

Minutes of the 131st Meeting of the Office for Legal Complaints (OLC)

Tuesday 30 January 2024

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

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. There were no declarations of interest reported.

Item 2 – Performance Sub-Group Update

5. The Performance Sub-Group (PSG) met on 10 January 2024 to scrutinise and challenge the draft assumptions and trajectories underpinning the 2024/25 Business Plan.
6. Discussions had focussed on changes that had been made to the assumptions for investigator recruitment, investigator productivity, contingency, attrition and demand since the PSG had last met in September 2023. The PSG had been content with all the revised assumptions except those relating to demand.
7. Considering the sustained increase in demand that LeO was experiencing and the impact of Scheme Rules changes, the PSG had asked the Executive to re-consider whether a sufficient level of caution had been applied to the demand assumptions, particularly in terms of the worst-case scenario.
8. Having re-assessed the assumptions, the Executive had **recommended** adjustments to the likely, lower and worst case scenarios for demand and the likely, lower and worst case

scenarios for the number of cases in the Pre- Assessment Pool (PAP) at the end of 2024/25. The rationale for the Executive's recommendations were set out in the PSG update report included in the January Board pack.

9. The Board **noted** the PSG update and confirmed that it was comfortable with the revised assumptions and trajectories underpinning the 2024/25 Business Plan and the assurance that had been provided by the PSG.
10. Board members commented that the new format of written updates from the PSG had been helpful.

Item 3 – ARAC Update Report

11. The ARAC Chair presented a paper reporting on the key points of discussion at the ARAC meeting held on 15 January 2024 and the current position on strategic risks and issues. The following key points were drawn to the Board's attention:
 - There had been a full agenda for discussion and this had been supported by a range of papers and verbal updates from the Executive, Internal and External auditors which had provided assurance to the Committee.
 - There had been significant improvements across all areas of risk, governance and compliance within ARAC's oversight.
 - ARAC had been assured by the substantial audit opinions received in response to the internal audits of Cyber Security and Grievances and Staff Complaints and that no recommendations had been made.
 - ARAC had been satisfied that its Budget Setting Assurance criteria had been met and had been assured by the process followed by the Executive in setting the 2024/25 Budget.
 - ARAC had made a decision to escalate to the Board the static nature of the risk scoring for the strategic risks and issues relating to performance and attrition for further consideration on what more could be done to manage the risks.
12. The Board reflected on its oversight role and ownership of the strategic risks and issues. In discussion, it was suggested that there would be value in receiving a regular Board update on the strategic risks and issues that were outside of tolerance, either as a standalone agenda item or as part of the Chief Ombudsman's report and that this update should be supported by clear and consistent narrative explaining why mitigating actions were not reducing the residual risk rating.
13. Following discussion, the Executive were asked to consider how out of tolerance risks and any other escalated risks would be presented to the Board for consideration in the future.

ACTION: The Executive to consider how the out of tolerance risks and other escalated risks would be presented to the Board in the future.
14. The Board discussed the target risk scores and static risk scoring for the attrition and performance strategic risks and issues; reflected on the implications of the long-standing and deep-rooted factors relating to pay, labour market pressures and increased demand that underpinned them; and questioned what more could be done realistically to manage the target risk scores and static risk scoring for these risks. The following suggestions were made:

