

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

**Monday 28 January 2019**

**10:30 – 16:05**

**Legal Ombudsman, Birmingham**

**Present:**

Wanda Goldwag, Chair

Lis Bellamy

Bernard Herdan

Rebecca Hilsenrath

Jane Martin

Michael Kaltz

Annette Lovell

**Board Secretary:**

Kay Kershaw

**In attendance:**

Rob Powell, Chief Executive

Rebecca Marsh, Chief Ombudsman

Ed Nally, Chair of the Solicitors Disciplinary  
Tribunal

Steve Pearson, Head Ombudsman (items 4,5,6  
and 15,)

Neil Buckley, CEO, Legal Services Board  
(items 5 and 6)

Marina Gibbs, Board Member, Legal Services  
Board (items 5 and 6)

Sarah Ritzenthaler, Parliamentary and Policy  
Officer (items 8, 9 – except alternative delivery  
models -10 and 15)

Shrinivas Honap, OLC Board Member  
Designate (items 1 to 9)

Professor Steven Mayson, UCL (item 15)

Mariette Hughes, Head Ombudsman (item 15)

Siobhan Fennell, Head Ombudsman (item 15)

Marcus Passant, Head of HR

Nikki Greenway, Head of IT and Governance  
(item 15)

Emma Cartwright, Head of Finance (item 15)

Kimberley Wallaard, Operations Manager (item  
15)

Taran Hayre, Legal Manager (item 15)

### **Preliminary issues:**

The Board meeting was quorate.

### **Item 1 – Welcome, apologies and declaration of conflict of interest**

1. The Chair welcomed attendees to the meeting and introductions took place.
2. Shrinivas Honap, OLC Board Member designate was present to observe the Board meeting in preparation for his new role which commences on 1 April 2019.
3. Ed Nally was present to observe the Board meeting as part of his review OLC Board effectiveness.
4. There were no apologies.
5. Annette Lovell declared that she was an employee of the Financial Ombudsman Service (FOS).
6. Shrinivas Honap declared that he was a Non-Executive Director at the Office of the Public Guardian.
7. Wanda Goldwag declared that she is Interim Chair of LEASE.

### **Item 2 – Approval of previous minutes**

8. The minutes of the OLC Board meeting held on 10 December 2018 were **approved** for accuracy and **approved** for publication.

**ACTION: Board Secretary to publish the minutes of the OLC Board meeting held on 10 December 2018.**

9. The minutes of the ARAC meeting held on 7 July 2018 were **approved** for publication.

**ACTION: Board Secretary to publish the minutes of the ARAC meeting held on 7 July 2018.**

10. The minutes of the RemCo meeting held on 16 November 2018 were **approved** for accuracy. The Board **approved** a recommendation to redact the minutes in full.

**ACTION: Board Secretary to redact the minutes of the RemCo meeting held on 16 November 2018.**

### **Item 3 – Matters arising and outstanding actions from previous minutes**

11. The CMC transfer agreement has not yet been finalised; the action from the previous meeting to circulate the CMC transfer agreement remains outstanding.
12. The CEO reported that the guidance on handling external allegations about senior members of staff had been updated following discussion with the Chair of ARAC. The updated guidance would be circulated to the Board.

**ACTION: CEO to circulate the updated guidance on handling external allegations about senior members of staff.**

13. The Chief Ombudsman reported on a telephone call with Jane Martin exploring options to appoint other 'pool' staff in order to aid operational delivery.

