Meeting: Legal Services Board

Date: 30 November 2021

Item: Paper (21) 62

Title: OLC draft budget 2022/23 and mid-year stocktake

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Status: Official

Purpose of the paper

1. The Board is invited to discuss the OLC's draft budget and business plan for 2022/23. The OLC has presented two budget options for increases of either 3.8% or 5.1% (potentially higher depending on public sector pay decisions).

2. No decision on the budget is required today; the Board will be asked to set the OLC's budget at its March 2022 meeting. The purpose of today's meeting is to finalise the budget acceptance criteria and signal points on the direction of travel, so that the Board has all the information it needs to make its decision in March.

3. The supporting materials incorporate a mid-year stocktake on performance, fulfilling a commitment made when the Board approved the 2021/22 budget.

4. OLC representatives will be in attendance.

Recommendation

5. The Board is invited to:

   - **Discuss** the OLC's budget paper and identify any issues or concerns with the information presented, which it wants further assurance on
   - **Approve** the budget acceptance criteria.

Background

6. In accordance with the Legal Services Act 2007, schedule 15 para 23, before the start of each financial year the OLC must adopt an annual budget which has been approved by the Board.

7. At this stage, and as in previous years, the OLC is sharing with the Board its initial assumptions and the outcome of its internal planning on its budget. The OLC has produced the paper at **Annex A** for the Board but is consulting publicly on its draft business plan and budget in parallel, at **Annex B**. The consultation contains additional materials, including on the performance trajectory, and it is important to consider the two documents alongside one another.

8. The OLC shared an early high-level version of its plans with a sub-group of Board members convened as a ‘challenge panel’ on 28 October.

9. The Board will be aware that the OLC is funded by a levy on approved regulators which must be approved by the Lord Chancellor.

Draft budget acceptance criteria

10. Under the terms of the LSB-OLC-MoJ tripartite operating protocol, we sent draft budget acceptance criteria to the OLC on 19 August, at **Annex C**. The purpose of these criteria is to ensure that the Board ultimately has all the information it needs to make a sound decision at the March 2022 meeting.

11. Since the criteria were significantly revised last year and proved helpful in giving the Board the materials it needed, only minor changes were made. The OLC’s cover paper, Annex A, addresses each of the acceptance criteria in turn.

12. The criteria should be finalised as soon as possible following this Board meeting to enable the OLC to prepare its full submission. Following a review of the OLC’s paper we do not propose making any changes to the draft criteria.

Context for the Board’s discussion – the performance picture

13. The 2021/22 budget approved by the Board represented a significant investment in resources to give the new leadership an opportunity to recover performance. In making this decision, the Board emphasised that the OLC’s forecasts were minimum delivery expectations and that it needed to see results this time given a history of promises of improvement that had failed to materialise. The key paragraphs from the decision letter are reproduced below:

    “As was discussed at the Board meeting on 18 March, the size of the investment for the slow rate of improvement set out in the OLC’s application meant this was not an easy decision for the Board to make. However, an important part of the Board’s consideration was that the forecast performance trajectory is the OLC’s minimum delivery expectations, which does not take account of planned innovations. We welcomed the increased appetite for innovation but accepted it is too early for the new team to predict the impact of these changes with confidence. The Board also recognised that the new team needs time to change the performance culture and asked for further information in due course about how this will be achieved.

Ultimately, the Board considered that the level of investment requested is necessary to give the OLC an opportunity to address performance issues in the context of a backlog which has grown considerably in the last year in a challenging operational environment. Equally, the Board was clear that it needs to see results this time, following a history of promises of improvement that have failed to materialise. The Board expressed confidence in the OLC's leadership, but should the expected benefits not materialise, then we would be justified in calling on the government to pursue alternative arrangements to deliver effective consumer redress in the sector."

14. Any objective assessment, including the OLC's own, would have to conclude that these minimum delivery expectations have not been met. The backlog in March 2022 is expected to be 6,732 against a forecast of 4,696. Annual case closures of 6,177 are expected compared to the 7,057 forecasted. Customer journey times are expected to continue to increase across 2021/22.

15. Across the cover paper and consultation, the OLC is candid about the level of underperformance and the reasons for this. It says an exceptionally challenging employment market has had a negative impact on operational performance. Since the start of 2021/22 the Legal Ombudsman has been around 20% below established investigator numbers. This is due to a combination of factors including rising attrition, increased sickness and inability to fill vacancies.

16. The OLC states the headline numbers mask a story of stability, culture change and improved performance by investigators. For example, there has been a 30% year-on-year increase in closures and case investigation times are 10% quicker overall. Further, a series of innovations has been introduced. Foremost is early resolution, which has so far delivered 392 case closures without the need for investigation (forecast to increase to 800 across 2021/22). Other innovations are detailed at pages 36 to 37 of Annex B.

