

**Minutes of the One Hundred and Seventh Meeting of the
Office for Legal Complaints (OLC)**

Monday 26 October 2020: 10:30 – 15:15, by video call

<p>Present: Elisabeth Davies, Chair Lis Bellamy Rod Bulmer Annette Lovell Jane Martin Hari Punchihewa Rebecca Hilsenrath</p> <p>Board Secretary Kay Kershaw</p>	<p>In attendance: Mariette Hughes, Acting Chief Ombudsman Siobhan Fennell, Head of Governance and Strategy Michael Letters, Head of Finance Steve Pearson, Deputy Chief Ombudsman David Winks (Items 1 to 8) Alison Wedge, Ministry of Justice (Items 9 - 16) Craig Wakeford, LSB Alex Moore, External Affairs Team Leader (item 9 and 10) Sam Argyle, Senior Ombudsman (items 11 and 12) Kerensa Scott, Executive Assistant</p>
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Preliminary issues:

The Board meeting was quorate.

Item 1 – Welcome, apologies and declarations of interest

1. The Chair welcomed attendees to the meeting.
2. There were no apologies.
3. The Chair reported that Board paper 109.9 made reference to customer views on staff impartiality; this was linked to an area of academic research she was undertaking.
4. There were no declarations of interest reported.

Item 2 – Previous Minutes

5. The minutes of the OLC Board meeting held on 28 September 2020 were **approved** for accuracy and **approved** for publication, subject to the amendment of a typographical error in paragraph 71.

ACTION: Board Secretary to publish the minutes of the OLC Board meeting 28 September 2020, subject to the amendment of the typographical error.

Item 3 – Matters arising and outstanding actions from previous meetings

6. The Board **ratified** the decision taken by the Chair to provide final feedback of the OLC's response to the Competition and Markets Authority call for input following up on the 2016 review of the legal services market.
7. The Chair reported on a minor error in the minutes of the July Board meeting advising that, as this had not a substantive matter, she had agreed an amendment and the minutes were subsequently published.
8. The Chair confirmed that clarity on what was required to address previous actions 6, para 30 and 8, para 73 had been given to the Executive prior to the Board meeting.

ACTION: Board Secretary to update the action log to reflect that the Chair had provided clarity to the Executive on what was required to address previous actions 6, para 30 and 8, para 73.

9. The outstanding actions paper is to be amended to reflect the correct date of the actions arising from the last Board meeting.

ACTION: Board Secretary to correct the date shown on the outstanding actions paper prior to its publication.

10. The Chair of the Performance and Quality Task and Finish Group clarified that the group had not met prior to the Board meeting on 5 October. The update on action 6A, para 55 is to be amended to reflect this.

ACTION: The Board Secretary to update action 6A, para 55, to reflect that the Performance and Quality Task and Finish Group had not met prior to the 5 October Board meeting.

11. Paragraph 91 of the September minutes stated that a report would be provided at the October Board meeting on the nudge initiative; this report was deferred to the next Board meeting.

ACTION: Board Secretary to update the Board forward plan to include a report the nudge initiative at the next Board meeting.

Item 4 – Chair's Report

12. The Chair reported on the appointment of the new Chief Ombudsman and how the transition to the new Executive Team was being managed.
13. External feedback on the CO and COO appointments had been positive and acknowledged that strong appointments had been made.
14. The new CO and COO would be providing input to corporate planning, reviewing key documents and attending key meetings, including induction and training sessions in the intervening period before they commence in role.
15. The Board **noted** the Chair's report.

