

Meeting	OLC Board	Agenda Item No. Paper No.	5 130.3
Date of meeting	14 December 2023	Time required	15 minutes
Title	Annual Legal Update and Enforcement Report		
Sponsor	Steve Pearson		
Status	OFFICIAL		
Executive summary			
<p>The purpose of this paper is to provide the OLC Board with assurance around the work of the Legal Team, including the level of enforcement activity undertaken and also around the number of cases where a decision has been taken not to enforce an Ombudsman directed remedy. The paper also provides an overview of the work of the Legal Team and a summary of the number of legal challenges faced by the Legal Ombudsman.</p> <p>This paper will cover the period 1 November 2022 to 1 November 2023.</p> <p>This paper provides OLC Board with assurance that the majority of service providers comply with the Legal Ombudsman's decisions without the need for any enforcement activity (30 new referrals). Only a small proportion of matters result in a decision by the Legal Ombudsman not to take enforcement action.</p> <p>Based on the available data, the Legal Ombudsman's assessment remains that its strategic approach to enforcement is effective in ensuring that, wherever practicable, steps are taken to ensure that complainants receive the remedies that have been directed by an Ombudsman. This is part of ensuring that the Legal Ombudsman acts in a way that is compatible with the regulatory objectives set out in the Legal Services Act 2007.</p> <p>The number of judicial review claims remain roughly consistent when compared to previous years. The Legal Ombudsman will continue to seek to robustly defend such challenges where it is appropriate to do so.</p> <p>The Legal Team have also advised on a number of projects operating across the business and wider legal issues.</p>			
Recommendation / action required			
Board is asked to NOTE the paper			
Equality Diversity and Inclusion			
EDI implications	Yes		
The decision whether or not to take enforcement action is driven by a number of criteria, one of which relates to EDI.			
Freedom of Information Act 2000 (Fol)			
Paragraph	Fol exemption and summary		
We have not identified any statutory grounds that would justify this paper not being published or any elements being redacted.			

Annual Report from the Legal Team

Enforcement data for the period 1 November 2022 – 1 November 2023

Between 1 November 2022 and 1 November 2023, the Legal Ombudsman made 1299 final ombudsman decisions of which 751 included a direction that the service provider provide a financial remedy only. Of those 751 decisions, 508 were accepted by the complainant making them legally binding.

In the same period, the Legal Team received 30 new referrals to commence enforcement action to require service providers to comply with an ombudsman's directed remedy. There have been 2 decisions not to enforce as it was considered by the Ombudsman to be inappropriate after applying the strategic decision tree. As of 1 November 2023, the legal team had 14 open enforcement cases some of which relate to historic matters.

