

---

## Application to Vary OLC Budget 2020-21.

---

### Executive summary

Attached is the OLC's application to the LSB for an interim variation on the 2020-21 budget.

The OLC'S budget for 2020-21 is set at a total of £12,808,300. This paper sets out OLC's request for approval of an interim variation to provide additional funding of £344,315 which represents an increase of 2.7%.

Schedule 15, para 23(1) of the Legal Services Act provides that the OLC may, with the approval of the Legal Services Board, vary the budget for a financial year any time after its adoption.

The Tripartite Operating Protocol between OLC, LSB & MOJ provides that:

*Changes in budgets are subject to the Supplementary Estimates process, and need to be presented to Parliament, which usually takes place in January or February of each year. This means that likely budget variations usually need to be picked up by the end of November.*

*If the OLC requires a change in the agreed revenue or capital budgets, the following process will apply:*

- *the OLC will discuss and agree the need for the change, and the value of the change;*
- *the OLC will share a short business case explaining the required change with the rationale for it, and share this with both the LSB and MoJ, requesting initial feedback which the bodies will provide within ten working days;*
- *the OLC will prepare a short note requesting formal approval of the change by the LSB; and*
- *if the request is approved, the OLC will liaise with the MoJ to ensure its inclusion in the Supplementary Estimates.*

This paper explains that during 2020-21 a number of exceptional circumstances have created pressures on the agreed annual budget which, if unaddressed, will result in an overspend by the end of the financial year. The paper also outlines a number of appointments that are considered critical to ensure the long term resilience and capacity of LeO's leadership team.

The paper summarises:

- the nature of those exceptional circumstances and the steps that have already been taken to mitigate their impacts on budget and delivery.
- the options that have been considered to further mitigate the possibility of a budgetary overspend and associated risks.
- how the additional budget, if approved, would be spent and the impacts of that spend on short term delivery, longer term improvement and operational resilience.

OLC are satisfied the suitable steps have been taken to mitigate historic errors and to ensure that they are not replicated in future submissions. It is further of the view that whilst alternatives to a budgetary increase exist, they pose unacceptable risks to staff engagement and performance, the resilience of senior leadership and the planned operational improvement.

Any queries relating to the attached paper should be addressed to Michael Letters, LeO Head of Finance, in the first instance.

22 October 2020

---

## Application to Vary OLC Budget 2020-21.

---

### Background

1. In 2020 the OLC chose not to adopt its Executive's proposed growth budget for 2020-21, electing instead, after consultation and scrutiny to adopt a standstill budget with an inflationary uplift.
2. The implications of this decision being that improvements in performance both in terms of delivery and feedback and insight work, that had been projected under a growth budget, would not be achievable.
3. Considerable work has been done and a 'lessons learned' review conducted as a result of the process for 2020-21 budget. The findings and recommendations of that review have already been shared and therefore are not repeated here.

### General Principles

4. Exceptional circumstances, that were not foreseen during the budget setting process, have led to significant pressures on the 2020-21 budget and there is a real risk of overspend, and impact on operational performance, by the end of the financial year if these pressures are not addressed. A range of actions have already been taken to mitigate the impact of those pressures. The OLC, in conjunction with the LeO Executive, have considered the alternatives to requesting a budget variation but believe that they would present an unacceptable risk both to senior level resilience and to staff engagement, at a time when improvement activity is focused on building effective management practices within the operation, which are critical to effective performance recovery and improvement. Through an in year budget increase of 2.7%, LeO will be able to address the budgetary pressures, protect performance recovery and longer term improvement, and support the resilience and capacity of the senior leadership team thereby ensuring effective leadership across the business.
5. The proposed increase in budget is made with consideration of the wider economic pressures for lawyers who fund the OLC via the levy, and that other organisations within the regulatory sector are looking to limit their demand on levy funding. Consideration has also been given to a reduction in case fee income this financial year, which is a result of the significant decrease in the number of cases concluded against forecast<sup>1</sup>. This will mean a greater proportion of LeO's budget will need to be funded via the levy rather than case fees. These considerations are balanced against the need to ensure performance recovery for the benefit of those who use the service, and to support confidence in the service as an effective avenue for redress, particularly in relation to reducing front end wait times.

---

<sup>1</sup> Between 1 April 2020 and 31 August 2020 LeO invoiced case fees for a total value of £276,000 against a budget of £466,000. Current performance forecasts indicate that total case fees chargeable for 2020/21 are likely to be in the region of £839,000 as compared to budget of £1,118,000 – a deficit of £279,000.

