

Meeting	OLC Board Meeting	Agenda Item No. Paper No.	3 134.1
Date of meeting	25 July 2024	Time required	30 minutes

Title	Transparency and publishing decisions – July 2024
Sponsor	Paul McFadden – Chief Ombudsman
Status	OFFICIAL

Executive summary

LeO has a long standing and continued commitment to working transparently and exploring ways of ensuring the transparency of decision making. This paper outlines the background, considerations and options for publishing ombudsman final decisions in full.

In December 2021, a paper was presented to the OLC Board which considered the rationale for publishing ombudsman decisions and wider areas of transparency, including the publication of Public Interest Decisions. It also explored the work that would need to be undertaken to ensure that LeO was in a position to publish decisions in full, recognising the significant resource requirements involved.

Board approved the recommendation to make a provisional decision to commit to progressing towards publishing full ombudsman decisions, but recognising further work would need to be undertaken to consider the resource requirements and the impact on operational performance. It was also agreed that any implementation of a decision to publish would be delayed until a point at which operational stability will allow for this work to take place, to mitigate against any impact on LeO’s recovery and productivity.

Since this decision, a number of stakeholders – notably the Legal Services Board and Legal Services Consumer Panel – have outlined their ambition to see LeO map out a path towards publishing full ombudsman decisions.

LeO has now made significant progress toward reaching a far better standard of service and customer experience. This means we are in a position to recommence our assessment of the options for, and pathway to, enhancing transparency through publishing decisions.

It is important to note that LeO is still on a trajectory toward a working-level investigation queue, with waiting times remaining higher than acceptable for customer needing an investigation - meaning the risk of destabilisation remains live and will need to be carefully managed. However, we are in a position to begin preparations, with an emphasis on carefully managing implementation timeframes to minimise the operational impact.

This paper sets out:

- Background information about transparency at LeO to date, including previous stakeholder consultation
- The legal framework within which we work, and which guide our approach

- What we currently publish and share under our existing transparency programme
- Wider options for enhancing transparency, their value and potential impact
- An assessment of the likely resource requirements of publishing Ombudsman final decisions.

Of the options set out, Currently, LeO considers a viable pathway could be to deliver option 1 – publishing decisions in their current format and style – while undertaking the work involved in option 2 to improve the consistency and style of decisions in the longer term.

Option 3 – publishing summaries of decisions – could be delivered as an alternative or interim step to publishing full decisions, noting that it is not a less resource-intensive option.

The parameters of any expansion of LeO’s wider transparency programme under option 4 would necessarily be set by the resource available, bearing in mind the investment required in options 1, 2 and 3.

Recommendation / action required	
OLC Board is asked to note the assessment of the context and resource implications, and to feed back on the merits of the options set out, including the suggested viable pathway toward the publication of Ombudsman decisions in full.	
Equality Diversity and Inclusion	
EDI implications	Yes
The publication of all Ombudsman final decisions would involve all cases resolved by LeO at decision stage. This will necessarily involve the processing and redaction of substantial amounts of information relating to the characteristics of individual consumers and potentially legal service providers. LeO would complete a full equality impact assessment as part of progressing any proposed option(s).	
Freedom of Information Act 2000 (Fol)	
Paragraph reference	Fol exemption and summary
N/A	N/A

Transparency and publishing decisions

– July 2024

1. Introduction

The Legal Ombudsman (LeO) has a long-standing stated commitment to working transparently. This includes openness about how it resolves complaints about legal services, its governance and ways of working, and its performance against its published strategies, plans and commitments.

While transparency is important as a general principle for how public bodies should operate, data and insights from Ombudsman schemes, including LeO, are important indicators of the quality of service and complaints handling in their respective sectors. These indicators can be used by firms and regulators to inform improvements and drive higher standards. And they can help consumers make informed decisions when choosing providers.

Most recently – in the context of LeO’s performance recovery – much of LeO’s transparency has centered on sharing updates on its own performance. However, in the context of the Office for Legal Complaints’ new strategic objective to increase LeO’s impact on standards in the legal sector, there is a renewed focus on enhancing LeO’s transparency programme in terms of the insights it shares about the complaints it sees.

While there are a range of ways this can be achieved, an area of particular focus is the publication of Ombudsmen’s final decisions. Having carried out a number of consultation exercises in this area since it was established, LeO currently publishes information about final decisions, but not decisions themselves. The Legal Services Board and Legal Services Consumer Panel have made clear their expectation that LeO map out a pathway to publishing decisions in full.

LeO has now made significant progress toward reaching a far better standard of service and customer experience. This means we are in a position to recommence our assessment of the options for, and pathway to, enhancing transparency through publishing decisions. It is important to note that LeO is still on a trajectory toward a working-level investigation queue, with waiting times remaining higher than acceptable for customer needing an investigation - meaning the risk of destabilisation remains live and will need to be carefully managed. However, we are in a position to begin preparations, with an emphasis on carefully managing implementation timeframes to minimise the operational impact.

Reflecting LeO’s commitment in this space, the new strategy underlines the intention to *“make greater use of our powers to publish Ombudsman decisions in the public interest – while delivering a plan to further increase the transparency and impact of LeO’s decisions.”*

This paper sets out:

- Background information about transparency at LeO to date, including previous stakeholder consultation
- The legal framework within which we work and which guides our approach
- What we currently publish and share under our existing transparency programme
- Wider options for enhancing transparency, their value and potential impact
- An assessment of the likely resource requirements of publishing Ombudsman final decisions.

