

<i>Meeting</i>	OLC	<i>Agenda Item No.</i>	11
		<i>Paper No.</i>	96.8
<i>Date of meeting</i>	24 June 2019	<i>Time required</i>	10 minutes

<i>Title</i>	OLC: Strategic Approach to Enforcement – annual update
<i>Sponsor</i>	Rebecca Marsh, Chief Legal Ombudsman
<i>Status</i>	OFFICIAL
<i>To be communicate</i>	Members and those in attendance

Executive summary

In September 2018, OLC Board approved a paper setting out LeO’s ‘*Strategic Approach to Enforcement*’.

One of the action points arising from the September Board was for the provision of an annual report to include the numbers of decisions made by ombudsmen not to enforce a remedy.

This paper provides the information requested by Board for the calendar year, June 2018 - May 2019.

Recommendation/action required

Board is asked to **NOTE** the information within this paper.

24 June 2019

The OLC Strategic Approach to Enforcement - update

1. Introduction

In September 2018, OLC Board approved a paper proposing LeO's '**Strategic Approach to Enforcement**'.

LeO's **default approach** is to enforce all remedies, unless an ombudsman does not consider enforcement to be appropriate in all the circumstances.

In arriving at a decision not to enforce, ombudsmen are to use the '**decision-tree**', which was devised and appended to the '*Strategic Approach to Enforcement*' paper.

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 has taken account of all enforcement matters from **June 2018 – May 2019**.

2. Enforcement information for period June 2018 - May 2019

Although the Strategic Approach to Enforcement paper was approved by Board in September 2018, Ombudsmen have always had the power to enforce or not to enforce. Accordingly, the period June 2018 – May 2019 has been selected in order to provide Board with data pertaining to a **12 month period**.

In the period **June 2018 - May 2019**, we received **55 referrals** to commence enforcement proceedings to require service providers to comply with an ombudsman's directed remedy. There were **40 legal** referrals and **15 CMC** referrals. The referral volumes are relatively evenly split across the quarters.

	Referrals	Assessment Stage	Pre-action stage	In court	Successfully enforced	Unable to enforce	Decision not to enforce
Legal	40	37	1	0	2 (pre-assessment)	0	0
CMC	15	0	0	1	2 (pre-action)	10	2

The process of assessment involves considering the ombudsman decision to ascertain whether it is a financial or non-financial remedy, identifying the legal status of the firm, investigating whether they (or any partners) have sufficient assets to satisfy the remedy (by reference to Companies House/Individual Insolvency Register/application to court) and considering whether there are sufficient prospects of success. This can be a lengthy process, particularly where we apply to court to determine assets.

In addition to the data set out above, we have **54 ombudsman decisions** brought forward from the previous year – these are matters that are either at Pre-Action Protocol stage, in court or at post-court order enforcement stage. This is in addition to our other work and we will prioritise enforcement matters on an exceptional basis only.

Number of decisions not to enforce (or discontinue enforcement proceedings):

- Legal jurisdiction: **1 decision** not to commence enforcement proceedings - upon the basis that the enforcement process would be disproportionate to the intended outcome
- CMC jurisdiction: **17 decisions** not to commence enforcement proceedings/to discontinue enforcement proceedings.

3. The Position regarding CMCs

Board will be aware that, as part of the **transfer of claims management regulation** from the Claims Management Regulator to the Financial Conduct Authority, the responsibility for complaints handling transferred from the OLC to the Financial Ombudsman Service (FOS). The transfer took place on 1 April 2019.

From 1 April 2019, the OLC no longer has the power to determine complaints regarding CMCs. However, **transitional arrangements** allow the OLC to retain the **power to enforce** those matters where an application was made to court before 1 April 2019. We have three such cases that we are in the process of enforcing.

All of the 17 decisions not to enforce or discontinue enforcement of CMC matters arise from the transfer of responsibility for complaints handling from OLC to FOS, and LeO's subsequent loss of power to enforce.

The enforcement decision-tree and associated guidance have been introduced within our internal **Wiki page** and is part of our decision-making process.

Moving forward, we will continue to record data regarding ombudsman decisions not to enforce remedies. We will continue to liaise with the FCA and FOS to work together in concluding the CMC enforcement and litigation matters that remain.