6. The proposal covers variation up to 31 March 2021 only. Budget for any of the items beyond 31 March 2021 will be provided for in OLCs annual 2021-22 budget proposal. It is important to note that a number of the items proposed, particularly the creation of new permanent posts, will commit OLC to expenditure beyond 31 March 2021.
7. Enquiries have been made as to whether the OLC can access any of the circa £18 million reserves which it holds. Whilst some reserves are necessary to ensure that the organisation could be appropriately wound up if statutory changes made that necessary, the required amount is a fraction of the £18 million currently held. Accessing the reserves would be particularly beneficial as it would provide a means of funding the expenditure necessary to support performance recovery and longer term improvement, without requiring a significant increase in levy funding. Other ombudsman schemes have accessed reserves in response to budget pressures arising from the covid-19 pandemic, though of course the relevant legal framework differs between ombudsman schemes. Enquiries remain ongoing with MOJ.

## **Rationale for increase to OLC budget 2020-21**

8. The OLC seeks a 2.7% increase to the current budget, equating to an increase in the sum of £344,315. The following budget pressures, which were not foreseen at the time the standstill budget was agreed, have resulted in significant pressure on the existing OLC budget.

### **Budget Pressures:**

#### ***Costs relating to senior leadership and capacity***

9. Since April 2020 the Chief Ombudsman, Director of Corporate Services and Head of Human Resources have left the organisation. These changes were not foreseen at the time of the 2020-21 budget submission. They have however presented an opportunity to restructure the senior leadership in a way that provides greater resilience in the longer term. This has necessitated expenditure, which has already been incurred, for the recruitment of a new Chief Ombudsman and Chief Operating Officer and the departure of the Head of HR. The existing leadership team has needed to be restructured both to ensure effective cover for senior vacancies in the short term, and to provide a more resilient senior leadership structure in the longer term. The costs relating to the temporary acting up of the senior leadership team and the provision of high-level strategic HR resource have also been already incurred (see Fig.2 below).
10. The need for additional expenditure has also been identified to ensure LeO's senior leadership team has the capacity and resilience to deliver post-covid performance recovery and longer-term improvement (see Fig.2 below). The recent resignation, and imminent departure, of the Head of Governance & Strategy places yet further pressure on the remaining members of the senior leadership team and will require others within LeO to step up to provide cover and resilience. This development exacerbates the need for a suitably resourced structure beneath the senior leadership team.

#### ***Formulation of budget 2020-21***

11. As part of the forensic analysis of the budgeting process in 2020-21, and in keeping with the recommendations of the Budget Learning review, LeO's new Head of Finance has conducted a comprehensive review of the assumptions and numbers underpinning the standstill budget

for 2020-21. In doing so, calculation errors in the budget formulation have been identified, the net effect of which is to leave expenditure of £283,150 not provided for (see Appendix A).

### **Costs relating to the Covid-19 pandemic**

12. The unprecedented circumstances surrounding covid-19 have impacted LeO staff's ability and willingness to take annual leave. Although a number of options are being considered to ensure that LeO staff use their annual leave entitlement to support their health and wellbeing, that is being actively balanced with the need to maximise staff availability to achieve performance recovery. Typically, LeO staff are entitled to carry over no more than 5 days leave however, given the circumstances outlined, it is expected that provision will need to be made to enable some staff to carry over additional leave this year, up to an absolute maximum of 10 days. This is likely to create a significant increase in accrued leave which has to be accounted for at the end of the financial year.

**Fig. 1: Summary of Budget Pressures**

<b>ITEM</b>	<b>AMOUNT</b>
Senior Leadership Recruitment & Restructure / Senior Leadership Resilience	£271,165
Calculation errors 2020-21 budget	£283,150
Covid-19 related costs	£100,000
<b>SUB TOTAL</b>	<b>£654,315</b>
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 non-payroll inflation	(£50,000)
<b>MITIGATIONS SUB TOTAL</b>	<b>£310,000</b>
<b>BUDGETARY ISSUE</b>	<b>£344,315</b>

### **Maintaining Performance Recovery / Improvement & Resolving Budget Pressures**

13. If approved, the proposed budget variation would be used to support post-Covid performance improvement as follows:
14. Firstly, in addition to covering expenditure that has already been incurred Fig.2 below, a budget increase would provide additional resilience and capacity for the senior leadership team. Pending, and in anticipation of, the arrival of the new Chief Ombudsman and Chief Operating Officer, the existing leadership team has been restructured to enable the groundwork to be laid for the required improvements in performance, governance and risk management. During this period the leadership team are carrying a significant burden in terms of breadth and depth of responsibility. An increased budget would support the recruitment activities outlined in Fig. 2 below – this activity would ensure that single points of failure are avoided and provide the leadership team with the additional resilience and capacity required to enable them to lead the organisation through performance recovery and improvement.