Item 5 – Executive report

16. The Acting Chief Ombudsman reported on the progress that had been made by the Executive Team on regaining grip across the organisation, delivering the performance recovery plan for 2020/21 and developing proposals for the 2021/22 Budget and Business Plan consultation.
17. Recognising the assurance that had been provided by the Performance and Quality Task and Finish Group, the Board had been pleased to see that September's performance had shown signs of recovery and was in line with the performance trajectory.
18. The Board was disappointed to learn that the Head of Governance and Strategy had resigned and was concerned about the impact this would have on capacity within the Executive Team.
19. Noting that the Business Performance Manager would be taking responsibility in the short-term for the Head of Governance and Strategy's priority work, the Board sought assurance that any risks inherent with this were being mitigated.
20. In response, the Board was advised that the Business Performance Manager was already familiar with the additional work they were taking on. This, coupled with line management and support being provided by the Deputy Chief Ombudsman and continued close working arrangements with the Executive Team, would ensure that key risks were being mitigated.
21. The Head of Governance and Strategy would be meeting with Internal Audit before her departure to provide assurance on any possible risks with this working arrangement.
22. The Board had been pleased to note that the OLC Chair and the Executive had continued to engage with key stakeholders, deliver courses and attend speaking engagements with the profession during the pandemic.
23. The Acting CO reported on the positive feedback from attendees of LeO's webinars and courses and the positive impact the webinars and courses were having on raising standards across the profession. The Board **recommended** that the 2020/21 Annual Report and Accounts reflected this.

ACTION: The Executive to ensure that the 2020/21 Annual Report and Accounts reflected the positive impact of LeO's external engagement.

24. The Board requested that future Executive reports included information on the main risks and challenges associated with each of the five key areas of focus.

ACTION: The Executive to include information on the main risks and challenges associated with each of the five areas of focus in future Executive reports

25. The Board **noted** the Executive report.

Item 6 – Finance report

26. The Head of Finance updated the Board on the financial position at the end of Month 6, reporting on an overspend against the revenue budget of £139,000 and that an overspend of £344,000 was forecast for 2020/21. The overspend in staffing included accruals for the pay remit and reward and recognition scheme.
27. Options to mitigate the forecasted overspend had been developed and included an interim budget submission to the LSB.

28. Overall, case fee income remained a concern. Despite this, there had been an increase in case fee income invoiced as a result of the improved performance in September. It was hoped that case fee income would be closer to budget for the rest of the year in line with the performance trajectory.
29. Aged debts continue to decrease.
30. A Management Letter, reflecting External Audit's feedback on the 2019/20 audit of accounts, had been received. A meeting with External Audit had taken place to discuss the audits findings and the Chair had been appraised of the meeting.
31. The Chair of ARAC asked the Head of Finance to prepare a response to the Management Letter for consideration at the ARAC meeting on 4 November.
- ACTION: Head of Finance to prepare a response to the Management Letter for consideration at the ARAC meeting on 4 November.**
32. David Winks reported that it had not been possible within the timeframe of the interim budget application for the MoJ to provide any further clarity on whether LeO could access its cash reserves. The MoJ continued to explore the options and would report back when there was more clarity.
33. The Board **noted** the update on finance

Item 7 – Annual review of strategic risks

34. Due to the rescheduling of the October ARAC meeting, the Committee had not yet completed its preliminary work on strategic risks. This work is to be undertaken at the ARAC meeting scheduled for 4 November, after which the risk register would be updated and presented for its annual review at a future Board meeting.
- ACTION: Board Secretary to update the Board's forward plan to include an annual review of the risk register at its next meeting.**
35. It had taken longer than envisaged to strengthen resource in the governance and strategy function, this had delayed work to improve the risk assurance framework.
36. Resource was put in place in September to back-fill the Head of Governance and Strategy's previous role, additional MoJ resource would soon be in place to support the Head of Finance and recruitment was underway for a Project Manager. These additional resources would free up time for the Head of Governance and Strategy, Head of Finance and Business Performance Manager to focus on the risk and improving the assurance framework.
37. Considering the current limited resource, the focus had been on mitigating against the most significant risks: Covid-19; the standstill budget and ensuring that business and budget planning for 2021/22 remained on track.
38. Details of the current strategic risks were shared on screen and Board Members were asked to provide feedback for the Executive to consider as part of their detailed review of risks in preparation for the next ARAC meeting:
- SO7: Covid-19 risk: The Board suggested that consideration should be given to the impact of the risks associated with Covid-19 on the wider sector's ability to respond to case work and the viability of providers to respond to case fees.

- SO4: Levels of staff engagement diminish: The Board suggested that consideration should be given to whether this risk was specific enough or whether more clarity was required.

ACTION: The Head of Governance to consider the Board’s feedback when undertaking the detailed review of strategic risks before presenting them to ARAC.

