

**Minutes of the Thirty-Ninth Meeting of the
Office for Legal Complaints Audit and Risk Committee
Wednesday 5 December 2018
12:15 – 14:25
Edward House, Birmingham**

Present:

Michael Kaltz, Chair

Rebecca Hilsenrath

Annette Lovell

In Attendance:

Rob Powell, CEO

Rebecca Marsh, Chief Ombudsman (items 1, 2, 11 and 12)

Emma Cartwright, Head of Finance

Nikki Greenway, SIRO and Head of Information, Technology and Governance (ITG) (items 3, 4 and 6)

Chris Manise, Data Protection and Information Compliance Officer (item 3)

Emma Ireson, Programme manager (items 5, 7-10)

Siobhan Fennell, Senior Ombudsman (items 1, 2, 11 and 12)

David Eagles, Partner, BDO

Ella Firman, NAO

Chris Davies, Government Internal Audit Agency (GIAA)

Ed Bowie, MoJ

Apologies:

Neil Buckley, CEO, Legal Services Board

Steven Corbishley, NAO (items 1 – 6)

Archie Rwavazhinji, Assistant Manager, BDO

Alison Wedge, Deputy Director, ALB Governance, MoJ

David Bartlett, MoJ

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 demand risk.
7. Of the five strategic risks, one is at target and 4 are above target.
8. Six of the corporate risks are at target, ten are above target, four have reduced, eleven are stable and one has increased. None of the corporate risks have a score of above 15.
9. Two operational risks relating to the Modernising LeO programme have a score above 15. One relates to reliance on a small pool of resources, the other relates to the impact of change fatigue on the programme. The CEO reported that these are short term risks, as the highest risk Modernising LeO projects had been successfully delivered and the programme is to be closed at the end of 2018-19.
10. In discussion, the CEO confirmed that the commentary for each of the risks was updated before each strategic risk report was tabled at ARAC meetings and **noted** a request to expand the narrative to include an overarching commentary on the strategic risks, including the actions being taken to mitigate overall risk exposure in future strategic risk reports.

ACTION: CEO to include an over-arching commentary on strategic risks, including actions being taken to mitigate overall risk exposure in future strategic risk reports.

11. The deep dive review explained that demand risk covers significant unplanned changes in demand for the Legal Ombudsmen's service. The organisation's ability to meet demand is fundamental to trust and confidence in the scheme. The current demand risk appetite is cautious.
12. The findings of an internal audit of performance data in 2017 highlighted limitations in the organisation's processes for managing the demand risk, specifically in relation to effective forecasting. Since then, progress has been made in improving capability to forecast operational delivery and performance. There is ongoing work to further develop the tools available to support the effective management of demand through the MI step change project.
13. The demand risk is managed through a variety of controls.
14. Historical data and horizon scanning information is used to predict the annual volume of contacts and of complaints accepted into jurisdiction. Regular monitoring of actual volumes of contacts against expected levels is undertaken. Horizon scanning information is regularly updated and highlights any anticipated impacts of

key strategic issues on future demand. Actual delivery against a robust forecast of operational delivery for the financial year is reviewed weekly and adjustments are made to reflect staffing levels, experience levels, utilisation rate and overall performance expectations.

15. Data on contact demand, together with a workforce planning tool, are used to allocate resources at the front end of the business process in order to meet demand. Contact data, together with the forecast model and management information on actual delivery, is used to plan for meeting future demand.
16. The organisation's ability to respond to unplanned fluctuations in demand is limited by the provisions of the Legal Services Act 2007, which prevents the organisation outsourcing casework and using secondments to support ombudsman functions, which limits the organisation's casework resources to directly employed staff. To mitigate some of this risk, a more flexible staffing model and pool ombudsmen have been introduced along with a budget for overtime and a number of initiatives to improve productivity, such as the supervision pilot and introduction of the Customer Assessment Tool (CAT).
17. A report on the impact of the CAT is to be provided to the OLC at its December Board meeting.
18. The demand risk is currently above target with an amber status. This reflects that the current controls are operating effectively and that there is further development planned to enhance capability to forecast demand more effectively.
19. In discussion the Committee was advised that improvements introduced by the Chief Ombudsman to improve the flow of work through the business would help to ensure that the organisation was better able to react to fluctuations in future demand. Future changes in the legal sector were likely to impact demand and it was therefore imperative that the organisation takes steps now to ensure that it has the flexibility to respond to the changes and predict any other changes as early as possible.
20. Following discussion, the Committee confirmed that it was comfortable that the organisation was now getting better at tracking demand and that there were adequate controls in place to provide assurance that the demand risk was being managed.
21. The Committee **noted** the strategic risk update and deep dive review of the demand risk.

Item 3 – Information rights and security update

22. The Head of IT and Governance and SIRO presented a paper providing an update on information rights and security incidents for quarter two.
23. During quarter two there had been 42 incidents, most of which were the result of human error. Four incidents were not as a result of Legal Ombudsman actions and related to personal data being disclosed to the organisation in error. 15 incidents related to staff forgetting photographic ID cards which had recently been introduced. A reminder has been issued to all staff and three spot checks have been undertaken with additional checks planned for Q3.

