Meeting: Legal Services Board

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Item: Paper (21) 49

Title: SDT Budget 2022

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Status: Official

Introduction

1. Approving the Solicitors Disciplinary Tribunal's (SDT) proposed annual budget is a statutory decision reserved to the Board. This paper provides information for the Board to support this decision for the SDT's proposed annual budget for the 2022 calendar year.

2. The application from the SDT is for approval of an operating budget of £3,156,354. This represents a 0.2% increase compared to the budget approved for 2021 (£3,150,607).

Recommendations

3. The Board is invited to:

    a) Approve the SDT's application for a budget of £3,156,354
    b) Note the issues raised by the challenge panel

Timing

4. Under the Memorandum of Understanding (MoU) between the SDT, the Law Society and the LSB, the LSB must approve the budget by 31 October.

Background

5. Section 46A 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 MoU agreed between the LSB, the SDT and TLS sets out the process which the parties follow and this application has been made following those provisions.

6. A challenge panel has met to scrutinise the SDT's application in greater detail. On 6 October Michael Smyth (non-lay member) and Catherine Brown (lay member), met with the SDT supported by the LSB executive. The challenge

panel felt able to support the executive's recommendation to the Board that it approve the SDT's application. It made observations, including on the impact of inflation on the proposed budget, the new Key Performance Measures, the expiry of the lease on Gate House and assumptions about working patterns post Covid-19 that are detailed in this paper.

7. As required by the MoU and the Legal Services Act, the LSB consulted with TLS on the budget application. TLS confirmed that it agreed with the figures and had no other comments.

8. The LSB decision letter approving the budget for 2021 highlighted two areas for action: we wish to see a downward trajectory in the cost per court; we wish to see new Key Performance Measures on equality, diversity, and inclusion as well as user satisfaction operationalised for 2021. The SDT's application includes its response to these requests, discussed from paragraph 13 below.

Proposal

9. The application from the SDT is for approval of an operating budget of £3,156,354 for the calendar year 2022. This represents a 0.2% increase compared to the budget approved for 2021. The 2021 budget contains several one-off costs like office remodelling, which if removed so the 2022 proposed budget is compared with the 2021 LSB-approved budget on a like-for-like basis, produces a year-on-year budget decrease of £172,813, or 5.5%.

10. The challenge panel probed whether the proposed modest budget increase would be sufficient if inflation increases significantly in 2022. The SDT reassured the panel that should this occur is has some discretionary spending it could reduce and ultimately reserves to draw on.

11. The SDT expects to receive a maximum of 140 cases from all sources for 2022 and to require 270 sitting days for these. Cases sent to the SDT by the SRA represent a large majority of these cases. The SRA anticipates sending the SDT 100 cases requiring 202 sitting days (after taking account of Agreed Outcomes). The SRA has a potential cohort of sexual misconduct cases that it may lodge at the SDT, which could require an additional 40 days. This brings the total number of sitting days required for SRA cases to an estimated 242 sitting days out of the total 270 days.

12. By way of contrast, the SDT estimates that in 2021 it will have about 129 cases requiring between 228 and 234 sitting days. As SDT operations continue to be affected by restrictions imposed in response to Covid-19 it is reasonable to compare the numbers for 2022 to the past 3 years. Comparing the numbers for 2022 to the last three years shows a decrease in expected sitting days from previous years.

13. We call the Board's attention to the fact that the SDT has undershot the predicted number of sitting days by some margin in recent years – see Table 1 below. We will actively pursue this with the SDT over the next period to ensure that the SDT is efficient with its listings practices and court utilisation. We note that the SDT has created a sitting days reserve to record budgeted

members' fees, which have been received from the Law Society but not been spent in the year. The intention is to release this reserve in years when actual sitting days exceeds the budgeted level.

Table 1 - Number of cases and sitting days 2019-2021

Description	2019	2020	2021	2022
Sitting days as per budget application	406	300	300	270
Sitting days as completed or expected	308	253	228-234	N/A
Cases	137	119	129 (expected)	Max 140

Further analysis

Considerations from the review of the 2021 budget

14. When the LSB approved the SDT budget for 2021, in the decision letter we requested that the SDT consider the following areas:

    a) we wish to see a downward trajectory in the cost per court.

    b) we wish to see new Key Performance Measures on equality, diversity, and inclusion as well as user satisfaction operationalised for 2021.

Cost per court

15. We challenged the SDT to achieve a downward trajectory in the costs per court for the 2022 budget year. This year the SDT has provided additional figures for cost per court and commentary of the predicted cost per court for 2022 as part of their budget application.

16. Table 2 below sets out the trend for cost per court showing a 17% increase in the cost per court from 2019 to 2020. The SDT sets out that the main reason for this increase was that administrative expenses, which are largely fixed costs, were spread over 55 (18%) fewer hearing days in 2020 compared to 2019. The expected cost per court for 2021 is a significant increase on 2020 since the SDT is expecting to need 60 fewer sitting days than budgeted for.