15. Secondly, performance recovery and improvement would be supported by avoiding the need to place any restriction on the current staff pay and/or bonus remit. The positive impact of pay increases cannot be underestimated and would help bolster staff morale and engagement thereby also encouraging improved performance.
16. In recommending a budget variation it is worth outlining the steps that have already been taken to mitigate the budgetary pressures, savings that have already been identified and the other options that have been considered.
17. Steps that have already been taken to mitigate the budget pressures include:
- Not filling vacancies that have arisen.
  - Releasing temporary staff at the start of the year.
  - Significantly reducing the use of pool ombudsman resource.
  - Restrictions on overtime availability.
  - Pausing a final decision regarding the 2020-21 pay remit and bonus payments pending a decision on any variation to the existing budget.
- These steps have mitigated the risk of a further increase in the overall budget pressure but are not, in themselves, sufficient to resolve the budget issue identified
18. As noted in Fig. 1, above, a number of savings and underspends have been identified as part of the review of the budgeting process and these have resulted in the total cost of the budgetary pressures being reduced from £654,315 to £344,315.
19. In the absence of an increased budget, it is likely that LeO would need to take the difficult decision to restrict the pay remit for 2020-21, which is currently budgeted at 2% for all entitled staff (equating to around £192,000), and the scope for one off high performance pay rewards which are currently budgeted at £100,000. This would offset the cost of the errors contained in the 2020-21 budget. However, it would do so at a significant cost to staff morale which is already fragile. Staff morale and retention are significant risks for LeO and the levels of attrition seen pre Covid played a large part in the decline in performance seen at the end of 2019-20. The inability to maintain a reward package that is aligned to a highly competitive local market<sup>2</sup> poses not only a significant risk to staff retention but also to LeO's ability to attract new staff when required. An increase in levels of attrition, especially if combined with an unattractive employee proposition, could seriously undermine the plans for performance improvement.
20. Although suspending pay remit would reduce the budgetary pressures it would not be sufficient to fully address the need for the additional resource that is considered necessary to support the capacity and resilience of the senior leadership team. In the absence of an in-year budget variation it is likely that those recruitment plans would have to be curtailed or abandoned until the 2021-22 budget submission. This would not only put the resilience of senior leadership at risk, along with risking the delivery of the recovery plan, but also waste the chance to embed new governance and risk management structures at the earliest possible opportunity.
21. Taking into account the risks posed by seeking to resolve the budget pressures without additional funding, the OLC are satisfied that the proposed increase represents value for money and appropriately prioritises spend on a risk basis.

---

<sup>2</sup> An independent salary benchmarking survey completed earlier in the year for operational staff indicated that salaries were, assuming a 2% organisation wide increase in 2020-21, within 10% of the median salary for the posts considered. Nearly all salaries reviewed were currently paying within the lower quartile of the local salary range.

## Budget Variation – Relevant Incurred and Anticipated Expenditure

22. The table below summarises the key areas of actual and planned expenditure that were not accounted for within the OLC’s 2020-21 budget and which, together with the information above regarding budget pressures, form the basis of the OLC’s request for a budget increase of £344,315.

**Fig. 2: Summary of incurred and anticipated expenditure**

Area of Expenditure	Incurred* and Anticipated Expenditure.	Amount <sup>3</sup>	Impact on Performance Recovery & Improvement
SENIOR LEADERSHIP RESILIENCE			
(1)	Recruitment Costs*  [Costs incurred in recruiting for Chief Ombudsman and Chief Operating Officer roles].	£70,000	Ensuring that the OLC is able to appoint the strongest possible candidates to LeO’s two most senior posts, which will be pivotal to driving performance improvement.
(2)	Senior Team Restructure*  [Re-grading for new roles within LeO’s existing Executive Team and acting up costs during CO vacancy]	£21,615	Restructure to ensure LeO’s existing Executive Team are best placed to focus on strategic leadership and driving organisational performance improvement.
(3)	Redundancy Payment*	£51,650	As per item (2)
(4)	Strategic HR Support*	£25,200	Resource to provide resilience to the senior team pending appointment of Chief Ombudsman & Chief Operating Officer and in delivering the objectives of the People Plan.
(5)	New Post: Risk Manager	£18,000	Supporting LeO’s Executive Team’s effectiveness in driving organisational performance improvement by providing capacity to further develop the organisation’s risk management framework, including capacity to conduct assurance reviews led by risk considerations.
(6)	New Post: Project Manager	£20,000	Supporting the capacity of the senior leadership team by providing additional resource for managing significant organisational projects. LeO currently has 1 dedicated PM and this limited resource leads to the senior team being more involved in the management of projects than is necessary.
(7)	New Post: Finance Business Partner	£14,800	Provide capacity and resilience within Finance to support the Head of Finance in leading on improvement within the function, and in providing strategic financial leadership as part of LeO’s Executive Team.

