

**Minutes of the Fortieth Meeting of the
Office for Legal Complaints Audit and Risk Committee
Monday 11 March 2019
13:00 – 15:50
Edward House, Birmingham**

Present:

Michael Kaltz, Chair

Rebecca Hilsenrath

Annette Lovell

In Attendance:

Rob Powell, CEO

Rebecca Marsh, Chief Ombudsman

Nikki Greenway, SIRO and Head of Information, Technology and Governance (ITG) (items 3, 4 and 5)

Emma Ireson, Programme manager (items 1-9)

Siobhan Fennell, Head Ombudsman (item 10)

David Eagles, Partner, BDO, by telephone

Ella Firman, NAO

Chris Davies, Government Internal Audit Agency (GIAA)

Ed Bowie, MoJ

Observers:

Neil Buckley, CEO, Legal Services Board (items 1 -7)

Wanda Goldwag, Chair of OLC

Shrinivas Honap, ARAC Chair designate

Brendan Arnold, Interim Director of Corporate Services

Apologies:

Emma Cartwright, Head of Finance

Steven Corbishley, NAO

Alison Wedge, Deputy Director, ALB Governance, MoJ

David Bartlett, MoJ

Mark Andrews, Government Internal Audit Agency (GIAA)

Nuwan Indika, BDO, External Audit

Board Secretary:

Kay Kershaw

Item 1 – Welcome, apologies and preliminary matters

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.
5. The Committee **noted** the ARAC forward plan that had been circulated for information prior to the meeting.

Item 2 – Strategic risk register and deep dive of the demand risk

6. The CEO presented a paper setting out the current position on strategic risk and a report on a deep dive review of the organisational capability and governance risk.
7. The strategic risk register had been updated to reflect five new strategic risks agreed by the OLC in June 2018. Of these, one risk was at target and 4 are above target. Three of the risks were stable and two were falling. The CEO reported that it was unlikely that target risk levels would be achieved until a more consistent and sustained improvement in organisational performance was seen.
8. The operational resource risk had a black status as a result of turnover and current staffing levels.
9. Four of the corporate risks were at target, the others were above target. Four corporate risks had a red status. It was anticipated that the red status of the CMC transfer risk would rapidly reduce in April following the successful transfer of the CMC jurisdiction to the Financial Ombudsman Service.
10. Members discussed the risks associated with the work being undertaken to embed a high performance culture, values, behaviours and new ways of working and noted their consequences, particularly in regard to the increased workload of the HR team.
11. They acknowledged the importance of getting the right balance between staff capability and performance, and sought assurance from the executive about how the organisation would ensure that staffing levels were maintained to mitigate any risks around performance.
12. In response, the executive reported that a rolling recruitment campaign was in place and that the Board would be considering three alternative delivery models at its meeting in March with a view to mitigating the risks around staff turnover and performance. Budgetary and legal constraints restrict the organisation's options to increase staff numbers or work in different ways to improve performance this present time.
13. A suggestion was put forward to develop key metrics to help understand an individual's performance and its impact on organisational performance should they leave. It would be important to continue to set clear expectations about required

performance at all levels of the organisation in order to get the right disciplines in place.

14. At the request of the ARAC Chair, a deep dive review of the organisational capability and governance risk was undertaken. The review focussed on the risks and risk management associated with moving from a Chief Executive and Chief Ombudsman structure to a combined role with effect from 1 April 2019.
15. Members sought assurance around the transition arrangements while the new structure bedded in. The CEO reported that an Interim Director of Corporate Services (DCS) had been appointed and would commence on 19 March ensuing that a two week handover period with CEO would take place; recruitment for a permanent DCS was underway, and in the last few months the CEO and CO have worked together closely to ensure that the CO understood the aspects of her new role in order to mitigate any risks.
16. Additionally, changes have been made to the line management of the Management Team, with some now reporting to the DCS and others reporting to the CO. Members of the Management Team will continue to attend Board and Committee meetings as required.
17. The impact on governance arrangements generally was discussed including assurance processes.
18. A clear message has been given to all levels of management to ensure they understand that the structural changes require all managers to provide a high quality of leadership going forward.
19. The Chair stated that he would expect the Head Ombudsmen and the DCS to attend future ARAC meetings to discuss risk.
20. The Committee **noted** the strategic risk update and deep dive review of the organisational capability and governance risk.

Item 3 – Information rights and security update

21. The Head of IT and Governance and SIRO presented a paper providing an update on information rights and security incidents for quarter three and the first half of quarter 4. Additionally, as this was the closest meeting to the year-end, an annual review was provided for both incidents and requests.
22. The number of security incidents remained steady since the last report with similar themes to previous quarters; more active liaison with operational leaders is underway to identify and put in place further measures to reduce human errors.
23. The annual review highlighted an increase in data protection subject access requests following the introduction of GDPR; this trend continues to be monitored in order to establish the longer term demand in order to ensure that the organisation is sufficiently resourced to respond to requests.
24. Members raised concern about the physical security incidents reported. In response the Head of IT explained the steps taken to mitigate future security risks and advised that options and costs were being considered to improve the physical security of the building.

