

Minutes of the 134th Meeting of the Office for Legal Complaints (OLC)

Thursday 25 July 2024

<p>Present</p> <p>Elisabeth Davies, OLC Chair</p> <p>Georgina Philippou, OLC</p> <p>Rachel Cerfontyne, OLC</p> <p>Hari PUNCHIHEWA, OLC</p> <p>Patricia Tueje, OLC</p> <p>Dale Simon, OLC</p> <p>Alison Sansome, OLC</p>	<p>In Attendance</p> <p>Paul McFadden, Chief Ombudsman</p> <p>Steve Pearson, Deputy Chief Ombudsman</p> <p>Blessing Simango, Head of Finance, Procurement and IT</p> <p>Laura Stroppolo, Head of Programme Management and Assurance</p> <p>Stephanie Godbold, Head of Communication, Engagement and Impact</p> <p>Debra Wright, Head of People Strategy and Services</p> <p>Aaron Rock, Enterprise Risk Manager, item 2</p> <p>Paul Conway, Performance and BI Manager, item 7</p> <p>Mark Persard, EDI Manager, item 8</p>
<p>Apologies :</p> <p>Martin Spencer, OLC Board Member</p> <p>David Peckham, Head of Operations, Business Transformation and Intelligence</p>	
<p>Minutes</p> <p>Kay Kershaw, Board Governance Manager</p>	

Item 1 – Welcome, apologies and declarations of Interest.

1. The Chair welcomed attendees to the meeting.
2. Apologies were noted.
3. The meeting was quorate with a lay majority.
4. There were no declarations of interest reported.

Item 2 – Annual risk workshop

5. The Board participated in its annual risk workshop, reflecting on the progress made on OLC / LeO’s risk management framework since 2019 and considering what more could be done to build on what was currently in place; reviewing and **agreeing** the OLC’s risk appetite statement for 2024/25; and, reviewing and **agreeing** the 2024/25 strategic risks and issues, risk appetites and tolerances, subject to some amendments to the wording of SR06 and terminology used in S103.

Item 3 – LeO’s position on transparency of case work and publishing decisions

6. The Executive presented a paper to Board setting out the background, considerations and options for publishing ombudsman decisions. This paper outlined the background, considerations and options for publishing ombudsman final decisions in full. The Chief Ombudsman opened by highlighting OLC and LeO’s long standing and continued commitment to greater transparency and exploring ways of ensuring the transparency of decision making. He outlined the options presented by the Executive and some of the key considerations and challenges inherent in these including those related to resource and operational performance. This had been informed by the Executive’s assessment but also the experience of a number of other national Ombudsman who had delivered or were continuing to pursue greater transparency of decisions.
7. The OLC Chair reported that, having made significant progress in reaching a better standard of service and customer experience, the OLC was now in the positive position of being able to assess the options and pathway to enhancing transparency through publishing ombudsman decisions as part of its new strategic objective to increase impact on standards in the legal sector. There were important considerations to take account of round this change and previous OLC consideration had highlighted that there was some risk to this change. The principle of transparency was important however, and one which stakeholders were rightly pushing for. It was also a clear commitment of the OLC and LeO.
8. In discussion, Board members shared their thoughts on transparency and the options for publishing decisions, the following key points were made:
 - It was agreed transparency was important in principle for a public body, as a means of underpinning confidence in, and understanding of LeO’s decision-making work. Transparency had featured prominently in discussions at a recent Board to Board meeting with the LSB, where there had been strong support in particular for LeO to set out plans for the publication of ombudsman decisions and a clear message that delivering this strategic aim would be key to bolstering trust and confidence in the OLC/LeO going forward.
 - The OLC’s assessment of the options for publishing decisions should be underpinned by a clear rationale and explanation of not only the resource and costs but also the associated opportunity costs – that is, other feedback, learning and insight activities that might deliver greater benefits but for which resource and strategic capacity might then be limited. Where an option was considered not to be achievable, an alternative way of achieving the objective should be explored. Consideration could be given to conducting the OLC’s assessment of the options for publishing decisions through a value for money lens, taking account of economy, efficiency and effectiveness in quality.
 - Board members were in support of enhancing the transparency of ombudsman decisions and recognised the need to consider carefully the options presented in the associated paper. Board members expressed a range of preferences from publishing summaries of ombudsman decisions, drawing out the learning and insight, to moving more quickly to the publication of ombudsman decisions in full in their current format. It was agreed that publishing heavily redacted ombudsman decisions (for example, to remove information considered restricted under the Legal Services Act) would not be

ideal, given these would not meaningfully increase transparency. This was, however, the most realistic option in the short term.

