Meeting: Legal Services Board

Date: 14 November 2022

Item: Paper (22) 56

Title: SDT Budget 2023

Author(s): Vibeke Bjornfors, Regulatory Policy Manager,

Margie McCrone, Head, Strategy and Policy

Status: Official

Introduction

1. Approving the Solicitors Disciplinary Tribunal's (SDT) annual budget is a statutory decision reserved to the Board. This paper provides information to support the Board's decision on the SDT's proposed annual budget for the 2023 calendar year.

2. The application from the SDT is for approval of an operating budget of £4,289,381, which is comprised of:

   a) £3,127,259 of known costs; and
   b) £1,162,122 of estimated costs related to accommodation for the calendar year 2023.

3. The total budget represents a 34% increase compared to the budget approved for 2022 (£3,156,354). The budget increase is caused by the SDT's need to secure new accommodation after its landlord withdrew the offer of a new 10-year lease for its current premises at short notice. The SDT and its landlord have agreed, in principle, a new lease that will allow the SDT to stay in its current premises until Q4 2023.

4. The Board is aware that the SDT budget application was initially due to be considered at the October Board meeting. The original budget application had been scrutinised by a Challenge Panel comprising Habib Motani (non-lay member) and Catherine Brown (lay member), who supported the Executive's recommendation to approve the budget and made some observations for future budget applications. Due to the unexpected change in the SDT's accommodation, the SDT's original budget application was not presented and an oral update was provided to the Board instead.

5. The SDT has since submitted a revised budget application, which includes known costs until Q4 2023 and estimated costs for its securing of, and move to, new premises. The application is accompanied by a letter from SDT

President Alison Kellett setting out the full circumstances and information available at this time (see Annex B).

6. The Executive's view is that the Board now has sufficient information, as set out in this paper and annexes, to decide whether to approve the SDT's budget for 2023. We note that due to time constraints, the Challenge Panel has not met to scrutinise the revised budget application, but did provide comments on the paper.

Recommendations

7. The Board is invited to:

   a) **approve** the SDT's application for a budget of £4,289,381; and
   b) **note** the plan for securing and funding new accommodation, and
   c) **note** the issues raised by the Challenge Panel and Executive in relation to the original and revised budget applications (respectively), and observations for future budget applications.

Background

8. Section 46A of the Solicitors Act 1974 (which was inserted by paragraph 48 of Schedule 16 to the Legal Services Act 2007) requires that the SDT submits to the Law Society (TLS) an annual budget that has been approved by the LSB.

9. Under the Memorandum of Understanding (MoU) between the SDT, TLS and the LSB, the LSB is expected to approve the budget by 31 October. Due to the extraordinary circumstances for the budget for 2023, we agreed with SDT and TLS that the LSB would consider approval of the SDT's budget as soon as possible after receiving a revised budget application.

10. Under the MoU, the LSB is required to consult with TLS on the budget and we did so on both the original and revised applications. TLS confirmed that it had no comments on the original budget. TLS noted the following points in relation to the revised budget:

   a) any further revision to the SDT's budget, borne out of its accommodation plans, will need to be adjusted in the next Net Funding Requirement;
   b) a request for the SDT to develop an accommodation strategy for Q4 2023 and beyond, as soon as possible, to ensure that cost efficiencies are achieved;
   c) a request for assurance from the SDT on this strategy in due course; and
   d) a request to be kept updated on developments at appropriate intervals of the SDT's negotiations and likely budget implications.

11. Board members should note that information in both the original and revised budget applications inform the SDT's budget proposals for 2023 (Annexes A and B respectively).

12. The original budget application contains information on known, non-accommodation costs, such as expected number of sitting days and member

and staff pay. The revised budget application contains what the SDT considers to be reasonable estimates for as yet unknown new accommodation and associated move costs, as well as the total budget figure for 2023 once these estimated costs are taken into account.

13. The revised budget application makes clear that SDT's intention is to ask for TLS to arrange for payment of the known costs as it usually would in four equal payments during 2023.For the unknown costs, if approved by the LSB, the SDT would only seek to draw down the funds that are actually required once new premises and moving costs are confirmed.

Budget proposals

14. The revised budget application includes reasonable estimates of the costs of securing new premises with the SDT's own courtrooms, and the associated move, amounting to £1,162,122. In presenting the estimates, SDT proposes to reduce its footprint from 6,753 square feet in Gate House to 5,000 square feet in new accommodation based on one less courtroom and less staff accommodation.