Table 2: cost per court: 2018 to 2021

year	2022 Budget	2021 Budget	2021 expected	2020 Actual	2019 Actual	2018 Actual
Cost per court	£11,690	£10,502	£13,084[1]	£10,989	£9,401	£10,321
	£11,029	Cost per Court excluding Gate House dilapidations and other costs associated with the remodelling of the office and renegotiation of the lease in 2022 also additional legal costs in 2022				

17. The SDT's budget application shows a projected decrease in cost per court in 2022 relative to the expected cost for 2021 but it still higher than previous years. The SDT anticipates makings savings of about £130,000 per year in accommodation costs from January 2023, which should reduce costs in 2023. As such, the SDT is likely to achieve a downward trajectory in the costs per court for the 2023 budget year

Key Performance Measures

18. We asked to see new Key Performance Measures (KPMs) on equality, diversity, and inclusion as well as user satisfaction operationalised for 2021. The 2020 panel challenged the SDT to be more concrete about how it would assure itself around equality, diversity, and inclusion.

19. Since then, the SDT has taken several steps in this area, summarised below:

    a) Introduced five new KPMs for measurement from 2021, to help the SDT focus on improving service levels, responding to feedback, and working towards diversity targets.

    b) As noted by the Board in April 2021, the SDT's 2021 performance statistics[2] included new information on the equality and diversity information that the SDT holds.

    c) The SDT annual report[3] for 2020 was published in July 2021 and included four pages on how the SDT approached four different diversity objectives.

20. The challenge panel welcomed that the SDT is now collecting and publishing more information on equality, diversity and inclusion and discussed opportunities to make further improvements in collaboration with the SRA.

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[1] 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.

[2] SDT annual performance statistics

[3] SDT annual report 2020

Issues

The SDT's Premises

21. The SDT's lease of Gate House expires in December 2022. The SDT is currently exploring two options of either remaining in Gate House with a reduced footprint or moving to an alternative office space within London. The SDT's preference, subject to agreeing on suitable terms with the landlord, would be to remain in Gate House, which it considers is the cheaper option.

22. The panel probed the assumptions that the SDT had made around this issue and was satisfied that it had thoroughly investigated options, subject to comments in paragraphs 25 to 28 on court utilisation post Covid-19.

Recruitment

23. The SDT last recruited Members in 2015. The Master of the Rolls finalised the Member Appointment Protocol earlier in 2021 and has appointed Lady Justice Carr as the Appointment Panel Chair (responsible for overseeing Member recruitment). 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, so no further funding is sought in this year's application.

Potential Implications of litigation

24. The SDT raises potential litigation liabilities – see Annex A, page 4. Should the liability materialise the SDT will use the in-year funding request process detailed in the MoU to seek the necessary funds.

Future impact of Covid-19

25. The SDT's operations have been affected by the restrictions imposed by the Government to control the spread of Covid-19. The SDT's offices were closed between March and August 2020. The SDT introduced remote hearings in response to the first lockdown and implemented hybrid hearings in September 2020. The SDT currently has 2 cases outstanding from 2018, 2 from 2019, and 6 from 2020. This is comparable with previous years.

26. The current position is that the SDT's offices are open to members of the public by prior arrangement and staff presence is increased as required when there are hybrid hearings. To date, the SDT considers these arrangements are working well. The SDT has a courtroom that is equipped with social distancing measures and screening. Given the uncertain position, the SDT intends to keep these measures in place and improve audio-visual facilities in another courtroom to increase the number of hearings that can be held safely in the building on any one day.

27. 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 this budget the SDT has estimated that 20% of sitting days in 2022 will take place remotely and 80% will be in person.

28. The challenge panel probed the SDT on their assumptions for how hearings would be conducted post Covid-19. It considered that the need for in-person hearings should not be solely based on the preferences of respondents. While the interests of safeguarding just outcomes were paramount, return to ‘new normal’ combined with the expiry of the lease on Gate House may be an opportunity for the SDT to assess the possibility of reducing fixed costs like the number of courtrooms and travel expenses. The challenge panel asked the SDT to report back next year on whether the courtroom utilisation rate was in line with expectations.

Next steps

29. The Chair will write to the SDT President to confirm the Board’s decision, which will also reflect key points made by the challenge panel.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Communications and engagement:	The decision letter will be published.
Equality and diversity:	See paragraphs 18 to 20
Resource:	N/A

Annexes

Annex A: The application letter
Annex B: Budget table for 2022 vs 2021
Annex C: SDT Budget Principles
Annex D: Continuous Improvement and Value for Money assessment

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
Annex A – page 3	Exemption s 43 – commercially sensitive.	N/A