

## Minutes of the 116<sup>th</sup> Meeting of the Office for Legal Complaints (OLC)

Monday 18 October 2021: 09:45 – 16:20

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| <p><b>Present:</b><br/>         Elisabeth Davies, Chair<br/>         Lis Bellamy<br/>         Annette Lovell<br/>         Jane Martin<br/>         Hari Punchihewa<br/>         Alison Sonsome<br/>         Dale Simon<br/>         Martin Spencer<br/> <b>Board Secretary</b><br/>         Kay Kershaw</p> | <p><b>In attendance:</b><br/>         Paul McFadden, Chief Ombudsman<br/>         Sandra Strinati, Chief Operating Officer<br/>         Steve Pearson, Head of Complex Casework and Deputy Chief Ombudsman<br/>         Michael Letters, Head of Finance<br/>         Debra Wright, Head of Head of People Strategy and Services<br/>         Laura Stroppolo, Head of Head of Programme Management and Assurance<br/>         Luke Hutcheson (item 7 and 10)<br/>         Deb McIntyre, Operations Manager (item 8)<br/>         David Peckham, Operations Manager (item 8)<br/>         Alex Moore, External Affairs Team Leader (item 10)</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. There were no declarations of interest reported.

### Item 2 – Previous Minutes

4. The minutes of the OLC Board meeting held on 1 July 2021 were **approved** for accuracy and **approved** for publication.
5. The minutes of ARAC meetings held on 6 May 2021 and 1 July 2021 were **approved** for publication.
6. The minutes of the RemCo meeting held on 10 June 2021 were **approved** for accuracy and **approved** for publication.

**ACTION: Board Secretary to publish the minutes of the OLC Board meeting held on 1 July 2021, the ARAC meetings held on 6 May 2021 and 1 July 2021 and the RemCo meeting held on 10 June 2021.**

### **Item 3 – Matters arising and outstanding actions from previous meetings**

7. The Board ratified the following decisions made out of committee:
  - A decision made in July by the OLC Chair and ARAC Chair to approve minor adjustments to the 2020/21 accounts. This decision was made in line with delegated authority provided by the Board at the July Board meeting.
  - A decision made out of committee by five of the six Board Members, in July to approve the Risk Policy.
  - A decision made out of committee by all 8 Members of the Board in August to approve the appointment of two L1 Ombudsmen.
8. The Board **noted** the update on previous actions. The following key points were made:
  - Action 8 paragraph 44 from the Board meeting on 1 July Board was to be closed. The frequency of RemCo meetings would be considered in discussions on agenda item 13 and any further actions arising from this would be captured separately.
  - Further to action 11 Paragraph 52 from the 1 July Board meeting, the Chief Operating Office **agreed** that dates would be identified for Board Members to shadow Investigators to gain a better understanding the investigative process.

**ACTION: Board Secretary to close action 8, paragraph 44 from the July Board meeting.**

**ACTION: The Chief Operating Office to arrange for dates to be identified for Board Members to shadow Investigators to gain a better understanding of the investigative process.**

### **Item 4 – Executive report**

9. The Chief Ombudsman (CO) reported on meetings with the Challenge and Advisory Group and the Law Society Regulatory Policy Committee which had focussed on performance and progress against the 2021/22 Business Plan and preparation for the mid-year review and 2022/23 Business Plan consultation. The Board's attention was drawn to the following key points:
  - Overall, there had been a clear understanding of the challenges faced by LeO and of the progress made on delivering the 2021/22 Business Plan, particularly in regard to doing more with less and the early resolution activities.
  - It was recognised that further improvement was required, and that radical change would be necessary to ensure that a reduction of the backlog was achieved more quickly than forecast at present.
  - It was recommended that the mid-year review and 2022/23 Business Plan consultation document emphasised the progress that had been made so far.