25. The Data Protection and Information Compliance Officer has resigned and the vacant post has been advertised.
26. The CEO reported on a recent voluntary audit on GDPR that had been undertaken by the Information Commissioner's office.
27. Following discussion, the Committee **noted** the update on information rights and security incidents.

Item 4 – External audit update

28. David Eagles, BDO, presented a paper summarising the key matters arising from the interim audit of the 2018/19 financial statements of the OLC.
29. The interim audit concluded that there were no issues to report in regard to the change of case management system and good progress was being made on the upgrade of the Sage ledger.
30. At the time of the interim audit, the Claims Management Transfer Agreement had not been finalised and therefore auditors were unable to undertake regularity testing or consider accounting treatment; planned testing will therefore take place at the final audit, when it was expected that the Transfer Agreement would have been finalised.
31. Auditors awaited a technical paper outlining how the new accounting standards, IFRS 9 and 15, were likely to impact the OLC. The CEO agreed to check on the progress of this paper and confirm its submission date to BDO.
ACTION: CEO to check on the progress of the technical paper outlining how the new accounting standards, IFRS 9 and 15, were likely to impact the OLC and confirm when it would be submitted to BDO.
32. Auditors await a response from Coventry City Council to a request for controls assurance in regard to the outsourcing of the payroll function; once received Auditors will be in a position to finalise this aspect of the interim audit.
33. The CEO reported that the annual review on fraud will be tabled at the May ARAC meeting. Board Secretary to note on the ARAC forward plan.
ACTION: Board Secretary to note that the annual review on fraud will be tabled at the May ARAC meeting.
34. The Committee **noted** the update on External Audit.

Item 5 – Update on internal audit actions

35. The CEO presented a paper setting out an update on actions arising from internal audits.
36. Since the last ARAC meeting, one of the two actions relating to the Financial Control Framework remains outstanding. Two actions for Attendance Management are now complete following RemCo on 28 November. One of the actions for Business Continuity is outstanding as is one for Infrastructure. Both actions for Stakeholder Management are outstanding. The action relating to Programme Management is complete, with submission due to the OLC board as part of the next quarterly performance paper. The GDPR audit was agreed on 4 March and, as such, the actions are yet to be completed.

37. The Committee **noted** the update on Internal Audit actions.

Item 6 – Internal Audit update

38. Chris Davies, GIAA, presented an update on progress against the 2018/19 internal audit plan. He reported that Internal Audits are on track to deliver the plan by the end of the financial year.
39. Fieldwork had been completed for audit of Financial Control Framework and was in train for the audit of Management Information. Both audits would be concluded in good time to produce the annual opinion in March.
40. When undertaking the audit of Management Information, Members were advised that Auditors had focussed on the core assumptions underlying the forecasting model at the time and had considered whether any core assumptions were missing from the model. Auditors had not considered any historical assumptions because the business model had changed. This audit focussed on year one of the forecasting model.
41. The Head of IT and SIRO, provided an update on the process in place for handling GDPR Right to be Forgotten requests how a process for bulk deletions was in train.
42. The Committee **noted** the progress made by internal audit.

Item 7 – Draft internal audit plan 2019/20

43. Chris Davies, GIAA, presented a paper setting out GIAA's audit strategy and approach to developing the 2019/20 internal audit plan.
44. Following discussion Members **approved** the draft internal audit plan for 2019/20.
45. The ARAC Chair designate suggested that the 2019/20 internal audit plan should be aligned to the areas set out in the risk strategy, and requested sight of audit plans for 2016/17 and 2017/18.

ACTION: Board Secretary to forward the 2016/17 and 2017/18 internal audit plans to the ARAC Chair designate.

Item 8 – GIAA annual survey to ARAC Members

46. Chris Davies, GIAA, updated the Committee on outstanding actions from previous meetings
47. He reported that the survey used by GIAA was the same survey used by the NAO. As the OLC already completed the NAO survey, GIAA would therefore not be proposing that the OLC's ARAC Members completed the GIAA annual survey.
48. Members **agreed** to this proposal.

Item 9 – Policy Reviews

49. The CEO presented a paper setting out an update on policy reviews undertaken in line with LeO's rolling programme of policy reviews.
50. Following review, there were no amendments proposed to the Anti-Fraud and Bribery policy. Minor amendments were proposed to the Asset Management, Conflict of Interest, Health and Safety, Service Complaint policies.

51. Following discussion, Members noted and approved the updates to the Anti-Fraud and Bribery, Asset Management, Conflict of Interest, Health and Safety and Service Complaint policies.
52. Members discussed the update to the Health and Safety policy on stress and well-being at work and were assured that ARAC would have oversight of the findings of risk assessments undertaken to identify workplace stressors.

ACTION: Board Secretary to schedule time for ARAC to review the risk assessment of workplace stress.

53. The Executive **noted** Members' feedback on the health and safety arrangements in place for visitors.
54. Following Discussion, Members **approved** the updated Health and Safety Policy.
55. A detailed discussion took place about the Whistleblowing Policy and Members made a number of recommendations for further amendments to this policy. It was **agreed** that the policy would be amended and circulated outside of committee for approval.

