Minutes of the thirty-second meeting of the

Office for Legal Complaints Audit and Risk Committee

Friday 12 May 2017

1.00 pm – 4.00pm

NAO offices, London

Present:
Michael Kaltz, Chair
Rebecca Hilsenrath
Tony King

In attendance:
Nick Hawkins, Chief Executive (CEO)
Kathryn Stone OBE, Chief Legal Ombudsman (CLO)
Rob Powell, Director of Corporate Services (DCS)
Emma Cartwright, Head of Finance
Steven Corbishley, NAO
Ali Morgan, NAO
David Eagles, Partner, BDO
Marc Rainforth, Government Internal Audit Agency
Chris Davis, Government Internal Audit Agency
Wanda Goldwag, OLC Chair (Observer)
Julie Myers, Corporate Director, Legal Services Board (Observer)

Board Secretary:
Helen White

Preliminary issues:
The meeting was quorate.

Item 1 – Welcome and apologies:

1.   The Chair welcomed and thanked those in attendance. He welcomed Rebecca
      Hilsenrath to her first ARAC meeting.

Item 2 – Minutes of previous meeting:

2.   The minutes of the meeting of 11 January 2017 were approved as a true and
      accurate record of the meeting. It was noted that these minutes would now be
      published.

ACTION:
The Board Secretary to publish the ARAC minutes from the January 2017 meeting.

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. Discussion took place on the business combined insurance, which it was noted had now been resolved. It was agreed that the CEO would discuss the concerns raised by ARAC members at the January meeting with Amelia Wright from the MoJ.

ACTION:
The CEO to discuss the concerns raised by ARAC members at the January meeting with regard to the business combined insurance with Amelia Wright from the MoJ.

5. The Head of Finance reported that the LSB had confirmed their agreement that the notional charge for insurance could be set against the levy. The ARAC Chair requested that the LSB confirm this in writing.

ACTION:
The Head of Finance to request formal acceptance in writing from the LSB confirming the levy position on the notional annual charge for insurance.

6. Marc Rainforth updated members on the outputs from the work being undertaken across the MoJ on data information sharing. He committed to sharing a summary highlighting good practice and areas of poor control.

ACTION:
Marc Rainforth to circulate a written summary of the outputs from the work undertaken on data information sharing.

Item 4 – Data Handling Incident Report

7. Members noted the data handling incident report which had been circulated and read in advance by attendees.

8. The CLO reported that this report contained the lowest number of data incidents reported over the last two years. She noted that since the 'email handshake' had been introduced, there had been no incidents during the last quarter as a result of keying in incorrect address details.

9. She reported that in the last 90 days, 139,544 emails had been sent from the Legal Ombudsman. Out of this number, 5 data loss incidents had been reported

10. It was agreed that the CLO would discuss Incident 17 outside committee with Tony King.

ACTION:
The CLO to discuss Incident 17 outside committee with Tony King.

11. Discussion took place on the circulation of ICO guidance. The CLO confirmed that this information was shared with all operational staff.

12. Rebecca Hilsenrath questioned whether the organisation's culture had shifted, resulting in the improvement in data incidents. The CEO confirmed that there had been a definite culture shift over the last two years although recognised that we cannot be complacent.

Item 5 – Risk Strategy and Strategic Risk Register

13. The Head of Finance reported that the application of our accounting policy for recognising revenue and associated bad debt expenses had been clarified with the help and advice of NAO colleagues.

14. It was agreed that the Head of Finance would speak to the external auditors outside committee to agree the practical treatment of borderline cases to ensure clarity of internal guidance in line with accounting policy.

ACTION:
The Head of Finance to discuss the processes for determining the treatment of borderline cases to ensure clarity between internal guidance and accounting policy.

15. It was noted that prior year items had been discussed with the external auditors and a prior period adjustment for 2015-16 was not required due to materiality. The external auditors had confirmed that this was compliant with auditing standards.

16. It was agreed that any wording included in the Annual Report and Accounts would be approved by both the OLC and external auditors.

17. The Head of Finance updated members on the HM Treasury Guidance on ESA10 which was a change in accounting treatment for research, meaning that more research and development would now be treated as capital spend in certain circumstances. She reported that she and the DCS had held a conference call with MoJ colleagues where it had been agreed that the research performed or procured by the Legal Ombudsman did not form a 'knowledge asset' and, as per the formal definition adopted by HM Treasury, did not quality as research under ESA10 guidelines and should not be treated as capital.

18. Julie Myers confirmed this position on ESA10 was the same as that adopted by the LSB.

19. Discussion took place on expense publication. The Head of Finance reported that the Legal Ombudsman did not currently publish senior managers' travel and

expense claims but were keen to disclose summary information on travel and expenses on a voluntary basis. This would provide an open and transparent approach to the publication of information about the use of public funds. She explained that for the purposes of publishing travel and expenses, the senior managers were the CEO, CLO, DCS and Director of Operations, although this may be extended to include all the senior management team in due course.