<sup>3</sup> Amounts noted for cost of anticipated recruitment calculated on the basis of roles being filled by December and therefore 4 months in post with the exception of Project Manager vacancy which is actively being recruited for and is assumed to be in post for 5 months.

(8)	New Post: Diversity & Inclusion Manager	£16,650	New post to provide expertise and resilience for HR / Governance in ensuring that LeO is an inclusive and diverse workplace, and provides an inclusive service for its customers.
(9)	Recruit to vacant post: Policy Officer	£13,250	Provide additional capacity within Impact / External Affairs / Policy, while the Head of fulfils interim Chief Ombudsman role. To start to take forward insight and transparency work identified in the 2020-21 business plan but paused due to resource constrains of standstill budget.
(10)	Forecasting Model Improvement - Commission Independent Productivity Survey	£20,000	External resource to support development of dynamic forecasting model which reflects organisational processes. An enhanced forecasting model will provide the senior leadership with more accurate short term forecasts enabling better targeted management interventions. It will also enable more accurate identification of processing times throughout the customer journey and therefore support identification of opportunities to improve organisational performance.
<b>TOTAL</b>		<b>£271,165</b>	
<b>COVID-19 RELATED COSTS</b>			
	Cost associated with accrued annual leave and providing for staff to carry over additional leave.	£100,000	Requiring staff to take additional accrued leave in year could impact on morale and interfere with performance improvement trajectory.
<b>BUDGET CALCULATION ERRORS</b>			
	Errors identified through forensic review of 2020-21 budget setting process	£283,150	In the absence of increased budget, the cost of these errors would need to be offset by restricting pay remit which would in turn impact staff morale and performance.
<b>TOTAL INCURRED / ANTICIPATED EXPENDITURE</b>		<b>£654,315</b>	

23. Consideration has been given by LeO's executive to possible alternative means of providing the levels of support and resilience sought by the above recruitment activity. The possibility of sourcing experienced Interim assistance has been considered but discounted. Such assistance would inevitably have a cost implication which would still require an in-year budget variation and therefore any cost benefit is likely to be minimal. Further, the identified roles are considered critical to the long term improvement of LeO's governance and risk management structures and would ideally require permanent appointments. Being able to introduce these key hires as early as possible would be preferable from a continuity perspective, supports delivery of the recovery plan, and avoids introducing disruption in the 2021-22 year. Choosing

not to engage in this recruitment activity has also been considered but this approach would place a significant strain on the existing senior leadership team and constrain their ability to improve LeO's governance and risk management activities and performance.

## **Summary**

24. 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) provide resilience and capacity to the senior leadership team.

## Appendix A

### 2020-21 Budget Calculation Errors

Operations Team	£265,000
External Affairs	£6,000
HR Budget Adjustment	£40,000
Legal Salary budget adjustment	(£1,350)
Finance Budget Adjustment	(£42,000)
Deputy Chief Ombudsman salary	(£7,500)
Survey over and above budget £27,000	£23,000
<b>Budget error</b>	<b>£283,150</b>

The budget calculation errors identified were made by interim staff (appointed following the departure of the former Head of Finance) covering key roles within LeO's finance function, and by insufficient oversight and checking of the budget which, if undertaken, would have identified the errors. The individuals with responsibility for these errors are no longer employed by LeO. The budget calculations lacked transparency, and were un-necessarily complicated, resulting in the double removal of an adjustment not being identified. In addition, incorrect salaries were used for some cohorts of staff

The new Head of Finance has already put more rigorous checks and balances in place to ensure that existing resource levels are fully recorded and that future planned recruitment activity for 2021-22 is fully mapped, challenged and costed. The provision of extra resource, as outlined above, will enable this check and challenge methodology to be adopted on a regular basis throughout the financial year and will help ensure that the risk of similar errors is mitigated for all future budget planning exercises.