

## COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND

### Minutes of the meeting of the Commission held at Millbank Tower, Millbank, London SW1P 4QP in the Board Room 15<sup>th</sup> floor on Tuesday 2 December 2008 at 11.15pm

**Present:** Mr T Redmond (Chairman)  
Mr J R White (Vice Chairman)  
Ms A Seex  
Ms A Abraham

**In attendance:** Mr N J Karney  
Mr M King  
Mr N H Jones  
Mr C Bottomley  
Ms A Harding )  
Ms L Kelly ) item 7  
Ms H J Pook )  
Mr A L Creech

#### 1. Apologies

Apologies for absence were received from Peter MacMahon.

#### 2. Matters arising from the minutes of 13 November Commission meeting

The minutes of the 13 November meeting were confirmed as an accurate record, and signed by Tony Redmond.

There was one matter arising from the minutes.

*Minute 7: Head of Policy and Research/resourcing current and future developments*

In reply to a question from Anne Seex, Nigel Karney explained that recruiting to the Head of Policy and Research vacant post would await the outcome of the 2009/10 grant bid. This was noted by the Commission.

#### 3. Commission PIs: October 2008

CLA 1681 had been circulated.

The Commission discussed table 1 (initial contact data) and noted/agreed the following points:

- Neville Jones proposed that the 'written complaints' indicator (premature complaints/other complaints) should be changed from 'average time taken' to the 'numbers taking longer than the three day target'. This was **AGREED** by the Commission. In the discussion, it was noted that LGOAT was deciding the majority of premature complaints within one day; this represented a substantial improvement over previous turnaround times.
- The average length of calls to LGOAT was 5 minutes 34 seconds (this figure had not been included in the table).

- To include an explanation of the 'insufficient data to make a decision' indicator in the next set of PIs.

**NJK; DP**

The Commission noted that many of the datasets did not include comparisons with the previous year's figures. This would enable the Commission to monitor, for example, the impact of external changes in areas such as parking and planning on incoming complaints. The Commission **AGREED** to request that the Deputies explore the possibility of including some broad comparisons in future PIs, while recognising the difficulty of providing 'like for like' comparisons because of the changes to complaint handling arrangements introduced with LGOAT.

**DEPs**

#### **4. Budgetary control report: October 2008**

CLA 1682 had been circulated.

Tony Redmond stated that the October report showed that the level of underspending meant that the projected call on reserves of around £480k might not be necessary. He commented that the underspending was due to careful budget control, and because most staff vacancies were not being filled until the Commission's financial position in 2009/10 became clear.

The Commission noted that it might be possible to bring forward some items of expenditure planned for 2009/10 into the current financial year eg in the IT area, but no final decisions could be taken until CLG had indicated their likely response to the grant bid.

Neville Jones reported that, since writing his commentary, a Team Administrator had advised that she would leave the Commission at Christmas.

The budgetary control reports and Deputies' comments were noted by the Commission.

#### **5. Strategic Risk Register**

CLA 1683 had been circulated.

Nigel Karney explained that the Register, which incorporated the Deputies' views:

- had previously only been reported to the Audit Committee, but this would in future also be put to the Commission. This reflected the recent change in membership of the Audit Committee, which meant that otherwise not all the Commissioners would be able to consider the Register.
- had been reviewed by the Commission's internal auditors, KPMG, and the Register incorporated their recommendations, including the addition of an 'acceptability' column.

In the discussion, the Commission noted that:

- three of the sixteen areas of risk were currently rated by the Deputies as 'high'; these were:
  - 'service delivery matching reasonable customer expectations of outcome' (this related to the Ipsos-MORI customer satisfaction survey result);

- 'managing change well'; and 'addressing major threats and opportunities' (both of which related to the current uncertainty over funding, and Government plans to increase the LGO's jurisdiction).
- these levels of risk should reduce as the Commission's response to the Ipsos-MORI survey was put into effect, and the position on funding and jurisdiction became clearer.

The Commission also noted that the AOs' role in responding to consultations on new legislation had been established (relevant to the 'identify/pursue opportunities to positively influence developments in local/central government/advisory sector' and 'address external threats/opportunities well' risk areas); the Commissioners requested that the listing be sent to them.

**NJK**

The Register was noted by the Commission.

## **6. Equality and Diversity Data**

CLA 1664 had been circulated. The Commission received its annual report from the Deputies, commenting on Equality and Diversity data for 2007/08; this report had been delayed by the need to focus on the budget.

