

The Office for Legal Complaints
The Minutes of the 62nd Audit and Risk Committee Meeting
Monday 20 May 2024

Members present:

Harindra Punchihewa, Chair

Alison Sansome

Georgina Philippou

Martin Spencer

In attendance

Elisabeth Davies. OLC Chair – observing.

Paul McFadden, Chief Ombudsman

Laura Stroppolo, Head of Programme Management and Assurance

Blessing Simango, Head of Finance, Procurement and ICT

David Peckham, Head of Operations, Business Transformation and Business Intelligence

Kay Kershaw, Board Governance Manager (Minutes)

Aaron Rock, Risk Manager (item 3)

Steve Pearson, Deputy Chief Ombudsman (Item 12)

Tom Harris, Deloitte

Alex Clarke, National Audit Office (items 1-7)

Sarah Hutchinson, Government Internal Audit Agency

Kasim Raja, MoJ ALB Centre of Excellence – observing.

Holly Perry, LSB – observing.

Apologies

Matt Ellis, Government Internal Audit Agency

Item 1 – Welcome, apologies and declarations of interest

1. The Chair welcomed attendees to the meeting and introductions took place.
2. Apologies were noted.
3. The meeting was quorate with a lay majority.
4. There were no declarations of interest.

Item 2 – Previous minutes, matters arising and previous actions.

5. The minutes of the ARAC meeting held on 15 January 2024 were approved, subject to minor amendments.
6. There were no matters arising.
7. ARAC noted the update on previous actions.

Item 3 – Risk Assurance

8. The Head of programme Management and Assurance presented the Risk Assurance report, updating ARAC on the quarter four and year end position on strategic risks and issues, business unit risks, internal audits, the proposed strategic risks and issues for 2024/25 and a proposed new approach to risk tolerances and appetite. The following key points were made:
 - The year-end position on strategic risks and issues had been presented to the Board in April.
 - The strategic issues on attrition (SI.02 and SI.03) had reduced following a month on month decrease in rates of attrition. These strategic issues would be closely monitored and further developed in line with discussions at the Board's attrition workshop in April.
 - The strategic risk on the lease renewal for the Birmingham office (SR.05) had reduced following a section 26 notice being served in quarter three. The details of the lease were now being finalised.
 - Six business unit risk scores had reduced and one had increased due to an increase in post case closure correspondence.
 - The Risk Manager continued to work with risk owners to capture business unit risks for 2024/25; these would be reviewed and monitored at quarterly business performance review meetings.
 - In response to ARAC's previous feedback, a revised approach to risk reporting was to be introduced based on risk tolerance driven by the agreed risk appetite position. This aimed to provide more robust, succinct and strategic risk reporting with clear mitigating actions, controls and target dates. An example of the mapping of the risk appetite against the risk matrix for the strategic issue relating to the backlog of investigations had been shared with ARAC for feedback.

- In line with the new approach to risk reporting, it was proposed that all risks falling outside of tolerance would be reported to ARAC and Board, cementing the Board's ownership of risk in line with the findings of the Board Effectiveness review.
 - The MoJ had commended LeO on the proposed new approach to risk reporting and the improvements that had been made to the risk management framework and risk reporting over the last two years.
 - The proposed strategic risks and issues for 2024/25, which included two new strategic risks (insufficient resource to deliver the impact objective and inability to absorb demand) and incorporated more realistic target scoring in line with ARAC's previous feedback, had been shared with ARAC for feedback ahead of the Board's strategic risk workshop in July.
 - The Board would be asked to approve the new approach to risk reporting and the 2024/25 strategic risks and issues, risk appetite and risk target scoring at its workshop in July.
9. In response to a question, ARAC was advised that resource and reputation were the underlying risks linked to the increase in post case closure correspondence from customers, many of whom had exhausted routes to legal challenge and service complaints but continued to correspond with LeO, OLC, key stakeholders and Members of Parliament. Short to medium term mitigations had been put in place to mitigate the resource risks and LeO would continue to manage any potential reputational risk. The post case closure correspondence received so far had not highlighted any themes or trends; this would continue to be monitored and the Board would be alerted if anything were to be identified.
10. Considering the new approach to risk reporting, clarity was sought on whether risk target scores were to be replaced by risk tolerance. In response, ARAC was advised that risk target scores and risk tolerance position were two distinct metrics that would be incorporated into the new format of risk reporting. The risk target score would set out the risk position LeO aimed to achieve following the implementation of effective mitigations and controls and risk tolerance would set out the tolerable position of risk that the OLC was willing to accept based on its agreed risk appetite. All risks falling outside of the agreed risk tolerance would be reported to ARAC and the Board so that decisions could be made on what more should be done to reduce the risk.
11. In response to feedback on the new approach to risk reporting, the Head of Programme Management and Assurance **agreed** to give further consideration to incorporating updates on all risks, not just those that were outside of tolerance, to provide ARAC with a clearer understanding of LeO's risk exposure, whether it was under control and whether any risks or concerns should be escalated to the Board for wider consideration.

