

<i>Meeting</i>	OLC Board Meeting	<i>Agenda Item No. Paper No.</i>	4 106.3
<i>Date of meeting</i>	27 July 2020	<i>Time required</i>	15 Minutes

<i>Title</i>	Executive Report
<i>Sponsor</i>	Rebecca Marsh, Chief Ombudsman
<i>Status</i>	OFFICIAL
<i>For:</i>	Members and those in attendance

Executive summary

This paper is in two sections, updating Board on the Chief Ombudsman's view of progress and risks since last Board and the senior recruitment and risk following on from last month's Board meeting.

The performance report later on the agenda will reference the discovery work that the interim leader has undertaken and the risks associated with what she has found. It will also draw attention to the fact that we have a growing issue at first contact, which is a risk, as it has long term impacts if left unchecked.

Overall, there have been some small positives in relation to performance, most particularly in the new starters coming on stream at a faster rate than expected and a slight overall increase in output in month, but the business carries significant risk in relation to the efficacy of Operational line management and this risk also impacts on the nature and timing of any improvement interventions and the prioritisation of the people plan. The improvement in engagement is fragile and will be easily lost if staff are not taken on any change journey effectively.

Melanie Whitfield, our additional strategic HR support, commenced work on 16th July and identified a need to focus and reassess the People Plan delivery in light of the skills and capability issues identified in Operations and the current business priorities in light of Covid.

The work on governance is progressing, but we are still awaiting the MoJ support on risk and finance, which is slowing the work in both areas. Resourcing is the biggest challenge in taking forward the governance and risk work.

On finance and financial control, we have made progress on the areas in the internal audits, but necessary recruitment to the finance team and the acquisition of improved IT mean the benefits will take time to flow through. Work done on the budgetary position for this year has identified poor practice in the original budget setting and in addition have a need to address both the additional costs of the recruitment and the need for Q2 spend to support performance improvements and people plan delivery. The forecast overspend will thus need to be brought back in the latter 6 months and so re-profiling will be done to report to Sept Board and ARAC.

Recommendation/action required

Board is asked to **AGREE** the recommendations on the senior recruitment risks and **NOTE** the position on the areas of key risk in the organisation

Executive report

1. Risks and issues

The Board will address the question of strategic risks at its autumn meetings, but it is the view of the Executive that they are captured as:

- Confidence in the Ombudsman's service. This potentially impacts access to justice and redress and flows from the poor delivery
- Confidence in the governance and control of the business. This, when combined with the above restricts our likely access to budget and resource
- Demand for the service, especially in light of COVID. Historically the lag between first tier and LeO allows this to be visible and planned for, but current conditions and changes to the sector, in both shape and structure, as well as recession, mean this is potentially much more volatile and unpredictable for the coming year.

These translate into five key risks for the business on a day to day basis that we have discussed in previous papers and the annual report:

- Delivery, including performance and people
- Governance and Risk management capability
- Finance and financial control
- Reputation and confidence of key stakeholders (and resultant external commentary)
- Succession and senior leadership skills and capacity.

The work on the last of these has begun with the senior leadership restructure, which also begins to address the other four, but this restructure, in particular the need to recruit a new CO and COO is still a matter of considerable risk to the business. I will return to this later in my report.

Mariette Hughes has taken up role, since the last Board, as an interim Director of Operations, as well as continuing to oversee key components of her role as Head of Impact. The Board will hear from Mariette later on the agenda, but there are two clear issues for members and a need to balance the risks they present – our delivery risk in terms of the increase in the pre-assessment pool, particularly with delivery output remaining below incoming demand and our people risk, with some fragile improvement in engagement. There is a clear need to address the first with some active interventions, but some precursor activity to any change is needed in the way in which we are managing and supporting staff. It is crucial that we manage any changes not just in a way that the wider stakeholders can support, but that staff do not feel is yet again a change done without consideration or engagement.

Having seen the issues surfaced by Mariette not yet three weeks into her temporary role, it is clear that there is an urgent need to improve the management and support provided and an opportunity to see a corresponding uplift in

performance, as well as preparing the organisation for any improvement initiatives to be undertaken in the autumn. With the impact of caring responsibilities through the summer, the delivery resource will continue to be reduced and until some basic issues have been addressed, the business will not have sustained success in delivering any improvement initiatives as all delivery relies on ongoing effective line management and support.

