

Minutes of the third meeting

Office for Legal Complaints (OLC) Board

Monday 28 September 2009

10.30am – 2.00pm

Victoria House, Southampton Row, London, WC1B 4AD

Present:

Elizabeth France, Chair
Rosemary Carter, member
Margaret Doyle, member
Professor Mary Seneviratne, member
David Thomas, member
Tony Foster, member
Brian Woods-Scawen, member

In attendance:

Adam Sampson, Chief Ombudsman
Nyall Farrell, Interim Chief Operating Officer
Liz Shepherd, Interim Programme Director
Lesley Hancock, Head of Human Resources
Hilary York, Interim Ombudsman

Secretary:

Alison Robinson, Policy Manager

Item 1 – Welcome and apologies

1. No apologies were received.
2. The Chair welcomed the new Head of Human Resources.

Item 2 – Minutes of previous meeting

3. The minutes of the meeting of 8 September 2009 were approved subject to amendments proposed by members. Substantive amendments were made to ensure the minutes captured in more detail the debate about in-house complaints at the previous meeting and views on the approach to case fees.

Item 3 – Matters arising and register of interests/ hospitality

4. The meeting noted matters arising from previous minutes. Members thanked the implementation team for circulating the responses to the discussion draft of the scheme rules.

5. The Chair noted that she had reviewed the Terms of Reference for the staffing and Remuneration Committee and, subject to the need to review the quorum, was content. The meeting noted that a comprehensive review of good governance would be required by the incoming permanent Board Secretary and that the Terms of Reference might be re-visited in light of that review.
6. It was noted that the Solicitors Regulation Authority had provided the information it had promised in relation to the operation of insurance and the compensation fund very close to the Board meeting. This would be circulated to members for information.
7. The register of interests was circulated for review. The Board had previously agreed this would be circulated once a quarter to make sure it remained up to date. Members agreed to review their entries and provide amendments to the implementation team. The meeting agreed that a separate register should be maintained for ombudsmen.
8. Members reported that there were no returns to be made in relation to hospitality and there was nothing to add to the register.
9. The Board noted that as the Legal Services Board appoint and fund the OLC Board, the LSB paid members' expenses. The meeting asked the implementation team to develop an approach to publishing members' expenses that acknowledged the role of the LSB in authorising and paying OLC Board expenses.

ACTIONS

- Members to provide updates on the register of interest to the implementation team.
- Implementation team to update register of interests.
- Implementation team to develop an approach to publication of expenses.

Item 4 - Chair's update

10. A list of the meetings attended by the Chair and/ or Chief Ombudsman since the last meeting was circulated for information.
11. The Chair reported that the recruitment process for the roles of Deputy Chief Ombudsman and Ombudsmen was progressing. A strong field of applications had been received for the Deputy Chief Ombudsman role, with the Ombudsman applications still to come.
12. Members discussed arrangements for short listing and briefing the panel for both recruitment rounds. The Chair thanked those members who had made time available to participate on the interview panels for these key roles.
13. The Chair also noted that the formal consultation about the draft scheme rules had been published on 15 September 2009. Key stakeholders had indicated to the implementation team that they had been pleased to see changes to the rules that demonstrated that the OLC had listened at the discussion draft stage. The Chair thanked David Thomas and Mary Seneviratne for their help in making sure the revised scheme rules were in a good state for public consultation.
14. The meeting noted that there were still questions about the rules to make sure they captured some of the complexities of legal complaints. In particular members were keen to make sure that the rules were clear in relation to complaints about

transactions such as re-mortgages where there may not be a direct relationship between a lawyer and the person receiving the service, as a financial service provider, for example, might have instructed the solicitor. David Thomas agreed to look at this area and pick up any outstanding issues with the implementation team.

ACTIONS

- David Thomas to consider whether the current draft of the scheme rules are sufficient to capture complex transactions such as re-mortgages and pick up any outstanding issues with the implementation team.