- Consider introducing interim risk target scores and risk ranges to demonstrate incremental improvements in those risks that required a longer-term approach to risk management.
 - Consider whether more could be done to reduce the impact of the risks even if the likelihood of them being realised could not be controlled.
 - Consider what more could be done differently in the internal and operating environments to manage the risks that were outside the OLC/LeO's immediate control.
 - Consider whether and how the OLC/LeO should seek to address the risks that were currently outside its immediate control, including whether a 'plan B' was required.
15. Following discussion, the Executive was asked to revisit the risk targets and scoring, taking account of those risks that could not be mitigated against, particularly those relating to long-standing and deep-rooted factors that required a longer term approach to risk management, and report back to the Board accordingly.
- ACTION: The Executive to revisit the risk targets and risk scoring taking account of those risks that could not be mitigated against, particularly those relating to long-standing and deep-rooted factors that required a longer term approach to risk management and report back to the Board accordingly.**
16. The Board **noted** that there would be an opportunity to question strategically and consider alternative approaches to managing the attrition risks at the Board's attrition workshop in February and to consider whether and how LeO might seek to address what was currently outside its immediate control.
17. The ARAC Chair suggested that there would be value in the Board reviewing its risk appetite and recommended the introduction of a risk matrix to improve the link between risk appetite and risk management.
18. The Board **noted** that its risk appetite for 2024/25 would be considered at the Board's annual risk workshop in July 2024, along with the risk target scores, interim target scores and risk ranges.
19. The Board **noted** the assurance provided by ARAC on the 2024/25 Budget and Business Planning process.
20. Board members provided feedback on the new format of the ARAC report, which had provided a helpful summary of the points discussed at the last ARAC meeting and the matter being escalated to the Board. The report was lengthy and the Board **recommended** that, unless there were any exceptional circumstances, future ARAC update reports should be around 2 pages long.
21. The Board **noted** the ARAC update.

Item 4 - 2024/25 Budget Acceptance Criteria, Business Plan and Budget and 2024/27 Strategy.

22. The 2024/25 Budget Acceptance Criteria (BAC), Business Plan and Budget and the 2024/27 Strategy were presented to the Board by the CO and Head of Communication, Engagement and Impact. The following key points were drawn to the Board's attention:

- In response to the consultation, there had been majority support for the proposals set out in the Budget, Business Plan and Strategy, the Executive therefore did not propose any significant changes to the documents.
- The Executive remained comfortable with the Budget and the provisions made for a pay award (which would be subject to the Government pay remit), inflation and resource to deliver learning and insight.
- The link between the strategic objectives for service and impact had been strengthened to reflect stakeholder feedback, promoting understanding of the relationship between the two.
- Further engagement would take place with individual stakeholders whose consultation feedback didn't align with the majority of respondents.
- A summary of the consultation responses would be added to the BAC.
- The consultation feedback would be published on LeO's website.

23. The Board provided feedback on the BAC, questioning whether there would be an opportunity to refine the criteria for future years to recognise LeO's changed circumstances, or the process by which LeO provides assurance on its Budget and Business Plan, to make it more equally workable for the needs of both organisations.

ACTION: The CO and Head of Programme Management and Assurance to consider when would be the best time to engage with the LSB to propose refinements to the BAC, or the process by which LeO provides assurance on its Budget and Business Plan, to make it more equally workable for the needs of both organisations.

24. Following discussion, the Board:

- **Approved** the 2024/25 BAC for submission to the LSB.
- **Approved** the 2024/25 Budget and Business Plan for submission to the LSB.
- **Approved** the 2024/27 Strategy, which would be shared with the LSB in support the Budget and Business Plan.

25. The approved BAC, Budget and Business Plan would be shared with the LSB by 27 February 2024 and would be presented for formal approval by the LSB Board at its meeting on 26 March.

Item 5 – EDI Update

26. The CO and EDI Manager updated the Board on EDI and the progress that was being made on delivering the EDI strategy. The following key points were made:

- A strategic EDI framework was in place; this was managed by the EDI Manager and EDI Specialist who were both now permanent in role and making steady progress on delivering the EDI strategy, which was aligned to the People strategy. 89% of the activities set out in the 2023/24 EDI action plan had been completed; all remaining activities were on track for completion by the end of the year.
- The HR and EDI Teams had developed constructive relationships with the Staff Networks. Staff Networks have a revised Terms of Reference and members have time allocated to fulfil their commitments.

