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Dr Helen Phillips  
By email

9 February 2022

Dear Helen

At the end of January the OLC Board met in advance of holding a dedicated Board workshop in February when we will review and approve the Business Plan and Budget Acceptance Criteria before sharing this with LSB colleagues.

January's meeting provided genuine assurance to the Board in a number of critical areas and where LeO's Executive demonstrated that it had answers to all of the Board's questions. We particularly considered how attrition rates will be managed, recognising that previous meetings have focused on recruitment, along with acknowledging the success of the national recruitment campaign. I have previously shared with you a national recruitment update and have included further information in this letter which also talks to the considerable progress and pace being made to the Scheme Rules review. A clear message that the Board took away from the meeting is that where there is an obstacle to LeO being able to deliver its improvement trajectory, they are doing something about this and removing it.

In keeping with previous formats, this letter focuses on:

1. Performance improvement including responding to COVID-19
2. People and Leadership
3. Risk management and financial governance
4. Enhanced public reporting

For each section it sets out the assurance received to date by the OLC Board along with the additional assurance being sought through further actions, many of which are already in hand.

### **Performance improvement including responding to COVID-19**

The overview: *Significant progress was made in November and December with revised assumptions exceeding the closure rates for the equivalent point in 2020 and with significantly less established resource. LeO now projects ending the year at 90% of closure forecasts. The Scheme Rules review has continued at pace with the consultation planned to go live in February 2022.*

#### Assurances received:

1. Key highlights for December include:
  - a. 466 customer closures (371 investigation closures plus 95 early resolution closures) were achieved, which compares to a revised assumption of 365 closures; progress continues on moving to the position where LeO will share one number for total closures in the new FY and not just investigative closures.

- b. Including early resolution, productivity was 6.13 which was down on November's high of 7.01 but consistent with seasonal and anticipated factors.
  - c. On average in 2021/22, 116 more additional customer closures are being delivered each month than in 2020/21
  - d. Across 2021/22, the average length of time for an investigation to be completed has continued to decrease; average investigation times for low complexity cases (67% of LeO's workload) is 89 days and averaged 80 days in December – a 15% improvement from the beginning of the year.
  - e. In December, customers with low complexity cases closed through the early resolution process had an average customer journey time (CJT) of 144.04 days which is 48% shorter than the average YTD CJT for low complexity work cases.
2. Whilst staff shortages and recruitment challenges have directly resulted in LeO remaining below the forecast targets set in the 2021/22 Business Plan, it is beginning to approach these and now projects ending the year at 90% of closure forecasts; the PAP stands at 5747 with current PAP size for the end of the year forecast at 6,300 (since the Board meeting this has been revised to 6,153).
  3. Accuracy of forecasting has improved and assumptions have been accurate; this is the product of much stronger alignment of internal processes including HR and Finance working more closely with Operations.
  4. The Scheme Rules review is progressing at pace and a Sub Group of the Board met three times in January, discussing the substantive content of the proposed changes and the style and format of the upcoming consultation; the consultation will go live in February, have changes developed and agreed and implemented as early in 2022/23 as possible. The Board questioned when the quantifiable impacts of the review will be factored into forecasting and was assured that the Executive has carried out some preliminary impact assessment work to support the proposed changes outlined; more information will be factored into what comes to the Board in March and as part of the ongoing consultation with the sector.
  5. The Board returned to under-resourcing of the Quality Team recognising that a new Quality Manager has still not been appointed, despite working with a number of recruitment agencies; the Quality Team continue to deliver on quality assurance and customer satisfaction work and LeO is also piloting an approach to identify those systems and processes that LeO staff feel are overly burdensome; whilst going broader than quality this is consistent with the approach being adopted to the more substantive review of the Quality and Feedback mechanism which will be alert to whether there is a re-balancing between quality assuring the outcome for customers whilst enabling LeO investigators to operate more freely and producing a faster service for customers.
  6. A waterfall chart to better demonstrate the impact of planned initiatives on the improvement trajectories is being worked on, taking account of the LSB request to include costings.
  7. Work on delivering the backlog recovery continues to be prioritised with a focus on those interventions that are making the greatest difference for LeO's customers; where things can be quantified, they have been, recognising some interventions will need to be evidenced over a longer time frame. In progress initiatives continue to deliver better than expected results across Reasonable offer made (34 closures against a target of 30), Guided negotiation (21 against 19) and Nudge (36 against 26).
  8. Business Planning processes have improved this year with dedicated staffing resource set aside to lead on drafting and more executive reviews completed; supported by the Chair of the Quality and Performance Task and Finish Group, work is progressing to ensure the Budget Acceptance Criteria document stands on its own right recognising that this is the primary document to be reviewed by the LSB.