Item 5 - Chief Ombudsman's report

15. The Chief Ombudsman reported that procurement had been a recent priority. A number of procurements had been successfully completed, with agreement in principle for contracts being signed. The Board noted the procurement of HR consultancy services, property agents, branding agency service, expertise to specify IT requirements and that these had been completed with favourable terms. They were satisfied that Ministry of Justice procurement processes had been adhered to and that a clear audit trail for each was in place.
16. The Executive reported that the OLC had benefited from strong support from the OLC's sponsor team in the Ministry of Justice. However, the meeting also noted that procurement processes did take time, and that any serious delays could pose a key risk for the OLC start up.
17. The meeting agreed that if the implementation team needed to discuss or seek approval for spending outside the pattern of Board meetings, that the team would seek comments and advice from Brian Woods-Scawen and Tony Foster. Members noted that while its preference was for finance to be a matter for the full Board a more streamlined process might be needed from time to time.
18. The Chief Ombudsman also noted that the practical effect of successfully concluding procurement processes was that the interim team had swelled in number and that more space would soon be required, adding urgency to the need to find temporary accommodation in the West Midlands.
19. To conclude his report, the Chief Ombudsman reported on a range of stakeholder meetings, noting on the whole that there was support for the approach being adopted by the OLC. These conversations were also useful to build OLC understanding of some of the future risks and issues it might face.

Item 6 – Quorum

20. The meeting considered a paper outlining the requirements of the Legal Services Act 2007 in relation to quorum and the governance structures for the OLC more generally.
21. Members agreed that the quorum for the Board would be set at three, with a lay majority required. The meeting also agreed that when Board or sub-committees are taking formal decisions, views from non-attendees could be accepted in writing or by telephone. In the alternative, to make sure that members are aware of the nuance of debate, a resolution may be circulated to all members after a Board meeting and a decision taken by email. The meeting noted that it would need to be clear when it was taking a formal decision. If there was any doubt, there would be an option for a decision to be delayed to a subsequent meeting.

22. Members also agreed that if the Chair was absent, the Board should appoint a meeting Chair from among the lay members present.

ACTIONS

- Board Secretary to highlight to the Chair if any Board meeting would not be quorate.

Item 7 – Business plan

23. Agenda items 7 and 12 were considered together. The reason for this was that a first indicative budget was needed to be included in the business plan.
24. The meeting approved the business plan for publication subject to some minor drafting changes. Members also agreed that while risks were referred to throughout the text it would be useful to include a summary of key risks.

Item 12 – Finance report

25. The Chief Ombudsman reported that the implementation team had been working hard on refining the budgets for the implementation stage and the steady state operation. The budgets presented to the Board were based on previous discussion with the Board and specifically with Brian Woods-Scawen and Tony Foster. He emphasised that these are provisional figures but were presented to ensure the Board as a whole understood the current shape of the budgets.
26. The Chief Ombudsman proposed a high level budget statement should be included with the business plan. The meeting agreed that this was an appropriate level of detail to include in a public document at this stage.
27. The interim Chief Operating Officer presented a paper outlining a three year view of the budget and associated risks in more detail. The meeting noted the separation of implementation and running costs budgets, and noted the costs envelopes that the OLC is required to work within. Members also agreed that it was right to make provision for contingency given the risks posed by factors such as IT procurement and as the volumes of complaints that might be expected by the new Ombudsman scheme were hard to predict.
28. Members noted that there was more work to be done with the Ministry of Justice to clarify budget processes, and that this work was progressing.
29. The Board thanked the Interim Chief Operating Officer for a clear presentation. Members agreed that procuring premises and IT remained key risks for the budget and the set up as a whole and that they were satisfied with the steps taken to date to mitigate these risks.
30. The meeting also agreed that its role in relation to the budget should focus on the management of risks and risk mitigation. It noted that this was a different role to that of the Audit Committee, as the remit of that Committee was to make sure it was satisfied with the processes put in place in relation to identification of risk, rather than being concerned with the decisions on how they should be mitigated.

ACTIONS

- Business plan with high level budgets to be published for consultation.

Agenda Item 8 – Case fees

31. The meeting considered a draft consultation paper on case fees, with an accompanying initial impact assessment. Members noted that while the case fees were included in the scheme rules, a separate consultation was now required. This was because the case fee will impose a charge on private business, and government rules require NDPB's to conduct an impact assessment on any proposal that will mean private and particularly small business might need to be charged.
32. The initial impact assessment that accompanies the draft consultation paper has been developed with the Ministry of Justice. Members noted that a key factor in setting a case fee was that there was little evidence of potential impacts and that the consultation and impact assessment would be useful to seek more evidence and a better understanding of how the case fee should be structured.
33. The meeting welcomed the paper and offered some minor drafting changes. A more general request for page numbers to be included in all papers was made.
34. Members agreed that the paper should make clearer that the case fee will payable by firms (or entities) rather than individual lawyers in firms. The meeting asked that the draft scheme rules be checked to make sure the drafting was consistent with this approach.
35. The meeting agreed that the consultation paper and initial impact assessment, subject to some drafting changes, should be published for formal consultation.

