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Convener
Public Audit and Post-Legislative Scrutiny
Committee

2nd May 2018

THE 2016/17 AUDIT OF NHS TAYSIDE

Investigations and reviews

Thank you for your letter of 23 April. I can confirm that the investigations and reviews that are being undertaken are as follows:

NHS Tayside

1. An external review by Grant Thornton about NHS Tayside's financial governance, reserves and use of deferred expenditure, and the Board's response to the initial independent review into the allocation of e-Health monies. The timescale for this review is 4 weeks, and I expect it to be complete by 15 May. I attach the terms of reference at Appendix A.
2. A formal inquiry under section 28(1)(a) of the the Charities and Trustee Investment (Scotland) Act 2005 by OSCR into allegations of possible misconduct in the operation of Tayside's endowment fund. The inquiry is currently underway, and the timescale for this is a matter for OSCR.
3. Professor Sir Lewis Ritchie will continue as Chair of the Assurance Advisory Group, but with an expanded role focused on non-executive development and support. I have asked that Sir Lewis and Caroline Lamb provide me with a further report on progress with the transformation programme as at 30 September. I have asked Sir Lewis and Ms Lamb to send their report to me by 15 October and I will share it with the Committee shortly thereafter, together with my response to it.

NHS Scotland

4. I have written to Chairs of all NHS Boards about the use of NHS endowment funds. The Chief Executive of OSCR has welcomed my offer to share the responses with him and has confirmed that this will assist OSCR in their decisions about whether further regulatory action is merited. The Chief Executive of OSCR has indicated his intention to respond to me by the end of May. I enclose a copy of the relevant letter at Appendix B.

NHS National Services Scotland (NHS NSS)

5. NHS NSS's Internal Auditors, KPMG LLP, were engaged to conduct an immediate review and provide a report on NHS NSS management of eHealth funds. The subsequent report was shared with Grant Thornton and informed the Grant Thornton report. The Chief Executive of NHS NSS wrote to the Scottish Government Director of Health Finance on 16 April setting out the action plan based on both reports that is underway to address issues identified in management of eHealth funds. I attach a copy of the action plan at Appendix C. This will be reviewed regularly through the NHS NSS Board and Performance and Finance Committee.

Scottish Government

6. The Scottish Government's Director of Internal Audit is reviewing actions taken by the Scottish Government eHealth and Health Finance teams in response to the original Grant Thornton report on eHealth funding. The final report is due to be issued on 4 June and I attach a copy of the terms of reference at Appendix D.

Leadership arrangements at NHS Tayside

I note your intention to explore the interim leadership arrangements at NHS Tayside and I will be happy to discuss this with you in more detail on 10 May.

I can confirm that Amanda Croft, Deputy Chief Executive Officer at NHS Grampian, will oversee the day to day operations at NHS Grampian and this arrangement will support Malcolm Wright in his role at NHS Tayside. Malcolm Wright remains as Accountable Officer and Chief Executive at NHS Grampian.

Summary

I trust this provides the information you require at present in advance of the evidence session on 10 May. I am happy to provide more details in advance if that would be helpful.

Yours sincerely



Paul Gray

Appendix A

Grant Thornton - NHS Tayside Independent Review

Agreed scope of the review

Background

Following on from the two reviews (the independent review of the allocation of Scottish Government e-Health monies to NHS Tayside and the NHS Tayside Internal review of e-Health funding transferred to NHS Tayside), the Scottish Government Health and Social Care Directorate has asked Grant Thornton UK LLP to undertake an independent review of certain NHS Tayside arrangements as set out in this scope; specifically to

- Review the controls that will be implemented by the Board in response to the initial independent review into the allocation of e-Health monies.
- Undertake an independent review of Board reserves and Deferred Expenditure following the Board's own review.
- Form an independent view on the level of transparency and the effectiveness of financial governance at NHST Tayside 2012-18 with specific reference to:
 - i) The scale and use of deferred expenditure by NHS Tayside 2012 -2018; and
 - ii) The extent to which the Board, Finance and Resources Committee and Audit Committee were engaged in decisions regarding the year end financial position and use of endowment fund retrospection in 2013-14. The review will also take into consideration the findings and recommendations noted in relevant internal and external audit reports

We note that OSCR in their role as Charity Regulator for Scotland are also undertaking an independent review in respect of the use of endowments in 2013/14 and our review will not duplicate this work, although they will be closely aligned.