2. Background to transparency at LeO



Unlike some other Ombudsman schemes, such as the Financial Ombudsman Service, LeO is not required by law to publish its Ombudsmen’s final decisions. However, in 2011 LeO consulted on a staged approach to publishing decisions¹ and as a result has been publishing data about ombudsman final decisions since April 2012, as a way of holding service providers to account for complaints that have been all the way through the investigation process.

From this date, whenever a case fee was charged to the service provider – reflecting a finding of poor service and/or poor complaints handling – full details of the complaint would be published on LeO’s website. If a case fee was not charged then all other fields were left blank apart from the field which indicated whether there was poor service.

In December 2016 the Competition and Markets Authority (CMA) published the final report of its legal services market study. A number of recommendations were made regarding greater transparency, some of which also applied to LeO:

*“Our recommendations to the frontline regulators to address these issues are:
(c) To facilitate the development of a dynamic intermediary market through making*

¹ <https://www.legalombudsman.org.uk/media/sd3asgji/olc-publishing-decisions-consultation-response-2011.pdf>

data more accessible to comparison tools and other intermediaries. This recommendation would also apply to the LeO as well as to the regulators”

2019 discussion paper

As a result of these recommendations, in October 2019 LeO published a ‘Transparency and Reporting Impact’ discussion paper. The paper set out a range of options for improving LeO’s transparency and was intended to initiate conversations with stakeholders to understand how LeO’s information and data could best serve the needs of the consumers, the profession and the wider sector. The discussion paper outlined 5 options, including ones which were within current powers and ones which would require longer term development or legislative change:

- Option 1: Create more filters to sort our decision data
- Option 2: Write annual reviews of service providers
- Option 3: Publish all ombudsman decisions in full
- Option 4: Contextualise our decisions with firm-based data
- Option 5: Publish a greater range of data about the complaints we see

The consultation ran from 1 October 2019 – 31 January 2020 and received a total of 17 responses. The majority of the responses were from those representing the legal sector, with just two responses focusing directly on consumers. In Spring 2020, LeO expanded the detail included in its ombudsman decision data by publishing details of whether the first-tier complaints handling was reasonable. An updated policy statement put in place to reflect inclusion of new data.

In September 2020, LeO published a paper outlining the responses to the options presented. A range of responses were received to the option of publishing all ombudsman decisions in full – including support where it was recognised that publishing full ombudsman decisions would be adopting best practice and that it would go some way towards rebalancing the power and information asymmetry that can exist in the legal sector. There was, however, notable concern about the impact publishing decisions would have on some firms. This included the potential for a disproportionate impact on firms run by individuals from minority ethnic backgrounds, who it was suggested were likely to be smaller firms without a core compliance function; the possibility that it could drive perverse behaviours such as making ‘commercial offers’ to avoid a complaint being brought to LeO; and the difficulty of explaining to consumers how decisions should be interpreted or whether they would be properly understood.

Other key themes from the responses included:

- Usefulness of information to the public. Respondents questioned whether any of the measures outlined would provide useful information for people looking to choose a service provider. Responses questioned whether the public would access LeO’s website as part of the decision-making process, and whether they would understand the information and read it in the correct context.
- Fairness to all parties. A number of responses focused on ensuring fairness to all parties, for example whether there was merit in sharing information based

on number of overall complaints rather than the number of determinations as this could present a distorted picture to the public. Service providers expressed concerns that any decision made about a firm would be perceived negatively, regardless of whether the ombudsman decided in the firm's favour or not.

- Research to inform decision-making. Several organisations indicated that they would like LeO to conduct more consumer insight research to understand what people are looking for and what they find helpful, before making any decisions on what is published.

Following the publication of the response paper, LeO committed to reviewing the transparency of ombudsman decisions as part of the 2021/22 Business Plan.

OLC Board paper – December 2021

A paper was presented to the OLC Board on 14 December 2021 with a recommendation for provision approval for LeO to progress towards publishing full ombudsman decisions – recognising that further work was required to consider the resourcing required and the impact implementation would have on operational performance. It was also recommended that LeO should delay implementation of this decision until a point at which operational stability would allow for this work to take place in order to manage the potential impact on operational productivity.

In the meantime, LeO committed to delivering other projects which aimed to deliver greater transparency to decision making, including engagement on quality indicators work with the SRA, engagement with digital comparison tool providers, and the development and better use of category 1 decisions, all of which contribute to the transparency of our decision making and support improved consumer choice.

Since the Board decision in 2021, LeO has remained committed to delivering greater transparency and continues to share decision data and information with regulators, service providers and consumers. LeO has also continued to engage with stakeholders who have an interest in the publishing decisions work being taken forward – including the Legal Services Consumer Panel, who sent a letter in July 2023 expressing their continued desire to see decisions being published in full.

3. Legal framework and requirements

Legal Services Act 2007

The Legal Services Act 2007 allows the Office for Legal Complaints to publish reports of investigations or ombudsman decisions if it considers it “*appropriate to do so in any particular case*”. In considering what the OLC considers to be “*appropriate*” for publication, it has been guided by the regulatory objectives of the Legal Services Act.

LeO has recently sought legal advice from Counsel on the parameters of publishing full decisions, including considerations about Legal Professional Privilege (LPP). The advice received made it clear that there is a general presumption within the LSA which favours transparency, but a blanket policy cannot be applied without the risk of it being seen as procedurally unfair. Therefore, the publication of any decision needs

to be on a case-by-case basis and considered on its individual merits.