- Stakeholders had requested wider engagement with the sector regarding the approach to further early resolution activities and its impact on service providers.
  - The Agreed Data Set was now shared widely with stakeholders.
- 10.** The CO reported on the ongoing return to the office pilot and on future ways of working, advising that legal advice on national recruitment had been received and proposals for a managed recruitment service were being progressed.
- 11.** Having sought clarity on the rationale for the return to office pilot and any potential implications it may have on productivity and staff well-being, the Board was advised that:
- Insufficient numbers of staff had returned to the office on a voluntary basis earlier in the year, consequently the Executive had been unable to collect sufficient data to inform it's thinking on future ways of working.
  - To obtain the data required, it had been necessary to change the parameters of the pilot and request that all staff attend the office for 40% of their working week; this was in line with working practices in other similar organisations, including the MoJ.
  - This was a change to pre-Covid requirements when staff had been required to attend the office for 60% of their time.
  - Consideration had been given to the impact on productivity and staff well-being. The Executive recognised that performance for some staff had improved whilst working from home, but for others it had dipped and 25% of Investigators were now on performance improvement plans. Additionally, by December 40% of Investigators would be new in role. Having considered this, the Executive had felt that this working model struck the right balance between bringing people into the office for coaching, development and peer support, whilst also allowing staff the autonomy to work from home.
  - LeO's approach to hybrid working would be further considered once the pilot had concluded.
- 12.** The Board was keen to understand the extent to which Line Managers had been upskilled to support and manage hybrid working and whether there was scope for further improvements in staff communications to ensure that the rationale for returning to the office was fully understood. In response, the Chief Operating Officer (COO) reported on:
- Workshops attended by Line Managers aimed at supporting them and providing the skills required to respond to staff concerns about returning to the office.
  - Communications to staff from the Executive and wider management about why staff were being asked to return to the office.
  - Engagement that had taken place with the top performing Investigators to explain why they were being asked to attend the office and to help them understand the important role they would play in supporting their peers to improve performance.
  - Externally facilitated online well-being sessions for all staff to support them with mental health issues, anxiety and stress.
- 13.** It was suggested that well-being sessions could take place face to face in the office to encourage staff attendance.

14. The COO reported on the impact of improved recruitment practices and how some of July's new starters were now outperforming longer serving colleagues in similar roles. Further work to develop and improve leadership skills was taking place.
15. In response to comments from the Board, the Deputy Chief Ombudsman (DCO) reported on resourcing issues and constraints within the Service Improvement, Quality and Legal Teams, advising the Board that:
  - Following a period of Covid related absence, the Service Complaints Team was fully resourced again; service complaints were being progressed and the backlog was being addressed.
  - Despite the ongoing resource and recruitment challenges within the Quality Team, quality assurance work continued to be undertaken. There were no issues to report regarding the quality of work being achieved.
  - Active steps were being taken to recruit a Legal Manager and ensure sufficient legal cover in the intervening period.
16. Concerns had been raised about the increased stakeholder engagement and scrutiny and the impact this has had. This may also arise from the Agreed Data Set being shared more widely. In response, the CO reported that the significant investment in stakeholder engagement had led to an increased confidence amongst stakeholders who appreciated the candid and transparent approach being taken. Whilst this was a challenge to resource it was important to the rebuilding of confidence in the Legal Ombudsman.
17. The Board **noted** the Executive report.

### **Item 5 – Finance report**

18. Reflecting on the underspend reported in the Finance paper, the Board sought clarity on:
  - The requirement for any underspend at year end to be paid back.
  - The scope to redirect some of the underspend to accelerate improvements in other priority areas.
  - The scope to enhance staff reward and recognition in acknowledgment of the additional duties that some staff were undertaking above their substantive roles.
19. In response, the Head of Finance confirmed there was no requirement to return the underspend at the end of the financial year; this was because the OLC's funding was collected in arrears at year end and so any funding collected for 2021/22 would be adjusted to reflect the final underspend position.
20. The Board was advised that the current executive and corporate underspend was already being redirected to support specific improvement work. In discussion, it was suggested that the underspend could be further utilised to support additional work on robotic processing and to progress national recruitment, which would ultimately improve performance and impact positively on customer experience.
21. In discussion, some Board members urged caution on redirecting funds to other areas, stating that they would want assurance on the parameters for virement before this was done.

