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| <b>Meeting</b>  | OLC Board                      | <b>Agenda Item No.</b> | 4          |
|   |                                | <b>Paper No.</b>       | 117.3      |
| <b>Date of meeting</b>  | 14 December 2021               | <b>Time required</b>   | 16 minutes |
| <b>Title</b>  | <b>Executive Report</b>        |                        |            |
| <b>Sponsor</b>  | Paul McFadden, Chief Ombudsman |                        |            |
| <b>Status</b>   | OFFICIAL                       |                        |            |
| <b>Executive summary</b>  |                                |                        |            |
| <p>Our organisational focus remains on supporting the efforts of our operational teams as they deliver improving performance and address people and resourcing challenges. The Executive will outline positive November progress with total customer closures now at a rate higher than at the equivalent point in the previous two years despite less established resource being in place. Board will also note steady ongoing increases in productivity, further reductions on average investigation times and substantial ongoing success of our Early Resolution pilots.</p> <p>The agenda item on the 2022/23 Budget and Business Plan will give Board an opportunity to assess key elements of the Business Plan and consider key questions asked by the LSB on plausibility and confidence in the plans and intended outcomes. With the consultation closing on 13 December the Executive will also update on responses received and wider stakeholder engagement.</p> <p>Board will note significant progress in addressing the recruitment challenges seen this year with a managed recruitment service campaign in November delivering an unprecedented return which will help deliver our staff complement in advance of 2022/23 and address some of the key questions raised around confidence. This will also provide possible opportunity to recruit over and above staff complement to offset future assumed attrition, something being considered in terms of risk and affordability.</p> <p>We are also moving forward with plans for a first LeO Hub with a site visit planned to assess feasibility ahead of a potential proof of concept pilot, increasing further our potential recruitment reach and scope.</p> <p>The review of LeO's Scheme Rules is progressing close to a point of consultation on phase 1 changes. With the support of OLC colleagues – and subject to LSB engagement on the consultation and approval process - we intend to bring a draft consultation paper, relevant supporting information and the revised set of Scheme Rules to a sub-group of OLC Board members for discussion and approval in early January.</p> <p>Board will note updates on finance and governance and, in particular, the ongoing risk in relation to a growing underspend directly related to resourcing issues.</p> |                                |                        |            |
| <b>Recommendation/action required</b>   |                                |                        |            |
| OLC is asked to <b>NOTE</b> the paper.  |                                |                        |            |

## Executive Report

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### Performance and People

Our organisational focus remains on supporting the efforts of our operational teams as they deliver improving performance and address people and resourcing challenges. Our Performance and People updates later in the agenda outline positive progress. The following key highlights for November 2021 will provide Board with a clear summary of where performance currently stands:

- 571 customer closures (465 investigation closures plus 106 early resolution closures). This is higher than assumed with the resources available and exceeds the closure rate for both November 2020 and November 2019 with less established resource.
- 16% more investigative closures delivered (excluding early resolution closures) than October 2021 with fewer established investigators.
- 61.7 established investigators in post against a Business Plan assumption of 80.29. This was complemented by 39.63 FTE new investigators who are coming up to productivity.
- Productivity continuing to increase, reaching 5.59 on investigation closures against a Business Plan assumption of 6.3. Including early closures, productivity in November was 7.01. New investigators are also performing above the set expectations, delivering earlier than expected and contributing to the substantial increase in closures in November.
- PAP backlog stands at 5796 against an original Business Plan forecast of 5048 - 748 more customers than anticipated.
- Across 2021/22, the average length of time for an investigation to be completed has continued to decrease – now down by 12.29%.
- Early Resolution pilots have delivered 587 closures so far in 2021/22. November early resolution closures averaged a customer journey time of 186.35 days - 38% shorter than the average year to date for low complexity cases.

We remain below the forecast targets set in our 2021/22 Business Plan, although November 2021 total closures (571) were c.8% less than the original Business Plan assumption for November (619) and beginning to approach Business Plan forecasts. Looking ahead to the remainder of 2021/22 our absolute focus is on further improvement and delivering the best possible performance as we approach the last quarter of the year.

