Minutes of the Forty-Seventh Meeting of the
Office for Legal Complaints Audit and Risk Committee
Monday 23 November 2020, by video call

Members Present:

Harindra Punchihewa, Chair

Rebecca Hilsenrath

Annette Lovell

In attendance

Elisabeth Davies, OLC Chair – observing

Mariette Hughes, Acting Chief Ombudsman (CO)

Steve Pearson, Deputy Chief Ombudsman

Michael Letters, Head of Finance

Paul McFadden, Chief Ombudsman Designate – observing

David Winks, Ministry of Justice (MoJ)

Chris Davis, Government Internal Audit Agency (GIAA)

David Eagles, BDO, External Audit

Matthew Hill, CEO, Legal Services Board (LSB)

Ella Firman, National Audit Office (NAO)

David Anderson, Head of IT and Information Governance (items 10 and 12)

Petrina Hoggan, Interim Head of Organisational Design and People Strategy (item 13)

Apologies:

Laura Stroppolo, Business Planning Manager

Alison Wedge, Ministry of Justice (MoJ)

Mark Andrews, Government Internal Audit Agency (GIAA)

Alex Clark, NAO

Board Secretary:

Kay Kershaw

Item 1 – Welcome, apologies and preliminary matters

1. The Chair welcomed those in attendance and introductions took place.

2. Apologies were noted.

3. The meeting was quorate.

4. There were no declarations of interest reported.

5. Having reviewed the ARAC papers, the Chair made the following comments and observations:

   - ARAC papers need improvement. The Chair and Committee would provide guidance and support to the Executive on this.

   - All papers should include a detailed executive summary (maximum of 2 pages) highlighting the key messages and concerns, recommendations and mitigating actions.

   - All actions should be completed in full within agreed deadlines. The Chair should be notified of any deadlines that could not be met at the earliest opportunity. Only in exceptional circumstances would a deadline be changed.

   - Future agendas should be set out in four key sections: Assurance, Compliance, Risk and Mitigations and Financial and Budgeting.

   - Future agendas should allow more time for Internal and External Audit updates.

   - Some future agendas might include a deep dive of a specific topic.

   ACTION: Board Secretary to change the format of the ARAC agenda to include four key sections: Assurance, Compliance, Risk and Mitigations and Financial and Budgeting and allow more time for Internal and External Audit updates.

6. The Chair advised that he would be discussing with Auditors whether a Governance Manual was required.

7. The Chair updated the Committee on the status of the interim budget submission.

Item 2 – Previous minutes

8. The Committee **approved** the minutes of the meetings held on 15 May 2020 and 29 June 2020 as an accurate record of the meetings. .The Committee **noted** that both sets of minutes had been reviewed and approved by the former ARAC Chair prior to his departure.

Item 3 - Outstanding actions from previous meetings and matters arising

18. The Head of Finance provided an update on action 4, paragraph 23 from the May meeting advising that an interim Finance Manger had been appointed for a three-month period to support risk within finance. This additional resource has enabled the Head of Finance to support the Deputy Chief Ombudsman and Business Performance Manager on risk related issues arising from Internal Audits.

19. The Chair requested more clarity on the update for action 5, para 50 from the May meeting, advising that ARAC needed to understand how the full review of HR casework would provide a clear position on the control environment around performance management.

    ACTION: Deputy Chief Ombudsman to provide ARAC with a more detailed update on action 5, para 50 from the May meeting.

20. The Chair requested more clarity on the update for action 4, para 24 from the May meeting, advising that ARAC needed to have a better understanding of what it would mean to incorporate LeO's approach to risk management into a formal project plan, what the timeframe would be for completing this work and when the final project plan and the improved risk management framework would be shared with them.

    ACTION: The Deputy Chief Ombudsman to provide a more detailed update on action 4, para 24 from the May.