- On balance, a staged approach to publishing ombudsman decisions was preferred if this was possible. This would allow time for the required operational changes and staff training to be implemented to ensure consistency of style and format and for engagement with the legal sector to manage expectations on this significant change.
- The merits of publishing ombudsman decisions where there had been no finding of fault on first tier complaints handling was discussed; it was recognised that there was also value in showing examples of good practice and representing the balance of outcomes across LeO's decisions overall.
- It was suggested that, in the short-term, ombudsman decisions could be published in their current format subject to clear criteria, with care taken to mitigate against unfair commercial impacts and to protect the privacy of the consumers involved. Consideration could also be given to implementing any quick fixes to address inconsistencies in the style and format, and to incorporating a standard section on wider learnings for consumers and the legal sector to maximise impact.

9. Noting the Board's comments, the Chief Ombudsman (CO) reported that:

- As had been clear through the development of the new three year strategy, the Executive was also fully committed to enhancing transparency in a range of ways including through publishing ombudsman decisions.
- Careful management of the implementation process would be required to mitigate the associated risks, including those relating to commercial fairness for the legal sector, legal challenge, process and system changes, resource, demand volatility and performance. On the final point, although LeO's operations had stabilised sufficiently to once again progress plans to enhance transparency, it was important to exercise caution given that challenges remained and the significant operational impacts of implementing the changes required to support the publication of decisions.
- LeO's engagement with other schemes suggested that it could take a minimum of three years to implement the publication of ombudsman decisions in full without redaction where a change in process, systems and approach to drafting was required across all investigators and Ombudsmen (and therefore thousands of drafts and final decisions); considering this, the quickest option for OLC would be to publish ombudsman decisions in their current format and style subject to clear criteria, with a view to moving to such a more root and branch change of approach and appealing style of ombudsman decisions over time.
- Publishing summaries of ombudsman decisions would also be resource and time intensive. Because it would be a different output, Counsel's advice had confirmed that this would require additional stages of process for checks and consultation with the complainant and legal provider before publication, to ensure procedural fairness. This would add additional resource and time to the process.
- There would be some value in publishing all ombudsman decisions, not just those relating to upheld complaints, in terms of confidence in LeO and the legal profession

more generally and in allowing greater transparency of issues identified in service provision. However, the tangible impact would be minimal in terms of driving behavioural change, reducing demand for LeO, delivering improvements to legal services and addressing complaints handling failures within the sector, certainly when compared to other planned activities and taking account of the extent of change and required resource. There would be a limitation to which of these activities LeO could progress alongside each other, which spoke to the opportunity cost question raised by Board.

- Whilst the Legal Services Act did not require the OLC/LeO to consult on a change to its approach to publication, a commitment had been made in 2020 to fully consult before any decision was made on potential changes; it was proposed that this would be undertaken alongside the 2025/26 Budget and Business Plan consultation, so that the budget and resourcing implications could be presented in the context of LeO's wider plans and budget for the year.

10. The Board and Executive **agreed** that it would be necessary and important to consult on the options for publishing decisions. In terms of next steps, the Board would therefore revisit this discussion as part of the 2025/26 budget and business planning process with a view to consulting on publishing decisions at the same time as the 2025/26 Budget and Business Plan in the Autumn to inform the OLC's decision making in advance of the 2025/26 business year.

11. The OLC Chair agreed to write to the LSB to report on the Board's discussions on enhancing transparency through publishing ombudsman decisions.

ACTION: The OLC Chair to write to the LSB to report on the Board's discussions on enhancing transparency through publishing ombudsman decisions.

