



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

HSE Audit & Risk Committee Meeting

Minutes

A meeting of the HSE Audit & Risk Committee was held on Friday 8th October 2021 at 08:00 via videoconference.

Members Present: Brendan Lenihan (Vice Chair), Fergus Finlay, Ann Markey, Pat Kirwan, Colm Campbell, Martin Pitt.

HSE Executive Attendance: Patrick Lynch (ND Governance and Risk), Stephen Mulvany (CFO) (from item 3), Mairead Dolan (ACFO), Colm Waters (Head of Tax) (items 1 & 2), Geraldine Smith (ND Internal Audit), Declan Lyons (CEO IEGH) (item 3.3), Dean Sullivan (CSO) (from item 3), Jim Curran (ND Capital and Estates) (from item 3), John Swords (Head of Procurement) (item 3), Brendan White (AND Procurement Head of Sourcing and Contracting), Paul De Freine (Chief Architectural Advisor) (from item 3), Maire Lennon (Office of Legal Services) (item 5), Orlaith Magee (DDPO) (item 8), Dara Purcell (Corporate Secretary), Hannah Barnes.

Minutes reflect the order in which items were considered and are numbered in accordance with the original agenda.

1. Governance and Administration

1.1 Welcome and Introductions

The Vice Chair welcomed Committee members to the meeting and held a private session to consider the agenda and papers for the meeting and the approach to conducting the meeting. Ann Markey agreed to formally act as Committee chair for the purposes of signing minutes and then asked the Vice Chair to handle the conduct of the meeting.

1.2 Declarations of Interest

No conflicts of interest were declared.

1.3 Approval of Minutes

The Committee approved the minutes of Committee meetings held on 10th and 22nd of September 2021.

2. Accounting, Governance and Financial Reporting

2.1 YTD Expenditure Update, Governance and Financial Reporting

The Committee reviewed with the CFO the YTD expenditure at end of August 2021 which shows a YTD deficit of €67.4m or 0.5%, with a significant element of this being driven by the direct impacts of the 3rd COVID-19 surge, with €242.3m adverse variance on COVID-19 related costs and (€174.8m) positive variance on core related costs. It was noted that the positive variance on core related costs is related to delayed development within services. The CFO informed the Committee that from a capital perspective the HSE Capital Plan has a YTD surplus of €35.5m / 7.6% to the end of August, which compares to an overall YTD July capital surplus of €10.5m. Included in the August YTD surplus of €35.5m is a YTD deficit in relation to the Children's Hospital of €44.2m (offset by timing surpluses on other projects). It is anticipated that this pattern of expenditure will continue to year-end and the National Paediatric Hospital Development Board (NPHDB) have advised that the likely overall cash requirement for 2021 for the Children's Hospital will be in excess of €282m, as against the capital allocation of €198m, a projected shortfall of €82m. In response to questions, it was agreed that further discussion on the projected shortfall of €82m would take place when the CSO and ND. The CFO informed the Committee that based on the preliminary estimate of cash requirements for 2021, the HSE's expected year end cash holdings would be €239m / 4.5 days cash. However, unless DOH / DPER and HSE can agree a workable alternative, the HSE will be required to drawdown its full cash entitlement at year-end, in which case the estimated closing cash holding would be circa €897m (4.3%) / 16 days cash. This compares to a 2020 closing cash holding, on the same full drawdown basis, of €723m / 4.1%.

Action:

- The CFO will share correspondence regarding the cash on hand matter with the V/Chair.

