

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

Wednesday 20 March 2019

10:30 – 16:10

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

Brendan Arnold, Interim Director of Corporate Services

Rod Bulmer, OLC Board Member Designate

Steve Pearson, Head Ombudsman (items 4,5,6 and 16,)

Sarah Ritzenthaler, Parliamentary and Policy Officer (item 12)

Alex Moore, External Affairs Team Leader (items 12 and 13)

Rod Bulmer, OLC Board Member Designate

Mariette Hughes, Head Ombudsman (item 16)

Siobhan Fennell, Head Ombudsman (item 16)

Marcus Passant, Head of HR (item 16)

Nikki Greenway, Head of IT and Governance (item 16)

Emma Ireson, Programme Manager (item 16)

Krystal Powell, Finance Assistant and staff observer (items 1 – 11)

Neeta Karelia, Level 1 Ombudsman and staff observer (items 1 – 11)

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. Rod Bulmer, OLC Board Member designate was present to observe the Board meeting in preparation for his new role which commences on 1 April 2019.
3. Staff observers, Krystal Powell and Neeta Karelia were present and were reminded to observe the confidentiality of discussions held during the meeting where appropriate.
4. There were no apologies.
5. Wanda Goldwag declared that she had been appointed Chair of the Financial Services Consumer Panel.
6. Annette Lovell declared that she was an employee of the Financial Ombudsman Service (FOS).
7. Rob Powell declared that he would be taking up an appointment at Warwickshire County Council on 1 April 2019.
8. Bernard Herdan declared that he was a panel Member of the Nursing and Midwifery Council.

Item 2 – Approval of previous minutes

9. The minutes of the OLC Board meeting held on 28 January 2019 were **approved** for accuracy and **approved** for publication.

ACTION: Board Secretary to publish the minutes of the OLC Board meeting held on 28 January 2019.

10. The minutes of the RemCo meeting held on 28 November 2018 were **approved** for publication.

ACTION: Board Secretary to publish the minutes of the RemCo meeting held on 28 November 2018.

11. The minutes of the RemCo meeting held on 2 January 2019 were **approved** for publication.

ACTION: Board Secretary to publish the minutes of the RemCo meeting held on 2 January 2019.

12. The minutes of the ARAC meeting held on 5 December 2018 were **approved** for publication.

ACTION: Board Secretary to publish the minutes of the ARAC meeting held on 5 December 2018.

Item 3 – Matters arising and outstanding actions from previous minutes

13. The Board **ratified** a decision made out of committee to approve minor amendments to the Scheme Rules to reflect changes in CMC jurisdiction.
14. The Board **ratified** a decision made out of committee between 14 February and 18 February to approve the CMC transfer agreement. Six of the seven Board Members provided their approval; Annette Lovell abstained from making a decision due to a conflict of interest.

15. The CEO reported that the CMC Transfer Agreement had been approved by the Lord Chancellor and the Treasury. The CEO thanked LeO's Legal Manager for his work on the CMC Transfer Scheme.
16. Following discussion, the CEO agreed to confirm the number of CMC staff transferring under TUPE arrangements to the legal jurisdiction and to FoS.
ACTION: CEO to confirm the number of CMC staff transferring under TUPE arrangements to the legal jurisdiction and to FoS.
17. The CEO reported that efforts had been made to reduce the duplication of information within Board papers. This would be kept under review. Members were asked to provide feedback to the Board Secretary.
18. The Chair of ARAC reported that he would be providing further feedback on the draft Whistleblowing policy that was tabled at the ARAC meeting on 11 March 2019.
19. The Board **noted** the update on the actions from previous meeting.

Item 4 - Standing reports

Executive report

20. The CEO and Chief Ombudsman presented their executive report setting out key issues arising since the January Board meeting, including updates on meetings with key stakeholders.
21. The Chief Ombudsman's focus has been on trust and confidence in LeO, through improving performance and in relation to external relationships. She reported on ongoing discussions with the Legal Services Consumer Panel on alternative delivery models, on collaborative work with LawyerChecker on delivering a webinar on cybercrime and a final CMC stakeholder event.
22. The Chief Ombudsman highlighted her continued concern about the impact of sickness and turnover on delivery and performance.
23. Members provided feedback on improvements to be made to the Executive report.
24. The Board **noted** the update on external meetings attended by the CEO, Chief Ombudsman and Chair.
25. The Board **noted** the update on legal matters that had been issued separately under legal privilege.
26. The Board **noted** the Executive report.

