

Minutes of the 130th Meeting of the Office for Legal Complaints (OLC)

Thursday 14 December 2023

<p>Present : Elisabeth Davies, Chair Martin Spencer Jane Martin Alison Sansome Rachel Cerfontyne Hari Punchihewa</p> <p>Apologies : Patricia Tueje Dale Simon</p> <p>Minutes: Kay Kershaw, Board Governance Manager</p>	<p>In Attendance: Paul McFadden, Chief Ombudsman Steve Pearson, Chief Ombudsman and Head of Complex Cases Blessing Simango, Head of Finance, IT and Procurement Laura Stroppolo, Head of Head of Programme Management and Assurance Debra Wright, Head of Head of People Strategy and Services David Peckham, Head of Operations, Business Transformation and Intelligence Stephanie Godbold, Head of Communication, Engagement and Impact Laura Stockin, Legal Manager (item 5)</p>
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Item 1 – Welcome, Apologies and Declarations of Interest.

1. The Chair welcomed attendees to the meeting.
2. Apologies were noted.
3. The meeting was quorate with a lay majority.
4. LeO employees declared an interest in agenda item 4: Pay and benefits benchmarking. The Board **agreed** that they should remain in attendance for the discussion on this agenda item.
5. There were no other declarations of interest reported.

Item 2 – 2024/25 Draft Budget, Business Plan and 2024/27 Strategy.

6. The Board received a verbal update on the progress being made on the 2024/27 Strategy and the development of the 2024/25 Budget and Business Plan.
7. In discussion, the following key points were made:
 - There had been wide and positive stakeholder engagement on the 2024/25 Budget and Business Plan and 2024/27 Strategy since September 2023; a summary of stakeholder engagement had been included in the Executive Report.
 - Early engagement had confirmed that confidence in LeO had been maintained and that most stakeholders had a clear understanding of the inter-dependencies of the two strategic objectives. Overall, there had been support for LeO’s proposed focus on learning and insight, and a small number of stakeholders had expressed a desire for

focus to be maintained on reducing customer queues as a priority. Other key themes of discussion included trends underlying demand and the potential for collaboration.

- The draft 2024/25 Budget and Business Plan and Budget Acceptance Criteria had been presented at the LSB's Board meeting in November. Discussions had been positive and focussed primarily on the Business Plan, in particular, progress, the implementation of the Scheme Rules changes and demand.
 - The LSB had sought to understand how it could support LeO in engaging with the sector to address issues with first tier complaints handling which might be contributing to the increase in demand – with LeO having responded to LSB's consultation on its own focus on this area - and whether a mid-year budget submission would be required if the increase in demand was sustained.
 - The LSB had subsequently confirmed that no changes would be required to the Budget Acceptance Criteria.
 - The formal period of consultation on the 2024/25 Budget and Business Plan and 2024/27 Strategy would close on 22 December 2023.
 - The consultation responses would be reviewed by the Executive in early January and a paper setting out the high-level consultation responses would be shared with the Board ahead of the January Board meeting.
 - Further engagement may take place with individual stakeholders in the event of any disparity between their early feedback on the Business Plan and their response to the formal consultation to help promote greater alignment.
 - The forecasts and trajectories underpinning the 2024/25 Business Plan would be tested by the Performance Sub-Group in early January ahead of a Budget Setting Assurance paper being presented to ARAC at its meeting in January.
 - The final 2024/25 Budget, Budget Acceptance Criteria, Business Plan and the 2024/27 Strategy would be presented for approval at the January Board meeting.
 - The final 2024/25 Budget application, along with the Budget Acceptance Criteria, will need to be with the LSB by the 27 February 2024 for consideration at its Board meeting on 26 March 2024.
8. The Board **noted** the update on the 2024/25 Budget and Business Plan and 2024/27 Strategy.

