

Minutes of the Sixty-Second Meeting of the

Office for Legal Complaints (OLC)

Monday 9 March 2015

13:00 pm – 15.30 pm

Legal Ombudsman, Birmingham

Present:

Steve Green, Chair
Rosemary Carter, member
Karen Silcock, member
David Thomas, member
Tony Foster, member

In attendance:

Ian Brack, Interim Chief Executive
Kathryn King, Interim Chief Ombudsman
Rob Hezel, Chief Operating Officer
Freda Sharkey, General Counsel
Ken Young, Interim Head of Policy and Communications

Apologies:

Stella Manzie, member
Professor Philip Plowden, member
Maureen Vevers, member

Board Secretary:

Helen White

Preliminary issues:

The Board meeting was quorate.

Staff declared a general declaration of interest for discussions related to Item 1 of the Interim Chief Executive's report and Agenda Item 11 (Insight Capability).

Item 1 - Welcome and apologies

1. The Chair thanked those in attendance and welcomed Kathryn King to her first Board Meeting as Interim Chief Ombudsman.

Item 2 - Minutes of the previous meeting

2. The minutes of the meeting held on 19 January 2015 were approved.

ACTION:

- **The Board Secretary to publish the approved minutes of the meeting held on 19 January 2015.**

Item 3 - Matters arising and outstanding action points

3. Members noted those items where actions had been completed and those that were included as agenda items.
4. The General Counsel confirmed that she had finalised the Service Complaints Policy with David Thomas.
5. The Interim Chief Executive updated members on a matter arising from the previous minutes in relation to the independent review of the organisation's controls and systems. He reported that the methodology and content had been reviewed and approved by the OLC Chair and the ARAC Chair. This would now be sent to the Accounting Officer for comment.
6. The Interim Chief Executive stated that the process would now commence to identify an independent firm to carry out this work, from the list of approved Government contractors and recommended that Board oversight of this review be carried out by a sub-committee comprising the OLC Chair and Chairs of ARAC and RemCo. It was noted that the tenure for the RemCo Chair ended on 31 March 2015. The Board approved the formation of the sub-committee.
7. The items presented for information were noted. No comments had been received in advance of the meeting for circulation

ACTION:

- **A sub-committee comprising OLC Chair and the Chairs of RemCo and ARAC would be formed to oversee the finalisation of the terms of reference for the independent review of governance.**

Item 4 - Comments received regarding items presented for information

8. The items presented for information were noted. No comments had been received in advance of the meeting for circulation

Interim Chief Executive's Report

9. The Interim Chief Executive drew members' attention to the recommendation of the legal advice received in relation to the staff benefits schemes and the possibility of recovering irregular expenditure. The payments had been deemed irregular and were thus overpayments for the purposes of Managing Public Money.
10. However, the legal advice received from Treasury Solicitor's Employment Division indicated that the sums involved were payments made under

contracts of employment and were therefore not paid in mistake - so they were not overpayments in a legal sense. For that reason, the legal advice was the chances of securing recovery of monies from existing or previous staff were nil.

11. He reminded Board members that staff had accepted the sums involved in good faith, on the understanding that they were entitled to them. Staff had a reasonable basis for believing this, given the statements made to them by the OLC. He added that there was no evidence of fraudulent activity, nor any reason to suspect it.
12. The Interim Chief Executive noted that on the basis of the TSol advice they had received, there was no reason for staff to voluntarily surrender monies that were paid under contract. Furthermore, his judgement was that if the OLC sought to recover the sums in question by legal action, they would almost certainly lose. If they sought to do so by abatement of salary, they would be challenged and would again, almost certainly lose. He was also of the view that, given that they had been advised that they had no legal basis for recovery, it would be inappropriate and imprudent to attempt either approach.
13. He concluded that there would be no value for money basis to proceed with an attempt to secure recovery from either existing or previous staff. Furthermore, the arguments that might over-rule value for money considerations were very weak or absent— in legal terms, this was not actually an overpayment; staff had accepted in good faith; there was no indication of fraud; and there were real obstacles to pursuing recovery from ex-employees.
14. The OLC Board agreed that repayment should not be pursued and that the Interim Chief Executive notify the Accounting Officer of its intended course of action and the reasons for this decision. The Accounting Officer's advice would be sought.

ACTION:

- **The Interim Chief Executive to notify the Accounting Officer of the Board's intention not to pursue the recovery of payments made under the staff benefits schemes. The Accounting Officer's advice on this matter would be sought.**

Interim Chief Ombudsman's Report

15. The Interim Chief Ombudsman updated members on her four main areas of focus; the Ombudsman team, Quality team, external stakeholder relationships and the 'Insight Capability' project.
16. Discussion took place on the Ombudsman work in progress. The Interim Chief Ombudsman reported that it was recognised that both structural and process issues were affecting the work in progress. She reported that she

was developing proposals to address this which she would continue to progress in consultation with the Interim Chief Executive and OLC Chair.