Item 4 – Update from the Performance Sub-Group

12. The CO reported on discussions that had taken place at the Performance Sub-Group (PSG), drawing the Board's attention to the following points:

- The PSG had reviewed performance against the 2023/24 assumptions to test the accuracy of LeO's trajectory model and to identify any changes that may be required to improve the accuracy of forecasting for 2025/26.
- Performance for 2023/24 had been in the upper trajectory ranges, giving the PSG confidence in LeO's assurance setting model.
- There had been deviance in the 2023/24 assumptions for demand, investigator attrition and reallocations resulting from sickness. The Executive would continue to monitor these areas closely. Assumptions based on 12 months actual data collected between August 2023 and July 2024 would be presented at the next PSG meeting in September for further consideration.

13. In discussion, it was suggested that consideration should be given to extreme testing reallocations resulting from sickness.

ACTION: The Head of Operations, Business Transformation and Intelligence to consider extreme testing reallocations resulting from sickness.

14. Questions were raised about the extent to which demand was being impacted by the Scheme Rules changes and what that might mean for the budget. Considering this, it was suggested that consideration should be given to conducting a budgetary re-forecast.

ACTION: The Head of Finance to consider whether a budgetary re-forecast would be required to take account of the impact of the higher levels of demand than had originally anticipated for 2024/25.

15. The Board **noted** the update on the PSG meeting held in July 2024.

Item 5 – Update from ARAC

16. The ARAC Chair reported on key discussions that had taken place at the ARAC meeting in May, the following key points were made:

- Considering that a high proportion of audits in 2023/24 had received a ‘substantial’ rating and concerns that the 2023/24 audit plan had not been sufficient to provide the required assurance, ARAC had sought to understand the rationale for GIAA’s assessment of its indicative ‘moderate’ annual audit opinion for inclusion in the 2023/24 Annual Report and Accounts. GIAA had explained that its assessment had been based on the OLC’s performance over the last three years, not the last 12 months, and confirmed that the size of the audit plan had not been a determining factor.
- It had not previously been made clear to ARAC or the Board that the annual audit opinion would be based on the last three years performance and, concerned that GIAA’s assessment did not demonstrate the year on year improvements that had been made, ARAC had provided feedback on re-defining audit ratings to reflect scales (lower to higher) within each of the audit rating categories to provide more clarity on incremental improvements; GIAA would be considering this as part of ongoing work to re-define audit ratings.
- ARAC had provided feedback on potential changes that could be made to the LSB’s Budget Setting Criteria for further consideration by the LSB.
- ARAC had undertaken its annual review of the assurance map and had been pleased to note the improvements that had been made and the further improvements that were planned, which would provide further assurance.

17. A discussion took place about issues that had emerged after May’s ARAC meeting regarding the External Audit timeline. These issues had been outside of the OLC/ LeO’s control but had created additional work for LeO staff. The lessons learned from this had been captured and the 2023/24 Annual Report and Accounts had now been laid in Parliament. The Board commended all involved at LeO for their resilience and hard work on this.

18. The Board **noted** the update on May’s ARAC meeting.

Item 6 – Chief Ombudsman’s report

19. The CO report was shared with the Board prior to the meeting for consideration. The CO drew the following points to the Board’s attention:

- LeO had hosted a delegation from the LSB in July; discussions had focussed on promoting understanding of LeO’s service, the improvements that had been made to customers’ experience and the progress and plans for delivering the OLC’s new strategic objective to increase impact on standards in the legal sector. Further discussions on this new strategic objective had taken place at July’s Board to Board meeting with the LSB.
- The delayed Cabinet Office pay remit guidance would limit the time available for LeO to implement any mitigating actions that may be required to ensure that the year-end budget was within MoJ tolerance.
- The Executive continued to closely monitor the impact of the Scheme Rules changes on demand.

20. The Board raised a number of questions and points in discussion and **noted** the Chief Ombudsman’s report.

Item 7 – Integrated performance Scorecard

21. The Board reviewed the integrated performance scorecard for Q1 2024/25.

22. In discussion about the upward trend in sickness absence that had been reported for Q1, the following points were made:

