

# COPFS and QLTR audit and risk committee

Minutes of the meeting held on 24 November 2020 via Microsoft Teams

## Present:

### Members

Rob Tinlin	Non-Executive Director - Chair
David Watt	Non-Executive Director
Vanessa Davies	Non-Executive Director

### In Attendance

David Harvie	Crown Agent, Chief Executive and COPFS Accountable Officer
Robert Sandeman	QLTR Accountable Officer
Ian Walford	Deputy Chief Executive
Mark Howells	COPFS Director of Finance and Procurement (DFP)
Gillian Woolman	Audit Director, Audit Scotland
Esther Scoburgh	Audit Manager, Audit Scotland
Jim Montgomery	Audit Manager SG Internal Audit Directorate
William Wilkie	Senior Auditor, SG Internal Audit Directorate
Marlene Anderson	Head of Finance (HoF)
Sharon Davies	Head of Management Accounting and Business Planning
Lindsey Millar	Deputy Crown Agent (High Court/Serious Casework Group)
Action Tracker item 5	
Colette Weir	COPFS Secretariat
Denise Ralston	COPFS Secretariat
Georgia Dewar	COPFS Secretariat

## Welcome / Apologies / Introductions / Declarations of Interest

1. The Chair welcomed everyone to the meeting.

## Declarations of Interests

2. The Chair received declarations of interest from David Watt with regard to his role on the Advisory Audit Board of the Scottish Parliamentary Corporate Body and from Gillian Woolman who declared an interest as the appointed Auditor for the Scottish Police Authority which includes Police Scotland. It had previously been agreed that these should not preclude the individuals from attending and participating in COPFS / QLTR ARC meetings.

## Feedback on pre-meetings

3. The Chair advised that the Non-Executive Directors conducted a pre-meeting with the External Auditors to discuss the Annual Report and Accounts.

## Minutes of the Previous Meetings – 29<sup>th</sup> May and 3<sup>rd</sup> July

4. The Minutes from the 21<sup>st</sup> August 2020 ARC meeting were agreed.

## Matters Arising / COPFS ARC Action Tracker

5. The Matters Arising are contained in Actions 25 – 30 on the ARC Action Tracker.

## Action Tracker

1: remains open until the Risk Management Group have considered the Corporate Risk Register. RMG will consider the Corporate Risk Register in relation to the Corporate Strategic Plan;

5: is closed as LM will be providing an update on at this meeting;

9: The DFP advised that a draft enhanced Corporate Finance Report had been sent to the ARC chair in the last few days and that it would be shared with the remaining ARC members in the next few days. He asked that ARC members would be kind enough to assist in the further enhancement of the report in the same way that they had facilitated the significant improvements to the COPFS Annual Accounts format for 2019-20. The ARC members agreed to attend a workshop to do this with a view to the action being brought back to the February 2021 ARC meeting;

13: is closed;

20: is closed as the report has been distributed to the ARC members;

21: is closed as DFP has continued to refine the tracker and will report on further proposals at this meeting;

24: is closed as DFP and WW will address this at today's meeting;

26: is closed as completed;

27: is closed as the Committee will receive the Chief Digital Officer's update today at this meeting;

28: is closed as the Committee will receive the QLTR update today; and

29 and 30: are closed as the Committee will receive the Annual Report and Accounts at today's meeting.

**Action: Secretariat to remove the closed actions from the tracker.**

### **Audit Action Trackers - Internal and External**

6. The Committee noted the progress recorded on the trackers.

### **COPFS Annual Accounts / Letter of Representation**

7. The Chair noted that the Annual Report and Accounts are to be presented today and that the Crown Agent will sign them off electronically.

8. HoF spoke to the paper, advising that the need to add an additional provision had delayed the completion of the accounts. In the copy of the accounts presented, all changes to wording and figures were highlighted in yellow for easy reference. The version for signing by the Crown Agent today would be a clean copy.

9. HoF talked through the changes explaining where and why the changes had occurred.

10. DW advised that the additional bullet point at paragraph 30 (h) regarding the Court of Session ruling would be considered at the next Risk Management Group and that, if deemed appropriate, a risk may need to be added to the COPFS corporate risk register. There were no other changes to the body of the report.

