

**Minutes of the Ninetieth Meeting of the
Office for Legal Complaints (OLC)**

Wednesday 12 September 2018

10:30 – 14:35

Legal Ombudsman, Birmingham

Present:

Wanda Goldwag, Chair
Lis Bellamy
Bernard Herdan
Rebecca Hilsenrath, by telephone
Michael Kaltz
Annette Lovell
Jane Martin

Board Secretary:

Kay Kershaw

In attendance:

Rob Powell, Chief Executive
Rebecca Marsh, Chief Ombudsman
Steve Pearson, Senior Ombudsman (item 5 and 12)
Taran Hayre, Legal Manager, (item 6)
Nikki Greenway, Head of IT (item 12)
Sarah Ritzenthaler, Parliamentary and Policy Officer (items 8 and 12)
Marcus Passant, Head of HR (item 12)
Clair Daniel, Senior Ombudsman (item 12)
Marianne Hughes, Senior Ombudsman (item 12)
Siobhan Fennell, Senior Ombudsman and staff observer
Emma Ireson, Corporate Planning and Programme Manager (item 12)
Alex Moore, Stakeholder and Public Affairs Officer, (item 12)
Rajinder Mattu, Communications Officer and staff observer (items 1 to 11)

Preliminary issues:

The Board meeting was quorate.

Annette Lovell declared that she was an employee of the Financial Ombudsman Service (FoS). The Board agreed that she could remain present for all discussions relating to FoS at this meeting.

Rob Powell declared that he had been invited to join to the Pubs Code Adjudicator's Audit and Risk Committee. This was an unremunerated post.

Wanda Goldwag declared that she had been appointed as Chair of the British Board of Film Classification Appointments Board. This was a 15 day project to be undertaken between July and October 2018.

Item 1 – Welcome and apologies

1. The Chair welcomed attendees to the meeting.

Item 2 – Approval of previous minutes

2. The minutes of the ARAC meeting held on 19 April 2018 were **approved** for publication, subject to the recommended redactions.

ACTION: Board Secretary to publish the minutes of the ARAC meeting held on 19 April 2018.

3. The draft minutes of the RemCo meeting held on 13 June 2018 were **approved** for accuracy and for publication, subject to the recommended redactions.

ACTION: Board Secretary to publish the minutes of the RemCo meeting held on 13 June 2018.

4. Subject to minor amendment to paragraph 10, the draft minutes of the OLC Board meeting held on 9 July 2018 were **approved** for accuracy and for publication.

ACTION: Board Secretary to publish the minutes of the OLC Board meeting held on 9 July 2018.

Item 3 – Matters arising and outstanding actions from previous minutes

5. The Board **ratified** a decision made out of committee by the OLC Chair and Rebecca Hilsenrath in line with the scheme of delegation to approve £40K of additional capital costs to fund the next stage of enhancing the new case management system and for an associated business case to be submitted to the MoJ.
6. The Board **ratified** a decision made out of committee on 1st and 2nd August to approve the OLC's consultation response to the FCA's claims management regulation consultation.
7. The Board **noted** the update on the actions from previous meeting.

Item 4 - Standing reports

Executive report

8. The CEO and Chief Ombudsman presented their executive report setting out key issues arising since the July Board meeting, including an update on meetings with key stakeholders.
9. The executive continues to focus on driving performance. A continued, steady improvement is being seen across all teams, however there is still variability in operational performance and much to do to sustain improvement.
10. The Management Team is now focussing on a project to build a high performance culture.