- Work was underway to gain a better understanding of the reasons why a small number of staff had provided neutral or negative responses to questions relating to bullying, harassment and discrimination in the 2023 Civil Service People Survey. The Chief Ombudsman had issued a zero tolerance statement to staff in respect of bullying, harassment and discrimination.
 - Work was underway to automate processes to improve the collection and reporting of EDI data.
 - A benchmarking exercise had concluded that LeO's workforce diversity data was comparable to other Ombudsman Schemes and Regulators. Workforce data would be reviewed in April 2024, taking into consideration any areas of under-representation in specific roles or areas of the organisation.
 - Menopause awareness training for LeO's managers had been well received. The EDI action plan for 2024/25 would include the development of menopause guidance for managers and staff.
 - A traditional mentoring pilot had concluded in December; this had been well received by those involved. A reverse mentoring pilot was due to conclude in April 2024.
 - Race Equality week commences on 5 February 2024; staff will take part in daily activities and make their big promise to promote race equality in the workplace.
 - Members of the Board, the Executive and Line Managers would be asked to take part in a social mobility survey during the week commencing 12 February 2024; the results of this survey would be shared with the Board.
- 27.** The OLC Chair reported that the EDI Board Sponsor had been assured by the permanent appointment of the EDI Manager and had commended them for their excellent work on delivering the EDI Strategy so far and for being on track to complete the rest of it by the end of the year.
- 28.** On behalf of the EDI Board Sponsor, the OLC Chair questioned why mental health absences had increased despite LeO's improved well-being package. In response, the Head of People Strategy and Services reported that whilst there had been an increase in overall sickness absence in Q3, mental health related absences had decreased by almost 50%. This was largely due to the support that HR Business Partners were providing to Line Managers in respect of sickness absence management; improved sickness absence reporting and data analysis that helped to identify triggers and ensure that timely interventions were put in place to manage sickness absence; a campaign to raise awareness of the staff benefits package and the support available for health related matters.
- 29.** In response to questions relating to the capture of EDI data for staff and customers, the Board was advised that:
- The data captured following Investigator recruitment campaigns had not identified and EDI concerns or trends.
 - As part of the 3 year EDI action plan, further work would be undertaken to ensure that EDI data was captured for all recruitment.
 - Capture rates for customer's EDI data had been benchmarked against other Ombuds schemes and regulators and it was found that organisations capturing EDI data as part of the complaint form had the highest EDI capture rates. Considering

this, LeO had scoped a project to move EDI questions from the Eligibility Checker onto the online complaint form. This would ensure the availability of more robust and trackable EDI data at each stage of the business process, improving the customer experience and LeO's ability to track the impact of the Scheme rules changes.

30. In response to questions about the Civil Service survey results for bullying, harassment and discrimination, the action being taken in response to them, and the route outside of the survey for staff to raise concerns about bullying, harassment and discrimination, the Board was advised that:
- It was not mandatory for staff to respond to the Civil Service People Survey or answer all of the questions. One hundred and seventy five staff had responded to the 2023 survey but there was no data available to LeO to confirm whether they had answered all the questions.
 - There had been a small decrease in the survey results for bullying, harassment and discrimination compared to the previous year. LeO's results, whilst comparable to those of the wider Civil Service, were still being assiduously probed and questioned.
 - A detailed analysis of the survey results was currently being undertaken; this included an analysis of the findings based on protected characteristics. A small number of staff had provided neutral or negative responses to the questions relating to bullying, harassment and discrimination.
 - When 10 or fewer people responded to a survey question, the data was suppressed to protect anonymity. This prevented organisations drilling down to analyse the underlying reasons for the responses given. Considering this, the EDI Team would be holding 'safe space' sessions with staff to gain further insight on the responses given.
 - Action would be taken to address the reasons why some staff responded negatively to these questions.
 - The formal route for raising concerns about bullying, harassment and discrimination is through the grievance process which is set out in LeO's Grievance Policy. Informally, staff would raise emerging issues with their line managers, HR, staff networks and the EDI Team.
 - The HR team had not been made aware of any emerging issues relating to bullying, harassment or discrimination in advance of the survey, or anything from other channels that would evidence or support a view that incidents of bullying or harassment were taking place. The HR team were aware of a correlation between how some staff perceived performance management or managing capability issues and bullying and harassment. Line Managers had received training on how to support staff through performance management.
31. Board members had been pleased to note the external EDI activities that were taking place and the valuable learning opportunities they presented.
32. In response to a recommendation, the EDI Manager **agreed** to consider how best to measure and report on the impact of EDI activities to the Board.
- ACTION: The EDI Manager to consider with the Chief Ombudsman how best to measure and report the impact of EDI activities to the Board.**
33. The EDI Manager explained that the results of the Social Mobility Survey would be shared and publicised internally and shared externally, as appropriate. Consideration would also be given