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

#### **Item 4 - Standing reports**

##### **Executive report**

15. The CEO and Chief Ombudsman presented their executive report setting out key issues arising since the December Board meeting, including updates on meetings with key stakeholders, the civil service survey results and the CMC transfer to the Financial Ombudsman (FoS).
16. The Chief Ombudsman's focus continues to be on operational delivery and quality, whilst ensuring effective preparation for the coming year.
17. Successful changes to the front end of the business have improved efficiency and customer service. The backlog of enquiries have been cleared and service levels are now operating in line with good practice. However, the work has driven up the number of files awaiting assessment as the backlog has been cleared.
18. Work continues on embedding new workload management processes which aim to improve case progression and enable more accurate workflow forecasts.
19. Performance variability in operations continues to be a concern and is being actively managed by Line Managers, supported by HR. The changes to ways of working and attrition have had an impact on staff morale.
20. Preparations for the development and roll out of the quality and feedback model are underway; this will support the development of a high-performance culture.
21. The Legal Ombudsman has become a member of the Institute for Customer Service, which will provide a further stimulus for service improvement and learning from others.
22. The progression of legacy cases continues to be actively managed. Customer feedback and service complaints data highlights the impact of historic delays and poor communication. The service complaint process has been refined and all expressions of concern are captured in order to inform organisational learning.
23. The 2019/20 business plan consultation was launched on 14 December 2018.
24. The CEO updated the Board on the progress made in regard to the transfer of CMCs to the Financial Ombudsman.
25. The CEO reported that the HR team is currently supporting the Board with revising the structure of the senior management in line with the MOJ's Tailored Review recommendations, dealing with recruitment campaigns and supporting performance improvement.
26. A discussion took place about the potential implications of Artificial Intelligence (AI) both in terms of LeO's operational delivery and in terms of how it could be used in the wider legal services context.
27. The CEO reported on an AI workshop for Management Team taking place in February, which would inform future OLC strategic discussions.

**ACTION: Board Secretary to add discussion on AI to the Board forward plan**

28. The Board **noted** the actions agreed by the Management Team in response to the results of the Civil Service survey, which has been discussed with RemCo and Staff Council.
29. The Chief Ombudsman reported on a positive feedback received following a presentation to the Council for Licenced Conveyancers.
30. The Chair reported that she would be attending meetings with all the regulators over the next few months.
31. The Board **noted** the update on external meetings attended by the CEO and Chief Ombudsman.
32. The Board **noted** the update on legal matters that had been issued separately under legal privilege.
33. The Board **noted** the Executive report.

### **Finance Report**

34. The CEO presented a paper reporting on the financial position at the end of month 9 and the key issues in the management accounts.
35. An underspend for the year to date of £296k was reported, representing an underspend in legal of £319k and an overspend in CMC of £23k.
36. The organisation is midway through the quarter 3 reforecast in line with MoJ requirements. It was estimated that the underspend was likely to increase further in order to control unit cost in light of the lower volumes of cases currently being concluded and the impact of staff turnover.
37. The Board, disappointed by the low output against the delivery plan, challenged the executive about whether its recruitment and turnover assumptions had been overly cautious over the last 12 months and whether the organisation should focus on more aggressive recruitment to address immediate operational imperatives rather than budget and unit cost control. The Board emphasised the relationship between output and unit cost. Low output made it inevitable that until cost would exceed budget and the executive should avoid cost cutting which would compound issues with output and cost per case in the medium-term.
38. In response, the CEO explained that manging the budget against delivery and staffing had been challenging. The organisation had needed to reduce resources from the one-off increase in 2018-19 to the reduced budget and establishment from April 2019. Uncertainty around the impact of CMC transfer on staffing levels had compounded this risk.
39. Following discusison, the CEO agreed to a request to look retrospectively at staffing numbers with a view to informing future workforce planning and recruitment.  
**ACTION: CEO to look retrospectively at staffing numbers to inform future workforce planning.**
40. An interim external audit is taking place in January 2019 and an internal audit of financial controls will take place in February 2019.

41. Corrective action to address data quality assurance issues has progressed, with final checks taking place in January. An exercise to correct non-financial data issues identified through this review will follow.

42. The Board **noted** the finance report.

#### **Item 5 – Quarterly strategic and performance update**

43. The Executive presented a paper updating the Board on progress against the strategy at the end of quarter 3, including progress against the 2018/19 business plan, performance against KPIs, strategic risk and operational performance.

44. This quarter has seen a mixed performance as changes introduced through Modernising LeO in quarter 1 are settling down.

45. The Board remained disappointed that the overall volume performance remained significantly behind the delivery plan. The associated business plan deliverable has a red risk status as output would not now recover within tolerance in this financial year. Variable output and performance remains a key issue.

46. Good progress has been made with other business plan deliverables. The Board commended the excellent progress with a number of key technological deliverables through Modernising LeO and thanked the teams involved.

