

To:	Legal Services Board	Agenda item: 7
Date of Meeting:	26 October 2017	Item: Paper (17) 70

Title:	Solicitors Disciplinary Tribunal Budget 2018
Work stream(s):	Performance, evaluation and oversight
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Status:	Official

Summary:

S46A of the Solicitors Act 1974 (which was inserted by paragraph 48 of Schedule 16 to the Legal Services Act 2007 (**the Act**)) requires that the Solicitors Disciplinary Tribunal (**SDT**) submits to the Law Society (**TLS**) an annual budget that has been approved by the Legal Services Board (**LSB**). The approved budget must be paid by TLS.

A Memorandum of Understanding (**MoU**) agreed between the LSB, the SDT and TLS sets out the process which the parties follow and this application has been made in accordance with the provisions of that MoU.

In previous years, the Board has considered only a paper and recommendation from the LSB executive on the application. In 2016, it was decided that we should treat this application in a similar way to how we deal with the OLC budget. Consequently **Ed Nally, President of the SDT, and Susan Humble, Chief Executive of the SDT will attend the Board meeting to present the budget.**

The application from the SDT is for approval of an operating budget of £2,838,122, approximately 2.5% lower than the budget approved for 2017 (£2,905,166). In addition, “provisional” approval is sought for two additional amounts (relating to additional Tribunal sitting days and a possible rent increase) that may be needed in the year but about which there is sufficient uncertainty as to not require TLS to pay the money unless the amounts are actually needed.

Following the approval of the 2017 budget, we asked the SDT to develop a set of budget principles and these are set out in **Annex B**.

Recommendation(s):

We recommend that the Board:

- a) approves the application for a budget of £2,838,122 for 2018. This would be a decrease of £67,044 (2.5%) on the approved 2017 budget; and
- b) provisionally approves the two contingency amounts of £215,490 for additional hearing days and £168,440 in respect of the rent review on the understanding that the amounts will only be paid by TLS if the funds are required.

Risks and mitigations

Financial: N/A

Legal:

[REDACTED]

Reputational: N/A

Resource: N/A

Consultation	Yes	No	Who / why?
Board Members:		X	
Consumer Panel:		X	
Others:	Under the terms of the MoU and the Legal Services Act, LSB is required to consult with TLS on the budget application. No comments were received at the time of preparing the paper. TLS may choose to comment on the second contingency amount which emerged after the original draft budget had been agreed between TLS and SDT. There will be an oral update at the Board if any additional comments are received.		

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Risks and mitigations: Legal	Section 42: information subject to legal professional privilege	
Para 16, final sentence Annex A, Note 4	Section 43: information likely to prejudice the commercial interests	

LEGAL SERVICES BOARD

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Solicitors Disciplinary Tribunal (SDT) Budget 2018

Recommendation

1. We recommend that the Board:
 - a) approves the application for a budget of £2,838,122 for 2018. This would be a decrease of £67,044 (2.5%) on the approved 2017 budget; and
 - b) provisionally approves the two contingency amounts of £215,490 for additional hearing days (paragraphs 11 to 14) and £168,440 in respect of the rent review (paragraphs 15 and 16) on the understanding that the amounts will only be paid by TLS if the funds are required.

Background

2. S46A of the Solicitors Act 1974 (which was inserted by paragraph 48 of Schedule 16 to the LSA 2007) requires that the SDT submits to TLS 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.
3. The 2018 budget application was submitted to the LSB on 8 September 2017.
4. The SDT has consulted with TLS (in accordance with the statutory requirements). We have also fulfilled our obligation to also consult TLS following receipt of the SDT's budget application. The LSB sought TLS views on the budget application on 15 September 2017. No comment was received on the initial application. TLS has been made aware that approval has also been sought for a further amount relating to additional sitting days; there will be an oral update to the Board if any further comment is made on this further amount.
5. In the approval letter to the SDT in October 2016, it was noted that a large part of the budget is driven by assumptions for cases and sitting days and we asked for this information to be clearly set out in future application. Assumptions about the number of cases and sitting days covered in paragraphs 11 to 14 below.
6. Last year's approval letter also noted the plan to reduce from 70% to 60% the key performance indicator (KPI) in relation to the number of substantive hearings to be heard within six months of issue of proceedings. We acknowledged that this was still a challenging target given the then performance levels and that we would look closely at this (and the other KPIs) in future applications. **Annex C** summarises the most recent performance against the KPIs. There is specific commentary on the revised KPI in paragraph 26.

