

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

Wednesday 17 October 2018

10:30 – 15:10

Legal Ombudsman, Birmingham

Present:

Wanda Goldwag, Chair

Elisabeth Bellamy

Bernard Herdan

Rebecca Hilsenrath

Michael Kaltz

Annette Lovell

Jane Martin

Board Secretary:

Kay Kershaw

In attendance:

Rob Powell, Chief Executive

Rebecca Marsh, Chief Ombudsman

Steve Pearson, Senior Ombudsman (item 6 and 9)

Emma Cartwright, Head of Finance (item 11)

Sarah Ritzenthaler, Parliamentary and Policy Officer (items 2, 12 and 13)

Alex Moore, Stakeholder and Public Affairs Officer (items 2 and 12)

Sarah Chambers, Legal Services Consumer Panel, (item 2)

Lola Bello Legal Services Consumer Panel, (item 2)

Amajrit Saini, Staff Observer

Michelle Fleming, Staff Observer

Preliminary issues:

The Board meeting was quorate.

Annette Lovell declared that she was an employee of the Financial Ombudsman Service (FOS).

There were no other conflicts of interest declared.

The Chair asked staff observers to maintain the confidentiality of the sensitive discussions held at this meeting.

Item 1 – Welcome and apologies

1. The Chair welcomed attendees to the meeting.

Item 2 – Update from the Legal Services Consumer Panel

2. Sarah Chambers and Lola Bello of the Legal Services Consumer Panel (LSCP) joined the meeting to talk to the Board about the legal services landscape from a consumer's perspective.
3. The key areas highlighted by the LSCP included the need for greater transparency in the legal sector around pricing and quality. Since the findings of the CMA report were published, the LSCP has seen little evidence of improvement around transparency on pricing and quality.
4. Concerns in the wider landscape include the significant reduction in the use of legal aid since 2014 and 'silent sufferers' given the high proportion of people who are dissatisfied and do nothing about it. With increasing numbers of consumers self-funding and seeking fixed price services, it is imperative that data is available to help consumers make informed choices.
5. The LCSP would welcome the publication of full ombudsman decisions, improved decisions data and the quarterly publication of contextualised summaries and analysis of cases decided informally. It would also like to see direct links made with websites such as Legal Choices.
6. The LSCP would welcome more thematic work by LeO in order to strengthen commentary around complaints and would like LeO to consider alternative dispute resolution and its approach towards the unregulated sector. This is significant given that the LSCP has found that 45% of consumers say that access to LeO is important when choosing a provider.
7. The LSCP highlighted some challenges for the OLC, both short-term and long-term around: segmenting complainants, in particular around levels of vulnerability in order to personalise services as far as possible within time and resource constraints; targeting major causes of complaints and using the information to prompt service improvements by providers, and to give consideration to artificial intelligence.

Item 3 – Approval of previous minutes

8. The minutes of the OLC Board meeting held on 12 September 2018 were **approved** for publication, subject to the recommended redactions.

ACTION: Board Secretary to publish the minutes of the OLC Board meeting held on 12 September 2018.

Item 4 – Matters arising and outstanding actions from previous minutes

9. The Board **noted** the update on the actions from previous meeting.

Item 5 - Standing reports

Executive report

10. The CEO and Chief Ombudsman presented their executive report setting out key issues arising since the September Board meeting, including an update on meetings with key stakeholders.

11. The Chief Ombudsman reported on the improvements made to the front end of the business process, including the launch of the on line Customer Assessment Tool (CAT).
12. Early data since the recent launch of the CAT indicates that the tool and web complaint form are being well used by the public. The alternative options to contact LeO by telephone, letter and email when seeking assistance with a complaint about a lawyer remain in place.
13. In order to ensure that the CAT was not deterring members of the public from contacting LeO, in particular more vulnerable complainants, the Board asked the Chief Ombudsman to provide assurance through comparative data about the impact of CAT.

ACTION: Chief Ombudsman to provide comparative data to the December Board on the impact of the CAT tool.

14. The Chief Ombudsman summarised the performance challenges across the organisation and gave examples of how she was responding to them.
15. The CEO reported that the supervision pilots were currently being evaluated and agreed that the evaluation would be reported to the Board in December.
16. The CEO reported that the 2018 Civil Service Survey was live. He anticipated that the results would reflect low morale and current performance challenges.
17. The Board **noted** the ongoing performance challenges and stressed that performance and timeliness continued to be its key priority.
18. The Board **noted** the update on legal matters that had been issued separately under legal privilege.
19. The Board **noted** the Executive report.