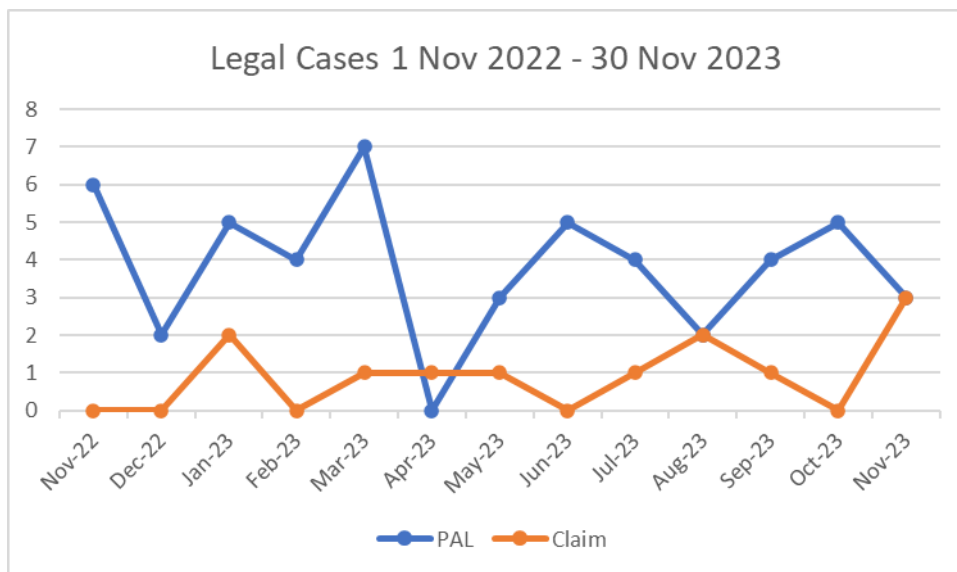
Legal cases

A judicial review claim (JR) is a challenge to the legality of the ombudsman's decision and/or process. The claim will be brought by whichever party is seeking to challenge the decision. The first stage of a JR claim is for the proposed claimant to write to the Legal Ombudsman setting out why they want to challenge the decision. This is known as the pre-action stage. Typically, we have more pre-action challenges from complainants than service providers. However, in some circumstances, a claim can be made without sending a pre-action letter. The next stage is for the Legal Team, with the support of the ombudsman, to respond to the pre-action letter. It is common for this to resolve matters. For those who remain dissatisfied they can make a formal claim to court. We will then respond accordingly. The court usually makes an initial decision on the papers without a hearing. Ordinarily, the claimant can ask for this to be reconsidered at an oral permission hearing if the decision does not go in their favour. There is then a further ability, in most cases, to appeal to the Court of Appeal.

Number of claims: In the relevant period the Legal Team received a total of 47 pre-action letters and a total of 9 JR claims. Of the 9 JR claims 5 are awaiting a permission decision, 4 have been refused permission. Of the 4 which have had permission refused 2 have appealed. This provides assurance that the Legal Ombudsman will seek to robustly defend such challenges where it is appropriate to do so.

Whilst we are at heightened risk of JR challenges given the nature of the parties who are often familiar with the legal system compared to other ombudsman schemes, there is now less of a trend for challenges to be brought by service providers. Of the 9 claims, only 2 were brought by service providers. Of the 47 pre-action letters (PAL), 7 were from service providers.

It is common for numbers of challenges to fluctuate. The below chart demonstrates the fluctuation.



Legal costs

Since April 2022 the Legal Team have undertaken a significant amount of work to review legal costs owed to the Legal Ombudsman. The Legal Team continue to seek recovery of court costs where appropriate.

Money Claims Online (MCOL)

The Legal Team have continued to seek recovery of case fees owing to the Legal Ombudsman. The Legal Team work alongside Credit Control to ensure this process operates smoothly and that legal cases issued by the OLC are correctly brought and progressed. In the relevant period 51 Letters Before Action were sent, following which only a small proportion required the issue of legal proceedings as most service providers complied.

The Legal Team

The team currently consists of four members – the Legal Manager, a solicitor and two paralegals. The Legal Team will continue to seek efficiencies and drive improvements. The Legal Team now operate from CRM which is allowing better reporting and oversight of cases.

Other areas of work that the Legal Team are involved in include advice on the new Scheme Rules, the implications of key Court of Appeal cases including *Belsner v Cam Legal Services*, the issue of sharing privileged information and restricted information, the use and operation of powers under s147-s149 of the Legal Services Act 2007.

Horizon Scanning

There are a number of issues that have the potential to impact the operation of the Legal Ombudsman scheme. A key development will be the increasing use of AI. This will involve consideration of how the Legal Ombudsman use it, and what implications it has on service providers in terms of accuracy, bias, transparency, confidentiality and accountability. The Legal Ombudsman will need to consider how it approaches complaints where AI has been used.

There is a raft of employment law changes in 2024, including but not limited to: changes to flexible working, carer's leave, the extension to protection from redundancy to pregnancy and employees returning from maternity, adoption or shared parental leave. Pending employment law changes are closely monitored by the HR Team. Any changes to policies arising from legislative change will be addressed as required to ensure continuing compliance and good practice..

It is expected that there will be some changes to whistleblowing laws following a consultation by the Department for Business and Trade which will conclude by the end of 2023. The Legal Ombudsman will need to consider any changes and update its policy accordingly.

In October 2023, the Ministry of Justice launched its consultation regarding reforms relating to the use of High Court Enforcement Officers (HCEO). The Legal Ombudsman use HCEOs as its primary method of enforcement therefore it will be important for Legal Ombudsman to be aware of the changes and what impact they may have. One of the proposed reforms is to extend the minimum period of notice that agents must give before attending a residential property.

There have been widespread concerns following the intervention by the SRA into Axiom Ince and what impact it is likely to have on the profession. It is the SRA's largest ever intervention and they have noted that it has raised issues for the compensation fund as they will need to try to balance that so that it remains available to the wider public who need to utilise it. Some complainants of the Legal Ombudsman are directed to the SRA compensation fund following an ombudsman's decision. It is likely that solicitors will need to pay an increased levy in future to offset some of the loss. The SRA are continuing to investigate.