11. The flow of cases continued to be an issue and the executive alerted the Board to the impact this would have on reported performance. Team Leaders were exploring ways to improve the flow of cases through the business.
12. The Chief Ombudsman reported on a range of training and support being introduced to develop and support the Team Leader cohort who were critical to improving performance.
13. Two data inputters have been appointed to move data from the old case management system (CMS) in to the new system with the aim of having all cases moved to the new CMS by mid-December. This would facilitate the transfer of all casework from the old CMS before Microsoft applied its mandatory version 9 upgrade, the date of which was brought forward to 31 January 2019.
14. The Board sought assurance that there were appropriate checks on the accuracy and quality of the data being manually transferred from the old system to the new one. The Chief Ombudsman assured the Board that there would be a robust quality assurance process, which would include sample testing, and that a Team Leader provided ongoing support and guidance to the Data Inputters.
15. The Board sought assurance that the operational performance forecasts modelled any impacts that might arise from this data transfer work and that the parties to a complaint should be kept informed if there was to be any resulting delay to the progression of their case.
ACTION: Chief Ombudsman to ensure operational performance forecasts reflect potential implications on performance KPIs arising from the data transfer work.
ACTION: The Chief Ombudsman to ensure that the parties to a complaint were kept informed of any delays that might arise from the data transfer work.
16. The CEO assured the Board this work would be closely monitored.
17. The change of date for the Microsoft upgrade has required the re-working of elements of existing plans for interdependent activities, including CMS2 enhancements.
18. Following the application of the version 9 upgrade to CMS2, all operational staff would be required to undertake some additional training. The Board was assured that the organisation was currently exploring options to minimise the impact of this additional training on performance.
19. The Board was assured that there was no planned down time during normal working hours as a result of the Microsoft upgrade, but there would be a period of change freeze between October and January and this would result in the delay to some of the planned enhancements required for CMS2.
20. Improvements continue to be made to the front end of the business process and, combined with the increased pull through of new cases as a result of the main business as usual improvements, will directly impact the numbers of cases accepted, bringing them back in line with forecasts.

21. A prototype of a Customer Assessment Tool (CAT) has been developed to assess eligibility. Subject to user testing the CAT is expected to go live in October. A demonstration of the CAT was given to the Board. The CAT would enable members of the public to determine whether their complaint could be dealt with by the Legal Ombudsman. If people did not wish or could not use the CAT they would still be able to phone us.
22. Time-critical work to support CMC transition to the Financial Ombudsman Service on data transfer was underway, with agreement that costs of the transition were not to be borne by the OLC. Regular discussions continued with CMC staff about their options.
23. The Modernising LeO Programme Board met in July and August; in response to appropriate challenge from the non-executive member, discussions had focussed on reducing the scope of phase 2 of the programme and moving some of the planned work to business as usual.
24. The CEO provided clarification of the work being undertaken in the business intelligence/management information project, with development now underway.
25. July's annual sickness rate was 4.1%, in line with the previous two months and comparable to the same period in 2017. Long-term sickness had increased slightly to 2.6%. Rolling annual turnover was 19.7% which reflected the peak in Q3 2017/18.
26. The Board raised concern about the annual voluntary turnover rate. In discussion the CEO reported that this figure was anticipated to remain at this level in the short term, and may increase as further changes are made to ways of working.
27. The Reward and Recognition – Celebrating Success scheme was launched in July and the first quarterly awards were presented in early September. This was positively received by staff. The CEO wrote to congratulate all 22 nominees. One team award and 4 individual awards were issued. Recognition vouchers and an employee savings portal are on track for implementation by 1 October.
28. The 2018/19 pay remit has received approval from the Secretary of State.
29. The Chief Ombudsman reported on the telephone training that had been designed and delivered in-house. The Board commended the work done on this.
30. A report had been received from MoJ's Project RACE specialist team following focus groups to allow staff to express their perceptions of the challenges and experiences of Black and Ethnic Minority staff. Project RACE specialists will present the report to the Management Team and an action plan will be produced and shared with RemCo in November.
31. The Board **noted** the update on legal matters that had been issued separately under legal privilege.
32. The Board **noted** the Executive report.