Item 3 – Executive Report

9. The Chief Ombudsman (CO) presented the Executive report.
10. The Board's attention was drawn to the high-level results of the 2023 Civil Service People Survey that had been received after the Executive report had been issued. The following points were made:
- It was not mandatory for staff to answer any of the survey questions.
 - Whilst the number of staff responding positively had remained high, and better than 2021, the scores across all themes except Learning and Development and Organisational Purpose and Objectives had fallen back from their improved position in 2022.

- The scores for Discrimination, Bullying and Harassment had dropped the most. Further enquiry of the high-level results showed that the number of respondents indicating a negative or neutral response to these questions were few (between one and ten) but there is no complacency around this.
 - Apart from the scores on Pay and Benchmarking, all scores remained ahead of the scores in 2021.
 - The Executive was exploring the reasons for the reduction in response rates and scores and would share further information with the Board in due course.
11. The Board had been pleased to **note** that attrition had reduced in recent months and sought to understand the reasons for this, questioning whether it had been driven by a reduction in recruitment activity by LeO's competitors or the Executive's mitigating actions. In response, the following points were made:
- Attrition remained a key strategic challenge and, whilst the Executive was cautiously optimistic, it was too early to confirm whether the mitigating actions had driven this reduction in attrition.
 - Exit data confirmed that the profile of operational staff leaving the organisation was changing. The improvements that had been made to the recruitment and onboarding process appeared to be driving a reduction in the number of probationary staff leaving the organisation, but there had been an increase in the number of established staff leaving the organisation for career development and better pay and benefits offered by LeO's competitors.
 - To ensure the accuracy of the performance trajectories underpinning the 2024/25 Business Plan, adjustments had been made to the worst and likely case scenarios for attrition; further adjustments would be made as necessary and subject to the planned discussion with the Performance Sub-Group.
 - The end-to-end review of recruitment would consider what additional improvements could be made to the induction and onboarding process to further mitigate attrition.
 - In January, the Executive would be taking part in a workshop focussing on attrition and what more could be done to mitigate the associated risks.
12. Considering that, in addition to improved pay and benefits, staff were leaving LeO for career progression, it was **recommended** that the Executive considered the scope to develop career pathways and a retentive organisational structure at its attrition workshop.
- ACTION: The Executive to consider the scope to develop career pathways and a retentive organisational structure at its attrition workshop**
13. The Board discussed the progress that had been made on implementing the Scheme Rules changes, **noting** that time limit changes had had the greatest impact so far but, as cases progressed through the investigation process, changes to Scheme Rules 5.7, 5.19 and 5.20 would start to be applied. Criteria were being finalised to ensure that there were clear and consistent grounds to apply Scheme Rules 5.7, 5.19 and 5.20.
14. A further update on the Scheme Rules would be provided for the January Board meeting.
15. The Board had been pleased to **note** that all three audits completed so far as part of the 2023/24 Internal Audit Plan (Management Reporting, Cyber Security and Grievances and

Staff Complaints) had received substantial ratings and that no recommendations had been made following the audits on Cyber Security and Grievances and Staff Complaints.

16. In response to questions, the Board was advised that consideration was being given to the implications of digital technology and Artificial Intelligence (AI) on both the legal sector and LeO. The following key points were drawn to the Board's attention:

- Early engagement with the sector had focussed on the impact of digital technology and AI on first tier complaints handling; the expected timescale for adoption of AI in the sector; and, how AI would be regulated.
- The Executive would be giving consideration to the opportunities and risks associated with AI and digital technology in 2024 to inform the new strategy aims, including how AI and digital technology could be used to improve LeO's business processes and deliver strategic objectives; LeO's policy on the use of AI; and how the risks associated with AI being used in complaints investigated by LeO would be managed.
- The Executive would be liaising with Government Internal Audit Agency (GIAA) as part of the development of its AI policy and the management of AI risks.
- Consideration may be given in the future to developing a business case for additional funding to adopt digital technology if it was required.
- An update on digital technology and AI would be included in future Board reporting.