7. Attached to this papers are the application letter (**Annex A**) and the SDT paper on Budget Principles 2018 (**Annex B**). The table in paragraph 8 sets out a high level summary of the application. A more detailed spreadsheet is available to Board members and will be available at the meeting.

The main budget application

8. The application letter is at **Annex A**. The main application is for the approval of a main operating budget of £2,838,122 for 2018. In summary, the budget by category and explanation of the variances compared to 2017 are as follows:

Expense category	2018 budget	2017 budget	Variance from 2017 and primary reasons for change
Salary and related costs	£1,159,939	£1,115,510	4% increase on 2017. Fully qualified and experienced Financial Controller now in place (replacing the Finance Officer role). Additional full-time deputy clerk to be recruited in 2018 to support increased workload from contested cases and for succession planning.
General administration	£927,421	£1,024,872	9.5% reduction on 2017. The most significant decrease relates to members total fees for sitting days which is reduced by £71,100 (13%) reflecting the reduced number of sitting days.
Building costs	£579,138	£581,643	0.4% reduction on 2017. However, the budget contains no allowance for any rent increase which is covered in paragraphs 15 to 16 below.
Contingency Fund	£25,000	£30,000	16.7% reduction on 2017 reflecting reduced need for contingency
Irrecoverable VAT	£146,624	£153,141	4.2% reduction on 2017.
Total	£2,838,122	£2,903,166	

9. In addition there are two further amounts for which approval is sought but which at this stage are sufficiently uncertain that the SDT has concluded that it should seek approval but that it would not ask the TLS to release the funds unless and until needed.
10. In the past where there has been an unknown and uncertain but potentially significant cost, the SDT has agreed with the Law Society that the amounts will be paid only when they become due. We have accepted this as a sensible approach to budgeting.

First contingency: number of cases and sitting days

11. The biggest variable in SDT budget is the number of cases and the related number of sitting days. At the point the budget was submitted, the SDT had assumed a total 160 cases from all sources which will would require 300 sitting days (2017: 345 days), 180 for standard cases and 120 for part heard cases.
12. The majority of cases will flow from the SRA though the information that is provided to the SDT is sporadic. In order to test the assumptions about the number of cases, we asked the SRA to provide to us its projections/estimates on cases and sitting days in 2018. On 10 October, SRA confirmed its working assumption was that 180 matters would be referred to the SDT, with an average of 3 days per case. This total of 540 days is considerably higher than that assumed by the SDT.
13. The SDT has considered the impact of this and concluded that it would be appropriate to secure agreement for funding for additional days that would only be paid by the TLS in the event that the additional days are needed.
14. Taking into account its experience on days “lost” as a result of agreed outcomes (90 days) and adjournments (40), SDT considers that additional 110 days would be reasonable. Approval is sought for £215,490 to cover members’ fees (£173,800) and fees (£41,690) for 100 sitting days. All other costs (staff, administration etc) will be absorbed in the main budget.

Second contingency: rent review

15. The budget application contains an allowance for rent at the same rate a 2017. A rent review is due toward the end of 2017 but there is uncertainty as to the level of any increase and when it might become effective. Given this, the SDT is asking us to provisionally approve an amount which would be paid by TLS once there is certainty as to the future rent liability.
16. The application contains an estimate as to how much the increase might be based on information from SDT agents as to the possible rate per square foot and a possible rent free period of six months. [REDACTED]
[REDACTED]
[REDACTED].