This is of real concern as it is further exacerbated by the capacity and capability in HR. Risks to effective delivery of the People Plan will be explored by members later on this agenda. Melanie Whitfield, who undertook the Independent Review, joined us this month and has begun working with Marcus and the senior team, but has already identified the gap between business need and HR support in this area.

On governance and risk, I have seen real progress this month. The Head of Governance and Strategy has begun to reshape the support team, with up-skilled resource on risk management being recruited, and the work on business planning, robust reporting and governance infrastructure commenced, some of which will be discussed as part of the Budget Learning review. The business case for additional support was with MoJ procurement but is delayed, which affecting the timetable on the risk and finance progression.

Development of the finance function is underway and I am pleased with the new Head of Finance work to date, which has demonstrated a level of grip and understanding we have been lacking. However, it will take time for all the issues to be addressed and I will continue to work closely with him on driving these forwards.

However, this brings me to the final significant issue for members. As was flagged previously, the senior restructure and underpinning resource requirements brought a level of budgetary risk on the standstill budget, now exacerbated by the recruitment costs for the CO and COO roles. There has also emerged a need for further resource in HR to protect the delivery of the People Plan, which together will require adjustment to budgets and spend, to ensure the organisation comes in on budget by year end. The Head of Finance and I will be addressing this with the business over the coming weeks and a re-profiled budget, reflecting those changes will come to September Board.

2. Senior restructure and recruitment – progress and risks

The revised structure went live at 1 July and the team's focus is already providing insight and structure to addressing the organisational challenges. However, as referred to above, these remain key risks for the organisation until the senior team are fully resourced and up to capacity.

At June's Board meeting I highlighted two specific sets of risks around the restructure of the Leadership Team and the transition to the new Chief Ombudsman and new Chief Operating Officer:

1. Temporary adjustments to roles/additions to the senior team to ensure it can deliver its purpose both before the current Chief Ombudsman leaves and in

advance of the new Chief Ombudsman and Chief Operating Officer being in place.

2. Plans that need to be considered to address the risk of the gap between the current Chief Ombudsman departing and the new Chief Ombudsman and Chief Operating Officer starting.

The first category, covered in my Executive Update from June, looks at risks in relation to: Delivery, including performance and people; governance and risk; finance; confidence and reputation. Plans that have been put in place include strengthening line management of the Operations Managers to support performance, bringing in additional HR support to protect delivery of the People Plan and seeking MoJ authorisation to strengthen the risk management function.

The second category is about recognising the gap period that will exist before the new appointees join the organisation. Appointments will be made in the first half of September. Given notice periods it is likely that the appointees will join between January and March 2021. In addition to creating functional gaps a formally designated Ombudsman along with a formally designated Accounting Officer will be required during the 'gap period'. At the Board meeting a number of options were identified and it was agreed the OLC Chair and the Chief Ombudsman would review these options before coming back to the Board in July. This section of my report is therefore the outcome of that review.

The options table in Appendix 1 has been designed to specifically consider the risks posed by the gap period, namely the period after the current Chief Ombudsman (who is the formally designated Ombudsman and Accounting Officer) leaves in September from the point at which the permanent Chief Operating Officer or Chief Ombudsman starts (NB. The recruitment process marginally prioritises the appointment of the Chief Operating Officer over the Chief Ombudsman and so it is likely that the COO will start before the CO).

Three particular risks have been identified for the gap period:

1. Delivery of the Chief Ombudsman role – both functional and designated.
2. Delivery of the Accounting Officer role – both functional and designated.
3. Delivery of the balance of Chief Operating Officer functions, currently absorbed by CO, and of formal line management and Chair of the Executive Team

The Board is asked to agree the following recommendations in relation to 1 and 2, the detail rationale is as covered in Appendix 1:

Recommendation 1: The Board is asked to note the solution for functional delivery of Ombudsman function; the Board is asked to approve a recommendation that the permanent Head of Impact is the formally designated Chief Ombudsman until the permanent Chief Ombudsman formally starts in post.

Recommendation 2: The Board is asked to note the solution for functional delivery of the Accounting Officer function; the Board is asked note that the

MoJ will feedback formally at the Board meeting with its views on the preferred solution for the designated Accounting Officer role, having reviewed the range of options.

