

Meeting	OLC Board	Agenda Item No.	12
		Paper No.	106.9
Date of meeting	27 July 2020	Time required	10 Minutes

Title	OLC Strategic Approach to Enforcement: 2019-2020 Update
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Status	OFFICIAL

Executive summary
<p>Following the OLC's approval of LeO's Strategic Approach to Enforcement (see Appendix A) in September 2018, OLC requested that, for assurance purposes, they receive an annual update regarding any decisions not to enforce ombudsman directed remedies. This paper provides that assurance update.</p> <p>Between 1 June 2019 and 31 May 2020 LeO made 951 ombudsman decisions that included a direction that the service provider provide a remedy. Of those 951 decisions, 524 were accepted by the complainant making them legally binding.</p> <p>During the same time period LeO's legal team received 43 referrals requesting enforcement of decisions directing a remedy. 2 ombudsman decisions were made not to enforce decisions where a remedy had been directed.</p> <p>Based on this data, LeO's assessment is that its strategic approach to enforcement is effective in ensuring that, wherever practicable, steps are taken in an effort to ensure that complainants receive the remedies directed in their favour.</p>
Recommendation/action required
Board is asked to NOTE the paper.

OLC strategic approach to enforcement: 2019-2020 update

Executive Summary

1. Following the OLC's approval of LeO's Strategic Approach to Enforcement (see Appendix A) in September 2018, OLC requested that, for assurance purposes, they receive an annual update regarding any decisions not to enforce ombudsman directed remedies. This paper provides that assurance update.
2. The objective of enforcing ombudsman directed remedies is to:
 - Ensure that any remedy directed by an ombudsman is complied with;
 - Further the regulatory objective of "*Protecting and promoting the interests of consumers*";
 - Ensure that the enforcement of determinations is in line with the statutory aim of resolving complaints "*quickly and with minimum formality*";
 - Ensure complainants are not burdened with the formality and complexity of the court system; and
 - Build trust and confidence in the effectiveness and fairness of the Legal Ombudsman scheme and act in the public interest in undertaking enforcement activity.
3. By way of context, between 1 June 2019 and 31 May 2020 LeO made 951 ombudsman decisions that included a direction that the service provider provide a remedy. Of those 951 decisions, 524 were accepted by the complainant making them legally binding.
4. During that same time period LeO's legal team received 43 referrals requesting enforcement of decisions directing a remedy. 2 ombudsman decisions were made not to enforce decisions where a remedy had been directed. (It should be noted that of those 43 referrals, not all will have related to decisions made between 1 June 2019 and 31 May 2020, the related decision may have been made prior to 1 June 2019).
5. This information illustrates that the majority of service providers comply with LeO's decisions without the need for any enforcement activity (only 43 referrals for enforcement of a decision directing a remedy, compared to 524 binding remedy decisions in the same period) and that only a very small proportion of matters result in a decision by LeO not to enforce (2 matters in a 12 month period).

6. Based on this data, LeO's assessment is that its strategic approach to enforcement is effective in ensuring that, wherever practicable, steps are taken in an effort to ensure that complainants receive the remedies directed in their favour. Therefore, that appropriate steps are being taken to achieve the objective outlined above.
7. Board are asked to note this paper. By way of ongoing assurance, LeO will continue to provide the Board with an annual update on decisions not to enforce remedies.

Introduction

8. In September 2018, the Board approved LeO's '**Strategic approach to enforcement**'. Our **default approach** is to enforce all remedies, unless an ombudsman considers enforcement not to be appropriate.
9. In arriving at a decision not to enforce, ombudsmen refer to the '**decision-tree**', which was devised and appended to the '*Strategic approach to enforcement*' paper. The decision-tree (included at appendix A) lists all the relevant factors and questions for an ombudsman to consider before deciding whether to enforce a particular remedy.
10. One of the action points arising from the September 2018 Board was for the provision of an **annual report** to include the numbers of decisions made by ombudsmen not to enforce a remedy.
11. This update relates to enforcement matters in the period 1 June 2019 – 31 May 2020 and confirms the current position as at July 2020.

Enforcement data for period 1 June 2019 – 31 May 2020

12. In the period 1 June 2019 – 31 May 2020, we received **43 referrals** to commence enforcement proceedings to require service providers to comply with an ombudsman's directed remedy.
13. In the same period, there were **2 ombudsman decisions** not to commence enforcement proceedings in connection with ombudsman directed remedies.

Total amounts recovered 2019/20

	Q1	Q2	Q3	Q4	Totals
Remedies (inc costs)	£10,800	£11,713.50	£23,634.20	£4,909.65	£51,057.35
JR legal costs	£1,418.10	£-	£1,077.95	£7,433.45	£9,929.50
Case fees (inc costs)	£-	£671	£704.90	£-	£1,375.90
Total:	£12,218.10	£12,384.50	£25,417.05	£12,343.10	£62,362.75

Enforcement – current position & improvement activity

Enforcement – position as at 13 July 2020

Current enforcement Cases (all types – remedy / JR costs / Case Fees / Misc)	Assessment stage	Pre-action stage	In court	Awaiting decisions not to enforce/discontinue
56	3	43	8	2

14. Original budget plans for 2020/21 included an additional post to widen the Legal Team's capacity to deal with the current backlog of enforcement matters, and other work. A standstill budget means that is not possible at the present time. This will be kept under review.

