

Minutes of the Eightieth Meeting of the

Office for Legal Complaints (OLC)

Monday 19 June 2017

11:00 – 14:30 am

Legal Ombudsman, Birmingham

Present:

Wanda Goldwag, Chair
Bernard Herdan
Rebecca Hilsenrath
Michael Kaltz
Tony King
Jane McCall

In attendance:

Nick Hawkins, Chief Executive
Kathryn Stone OBE, Chief Legal Ombudsman
Rob Powell, Director of Corporate Services
Simon Tunncliffe, Head of Operations
Crispin Passmore, Executive Director, SRA (item 6 only)
Siobhan Fennell, Senior Ombudsman (items 6 and 9 only)

Observing:

Amanda Charlton, Ombudsman
Sanchia Wheeler, Solicitor

Board Secretary:

Helen White

Apologies:

Caroline Coates

Preliminary issues:

The Board meeting was quorate.

Item 1 – Welcome and apologies

1. The Chair welcomed Amanda Charlton and Sanchia Wheeler, staff observers, to the meeting and noted there were no declarations of interest. The Chair noted the apologies sent by Caroline Coates who had fed back comments on the papers.

Item 2 - Minutes of the previous meeting

2. The minutes of the meeting held on 25 April 2017 were approved for publication.

ACTION:

- **The Board Secretary to publish the approved minutes of 25 April 2017.**

Item 3 - Matters arising and outstanding action points

3. Members noted the update on action points from previous meetings. .
4. The Chief Legal Ombudsman updated members on discussions held at the recent Ombudsman Association conference which confirmed that the Legal Ombudsman was consistent with other schemes in its measures to support vulnerable people.
5. The Director of Operations confirmed that work was continuing to finalise the personal injury thematic and an update would be presented to the OLC in July.

ACTION:

- **The Director of Operations to present an update on the personal injury thematic at the July OLC Board.**
6. Bernard Herdan, RemCo Chair, reported that discussion had been held at the recent RemCo meeting on the impact of the leadership development programme. He noted that RemCo members had requested further work on this area.
 7. Discussion took place on whether a further external assurance review was necessary prior to assure the acceptance criteria to go live with the new business processes, case management system and telephony. The CEO reported that the next programme board on 20 June would discuss this issue.

ACTION:

- **The CEO to update Board members on final proposals for external assurance of the acceptance criteria.**
8. The Director of Operations reported on a call with Tony King, Board member and Siobhan Fennell, Senior Ombudsman to assure Tony on the work being undertaken on internal quality reviews.
 9. The OLC Chair reported Board colleagues had requested that future board papers include a header outlining previous board discussions and background on the subject.

ACTION:

- **The Board Secretary to design a format in which the executive can provide information outlining history and background on all board papers previously presented to the OLC Board.**

Item 4 - Comments received regarding items presented for information

10. The items presented for information were noted.

Chief Executive's Report

11. The Chief Executive reported that the tripartite operating protocol had been signed by the OLC, LSB and MoJ.
12. Discussion took place on the work being undertaken with the MoJ regarding the transfer of the CMC jurisdiction to the Financial Ombudsman Service. It was noted that the CEO had a meeting at the MoJ later in the week, at which he would raise the potential for a meeting with either the CEO or Chair of the Financial Ombudsman Service.
13. The Chief Executive reported that he had communicated the additional day's leave for high performing staff which had been well received.
14. The Board Secretary raised a question from Caroline Coates regarding the impact of the new staffing model on staff morale. The CEO reported on some positive early indicators, including a number of staff from the Assessment Centre who had now been promoted into investigator roles and the start of the process to identify level one ombudsmen which would result in a number of promotions.
15. Rebecca Hilsenrath queried whether the increased targets were impacting staff. It was agreed that this would be discussed as part of the CLO update.
16. Michael Kaltz, ARAC Chair, requested that the CEO provide further information out of committee regarding the point raised in the Legal update regarding a pre-action letter.