Chief Operating Officer's Report

17. The Chief Operating Officer and OLC Board thanked staff for all their efforts and hard work over the recent months which had enabled the service to continue despite the office move and implementation of the new case management system.
18. The Chief Operating Officer confirmed that work on the dilapidations at the old premises had been completed and that negotiations continued with the landlord.
19. The Chief Operating Officer reported that discussions continued with the MoJ on the IT Migration Business Case. Internally, work had commenced on the definition of the project scope and identification of potential suppliers.

CMC Report

20. Discussion were held on the contact volumes which were averaging at around 70 per day.
21. The Head of CMCs reported that having the Ombudsman at the front of the business process had been successful as it facilitated the "triage" of cases, resulting in a large proportion of cases having been settled via informal resolution.
22. The Head of CMC's reported that the team had been working on increasing public awareness via social media.

Finance Report

23. Members discussed the Finance Report. No questions were raised.

KPI Report

24. Discussion was held on performance. The Chief Operating Officer reported that the implementation of the new case management system had caused some delays in processing new cases through the Assessment Centre. This, coupled with staff becoming familiar with the new system, had caused delays in cases being sent for allocation. An action plan had been put in place to address these issues.
25. Discussion took place on the recent telephony issues at the new offices. The Chief Operating Officer reported, that despite these issues, the service level target (percentage of calls answered within 20 seconds) had been achieved for February.

26. The Chief Operating Officer stated that whilst the office move and the implementation of the new case management system, which happened at almost the same time, had adversely affected performance, the organisation was now in a much better place to deliver the required efficiencies.
27. Discussion was held on the Ombudsman work in progress. The Chief Operating Officer stated that the model used in the CMC jurisdiction resulted in more cases being resolved via informal resolution. The Interim Chief Ombudsman had earlier reported that she was developing a number of proposals to address this issue. Further updates on this would follow.

Item 5 – RemCo Update

28. The Chair of RemCo updated members on the RemCo meeting held on 19th February 2015.
29. She reported that the Head of HR had presented a report on Homeworking. RemCo acknowledged that homeworking was an important part of the offering to staff but had requested that management adopt a consistent approach to homeworking – and set a good example of responsible working themselves. An update would be tabled at the next RemCo meeting with the recommendation that a report on Homeworking follow at the main OLC Board.

ACTION:

- **The Board Secretary to ensure that a report on Homeworking is scheduled on the next RemCo agenda with a follow up scheduled at the July OLC Board.**

30. The Chair of RemCo reported that the Equalities and Diversity Manager had presented to RemCo. It was agreed that she would be invited to a future OLC Board meeting.

ACTION:

- **The Board Secretary to invite the E&D Manager to a future OLC Board meeting.**

31. The Chair of RemCo reported that the People Risks contained in the Risk Register were reviewed. She reported that the People Risks contained in the Risk Register would be presented to RemCo on a regular basis.

32. It was agreed that there would not be a March RemCo meeting so the February meeting was the last for the incumbent RemCo Chair. The OLC Chair thanked the RemCo Chair for everything she had done in her tenure.

Item 6 – Budget 2015/16

33. The Head of Finance joined the meeting to present the 2015/16 Budget. He reported that the document had been shared with the LSB, who had raised some questions. He reported that feedback was awaited from the MoJ.
34. The Chair of ARAC reported that she had reviewed the document and provided feedback to the Head of Finance. She thought it was a sensible and comprehensive document.
35. The Board approved the Budget and authorised the Interim Chief Executive to approve the addition required following the completion of the review of stakeholder feedback. Once added, the document would be presented to the Legal Services Board for approval on 25 March.

ACTION:

- **The OLC Board approved the 2015/16 Budget and authorised the Interim Chief Executive to approve the addition required following completion of the review of stakeholder feedback.**

Item 7 – Service Complaints Adjudicator Role

36. The Interim Chief Ombudsman reported that Walter Merricks' term as Service Complaints Adjudicator would end in March 2015. A tender process had been undertaken with interviews conducted by David Thomas and Kathryn King. It was agreed that the chosen candidate had the necessary skills and experience for the role.
37. The Board approved that the Interim Chief Ombudsman proceed with the appointment of the shortlisted candidate for a three year period. It was agreed that finalisation of the contract be delegated to the Interim Chief Ombudsman in consultation with the General Counsel and the OLC Chair.

