Solicitors Disciplinary Tribunal Administration Limited

Our ref: Geraldine Newbold

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Legal Services Board

By Email Only to: Steve.Brooker@legalservicesboard.org.uk

3 September 2021

Dear Steve

Solicitors Disciplinary Tribunal/Solicitors Disciplinary Tribunal Administration Limited: Budget Application 2022

In accordance with the Memorandum of Understanding (MoU) dated 23 August 2019 between the Legal Services Board (the LSB), the Solicitors Disciplinary Tribunal (the SDT), Solicitors Disciplinary Tribunal Administration Limited (SDTAL) and The Law Society (TLS), I attach the SDT/SDTAL Budget Application 2022, for the LSB's attention. The application comprises:

1. this letter;
2. SDT/SDTAL Budget Principles 2022;
3. SDT/SDTAL Budget Application 2022;
4. SDT/SDTAL Out-turn 2020 – Budget Compared with Actual Spend;
5. SDTAL Management Accounts January to July 2021; and
6. Continuous Improvement and Value for Money Assessment.

Before I set out information in relation to the current position in relation to hearing days and the forecasting information for 2022, I thought that it would be helpful to provide an update on some key issues.

Covid 19

As you are aware, the pandemic meant that the Tribunal closed its offices to the public in March 2020. However, we quickly introduced remote hearings to minimise the business impact of the closure and subsequently implemented hybrid hearings in September 2020. To date there has been minimal demand for hybrid hearings.

The Tribunal currently has 2 cases outstanding from 2018, 2 from 2019 and 6 from 2020. This is comparable with previous years. The measures that we have put in place during the pandemic, including the successful introduction of remote hearings, have meant that we have been able to continue to progress cases effectively and efficiently.

The current position is that the Tribunal's offices are open to members of the public by prior arrangement. We have a reduced level of attendance in the office on the days when we do not have hearings in the building, and this is increased as required when we have parties, advocates, and witnesses attending hybrid hearings in person. To date these arrangements are working well.

We have a courtroom which we have equipped with social distancing measures and screening. Given the uncertain position currently we intend keeping these measures in place and improving our audio-visual facilities in another courtroom in order to increase the number of hearings that can be held safely in the building on any one day.

The intention is that, for the foreseeable future, shorter hearings (of up to 2 days) will take place remotely unless a party successfully applies for a hybrid/in person hearing. For hearings with a time estimate of 3 days or more, the question of what type of hearing is appropriate will be determined at the case management hearing. In preparing the budget we have estimated that 20% of sitting days in 2022 will take place remotely and 80% will be in person. If you require any further information in relation to our listing strategy, please let me know.

<u>The Tribunal's Premises</u>

The Tribunal's lease of Gate House expires in December 2022. We are currently exploring two options as set out in the Continuous Improvement and Value for Money Assessment, namely remaining in Gate House with a reduced footprint or moving to alternative office space within London.

Our preference, subject to agreeing suitable terms with our landlord, would be to remain in Gate House. Accordingly, this budget application only includes provision for dilapidations for the 5^{th} floor of Gate House. If we were to leave Gate House entirely the amount required for dilapidations would be increased.

The budget application does not include provision for the costs that would be incurred to fit out new offices if we were to move to new premises. We would, if possible, look to fund these from reserves and/or by negotiation of incentives with a new landlord. An amount has been included in the application for repurposing part of the accommodation on the 3^{rd} and 4^{th} floors of Gate House to accommodate those staff who currently work on the 5^{th} floor. This sum is an estimate at this stage and again if these costs exceeded the estimate, we would look to fund these from reserves.

The budget application also excludes any provision for a period during which the Tribunal would have to rent two sets of premises if there is a decision to move. In these circumstances we would seek an enhanced rent-free period from the new landlord to offset this period.

However, it should be noted that in the worst-case scenario, the Tribunal could incur two sets of rent, service charges and business rates for a few months in 2022.

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

[FoIA exempt Section 43]

Update in respect of Member Recruitment

As you may recall, the 2020 Budget included provision for Member recruitment in 2020. The Tribunal last recruited Members in 2015. The Master of the Rolls finalised the Member Appointment Protocol earlier this year. He has appointed Lady Justice Carr as the Appointment Panel Chair (responsible for overseeing Member recruitment). Preparations for the recruitment exercise are underway and it is anticipated that the recruitment campaign will commence in late October 2021 and be concluded in March 2022. Funding provision for this recruitment campaign was made in the 2020 budget and will be drawn from Free Reserves, so no further funding is sought in this year's application.