15. These estimated costs, which are set out on page 7 of the revised budget application, are based on information from SDT's property agent and SDT's knowledge and experience gained from its current work to vacate the 5th floor of Gate House and to adapt the 4th floor to service its needs. The SDT states that before making any decision about its accommodation needs, it will also consider other options, including to have separate administrative offices and hiring hearing venues or to have one permanent courtroom and hiring additional venues as required.

16. The original budget application includes expenses generated by a below inflation salary increase and increases to members' costs. It also notes the SDT's response to litigation and raises potential liabilities – see Annex A, pages 4 and 5, which it proposes should be dealt with in year. This approach was agreed by the Board previously (in respect of the 2021 and 2022 budgets) and the Challenge Panel was content to support this approach in 2023, although it requested further information from the SDT to understand the scale of potential liabilities. SDT has confirmed that there are potential liabilities of up to £354,000 for historic holiday pay and employers National Insurance contributions. This figure excludes potential pension liabilities.

Analysis

Use of reserves

17. The latest SDT accounts from December 2021 show Reserves at £850k including a Sitting day reserve of £341k. In the revised budget application, the SDT sets out reasonable estimates for fit out costs for new premises of £600k

It proposes to consider drawing on some or all of its sitting days reserve (£341k) to part fund these fit out costs, which would reduce its need to call on the £600k set out in the revised budget (assuming that had been approved). We asked the SDT if it could explain the rationale for this approach, including the use of the sitting days reserve specifically.

18. The SDT explained that its reserves policy, published on its website, sets out that it can draw on its sitting days reserve for other purposes. The SDT said it considered its approach would be prudent to balance its need to maintain total reserves at a level that is reasonable and consistent with its policy, whilst also ensuring proper use of funds from TLS (and ultimately, the profession and its consumers).

19. As set out in paragraph 13 of the revised application, the SDT proposes to only draw down on funds from TLS for its future accommodation needs once these are known, so this approach would mean the SDT could initially consider the extent to which its reserves can fund the fitout, and fund the remaining balance from the budget envelope. We suggest this approach can be supported provided there is sufficient transparency of the SDT's actions.

In-year funding application

20. As part of the revised budget application is based on reasonable estimates, the SDT may need to submit an in-year additional funding request if its costs exceed these estimates. There is also the possibility of an in-year funding request owing to potential litigation.

21. The MoU stipulates that such a funding request will go to TLS, with TLS consulting the LSB before taking a decision to approve the funding. The revised application sets out that should the need for an in-year application arise, the SDT intends to liaise, keep us informed and answer any questions that we may have. We have been clear to the SDT that our expectation would be to apply the same standards of scrutiny and transparency for any in-year application as we do for the annual budget application.

Dilapidations

22. The revised application explains that the SDT's landlord has not agreed to cap the SDT's future dilapidation liability, although the SDT is hoping to negotiate a reduction. For now, however, there is a significant sum for dilapidations included in the estimated costs, as set out on page 4 of Annex B.

23. We note that the SDT has not provided for the cost of dilapidations of its current accommodation over the life of the existing lease, so it will now have

to charge the full cost of this item to its accounts. This cost is now included in the 2023 Revised Budget. We suggest that the Board sets an expectation that the SDT make a provision for dilapidations on an ongoing basis to avoid a similar situation in the future.

SDT vision

24. When the Challenge Panel scrutinised the original budget application, it made observations about what should be expected in the 2024 budget application, including that the SDT should set out its strategic vision and show how the budget supports the delivery of the SDT vision.

25. Board members will be aware that in July 2022 there was a Board-to-Board meeting between the LSB and SDT where we encouraged the SDT to set out its strategic vision. The SDT noted it was holding a strategy day in the autumn and, at our request, the SDT sent the LSB a cover letter to the original budget application setting out the steps that the SDT is taking to define and express its strategic value (see Annex C).

