AUDIT AND RISK ASSURANCE COMMITTEE
("the Committee")
MINUTES
Meeting held on 28 September 2021
10:30 – 13:30 | by video-conference

Present: (Members)	Catharine Seddon	Chair
	Catherine Brown	
	Gary Kildare	
In attendance:	Matthew Hill	Chief Executive and Accounting Officer
	Tim Borthwick	Corporate Services Manager
	Stuart Hamill	Head, Finance and IT
	Jenny Prior	Corporate Governance Manager
	Holly Perry	Director, Enabling Services
	Ethan Fleming	Corporate Governance Manager (minutes)
	Steve Brooker	Head, Policy, Development and Research
	Ella Firman	National Audit Office (NAO) External Auditor
	Bri Luscombe	Crowe Internal Auditor
	Richard Evans	Crowe Internal Auditor
	Leona Awoyele	Ministry of Justice (item 2 only)
Apologies	Michael Smyth	

AUDIT AND RISK ASSURANCE COMMITTEE MEETING

Item 1 - Private session with auditors

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

Item 2 - Welcome and apologies

2. The Chair welcomed everyone present to the meeting in particular the Head, Policy, Development and Research who would be attending the whole session as part of the standing invite for Senior Leadership Team members to attend committee meetings.
3. Apologies had been received from Michael Smyth who had submitted comments to the Chair in advance; these would be referenced at appropriate points during the meeting.
4. Members confirmed that they had seen the correspondence relating to the change of the external auditor's subcontractors (from BDO to Deloitte).

Item 3 - Declarations of interests relevant to the business of the Committee

5. There had been no new declarations made in advance or at the meeting.

Item 4 - Minutes of the previous meeting

6. The minutes of the ARAC meeting held on 1 June 2021 were **APPROVED.**

Item 5 - Noting of items considered out of committee since 1 June

7. The Committee noted the ARAC effectiveness review paper that was included on the agenda for discussion.

Item 6 – Action Tracker

8. The Committee reviewed and **NOTED** the action tracker. The Committee noted in particular:
    - Action 3 – An oral update on resource data was still on track for March 2022.
    - Action 11 – The suggestion had been made to the MoJ to appoint a diversity champion and the Chair had requested a written update from the MoJ representative by correspondence - other government departments had considered it a priority.
    - Internal Audit Action 4 – The Chair commended the team for putting in place training on statutory decisions.
    - The Committee was content for all actions marked as completed to be removed from the action tracker.
    - The Head, Finance and IT reported that the historic PAYE liabilities had been noted and allocated by HMRC to their public sector team but a decision has yet to be made due to a backlog of work at HMRC. Once it was received it would be circulated to the Committee (**action**).

Item 7 – NAO External Audit Update

9. The NAO introduced the item and reported that the subcontracted audit function would now be delivered by Deloitte as part of the NAO's regular process of auditor rotation. Several audits were outsourced to assist with NAO resourcing and to allow NAO learnings from the private sector. The LSB's audit was contracted out to guarantee a pre-recess audit. NAO had yet to agree the team with Deloitte and would put them in contact with LSB as soon as possible.

10. The fee was yet to be set and would not factor in Deloitte getting up to speed about the work of the LSB, however would include set up costs that any new auditor would incur which, owing to its standardised nature would lead to the LSB incurring a disproportionate amount of set up costs. This may be offset by Deloitte being able to provide efficiencies such as data analytics tools, given its scale and expertise.

11. The Committee **NOTED** the updates.

Lessons Learnt 2020/21 audit

12. The resourcing and consistency of the audit team had been raised by the LSB executive, particularly the change in personnel from the interim audit to the final audit

and this was an area Deloitte had scored highly on in the tender process. NAO would raise the importance of consistency in staffing at a planning meeting with Deloitte to be held shortly.

13. The need for an interim audit was queried, given the LSB's size and relative simplicity. There were benefits, in that it could mean that some audit work can be carried out ahead of the final audit, however should not introduce a disproportionate administrative burden.

14. Overall, it had been a positive audit year with the LSB accounts the first to be signed off within the MoJ.

15. The LSB Chief Executive had written to BDO thanking them for their services and the Committee wished to record for the record its thanks for a smooth and collegiate relationship.

16. The Committee **NOTED** the lessons learnt.

Changes to Guidance ahead of the 2021/22 audit

17. IFRS16 was being fully introduced for the 2021/22 accounts. The disclosures of the impacts had been included in the previous year's accounts but would now be included on the balance sheet.

18. The Committee **NOTED** the upcoming change.

Item 8 - Internal Audit Update

Lessons Learnt 2020/21 audit

19. Crowe reported that there were no substantive comments to raise. Audits were taking slightly longer owing to remote working - it may be that opening and closing meetings would be held physically in the future. The LSB monitored the workload on staff when arranging audits.

