

Response to the LSB's initial queries on the Tribunal's budget application 2020

Actual vs budgeted expenditure

“We note that actual expenditure for 2019 is expected to be c. £260,000 lower than budgeted. We also recognise that in previous years, actual expenditure has been consistently lower than budgeted. Please provide some insight on the measures that are being taken to improve expenditure estimates.”

The current forecast underspend for 2019 is just under £265,000, of which £220,000 results from a forecast shortfall of 95 hearing days compared with budget. A further £25,000 is related to the contingency budget. This leaves a forecast underspend of £20,000 on items directly controlled by the Tribunal.

While it is correct to say that actual expenditure has been consistently lower than budget in previous years, the level of underspend has dropped very significantly over the last three years. The actual underspend for 2018 was just under £132,000, of which £62,000 was due to fewer actual sitting days than were budgeted. The adoption of the Reserves Policy will help to ensure that future expenditure budgeting is not overly cautious.

“We acknowledge that the SDT makes use of SRA forecasts. However, please provide the reasons for the significant variance between projected and actual hearing days in 2019.”

The variance between projected and actual hearing days in 2019 is due to a number of factors, namely:

- Disparity between the SRA's projected cases for 2019 and cases received to date;
- Hearing days lost due to Agreed Outcomes;
- Hearing days lost due to Adjournments (including for further allegations and criminal trials);
- Time estimate is based on a contested hearing but the Respondent does not engage and so the number of days required is less than was estimated; and
- Agreement of a factual matrix prior to the substantive hearing which shortens the substantive hearing itself.

Since the start of 2019 the Tribunal has been recording the reasons for any changes between planned and actual hearing days each month. The key factors that have been identified are, as anticipated, those listed above. For example, in July 2019 there were 60 planned hearing days whereas the Tribunal actually sat on 36 days. 5 days were not effective due to Agreed Outcomes, 13 due to Adjournments and 6 due to the hearings being shorter than the time estimate provided.

There has also been a recent trend for cases to be part heard (which means that they require more hearing days than originally listed) but there is no common theme as to why this has occurred in recent months. This also impacts on the variance between projected and actual hearing days but has the opposite effect to the factors listed above as such applications require more hearing days not fewer.

The SRA estimated that it would send the Tribunal between 131 and 136 cases during 2019. To the end of August 2019 the Tribunal had received 76 cases from the SRA. Assuming a relatively even spread of cases across the year, on the SRA's projected numbers, the Tribunal would have expected to have received between 87 and 90 cases by 31 August 2019.

The SRA and the Tribunal are independent of each other. This means that the Tribunal does not have any information in relation to the matters that the SRA is dealing with internally and which may result in proceedings before the Tribunal. This arrangement is entirely appropriate but does mean that the Tribunal is reliant on the forecasts provided by the SRA in terms of likely number of cases.

Given the period of time for which case numbers are being forecast, the SRA are estimating hearing days on cases which are still being investigated and where the allegations and available evidence is subject to change. The SRA acknowledges that it is extremely difficult to be more precise with the information that it provides to the Tribunal, as it has to base its forecasting on historic data and previous patterns of referrals. There are also cases where, for evidential or public interest reasons, it is no longer appropriate/proportionate to progress to a Tribunal hearing and so the matter is resolved in an alternative way, for example by use of an internal sanction by the SRA.

Equality and diversity

“How does the SDT ensure that its budget principles take into account equality and diversity issues?”

The Tribunal seeks to respect and promote equality and diversity in all that it does. The Tribunal is an independent organisation and is committed to integrating equality and diversity into its work and culture.

The Tribunal monitors the diversity of staff and Members and publishes this data in each year’s annual report. It has provided training to Members and clerks in respect of equality and diversity issues, including unconscious bias.

The Tribunal’s recruitment processes for staff are in line with good practice. There is a separate process in place for the appointment of Members (which is governed by the Appointment Protocol from time to time in force) and this also embeds the importance of equality and diversity.

In reviewing the budget principles for submission with this year’s budget application, the Tribunal did not undertake a formal equality impact assessment. However in formulating and reviewing the budget principles the Tribunal did consider its equality and diversity obligations and commitments. The Tribunal is confident that the budget principles do not impact on any specific group or groups of Tribunal users disproportionately, regardless of whether they have a protected characteristic.

The budget principles that are currently in place and those that are proposed for 2020 ensure that the Tribunal has the necessary level of funding to support the SDT’s Mission, Vision and Core Values. The level of funding sought (and the budget principles) provide for continuous improvement of services to deliver best practice and value for money. If the budget, as submitted, is approved the Tribunal will remain appropriately resourced at the correct level to enable it to reflect best practice and to meet the needs of its service users (irrespective of any protected characteristic) and to ensure that Members and staff are appropriately trained and kept up to date in respect of equality and diversity issues.

The Tribunal is currently developing Strategic and Operational Plans for the period 2020-2023. The Operational Plan will include a proposed activity schedule for 2020-2021. A proposed strategic objective for this period is to: “Increase the confidence and understanding of the public and the profession in the SDT, its powers and decision making processes, and its commitment to treating all people fairly and with respect.” One of the activity strands in relation to the delivery of this objective is to develop a strong understanding of the experience and needs of Tribunal users and use this to

inform SDT policy and practice. A key activity will be to seek to increase the amount of equality and diversity information provided by individual parties to proceedings before the Tribunal.

“Please provide more details of the plans around member recruitment to ensure the tribunal is more reflective of the society it serves. Please also provide details of training and other support planned next year for new and existing members on equality and diversity issues.”