Finance Report

20. The CEO presented a paper providing an overview of the financial position at the end of month 6 and reported on the key issues in the management accounts.
21. The paper provided an update on various procurement and contract issues and clarified figures set out in the September Board paper on IT procurement.
22. The Board **noted** the clarified figures and provided financial **approval** for expenditure on the infrastructure contract of [REDACTED] as set out in the clarified figures in the October finance report. **Fol Exempt S. 43 (2)**
23. Following discussion, the CEO agreed to a request from a Board member to amend the wording of the recommendation set out on the first page of the Finance report before the paper is published.

ACTION: The CEO to amend the wording of the recommendation set out on the first page of the Finance report before the paper is published.

24. The Board discussed the implications and challenges around two key financial risks for the remainder of 2018/19 in regard to the increased risk of under-spend on staffing and controlling unit cost.
25. The CEO explained that recruitment had taken place to reach establishment, but recent turnover had led to some vacancies for investigators. There was a significant risk, given the scheduled transfer of the CMC jurisdiction to FOS, that any further recruitment could result in the organisation being over establishment at the start of the new financial year. This could create problems for the 2019-20 budget and increase unit costs in 2018-19.
26. Board discussed these conflicting priorities, supporting investment in 2018-19 that would directly increase output, and asked the executive to prioritise the interests of consumers when deciding about other expenditure that could support medium-term performance even if this increased short-term unit cost.
27. To mitigate any risk to performance around staff turnover, the Chief Ombudsman assured the Board that further investigator recruitment would take place before the end of the financial year.
28. An evaluation of the staffing models was underway and would include an analysis of the costs associated with each model. This information is to be presented to the Board at the December meeting.
29. The Board **noted** the finance report.

Item 6 – Quarterly Strategic and Performance update, including the Quality report

30. The Executive presented a paper summarising the Legal Ombudsman's progress against the strategy at the end of quarter two, performance against the 2018/19 business plan, operational delivery plan, strategic risks and performance.
31. Improved performance was seen in the first two months of quarter 2, but the Board was concerned to see that performance had dipped in September. Key issues included the front-end business process, distribution of milestones and the need to build staff capability.
32. The Board sought assurance that the poor closure performance in September was under appropriate executive scrutiny and that senior management were able to predict closure profiles going forwards, as there had been a failure to anticipate the extent of the shortfall this month.
33. The Executive reported that to ensure a better flow of cases, Team Leaders now had visibility of the cases closed and new ones taken by each Investigator and now have the ability to automatically allocate a new case each time an investigator closes a case. On a weekly basis Operations Managers now review all cases to ensure that investigations are reaching case milestones in a timely manner and address any issues identified.
34. Improved Business Intelligence reporting was currently being tested and would have a positive impact by providing better management information on case management once introduced.
35. Case closures for October were likely to be below target, but closer to tolerance.

36. There was evidence that the steps taken to improve the front end of the business process were having a positive impact on performance, time to deal with email enquiries and the quality of the files being assessed by Investigators has improved. The improved timeliness for dealing with email enquiries has had a knock on effect on the volume of files awaiting assessment; this would reduce as the flow of cases improved.
37. Some Board members raised concern about the time while cases were awaiting assessment and that case age was calculated only once a case had been assessed and accepted for investigation.
38. The Chief Ombudsman explained that overall, complainants were more tolerant of a wait at the beginning of the process and less tolerant of a stop start investigation. Once accepted, low and medium complexity cases now proceed within our target timescales.
39. Amarjit Saini, staff observer and member of the General Enquiries Team (GET) assured the Board that expectations were managed by GET right at the start of the process and complainants accepted that there was a wait time for their complaint to be assessed.
40. It was felt that it would be beneficial for the GET to be kept informed of current wait times in order to manage new complainants' expectations.

ACTION: Chief Ombudsman to ensure that GET are kept informed of current wait times for cases to be assessed for investigation so that they can share this information with complainants.

41. Other work to improve performance included the ongoing evaluation of supervision model pilots, work to manage milestones more effectively, and significant focus on developing a high performance culture and building staff capability.
42. Performance against the business plan remained strong, with 68% of the deliverables showing a green RAG status or as completed.
43. KPI Performance in quarter 2, including against tolerances, was broadly in line with expectations on timeliness, and reflected plans for an improving trajectory throughout 2018/19.
44. Tolerance breaches occurred against 11 of the 30 sub-measures relating to seven KPIs and two of the 11 strategic Board indicators.
45. The lack of closed cases during September resulted in some areas, including unit cost, being outside tolerance.
46. Concerns were raised about two of the Customer Satisfaction KPIs that were outside tolerance; the Chief Ombudsman was clear with Board that these would take time to revert, as they were lag indicators and the clearance of legacy work and performance trajectory impacts would take time to flow through.
47. Following discussion, Board members asked for the summary of strategic risks to be updated to include a RAG status, headline data in order to assist Board members in drawing out key points and information about next steps and timescales for completion.