2.1 Tax Submission

The ACFO introduced the Head of Tax to the Committee meeting and spoke to the HSE Tax Self Review 2020 briefing paper which was circulated in advance of the meeting. The ACFO informed the Committee that the HSE has completed its annual Tax Self Review for 2020 and submitted an unprompted qualifying tax disclosure to Revenue in addition to payment. It was noted that the review was conducted based on the agreed risk assessment approach with Revenue under their co-operative compliance framework. The Head of tax provided a high level overview of the review with the Committee as to the size of the liability, how the liability has arisen, and comparison with previous years. The Committee discussed the key findings of the paper and in response to questions the Head of Tax confirmed that the carrying forward of non - material liabilities in certain areas that were not reviewed allowed resources to be focused on areas of higher risk, due to the impact of the pandemic

response, was a pragmatic solution (agreed with Revenue) to ensure the qualifying disclosure would be acceptable to Revenue. At this time the HSE are awaiting the confirmation from Revenue that this submission is agreed.

The Committee questioned whether there is a compliance issue regarding HSE senior officials not providing tax clearance certs to SIPO. The ACFO responded that these queries have arisen in regards to consultants and that the HSE pays all Consultants through payroll, and all PAYE, PRSI etc are deducted at source so it is likely that any tax issues relate to private practice/outside interests. The Committee asked that senior office holders be asked to confirm compliance with SIPO requirements.

Actions:

- The Committee asked that senior office holders be asked to confirm compliance with SIPO requirements.

2.3 Procurement compliance

The Committee discussed with the CSO, CFO & John Swords and ND Capital and Estates the briefing paper on the Reform of Procurement & Compliance Improvement in the Health Services which was circulated in advance of the meeting. The Committee were informed that the HSE initiated a comprehensive self-declaration process involving major budget managers whereby non-competitive and non-compliant procurement in excess of €25,000 was declared and was able to provide, for the first time, an estimate of non-compliance in its 2020 reporting as required by the DPER Code. In total 11,702 invoices over €25,000 with an overall expenditure value of €1.979Bn were presented for review by the respective Budget Holder. From this review it was noted that of the total 2020 spend, 91% was declared to be compliant (representing a value of €1.794Bn), 37% was declared to be awarded based on a competitive process (representing a value of €736mil) and 63% was declared to be awarded from a non-competitive process (representing a value of €1.243Bn). A significant portion of health service 2020 spend was procured without competitive process using permitted derogations under EU directive 2014/24/EU. This is particularly true in respect of COVID related expenditure. The Committee noted that the Corporate Procurement Planning (CPP) Toolset which has been upgraded, taking account of feedback and learnings from the 2020 process.

The Committee discussed with Management Team Members the expansion of the procurement compliance effort and the remit of the procurement division. The Committee noted that the HSE is seeking OGP commitment to support this multi-annual programme / delivery of compliant procurement processes and contracts in respect of the categories for which the OGP is responsible.

The Committee requested that a further update on Procurement compliance is brought to the Committee at the February Committee meeting.

Actions:

- The Committee requested that a further update on Procurement compliance is brought to the Committee at the February Committee meeting.

2.4 KPMG Audit Tracker Report

The Committee noted that a briefing paper would be reviewed on this item at the next Committee meeting.

Actions:

- A briefing paper on the KPMG Audit tracker is to be provided at the November Committee meeting.

2.5 Note on estimated costs of translation and interpreting services

The Committee considered with the ACFO the note regarding estimated costs of translation and interpreting services which detailed vendor who has been in receipt of any payment for a value of €20k or more in the last three years. The Committee requested that this paper be shared with the appropriate Safety and Quality Committee. They noted that this paper was in respect of the statutory system and did not include Voluntary Hospital costs.

3. Internal Audit

The CEO of IEHG joined the meeting at 09:55.

3.3 Ireland East Hospital Group - briefing note on implementation of controls that provide assurances

The Committee discussed with the CEO of IEHG the briefing note on the implementation of controls that provide assurances which was circulate in advance of the Committee meeting. The Committee noted that there are eight recommendations contained in the final Internal Audit Report. Five recommendations have already been implemented and the remaining three are due to be implemented in Q4 2021.