to publishing the profiles of those people that had taken part in the survey to break down barriers and inspire staff.

34. The Board **noted** the EDI update and commended all the work on EDI that was being undertaken.

Item 6– Chief Ombudsman Report

35. In response to the findings of the Board effectiveness review and subsequent discussions with the Board, the format of performance reporting had been updated.
36. The Chief Ombudsman’s report provided the Board with strategic updates under the headings of the proposed strategic objectives for the new 2024/27 strategy with the relevant strategic risks and issues highlighted. The Board’s attention was drawn to the following key points:
- Year to date performance on closures was in line with or beyond likely-case forecasts.
 - Demand remains a key risk and continues to be closely monitored.
 - Attrition also continued to be closely monitored as a key risk. The Executive held a strategic workshop on attrition in January in preparation for the Board workshop in February.
 - A higher than anticipated year end underspend of £106,000 was forecast at this point but was being managed closely by the Executive with an expectation that this would be reduced significantly. The Executive had implemented a range of mitigations and was actively managing and monitoring financial movements.
 - The Chief Ombudsman’s report could be further updated in the future to reflect the Board’s feedback on escalated risks as part of the earlier ARAC update.
37. Board members provided positive feedback on the new format of the Chief Ombudsman’s report, the following key points were made:
- The format and the alignment to the strategic objectives had provided a broader, well-connected, high level picture of the organisation which, when read alongside the balanced scorecard, had prompted a more strategic discussion.
 - There was scope to tighten up the narrative to ensure that critical messages were drawn out.
 - Further consideration should be given to whether the strategic risks and issues were reported in the right place.
 - Reduce the length of the report – decide how long the report should be and then add the narrative to fit within it.

Board **noted** the Chief Ombudsman’s report.

Item 7 – Integrated Performance Dashboard

38. The new format of the Integrated Performance Dashboard Report included a balanced scorecard reporting on key indicators, targets and their RAG rating against agreed tolerance.
39. In discussion about the format of the report the following key points were made:

- Overall, the Board felt that the new format of the report was a strong first draft.
- It was recognised that further work would be required to agree targets and tolerances for some of the indicators and to reduce the amount of repetition between the Chief Ombudsman's report and the balanced scorecard.
- Considering the number of quality indicators, it had not been possible or desirable to put in place an aggregated quality indicator for customer experience that would remain meaningful and that would not diminish or cloud the overall reporting on quality. The Executive would be giving further consideration to this and, in response to feedback from the Board, whether customer journey time should be reported under customer experience or operational performance and efficiency.
- Overall, the Board felt that the balanced scorecard narrative had been helpful but **recommended** that the correlation between the narrative and the indicators, particularly the customer experience indicators, was strengthened.
- The indicators had not provided a sense of trajectory or how far away from target the red RAG rated indicators were. To address this, the Board **recommended** that consideration was given to exception reporting either in the balanced scorecard narrative, the Chief Ombudsman's report or a separate report and using arrows or coloured stripes to indicate the direction of travel each of the indicators.
- The Board **recommended** that consideration was given to strengthening the alignment between the strategic enablers and the balanced scorecard.

40. The Chief Ombudsman confirmed that further consideration would be given to the Board's recommendations.

ACTION: The Executive to give further consideration to the Board's feedback on strengthening the correlation between the narrative and the indicators; exception reporting; providing more clarity on the direction of travel for each of the indicators; and the strategic alignment of the enablers.

