

Dr Helen Phillips
By email

6 January 2022

Dear Helen

On the 14th December we had a very helpful OLC Board meeting when we mirrored some of the critical questions posed by the LSB with regard to the consultation document, particularly in relation to confidence and plausibility. The Chief Ombudsman shared an approach to more systematically setting out confidence levels in each of the key initiatives, an approach which has subsequently been tested with a number of LSB colleagues.

The Board met just one day after the stakeholder consultation session had closed. It has subsequently received more comprehensive feedback but at the meeting itself was able to focus on the confidence of stakeholders, both in LeO's Leadership and in the improvement plans.

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: The mid-year review for 2021/22 was published as part of the consultation document but 2021/22 is not yet over and significant progress continues to be made. Established investigators achieved a productivity level of 7.01 in November, the highest number reported since LeO started capturing this figure. LeO is on track to deliver 90% of the 2021/22 Business Plan year end closures by March 2022 with around 80-84% of the established investigators needed. Confidence in the deliverability and plausibility of LeO's performance improvement trajectories for 2022/23 is critical.

Assurances received:

1. November was a significant month in LeO's ongoing stabilisation:
 - a. Complaint outcomes were delivered to 571 customers (exceeding a Business Plan assumption of 432).
 - b. This is made up of 465 investigation decisions with an additional 106 early resolution closures achieved for customers using early interventions (including Reasonable Offer Made (ROM) and Guided Negotiation activity).

- c. Investigation times continued to fall and are 12.3% lower than for the same period in 2021/22.
2. The new General Enquiries Team Investigator (GETI) pilot is bringing an acute focus on improving customer service and efficiency at the front end; total investigation time on a sample of 26 cases is around 45 days compared to 91 days for a case where there has been no GETI involvement.
3. The number of customers added to the PAP has increased again for the second month in a row, with 690 being added compared to a Business Plan assumption of 600. The increase in cases to the PAP was anticipated and does not represent a change to core demand. It represents a resourcing issue in the General Enquiries team which had been built into Q4 trajectories for 2021/22. The increase is offset by increased closures both from cases resolved by investigation and the new initiatives of guided negotiation, ROM, proportionality and demand management at the front end. In addition, LeO has seen a steady increase in the number of customers being taken from the PAP as the new starter cohorts become more productive and take on more cases.
4. The review of LeO's Scheme Rules is rapidly progressing, including conducting full impact assessments on proposed changes, and a draft consultation paper is being prepared on the first phase of changes. To expediate decision-making and reflecting the sector's desire to receive more information, a subgroup of the OLC Board will work with the LeO Executive in early January in readiness to go out to consultation as soon as possible thereafter.
5. Discussions are ongoing with the LSB and the MoJ on the legality and ability to outsource casework or utilise agency resource and a meeting is planned for early 2022. In the interim LeO Executive is not standing still and is researching potential options on outsourced services, including costs and risks, if they're able to progress this.
6. The quality of communication along with the speed of process, particularly delays at the front end, continue to be the main drivers of customer dissatisfaction. Work has been undertaken to address issues around frequency of communication whilst cases are waiting in the pre-assessment pool (PAP). Significantly the Board was assured that work will continue to ensure that the focus on operational delivery and initiatives that are being trialled to improve efficiency and reduce customer journey time do not have any unforeseen adverse impacts on the quality of the customer experience.
7. The interim report of the independent Service Complaints Adjudicator shows that a significant proportion of service complaints are closed at earlier stages and without the need for escalation.

Additional assurances being sought:

1. Confidence levels in deliverability of the performance trajectories is critical for the Board, recognising the plan to close over 50% more cases next year. The Board guarded against over-optimism in the current recruitment round. The challenge is around how LeO sets out a clear ambition for the future which is plausible and deliverable – “this is about giving confidence in LeO's ability to manage the change, not downgrading the scale of the change required”. The Board committed to using the remaining stages of the Business Planning process to revisit confidence in the anticipated trajectories, their dependence on an increased budget and the integrity of the assumptions that underpin these.
2. The Board reviewed an approach to more systematically setting out confidence levels in each of the key initiatives. Further consideration now needs to be given on how this will be shared via either the reviewed Business Plan or Budget Acceptance Criteria submitted to the LSB.
3. Mindful of the LSB critique of the number of options previously being considered, the Board recognised the tighter and more targeted approach to reducing the PAP and the focus on quantifying such activities where possible. Board members asked the question ‘what will make the biggest differences?’ and in future the initiatives will be categorised on the basis of impact.
4. The Quality Team remains under-resourced and attempts to recruit a new Quality Manager have not been successful. Levels of proactive interventions that can be delivered by the team are significantly reduced compared to previous years. The Board will seek assurance

about how this important resourcing issue is being addressed and will continue to receive a comprehensive quality assurance update every six months.

