

**Minutes of the thirty-eighth meeting of the  
Office for Legal Complaints Audit and Risk Committee  
Monday 2 July 2018  
10.00 - 13:00  
National Audit Office, London**

**Present:**

Michael Kaltz, Chair

Rebecca Hilsenrath

Annette Lovell

**In Attendance:**

Rob Powell, CEO

Nikki Greenway, SIRO and Head of Information, Technology and Governance (ITG) (by telephone for items 6 and 9)

Sarah Ritzenthaler, Parliamentary and Policy Associate (by telephone for items 2 and 3)

Neil Buckley, CEO, Legal Services Board

Steven Corbishley, NAO (items 1 – 6)

Archie Rwavazhinji, Assistant Manager, BDO

David Eagles, Partner, BDO

Ali Morgan, National Audit Office (NAO)

Andrea Emms, Government Internal Audit Agency (GIAA)

**Observer:**

Elisabeth Bellamy, OLC Board Member

**Apologies:**

Alison Wedge, Deputy Director, ALB Governance, MoJ

Rebecca Marsh, Chief Ombudsman

Emma Cartwright, Head of Finance

**Board Secretary:**

Kay Kershaw

**Item 1 – Welcome and apologies.**

1. The Chair welcomed those in attendance and introductions took place. Apologies were noted.
2. The meeting was quorate.

3. Annette Lovell declared a conflict of interest in regard to discussions about the CMC transfer to the Financial Ombudsman (FOS).
4. There were no other conflict of interests declared.

#### **Item 2 – Annual report and accounts**

5. The CEO presented a paper setting out the draft Annual Report and Accounts for 2017/18.
6. He explained that approval of the Annual Report and Accounts was a matter reserved to the OLC Board and that, at a Board meeting on 4 June, it had been agreed that the final review of the Annual Report and Accounts would take place at the ARAC meeting on 2 July. ARAC would then make a recommendation to the OLC Board about whether the Annual Report and Accounts for 2017/18 could be signed off and approved for publication and laying before Parliament before the July recess. Due to the tight timescales for laying the report before Parliament, it had been agreed that the OLC Board would provide their final approval of the Annual Report and Accounts 2017-18 out of committee.
7. Members of ARAC had had previous sight of the draft Annual Report and Accounts and had provided their feedback.
8. On 23 May a copy of the Annual Report and Accounts had been sent to OLC members who were not members of ARAC to provide their comment. This version had also been shared with the MoJ in preparation for a meeting with Lord Keen which was attended by the OLC Chair, Chief Ombudsman and CEO on 21 June.
9. The paper summarised key changes that had been made to the report in response to feedback and points raised by external audit.
10. The Committee reviewed the Annual Report and Accounts in detail, provided comments and requested a number of amendments to the report which were noted by Sarah Ritzenthaler. Subject to these amendments being made, the Committee **agreed** to recommend to the OLC Board that it approved the 2017-18 Annual Report and Accounts for final sign off and publication.

#### **Item 3 – External Audit update**

11. External Audit presented an audit completion report setting out findings from the audit of the 2017-18 financial statements and reported that they anticipated recommending to the Comptroller and Auditor General that the OLC's 2017-18 financial statements should be certified with an unqualified audit opinion, without modification.
12. The audit of financial statements was substantially complete, subject to the receipt and review of the OLC's final signed accounts, incorporating any agreed audit adjustments, receiving the signed representation letter from the OLC and a final subsequent events review being undertaken by BDO / NAO prior to sign off.
13. The Committee considered the key audit risks set out in the report: management override of controls; revenue recognition; materiality and unadjusted misstatements.
14. External Audit confirmed that no evidence of management override of controls had been identified.