Hearing Days (Actual and Estimated with Members' Fees)

Description	2020	2021	2022
Budget Application	**300 = £492,000**	**300 = £535,500**	**270 = £481,950**
Completed or Listed	**253 = £414,920**	**230 = £410,550**	**N/A**
Estimated to year end	**253 = £414,920**	**230 = £410,550**	**N/A**
Underspend (estimated)	**£77,080**	**£124,950**	**N/A**

Table 1

2021 – year to date

To 31 August 2021 the SDT received 59 applications from the SRA and 30 from all other sources. If current levels are maintained this suggests a caseload of 89 applications from the SRA and 40 from all other sources for 2021. In 2020 the Tribunal received 91 applications from the SRA and 23 from all other sources.

To 31 August 2021 the SDT sat on 158.75 days. During that period, it had originally been anticipated that it would sit on 261.75 days based on the time estimates for the cases due to be heard in that period.

The Tribunal has seen a reduction in its workload during the last 12 months. In part this may be attributable to the introduction of the SRA's Standards and Regulations and changes to the SRA's enforcement strategy. However, the Covid 19 pandemic has caused some delay in SRA investigations so the extent of the impact of the SRA's internal changes on the SDT in the medium to longer term is unclear.

On 25 November 2019 the Tribunal's first instance rules changed from the Solicitors (Disciplinary Proceedings) Rules 2007 to the Solicitors (Disciplinary Proceedings) Rules 2019 for cases certified on or after that date. The 2019 Rules introduced a change in the applicable standard of proof from beyond reasonable doubt to on the balance of probabilities. Currently there are proceedings before the Tribunal under both the 2007 and 2019 Rules. The amended standard of proof has not resulted in an increase in the number of proceedings.

2021 – September to December

The SDT is currently scheduled to sit on 106 days between September and early December 2021 with additional days to be listed in December 2021. If all these days are effective, then the total number of hearing days for 2021 will be in the region of 300 days. However, it is likely, based on previous patterns, that only 60-65% of these days will be effective, bringing the predicted number of hearing days for 2021 to between 228 and 234 days.

2022- Predicted number of hearing days

Each month the SRA provides an estimate of the number of cases it anticipates sending to the SDT in the following month with a maximum and minimum anticipated length for each case. However, the estimated number of hearing days required for each case is not known until the SDT actually receives the case from the SRA, at which point the SRA provides a worst case scenario time estimate for that case. The Tribunal reviews the time estimate for each case at key points as the case progresses and makes adjustments as appropriate.

Relevant factors in determining the number of hearing days required for a case include:

- the number of respondents;
- the number of allegations made;
- whether the allegations include dishonesty and/or lack of integrity (which are more likely to be defended);
- whether the respondent is legally represented (which can increase or decrease the hearing length);
- whether the allegations are to be defended;
- the number of witnesses to be called;
- the quantity of supporting paperwork;
- the likelihood of an Agreed Outcome based on the papers.

The estimated number of applications for 2022 is a maximum of 140 from all sources, including a number of lay applications and applications for non-party disclosure.

As at 20 April 2021, the SRA anticipated sending the Tribunal 120 cases in 2022 and estimated that these cases would require 318 sitting days (excluding any reduction for Agreed Outcomes, which the SRA considered would reduce the required number of sitting days to 244).

In submitting its forecast, the SRA highlighted the following:

- There had been a decrease in cases in 2020, partly due to a reduction in reports and partly due to a 2–3-month delay in investigations, related to the pandemic. The SRA expected this to pick up and numbers to return to a usual average.
- The number of Agreed Outcomes increased in 2020 and the SRA considered that this was perhaps as expected following the introduction of the Tribunal's new rules in 2019. However, it did not anticipate that numbers of Agreed Outcomes would increase significantly from the 2020 data.

The SRA updated its forecast on 20 July 2021. At that time, it anticipated sending the Tribunal 100 cases in 2022 and estimated that these cases would require 287 sitting days (excluding any reduction for Agreed Outcomes, which the SRA considered would reduce the required number of sitting days to 202).