39. The Board noted the update on strategic risks.

Item 8 – Performance report and update on Covid-19 planning and the People Plan

40. In line with forecast, performance in September had improved.

41. The PAP had increased in line with forecast and wait times for final Ombudsman decisions had increased by 12 days due to the volume of high complexity cases being passed for decision. The Executive was carefully monitoring this increase but advised that mitigating actions were constrained, particularly as there was no budget to utilise Pool Ombudsmen.

42. September’s performance improvement had been underpinned by an increase in staff availability; the amount of Covid special leave having reduced and most staff now working their full contracted hours.

43. The Board stressed that despite September’s performance being in line with forecast, there should be no complacency, as overall performance remained unsatisfactory.

44. Managing by behaviours had been rolled out to operational staff and had been well received. With performance management now reinstated to pre-Covid levels, staff engagement was being closely monitored

45. Work to redeploy Level 1 Ombudsman resource continued. Progress had been slower than anticipated because HR had highlighted a need for contractual changes in certain circumstances. To overcome this, Expressions of Interest had been requested and some staff had put themselves forward for redeployment. The Acting CO would be drawing the new CO and COO’s attention to the inflexibility of Level 1 Ombudsman contracts.

46. The Board sought confirmation on whether performance to date was in line with October’s projected performance target. In response, the Acting CO reported that October’s performance was predicted to exceed September’s, but it was not yet clear whether the forecasted target would be met. Ombudsman availability, lack of budget for Pool Ombudsmen and staff taking annual leave during half term were all factors that would influence the final performance achieved in October.

47. The Board considered the update on the People Plan, was pleased to see the focussed and phased approach to the delivery plan and provided the following feedback:

- Talent and career development workstream deliverable Q4 2020/21: Previous discussions with RemCo had indicated that this work would focus on specific cohorts of operational staff. Recognising the significant amount of work involved, the RemCo Chair had been surprised to see that this deliverable now related to all staff groups below the Executive Team.
- HR casework workstream: Clarity was sought on the rationale for this workstream.
- ED&I: RemCo had requested that ED&I issues were to be included as part of the People Plan; the current delivery plan did not reflect this.

- Staff Appraisals: Recognising the risks associated with performance management, concern was raised that the delivery plan made no reference to the staff appraisal process.

48. A brief response to each of these points was provided by the Acting CO, and it was **agreed** that a more detailed follow up on each of the points would be provided to RemCo either at the Committee's next meeting, or directly to the RemCo Chair out of committee:

ACTION: Acting CO to ensure that an update on the points raised in response to the People Plan update are provided to RemCo at its next meeting, or to the RemCo Chair outside of committee.

49. The Acting CO reported that Birmingham and the surrounding areas were under tier 2 Covid restrictions and most staff continued to work from home. A small number of staff were working from the office following Covid safety protocols.
50. Board Members raised concerns about the impact of 'Covid uncertainty' on operational performance and modelling. The Acting CO stated that modelling for this level of uncertainty was challenging. Current modelling forecasted an investigator loss of 1.5 FTE and this was felt to be broadly correct; this loss related to productivity lost, not hours lost.
51. Operations Managers and the Acting CO were considering the impact of lost productivity on performance as part of their ongoing work to scrutinise performance and forecasting.
52. Despite September's increase in performance, individual productivity had been lower than expected for some staff; this was attributed to interrupted workflow as a result of working whilst providing care for children that were unable to attend school due to Covid closures.
53. Board Members urged the Executive not to underestimate the impact of the extended period of homeworking on staff morale and well-being, recognising that even those staff that had coped well and had been working productively at the start of lockdown could be adversely affected by this prolonged period of home working.
54. The Acting CO reported that, in the event of a second national lockdown, the LSB would expect service providers to fulfil their regulatory objectives and comply with investigations. Guidance was being jointly written by the LSB and LeO and would be shared with the regulators.
55. Further to the Executive's request for more clarity on addressing action 6, para 30 from the previous meeting, the Board advised that a Covid plan should include:
- Scenario planning for the impact on Covid on the mental health, wellbeing and motivation of staff.
 - Policies for resourcing the business and meeting demand.
 - Policies for dealing with service providers who are unable to respond to investigations due to Covid.
56. The Acting CO reported that the development of the Covid plan would need to be an iterative process involving input from the new CO and COO.
57. The Acting CO **agreed** to present the Covid plan at the January 2021 meeting. Members were asked to notify the Acting CO of any specific items that they wished to see included and to contact her directly with any specific Covid related questions.