We know that our progress over the year has been critically undermined by not having the required number of people in the business and we have implemented proactive solutions to address the recruitment challenges seen this year. November has seen real progress with a managed recruitment service campaign focused on a wider catchment area launched and delivering an unprecedented return in terms of applications and wider interest. As of 9 December, we have received 724 completed

applications, and almost 1500 applications started but not completed. Looking ahead to 2022/23, this provides a high degree of confidence of not only reaching our planned staff complement by March 2022, or earlier, but providing real opportunity to forward plan and offset expected attrition in Q1 and Q2 2022/23. A decision on this is being urgently assessed with a view to assuming an appropriate level of risk – both in terms of affordability and future budget planning but also with regard to stability of the business.

Alongside this, significantly, we have taken the first steps towards a first LeO Hub where our employment offer may be more attractive to a wider candidate pool. Engagement with MoJ estates team has identified potential locations and we have a site visit planned to assess one clear option. If feasible this will be used to test a proof of concept for hub working – alongside our Birmingham site and more hybrid and remote working.

A full update and opportunity for discussion on people and performance will be provided for Board members throughout the agenda.

### **Consultation & 2022/23 Budget & Business Plan**

The 2022/23 Budget & Business Plan consultation has been a key focus of the Executive in the period since the October OLC Board meeting. The consultation was published on 5 November and is scheduled to end on 13 December. A summary of the key themes and feedback will be verbally presented to the OLC Board later in the agenda, with a detailed summary paper to follow.

The draft budget submission was discussed at the LSB Board meeting on 30 November, with clear points of feedback being used by the Executive to inform further development and preparing for submission early next year. Internal and external stakeholder events have taken place over November and December alongside significant wider stakeholder engagement. Positive and constructive feedback has been received and is also being used to inform further development of the Business Plan. Discussion later in the agenda will focus on the key questions raised by the LSB and the Executive are happy to address questions from the Board on the proposed plan.

The Executive are continuing to progress the Business Plan, Final Budget Acceptance Criteria and additional assurance documents throughout December and into the new year. The 2022/23 Budget and Business Plan submission will be circulated to LSB by 4 March 22.

### **Scheme Rules Review**

The review of LeO's Scheme Rules is progressing close to a point of consultation on phase 1 changes. We are currently preparing a draft consultation paper and have engaged with LSB around the formal consultation process and timescales. With the support of OLC colleagues we intend to bring the proposed consultation paper, relevant supporting information and the revised set of Scheme Rules to a sub-group of OLC Board members for discussion and approval in early January. Following that, with the support of LSB, we intend to aim for a shortened consultation period in January or early February. Taking account of responses to the consultation, a final set of revised scheme rules will be prepared for OLC Board for consideration and approval with submission of the final revised Scheme Rules to LSB as soon as possible thereafter.

Board will recall that the key proposed areas for intervention were:

- to support our application of proportionality and demand management, revising the scope of SR 5.7 providing an ombudsman with discretion to dismiss a complaint if satisfied that it is fair and reasonable to do so; and
- to manage the high level of demand on the ombudsman cohort, revising the scope of SR 5.19 to limit the circumstances where a complaint is escalated to an ombudsman for decision. The ability to delegate decision making to investigation staff thereby reducing the reliance on ombudsman resource and driving process efficiencies

The revised provisions for SRs 5.7 and 5.19 have now been drafted to reflect these key changes and work is ongoing to conduct a full impact assessment.

Board will recall that there were a number of other changes that were designed to drive operational efficiencies and reduce failure demand. There were also a number of other proposed changes to correct historical anomalies and now redundant provisions within the Scheme Rules. These changes have been fully scoped, and the relevant provisions of the Scheme Rules have been amended to reflect the proposed changes.

The Executive have sought the insight and input of key stakeholders through direct engagement and through the Challenge and Advisory Group through which stakeholders have articulated their support for revisions to the Scheme Rules.

Whilst progressing these proposed changes, we have also sought to pilot and assess their viability where possible to identify whether we can achieve the same efficiencies/ outputs without the need for a formal change to the Scheme Rules. By way of an example, we are currently using the provisions of SR 5.7(n) as an interim mechanism to test the viability of demand management and proportionality. We will also use this pilot period to assess the impact of these initiatives on quality and customer satisfaction.

