noted that there was a rota for the infrastructure and web ops teams to cover out of hours but not for the IT helpdesk. This was something that will be explored further, possibly with the help of an external provider, to give ‘real time’ alerts of attacks.
2. With reference to the last phishing campaign which caught out 137 staff, the committee asked if enough was being done to raise awareness and provide training, particularly extra support for those staff who have been caught out several times. A new software tool is currently being procured but it was recognised that more awareness raising activities are needed to increase the communications and directorate engagement in this work.
3. The chair commented that it was not clear from the report where there are opportunities to reduce the cyber security risk. Alexia agreed to provide a follow up paper detailing what actions will be taking place, what the expected outcomes/benefits will be, how they will reduce the cyber risk level and how much it will cost.

**Action: Alexia Tonnel**

1. The committee thanked Alexia, Malik and Matt for their report.

## Commercial report (item 5.7)

1. Boryana Stambolova gave an update on the actions arising from the contract management internal audit, and progress with the procure-to-pay automation.
2. It was noted that the Iproc processes differ from NICE’s current purchasing processes so there will be training provided for staff from July onwards. The onboarding requires support from NHS Shared Business Services, therefore NICE has to work to their timescales. The IT, HR and facilities teams will be trained first as they place the majority of purchase orders. Some challenges were expected due to the different ways of working that will be introduced through Iproc.
3. In relation to contract managers, they will all be asked to start using the DHSC’s Atamis procurement system by 31 March 2023. NICE is taking advantage of the DHSC’s Procurement Capability Programme to train contract managers. To date, 21 of the 54 contract managers have been trained. Those who do not complete the DHSC course, will complete the in-house contract manager training through the ESR learning hub.
4. The committee welcomed the progress made since the audit report and looked forward to receiving qualitative data on contract management performance at future meetings.

**Action: Boryana Stambolova**

## Financial accounting performance (item 5.8)

1. The financial accounting performance at 31 December was noted. Reference was made to the accounts payable target having slightly under performed at 94.5% by value and 94.8% by volume, against the target of 95%, due to the Christmas break, but this was expected to be on target in Q4. It was observed that train cancellation fees appeared to be increasing back to pre-Covid levels.
2. The committee noted the financial accounting performance at the end of December 2022.

## Review of the external auditor (item 5.9)

1. Elaine Repton presented a summary of the feedback from the review of external audit effectiveness in 2022/23. The responses had been positive about the NAO’s and KPMG’s performance, independence and relationship with the committee, and there were no concerns raised, but some feedback to take on board in the year ahead.
2. Andrew Jackson confirmed that NAO does have regular bi-lateral meetings with GIAA during the audit process, however recognised that this was not visible to the committee, so something they will be mindful to share in future.
3. The report on the external auditor’s performance was noted.

# REPORTS FOR INFORMATION

## Contract waivers report – November to January 2023 (item 6.1)

1. Barney Wilkinson presented the schedule of contract waivers agreed during the period November to January 2023. He advised the committee of a recent waiver request (which missed the agenda deadline), for the guideline’s special mental health guidance development unit. The contract value was £1.7M over 5 years, 3 years with a built in optional 2 year extension. The reason for the waiver was that NICE followed a valid OJEU process and advertised on usual tender sites, but only received one bid, which was from the current supplier.
2. The contract waivers report was noted, and the waiver for the guidelines special mental health guidance development unit contract was approved.

## Counter fraud functional standard – Q3 data return (item 6.2)

1. The committee noted there were no losses from fraud or error reported in Q3. The report confirmed recovery of a £490.80 duplicate payment made in Q2 and £60 salary repayment from a former staff member.
2. A revised fraud action plan was also presented giving an update on actions being taken to strengthen NICE’s counter fraud strategy and policy, and compliance with the government functional standard. The committee was advised that a further submission of compliance evidence has been made to the DHSC’s Anti-Fraud Unit, for independent assessment by a peer review group, to confirm NICE’s compliance level with the functional standard. The outcome of the assessment will be reported in May.

## Use of the NICE Seal (item 6.3)

1. There have been no entries in the seal register.

## Committee annual plan 2022/23 (item 6.4)

1. It was requested that an update on compliance against all the government’s functional standards be added to the committee’s annual plan.

**Action: Elaine Repton**

# Other business (item 7)

##  Commercial functional standard (CCIAF) (item 7.1)

1. Boryana Stambolova reported that NICE had recently made a submission against the government’s Commercial Continuous Improvement Assessment Framework (CCIAF) and was awaiting a response. The outcome will confirm NICE’s compliance category as being either good / better / best, and identify areas for improvement, if required.

##  Retiring committee members (item 7.2)

1. The chair expressed thanks to Elaine Inglesby Burke for her support and valuable contributions to the committee’s work during the last six years. Elaine will be stepping down from the NICE board at the end of her tenure in March 2023.
2. The committee also thanked Andrew Jackson and Andrew Ferguson for their advice and support over the last five years, and their help in guiding the committee. They were moving to another NAO client in line with the rules governing independence.

**Future meeting dates**

1. The committee confirmed its future meetings would take place on:
* 3 May 2023
* 21 June 2023
* 18 September 2023
* 1 November 2023 (this date has since changed to 9 November)

The meeting closed at 4:30pm.