22. Responding to the Board members' concerns, the CO indicated that he was clear that to satisfy the original purpose of the increased budget provided to the OLC for 2021/22, any substantial redirected funds would have to directly link to performance improvement. The CO also clarified that before there could be any significant and substantial change in the use of the OLC's 2021/22 budget it would be necessary to engage with LSB and MOJ. That was not what was being proposed and investment in improvements in corporate areas were being offset by savings being realised in the corporate support budget overall. Where there was no major departure from the intended purpose of the budget, the CO would be comfortable to redirect the underspend to other areas of the business to accelerate performance improvement.
23. The COO reported on how the 2021/22 Celebrating Success Scheme would be used to reward, recognise and incentivise staff. The 2021/22 Scheme had a wider scope than previous years and it was expected that more staff would benefit.
24. Considering this, Board members felt that in addition to the Celebrating Success Scheme, LeO could have a strong case for offering an enhanced pay award to incentivise those staff undertaking duties over and above their substantive roles in recognition of their commitment.
25. The Board **noted** the finance report.

#### **Item 6 – ARAC update**

26. The ARAC Chair reported on discussions that had taken place at the ARAC meeting on 6 October 2021, the following key points were made:
- Significant improvements had been seen in the Risk Assurance Review papers. Detailed discussions had taken place on key risk areas including strategic risks, acceptable risk appetite, strategic risk mitigations, residual risk targets and ratings, risk culture and horizon scanning.
  - Improvements had been made on embedding risk culture across the organisation; further improvement work was planned.
  - The audit of Business Continuity had received a substantive audit rating.
  - The audit on Recruitment had been rescheduled to Q3 at the request of Auditors.
  - The Management Letter in respect of the audit of 2020/21 Financial Statements had incorporated updates on the recommendations made following the 2019/20 audit. There had been no new recommendations made and Auditors had been satisfied with the progress made on addressing the recommendations from 2019/20 audit. The Executive would be preparing the response to 2020/21 Management Letter.
  - Papers on Financial Governance and Budget Setting Assurance had been received and discussions had taken place on utilising the underspend.
  - Papers had also been received on Cyber Security and Information Rights and Security Incidents. No serious issues had been reported and the Committee had been satisfied with the measures in place to mitigate risks in these areas.
  - ARAC had agreed to defer its self-effectiveness review so that it was aligned to a wider, external review of Board effectiveness taking place in March 2022.

27. Committee members commented on the positive improvements that had been made to the tenor of ARAC meetings and the positive improvements that had been made more widely across the organisation. It was recommended that the Board and Executive capitalised on these positive messages in all interactions with staff and stakeholders.
28. The Board **noted** the update on the ARAC meeting held on 6 October 2021.

### **Item 7 – People and Performance**

29. Having sought clarity on whether early case closures were being captured in performance data, the Board was advised that, following a recommendation from the Performance and Quality Task and Finish Group, early case closures were now being captured in performance trajectories and had been referenced in the Business Plan Consultation document.
30. The Executive confirmed that an action plan was in place to assess the potential ramifications of capturing this information; key stakeholders would be informed of any issues accordingly. It was recognised that the potential ramifications of capturing early case closures in performance data would need to be balanced against closure targets not being achieved.
31. Concerns were raised about the high rate of attrition amongst Investigators, and the Executive was encouraged to consider making radical changes to the role to make it more attractive and to encourage retention.
32. Recognising that there were issues relating to recruitment and retention more widely across the organisation, the Board commented on the need for an attractive employee offering and a clear attraction and retention strategy.
33. It was suggested that the Executive, in line with accepted practices at the MoJ and in Government, should have the scope to take pro-active steps to encourage the retention of key staff who were at risk of leaving the organisation for more attractive employment offers elsewhere.
34. In response to the points made, the Executive:
- Acknowledged the need for an attraction and retention strategy and for improvements to be made to LeO's employee offering to ensure that it was both competitive and attractive in order to recruit and retain staff.
  - Reported on a new General Enquiry Investigator (GETi) role that was being piloted. This new role had split the Investigator role and had been developed in recognition of the need to make the role more attractive and to encourage staff retention. Considering that similar local organisations were offering significantly higher salaries for investigative roles, it was recognised that more needed to be done to make LeO's investigator role more attractive.
  - Reported on meetings taking place with the MoJ to identify what action LeO could take, within the parameters of its governance framework, to actively encourage the retention of key staff.
35. A discussion took place about the increase in demand that had been reported in the Performance Report. Considering this, and the implications of an increase in tier one complaints, the Board had felt that there should be a greater emphasis on demand in the Budget and Business Plan Consultation document.