Alongside proposed changes there are other areas which could offer some significant operational efficiencies but which are either more complicated, require approval in addition to that of the LSB, or may even require amendments to primary legislation. The key areas of focus here relate to:

- the ability to outsource casework or utilise agency resource. LeO has previously sought counsel's advice on whether the wording of the LSA 2007 precluded investigatory work from being outsourced to a third-party organisation or passed to non-LeO employees. Discussions are ongoing with LSB and MoJ on the interpretation of and flexibility within the LSA provisions and the appetite for risk in this area. In the interim the Executive are researching potential options on outsourced services, including costs and risks, should we be in a position to progress this.
- the application of rules relating to case fees as a means of incentivising early case resolution. A revised approach to LeO's case fee structure was considered but not pursued some years previously. This would provide a possible means of incentivising early resolution, but is a matter that would need formal approval from

the Lord Chancellor under the terms of the LSA. Although we intend seeking views on the issue of case fees in the phase 1 consultation, it is not something that can be fully scoped and progressed before the end of this financial year. We will assess responses to a proposed change in case fees and look to include in phase 2 changes which will be progressed later in 2022/23.

## **Stakeholder engagement and Enhanced public reporting**

Stakeholder engagement has remained a significant focus over Quarter 3, largely focused on the publication of the consultation on the draft 2022/23 Business Plan and Budget.

Meetings with the Solicitors Regulation Authority and The Faculty Office were held in November and provided an opportunity to discuss views on the draft Business Plan as well as discussing wider organisational issues and opportunities for further engagement and support. The Chief Ombudsman and Chief Operating Officer also attended the November meeting of the Legal Services Consumer Panel, where a summary of the 2022/23 Business Plan, operational performance, recruitment and future trajectories were presented and discussed.

An external stakeholder consultation session was held on 24 November and was attended by a range of regulatory, representative and consumer bodies, including the Council for Licensed Conveyancers, The Law Society, and the Association of Consumer Support Organisations. Feedback received was that there is growing confidence in the organisation, supported by the Legal Ombudsman's increased openness and transparency over the last 12 months and a real sense that what is being proposed provides the basis for increased confidence. There was also a clear recognition, however, that the recovery process ahead of LeO is a steep one.

The OLC Chair and Chief Ombudsman have also been engaged in a series of meetings over the recent period with the LSB and MoJ, which included a second workshop on legal redress.

The Chief Ombudsman is happy to update members on feedback from stakeholder engagement over this period.

## **Transparency and Reporting Impact**

The Legal Ombudsman is working with the wider sector to help drive increased consumer choice and improved standards. Work has been ongoing within 2021/22 to explore the possibility of LeO publishing its Ombudsman decisions in full, something that has been explored previously but not taken forward. Work over the last six months has considered whether, as an organisation, LeO would be in a position to start publishing its decisions in full on their website. Publishing decisions is seen as best practice within the Ombudsman sector and the Legal Ombudsman is the only large Ombudsman Scheme which does not publish decisions in full.

The paper presented to Board outlines the business case for publishing decisions. This includes important considerations around quality assurance, technical solutions, training, and stakeholder engagement that would need to be in place before implementing a policy of publication. There are also high-level estimates of the potential business impact of training and considerations of additional resource. Given the impact publishing decisions could have on performance and case closures, the recommendation is to make a provisional decision that LeO move towards publishing full Ombudsman decisions but to delay implementation until a point at which operational performance, business stability and additional external affairs resources would allow for this to be prepared for and implemented effectively. This would also allow further consideration of factors related to cost, risks, quality and consistency of decision writing and technical solutions for anonymisation. Such a change will also require consideration through future budget setting and approval processes.

Whilst the publishing decisions project is seen a longer-term priority, there is a recognition that LeO could do more with its data to improve the information available on quality of service. Work within the next quarter will start to look at reviewing the current publication policy to consider how LeO can make better use of Category 1 decisions and report cases. Category 1 decisions identify service providers which have been involved in cases where there is a pattern of complaints that have resulted in an Ombudsman decision(s) or set of individual circumstances which indicate that it is in the public interest that we should publish a decision with a report and the service provider should be named.