Scope

The review should be focused only on the internal processes at NHS Tayside. The review should consider the following:

Revenue Resource Limit (internal controls)

Assess the controls that NHS Tayside have agreed to put in place over the accounting for and receipt of Scottish Government Health and Social Care Directorate allocations to NHS Tayside and the monitoring and reporting on corresponding adjustments to the Board's Revenue Resource Limit. This will include the arrangements that will operate within the Finance Directorate (including adequacy of segregation of duties), the reporting to the Board and its respective Committees and changes to Board Standing Financial Instructions.

Board reserves and Deferred Expenditure

Undertake an independent assessment of the internal review of Board reserves and deferred expenditure undertaken by the Finance Directorate and NHS Tayside Strategic Director of Finance. This will include reviewing the findings of the review, the approach taken and the conclusions derived regarding any impact on the 2017/18 out-turn and projected financial gap for 2018/19

Financial Governance

The overarching focus of our work will be to consider the NHS Tayside's Board's governance and financial management arrangements, including the circumstances related to the retrospective use endowments in 2013/14

and the circumstances in relation to the use of deferred expenditure. In relation to the retrospective use of endowments we will focus on the decisions taken by the NHS Board in their role as NHS Board Non-Executives. The role of the Endowment Trustees will be considered by OSCR.

Retrospective use of endowment funding

We will specifically cover:

- The clarity of reporting of the NHS Tayside financial position during 2013/14 to the relevant Committee and the Board, including the openness and transparency of the decisions taken by the NHS Board in respect of endowment funds and the link to the Board's financial position.
- The evidence available (minutes, board papers, emails, guidance, advice) to support the decision making process and how information was made available to the NHS Board to inform their decision making
- The timeline for events, including who was involved and when, and the advice and guidance sought during 2013/14 and how that guidance/advice was acted on
- The work of internal audit in respect of endowments including iterations between draft and final report stage, the advice of internal audit and how this was considered and the subsequent follow up of internal audit recommendations. We will also consider internal audit reporting lines.
- Based on the timeframe, what were the various assurance framework "check-points" and how did the wider system of internal controls operate in this instance.

Deferred expenditure

- The findings of internal audit in relation to the system of financial control in existence during this period relating to use of deferred expenditure, e-health expenditure (including national programme funding) and endowment fund retrospection and the extent to which the audit recommendations were implemented and assurances provided to the Board.
- The role of the Board, its finance and audit committees and the level of challenge offered in relation to the Board's financial position.

Reporting

The findings and conclusions from our work will be reported to the Scottish Government Health and Social Care Directorate Director of Finance and the Chief Executive of NHS Tayside.

Paul Gray
DG Health and Social Care and Chief Executive
NHS Scotland
Scottish Government
St Andrews House
Regent Road
Edinburgh
EH1 3DG

16 April 2018

Dear Paul

Thank you for your letter of 12 April about Tayside NHS Board Endowment Funds (SC011042), and the wider position. I welcome the constructive engagement we have had with your team so that we can pursue our respective interests here. We share your concerns about possible abuses and would view any transgressions as serious matters – our ultimate aim is to preserve and enhance public trust and confidence in charities.

As you are aware, it is the responsibility of the charity trustees to comply with their legal duties in managing the charity – as regulator we will intervene where we judge it to be in the public interest to investigate possible misconduct (our Inquiry Policy, available on our website, sets out the position in more detail). In particular, trustees must ensure that they act in the best interests of the charity at all times, that all expenditure is in line with the charity's purposes and that any grants or donations are used for the purposes for which the charity accepted them, and in line with any conditions imposed. This is what we are investigating with the Tayside Endowment Funds and, in light of the strong public interest in this case, we are pursuing it as a top priority.