- The upward trend in sickness absence had been partly due to the more rigorous and consistent application of the Sickness Absence Policy, the availability of more accurate sickness absence data and improved reporting.
- Mental health had been the reason for 29% of sickness absences; these absences related to a small cohort of staff and were for a variety of reasons, most not work-related.
- Other reasons for sickness absence had included Covid, other viruses, pregnancy and muscular skeletal issues.
- A small cohort of staff, some of whom were being performance managed, had taken repetitive periods of sickness absence. This was impacting the sickness absence figures and HR and line managers were managing the situation appropriately.
- The Sickness Absence Policy had been reviewed and updated as part of the annual review cycle. The opportunity had been taken to put in place earlier intervention and support for staff on long-term sick leave.
- It was anticipated that the upward trend in sickness absence may continue as a consequence of more rigour and consistency in the management of absence via the improved Sickness Absence Policy, the HR business partner model and more accurate reporting. The Head of People Strategy & Services outlined the support already in place for disabled and ill colleagues:

- More support for disabled colleagues and those with chronic health conditions.
 - The introduction of a new Reasonable Adjustment's Policy, supported by a reasonable adjustments passport.
 - The introduction of neurodiversity champions across LeO's estate.
 - A major review of the staff recruitment policy and processes, ensuring a professional and more inclusive candidate experience, including for neurodivergent candidates.
 - Leadership development training for managers on the implementation of HR policies, EDI awareness raising including neurodiversity in the workplace.
 - Improvements to the employee benefits package including the Employee Assistance Programme.
23. The Board discussed the potential timeframe in which levels of sickness absence might reduce as a result of the application of the revised Sickness Absence Policy and the other HR interventions, commenting on the importance of ensuring that managers effectively applied the Sickness Absence Policy and that mental health was recognised as a disability where appropriate to do so.
24. It was **agreed** that the Head of People Strategy and Services would follow up on a query raised by the ARAC Chair relating to the target and tolerance metrics stated in the integrated strategic scorecard for sickness, lost days per head outside of the Board meeting.
- ACTION: The Head of People Strategy and Services to follow up on a query raised by the ARAC Chair relating to the target and tolerance metrics stated in the integrated strategic scorecard for sickness, lost days per head outside of the Board meeting.**
25. The Board **noted** the integrated performance scorecard for Q1 2024/25.
26. The Board considered a paper setting out proposed changes to the strategic performance indicators, which included the addition of some new strategic indicators, the removal of others and changes to the reporting format and frequency of reporting of the reporting cycle.
27. The CO advised that the proposed changes would ensure that future strategic reporting would be more focussed, concise and aligned to the new 2024/27 strategic period.
28. In response to questions, the Board was advised that:
- Those strategic indicators that had been removed from the strategic scorecard would not be included as part of future exception reporting to the Board but they would continue to be monitored at a business level.
 - The new 'combined touchpoints' strategic indicator was intended to be a proxy measure of LeO's impact; the exact 'touchpoints' to be measured would be subject to further discussion.
29. The Board welcomed the reduction in the number of strategic performance indicators.
30. Following discussion, and in line with the requirements set out in the Tripartite Protocol, the Board **approved** the new Strategic Scorecard and all the new strategic indicators, the changes to the revised reporting format and the frequency of reporting.

Item 8 – EDI update

31. The EDI Manager presented the EDI update report, drawing the following points to the Board's attention:

- All key EDI deliverables in the 2023/24 EDI action plan had been achieved, including:
 - The analysis of the diversity of workforce data, which had been benchmarked against the civil service and census data and found to be stable when compared to previous years' data.
- The 2024/25 EDI action plan had been aligned to the strategic enablers set out in the OLC's business plan and the key themes set out in the HR people strategy. Activities planned for 2024/25 included:
 - Disability training for managers on autism, ADHD and dyslexia, to be delivered in partnership with the Disability Forum.
 - A review of the accessibility of LeO's website.
 - A review of the Managing Unacceptable Behaviour Policy (customers).

32. In discussion, Board members sought to understand whether there were any issues with inclusion as distinct to diversity; whether there was any ambition to measure inclusion; and, whether inclusion ought to be made part of LeO's employee value proposition (EVP). In response, the following points were made:

- The Head of People Strategy and Services, EDI Manager, Staff Networks and the Internal Communications Manager worked closely to promote inclusivity at LeO.
- Underpinning LeO's inclusive culture was an extensive calendar of events for all staff working across LeO's estate and strategies to support inclusivity.
- Staff feedback provided in safe space sessions helped the Executive to better understand the civil service survey results for EDI and to determine whether any action may be needed to ensure that LeO was an inclusive place to work.
- LeO's inclusive culture and diverse workforce was promoted as part of LeO's recruitment strategy and EVP.
- HR was working with the External Communications Team to review how LeO's website could be used to promote its inclusive culture from an employee attraction perspective.
- Diversity data was included in the OLC's Annual Report and Accounts which was published on LeO's website.