In relation to risk 3, the executive team line management, and delivering those elements of the COO role not covered by the interim arrangements already in place, will be significantly different depending on the recruitment timescales and in particular the longer the period between the existing CO leaving and the new CO arriving. A very different risk profile is implied for a 0-3 months gap than a 3-6 months gap.

The recruitment timescales will allow us to get a real sense of the likely availability of candidates at the shortlisting point and when the likely extent and nature of the gap will become much clearer. This is at the end of August and as such whilst some of the options are rehearsed in the table in the Appendix, Board is strongly recommended to wait till the shortlisting point before taking a view on the appropriate actions. This should provide sufficient time for me to enact that preference before my last day in the office.

Recommendation 3 : The Board is asked to note the options outlined in the table and to delegate to RemCo and the OLC Chair a decision on the best option either in August or at its meeting in early September.

APPENDIX 1:

Delivery of the Chief Ombudsman role	Solution or option	Risk period 1: From CO leaving to COO beginning Risk period 2: From CO leaving to CO beginning	Advantages and disadvantages	Risk level and assessment
Chief Ombudsman <u>functional</u> delivery: Solution	All CO functions, excluding formal consent for the appointment of Ombudsman and the preparation of the Chief's report to the OLC Board for the annual report and accounts, have been formally delegated to the Deputy Ombudsman from 1 st July.	Deputy Ombudsman continues to fulfil functions until CO formally starts.	Experienced Deputy, who is able to fulfil the requirements of the Ombudsman role, including to authorise high remedy amounts and to propose to the Board any Category 1 publications (ie 'naming and shaming').	Low; working on the basis that the new Chief Ombudsman will be in post by 1 April 2021.
Chief Ombudsman <u>designated</u> delivery: Option 1	Deputy Ombudsman is designated as the Chief Ombudsman.	Deputy Ombudsman is the designated CO until CO formally starts.	Legal background of Deputy Ombudsman precludes this, as per the Act.	N/A
Chief Ombudsman <u>designated</u> delivery: Option 2	A Head Ombudsman is designated as the Chief Ombudsman - the Head of Impact	The Head Ombudsman – Head of Impact is the designated CO until CO formally starts.	No additional cost to organisation or increase in workload from the two non-delegated functions – no report required until April 21, and the individual would already be authoring any request for Ombudsman appointments or dismissals. The individual is known and respected within the stakeholder community and would not create undue concern.	Low; working on the basis that the new Chief Ombudsman will be in post by 1 April 2021.

			The legal background of the Head of Governance also precludes them (ie limiting any alternative).	
Chief Ombudsman <u>designated</u> delivery: Option 3	A remote CO on a zero hours contract is designated as the Chief Ombudsman.	Designated until CO starts.	<p>The rules do not require the designated CO to be a full time employee but rather to be 'appointed' as CO by the Board on such terms as the Board wishes. In practice it is therefore possible to have a remote CO on a zero hours contract, as long as the delegations are in place and provided the functions entirely reserved to the CO (appointment of other Ombudsman; preparing an annual report) are not required during the time period of cover.</p> <p>Higher risk option, in that the individual would likely be less experienced in LeO, not known to the sector and have personal responsibilities that may result in them seeking a higher level of involvement in the casework than is in practice necessary.</p> <p>There would be a cost, as there would need to be a retainer and any additional hours seeking assurance would have a related cost.</p>	Medium overall
Chief Ombudsman <u>designated</u> delivery: Option 4	A non-executive OLC board member/OLC Chair is designated as the Chief Ombudsman.	Designated until CO starts.	This is a high risk and non-viable option, going against the requirement of the Chief Ombudsman to have real and perceived independence in their decision-making on cases.	High

			The executive and non-executive accountabilities would become confused.	
--	--	--	---	--

Recommendation 1: The Board is asked to note the solution for functional delivery of Ombudsman function; the Board is asked to approve a recommendation that the permanent Head of Impact is the formally designated Chief Ombudsman until the permanent Chief Ombudsman formally starts in post.

