

Meeting: Legal Services Board

Date: 20 November 2020 (extraordinary meeting)

Item: Paper (20) 54

Title: OLC in-Year Budget Variation Application

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Status: Official

Purpose of the paper

1. To consider an in-year budget variation application from the OLC for an increase of 2.7% (£344,315) to its 2020-21 budget.

Recommendation:

2. The Board is invited to **approve** the OLC's application for an increase of £344,315 to its 2020-21 budget.

Background

3. Schedule 15, para 23(1) of the Legal Services Act 2007 ('the Act') provides that the OLC may, with the approval of the Board, vary the budget for a financial year any time after its adoption.
4. The OLC's application was received on 22 October 2020, see **Annex A**. The tripartite operating protocol provides that an appropriate process be agreed to satisfy the LSB's requirements on budget setting. The LSB executive agreed to offer feedback and raise queries within a period of ten working days. This included input by the Board member lead for OLC oversight. The OLC then provided supplementary material in response to these queries, see **Annex B**.
5. Neither the Act, nor the tripartite operating protocol include provision for external consultation as part of this process. Given the relatively small sums involved, we consider the absence of external consultation to be appropriate in this case.
6. Since the next Board meeting is not until 2 December, an extraordinary meeting has been convened so that the OLC can implement the plans set out in its application, if approved, in a timely fashion.

7. Since the Lord Chancellor must approve the amount to be raised by way of the levy, approval from the Ministry of Justice as well as the Board is required. Officials were invited to comment on the OLC's application and confirmed they would support the increase should the Board approve it.

Proposal

8. Figure 1 in the OLC's application, reproduced below, itemises the planned individual spend items; these costs are partly offset by savings elsewhere. A more detailed breakdown is provided in Figure 2 in the OLC's application document. The supplementary information details a split between incurred and anticipated expenditure, and provides the full-year costs of new hires.
9. In summary the OLC requests approval of an increase of 2.7% (£344,315) to its 2020-21 budget in order to safeguard performance recovery and improvement by: (1) mitigating against the risks posed by needing to constrain the 2020-21 pay remit to address current budget pressures, including Covid-19 related costs; and (2) to provide resilience and capacity to the senior leadership team.

ITEM	AMOUNT
Senior Leadership Recruitment & Restructure / Senior Leadership Resilience	£271,165
Calculation errors 2020-21 budget	£283,150
Covid-19 related costs	£100,000
SUB TOTAL	£654,315
Mitigating Factors:	
Agreed levy higher than budget	(£95,000)
Staffing underspends – vacancies/ delayed promotions	(£50,000)
Senior Leadership Restructure Savings	(£55,000)
IT savings	(£60,000)
Identified savings including nonpayroll inflation	(£50,000)
MITIGATIONS SUB TOTAL	£310,000
BUDGETARY ISSUE	£344,315

10. The application should be considered separately to the OLC's application for its 2021-22 budget, although the in-year application includes funding to support the creation of new posts which will have ongoing resource implications. Specifically, the full-year costs of the proposed new hires are projected at £236k.
11. The Board will be mindful of the impact of a budget increase on levy payers, especially given the financial pressures caused by Covid-19. In addition, the OLC notes that a reduction in case fee income will mean a higher proportion of the 2020-21 budget set by the Board will come from the levy than anticipated.

However, we encourage the Board to also consider the impact of its decision on the Legal Ombudsman's performance and the consequences for its customers (complainants and respondents) and broader public confidence in regulation. The percentage increase requested (2.7%) is very different to that originally proposed by the OLC for its 2020-21 annual budget (21%) when the context was very different. Further, the actual financial impact on levy payers would be modest in real terms, and it would not be invoiced until March 2022.

12. The Board will be disappointed to note that a significant proportion of the amount requested relates to calculation errors in the original 2020-21 budget application. The annex to the application sets out the reasons for this and the measures put in place to seek to ensure that these errors will not be repeated.
13. The executive shares the OLC's view that it would be preferable to fund the additional spend requested from its reserves. The amount sought represents a small fraction of the OLC's reserves and its total reserves greatly exceed the level of funds that would be required to wind-down the organisation. However, since the application was submitted to the LSB, the Ministry of Justice confirmed that the OLC will be unable to access its reserves for this purpose in 2020-21. Discussions with the Ministry of Justice on use of reserves will continue.

Conclusion and next steps

14. The executive considers that the budget application is proportionate and targeted at addressing systemic weaknesses previously identified by the Board. In particular, the Board has emphasised the need for the OLC to invest in its senior team. Should the OLC be unable to go ahead with its planned recruitment to senior roles and/or implement the pay award, we consider this carries a material risk of the performance picture destabilising or worsening further.
15. Since the additional spend involves hiring new staff the Board's decision will have consequential, albeit modest, impact on the 2021-22 budget. There is a risk that the new senior leadership team will wish to pursue an alternative staffing structure. The OLC offer limited mitigation for this, but any future changes are likely to be marginal and the proposal carries the OLC Board's endorsement. The new chief ombudsman and chief operating officer will soon be in post and they may wish to flex recruitment plans within the available budget.
16. Should the Board agree the recommendation, this will be notified to the OLC in a decision letter swiftly after the meeting. The decision letter can be used to highlight any points that the Board wishes to signal to the OLC.

Annexes

Annex A – OLC's application document

Annex B – Supplementary information requested by the LSB executive

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Comms and engagement:	Any increase in the OLC's budget may receive an adverse response from the legal profession given the performance picture and financial pressures resulting from Covid-19.
Resource:	N/A.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
None		