

**Minutes of the Ninety Second Meeting of the
Office for Legal Complaints (OLC)**

Monday 10 December 2018

10:30 – 14:55

Legal Ombudsman, Birmingham

Present:

Wanda Goldwag, Chair
Lis Bellamy
Bernard Herdan
Rebecca Hilsenrath
Jane Martin

Apologies:

Michael Kaltz
Annette Lovell

Board Secretary:

Kay Kershaw

In attendance:

Rob Powell, Chief Executive
Rebecca Marsh, Chief Ombudsman
Steve Pearson, Senior Ombudsman (item 5, 11 and 12)
Claire Evans, Independent Service Complaint Adjudicator (item 6)
Taran Hayre, Legal Manager, (item 9)
Sarah Ritzenthaler, Parliamentary and Policy Officer (items 10 and 13)
Mariette Hughes, Senior Ombudsman (item 11 and 12)
Dieu Huynh, IT and Governance Apprentice and staff observer (items 1 to 10 and 13)

Preliminary issues:

The Board meeting was quorate.

The Chair reminded the staff observer to maintain the confidentiality of any sensitive discussions held at this meeting.

Item 1 – Welcome and apologies

1. The Chair welcomed attendees to the meeting.

Item 2 – Approval of previous minutes

2. The minutes of the OLC Board meeting held on 17 October 2018 were **approved** for accuracy and **approved** for publication, subject to the recommended redactions.

ACTION: Board Secretary to publish the minutes of the OLC Board meeting held on 17 October 2018.

3. The draft minutes of the RemCo telephone meeting held on 20 August 2018 were **approved** for accuracy and **approved** for publication.

ACTION: Board Secretary to publish the minutes of the RemCo meeting held on 20 August 2018.

4. The minutes of the RemCo meeting held on 25 September 2018 were **approved** for publication.

ACTION: Board Secretary to publish the minutes of the RemCo meeting held on 25 September 2018.

Item 3 – Matters arising and outstanding actions from previous minutes

5. The CEO reported that the CMC transfer agreement was currently being drafted. Once finalised, the agreement would be circulated to the Board out of committee for approval.

ACTION: CEO to circulate the CMC transfer agreement to the Board out of committee for approval.

6. The Board **agreed** that an outstanding action, to consider whether there was any scope to generate commercial revenue streams through data, should be closed as this was not an immediate priority, and included in the scope of the 2020-23 strategy.
7. The CEO confirmed that there was no slippage around the anticipated timing for the completion of case transfers from CMS1 to CMS2. All cases on CMS1 were on track to be closed or transferred to CMS2 by the end of December 2018, ahead of the planned version 9 Microsoft upgrade.
8. The Board **noted** the update on the actions from previous meeting.

Item 4 - Standing reports

Executive report

9. The CEO and Chief Ombudsman presented their executive report setting out key issues arising since the October Board meeting, including an update on meetings with key stakeholders.
10. The Chief Ombudsman's focus continues to be on performance. Challenges remain in maximising closures and there continues to be variable performance across teams. This is compounded by staff turnover and the subsequent re-allocation of cases and is impacting the volume of people waiting at the front end of the business process.
11. The Customer Assessment Tool (CAT) went live on 8 October and has started to deliver clear benefits.
12. 75% of complaint submissions received through CAT are being converted into assessment cases, compared with 18% of enquiries received through other channels. Only 6% of files are being closed requiring further information, compared with 25% of complaints received through other channels. Since its introduction, the operation of CAT has been enhanced by making the submission of certain documents mandatory in order to accelerate the business process.