36. The Board **noted** the update on People and Performance.

### **Item 8 – Reducing the backlog**

37. The Board considered a paper listing a range of improvement activities and improved ways of working aimed at reducing the Pre-Assessment Pool (PAP). Of these improvement activities, the Board had been keen to understand which were the most radical in terms of business process; how new activities were identified and prioritised; how dynamic the activities were, and how they would be qualified in terms of their benefits.

38. In response, the Board was advised that:

- Overall, the current improvement activities should be considered more as an an adaption or enhancement of existing activities.
- More radical activities, such as changes to the Scheme Rules, were being considered.
- The Executive's willingness and approach to considering different ways of working was radical; this was enabling better informed decisions about improvements that would reduce the PAP and improve the customer experience.
- The performance improvement activities listed in the Board paper were not an exhaustive list; other activities had been identified and would be considered for testing in due course.
- Considering the limited resource, it had not been possible to test all activities at the same time. Activities that were likely to have the greatest impact were being prioritised. These were being tested on a small scale to determine their feasibility before moving to larger scale testing and piloting. Those activities found to be viable were then progressed to business as usual.
- The improvement activities had mainly been identified by staff through the Ideas Station.

39. The Board was advised that the quantifiable 'below the line' activities had been included in the two-year trajectory. Each of these activities were being individually tracked to determine its impact on performance improvement.

40. Board members were invited to add their performance improvement ideas to the Ideas Station.

41. In discussion about staff returning to work from the office, the COO reported on the expected benefit of improved collaborative working and the impact this would have on addressing performance variation amongst operational staff. The Board commented on how quantifying this benefit might help staff to better understand the rationale for being asked to return to work from the office.

42. In response to a questions raised, the Board was advised of the constitution of operational teams, the network in place to support new operational staff and the Grad Bay approach currently being trialled.

43. Board **noted** the update on reducing the backlog.



## **Item 9 – The case for changing the Scheme Rules**

- 44.** The Board considered a paper setting out the approach to changing the Scheme Rules, which highlighted the significant appetite from the MoJ and LSB for the changes and the LSB's commitment to expedite the process for consultation.
- 45.** In discussion, Board members commented on the need for the Board to assure itself that any changes to the Scheme Rules would not adversely affect the quality of case handling; that complaints would not be unnecessarily rejected; that access to the Scheme would not be limited, and that customers would not be disadvantaged as a result of any of the changes.
- 46.** In response to questions raised, the Deputy Chief Ombudsman:
- Outlined the process for the consultation on the Scheme Rules changes, the time constraints and the process for legislative changes, advising that it was proposed that the consultation took place in Q4 with a view to the changes being implemented by the end of Q1 or early in Q2 on 2022/23.
  - Confirmed that Equality Impact Assessments would be undertaken before any changes were made to the Scheme Rules.
  - Explained the rationale for the more proportionate approach being considered to the resolution of complaints.
  - Explained that many of the changes being proposed were associated with improving the interpretation of the Scheme Rules, to ensure greater clarity on the process.
  - Confirmed that Ombudsmen would still be involved in the process of resolving complaints. Ombudsman involvement would ensure that appropriate checks and balances were in place to maintain that standard of complaint handling.
  - Confirmed that staff guidance would be updated to reflect any changes made to the Scheme Rules and training would be provided.
- 47.** In a detailed discussion, the following points were raised by the Board:
- Consider setting out in the consultation document the performance improvement expected without changes being made to the Scheme Rules and the improvement that could be expected once the Scheme Rules had been changed.
  - Consider whether service providers should be asked to pay compensation to complainants for any delays caused by multiple challenges to decisions made by the Ombudsmen.
  - Consider having a 'complaint window,' when complaints could be taken in at various times throughout the year.
  - It was suggested that other Ombudsman Schemes may have a lower percentage of cases being determined by Ombudsman decision because they were better at helping customers to understand the reasons why a decision was not made in their favour.
  - Consider bringing in external resource to expedite the work required to deliver the Scheme Rules changes and engage with Stakeholders.