15. Notwithstanding the above, the Legal Team has amended its process to accurately manage and process our extant enforcement matters. Historically, enforcement was a reactive process, whereby Legal would receive ad-hoc information and requests for updates. The amended process deals with the extant cases in a sequential manner; the result is that complainants are assured that they will receive regular updates every 8 weeks. The amended process was introduced on 1 June 2020 and has led to a reduction in our caseload from 79 to 56 within a month, with 23 enforcement cases closed in June and a total of £6,309.71 recovered. The Legal Team will continue to seek efficiencies in the handling of enforcement matters.

Moving forward

16. Future annual updates will provide data based on standard quarterly reporting dates.

We will continue to record monthly data regarding:

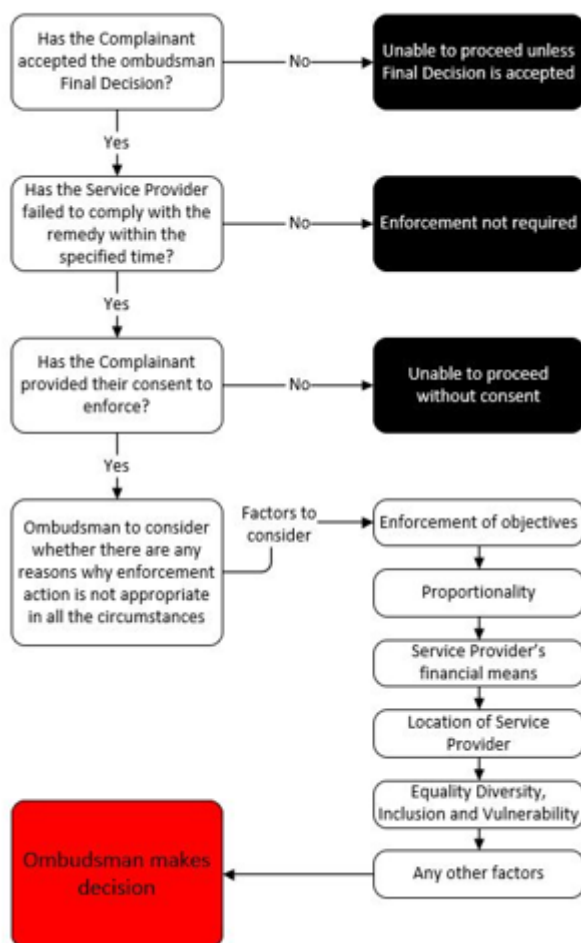
- ombudsman decisions not to enforce,
- current enforcement cases, and
- remedies, judicial review costs and case fee costs.

Taran Hayre
Legal Manager

Appendix A: Legal Ombudsman Strategic Approach to Enforcement

Summary

In September 2018 The OLC Board approved, “*The OLC Strategic Approach to Enforcement*”. This paper set out the OLC’s enforcement objectives and powers, and proposed a strategic approach to making enforcement decisions. An accompanying decision-tree sets out the factors that an ombudsman will need to consider. This Guidance note builds on the paper presented to Board and will expand upon the factors to be taken into account by an ombudsman when deciding that enforcement is “**appropriate in all the circumstances**” (Scheme Rule 5.57).



The decision-tree factors

We start with the presumption that **we will enforce all remedies** that have been directed by an ombudsman and to pursue all case fee debts using all the available options.

The decision-tree considers the following as **relevant factors** to be taken into account when making an enforcement decision. These factors are non-exhaustive.

2.1. Enforcement Objectives

The Enforcement Objectives are set out as follows:

- Ensure that any remedy directed by an ombudsman is complied with;
- Further the regulatory objective of “*Protecting and promoting the interests of consumers*”;
- Ensure that the enforcement of determinations is in line with the statutory aim of resolving complaints “*quickly and with minimum formality*”;
- Ensure complainants are not burdened with the formality and complexity of the court system; and
- Build trust and confidence in the effectiveness and fairness of the Legal Ombudsman scheme and act in the public interest in undertaking enforcement activity.

2.2. Proportionality

An ombudsman will consider:

- Whether the cost of enforcement action is proportionate to the remedy to be recovered. ‘Cost’ includes both time and monetary costs to the OLC, and the remedy may be either financial or non-financial.
- Whether there other potential routes of recovery for the complainant, for example can the complainant apply to the SRA compensation fund or to the firm’s insurance company.

2.3. Financial means of the Service Provider

A Service Provider may be an individual or an entity. An ombudsman will consider:

- The type of entity, for example the Service Provider may be a sole trader or a limited company, there are differences as to the liability that attaches to each.
- Whether the Service Provider has the means to pay or carry out the terms of any remedy.
- Whether the Service Provider owns property or has any other assets.
- Whether further information regarding the Service Provider’s finances is needed. If so, an ombudsman should discuss with the Legal Team the possibility of making an application to court for the Service Provider’s financial information.

2.4. Location of the Service Provider

Enforcement action against individuals based outside of the UK is complex. An ombudsman will consider:

- Whether the Service Provider is based in the UK, if not, are they likely to return?
- Whether there any assets in the UK which could be used for enforcement purposes.

2.5. Equality, Diversity, Inclusion and Vulnerability

An ombudsman will consider:

- Whether any of the '[protected characteristics](#)' (as defined by the Equality Act 2010) impact upon the Service Provider's ability to comply with a remedy.

2.6. Other relevant factors

An ombudsman will consider other factors that they consider to be relevant, which may include:

- Whether the Service Provider will be at risk of being evicted (and whether others are also likely to be affected).
- Whether enforcement action is likely to impact upon the Service Provider's employment (and whether others are also likely to be affected).