While LeO could adopt a policy of transparency whereby the general rule is that we will publish decisions wherever possible, we are subject to constraints around LPP and restricted information which may limit how full the publication is capable of being.

Privacy policy and notifying people of change to process

LeO currently publishes an 'Access to Information Policy' which outlines what information we currently publish. Any change to our publication policy will require an updated policy to be put in place.

A change to operational processes to include routine publication of decisions will also require notification to complainants and service providers. This will include those who have a complaint already with LeO. We know from talking to other Ombudsman Schemes that updating the privacy statement sent to customers is something that needs to be done in advance of the intended publication start date so that complaints resolved after the start date are captured by the new policy.

Consultation

Under legislation there is no requirement for LeO to consult on a change to its approach to publication, however, in the 2020 Transparency and Reporting Impact response paper, LeO made a commitment in paper to fully consulting before any decision is made on potential changes. Legal advice and best practice also suggest that because we consulted on our original position regarding publication - and in doing so only talked about publication of full decisions in exceptional circumstances – it is therefore reasonable for stakeholders to assume any changes will be fully consulted on before being brought into effect.

It was clear from the responses to previous discussion papers and subsequent business plan and budget consultations that there is some resistance within the sector to LeO pursuing publishing full decisions. As with other significant changes, such as the amendments to the Scheme Rules, a period of engagement will be required to fully engage the profession, professional bodies and regulators ahead of full consultation.

4. What we currently do

LeO is committed to improving transparency and building on what we do. It is an essential part of both ensuring consumers have the information they need to make informed decisions and helping to manage future demand for LeO's service. The 'impact' objective in the OLC 2024-27 Strategy for LeO reflects this:

“This strategic aim is about ensuring LeO's voice is heard. It reflects LeO's commitment to share our independent view of legal services – using the right platforms and channels to reach the people who need to know. It includes making the outcomes we reach more transparent, so they can help inform consumers' decisions about choosing and using legal services.”

The data and insight LeO shares are valuable tools for both consumers and service providers – encouraging improvements in service delivery and first tier complaints handling and enabling consumers to access high level data and insight on the complaints which have been resolved by final decision.

Publishing full Ombudsman decisions per se would not necessarily ensure the insights and learning from those decisions are communicated to legal sector stakeholders or consumers in any appropriate or effective way. Larger providers may have teams available to analyse Ombudsman decisions for learning points; however, small or sole practitioners simply wouldn't have the resource to do so.

Enhancing transparency could therefore mean doing more of the initiatives highlighted below. By publishing them more regularly, and raising their profile more effectively, they could have far greater potential than publishing Ombudsman final decisions to influence standards, behaviour and culture within legal services.

Examples of how LeO's data, insight and key learnings are shared include:

Formal processes

Publishing ombudsman decision data²

AREA OF LAW	REFERENCE	DATE OF DECISION	REMEDY	REMEDY AMOUNT	COMPLAINT REASONS	POOR SERVICE Y/N	COMPLAINT HANDLING REASONABLE
Employment Law	D009999	20/03/2024	N/A	N/A	N/A	No	Yes
Personal Injury / Medical Negligence	D009876	12/02/2024	To pay compensation for emotional impact and/or disruption caused	£1-£299	Failure to respond	Yes	No
Personal Injury / Medical Negligence	D009588	24/11/2023	To pay compensation for emotional impact and/or disruption caused	£1-£299	Poor complaints handling	Yes	No

Data on all ombudsman final decisions is published quarterly in accordance with our Publishing Decisions policy statement, which summarises how we approach the publication of decisions, how we use this information to raise standards and how we monitor and review our policy. It refers to two categories of publication:

- “Category 1” or “public interest” decisions: identifying service providers which have been involved in cases where there has been a pattern of complaints and decisions or set of individual circumstances which indicate that it is in the public interest that we should publish a decision with report and the firm or individual should be named.
- “Category 2”: publishing the names of all service providers which have been involved in complaints resolved by an ombudsman’s final decision will be published on a rolling annual basis, updated quarterly.

Case studies

² <https://www.legalombudsman.org.uk/information-centre/data-centre/ombudsman-decision-data/>

LeO regularly publishes³ illustrative case studies to help service providers and consumers to understand our approach to investigating complaints, how we apply the Scheme Rules and the limits of our jurisdiction. These are anonymised summaries of cases that have been brought to LeO and help explain processes more clearly.

Public interest decisions

From a policy perspective LeO has historically interpreted the LSA 2007 as permitting us to publish a decision in full in exceptional circumstances, where it meets certain criteria and qualifies as a Public Interest Decision (formerly a Category 1 decision).

Historically, LeO has not issued public interest decisions regularly and is currently developing the process for identifying and publishing public interest decisions more regularly. A benefit of increasing the number of public interest decisions we publish is that it is providing warnings to potential consumers about firms which have shown a pattern of complaints. By utilising these decisions more effectively we will be able to:

- Better highlight service providers which pose a risk to consumers.
- Provide relevant and targeted learning and development to service providers around specific providers or issues.

If LeO pursues a policy of publishing all final ombudsman decisions in full, the impact of publishing a public interest decision will be minimised. Better utilisation of existing powers surrounding public interest decisions will allow LeO to focus on highlighting those service providers who have continued to show a pattern of poor service or complaint handling, as well as those we believe should be highlighted due to one off events which may pose substantial consumer detriment.