Finance Report

27. The CEO presented a paper reporting on the financial position at the end of month 11 and the key issues in the management accounts. The figures reflected a reforecast undertaken in January 2019
28. The paper reported on an underspend against budget for the year to date of £89k (1%), representing an underspend in legal of £90k (0.8%) and an overspend in CMC of £1k (0.1%). The year-end outturn was forecast to be in the range of 10-12%.

29. Following feedback from the ARAC Chair, it was **agreed** that the Interim Director of Corporate Services and the new Chair of ARAC would review scope to clarify the presentation of forecast outturn against the original budget alongside the necessary reporting against the quarterly reforecast.

ACTION: Interim Director of Corporate Services and new Chair of ARAC to review the scope to clarify the presentation of forecast outturn against the original budget alongside the necessary reporting against the quarterly reforecast.

30. The Chair of RemCo had been disappointed to see an underspend reported on staff costs in light of the organisational challenges around delivery and performance. The CEO repeated earlier explanations of the factors that had led to the underspend and confirmed that the recent recruitment round would have appointed further investigators had more candidates achieved the assessment centre threshold.
31. The Board was advised that the production of the 2018-19 Annual Report and Accounts was underway. The three Chairs would be asked to sign off their sections of the governance statement for inclusion of the report imminently.
32. An Accountant had been recruited and would join the finance team on 1 May.
33. The Board **noted** the finance report.

Item 5 – Performance Report, including KPI tolerances

34. The Executive presented a paper setting out an overview of operational performance and the position against KPI tolerances at the end of February 2019 and the progress made to date to refine and enhance the assessment process.
35. The position on tolerances remains unchanged and there were three breaches of external KPIs and two strategic Board measures; this was consistent with the position previously reported to Board.
36. Performance against delivery plan for closures remained a significant issue and was impacted by available productive resources and variable output levels. These issues were being addressed within budgetary constraints. Timeliness remained positive, but was subject to the impact of legacy work on 180 and 365 day closures.
37. Performance in March was unlikely to show a marked improvement. Overtime was being offered to staff and workload management was in place to drive operational delivery. End of year closure performance was predicted to be outside of tolerance.
38. Members discussed the continuing disparity between the number of cases closed against the delivery plan and challenged the Executive to consider whether the delivery plan targets were achievable and appropriate.
39. Members welcomed the improvements made to the efficiency of the front-end of the business process, but were concerned by the impact in terms of the number of files that were now awaiting investigator assessment.
40. Members were reminded that there had previously been waits for assessment which had not been fully quantified. While files are awaiting allocation to an

investigator, the parties to the complaint are being kept updated on wait times and some further information is being requested to progress the files. At this stage, vulnerable customers were being identified and support to assist them was being put in place.

41. Following discussion, the Chief Ombudsman agreed to arrange a workshop on vulnerable customers at a future Board meeting.

ACTION: Chief Ombudsman to arrange a workshop on vulnerable customers at a future Board meeting.

ACTION: Board Secretary to add to the Board forward plan.

42. Detailed discussions took place about the challenges of delivering case closures in line with the 2019-20 delivery plan and dealing with the volume of front-end files in light of the current resource and budgetary constraints. The Board asked the Executive to do some detailed modelling of the issues and options on how to address them and present them to the Board,

ACTION: Chief Ombudsman to model options and approach for addressing the volume of files awaiting assessment and present them to the Board.

43. Members asked the executive to develop a measurable plan for dealing with the files awaiting assessment and to report progress against this plan in future performance reports.

ACTION: Chief Ombudsman to develop a measurable plan for dealing with the files awaiting assessment and to report progress against this plan in future performance reports.