17. It was **agreed** that consideration would be given to the Board forward plan and future Board discussion of LeO's strategic approach to digital technology and AI in support of the new 2024-27 strategy.

ACTION: The OLC Chair and Chief Ombudsman to give consideration to the Board forward plan and Board discussion on LeO's strategic approach to digital technology and AI once this is developed.

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

Item 4 – RemCo Update

19. The RemCo Chair reported on the RemCo meeting that had taken place on 16 November 2023. The following key points were drawn to the Board's attention:

- Good progress had been made on delivering the People Strategy despite some historic resource issues within the HR Team.
- RemCo had approved changes to the roles, responsibilities and ToR for the Staff Council and the Staff Networks.
- RemCo had received an update on the response rate to the 2023 Civil Service People Survey and had discussed what more could be done to encourage staff to respond to future surveys.
- RemCo had approved the 2023 gender pay gap which showed a positive position for the organisation.

- RemCo had reviewed and approved a new Recruitment, Selection and Promotion Policy, noting that guidance and training on this would be rolled out to managers in due course. This policy had been re-written to provide more structure and rigour to the recruitment process and to ensure good HR and equality practice and compliance with employment legislation.
- RemCo had considered a detailed paper highlighting the findings of an external pay benchmarking exercise and a wider complimentary pay and benefits benchmarking exercise and had recommended that a paper highlighting the key points on this was shared with the Board.

20. The Head of People Strategy and Services presented a paper highlighting the key findings of the external pay benchmarking exercise and the wider pay and benefits benchmarking exercise, drawing the Board's attention to the following key points:

- The external pay benchmarking exercise had been limited by the type of roles and organisations available for comparison within the external database. To obtain a holistic picture, a wider benefits benchmarking exercise had been conducted to directly compare LeO to other Ombudsman and regulatory sector organisations.
- Given these limitations, the pay benchmarking exercise did not reveal on first review any significant areas of concern. Some variance was seen across Corporate roles.
- The wider pay and benefits exercise however had highlighted that LeO was not able to effectively compete with other Ombudsman and regulatory sector organisations in terms of pay and benefits, particularly pensions, contracted working hours, ways of working and annual leave entitlement.
- The findings of the pay and benefits benchmarking exercises had informed aspects of the draft 2024/25 Budget and Business Plan; would provide an evidential base for future discussions with key stakeholders about LeO's pay and benefits; would inform ongoing work to improve LeO's Employee Value Proposition (EVP) in areas that were within LeO's control; and, would inform discussions at the Executive's workshop on attrition.
- An update would be provided to staff in December to explain how LeO intended to use the findings of these pay and benefits benchmarking exercises.

21. The Head of People Strategy and Services reported that a new three-year People Strategy was being developed; this would be aligned to the new 2024/27 OLC Strategy and 2024/25 Business Plan and would be subject to consultation in 2024 before being presented to RemCo for approval. Sitting beneath the new 2024/27 People Strategy would be a clear set of deliverables with time scales set out on a year-by-year basis; these would be monitored by RemCo to monitor progress against the People Strategy.

22. In discussion, it was **agreed** that further consideration would be given to whether regular touchpoints would be required to ensure that the Board was sufficiently sighted on the development of the 2024/27 People Strategy.

ACTION: The RemCo Chair and OLC Chair to consider whether regular touchpoints were required to ensure that the Board was sufficiently sighted on the development of the 2024/27 People Strategy.