Action: Board Secretary to add the Covid plan to the Board forward plan for the January Board meeting.

ACTION: The Board to notify the Acting CO of any specific items they wished to see included in the Covid plan and to raise any Covid related questions directly with her.

58. The Chair asked ARAC to consider the strategic risks around Covid at its meeting in November in order to provide some assurance in the intervening period before the January Board meeting.

ACTION: ARAC to consider the strategic risks around Covid at its November Board meeting.

59. The Board considered the Executive's recommendation to report the 2020/21 KPI for customer journey time against the pre-Covid target.
60. In discussion, concern was raised about the consistency of reporting KPI targets where some had been adjusted for Covid and others hadn't. Recognising that each of the 2020/21 KPIs had been considered on an individual basis on its own merits, the Chair stated that the end to end customer journey time should be considered in the same way, adding that reporting against a pre-Covid target would ensure greater transparency and that published KPIs should be accompanied by supporting narrative to add context to the data reported.
61. Considering the supporting narrative, Members felt that it should define and differentiate between the Covid impact and the performance impact for each of the KPI targets. Recognising the benefit of doing this, the Head of Governance and Strategy reported that granular metrics were not available to report this level of detail for all KPIs, but where possible, this would be taken into consideration. The supporting narrative would be drafted and agreed by the Executive and published with corresponding KPI data on LeO's website.
62. Following discussion, the Board broadly **agreed** with the Executive's recommendation to report the 2020/21 KPI for customer journey time against the pre Covid target.
63. The Chair reported that the commonly agreed data set would be reviewed early in 2021. Board Members were asked to reflect on what supplementary narrative and guidance they would like to see accompany the commonly agreed data set in the future and report back to the Chair.
- ACTION: Board Members to reflect on what supplementary narrative and guidance they would like to see accompany the commonly agreed data set in the future and report back to the Chair.**
64. The Board **noted** the performance report and update on Covid-19 planning and the People Plan.

Item 9 – 2021 /22 Business Plan and Budget, planning for consultation

65. The Board reviewed the draft 2021/22 budget and business plan consultation document and considered whether LeO's improvement journey and the rationale for seeking an increased budget were sufficiently explained and whether there were any unanswered questions to be addressed before the document was finalised.
66. Following a detailed discussion, Board Members put forward the following suggestions to improve and strengthen the narrative within the consultation document:

- Provide more granular detail on why an increased budget was being sought.
- Set out how an increased budget would be used to improve performance and what benefits would be seen by the sector.
- Acknowledge the significance of seeking an increase in budget at a time when the legal sector is facing many challenges
- Set out how step by step improvements would achieve each of the KPIs, providing a breakdown of the costs associated with each of the individual improvements and including a full budgetary breakdown in the consultation document.
- Explain what the consequences would be if an increased budget was not received.
- Explain why having a strong and effective Ombudsman Scheme was of benefit to both consumers and service providers.
- Articulate the Board's confidence in achieving the improvements in 2021/22.
- Explain how the new CO and COO's ideas for improvement would also be taken into consideration along with stakeholder feedback before the business plan was finalised.
- Include reference to the ongoing impact of Covid.
- Ensure that ideas for further improvement were not closed down.
- Reconsider the wording of priority 2 and provide more detail to ensure that outcomes were focussed on the sector's perspective. Explain what scope there would be for doing things differently with an increased budget, how innovative ways of working could be tested and how this would be phased.
- Include more detail on how LeO would use technology to maximise opportunities to deliver courses and feedback to the profession and include timescales for delivering this work.

67. The Executive **agreed** to reflect on the Board's feedback, edit the consultation document and present a revised draft to the Chair and two nominated Board Members for further review at a follow up meeting.

ACTION: The Executive to update the consultation document in line with the Board's feedback.

68. Following discussion, the Board **agreed** that the Chair, with support of two Board Members, would approve the final 2021/22 budget and business plan consultation document for publication.