44. The Board **noted** the performance update.

Item 6 – Key performance indicators and Balanced Scorecard update 2019-20

45. The Chief Executive presented a paper setting out the key performance indicators and Balanced Scorecard update for 2019-20. The paper set out proposals for the framework to remain largely unchanged, other than to set more stretching timeliness KPIs as agreed in the 2018-19 business plan and to enhance the framework with minor changes and improvements to the set of KPIs based on learning during the first year using the new Balanced Scorecard.
46. Members questioned the proposal to set a more stretching timeliness KPI when current timeliness KPI targets were not being met. The CEO assured the Board that operational modelling and sensitivity analysis confirmed the proposed targets should be met in 2019-20.
47. Members raised concern that there was no proposed KPI target to measure the volume and age of cases awaiting assessment and felt that trend analysis was not an appropriate measure.
48. Members discussed the extent to which the accuracy of the initial assessment of case complexity was monitored, noting that any inaccuracy would impact on achieving the KPI. The Chief Ombudsman explained the checks that were in place to provide assurance about the accuracy of triage. It was **agreed** that a

paper would come to Board to explain the process for monitoring and assuring the accuracy of initial assessments of case complexity.

ACTION: Head Ombudsman to report to Board on the process to monitor and assure the accuracy of initial assessments of case complexity.

49. Following discussion about the impact of staff turnover on case progression and the potential impact of ongoing work to develop a high performance culture, it was **agreed** that the Executive would reconsider whether the proposed KPI to measure turnover was the most appropriate.

ACTION: Chief Ombudsman to reconsider the turnover KPI and report back to Board.

50. Following a detailed discussion, the Board requested further amendments to the 2019-20 key performance indicators and balanced scorecard. These covered the removal of the advocacy KPI, the requested reconsideration of the turnover KPI, and the need for a quantified target for files awaiting assessment. The bulk of the framework was approved and the changes would be presented to Board in June.

ACTION: Chief Ombudsman to report on the changes to KPI framework at the June Board meeting.

ACTION: Board Secretary to add to the Board forward plan for June.

Item 7 – RemCo update

51. The Chair of RemCo updated the Board on discussions held at the Committee's last meeting on 27 February 2019.
52. Discussions included the HR balanced scorecard, including staff turnover and those leaving within their first year of employment; actions arising from previous staff surveys and proposals for future surveys; feedback from discussions held at a joint meeting with Staff Council; exit reports; policy reviews; the 2018-19 staff bonus and the approval of an updated appraisal process.
53. Following a recommendation arising from the RemCo self-assessment, the OLC Chair requested that the new RemCo Chair should review the Committee's terms of reference with a view to de-scoping some of the items that were more appropriate as areas for executive focus.

ACTION: The new RemCo Chair to review the committee's terms of reference with a view to de-scoping items that are more appropriate for an executive focus.

Item 8 – ARAC update

54. The Chair of ARAC updated the Board on discussions held at the Committee's meeting on 11 March 2019.
55. The Committee reviewed the risk register and undertook a deep dive review of the organisational capability and governance risk to provide assurance in light of the imminent changes in senior structure following the departure of the current CEO and the combination of the Chief Ombudsman and Chief Executive roles. An Internal Audit planned for Q3 2019-20 will focus on providing assurance on the operation of financial and governance controls under the new structure.

56. The Chair of ARAC had asked the CEO to ensure that the MacPherson Critical Business Models were published on LeO's website.
57. The Committee undertook a number of policy reviews; received an update from Internal and External Audit; received an update on internal audit actions, data assurance and the timetable for the Annual Report and Accounts and approved the 2019-20 internal audit plan.
58. The OLC Chair asked the ARAC Chair to arrange a handover meeting with the ARAC Chair designate.

ACTION: Board Secretary to arrange a handover meeting between the current Chair of ARAC and the Chair designate.

Item 9 – OLC Governance

59. The CEO presented a paper summarising the steps taken to update the OLC's corporate governance following the merger Chief Executive and Chief Ombudsman roles and the creation of a Director of Corporate Services role.
60. Copies of the Scheme of Delegation and Schedule of Matters Reserved to the OLC with highlighted amendments had been circulated to the Board ahead of the meeting for review.
61. A number of other policies and governance documents had been identified for amendment, and would be updated by the end of March.
62. A project to review and refresh the various Memoranda of Understanding (MoU) with the relevant organisations would be undertaken in 2019-20.
63. The Rules of Procedure and Term of Reference for ARAC and RemCo were to be updated as part of the annual review.
64. The Tripartite Protocol, MoJ Framework Agreement, OLC-MoJ Management Statement, LSB OLC MoU and the OLC Members' Code of Practice would be updated in draft and shared with the LSB and MoJ.
65. The Business Continuity plan and ownership of Strategic and Corporate Risks have been updated, along with the ownership of areas of the Assurance Framework.
66. Following discussion, the Board **approved** the specific changes to the Scheme of Delegation and Schedule of Matters Reserved to the OLC and **approved** the output of the OLC Governance review.