ACTION:

- **The CEO to update the ARAC Chair, out of committee, on the point raised in the Legal update regarding a pre-action letter.**

Chief Legal Ombudsman's Report

17. Performance Update: The CLO updated members on current performance. It was noted that the number of unallocated cases had risen significantly during May. The executive had then instigated an action plan to address the issues. This included introducing elements of the Modernising LeO staffing model earlier and changing the Assessment Centre model. It was noted that since the implementation of the plan, there had been no negative feedback about the service in the Assessment Centre.
18. The CLO reported in the seven working days since the action plan had been introduced, the number of unallocated cases had reduced by 134, and it was anticipated that this would have reduced further by the end of June.
19. The Director of Operations reported that the implementation of the action plan, at short notice, had required a significant call on time from the team leaders and operations managers. He noted that RemCo had raised concerns about the

impact of increasing case holdings for staff, and this had been taken into consideration when developing the action plan.

20. Discussion took place on the Q1 forecast. The Director of Operations reported that this forecast had been impacted by the introduction of case ownership in the Assessment Centre, which had a greater impact than anticipated on throughput.
21. The OLC Chair reported that forecasting had been discussed in the earlier non-executive director meeting. She stated that the Board wanted to understand the modelling and forecasting capabilities within the organisation. The Executive was asked to consider options to develop future operational modelling and update the OLC Chair on proposals by the end of June.

ACTION:

- **The CLO, with input from the executive, to update the OLC Chair on proposals for future modelling by the end of June.**
22. Tony King queried whether the staffing model introduced early was consistent with current business processes and systems. The Director of Operations reported that the team had accelerated the implementation of the staffing model but to deliver the existing business process within the current case management system. Staff would still receive training in the new business processes and case management system, which was picked up in operational modelling.
23. Discussion took place on whether there was any impact on vulnerable complainants as a result of the new staffing model in the Assessment Centre. The Director of Operations stated that the preferred method of contact for complainants was via the online form on the website. However, where this was not possible, staff would provide support to complainants. The Director of Operations reported that in order to track quality, work would be undertaken to review the percentage of forms completed online which needed to be sent back.
24. Jane McCall noted the improvement in the number of cases being sent back to investigators but nevertheless expressed concern at the absolute number of cases. She noted that the report did not include information on plans to improve the figures and requested this be included in the next Performance Report.

ACTION:

- **The CLO to provide an update in the next Performance Report on plans to improve the number of send backs.**
25. Caroline Coates had queried by email whether there was any known reason for the increase in complaints and this being higher than forecast. The Director of Operations responded that there was no known reason or trend.
26. It was noted that Caroline Coates raised concern that the new staffing model could result in the Assessment Centre accepting complaints which were in fact out of jurisdiction. The Director of Operations responded that reviews were being

undertaken at the triage point to ensure all cases accepted were within jurisdiction.

27. The CLO provided an update on work within her team. She noted that there had been good media coverage for the launch of the live chat service for the legal jurisdiction.
28. CMA Update: Discussion took place on the OLC's response to the CMA recommendations, which was due to be submitted by the end of June 2017.
29. The Board Secretary raised a question on behalf of Caroline Coates who queried whether partnering with consumer and legal focussed bodies could be viewed as moving away from an impartial position. The CLO reported that the OLC had an equal partnership with consumer organisations, and worked hard to ensure that LeO was not viewed as a consumer champion.
30. It was noted the response to the CMA recommendations was due at the end of June. It was agreed that the CLO would provide an update to Board members out of committee.

ACTION:

- **The CLO to provide an update out of committee to Board members on the OLC response to the CMA report.**

31. Discussion took place on the availability of redress for consumers using the services of unregulated providers. Extending LeO's jurisdiction to unregulated providers would require a separate funding stream outside the levy. It was noted that the CLO was meeting with policy advisors from the Bar Council and SRA and would provide an update on this at the July OLC Board.

ACTION:

- **The CLO to provide an update at the July OLC Board on the meeting with policy advisors from the Bar Council and SRA.**

32. It was also agreed that the CEO would speak to colleagues at the MoJ to discuss their response to the CMA recommendations.

ACTION:

- **The CEO to discuss with MoJ colleagues their proposed response to the CMA recommendations.**

33. High Value Remedies: The CLO provided an update to Board members on the process for remedies over £10,000. Remedies of this nature go to the CLO for approval. At this point the remedies would have reviewed by the Legal team.