As you have recognised, there are wider issues here. In 2012, following a review of Lothian Health Board Endowment Fund and some work with all the NHS Endowment Funds in Scotland, we wrote to the Chairs of each of these charities reminding them of the trustee duties, specifically in the context of the unique, statutory structures of endowment funds and health boards. We also engaged with NHS Scotland in 2013 around the production of a report regarding governance and good practice for NHS Endowment Funds in



Scotland. This report included recommendations regarding the expenditure of charitable funds, and the management of conflicts of interests.

I am grateful for your willingness to share with us the responses to your letter of 5 April seeking assurances from the Chairs of Endowment Funds. This information will assist us with our risk-assessment of these charities and our decisions about whether regulatory action is merited in these cases. We would hope to be able to give you a response by the end of May. Any formal inquiries will be conducted in line with our policy. I am writing today to the Chairs of the other Endowment Funds setting out this position.

Thank you also for your offer to provide support and resource – we will be better able to assess our needs after 30 April. I note also your expectation that funds inappropriately passed to NHS Boards for general use would be paid back – this may help restore public confidence in the system in the short term.

Longer term, OSCR will review lessons learned to see how future problems in this area can be solved or at the very least minimised. Doubtless NHS Scotland will wish to do the same.

Yours sincerely



David Robb
Chief Executive

Appendix C

NHS National Services Scotland

Actions Underway to Address Issues Identified in Management of eHealth Funds

Purpose

The purpose of this paper is to outline the immediate actions taken and further work underway to address issues identified in the management of eHealth funds. These actions will ensure that weaknesses in governance and reporting arrangements are addressed and the specific recommendations made within the KPMG and Grant Thornton reports are implemented in full.

Immediate actions taken on becoming aware of eHealth issues

- The CEO immediately informed the Board Chair and the Non-Executive Director Chairs of the Audit and Risk and Performance and Finance Committees.
- NHS NSS' Internal Auditors, KPMG LLP, were engaged to conduct a carry out an immediate review and provide a report on NHS NSS management of eHealth funds. The subsequent report was shared with Grant Thornton LLP, the body SG commissioned to investigate eHealth finances.
- The Head of Finance (IT) was asked to step back from direct involvement and engagement with the eHealth community.
- The Associate Director of Finance – Financial Planning & Analysis assumed responsibility for eHealth reporting and immediately undertook a review of the position.
- Total slippage on the programme was identified and reported to SG Health Finance and SG eHealth.
- Reporting arrangements were established as part of formal NSS governance – with the financial position on eHealth funds highlighted within the finance reports to EMT and the Board on financial performance to 28 February 2018.
- All correspondence and engagement with SG Health Finance in respect of the management of allocations must be carried out by the Head of Corporate Reporting, or the Associate Director of Finance – Financial Planning & Analysis, following approval by the Director of Finance.

Other actions underway:

Work is underway in the following areas. This work will specifically address the key finding within the Grant Thornton report and will enable the recommendations made by KPMG to be implemented in full.

Formal management investigation into potential irregularities in the financial management of e-Health funds relating to years 2012 – 2018

In line with the Management of Employee Conduct Policy, the CEO directed that a formal management investigation into the potential irregularities in the financial management of e-Health funds relating to years 2012 – 2018 and particularly between NSS, NHS Tayside, eHealth and Scottish Government eHealth.¹ The investigation is to establish if there is any evidence of a breach of conduct by any NSS employee.

Improved governance and reporting

Work is underway with SBUs to identify governance arrangements and any delegated authority in place for all funds managed by NSS on behalf of NHSScotland to consider whether a greater level of financial scrutiny is required.

A report outlining current arrangements was presented to the NHS NSS Board on 6th April 2018.² That report highlighted specific areas of possible risk which would benefit from additional internal audit attention during 2018/19 and where additional reporting requirements are recommended. The Board agreed to these revised reporting arrangements and directed that they be adopted with immediate effect. The first of these revised reporting arrangements will be scrutinised by the Performance and Finance Committee on 30th May 2018.