26. This letter provides some assurance that it has understood the call to action and there are some signs that the SDT is making progress in this area. We will continue to engage with the SDT on this:

    a) SDT will write to us after its strategy day and has been provided a note from the Board-to-Board to support its discussion on the day.
    b) It has asked what information we would find most useful in the performance report it provides to us in March.
    c) SDT and SRA have agreed that the SRA will share more case forecasting and EDI data, which the SDT will use to manage its workload and understand the impact of SDT judgments on solicitors with protected characteristics. This might allow the SDT sufficient data to set itself a strategic aim around EDI based on its current performance and any vision it is aspiring to achieve.
    d) SDT proposes to increase the number of Board meetings it has each year, which will provide it more time to consider strategic matters.

27. In addition to noting the progress so far, the Challenge Panel welcomed the SDT's engagement with the SRA which ensures that better statistics on EDI are available for future years and efforts to gather data on SDT user experience. Both initiatives should create baseline data against which the SDT can measure improvement on EDI and customer satisfaction respectively. The Panel also noted plans for a significant improvement in the usability of the SDT website.

Considerations from the review of the 2022 budget

28. When the LSB approved the SDT budget for 2022, in the decision letter we requested that the SDT consider the following areas. The Challenge Panel explored the extent to which the SDT had responded when it met:

   a) 'The Board reiterated its wish to see a downward trajectory in the cost per court'; and
   b) 'The SDT has again overestimated by some margin its required sitting days… this overestimation appears to be settling into a longer-term trend, which my Board would like to see addressed, for example through changes to your model and/or improved co-ordination with the SRA'; and
   c) 'We will wish to monitor the courtroom utilisation rate'.

Cost per court

29. We challenged the SDT to achieve a downward trajectory in the costs per court for the 2023 budget year. Table 1 below sets out the trend for cost per court since 2020, which shows that the expected cost per court for 2022 is £17K, which is a 35% increase in the cost per court from 2021. The SDT sets out that the main reason for this increase is because administrative expenses, which are largely fixed costs, are spread over 59 fewer sitting days in 2022 compared to 2021 (2021 had 239 sitting days whereas SDT expect to have 180 sitting days in 2022).

30. In the revised budget application, the SDT expects cost per court to increase to £15,887 in 2023 due to £1,162,122m of accommodation costs from moving premises. It is worth noting that if the SDT had secured the long-term lease of Gate House that was withdrawn at late notice, then accommodation would have been an area of substantial savings, which would have reduced its cost per court to 2021 levels, despite high inflation.

31. The Challenge Panel requested that future applications should have a clearer focus on value for money and use of data to inform use of courtrooms and effective sitting days.

Table 1 – Cost per court – trend since 2020

year	2023 revised Budget	2023 original Budget	2022 Expected	2022 Budget	2021 Actual	2020 Actual
Cost per court	£15,887	£11,849	£17,500	£11,690	£ 12,933	£10,989

Managing sitting days

32. The original budget application sets out that the SDT expects to receive a maximum of 140 cases from all sources for 2023 and to require 270 sitting days for these. The SDT budget for 2022 was based on 270 sitting days. The application also provides information on the expected achieved number of sitting days for the 2022 calendar year. The application notes that for 2022 the SDT expects to have about 118 cases requiring a predicted number of

effective sitting days of about 180 days. This is 90 days fewer than expected at the time of the budget application for the 2022 budget year.

33. In response to our request to change its [forecasting] model to address the issue of consistently undershooting its budgeted-for sitting days, the application sets out that there are three main factors contributing to the SDT undershooting its budgeted-for sitting days and that the SDT is addressing these areas. The SDT is now applying a discount to mitigate the SRA's historical over-estimation of sitting days required; taking steps to mitigate the risks of short-notice adjournments and factoring in a reduction in sitting days due to Agreed Outcomes.

34. The Challenge Panel members noted the initiatives that the SDT has put in place to manage sitting days such as improved engagement with the SRA, mitigating actions for ill health leading to adjournments and cases closed by agreed outcomes.

Courtroom utilisation rate

35. We asked the SDT to monitor the courtroom utilisation rate, but neither application contains any data on this area. We asked the SDT for further information and received the following response '*the terminology courtroom utilisation rate is misleading. For us that measures how often a particular courtroom is in use. As we have physical courtrooms and unlimited virtual courtrooms how often each courtroom is in use doesn't tell us anything about the level of effective hearings. It is the level of effective hearing days that impacts the cost per court for the reasons set out in the budget application letter*'.

