

<b>Meeting</b>	OLC Board Meeting	<b>Agenda Item No.</b>	5
		<b>Paper No.</b>	136.3
<b>Date of meeting</b>	18 December 2024	<b>Time required</b>	15 minutes
<b>Title</b>	<b>Annual report on enforcement</b>		
<b>Sponsor</b>	Steve Pearson – Deputy Chief Ombudsman		
<b>Status</b>	<b>OFFICIAL</b>		
<b>Executive summary</b>			
<p>The attached paper provides Board with an update on the work that LeO’s Legal Team have been undertaking over the last 12 months.</p> <p>Board can take assurance that in the majority of cases service providers honour the terms of LeO’s Ombudsman decisions, but where there is not the case we will take action to enforce those decisions for our customers.</p> <p>Board should also take assurance from the paper that LeO’s legal team take a proactive approach not only to the recovery of outstanding case fees but also to the recovery of costs awarded in LeO’s favour on the back of defending applications for judicial review of our decisions. The paper also provides an overview of the options available to LeO when it comes to the recovery of those outstanding legal costs.</p> <p>The paper also provides assurance that the number of pre action letters and formal JR claims to LeO’s casework remains broadly consistent with previous years.</p>			
<b>Recommendation / action required</b>			
Board is asked to note the content of the legal team’s report			
<b>Equality Diversity and Inclusion</b>			
<b>EDI implications</b>	No		
No			
<b>Freedom of Information Act 2000 (Fol)</b>			
<b>Paragraph reference</b>	<b>Fol exemption and summary</b>		
n/a			

## Annual Report from the Legal Team

### Enforcement of Ombudsman Decisions

Between 1 November 2023 and 1 November 2024, the Legal Ombudsman made 1298 final ombudsman decisions of which 794 included a direction that the service provider provide a financial remedy. Of those 794 decisions, 514 were accepted by the complainant making them legally binding.

If a service provider fails to comply with the direction in a Final Decision, the Complainant can refer the matter back to LeO who will then assess whether enforcement action should be taken by the Legal Team on behalf of the Complainant. Although the Legal Ombudsman can decide not to enforce the decision, in this period all decisions that were passed for enforcement were accepted.

Over the last twelve months, the Legal Team received and actioned 31 new referrals to commence enforcement action to require service providers to comply with an ombudsman's directed remedy. Generally, the main enforcement action that is pursued by the Legal Team is the instruction of High Court Enforcement Officers (HCEOs).

Of the files that have been concluded and closed:

- 12 were closed following payment being made after a pre-action letter.
- 3 were closed after successful recovery from HCEOs (including additional costs and interest).
- 5 were referred to insurers/SRA

There remain 11 open enforcement cases. The status of which are set out below:

- 7 are open files at pre-action stage.
- 2 with High Court Enforcement Officers for recovery
- 2 awaiting Orders for recovery of award from the Court

### Case fee recovery (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.

- The Finance Team start the process by sending an initial letter to service providers, if payment is not received, then the case will be referred to the Legal Team for recovery.
- The Legal Team send out a final reminder email demanding payment in 7 days and if no response is received a formal Pre action letter will be sent out. If payment is still not received following the pre action letter, the Legal Team will issue a County Court claim for the sum owed.

In the relevant period 121 referrals have been received from Finance.

- 76 service providers complied following the Legal Team's final reminder email or PAL which equates to a total of £30,400 recovered by the legal team.
- 2 case fees charges were written off due to Service Provider death and firm closure.
- The remaining 43 cases are at different stages
  - 15 are awaiting payment,
  - 23 are ready to be issued at court

5 are current live claims with the court.

### **Legal cases**

A judicial review claim (JR) is a challenge to the legality of the ombudsman's decision and/or process where a Judge will review the decision-making process applied to determine whether the correct procedures were followed.

When considering a Judicial Review application, the Court will take into consideration the following

- Illegality – has something been done that breaches the law.
- Irrationality/unreasonableness – was the decision so wrong that no one else would have come to the same decision.
- Procedural Impropriety – was there any bias in the decision-making process.

The Judge will not consider whether the decision itself was right or wrong. The claim will be brought by whichever party is seeking to challenge the decision, this could be either a Service Provider or a Complainant.

- The first stage of a JR claim is the pre-action stage where the proposed claimant writes a pre action letter (PAL) to the Legal Ombudsman setting out why they want to challenge the decision.
- The next stage is for the Legal Team, with the support of the decision making ombudsman, to respond to the pre-action letter. It is common for this to resolve matters because information is set out in the response prepared by the legal team on the risks of bringing a Claim.
- For those who do not accept the response to the PAL, they can apply to the Court for permission make a formal JR claim. (In some circumstances, a claim can be made without sending a PAL). The Legal Team will then respond accordingly.
- The Court usually makes an initial decision on whether or not to grant permission on the papers, without a hearing. If the papers based decision does not go in their favour the claimant can ask for it to be reconsidered at an oral permission hearing. There is then a further ability, in most cases, to appeal to the Court of Appeal.
- If permission is granted at any of the above stages, the claim will then proceed through the formal JR process.

Number of claims:

Since November 2023, the Legal Team has received a total of 32 pre-action letters and a total of 14 JR claims (of which 6 claims were issued without first sending a pre action letter). Whilst we are at heightened risk of JR challenges given the sector we operate in and the nature of our customers (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.