Revision of SFIs

The SFIs are currently under review, and will be subject to a fundamental redrafting to ensure that governance, management and reporting arrangements, including delegated approval limits are clearly articulated. The revisions will include:

- Procedures for the management and reporting of funding allocations. All allocation returns and changes will require authorisation by the Director of Finance
- Governance and delegated authority for all funds managed by NSS on behalf of NHSScotland; including but not limited to:
 - NSD
 - CNORIS
 - eHealth
 - National Logistics
- Scheme of delegation and reporting arrangements for the payment of practitioner payments

The revised SFIs will be reviewed by the Performance & Finance Committee on 30th May 2018.

Improved financial controls compliance

Minor changes to the structure within Finance were agreed by OCPMG in January 2018, including a new post of Financial Controller, with responsibility for ensuring organisational compliance with the financial controls framework. A key aspect of the

¹ 'In Confidence' letter from CEO to Mary Morgan dated 3 April 2018.

² NHS NSS Board paper B/18/61

role will be to improve supporting processes and governance arrangements and to report on performance to EMT and the Audit and Risk Committee. It is anticipated that the role will be in place by September 2018.

Rotation of Senior Finance staff

Options to introduce regular rotation amongst senior finance staff are being explored in partnership with our TU colleagues. The aim is to support both the learning and development of our staff and encourage regular reviews and challenges to existing working practices. Changes in team responsibilities within the IT SBU will be introduced by end April 2018. Wider rotation arrangements will be introduced in line with existing planned, organisational change.

Training of Finance Staff

All finance staff will receive training on professional standards, the role of finance and our expectations in respect of ethical standards and how to identify and deal with financial irregularities and inappropriate behaviours. Discussions are underway with CIPFA and ICAS regarding course design. All staff are to have undergone this training by the end June 2018.

Mandatory training on financial management for non financial managers

NSS is also exploring options available for training on financial management, SFIs and role of budget holders for all staff. This will be an additional mandatory training requirement for all staff. eLearning modules in use across NHS Scotland will be reviewed for appropriateness and updated to reflect the specific requirements highlighted through the investigations. These new training modules are to be available during the 2nd quarter of the 2018.

CIPFA Business Partner qualification for our current and future heads of finance

We recognise the need to support and develop our finance staff to ensure they are equipped to meet the needs of the business in the challenging financial environment. We will be commissioning training from CIPFA; to be delivered locally and made available to all National Boards finance managers. Modules include:

- Finance Business Partnering
- Commercial Acumen
- Communication and Presentation Skills
- Behavioural Skills and Emotional Intelligence
- Influencing Skills: Impact and Presence
- Transformational Change

The first cohort will be trained during 2018/19.

Governance arrangements:

The CEO has given regular, verbal updates on progress to the Board Chair and Chairs of the Audit and Risk and Performance and Finance Committees. The latter two Non-Executive Chairs have also constituted a Panel, with HR Director support to oversee the investigation into the financial management of e-Health funds and assure progress against the agreed action plan. This panel first met on 22 Mar 18 to discuss the KPMG and Grant Thornton reports, their remit and ensure there was mutual understanding of the situation across the Non-Executive and Executive Directors.

Formal scrutiny and discussion of the KPMG and Grant Thornton reports has been undertaken by the Audit and Risk Committee (28 Mar 18) and NSS Board (6 Apr 18).³

A summary of actions together with responsible officers and due date for completion is presented in Appendix 1. Progress on these actions will be formally scrutinised by the EMT as part of the monthly Finance update and also to the Audit and Risk Committee, Performance and Finance Committee and NSS Board.

Colin Sinclair
Chief Executive NHS National Services Scotland
16rd April 2018

³ NSS Board paper B/18/37 dated 6 April 2018.