Operational and strategic engagement

LeO undertakes regular and detailed operational and strategic engagement which delivers transparency about operational performance and insight into the complaints referred to us. This includes

- Working with regulators and trade bodies. LeO already shares Ombudsman decisions with approved regulators, but we have little insight into what proactive action they take to analyse them to understand what is driving complaints and how complaint handling and service delivery could be improved. The Legal Services Board's recent changes to its first-tier complaints handling guidance and Statement of Policy are opportunities for the regulators to work more closely with LeO to understand how complaints handling in particular should be improved, but also presents an opportunity to understand where systemic or firm specific issues may lie within service delivery.
- Consumer representatives. LeO is continuing to build its relationship with the consumer representative sector including with bodies such as the LSCP, Citizens Advice, Which? and Money Saving Expert.

³ <https://www.legalombudsman.org.uk/information-centre/case-studies/>

- Targeted intervention with firms. LeO has had significant success with working with firms we have identified as generating a high number of complaints either generally, or at a specific point in time. Working closely with these firms have provided the opportunity to talk to the firm about what we have found during investigation processes and suggest improvements. For one firm, the number of complaints at enquiry stage reduced by over 50% in a 12-month period, and a 44% reduction in the number of cases progressing to investigation.

Information and content

As part of LeO's ongoing learning and insight work, insight from complaints is presented through various channels, all with the intention of highlighting best practice and where improvements can and should be made. While this work has been limited over recent years, the additional capacity we intend to build over the strategy period will allow for its expansion. We currently publish, or contribute to:

- Data on complaints received. Published every 12 months and shows an annual view.
- Legal Choices. The Legal Choices website brings together data on all regulated service providers from across the legal services sector and includes LeO's published ombudsman decision data.
- Articles and blogs. This includes contributions to regular publications such as local and regional law society magazines and professional body publications.
- In-depth thematic reports highlighting key themes and trends found with complaints. This includes around specific areas of law or complaint issues.
- Press and media contributions around specific points of interest.

Training and learning

LeO also delivers transparency of learning from complaints through specific training and guidance to the profession. This includes:

- Webinars. This includes on best practice complaint handling, expected standards within service delivery and on the application of the Scheme Rules.
- Guidance and best practice. Detailed guidance designed to ensure that service providers deliver the quality of service expected. Guidance can be developed as a result of identifying themes and trends within the complaints being brought to LeO and encourages service providers to apply learning to their own service provision and complaints handling processes.

5. Options for publication

For publication of full ombudsman decisions, it is important to consider what options are available and the benefits and challenges of delivering each option.

As work is taken forward, we would also need to assess both our own risk appetite for publishing and that of other stakeholders. From our discussions with other Ombudsman schemes, it is evident that there is a spectrum of approaches available to delivering publication, with varying time scales for delivery, but all with a significant

budget implications. Arrangements also necessarily reflect the nature of complaints and particular characteristics of the sector in question.

Considerations such as redaction and anonymisation, the development of a technical solution for publishing and storing decisions on the website, and recruitment and/or training of staff will all apply regardless of the option taken forward.

We also know that some ombudsman schemes have taken a phased approach to publishing all decisions. As LeO operates in a private sector environment we do not consider that it would be possible to only publish a selection of complaints to start with, given the potential commercial impacts of doing so and the challenges to any selection process. This means we will likely need to be in a position to publish all decisions at the time of implementing a policy of full publication.

The options available to LeO within the parameters of the legislative framework are set out below. While each is a standalone option, they are not mutually exclusive and could be delivered in phases or in combination.

Currently, LeO considers a viable pathway could be to deliver option 1 – publishing decisions in their current format and style – while undertaking the work involved in option 2 to improve the consistency and style of decisions in the longer term.

Option 3 – publishing summaries of decisions – could be delivered as an alternative or interim step to publishing full decisions, noting that it is not a less resource-intensive option.

The parameters of any expansion of LeO's wider transparency programme under option 4 would necessarily be set by the resource available, bearing in mind the investment required in options 1, 2 and 3.

1. Publishing decisions in their current format and style

This option recognises the appetite among some stakeholders to see LeO publish decisions as soon as possible. To achieve this, LeO would be unable to undertake any comprehensive changes that sought to develop and improve the way decisions are written and presented to allow them to be clear, concise and easily understood or to develop in terms of quality and consistency of style. The nature of the complaints LeO investigates are often complex and research has previously shown that peoples' understanding of the law and legal matters is low⁴.

LeO has a history of investigators and ombudsman having the autonomy to write their decisions in a way they consider appropriate, which has resulted in variation. Any short-term option for publication will likely mean all published decisions will continue to reflect this variation. Longer term options would present opportunities for LeO to develop how decisions are presented which may help consumer understanding of the information being accessed.

Experience from other schemes also suggests that having a recognisable house style for decisions not only creates a brand identity for the organisation but also helps with

⁴ <https://research.thelegaleducationfoundation.org/research-learning/funded-research/how-people-understand-and-interact-with-the-law>

the longer-term considerations of the publication project, specifically around the technical solution and the uploading of decisions to the website.

2. Addressing the consistency and style of decisions over the longer term

Taking a longer-term approach to publishing decisions which seeks to change the way decisions are written, undertake quality assurance checks, and deliver relevant training to all LeO employees is likely to deliver greater transparency and consumer understanding of the complaints resolved by final decision. These improvements could also seek to make learning points easier for legal providers to identify and action.