Delivery of the Accounting Officer role	Solution or option	Risk period 1: From CO leaving to COO beginning Risk period 2: From CO leaving to CO beginning	Advantages and disadvantages	Risk level and assessment
Accounting Officer functional delivery: Solution	Executive Team deliver the oversight and assurance function, as well as being the decision making body for the organisation, with a particular focus on the Head of Governance and their assurance role. The oversight of ARAC will also be an important line of defence.	Executive Team continue to deliver functions until new CO in place. Could be greater role for COO if they start before the CO and depending on their experience and skillset	Newness of Executive Team and Management Team will focus the requirements of the Head of Governance to liaise well with the Board, ARAC and the MoJ in overseeing delivery of the assurance function. It is important to recognise change of Chair of ARAC over the early part of this period although the new Chair should be appointed by the end of September. The addition of the COO to the Team, on their arrival will enhance the effectiveness of the team further, should they arrive before the CO.	Medium overall.

			Any shift of focus from a clear auditable decision making function of the Executive Team to the COO would need to be agreed by Board and the principles supported by the MoJ.	
Accounting Officer designated delivery: Option 1	Existing Executive – Head of Governance - takes on formal responsibility.	Head of Governance would carry out role until new CO formally starts, subject to the experience and start date of the COO.	<p>New to role, although longer standing member of organisation and management team.</p> <p>However, the lack of experience in AO function and the effective removal of the challenge function between AO and Head of Governance, removes a layer of assurance and therefore increases risk.</p> <p>Furthermore, the extent of work required on the Governance agenda, and the fact that the individual is not full time, would place a disproportionate capacity impact on them</p> <p>All of these issues make it unlikely that MoJ would consider it to be a suitable proposition.</p>	High
Accounting Officer designated delivery: Option 2	Existing Executive – Financial Controller - takes on formal responsibility.	Financial Controller would carry out role until new CO formally starts, subject to the experience and start date of the COO.	<p>The lack of time/experience, both in role, at LeO and in AO function.</p> <p>As above, the effective removal of the challenge function between AO and the Financial Controller, removes a layer of assurance and therefore increases risk.</p> <p>Furthermore, the extent of work required on the financial control agenda would place a disproportionate capacity impact</p>	High

			<p>on them, particularly as they are taking on SIRO role.</p> <p>All of these issues make it unlikely that MoJ would consider it to be a suitable proposition.</p>	
<p>Accounting Officer designated delivery: Option 3</p>	<p>Existing Non Executive member of the Board takes on formal responsibility.</p>	<p>Non-Executive member would carry out role until new CO formally starts, subject to the experience and start date of the COO.</p>	<p>Given range of skills and experiences on the Board a suitable candidate could be identified but they may not have the time/capacity/desire to carry out the role (although it is recognised that this is an assurance rather than an operational role).</p> <p>Challenge for non-exec of re-assuming executive/ non-executive boundaries once the permanent CO is in place.</p> <p>Role would need to be clearly defined and consideration given to additional remuneration.</p>	<p>Medium</p>
<p>Accounting Officer designated delivery: Option 4</p>	<p>Existing Non Executive member – OLC Chair - takes on formal responsibility.</p>	<p>OLC Chair would carry out role until new CO formally starts, subject to the experience and start date of the COO.</p>	<p>Mirrors governance structure of other Ombuds schemes (although formal delegation scheme would be in place between Chair and Chief Executive and Chair is frequently the Chief Ombudsman as well and appointed with this skillset in mind).</p> <p>Currently, the AO/Chair accountabilities are seen as overlapping in some areas and on a practical level with the Chair being equally held to account for some AO responsibilities (eg. Reporting back to the Permanent Secretary on financial</p>	<p>Medium, but the longer the time from appointment to arrival of CO will increase the risks of the need to take executive decisions that are reserved to the designated AO.</p>