11. HoF confirmed the negative General Fund balance had been cleared with SG.

12. Note 2 page 59 – separate heading under non- cash costs, the proposed change was agreed and updated.

13. Post balance sheet event, proposed change agreed, and amendment completed.

14. The Chair expressed his thanks to all the internal and external team who have worked so hard to bring the Accounts to a conclusion.

### **ISA 260 2019/20 Annual Audit Report**

15. GW advised the Committee that the External Audit is now complete and that, as had been the case at 4<sup>th</sup> July, an unqualified audit opinion was still appropriate. The Letter of Representation has been drafted for the Crown Agent to sign.

16. GW talked to the Audit Scotland Annual Report, detailing the minor changes. The Chair received and noted the content of the report and, along with the

other Non-Executive Members made a formal recommendation to the Crown Agent to sign the accounts as presented and amended today.

17. The Chair expressed his appreciation of the unique circumstances faced by COPFS and his gratitude to Audit Scotland, the Crown Agent and staff for their work in achieving its resolution. GW expressed thanks to all involved in producing the reports.

## Financial Governance and Sustainability Report / Internal Audit Progress Report

18. JM advised the Committee that the Financial Governance and Sustainability Report, was a good, solid report and noted that it was consistent with the External Audit report. This was due in part to the support and co-operation of the Crown Agent and COPFS staff. WW spoke to the Financial Governance and Sustainability Report, advising the Committee that COPFS had achieved a high reasonable rating with four recommendations.
19. The Chair and the Committee expressed their thanks to IAD for their positive approach and endorsed the report as presented. The Chair requested that all three NEDs on ARC be consulted on the IA plan for 2021-22 and reminded of the previous ARC request that the plan be risk based.

**ACTION – WW to consult RT/VD/DW on the draft IA audit plan for 2021-22.**

## Update on Performance reporting: Key Performance Indicators

The DCA (High Court and Serious Casework Group) joined the meeting.

20. The DCA (HC/SCG) spoke to her paper, advising on the MI gathering process and challenges including system complexities, data extraction and journey times.
21. The Committee discussed the paper, recognising the positive aspects of the report and highlighting the risks and challenges.
22. The Chair proposed the DCA is invited back to the ARC once the KPIs are more mature to discuss the challenges and analysis. The DCA invited the ARC Committee to attend a Operational Performance Committee meeting if they wished.
23. The Committee expressed their thanks to the DCA for providing a helpful summary of the progress to date.

**Action: DCA to be invited to future ARC – date to be confirmed by the DCA when sufficient progress has been made.**

## Audit Action Tracker: Internal Audit and Internal Audit update

24. DFP spoke to the paper and acknowledged the ARC's strong preference to restrict the size of the paper for each meeting.

25. DFP explained that the first few pages provided a visual summary of the RAG status for each recommendation from each audit. He confirmed that, thanks to input by the DCE, significant progress had been made since the August ARC meeting. He added that the next step would be for IAD to review and agree management's assessment.
26. DW and JM indicated that Internal Audit would normally wait until the final recommendation has been implemented prior to conducting a follow up audit.
27. The Chair advised the summary was reassuring. The Committee agreed that the paperwork should be minimised, and that Internal Audit capacity should be directed to "exception" issues e.g. high and some medium rated recommendations.

### **Audit Action Tracker: External Audit and External Audit update**

28. DFP indicated that the Audit Scotland paper and recommendations presented today would be taken into the tracker immediately after this meeting.
29. The Committee advised that they were content with the tracker.

**Action: DFP to update the tracker with the Audit Scotland recommendations from the 2019-20 annual accounts.**

### **COPFS Assurance Mapping Framework: Progress Report**

30. DFP spoke to the paper confirming that 16 areas had been identified and that these had been split into four groups, each of four areas. He confirmed that the first group had been addressed at the May 2020 meeting, the second group (with the exception of 2.3) at the August meeting and that the third group and area 2.3 were being presented to today's meeting.
31. The Chair was pleased to see that the ISD areas (2.3 and in Group 3) had been brought to the group. He indicated that it would be helpful to see more on the human aspect of data protection as the report focused on the IT and technical aspects.
32. DW advised there was too much information.
33. VD suggested a focus on the users of the systems as the link to the workforce use of systems and tools was not articulated well and that the report did not demonstrate how it would assist ISD to achieve their desired outcomes.
34. JM offered to provide the report by the Global Institute of Internal Auditors which had further refined the Three Lines Model, to assist DFP. DFP confirmed that he would be delighted to receive the report. The Committee agreed to review the assurance process after the completion of a full year and this will include consideration of this revised model.