23. The Board **noted** the RemCo update.

Item 5 – Annual Legal update and Enforcement Report

24. The Legal Manager presented the Annual Legal Update and Enforcement Report which covered the period 1 November 2022 to 1 November 2023. In discussion, the following points were made:

- In addition to dealing with enforcement and Judicial Review challenges, the Legal Team also provided general legal advice and support to the wider organisation.
- Only Ombudsman’s decisions that were accepted by a complainant were legally binding on the law firm and could be enforced. LeO aimed to enforce all Ombudsman’s decisions where it was appropriate to do so. A complainant was also free to take their own enforcement action if they wished to do so.
- In the period covered by the report, the Chief Ombudsman had made two decisions not to take enforcement action; one decision related to a case where the firm had become insolvent, the other related to a case where the Barrister complained about had died, in both instances the Chief Ombudsman had considered it disproportionate to enforce the decisions considering the individual circumstances.
- Correspondence was issued to the complainant to explain decisions made not to take enforcement action and to inform them that could take their own enforcement action if they wished to do so.
- From a MI reporting perspective, cases were recorded as closed once an Ombudsman’s decision had been made.
- Considering the number of Ombudsman decisions made, LeO received a higher proportion of JR challenges compared to other Ombudsman schemes.
- The number of monthly JR challenges received by LeO had fluctuated throughout the period covered by the report but the total number of challenges remained broadly consistent when compared to the previous year.
- The increased number of JR challenges received from complainants may have been driven by a sign posting fact sheet issued at the end of LeO’s process which aimed to provide clarity to complainants on the options available to them, including JR, if they were dissatisfied with the Ombudsman’s decision. The Board supported this transparent approach whilst urging the Executive to monitor its impact and whether it was generating a disproportionate number of JR challenges from complainants.
- JR challenges at the pre-action stage provided LeO with an opportunity to identify and resolve any issues with the Ombudsman decision or process that had been followed.

25. The Board **noted** the legal update and enforcement report.

Item 6 – Performance Reporting: Mock-up of Integrated Performance Dashboard Reporting

35. The findings of the recent external Board effectiveness review had highlighted the need to move away from the level of operational detail that current Board reporting delivered to enable the Board to have a more strategic focus.

36. The Chief Ombudsman presented a paper on future Board reporting which included a mock-up of a proposed new Chief Ombudsman's Executive report and a proposed new format for performance reporting that incorporated a balanced scorecard and updates on strategic risks and issues and performance indicators. It was intended that the revised format and structure of these reports would minimise any duplication and enable the Board to take a more strategic view of LeO's performance whilst maintaining an appropriate level of assurance.

37. In discussion, the following key points were made:

- The Chief Ombudsman's Executive report would continue to include strategic narrative on areas of relevance and on strategic objectives and progress. This would look to cover aims; enablers; progress updates; issues and risks and would include information on all key matters that fell outside of the balanced scorecard, including matters relating to external reputation, learning, insight and impact.
- There may be scope in the future to enhance the Horizon Scan report to include information on internal and external factors that could influence organisational reputation.
- The quadrants of the balanced scorecard would include narrative on the strategic indicators, including their impact on the organisation and any associated action that was being taken.
- The mock-up of the balanced scorecard included indicators from the existing Agreed Data Set (ADS) top level dashboard. It was recognised that the ADS was not strategic in nature but would continue to be in place until agreed otherwise with the LSB and MOJ. It would be important in future to develop the right strategic indicators in place to ensure that future performance was on track to meet the strategic objectives.
- Considering this, and that the OLC /LeO would soon be entering into a new strategic period, a full review of the strategic indicators underpinning performance, how they were reported and to whom would be undertaken in close consultation with the Board and those with an oversight role of the OLC/LeO.
- It was suggested that: the strategic indicators developed and agreed with LSB and MoJ should be forward looking. Retrospective indicators were likely to focus the Board's attention at an operational level; that narrative should only be provided on any indicators that were outside of tolerance; that the indicators could be reported on an exception basis; and consideration was given to including a box above the balanced scorecard quadrants for additional narrative to provide the Board with a more holistic view of the organisation.
- An interim approach to reporting on strategic indicators would be required until the strategic indicators for the new strategic period had been agreed and all the associated background work to build the data set had been completed; it was estimated that this would be completed in quarter 3 2024/25.
- Future Board reporting would be supported by a written report from the Chairs of the Board Committees and Sub-Group. It was proposed that the update on strategic risks and issues was included as an addendum to the update from the ARAC Chair.