5. The LeO Executive is giving further consideration to the possible impact of the ongoing pandemic and changes in Government Guidelines, recognising that this is not directly comparable with previous lockdowns. Further assurance will be provided to the Board at the January meeting on its likely impact on both the last quarter of 2021/22 and future performance trajectories.

People and Leadership

The overview: The importance of having sufficient people in the business cannot be overstated. LeO began the 2021/22 business year under resourced and has not been able to recruit sufficient investigators to achieve the required numbers which directly deliver the Business Plan outcomes. The major reason has been the prevailing employment market conditions which have affected the ability to reach the required numbers of people in investigative teams. This has included recruiting sufficient numbers of new people of the right quality alongside an increase in the number of people leaving the organisation. Whilst still cautious, LeO's first time partnership with a managed recruitment partner looks set to over deliver on the numbers of candidates needed which will then translate to successful recruits for a February start. This will enable LeO to recruit sufficient numbers of investigators to reach staff complement before 2022/23 and bring forward recruitment for assumed 2022/23 attrition, a position which will deliver significant resilience to LeO's performance and future trajectories. The importance of confidence in LeO's leadership is also of critical importance. Feedback from the stakeholder consultation has reinforced confidence in LeO's leadership and this is echoed by the Board who believe in the credibility of the actions they are taking.

Assurances received:

1. Overall investigator resource year to date stands at a deficit of 15.6%. The OLC Board must have confidence in LeO's ability to end 2021/22 with the full staff complement. Following the failure of local campaigns to recruit sufficient numbers LeO has changed its recruitment strategy and is now working with an external recruitment partner on a national campaign to widen applicant reach. This has the added advantage of conserving internal resource for delivering business as usual. Working with the national recruitment partner LeO attracted almost 900 candidates and shortlisted 144 for interview. Interview dates run from 6 January – 18th January, with a moderation exercise on 20th January. Evidence from previous local campaigns in 2021 show that LeO usually interviews 3.5 candidates to fill each investigator vacancy. LeO plans to recruit between 38-43 investigators which is achievable from the numbers called for interview. Induction for new starters will be staggered in weeks 1 and 2 of March 2022, ready for LeO to have a full complement of investigators for the 2022/23 year. The numbers of investigator roles to be filled takes LeO to its Business Plan staffing assumption, taking full account of assumed attrition at 2.7 per month for Q4 2021/22 and Q1 and Q2 for 2022/23.
2. Alongside the national recruitment campaign LeO is proactively developing a strategy to diversify away from a single site location in Birmingham and consider small hubs, potentially making good use of MoJ estate. LeO's employment offer is likely to be more attractive in other UK cities where the market is less saturated with competitors requiring similar skills. LeO will interrogate candidate national recruitment data to consider the feasibility and benefits of whether and where hubs could be developed. A site visit to Cardiff has already taken place to test proof of concept.
3. EDI is being fully integrated into performance discussions with an EDI induction session now delivered to new cohorts; equality impact assessments built into the Business Plan cycle; and inclusive leadership training arranged for both the Board and Executive.
4. Increased performance management has also driven attrition. LeO is taking steps to tackle this through the People Strategy which will review the employee proposition taking account

of the approach to diversity, pay and reward, and the development of staff. This includes a pay benchmarking exercise already underway.

5. New starters exceeded expectations with the July cohort delivering 4.75 and September 1.4 closures, against expectations of 2.58 and 0.7 respectively. Operational leadership continue to drive improvements in performance variation for established investigators with the expectation results will be seen in Q4 of this year. As predicted, this in part has increased sickness levels across the investigator population which has risen from a loss of 10.97% of available investigator days in October, to a loss of 11.75% of available investigator days in November. Wider contributing factors to sickness levels have included absences due to mental health and absence relating to surgery. These have significantly increased month on month as hospitals have started to work through the backlog of procedures paused through 2020/21 lockdowns. Absences due to COVID are still apparent in the business, however through November LeO had seen a reduction month on month with individuals with long-term absence returning to work.
6. The distribution of established to non-established investigators has moved from 100% established in June and now stands at a 61%/39% split - until investigators become established, this split will continue to grow.
7. In keeping with Government Guidelines, from 13 December staff have not been required to work 40% of their working week in the office. Exceptions are in place for those staff who require this.