- The Board sought clarity on the rationale for early stakeholder engagement prior to consultation and sought to ensure that any such engagement would be in the best interests of complainants.
- Significant questions were raised about the proposal to remove the right to request an Ombudsman's decision and it was suggested that consideration should be given to delegating the Ombudsman's powers to other staff. The Board commented on how important it would be to ensure that any such changes were properly communicated and understood by customers.

- 48.** In response to some of the points made, the Deputy Chief Ombudsman explained that LeO did not have powers to penalise service providers for any delays caused by multiple challenges during the process, but did have powers to make referrals to the regulators if required; confirmed that work was being undertaken to improve communications with a view to better explaining the reasons for the case decisions that were made, and confirmed that consideration was being given to bringing in external resource to support the work on changing the Scheme Rules.
- 49.** Overall, there had been a high level of support for the Executive's approach to changing the Scheme Rules, with a clear message from the Board that further consideration should be given to the positioning and balancing of messages before any external engagement commenced and that further consideration should be given to the proposal to make changes to the right to request an Ombudsman's decision.
- 50.** The Board **approved** the Executive's plan to progress with the proposed approach to changes to the Scheme Rules, subject to further consideration of the points raised on external engagement and the right to request an Ombudsman's decision.
- 51.** In terms of next steps, the Board was advised that stakeholder engagement plan would be drawn up with a view to commencing engagement in November. The Board would be kept informed of stakeholder feedback on a regular basis.

### **Item 10 – 2021/22 Mid-year review and 2022/23 Budget and Business Plan**

- 52.** The Board had an extensive discussion on the consultation document. Recognising that at the previous Board meeting discussions had focused on the mid-year review element, the Board spent time on discussing 'Plan A Plus'. In drawing together reflections from discussions on previous agenda items, the Board suggested that the consultation document might draw out:
- The importance of the multi-year timescale and how it was still important for delivering the Plan A Plus timescale.
  - The importance of external validation and the consultation responses.
  - The positive progress that had been made so far, emphasising and making enough of the positives.
  - The willingness to respond to the Challenge and Advisory Group and 'do something radical'.
  - The clear distinction between the rest of 2021/22 and 2022/23.
- 53.** Reflecting on the overall narrative for the consultation document, the Board commented that:

- An overarching statement about the importance of Ombudsman should be included.
- The main problem faced by LeO had been the shortfall of people.
- Despite very difficult times, progress had been made. The OLC / LeO had listened and learned, had been open and transparent, and recognised that more still needed to be done.
- More time was now required to do more and to make the difference needed – deliver Plan A Plus and increase confidence levels.

**54.** In considering Plan A Plus proposals the Board noted:

- The importance of recognising that Plan A was working, but that it was not delivering change quickly enough. Therefore, there needed to be something else to make the year end position at 2022/23 and 2023/4 acceptable.
- That demand management was necessary, and that it would be important to consider what workload was coming into the organisation. The impact of any changes would need to be understood and there should not be any changes that made it more difficult to complain. The Board expected LeO to actively seek feedback from consumer organisations and satisfy itself that the appropriate checks and balances have been established.
- There was support for Scheme Rule changes and a desire to make the Rules more workable. Further assurance would be required to ensure that any changes would not adversely affect the quality of the case outcomes.
- That the national recruitment and the hub model clearly fitted within a broader workforce strategy; this strategy should include a refreshed approach to retention and attraction where EDI was fully integrated within this.

**55.** The Board identified the following areas that the consultation document should also address:

- A clear narrative around the underspend and why this won't be there in 2022/23.
- Clarity around when a step change in performance would be delivered and what this would mean for customers.
- The presentation of budget options.
- Clarify that section two was providing a revised trajectory before the implementation of Plan A Plus.
- The importance of including a revised trajectory for Plan A Plus that takes full account of recording what was currently seen as 'below the line' activity.
- The challenges faced by the organisation.
- A clear focus on the impact of the changes on complainants and service providers.

