

**Minutes of the Seventy-Ninth Meeting of the
Office for Legal Complaints (OLC)**

Tuesday 25 April 2017

11:00 – 15:30 am

Legal Ombudsman, Birmingham

Present:

Wanda Goldwag, Chair
Caroline Coates
Bernard Herdan
Rebecca Hilsenrath
Michael Kaltz
Tony King
Jane McCall

In attendance:

Nick Hawkins, Chief Executive
Kathryn Stone OBE, Chief Legal Ombudsman
Rob Powell, Director of Corporate Services
Simon Tunnicliffe, Head of Operations
Claire Evans, Independent Service Complaints Adjudicator (item 6 only)

Observing:

Alison Wedge, Head of ALB Governance, MoJ (items 6-12 only)

Board Secretary:

Helen White

Preliminary issues:

The Board meeting was quorate.

Item 1 – Welcome and apologies

1. The Chair welcomed Rebecca Hilsenrath to the meeting and noted there were no declarations of interest. The Chair noted the apologies sent by staff observers.
2. The Chair noted that the first order of action would be to formally approve Rebecca Hilsenrath to membership of the Audit and Risk Assurance Committee. ARAC membership would therefore be: Michael Kaltz (lay member, Chair), Tony King (lay member) and Rebecca Hilsenrath (non lay member). The Board formally ratified this proposal.
3. The Chair noted that, at the request of board colleagues, the ARAC and RemCo committee membership would be reviewed in the coming months.

4. The Chair stated how pleased she was to join the OLC.

Item 2 - Minutes of the previous meeting

5. The minutes of the meeting held on 8 March 2017 were approved as a true and accurate record of the meeting. It was noted these minutes would now be published.

Item 3 - Matters arising and outstanding action points

6. Members noted those items where actions had been completed and those that were included as agenda items.

Item 4 - Comments received regarding items presented for information

7. The items presented for information were noted.

Chief Executive's Report

8. The Chief Executive provided an update in his recent meeting with the LSB. He reported that the LSB had proposed a modified way to organise the regular schedule of meetings. It was proposed that the LSB Chair and CEO would attend OLC Board meetings twice a year and the Chair / CEO meetings be reduced from quarterly to six-monthly. The OLC Chair welcomed this approach.
9. The Chief Executive updated members on the transfer of CMC work to the Financial Ombudsman Service. He reported that the executive were working on scenario planning that a transfer would not happen until eighteen months after the introduction of legislation.

Chief Legal Ombudsman's Report

10. The CLO updated members on the appointment to roles within the new Office of the Chief Legal Ombudsman (OCLO) team. She reported that the new team would all be in post by 8 May.
11. The CLO reported that work to verify and check the Category 2 publishing decisions data on the external website had been completed with all decisions now back on the website. She reported that to ensure impartiality, she wanted to propose amendments to the way future decisions were published to make it clear where no poor service was identified.

12. The CLO thanked Tony King for his help and support with the Third Party Complaints and Scheme Rules work. It was noted that an update would be presented to the June OLC Board.

ACTION:

- **The CLO to update the June OLC Board on the Third Party and Scheme Rules work.**

13. Discussion took place on s133(3)(i) of the Legal Services Act which permits the OLC to make a rule allowing the ombudsman to make an award of costs against a complainant if, in the ombudsman's opinion, that person acted so unreasonably in relation to the complaint that it would be appropriate in all the circumstances of the case to make such an award. It was noted that the OLC had not exercised its rule-making powers under this section.

14. Tony King stated that he was not aware of any ombudsman scheme which awarded costs in such situations. He said that there could be a risk of losing Ombudsman Association membership. He added that an alternative way of dealing with unreasonable behaviour would be to dismiss the complaint as vexatious.

15. The CLO reported that this would be one of the areas to be reviewed in the proposed scheme rules consultation.

16. The CLO reported that an engagement feedback form was being finalised to capture all output from meetings and events with external stakeholders. She reported that the form would be circulated to Board members for completion as required.

ACTION:

- **The CLO to circulate the engagement feedback form to Board members.**

17. Discussion took place on the proposed Equality & Diversity priority objectives for 2017/18. Rebecca Hilsenrath noted that some of the objectives were internal and some external and suggested that the two areas should be separated out. She also noted that there was a mix of best practice and aspirational areas.

ACTION:

- **The CLO to separate out the internal and external E&D priority objectives.**

18. Caroline Coates reported that the proposed objectives tabled were the overarching objectives agreed by the E&D Forum. Behind these was more detail about each of the areas. It was agreed that Kathryn Stone would discuss this in more detail with Rebecca Hilsenrath outside committee.