ACTION: The Head of Programme Management and Assurance to give further consideration to incorporating updates on all risks, not just those that were outside of tolerance, into the new format of risk reporting to ARAC.

12. In response to questions, ARAC was advised that the effectiveness of mitigating actions and controls would be monitored and tested by the Risk Manager and the new risk management system and reported to the Executive accordingly. The point at which a mitigation would impact the residual risk score would be after it had been implemented and tested to determine its effectiveness. A target date for the completion of mitigating actions was a requirement of the new risk management system; this would be monitored by the Risk Manager and appropriate action taken in response to any overdue target dates. ARAC suggested to highlight where certain specific mitigating actions are necessary but they are either restricted or delayed as result of following the necessary protocol set by MOJ and the Government, (one example discussed was the lengthy approval process to create a different pay level for certain roles.)
13. Positive feedback was provided by the MoJ on the progress that had been made on risk management which demonstrated good signs of risk maturity and a more advanced way of considering risk compared to some other public bodies. The MoJ confirmed that the level of risk reporting was in line with its expectations for an organisation the size of OLC/LeO.
14. It was confirmed that risk reporting against the 2024/25 agreed strategic risks and issues would include a direction of travel arrow to show whether the risks were reducing or increasing.
15. In discussion about the proposed 2024/25 strategic risk (SR.05) relating to the lease renewal for the Birmingham office, ARAC was advised that the revised risk description highlighted that the greater risk associated with this related to the move to a government hub in three years' time because the Executive was confident that the lease had been secured and would be signed imminently.
16. ARAC commended the Executive on the clear and comprehensive risk assurance report, commenting that, whilst not complacent, risk management and risk reporting was now at a high-level requiring only small refinements to deliver further improvement.
17. ARAC **noted** the Risk Assurance report.

Item 4 – Annual review of the assurance Map

18. The Head of Programme Management and Assurance presented a report highlighting the key findings of the Executive's annual review of the risk assurance map which had been undertaken in line with the three lines of defence model. The following key points were drawn to ARAC's attention:

- The assurance map had been updated in line with the 2023/24 year-end risk ratings, controls, policies, terms of reference and audit opinions and actions.
- Since last year's review, improvements had been seen in HR, ED&I and External Affairs, with RAG ratings moving from amber to green.
- Three areas had been identified as requiring further improvement: Counter fraud; contract management; commercial, and information management. To address this, an over-arching overtime policy, detailing the rate at which overtime would be applied, was being developed to further reduce the risk of fraud; work was underway to obtain missing supporting information for some of LeO's historical contracts; and, consideration was being given to the implementation of a technical solution to improve information management.
- Whilst a number of areas on the assurance map had a green RAG rating, there was no complacency and further improvements were planned which would strengthen assurance in these areas further.

19. ARAC had been pleased to note the improvements that had been made to the assurance map during the last year and welcomed the further improvements that were planned which would provide further assurance on some of the areas of the assurance map currently considered to have a 'fragile' green RAG rating.

20. In discussion, it was **recommended** that there would be value in differentiating between the areas of the assurance map considered to have a 'fragile' green RAG rating and those with a 'robust' green RAG rating.

ACTION: The Head of Programme Management and Assurance to update the assurance map to reflect the differentiation between the areas considered to have a 'fragile' and 'robust' green RAG rating.

21. In response to a question, ARAC was advised of the contractual measures that were put in place to protect LeO against any external, third party, cyber security weaknesses that may adversely impact LeO's cyber security. ARAC suggested to provide an annual formal assurance in future with regard to protecting LeO in the contracts with third parties.