The SRA also identified that there is a potential cohort of sexual misconduct cases that it anticipates lodging at the SDT. If the cases the SRA has currently identified as likely to result in proceedings all meet the threshold for referral in 2021, these could require an additional 40 days in 2022, based on a very approximate calculation at this early stage. This brings the total number of hearing days required for SRA cases to an estimated 242 hearing days.

The reason that the SRA provided for the decreased forecast is that there has been a reduction in reports and there is the impact of a lag due to Covid 19 with 2-3 months delay in investigations due to extensions for time granted to deal with requests for information. The SRA noted that it had seen an increase in reports to pre-COVID averages and is therefore expecting this to result in an increase in workflow in the Legal and Enforcement Department.

As has been highlighted previously, estimating the required number of hearing days for any given year is not a precise science. Matters received by the Tribunal in the second half of the year are generally not heard until the next calendar year. Factors such as the respondent's health or parallel criminal proceedings can result in listed hearings being adjourned.

As well as ensuring that there are enough hearing days for the cases lodged by the SRA the SDT must ensure that there are sufficient hearing days for all other applications it receives. Considering all of the available information, the SDT has based this budget application on 270 hearing days in 2022. This is a reduction of 30 hearing days from the preliminary budget estimate informed by the SRA's updated forecasting information.

Overall SDT workload

General enquiries from members of the public appear to be continuing at previous levels. There continues to be a notable level of post-hearing contact from a number of respondents (or persons connected with a case) who are unhappy with the SDT's decision and are seeking recourse that is not within the SDT's powers. This correspondence can be time-consuming, and responses are often not well received because we cannot do as requested. In addition, there continues to be a steady number of potential or actual judicial reviews of the SDT's interlocutory decisions.

In 2020 the number of individuals seeking restoration to the Roll or termination of a period of indefinite suspension was 5. The number of such application so far this year is 5.

In 2020 there were 4 applications to vary conditions on practising certificates. The number of such application so far this year is 3.

In 2021 the number of lay applications for consideration by the Tribunal has exceeded the 10 received in 2020, having reached 14 to date. However, it should be noted that 6 of these applications are inter-related. The number of enquiries received in relation to the possibility of making a lay application has increased although these enquiries do not always result in an application being made.

There were 5 applications in 2020 for either a revocation/review/variation of a S43 Order or an appeal application to the SDT. So far this year we have received 6 such applications.

2020 Underspend and 2021 Underspend Estimate

The 2020 underspend and current estimate of underspend in 2021 can be broken down as follows:

2020	Budget (£)	Actual Spend (£)	Under Spend (£)
Employment Costs	**1,167,970**	**1,133,706**	**34,264**
General Administration Costs	**1,114,020**	**797,089**	**316,931**
Building Costs	**682,310**	**689,350**	**(7,040)**
Irrecoverable VAT	**171,630**	**160,125**	**11,505**
Total Costs	**3,135,930**	**2,780,270**	**355,660**
Capital spend	**-**	**40,619**	**(40,619)**
TOTAL EXPENDITURE (REVENUE & CAPITAL)	**3,135,930**	**2,820,889**	**315,041**

2021	Budget (£)	Forecast Actual Spend (£)	Forecast Under-Spend (£)
Employment Costs	**1,203,651**	**1,181,647**	**22,004**
Administrative Costs	**1,076,617**	**948,549**	**128,068**
Building Costs	**702,514**	**699,070**	**3,444**
Irrecoverable VAT	**167,825**	**180,000**	**(12,175)**
Total Costs	**3,150,607**	**3,009,266**	**141,341**
Capital spend	**-**	**108,504**	**(108,504)**
TOTAL EXPENDITURE (REVENUE & CAPITAL)	**3,150,607**	**3,117,770**	**32,837**

Table 2

The projected reduction in sitting days in 2021, and the impact of remote hearings on Members' expenses, is anticipated to result in an underspend against the budget for these items of just under £244,000.

Cost Per Court

The cost per court is largely driven by the number of effective hearing days.

The overall cost per court in 2020 was £10,989. This was an increase of £1,588 (17%) compared to the previous year. The main reason for this increase was because administrative expenses, which are largely fixed costs, were spread over 55 (18%) fewer hearing days in 2020.