Finance Report

33. The CEO presented a paper providing an overview of the financial position at the end of month 5 and reported on the key issues in the management accounts.
34. The reported figures reflected a reforecast prepared in July 2018 at the end of Q1. The current forecast focussed on moving current delegated budget between business areas to reflect changes in business process and ways of working, particularly at the front end of the business and the introduction of the supervision model.
35. Budget is being redirected to operational resources in order to address key business priorities to drive improved performance and create a high performance culture.
36. The reforecast capital spend is £163k; an underspend of £87k during the year resulting from efficiency savings and changes to the timing of planned works which would change the OLC's capital budget for 2018-19 from £250k to £163k. In light of the significant pressures on capital spending across the MoJ family, Board approved the return of £87k capital to the department.
37. The CEO assured that Board that it was unlikely that future capital funding would be affected by taking this action.
38. The pace of change and the scale of ambition for modernisation over the last 18 months had been significant and there was broad agreement that, as a small organisation, there was now a need to focus on the core business before undertaking any more large scale digitisation and modernisation projects.
39. The CEO reported that strategic meetings would continue to take place in order to explore what the business would need in the future around digitisation and Artificial Intelligence (AI) so that future business plans could be developed.
40. A £90k underspend was reported across the CMC and legal jurisdictions, mainly relating to establishment costs. This establishment underspend was the result of timing issues in terms of new staff arrivals, departures and promotions. This was making forecasting difficult but was being monitored closely.
41. The reforecast had led to a significant reduction in costs and staffing in CMC as a result of falling volumes. This has increased overhead apportionment to the Legal jurisdiction. The CEO reported that the organisation was actively looking at staffing options and contingency plans for resourcing CMC.
42. Following discussion, the Board **approved** the return of the £87k of capital budget to the MoJ.
43. The Board **noted** the finance report.

Item 5 – Performance update, including the KPI tolerance report

44. A paper summarising performance and the position against KPI tolerances at the end of August was presented to the Board.
45. In July and August further 'green shoots' of improvement were seen through the ongoing strong delivery by the legacy team; positive performance by teams working

under the new 'supervision model'; contributions of both internal and pool ombudsmen; and the reduced reliance on Ombudsman decisions for resolution. Despite this, closures in July and August were behind the original delivery plan profile although remained within tolerance.

46. There were no new tolerance breaches. At the end of Q1, there were 6 breaches of sub-measures against tolerances for 5 KPIs.
47. Unit cost in the legal jurisdiction was back within tolerance for August. The Board discussed whether the cost per case was likely to increase in 2019/20. It was noted that this would be partly dependent on the volume of cases closed; additionally, after the transfer of the CMC jurisdiction to FOS, central overheads would be allocated wholly to the Legal jurisdiction. Currently new case receipts are below forecast. It is likely that the cost per case will increase in 2019/20.
48. The Board **noted** that a full report on quality would be provided to the Board in the Quarterly Performance paper to be tabled at the October meeting.
49. Timeliness performance continued to improve with overall performance for all cases reflecting the impact of the starting age profile of work on the old CMS at the start of the year. Team Leaders were working to progress cases in the old CMS as quickly as possible.
50. Timeliness performance for cases under the new business process and case management system remained strong, and performance across the organisation improved in August.
51. The key challenge for timeliness KPIs, demonstrated by the emerging forecast, related to the 72% target for 180 days for all legal cases given volumes and aged cases. The Chief Ombudsman assured the Board that legacy cases were being allocated in date order and progressed quickly once allocated, but the impact of legacy case age and the actual volume at the start of the year had adversely affected the 180 day profile.
52. Improvements continued to be made to the front end of the business process through increased resources and redesigned processes, which would see both the transactional and judgment components of the work undertaken more effectively and efficiently.
53. The refinements should help to meet the significant challenge of ramping up output in line with the annual delivery plan, but further work is required to create a smoother flow to achieve the full benefits of the new 'pull' system introduced through Modernising LeO changes.
54. The Board discussed the implications on timeliness of any build-up of work across the business and requested a breakdown of work volumes on a stage by stage within performance reporting. They also requested further analysis and assurance that the volume and age of assessment work was reducing.
55. The Board discussed the range of work dealt with by the General Enquiries Team, which included initial complaint contact and assessment, and the provision of advice and guidance and signposting to other organisations. The Chief Ombudsman and Senior Ombudsman advised that the number, the type and the

outcomes of front-end enquiries would be tracked for statistical purpose and the Board would have sight of this information.