Given that ombudsmen do not currently write decisions in a particular format, a longer-term option will also enable LeO to develop and implement a framework for how decisions should be written. We may need to consider Plain English training, alongside technical training, and guidance on publication criteria.

This work could be carried out once decisions are being published in their current form. Alternatively, it could be seen as a prerequisite to publishing full decisions.

3. Publishing summaries of decisions only – or as an interim step

An alternative to publishing full decisions is the publication of summaries – which condense the detail of the complaint down to the key points. While this would likely improve consumer understanding of the complaint, this should not be seen as a more straightforward option as it would be more resource intensive than publishing the full decision. This is because a full final decision would still need to be produced and offered for comment to the customer and service provider – as required by the LSA 2007 – so producing a summary of the complaint for publication is an additional task that will require time and resources.

This option will also likely require comprehensive research to determine what detail would be required for it to constitute meaningful transparency and to develop a consistent approach to this. Without automation, producing summaries of approximately 1300 final decisions a year will require a substantial skilled resource. Requiring ombudsman to produce summaries of their own decisions will also have a significant operational impact on efficiency.

4. Continuing to develop and strengthen other transparency options

While continuing to consider how far full publication can be achieved, LeO has remained committed to doing much more via other means to ensure our expertise and experience have an impact on both levels of service and the standard of complaints handling.

If full publication of final ombudsman decisions cannot be achieved, the development of other transparency initiatives remains a key priority. We know that in the most part, published decisions are not inherently helpful for consumers and are often accessed more frequently by other stakeholders such as the press and media who are looking to interrogate specific cases of interest.

We also know that the data and insight our decisions can provide should be a tool for service providers to understand how to improve their own service and complaint handling processes. The ability to analyse these decisions will require resource that

smaller firms and sole practitioners will not have. It is likely only larger firms with bespoke compliance departments that will have the resource to undertake analysis of the decisions published. By investing in other means of ensuring transparency of the learning and insight that can be taken from complaints, it ensures that all firms have access to the resources we can provide that support ongoing improvements.

6. Value of wider transparency

Publishing full decisions is widely acknowledged as best practice and useful for consumers and service providers across a range of markets. It has, over the last decade, progressively become common - though not universal - practice within the Ombudsman sector with many different schemes having published decisions for some years, including the Financial Ombudsman Service (FOS) and the Local Government and Social Care Ombudsman (LGSCO) and some devolved public services Ombudsmen. The Parliamentary and Health Service Ombudsman (PHSO) started a phased approach to publishing their decisions in 2021.

As an organisation, LeO recognises the identifiable benefits to publishing our decisions, including:

- It will provide a fairer picture of complaints that have made it all the way to an ombudsman's final decision.
- It will give consumers greater detail to make judgements about quality when choosing a service provider.
- It will give service providers a range of information to understand the standards we hold the sector to; and
- It will offer a more comprehensive picture of the depth and range of work we do and allow for better reporting across media platforms.

There are, however, some limitations to the impact publishing decisions can achieve.

Analysis of complaints

Analysis of the content of the decision will be an important part of understanding quality of service. Each complaint LeO receives is unique to the circumstances of the individual purchasing legal services – often during a significant life event. As a result, there will be different nuances on facts and the impact on a particular complainant, depending on their specific circumstances and vulnerabilities. The publication of decisions may unreasonably raise consumer expectations about what may be available by way of compensation as cases that have gone to an ombudsman for decision are likely to be among the more complex complaints. LeO resolves a much higher percentage of complaints by way of early resolution or a case decision. These cases will not be reflected in the decisions published.

We also know that only limited analysis takes place of the decisions that we do share – particularly with regulators. The LSA 2007 requires LeO to share a copy of the final decision with the regulator, as well as the complainant and service provider. We have very limited evidence of regulators using the information available to them in the complaints to help understand themes and trends in poor service and poor complaint handling.

Consumer awareness of an Ombudsman scheme before an issue has arisen is low. It is unlikely that consumers will visit LeO's website as part of any research or checks that they make before purchasing a legal service. LeO has previously included a survey on its ombudsman decision data page to help understand the reasons for visiting and found that only 14% were consumers looking to find information about a service provider before the point of purchase.

In 2012, when LeO started publishing decision data, it was also clear that interest in what was being published declined significantly after launch. In the first quarter of publication there was a spike in unique page visits to the website – over 6,500 hits during the first 24 hours – however, after first week the level of visits was low, averaging around 150 per day.

Impact on learning and insight ambitions

The ambition outlined in the OLC's 2024-27 Strategy for LeO's impact recognises the varied approaches that are required to reach different audiences to help communicate the learning and insight gained from complaints, which in turn will support improvements across the legal sector. The resource and budget requirements for delivering the publication of decisions will be significant and is likely to result in LeO being unable to deliver much more by way of wider learning and insight during the period of development and implementation required.

7. Challenges and impact

While there are benefits to publishing full ombudsman decisions, there are several challenges for delivery we would need to address to ensure the appropriateness of what is published and to ensure operational performance is maintained at an acceptable level.

Redaction

All decisions will also require redaction to anonymise the complaint – something that LeO does not currently do. The anonymisation of decisions will therefore require both a technical solution (software exists which can check documents for names) and a change in how decisions are written by investigators and ombudsman. Consideration must be given to whether there are any other aspects of the ombudsman's decision that should not be published. This will include:

- The details of the complainant or anything that could identify them
- Any information that would enable a third party to be identified
- Details of any court case or other public hearing which could enable the complainant to be identified through public records.
- Information which is subject to Legal Professional Privilege

Any publication policy will also require LeO give the service provider a chance to review the information that is intended to be published (either the redacted decision or a summary thereof) and the opportunity to raise concerns or objections to the content of the decision / report.