21. Having sought more clarity on the risk management capacity and capability within the organisation, ARAC was advised that LeO did not currently have a risk specialist. To address this, a Project Manager was being recruited and the interim budget application made provision for a Risk Manager. The Project Manager will lead the project to improve the risk framework with support from the Risk Manager and Business Performance Manager.

22. In the meantime, risk was being managed by the Business Performance Manager with support from the Deputy Chief Ombudsman, the Head of Finance and the Business Intelligence Manager. Monthly reviews of all business unit and strategic risks are undertaken.

23. LeO's key risk was resilience within the Senior Team; this risk had been exacerbated by the departure of the Head of Governance and Strategy and was being mitigated by diverting resource from other areas of the organisation to support the Business Performance Manager.

24. Considering LeO's current risk exposure, it was **agreed** that an interim risk assurance report would be circulated at the end of calendar year. This report would provide an overall update on risk management, including updates on risk actions and internal audit actions.

    ACTION: The Executive to provide ARAC with a risk assurance report at the end of calendar year.

25. ARAC **noted** the update on actions arising from previous meetings.

Item 4 – Risk assurance review

26. The Deputy Chief Ombudsman presented the Risk Assurance report advising that:

    - Access to Power BI was to be given to Members and would enable them to review risk data more easily online in the future.

    - A more consistent approach to risk management was now being seen with an increased level of Executive oversight.

- The risk rating for some of the business unit and strategic risks had increased; some were rated black risks. Covid-19, the resilience of the senior team and stakeholder confidence and engagement were underlying factors for the increased risk rating of some strategic risks.

27. Internal Audit reported that the Risk Management audit had received an overall limited rating; an unsatisfactory rating had been given for the element relating to the development of the risk policy and risk framework. The findings of this audit reflected LeO's current lack of capacity to improve processes and a follow up audit was recommended in 2021/22 once LeO's revised risk policy and risk assurance framework was in place.

28. Members raised strong concerns about their lack of assurance in the current risk assurance framework.

29. In discussion, the following comments and recommendations for improvement were made:

- Operational Risks in Business units were a matter for the Executive. ARAC did not require a detailed business unit risk update but would need to be assured that business unit risks were being controlled and appropriately mitigated and made aware of any issues or concerns or any particular risk that could have a substantial negative impact.

- The format of the risk register should be updated to ensure that it was succinct and easier to understand and should include a risk appetite rating / score and timescales for mitigating individual risks.

- Improvements to the risk register should be completed as soon as possible and before 31 March 2021. Members and Internal and External Auditors would provide guidance and support to help the Executive to assist with these improvements.

ACTION: The Business Performance Manager to update the format of the risk register.

30. The Chair was concerned that, despite the mitigations in place, some of the risk scores were not reducing, the Executive was asked to give further consideration to what else could be done to reduce the scores to an acceptable level in order to provide the assurance needed.

ACTION: The Executive to consider what else could be done to bring down the risk scores to an acceptable level.

31. A discussion took place about end of year assurance reporting and the best way of demonstrating the progress that had been made throughout the year on risk management. Internal Audit advised that the best way of doing this would be to set out the risks perceived at the start of the year against the risks at the end of the year; this would create a view of the progress made over the year and demonstrate the effectiveness of the risk management processes that had taken place in between.

32. It was agreed that the Chair, Internal Auditors and the Deputy Chief Ombudsman would meet to discuss the preparation of the end of year assurance reports.

ACTION: The Chair, Internal Audit and the Deputy Chief Ombudsman to meet to discuss the preparation of the end of year assurance reports.

33. The OLC Chair reported on a follow up letter being written to the Interim Permanent Secretary. The letter would provide an update on the progress being made to address concerns raised following two unsatisfactory audit reports. The letter would include details of the plan in place to improve the risk assurance framework and the steps being taken in the intervening period for ARAC to be assured that risk was being appropriately managed. When collating the letter, consideration would be given to the discussions that had taken place at this meeting and in follow up conversations with Auditors and Members of ARAC after the meeting.