The SDT budget principles

17. The SDT was asked to consider developing a set of budget principles and these are set out in **Annex B**. In developing these, the SDT considered the principles that the OLC has developed for its budget applications.
18. The principles cover the key areas that impact on the budget, including the number of cases and sitting days and staff salaries and members fees.
19. Paragraph 4.1 and 4.2 describe the principles about the number of sitting days

4.1 It is assumed that the SDT will sit in court on all hearings (substantive, case management, applications) for no more than 300 days in 2018.

4.2 Sittings required over and above 300 days will be delayed to the next funding round in 2019.

20. We were concerned that by imposing an upper limit in this way an element of unfairness would be introduced into the system if a case were ready to be heard but the budget had been exhausted by previous cases.
21. This was discussed this with the President of the Tribunal who recognises the risk of unfairness. On the information available at the time the budget was prepared and agreed with TLS, 300 days appeared to be a realistic estimate based on past experience and the view was that the risk that cases could not be heard for purely budgetary reasons was low. However, in the event that the risk crystallised, the SDT would use the provisions in the MoU to seek additional funds from the TLS to allow the cases to proceed. This appears to be a reasonable approach.
22. The draft principles were sent to the LSB at the end of June (by which time the draft budget had been submitted to TLS) and beyond the feedback described above in relation to paragraphs 4.1 and 4.2, we have not provided any feedback to the SDT. Our intention is to do so after the Board discussion on the application. The President of the SDT has indicated that the Principles will be reviewed in the light of the experience of using them and any feedback we give.

Key performance measures

23. **Annex C** provides a summary of performance against all the key performance indicators. SDT continues to deliver performance in line with the measures.
24. Performance against the measure for determination of cases was amended for 2017 with the target reducing from 70% to 60% within six months of issue of proceedings. We were informed of this change when approving the 2017 budget application and noted that on experience this remained a challenging target.
25. Performance to date against this revised measure is as follows

Q1 2017	Q2 2017	Q3 2017
64	56	75

26. This demonstrates that the revised target is achievable but remains challenging.

LSB work on understanding processing of disciplinary cases

27. We have previously noted in budget applications that the actual spend is often considerably lower in the year than the original budget. The actual underspend for 2016 was £530,273; the current forecast for 2017 is an underspend of £256,927. Any underspend is returned to TLS.

28. One of the key contributors to any underspend is delays to cases (which impacts on the key budget driver of number of sitting days). Since the last application we have completed some work to better understand the range of reasons for delays in cases. We are grateful for the help that we have had from SDT colleagues in collating the data to do this analysis.
29. Of the 54 cases heard in 2016, 24 (44%) were delayed meaning that the SDT did not meet its six month target in 19 cases. The reasons for the delay were as follows:

Reason for delay		
Issues serving respondent	6	25%
No open dates	4	17%
Respondent address incorrect	3	13%
Availability of applicant's representatives	1	4%
Availability of parties	2	8%
Availability of witnesses	1	4%
Health of respondent	2	8%
Agreed directions	2	8%
Further investigation by applicant	1	4%
Failed application for adjournment	1	4%
Respondent not filing answer	1	4%

30. In this application, SDT comment on a more recent trend of cases being settled (agreed outcomes) between the SRA and the solicitor(s) after a hearing date has been set but before the hearing has taken place. In 2017 to date there has been 27 applications under the agreed outcomes procedure (of which 5 were rejected by the Tribunal). While recognising that a "rapidly approaching hearing date can focus minds on both sides", where this comes to the Tribunal shortly before the date it does mean that planned sitting dates are lost.
31. This is only a snap shot but gives an indication of the variety of causes for delay. On this limited data it would not be appropriate to draw any conclusions but this information will be fed into the planned review of enforcement processes.

18 October 2017