Legal Ombudsman
Edward House
Quay Place
Birmingham
B1 2RA
www.legalombudsman.org.uk

Dr Helen Phillips
By email

9 January 2023

Dear Helen

The OLC Board met in December, after the first scrutiny meeting with the LSB on the Budget and Business Plan for 2023/24. I can assure you that there was a clear recognition of the disappointment felt within the LSB, and indeed this is matched by that of the OLC Board and the LeO Executive. We appreciate the collective risk investment made by the LSB over the last year, alongside the very real support we all share for the extent of the successful change and progress.

It is clear that LeO will not finish the financial year having made up the variance as set out in recent VA letters. December's Board meeting was rigorous and robust, enabling the Board to be satisfied that it knew why the trajectories were not going to be met, what could be done to address this and what could not. This last point matters. What is clear to the OLC Board is that LeO continues to face a number of challenges and risks over which it has limited control – namely around staff retention given the competitive local and national job market and salary rates - despite doing everything possible to minimise impact and mitigate against these.

The meeting shone a spotlight on the challenge at the heart of how LeO understands, presents and now articulates its ongoing improvement journey. Since our meeting with LSB colleagues a subset of the OLC Board has met with the Executive and carried out a detailed review of forecasting, identifying and agreeing those improvements that now need to be made. This will be built on and reinforced by a further meeting of the subset of the OLC Board in January and by a full and complete review at January's Board Meeting.

Attention is rightly being paid to finding the right balance – on the one hand reflecting the disappointment we all feel at not being further along on the improvement trajectory and needing to be on top of why this is; on the other hand, doing justice to the significant improvement that has been delivered over the last two years and not underplaying nor undervaluing this in any way.

This focus rightly forms a key backdrop to this VA letter. In addition, whilst I have included a brief section on the Scheme Rules, I have also sent the LSB a separate and fuller update, as has LeO's Deputy Chief Ombudsman, sharing more specific thinking on plans for monitoring and reporting on the impacts of the changes. I have not included reference to the Budget and Business Planning process, recognising that a significant amount of work is taking place on this and January's Board meeting will be a chance for the OLC Board to focus on the consultation responses and any necessary changes.

This letter therefore focuses on:

1. Performance improvement
2. People and Leadership
3. Risk management and financial governance
4. Enhanced public reporting
5. Scheme Rules review

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**

<u>The overview:</u> *Performance across October and November was 7% short of Business Plan forecast and has taken LeO to 94% delivery of forecast to date (6,313 against a forecast of 6,702). Continued progress is being made with the Pre-Assessment Pool (PAP), reducing by 23% across 2022/23 so far. November saw 499 closures by the Front-End Team, a 71% increase on the Business Plan forecast and the highest delivered to date. It is nonetheless clear and disappointing that, despite the progress that has been made, LeO will not be able to make up the variance at the year end. Based on current and projected performance, revised end year forecasts show a reduced position, with a range between 91% and 92.7% . This is against the backdrop of LeO delivering 54% more closures year on year.*

<u>Assurances received:</u>

1. LeO resolved 788 and 831 cases in October and November against monthly forecasts of 876 and 875; 1,619 cases were closed against a forecast of 1,751, representing 92% of the Business Plan forecast for those months and 94% against year to date.
2. The Pre-Assessment Pool (PAP) reduced for the ninth consecutive month in November and currently sits at 4,514; a cumulative 23% reduction year to date which puts LeO behind the Business Plan forecast of 4,251 for the first time this year; the PAP will increase in December as forecast, given the expected seasonal reduction in closures.
3. November saw 499 closures by the Front-End Team (FET), a 71% increase on the Business Plan forecast and the highest delivered to date; early resolutions are expected to reduce earlier than expected and bring the FET numbers down across Quarter 4 with a focus on proportionality from new cases only, aligning with forecasts for FET in 2023/24.
4. Overall context and progress against a backdrop of significant change remains important; LeO has delivered 54% more closures year on year and expects to resolve 6,900 complaints by the end of December, exceeding last and previous years' performance on closures with a full quarter remaining.
5. LeO continues to face several challenges and it cannot exercise full control over all of these; it is becoming increasingly clear that high attrition and a buoyant labour market mean that LeO risks not being competitive for the highly skilled staff required to deliver on complex investigations.
6. Work continues to ensure that the standard of service that LeO provides to its customers is maintained across all service areas; recent quality assurance reviews show that delay and communications remain the key issues that impact on the quality of LeO's casework and overall customer satisfaction; work is ongoing to ensure that guidance and expectations around communication are clear and customer focussed to ensure that standard templates and style of correspondence (across FET and BAU workstreams) are accessible.
7. LeO's approach to reasonable adjustments (RAs) has been strengthened through the introduction of a multidisciplinary team to look at the steps taken to enable those customers with complex RAs to access LeO's service; learning will be used to inform the need for organisation wide training and guidance, mitigating the risk of future legal challenge; a new process is being launched around the identification of cases which need to be prioritised due to customers' protected characteristics, which will be supported by plans for enhanced data collection and reporting around EDI.

