# AUDIT AND RISK ASSURANCE COMMITTEE
**("the Committee")**
**MINUTES**
Meeting held on 3 March 2021
10:30 – 13:30 | by video-conference

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| **Present:** (Members) | Catharine Seddon | Chair |
| | Catherine Brown | |
| | Marina Gibbs | |
| | Michael Smyth | |
| **In attendance:** | Matthew Hill | Chief Executive and Accounting Officer |
| | Tim Borthwick | Corporate Services Manager |
| | Stuart Hamill | Head, Finance and IT |
| | Steph North | Corporate Governance Manager (minutes) |
| | Holly Perry | Director, Enabling Services |
| | David Eagles | BDO LLP External Auditor |
| | Matthew Vosper | BDO LLP External Auditor |
| | Ella Firman | National Audit Office (NAO) External Auditor |
| | Richard Evans | Crowe Internal Auditor |
| **Observing:** | David Winks | Ministry of Justice |
| **Attendance for items:** | Jenny Prior | Corporate Services Manager (item 9) |

**AUDIT AND RISK ASSURANCE COMMITTEE MEETING**

**Item 1 – Finance Committee**

1. The Committee sat as a Finance Committee prior to the meeting to discuss the 2021/22 draft budget.

**Item 2 - Private session with auditors**

2. The Members met in a private session with the internal and external auditors.

**Item 3 - Welcome and apologies**

3. The Chair welcomed everyone present to the meeting, in particular David Winks from the Ministry of Justice (MoJ) who was observing the meeting. Apologies had been received from Bri Luscombe from Crowe.

**Item 4 - Declarations of interests relevant to the business of the Committee**

4. Catharine Seddon declared that she had been appointed as Board Member at the Human Fertilisation and Embryology Authority from 18 January 2021, where she had been made Chair designate of the Audit and Governance Committee.

**Item 5 - Minutes of the previous meeting**

5. The minutes of the ARAC meeting held on 20 November 2020 were **APPROVED.**

**Item 6 - Action tracker**

6. The Committee reviewed and **NOTED** the action tracker, in particular that:
    - *Essentials Plus* certification was delayed because of the need for office access to complete the action and was expected to be complete by the end of April 2021; and
    - Two actions arising from the 20 November 2020 meeting would be added to the tracker: *alternative budget models to be presented to the Board at its meeting on 2 December 2020 (complete*), and *Executive to develop success criteria for the Office for Leal Complaints (to be considered as part of deep dive planned in October 2021).*

**Item 7 –Internal Audit update Paper (21) 03 (ARAC)**

7. Crowe presented an overview of internal audit work which had been carried out over the past year.

    *IT internal audit*

8. The points raised in the report were largely administrative and reflected enhancements to the positive control environment and management had accepted all of the recommendations. The Committee was supportive of the recommendation to include a right to audit in all future contracts, and welcomed the review of licenses prompted by the audit which had resulted in a rebate for the LSB.

9. The Committed noted a point of consistency that across the audit reports – *significant* assurance should be read as *substantial.*

*Remote working fraud risk*

10. It was noted that the LSB's control system and processes had remained largely unchanged as a result of moving to a fully remote working environment, which was largely due to previous work done as part of the office move and IT transformation in 2019/20. Advisory points had been suggested for efficiency – in particular, there had been positive colleague feedback on improved oversight and engagement during the remote working period and it would be important not to lose this following a return to the office or hybrid working.

11. The Committee considered the report, noting that:

    - it was particularly reassuring to receive a 'substantial' rating following a recent Cabinet Office report which had highlighted increased instances of fraud in remote working environments in general;
    - one recommendation – in relation to retaining senior leadership team authority for invoices - had been rejected because of a misunderstanding between executives and the auditor. A workaround was in place which negated the risk;
    - in relation to the recommendation around colleagues reporting suspicious activities, the executive planned more frequent reminders to staff about fraud and related aspects, and would use these opportunities to remind colleagues of the process for reporting;
    - as the oversight regulator, the LSB potentially had a role to encourage a robust approach to cyber security across the sector – the matter might helpfully be discussed at the full Board in due course (**action**);
    - in future audit reports, it would be helpful for the management response to include a headline 'agree' or 'disagree' with regard to each audit recommendation. For those actions were there was a 'disagree', it was requested that the auditors either remove the action, or that the residual risk was stated (**action**). The Committee also requested that the auditor's residual risk be stated before audit reports were presented (**action**).