Legal

Legal Professional Privilege

It is not unusual for an ombudsman decision to contain information that is subject to Legal Professional Privilege, and we would need to ensure as a matter of course that this information was redacted.

It is unknown whether there is a technological or AI solution which is available that can scan and redact legally privileged or restricted information, but even if software is available, it is likely to require significant AI training to ensure the right information is flagged for redaction. Any manual exercise which requires an ombudsman or legal qualified individual to check decisions for privileged information will be highly specialist and consideration must be given to the viability of this given the scale of decisions being published.

Legal challenge / Judicial Review

The only route to appeal for an ombudsman final decision is through judicial review and a challenge may be brought for a period of three months from the date of the decision. There is therefore always a risk that it could be subject to challenge, and should we progress with publishing full decisions, we may wish to delay publication until after that window of challenge has passed.

Given the nature of the sector we work in, it is expected that challenges to any policy for full publication will also arise. In 2012 when LeO started publishing decision data the Legal team dealt with 13 challenges threatening judicial review or other litigation in respect of the proposed publication of data in the 2–3-week window prior to publication.

In the first quarter following the publication policy going live the Legal team also dealt with 98 objections to publication.

Quality and consistency

As part of research previously undertaken into how we may look to publish decisions, we spoke to three other ombudsman schemes who all took a different approach to preparing their organisation for publication. In all discussions, however, improving and developing the quality of decisions has been the biggest and most time-consuming piece of work. (Appendix 1 details the of approaches from the schemes we have met with).

Our current quality framework suggests that the quality of our decision making is of a good standard; however, we will likely need to develop a more structured framework and specific standards for decisions to be quality-assessed against. This will be particularly important if LeO adopts a “check and sign-off” policy before publication or intends to undertake regular quality and moderation exercises. These processes will add time to any timetable for delivery. It was clear from discussions with other ombudsman schemes that the development and implementation of quality checks and sign off can take between 18 months and 2 years. Including this in a shorter-term option is therefore not viable.

Destabilisation of operational performance and resource requirements

Any training, manual anonymisation and quality assurance checks ahead of publication will have an impact operational efficiency. LeO operates under two-tier

decision-making process for cases that go to investigation, and it is therefore likely that all staff will require some training from a quality assurance and anonymisation of decisions perspective.

At this stage we do not know how long training would take, and this would also be dependent on the option taken forward. To understand the potential operational impact, the forecasting outlined below has been based on a one hour, two hour or three-hour publishing check per decision. The forecasting has also been done using a 100% utilisation of 7.5 hours work per day and an 80% utilisation of 6 hours work per day – which takes into account breaks during the working day.

Time investment

Time taken per check	Total in hours (over 12 months)	Total in days at 100% utilisation (over 12 months)	Total in days at 80% utilisation (over 12 months)
1 hour per publishing check	1371 hours	183 days	228 days
2 hours per publishing check	2742 hours	366 days	457 days
3 hours per publishing check	4113 hours	549 days	685 days

Impact on resolving complaints

Time taken per check	No. of low complexity closures lost at 80% utilisation (over 12 months)	No. of medium complexity closures lost at 80% utilisation (over 12 months)
1 hour per publishing check	380	274
2 hours per publishing check	721	438
3 hours per publishing check	1139	821

To mitigate against efficiency losses, additional resource will be required to ensure the customer experience is not negatively affected and that case closures continue against published trajectories.

Decisions – how would we consider endorsements and 5.19/5.20 challenges

Endorsements

For returning provisional decisions and endorsements it is unlikely that we will be able to publish these a standalone document – the content of the final decision will only work by reference to the case decision or provisional decision.

Endorsing a decision supports a quicker and cheaper decision-making process, which is helpful for business efficiencies, but publishing these decisions would make little sense to a reader as they would not have sight of the investigators case decision. Publication of the case decision alongside the endorsement could make the published document lengthy, and we may therefore need to consider a revised approach. This change will take time to develop and implement.

5.19 / 5.20 challenges

Under chapter 5 of the Scheme Rules, cases may be closed as resolved after a case decision if:

- No new material comments or evidence have been submitted as to why the complainant disagrees with the case decision - (SR 5.19c); or
- If both parties either do not respond or do not indicate disagreement within the time limit that has been set to respond – (SR 5.20)

As these processes do not result in a formal determination of a complaint we would not look to publish those “decisions”. The introduction of these Scheme Rules may result in fewer final Ombudsman decisions being made.

8. Resource and technology requirements

To deliver the work required to develop and implement a policy of publishing all ombudsman final decisions, there are key considerations surrounding the resource costs. These can largely be broken down into people resource and technical resources requirements.

People resource requirements

Operational

Regardless of any technical solution we may opt for, there is a need for manual checks to be made to final decisions, either from a quality perspective or to ensure the anonymisation. As discussed, the nature of legal complaints means they often contain privileged information that cannot be disclosed, and we are unaware of any software or AI solution that is programmed to check for information which is legally privileged or information which can be triangulated to identify an individual.

To ensure operational delivery is maintained and based on the calculations above around case closure impact, it is estimated that an additional 3.1 FTE Ombudsmen would be required, at a cost of approximately £150,000.

Any option which looks to produce summaries of decisions will be additional resource that would need to be calculated.