			<p>governance). The risk of blurring is an existing one and currently being managed. Some of the personal responsibility, it could be argued, is already in practical existence.</p> <p>The Chair has relationships with MoJ that would enable this transition to be effective and to more easily transfer it on to the new CO. However the MoJ is concerned at the subsequent conflicts of interest that would be created between the AO and the Chair of the OLC and how these could be addressed.</p> <p>Risks remain around executive/non-executive boundaries and any requirements for the AO to take decisions that are executive in nature. To manage this the Board delegations framework is being reviewed and such risks could be reduced through an appropriate delegation scheme.</p>	
<p>Accounting Officer designated delivery: Option 5</p>	<p>MoJ asked to assume responsibility for the Accounting Officer role.</p>	<p>MoJ would carry out role until new CO formally starts, subject to the experience and start date of the COO.</p>	<p>This is emerging as the MoJ's preferred option and further information will be shared at the Board meeting by Alison Wedge.</p> <p>It is recognised that this could be perceived as a further act of lack of confidence in the scheme and reflect back to the time of the qualified accounts. The MoJ will address this, being clear that this is a pragmatic and temporary solution reflecting the size of the organisation.</p>	<p>Medium/High, on reputation front and speed of turnaround in particular</p>

			Additional burdens around assurance, with MoJ not experienced in LeO processes. Could impact on whether MoJ could turnaround required decisions within a reasonable timescale. These will need to be fully explored with the MoJ.	
Accounting Officer designated delivery: Option 6	Interim member of staff brought in (eg Interim Chief Operating Officer) takes on formal responsibility.	Either until the COO begins, should they be appropriately experienced, or until CO appointed	<p>This could provide a potential combined solution to this issue and the line management/Chair of the executive Team (see next section).</p> <p>However, it has both cost and effectiveness issues, with the lack of knowledge and experience of LeO, particularly in its current situation, as well as identifying a suitable individual who is available for an undetermined period and the likelihood of such providing the necessary level of confidence to MoJ in the individual for such a key role.</p>	Medium/High

Recommendation 2 : The Board is asked to note the solution for functional delivery of the Accounting Officer function; the Board is asked note that the MoJ will feedback formally at the Board meeting with its views on the preferred solution for the designated Accounting Officer role, having reviewed the range of options.

Delivery of the balance of Chief Operating Officer functions and of formal line management and Chair of the Executive Team	Solution or option	Risk period 1: From CO leaving to COO beginning Risk period 2: From CO leaving to CO beginning	Advantages and disadvantages	Risk level and assessment
Option 1	Interim Chief Operating Officer	Interim could be in place until permanent COO starts	<p>This could help ensure that performance improvement continues to be driven forward, that post COVID-19 responses are maintained and avoids the gap in line management and leadership.</p> <p>However, recruitment to this role would still take time, would retain the challenge of managing constant change –from Head of to interim COO to permanent COO.</p> <p>Interim could only be in place for a small number of months, subject to notice period of permanent candidates.</p> <p>There would be a significant financial cost associated and the risk of lack of continuity, as well as the issues associated with gaining sufficient understanding of the highly complex governance and management environment in the short period to be worth the opportunity cost.</p>	Medium/high
Option 2	Designated AO could take line management of IT and HR and Executive Team.	Designated AO could take line management of IT and HR and	This option is dependent on which AO option is chosen.	Medium

		Executive Team until COO arrives and then transfer all to COO, until CO arrives.	<p>The interim staff member AO carries the same risks as Option 1. If the AO is the OLC Chair then this option risks them being drawn into executive space.</p> <p>However, should the potential time span between CO leaving and COO starting be short, this risk is limited and a hybrid approach may work.</p>	
Option 3	Exec Team Chair rotates.	Existing staff member takes line management of IT, HR and Deputy Ombudsman and AO line manages Executive Team until COO arrives. Exec Team Chair rotates between the three CO line reports. COO then steps in until CO arrives	<p>This option minimises the risk of the AO needing to take executive decisions, unless there is a significant delay in COO arrival.</p> <p>If the three Exec members whose permanent line is to the CO have a clear action plan for the transition period, and that period is less than 3 months, then as the CO does, the 3 could report to the Chair as line manager and the executive team can take the operational decisions, with a rotating Chair.</p>	Low/medium
Option 4	An existing staff member is asked to step up to line manage some or all of the team, within clear defined escalation boundaries.	Existing staff member line manages all until COO arrives. COO line manages all until CO arrives	This is a significant breadth and depth of responsibility, but it is dependent upon the recruitment timeline/notice periods of the new CO/COO, so may in reality be a doable but short term option.	Medium

Recommendation 3: The Board is asked to note the options outlined in the table and to delegate to RemCo and the OLC Chair a decision on the best option either in August or at its meeting in early September.