The Committee discussed with the CEO the culture of understanding within payroll departments in the IEHG. The Committee were informed of a number of further control measures have been introduced since the Committee last considered this item at their September Committee meeting. Over the last month the IEHG Finance engaged with each hospital finance manager to review the output of each hospital's findings from their self-assessment review as requested by the HSE CFO. The Committee were told that these reviews have identified where enhancements to the internal control

framework can be made. The CEO confirmed that they are working with the hospitals during October to clearly document the 'as-is' process which will then enable the group to evaluate the Design and Implementation of the Controls framework in advance of commencing controls testing in the hospitals in early 2022.

The Committee noted that a short-term internal assurance strategy has been developed by IEGH management, which will enable them to strengthen the payroll control framework across the IEHG. This will focus on the first line of defence. IEHG finance is liaising with hospital staff to implement recommended enhancements: guidance on procedures documentation and controls systems, segregation of duties, clearly defined roles, enhancements to existing controls and recommendation on new controls.

The CEO of IEHG left the meeting at 10:10.

3.1 Update on Status of Management's implementation of recommendations contained in the IA report on Senior Management Overtime.

The Committee reviewed with the ND IA the briefing paper on the status of recommendations due but not yet implemented contained in the IA Report Senior Management Overtime. The Committee noted the outstanding recommendations which are yet to be fully implemented and requested that work is prioritised to insure implementation is finalised. It was noted that as a result of the written representations from each of the hospital's finance managers received by the CEO of IEGH in relation to their internal control framework operating in their respective hospital only reasonable assurance can be provided that the internal control framework for payroll is adequate and the controls to mitigate key risks are operating effectively.

The ND IA responded to Committee questions confirming the Internal Audit unit will be focusing on Hospital Payroll departments across all Hospital groups, in light of the investigations into St Columcille's Hospital Payroll.

3.2 A note on Children First – Cork / Kerry

The ND IA provided an update on the implementation status of recommendations contained in the Q1 key report – Children First Legislation Cork Kerry CHO as per the briefing paper circulated in advance of the Committee meeting. The Committee noted the summary of the 8 recommendations provided and discussed the comments provided by CHO4 management. The Committee asked that confirmation and assurance be provided as soon as possible that staff have successfully completed the "An Introduction to Children First". In response to questions the ND IA confirmed that the report covers state bodies and not voluntary bodies. Further discussion took place regarding the access to

completion records on HSELand. It was agreed that the ND Governance and Risk would provide a further update to the Committee on Children first completion rates across the country at the next Committee meeting and that the members of the People and Culture Committee and the Safety and Quality Committee would also be invited to the meeting.

Actions:

- The ND Governance and Risk will provide a further update to the Committee on Children first completion rates across the country at the next Committee meeting.
- CHO 4 to provide confirmation that and assurance as soon as possible that staff have successfully completed the “An Introduction to Children First” training.

4. Risk Management

4.1 Risk Management Update

The Committee discussed with the ND G&R the Risk update provided in advance of the Committee meeting. The ND G&R advised the Committee that further work has been done on the Risk Appetite Statement following feedback from members of the Committee. It was agreed that in advance of the revised document being brought back to the EMT for consideration, the ND G&R would meet with Pat Kirwan and Colm Campbell to seek their feedback. The Committee requested that the final draft would be ready for presentation to the Board at their November meeting when they will be undertaking their annual review of the Corporate Risk Register.

In response to questions the ND G&R confirmed that following discussions with EMT Sláintecare will be called out as a specific risk in the next iteration of the CRR. The Committee noted that the EMT are due to consider a revised corporate risk list for 2021 at its meeting on the 12th October 2021. The Committee were advised that the Q3 2021 CRR review report is due to be considered by the EMT at its meeting on the 26th October 2021.

4.2 Update on implementation of Moody Report ‘Critical Path’ actions

The ND G&R provided an update on implementation of the Moody report critical path recommendations.

The Committee advised that the Report’s recommendation that risk assessment should be a formal part of all strategic plans and decisions should be implemented as a matter of priority.

4.2 Briefing of proposed EU Directive on the resilience of critical entities

The Committee noted the briefing on the proposed EU Directive on the resilience of critical entities paper provided by the ND G&R ahead of the Committee meeting.