20. It was noted that the organisation did not currently have a GPC card, so some items, such as professional fees, were included in expenses.

21. Board members approved the Executive's proposal for the publication of senior managers' expenses and the proposed format. This would take place after the election purdah period.

ACTION:
The Head of Finance to proceed with the publication of senior managers' expenses using the proposed format.

Item 6 – Strategic Risk Register

22. The DCS reported that the strategic risk register was being presented in a new format and welcomed feedback from members and attendees. He stated that the content remained the same and that of the 12 strategic risks, 7 were existing risks and 5 new.

23. He reported that the new format was intended to help with quarterly reporting against the business plan and balanced scorecard.

24. Rebecca Hilsenrath commented that 12 strategic risks appeared a high number. She stated that it may be worthwhile if against each risk, a comment was added about what good would look like.

25. Discussion took place on the business continuity strategic risk. It was agreed that this risk should currently remain on the risk register.

26. Discussion took place on the correlation between the risk appetite and target risk. The DCS reported that there was work to do on the refinement of the scores which the executive would be conducting before the next OLC Board. This update would include detail on the dates by which planned controls would be implemented and the targets risk achieved.

27. The ARAC Chair stated that he felt that the risk appetite and descriptors for the IT risk required further consideration outside of committee.

28. The ARAC Chair noted that the risk strategy required the executive to flag any operational risks with a current rating above 15. The DCS confirmed that there

were no current operational risks at that level. The ARAC Chair noted that when presenting the risk register to ARAC in future, a 'nil return' should be included if there were no operational risks with a current rating of 15 or more.

29. The DCS reported that there were two strategic risks to be reviewed in more detail with the risk owners at this meeting: Modernising LeO; and Business Continuity.

30. The CEO, as risk owner for the Modernising LeO risk, reported that the Executive were assessing the risks for this as high until the programme was delivered. He stated that, to date, all deliverables had been achieved within the dates set. He noted that Jane McCall, the OLC Board member lead on the programme, attended periodic Programme Boards and received papers and regular updates on the programme.

31. The ARAC Chair commended the Executive's work on flexible disaster recovery solutions. The DCS confirmed that the support offers made to other organisations by LeO could be met without disruption to our own service. As LeO changed its IT and telephony infrastructure and moved to the Cloud, the business continuity plan would become more flexible and the organisation would carry additional risk between now and the end of the calendar year.

32. The CEO noted that as part of his involvement with the Birmingham Regulators' Forum, a list would be developed of those organisations with potential disaster recovery space.

Item 7 – Freedom of Information Compliance Report

33. The DCS presented the Freedom of Information compliance report. He noted that the General Data Protection Regulation (GDPR) would come into force in May 2018 which would include significant changes which would affect the Legal Ombudsman. He stated planning work was ongoing and that the OLC Board and ARAC would be kept updated. The changes would affect the volume of work for the Compliance function and it was important that the organisation ensured there was resilience in this area.

34. Discussion took place on the assumptions being made by the Executive about the modelling of future Freedom of Information Act and Data Protection Act enquiries and whether these were likely to become more complex. The DCS stated that the subject access request charge would be dropped, which was likely to increase volumes. He stated that the team were reviewing the possibility of employing an apprentice to help with the increased workload and improve resilience.

35. The DCS reported that it was important that the organisation be robust and ensure appropriate training was planned for all staff, and that the correct policies

were in place for areas like data retention as well as networking with other regulators to share best practice.

Item 8 – Update on Internal Audit Actions

36. The DCS presented the summary of progress against open internal audit recommendations.

37. Marc Rainforth reported that it was clear from the summary that the actions were being taken forward by the Executive. He stated that it would be best practice for a meeting to be held before the ARAC meetings, involving GIAA and the DCS to go through the actions.

ACTION:
The DCS to schedule a pre-meeting with Internal Audit before future ARAC meetings.

38. Chris Davis noted that only one action had passed its due date and the reasons for this delay around procurement were understood.

Item 9 – Internal Audit Reports

39. Discussion took place on the internal audit of ICT contract procurement which had secured a 'moderate' assurance rating. Chris Davis noted that the focus of the audit was on the preparation for the ICT transition and to learn the lessons from the previous ICT change programme.

40. Chris Davis reported that internal audit were assured that everything was done but there could be better use of the formally documented system to support both management and the process. The DCS responded that the Executive had accepted the recommendations from the audit and were building these into the transition to the new infrastructure provider.

41. Discussion took place on the internal audit of corporate governance. The DCS reported that subsequent to this audit, the Cabinet Office had issued a revised version of its *Corporate governance in central government departments: code of good practice*. He stated the only major area of impact for the OLC was in relation to Remuneration Committees, as the updated publication removed the formal requirement to have a specific Remuneration Committee.