*Regulatory performance* – oral update

12. The audit was at an advanced stage: substantial assurance was anticipated. Key points raised were around procedure, consistency and documentation of processes.

13. The Committee thanked Crowe for the update, which was timely ahead of a planned review of the regulatory performance framework.

*Draft head of internal audit opinion*

14. Crowe introduced the draft head of internal audit report, which summarised the internal audit work completed in the past year, in line with public sector audit guidance. There was substantial assurance overall and there were no significant control breakdowns or weaknesses identified. Recurring themes arose around consistency and producing guidance for colleagues. Risks had been clearly reported at each Committee meeting and there were no adverse events to report.

15. The Committee noted the draft opinion, and that the executive would review existing processes and procedures across the LSB, identify gaps and streamline where improvements were identified (**action)**. Value for money would be a key consideration across this work.

16. The Committee thanked Crowe for their work and the high level of assurance provided in the draft annual opinion, asking that reference to Crowe's 2019/20 experience with the LSB be referenced as informing this opinion, and that the final report present a tabular comparison charting progress over time (**action**). The Committee also thanked Crowe for the update on their billing cycle – the three-year audit plan in line with the budget would be included in the final report (**action**).

17. The Committee **NOTED** the internal audit update.

**Item 8 - NAO external audit update**

18. BDO introduced the paper, which had been circulated out of committee in December 2020. The following points were brought to the Committee's attention:
    - There were three areas of external audit focus: the impact of the early adoption of accounting standard IRFS16 on 1 April 2021 and the subsequent need for narrative detail in the Notes to this year's resource accounts; the historic treatment of Board member expenses, for which a voluntary disclosure had been made to HMRC, and a potential penalty or interest which might be issued by HMRC; disclosure and the LSB's response to Covid-19.On the final point, the external auditors' expectations were a narrative disclosure running throughout the annual statement, with any risks explained;
    - A significant risk identified was the presumed management override of controls;
    - Materiality was based on 2% giving a figure of £80k. The error reporting threshold was amended to £2k as in previous years following feedback from LSB;
    - On the audit team fee and timetable, there was a chance resourcing may be an issue, although presently resourcing remained flexible - resource was booked in for the final audit, and no changes were expected;
    - Audit colleagues would discuss with the executive any disclosure required in relation to any HMRC penalty or interest charged on tax liability;
    - In relation to the Committee's queries about audit fees, it was explained that the NAO sets a fee which reflects at a minimum the need to recover costs. Requirements in relation to audits were increasing, particularly around the amount of challenge required, and LSB work on fixed assets represented a significant area of new work. In addition, historically the NAO had not recovered its costs, and in the future fees would reflect recovering costs for the full audit year - any underspend would be returned to the LSB. The Committee was satisfied with the explanation given, with thanks for the thorough consideration given to the query.