### **Service Improvement, Quality and Legal**

We continue to experience resource issues across the service improvement function, particularly in relation to quality. This continues to impact the level of proactive service that can be delivered.

The level and standard of external interest in the Quality Manager role has been disappointing despite advertising directly and placing with several recruitment agencies which have failed to source any suitable candidates – citing a shortage of suitable candidates in the market. As a result, the Quality team continues to run at a skeleton level, with one part time quality auditor co-ordinating quality and customer satisfaction. Although we continue to be able to deliver on our reporting commitments, the ability of the team to take a more proactive stance on the findings of our quality reviews and customer satisfaction surveys is extremely limited. Further, the team's ability to fully explore the quality dimension of our new pilot initiatives is constrained by the lack of resource.

Board will recall that the Legal Manager left LeO in early November, and we have been actively seeking to source a permanent replacement and an interim to cover the inevitable gap caused by notice periods. We have now offered and had a verbal acceptance for the permanent vacancy but, although we have seen a few candidates for the interim post, we have not been successful in filling that post. We will continue to liaise with external agencies for interim cover to provide the team with added resilience and are pursuing external legal services to provide advice and support should it be required on key cases.

The service complaints team has started to bring the number of customers waiting for their service complaint to be considered back to more acceptable levels and, if resource levels remain stable, this improvement will continue over the coming months.

## **Finance**

Our Finance update focuses primarily on the increase in forecast underspend which has been driven by the ongoing recruitment and attrition challenges. There have been a number of significant movements in the forecast this month. In particular, the new investigation cohort is now forecast to start 5 weeks later than planned, although we are now forecasting that we will recruit a higher number than planned with the aim of mitigating future attrition which could offset some of this forecast underspend.

Significant efforts are being made to address a number of vacancy gaps across operations and corporate roles and a number of interim appointments have been made or are being sought. There is also an on-going focus on recruiting to all of these roles to ensure that we are fully resourced for 2022/23 including possible use of managed recruitment service.

## **Risk Management, Audit & Governance**

Following the October ARAC, the Executive remain committed to ensuring management actions and controls are progressing, including revised timescales where necessary. Underspend and the inability to attract / retain have been escalated to issues and proactive measures are in place, including Managed Recruitment Partner. Work has progressed on developing a new Risk Assurance Map which will be presented to Executive Team shortly.

No GIAA internal audits have been completed as we approach the end of Q3, but progress has been made in relation to the scoping of the recruitment audit with final terms of reference have been shared with key internal stakeholders. Initial contact has also been made for Internal Audit colleagues to commence the payroll audit.

Work continues to progress on our comprehensive review of governance and contracts, with the formal approval of internal meeting terms of reference being approved and a full schedule of updated and refreshed policies being developed.

## **Office re-opening and future ways of working**

Our ongoing hybrid working trial was amended slightly at the start of November with staff required to work from the office from that point for a minimum of 40% of their contracted hours (subject to existing flexible working/reasonable adjustment arrangements are in place). A full programme of communication and engagement was rolled out in advance to ensure staff were well informed about the new office environment and to help allay any concerns and provide necessary support. This included all staff briefings, weekly drop-in sessions with Senior Managers, Line Manager sessions to provide guidance and clarity on supporting hybrid working and case clinics with HR to provide further guidance on individual cases.

There has been a positive atmosphere in the office and feedback on how the hybrid model is working in practice has been obtained throughout November via a staff survey,

coffee and catch-up sessions with the Chief Ombudsman and Chief Operating Officer as well as anecdotal feedback to Managers. Taking account of the feedback received, a decision on maintaining the 40/60 split will be communicated with Staff Council and then wider staff in due course.

As Board are aware, in line with recent Government guidance to work from home, staff will not be required to work from the office from 13 December until further notice. Exceptions will be in place for staff where personal circumstances would make working from home challenging or not possible. We are assessing possible impacts of this change. For now, we anticipate this being minimal, but we will assess and plan for any further future restrictions.