ACTIONS

- Implementation team to publish the consultation paper and impact assessment.
- David Thomas and Alison Robinson to look at wording of the draft scheme rules to make sure the drafting was consistent with a case fee being chargeable to firms.
- All Board papers to have page numbers.

Item 9 – Transition planning

36. The Chief Ombudsman reported to the meeting that the work around transition planning was continuing. Members asked to be kept informed as thinking of the team developed and as further discussions with key stakeholders occurred.

Item 10 – In-house complaints handling

37. The Chief Ombudsman advised that he had had some further discussions with the Legal Services Board since the last OLC Board meeting. A possible joint approach to setting standards for in-house complaints handling might be for the OLC and LSB to set out what both organisations saw as key principles to guide in-house complaints, including a requirement to have an in-house complaints process and for the timeframes to resolve a complaint in-house to mirror the timeframes included in the OLC scheme rules. The OLC was also keen for there to be some requirement for lawyers to signpost to the new Ombudsman scheme.
38. The key concern of the LSB was seen to be to make sure it is not disproportionate in its approach as a regulator. The approach set out above would allow the LSB, if

required in the future, to impose more demanding and prescriptive requirements, if there was evidence that guidance based on key principles was not sufficient.

39. The meeting agreed with this approach, noting that the key concern for the OLC was for all lawyers to have some form of in-house complaints procedure, otherwise the scheme rules would be based on a false premise. Members also noted that having some parameters indicating requirements at the in-house stage was important as it would allow the new Ombudsman scheme to indicate to consumers the level of service that they might reasonably expect from their lawyer.
40. The meeting noted that the OLC and LSB would continue working together over the coming weeks to develop this joint approach.

ACTIONS

- OLC and LSB to set out what both organisations saw as key principles to guide in-house complaints, including a requirement to have an in-house complaints process.

Item 11 – Communications strategy and engagement plan

41. The meeting noted a first draft of a communications strategy and engagement plan and offered their thoughts and comments to shape the strategy. Members were keen that the communications strategy clearly balanced the need to assist to raise standards in the profession and build confidence in legal services generally without raising the perception that the new Ombudsman scheme was too closely aligned with the interests of the profession.
42. Members also asked that the strategy be re-visited in light of the outcomes of the Board discussion with the branding agency, to make sure our tone of voice and overall approach was consistent. The meeting also noted the experience of other Ombudsman schemes and the importance of being authoritative as well as approachable.
43. The Chair asked the implementation team to work Board Members and it was agreed that Margaret Doyle, in particular, would assist in further refining the strategy and engagement plan, making sure that the not-for-profit and advice sectors, for example, were captured sufficiently in planning. The meeting also agreed that the LSB's Consumer Panel would be a valuable resource for the OLC.
44. The meeting noted that an early priority would be to develop pieces to describe the new Ombudsman scheme for recruitment.

ACTIONS

- Implementation team to further develop the communications strategy and engagement plan
- Margaret Doyle to offer advice and support in relation to developing the communications strategy and to help build strong relationships with the not-for-profit and advice sectors.

Item 13 – Committee reports

45. The next meetings of both the Audit and Risk Committee and the Remuneration Committee are scheduled for 12 October 2009.

46. The Chair of the Remuneration Committee noted that she was to meet the HR consultants following the Board meeting for an introductory session.

Item 14 – Future agendas and any other business

47. Members noted that the next Board meeting would be held on 19 October and was currently scheduled to be held at Leamington Spa. Members noted that the Leamington visit may need to be postponed depending on the programme of work over coming weeks. The Board asked the Chief Ombudsman to advise the Chair by the end of the week as to whether the Leamington Spa visit might need to be re-arranged.

48. Members also agreed that the pre-Board speakers were proving valuable and agreed that it would also be useful to have speakers who focused on the role and management of NDPBs as well as speakers who focused on legal services regulation.

ACTIONS

- Implementation team to organise pre-Board sessions with a focus on NDPBs and good governance in addition to those with a background in legal services regulation.

49. The next meeting is scheduled for 19 October 2009 at 10am.