15. External Audit confirmed that no evidence of material misstatement in respect of revenue, or of fraud or management bias in revenue recognition had been identified.
16. External Audit explained that there was one unadjusted misstatement which exceeded the £5k threshold. This related to accounting for a 6 month rent free period after the 5 year break clause on the lease for Edward House.
17. The Committee considered whether any correction was required in regard to the unadjusted misstatement in light of the CEO's explanation that the first rent free period had been spread over 10 years, but the second rent free period would only come into place when the MoJ approved the OLC's application to remain beyond the lease break. Based on the prudence accounting principle, the Committee **confirmed** the CEO's view as Accounting Officer that the OLC should not account for this until such time as the MoJ had confirmed approval for the OLC to remain in the premises, and the unadjusted misstatement should not be corrected.
18. External Audit confirmed that there were no significant risks of material misstatement in regard to related party identification and disclosures, and had identified no irregularity or impropriety or internal control issues that those charged with governance should be alerted to. External Audit was content with the overall neutrality, consistency and clarity of the disclosures in the financial statements as well as judgements made in formulating particularly sensitive disclosures.
19. The Committee, having considered whether the financial statements could be materially misstated due to fraud, **confirmed** that it had no knowledge of any expected or risk of fraud that would change the views of external audit.
20. Having **reviewed** and **noted** the findings set out in the audit completion report, including the draft letter of representation and audit certificate the Committee **recommended** that the Accounting Officer should sign letter of representation and would recommend to the OLC Board it should approve the Accounting Officer signing the 2017-18 annual report and accounts.

#### Item – strategic risks

21. The CEO presented a paper summarising the position on strategic risk for quarter 1.
22. The OLC had approved a new set of more focussed strategic risks at its Board meeting in June and the strategic risk register had been updated accordingly. A new set of corporate risks had been developed to sit beneath the strategic risks.
23. One of the five strategic risks was at target and four were above target.
24. Four of the sixteen corporate risks were at target. Three of the risks were green and nine were amber. Three were red and related to not fully exploiting opportunities to use IT to drive improvements, management information and data integrity and lack of resilience in operational and support functions. There was one risk that was currently black relating to CMC transition.
25. The risk strategy required the Executive to report any operational risks with a score above 15 to ARAC. Of the four operational risks with a score above 15 reported in April, those relating to Modernising LeO had now reduced to below 15 as a result of successful go live in mid-April.

26. The UnITe work stream risk register had a score of 15 for 'absence of key subject experts'. This related to the risk of IT staff key to the delivery of UnITe leaving the organisation or being absent and the associated challenges in recruiting and replacing them in sufficient time to meet the ambitious delivery timetables. The CEO advised that the work stream was being closed down at which point the associated risk would inform the corporate and programme risk framework.
27. An in-depth review of a specific risk was not undertaken at this meeting but the Committee **approved** a schedule of in depth risk reviews for future meetings.
28. A discussion took place about the risks associated with the transfer of the CMC jurisdiction to FOS.
29. The CEO reported that he would be meeting with CMC staff on 4 July to discuss transition issues.
30. The Treasury had yet to confirm the arrangements for paying transfer costs given that it was likely to be irregular for the OLC to use grant-in-aid to fund transition costs.
31. FOS was yet to confirm a final decision on the location of the CMC work.
32. Following discussion, the CEO agreed to review and re-word the commentary about contingency plans for the risk around trust and confidence in order to provide greater clarity.  
**ACTION: the CEO to review and re-word the commentary about contingency plans for the risk around trust and confidence.**
33. There was some concern about the likelihood target of 4 that had been given to the risk around trust and confidence. The CEO explained that this risk was a high risk due to the number of factors underpinning organisational trust and confidence, and reminded the Committee that the OLC Board had agreed an open risk appetite for this particular risk.
34. Following discussion, the CEO agreed to discuss with the Chief Ombudsman whether the likelihood and impact targets for this risk needed to be changed.  
**ACTION: CEO to discuss with the Chief Ombudsman whether the likelihood and impact targets for the trust and confidence risk needed to be more balanced.**
35. The Committee **noted** the update on strategic risks.

#### Item 5 – Policy reviews

36. The CEO presented an update on policy reviews and explained that due to recent legislative changes reviews of all policies that referenced data protection legislation had been undertaken and this had led to some minor factual changes being made to the Access to Information and Information and Data Protection policies.
37. In discussion, it was noted that the Information and Data Protection policy still made reference to the post of Compliance Officer. As this post no longer existed, the CEO informed the Committee that the policy would be amended to reflect the new Data Protection and Information Compliance Officer role.