24. The Committee felt that the number of incidents was high and expressed concern. The Data Protection and Information Compliance Officer explained that the number of incidents was not unusual and reflected significant work to increase levels of reporting. The Committee was assured that the organisation was not being complacent about this and was working with Operations Teams to ensure that staff were being educated and trained in order to ensure that lessons were learnt to prevent future incidents.
25. The Committee discussed whether the increase in the number of incidents reflected a workforce that was under pressure and whether this should flag up fundamental issues around their well-being and management. The CEO explained that the organisation was working to develop a high performance culture and there were currently tensions between levels of output and quality, and a fundamental need to get things right first time to reduce overall workloads. The organisation was working with staff to ensure that they understood what was required of them in order to get things right first time, and to take appropriate actions to address repeated failures to do so.
26. The next meeting of the MoJ Security Group would be looking at the types of incidents in order to determine whether there were any patterns evolving between the various organisations.
27. There had been no notable increase seen in the number of Subject Access Requests (SARs) received since the introduction of GDPR.
28. A new online form was being developed to direct SARs straight to the information rights and security staff. This would help to ensure that SARs were dealt with within the statutory deadlines.
29. Following discussion, the Committee **noted** the update on information rights and security incidents.

Item 4 – External audit update

30. A paper setting out the proposed approach to the audit of 2018/19 financial statements was presented by David Eagles, BDO, and Ella Firman, NAO.
31. The 2018/19 audit of financial statements has been planned to respond to the risks of material misstatements to transactions and balances and irregular transactions. Four risks that have the most significant impact on the audit have been identified as: presumed risk of management override of controls; change of the Case Management System; the transfer of the Claims Management Companies (CMCs) to the Financial Ombudsman (FOS) and the upgrade of Sage (the ledger).
32. The areas of audit will be: changes in accounting standards, IFRS 9 and 15 and outsourcing of the payroll function. Changes in accounting standards, IFRS 16, has been deferred until 2020, following a decision taken by HM Treasury.
33. The CEO reported that discussions were taking place with the MoJ to clarify the precise mechanism by which the costs associated with the CMC transfer would be met by the Financial Ombudsman as the OLC cannot fund this work. He assured the Committee that, as Accounting Officer, he had achieved an agreement about the

treatment and handling of costs with FOS transfer and shared with the other interested parties.

34. The Head of Finance reported that she, and the accountants at FOS, had agreed with the NAO how FOS and their auditors accounted for costs associated with the transfer of CMCs.
35. The Committee was advised that NAO and BDO are looking to ensure, in principle, that the same accounting treatment of CMC transfer costs was reflected in both the Legal Ombudsman and FOS accounts.
36. The Transfer Agreement between LeO and FOS is yet to be finalised by the lawyers. This has delayed the data transfer to FOS and may jeopardise the success of the data transfer.
37. In a request from BDO, members of ARAC formally confirmed that they had no knowledge of any actual, suspected or alleged fraud cases that should be reported to NAO / BDO at the time of the meeting.
38. The Committee **noted** the update on External Audit.

Item 5 – Update on internal audit actions

39. The CEO presented a paper setting out an update on actions arising from internal audits.
40. Since the last ARAC meeting, one of the two actions relating to the Financial Control Framework remains outstanding. Two actions for Attendance Management have been completed. One of the actions for Business Continuity is outstanding as is one for Infrastructure. Both actions for Stakeholder Management are outstanding.
41. The Committee **noted** the update on Internal Audit actions.

Item 6 – Internal Audit update

42. Chris Davies presented an update on progress against the 2018/19 internal audit plan. He reported that Internal Audits are broadly on track and in line with the plan.
43. All of the audits scheduled for quarters 1 and 2 have now been completed with the exception of the audit of GDPR, which had been rescheduled for quarter 3 at the request of the Executive.
44. Of these completed audits, ICT Infrastructure Contract Management and Business Continuity received 'moderate' ratings and Stakeholder Management received a 'substantial' rating. The final audit reports were circulated to the Committee ahead of the meeting for information.
45. The audits for completion in quarter 3 on GDPR, Management Information and Benefits of Modernising LeO are underway and scoping work for the audit scheduled for quarter 4 audit of the Financial Framework has commenced.
- 46.. There were no draft reports outstanding at the time of the meeting.
47. The Committee **noted** the progress made by internal audit.

Item 7 – Annual review of business continuity

48. The Corporate Planning and Programmes Manager presented a paper summarising a number of improvements that had been made to the business continuity plan (BCP).
49. Improvements related to contact documentation, incident management and access to systems and information.
50. Staff with key roles to support the BCP are to receive training on 13 December via the BSI introduction to business continuity course; learning will be cascaded to the Management Team.
51. The CEO confirmed that the Security Forum had reviewed the changes to the BCP in October 2018.
52. The Committee **noted** the update on internal audit actions.

Item 8 – Annual review of risk strategy

53. The CEO presented a paper providing an update on the OLC Board's risk strategy.
54. A number of minor changes had been made to the risk strategy to clarify that it belonged to the OLC rather than LeO, to make clear the joint responsibility of the CEO and Chief Ombudsman, to incorporate the transfer of CMCs, to take account of minor changes in organisational structure and to update terminology and wording.
55. Following discussion, the CEO agreed to issue members with a tracked changes version of the risk strategy.