36. Supplemental data from the SDT shows that for the period of January 2021 to August 2022 there was an average of 34 listed sitting days each month with 17 of these days being effective. This means that for this period about half of sitting days are ineffective. The SDT explains that these days are lost due to adjournments, which the SDT is taking steps to manage.

37. The Challenge Panel noted that from January 2023 the SDT will have new software which will gather data on usage rate for the SDT's three physical courtrooms and the SDT's unlimited online courtrooms. The Panel requested that this data should be provided in the future and used to inform the SDT's effective use of resources. The SDT is now fast tracking this work to monitor court room utilisation rate to determine its accommodation needs.

Replacing cost per court as a costs measure

38. The original budget application states that from the perspective of the SDT the 'costs per court' 'is not reflective of efficiency or effectiveness for the SDT'. The SDT points out that '*Looking at the cost per court per effective hearing*

day…does not factor in the time and resource required to respond to enquiries from members of the public and profession in respect of forthcoming or concluded cases nor the time needed to assist unrepresented parties to comply with the Tribunal's procedures'.

39. The SDT suggests that a better measure for value for money might be 'cost per application' where the costs are divided by application. Table 2 below compares the headline figures for cost per court and cost per application for 2018 to 2023. In general, the data shows that cost per application rises if the SDT receives fewer applications one year compared to the previous year. The table shows that if one uses the cost per application measure then costs have risen less steeply than if one uses the costs per court measure.

40. The Challenge Panel members noted that replacing 'cost per court' with 'cost per application' is not the right solution for finding an appropriate Key Performance Indicator (KPI) for value for money (VFM). Ultimately, there needed to be an effective and transparent means for measuring VFM. The Panel would like to see the SDT develop 3 - 4 KPIs indicating VFM and report on these so it can show improvements overtime. Until a new measure has been agreed, the Panel suggests maintaining the current 'cost per court' measure.

Table 2 - Comparing costs per court and cost per application

	2023 Original Budget (£)	2022 Expected (£)	2021 Actual (£)	2020 Actual (£)	2019 Actual (£)	2018 Actual (£)
Cost per Application (£)	22,851	26,759	22,728	24,388	21,135	19,751
Cost per Court (£)	11,849	17,500	12,933	10,989	£9,401	10,321
variance (cpa)	-14.61%	17,74%	-6.81%	15.39%	7.01%	N/A
Variance (cpc)	1.36%	35.31%	17.69%	16.89%	-8.91%	N/A

Next steps

41. The Board is invited to accept the recommendation to approve the budget. It is also invited to note the SDT's plans to secure and fund new accommodation and the issues raised by the Challenge Panel and Executive in relation to the original and revised budget applications.

42. The Chair will write to the SDT President to confirm the Board's decision, which will set out our expectations for future budget applications.

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

Annexes

Annex A: The original application letter
Annex B: The revised application letter
Annex C: SDT strategy letter
Annex D: Budget table for 2023 vs 2022
Annex E: SDT Budget Principles
Annex F: Continuous Improvement and Value for Money assessment

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
Annex A, Page 4, from ‘Implications of NMC v Sommerville decision’ to end of paragraph below	Exemption s36(2)(b)(ii) – prejudice to effective conduct of public affairs	N/A
Annex A, Page 4, final paragraph, text between ‘age’ and ‘Accordingly’	Exemption s42 – legal professional privilege	N/A
Annex A, Page 13, every paragraph below paragraph 1	Exemption s43(2) – commercial interests	N/A
Annex A, Page 18, personal data	Exemption s40(2) – personal data	N/A
Annex B, Page 2, 4th paragraph from the bottom, fourth sentence until, ‘Fees would still…’	Exemption s43(2) – commercial interests	N/A
Annex B, Page 2, 3rd paragraph from bottom to end of paragraph 1 on page 4	Exemption s43(2) – commercial interests	N/A

Annex B, Page 3, first sentence of paragraph 2	Exemption s36(2)(b)(ii) – prejudice to effective conduct of public affairs	N/A
Annex B, Page 3, second and fourth sentences of paragraph 2	Exemption s43(2) – commercial interests	N/A
Annex B, Page 4, paragraph above ‘Dilapidations for Gate House’	Exemption s36(2)(b)(ii) – prejudice to effective conduct of public affairs	N/A
Annex B, Page 6, under ‘Additional information’ – personal data	Exemption s40(2)	N/A