Meeting: Legal Services Board

Date: 22 March 2022

Item: Paper (22) 12

Title: OLC Budget Application 2022/23

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Status: Official

Purpose of the paper

1. The Office for Legal Complaints (OLC) is required by the Legal Services Act 2007 ('the Act') to adopt a budget which is approved by the LSB. This paper provides an analysis of the submission made by the OLC for its proposed 2022/23 budget.

2. The OLC is seeking a total budget of £15,317,187, an increase of £846,145 (5.8%) over the current year Budget of £14,471,042.

3. The OLC Chair, supported by the Legal Ombudsman's Chief Ombudsman and Chief Operating Officer, will attend to respond to questions.

Recommendation:

4. The Board is invited to:

    - **approve** the OLC's budget proposals

5. The justification for this recommendation is set out in paragraphs 29 to 33. Summarising, the executive recognises the shared frustration that the minimum delivery expectations set out in last year's budget have not been met despite the significant injection in funds. And, further, that this investment was not fully spent due to recruitment and retention issues. However, we consider that six main reasons justify granting the increase sought. First, the application is technically sound and satisfies the budget acceptance criteria. Second, much of the budget uplift reflects the full-year costs of increased staffing levels previously agreed by the Board. Third, while significant performance issues persist, there are positive recent signs of stabilisation and recovery. Fourth, the OLC has implemented some successful innovations and shown greater willingness to embrace radical change options. Fifth, the budget sought is close to the current rate of inflation

and it is reasonable for the OLC to pass on relevant additional costs. Sixth, enhanced transparency and engagement with stakeholders has improved understanding of the issues and begun to rebuild confidence in the scheme.

Background

6. Schedule 15 to the Act requires the OLC, before the start of each financial year, to adopt an annual budget which has been approved by the LSB. The Act requires that the budget must include an indication of the distribution of resources deployed in the operation of the ombudsman scheme and the amounts of income arising or expected to arise from the operation of the scheme. In addition to these statutory criteria, under the Tripartite Operating Protocol agreement between the Ministry of Justice, the LSB and the OLC, the LSB may also set budget acceptance criteria. These criteria were finalised on 2 December 2021, see **Annex A**.

7. The budget approval process undertaken by the LSB is designed not to duplicate the work properly done by the OLC in scrutinising the basis on which the budget has been developed. Rather, the approval process is designed to provide adequate assurance to the Board of the robustness of the OLC's process in formulating its budget. The acceptance criteria provide the basis for this analysis. Further, as an independent NDPB, the OLC has its own Accounting Officer and Audit and Risk Assurance Committee. It also has an independent relationship with the Ministry of Justice in accordance with Managing Public Money. Hence, while the LSB approves the level of the budget, it does not have ongoing responsibility in relation to in-year financial control issues (unless these cause the budget to be varied) nor in relation to the propriety of spend.

8. The Board has discussed the proposed budget with the OLC several times: at a 'challenge panel' meeting on 28 October, at the 30 November board meeting, and the board-to-board meeting on 11 January. The Board has expressed reservations about the draft budget proposal, which it set out in writing following the 30 November board meeting. Throughout these interactions the Board has been consistent in its feedback to the OLC: on the need to convey urgency and embrace radical change options; address areas where the plans lack plausibility; and to produce a simple visual based on proper forecasts summarising the impact of each initiative in the plan on cases and the associated cost.

The OLC's proposed budget

9. The OLC has provided a detailed submission providing information against each of the Board's acceptance criteria – see **Annex B**. The OLC has also provided its revised business plan as an appendix to the application – see **Annex C**.

10. The OLC is seeking a total budget of £15.317m, an increase of £846,145 (5.8%) over the current year Budget of £14.471m.

11. The OLC explains that the budget increase is principally made up of three factors: the full-year cost of investigator staff recruited in 2021/22 in line with the agreed business plan, three senior ombudsmen to focus on proportionality, and inflation. The OLC explains that it has offset necessary increases wherever possible and identified substantial savings from staff and non-staff costs, including increases to the vacancy factor and a reduction in non-staff budgets.

12. The budget assumes full funding for all posts less a vacancy factor of £561,000 (increased from the 2021/22 vacancy factor of £306,000). The budget includes a 2% pay increase for Legal Ombudsman staff. While government guidance on pay is awaited, this reflects our working assumption of the likely position. OLC states that any pay increase less than 2% would have risks for attrition, staff engagement and performance. It cannot fully absorb the increase of £240,000 but plans to increase the vacancy factor by £105,000 to partially mitigate this.

13. Table 1 below summarises the proposed split of expenditure.

Table 1 – Proposed split of expenditure

Business area	**2022/23**	**%**
Operational delivery	£9,482,608	77.6%
Policy and Impact Work	£280,820	2.3%
Corporate Functions and business support	£2,461,597	20.1%
Total staff salary expenditure	**£12,225,025**	**100%**
Total non-salary expenditure	**£3,092,162**	
Total revenue expenditure	**£15,317,187**	

Analysis of the application against the acceptance criteria

14. We consider that the OLC's application is technically sound and contains sufficient information against the acceptance criteria to enable the Board to make its decision. Below we set out more detail on operational performance and other considerations that are likely to be key to the Board's decision.