34. Following discussion, ARAC **noted** the update on the risk assurance.

Item 5 – Annual review of the ARAC terms of reference

35. ARAC reviews its Terms of Reference (ToRs) on an annual basis.

36. As part of the 2020 review, the Committee was asked to consider the following points outside of the meeting and to provide feedback to the Chair on how the ToRs could be improved:

- The points raised in the Budget Learning Review about ARAC's role in the OLC budget process, including its responsibility for examining the budget approved by the Board to identify any delivery risks and its role in the ongoing monitoring of budgetary risk.

- Whether the frequency of ARAC's private meetings with Internal and External Auditors was sufficient.

- Roles and responsibilities for drawing up and approving the annual internal audit plan, as there had been some issues with this earlier in the year.

ACTION: The Committee to review ARAC's ToRs and provide the Chair with feedback on how they could be improved.

37. The Chair advised that further discussions on revising the ToRs would take place with Members and the Executive outside of the meeting.

Item 6 – Internal Audit update

38. Internal Audit reported on the progress made to deliver the 2020/21 Internal Audit plan, advising that the audit plan was on track to be completed by the end of the year.

39. ARAC formally **approved** the 2020/21 Internal Audit plan.

40. In discussion, the following points we made:

- The impact of the pandemic and issues around capacity and changes in the Executive Team had made it difficult to progress the Risk Management and Corporate Governance Audits.

- The Risk Management audit report had been issued. Further audit work would be required in 2021/22 once the new risk assurance framework was in place.

- Fieldwork for the Corporate Governance audit had been completed. The draft audit report was being prepared and some recommendations would be made.

- The terms of reference for the Workforce Planning audit had been agreed and fieldwork has been put in place.

- Discussions would soon be taking place with the Head of Finance to prepare for the Financial Management audit.

- The Case Progression audit would be undertaken in Q4.

41. Considering current organisational risks, ARAC sought assurance on the scope and timings of the remaining audits and whether they were focussed on the right areas of the business to add the most value.

42. Internal Audit confirmed that audits were broadly focussed on the right areas of the business. There was some concern about whether the issues at Executive level had had any impact on the operational level and this would be considered as part of the Workforce Planning audit in Q3 and the Case Progression audit in Q4.

43. Following discussion, it was **agreed** that the ToRs for the Workforce Planning audit would be circulated to Members so that they could consider whether the scope and timing of the audit would add value and provide the level of assurance required, or whether any changes were required.

    ACTION: The Business Planning Manager to circulate the ToRs for the Workforce Planning audit to ARAC Members for review.

44. Scoping discussions for the Case Progression audit would take place in Q4 and ARAC's input would be welcomed. The ToRs would be produced once scoping meetings had taken place.

    ACTION: The Business Planning Manager to arrange for ARAC to provide input into the scoping of the Case Progression Audit and to circulate the ToRs to Members once drafted.

45. Meetings to prepare the 2021/22 Audit Plan would be taking place with the Executive before Christmas. A first draft of the 2021/22 Audit Plan would be prepared by end of January 2021.

46. The Chair sought to understand how ARAC would be assured on the progress being made on audit actions that weren't due to be fully completed until 2021/22 and how this progress could be demonstrated in the end of year assurance report. The Chair was advised that:

- Interim assurance reports would provide updates and assurance to ARAC on the progress being made against audit actions, including those that weren't due to be completed until 2021/22.

- A view would be taken on the implementation of all audit actions as part of Internal Audit's Annual Opinion issued on 31 March 2021.

47. ARAC **noted** the update from Internal Audit.

Item 7 – Attestations and single tenders report

48. The Head of Finance reported on the updated format of the Attestations and Single Tenders report which, in line with MoJ requirements, now reported on single tenders by exception.

49. ARAC confirmed that it was content with the revised format and **noted** the Attestations and Single Tenders report.

Item 8 – ARAC forward plan

50. The Committee reviewed the ARAC forward plan and was **satisfied** that all the essential items for ARAC to consider had been included.