19. The Committee **NOTED** the external audit update.

**Item 9 – Corporate Risk Register Paper (21) 04 (ARAC)**

20. The Chair welcomed Jenny Prior, Corporate Services Manager, to the meeting as an observer.

21. Tim Borthwick, Corporate Services Manager, introduced the Corporate Risk Register.

22. The Committee scrutinised the risks in turn and raised the following points in discussion:
    - RO5 – poor Legal Ombudsman (LeO) performance leads to lost public confidence: the Committee noted that the MoJ's opinion of this risk diverged from the LSB's, but overall considered that the risk remained out of risk appetite. It was posited that an additional risk factor might be OLC Board member attrition, as well as and the role and effectiveness of the OLC's ARAC (**action**: the executive would consider the factors impacting the OLC and make a decision in consultation with the head, Policy Development and Research – the executive lead for the OLC). The Committee noted the importance of being open to changes to how the scheme operated or indeed alternative mechanisms of redress and requested that the executive continue to work with OLC and MoJ on these questions(**action**);
    - R10B – Covid-19 impacts on the market: the Committee queried whether it was realistic to provide an estimated date for reaching an acceptable risk score given the riskiest time for the sector was likely to be in the autumn and beyond. It was suggested that some of the stated mitigations were not true mitigations and should be revised. The Committee noted that preliminary data on the number of authorised persons had been received – the indications were that practicing certificate fee (PCF) revenue was holding up. By June 2021, the LSB would have robust analysis which would enable it to say whether or not, due to Covid-19, there had been a significant impact on the number of authorised persons or PCF income. This would be an important indicator of the impact of Covid-19 on the sector. It was agreed that on other metrics, for example criminal justice, there had been a significant impact, and in others, results had been better than expected e.g. conveyancing. On mitigating actions, more thought could be given to the way in which grassroots measurements might be obtained – consumer detriment e.g. more use of LSCP intelligence, the possibility of establishing feedback from the sector directly;
    - R11 – LSB not achieving traction with its policy objectives: it was noted that this risk had decreased since the last discussion, and the Committee expressed a desire for the planned mitigations to be delivered as quickly as possible;
    - R12 – LSB policies fail to support a diverse legal profession: the Committee questioned whether it was sufficiently clear that the performance assessment mechanism was an existing mitigation, as well as the timeline for the risk to cease – which the executive would revise;
    - R13 – lower colleague morale affecting delivery: the Committee acknowledged that this risk was volatile because it was possible for entirely unforeseen external circumstances – for example the success or failure of a vaccine – to have a profound impact on morale that was beyond the LSB's influence. The executive provided an oral report on the position in relation to annual leave taken to date – as a result of a concerted focus on wellbeing and effort to encourage colleagues to take their annual leave entitlement within the 2020/21 leave year, the majority

of colleagues would have taken leave by the end of March 2021 – the adverse impact on the accounts this year was likely to be approximately £12k compared with over £90k estimated at the start of January 2021.

23. The Committee **NOTED** the risk register.

24. The Committee **CONSIDERED** horizon scanning of risks. The Committee suggested the following three risks affecting legal services generally:
    - Surveillance – in respect of the LSB not being aware of where issues may be arising and impacting consumers. Although the LSB already considered surveillance in the context of its enforcement work, there was an opportunity to explore the possibility of establishing grassroots feedback mechanisms (**action**);
    - Value for Money (VfM) – there was a rationale for adding a risk on VfM, including the LSB being unable to evidence sufficiently quickly and transparently VfM both internally and externally; Board diversity – the Committee discussed whether it was acceptable to say that the LSB's weakness in terms of Board diversity was beyond the LSB's control. A lack of diversity in terms of experience and perspectives was considered to be a material risk to the LSB's credibility - seeking diverse candidates should be a priority for the LSB, working closely with the MoJ public appointments team. In addition, although the Committee had full confidence in the Board as constituted, its diversity had become an matter of increasing concern for colleagues, particularly in the context of the LSB setting out a strong policy platform on the matter. The MoJ observer noted these concerns in the context of upcoming Board member recruitment.

**Item 10 - Update on LSB Annual Report and Accounts 2020/21 Paper (21) 05 (ARAC)**

25. The Committee **NOTED** the update on the timetable for the Annual Report and Accounts, with thanks to the NAO for circulating guidance on good practice in annual reporting. This would be considered carefully by the executive in preparing this year's report, with a particular focus on accessibility, simplicity and the inclusion of high-level summaries.

26. The Committee **NOTED** two updates from the MoJ observer:
    - The Executive should work towards the proposed laying date of 24 June 2021;
    - There was no definitive confirmation on whether formal delegated authority to spend from 1 April 2021 would be received by that date but MoJ are keeping LSB updated on what will be in place come 1 April.