ACTION:

- **The Board approved the proposed E&D priority objectives for 2017/18, subject to minor amendments.**

Director of Corporate Services Report

19. Members noted the DCS Report.

20. The DCS reported that the Strategy and Business Plan had been published on 20 April and that the team would now focus on developing the balanced scorecard.

21. He reported that there had been a lot of activity on leadership development in recent months. The next step, with RemCo oversight, would be to review and track the impact of this development.

ACTION:

- **RemCo to oversee work being undertaken by the executive to review and track the impact of the leadership development.**

22. Discussion took place on the approval process for responding to employment tribunals claims. It was noted that any claims were reported to RemCo via the HR Balanced Scorecard report to ensure trends were monitored.

23. Discussion took place on the development of an estates strategy. The DCS reported that the recent occupancy survey highlighted significant opportunities to better utilise and configure the office. He stated that discussions were ongoing with the MoJ to look at options and a draft Estates Strategy had been discussed by the Management Team.

Finance Report

24. Members noted the Finance Report.

25. The DCS reported that the NAO technical team had advised on the accounting treatment for bad debt where recovery was not probable. The NAO had advised in line with international accounting standards that income should not be recognised where recovery was not probable. It was noted that this would mean a reversal of bad debt in the 2016/17 accounts with an adjustment in the final accounts.

26. The ARAC Chair noted that income recognition and accounting for bad debt would be discussed at the forthcoming ARAC meeting.

27. Bernard Herdan raised concern at the large underspend on staff. The CEO stated that the underspend was accrued mainly in the first half of the year as a result of recruitment and spending controls. Recruitment campaigns had been run from December to April.

Register of Interests

28. Members approved the Register of Interests, with one minor amendment, for publication on the LeO website as part of the LeO publication scheme.

ACTION:

- **The Board Secretary to publish the Register of Interests on the LeO website.**

Gifts and Hospitality

29. Members approved the Gifts and Hospitality report for publication on the LeO website as part of the LeO publication scheme.

ACTION:

- **The Board Secretary to publish the Gifts and Hospitality report on the LeO website.**

Board Member Expenses

30. Members approved the Board Member expenses report for publication on the LeO website as part of the LeO publication scheme.

ACTION:

- **The Board Secretary to publish the Board Member Expenses report on the LeO website.**

Item 5 – Modernising LeO

31. The CEO thanked Board members for their time and input to the development of the Modernising LeO programme, which he introduced. He also thanked Jane McCall for her support as Board lead.

32. Discussion took place on the governance of the Modernising LeO programme. The CEO reported that Jane McCall, as Board lead, received copies of all papers and attended the recent Programme Board. He stated that an independent programme assurance review would take place in May and a programme manager had been appointed from internal resource.

33. The CEO reported that plan remained to schedule to move the existing infrastructure to Version 1 on 30 June. He confirmed the new CMS was due to be built by October. The sequencing of individual deliverables had been restructured to ensure that the new business process, staffing model, CMS and telephony went live at a single point in time, which would be January 2017. Wherever possible, elements of transition would take place well in advance of the hard cut-across in January 2017.

34. [REDACTED] The core system would provide a basic business intelligence capability which would need to be enhanced through a separate project which would be separately scoped and have its own business case. It was noted this may require some additional movement within the overall capital allocation. The CEO requested in principle approval for additional spend on business intelligence from within the existing capital allocation. **[FoIA exempt s43(2)]**

35. Jane McCall reported that she had raised concerns about communication about the timetable which the executive had worked through positively with her. She reported that she had attended the recent programme board and had also met individually with members of the executive. She was therefore assured that the programme was being managed appropriately and risks were being appropriately assessed. She had confidence that the Board were sighted on the risks and mitigations. She did reiterate that there were risks as the resource plan was stretching.

36. Discussion took place on the transition plan. The Director of Operations reported that there was a workstream leading on the development of the transition plan. It was agreed that an update on this would be provided at the July OLC Board, including an update on parallel running of the existing and new CMS.

37. Discussion took place on the quantification of the intended benefits. Jane McCall confirmed this point had been raised at the Programme Board. The DCS confirmed that work was being done on the detail of the benefits mapping and the benefits framework would be the key theme of the quarterly programme update at the October OLC Board.

38. Bernard Herdan questioned whether there should be a further external review to sign off the go live gateway. It was agreed the SRO would consider whether an independent view of the acceptance criteria was required.

ACTION:

- **The CEO, as SRO, to consider whether an independent view of the acceptance criteria to sign off the go live gateway was required.**

39. Discussion took place on the staff consultation process for the new staffing model. The CEO reported that external advice had been sought on the process and communications. He confirmed that once Board approval was received, the executive would agree next steps.

40. Rebecca Hilsenrath asked whether two Delivery Boards and a Programme Board was over-engineering the programme governance. Jane McCall stated that at this point in the programme, two separate boards was the right approach, but this would be reviewed as the programme developed.