- For assurance purposes, it would be important for the Board to be sighted on all key issues and inter-related aspects of performance, and to receive the same information and as all other stakeholders, including the LSB.

38. Following discussion, the Board broadly **agreed** that the combination of the proposed new structure and format of performance reporting and the strategic narrative to be included in the Chief Ombudsman's Executive report should provide the Board with the right level of information to occupy the strategic space, but to determine its effectiveness and identify any gaps, it was **agreed** that the reports should be trialled and assessed against a set of criteria. The OLC Chair **agreed** to consider what criteria could be used to assess the effectiveness of the new format of performance reporting.

ACTION: The OLC Chair to consider what criteria could be used to assess the effectiveness of the proposed new format of performance reporting.

39. The Executive was asked to include 'cost per person helped' in the balanced score card in addition to 'value for money and unit cost'.

Action: The Executive to reference 'cost per person helped' in the balanced score card.

40. The Board **noted** the update on performance reporting.

Item 7 – Independent Service Complaint Adjudicator Contract

26. The Board considered and **approved** a recommendation set out in a paper relating to the contract of the Independent Service Complaint Adjudicator.
27. In discussion, the Board **noted** that the ongoing review of the service complaint process would take into consideration the appropriate duration for the contract of an Independent Service Complaint Adjudicator.

Item 8 – Annual Review of Governance Documents

28. In line with a recommendation from the 2019/20 Corporate Governance Audit, key governance documents were reviewed and updated on an annual basis by the Executive and presented to the Board for approval.
29. The Executive had reviewed the following governance documents in Q3, taking account of the recommendations made following the external Board Effectiveness Review: OLC Operating Framework; OLC Rules of Procedure; Schedule of Matters Reserved to Board; Scheme of Delegations; Terms of Reference (ToRs) for ARAC, RemCo, the Public Interest Decisions Committee (PIDCo) and the Performance Sub-Group (PSG); and the OLC Governance Framework.
30. In discussion, the following points were made:
- The proposed changes to the governance documents had been marked up in tracked changes.
 - In line with a recommendation from the Board Effectiveness Review, the Matters Reserved to Board and the Scheme of Delegations had been separated into two distinct documents.

- Once approved, the governance documents would be subject to a final proof reading before being published.
- Following consultation with the respective Chairs, the ToRs for the Committees and Sub-Group had been updated to align them in terms of structure, format and terminology.
- The PIDCo would be set up in the new business year 2024/25 and would start to meet once there was a flow of public interest decisions to be made.
- To provide more visibility and assurance on decision making to the full Board on matters discussed by the Committees and Sub-Group, the Board **agreed** that further changes should be made to the ToRs for RemCo, ARAC, PIDCo and PSG to reflect that the respective Chair's would provide succinct written reports to the Board.

ACTION: The Head of Programme Management and Assurance to update the ToRs for RemCo, ARAC, PIDCo and PSG to reflect that the respective Chair's would provide succinct written reports to the Board, instead of verbal updates.

- Considering the frequency of Committee and Sub-Group meetings and that the OLC Chair's annual Board effectiveness review would take into consideration the effectiveness of the Committees and Sub-Group, the Board **agreed** that the ToRs for the Committees and Sub-Group should be updated to reflect that self-effectiveness reviews would be undertaken every two years, rather than every year, with discretion for the Chairs to conduct informal effectiveness reviews in between as deemed necessary.

ACTION: The Head of Programme Management and Assurance to update the ToRs for RemCo, ARAC, PIDCo and PSG to reflect that self-effectiveness reviews would be undertaken every two years, rather than every year, with discretion for the Chairs to conduct informal effectiveness reviews in between as deemed necessary.

- To ensure better alignment, it was suggested that the Chairs of the Committees and Sub-Group should consider meeting on an informal basis ahead of Committee and Sub-Group meetings to discuss any agenda items of common interest.
- It was **agreed** that the Board Governance Manager would ensure that all agendas and papers for Committee and Sub-Group meetings were made available to all Board members.