20. New Government functional standards had been published, including in relation to internal audit. Crowe at this stage did not believe these would impact on the LSB but would review any relevant standards as part of its audit programme, and report back on these as necessary.

21. The Committee **NOTED** the lessons learnt.

Business Planning

22. Crowe reported that the overall conclusion was substantial assurance with the business planning process linked to strategic processes. The four recommendations were lower-level priority and Crowe recommend keeping processes proportionate and ensuring projects had clear ends. It was noted that many of the actions were already underway or planned.

23. The Committee **NOTED** the audit report.

Procurement

24. Discussions had begun with the Head, Finance and IT in relation to the procurement audit, which was now planned for November. This would include checking procurement against the Government functional standard.

25. The Committee **NOTED** the upcoming audit.

Communications

26. The communications audit had been brought forward with terms of reference drafted.

27. The Committee **NOTED** the upcoming audit.

Item 9 - Counter Fraud Update

Fraud Assurance

28. There had been no incidents of fraud recorded in the latest quarter.

Counter Fraud Standard Update

29. MoJ had informed the LSB that the annual update and commissioning request would be issued within the next month.

30. The Committee **NOTED** the fraud updates.

Item 10 - LSB Corporate Risk Register

Corporate Risk Register

31. The Corporate Governance Manager introduced the risk item which included the latest version of the Corporate Risk Register ("CRR").

32. The Committee scrutinised the risks on the CRR. The following points were raised in discussion:
    - R05 – *poor Legal Ombudsman (LeO) performance leads to lost public confidence*. The risk was at appetite. A letter had been circulated separately to Committee members from the Chair of OLC to the Chair of the LSB, giving details on performance and the general trajectory. This would be further discussed in the deep dive session later on the agenda.
    - R11 - *LSB not achieving traction with its policy objectives.* It was proposed that the executive should consider keeping the risk on the register whilst the impacts of returning to the office were ongoing.
    - R12 - *approach fails to improve the diversity in the profession*. The Committee considered that the framing of this risk focused it on credibility rather than effectiveness – the executive would review the framing to address this point. The focus on all of the protected characteristics implied it was a general compliance risk however BAME and disability were particular gaps and should be referenced as priority. Mitigations in relation to Board diversity could include for example shadow board members and development schemes, or perhaps submissions from diverse consumers and users of legal services. The point was also made that diversity should not be conflated with vulnerability as they were separate issues. Separately there was also a risk of a long-term deterrent to the sector in relation to diverse new entrants to legal

services from the cumulative impact of different treatment. Given the discussion the scoring and appetite may require review.
- R15 – *negatives effects of hybrid working*. Consideration should be given to retaining this risk whilst the effectiveness of post COVID arrangements were determined. There may also be an impact from the pay freeze as previously discussed.
- As the BSB had yet to reach a steady state position, a risk should be considered for inclusion in relation to this. The executive would consider the inclusion of a broader risk relating to all the regulators not being sufficiently focussed on the public, and regulatory objectives, and generally not meeting expectations (**action**).

Horizon-scanning Reflections

33. The Committee reflected on the Board horizon scanning discussion held on 21 September and the following points were raised:
    - The horizon scanning had not identified any specific amendments to the CRR.
    - There was a potential risk that the LSB did not have sufficient traction to fulfil the ambition. Alternatively, communication and engagement failed to gain traction in comparison to ambition. This could be considered as part of the budget drafting process (**action**).
    - Environmental, Social and Governance reporting should be considered for inclusion.
    - The ALB Risk coordinators group would not be meeting until October and a note would be circulated to the Chair afterwards of any relevant items (**action**).
    - The ALB Risk Chairs' meeting had highlighted the need to ensure work life balance was maintained as hybrid working was adopted.

Item 11 - Deep Dive – Office for Legal Complaints

34. The Head, Policy, Research and Development introduced the paper and recapped that when the Board made the decision in March 2021 to invest funds in the Legal Ombudsman for the financial year 2021/22, the performance trajectory was the minimum set of expectations and did not include improvements from innovations. From April to June LeO was ahead against targets with the backlog forecast due to begin to decrease in July. However, the backlog has continued to slowly increase – attrition amongst staff and difficulty in filling vacancies were key reasons for this. LeO was also running under budget due to staff vacancies. It was possible that the minimum expectations for the year would not be met. The mid-year review and budget process would be a key point for the LSB to provide a view – this was scheduled for the Board's consideration in November. Separately, the LSB, OLC/LeO and MoJ representatives were meeting to discuss how to secure the best possible models for consumer redress.. These discussions included success criteria, which would need to be applied to both the existing and possible alternative models.