<u>Additional assurances being sought</u>

1. The current forecast position will inform an analysis and revision of forecasts for 2023/24, the assumptions for which were discussed at a recent Performance & Quality Task and Finish Group; the LeO Executive and OLC Board came out of these on the same page and forecasts are already being re-assessed by the Executive, stripping out any optimism-bias and scrutinising in more granular detail the assumptions and factors lying behind the forecasts, ahead of a further meeting early in the new year.

2. OLC Board will then have a full and focused discussion at January's Board meeting; this will look at improved, revised and realistic forecasting, use this to reset collective expectations and to be clear about what will be an acceptable target range for the OLC Board for year-end

**People and Leadership**

*<u>The overview:</u> Actions to minimise the impact of attrition, particularly through ongoing recruitment have continued, and sickness absence levels have reduced significantly for the fifth month in a row. Early findings from the Annual Civil Service Staff Survey show significant improvements across almost all of the headings with views on My Manager, on Leadership & Managing Change, and Learning & Developing all up 15 or 16%. This is a testimony to the capability and confidence of the HR function and LeO's wider leadership. LeO's Executive and OLC Board reaffirmed their support for seeking an uplift to reflect the ongoing cost of living increases and both have responded to a social mobility questionnaire, demonstrating a socially diverse leadership and reaffirming LeO's commitment to EDI.*

<u>Assurances received:</u>

1. In response to higher attrition rates recruitment activity has continued across both the Operational and Corporate areas; in Operations, the new December cohort is made up of 19.51 FTE, or 20 investigators and whilst this new cohort will support closures in 2023/24, this is a significantly lower number than recruitment expectation (34 FTE) with the shortfall directly contributing to the reduction in expectations on year end outturn.
2. LeO will be further recruiting nationally in February 2023 with an April 2023 start date; the recruitment market remains buoyant, causing challenges in both attrition and recruitment to replace.
3. The Leeds Hub is being implemented for a small number of the new and existing staff, building on the success and lessons of the Cardiff Hub.
4. Attrition remains a significant challenge; overall attrition continues to decrease, falling for the fourth consecutive month to 21.2% in November, a decrease of 2.5% compared to October; Investigator attrition has fallen for the second consecutive month, and now stands at 26.5%, a 0.9% decrease compared to October (27.4%) whilst Corporate attrition stands at 26.7% for November (37.6% in October).
5. Sickness absence levels have also continued to reduce for the fifth consecutive month, with November showing an average of 12.25 days of sickness per employee in a rolling year, compared to 12.75 in September and a high of 16.2 days per employee in July; this reinforces the impact of the absence management policy and work invested in focused support on complex employee cases, many of which had absence as a factor.
6. Findings from a social mobility questionnaire, to measure and benchmark the socio-economic background of OLC Board and Executive Team members and reaffirm the joint commitment to establishing an inclusive culture shows the proportion of OLC/ Executive members from a working / lower class socioeconomic background is 54%, above the national average of 39% and that none of the respondents had parents who attended university; further questions will now be followed up including on which messages should be shared internally and externally and whether targets on social mobility should be set.
7. Given its importance to employee pay and the wider piece around LeO's pay, benefits and reward offer and strategy contained within the re-prioritised People Strategy, Pay Benchmarking is being given priority within HR, started in early November and will be completed by February 2023.
8. The internal Business Plan and Budget event was attended by over 150 members of staff with questions focused on the implementation of the People Strategy and associated queries around the proposed pay remit of 8%; staff were reassured that whilst the pay ask cannot be guaranteed and will be subject to MoJ pay award guidance, LeO's Executive and OLC Board were supportive of seeking an uplift to reflect the ongoing cost of living increases.
9. Productivity expectations in BAU for the last quarter of 2022/23 and for 2023/24 have been revised to recognise the effect of the FET on complexity of case holdings; Operational

Leaders have also been providing targeted support where the expected level of productivity is not being reached, with early indications showing that this is having a positive effect.