**ACTION: The SIRO to amend the Information and Data Protection policy to remove the reference to the post of Compliance Officer.**

38. It was also noted that this policy did not make any reference to the requirement for staff to report data breaches within the new time limits set out in GDPR legislation. The CEO agreed to arrange for the SIRO to include this in the policy.

**ACTION: The SIRO to update the Information and Data Protection policy to include a reference to the requirement for staff to report data breaches within the new time limits set out in GDPR legislation.**

39. The Committee **approved** the Information and Data Protection policy subject to the two changes set out above.

40. In discussion, it was suggested that clarity may be required around LeO's policy in regard to recording meetings and discussions and how staff were being informed of any recordings that were taking place and how recorded data was being stored. The CEO **noted** this suggestion.

41. The Committee **noted** that a review of the Procurement policy had resulted in some minor changes to reflect the reorganisation of roles and delegations in place at the time.

42. The Committee **noted** that the Gifts and Hospitality, Conflict of Interest and Expenses policies would be reviewed and revised in July, following receipt of the formal 2018-19 delegations from MoJ.

43. The Committee **noted** the review of these policies.

#### **Item 6 – Data handling incident report**

44. The SIRO presented a paper providing an update on the data handling incidents that had occurred in the first quarter of 2018/19.

45. The Committee was advised that previous data incident reports had been delivered by Operations with input from the Compliance function, but with the advent of GDPR and the creation of a more senior Data Protection Officer, as required by law, the new role would report directly to the SIRO and responsibility for the delivery of this update had moved with it.

46. Since the report was issued to ARAC, a further seven incidents had occurred; 3 involving incorrect postal addresses, 2 involving incorrect email addresses; 1 where the recipient was unclear (as it related to an old and possibly unregulated organisation) and 1 related to hidden data in a user-generated template.

47. It was felt that the increase in the number of data breaches reported was as a result of the introduction of GDPR and raised staff awareness, as well as the decision to widen the scope of breach reporting to include physical security breaches.

48. Of these incidents, four were reported to the ICO to ensure that reporting was carried out within the new deadlines.

49. Subsequently, and upon a more detailed review, one data breach was found not to have needed reporting as it contained limited information and had been immediately remediated by the recipient.

50. Remedial action had taken place to improve the control of letter templates, thus reducing the risk of new breaches. Further investigation was underway to provide assurance that there were no other related information security risks.
51. One of the other two incidents related to a misreading of an untidy handwritten form; the other related to a complainant who had moved address and investigations were taking place as to whether they had notified LeO. In both cases efforts were being made to obtain the wrongly addressed correspondence.
52. Having reviewed these additional incidents, the two main themes set out in the paper around incorrect addressing and ID cards remained valid. On 22 June a reminder was issued to all staff to check email and postal addresses and work had been commissioned to prepare guidance notes for good practice in contact data verification. Reminders were to be issued to all staff about wearing ID badges at all times.
53. In a detailed discussion, the CEO confirmed that there was absolutely no complacency in regard to the spike in the number of data breaches reported. Additionally, system and quality checks should be considered to assure the accuracy of data and not to rely solely on staff reporting after the event.
54. A further detailed discussion took place about the autofill function available in Outlook. The SIRO would investigate the use of autofill and assess associated risks, and any historical decisions about this.
- ACTION: The SIRO to investigate the use of autofill and assess associated risks, and any historical decisions about this.**
55. The Committee **noted** the update on data handling incidents.