#### Additional assurances being sought

1. Given the Board's focus on assurance and risk, and in keeping with stakeholder feedback, the Board has been focusing on priorities one and two but it has not forgotten priority three and 'developing learning and insight mechanisms in the sector for providers and customers'. This needs to be covered in Board papers too so that the Board receives the

complete picture of reporting and progress against the Business Plan; the Chief Ombudsman recognises this and will provide an update to the Board including development of an Advice Desk for service providers and updating on the work on Transparency, as discussed at the last Board meeting.

2. Additional consideration will be given to the accuracy of forecasting on a quarter-by-quarter basis, as distinct to the month by month focus at present.
3. Further consideration will be given as to whether a Covid variance factor should be modelled and included in future forecasting or whether this is better addressed via proactive risk management and whether it is sufficiently visible in the risk register; the Board was assured by the Executive emphasis on managing differently and the importance of not seeing 2020 as a Covid baseline for the business.
4. Clarity on the inflationary pay award is still awaited from the MoJ.

## People and Leadership

The overview: *The national recruitment campaign was very successful and was a significant achievement for LeO, contributing significantly to growing confidence around the core elements of the 2022/23 Business Plan trajectories. There is a clear recognition of needing to keep the right people alongside bringing the right people into the organisation and this is reflected in the focus on both retention and recruitment. HR policies are being reviewed, updated and changed to ensure they are fit for purpose before the end of 21/22 – no one is waiting for the new financial year.*

### Assurances received:

1. National recruitment has been extremely successful with overwhelming response rates; this is the largest scale recruitment LeO has ever attempted with the campaign attracting almost 900 candidates and offers made to 42 people and a reserve list in place; this meets LeO's aim of not only reaching the 2022/23 investigator staffing complement but recruiting for assumed attrition for Q4 2021/22 and Qs 1 and 2 of 2022/23, allowing LeO to get to the best staffing position possible in advance of 2022/23.
2. Successful candidate spread from the national recruitment campaign is being scrutinised to match numbers of candidates to possible hub locations, facilitating the same hybrid working model in place at the Birmingham office. As a contingency, LeO's emerging hub strategy entails diversifying away from a single site location in Birmingham to small hubs, potentially making best use of the MoJ estate.
3. Attrition has seen a month on month increase since May; considerable effort is being placed on understanding the range of factors impacting this including wider job market changes, LeO's continued focus on operational performance variation, and non-competitive salaries and terms and conditions. The outcome of the pay benchmarking exercise, currently underway, will be shared with the Board in March; looking at both corporate and investigator roles it will provide a lever for revisiting and removing existing constraints.
4. A new EDI Steering Group is leading on ensuring the EDI strategy is fully embedded in organisational strategy and business priorities; reporting to the Executive quarterly it will report to Board twice a year. Following Inclusive Leadership training in January for the full Board and Executive, further consideration is being given to what inclusive Board leadership looks like.
5. Return to the office is being well handled, actively guarding against disadvantaging those who can't get into the office, responding to requests for reasonable adjustments and focusing on a managed and supported transition over the month of February; performance management processes have been adapted to take full account of hybrid working.
6. Extensive work is being done on HR policies, with a clear message that the basics are not in place and how important these are to contributing to retention. Examples include a lack of training and development programmes, so important for corporate roles too which operate in small teams with limited opportunity for progress, how the existing sickness policy does not support effective short-term absence management, and recognising that the approach to performance management is about managing both good and poor

performance. This is all already being picked up by the People Strategy and will be reviewed and approved by RemCom in February.

7. Increased performance management currently has an impact on attrition but the culture is changing whereby new joiners are entering a business where they are clear from day one about the expectations and this is being reinforced through induction, onboarding and performance management during probation; LeO will continue to see this change as the balance between established/non-established investigators shifts.
8. A new Legal Manager has now been successfully appointed; as a contingency LeO is also taking steps to procure on demand external legal advice from a law firm on the MoJ's procurement panel to build resilience and ensure consistent access to legal advice when needed.
9. The Ideas station, which received 192 ideas from staff, is being recategorized to look outside reducing the PAP and ensure this is valued as an effective staff engagement tool with a clear emphasis on 'being listened to'; it is being relaunched to take account of new staff and maximising every stream of feedback.

#### Additional assurances being sought:

1. The Board focused on attrition, and the need to unpick this to understand the difference between those leaving because of some element of performance management and those not; whilst difficult to be precise about this, because exit interviews will capture and classify departure reasons based on the provided reason, the Executive will give this further consideration.
2. A detailed analysis of the People survey will go to the Executive then February's RemCo before March's Board meeting; with the exception of the Learning and Development theme, all of the 8 remaining core themes have improved; it will also be discussed with Staff Council and Staff Networks and response rates compared with 2019 (as recommended by the MoJ) but 2020 results will not be ignored.
3. EDI monitoring of national recruitment will be fully benchmarked in March (the latest recruitment round gave consideration to the need for visibly diverse recruitment panels and adopted anonymised recruitment).
4. Executive will consider adapting the template for Board covering papers to include 'consideration of equality implications' (noting the LSB's template refers to Equality and Diversity in the context of a section on Risks and Mitigations).