ACTION: CEO to update the summary of strategic risks to include RAG status, headline data and information about the next steps and the timescales for completion.

48. The Board **noted** the performance update, noted that further short-term fluctuations are likely before performance stabilises, and highlighted the need for more granular data to predict short-term performance more accurately. The Chair stressed that the Board remained concerned about performance and would continue to do so until more consistent improvement was seen.

Quality Report

49. A paper summarising performance between October 2017 and September 2018 against four the key quality measures was presented to the Board.
50. Performance remained relatively stable against the measures of all four quality measures. Current performance reflected the known issues, specifically timeliness; level of contact with the parties, and the quality of preliminary and case decisions prepared by investigators. Steps have been taken each quarter to address these issues and improvement work is an ongoing priority.
51. The number of cases sent back to Investigators by the Ombudsman have reduced which is having a positive impact on timeliness and customer satisfaction.
52. The Quality framework is currently under review. The ability to measure some indicators has been impacted since April as a result of the new business processes.
53. Small sample sizes used in Customer Satisfaction surveys were impacting on results. Improved reporting and larger sample sizes taken from the new CMS would improve the data collected in the future.
54. The Board **noted** the quality update and the issues highlighted in the paper.

Item 7 – Quarterly Modernising LeO report

55. The Chief Executive updated the Board on the progress of the Modernising LeO programme during quarter two, and the reduction in programme scope to better align with available resource.
56. Enhancements to CMS2 have been successfully deployed and preparation for the mandatory v9 upgrade required by Microsoft is progressing. Cases were now being moved from CMS1 into CMS 2 in advance of CM1 being decommissioned. The last case to be moved is likely to take place in the second half of November. The CEO agreed to alert the Board to any slippage.

ACTION: CEO to alert the Board to any slippage around the anticipated timing of the last case being moved from CMS1 to CMS2.

57. The development and launch of the Customer Assessment Tool (CAT) has been successfully completed, and the business intelligence tool is being tested.
58. Improvements to the website and planning for the Scheme Rules review in quarter 3 are in train along with improvements to the MI reporting and data quality.
59. The Board **noted** the Modernising LeO quarterly report.

Item 8 – RemCo update

60. The Chair RemCo provided a verbal update on the key discussions that took place at the RemCo meeting held in September.
61. The agenda included discussions on recruitment and staff turnover, CMC transition, the imminent refresh of the Staff Council, feedback from two Staff Council members on the new ways of working and planning for the RemCo to RemCo meeting on 28 November.
62. The CEO updated the Board that the refresh of the Staff Council has been completed, and the new Staff Council was more representative of the organisation.
63. The Board noted the **update** from the RemCo Chair.

Item 9 – CMC Transition

64. Senior Ombudsman, Steve Pearson, updated the Board on the project dealing with the statutory transfer of the Claims Management Companies (CMC) jurisdiction from the OLC to the Financial Ombudsman Service (FOS).
65. The scheduled date for the CMC transfer is 1 April 2019. The Statutory Instrument required to effect the transfer is to be laid in Parliament in October 2018 and is expected to be debated in late November 2018. This process is being managed by HM Treasury lawyers.
66. A viable solution for dealing with the transfer costs is still to be agreed and is a significant risk to transition generally and data transfer, which needs to commence by 1 December 2018 at the latest..
67. The CEO has asked the Ministry of Justice (MoJ) to assist in expediting a solution on this matter as it is hindering progress on drafting the Transfer Scheme. Once written the Transfer Scheme requires approval by FOS, the Financial Conduct Authority and the MoJ.
68. The Financial Ombudsman has now confirmed the location of its CMC department and LeO staff have been informed. It has been agreed that the principles of TUPE will apply to staff currently employed in the CMC jurisdiction.
69. HM Treasury has confirmed that post-transfer the OLC can continue to enforce existing enforcement applications (those that have already been issued in court prior to transfer to FOS), with costs to be funded by the Financial Ombudsman. However the OLC cannot make any new enforcement applications post-transfer (in relation to a pre-transfer decision). Complainants are to be notified of this from 1 November 2018.
70. It is anticipated that the vast majority of CMC-related enforcement would have commenced or concluded before the transfer date.
71. The Board **noted** the update on the project dealing with the CMC transfer.

Item 10 - Transparency Publication Reports

72. The Board **approved** the gifts and hospitality register covering the period 26 June to 3 October 2018 to 25 June 2018 for publication.
73. The Board **approved** the OLC Board member and senior manager expenses reports for the period of 1 July to 30 September 2018 for publication, subject to the inclusion of a nil return being reported for those Board members that did not receive any expenses in this reporting period.
74. The Board **approved** the OLC Board member and Ombudsman register of interests for publication, subject to a minor amendment.

