

**Minutes of the twenty-eighth meeting of the
Office for Legal Complaints Audit and Risk Committee**

Tuesday 19 April 2016

1.00 – 4.00 pm

Legal Services Board, London

Present:

Michael Kaltz, Chair

Tony King, member

Professor Philip Plowden, member (via conference call item 7 onwards)

In attendance:

Elizabeth Gibby, MoJ (representing Catherine Lee, OLC Accounting Officer)

Nick Hawkins, Chief Executive

Freda Sharkey, General Counsel

Emma Cartwright, Head of Finance

Caroline Mendes da Costa, NAO

David Eagles, Partner, BDO

Jody Etherington, BDO

Charlie Lovlee, BDO

Marc Rainforth, Head of Audit Operations, Internal Audit and Assurance, MoJ

Neil Buckley, Chief Executive, Legal Services Board (Observer)

Apologies:

Kathryn Stone OBE, Chief Legal Ombudsman

Board Secretary:

Helen White

Preliminary issues:

Due to the unavailability of Prof Plowden, it was noted that any formal decisions taken before Item 7 would be ratified when Prof Plowden joined the meeting.

Prof Plowden reported a potential declaration of interest regarding his university's research engagement with Lockheed Martin, who it was noted are working with the OLC on their new case management system. It was agreed that this would be noted as a standing conflict of interest.

Item 1 – Welcome and apologies:

1. The Chair welcomed and thanked those in attendance. The Chair noted apologies for absence had been received from Kathryn Stone OBE.

Item 2 – Minutes of previous meeting:

2. The minutes of the meeting of 21 January 2016 were approved.

Item 3 – Matters arising & action points:

3. Members noted those items where actions had been completed and those that were included as agenda items. Follow-on action points were set as required.
4. It was agreed that the email handshake and data incident papers produced by Kathryn Stone and circulated to ARAC Board members following the January ARAC meeting, would be circulated to all ARAC attendees.

ACTION:

The Board Secretary to circulate the reissued email handshake and data incident papers to all ARAC attendees.

5. The Chief Executive reported that the updated financial crimes guidance note had not been circulated to ARAC members. Advice had been sought from an external financial crimes expert which the General Counsel would incorporate into the guidance note. It was agreed that the updated document would be circulated out of committee as a matter of urgency.

ACTION:

The General Counsel to update the financial crime guidance note and circulate to ARAC members out of committee.

6. The Head of Finance to ensure version control was included on the corporate risk register.

ACTION:

The Head of Finance to ensure version control was included on the corporate risk register.

7. Members noted that the updated Whistleblowing policy had been published on the corporate intranet.
8. It was noted that an audit needs assessment for the current year had been produced and circulated to ARAC members. This would be supplemented with a more detailed three year plan which would be produced a half year. This would be circulated out of committee in advance of the October ARAC meeting.

ACTION:

The three year internal audit plan would be circulated out of committee in advance of the October ARAC meeting.

Item 4 – Data Handling Incident Report

9. It was noted that the data handling incident report had been prepared by the Operations Manager for the Assessment Centre, which was the area where the majority of data incidents occur. The report included a brief summary categorised by the incident type together with a detailed breakdown of each incident including action taken.
10. The Chief Executive reported that due to the high level of repeat incidents, it had been necessary to commence disciplinary action where necessary. He reported that to reiterate the importance of data handling, mandatory training was being provided to all staff, including the 22 new joiners, on 'Protecting Information'. He also reported that to reduce the potential for mistakes, the 'auto fill' function had been removed from the email system.
11. Discussion took place on the internal communication routes being used to reiterate the importance of data handling amongst staff. The Chief Executive stated that team leaders were best equipped to deliver this message as they could discuss incidents with their teams and outline the potential damage any incidents could cause; both to individuals and to the organisation. Work was ongoing amongst the executive to raise the awareness of data handling and focus on driving the numbers down.

Item 5 – Annual Update 2015/16 - Information Requests Freedom of Information and Data Protection

12. The General Counsel updated members on two additional matters which were not included in her report. She reported that an ICO decision had been received relating to a complaint. The complaint had been considered by the Commissioner and the decision notice reviewed in the organisation's favour.
13. The General Counsel also draw members' attention to the new General Data Protection Regulation. Whilst there was time before this would be adopted, there were areas the organisation would need to review and prepare for.
14. The General Counsel reported that since the Evidence Sharing guidance had been reviewed, the number of data protection requests had reduced.