42. The ARAC Chair queried whether, as a result of this update, Recommendation 2 would no longer apply. Chris Davis responded that it could be argued that this would no longer apply.

43. It was noted that the OLC Board would be discussing a review of Board effectiveness at its next meeting in June, which was likely to provide the opportunity to debate future sub-committee structures.

44. Chris Davis provided an update on the overview of the technology infrastructure services contract which had been undertaken. This highlighted the need to retain focus on good contract management and that this was important even before the point the contract was let.

45. It was agreed that the advice and guidance assignment undertaken by GIAA on the infrastructure service contract had proven very helpful.

46. Chris Davis presented the Internal Audit on the Financial Control Framework. Discussion took place on the moderate assurance rating provided for the audit. Marc Rainforth stated that the moderate assurance rating was a positive rating which confirmed that financial controls were working effectively. Management had accepted the recommendations and had made prompt changes to practice where these were required to enhance controls.

47. Discussion took place on the annual report on audit activity for 2016-17, which provided a summary of the work undertaken to date.

48. Marc Rainforth updated members on a review being undertaken by GIAA to assess whether work was being done consistently across that organisation. He stated the report was due in October after which there may be an alteration in the format of internal audit reports. The ARAC Chair expressed an interest in inputting to the review

49. Chris Davis presented the draft 2017/18 Internal Audit Plan. He noted that the timing may change on some of the audits. He stated that work on assurance mapping would be brought forward to Q2. The DCS reported that he aimed to bring the assurance map to the September ARAC meeting. The ARAC Chair reported that more work may be required from Internal Audit once the assurance map was drafted.

50. Members noted that there would be a financial controls audit each year, which would be coordinated with external audit.

Item 10 – External Audit Update

51. Steven Corbishley presented the Audit Planning Report, outlining how the external audit team planned to go about auditing the 2016/17 accounts.

52. He drew members' attention to the box outlining the actions for the Audit and Risk Committee and queried whether members thought anything should be added to the list.

53. Steven Corbishley reported that the external audit team were looking to provide an audit opinion that the accounts were true and fair and to provide an opinion on the regularity of the accounts against the framework Parliament would expect them to comply with.

54. David Eagles reported that there were two risks identified as significant. He noted that this was driven by the auditing standards rather than anything specific to the Legal Ombudsman; these were Management Override which was a standard risk and Income Recognition. He noted that discussion had taken place earlier in the meeting on the policy for the recognition of income for those entities where there was no realistic prospect of receiving the income. He reported there were no other areas identified as being significant in the audit.

55. Discussion took place on the External Audit assessment of materiality and the triviality threshold. It was agreed that this threshold would be set as zero.

56. Discussion took place on the assessment of the management processes and controls with regard to fraud. The ARAC Chair confirmed this would be reviewed and considered by ARAC members after further work had been presented to the ARAC members by the DCS. The judgement would then be communicated to External Audit.

ACTION:
The DCS to present further analysis of fraud prevention and management processes. The ARAC Chair with ARAC members subsequently to assess the management processes and controls with regard to fraud. Their judgement would then be communicated to External Audit.

Item 11 – Annual Report and Accounts

57. The DCS provided an update on the progress on the production of the OLC's 2016/17 Annual Report and Accounts.

58. Members agreed that the draft Annual Report and Accounts could be shared with the NAO. They also agreed to provide feedback on the draft annual report and accounts by 31 May outside committee.

ACTION:
ARAC members to provide feedback to the DCS on the draft annual report and accounts by 31 May.

Item 12 – Policies for Review

59. It was agreed that Committee members would provide written comments on the individual policies tabled outside Committee, subject to which the policies could be considered approved.

ACTION:
The DCS to manage responses to feedback on individual policies tabled at ARAC outside committee.

60. Discussion took place on the revised Whistleblowing Policy. The ARAC Chair reported that this needed further review. Marc Rainforth stated that the MoJ policy was a good policy and was used by the main agencies and provided the key principles.

61. Tony King questioned the consistency of presentation across the suite of policies. The DCS reported that he was reviewing the approach to policy changes across the organisation with a view to rationalising and reducing the number. He reported he would be tabling a paper proposing some changes in the approval process at the June OLC Board.

Item 13 – ARAC Terms of Reference

62. The ARAC Chair reported that the changes discussed at the last ARAC meeting had been incorporated into the revised Terms of Reference.

63. The Terms of Reference were approved, subject to minor amendments and will be put to the OLC Board for formal approval.

Item 14 – Financial Approvals

64. Members noted the Financial Approvals report tabled by the Head of Finance.

Next meeting

65. The date for the next ARAC meeting would be held on Tues 4 July in Birmingham.

Helen White
Board Secretary