

<b>Meeting</b>	OLC Board	<b>Agenda Item No.</b>	14
		<b>Paper No.</b>	117.11
<b>Date of meeting</b>	14 December 2021	<b>Time required</b>	10 minutes

<b>Title</b>	<b>Annual Assurance on Legal Enforcement</b>
<b>Sponsor</b>	Steve Pearson – Deputy Chief Ombudsman
<b>Status</b>	OFFICIAL

<b>Executive summary</b>
<p>The purpose of this paper is to provide OLC Board with assurance both around the level of enforcement activity undertaken by the Legal Ombudsman’s Legal Team and also around the number of cases where a decision has been taken not to enforce an ombudsman directed remedy.</p> <p>By way of context, between 1 April 2020 and 31 March 2021 LeO made 1671 Ombudsman decision of which 802 included a direction that the service provider provide a remedy. Of those 802 decisions, 563 were accepted by the complainant making them legally binding.</p> <p>During that same time period LeO’s legal team received 29 referrals requesting enforcement of decisions directing a remedy (it should be noted that of those 29 referrals, not all will have related to decisions made between 1 April 2020 and 31 March 2021, as the related decision may have been made prior to 1 April 2020). During that financial year, 1 ombudsman decision was made not to enforce a decision where a remedy had been directed.</p> <p>This information hopefully provides OLC Board with confidence that the majority of service providers comply with LeO’s decisions without the need for any enforcement activity (only 29 referrals for enforcement of a decision directing a remedy, compared to 563 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 (1 matter in a 12 month period).</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. This is part of ensuring that LeO, as far as is reasonably practicable, acts in a way that is compatible with the regulatory objectives set out in the Legal Services Act 2007.</p>
<b>Recommendation/action required</b>
Board is asked to <b>NOTE</b> the paper.

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# Annual Assurance on Legal Enforcement

## 2020-2021 update

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### 1. Introduction

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.

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.

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.

This update relates to enforcement matters in the period **1 April 2020 to 31 March 2021** and also provides a year to date record for 2021/2022.

### 2. Enforcement data for period 1 April 2020 – 31 March 2021

By way of context, between 1 April 2020 and 31 March 2021 LeO made 1671 Ombudsman decision of which 802 included a direction that the service provider provide a remedy. Of those 802 decisions, 563 were accepted by the complainant making them legally binding.

In the same period the Legal Team received **29 referrals** to commence enforcement proceedings to require service providers to comply with an ombudsman's directed remedy (although it should be noted that some of the requests to enforce will have relate to decisions made by an ombudsman in the preceding financial year).

During 2020/2021, there was only **1 ombudsman decision** not to commence enforcement proceedings. That decision was made in line with the principles and criteria outlined in the Strategic Approach to Enforcement decision tree.

The table below outlines the outcomes of the Legal Ombudsman's enforcement and recovery activity in 2020/2021.

#### Total amounts recovered 2020/2021

	Q1	Q2	Q3	Q4	Totals
Remedies (inc costs)	£2,350.00	£37,415.09	£8,118.40	£53,068.59	£100,952.08
JR legal costs	£5,758.65	£9,000.65	£2,621.20	£1,816.50	£19,197.00
Case fees (inc costs)	£594.36	-	£2,184.66	£3,196.54	£5,975.56
<b>Total:</b>	<b>£8,703.01</b>	<b>£46,415.74</b>	<b>£12,924.26</b>	<b>£58,081.63</b>	<b>£126,124.64</b>

### 3. Enforcement – current position

#### Enforcement – position as at December 2021

Current Enforcement Cases	Assessment Stage	Pre-action stage	In court	Awaiting decision on enforcement	Suspended / waiting cases
42	1	29	6	3	3

#### Total amounts recovered 2021/2022 to date

	Q1	Q2	Q3*	Q4	Totals
Remedies (inc costs)	£7,254.18	£32,716.70	£10,095.27		£50,066.15
JR legal costs					
Case fees (inc costs)	£3,055.27	£1,941.31			£4,996.58
<b>Total:</b>	<b>£10,309.45</b>	<b>£34,658.01</b>	<b>£10,095.27</b>		<b>£55,062.73</b>

In July 2021 the decision was taken that recovery of outstanding case fees was more proportionately handled by the finance team through the MCOL system and does not require the level of oversight that the Legal Team historically provided. The involvement of the Legal Team is now limited to providing advice and support on cases where recovery of the case fee is defended.