ACTION: CEO to arrange for the Whistleblowing Policy to be amended and circulated outside of committee for approval.

Item 10 – Data Assurance

56. Siobhan Fennell, Head Ombudsman, presented a paper providing an update on data assurance activity.
57. Significant progress had been achieved in quarters 3 and 4 in identifying and addressing data integrity issues and in implementing additional data assurance measures.
58. A review of all CMS 1 and CMS 2 data fields has been undertaken and corrective and preventative action has been taken where appropriate.
59. Comprehensive exception reporting for key data fields has now been developed and training has been given to Team Leaders. This will ensure that inaccuracies in data fields will be identified earlier in the business process and will result in less reliance on exception reporting and correction when cases are ready for publication and invoices are ready to be issued.
60. Good progress had been made in improving the range, accuracy and timely delivery of management information. A comprehensive suite of reports is now provided on a weekly basis to the management team and other key data is available as required.
61. Further development of Management Information and forecasting is planned for the new financial year.
62. Further to the action taken to address issues relating to case fees, reported to ARAC at its December meeting, all informal resolution cases had been reviewed in addition to the original 30% sample. Out of 1,000 cases reviewed, two cases were identified where case fees were charged when they should have been waived and 22 cases where the service provider was not informed of a charge being made or informed of

a waived case fee when it should have been charged. A decision was made not to charge in these cases.

63. Members sought assurance from the Executive that this was permitted under MPM. The CEO and Accounting Officer confirmed that in the circumstances it was appropriate to raise and write-off the associated invoices.
64. This additional assurance activity has enabled the organisation to implement additional controls, including: operational data exception reporting with senior oversight; video guidance for the ombudsman team; lessons learned to be incorporated into the rolling data assurance audit programme to be developed in 2019/20, and to design additional training on case fees for team leaders.
65. The Committee **noted** the update on data assurance.

Item 11 – Annual Report and Accounts

66. The CEO presented a paper setting out the process and timetable for the 2018/19 Annual Report and Accounts.
67. A project team has been appointed to work on the day to day production of the report and each member will be responsible for writing a section of the Annual Report and Accounts.
68. In discussion, the CEO advised that he would be supporting the Chief Ombudsman on the Governance Statement included on the report. Ella Firman recommended that the Governance Statement should therefore include information about how the support provided by the CEO has enabled the Chief Ombudsman to sign off the statement.
69. Members discussed the challenges associated with the tight timescales experienced in 2018 for reviewing, amending and signing off the Annual Report and Accounts. The CEO advised that in 2019, the draft Annual Report and Accounts would be tabled for review at the June Board meeting and final approval of the Annual Report and Accounts would be sought at the July ARAC meeting. He **agreed** that tracked amendments would be provided to Members for ease of reference and a change request log would be maintained as an audit trail of all the changes made during the process of drafting the Annual Report and Accounts.

ACTION: Parliamentary and Policy Office to ensure that tracked amendments to the Annual Report and Accounts would be shared with Board and ARAC as required, and a change request log was maintained as an audit trail of all changes made during the drafting process.

70. Members **noted** the process and timetable for the 2018/19 Annual Report and Accounts.

Item 12 – Standing items

71. The CEO presented a paper setting out exception reporting as at period ten.
72. There were no financial irregularities, controls or breaches reported.
73. One matter was reported on the monthly MoJ attestation relating to recruitment fees.

74. The CEO reported that he would be checking to confirm whether he had approved a single tender since the December ARAC meeting and if so, would re-issue this paper to the Committee.

ACTION: The CEO to confirm whether he had approved a single tender since the December ARAC meeting and if so, would re-issue this paper to the Committee.

75. Recruitment continues for the replacement of the outgoing Management Accountant.

76. The MoJ audit of spending controls is underway.

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

Item 14 – Previous minutes

78. Members of ARAC reviewed the minutes of the meeting held on 5 December 2018.

79. Subject to a minor amendment, the Committee **approved** the minutes as an accurate record of the meeting.

Item 15 – Matters arising and outstanding actions

80. The CEO update the Committee on the progress of the CMC transfer to the Financial Ombudsman Service.

81. The CEO reported that he would ask the Board Secretary to circulate a copy of the tracked changes version of the risk strategy, as set out in the previous minutes.

ACTION: Board Secretary to circulate a copy of the tracked changes version of the risk strategy.

82. The Assurance Map, due to be tabled at the October 2019 ARAC meeting, would be updated to ensure that the header line was repeated on all pages.

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

Item 16 – Any other business.

84. The Chair of ARAC asked the CEO to consider, following Modernising LeO, whether the Legal Ombudsman now had any Macpherson Business Critical Models.

85. ACTION: The CEO to report at the May ARAC meeting whether the organisation now had any Macpherson Business Critical Models.

86. The Committee thanked the Chair for his hard work, dedication and leadership and wished him well for the future

87. There was no other business discussed.