ACTION: The Chair, with support from two Board Members, to approve the final consultation document for publication.

69. The Head of Governance and Strategy reported on the process for submitting the OLC's 2021/22 budget acceptance criteria paper and supporting documents to the LSB for consideration its December Board meeting. The final papers would take into consideration the Board's feedback on the 2021/22 budget and business plan consultation document.

70. Following discussion, the Board **agreed** that the Chair should review and approve the final papers before they were submitted to the LSB.

ACTION: The Chair to review and approve the budget acceptance criteria paper and supporting documents for submission to the LSB.

71. The LSB had been made aware of the OLC's intention to seek additional investment at a challenge panel-style meeting in October. The specific details of the additional investment were not discussed, but the key deliverables were outlined.

Item 10 – Annual Report and Accounts learning review

72. The External Affairs Team Leader reported on the lessons learnt from an internal review of the 2019/20 Annual Report and Accounts process and suggestions to improve the process in 2020/21.
73. The Board was asked to provide feedback on the challenging points in the 2019/20 process, what could be done differently next year and whether any changes to the format of the 200/21 report would be required.
74. In discussion, the Board **noted** the lessons learnt from the internal review of the Annual Report and Accounts process, welcomed the improvements that had been suggested and commented on the value of learning from other Ombudsman Schemes and existing good practice across the sector.
75. To further improve the 2020/21 Annual Report and Accounts process, it was **recommended** that the Board agreed the length of the report in advance, provided an early steer on the tone and key messaging and that a different method for reporting value for money was identified.
76. The Board emphasised that the report should be lively, engaging, link strongly to key corporate documents and have a strong emphasis on the impact of the organisation's work.
77. In order to ensure their availability for key meetings and to respond to any out of committee requests, the Board requested a timetable setting out key dates for the Annual Report and Accounts process.
78. Considering the Board's feedback, the Head of External Affairs confirmed that further reflection would be given to the plan for the 2020/21 Annual Report and Accounts process, **agreed** to circulate a timetable by the end of November and would aim to present the Board with the key messages to be included in the report in January.

ACTION: The External Affairs Team Leader to circulate the Annual Report and Accounts timetable to the Board by the end of November.

Item 11 – Impact of Covid-19 on quality

79. The Head of Governance and Strategy updated the Board on the key trends identified from the quality assurance framework in Q1 and Q2 of 2020/21, reporting that:
- The level of quality assurance monitoring had been reduced to ensure that resources were focussed on delivering to customers.

- Performance against quality measures remained broadly stable.
- The main key risk was the wait time at the front end.
- Improvements had been seen in the resolution of service complaints and feedback from consumers through the customer satisfaction survey, however the speed of investigation remained a cause of dissatisfaction for some customers, especially regarding the pre-assessment wait time.
- There had been an increase in the number of cases sent back by ombudsman. Learning was being captured and improvement action was being taken.
- Improvements were being made to the delivery of service to customers with reasonable adjustments and to ensure better communications on wait times.

80. The Board was pleased that quality had remained stable, despite the Covid pandemic.
81. Considering that quality monitoring had been reduced with no adverse impact, the Board questioned the appropriateness of previous levels of monitoring. In response the Board was advised that the quality assurance framework was under review with the aim of ensuring that it was coherent, proportionate and appropriate.
82. Noting that staff feedback had indicated an excessive amount of internal quality checking, which had hindered productivity, a suggestion was put forward for the Board to be sighted on the review of the quality assurance framework so that it was assured of the appropriateness of the checking process.
83. The Board sought assurance on the quality of communication set out in the ombudsman decision letter and was advised that ombudsman communications were continually reviewed; the tone, clarity and length of communications was considered and learning was captured and fed back to the ombudsman to ensure continuous improvement.
84. The Board sought clarity on the reasons for ombudsman send backs and the impact of this on productivity. In response, the Board was advised that there were various reasons for cases being sent back to investigators, some were minor whilst others would require further investigation to be undertaken. Trends and learning from send backs were captured to ensure continuous improvement and improve productivity.
85. The Chair of ARAC raised a query about external KPIs relating to customer satisfaction (CEQ1a and CEQ1b) and it was agreed that that further information on these KPIs and an explanation of the distinction between customers satisfied with outcome and customers dissatisfied with outcome would be provided outside of the meeting.

