Solicitors Disciplinary Tribunal Administration Limited

Our ref: Geraldine Newbold

Steve Brooker
Head of Research and Development
Legal Services Board

By Email Only to: [redacted]

2 September 2020

Dear Steve

Solicitors Disciplinary Tribunal/Solicitors Disciplinary Tribunal Administration Limited: Budget Application 2021

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 2021, for the LSB's attention. The application comprises:

1. This letter;
2. SDT/SDTAL Budget Principles 2021;
3. SDT/SDTAL Budget Application 2021;
4. SDT/SDTAL Out-turn 2019 – Budget Compared with Actual Spend;
5. SDTAL Management Accounts January to July 2020;
6. Efficiency Impact Assessment; and
7. Review of Key Performance Measures.

Sitting Days (Actual and Estimated with Members' Fees)

Description	2019	2020	2021
Budget Application	**406 = £641,480**	**300 = £492,000**	**300 = £535,500**

Completed or Listed	**308 = £485,850**	**250 = £410,000**	**N/A**
Estimated to year end	**N/A**	**250 = £410,000**	**N/A**
Underspend (estimated)	**£155,630**	**£82,000**	**N/A**

Table 1

2020 – year to date

To 31 August 2020 the SDT received 70 applications from the SRA and 9 from all other sources. If current levels are maintained this suggests a caseload of 105 applications from the SRA and 13-14 applications from all other sources for 2020 as a whole. In 2019 the Tribunal received 111 applications from the SRA and 26 from all other sources.

To 31 August 2020 the SDT sat on 126.75 days. During that period it had originally been anticipated that it would sit on 317 days based on the time estimates for the cases due to be heard in that period.

To date the Tribunal has not seen any impact on its caseload as a result of the introduction of the SRA's Standards and Regulations but it is too soon for cases investigated on this basis to have reached the Tribunal.

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 as yet resulted in an increase in proceedings and as you will see from the SRA's forecasting (below) does not seem likely to result in an increase in case numbers in 2021.

2020 – September to December

The SDT is currently scheduled to sit on 201 days in September to December 2020. If all of these days are effective then the total number of hearing days for 2020 will be in the region of 327 days. However it is likely, based on previous patterns, that only 50-65% of these days will be effective, bringing the predicted number of hearing days for 2020 to between 227 and 257 days.

2021- 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 2021 is a maximum of 150 applications from all sources, including a number of lay applications and applications for non-party disclosure.

As at 24 April and 11 August 2020, the SRA anticipated sending the Tribunal 120 cases in 2021 and estimated that these cases would require 311 sitting days (excluding any reduction for Agreed Outcomes which the SRA considered would reduce the required sitting days to 273, as its information suggests that 80% of the cases which it lodges at the Tribunal will proceed to a hearing, with c.20% resolved by way of an Agreed Outcome).

In submitting its forecast the SRA highlighted the fact that the Covid 19 pandemic might well impact on the number of reports of misconduct received by them but that this was unlikely to have any real impact for cases presented to the Tribunal in 2021. The SRA anticipates that the impact on the SDT, if any, will be seen much later than 2021. The SRA stressed that it remained unclear what the longer-term impact of Covid-19 would be on the numbers of cases it expects to issue, and that this was very difficult to predict.

Over the last few months, the SRA reported that it had seen a slight reduction in the number of cases referred to its legal team for consideration of referral to the SDT, but those numbers were now increasing and the SRA anticipated that, by 2021, referrals would be back in line with what had been seen historically. The SRA considered that it might, ultimately, be too soon to tell what real effects the pandemic will have on the nature and volume of its work in the longer term. Particular areas which are unknown include:-

- Impact of significant numbers of cases of illness in SRA staff;

- Impact of the SRA's investigation team being prevented from carrying out onsite investigations; and
- Impact of firms delaying or being unable to access documents/information from offices.

As has been highlighted previously, the estimate of required 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. Taking into account all available information the SDT has based this budget application on 300 hearing days in 2021.

<u>Overall SDT workload</u>

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. There has also been a steady number of potential or actual judicial reviews of the SDT's interlocutory decisions.

In 2019 the number of individuals seeking restoration to the Roll or termination of a period of indefinite suspension was 2. The number of such application so far this year is 1.

In 2020 the number of lay applications for consideration by the Tribunal for certification looks likely to be slightly lower than the 10 received in 2019, as we have only received 4 such applications in 2020 to date. There was one Section 44E appeal application in 2019 but none so far this year.

<u>The impact of Covid-19 on the SDT</u>

The Tribunal's offices at Gate House closed on 18 March 2020 and the staffing team worked remotely until August 2020. The immediate impact of the closure of Gate House meant that a number of hearings listed in March and early April 2020 had to be adjourned and re-listed.

