

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	26 October 2016	<b>Item:</b> Paper 16 (61)

<b>Title:</b>	Solicitors Disciplinary Tribunal Budget 2017	
<b>Work stream(s):</b>	Statutory Decisions	
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<b>Status:</b>	Unclassified	

<b>Summary:</b>
<p>S46A of the Solicitors Act 1974 (which was inserted by paragraph 48 of Schedule 16 to the Legal Services Act 2007 (<b>the Act</b>)) requires the Solicitors Disciplinary Tribunal (<b>SDT</b>) to submit to the Law Society (<b>TLS</b>) an annual budget that has been approved by the Legal Services Board (<b>LSB</b>). The approved budget must be paid by the Law Society.</p> <p>A Memorandum of Understanding (<b>MoU</b>) agreed between the LSB, the SDT and the Law Society sets out the process which the parties follow and this application has been made in accordance with the provisions of that MoU.</p> <p>On 9 September, the SDT submitted an initial 2017 budget application to the LSB with a proposed budget of £3,026,622 – an increase of £118,380 (4.07%) on its 2016 budget. Following our engagement with them, the SDT submitted a revised budget of £2,905,167 on 13 October 2016 – a decrease of £3,075 (0.11%) on 2016.</p> <p>The SDT has consulted with the Law Society (in accordance with the statutory requirements) and a copy of the original application was sent to Paul Wilson (Head of Regulatory Affairs at the Law Society). We have also fulfilled our obligation to consult the Law Society following receipt of the SDT's budget.</p>

<b>Recommendation(s):</b>
<p>We recommend that the Board:</p> <ul style="list-style-type: none"> <li>• Approves the SDT's revised budget application of £2,905,167 for 2017. This would be a decrease of £3,075 (0.11%) on the approved 2016 budget</li> <li>• Accepts the proposed change to the key performance measure for 60% (currently 70%) of substantive hearings to be heard within 6 months of issue of proceedings (see paras 17 – 20)</li> </ul>

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
<b>Reputational:</b>	N/A
<b>Resource:</b>	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		X	
<b>Consumer Panel:</b>		X	
<b>Others:</b>	Under the terms of the MoU and the Legal Services Act, LSB is required to consult with TLS on the budget application		

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Risks and mitigations: Legal and Resource; and Para 27, third and fourth sentences	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for purposes of deliberation	

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board		
<b>Date of Meeting:</b>	26 October 2016	<b>Item:</b>	Paper 16 (61)

### **Solicitors Disciplinary Tribunal (SDT) Budget 2016**

#### **Recommendation**

We recommend that the Board:

- approves the SDT's revised budget application of £2,905,167 for 2017. This would be a decrease of £3,075 (0.11%) on the approved 2016 budget
- accepts the proposed change to the key performance measure for 60% (currently 70%) of substantive hearings to be heard within 6 months of issue of proceedings (see paras 17 – 20)

#### **Background / context**

1. S46A of the Solicitors Act 1974 (which was inserted by paragraph 48 of Schedule 16 to the LSA 2007) requires the SDT to submit to the Law Society an annual budget that has been approved by the LSB. A MoU agreed between the LSB, the SDT and the Law Society sets out the process which the parties follow and this application has been made in accordance with the provisions of that MoU.
2. The 2017 budget application was submitted to the LSB on 9 September 2016. The LSB sought the Law Society views on the budget application on 13 September 2016.
3. In the approval letter to the SDT last year, we made it clear that the 5.6% budget increase for 2016 was high, and that the Board took into account the significant increase in the number of cases being referred to the SDT when it approved the budget. We also said that we would be paying attention to their productivity when considering the budget submission for 2017. Despite the significant increase, the SDT has underspent in 2016, and was requesting a further increase in its budget for 2017 in its initial application.
4. A meeting was held with the CEO and President of the SDT. Information was also requested from them. We subsequently received a revised budget from the SDT on 13 October 2016. The revised application was for £2,905,167, a reduction of £121,455 on the original application and £3,075 on the budget approved by the Board for 2016.
5. The full applications have not been included with this paper but will be available at the Board meeting. Members may also request copies ahead of the meeting.

#### **Original budget application**

6. The original application was for the approval of a budget of £3,026,622 for 2017. This would be an increase of £118,379 (4.07%) on 2016.

7. The variances for the expense categories were as follows:

Expense category	2017 budget	Variance from 2016 and primary reasons for change
Salary and related costs	£1,120,510	2.3% - 1% increase on 2016, plus contingency. Employee benefits increase as more staff means potential for discounted rates. New line in 2017 for Member appraisal to cover 360° feedback system
General administration	£1,098,181	13.46% - Takes account of inflation, potential increase to sitting days, anticipated increase in long cases and increased credit card fees
Building costs	£599,243	4.21% - Agents fees in respect of renegotiation of leases
ABS appeal costs	£22,892	-50% - ABS appeal allowance reduced to 10 sitting days. No ABS appeals to date
Contingency Fund	£30,000	-45.45% - Reduced need for contingency as budgeting accuracy improves with available data
Irrecoverable VAT	£155,796	-7.95% - Reduction in VAT lines in budget lines.

#### Initial assessment

8. When reviewing the initial application, we took into account the Board's discussion of the SDT's budget last year when it was noted that the proposed increase seemed high, and the Board approved the budget having taken into account the anticipated rise in case numbers. For this reason it was surprising that, given the SDT had forecast an underspend, it was again requesting a further increase in its budget of £118,379 for 2017.
9. Following Neil's meeting with the Chief Executive and President of the SDT to discuss the application, we submitted a letter detailing a number of areas we felt required clarification by the SDT before the Board would be able to make an informed decision on the budget application. The overarching themes for which we sought explanations were:
  - The method used to estimate sitting days
  - Members' expenses
  - Historical underspends
  - Public statements by the SDT about its proportion of PCF
10. We also asked the Law Society to comment specifically on the discrepancy between the amount in the SDT budget (£3,026,622) and the amount described as SDT budget in the Law Society's practising certificate fee (PCF) application (£2.63m) that we approved in July 2016.