ACTION: Head Ombudsman to provide background information and an explanation of the distinction between customers satisfied with outcome and customers dissatisfied with outcome to the Chair of ARAC.

86. Following discussion, the Chair suggested that Board Members might wish to attend any training and induction sessions planned for the new CO and COO on the quality assurance framework to aid their understanding of the process.

ACTION: Board Secretary to notify Board Members of any training / induction sessions planned for the new CO and COO on the quality assurance Framework.

87. It was agreed that the Board would receive a twice-yearly update on quality assurance, to be presented at the same time as the Service Complaint Adjudicator's reports.

ACTION: Board Secretary to add a twice-yearly update on quality assurance to the Board forward plan.

88. The Board **noted** the update on quality assurance and the impact of Covid on quality.

Item 12 – Service Complaint Adjudicator's Interim Report

89. The Head Ombudsman reported on the Service Complaint Adjudicator's (SCA) interim report, advising that there had been a significant decrease in the number of stage 1 and stage 3 service complaints in the first six months of the business year, the number of service complaints upheld by the SCA and the number of complaints received about delays at the front end of the in the business process.
90. The number of complaints received from service providers has increased; most relate to complaints about case fees.
91. Dissatisfaction with the outcome of the complaint about the service provider was the underlying reason for some of the service complaints received from complainants. These complaints fall outside of the service complaint policy and complainants are advised of alternative processes for dealing with their complaints.
92. The Board was pleased with the progress that had been made by the service complaint team to resolve complaints internally and noted the positive impact of this on complainants and service providers.
93. The Board **noted** the Service Complaint Adjudicator's interim report.

Item 13 – Transparency Reports

94. The Board reviewed and agreed the quarter two transparency reports, which included the Board Member and Ombudsman Register of Interests and **approved** them for publication, subject to the inclusion of information relating to Hari Punchihewa's interests and additional information relating to Rod Bulmer, which is to be sent to the Board Secretary.

ACTION: Rod Bulmer to provide the Board Secretary with additional information to be added to the Board Member Register of Interests.

ACTION: Hari Punchihewa to provide the Board Secretary with information to be recorded in the Board Member Register of Interests.

ACTION: Board secretary to publish the Ombudsman Register of Interests and the Board Member Register of Interests, subject to the inclusion of the additional information to be provided by Rod Bulmer and Hari Punchihewa.

95. The Board **noted** that there had not been any entries to the Gifts and Hospitality Register since it was last presented to the Board on 27 July 2020. The last entry to the Gifts and Hospitality Register was dated 16 June 2020.
96. The Board **noted** that the Board Member and Senior Manager Expenses Report was not available. The information required to collate this report was held at LeO's office which, due

to current working arrangements, was not currently being accessed by all staff. This is to be presented to the Board for review at the earliest possible opportunity.

Item 14 – Board Paper Redactions and Non-Disclosure report

97. The Board reviewed a paper setting out the redactions and items for non-disclosure proposed in respect of the October Board papers.
98. The Head of Finance reported an additional redaction to be made to the Finance paper before it is published.
99. The Board **approved** the items identified for redaction and non-disclosure.

ACTION: Board Secretary to publish the September Board papers subject to the approved redactions and items for non-disclosure.

Item 15 – Board Effectiveness

100. In line with the Board's commitment to improving Board effectiveness, Annette Lovell reflected on the meeting and made the following points:

- The changes to the structure of the agenda had improved the flow of Board discussions.
- Positive improvements had been seen in the quality of the Board papers.
- The cohesion in the Executive Team had been notable and their alignment had been reflected in the quality of the Board papers and discussions.
- The Chair's handling of the feedback on the Business Plan and Budget consultation document had been very helpful.

Item 16 – Any other business

101. The ARAC Chair requested a glossary of the abbreviated terms used by LeO.

ACTION: Board Secretary to provide a glossary of abbreviated terms to be provided to the ARAC Chair.

102. The New ARAC Chair provided feedback on the Executive Summary included in the Board papers recommending that more detailed information was included.

103. The Board thanked the Head of Governance and Strategy and wished her well for the future.