41. The Board discussed the increase in the number of cases in the Pre-Assessment Pool (PAP) over the Christmas period and whether anything could have been done to prevent it. The Board was advised that performance forecasts, which were reviewed by the Performance Sub-Group, included adjustments for seasonality to mitigate any adverse impact on demand. The increase in demand over the Christmas period had been anticipated and planned for and by the end of January, the PAP would be within forecast ranges.

42. A discussion took place about the red RAG ratings shown against the balanced scorecard indicators for customer journey times, and how they did not reflect the positive impact of early resolution, the feedback from customer satisfaction surveys, or the impact of the strategic risks that were outside of LeO's control. Considering this disconnect, and the need for customer journey times to be realistic in terms of the improvement trajectory, further consideration would be given to the targets and tolerances set out in the performance dashboard for customer journey times to ensure a more meaningful way of assessing the progress that was being made.

43. This would be undertaken as part of a wider, longer-term strategic and business intelligence reporting project that would take place over the course of 2024/25. As part of this project, the Executive would be reviewing the indicators within the Commonly Agreed Dataset (ADS) with a view to developing a revised strategic ADS in consultation with the OLC, MoJ and LSB. The first step would be for the OLC Chair and CO to engage with the

MoJ and LSB on the rationale and process for developing a rationalised strategic dataset
Further information on this would be provided to the Board in due course.

44. It was anticipated that any changes to future strategic reporting and business intelligence reporting would require system changes; these changes would take place in 2024/25 with an aim of agreeing this by the start of quarter 4.
45. Considering this, and that targets and tolerances would need to be agreed for other indicators, the development of the balanced scorecard would be an iterative process.
46. The Board **noted** the update on performance reporting.

Item 8 – Scheme Rules Update

47. A paper reporting on the impact of the Scheme Rules changes at the end of quarter 3 was presented by the Deputy Chief Ombudsman. The following key points were made:
 - A transitional approach had been adopted towards the application of the new Scheme Rules over quarters 1 to 3, Considering this, the full impact of the Scheme Rules changes would not be known until after they had been consistently applied for a longer period of time, ideally 12 months.
 - During the transitional phase, the Scheme Rules changes to the time limits had had the biggest impact.
 - Only a small number of cases had progressed to a stage where the application of Scheme Rules 5.19 and 5.20 could be considered and therefore it was still too early to comment on the impact of these Scheme Rules changes. It was envisaged that these rules would not be applied in any significant number until early 2024/25 when more of the cases received after 1 April 2023 progressed through to investigation. Any operational efficiencies these rules would bring would therefore not be fully apparent until the new financial year.
 - Since the launch of the new Scheme Rules, a consistent 36% of LeO's customers had provided EDI data. An assessment of this data by the EDI Team has confirmed that the Scheme Rules change have not had a detrimental or disproportionate impact on access to the Legal Ombudsman Scheme for any particular group(s) of LeO's customers.
48. In discussion, the Board was advised that the impact of the Scheme Rules changes on performance was in line with the assumptions and trajectories that had been considered by the Performance Sub-Group. The Board would be notified of any risks to performance arising from a significant variance in expectations.
49. The Board reflected on how the Scheme Rules changes to time limits were having a positive impact on timeliness and mitigating the impact of increased levels of demand.
50. A high level update on the impact of the Scheme Rules changes, including their impact on EDI and access to the Scheme, was to be shared with the LSB.
51. A more formal update on the application of the new Scheme Rules would be provided once LeO was in a position to assess the data over a wider period of time (6-12 months).
52. The next update to the Board on the Scheme Rules changes would be provided in 6 months' time.

ACTION: The Board Governance Manager to update the Board forward plan to reflect that an update on the Scheme Rules would be provided in 6 months' time.