Item 6 – Corporate Risk Register – Risk Theme *Performance*

15. The Head of Finance update members on the internal process for the regular review of the risk register. Members noted that only the performance risks had been circulated in the ARAC papers.
16. Discussion took place on the risk which focussed on Timeliness Performance. Members agreed that as well as causing a delay, timeliness could also affect the quality of the outcome. The Chief Executive reported that the Chief Ombudsmen had initiated a project to ensure a consistent approach was adopted across the organisation. It was anticipated that this coupled with the changes to teams and the arrival of the new starters would start to address timeliness performance in the second quarter of the year.
17. Members agreed that it would assist future board deliberations if the risk register was accompanied by both the business plan and the key objectives.

ACTION:

The Head of Finance to include the business plan and key objectives for future discussions on the risk register.

18. Members agreed that the current risk register was too operational, rather than being strategic. However, in the short term, it was agreed that having more detail was acceptable. The ARAC Chair agreed that the executive should work on refining the register and review, for example, how the new performance indicators were reflected in the risks.
19. Discussion took place on the balance between quality and performance. The Chief Executive reported that quality checks were now being undertaken during the life of a case to provide assurance that quality was being embedded throughout the organisation. He stated that anecdotal research had indicated that feedback on service was focused on the quality of the outcome rather than the time taken to reach an outcome.
20. It was agreed that the Head of Finance would incorporate a projection for the phasing for mitigating actions.

ACTION:

The Head of Finance to incorporate a projection for the phasing of mitigating actions.

Item 7 – Judicial Review Process and Controversial Case Process

21. Prof Plowden joined the meeting via conference call. The ARAC Chair noted that no decisions had been taken in the first part of the meeting which required ratification.

22. Discussion took place on the internal process for the identification of high risk cases, both when they come into the organisation and before any decision was made. It was noted that the General Counsel would provide an update on this.
23. Discussion took place on those cases which could potentially result in judicial review. It was noted that the Scheme of Delegation outlined which cases needed to be highlighted to the Chief Legal Ombudsman and Chief Executive. They in turn would take a view as to whether any case needed to be escalated to either the OLC Chair or OLC Board. There would also be exceptional circumstances where cases may need to be flagged to the Legal Services Board or Ministry of Justice.
24. The Chief Executive reported that a process was in place for a monthly review by the Chief Legal Ombudsman and Chief Executive with the General Counsel of all judicial review cases. The General Counsel also provided a written update for the Chief Executive and Chief Legal Ombudsman on all hearings.
25. The General Counsel reported that a set of criteria had been developed to identify the factors present on a case which could make it potentially contentious. A risk assessment rating would highlight whether a case needed to be discussed with either an ombudsman or the General Counsel.
26. Members noted that the Chief Legal Ombudsman had initiated a project to ensure consistency in the structure of decisions. Training had also been provided on how to analyse facts and set out reasoning clearly. A process of 'peer reviews' had also been instigated amongst the ombudsman team. Quality checks were being conducted which looked at the ombudsman decision including the structure of the decision and the language used.
27. ARAC members raised concern the current intervention was too late in the decision making process. The General Counsel reported that there was a more homogenous approach as the ombudsmen were now embedded in the operational teams. She also reported that team leaders met their staff on a monthly basis to discuss their casework. Prof Plowden raised concern as to whether sufficient steps were in place to manage risk.
28. Members noted that this item would be discussed in further detail at the forthcoming OLC Board.

Item 8 – Internal Audit Reports

29. Members noted that there were two internal audit reports to finalise. Once finalised, internal audit would issue its final opinion. It was noted that the management response had been received on the case management audit and

the management response was awaited on the procurement audit. The final reports for both these audits would be issued shortly.

30. The ARAC Chair stated that ARAC members were not receiving copies of the final audit reports. Marc Rainforth to ensure that once completed, these are shared with ARAC members.

ACTION:

Internal Audit to ensure ARAC members are copied on the final audit reports.