- 13.** We have had an Ombudsman triaging files awaiting assessment. This has identified potential early interventions and resolutions, and has assisted in identifying further refinements to CAT.
- 14.** An initial increase in the number of files awaiting assessment has been seen. Data suggests that this has now reached its peak and volumes are expected to reduce over the next six to eight weeks. Customers are being kept informed of wait times.
- 15.** There was an initial increase in the volume of incoming calls to the general enquiries team (GET) and live chat contacts. This was primarily because customers were calling to gain confirmation of receipt of their complaint form submitted through CAT. To address this, an automatic acknowledgment response is now issued every time a complaint is submitted.
- 16.** The CAT jurisdiction questions were visited 3,354 times, of which 2,042 visits resulted in progression to the complaint form, from which 547 complaint forms were completed.
- 17.** Further analysis of the early data from CAT is underway to understand the implications for demand. A latent seam of demand may have come to light following the introduction of CAT.
- 18.** Vulnerability champions have been selected in GET to support vulnerable customers with completing the CAT compliant form.
- 19.** The Chief Ombudsman reported on steps being taken to rebalance investigator and level 1 ombudsman case holdings in order to improve closure rates. This includes the roll out of workload management guidance to support case progression; the acceleration of team leader development training to ensure more effective performance management; improved MI reporting, and the scoping of development training for level 1 ombudsman.
- 20.** Active steps are being taken to drive forward a high performance culture. Recruitment is underway to increase operational resource levels and ensure that the organisation enters the new financial year with the right number of skilled staff to deliver on performance and quality KPIs.
- 21.** The Chief Ombudsman updated the Board on discussions that had taken place at external meetings with Professor Mayson, Paul Phillip, CEO of the SRA and Baroness Deech.
- 22.** The CEO reported on the progress made on the Modernising LeO agenda which, in addition to the introduction of the CAT tool, included the completion of phase 1 of the BI/MI project and the mobilisation of a project to consolidate the Azure Cloud environments onto a newer one in quarter 4 which would provide savings of £46K per annum and greater resilience for the CMS. The new BI tool was demonstrated to the Board during the lunch break.
- 23.** Another ALB successfully moved into one half of the first floor on 19 November.
- 24.** Following RemCo's approval, a new permanent senior structure is being introduced to include the creation of three operational hubs, each led by a 'Head Ombudsman'
- 25.** LeO's payroll service has successfully been transferred to Coventry City Council.

26. The Board **noted** the update on external meetings attended by the CEO and Chief Ombudsman.
27. The Board **noted** the update on legal matters that had been issued separately under legal privilege.
28. The Board **noted** the Executive report.

Finance Report

29. The CEO presented a paper reporting on the financial position at the end of month 8 and the key issues in the management accounts.
30. The reported figures reflected a reforecast prepared in October 2018.
31. Budgeted expenditure after a MoJ uplift was estimated to be £14.81m, with a target expenditure of £14.6m - £15m.
32. Across both CMC and the legal jurisdictions, an underspend for the year to date of £91k was reported.
33. The forecast outturn shows a 7.5% underspend across both jurisdictions, of which a significant element relates to CMCs and depreciation.
34. Capital spend is forecast as £163k, following approval by the OLC Board in September to return of £87k of capital budget to the MoJ.
35. Procurement of a new print supplier, with effect from 1 January 2019, was successfully completed and will deliver annual savings of £32k.
36. The CEO reported on the LSB's feedback on the budget principles paper and advised that some minor amendments to the draft budget acceptance criteria were anticipated. The final budget proposals will be presented to the OLC Board on 20 March 2019 for approval before being submitted to the LSB for approval at its Board meeting on 26 March 2019.
37. An interim external audit will be taking place in January 2019 which will focus on the quality of year end information.
38. The CEO reported on issues and mitigations to ensure data quality in CMS2 and the work that has been undertaken to provide assurance that case fee income was being correctly recognised.
39. Recruitment for two vacancies in the finance team is underway.
40. The Board **noted** the finance report.

Item 5 – Performance update, including the KPI tolerance report

41. A paper summarising operational performance and the position against KPI tolerances at the end of November was presented to the Board.
42. The position on tolerances reported quarterly was unchanged. Of the monthly reported tolerances, there were three breaches of external KPIs and two breaches of strategic Board measures, all of which were consistent with the previous position.