Additional assurances being sought:

1. Internal auditors will carry out an audit in January on recruitment and this will provide the Board with independent assurance in relation to LeO's revised approach to recruitment.
2. LeO's response rate to the Civil Service People Survey is 56%, higher than the rate of the MoJ (41%) but lower than last year's exceptional response rate of 81%. The Board was assured that a full analysis with detailed action plan will be shared, potentially at its March Board meeting.
3. The Board is seeking clarity on the relationship between the national recruitment model, already progressed, and the consideration of potentially making greater use of regional Hubs.
4. From March 2022 the OLC Board will have regular sight of critical EDI datasets for both LeO's customers and LeO's people.

Risk management and financial governance

The overview: LeO must be able to break the mould of the underspend, giving the OLC Board confidence that it won't be in this position next year. Much of this comes down to the confidence of being able to address the recruitment challenges and the ability to effectively 'over recruit' this year in order to future proof against planned attrition. With ambitious improvement trajectories, effective and pro-active risk management will be more important than ever as it is risks maturing that will prevent achievement of the Business Plan. Alongside this clearer messaging is needed around the implications for the sector – namely that costs will not be incurred in 2021/22 and invoices for February will be lower than anticipated.

Assurances received:

1. The increase in forecast underspend has clearly been driven by ongoing recruitment and attrition challenges. Significant efforts are being made to address a number of vacancy gaps including through the external recruitment partner and good use of interim appointments.
2. Recruitment challenges have affected corporate as well as investigative roles where vacancy gaps include the Legal Manager and Risk Manager roles. Additional resource is being brought in to address potential risks created by the gaps. Greater use is being made of external legal advice to address potential risks created by the former gap whilst the use of a managed consultancy service is being explored to provide risk management support.

3. Work continues on LeO's comprehensive review of governance and contracts with a full schedule of updated and refreshed policies being developed.
4. Following October's Board meeting the quarterly update on financial governance was shared with the Permanent Secretary, noting the improving feedback from internal and external auditors along with emphasising the critical focus and challenges of managing the underspend.

Additional assurances being sought:

1. Throughout the review of the consultation document the Board has been clear about the need to give the LSB and the sector confidence in why this year's underspend will not be repeated next year. This will need to be included in the response to the consultation exercise and the revised Business Plan for 2022/23.

Enhanced public reporting

The overview: Stakeholder engagement has remained a significant focus over Q3 and has largely focused on the consultation document. The targeted approach to engagement will continue post-consultation with more information provided on a tailored basis.

Assurances received:

1. Top level feedback from the consultation exercise demonstrates that LeO is recognised as a more transparent organisation; that the approach to being open about different confidence levels within future plans is welcomed; and that there is renewed and strong confidence in LeO's leadership. There is overall support for proportionality and early resolution but further details are required, alongside a concern that the trajectories are too ambitious given the difficulties with recruitment.
2. Additional interim resource has been sourced to work on the revised Business Plan, ensuring levels of detail can be revisited and messages better articulated in direct response to stakeholder feedback.
3. The organisational focus will remain on recovery and reducing the backlog. The Board supported in principle the move to progressing towards publishing full ombudsman decisions in 2023/24 whilst recognising that further work will be done on resourcing this along with fully understanding its impact on operational performance.
4. A GIAA audit has been completed in Q3 on LeO's approach to performance reporting. Provisional findings were shared after the Board meeting, indicating a moderate rated report with a small number of recommendation improvements and praising the importance of the commonly agreed dataset for providing a solid foundation to build on.

Additional assurances being sought:

1. In addition to taking the publishing decisions work forward there are other areas of transparency work that LeO can explore to help enhance the quality of data available to its customers. This includes further consideration of the use of Category 1 decisions, currently rarely used, and the OLC Chair will work with LeO Executive on this.
2. The OLC is ending the year with real and renewed stakeholder confidence in LeO's Leadership. Where more work is needed next year is on ensuring that this is matched by a confidence in LeO's improvement plans, and that these are considered to be plausible and deliverable.

In this letter I have made numerous references to confidence because this is such an important theme, for the LSB Board, the OLC Board and LeO's stakeholders. November has shown some positive signs but there is some way to go and 2021/22 is not yet over. LeO's absolute focus is on further improvement and delivering the best possible performance in the last quarter of the year. At the Board meeting there was a clear indication that LeO is not standing still nor is it waiting for

change to happen. A significant amount of activity is being progressed including now actively considering the possible impacts of COVID and what this should mean for LeO's priority actions.

Finally, January's Board to Board meeting is an important opportunity to explore the points I have included in this voluntary assurance letter in more detail, ensuring both the LSB and OLC Boards have confidence in LeO's 'realistic ambition' for 2022/23.

Best wishes

A handwritten signature in blue ink, appearing to read 'Elisabeth Davies', with a stylized flourish at the end.

Elisabeth Davies
Chair, Office for Legal Complaints