	<b>Complainant</b>	<b>Service Provider</b>	<b>Total</b>
<b>PAL</b>	26	6	32
<b>JR Claim</b>	8	6	14

The current status of the 14 claims is:-

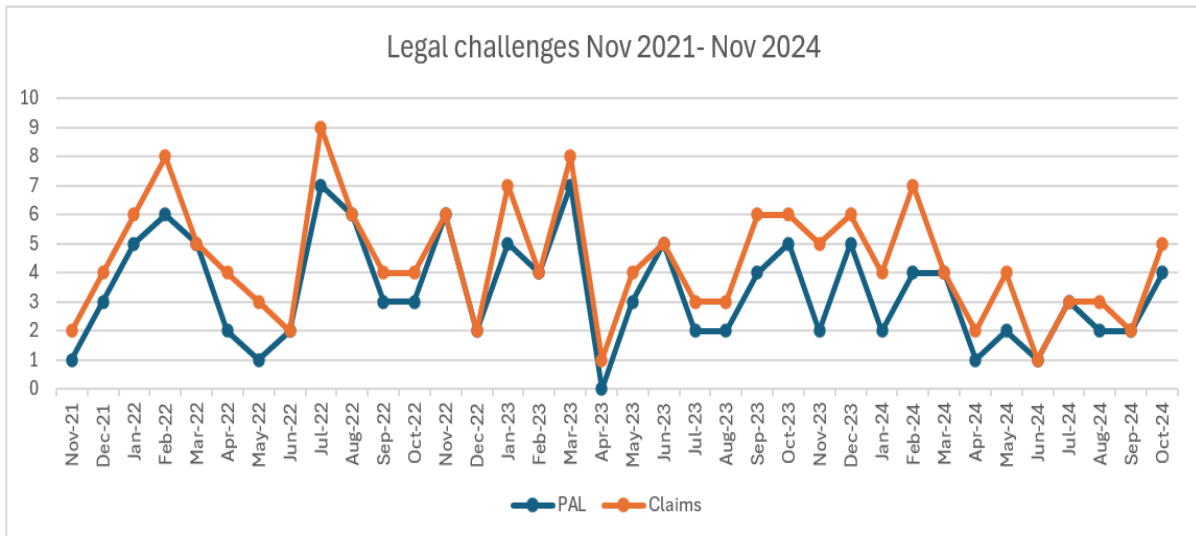
- 6 permission refused
- 1 awaiting permission decision
- 1 has been granted permission
- 2 discontinued (1 by Claimant 1 by Court due to non compliance)
- 1 awaiting appeal decision (this decision relates to an existing matter that pre-dates Nov 23, which is still awaiting COA decision.
- 2 have now been refused at appeal stage as being totally without merit)
- 2 awaiting court directions

The legal team will throughout the process take a pragmatic approach to dealing with any claims and if any action presents a litigation risk, a view will be taken on whether or not to continue to defend the action or attempt settlement. No JR claims were settled by the legal team in this period, this provides assurance that the Legal Ombudsman will seek to robustly defend such challenges where it is appropriate to do so.

Of the 32 PALs received, only 8 proceeded to issuing a claim following receipt of the legal teams response to a PAL. 24 matters were concluded following a PAL response with no further action being taken.

It is rare that the Court's grant permission to proceed with a Judicial Review application, however where permission has been granted, the Legal Team will often instruct Counsel to prepare the necessary grounds of response and attend any hearing. In the last 12 months, only 2 claims have been granted permission by the Court to proceed with JR proceedings, however this does not mean that the Claim will succeed. The Legal Team will continue to seek Counsel's advice on prospects of success and proceed to defend any matters as appropriate.

It is common for numbers of challenges to fluctuate. The below chart demonstrates the fluctuation of PALs and Claims issued over the last 3 years.



### **Legal costs**

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

In the period from 1<sup>st</sup> November 2023 – 1<sup>st</sup> November 2024:

- £24,600.19 has been recovered for legal costs. This sum consists of payments being made in full and money received in instalments by way of payment plans.
- £6,102.35 was written off due to not being able to locate debtors and enforcement options being exhausted.
- There are 4 matters that are with the High Court Enforcement Officers for recovery of legal costs amounting to roughly £7,000.00.
- There is currently approximately £25,000 outstanding for legal costs (which will include the balance of historic ongoing payment plans).

The lowest costs awards were around £900 (being historic judicial reviews, predominantly during COVID). Higher costs awards, and what we are now generally charging, are around £3000-£3500 but can be up to £4,500 if counsel instructed. In *R (Adams) v Legal Ombudsman* [2024] EWHC 2818 (Admin), the Legal Ombudsman was awarded £6,542.03, which was recovered in full.

### **Recovery of Outstanding Legal Costs**

LeO actively seeks to recover outstanding costs in line with “*the generally accepted principles of good corporate governance*” (s.117 LSA) and the Managing Public Money guidance which states “*Public sector organisations shall take care to track and enforce debts promptly. The presumption should be in favour of recovery unless it is uneconomic to do so*”.

Recovery of costs awards remains a requirement - and we believe that not taking a robust approach to enforcement would pose the risk of LeO not being able to recover the costs of defending judicial reviews. However, we also recognise that recovering payment in full is not always possible and as a result we have previously entered into payment plans and made use of High Court Enforcement Officers. We also have a range of other enforcement options available to us including, for example, applying for charging orders, attachment of earnings orders and third party debt orders. We know from our discussions with other ombudsman schemes that they will consider using any of the above options where it is appropriate to do so in the circumstances of the case. We will continue to review each situation on its individual circumstances and reflect on the most appropriate course of action to secure and recover our costs.