## Revised Application

11. The revised application is for the approval of a budget of £2,905,167 for 2017. This is a decrease of £121,455 (4.01%) on the initial budget application and a decrease of £3,075 (0.11%) on the approved 2016 budget.

12. The variances for the expense categories were as follows:

Expense category	2016 budget	Initial 2017 budget	Revised 2017 budget	Variance 2016-17
Salary and related costs	£1,095,286	£1,120,510	£1,115,510	1.85%
General administration	£967,906	£1,098,181	£1,024,873	5.89%
Building costs	£575,016	£599,243	£581,643	1.15%
ABS appeals costs	£45,784	£22,892	£0	-100%
Contingency Fund	£55,000	£30,000	£30,000	-45.45%
Irrecoverable VAT	£169,250	£155,796	£153,141	-9.52%

13. In response to the questions we raised, the SDT provided the following answers:

- The method used to estimate sitting days – The SDT provided a breakdown of its sitting days, and also reduced the number of sitting days for which it budgeted by 51.
- Members' expenses – our query was around the budgeted increase for solicitor members not being matched by an increase in the budget for lay members. The reason for this is that each Tribunal consists of two solicitor members and one lay, and so the increase was necessary to cover that additional cost. Expenses allowances for members have not been increased significantly for six years, but an increase is necessary to avoid the shortfall which will arise in 2016 (currently forecast at £33,145).
- Historical underspends – the SDT has reacted to our queries by reducing its budget for 2017, and therefore reducing the potential for a large underspend.
- Public statements by the SDT about its proportion of PCF – the SDT stated that its proportion of the total PCF has remained consistent in the last six years at the 2-3% level.

14. The SDT has also chosen to incorporate its allowance for ABS appeals process into its long hearing sitting days' estimate, which explains the reduction to £0 on this line. We are content with this approach as the SDT is yet to receive any ABS appeals.

15. In relation to the discrepancy between this application and the earlier PCF application, the Law Society confirmed that the amount included in the PCF

application referred to that which is actually paid to the SDT (allowing for any underspend) rather than the full SDT budget.

16. Further to our discussions with the SDT and the Law Society, we now have a clearer understanding of the process for returning annual underspend to the profession, and are content with the process going forward.

### **Key performance measures**

17. The SDT continues to consistently achieve its performance measure for issuing proceedings within 10 calendar days of receipt of a complete application. Against a target of 85%, 99% was achieved in 2015 and 100% has been achieved in 2016 to date.

18. Performance against the measure for determination of cases (target 70% within six months of issue of proceedings), is variable.

Q1 2015	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Q2 2016
49	75	45	31	49	51

19. The application sets out that since February 2016, the SDT has been monitoring the reasons for cases being delayed. The emerging themes include

- Adjournments for personal service by SRA advocates of proceedings or papers having to be re-served where not received by the applicant
- Tribunals directing at case management hearings that the substantive case be heard outside the target date
- Unavailability of counsel/parties
- Without prejudice discussions between the parties – sometimes at a late stage
- Respondents ill health
- Late instruction of expert witness (either party)
- Concurrent criminal (or more rarely civil) proceedings

20. The SDT now considers itself appropriately staffed to offer hearings within the target well over 70% of the time but as set out above, for reasons primarily beyond its control, the hearings are frequently delayed. In light of experience to date, the SDT is proposing to amend this performance measure as follows:

- 60% within 6 months issue
- 20% within 6-9 months of issue
- 15% within 9 – 12 months of issue
- 5% within 12-24 months of issue

21. The first of these is still considered to be challenging (given that current performance is at 51%); the others are in line with current performance. Under

the MOU, the SDT is required to consult with the LSB when considering changes to the performance measures. While this proposal is a reduction, it is based on actual experience and remains challenging. We recommend that we accept the proposed change.

22. The third measure (for which there is no specific target) is the average cost per court. As noted in our approval letter for the 2016 budget, this something which was a particular focus for the SDT. This application shows overall the trend over the last 18 months is downward:

Q1 2015	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Q2 2016
12,497	12,132	9941	10,914	10,686	9179

23. The final measure is for the production of the judgement for which the target is 80% within 7 weeks of final determination. Again performance varies. Good performance in the first half of 2015 meant that at across the whole year the target was exceeded (81%) despite the low number in the second six months.

Q1 2015	Q2 2015	Q3 2015	Q4 2015	Q1 2016	Q2 2016
87	92	55	59	87	98

24. While not proposing a change to the overall target, the SDT are seeking to improve performance against this measure by setting internal targets for producing judgements within shorter periods.

### Conclusion

25. Following our engagement with the SDT, it submitted a revised budget for 2017. The revised budget is 0.11% lower than 2016.
26. Having considered the application and the anticipated caseload increase in 2017, we are satisfied this budget allows the SDT to sufficiently carry out its functions and that the SDT has taken into account our commitment to the downward pressure on costs.
27. While the Board may consider that this reduction is small, a decision to approve the budget at this amount limits allows the LSB to maintain oversight of this process, as per its role in the Act. Under the MoU, the SDT is able to apply to the Law Society, without involving the LSB, for further funding should it be required throughout the year. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
28. Given our engagement with the SDT and the Law Society, we are now sufficiently satisfied to recommend to the Board that it approves the revised budget. We will engage with the Law Society and the SDT throughout the coming year to improve the process.