43. Timeliness was within tolerance, excluding the legacy impact of 180 day 'all cases', and good progress was being made.
44. Volume performance remains poor through quarter 3 to date and is a significant issue, with a total of 1,185 closures against a target of 1,584.
45. Performance is being impacted by variations in both team and individual performance and the availability of productive resource. Additionally, dual running, call overflow and new starters have all impacted on the closure figures earlier in the financial year.
46. The Board was advised that December's performance figures would also be below target.
47. The Board was assured that output in quarter 4 should be stronger.
48. Concern was raised about the budgetary underspend on staffing reported in the finance paper as it was felt that this underspend should be used to recruit additional resource in order to address the performance issues.
49. The Board was assured that ongoing recruitment and the absorption of Legacy and CMC staff would ensure that the business should start 2019/20 above establishment which would help meet forecast demand.
50. The Chief Ombudsman explained that output was unlikely to reach the desired levels at this time because of the combination of operational challenges around attrition, sickness absence, maternity leave, staff capability and competency.
51. Changes to the business process, aimed at improving the spread of investigator case holdings, would ensure a smoother flow of work and impact on performance, but this would take time to introduce and embed.
52. Changes were being made to the recruitment process to address the issues around capability and competency and HR and Line Managers were actively managing sickness absence.
53. The Board was assured that performance was being actively addressed.
54. A discussion took place about the positive impact of Pool Ombudsmen and the Board asked the Chief Ombudsman to look at options to appoint other 'pool' staff to aid operational delivery.
ACTION: Chief Ombudsman to look at the options to appoint other 'pool' staff to aid operational delivery.
55. There was some concern about optimism bias and whether the organisation could realistically achieve its targets with the forecasted levels of resource.
56. Overall, the Board remained concerned about operational performance. Members noted the positive actions that have been taken to date to address and improve performance so far. The Board acknowledged the challenges that lay ahead and that performance improvement would take time to sustain.
57. The Board **noted** the performance update.

Item 6 – Service Complaint Adjudicator’s Interim report

- 58.** The Service Complaint Adjudicator (SCA) presented her interim report for 2018/19.
- 59.** Eight stage three service complaints had been received date. This was a slight reduction compared to the same period last year.
- 60.** Five of these eight complaints have now been closed. They raised 24 individual issues of complaint. This represented a significant reduction on the 108 individual issues of complaint received in the same period of the previous year.
- 61.** The SCA upheld four of the individual issues complained about and had made recommendations for redress, which the Legal Ombudsman had been receptive to.
- 62.** The SCA identified two key themes arising from the service complaints she had considered; delay and attention to detail. She had made recommendations for service improvements and reported that Legal Ombudsman had been very open to her suggestions.
- 63.** The SCA confirmed that the overall majority of service complaints were dealt with at stages one and two of the process.
- 64.** The Board **noted** the SCA’s interim report.

Item 7 – RemCo update and approval of Terms of Reference

- 65.** The Chair of RemCo provided a verbal update on three previous meetings.
- 66.** At a telephone meeting on 16 November, RemCo approved proposals for a new senior structure, to include three Head Ombudsman posts.
- 67.** On 28 November, the Committee met to discuss a wide agenda including: an HR update; an update of the annual PIF process; assurance on the moderation of staff awards; an update on the Equality, Diversity and Inclusion forum, including the race action plan; a number of policy approvals; an update on the Staff Council, and the approval of amendments to the RemCo Terms of Reference.
- 68.** In private, before the meeting on 28 November Committee members met to review the findings of its annual self-assessment.
- 69.** A joint RemCo to RemCo meeting also took place on 28 November, with representatives from the Gambling Commission, Criminal Cases Review Commission and the Leasehold Advisory Service in attendance. A range of common issues were discussed and it was agreed that another meeting would be arranged in the Autumn of 2019, hosted by the Gambling Commission.
- 70.** The Board **noted** the update on RemCo meetings.
- 71.** At its meeting on 28 November, the Committee approved the amendments to the RemCo Terms of Reference to reflect organisational changes and changes in Committee membership.
- 72.** The Board **approved** the updated RemCo Terms of Reference for publication.