41. Tony King questioned whether the programme risks should be aligned to the corporate risk register. The DCS confirmed that work was being undertaken to transition the presentation of the strategic risk register. He confirmed that a new model would be presented at the forthcoming ARAC meeting.
42. Discussion took place on the development of a portal. The DCS reported that the portal was in the business plan for 2018/19 and 2019/20. The CEO confirmed that research work had commenced on the portal. The DCS confirmed that the portal was not part of the scope of the CMS project but Version 1 understood the importance that the new CMS and infrastructure should be capable of supporting a future portal.
43. Michael Kaltz questioned the variance / stress testing in the caseload assumptions within the new staffing model. The Director of Operations confirmed that the starting point had been the caseload numbers over previous years. He assured Board members on the depth of analysis of the numbers, and confirmed that the key driver for the new staffing model was to reduce queues and backlogs. He remained confident that this would be achieved.
44. Board members approved that the executive initiate consultation with staff on the new staffing model.

ACTION:

- **The CEO to initiate consultation with staff on the new staffing model.**

45. Board members also approved the re-allocation of capital budgets within the approved MoJ allocation, and the revised budget for the case management system, [REDACTED]

[FOIA exempt s43(2)]

46. The Board noted and approved, in principle, any further reallocation of budget within the existing capital allocation to fund the second phase project to enhance the business intelligence capability.

ACTION:

- **The Board noted and approved, in principle, any further reallocation of budget within the existing capital allocation, to fund the second phase project to enhance the business intelligence capability.**

47. It was noted that more detail on the transition plans would be provided at the July OLC Board and detail on the benefits would be provided at the October OLC Board.

ACTION:

- **The Board Secretary to note the schedule for items being tabled at the July and October OLC Board meetings.**

Item 6 – Annual Service Complaint Adjudicator Report

- 48.** The OLC Chair welcomed Claire Evans, the Independent Service Complaints Adjudicator (SCA) to the meeting.
- 49.** The SCA gave an overview of the complaints considered in the 2016-17 business year. She reported that 118 service complaints were received by the Legal Ombudsman at Stage 1 of the service complaints procedure; 51 of these were referred to Stage 2 for consideration by an ombudsman or operations manager; and 21 referred to the SCA. In total, the SCA completed consideration of 19 complaints this year.
- 50.** It was noted that the SCA had supported 22 of the 152 individual issues of complaint (14.5%), which represented a reduction of 7.5% on the previous year.
- 51.** The SCA reported that there were four key areas for service complaints, the main concerning delay, the way the delay had been managed and the complainant updated.
- 52.** It was noted that the SCA had upheld 8 complaints on grounds of delay; 7 in the first half of the year and 1 in the second half. In these cases she had noted the delays, apologised and ensured appropriate remedies were put in place.
- 53.** The SCA reported that the intervention by operations managers at Stage 2 in the process had led to a more tailored approach and that whilst more complaints were being sent to her for review, less were being upheld.
- 54.** It was noted that during the business year, the SCA had made 27 suggestions for service improvements.
- 55.** The CLO reported that the team had a very positive relationship with the SCA and had benefited from her knowledge, training and experience.
- 56.** The CLO reported that work was continuing to train staff with the introduction of a reporting masterclass, report writing skills, peer reviews and input from operations managers for Stage 2 complaints. The introduction of the service principles was encouraging staff to focus on the right areas.
- 57.** The Chair thanked the Service Complaints Adjudicator for her report and welcomed her next review.

Item 7 – Update on the Tailored Review Report

- 58.** The Chair welcomed Alison Wedge to the meeting. It was noted that Alison had been invited to the meeting to outline the draft conclusions of the Review.

It was noted that the Report had not yet been signed off by Ministers. The publication would therefore be delayed due to Purdah.

- 59. Alison reported that during the review, her team had interviewed and spoken to a large number of staff within the organisation. She noted how warmly the team had been received and how constructive and positive staff were.
- 60. It was noted that work was currently being undertaken to close the final questions raised in the interim report.
- 61. Board members noted the key themes from the Report.
- 62. Board members noted the change in assurance arrangements with the MoJ.
- 63. The Chair thanked Alison and her team and looked forward to the publication of the final report.