APPENDIX 1

Action	Responsible officer	Due Date
Improved Governance and Reporting:		
<ul style="list-style-type: none"> Initial reporting of eHealth to EMT and NSS Board based on financial position at 28 February 2018 	Director of Finance & Business Services	26 th March 2018
<ul style="list-style-type: none"> Current governance and reporting arrangements for Nationally Managed Funds presented to NSS Board, with recommendations for revised reporting and internal audit intervention where appropriate 	Director of Finance & Business Services	6 th April 2018
<ul style="list-style-type: none"> Revised reporting arrangements to EMT and Performance & Finance Committee introduced with immediate effect 	Director of Finance & Business Services	23 rd April 2018 (EMT) 30 th May 2018(PFC)
Revision of SFIs	Director of Finance & Business Services	30 th May 2018
Improved Financial Controls compliance:		
<ul style="list-style-type: none"> Financial Controller in post 	Director of Finance & Business Services	30 September 2018
<ul style="list-style-type: none"> Formal reporting on controls compliance in place (EMT and Audit & Risk Cttee) 	Associate Director of Finance (Financial Planning & Analysis)	December 2018
Rotation of senior finance staff		
<ul style="list-style-type: none"> IT SBU 	Director of Finance & Business Services	30 April 2018
<ul style="list-style-type: none"> Other SBUs 	Associate Director of Finance (Financial Planning & Analysis)	30 September 2018
Training of Finance Staff	Associate Director of Finance (Financial Planning & Analysis)	30 June 2018
Mandatory training on financial management for non financial managers	Associate Director of Finance (Financial Planning & Analysis)	30 September 2018
CIPFA Business Partner qualification for our current and future heads of finance	Associate Director of Finance (FPA)	31 March 2019



Scottish Government Internal Audit Directorate

DG Health and Social Care

Audit Terms of Reference

Review Title:

SG Response to Recommendations 8,9 and 10 In the report
“Independent review by Grant Thornton UK LLP on eHealth Funding
between eHealth, NHS National Services Scotland and NHS Tayside
between 2012 and 2018”

Internal Audit Directorate

Report Issue Date: **02/05/2018**

Key contacts

SG Audit year	2018-19
Client Accountable Officer:	Paul Gray, DG Health and Social Care
Client Audit Contact(s):	<p><u>Main Contacts</u></p> <ul style="list-style-type: none"> • Richard McCallum, Deputy Director Health Finance and Infrastructure • Julie McKinney, Finance & Payments Officer, Head of Internal Financial Performance • Graham Gault, Interim Head of eHealth
Senior Internal Audit Manager:	<ul style="list-style-type: none"> • Les Henderson, Senior Internal Manager, tel: 0131 244 4796
Internal Audit Manager (including phone number):	n/a
Internal Auditor(s) (including phone number):	n/a
Trainee Internal Auditor (including phone number):	n/a

Estimated Reporting Timetable

Field work Starts:	03/05/2018
Field Work Ends:	18/05//2018
Draft Report Issued:	25/05/2018
Final Report issued:	04/06/2018

1. **Background**

1.1. Following the identification of the potential misuse of Scottish Government eHealth monies, Grant Thornton UK LLP were commissioned to independently consider the arrangements in place in respect of eHealth, NHS National Services Scotland (NSS) and NHS Tayside.

1.2. The focus of this investigation related to the Scottish Government Health and Social Care Directorate's (SGHSCD) eHealth programme resource allocation transactions between 2012 and 2018. These transactions were transfers of resource allocations from NSS to NHS Tayside through the Scottish Government's revenue allocation process, and ranged in value from £0.538m to £2.582m over the time period. In 2017/18 the financial impact on NHS Tayside due to these funds is £5.3m (the unreturned balance in 2016/17 and the 2017/18 funds).

1.3. The report was finalised in March 2018 and accepted in full by DG Health and Social Care. It set out several findings and conclusions, for the Scottish Government (eHealth and Health Finance) to address. Commenting on this report to the convenor of the Scottish Public and Post Legislative Scrutiny Committee in March, DG Health and Social Care gave an undertaking that the financial governance of national eHealth funds will now reside solely within Scottish Government, and additional internal control measures had also been put in place to validate requests for funding transfers between NHS Boards. Furthermore, it noted that the Scottish Government's Director of Internal Audit will review these additional measures.

1.4. This review has therefore been commissioned to implement the above request and specifically to provide a level of assurance on the new control measures implemented.

2. **Scope**

2.1. The review will cover findings relevant to the Scottish Government. As a result, following discussions with the Deputy Director Health Finance and Infrastructure, it was agreed that the scope would focus solely on responses to findings eight, nine and ten. – **Annex 1** refers.

