

Meeting: Legal Services Board

Date: 22 October 2019

Item: Paper (19) 51

Title: Solicitors Disciplinary Tribunal Budget 2020

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Status: OFFICIAL

Introduction / Purpose of the paper

1. The paper provides a summary of the Solicitors Disciplinary Tribunal's (SDT) budget for 2020. Approving the SDT's annual budget is a statutory decision which is reserved to the Board. The Board should have due regard to the Public Sector Equality Duty when considering the budget application (see paragraphs 16 to 20); indeed, equality and diversity is a central theme in our consideration of the SDT budget this year.
2. The application from the SDT is for approval of an operating budget of £3,135,930, which represents a 2.7% decrease compared to the budget approved for 2019. The decrease is largely explained by a projected 26% decrease in court sitting days based on information about likely caseload provided by the Solicitors Regulation Authority (SRA).
3. Ed Nally, President of the SDT (by phone), and Geraldine Newbold, Clerk and Chief Executive Officer of the SDT (in person), will attend the Board meeting to present the budget.
4. The Board has been exploring options on future approaches to enforcement. This provides wider context, but does not bear directly on, the SDT's budget for 2020.

Recommendations

5. The Board is invited to:
 - approve the SDT's application for a budget of £3,135,930
 - comment on the SDT's Reserves Policy, which provides that the target for the minimum level of general reserves should be £500,000
 - comment on the proposed changes to the SDT's KPIs.

Background

6. S46A of the Solicitors Act 1974 (which was inserted by paragraph 48 of Schedule 16 to the LSA 2007) requires that the SDT submits to the Law Society (TLS) an annual budget that has been approved by the LSB. A Memorandum of Understanding (MoU) agreed between the LSB, the SDT and TLS sets out the process which the parties follow and this application has been made in accordance with the provisions of that MoU, which was revised in August 2019. As well as minor process improvements, the MOU includes provision for the SDT to develop a reserves policy and commits them to review their KPIs periodically.
7. The 2020 budget application was submitted to the LSB on 9 September 2019.
8. Under the terms of the MoU and the Legal Services Act, the LSB is required to consult with TLS on the budget application. We consulted with TLS on 10 September 2019. TLS confirmed on 16 September 2019 that it had no comments to make on the budget application.
9. In our approval letter to the SDT on the 2019 budget application, we set out our expectation (as discussed at the Board meeting in October 2018) for the Tribunal to develop a policy on reserves with a built-in contingencies element to help drive budget discipline across the organisation. The revised MoU made provision for a reserves policy to be developed and the 2020 budget application duly includes a policy agreed by the SDT's Board (see commentary in paragraphs 30 to 35). The application also includes revised KPIs (see commentary in paragraphs 21 to 24).
10. The SDT has prepared an Efficiency Impact Assessment which outlines the steps the Tribunal has taken and will continue to take to improve efficiency and reduce costs where possible.
11. Attached to this paper are the application letter (**Annex A**), the SDT papers on Budget Principles (**Annex B**), Efficiency Impact Assessment (**Annex C**), Reserves Policy (**Annex D**) and Key Performance Indicators (**Annex E**) plus the SDT's response to queries we have raised on the application (**Annex F**). A more detailed budget spreadsheet is available to Board members on request. Finally, **Annex G** includes a list of possible questions to guide the Board's discussions.

The main budget application

12. The application is for the approval of an operating budget of £3,135,930 for 2020. This represents a decrease of £87,264 (2.7%) compared to the approved 2019 budget. The decrease is largely explained by a projected 26% reduction in court sitting days based on information mainly provided by the SRA on projected cases (300 sitting days in 2020 against 406 in the 2019 budget; 170 applications against 230 in the 2019 budget – this total includes applications other than from the SRA, e.g. lay applications and applications for restorations to the Roll).

13. We note that when the 2020 and 2019 budgets are compared based on sitting days alone, the requested budget represents an increase of £34,343 (1.1%).
14. The SDT's key business planning assumptions assume that there will be no significant increase in the number of hearing days required arising from implementation of the civil standard of proof and/or introduction of the SRA's Standards and Regulations, which will both have effect from 25 November 2019. While this assumption seems reasonable based on the available information, this can only be fully evidenced in time. On a longer-term horizon the evolution of the SRA's overall approach to enforcement will be a key variable on volume of work.
15. Table 1 below sets out a summary of the budget by category and an explanation of the variances compared to 2019.