Additional assurances being sought:

1. LeO has now recruited to 3 of the 6 roles within the new HR structure with the new HR Business Partner and Strategic HR Business Partner taking up post in October; the Senior HR Services Business Partner joined the business on 10 November and recruitment to the remaining posts is still ongoing with cover being provided by agency staff.
2. Overall trajectories for 2023/24 aren't expected to be affected given opportunities for early proportionality that will continue into 2023/24 at a rate higher than the original forecasts set out for 2023/24; this will be unpicked further by the OLC Board in the run up to the January Board meeting.
3. Board continued to give detailed consideration to what LeO is doing to reduce attrition, including looking at LeO's total rewards strategy and incentives to stay and the importance of career development and internal appointments; LeO's new Leadership Development Programme has been launched and is a helpful precursor to roll-out of LeO's Personal Development Review (PDR) process) in December; further insight on the Employee Value Proposition was sought.
4. Board sought assurance that appointing to the EDI Manager role is being prioritised; interim arrangements are being put in place for the management and delivery of ED&I priorities and balance across external and internal priorities is assessed in the longer term.

**Risk management and financial governance**

*The overview: The draft Internal Audit report on the Risk Management Framework shows significant improvement, justifying the considerable work that has gone into this area. Whilst LeO is forecasting an end year underspend of c£143k – within the 1% MOJ tolerance - appropriate measures to reduce this are being actively scoped out. This includes additional managed recruitment in operations in Quarter 4 which, if achieved, will offer the opportunity to reduce the underspend significantly. What is clear to the OLC Board is that LeO continues to face a number of challenges and risks over which it has limited control despite doing everything possible to minimise impact and mitigate against these.*

Assurances received

1. GIAA's audit programme continues with planned Quarter 4 audits on Service Complaints and Performance Management Framework; an initial draft report on the audit of LeO's Risk Management Framework highlights significant progress in this area since the previous risk audit in 2019/20.
2. Whilst LeO is forecasting an end year underspend of c£143k – within the 1% MOJ tolerance – potential actions and appropriate measures to reduce this in Quarter 4, including through further recruitment, are being explored and delivered.
3. LeO's Executive continue to monitor 2022/23 strategic risks and issues on a monthly basis and at the behest of ARAC are particularly watching Strategic Issue 1 (Pre-Assessment Pool) and Strategic Risk 1 (Performance), noting that the seasonality falling within Quarter 3 may impact both; the Quarter 3 performance position and current year end forecasts will also clearly be factored into this assessment before being taken to ARAC in January.
4. The Legal team continue to not only defend formal and informal legal challenges but also successfully mitigate the risk of legal challenge through providing ongoing advice on most high-risk cases and the application of processes.

Additional assurances being sought:

1. LeO Executive is giving careful consideration to mitigation and to risk appetite and a clearer assessment of risk ranges and forecast scenarios; several measures are being assessed to ensure that all efforts and actions are taken to ensure delivery of the best possible position

which is dependent on several key variables including attrition and the productivity achieved in the FET and BAU teams.