51. The Chair advised that he would be liaising with Members of ARAC and the OLC Chair to ensure that the items listed in the forward plan were mapped to the four key areas of assurance, compliance, risk and mitigations and financial and budgeting and that the timing of the items were aligned to internal and external timescales and the Board's forward plan.

Item 9 - External Audit Update

52. External Auditors updated ARAC on the findings of the audit of the 2019/20 Financial Statements and the recommendations for improvement that had been set out in a Management Letter issued to the Executive. Auditors made the following points:

- The Management Letter was an opportunity for External Auditors to work together with the Executive Team to achieve the improvements that were required to the end of year financial audit process.

- The findings of internal audits and the Budget Learning Review had highlighted similar themes to those identified in the 2019/20 Financial Statements Audit.

- The Management Letter adopted a cascade approach focussing on high level governance arrangements in the first instance and then drilled down to each of the stages in the process.

- The Executive Team had responded to the Management Letter, setting out the remedial actions that had already been completed and highlighting the actions that would be completed as part of the work being undertaken to prepare for the closure of accounts at year end.

- More detailed responses and actions plans were required for some of the actions relating to financial governance, particularly those relating to the structures for governance and oversight, skill sets and reporting and supervisory links.

- Progress against the actions would be tracked by External Audit and reported at ARAC meetings.

- The recommendations relating to the Governance of Finance may need to be reflected in the risk register.

- **ACTION: The Executive to consider whether the recommendations relating to the Governance of Finance should be reflected in the risk register.**

- **ACTION: The Executive to provide more detailed responses to the actions relating to governance.**

53. The Chair thanked Auditors for the honest and helpful Management Letter, acknowledging that it would be imperative for a plan to be put in place as quickly as possible in order to overcome the weaknesses that had been identified and to ensure that the right structure and support was put in place to assist the Head of Finance with the year end processes.

54. Auditors confirmed that a detailed 'records required' list for the 2019/ 20 financial audit had been provided. This list may require some minor updates to reflect the findings of the audit, but it would be a useful reference point for the Executive when preparing for the 2020/21 audit.

55. Auditors stressed that documenting the end of year close down process would not be a trivial undertaking and that the Head of Finance would need to be given sufficient time and space to complete this work. Recognising that this would be burdensome and pressured, Members urged the Head of Finance to seek help and support if needed and to advise them of any deadlines that might not be achieved.

56. An interim audit of the first 9 months of transactions would be completed and any issues would be reported to ARAC before year-end. Whilst this audit might not be fully completed in time to provide a detailed report at the next ARAC meeting, an interim update would be provided along with the External Audit planning report and an update on the actions set out in the Management Letter.

57. Considering the points made in the Management Letter, the Head of Finance reported that:

- That since joining the organisation he had instigated improvements to reconciliations and month end processes and now had a good understanding of the balance sheet.

- He retained ownership and responsibility for all work delegated to staff within his department and appropriate checks were now in place to ensure the accuracy of delegated work.

- He had a good understanding of the improvement work that needed to be done and would be using the records required list as a starting point for developing a year-end plan.

- Provision for additional financial resource had been made in the interim budget application.

- The Executive Team was working together closely, collectively owning tasks and providing the appropriate oversight, support and challenge.

58. Internal Audit advised that the audit of financial management would be considering financial leadership, capacity, and financial organisation. Recognising that that there would

be some overlap issues identified by external audit, it was agreed that Auditors would work together to develop the terms of reference and use this audit as a process for answering some of the questions that had been raised by External Audit.

59. ARAC **noted** the update from External Audit.

Item 10 – Information Rights and Security Incidents

60. The Head of IT and Information Governance reported on information rights and security incidents, advising that:

- There has been a reduction in the number of reported security incidents this quarter.

- Data incidents related to incorrect recipient remained a key issue.

- There were no reported physical security incidents.

61. ARAC was concerned to ensure that steps had been put in place to mitigate the risk of security incidents within the home and was advised that all staff had taken part in cyber security training; this had raised awareness of the risks and re-enforced the actions that needed to be taken to protect physical and information security within the home.