Table 1 – Budget by category and explanation of the variances from 2019

Expense category	2020 budget	2019 budget	Variance from 2019 and primary reasons for change
Salary and related costs	£1,167,970	£1,175,418	0.6% decrease on 2019. Reflects decreases in permanent staff costs.
General administration	£1,114,020	£1,195,556	6.8% decrease on 2019. Reflects the anticipated lower number of sitting days in 2020 ¹ .
Building costs	£682,310	£669,604	1.9% increase on 2019. Reflects increases in actual 2019/20 business rates and the adoption of the London Living Wage on the cleaning and security contracts.
Contingency	-	£25,000	Contingency removed on the assumption that the Reserves Policy is approved.
Irrecoverable VAT	£171,630	£157,616	8.9% increase on 2019.
Total	£3,223,194	£3,135,930	

¹ While overall general administration costs are lower, daily fee levels for Solicitor Members will increase from £585 to £595 and Lay Members from £410 to £450 in 2020. The last increase in fees was in 2014.

Equality and diversity considerations

Recruitment of new tribunal members

16. This year's budget includes one-off costs for the recruitment of additional Tribunal Members following some resignations/retirements and a digitisation project for c.1,900 historical Judgments. We asked the SDT for more details of the plans around member recruitment to ensure the Tribunal is more reflective of the society it serves. The SDT provided us with current diversity figures of Tribunal Members and an overview of its considerations for the recruitment campaigns. Proposals include: advertising roles within and outside the legal profession; a diverse recruitment and selection panel with anti-bias training for all panel members; and possibly redacting personal data from applicant forms.
17. From follow-up enquiries, we understand that there will be equality and diversity training, with particular focus on its judicial application for new members and there have been recent sessions for existing members and more are planned.
18. The Master of the Rolls appoints the tribunal members according to a protocol. LSB provided comments to the Master of the Rolls on a draft revised protocol in November 2018. In our letter we encouraged him to give serious consideration to 'positive action' initiatives and pointed to work by others in this area.

Budget principles

19. The SDT's budget principles have been updated for the 2020 application to reflect the Reserves Policy and the proposed revisions to its KPIs.
20. During the course of our assessment, we asked the SDT how it ensures that its budget principles take into account equality and diversity issues. The SDT told us of its commitment to integrating equality and diversity into its work and culture and advised that its budget principles were formulated with due consideration to its equality and diversity obligations and commitments. The SDT further explained how it monitors the diversity of its staff and Members and publishes this data in annual reports. Despite these assurances we consider that the Budget Principles should specify equality and diversity issues more explicitly. There could also a stronger focus in the budget on external facing dimensions of equality and diversity, for example analysing data in relation to case decisions. More widely, the SDT needs to convince us that they have an adequate strategy in place on these issues and will hold themselves publicly accountable to it.

Key Performance Indicators

21. The revised MoU included a new commitment for the SDT to review its KPIs periodically in line with good practice. The SDT provides the LSB with performance information against KPIs on a voluntary basis. While the Board may comment on the SDT's KPIs, these are ultimately for the SDT's board to decide.

22. The Board received a summary of the SDT's 2018 performance in March 2019. Overall performance was stable compared to the previous year's figures, and where there had been slippage on metrics a clear explanation was provided.
23. We asked the SDT for information about the process it went through to agree the revised KPIs. The SDT explained that the Tribunal reflected on the measures which most effectively demonstrate the extent to which it is achieving key business objectives. The SDT did not undertake any benchmarking exercises, although it undertook an informal review of KPI publications by other organisations (namely other Tribunals and public bodies).
24. In our view, the revised KPIs represent a welcome tightening of existing measures against a backdrop of existing metrics largely being met, but perhaps are a missed opportunity for a first principles reflection on what good looks like.

Underspend

25. The SDT's actual expenditure has historically been far lower than the budget approved by the LSB, see Table 2 below. Although surplus funds are returned to the profession, this situation is unsatisfactory so we made follow-up enquiries.