22. ARAC **noted** the annual review of the risk assurance map.

Item 5 – Internal audit update

23. The 2023/24 audit plan had been completed, with all reports finalised.

24. The 2023/24 audit of Customer Feedback had received a moderate opinion. The two medium and five low priority recommendations made by auditors had been accepted by the Executive and were on track to be completed within the agreed timescales.

25. In discussion about one of the medium rated recommendations, GIAA explained that the 2024/25 EDI audit engagement would provide a further opportunity to consider customer satisfaction and feedback and whether any of LeO's customer groups were disadvantaged by the service they received.
26. The Chief Ombudsman (CO) assured ARAC that, compared to other similar organisations, LeO had strong arrangements in place to monitor and address customer satisfaction with all key customer groups and at all stages of its process. This included regular monitoring and feedback of learning through a quality forum. The report and its recommendations had been accepted in full and would help strengthen these arrangements.
27. GIAA reported that a moderate annual audit opinion would be provided for 2023/24.
28. Reflecting on the further performance improvements that had been made by OLC/ LeO in 2023/24, which had been reflected in the ratings of the audits conducted during the year, ARAC sought to understand the rationale for the moderate audit opinion, questioning what more could be done to achieve a substantial audit rating in the future.
29. In response, GIAA advised that the 2023/24 annual audit opinion had been based on OLC performance over the last three years, not just the last twelve months, and whilst the OLC/LeO's year on year improvement had been acknowledged (3 substantial and 1 moderate audit rating received 2023/24; 1 limited, 3 moderate and 1 substantial audit rating received in 2022/23; 2 limited, 2 moderate and 1 substantial audit rating received in 2021/22), evidence of sustained substantial audit ratings over a period of time would be required before a substantial annual internal audit opinion could be awarded.
30. The 2023/24 annual audit opinion had been subject to wider internal GIAA consideration and had taken into account other factors including the size of the audit plan, observations at ARAC meetings and deep dives and that the areas audited had been self-selected and linked to self-contained processes within the OLC.
31. In the absence of information to the contrary, ARAC had expected GIAA's annual audit opinion to have been based on annual performance, not performance over a period of time.
32. In response to a question, GIAA confirmed that the presence of one moderate audit rating when all other audit ratings were substantial would not prevent a substantial annual audit opinion being awarded as long as all other criteria, including evidence of sustained substantial audit ratings over a period of time, had been satisfied.
33. Reflecting on the 2023/24 annual audit opinion, the following points were made:

- The 2023/24 internal audit on Cyber Security had not been solely self-contained to OLC processes as it had been aligned to wider cross-governmental risks in line with GIAA insights on cyber security.
 - All strategic risks linked to the areas audited had been mapped across the OLC's strategic risk register.
 - There may be value in GIAA re-defining audit ratings to reflect scales (lower to higher) within each of the audit rating categories to provide more clarity on incremental improvements that had been made.
 - A 'higher' moderate annual audit opinion would better reflect the improvements seen in the audit ratings received by OLC over the last 12 months.
 - It would be important to ensure that stakeholders derived the right meaning from this year's annual internal audit opinion considering the performance improvements that had been made during the last twelve months.
34. In response to the points made, GIAA confirmed that consideration was being given to re-defining audit ratings to reflect incremental performance improvements and that the narrative within GIAA's formal report setting out its annual audit opinion would ensure that stakeholders derived the right meaning from its annual audit opinion.
35. Following discussion and commenting on the importance of an independent assessment of OLC/LeO's performance, ARAC accepted GIAA's moderate annual audit opinion for 2023/24.
36. The 2024/25 internal audit plan included five audit engagements linked to the OLC's strategic risks; this would enable auditors to assess levels of assurance more broadly in 2024/25.
37. The audits would take place across the year to ensure that work was evenly distributed to minimise any adverse impact on staff capacity and business as usual.
38. The quarter one audit engagement on Governance was in the fieldwork stage; emerging findings indicate that progress had been made since this area was last audited in 2021. A scoping meeting for the quarter two EDI audit engagement had been planned.
39. On the basis that no points of clarification or objections were raised, it was taken that the 2024/25 internal audit plan was **approved** by ARAC.
40. ARAC **noted** the 2024/25 Audit Charter, MoU, fee letter and GIAA's ARAC supplements for February and April 2024 and that further information on GIAA insights could be provided on request.
41. ARAC **noted** internal audit update.