35. The following points were raised in discussion:

Performance

- Broadening access to redress was a feature of the policy debate in the wake of the Mayson report and CMA review and no doubt would be on MoJ's agenda currently.
- The situation described in the letter from the Chair of OLC to the LSB Chair was disappointing but not surprising and it had been accepted that progress would not always be linear. It was positive to see the plans and changes/redesigns that had been made so far, along with a change of tone.
- LeO should be encouraged to find alternative sources of human resource and to take a flexible approach.
- The impact of COVID was losing general currency as a reason for performance issues in the wider economy and would be likely to be challenged. Strong leadership would continue to be significant in this regard.

Scrutiny and Oversight

- The challenge panel was a useful tool and was currently pitched at the right level. Although a case could be made to increase the level of scrutiny or formal contact on a more regular basis with LeO, this would likely be a drain on resource for marginal benefit. It might also lead to a risk of unclear accountability and responsibility. Improvement was likely to be more sustainable if it came from within.
- Scrutiny had been made more transparent with more key performance data being published on the LeO and LSB websites in a more orderly and timely fashion. OLC has also established an external scrutiny panel of stakeholders.

Alternatives

- With a view to moving towards the best possible arrangements for consumer redress - perhaps in an environment where it was much more widely available than now - it was important to continue to consider a wide range of structural options for handling complaints about legal services. It would be important to continue to make clear that this work was not directly connected to LeO's performance (and would be likely to be of value however well LeO was performing withing the current legislative structures). There was a clear need to avoid jeopardising LeO's current trajectory to stabilisation. It remained helpful to consider the range of alternative models to ensure the redress mechanisms available to consumers were the best they possibly could be.
- Having plans for alternatives in advance was beneficial in the event of any political desire for reform.

Risks

- The executive should consider if the risk register entry needed to include the impacts of a lack of access to justice due to there being a set of people who had been poorly treated and had been unable to get redress. Further, if the risk consequences should include the potential impact on the LSB of not being able to deliver its strategic ambition (rather than the LSB not having been able to address the performance issues) (**action**).

- It would be important for the underspend not to impact on LeO continuing to seek value for money.

36. The Committee **NOTED** the progress in relation to: (a) mitigating the OLC risks (b) the key improvements in the nature of LSB oversight and (c) the use of the annual budget approval process to increase transparency. The Committee **endorsed** the work to set success criteria.

Item 12 - ARAC Effectiveness

37. The Corporate Governance Manager introduced the item and the following points were raised in discussion:
    - Action 1 – *Identification of skills required*. Digital and technology was in demand by Audit committees across the public sector however care needed to be taken to properly define what exactly was meant by digital/technology. It was agreed that amongst the existing members of the Committee, there was sufficient broad understanding of digital to fulfil an audit and risk function. More broadly, there was likely a need for increased digital skills on the Board. If Board diversity continued to be an issue, then a non-board member that was a diverse candidate with digital skills could be recruited to ARAC as a development opportunity.
    - Action 2 – *Committee to discuss assurances received*. A view was expressed that the level of assurances requested by the Committee sometimes felt onerous.
    - Action 3 – *ARAC members' earlier input to the Governance Statement*. ARAC members welcomed the opportunity to provide input at an earlier stage.
    - Action 4 – *Review the Chair's bilateral meetings*. This would be arranged for December.
    - The NAO checklist was comprehensive however it felt somewhat mechanical, and it was hoped that the NAO may have updated it by the time of the next review in 2023 to focus more on the effectiveness and behaviours of committees and members. The Board external evaluation planned for 2022 would include a review of ARAC and the ARAC could also undertake a shorter, self-reflective survey if required.
    - An update on the action plan would be presented at the March 2022 meeting.

38. The Committee **APPROVED** the action plan.

Item 13 - Corporate Governance Manual Review

39. The Corporate Governance Manager reported that the internal consultation on the corporate governance manual had now closed, and a number of points had been raised for consideration. It would be circulated in early November out of committee for ARAC endorsement, before formal submission to the Board for sign off.

40. The Committee **NOTED** the update.

Item 14 - LSB Publication Scheme

41. The Corporate Governance Manager reported a review of the publication scheme had been undertaken, that the version on the website worked, the latest versions of documents were available and all of the actions from the previous year had been completed.

42. The Committee **NOTED** the update.

Item 15 - Forward Look

43. The dates for 2022 had now been arranged with the exception of May/June 2022.

44. It was discussed if an update on the OLC should be scheduled for a future meeting. An update on success criteria and alternative models would be made at the March 2022 meeting.

Item 16 - AOB

45. There was no further business.

46. The next meeting would be 11am, 5 November, via Teams.