**Item 11 – Draft Annual Governance Statement Paper (21) 06 (ARAC)**

27. The Committee **REVIEWED** the Draft Annual Governance Statement, making the following drafting comments:
    - The Committee had met formally on four occasions in 2020/21 – the terms of reference required at least three meetings;
    - Language relating to fraud would be reviewed to reflect how assurance is provided;
    - The section on the Office for Legal Complaints reflected an appropriate level of detail;
    - A footnote would be added to explain when assurances maps are used and why, as well as how frequently they are revised and whether they are used as part of active and dynamic risk management;

- More detail on key risks would be included, in particular in relation to the impact of Covid-19 on the LSB – mindful that the LSB was a small, agile organisation with a history of flexible home-working which meant that a high level of output had been maintained over the past year. It was noted that risk was also covered as part of the performance report, and that the executive would seek to avoid duplication in so far as possible.

28. The Committee **NOTED** the Draft Annual Governance Statement.

**Item 12 - Final Grant Thornton report on Board Members' expenses and tax liability and LSB response Paper (21) 07 (ARAC)**

29. The Head, Finance and IT introduced the paper which provided an update on the legacy PAYE issue for which the LSB had submitted a voluntary disclosure to HMRC. A response was pending, and a decision would be taken as to how to reflect the cost in the end of year accounts.

30. The Committee considered the update, noting the following points:
    - That non-executive directors would not be individually liable and that there was therefore no detriment to Board members based in locations further away from headquarters – an issue that might have had an impact on diversity;
    - In 2020/21, HMRC had enabled employees to claim directly a working from home tax allowance. A cost would be incurred if the LSB decided to continue to pay the allowance in future years, once the HMRC arrangement came to an end;
    - Some equipment had been provided to colleagues to enable effective home-working. In many cases, the cost to recoup equipment would be more than the original cost. It was noted that most home equipment excluding laptops were a revenue cost and had already been expensed. A high-level assessment of assets held by colleagues had considered depreciation to calculate a current value and recovered a small amount to date. A full cost-benefit benefit analysis would be carried out, with the anticipated result that most equipment would not be recovered;
    - Tax liability for colleagues based abroad – although it was not expected that the LSB would employ any individuals based outside of the UK, the Committee noted that a policy would be developed given the tax implications that arose. This would be part of formalising the LSB’s approach to post-Covid working;
    - The executive was not aware of any colleagues using intermediary companies, nor of any miscalculations in relation to payroll;
    - Recognition awards for colleagues – the executive had established a procedure with the external payroll suppliers to ensure the real value of the award was paid to colleagues and not reduced by PAYE or NI.

31. The Committee **NOTED** the latest position with the HMRC calculation and the executive’s response to the employment taxes review report.

**Item 13 - Deep dive into value for money (VfM) Paper (21) 08 (ARAC)**

32. The Head, Finance and IT introduced the paper which set out progress made in relation to value for money developments at the LSB.

33. The Committee **CONSIDERED** the update. The following points were raised in discussion:
    - This was an excellent paper which clearly set out what VfM means for the LSB, with relevant and helpful examples;
    - The Committee welcomed the forensic analysis for investment against outcome: an area for future development was effort in against output;
    - It was suggested that considering budget against actual spend was not a good indicator of value for money;
    - The Committee noted the intention not to pursue further benchmarking at this stage;
    - The Committee agreed with the executive's recommendation not to pursue a deep dive into procurement in June, on the basis that an internal audit was planned for later in 2021/22. The next deep dive, planned for October 2021, would into the Office for Legal Complaints;
    - The Committee welcomed an update on emerging thinking in relation to how to streamline inventory and how the LSB might work post-pandemic;
    - The Committee noted that a pilot on combining resource data with payroll data would be presented in October 2021 (**action**);
    - The Committee welcomed the focus on project closedown reports, which supported the internal audit recommendation to ensure consistency across the workstreams;
    - On the future of the office, the executive updated the Committee that preliminary discussions had taken place with colleagues and third parties to explore a range of options – the aim was to ensure this expensive asset was used to best effect. Future working arrangements would see significantly increased flexibility compared to pre-pandemic arrangements, based on how positively colleagues had responded over the past twelve months. Discussions were ongoing and the Committee would be kept updated;
    - The internal and external auditors reflected on their experience of working arrangements. Points raised included: colleague wellbeing was paramount; there was strong support for more control over work-life balance, although it could be harder to maintain morale and flexibility was not universal; engagement remained a concern for some teams, as was the number of colleagues not taking sufficient breaks from work; and the challenges in supporting new and more junior colleagues understand new areas without face to face contact.