Members' fees and expenses fell by just under £146,000 in 2020. This reflected the decrease in hearing days between 2019 and 2020 and because the transfer to predominantly remote hearings during the last 9 months of 2020 resulted in substantial savings in Members' travel and accommodation costs.

Administrative costs rose by just under £17,000 (0.7%) in 2020. Aside from utility costs and other small items, such as photocopying, relatively little was saved on operating costs as a result of the temporary closure of the office and court rooms in March due to Covid-19 restrictions.

If, as predicted, the SDT sits for a minimum of 230 hearing days in 2021 the average cost per court for 2021 is likely to be £13,084.

The proposed cost per court for the 2022 budget submission is £11,690 (£11,029, if large one-off costs are excluded), based on 270 hearing days.

With the proposed reduction in the SDT's footprint in Gate House or move to alternative premises in late 2022 it is anticipated that there will be a saving of c £130,000 per year from January 2023 in relation to accommodation costs.

SDT Reserves

As part of the 2020 budget application the LSB considered the SDT's Reserves Policy which was approved by the SDTAL Board on 28 August 2019. The Board reviewed the Reserves Policy on 25 August 2021 and considered that it remains appropriate. If you would like a copy of this document, please let me know.

In accordance with the Reserves Policy, the SDT established a designated reserve funded by the under-spends in Members' fees in 2019 and 2020. The first call on the designated reserve will be to fund excess sitting days (and/or associated payments) in the years when they exceed the budgeted allocation.

The SDT is therefore confident that if the reduced level of 270 hearing days for 2022 proves insufficient it has the resources in place to increase the number of hearing days for 2022 and ensure that cases continue to be heard in a timely manner.

Key Performance Measures (KPMs)

Having undertaken a fundamental review of our KPMs last year, new KPMs were introduced from 1 January 2021. The KPMs have not been reviewed this year. It is our intention to review over time the information we gather in respect of the existing KPMs and from the user satisfaction feedback survey.

Website

The technology underpinning the SDT's website will cease to be supported in November 2022. From our own knowledge and the user satisfaction survey feedback we are aware that the existing website's can be hard for users to navigate. The need to update the website platform provides us with an opportunity to refresh the content and improve its functionality. We are not seeking any additional funding for this work and will draw the required funds from our reserves.

Annual Report

The SDT published its Annual Report for the calendar year 2020 in July 2021. It was sent to the LSB at the time of publication.

Concluding Remarks

You will see that I have copied Robert Cummings at TLS into this email.

I confirm that the Preliminary Budget Estimate 2022 was sent to TLS on 14 May 2021. Since the Preliminary Budget Estimate was submitted there has been a reduction in proposed hearing days from 300 to 270, changes to the amounts included in relation to our premises and an increase in the proposed amount for legal fees. The Preliminary Budget Estimate was £3,324,777 and the amount sought in this application is £ 3,156,354 which is a reduction of £168,423.

The budget application shows an overall increase of £5,747 (0.2%) when compared with the SDT's LSB-approved budget application for 2021. However, comparing the 2022 proposed budget with the 2021 LSB-approved budget on a like-for-like basis, by reducing the 2022 budget by the one-off amounts for dilapidations, office remodelling costs, agent's fees and additional legal fees, produces a year-on-year budget decrease of £172,813, or 5.5%.

We thought that it might be of assistance to set out what the proposed cost per regulated person would be if our budget application is approved. The proposed cost for 2022 would be £19.86. In 2020 the actual cost of the Tribunal per regulated person was £18.40. By way of comparison, the average levy per person authorised to undertake reserved legal activities for the LSB for 2020/2021 was £21.95.

It is not my intention to send hard copies of this letter and enclosures. If hard copies would assist, or if I can immediately help with anything else in relation to this application, please do not hesitate to let me know.

Edward Nally, Stuart DeBoos (our financial controller) and I are expecting to attend at the LSB Budget Challenge Meeting on 6 October 2020 for the purpose of presenting the Budget Application and dealing with questions. It would be of assistance if this meeting could take place remotely.

In the meantime, please let me know if you have any question or queries. Stuart DeBoos will be away from the office from 13 September to 24 September 2021 and I will be away from the office from 13 September to 24 September 2021 (inclusive). In Stuart and my absence if you have any queries, please contact Karen Wood (Karen.Wood@solicitorsdt.com).

Yours sincerely

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