Item 6 – External audit update

42. The audit of Financial Statements had commenced. There were no issues to report so far and the preliminary assessment of risk remained unchanged.
43. Regular meetings were taking place between auditors and LeO to ensure that the audit remained on track to conclude within the agreed timescales.
44. ARAC **noted** the external audit update.

Item 7 – Progress update on the Annual report and accounts 2023/24

45. The Head of Finance, Procurement and ICT presented a paper reporting on the progress being made on the 2023/24 annual report and accounts. The following key points were made:
 - A plan and process with accompanying deadlines was in place to ensure the Annual Report and Accounts were prepared ready to lay in Parliament on 27 June 2024.
 - The draft Annual Report and Accounts along with supporting schedules had been shared with external auditors and LeO was providing timely responses to questions and queries.
 - NAO had provided assurance that the Financial Statements audit would be completed in time for LeO to meet its deadlines for sending the Annual Report and Accounts to the printers and laying in Parliament.
 - Included in the 2023/24 accounts was an increase in the provision of dilapidations of £166k. This was funded from net bank interest which had been higher than budgeted for due to increased Bank of England interest rates.
 - The financial statements and notes for the accounts had been included in the paper presented to ARAC for information.
46. In response to a question, ARAC was advised that adequate controls on expenditure were in place. All expenditure required the budget holder's approval, additionally any expenditure over £20k required secondary approval by a member of the Executive and a further third layer of approval was required for expenditure over £75k. This approval was required before goods or services were procured.
47. ARAC **noted** the progress that was being made on the preparation of the 2023/24 annual report and accounts.

Item 8 – Financial governance

48. The financial governance report was presented by the Head of Finance, Procurement and ICT. The following key points were drawn to ARAC's attention:

- The year-end budget variance was within the MoJ's 1% tolerance for both operational and capital expenditure.
- All financial controls had been implemented and maintained throughout the year to ensure that the accounts were free from error and the risk of fraud was mitigated.
- The MoJ had confirmed that the pay remit for 2024/25 would not be confirmed until the end of summer. This may have implications for the OLC budget, which had been approved by the LSB in March and had included provision for a pay award based on the CPI index at the time of application. The Executive had conducted a sensitivity analysis to determine what the potential underspend might be if the confirmed pay remit was lower than the provision that had been made within the OLC's budget and what mitigating actions could be taken by the Executive to ensure that the budget remained within the MoJ's 1% tolerance range at year-end.

49. ARAC had been pleased to note that the year-end budget variance for 2023/24 had been within the MoJ's tolerance level and that the financial controls that had been implemented were effective.

50. ARAC **noted** the update on financial governance.

Item 9 – Lessons learned from the 2024/25 budget and business plan and the 2024/27 OLC strategy process.

51. A report on the lessons learned from the 2024/25 budget and business plan and the 2024/27 OLC strategy process was presented by the Head of Programme Management and Assurance.

52. The simultaneous development of the 2024/27 OLC Strategy and the 2024/25 Budget and Business Plan had been a significant achievement and had taken into account the lessons learned from previous years on drafting and key messaging.

53. The lessons learned from this year's process had been positive overall, these included:

- Early forward planning, which had ensured that the process ran smoothly with all actions completed within agreed deadlines.
- Early engagement with the Board, ARAC and Performance Sub-Group (PSG) had ensured a more collaborative and rigorous approach to process, this had ensured the early agreement of key messages which had enabled the drafting process to begin earlier.

- Early and continuous engagement with stakeholders throughout the year had aided the development the new strategy and had ensured that expectations were managed.
54. A similar approach would be taken for the 2025/26 budget and business planning process. Initial meetings have been scheduled to take place in May with the Chairs of ARAC and the PSG where consideration would be given to the performance and budget assumptions, ARAC's budget setting assurance criteria and the impact of inflation and the pay remit on the 2025/26 budget.
55. The LSB would be reviewing its budget acceptance criteria (BAC) and as part of this process had invited feedback from the LeO/ OLC. In discussion, it was noted that this would be a timely opportunity for LeO/OLC to seek alignment of the BAC with the OLC's new strategy and the 2025/26 business plan and to provide feedback on making the BAC more succinct. The LSB advised that both the LSB and OLC Boards would be involved in the review of the BAC.
56. ARAC **noted** the lessons learned from the 2024/25 Budget and Business Plan Process on and the 2024/27 OLC Strategy process, welcoming LeO's commitment to continuous improvement and the incremental improvements that had been made to the process.