47. Lower than planned output largely reflected staffing issues. The available productive resource has not achieved expected levels since Q1 due to high levels of turnover and sickness, and the challenge of reduced staffing from April 2019. The Executive reported on the current recruitment campaign, and the new process and assessment methodology being used.

48. Improvements to the front-end of the business process had led to significantly improved performance in the General Enquiries Team. There had also been improvements in the speed of ombudsman decisions, leaving improvement in investigation output as the key priority to improve future case flow and deliver sustainable performance next year.

49. The executive is developing proposals for a new strategic measure for the age of assessment work as an indicator of work flow and the efficient operation of the new business process for 2019/20.

50. Breaches occurred against 5 KPIs and against 3 strategic Board indicators.

51. Timeliness in quarter 3 remained strong for all KPIs except the all case 180 day KPI which, as previously forecast, would not achieve target. Quality and customer satisfaction indicators showed some deterioration, reflecting historical issues and case age. The lag indicator is likely to remain challenging into the new financial year due to the age of legacy cases.

52. The Board acknowledged the continuing recovery of CMC timeliness performance after a temporary backlog during Q1. CMC service provider satisfaction fell below tolerance but due to the very small sample size this result should be treated with caution.

53. Legal unit cost remained outside tolerance due to the lower than planned case closures and for the reasons discussed under the finance paper.
54. Marina Gibbs welcomed the OLC's increased transparency about performance. She reported that the LSB would like to be informed of any leadership risks and challenges associated with the new management structure, and also work being undertaken on people issues and organisational culture.
55. The Board **noted** the performance update.

#### **Item 6 – Update from the Legal Services Board**

56. Neil Buckley provided an update to the Board on the LSB's strategic priorities.
57. The LSB was pleased to see that the OLC was exploring strategic delivery options and was looking forward to the LSB/OLC Board to Board meeting in June.
58. Neil Buckley reported on the work the LSB was doing on performance standards for regulators, its business plan consultation, its internal governance rules publication, and its preparations for EU exit. The LSB was currently consulting on its strategic policy objectives.
59. A discussion took place about changes to the SRA Handbook and the potential impact of lawyers working in unregulated entities in regard to the enforcement of ombudsman decisions and consumer protection. The LSB was keen to understand how the Legal Ombudsman disseminates learning to the professions and how this links to the LSB's strategic focus on professional competence.

#### **Item 7 – Quarterly modernising LEO programme report**

60. The CEO presented a paper providing an update on the modernising LeO programme for quarter 3, covering programme status, risks and the next steps.
61. IT projects to decommission CMS1 and implement the CAT tool were successfully completed. The Scheme Rules project remains on schedule.
62. The programme risk status is at amber. Risks are reducing as the higher risk projects are successfully completed and it is anticipated that the risk status will move to green in quarter 4.
63. In quarter 4, scoping work will take place for the Better Records Management and website improvement projects.
64. A discussion took place about the extent to which improved data quality and integrity could improve feedback to the professions, for example future enhancements to provide downloadable data through the website.
65. Programme closure will begin in quarter 4.
66. The Board **noted** the update on the modernising LeO programme.

#### **Item 8 – Response to the LSB business plan consultation**

67. A paper setting the OLC's formal response to the LSB's 2019/20 business plan consultation was presented by the Chief Ombudsman.

68. Following discussion, the Board **approved** the OLCs response to the LSB's 2019/20 business plan.

**Item 9 – 2019/20 Budget and business plan**

69. [REDACTED]
70. [REDACTED]
71. [REDACTED]
72. [REDACTED]
73. [REDACTED]
74. [REDACTED]. Fol exempt S.36 (2) (b) and S.36 (c)
75. The CEO provided a verbal update on the 2019/20 budget, reporting that the final budget paper is being prepared and would be circulated to the Board out of Committee for comments in February.
- ACTION: CEO to circulate the 2019/20 budget paper to the Board out of Committee in February for comments.**
76. The Board **noted** the update on the 2019/20 budget.
77. The CEO presented a note circulated to Board members which summarised the responses to the OLC's 2019/20 business plan and budget consultation that closed on 25 January. Feedback would inform the final 2019/20 business plan and budget which would be tabled for OLC approval at the March Board meeting.
78. Three responses had been received, with a further response expected from the Law Society. The Board asked to be updated about the Law Society's response.
79. Final budget proposals are being developed. A draft paper will be circulated to OLC members for comments prior to seeking formal approval in March.
- ACTION: Stakeholder and Public Affairs Officer to report to the Board any new points raised in the Law Society's response to the consultation.**
- ACTION: Stakeholder and Public Affairs Officer to compare the consultation response rate to previous years.**

80. The Board discussed the benefit of having opportunities for high level discussions with stakeholders to identify areas of alignment and build relationships. They asked the executive to look at ways to improve engagement with external stakeholders for next year's strategy refresh.