33. In response to a question, the Head of People Strategy and Services confirmed that appraisal ratings and opportunities to progress would be monitored.

34. In discussion, Board members expressed their support for the proposed measures to determine EDI impact and success; commented on the need to ensure that LeO's customer data was sufficiently robust and reliable if it was to be used as a measure of EDI impact and success; reflected on the limitations of the civil service survey and urged caution if the survey scores for inclusion and fair treatment were to be used as a measure EDI impact and success; and, sought to understand when work would be completed to deliver

customer satisfaction reporting by EDI characteristics. In response, the following points were made:

- Improvements were being made to the way customer EDI data was collected to ensure its robustness and reliability as a measure of EDI impact and success.
 - To take account of the limitations of the civil service survey, HR and the EDI Team would continue to annually analyse the feedback provided by staff at safe space sessions on fairness and inclusion and ensure that the qualitative feedback from staff was cross referenced against the quantitative data from the survey. This would help LeO to track and measure EDI impact and success.
 - Work had commenced with the service and standards team to enable LeO to report on customer satisfaction by EDI characteristics; this work would be completed within the next six months.
35. The Board's views were sought on whether the next social mobility survey should be expanded to include the ombudsman cohort or opened out to the whole organisation. Following discussion, Board members **confirmed** that they were content to be led by the EDI Manager on whether the survey was expended and to whom.
36. Following the approval of the OLC's new business plan for 2024/27, the Equality Priority Objectives (EPOs) had been reviewed by the Executive and no changes had been proposed. The Board **approved** the EPOs for 2024/25.
37. The Board **noted** the EDI update, commenting on the good work and progress that had been made on EDI.

Item 9 – Scheme rules update

38. The Deputy Chief Ombudsman (DCO) presented a paper updating the Board on the impacts of the changes that had been made to LeO's Scheme Rules since their launch in April 2023. The Board's attention was drawn to the following points:
- The driving factor for the changes that had been made to time limits had been to ensure that complaints were escalated to LeO sooner; this ensured that evidence and the recollection of the events were more easily available to all parties which facilitated the early resolution of the complaint.
 - Since the introduction of the new time limits, there had been a significant reduction in the number of out of time complaints received by LeO.
 - The Ombudsman continued to exercise discretion on time limits where appropriate. This was carefully monitored to ensure that the application of discretion had no adverse impact on access to justice.
 - It was anticipated that other non-time limit Scheme Rules changes would deliver operational efficiencies but, with a significant majority of complaints still being investigated under the old Scheme Rules, it was too soon to confirm the extent of the efficiencies they would deliver.
 - As a result of changes that had been made to the way LeO collected EDI data, the data collection rate had increased from a historic 8% to a consistent 36%.

- The EDI team regularly reviewed EDI data to ensure that the new Scheme Rules did not adversely impact access to justice for any EDI group.
 - As part of a wider project, work would be undertaken to further enhance how and when LeO collected EDI data so that it could be linked to a specific case and used to provide a more detailed level of insight on LeO's casework.
 - LeO also continues to collect EDI data manually for customers who are not able to provide that data online; work is ongoing to ensure that providing EDI data off-line is as easy as possible for LeO's customers.
39. Board members had been pleased to note that data had indicated that the new Scheme Rules had not adversely impacted access to justice for any of the EDI groups and the changes that were to be made to enable EDI data to be used to provide a more detailed insight on casework.
40. Having sought to understand when meaningful data would be available to assess the impact of the other non-time limit Scheme Rules changes, the Board was advised that whilst it was hard to confirm with any certainty, core numbers of non-time limit cases were likely to come through for investigation within the next three to six months. LeO would monitor the data on these cases and inform the Board if there was any evidence of disproportionate adverse impacts.
41. Having reflected on the DCO's proposal to incorporate future Scheme Rules updates into the Chief Ombudsman's report, the Board advised of the need to consider the LSB's requirements when considering any changes to Scheme Rules reporting and the desire to minimise multiple report backs .
42. In response to a suggestion that consideration was given to an accessibility indicator being included in quarterly integrated performance reporting, the Board was advised that the timing of accessibility data did not currently align to quarterly reporting.
43. The Board **noted** the Scheme Rules update.