17. Once a case is passed to an investigator, the Legal Ombudsman's customers are experiencing an improved service. However, the backlog continues to rise with a consequential impact on customer journey times. As the backlog rises so the scale of the challenge facing the OLC becomes ever greater. Therefore, the OLC's principal focus in delivering sustainable and acceptable performance is on reducing the backlog. Within this are three priorities:

    - Improving processes for resolving disputes, including reinterpretation of and changes to the Scheme Rules
    - Becoming an employer of choice
    - Responding at pace to recruitment problems (where it cites apparent constraints in the Legal Services Act)

18. These future priorities are explored in paragraphs 25 to 30 below.

OLC's draft proposal

19. At this stage in the process, the OLC has chosen to present two budget options rather than propose a single figure, see Table 1. OLC has modelled the impact of salary increases of 1% and 2% pending the outcome of public sector pay decisions and stresses the importance of these to its recovery. This produces a range of potential increases between 3.8% and 6.8% over the 2021/22 budget.

20. The OLC has considered but ruled out a no budgetary increase option on the basis that the planned increase is intended to pay for the full year effect of new investigative teams recruited and trained in 2021/22.

Table 1 – Summary of options

	Option A	**Option B**
Base budget	£15,024,352	£15,212,448
Extra over 2021/22	£533,111	£741,406
Increase	3.8%	5.1%
1% salary increase	£118,000	£120,000
2% salary increase	£237,000	£240,000
Maximum budget	£15,261,352	£15,452,448
Maximum % increase	5.5%	6.8%

21. The OLC has forecasted improvement trajectories against these two options. Under Option A, the backlog would fall from a peak of 6,732 in March 2022 to 5,493 in March 2023 to 2,985 in March 2024. Reductions in customer journey times are anticipated. The OLC acknowledges a backlog of nearly 3,000 cases in March 2024 would not be acceptable and so more radical change is needed.

22. Under Option B, OLC says it would deliver a substantial reduction in the backlog over a quicker timetable. Its projections show that with all proposed initiatives, including on further proportionality and demand management, the backlog would fall to 750-1,600 by March 2024. The additional resource would be spent on a specialist team of ombudsmen to oversee the proportionality and demand management work. OLC says that Option B outcomes cannot be achieved without the additional investment since it would require transfer of existing resource which would significantly reduce closures and negate the impact.

23. With the introduction of proportionality and demand management there is an impact on closures from an investigation. Investigator resource will be required to dismiss cases identified which will reduce the minimum total for 2022/23 to 6,064. Total closures from all activity are expected to be 9,052 by year 2023/24.

24. Neither of these forecast trajectories takes account of additional potential outcomes that will derive from changes to working practice, people and culture change or scheme rule changes aimed at reducing the proportion of cases taken to the end of the investigative process.

Improving processes for resolving disputes

25. The Board has consistently underlined the need for innovation, including radical options, to make a step-change in performance. The OLC has publicly trailed work on its Scheme Rules review, which it plans to consult on in Q4. Some of the business process changes being considered would need reinterpretation of the existing rules, while other changes would require amendment of those rules. The OLC has clarified that none of changes would require primary legislation. Some options may be controversial since they are designed to prevent cases being investigated where Legal Ombudsman staff assess, against objective criteria, that doing so would be disproportionate. This may include, for example, where the complainant has suffered minimal detriment. The two options are:

    - Proportionality – making early decisions on whether cases currently sitting in the backlog can be concluded without the need for investigation

    - Demand management – review new cases as they first reach the Legal Ombudsman to decide not to accept a complaint for investigation where this would not be proportionate.

26. The Board has a statutory function to consent to Scheme Rules changes and must be careful to avoid fettering its discretion by commenting on policy options. Clearly, moving forward will involving making difficult trade-offs and the response of stakeholders to the OLC's plans will be instructive.

27. Pages 9-10 of Annex B list a series of other innovations either implemented or underway and their current or anticipated impact.

People issues

28. People issues are key to explaining the current performance situation and resolving them is crucial to future performance. These issues are multi-faceted embracing attrition, sickness, annual leave, recruitment, employee proposition and performance variation. The OLC's documents set out its plans here (summarised in the table on pages 15 to 16 of Annex B). A notable recent development is a national recruitment campaign and options for satellite hubs.

29. Along with the rest of the public sector the Legal Ombudsman has been subject to a pay freeze for staff, while OLC considers that its pay structure is no longer competitive in the local labour market. At the time of the drafting, the OLC is awaiting guidance from the Ministry of Justice on the lifting of the pay freeze. For now, the OLC has modelled budget options including a 1% and 2% salary increase. It says that not offering an inflationary pay award in 2022/23 could counter strategies for retention and recruitment.