Communications

The quality assurance and uploading of decisions, the analysis of what is being published – including the development of learning and insight such as guidance, thematic reports and case studies, and responding to external queries about what is being published – would likely require 3 FTE communications officers. This would be at a cost of approximately at £100,000.

IT

LeO does not have a dedicated internal resource that could build and develop a platform for decisions to be uploaded. Consideration will need to be given to the cost of procuring a developer or provider or both the upload process and the website the decisions would sit on. The costs associated with this are unknown but as outlined below, discussions with other ombudsman schemes have suggested the cost of building our own solution that was compatible with our existing systems may could potentially cost in the region of £500,000.

IT support will also be required to manage the technical queries and support for internal users of the publication system. They will also be required to provide website support once the developers have handed over to BAU. We have not been able to assess the estimated resource and cost of this work but, the cost of an IT support officer is approximately £40,000.

Legal

The issue of legal professional privilege and the likelihood of additional legal challenge to publication will require additional legal resource. Understanding what privileged material is will require specialist knowledge, so a legally qualified person may be required to assist with redaction and internal queries. Currently LeO only employees one individual in a qualified position.

The Legal team also currently deal with approximately 50 pre-action protocol letters and 12 judicial review claims a year. We know there is likely going to be ongoing challenge to publication so this will require additional resource to deal with the demand, especially in the short term.

The costs of an additional 1 FTE to the legal team will costs approximately £50,000.

Technology – AI solutions and platform for decisions

Platform for decisions

As it stands, we do not have the technology to support the publishing of full decisions. The cost of purchasing one will need to be factored into future budgets.

When discussing publishing decisions with PHSO, they confirmed that their upload solution is a manual process – copying and pasting decision text into the CMS and then uploading it to the external platform. Microsoft does not have the facility to transfer fields to another platform and the cost of developing a system which does it automatically was approximately £500,000.

Potential Artificial Intelligence (AI) solutions

We are currently looking at the potential use of AI solutions to assist with the redaction of decisions and what functionality exists – for example, whether an AI programme could be trained to help identify legally privileged information.

Other ombudsman schemes such as FOS are currently looking at the use of AI and intelligent automation that can help improve service delivery. This is not around writing or publishing decisions, but instead looking at how it can improve efficiencies to build complaint understanding. This includes building a solution that automatically identifies and labels important vs unimportant documents which allow case workers to focus on the documents that matter, and building a solution that automatically pulls information from key case documents and summarises them which will significantly reduce the time taken to understand the complaint.

While these are not used as part of any publication process, the time saved through the use of intelligent automation is also a consideration for identifying efficiencies in other parts of the process. This supports maintaining a good customer experience, despite the time which may be added as a result of publishing decisions processes.

The costs of an AI solution are currently unknown.

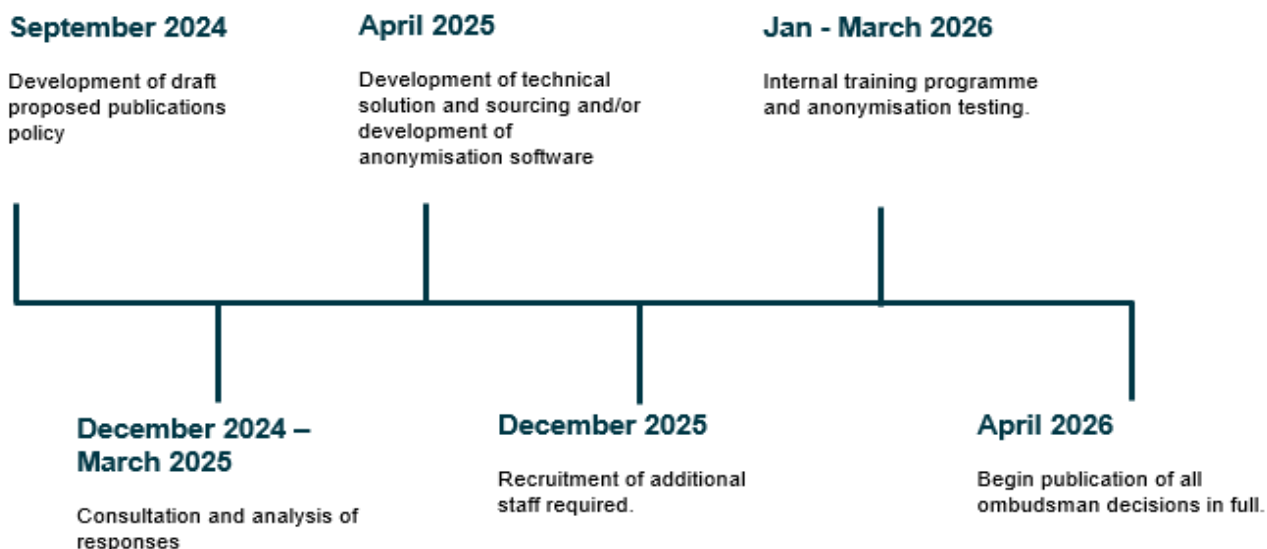
9. Potential timelines for publication

Option	Work required	Timeline for completion
Publishing decisions in their current format	Development of proposed publishing decisions policy	Minimum of 18 months
	Consultation on proposals	
	Development of a technical solution for publication – CRM and SharePoint compatibility	
	Development of an IT platform for hosting decisions	
	Recruitment and training of additional staff	
	Development and implementation of anonymisation process or procurement or implementation of anonymisation software	
	Amendment of privacy notice – application to new or existing complaints (notice required)	
Longer term development of publishing decisions process	Development of proposed publishing decisions policy	Minimum of 3 years
	Consultation on proposals	
	Development of quality standards and quality assurance assessment	
	Assessment of complaints to identify improvements against publication standards	
	Development and implementation of new decision templates	
	Training for all staff – complaint standards, plain English training, process changes	
	Quality review and sign off approach for investigators and ombudsman	