The Tribunal collects diversity data from Tribunal Members on a voluntary basis. Not all Members have provided this information.

According to data held at 24 September 2019, **16%** of Tribunal Members are from BAME backgrounds (**14%** of Solicitor Members and **19%** of Lay Members). According to the SRA’s Law Firm Diversity Tool figures (at 24 September 2019), 18% of law firm personnel (“All”) are from non-white backgrounds.

44% of SDT Members are women (**38%** of Solicitor Members and **56%** of Lay Members), compared to 64% of law-firm personnel (same data source).

In terms of the Tribunal’s administrative team, as at 24 September 2019, 29% of staff are from BAME backgrounds and 76% are female.

The Tribunal is awaiting the finalisation by the Master of the Rolls of an updated Appointment Protocol. Accordingly, detailed planning, including timescales, for the recruitment of new Members has not yet begun. It is hoped that this recruitment campaign will begin in the first quarter of 2020.

Measures to ensure the Tribunal’s Membership is reflective of the society it serves will include:

- Ensuring roles are advertised across an appropriate range of media, within and outside the legal profession, to extend awareness of both Lay and Solicitor Member opportunities to a range of potential applicants from wide sectors of society.
- Involving a diverse cross-section of assessors from different backgrounds and providing anti-bias training for those involved in the recruitment and selection process. Training was provided to those who took part in the previous recruitment campaign by a member of the Judicial Appointments Commission.
- Including appropriate questions to assess the applicant’s awareness of and approach to issues of diversity and fairness.
- Ensuring the wording of the job advert is as inclusive as possible.
- Considering the removal of data from CVs/applications which could contribute to unconscious bias.
- Including targeted equality and diversity training, with particular focus on its judicial application for those appointed.

In terms of training provided for existing Members, at the November 2016 Training Day, [REDACTED] spoke on “Ensuring Equal Treatment In The SDT” and in June 2019 [REDACTED] spoke to the Members (and staff) about unconscious bias. Training for new Solicitor Panel Chairs (and for existing Chairs who wished to avail themselves of the training) was provided in March 2019 and this included equality and diversity issues. A number of the Members of the Tribunal hold other appointments or judicial posts and will have received relevant training as part of those roles. The Solicitor Members of the Tribunal also have their own professional continuing competence requirements.

The need for training and support for existing Members on equality and diversity issues will be kept under review. Once the new Members are appointed there will be targeted equality and diversity training, with particular focus on its judicial application, for all Members.

KPIs

“Please explain the process the SDT went through to agree the revised KPIs. As part of your response please could you let us know whether the SDT reviewed its KPIs from first principles and undertook any benchmarking exercises.”

When considering the proposed KPIs for 2020, the Tribunal asked itself what measures most effectively demonstrate the extent to which it is achieving its key business objectives.

In seeking to answer this question the Tribunal did not undertake a formal benchmarking exercise. However, there was an informal review of Annual Reports and KPI information published by a number of organisations, including HMCTS, the Medical Practitioners Tribunal Service, the Bar Tribunals and Adjudication Service and the General Dental Council.

A number of these organisations publish performance information similar to the Tribunal’s KPI information. HMCTS provide information as to the number of receipts, disposal and outstanding cases across the various courts and tribunals month by month. Given the number of cases across the court service at any one time this information is very relevant within that context but would be less informative in terms of the Tribunal, which has fewer cases and where the number of receipts and disposals is provided on an annual basis.

The Tribunal does not award compensation or allocate cases to different courts or processes and therefore KPIs based on these factors are not relevant. The Tribunal is a distinct entity from the regulator and measures its own performance. Other organisations include different strands (for example including authorisation and approval as well as regulation) and different KPIs are appropriate for those organisations who have an end to end process.

For the reasons given above in relation to forecasting, a KPI that looked at the number of actual hearing days compared to the number of budgeted hearing days would not be particularly informative. The Tribunal provides information as to the length of hearings, cases disposed of by way of Agreed Outcomes and Adjournment applications in its Annual Report in addition to reporting against the five formal KPIs.

The Tribunal is aware that, whilst the number of Lay Applications is relatively small in terms of the overall number of applications received, this cohort of applications is very important to the individuals who make them. It was therefore appropriate for the different types of case to be further sub-divided to ensure that this information was easily accessible.

In terms of determination by hearing and the time in which matters are disposed of, this is clearly key information. What is also important is that it is clear to the public and the profession how quickly the Tribunal is able to first list cases. By providing this information in addition to the current KPI 2 information the Tribunal’s actual listing performance will be clearer. The timely listing of matters is very important to the parties who may have been aware of the potential for such proceedings for some time prior to issue.

KPI 3 measures cost per court. This is an important measure of whether or not the Tribunal is providing value for money.

For a party who has had a hearing at the Tribunal, the production of the Judgment is absolutely crucial. The Judgment sets out the Tribunal's reasons for its decisions and helps parties understand the outcome and decide on whether or not to appeal. The sooner the parties receive this document the better and the Tribunal aims to improve its performance in this area as set out in the revised KPI 4.

KPI 5 provides information as to the number of appeals from the Tribunal's decisions. This measure enables the public and profession to access information in terms of whether the Tribunal was found, at the conclusion of the hearing, to have either got things right or wrong. The level of appeals (and the recorded outcomes) demonstrates the robustness and correctness of the Tribunal's decision making and remains an important performance measure.

Having asked the question as to what the Tribunal should be measuring, the conclusion reached was that the revised KPIs proposed were the appropriate measures. This will be kept under review going forward.

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On behalf of the SDT
26 September 2019