34. Discussion took place on how often the threshold for high value remedies was reviewed. Tony King stated that he thought the delegations were not set at the right level and thought Ombudsmen, with the support of the Legal team, should be capable approving remedies at higher levels. It was requested that the DCS

check the consistency of delegations for high value remedies within the overall scheme of delegations.

ACTION:

- **The DCS to review the consistency of the scheme of delegations and thresholds for high value remedies.**

35. Tony King requested that the CLO consider the correlation between what the OLC consider to be a high value remedy and what the CLO should review, as value was only one measure of significance. It was agreed that the CLO would present an update on High Value Remedies to the July OLC Board.

ACTION:

- **The CLO to present an update on High Value Remedies at the July OLC Board.**

36. ADR: It was noted that this topic had been discussed a number of times at Board meetings. Board members noted that they would have found it useful if the paper provided further information on the external ADR market and a clearer rationale supporting the recommended approach.

37. It was noted that the approach agreed earlier in the meeting would assist newer Board members.

38. It was agreed that due to the Modernising LeO Programme, cost implications and uncertainties over Brexit, the Board should not pursue an application to become an ADR body at the current time.

39. Update on Case Fees: It was noted that the issue of case fees fitted with the wider discussion on scheme rules. The CLO reported that the work on the modelling the financial impact of changes was ongoing. It was therefore agreed that both Case Fees and Scheme Rules would be presented at the July OLC Board.

ACTION:

- **The CLO to present both Case Fees and Scheme Rules at the July OLC Board.**

40. Board members requested that the Case Fee Consultation responses be included in the July update.

ACTION:

- **The CLO to include the case fee consultation responses in the July Board update.**

Director of Corporate Services Report

41. Members noted the DCS Report.

42. The DCS reported that June was a peak month for the Unified IT environment workstream of the Modernising LeO programme.
43. The DCS reported that the infrastructure timetable was challenging but remained on course for transition by the end of June. There was an increased short-term risk of unplanned downtime during the transition. There had been a recent outage affecting incoming calls which related to external issues. The DCS paid tribute to the IT team's commitment, flexibility and ability to find innovative solutions to keep transition moving forward.
44. It was noted that the MOJ run telephony procurement process resulted in only one bid which had not fully met the requirements. A decision had therefore been taken to separate the requirements and invite bids under the G-Cloud digital marketplace.
45. Discussion noted that the OLC would be named on the Ofwat in-source framework, which made no commitment but made the framework available in future.
46. The DCS updated Board members on the Annual Report and Accounts. He noted that the team were hopeful that the Accounts could be laid before the Parliamentary recess. He stated that the NAO team were finalising their audit. The updated draft Annual Report and Accounts would be circulated to ARAC members in advance of the 4 July ARAC meeting, and final OLC approval would be sought on 12 July.
47. The OLC Chair reported that she had written a foreword which would be included alongside the previous Chair's foreword if publication was delayed until after the recess.

Finance Report

48. Members noted the Finance Report.
49. The DCS reported that a full reforecast would take place at the end of Q1, to reflect the impact of the Modernising LeO staffing changes and transition plan. This would be reflected in the next budget paper.
50. The DCS reported that following the election the MoJ had requested the OLC submit a revised MTFP for the next 5 years which was due for submission on 23 June.

Item 5 – Corporate Governance Paper

51. Audit and Risk Assurance Committee Terms of Reference: The ARAC Chair reported that the ARAC ToR had been discussed and approved at the last ARAC meeting. Board members approved the document for publication.

ACTION:

- **The Board Secretary to publish the updated ARAC Terms of Reference.**

52. Remuneration and Nomination Committee Terms of Reference: The RemCo Chair reported that the RemCo ToR had been discussed and approved at the last RemCo meeting. Board members approved the document for publication.

ACTION:

- **The Board Secretary to publish the updated RemCo Terms of Reference.**

53. Management Team Terms of Reference: The DCS presented the updated Management Team terms of reference. It was agreed that the DCS would amend the section on developing the organisation's strategy to more clearly reflect that the OLC is responsible for strategy.

54. Michael Kaltz requested that the performance section pick up the Board's request to identify tolerance levels for escalating performance issues to the Board.