35. The Chair reflected that this was a cultural shift and journey and that the report should provide the Crown Agent and Committee with a high degree of reassurance and that the Committee have an opportunity to take stock and refine the methodology at year end.

**Action: JM will share the Three Lines Model with DFP.**

## **COPFS Update**

36. The Crown Agent provided an update on the impact of Covid-19 on the justice system.
37. Since the last ARC meeting on 21st August the system has started to recover, with High Court and Summary trials up and running and Sheriff and Jury expected to restart at the beginning of December. There are now:
38. 16 High Court trial courts operating, through use of the remote jury centres;
39. Sheriff and Jury trials will not run on a significant scale until about January;
40. Summary trials now operating at 70% to 80% pre Covid capacity;
41. SCTS have confirmed that courts, including jury trials, will continue to operate in areas subject to tier 4 restrictions.
42. The Crown Agent provided an update on the timetabling of this year's budget round.
43. The Crown Agent provided an update on the potential Brexit implications for COPFS centred around mitigating the loss key EU investigative and extradition tools.
44. The Crown Agent advised that the FDA intend to ballot members over the next few weeks on the issue of pay coherence.
45. The Crown Agent thanked those present who had contributed their expertise and professional advice in relation to litigation cases.

## **QLTR Update including Covid19 and Brexit Updates**

46. RS updated the Committee on the work of the QLTR, explaining that:
47. The department has been undergoing a continual process of improvement and modernisation since RS took over as head in 2017. Among other things, this has involved – and required - far more engagement with other State agencies than previously; a more proactive and outward looking way of working; and, greater reliance on external professional advice and services, such as specialist legal and property advice and auctioneers.
48. As a result of this, the department is now further along its trajectory at Q3 than was originally anticipated at this stage. It has therefore been agreed with the CA/QLTR that the department's complement should be increased now, to

give the department capacity to manage its work and to provide the department with increased strategic, finance and policy capacity for 2021. And, as well as continuing to monitor its own case levels, the department is also liaising with Scottish Government's Economist Directorate to enable informed decisions to be made about work planning, and to ensure the department can be responsive as early as possible to any material changes to the profile of Scottish businesses as a result of the pandemic.

49. On the UHU side, RS reported that the team have secured 9 month's supply of PPE, which should see them well through the winter and spring period. The unit will secure an additional amount of PPE to ensure they have 1 year's cover.

50. RS asked the Committee if the QLTR reserve of £2m was sufficient in today's context. The Committee discussed and agreed the reserve should be increased. The Committee proposed £3m and advised RS to liaise with DFP to review and increase the reserve level.

51. The Chair and the NXDs thanked RS and his team for their work.

**Action: RS to liaise with IW on the next iteration of the QLTR Risk Register.**

**Action: RS to liaise with DFP to decide and implement a new reserve level for QLTR.**

## **Audit Scotland guide to Covid-19**

52. DFP advised that he will liaise with stakeholders out with Finance and Procurement and provide a response for the next ARC on the four areas in the Report.

53. The Committee discussed the intent of the report and advised that it should be used as a prompt to the organisation to identify where confidence is low and concentrate on those, rather than responding to the whole document.

**Action: DFP to provide a response to the report for areas where confidence is low for the next ACR**

## **Finance Report**

54. DFP spoke to his paper, highlighting:

### **2020-21 forecast outturn:**

- Forecast underspend of £1m;
- £1.78m has been secured from the SG for COPFS' costs for litigation cases;
- Employee benefits (untaken annual and flexi-leave) have been reclassified by HM Treasury to Non-Cash Annually Managed Expenditure (AME) meaning

we will not have to hold a contingency from our cash budget to cover any increase.