#### Item 7 – Update on internal audit actions

56. The CEO presented an update on internal audit actions.
57. Three actions remained unremediated: One related to the audit of Financial Control Frameworks and would remain unremediated until CMS 1 was decommissioned and the other two related to the audit of Attendance Management and were expected to be remediated upon approval by RemCo in September of amendments to the Sickness Absence Management policy.
58. The Chair requested that the following statement was added to the internal audit update: Whilst Internal Audit found the risk of not recording details of first day absence details and outcomes of contact conversations to be low, ARAC asked the Executive to give this action a higher priority due to the associated risks.
- ACTION: Board Secretary to ensure that the statement above is included in the internal Audit action report and that a higher priority than that given by Internal Audit is given to the risks around not recording details of first day absence details and outcomes of contact conversations**
59. The Committee **noted** the update on internal audit actions.

### Item 8 – Internal Audit update

60. Andrea Emms presented an update on progress against the 2018 /19 internal audit plan.
61. All audits scheduled for quarter 1 were in fieldwork and scoping work for the audits scheduled for quarter 2 had commenced. The audit of GDPR was to be conducted as part of a cross GIAA programme of work and the OLC work would take place in quarter 2.
62. Terms of reference for the stakeholder management internal audit undertaken would be circulated to ARAC once agreed.
63. The CEO reported that a voluntary audit by the Information Commissioner's Office would take place in quarter 4.
64. A Data Protection and Compliance Officer had been appointed and would join the organisation in mid-August.
65. The Committee **noted** the progress made by internal audit.

### Item 9 – Update on cyber security and penetration testing

66. The Head of IT presented a paper providing an update on the progress being made on the actions arising from LeO's self-assessment against the National Audit Office guidance on cyber security.
67. She advised that since the discussion of a self-assessment on cyber security at the ARAC meeting in January, an independent penetration test had been undertaken. The paper included an update on the main issues identified and progress that had been made to address them.
68. The CEO reported that external scrutiny of LeO's cyber security was undertaken as part of the MoJ's holding to account meetings and through regular reporting to MoJ's technical department and attendance at the ALB SIRO meetings.
69. In discussion, the CEO and Head of ITG provided assurance to the Committee that the prioritisation of the actions stated was correct in light of the organisational changes and current priorities.
70. A further penetration test was planned for April 2019 and this would include robust testing of "use your own device" services which would be implemented by then.
71. The Committee **noted** the update on cyber security.

### Item 10 – Health and safety compliance report

72. The CEO presented the annual Health and Safety compliance report which covered the period between June 2017 to June 2018 and reported on the progress made in regard to the 2017/18 risks and priorities, set out the priorities for 2018/19 and included a record of reported health and safety incidents .
73. Following discussion, the CEO **agreed** to clarify whether there were any statutory requirements to report health and safety incidents in the annual review.

**ACTION: The CEO to clarify LeO's statutory requirements to report health and safety incidents in the annual review.**

74. The Committee **noted** that LeO was a low risk organisation with a positive health and safety culture that received consistently positive feedback from external health and safety providers and the MoJ. Advice from the Health and Safety Executive, new regulations and guidance was adhered to in order to ensure the welfare of employees.
75. The Committee **noted** that in October 2017, a formal agreement between LeO and the Head of MoJ Corporate was reached for the provision of professional advice for Health & Safety in regard to accident and incident reporting, home working, stress related risk assessment, and advice on annual OHS/FS assurance reporting. Additionally, LeO was now a member of the MoJ's Health and Safety forum and Fire Safety forum.
76. The Committee was advised that regular reports in regard to the number of days lost specifically to work related stress were provided to RemCo as part of the HR balanced scorecard. Whilst the number of days lost to work related stress was relatively low, the well-being and workplace mental health agenda had a high priority to maximise staff engagement, performance and productivity.
77. Considerable work had been undertaken over the last 12 months to address this and the health and safety priorities for 2018/19 had moved beyond purely physical health and safety risks and now also considered well-being, mental health and stress.
78. The Chair commented that work related stress was considered by ARAC to be a risk
79. The Committee **noted** the annual health and safety compliance report.