Operational performance

- A key consideration is the expected performance benefits from the investment. As highlighted at the November 2021 Board meeting, any objective assessment, including the OLC's own, would have to conclude that the minimum delivery expectations set out in the 2021/22 budget application have not been met. Specifically, the forecast backlog in March 2022 is 1,457 higher than anticipated and closures will be 10% below target. However, the OLC points out that this has been achieved with an average of 86% of the established investigators originally anticipated. On our assessment, OLC has succeeded in stabilising the scheme and, while the metrics fall far short of an acceptable level of performance, there are positive developments to note in recent months. These include the backlog starting to reduce, investigation times falling and closures increasing. The OLC lists performance headlines for 2021/22 on page 14 of its application.

- Table 2 below summarises the OLC's forecast performance trajectory for the next 24 months based on its proposed budget. These projections do not take account of the following factors: changes to working practice, people and culture change; Scheme Rule changes aimed at reducing the proportion of cases taken to the end of its investigative process; outsourcing; or the hub strategy. On pages 32-33 of the application, the OLC provides further detail on the quantified performance improvement and its confidence level for each initiative.

15. The table starting on page 5 of the OLC's application lists the assumptions that underpin the forecast performance trajectory. As requested by the Board, on page 27 of its application, the OLC has produced 'waterfall' charts showing the anticipated impact of key initiatives on closure numbers and the backlog. Following the Board's feedback, page 31 sets out contingency plans should the forecasted performance trajectory not be met.

Table 2 – Performance expectations

Measure	**2021/22**	**2022/23**	**2023/24**
Incoming cases	7,200	7,200	Not stated
No. files in PAP @31/3	6,143	3,109	500-1,000
Case closures	6,246	10,244	9,793

16. Reflecting the current focus of performance concerns, a headline measure is the size of the backlog – the volume of files in the Pre-Assessment Pool (PAP) before a case is accepted and given to an investigator. Over 2022/23, OLC anticipates the PAP will nearly halve from 6,153 to 3,109. By the end of 2023/24 it expects the PAP to reduce to a working level of between 500 and 1,000 cases.

17. Recruitment and retention have been a significant focus for the Board during the budget application process to date. The failure to achieve a full staff complement is the key reason for the significant underspend and missing targets in 2021/22. The national recruitment campaign has enabled the Legal Ombudsman to recruit to replace assumed 2022/23 attrition in advance. There are other encouraging indicators, including a slowing of attrition and improved colleague engagement scores in the 2021 People Survey exercise.

18. Innovation has been another key focus for the Board. The OLC has introduced some successful innovations, in particular early resolution initiatives. A list of recent and planned developments and their impact on case closures is on page 22 of the OLC's application, with more detail on pages 24-25. We note that the OLC has consulted on proposed changes to its Scheme Rules. Since the Board is required to consent to any changes, we do not comment further to avoid fettering the Board's discretion as decision-maker, except to note these are

suggestive of an increased willingness to embrace radical change options. Further, discussions with the Ministry of Justice on outsourcing are ongoing.

19. The Board should also consider the possible negative impacts on performance if it does not approve the budget. The OLC states that without the planned increase its assumptions and forecast trajectory for customers would be adjusted significantly downwards.

Other considerations

20. The paragraphs below set out a series of issues that the Board might explore with the OLC at the meeting and reflect in its decision letter, although none are considered grounds alone to reject the OLC's application.

21. Pages 37 to 41 of the application set out how the OLC intends to evolve the 4E's value for money framework (economy, efficiency, effectiveness, equity) introduced in 2021/22. It plans on refreshing the tool, as reported in the agreed monthly dataset, by adding new metrics and monthly historical data. This is intended to enable stakeholders to observe a suite of key metrics together and to use that, along with a more detailed narrative, to understand performance. OLC states that it intends to explore an external peer review of its approach to VFM.

22. Pages 41 to 43 of the OLC's application address the LSB's acceptance criterion on EDI. The budget proposal includes £62,000 for an EDI Manager role already recruited in 2021/22. The OLC acknowledges the need to improve its VFM framework to incorporate EDI measures and commits to regular EDI reporting to the OLC Board covering metrics on both staff and customers.

23. The table on page 30 of the OLC's application addresses policy and impact work, and more detail is provided in pages 28-30 of the business plan. As set out in the November 2021 Board paper, this work should be a key benefit of the scheme but given underperformance lasting many years this critical area has not had the focus and resources that it merits. The OLC sets out plans in four areas: providing targeted learning and insight; increasing the visibility and impact of casework; using engagement opportunities to demonstrate the impact of the Legal Ombudsman; and responding to changes in the sector.

Stakeholder views

Ministry of Justice

24. The Act requires the Secretary of State to approve the leviable amount, which covers the majority of the OLC's budget, as well as any changes to case fees. The Secretary of State also approves any amount given as grant in aid.