### **2021-22 budget setting:**

- The Scottish Government have announced that the budget, and therefore the COPFS allocation, will be announced on 28 January 2021 and DFP proposes to have final budget figures to the Resources Committee in February and agreed at the Executive Board in March to fulfil the recommendation that budgets be available at the start of the financial year.

The Chair expressed thanks to the team that the budgets will be known and agreed before the start of the financial year.

### **Procurement Update: Minimising Off Contract Expenditure and Embedding Contract Management**

55. DFP outlined the history of Procurement within COPFS, detailing how, in 2015, the issues had been recognised and that the 2016 Procurement Capability Assessment had provided a sobering independent assessment. However, the January 2019 follow up, the Procurement Capability Improvement Programme audit, had confirmed that significant progress had been made including with introduction of high-quality infrastructure, policies, processes and proformas. However, there is a cultural issue in the organisation that remains. This relates to the use of compliant procurement routes and in ensuring that suppliers (whether on contract or not) are managed.
56. DFP advised that the Central Procurement Team (CPT) are a customer focused unit with fantastic staff, however, as COPFS do not pay the same allowances as SG, there is a risk that the staff will leave to do the same work for the SG at higher levels of pay. We have a good team but one member leaving (which will be the case in March) would prove difficult, more would have a major impact. The SG shared service resource has confirmed that she will return to the SG at the end of the Financial Year and we will need to adapt to the new personality and group dynamics.
57. DFP reported that, even so, the CPT does not have the capacity to address the legacy issues outlined. The Scottish Government conducted an independent review of what was required in March 2019 and estimated that 1.8 – 2.0 staff at Band E level would be required, each for 12 months. DFP expressed concern that COPFS staff were not fully adhering to legal requirements, which was untenable given that COPFS is part of the justice system and further staff awareness and education was required. By way of illustration he cited a recent incident where part of the organisation had sought to let a six-figure contract using a contract which did not cover the required work and without competing the works. Due to internal control mechanisms, this was then rectified.



58. The Chair noted that this provided useful context and expressed concern about the scale of off contract expenditure and contract management as it is difficult to determine if COPFS is achieving value for money. The Chair appreciated that the CPT are good at what they do but noted that the rest of the organisation must comply.
59. DW suggested we should be more ambitious and that we should set targets to get Off contract expenditure under contract, aiming to achieve almost zero.
60. VD suggested that the behaviour described is not just a compliance issue but a disciplinary one and that perhaps some illumination was required to get the rest of the organisation to understand the importance of contracting appropriately.
61. RS commented that some sort of “chivvying from CPT” is not enough, CPT have been great on QLTR work, but he had noticed inconsistency on fees from suppliers and he was dealing with one to one with the suppliers to ensure compliance. He identified issues in private sector law firms and is checking on all suppliers. Having a contract monitoring framework will help in those conversations.
62. The Chair recommended passing this to RC, reflecting our concerns that off contract spend must be brought on contract and value for money demonstrated.

**Action: DFP to provide a report from ARC to the next RC with the ARC’s concerns about off contract expenditure, procurement compliance and contract and supplier management.**

## **Risk Management**

63. DW advised that there would be significant changes to the Corporate Risk Register following the workshop and to the Local Court risk register, which will be reviewed at the November RMG meeting.

### **RMG Chair Report and RMG minutes**

64. The RMG Chair Report and Minutes were accepted by the Committee and, recognising that the RMG will be focusing on output from the risk workshop and producing the new Corporate Risk Register, deferred consideration of the current risk register. Accordingly, it will be discussed at a subsequent meeting

The Committee expressed their thanks.

## **Any Other Business**

### **ARC Annual Report:**

65. The Chair gave his apologies for sound issues and thanked everyone for their contributions and additional papers, particularly the DFP and MA, for the conclusion of the Annual Accounts.
66. The Chair also expressed thanks to CM and noted the change in secretariat.
67. There was no further other business.

### **Date of Next Meeting**

68. The next meeting will be on 24th February 2021, 11:00 to 13:00.

### **Meeting ends**

### **ARC Secretariat**

**8<sup>th</sup> December 2020**