56. The Board provided feedback on the presentation of data within the performance report, requesting greater clarity of the data reported in the graph on page one and the analysis in certain parts of the Appendix.
57. Following a discussion about the reporting of monthly and quarterly variance between legal cases accepted and closed by complexity, the CEO agreed that the delivery plan showing forecasts for cases received and cases closed, would be a more appropriate means to report on this data as an annex to future performance reports.

ACTION: Chief Ombudsman to:

- **Provide further analysis and assurance that the volume and age of assessment work is reducing.**
 - **Provide a breakdown of work volumes on a stage by stage basis included in performance reporting.**
 - **Detail the number, the type and the outcome of front-end enquiries.**
 - **Amend the format of the graphs and the statistical data reported in the performance paper.**
 - **Include the delivery plan showing forecast and actual numbers of cases received and cases closed as an annex to future performance reports.**
58. Whilst performance continued to improve, the Board would not feel that performance was satisfactory until there was sustainable delivery against the new KPIs. The expectation remains that despite an improving trajectory during 2018-19, it will take until early 2019-20 to sustain more consistent performance.
 59. The Board **noted** the performance update.

Item 6 – Strategic approach to enforcement

60. A revised paper, addressing previous feedback from the Board, set out the OLC's proposed approach to enforcement and included a decision tree for ombudsman to use in cases where they were considering whether it was appropriate to enforce.
61. The Board emphasised the importance of enforcement in demonstrating the OLC's impact and having considered the decisions tree, requested the wording and structure to be amended in order to make it explicit that that the default approach, unless there were exceptional circumstances, would be for the ombudsman to enforce all remedies.
62. The Board requested that each of the questions listed in the decision tree for the ombudsman to consider when deciding on enforcement action should be addressed in terms of potential challenge to that decision.
63. The Board were assured that guidance was to be developed to assist ombudsman when making decisions about enforcement action. This guidance, along with peer

reviews, would provide assurance around consistency and quality of enforcement decisions. The Board requested sight of this guidance once it has been developed.

ACTION: The Chief Ombudsman to share ombudsman guidance on making decisions on enforcement with the Board when it has been developed.

64. The Board requested an annual report on the number of decisions made by ombudsmen not to enforce.

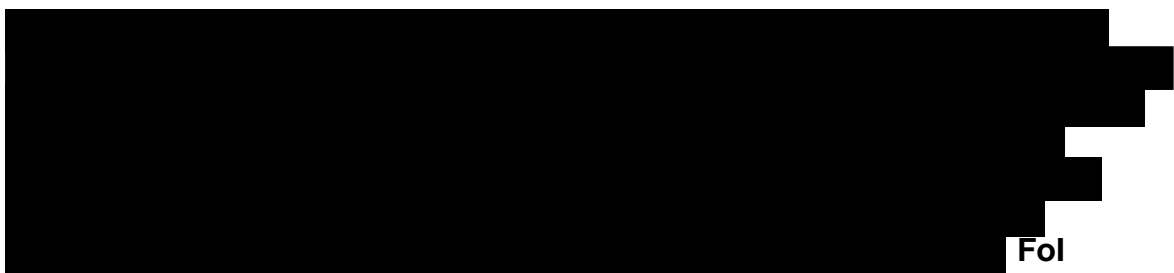
ACTION: Board Secretary to update the Board forward plan to include an annual report on the number of decisions made by Ombudsmen not to enforce.

65. At the July Board meeting, specific issues were raised in relation to the CMC jurisdiction around the OLC's power to enforce ombudsman's decisions post April 2019 and the funding of such work.
66. Since the last Board meeting, the MoJ has confirmed that the draft Statutory Instrument for the transfer of the CMC jurisdiction to the Financial Ombudsman Service would allow the OLC to retain the power to enforce ombudsman decisions made prior to the Transfer Date. HM Treasury has confirmed that surplus fees could be made available to cover the costs of OLC enforcement work on CMCs after April 2019; the details of how these costs would be recovered are still to be confirmed.
67. Subject to minor amendments to the decision tree and the opportunity to view the Ombudsman guidance, the Board **approved** a new strategic approach to enforcement.