Item 10 – 2019-20 OLC budget approval

67. The CEO presented a paper setting out the proposed budget 2019-20 budget to be submitted to the LSB and a commentary outlining to the Board the risks associated with the budget proposals in terms of whether the proposed budget would be sufficient to deliver the levels of output and sustained performance required in light of the underlying challenges the organisation was seeking to address. The CEO highlighted the lack of capacity in the budget to invest in innovative new delivery models.

68. In a full and frank exchange, the Board and Executive discussed the challenges that this budget would impose on the organisation at a time when performance improvement and reducing wait times for assessment were the key priorities and operational staff turnover remained high.
69. They discussed the impact of improvements in first tier complaint handling, the resulting increase in the complexity of cases now being handled and the relatively inexperienced staff cohort dealing with them.
70. They discussed the impact of the increased number of Subject Access Requests, Freedom of Information Requests and Judicial Reviews being received by the organisation, and acknowledged the potential impact on the organisation of changes on the horizon in the legal sector.
71. Board challenged the volume assumptions given performance in 2018-19, and were assured that the changes that had been introduced should allow the 10-20% improvement in output required to achieve the delivery plan. However, this was highly sensitive to staff turnover and sickness, and would remain a challenge.
72. The Board **noted** the risks set out in this paper and commented that this budget would result in a challenging year for the organisation. The Board emphasised their expectation that the organisation should adopt a strategy of 'slowing down quickly' mid-year and undertake any commitment to increases in staff and investment alternative delivery models in the early part of the year.
73. Following a detailed discussion the Board **approved** the 2019-20 OLC Budget, subject to some minor amendments, **approved** the draft LSB paper subject to **delegation of approval** of the final changes to the OLC Chair prior to submission to the LSB.

Item 11 –2019-20 Business Plan and Equality, Priority objectives

74. The CEO presented a paper setting out the draft 2019-20 business plan and the proposed Equality, Priority Objectives (EPOs) 2019-20.
75. In a detailed discussion, the Board felt that the draft business plan set out too many deliverables and asked the Executive to narrow down the focus to 4 or 5 areas of priority and set out how and when the organisation would deliver against them.
76. The Board asked the Executive to confirm to staff that reference to geographically dispersed work would not result in the organisation relocating or impact jobs for staff based in Birmingham.
77. It was agreed that the 2019-20 business plan would be amended to reflect the Board's comments and would be re-circulated to the Board for approval.
ACTION: CEO to amend the 2019-20 business plan and re-circulate it to the Board for approval.
78. It was **agreed** that an interim review of the quality and feedback model would be presented to the Board after six months.

ACTION: Board Secretary to add a six month interim review of the quality and feedback model to the Board forward plan.

79. The Board reviewed and **noted** the progress made against the 2018-19 EPOs.
80. The draft EPOs for 2019-20 had been developed in consultation with the Equality, Diversity and Inclusion Forum and Staff Council. Following discussion the Board **approved** the EPOs for inclusion in the business plan.
81. A discussion took place about nominating a Board sponsor for equality, diversity and inclusion issues. The CEO agreed to discuss this further with one of the Board members to seek their agreement to take on this role.

ACTION: CEO to seek the agreement of a Board member to take on the role of Board sponsor for equality, diversity and inclusion issues.

Item 12 – Horizon Scanning

82. The Parliamentary and Policy Officer presented a paper on March's horizon scan.
83. The paper provided an analysis of recent developments in regard to action against solicitors for leasehold claims, including the Housing, Communities and Local Government Select Committee's report on Leasehold Reform; parliamentary activity on ombudsman schemes; a six month delay in implementation of the SRA's handbook changes; the UCL review of legal services regulation; the work of the commission on justice in Wales; developments around reporting misconduct to the SRA; the dismissal of the ICAEW judicial review; the debate on the future Scottish regulatory framework; an announcement by CILEx to give its regulatory arm greater independence and the emergence of new types of firms in the legal services market.
84. The Board discussed the potential impact of on demand resulting from leasehold claims, and wider questions about who would deal with such complaints. The Board recommended that early consideration about how LeO would deal with this work and any increase in demand, including how it might engage with the Select Committee about this matter.