ACTION: Board Secretary to amend and publish the quarter two transparency publication reports.

Item 11 – Draft 2019/20 Budget Principles

75. The OLC is required to submit its annual budget to the LSB for approval. The LSB has provided draft budget acceptance criteria to inform preparation of an initial budget principles paper which is due to be discussed by the LSB at its meeting on 23 November. The final budget will be presented to the LSB in March 2019.
76. The CEO and Head of Finance presented the first draft of the draft 2019/20 budget principles paper for the LSB, advising that there was still more work to be done on the outline budget and business plan.
77. The Board was advised of the challenges around setting the 2019/20 budget. Evaluations of the supervision pilots were currently underway and the longer-term staffing model needed to be decided.
78. Key pressures impact the 2019/20 budget as a result of the transfer of the CMC jurisdiction to FOS and the associated allocation of all indirect costs to the legal jurisdiction.
79. Legacy budget will be absorbed, but cost pressures remain to invest in quality, develop a performance culture and some IT costs may move from 2018/19 to 2019/20 due to the v9 Microsoft upgrade.
80. The headline indicative revenue budget is in line with the estimate provided to the LSB last year having factored in inflation. However, the budget will be challenging to deliver as a result of these pressures and the unit cost will increase due to the lower volume of closures assumed and impact of overheads after CMC transfer, but will remain lower than the historical average.
81. A discussion took place around the impact of performance on the budget. The Chief Ombudsman clarified that should performance decline over the next few months the work in progress (WIP) would not change, but the number of files awaiting assessment might increase.
82. In light of this, the Board requested sight of the number of cases awaiting assessment and the number of cases in the Investigator WIP. This information would be included in the next quarterly performance report to be tabled at the January Board meeting.

ACTION: The Chief Ombudsman to arrange for the number of cases awaiting assessment and the number of cases in the Investigator WIP to be included in the next quarterly performance report.

83. Following discussion, the Board **noted** the draft 2019/20 budget principles paper for the LSB and suggested a number of amendments for incorporation into the final report.

ACTION: The CEO to incorporate the amendments suggested by the Board into the 2019/20 budget principles paper for the LSB.

84. The Board **agreed** to delegate final approval of the final 2019/20 budget principles paper for the LSB to the OLC Chair, CEO and Chief Ombudsman.

Item 12 – Publishing Decisions

85. The Legal Ombudsman has been publishing final ombudsman decisions since April 2012. In line with a commitment made in the OLC's policy statement in 2016, the policy is being reviewed in light of the transparency agenda from the CMA report into the legal services market and the insights from the 2018 Better Information research jointly commissioned by LeO and the SRA.
86. Proposals have been formulated to refine the published decision data, including a proposed scoping project in 2019-20 to explore the scope to publish full ombudsman decisions.
87. The Board discussed the pros and cons of publishing data on Ombudsman's decisions and full anonymised ombudsman's decisions. Board members put forward a range of views and comments. These included proportionality of publishing data and the importance of context, the limitations of the Legal Services Act 2007 in regard to publishing non-decision data and the possible scope to seek changes to the Act to allow publication of data where firms have agreed to informally resolve a complaint.
88. Chief Ombudsman **agreed** to consider the views and comments put forward by the Board when finalising the publishing decisions policy.
89. Following discussion, the Board **agreed** the proposed approach to working towards a revised publishing decisions as set out in the paper.

Item 13 – Horizon Scanning

90. A paper reporting on October's horizon scan of the legal landscape was presented to the Board.
91. The report highlighted major changes to regulators' rules, including flexibility in where service providers can practice, what information they must provide to the public about their services and how they are trained before they become qualified. The report also noted recent research into opinions and concerns of the profession regarding these changes.
92. Discussions took place about the transparency agenda arising from the CMA report, the proposed changes to the SRA handbook, and the LAPSO post-

implementation review and their impact on LeO, along with changes in the regulatory field and the findings set out in the LexisNexis Bellwether report.

93. The Board **noted** the October horizon scan.

Item 14 – Board Paper Redactions.

94. The Board reviewed a paper setting out proposed redactions to the October Board papers and **noted** that a late paper submitted on the scanning contract would require full redaction.

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

96. The Board **approved** the publication of the October Board papers.

ACTION: Board Secretary to publish the October Board papers, subject to agreed redactions.

Item 15 – Any other business

97. [Redacted]

[Redacted]

[Redacted] Fol
exempt S. 43 (2)

100. The CEO updated the Board on a legal matter highlighted in the legal update issued to Board members under legal privilege.

101. There was no other business.