**ACTION: Stakeholder and Public Affairs Officer look at ways to improve stakeholder engagement in next year's strategy refresh.**

81. The Board **noted** the responses to the 2019/20 business plan consultation.

#### **Item 10 – Horizon scanning**

82. Sarah Ritzenthaler presented a paper on January's horizon scan.
83. The paper provided an analysis of recent important developments in regard to the transparency agenda, Non-Disclosure Agreements, the Civil Liability Act, the independence of regulators, the impact of Brexit on legal services and consumer rights, and the use of Artificial Intelligence in legal services.
84. Additionally the paper reported on developments in the housing and property markets and wills and probate and a report published by the UN Special Rapporteur on the role of bar associations.
85. The Board discussed the extent of current developments within the legal market and their impact on LeO and its business plan.
86. In response, the CEO **agreed** that a section would be added to the quarterly strategic update to address specific forward-looking issues from the horizon scan and their impact on LeO's business plan.

**ACTION: Chief Ombudsman to ensure that the quarterly strategic and performance update includes a section specifically addressing the issues highlighted in the horizon scan and their impact on LeO's business plan.**

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

#### **Item 11 – Service Complaint Adjudicator's contract**

88. [REDACTED]
89. [REDACTED]
90. [REDACTED]

**Fol exempt S.40 (2) and S.43 (2)**

#### **Item 12 – Transparency publications**

91. The Board **approved** for publication three transparency reports covering the period 1 October 2018-30 December 2018:



- a. the gifts and hospitality register ;
- b. OLC Board member and senior manager expenses reports; and
- c. the OLC Board member and Ombudsman register of interests.

**ACTION: Board Secretary to publish the quarter three transparency publication reports.**

### **Item 13 - Board paper redactions**

92. The Board reviewed a paper setting out proposed redactions to December Board papers. The Board Secretary advised of an additional proposal to redact in full the minutes of the RemCo meeting held on 16 November 2018.
93. The Board **approved** the proposed redactions.
94. The Board **approved** the publication of the December Board papers, subject to the approved redactions.

**ACTION: Board Secretary to publish the December Board papers.**

### **Item 14 – Any other business**

95. The Board asked the executive to review potential overlap of information within the Board papers. In response, the CEO agreed to take steps to address this.

**ACTION: CEO to review options to reduce overlap within Board papers.**

96. Ed Nally provided initial feedback to the Board on his observation of the meeting.

### **Item 15 – Professor Mayson’s review of the legal services market.**

102. Professor Steven Mayson joined the meeting to discuss his independent review of the legal services market, supported by the University College of London.
103. The review will explore the issues raised and the recommendations made in the 2016 legal services market study conducted by the Competition and Markets Authority. A paper setting out the findings of Phase 2 (on the future focus of and approach to regulation) would be issued at the end of February.
104. Discussions took place about the role of the Legal Ombudsman; public interest and access to justice; the impact of regulated and unregulated entities on the consumer, the public and LeO and access to redress; the independence of the Ombudsman; feedback to the profession; the limitations of the Legal Services Act; what future models might look like; and future funding mechanisms.
105. The Board highlighted the challenges faced by some of the smaller firms in the current legal market; the power imbalance between members of the public and lawyers; its concerns around access to justice for vulnerable members of the public in light of the potential impact of the SRA handbook changes and its impact on redress and enforcement of ombudsman decisions and the impact of AI in regard to legal services and regulation.
106. Professor Mayson sought the Board’s views on the approach to future regulatory models. Following a detailed discussion, the Chair thanked Professor Mayson for

joining the meeting and taking the time to listen to the Board's views on the future of the legal services market.