The Tribunal introduced remote hearings (on the Zoom platform) to minimise the business impact of the closure. The introduction of CaseLines (a digital document management system) in 2018/19 means that electronic bundles are available for the majority of cases which has been an essential factor in being able to conduct remote hearings.

During August 2020 the SDT made a number of alterations to one of its courtrooms with a view to "hybrid" hearings commencing from September 2020. A hybrid hearing is one at which the Panel, clerk and parties are present but at which witnesses give evidence remotely (save in exceptional circumstances) and the press and public also attend remotely.

The SDT will only be able to accommodate one hybrid hearing in the building at any one time, whilst complying with current social distancing requirements, and for the foreseeable future the majority of hearings will take place remotely. It is not yet known when it will be possible to resume fully attended hearings in Gate House. This may mean that there are some cases that would have otherwise been heard in 2020 which will now be heard in 2021 if the hearing cannot be conducted remotely or as a hybrid hearing.

With the introduction of hybrid hearings the SDT has resumed a "skeleton" administrative service in Gate House but the majority of its functions are still being undertaken remotely and members of the public cannot attend the building unless they are a party attending a hybrid hearing.

2019 Underspend and 2020 Underspend Estimate

The 2019 underspend and current estimate of underspend in 2020 can be broken down as follows:

2019	Budget (£)	Actual Spend (£)	Under Spend (£)
Employment Costs	**1,183,928**	**1,108,069**	**75,859**
General Administration Costs	**1,187,046**	**977,552**	**209,494**
Building Costs	**669,604**	**661,057**	**8,547**
Contingency	**25,000**	**-**	**25,000**
Irrecoverable VAT	**157,616**	**148,798**	**8,818**
Total Costs	**3,223,194**	**2,895,476**	**327,718**
Capital spend	**-**	**16,675**	**(16,675)**
TOTAL EXPENDITURE (REVENUE & CAPITAL)	**3,223,194**	**2,912,151**	**311,043**
2020	Budget (£)	Forecast Actual Spend (£)	Forecast Under-Spend (£)
Employment Costs	**1,176,480**	**1,144,969**	**31,511**
Administrative Costs	**1,105,510**	**831,308**	**274,202**
Building Costs	**682,310**	**691,074**	**(8,764)**
Contingency	**-**	**-**	**-**
Irrecoverable VAT	**171,630**	**171,630**	**-**
Total Costs	**3,135,930**	**2,838,981**	**296,949**
Capital spend	**-**	**71,418**	**(71,418)**
TOTAL EXPENDITURE (REVENUE & CAPITAL)	**3,135,930**	**2,910,399**	**225,531**

Table 2

It should be noted that the projected reduction in sitting days in 2020 accounts for £110,000 of the total projected underspend of c£226,000. The reduction in Member’s expenses due to remote hearings accounts for approximately £60,000.

<u>SDT Reserves</u>

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 SDTAL’s Board reviewed the Reserves Policy on 26 August 2020 and considered that it remains appropriate.

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

The Tribunal is intending to implement a new case management system in 2020/21. The capital cost of implementing this system (estimated at c.£133k) will be funded from the Tribunal's Free Reserves in accordance with its Reserves Policy. Accordingly, no separate provision has been included in the Budget Application in respect of these capital costs.

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 is yet to finalise the Member Appointment Protocol and therefore this recruitment exercise has not yet commenced. As the Master of the Rolls' current consultation on the Protocol does not conclude until 8 October 2020, it is anticipated that this recruitment will now take place in 2021. The funding already provided will be spent in 2021 and no further funding is sought in this year's application.

Members' Fees

Parity of fees for Lay Members

The SDT had previously committed to working towards parity for Solicitor and Lay Member fees. This year's budget application is brought forward on the basis that, subject to LSB approval, Solicitor and Lay Members will receive the same daily fee (£595) from 1 January 2021.

Implications of recent NMC Employment Tribunal decision – information provided in confidence and not for publication

Please note that the following information is commercially sensitive and potentially prejudicial and is provided to the LSB in confidence. The information includes details which would be likely to prejudice the SDT's commercial position if disclosed under the Freedom of Information Act 2000. The SDT considers that this specific material is exempt from disclosure. In the event disclosure is requested from the LSB (or the Law Society as recipients of a copy of this letter), we would request that you revert to us so that additional detail may be provided if required.

Since the inception of the SDT, Tribunal Members have been regarded as 'office holders', not workers or employees. In practical terms this means that fees earned are paid after deduction of Income Tax and Employees' National Insurance contributions. Office holders are not entitled to holiday pay, sick pay or an occupational pension.

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Geraldine Newbold
Clerk, Solicitors Disciplinary Tribunal
Chief Executive Officer, Solicitors Disciplinary Tribunal Administration Limited

[redacted]
www.solicitorstribunal.org.uk