ACTION: CEO to issue members with a tracked changes version of the risk strategy

56. The Committee **approved** the changes to the risk strategy.

Item 9 – Annual review of the assurance map

57. The CEO presented a paper providing members with an update on the OLC Board's assurance map.
58. Each system and process set out in the assurance map has been aligned to the strategic risks agreed by the OLC Board and allocated a responsible owner for mapping controls.
59. Minor changes had been made to reflect current organisational structure and actions taken to date in order to provide increased assurance. Each line of defence had been updated to remove redundant items and newly developed items had been added.
60. Of the 22 systems and controls, 3 did not have sufficient assurance. Of the systems and processes, 1 had a red RAG rating, 7 were amber and 14 were green. An action plan is to be created to address the improvement actions that were identified.
61. In discussion, members sought further assurance from the Executive around information rights and information security in order to satisfy themselves that there

were sufficient lines of defence in place to address their concerns about the number of data breaches.

62. The Committee requested a minor amendment to the layout of the assurance map to ensure that the header line was repeated on all pages.

ACTION: Corporate Planning and Programmes Manager to amend the layout of the assurance map to ensure that the header line was repeated on all pages.

63. The Committee **noted** the update on the assurance map.

Item 10 – Policy reviews

64. The CEO presented a paper setting out an update on four policies that had been reviewed in line with the LeO's rolling programme of policy reviews.

65. No changes had been proposed to the Records Management and Acceptable Use of IT policies.

66. Minor changes had been made to the wording of the Security Policy and the link to the Information Asset Owners. This policy had been reviewed by the Security Forum in October.

67. Minor changes had been made to the Health and Safety Policy to reflect the current organisational structure.

68. Members were advised that the amendments recommended at the July ARAC meeting to the Information and Data Protection Policy and the Access to Information Policy had now been implemented. An additional amendment had been made to the Information and Data Protection Policy to reflect the change in the number of data protection principles in the GDPR from 8 to 6.

69. The Committee **noted** the policy review and update.

Item 11 – Bi-annual data assurance review

70. Senior Ombudsman, Siobhan Fennell, presented a paper providing members with an overview of the key improvements to operational data assurance, implementation since the last update in September 2017 and information about further planned improvements.

71. In discussion, Members **noted** the progress had been made in improving the effectiveness of the organisation's data assurance measures and the further significant improvements planned to ensure a comprehensive operational data assurance framework is in place.

72. The Committee **noted** the update on data assurance.

Item 12 – Case fee assurance

73. Senior Ombudsman, Siobhan Fennell, presented a paper updating members on corrective action that had been undertaken to resolve issues identified through routine data assurance relating to case fees and ombudsman decisions.

74. The Committee was informed of the steps that had been taken to address the issues identified and provide assurance that the root cause of these issues were being addressed going forward. This included: updates to the case management system

and processes followed by staff; the circulation of revised guidance to staff who were required to sign to confirm that they had read and understood it, and additional staff training.

75. All potential discrepancies identified as part of the assurance process were being followed up with both the Investigator and Line Manager involved, with oversight of the process by a Head Ombudsman. Additionally, the Operational Support Team will review whether further exception reporting could be developed to assist with assurance and the identification of any risks to future case fees. All cases involving an Ombudsman decision in 2018-19 have been reviewed and corrective action taken, and by the end of December, this will have been done for all cases informally resolved.
76. A full lessons learned review is to be undertaken and reported to the Management Team once all the corrective actions have been completed.
77. The Committee was assured that the steps being taken minimised both reputational risk and risks to the financial statements, both retrospectively and going forward.
78. The Committee **noted** the update on case fee assurance.

Item 13 – Standing items

79. The Head of Finance presented a paper setting out exception reporting as at period seven.
80. There were no financial irregularities, controls or breaches reported.
81. Four single tender actions were reported.
82. On 23 November, a paper had been circulated to Members of ARAC alerting them to one of the single tender contracts, as its value had been close to the CEO's delegations. Members unanimously confirmed their approval for the CEO to proceed with this single tender and award the contract.
83. Two attestations were report: one related to recruitment fees, the other to the payment of a late pension contribution after tax through payroll.
84. Recruitment for a Management Accountant commenced in November.
85. A new payroll contract commenced in November.
86. The print tender was completed and a contract awarded. Go live will be in January 2019.
87. The Committee **noted** the update on standing items.

Item 14 – Previous minutes

88. Members of ARAC reviewed the minutes of the meeting held on July 2018 and **approved** them as an accurate record of the meeting.

Item 15 – Matters arising and outstanding actions

89. It was agreed that the outstanding action for GIAA to discuss issuing its annual survey with members of ARAC would be carried forward to the next meeting in March.

ACTION: Board Secretary to update the action log accordingly.

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

Item 16 – Any other business.

91. Ed Bowie commended the organisation for listing the strategic risk register at the top of the agenda for discussion at this meeting.

92. There was no other business discussed.