25. The revised tripartite operating protocol sets out a process to mitigate the risk that the Ministry of Justice or LSB might approve the OLC budget, but the other does not. The LSB must approach the budget from the point of view of its

statutory responsibilities and that does not engage a view on the public finances more broadly. The OLC's application confirms that it submitted its medium-term financial plan (MTFP) in line with the department's requirements; the protocol dictates the MTFP must reflect the LSB's acceptance criteria.

26. We will provide an oral update with any feedback from the Ministry of Justice.

Other stakeholders

27. Pages 44 to 48 of the OLC's application summarise stakeholder feedback on the draft budget and business plan. In short, there is greater confidence in the Legal Ombudsman than a year ago, but scepticism that the performance trajectories will be achieved. There was limited support for the higher budget option for two reasons: underperformance against the 2021/22 performance trajectories; and the financial impact on providers and ultimately consumers. However, the LSCP was supportive of the additional investment.

28. The Board will note that the OLC intends to continue operation of the Challenge and Advisory Group, which was originally intended to run for 12 months only. This initiative, together with the enhanced transparency that was agreed with the OLC following last year's budget application, has been well-received.

Overall assessment

29. As the Board wrote to the OLC following the discussion at the November meeting, the LSB has a strong stake in the Legal Ombudsman achieving sustainable and acceptable performance as quickly as possible. Last year the Board demonstrated its commitment by agreeing a significant injection of funds. This was on the basis that the forecast performance trajectory represented the OLC's minimum delivery expectations at the time not taking account of planned innovations, and that time was needed to change the performance culture. Therefore, it is greatly disappointing that these delivery expectations were not met, and that the investment was not fully spent due to recruitment and retention issues. In this context, stakeholder scepticism about the performance trajectories set out in this year's application being successfully delivered are understandable.

30. The Board's ambition is for the sector to have a world-class system of consumer redress, and it has been engaging in discussions about how best to achieve this in the longer-term. However, the focus over the next 24 months is on pursuing a path of stabilisation and recovery so that the Legal Ombudsman is delivering sustainable and acceptable performance. In making its decision the Board will wish to consider a range of information including the OLC's track record, planned measures as well as wider contextual factors. Ultimately, the Board needs to set the budget at a level which supports the OLC to deliver its nearer-term goals. The budget should reflect LSB's overriding public law duty to provide OLC with sufficient resources to perform its statutory functions to an adequate standard.

31. In this context, the executive's recommendation that the Board approve the budget requested by OLC takes account of the following factors:

- Technical quality – in our view, overall, the application is technically sound and satisfies the budget acceptance criteria

- Implications of 2021/22 budget decision – a significant proportion of the uplift reflects the full-year cost of additional investigators recruited this year following the Board's approval of this investment in the 2021/22 budget

- Progress towards stabilisation – while the minimum delivery expectations set last year have not been met, elements of performance are improving. This includes operational metrics (backlog and customer journey times starting to fall) and people factors (a successful recruitment campaign, attrition falling and better colleague engagement scores in the 2021 People Survey)

- Innovation – some successful innovations have been introduced and there is a greater willingness to pursue radical change options

- Inflation – the budget is close to the current level of inflation; like any public body, the OLC will need to pass on some of these costs. The OLC has also provided evidence of absorbing costs and making savings in its budget

- Engagement – the OLC has taken account of stakeholder concern in its finalised application and more generally has started to rebuild stakeholder confidence. The expectation set last year for enhanced transparency has been met via the agreed dataset and Challenge and Advisory Group. There has been positive executive-level engagement throughout the process

32. On balance, while it will be challenging for the OLC to deliver the performance trajectory it has set out, we consider that the additional funds sought are necessary to give the organisation the opportunity to further stabilise and deliver sustainable and acceptable performance over the next 24 months.

33. Should the Board approve the budget sought, it can use the decision letter to set expectations of the OLC. The OLC has identified changes to the value for money framework and EDI reporting. It will also be important for the OLC to maintain progress on transparency of performance against the forecast trajectory, both through the agreed monthly dataset and via another mid-year stocktake.

Next steps

34. The Board's decision letter, incorporating any comments of wider reflection, should be provided to the OLC as soon as possible after the meeting. The OLC is required to adopt a budget approved by the LSB by 31 March 2022.

Annexes

Annex A – LSB budget acceptance criteria for 2022/23
Annex B – OLC budget application
Annex C – OLC revised business plan

Risks and mitigations	
Financial:	OLC is required to comply with Managing Public Money requirements. The Ministry of Justice is responsible for financial oversight in year.
Legal:	There is risk of challenge both from third parties opposed to the OLC budget approval and from the OLC if we failed to provide them with adequate budget to carry out its functions. The Board are reminded that there are acceptance criteria, referred to in the paper and the detailed analysis in the paper as well as the material provided by the OLC on which to base their decision.
Comms and engagement:	There is significant interest in the Legal Ombudsman's performance. Levy payers were sceptical about a further budget increase. The LSB could be criticised if the performance picture does not improve, or even deteriorates, by denying the OLC the resources need to improve performance.
Equality and diversity:	Pages 41 to 43 of the OLC's paper describe how the budget it seeks would advance equality and diversity. See paragraph 22 of this Board paper.
Resource:	N/A

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
Annex C	s22 – future publication	