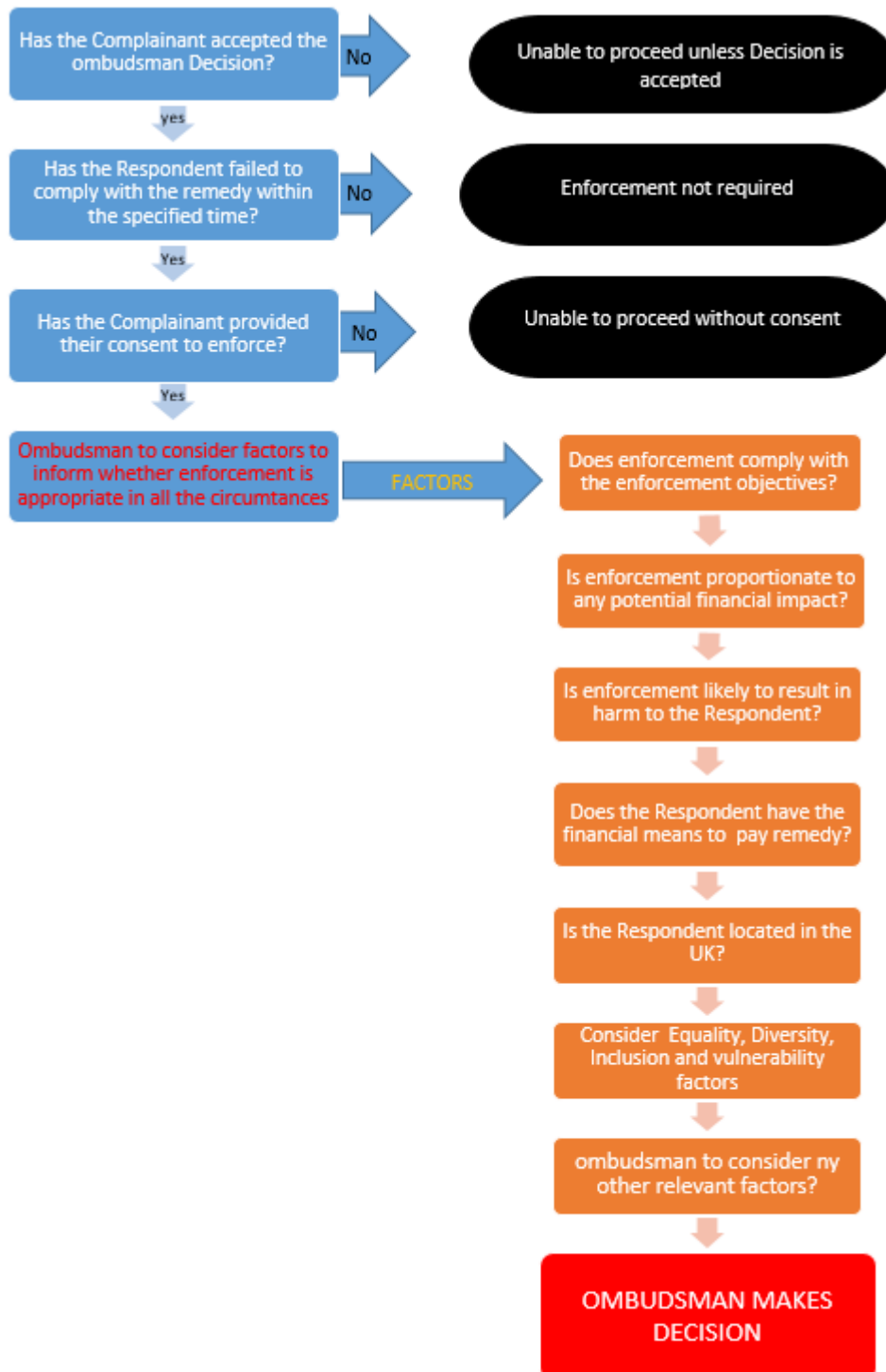
The Legal Team has been through a period of transition over the last six months. In June, the team's recently qualified solicitor left the organisation, and her role was used to recruit two paralegals who joined in the summer of 2021. In November the team's Legal Manager left the organisation and we have been actively recruiting to fill that vacancy with a verbal offer having now been made. Beyond these staffing changes there are no plans to change the composition of the team as we are satisfied that it is adequately resourced to deal with demand both in terms of challenges to casework and enforcement.

The Legal Team will continue to seek efficiencies in the handling of enforcement matters.

# Appendix A

## Guiding criteria decision-tree for enforcement decisions

Respondent failing to comply with remedy directed by an ombudsman:



## 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.

### 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.

### 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.

### 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.

### **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.

### **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.

### **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).