2.2. Our work is limited to those aspects only. Given that some of the new processes and controls will have only recently been agreed and implemented, we will provide assurance to

the extent possible as outlined in paragraphs 2.3 and 2.4. In terms of comprehensiveness, further review work will be carried out at a later date when the new processes have had sufficient time to embed. We will agree the timing of this work with Deputy Director ,Health Finance and Infrastructure

2.3. What the review will provide is an assessment and opinion on the design of the new control measures and whether the control design adequately addresses and has the potential to mitigate the risks and issues raised in the report. We will also confirm that the new controls are in place and where possible, we will undertake relevant controls and substantive testing.

2.4. More specifically the review will assess processes in place for:

- Ensuring the veracity of controls around Health funding allocations. We will ensure that processes are in place to exert due scrutiny and challenge over new and existing allocations and that the documented controls to be used by staff are clear and understood, that there is a clear description on the purpose of the allocation, that funding is not made in advance of need, underspend/overspends can be readily identified and reported on etc.
- Ensuring that all Health Directorates have appropriate financial support and that the Deputy Director for eHealth receives appropriate and robust information from eHealth leads and that he is represented in appropriate eHealth groups.
- Confirming there are appropriate controls relating to good communication and flow of relevant data between NSS, eHealth and Health Finance

3. Risks Covered

3.1. If appropriate controls are not in place and well designed, there are potential overarching risks of a governance, financial and reputational nature to SG. This high level risk is recognised in the Health and Social Care Assurance Boards (HSCAB) risk register.

3.2. More detailed operational risks include:

- A lack of communication and clear documented process and inconsistency in control culture between NSS, eHealth and Health Finance lead to financial and project outcome issues

- Allocation request is not properly scrutinised leading to authorising an unnecessary request, request of incorrect value and one that is inconsistent with remit.
- SG Budget holders are not finance professionals and may not understand accounting / budgetary implications of an allocation. This also has a potential to impact on the veracity of financial control and how spend is monitored.

4. Audit Approach

4.1. We will undertake the audit in compliance with the Internal Audit Directorate (IAD) Charter and Audit Manual. The supervision framework over the review and where relevant, Peer review, will also ensure compliance with Public Sector Internal Audit Standards.

4.2. Relevant staff will be interviewed and evidence of controls design recorded on our Galileo and the SG eRDM systems.

5. Reporting

5.1. Following fieldwork a provisional meeting will take place with Deputy Director Health Finance and Infrastructure and the Head of Internal Financial Performance to agree findings

5.2. The draft and final reports will be sent to the DG Health and Social Care, Director of Health Finance, Deputy Director Health Finance and Infrastructure, the Head of Internal Financial Performance and the Interim Head of eHealth for comment. The final report may be disseminated to a wider audience if authorised by DG Health and Social Care. The final report will in the form of a Management Letter

ANNEX 1

Relevant Recommendations for This Review

Finding 8: The Deputy Director eHealth has responsibility for ensuring resources under his remit are expended appropriately. In our view, the approval to transfer allocations to NHS Tayside at the end of each financial year was inappropriate given the former Deputy Director of eHealth was aware that these funds would not be utilised by NHS Tayside in year for the purposes intended. We acknowledge that colleagues from NHS Tayside and NSS have their own duty of care surrounding the use of these funds as well as the wider eHealth leads group. From review, there appears to be limited financial support available to the Deputy Director of eHealth with significant reliance on information provided by the NSS Head of Finance.
Source: Grant Thornton report on eHealth Funding – emphasis added

Finding 9: Whilst we recognise that the revenue resource transfers are authorised by appropriate budget holders within the Scottish Government, we would expect there to be scrutiny of these within finance before processing. Given the limited information on the transfer form, our expectation would be that the supporting email trail would have been reviewed which should have highlighted that a Health Board was holding balances at the year end.

Source: Grant Thornton report on eHealth Funding

Finding 10: There are opportunities to enhance the current financial monitoring arrangements in place across the eHealth Leads group as well as the finance sub-committee to provide more transparent monitoring for the group of the overall programme. While we acknowledge that the Scottish Government eHealth central budget is not within the remit of the eHealth Leads group, it is important to ensure transparency of amounts reported.

Source: Grant Thornton report on eHealth Funding