Item 7 - IT Procurements

68. The Board considered a paper setting out a proposed approach towards three IT contracts that were coming to an end.
69. MoJ advice on each of the contracts had been sought.

70.



exempt s.43 (2)

Item 8 – Horizon scanning

71. A paper reporting on September's horizon scan of the legal landscape was presented to the Board.
72. The paper highlighted a new review of legal regulation in England and Wales, scrutiny of the Financial Ombudsman Service and new rulings / guidance which may see more complaints coming to the Legal Ombudsman in both legal and CMC jurisdictions.

73. Discussions took place about the impact of comparison websites on solicitors, the impact of artificial intelligence within the legal sector, the results of the Legal Services Consumer Panel's Tracker survey, developments in CMC business areas and regulatory arrangements and the impact of proposed changes to the SRA Handbook which would allow for solicitors to work in unregulated businesses and as freelancers.
74. The Board **noted** the contents of the horizon scanning paper.

Item 9– Approval of Audit and Risk Committee Terms of Reference

75. At a meeting on 2 July 2018, the Audit and Risk Assurance Committee agreed amendments to its terms of reference to reflect organisational changes and changes in committee membership.
76. The CEO highlighted some additional minor amendments to be made to section 6 and to the list of 'other attendees'.
77. Subject to these additional amendments, the OLC Board, in line with the Audit and Risk Committee's terms of reference, **approved** the updated terms of reference for publication.

ACTION: Board Secretary to amend the ARAC terms of Reference and arrange publication on the website.

Item 10 Board effectiveness review

78. The Board considered a paper setting out the proposed scope, timing and approach to the 2018/19 review of Board effectiveness due to be undertaken in the Autumn.
79. Following discussion, it was **agreed** that the CEO would include an additional question in the performance, measurement and accountability section of appendix 1 of this paper in order to explore whether the Board was receiving all the information it required through the current KPI reporting process.
- ACTION: The CEO to add an additional question in the performance, measurement and accountability section of appendix 1 of the Board effectiveness paper in order to explore whether the Board was receiving all the information it required through the current KPI reporting process.**
80. It was **noted** that discussions at a forthcoming RemCo to RemCo meeting in November might provide insight and learning around how other Boards carried out Board effectiveness reviews **and inform the OLC's RemCo self-assessment and the Board effectiveness review**
81. The CEO **agreed** to make enquiries with the National Audit Office about the potential session for Audit and Risk Assurance Committees.

ACTION: The CEO to make enquiries with the National Audit Office to follow up on the potential session for Audit and Risk Assurance Committees.

82. Subject to the amendment of dates set out in the paper, the Board **approved** the proposed approach for the 2018/19 annual review of Board effectiveness.

Item 11 - Board paper redactions

83. The Board reviewed a paper setting out proposed redactions to September Board papers.
84. The Board **approved** the redactions proposed.
85. The Board **approved** the publication of the September Board papers.

ACTION: Board Secretary to publish the September Board papers.

Item 12 – Strategy workshop

86. The OLC Board held a strategic business planning workshop to review progress to date and identify any revisions that would need to be made to the strategic direction on the basis of current operational position and ongoing external developments.
87. The workshop identified a number of areas for consideration when developing the strategy for 2019/20 and beyond. Key themes arising from the workshop included:
 - Insight and impact – understanding the Ombudsman environment, the legal landscape and gaining better perspective of the external environment, being a thought leader in the sector.
 - Expectations - technological developments, alternative models of delivery, the speed of service delivery, driving internal service standards to provide an effective and efficient service.
88. The CEO would update the 2019/20 annual priorities based on the discussions held at this workshop and an update would be provided to the Board in October.

ACTION: CEO to update the Board on 2019/20 annual priorities at the October meeting.

Item 13 – Any other business

89. Jane Martin, Bernard Herdan and Michael Kaltz agreed to contribute blogs for inclusion in an internal newsletter.
90. Minor amendment to table of dates at the end of the Board agenda were noted.

ACTION: Board Secretary to amend the Board meeting agenda template.