## **Risk management and financial governance**

*The overview: Both ARAC and the OLC Board continue to focus on breaking the mould of the underspend, giving the OLC Board and wider stakeholders confidence that it won't be in this position next year. Evidence of pro-active monitoring and controls has been reviewed along with the importance of the vacancy factor which has been increased and which is important for the LSB's assurance.*

#### Assurances received:

1. Management Team actions and mitigations are having a positive impact with risk scorings reducing at the end of December, driven by a shift in scoring in Operational Delivery and External Affairs teams; whilst risks remain high in relation to backlogs, recruitment and retention, the PAP initiatives and national recruitment campaign are beginning to move this in the right direction.
2. The six-point plan for budget setting assurance was discussed at January's ARAC along with the additional assurance required around monitoring and staying within the assurance range.
3. ARAC had a lengthy discussion on underspend, taking assurance about the controls in place for 22/23 including entering the year with additional investigators to mitigate planned attrition, increasing the vacancy factor, and implementing more rigorous monitoring of budget assumptions and costs drivers.

4. ARAC has reviewed initial proposals on risk appetite for risk themes, starting to drill down on what this means for the different priority areas; this will need to be reflected in risk tolerances and both internal and external reporting.
5. Internal Audit planning for 2022/23 between the GIAA lead and the Executive Team took place on 12 January, with a view to sharing proposals with the ARAC Chair; planning meetings for the Payroll and Change and Transformation audit have been confirmed.

Additional assurances being sought:

1. Recruitment into corporate roles remains a challenge and the HR team alongside hiring managers are working with several agencies to source candidates, as well as looking to hire through a managed service route for the Risk Manager role; this is likely to have an impact on the pace of progress with the risk appetite piece, recognising the Head of Programme Management and Assurance will further develop this work for 2022/23 with support from the Business Intelligence Manager.

### **Enhanced public reporting**

*The overview: Stakeholder engagement remains focused primarily on the 2022/23 draft Business Plan and Budget consultation and has included ensuring the sector is aware that this year's underspend will result in a reduced invoice for them. In addition, stakeholder engagement on the Scheme Rules and in advance of the formal consultation has started at pace.*

Assurances received:


1. Since the last Board meeting the Board has received detailed feedback on the consultation responses which once again showed that confidence levels in the organisation have improved over the last financial year and showed support for the radical approaches outlined in the consultation; there is a level of concern that performance and recovery trajectories for 2022/23 onwards may not be achievable in the time frames specified.
2. LeO is not waiting for the formal consultation on the Scheme Rules review to start but has actively planned consumer engagement alongside engagement with the regulatory and professional body community; this is to ensure that any proposed changes have a clear benefit for those using the Legal Ombudsman service, that there are no detrimental impacts to individual consumer groups, and to provide assurance to the LSB that engagement has been wide and pro-active.
3. Meetings are due to take place with organisations such as the Legal Services Consumer Panel and the Association of Consumer Support Organisations, and opportunities for wider engagement is being explored through the MoJ and the Ombudsman Association; meetings with regulators and representative bodies commenced on 24 January with a constructive meeting with the Bar Council, who indicated their support for the direction of travel, and will continue over the coming weeks and into the formal consultation period.
4. The Annual Report and Business Plan will be aligned and drafted by the same dedicated resource with a focus on clarity of structure to address the needs of a sceptical audience and a narrative emphasising the multi-year journey and that this was never/could never be about a one-year plan; clear use will be made in setting out the vision and future plans alongside providing a retrospective report.

Additional assurances being sought:

1. In keeping with the Board's request for more information on Priority three, stakeholders will need to be similarly kept informed about full progress, including that made since the mid year review; a summary report will be shared with stakeholders in February which will outline how responses have informed the content of the 2022/23 Budget and Business Plan proposals.
2. Working closely with the Executive, the OLC Board will give further consideration to performance reporting for 2022/23 including how this relates to the commonly agreed dataset and revised KPIs.

In this letter I have made reference to the specific needs of the LSB, some of which were reiterated at January's Board to Board meeting. This is also about recognising that this letter is being received at a critical time as the LSB reflects on the assurance it needs to see in the forthcoming Business Plan and Budget submission. I am very mindful that the LSB's role is "to monitor how the OLC is assuring itself that the Legal Ombudsman is performing" and that "the LSB does not have a direct role in monitoring the performance of the Legal Ombudsman. Oversight by the LSB is not designed to duplicate the work done by OLC". (LSB website; MoU between LSB and OLC). To this end I have sought to provide an overview of the growing levels of assurance now being received by the OLC Board along with the message we are taking from LeO Executive: 'You can be confident that we will because we already are'.

Best wishes

A handwritten signature in blue ink, appearing to read 'Elisabeth Davies'.

**Elisabeth Davies**  
**Chair, Office for Legal Complaints**