Item 10 – Annual fraud report

57. The Head of Finance, Procurement and ICT presented the annual fraud report, drawing ARAC's attention to the following key points:
- Throughout the year, LeO had undertaken checks and reviews of exposure to fraud as part of the quarterly reporting requirements to MoJ's counter fraud department.
 - Following the completion of a fraud assurance review, the anti-fraud, bribery and corruption policy had been updated to include a lessons learned section.
 - Adequate controls were in place to identify any fraudulent activity and any known exposure to fraud.
 - There were no known instances of fraud in 2023/24, or to date.
58. ARAC **noted** the annual fraud report.

Item 11 – Attestations and single tenders report

59. ARAC **noted** two single tender justifications for the period January to March 2024.

Item 12 – Information rights and security incidents report

60. A report on information rights and security incidents was presented to ARAC, the following key points were made:

- The overall number of data breaches in 2023/24 had reduced compared to the previous year. This improvement was underpinned by mitigating actions including the annual mandatory security and data protection training for all staff, regular reminders and blogs, and switching off the auto populate function in Outlook.
- Despite an increase in the number of data breaches in quarter four compared to quarter three, the levels remained broadly consistent with the same period in 2022/23.
- The majority of data breaches in 2023/24 related to information and correspondence being sent to an incorrect recipient. The reasons for this varied and included customers sharing an incorrect email address with LeO and staff transcribing email addresses incorrectly.
- LeO's Security Forum closely monitored information rights and security incidents, the appropriateness of mitigating actions and whether more should be done to minimise the risk of data breaches incidents. Given the low proportion of data breaches compared to the volume of correspondence issued by LeO over the course of the year, balanced against the risk associated with the adverse impact on operational performance of the application of additional controls, it was deemed that the introduction of additional controls would be disproportionate. This would be kept under regular review and additional controls would be considered if the number of incidents increased.
- There had been no data breach incidents in 2023/24 that met the threshold of reporting to the Information Commissioner.
- The overall number of Freedom of Information (Fol) and Subject Access Requests (SARs) in 2023/24 remained broadly consistent with previous years, despite an increase in the number of requests received in quarter four.
- Eight Fol requests had been completed outside of the statutory timescales.

61. In response to a question, ARAC was advised that whilst LeO did not typically experience repeat offenders, staff responsible for repeated data breaches would be required to undergo additional training.

62. It was stated that there should be no 'acceptable level' for the number of data breaches; this should be clearly and consistently communicated to staff to ensure that there was no misunderstanding or complacency and that procedures were followed to mitigate the risk of data breaches.

- Following discussion, the ARAC Chair **confirmed** that LeO should continue with the level of controls currently in place to mitigate data

breaches, but further consideration would be given to the implementation of additional controls if the number of incidents were to increase. Further, ARAC suggested to do some benchmarking if possible.

63. In response to feedback, the Deputy Chief Ombudsman **agreed** to arrange for more clarity to be provided on the number of FoI and SARs that had been completed each quarter in future information rights and security incident reports.

ACTION: The Deputy Chief Ombudsman to arrange for more clarity to be provided in future information rights and security incident reports on the number of FoI and SARs that had been completed each quarter.

64. The OLC Chair suggested that there may be value in benchmarking the number of SARs and FoI requests received by LeO with other similar organisations.

ACTION: The Deputy Chief Ombudsman to consider benchmarking information rights and security incidents against other similar organisations.

65. ARAC **noted** the Information rights and security incidents report.

Item 13 – Escalations to the Board

66. ARAC did not identify any items requiring escalation to the Board.

Item 14 – Any other Business

67. ARAC members were asked to submit relevant suggestions for potential topics for future ARAC deep dives to the Board Governance Manager by 15 June 2024.

ACTION: ARAC members were asked to submit suggestions for potential topics for future ARAC deep dives to the Board Governance Manager by 15 June 2024

68. The ARAC Chair **agreed** to liaise with the OLC Chair about the suggestions submitted for ARAC deep dives to ensure their relevance and appropriateness for consideration by an OLC Committee as distinct to the full Board.

ACTION: The ARAC Chair to liaise with the OLC Chair about the suggestions submitted for ARAC deep dives to ensure their relevance and appropriateness for consideration by an OLC Committee as distinct to the full Board.

69. There was no other business discussed.