Item 10 – Report against the Welsh Language Scheme

44. The Board **approved** the 2023/24 report against the Welsh Language Scheme.
45. Following the Board's approval, the report against the Welsh Language Scheme would be translated into Welsh, shared with the Welsh Language Commissioner and published.
46. The Board **noted** that the Scheme would be reviewed and updated in liaison with the Welsh Language Commissioner in 2025 and presented to the Board for approval.
47. The Board **noted** that since the development of the initial Welsh Language Scheme, LeO had opened a hub in Cardiff. The OLC Chair reported that she would be visiting LeO's Cardiff hub with the CO in August.

Item 11 – Transparency publications reports

- 48. The Board **approved** the Q1 2024/25 Board member Register of Interests for publication.
- 49. The Board **approved** the Q1 2024/25 Ombudsman and Senior Manager Register of Interest for publication.
- 50. The Board **approved** the Q1 2024/25 Gifts and Hospitality report for publication.
- 51. The Board approved the Q1 2024/25 Board member and senior manager's expenses report for publication.

ACTION: The Board Governance Manager to arrange for the Q1 transparency reports to be published.

Item 12 - Previous Minutes; matters arising and previous actions.

- 52. The minutes of the OLC Board meeting held on 13 June 2024 were **approved** for accuracy and **approved** for publication.
- 53. The minutes of the ARAC meeting held on 20 May 2024 were **approved** for publication.

ACTION: The Board Governance Manager to arrange for the minutes of the Board meeting held on 13 June 2024 and the minutes of the ARAC meeting held on 20 May 2024 to be published.

- 54. The Board **noted** the update on the actions from previous Board meetings.
- 55. Following discussions that had taken place at the annual risk workshop, the Board **agreed** that action 4, para 27 from the April 2024 Board meeting and action 3, paras 13 and 15 from the January 2024 Board meeting should be closed.

ACTION: The Board Governance Manager to close action 4, para 27 from the April 2024 Board meeting and actions 3, paras 13 and 15 from the January 2024 Board meeting.

Item 13 - Board Paper Redactions and Non-Disclosure Report.

- 56. The Board **noted** and **approved** the items identified for redaction and non-disclosure in the July Board pack.

ACTION: The Board Governance Manager to publish the July Board papers in line with the redactions and items for non-disclosure approved by the Board.

Item 14 – Board Effectiveness

- 57. Dale Simon and Steph Godbold were appointed strategy champions for this meeting and provided feedback on which session had worked well strategically and why; which paper had been the most useful strategically and why; and where there was learning and value in doing things differently in the future to occupy a more strategic space. The following points were made:

- The best sessions strategically had been the risk workshop and LeO's position on transparency of case work and publishing decisions. The risk workshop session had made best use of Board members' experience and insight and there had been clear questioning and appropriate challenge; this session had set the tone for the rest of the Board meeting. The session on LeO's position on transparency of case work and publishing decisions had been useful, with vibrant conversations about the OLC/LeO as an organisation and the strategic direction it should be striving for.
- The best papers strategically had been the Scheme Rules update and the EDI update. The Scheme Rules update paper had provided a valuable update and assurance that LeO was delivering its strategic aims. The EDI update paper had clearly set out what LeO aspired to achieve in terms of EDI in 2024/25 and how it would be done.
- There would be learning and value in the Executive reviewing its style of writing and the language used in Board reports. Currently the default style of writing was to use operational language, but there would be value in adopting a clearer plain English style of writing so that Board papers could be more easily understood by their wider audience.
- There would also be learning and value in alerting the Board to any performance indicators that were edging towards being of tolerance and providing an analysis of the reasons for this and what was being done to mitigate the associated performance risks.

15 – Any other business

58. The OLC Chair thanked Dale Simon, whose term of office was due to end on 31 July 2024, for her service to the OLC Board and wished her well for the future.