Introducing the report, Nigel Karney pointed out that the Deputies had concluded that, in broad terms, there had been no significant changes compared with the 2006/07 data (the 2007/08 data predated the commencement of the LGOAT service). The Deputies had drawn particular attention to the following issues suggested by the data:

### ***Employment***

- There is under-representation of BME and people with (recorded) disabilities (compared with Census data), particularly in investigative teams. BME representation is higher in London/corporate services than in Coventry and York. Two thirds of the Commission workforce is female.
- The London PATH trainee left in 2007/08 and had not been replaced because of the current uncertainty over future recruitment. There is no provision for a replacement in the 2009/10 budget, but the Deputies would propose this should be reconsidered for funding in 2010/11.

### ***Service delivery***

- Young people (under 25s) are significantly under-represented in proportion to the Census figures, despite the initiatives to increase awareness of and accessibility to the LGO service amongst young people and the agencies that support them.
- People with a disability (categorised as 'long term illness' in the Census) are also significantly under-represented in proportion to the Census figures. This pointed to a need for a special initiative, given the planned extension of LGO jurisdiction to cover adult self-funders.
- In other areas, such as BME, LGO complainants are over-represented compared with the Census, but probably under-represented if service use could be taken into account (but no usable national data is available on LA service use).

The following points were noted in the Commission's discussion:

- The proportion of BME staff who left the Commission in 2007/08 was higher (20% - 7 staff) compared with 2006/07 (11%). It was noted that exit interviews had not revealed any equality and diversity issues as reasons for leaving.
- The pattern of complaint outcome is similar between different ethnic groups.

The Commission **AGREED**:

that the Deputies would bring forward proposals for initiatives relating to the issues identified in the report, when the Corporate Plan for the next three years is prepared in the early part of 2009 following the announcement of the grant allocation.

**DEPs**

## **7. Data Protection Act 1998: Personal Data**

CLA 1685 had been circulated.

The Commission considered the position paper it had requested in September on the interpretation of the term 'personal data' in the Data Protection Act. It was noted that:

- The interpretation of 'personal data' was important in dealing with requests from complainants for the disclosure of information contained in their complaint file.
- The position paper had been prompted by the issue of new guidance by the Information Commissioner (ICO), which appeared to define 'personal data' much more widely than the Court of Appeal decision (Durant) on which the Commission's staff guidance was based.
- The ICO's new guidance was based on the work of a European Working Party reviewing the implementation of the European Directive on data protection.
- The ICO was taking a hard line to LGO appeal cases it was currently dealing with, and it was very likely, if the LGO reverted to its previous 'Durant' position, that this could be taken by the ICO to a test case in the courts.
- The Deputies were, therefore, currently applying the new ICO definition of 'personal data' to new DPA requests, (using the exclusions within the Act where appropriate), pending guidance from the Commission.

Ann Abraham reminded the Commission that she had raised concerns about the new ICO guidance with the Information Commissioner Richard Thomas in July, and she was due to meet his Deputy Graham Smith to discuss them in December/January (delayed to allow time for the ICO to consider the implications of the Kay decision) . Meantime, the ICO had agreed to put the current PHSO appeal cases it was dealing with 'on hold', pending this discussion. This contrasted with the harder line ICO was taking with LGO appeal cases.

Ann Abraham's Legal Adviser Anne Harding then updated the Commission on PHSO's current approach to dealing with requests for information from complainants (this was not a 'blanket' approach and could be adjusted to take account of the circumstances of the individual case):

- Consider disclosure of information for the purposes of the investigation ie wherever possible, disclose those documents upon which the decision relied, and/or which influenced the decision.
- Then consider duties of disclosure under FOIA/EIR.
- Then consider disclosure under DPA, and in so doing consider whether the PHSO statutory exemption to disclosure applied.

The following key points were made in the Commission's discussion:

- It was important that the Commission and PHSO gain a greater shared understanding of each other's approach to the disclosure of information.
- There appeared to be no reason in principle why the ICO should not take a similar approach to the Commission and PHSO on this matter,

In conclusion, the Commission **AGREED** to request;

- i That the Deputies consider in detail in what way the LGO approach was different to the PHSO approach, and to report back on this to the next Commission meeting. This was with a view to agreeing a common approach.
- ii Nigel Karney would write to Graham Smith requesting that the ICO should take the same line with LGO appeal cases as the PHSO cases ie that they be put on hold pending further discussion.

**DEPs**

The Commission also hoped that, if PHSO's meeting had by then taken place, the outcomes would shed further light on the situation. Ann Abraham would report back on progress to the Commission at the next meeting.

**AA**

## **8. Date of next scheduled meeting**

11.15am, Tuesday 27 January 2009 in MBT.