30. The OLC cites restrictions on flexibility to procure and contract recruitment solutions and proposes outsourcing and operational partnerships to help reduce the backlog. The OLC's documents indicate that the Legal Services Act may constrain its ability to do this and change to primary legislation is required. We are actively exploring these issues with the OLC and Ministry of Justice officials.

Other issues

Demand

31. The OLC's paper refers to a continued increase in demand, growing by 23% between 2019/20 and 2020/21, and maintaining at similar levels in the first half of this year. OLC cannot discern the reasons behind this increase from the data at its disposal. OLC's budget assumes that this monthly average of 600 cases (7,200 a year) will sustain through 2022/23.

32. It is appropriate for the OLC to bring rising demand to our attention. However, based on past budget applications, levels of demand have historically been forecast around 7,200 so this caseload size is normal, and the Legal Ombudsman has the scale to manage the work.

Out-turn

33. The Legal Ombudsman is forecast to underspend by £659,000 in 2021/22. The main contributory factor has been the significant shortage of investigator FTE. Pages 62 to 63 of Annex B seek to offer the sector assurance around full budget spend next year. Even if the OLC successfully fills all vacancies it is unlikely to operate at 100% staffing capacity throughout the year. The Board might wish to ask whether the OLC has considered using a 'vacancy factor' approach, which could provide a more realistic forecast of staffing expenditure.

Equality, Diversity and Inclusion

34. Over the 2021/22 the OLC has introduced a new value for money framework based on the 4Es model used by the National Audit Office. In last year's budget process, the Board challenged OLC to develop the Equity dimension of this model. Specifically, the Board sought assurance on measurement of any differential complaint outcomes based on protected characteristics.

35. There is acknowledgment that further work is needed to optimise the VFM tool. On EDI, the OLC says that significant progress has been made on reporting following the appointment of a dedicated EDI manager and pages 24 to 26 of Annex A set out more detail on progress and plans. There are proposals on datasets with metrics covering staff and service users. These include diversity profiles of customers and analysis of case outcomes.

Insight

36. Given the performance situation this paper only covers insight work briefly, as do the OLC's documents. This is itself significant: insight 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.

37. Nevertheless, the documents refer to some new activities including establishing a cross-organisational Learning Group, launching an Advice Line for providers and preparing a thematic report on personal injury. The OLC continues to look at the feasibility of publishing full Ombudsman decisions, which would support aims

in the sector-wide strategy on empowering consumers. However, no specific timed deliverables on this are offered in the OLC's draft business plan.

Initial conclusions

38. When setting the budget in March, the Board will wish to consider a range of information including the OLC's track record, planned measures as well as wider contextual factors. Its overriding responsibility will be to provide the OLC with sufficient resources to perform its statutory functions to an adequate standard.

39. The executive cannot make a recommendation on the budget until the OLC confirms the final amount it intends to seek, and all the information that the Board needs is provided. This includes stakeholder responses to the OLC's consultation, although stakeholder support is not determinative.

40. It is clear that the minimum delivery expectations for 2021/22 will not be met even after a significant injection of funds. Balanced against this, there are signs of increased stability and improved performance once cases are removed from the backlog. The OLC has responded to the call for innovation with initiatives, especially early resolution, that are making a positive difference. It has trailed radical changes to business processes linked to the Scheme Rules review that hold out the possibility of a step-change.

41. In the executive's view, given the current position, should OLC achieve its ambition to reduce the backlog to around 1,000 and double output by March 2024 this would represent an acceptable position. Closely linked, is the need to reengineer the scheme so that it resolves the large majority of cases quickly and with minimum formality – the key design concept in the Legal Services Act 2007. However, at this stage, the OLC's estimates are just that and rely on future decisions. Given recent history, before injecting further funds, the Board will wish to satisfy itself that such a level of turnaround on this timescale can be achieved.

Next steps

42. We should finalise the budget acceptance criteria shortly after the Board meeting. No changes are proposed, but should the Board wish to make changes, it is proposed that the Chair and the CEO approve the final criteria.

43. The OLC commenced its formal external consultation on its 2022/23 business plan and budget on 5 November and this will run until 13 December.

44. The Board will be asked to approve the OLC's final budget at its March meeting.

Annexes

Annex A – OLC cover paper
Annex B – OLC public consultation on draft business plan and budget

Annex C – Draft budget acceptance criteria

Risks and mitigations	
Financial:	The OLC is consulting on its new business plan and budget for 2022/23 and will need to demonstrate that it will have sufficient resources to deliver against its Plan.
Legal:	N/A
Comms and engagement:	There is significant interest in the Legal Ombudsman's performance, which has intensified over 2021. It will be important to see the full range of considered responses to the OLC's consultation in due course.
Equality and diversity:	See paragraphs 34 to 35 of the Board cover paper, and pages 24 to 26 of Annex A.
Resource:	N/A

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
None	N/A	N/A