ACTION:

- **The Interim Chief Ombudsman to proceed with the appointment of the shortlisted candidate. Delegation to finalise the contract was given to the Interim Chief Ombudsman in consultation with the General Counsel and OLC Chair.**

Item 8 – Scheme Rules Review

38. The Interim Head of Policy and Communications presented members with a progress report on changes which would be required by the implementation of the EU ADR Directive in July 2015.
39. Discussion took place on the proposed changes and in particular the proposal for a variable case fee. Members requested that the Interim Head of Policy and Communications circulate the proposed case fee structure.

40. Members raised a number of points which were noted by the Interim Head of Policy and Communications.
41. Members agreed to decouple the case fees from the first round of proposed changes and provide an indication to the profession that changes are being considered to the scheme rules and then run a later consultation after gathering information from the profession.
42. It was agreed that delegation for sign off of the drafting issues be given to the OLC Chair. David Thomas would advise the Chair as required.

ACTION:

- **The Interim Head of Policy and Communications to circulate the proposed new case fee structure to members.**
- **The OLC Chair was given delegation for sign off of the drafting issues.**

Item 9 – Section 120

43. The Interim Head of Policy and Communications presented members with the draft response to the LSB request for a report in relation to price transparency in legal services complaints.
44. Discussion was held on the document and the Interim Head of Policy and Communications was asked to clarify one point in relation to the method of funding.

ACTION:

- **The Interim Head of Policy and Communications to clarify one point in relation to the method of funding.**
45. Subject to the clarification of the above point, the Board approved the final report and delegated final sign off to the Chair and Interim Chief Ombudsman.

Item 10 – Policy Review Update

46. The Chief Operating Officer presented members with an update on the policy review project. He reported that all the HR policies have been rewritten and restyled. The wider governance policies had been discussed by the Management Team and would be restyled within the next week. Work needed to be done on how to map the Committee approval process.
47. The Chair of ARAC stated that she had as yet no visibility of the draft restyled policy and requested that a sample policy be circulated to the Chairs of RemCo and ARAC for comment.

ACTION:

- **The Chief Operating Officer to circulate a sample restyled policy to the Chairs of RemCo and ARAC.**

48. The Chair of ARAC requested that consideration be given to differential access arrangements for certain policies within the investigation and security policy “family”.

ACTION:

- **The Chief Operating Officer to consider appropriate access arrangements.**

49. The RemCo Chair updated members on the feedback from the RemCo meeting on the policy review project.

Item 11 – ‘Insight Capability’ Update

50. The Interim Chief Executive updated members on the ‘Insight Capability’ project. The paper contained a mixture of detailed proposals and options which were currently being explored. He was firmly of the view that there were structural issues which inhibited delivery of the proposed strategy and prevented the OLC making best use of its resources. He emphasised that, as it stood, the organisation could not deliver its strategic objectives on insight and analysis. A general principle behind the proposals was that functions which were currently carried out centrally and in isolation from operations would be woven into the daily work of staff and overseen centrally.

51. Discussion took place on the proposals. Departing members agreed that the details were largely matters for their successors.

52. Discussion took place on the proposed split of the Chief Ombudsman and Chief Executive roles. David Thomas raised concern about the clarity between governance and management, power and responsibility. Discussion took place on how the accountability would work should the roles be split. The Board agreed that the roles should be split.

53. The Chair stated that the Board had a statutory role of guarantor of the independence of the role of the Ombudsman. He agreed that clarification would be needed as to the extent to which the Chief Ombudsman would be accountable to both the Chief Executive and the Board. He stated that an approach would be clarified going forward.

54. The RemCo Chair presented the feedback from the RemCo meeting. The Committee accepted there needed to be a review but were keen that this was not over-complicated. The Chair of RemCo reported that the structure and processes would drive the culture of the organisation.

55. The Board expressed some concerns that the proposed structure imposed an additional level of senior management without clear benefits. There should be a clear focus on better utilising existing skills and abilities. Board members recognised that the detailed design of the structure was for the executive to take forward once the Board was content with the high level approach.
56. The Interim Chief Executive reported that the team need to address the concerns raised by members and update the Board in April.

Item 12 – Any other business

57. The OLC Chair stated that this would be the last Board meeting for five of the OLC Board members. He reported that this was historic as it marked the departure of the remaining founder OLC Board members. He thanked them all for all they had done and stated they should be proud of their part in setting up a functioning ombudsman scheme. He wished them all the very best in their various non-executive commitments.

58. Welsh Language Scheme

The Interim Head of Policy and Communications updated members on the annual report report due under the Welsh Language Scheme. Members approved that sign-off of the final report be delegated to the OLC Chair.

ACTION:

- **The Interim Head of Policy and Communications to send the final report to the OLC Chair who had been delegated authority to approve it on behalf of the Board.**

Next meeting

59. The next OLC meeting would be held on Tues 21 April in Birmingham.