ACTION:

- **The DCS to amend the Management Team Terms of Reference to submission to the July OLC Board for approval.**

55. The DCS presented the Governance Summary document which provided a simple guide for staff, Board members and stakeholders about the OLC's corporate governance. The Board suggested an explanation be included of the acronym 'BV letter'.

56. Discussion took place on the revised approach to corporate policy management. Board members approved the approach and thanked the DCS for moving this work forward.

Item 6 – Update on First Tier Complaints

57. The OLC Chair welcomed Crispin Passmore from the SRA and Siobhan Fennell, Senior Ombudsman, to the meeting. He gave an overview of the research project being jointly funded by the SRA and OLC to look into the experiences and effectiveness of solicitors' first tier complaints handling processes.

58. He explained the research methods which included survey responses from over 500 firms together with surveys of over 1000 dissatisfied consumers identified by YouGov.

59. It was noted that the report was originally due to be published in July, but this was likely to be delayed because of purdah. Once completed, the SRA and OLC would agree the final details and timescale for publication.

60. Crispin reported that this research project reflected the collaborative and constructive way in which the two organisations were now operating.

61. It was agreed that once the research project was completed, an update would be presented to the OLC Board.

ACTION:

- **The Board Secretary to schedule an update to the OLC Board once the research project was completed.**

62. The OLC Chair thanked Crispin for his time and insight into the research project.

Item 7 – ARAC Update

63. The ARAC Chair presented the draft minutes and an update on the ARAC meeting held 12 May 2017.

64. Discussion took place on the ongoing discussions with the LSB regarding the notional charge for insurance. The ARAC Chair reported that he would raise this matter once again with the Head of Finance.

ACTION:

- **The ARAC Chair to raise the matter of the notional charge for insurance with the Head of Finance.**

Item 8 – RemCo Update

65. The RemCo Chair presented the draft minutes and an update on the RemCo meeting held 26 May 2017.

66. He stated that there had been discussion at the meeting about the results of the last staff survey, where RemCo members had noted the verbatim comments included references to stress and workloads.

67. It was noted that RemCo had reviewed the potential to implement a time recording facility. It was agreed that this was not currently a priority but would remain under consideration.

68. The RemCo Chair reported that as discussed earlier in the meeting, agreement had been reached about an alternative to a bonus scheme.

69. He stated that Jane McCall had facilitated a session at the last RemCo meeting to look at how RemCo could be more strategic rather than functional. As a result of this session, the DCS had developed a workplan which align future meetings' agenda with the OLC's strategy.

Item 9 – Third Party Complaints

70. Siobhan Fennell, Senior Ombudsman, presented a paper which informed a discussion about whether an additional consultation was required on third party complaints. It was noted that a consultation about changes to the Scheme Rules

was held in 2012 and that in 2013, a revision to the Scheme Rules extended the organisation's jurisdiction to allow complaints to be accepted from those who had been offered or refused a service. Siobhan Fennell reported that there was a widespread external misconception regarding this rule.

71. Tony King stated that the present rules reflected the limits of jurisdiction under primary legislation. If following a consultation it was decided to amend the Scheme Rules, this would only be possible if they continued to reflect primary legislation (which therefore almost certainly itself need to be changed).
72. It was agreed that the Legal Ombudsman would not consult further on extending its jurisdiction or changing its Scheme Rules in relation to third party complaints, and that the Legal Ombudsman would issue a policy statement and update related guidance about its approach to third party complaints.
73. It was also agreed that the Legal Ombudsman would consult on a change to Scheme Rule 6.2 to clarify the circumstances in which a case fee would not be chargeable in relation to complaints received from a third party.

ACTION:

- **The CLO to present to the July Board, the proposals to consult on a change to Scheme Rule 6.2 to clarify the circumstances in which a case fee would not be chargeable in relation to complaints received from a third party.**

74. The OLC Chair thanked Siobhan Fennell for her presentation of the paper.

Item 10 – Any Other Business

75. The OLC Chair reported that it had been agreed during the earlier non-executive directors meeting that a performance update would be included at each OLC Board meeting.

ACTION:

- **The Board Secretary to schedule a performance update at each OLC Board meeting.**

Next meeting

76. The next OLC meeting would be held on 12 July 2017 in Birmingham.