Item 8 – ARAC update

73. Rebecca Hilsenrath provided a verbal update on the ARAC meeting held on 5 December, where the agenda included: a review of the strategic risk register and a deep dive on the demand risk; updates on information rights and security and actions arising from internal audits; updates from Internal Audit and External Audit, which included the proposed approach to the audit of the 2018/19 financial statements; annual reviews of business continuity, risk strategy and the assurance map; policy approvals and data assurance and case fee assurance.
74. A paper had been tabled outlining data challenges and issues around case fees and the actions that were being taken to address the short term risks and mitigate any longer term risks.
75. External audit has planned its audit of the financial statements to respond to the risks of material misstatement and irregular transactions. They identified four risks which they believe had the most significant impact on the audit: presumed risk of management override of controls; change of the CMS; the transfer of the CMC jurisdiction to the Financial Ombudsman and the upgrade of Sage (the ledger).
76. The Board **noted** the update on the ARAC meeting.

Item 9 – OLC Governance

77. A paper setting out a number of minor changes to the OLC governance was presented by the CEO.
78. Changes to the schedule of matters reserved to Board were proposed to more clearly align decisions about the dismissal of Ombudsmen with the Legal Services Act (LSA) 2007.
79. In a detailed discussion, the Head of Legal advised that whilst the LSA 2007 stated that OLC approval was required for the appointment of Ombudsmen, their dismissal would be carried out under the terms and conditions of their contract of employment. Some members felt that it was wrong for the OLC to have involvement in the appointment of Ombudsmen, but not their dismissal and argued that the power invested in them to appoint, inferred there was also power for them to dismiss. Others members felt that it was the Chief Ombudsman's domain to appoint and dismiss Ombudsman.
80. In light of the differing views of Board members and the changing organisational structure, which is now moving towards an ombudsman led organisation, the CEO suggested a compromise where Board involvement would be required only for the dismissal of the more senior ombudsman (level 2 and above); the dismissal of level 1 and pool ombudsmen would be undertaken by the Chief Ombudsman.
81. Following discussion, the Board **approved** changes for the schedule of matters reserved to the Board to reflect that OLC approval was required only for the dismissal of level 2 Ombudsmen and above.
82. Changes to the Scheme of Delegation were proposed to reflect changes in job descriptions and clarification of approvals for suspension, dismissal or termination of individual employees.

83. Following discussion, the Board **approved** the changes proposed to the OLC Scheme of Delegation.
84. Changes to the operating framework were proposed to reflect that complaints about OLC members were to be handled under the LSB external allegations policy and to reflect how complaints about the conduct of senior members of LeO staff would be dealt with.
85. In discussion, the Board **agreed** that complaints made by a member of public about a senior member of the Legal Ombudsman's staff should be handled under Legal Ombudsman's existing policies.
86. The CEO confirmed that guidance and a process flow would be developed to assist staff when handling external allegations about senior members of staff. This would incorporate the process for handling complaints about conduct and under whistleblowing. The CEO agreed that, once developed, this guidance and process flow would be circulated to the Board for information.
- ACTION: CEO to circulate the guidance and process flow developed to assist staff when handling external allegations about senior members of staff to the Board once it has been developed.**
87. The CEO agreed that a statement on how public complaints about the conduct of senior staff and under whistleblowing would be added to the public website.
- ACTION: CEO to arrange for a statement on how public complaints about the conduct of senior staff and under whistleblowing would be added to the public website.**
88. Following discussion Members **agreed** that complaints about OLC members should be handled by the LSB under its policies and requested that the LSB advised them as and when any changes are made to its external allegations policy.
- ACTION: Board Secretary to request that the LSB informs members of the OLC as and when changes are made to its external allegations policy.**
89. Following discussion, the Board **approved** the proposed changes to the OLC Operating Framework.