53. The Board **noted** the Scheme Rules update.

Item 9 – Transparency Publications Report

54. The Board **approved** the Q3 2023/24 Board member Register of Interests for publication, subject to any changes being drawn to the Board Governance Manager's attention by the close of business on 2 February 2024.

55. The Board Governance Manager reported that relevant securities that were not placed in a blind trust were required to be declared by Board members in the future, in line with the LSB's Conflict of Interests Policy. Further details on this would be shared with the Board in due course.

ACTION: The Board Governance Manager to share details of the requirements for Board members to declare relevant securities that were not placed in a blind trust and to update the Board Members Register of Interests accordingly.

56. The Board **approved** the Q3 2023/24 Ombudsman and Senior Manager Register of Interests for publication.

57. The Board **approved** the Board Member and Senior Manager Expenses Report, showing the cumulative position for 2023/24 for publication.

58. The Board **approved** the Q3 2023/24 Gifts and Hospitality Register for publication.

ACTION: The Board Governance Manager to arrange for the Q3 Transparency Reports to be published after 2 February 2024.

Item 10 – Previous Minutes; Matters Arising and Previous Actions

59. The minutes of the OLC Board meeting held on 14 December 2023 were **approved** for accuracy and **approved** for publication.

60. ARAC members **approved** a proposed amendment to the record of attendance in the minutes of the ARAC meeting held on 2 October 2023.

61. Subject to the amendment of the record of attendance, the Board **approved** the publication of the minutes of the ARAC meeting held on 2 October 2023 for publication.

ACTION: The Board Governance Manager to amend and publish the minutes of the ARAC meeting held on 2 October 2023 and publish the minutes of the Board meeting held on 14 December 2023.

62. Non-Executive Directors attended a private pre- Board meeting and were joined in a separate private session by the Chief Ombudsman .

63. The process to appoint a new OLC Board had progressed and an announcement of the successful candidate would soon be made.

64. The Board **noted** the update on the actions from previous Board meetings.

65. The OLC Chair reported that further consideration would be given to what criteria could be used to assess the effectiveness of the new format of performance reporting (action 6, paragraph 30 from the December 2023 Board meeting), taking into account whether the

new format promoted the right level of Board discussion; whether it helped the Board to navigate the risks; whether it was sufficiently future focussed; and, whether the Board was giving the Executive sufficient headspace.

66. The Board **agreed** that action 10, paragraph 38 from the December Board meeting was to be closed following the publication of the December Board papers on 24 January 2024.

ACTION: The Board Governance Manager to close action 10, paragraph 38 from the December Board meeting following the publication of the December Board papers.

67. The Board **ratified** a decision (lay majority) made out of committee to approve the 2023/24 Strategic risks and issues.

68. The Board **ratified** a decision (lay majority) made out of committee to approve the Chief Ombudsman's recommendation to appoint to five Ombudsmen roles on a permanent basis and to one ombudsman role on a secondment basis.

Item 11 - Board Paper Redactions and Non-Disclosure Report.

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

ACTION: The Board Governance Manager to publish the January Board papers in line with the redactions and items for non-disclosure approved by the Board.

Item 12 – Board Effectiveness

70. Martin Spencer and David Peckham 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.

71. The following points were made:

- The ARAC update session had work well strategically. It had set the right tone, drawing the Board's attention to key points relating to risk and escalations and this had elevated the level of the Board's discussion.
- The papers that had been most useful were the ARAC and Performance Sub-Group updates, the Chief Ombudsman's report and the Integrated Performance Report. The ARAC and Performance Sub-Group updates had highlighted useful information on key points for the Board to consider and the Chief Ombudsman's Report and Integrated Performance Report had provided clarity and focus on key messages.
- A key part of the Board's discussion had been about what was needed to get the reporting right. Once this had been achieved, there would be value in papers and discussions having a more forward look, taking into account how the OLC/ LeO was tracking towards its vision and strategy and the key milestones.

Item 13– Any other business

72. The OLC Chair would be considering whether it would be feasible to reduce the duration of future Board meetings.