**Enhanced public reporting**

*<u>The overview</u>: LeO's stakeholder engagement in November has been focused mostly around the consultation on draft Business Plan and Budget for 2023/24 but engagement on the Scheme Rules changes has also continued at pace, with the support of the regulators. Positive meetings have been held with the Law Society's Regulatory Processes Committee and the Legal Services Consumer Panel to discuss the changes to the Scheme Rules, the Business Plan and Budget for 2023/24 and LeO's ongoing performance.*

<u>Assurances received:</u>

1. LeO's stakeholder engagement has focused mostly on the consultation on the Business Plan and Budget for 2023/24; there is valuable insight and challenge contained in the responses, which both the Board and Executive will be paying careful attention to in January and when the tension between ambition and realism will need to be grappled; there is a clear message of growing confidence – the 'cautious optimism' – in LeO's improvement trajectory and growing support for LeO's people.
2. Engagement on the Scheme Rules changes has continued with a letter sent to service providers which details the key changes that will be implemented from 1 April 2023 and outlines the intention to provide further guidance, including FAQs, in the new year; Legal press articles have also been published and articles have also gone to the Manchester Law Society magazine and Today's Media magazines.
3. At a meeting with the Legal Services Consumer Panel, discussions focused around the future ambition for priority three and the importance of this priority in line with the other two; at a meeting with the Law Society's RPC the focus was on performance trajectories and plans for ensuring the profession were adequately informed of what the Scheme Rules changes meant for them and their clients; both meetings were positive, with feedback focused on support for the direction of travel LeO is going in and the success of the changes that have been implemented to date.
4. LeO has continued to welcome key stakeholders to Edward House, reaffirming the message that 'LeO is back' and underlining its commitment to continuous improvement; with a visit from the Chief Executive of the Ombudsman Association, Donal Galligan, in December; discussions with Operations Managers helped bring to life some of the process changes which have taken place in within LeO.
5. LeO has also continued to attend a number of conferences and seminars during November and December, including the Society for Licensed Conveyancers Conference, the Solicitors Regulation Authority's COLP/COFA conference and the LegalEx Conference; all events are attended by large sections of the profession and key speaking roles for LeO's staff provided attendees with updates on changes to the Scheme Rules.
6. Strengthening relationships with consumer organisations has been a key priority for LeO and continued engagement with national organisations helps increasing awareness of key organisational changes, including the revised Scheme Rules, and how these may impact on consumers; LeO held a workshop with the consumer organisation Which?.

<u>Additional assurances being sought:</u>

1. In the new year, the OLC Board along with the LSB and MoJ will access the performance dashboard through the automated digital platform of Power BI, reshaping the information that LeO presents on performance with a new approved top-level dashboard of performance metrics sitting over the new digital agreed data set.

**Scheme Rules Review**

*The overview: Work is still on track for going live in April 2023 and is focusing on communicating and managing the transition for LeO's customers. Feedback from stakeholder engagement* continues to be positive.

Assurances received:

1. The work relating to the implementation of the revised scheme rules is still on track for go live in April 2023.
2. LeO's IT team have developed and built all of the necessary changes into the case management system and will enable recording of the application of the new rules and track the impacts and consistent application of them.
3. The communications strategy continues from both an internal and external perspective; LeO representatives have attended a number of conferences and seminars in recent weeks to discuss the Scheme Rules in terms of what customers will see in the coming months, what LeO plan to do to raise awareness of the changes and the implications of them.
4. Plans are being implemented for updating all guidance, factsheets and templates to ensure that they cover the new Scheme Rules whilst maintaining the existing suite of information on the current Rules (and will continue to do so whilst cases in the PAP are processed under those old Rules).
5. LeO is implementing IT changes and developing a suite of reporting that will enable them to capture EDI data and evaluate whether time limits (and other Scheme Rules changes) have/ or are likely to have any adverse impact on levels of demand or access for any group(s) of customers; LeO's Quality Team is also developing plans for a quality assurance framework to oversee the consistent and impartial application of the new Rules.

Additional assurances being sought:

1. The focus is on building a suite of reporting for both internal and external stakeholders and will be brought back to January's Board meeting for discussion; this reporting will enable LeO to provide assurance including around the impacts of the new Rules on levels of demand and access to justice.

This was a robust and challenging meeting and one which continued to focus on the needs of LeO's customers, including through a review of recent Ombudsman decisions. Moving forward the momentum must be maintained with the OLC Board committed to working with LeO's Executive in articulating a realistic assessment of risk, one that is neither overly pessimistic nor unhelpfully optimistic; one that does justice to what LeO is not yet providing whilst never losing sight of the significant improvement that has already been delivered to date.

Best wishes

**Elisabeth Davies**
**Chair, Office for Legal Complain**