	Development of a technical solution for publication – CRM and SharePoint compatibility Development of an IT platform for hosting decisions Recruitment and training of additional staff Development and implementation of anonymisation process or procurement or implementation of anonymisation software Training for all staff – technical and anonymisation processes Amendment of privacy notice – application to new or existing complaints (notice required)	
Summaries of decisions	Timelines similar to publishing decisions in their current format – due to technical resource requirements - but with a requirement to train staff to write summaries of their decisions or recruit and train staff to write summaries of all decisions.	12 – 18 months (but with a considerable impact on operational delivery and/or timelines for publication)

Example timeline

The below timeline is based on the option to publish ombudsman decisions as they are currently written. As outlined, this option does not take into account any quality assurance or decision format work that may be undertaken as part of a longer-term option for publication:



Annex – summary of discussions with other ombudsman schemes (2021)

Source	Importance	Impact	Lesson or Recommendation	Details
PHSO	Medium	Anonymisation	Lesson	No suitable anonymisation software was identified therefore requiring manual anonymisation. This averages 2 hours per standard 7-page decision and involves manual checking and removal of data.
	Medium	Anonymisation	Lesson	Anonymisation can / does go beyond complainant name and service provider. Other may details need to be removed.
	High	Costs	Lesson	Anonymisation is biggest overhead, currently being rolled out on team-by-team basis
	Low	Morale	Lesson	Investigators did not react well to use of quality standards being used to measure their decisions against.
	High	Quality	Lesson	Improving quality has negative impact on productivity. May need to tweak to find balance but until then, needs to be acknowledged that productivity could likely be affected.
	High	Privacy Notices	Recommendation	Privacy notice must be in place at very beginning of the process to explain how we are going to use information and that we intend to publish / share details.
	Low	Anonymisation	Recommendation	It would be useful to be able to identify average lengths of decisions (and pages) to be able to quantify true cost of anonymization and how long the process takes per decision.
	Medium	Publication	Recommendation	Publishing criteria should be discussed and agreed by Exec team as early as possible. Is it going to be ALL decisions and be damned or is there going to be a threshold on what is published? This could in turn skew the decisions that are published. Threshold could also be based on quality, complaint type or area of law for example.

	High	Phases	Recommendation	Quality Framework needs to form initial part of project - Decided and Implemented quality standards - Introduced standards / measured for 3 months to get baseline (Identified what a statistically viable sample would need to be) - Turn quality information into statistic that's able to be shared
	Medium	Phases	Recommendation	Phase 2 involved developing ICT software and developing managers to improve quality of product leaving
	Low	Publication	Recommendation	Investigators draft case summary which supports search function
	Medium	Publication	Recommendation	Review templates for decisions and make them as used friendly as possible for the platform. Liaise with stakeholders and then look to build platform
LGSCO	Low	Timescales	Lesson	2010 - Moved to having a specific report with headings. 2013 - Started publishing. The new letter template took a long time to be picked up by staff as it required specific formatting in order to be picked up by the database. Took 1.5 - 2 years to begin publications and a further 1.5 years before everyone was signed off.
	Low	Quality	Lesson	Decision made that nobody could publish without manager checking quality. After 5 satisfactory checks, person would be signed off and be allowed to publish without being checked.
	Low	Publication	Recommendation	Moderation - Small cohort meet quarterly to review 15 decision statements and make sure they're happy with quality. This is done with following questions in mind: 1) Does it meet written standards? Does it meet with standards manual? 2) Is it publishable? 3) Is it reasonable and defensible?
	Low	Anonymisation	Lesson	Biggest risk was that complainant's were named in the decision. Scheme 2 has a technical solution that scans document and flags if name is present before it is published.

	Medium	Anonymisation	Lesson	Decision drafted with anonymity in place. Cover letter states 'I will refer to you as Mr X' etc. Once decision issued, no checking. Decision not allowed to contain sensitive information such as specifics that may identify the person. If the complaint is about delay, then will often refer to months (early September / late January etc) rather than give specific dates.
	Low	Complaints	Lesson	Problem which happens is that people will use published cases and say their cases are the same and therefore warrant same compensation or will challenge recommendations because another case received more.
FOS	Low	Timescales	Lesson	Prep work done in 2011 / 2012. Started publishing in 2013 Scheme 3 has a legislative requirement to publish all final determinations in report or via an anonymised copy of decision. Opted for anonymised copies of decisions.
	Medium	Anonymisation	Recommendation	Issue of triangulation. Remove all locations, things specific to particular areas of the country or unique cases that may already be in public sphere
	Low	Publication	Lesson	Financial businesses weren't happy. Worried an informal league table would be created.
	Medium	Resource	Lesson	Published decisions result in additional work for other departments. Such as Press Office. Regardless of searchability of website / database, queries will still be sent into Press Office / External affairs and staff will need to search and provide response.
	Low	Publication	Recommendation	It's not unusual for final determination to say that complaints A, B, C have been dealt with and are considered resolved so therefore final determination will only look to deal with D, E F. Obligation on Scheme 3 is only to publish the final determination