34. The Committee **NOTED** the update, with thanks for the progress to date, and a strong endorsement for the actions planned, including making the office space effective post-Covid.

**Item 14 – Update on data management Paper (21) 09 (ARAC)**

35. The Corporate Governance Manager introduced the paper which provided an update on the steps taken in the past year to review and improve the LSB's data management practices: progress made, barriers remaining, and recommendations for further improvements.

36. The Committee considered the update and the following points were raised in discussion:
- The Committee welcomed improvements made over the past year;
- A query was raised in relation to whether the retention and disposal schedule would continue to be applied in the event that a legal challenge was lodged

against the LSB**:** the legal team would provide an update to the Committee by correspondence (**action**).

37. The Committee **NOTED** the update, with strong endorsement for the planned actions.

**Item 15 – Draft Annual Report of ARAC 2020/21 Paper (21) 10 (ARAC)**

38. The Corporate Governance Manager introduced the paper, which was a draft report on the Committee's work over the past year. The report would be presented to the LSB Board at its 18 March 2021 meeting, and help to inform the Annual Report and Accounts for the LSB. The internal and external auditors had been invited to comment on the report, but had not raised any points.

39. The Committee **ENDORSED** the paper to be presented to the Board at its March meeting.

**Item 16 - Oral update on counter fraud assurance**

40. The Head, Finance and IT provided confirmation that no incidents of fraud had occurred since the last Committee meeting.

41. In relation to an item on the action tracker - *decision to renew cyber essentials certification due February 2021* – it was explained that this action had been delayed due to office access in lockdown – it was now expected to be complete by the end of April 2021. It was anticipated that the recommendation to the Committee would be to adopt 'Essentials Plus' certification on the basis this would include vulnerability testing which would be valuable for the LSB.

42. The Director, Enabling Services, provided an oral update on the government counter fraud standard, explaining that there was ongoing communication with the MoJ about updates from wider government. Just before this meeting, the LSB had received a guide to good practice in counter fraud and error published by NAO, which would be reviewed and practice updated accordingly.

43. The Committee **NOTED** the updates.

**Item 17- Papers considered out of committee since 20 November meeting**

44. The Committee **NOTED** that Paper (21) 01 – *Internal Audit update - IT audit* – had been circulated on 29 January 2021.

**Item 18 – Forward look**

45. The Committee **NOTED** the agenda forward look.

**Item 19 - AOB**

46. The Committee **NOTED** the plan for the 2021/22 internal audits and deep dives, including that - subject to change - there would be no deep dive in June 2021.

47. The Committee and attendees reflected on the frequency of deep dives and the criteria under which they were decided. Given the resource required to produce

them, the Committee agreed that deep dives should be commensurate with existing and future risk, reflecting specific areas in which assurance was required, rather than presented as a matter of routine at each meeting. The Committee **noted** that future deep dives were planned as follows:

- October 2021 - OLC;
- March 2022 - deep dive follow-up on VfM;
- June 2022 - project management;
- October 2022 - communications and engagement update.

48. This was Marina Gibbs' final Committee meeting before stepping down from the Board on 31 March 2021. The Chair on behalf of the Committee expressed sincere thanks to Marina for her stalwart service to the Committee, and her invaluable contribution and support.

49. The Committee also thanked the outgoing Corporate Governance Manager for her contribution to the work of the LSB, in particular support for this Committee. Her last day at the LSB would be 14 May 2021.

50. There was no other business and the meeting ended.

SN, 12 March 2021

Signed as an accurate record of the meeting

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Date

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