31. Marc Rainforth requested that the executive complete the post audit questionnaires.

ACTION: The Chief Executive to ensure the executive complete the post audit questionnaires.

32. An update was given on the discussions held at the meeting held before ARAC between the ARAC Chair, Tony King, the Chief Executive and Marc Rainforth. It was noted that discussion had taken place on the draft internal audit plan for 2016/17 and in particular the ICT Contract Procurement audit, where the post implementation review was due to be carried out by internal audit.
33. The ARAC Chair reported that the audit on Governance Arrangements had been moved to Quarter 3. This was to enable the executive to further manage the response to the governance review. This audit would then consider the effectiveness of the measures which had been put in place to meet the recommendations in the governance review.
34. The ARAC Chair stated that he would like internal audit to review the accuracy of the performance data that was presented to the Board. It was agreed that this would be explicitly captured in the ToR for the Operational Productivity audit.
35. It was noted that the draft internal audit plan was a skeleton document. The next level of detail would be the terms of reference document for each audit which would be agreed at the start of the audit and would comprise one or two pages. As discussed in the pre-meeting, it was agreed that an ARAC member will attend the next meeting to develop the terms of reference for the Operational Productivity audit.

ACTION: The Chief Executive to ensure that an ARAC member attend the next meeting with the internal auditors to develop the terms of reference for the Operational Productivity internal audit.

36. Marc Rainforth agreed that the ICT Contract Procurement and Financial Control Framework terms of reference would be circulated to ARAC members out of committee.

ACTION: Internal Audit to circulate the terms of reference for the ICT Contract Procurement and Financial Control Framework to ARAC members out of committee.

37. Members noted that internal audit were developing a three year programme of work and noted that internal audit would work with the external auditors to ensure there was no overlap. It was noted that there were a smaller number of audits planned but valuable work was being done to provide assurance and feed into the three year audit programme.

Item 9 – External Audit Report

38. David Eagles updated members on the moves within the BDO external audit team; Jody Etherington was moving to a new role and Charlie Lovlee would be taking over as the main contact and would be attending the future ARAC meetings.
39. Discussion took place on the audit planning report on the 2015/16 financial statement audit, which was due to take place in June. The aim would be to lay the 2015/16 Annual Accounts in October 2016. The ARAC Chair requested that consideration be given to the Accounting Officer's diary in the timetable planning for the laying of the accounts.
40. David Eagles reported that there may be a small amount of residual work to do between June and October to audit the post balance sheet events for the three months between June and October. This would review whether anything had happened that would warrant disclosure in the management statement.
41. It was agreed that the aim would be to lay the 2016/17 Accounts in July 2017. The Board Secretary to schedule the 2017 ARAC meetings accordingly.
42. Members noted the audit fee which was the same as the estimated cost for the previous year.

Item 10 – Financial Approvals

43. The ARAC Chair reported that Financial Approvals paper introduced in January would continue to be a standing agenda item.
44. The Head of Finance reported that approval was still awaited from the Ministry of Justice for the business combined insurance. The ARAC Chair and Members expressed concern at this as the current policy was due to expire on 24 April. Elizabeth Gibby undertook to liaise with MoJ Finance.
45. It was agreed that in future the financial approval paper would include capital approvals.

ACTION: The Head of Finance to include capital approvals in future 'Financial Approvals' papers.

46. The ARAC Chair reported that Financial Approvals would be a standing agenda item going forward.

ACTION:

The Board Secretary to note that 'Financial Approvals' would be a standing ARAC agenda item.

Item 11 – Governance Review Update

47. The Chief Executive reported that work had continued since December on the Governance Review Action Plan. The Action Plan had been shared with both the Legal Services Board and Ministry of Justice. The Ministry of Justice had submitted their response to their actions.
48. It was noted that the other key piece of work was the progression of the three way tripartite document between the OLC, MoJ and LSB to set out the working relationship between the three organisations. The ARAC Chair asked whether those present were confident of early progression and Neil Buckley confirmed that the LSB were taking the lead on this piece of work and it was intended that progress would soon be made.

Next meeting

49. The date for the next ARAC meeting would be Thursday 7 July in Birmingham.

Helen White
Board Secretary