Item 8 – RemCo Update

- 64. Bernard Herdan reported that a RemCo meeting had been held earlier that day to consider proposals put forward by the executive to justify whether the threshold had been reached to pay a staff bonus.
- 65. He reported that the questions RemCo needed to consider were whether significant progress had been made towards achieving the key performance indicators for 2016/17 and secondly if RemCo were satisfied with progress towards KPI's, whether the payment of bonus would risk serious reputational damage.
- 66. It was noted that the unanimous decision of RemCo members was that the answer to the first question was no. They acknowledged that there had been a huge effort and positive good progress had been made on a number of fronts. Bernard Herdan reported that RemCo members had been influenced by the quarterly performance report, due to be discussed later by the OLC Board.
- 67. It was noted that RemCo had tasked the CEO to finalise the staff communication and timing for this decision.
- 68. Bernard Herdan reported that RemCo members had agreed that the executive would look at other options for ways to reward high performing teams and individuals. These proposals would be discussed at the RemCo meeting on 26 May.
- 69. Board members noted the decision reached by RemCo.

Item 9 – Quarterly Performance Report

70. The Director of Operations reported the initial forecast for the number for unallocated cases awaiting allocation would be 380 by the end of quarter 4. He noted that this figure was reforecast to 450. He stated that due to a number of factors, the actual number was 436. The reasons for this increase were staff shortages as a result of unexpected leavers, continued long term sickness and increasing workload pressures. He reported that timeliness had been affected by the level of unallocated cases.
71. It was noted that, following discussions at the March Board about the ability to sustain increased workloads, the executive took the decision to reduce the number of cases being allocated to investigators from 26 per quarter to a minimum of 24 per quarter.
72. Discussion took place on the ombudsman work in progress figures which remained consistent around 200.
73. It was noted that a great deal of focus was being put on recruitment with monthly recruitment campaigns being run from Dec, Feb, March and April 2017. Staff have shown their commitment by running assessment centres on Saturdays.
74. Jane McCall stated that the Board did not underestimate the work being undertaken within the organisation on performance.
75. Concern was raised at the number of cases which were sent back by the ombudsman to investigators for further investigation. It was noted that a second Senior Ombudsman had now been appointed to take responsibility for quality improvements and initiatives. Part of their remit would be to identify ways to reduce the level of cases sent back by the ombudsman team.
76. Jane McCall queried when the send back figures would improve; the Director of Operations reported that an improvement should be seen in the next quarterly performance report in July. The CLO reported that further training was being put in place to include areas such as report writing, communication skills and styles.
77. Discussion took place on the internal customer satisfaction survey conducted within the Legal jurisdiction.
78. Caroline Coates requested that the timeliness data graphs include timeliness performance data for a three year period. The Director of Operations to put this in place for the next quarterly report.

ACTION:

- **The Director of Operations to include timeliness data for a three year period in the next quarterly performance report.**

79. Discussion took place on the ageing of unallocated cases. It was noted that the figure had increased to 25 days and with the reduction in the number of cases being allocated to investigators, this figure would not reduce in the near future.
80. It was noted that work was being undertaken on the definition of cases; a significant amount of this work was being done through the development of the data dictionary.
81. Bernard Herdan raised concerns about workloads and staff wellbeing. He stated he did not believe there were sufficient staff to deliver the volume of work required. The Director of Operations stated that more cases had been resolved than accepted consistently throughout quarters 3 and 4. He stated the Modernising LeO programme would aim to address these concerns.
82. Tony King questioned whether the executive had a forecast for a reduction in the unallocated cases number.
83. The Chair reported that whilst the Legal Ombudsman was more transparent than other ombudsman schemes, there remained an issue of when to start counting cases. She stated that there was a need to review definitions.
84. Discussion took place on the internal quality reviews undertaken. The Board requested that the Director of Operations reconsider the way the analysis was undertaken. He agreed to review this with the new Senior Ombudsman.

ACTION:

- **The Director of Operations to review the internal quality reviews with the new Senior Ombudsman.**

85. Caroline Coates queried the information provided within the balanced scorecard to reflect the fourth strategic priority 'disseminate what we have learned more widely'. She stated that there were more publications. The CLO responded that the new OCLO team would be reviewing this and would ensure all activity was reflected.

ACTION:

- **The CLO to ensure the OCLO team review the data contained in the balanced scorecard under the fourth strategy priority.**

Item 10 – Quarterly Business Plan Update

86. The DCS presented the quarterly business plan update.
87. Caroline Coates requested that the presentation of section 2.2 be reviewed by the CLO.

ACTION:

- **The CLO to review the presentation of section 2.2 Premature Complaints.**

88. Board members agreed with the revised format for presenting progress against the business plan.

Item 11 – Any Other Business

89. Alison Wedge requested the dates for the forthcoming Audit and Risk Assurance Committee meetings. It was agreed these would be provided.

ACTION:

- **The Board Secretary to provide the ARAC dates to Alison Wedge.**

90. Michael Kaltz, ARAC Chair, reported that whilst the aim had been to lay the Accounts before the summer recess, Purdah may affect this. He undertook to keep Board members updated on progress.

Next meeting

91. The next OLC meeting would be held on 19 June 2017 in Birmingham.