Table 2 – Variance between budgeted and actual expenditure

	Budget	Actual	Variance
2018	£2,913,520	£2,781,629	£131,891
2017	£2,905,167	N/A	N/A
2016	£2,908,243	£2,377,969	£530,274
2015	£2,752,910	£2,098,733	£654,177
2014	£2,847,020	£1,899,367	£947,653
2013	£2,780,352	£2,103,338	£677,014

26. The main element of recent underspends has been the shortfall of hearing days against those assumed in the budget calculations. For example, the 2018 budget was based on 300 hearing days, but the outturn was 266 days. The SDT estimates that the 2019 budget will be underspent by £264,785 and a lower outturn of sitting days (by 95 days) is expected to contribute significantly to this figure. This amount would be almost £133,000 higher than the underspend in 2018. This is an unsatisfactory situation, particularly in light of the SDT's expectation last year for a much lower underspend.

27. We asked the SDT to provide the reasons for the significant variance between projected and actual hearing days in 2019. The SDT set out some of the factors for the variance. They include: disparity between the SRA's projected cases for 2019 and cases received to date; hearing days lost due to agreed outcomes or adjournments; and hearings being shorter than the time estimate provided. The SDT's response emphasised that the Tribunal is reliant on SRA forecasts (which we also acknowledged as part of our enquiries) and that the SRA is estimating volumes based on live and anticipated investigations, and where the allegations and available evidence is subject to change, which makes precision difficult.
28. We also asked for an explanation of the measures that are being taken to improve expenditure estimates. The SDT's response acknowledged that in previous years, actual expenditure has been consistently lower than budgeted. However, the SDT commented that the level of underspend had dropped over the last three years. It says that adoption of a Reserves Policy will help to ensure that future expenditure budgeting is not overly cautious.
29. We will continue to monitor actual outturn and, subject to the Board's view, we should underline the importance of this issue in our decision letter. While acknowledging that forecasting in this area is inherently challenging, this is an issue we need to pursue further with the SRA as well as the SDT, in particular by challenging the SRA through our regulatory performance framework.

Reserves Policy

30. At the October 2018 Board meeting and as set out in our decision letter for the 2019 budget application, we encouraged the SDT to develop a policy on reserves. The 2020 budget application includes the proposed Reserves Policy and the Policy Statement agreed by the SDT's Board on 28 August 2019. In our analysis the strongest rationale for SDT developing reserves is to accommodate an unanticipated increase in sitting days and to fund capital expenditure projects.
31. The Reserves Policy notes that the SDT has, in the past adopted alternative approaches to budgeting in the absence of having sufficient reserves, which has included some overly cautious budgeting (resulting in surpluses) and a contingency line in the budget.
32. The SDT intends to establish and maintain general reserves at a minimum level. In August 2019, its Board agreed that the target for the minimum level of general reserves should be £500,000 (before deducting fixed assets). The Board will review the minimum level of general reserves at least annually.
33. The SDT intends to implement a designated reserve to be funded by under-spends in Members' fees in financial years when the actual number of sitting days is lower than the number budgeted. The first call on this designated reserve will exceed sitting days in the years when they exceed the budgeted allocation.

34. Once the target minimum level of general reserves has been reached, surplus funds will be returned to TLS in the financial year following the approval of the Statutory Accounts.
35. As at 31 December 2018, the SDT held reserves of just over £530,000, of which just under £256,000 is being returned to TLS this year though a reduction to budget funding. No further past surpluses will be returned to TLS after the end of 2019, until the target minimum level of general reserves is achieved.

Next steps

36. The Chair will write to the SDT President to confirm the Board's decision, which will reflect key points in its discussions at the meeting.

Annexes

- Annex A: SDT Budget Application 2020
 Annex B: SDT Budget Principles
 Annex C: SDT Efficiency Impact Assessment
 Annex D: Reserves Policy
 Annex E: Key Performance Indicators
 Annex F: SDT response to LSB enquiries
 Annex G: Possible questions to guide the Board's discussion

Risks and mitigations	
Financial:	N/A
Legal:	
Reputational:	A reputational risk arises where the LSB approves a budget on the basis of forecasted volumes but the actual caseload is at significant variance to this resulting in a significant underspend.
Resource:	N/A

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Legal advice in box above	Section 42: Legal advice - LPP	N/A

Annex F, names on page 3	Section 40: personal information	
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