Item 10 - Scheme Rules Options Paper

90. Under modernising LeO, a scoping project was undertaken to establish whether any changes could be made to the Scheme Rules without amending primary legislation and to identify any rules and processes the organisation would like to amend in the future, given the opportunity. During the course of the review, due regard was given to comments raised in response to the 2018/29 business plan consultation, including stakeholder feedback about the case fee structure.
91. An options paper setting out the key findings of the project was tabled for information at the meeting along details of the next steps that would be taken to assess the potential for development or improvement.
92. The Board **noted** the update on the Scheme Rules review.

Scheme Rules amendments – CMC transfer

93. As part of the CMC transfer to the Financial Ombudsman, the Scheme Rules need to be changed to reflect that the Legal Ombudsman will no longer be able to accept complaints about CMCs from 1 April 2019.
94. In order to make the amendments, the Legal Ombudsman is required to follow a full consultation process, as set out in s.155 of the LSA 2007, and then submit an application to the LSB.
95. The draft consultation paper was tabled for review by the Board.
96. Following the review, the Board **approved** the consultation paper for publication in January 2019 and **agreed** to subsequently approve the formal application for submission to the LSB out of committee.

Item 11 – Evaluation of the supervision model

97. In April 2018, the Legal Ombudsman began testing a pilot operational model known as the supervision model with the aim of improving timeliness and quality. The model was trialled in a number of teams. In October 2018, the Board asked for more information about the supervision model evaluation.
98. A paper was presented setting out the basis for, and the keys findings from, the evaluation of the model. The paper set out three options for the Board to consider, along with their risks, constraints and benefits. Additional comparative data was presented in order to provide context and justification for the recommended option.
99. The Board discussed the pros and cons of each of the options, noting that option 3 would achieve the best balance of resources and was achievable within the indicative 2019/20 budget. Option 3 best addressed staff feedback and provided for a ‘supervision light’ approach that would maximise autonomy and flexibility for staff performing to the required quality, whilst targeting additional resource at new starters and developing staff.
100. Option 3 would require the introduction of further development training for Level 1 Ombudsmen and a training programme was currently being scoped.
101. Following discussion, the Board **approved** the recommended approach, option 3, and **noted** the proposed plan for its implementation.

Item 12 – Draft 2019/20 strategy, budget and business plan consultation

102. The CEO presented a paper on the draft 2019/20 business plan and budget for the final year of the OLC’s three year strategy. The paper summarised the key points for the Board to consider and included a copy of the draft consultation document.
103. The CEO advised the Board that changes to KPIs, reflecting organisational learning throughout the year would be tabled for Board approval in quarter 4.

104. Following review of the draft consultation document, the Board provided feedback and made some **recommendations** to improve the wording of the document and include additional information.

ACTION: CEO to amend the wording of the consultation document in line with the Board's comments.

105. Board members **confirmed** that the agreement of the final consultation document is to be delegated to the OLC Chair, CEO and Chief Ombudsman.

106. The consultation document is to be published in mid-December for a six week consultation. A summary of the responses will be provided to the Board at the January Board meeting.

Item 13- Horizon scan

107. A paper reporting on November's horizon scan of the legal landscape was presented to the Board.

108. The paper highlighted the ongoing trend of changes in legal regulation, including the approval of changes to the SRA handbook and challenges around non-disclosure agreements, and the far reaching impact of Brexit developments.

109. Issues around justice continue to be seen, in particular leasehold reform and the LAPSO review, along with a continuing focus on bodies in the financial services profession. The Board also discussed recent proposals to devolve justice in Wales, and the LSB's 2019-20 business plan consultation.

110. The Board **noted** the horizon scan.

Item 14 - Board paper redactions

111. The Board reviewed a paper setting out proposed redactions to December Board papers.

112. The Board **approved** the proposed redactions.

113. The Board **approved** the publication of the December Board papers.

ACTION: Board Secretary to publish the December Board papers.

Item 13 – Any other business

114. The Board noted the paper presented for information on IT and digital strategy.

115. It was agreed that a telephone meeting of RemCo would be arranged to discuss the results of the Civil Service Survey.