ACTION: The Board Governance Manager to ensure that all agendas and papers for Committee and Sub-Group meetings were made available to all Board members

- The OLC Chair **agreed** to consider whether it would be possible to share the approved minutes of RemCo meetings with Board members any sooner than they currently were.

ACTION: The OLC Chair to consider whether it would be possible to share the approved minutes of RemCo meetings with Board members any sooner than they currently were.

- In response to questions about the financial delegations, the Board was advised that there was no upper limit to the amount that the Accounting Officer could authorise and that there was no longer a requirement for MoJ authorisation for amounts over £148k.

31. Following discussion, the Board **approved** the changes to the Governance Documents, subject to a final proof reading by the Head of Programme Management and Assurance before they were published on LeO's website.

Item 9 – Previous Minutes; Matters Arising and Previous Actions

32. Board members had attended a pre-Board session with the Co-Chairs of the Women's Network.

33. The minutes of the OLC Board meeting held on 18 October 2023 were **approved** for accuracy and **approved** for publication.

34. The minutes of the RemCo meeting held on 27 March 2023 were **approved** for publication.

ACTION: The Board Governance Manager to arrange for the minutes of the OLC Board meeting held on 18 October 2023 and the minutes of the RemCo meeting held on 27 March 2023 to be published.

35. Board **noted** the update on the actions from previous Board meetings.

36. The Board **ratified** a decision made out of committee by the OLC Chair in line with delegated authority from the Board to approve the 2024/25 Budget and Business Plan and the 2024/27 Strategy for consultation and submission to the LSB.

Item 10 - Board Paper Redactions and Non-Disclosure Report.

37. The Board **noted** and **approved** the items identified for redaction and non-disclosure in the December Board pack.

38. The Board Governance Manager **agreed** to liaise with the Head of People Strategy and Services to ensure that an update on pay and benefits benchmarking had been issued to staff before the December Board paper on Pay and Benefits Benchmarking was published.

ACTION: The Board Governance Manager to seek confirmation from the Head of People Strategy and Services that an update had been issued to staff on pay and benefits benchmarking then arrange for the December Board papers to be published in line with the redactions and items for non-disclosure approved by the Board.

Item 11 – Board Effectiveness

39. Rachel Cerfontyne and Steve Pearson were appointed strategy champions for this meeting and were asked to provide feedback on which session had worked well strategically and why; which paper had been most useful strategically and why; and where there was learning and value in doing things differently in the future to occupy a more strategic space.

40. The following points were made:

- All sessions had been informative and had worked well strategically; the session on Performance Reporting had worked particularly well with a good level of engagement and discussion with a wide variety of contributions on how performance reporting could be improved to ensure that the Board occupied a more strategic space in the future.
- The Executive Report and the paper on Performance Reporting had been the best papers strategically. The Executive Report had provided a helpful holistic view of

the organisation and, subject to testing, the proposed structure and format of future performance reporting should ensure more strategically focussed Board discussions on performance in the future.

- There would be value in reducing the length of executive summaries where it was appropriate to do so and adding a section to Board and Committee papers to highlight key strategic risks and challenges; this would help to reduce the amount of repetition across Board papers and help to ensure that Board discussions were more strategically focused.

41. In discussion, the CO confirmed that reducing executive summaries and highlighting key strategic risks and challenges would be achievable; further consideration would be given to how best to encapsulate this information in Board and Committee papers as part of future Board reporting.

Item12– Any other business

42. The Board Governance Manager reported that planning for the 2025 Board and Committee meeting cycle was ongoing.

43. An end of year message from the Chief Ombudsman and OLC Chair would be issued to staff on Friday 22 December 2023.

44. The OLC Chair thanked members of the Board and Executive for their hard work and support throughout the year and wished them well for the holiday period.