#### Item 11 – ARAC terms of reference

80. The Committee **reviewed** and **approved** proposed changes to ARAC's terms of reference which reflected changes in committee membership and organisational structure.
81. It was **agreed** that the Board Secretary would table amended terms of reference at a future Board meeting for final approval.
- ACTION: Board Secretary to table the amended terms of reference at a future Board meeting for final approval.**

#### Item 12 – Standing items

82. The CEO presented a paper from the Head of Finance setting out exception reporting as at period two which included details of two single tenders.
83. The two single tenders were discussed.
84. The CEO **agreed** to clarify the justification for the second single tender with the Head of Finance who would report back to the Committee.
- ACTION: CEO to ask the Head of Finance to clarify the justification for the second single tender and report back to the Committee**
85. Suggestions for improving the layout of the report by tabulating it and improving the detail included in the report by providing some quantification were put forward. Additionally, reference to consideration of Civil Service Learning courses should be included when procurement for training courses has been undertaken.

**ACTION: CEO to ensure that the Head of Finance amends the layout and detail of this report in line with the suggestions set out.**

86. The Committee **noted** the update on standing items.

#### **Item 13 – Previous minutes**

87. Members of ARAC reviewed the minutes of the meeting held on 19 April 2018 and **approved** them as an accurate record of the meeting.

#### **Item 14 – Matters arising and outstanding actions**

88. A discussion took place about the outstanding action for GIAA to issue its annual survey to members of ARAC.

89. GIAA advised that whilst a standard assessment document was available, the Committee might wish to identify its own criteria for inclusion in this survey.

90. The Chair **agreed** that the Committee would identify its own criteria; this would be done out of committee and would be forwarded to GIAA before the next Committee meeting on 8 October.

**ACTION: The Chair and Committee members to identify criteria for inclusion in the GIAA annual survey and forward this to GIAA before the ARAC meeting on 8 October.**

91. In line with the ARAC terms of reference, a private meeting between members of ARAC and GIAA was to be arranged by the Board Secretary for 8 October. The GIAA annual survey would be discussed further at this meeting.

**ACTION: Board Secretary to arrange a private meeting to take place on 8 October between members of ARAC and GIAA.**

92. The Committee **noted** the update on outstanding actions.

#### **Item 15 – Recap of decisions taken**

93. The Chair provided an update on the decisions taken during the meeting; these are outlined in the relevant section of minutes.

#### **Item 16 – Any other business**

94. A further discussion took place about an incident reported in the Health and Safety compliance report after which, the CEO agreed to make further enquires to ascertain whether or not the description of this incident was accurate.

**ACTION: The CEO to make enquires to ascertain whether the description of an incident reported in the Health and Safety compliance report was an accurate description of the incident.**

95. There was no other business discussed.

### **Summary of decisions made at the meeting:**

1. Annual report and accounts: Subject to minor amendments, the Committee decided to recommend to the OLC Board that it approves the 2017-18 Annual Report and Accounts for final sign off and publication.
2. External Audit's financial statement audit 2017-18: The Committee decided that the unadjusted misstatement did not require any correction in light of the CEO's explanation that the first rent free period had been spread over 10 years, but the second rent free period would only come into place if the OLC were permitted to remain beyond the lease break and that the OLC should not account for this until such time as the MoJ had confirmed approval for the OLC to remain in the premises.
3. External Audit 2017-18: The Committee decided to recommend that the Accounting Officer should sign the letter of representation.
4. Strategic risks: The Committee decided to agree the deep dive risk schedule proposed by the CEO.
5. Policy reviews: The Committee decided to approve, subject to minor amendments (deletion of the reference to the Compliance officer and inclusion of a reference to the requirement for staff to report data breaches within the new time limits set put in GDPR legislation) the amended Information and Data Protection policy.
6. Policy reviews: The Committee decided to approve amendments to the Access to Information policy.
7. ARAC terms of reference: The Committee decided to approve amendments to the ToRs and agreed that they should be sent for formal Board approval.
8. Standing items: The Committee decided that the layout of the standing items report should be changed - tabulated and to include quantification.
9. Outstanding actions: The Committee decided to identify its own criteria for inclusion in the GIAA annual survey and forward this to GIAA before the ARAC meeting on 8 October.
10. Matters arising: The Committee decided to arrange a private meeting in line with the ToRs with Internal Audit before the next ARAC meeting in October