62. Considering that cyber security training had been provided to staff, the Chair queried the accuracy of the risk rating for unauthorised disclosures. The Head of IT and Information Governance **agreed** to review this risk rating.

ACTION: The Head of IT and Information Governance to review the risk rating for unauthorised disclosures to ensure that it accurately reflects the risk.

63. In order to provide ARAC with some context on data set out in the Information Rights and Security Incident report, the Head of IT and Information Governance was asked to undertake a benchmarking exercise with other Ombudsman Schemes. Having comparative data would help ARAC to understand the common issues across the sector and help Members to assess the risks to LeO and to determine the adequacy of the mitigating actions and responses being proposed.

ACTION: The Head of IT and Information Governance to benchmark the data on security incidents and information rights requests with other Ombudsman schemes.

64. ARAC **noted** the update on information rights and security incidents.

Item 11 – Annual Cyber Security and Monitoring Report

65. The Head of IT and Information Governance reported on cyber security and monitoring activities that had taken place over the last 12 months and the actions being taken to strengthen cyber security in the organisation.

66. To address action 8, para 67 from the May 2020 meeting, ARAC was updated on fraud and counter fraud measures being undertaken to mitigate the risk of fraud.

67. Considering the increase in homeworking, ARAC was keen to ensure that LeO had a robust strategy in place to mitigate the cyber security risks associated with homeworking.

The Head of IT and Information Governance advised that this strategy was being finalised and **agreed** to present it to ARAC for review either before or at the next ARAC meeting.

ACTION: Head of IT and Information Governance to present the homeworking cyber security strategy to ARAC either before or at the next ARAC meeting.

ACTION: Board Secretary to add homeworking cyber security strategy to the ARAC forward plan for the first meeting of 2021.

68. ARAC **noted** the Annual Cyber Security and Monitoring report.

Item 12 – Update on the Better Records and Information Management Project

69. The Head of IT and Information Governance updated ARAC on the Better Record and Information (BRIM) project, advising that this progress on this project had been set-back due to the standstill budget and a lack of resource and expertise.

70. To mitigate this, the BRIM delivery plan for 2020/21 has been revised and the focus for the remainder of 2020/21 would be on audits of document storage systems, structured training for records management and the expansion of retention and disposal tools for non-CMS areas.

71. Following discussion, it was **agreed** that the Head of IT and Information Governance would provide an update on the progress being made on the revised 2020/21 BRIM project deliverables at the next ARAC meeting.

ACTION: The Head of IT and Information Governance to provide an update on the progress being made on the revised 2020/21 BRIM project deliverables at the next ARAC meeting.

ACTION: Board Secretary to add update on the 2020/21 BRIM project deliverables to the ARAC forward plan for the first meeting on 2021.

72. ARAC noted the **update** on the BRIM project.

Item 13 – Annual Health and Safety Compliance Report

73. In line with a request from the previous ARAC Chair, the Annual Health and Safety report is also presented to RemCo. RemCo reviewed this report at its meeting on 7 September 2020.

74. Since then, the report had been updated following an internal review of health and safety and to include responses to specific points raised by RemCo regarding the requirement for dedicated health and safety resource and the impact of Covid on health and safety.

75. Recognising the impact of the pandemic on both physical and mental health Members stressed that it would be important for LeO to have sustainable and sufficient health and safety resource to support the workforce and deal with any issues that arise.

76. The Chair explained that ARAC would not able to make a judgement on whether health and safety was being effectively managed until it had assurance from the Executive that the actions being proposed in the health and safety report would be delivered within

agreed timescales and there was evidence that health and safety was being well controlled, managed and supported within the organisation.

77. ARAC **noted** the Annual Health and Safety Compliance report.

Item 14 – Any other Business

78. Considering that there was overlap on the matters discussed by each of the OLC Committees, the OLC Chair recommended that when reviewing the ARAC ToRs consideration was given to ensuring that there was alignment across each of the Committees