ACTION: The Chief Ombudsman to consider how LeO would deal with a potential increase in demand arising from leasehold claims and how it might engage with the Select Committee.

85. The Board discussed the pros and cons of the potential alternative delivery model pilots set out in the business plan and how they might support any increase in demand.
86. The Board was advised of a White Paper from the Department of Business, Energy and Industrial Strategy is due to be issued in June 2019 as a follow up to the Consumer Green paper issued in 2018, and that there may be a recommendation pertaining to EU ADR accreditation
87. The Board **noted** the horizon scan.

Item 13 – Communications and engagement strategy 2019-20

88. The External Affairs Team Leader presented a paper setting out the communications and engagement strategy for 2019-20. Thought leadership, transparency, stories and feedback were key themes to improve LeO's reputation and its feedback to the profession.
89. The paper considered key themes arising from LeO's horizon scanning and engagement work and its implications. The strategy set out that, as LeO had a relatively small team to address this work, the organisation would work in partnership with others to add value to their work and multiply the impact of LeO's contribution to the sector.
90. The Board asked for the communications and engagement strategy 2019-20 to be updated to align with changes requested in the 2019-20 business plan.

ACTION: The External Affairs Team Leader to update the communications and engagement strategy to align with the revised 2019-20 business plan.

Item 14 – Review of Board effectiveness

91. The CEO presented a paper summarising the main conclusions of the externally facilitated annual Board effectiveness review and a proposed draft action plan.
92. The Chair reported that the report setting out the findings of the Board effectiveness review had been shared with the MoJ and LSB.
93. The Board **noted** the findings of the Board effectiveness review and **approved** the action plan.
94. It was **agreed** that the Board Secretary would ensure that the Board received regular updates on the progress made against the action plan.

ACTION: Board Secretary to add regular updates on the Board effectiveness action plan to the Board forward plan.

Item 15 - Board paper redactions

95. The Board reviewed a paper setting out proposed redactions to the March Board papers, including full redaction of the 2019-20 OLC Budget paper.
96. The Board **approved** the proposed redactions.
97. The Board **approved** the publication of the March Board papers, subject to the approved redactions.

ACTION: Board Secretary to publish the March Board papers subject to the approved redactions.

Item 16 – Annual strategic risk workshop

98. The CEO presented a paper setting out the proposed strategic and corporate risks for 2019-20 and reported that, in line with the OLC's risk strategy, approved by ARAC in December 2018, the Board was required to undertake an annual risk workshop to identify strategic risks for the year ahead and the associated risk appetites.

99. The discussions concluded that the strategic risks covered the right areas, but the 'organisational capability and governance' risk should focus on organisational capability and capacity'; the risk names and descriptions should be drafted from a more customer-focused perspective; and that 'reputation and credibility' risk should be reframed as 'trust and confidence'. There were differing views about risk appetite, particularly in respect of operational resources where there was a tension between the absolute need to secure sufficient resources and the Board's openness to innovative new delivery models.
100. Management Team members joined the Board and were divided into three groups for this workshop, discussing the strategic risks and proposed risk appetites. It was **agreed** that the Management Team would undertake further work on this and re-circulate to the Board to agree the strategic risks for 2019-20 and agree the associated risk appetites.

ACTION: Chief Ombudsman to undertake further work with the Management Team to align the strategic risks and risk appetites with the revised 2019-20 business plan and recirculate to the Board for approval.

Item 17 – Any other business

101. The Chair thanked Michael Kaltz and Bernard Herdan for their dedication and service to the OLC and LeO, noting that they had played a pivotal role in leading the organisation through some challenging times. The Board wished them well for the future.
102. The Chair thanked Rob Powell for his hard work and commitment to the organisation and thanked him for his efforts to build strong links with both internal and external stakeholders. The Board wished him every success in his new role.
103. In response to a request from a Board member, the CEO shared his thoughts about the organisation's main challenges, opportunities and priorities going forward.