4.4 Proposal for the appointment of HSE Chief Risk Officer

The Committee discussed the establishment of the CRO role and the level of seniority at which the role is positioned in the context of the recommendation in the Moody Report that the role is 'at an appropriately senior level to be impactful in his or her dealings with the EMT and other senior positions'.

The Committee emphasised that the CRO has full, relevant knowledge of the current risk environment within the HSE. The Committee asked that senior management would ensure that the CRO would have appropriate access to, and involvement in, key planning and other process where consideration of risk is a central element, including key EMT discussions. The ARC was happy, on this basis, to recommend the current proposal to the full Board for approval.

5 Legal Services

Maire Lennon joined the meeting at 11:25

M. Lennon provided a verbal update to the Committee on the organisational process for strategic legal cases within the HSE. The Committee then reviewed with M. Lennon the summary of strategic legal cases which was provided in advance of the Committee meeting. The key areas discussed included;

- The opportunity to capture the organisational learning from strategic legal cases.
- whether there a policy role for the Board in relation to the cases which impact strategically.

Following discussions, the Committee requested that a further paper is provided in February 2022 which sets out a proposed approach to learning, controls etc. in relation to strategic cases. The V/Chair outlined that a joint session with the Safety and Quality Committee would be arranged early in 2022 in relation to the portfolio of cases managed by the SCA to include financial risks associated with potential changes to the 'Real rate of return'. In response to questions, the Committee were told that mediation is typically being encouraged more frequently in a wide range of cases. In response to questions the ACFO confirmed that in previous years significant legal cases have occasionally been outlined in the notes of the HSE's Annual Financial Statements.

Actions:

- The Committee requested that a further paper is provided in February 2022 which sets out a proposed approach to learning, controls etc. in relation to strategic cases and the Board and ARC oversight of the process of dealing with these cases.

- The V/Chair requested that a joint session with the Safety and Quality Committee would be arranged early in 2022 in relation to the portfolio of cases managed by the SCA.

6 Properties / Contracts

6.1 Summary Contract Paper and Property papers for consideration

The CSO and the ND Capital and Estates presented three Operational Lease Acquisitions for a value above €2m and one contract award to the Committee. The Committee considered the proposed transactions and the reasons outlined in the briefing papers circulated in advance of the Committee meeting.

Following a short discussion to seek clarification on an appeal on the matter of some signage to An Bord Pleanála the Committee agreed to recommend to the HSE Board for approval all of the proposed transactions.

7 Capital Plan 2022

7.1 Verbal Update

The CSO joined by ND Capital and Estates and provided the Committee with an update on progress made on the Capital Plan 2022. The Capital allocation for 2022 amounts to €1.025bn. The CSO outlined a number of previous existing contractual commitments which will be carried into the next year, examples of such include the National Children's Hospital project. These contractual commitments entering 2022 amount to some €700m leaving a total of some €320m for prioritisation. The Committee noted that typically the Capital plan is always prepared alongside of the National Service Plan and this is being continued. The Committee noted that a more detailed briefing will be provided as part of the development for the NSP.

8 Data Protection

8.1 Briefing ref update on Interaction with Data Protection Commissioner ref Cyber Attack

The Committee reviewed with the ADPO the briefing papers circulated in advance of the Committee meeting which provided an overview of the interaction with Data Protection Commissioner following the Cyber Attack. The Committee were updated on the establishment of the Legal and Data Protection work-stream in response to the cyber-attack and that an over-arching senior management steering committee sits above the Legal and Data Protection work stream and is chaired by the COO.

The Committee noted the chronology of HSE DPO engagement with the DPC following the Cyber Attack and the list of next steps provided to the Committee. In response to questions the ADPO

confirmed that the DPC has requested the Mandiant report which has been supplied to them with legal privilege.

10 AOB

The meeting concluded at 12:50.

Signed: Ann Mackay
/Chairperson

Date 12/11/21