**56.** The Board considered confidence levels in the consultation document and received an update from the Performance and Quality Task and Finish Group, the following points were emphasised:

- Assumptions had been reset.

- Getting up to the right staffing numbers was a critical factor.
- The model was more dynamic and therefore not as static as it once had been.
- The model did not yet include the expected impact of the 'below the line' activity, but work was on going to include this.

**57.** The Board **agreed** to delegate further consideration of the consultation document to a subset of the Board with the OLC Chair to complete the final sign off. It was **agreed** that a final version of the consultation document would be circulated to the Board in advance of being shared with stakeholders.

**ACTION: The OLC Chair and a sub-set of the Board to complete the final sign off of the consultation document.**

**ACTION: The OLC Chair to circulate the final version of the consultation document to Board members.**

**58.** The Board **agreed** that the draft version of the budget acceptance criteria would be reviewed by the OLC Chair and that more detailed consideration would be given by the full Board to the final version.

**ACTION: The OLC Chair to review the draft version of the budget acceptance criteria before a more detailed review of the final version was undertaken by the full Board.**

#### **Item 11 – Updated governance documents**

**59.** In line with recommendations made by GIAA following the audit of Corporate Governance, the Executive carried out a review of key organisational governance documentation. Updates were made to the following documents:

- OLC Operating Framework
- OLC Rules of Procedure
- Category 2 Publications Committee Terms of Reference

**60.** Additionally, the Scheme of Financial Delegations was updated to reflect changes to the approval of purchase orders and new contracts.

**61.** The Executive confirmed that the changes made to these governance documents satisfied the recommendations made by GIAA.

**62.** The Board **noted** the updates that had been made to the governance documents and, subject to a further update to the OLC Operating Framework to remove reference to Claims Management, **approved** the revised governance documents for publication.

**ACTION: The Deputy Chief Ombudsman to update the OLC Operating Framework.**

**ACTION: The Board Secretary to arrange for the updated OLC Operating Framework, the OLC Rules of Procedure, the Category 1 Publications Committee Terms of Reference and the Scheme of Delegations to be published.**

### **Item 12 – Quarterly transparency publications**

- 63.** The Board **approved** a report on Board Member and Senior Manager expenses covering the period 1 January to 31 March 2020 for publication. The Board was reminded that the information required to collate this report had been held securely in the office during the pandemic and it had therefore not been possible to present this report until staff had begun to access the office.
- 64.** The Board **approved** the Q2 report on the Board Member Register of Interests for publication, subject to the addition of two further entries to be added to the register for Dale Simon and Elisabeth Bellamy.
- 65.** The Board **approved** the Q2 report on the Ombudsman and Senior Manager Register of Interests for publication.

**ACTION: The Board Secretary to update the Board Member Register of Interests and publish the transparency publication reports.**

### **Item 13 – Update on Board effectiveness**

- 66.** The Board **noted** a report providing an update on Board effectiveness and **approved**, subject to the correction of a minor typographical error, the revised RemCo Terms of Reference.

**ACTION: The Board Secretary to correct a typographical error and arrange to publish the revised RemCo Terms of Reference.**

### **Item 14 – Board Paper Redactions and Non-Disclosure report**

- 67.** The Board reviewed a paper setting out the redactions and items for non-disclosure proposed in respect of the October Board papers.
- 68.** The Board **approved** the items identified for redaction and non-disclosure.

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

### **Item 15 – Board Effectiveness**

- 69.** In line with the Board's commitment to improving Board effectiveness, Martin Spencer reflected on the meeting and made the following points:
- The papers for the October Board meeting had been structured well. The Executive report had been written well and had set the tone for all other papers and discussions that had taken place at the meeting.
  - The discussion on reducing the backlog was most useful as it had outlined the pipeline of improvement activities and how they were being tested and translated into business as usual.

- It would have been better to have articulated the Business Plan before setting out the consultation paper, but the pace and timescales that the organisation was working to had prevented this happening on this occasion.
- It was suggested that a joint Christmas social event for members of the Board and Executive was arranged.

#### **Item 16 – Any other business**

**70.** There was no other business.