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| Report to: | The Board |
| Meeting Date: | 23rd September 2019 |
| Report Title | Performance Report |
| Report Category | For Information |
| Issue status: | Business as usual |

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| Written by: | Marie-Louise-Fox, Graeme Hill & Matt Taylor |
| Director responsible: | Marie-Louise Fox |
| Presented by: | Marie-Louise Fox |
| Contact details: | foxma@slab.org.uk |

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| Delivery of Strategic Objectives | |
| Select the Strategic Objective(s) relevant to the issues | 1. to deliver improvements to legal aid processes that increase efficiency and improve the experience of system users and customers.  3. to ensure that our organisation has the culture and capability to be responsive to our customers, the justice system and developments in legal and advice sectors. |
| The purpose of this paper is to report on operational performance as at 31st July 2019 and in particular the operation of the new benchmarking approach to reporting. | |

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| Link to Board or Committee Remit |
| To monitor the performance of the Operational Departments. |

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| Publication of the Paper |
| The Board has previously agreed that this paper should be published as a matter of course. It will be published on our website in due course. |

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| Executive Summary |
| Applications – The performance across the Applications Department is good and there are no particular concerns or issues to highlight.  Accounts – Accounts performance mixed; however overall improving across a range of account types |

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| Previous Consideration | |
| Meeting | Detail |
| 12th August 2019 | Applications – performance was good.  Accounts – performance was mixed. |

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| Report |

**Introduction**

Board paper SLAB-2019-11 in March 2019 proposed benchmarks for performance reporting for financial year 19-20. The benchmarks proposed were designed to be challenging but achievable. They were based on current performance at the time with some adjustment according to management input.

The Board requested that information be presented on performance at an appropriate point which contained the detailed numbers to explain the working of the benchmarks. This paper does that and is accordingly much lengthier than normal.

Current performance for each of the benchmarked indicators is presented in the form of a chart. This is compared with the chart that was presented in the March paper. The benchmark (BM) that was set is the midpoint of each of the green Met benchmark zones.

A complete set of charts for all the KPIs are shown in Appendix 1. The body of the report highlights some key issues that we think are relevant to the Board’s future consideration of the benchmarks for 2020-21. Individual charts have been used as examples in the body of the report. It is suggested that this approach, subject to members’ observations, should inform the development of benchmark proposals for 2020/21 for Board approval early next calendar year.

The standard format of presenting performance is shown at the end of the paper where we also present the detailed numbers with a colour shading to indicate the zones.

**Applications Performance**

The overall performance in civil applications remains good with the benchmarks being met or exceeded.

The benchmark setting for the first decision average duration for Adults with Incapacity (AWI) cases illustrates the challenge of understanding where the ‘normal’ level should be set during a time of proactive change. At the time the benchmark was set, the allocation of resources to different aspects of the applications process was being adjusted. We anticipated that optimising resources as between AWI and other cases would result in slightly longer timescales for AWI cases while allowing us to improve the position more widely, and that is what the data suggested (the November, December and January points on the first graph in Table 1 below).

The benchmark was therefore set at what was expected to be the ‘new normal’. Since then, we have seen that this change in the allocation of resources has actually resulted in a more efficient process and so improved performance both in AWI and other cases, with AWI performance improving back to the previous level – illustrated in the right hand graph.

Table : AWI First Decision Average Duration

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| Benchmarking Performance | Current Performance |
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The overall performance in criminal applications remains good with the average durations, and the ratio of further work cases all continuing to exceed the benchmarks.

The % granted at first decision indicator for summary varies between approximately 79% and 81%. It is perhaps not necessary to have such a narrow met zone of just 1.6% points, see Table 2 below.

Table : Summary First Decision % Granted

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**Accounts Performance**

Again some mixed results; however improving performance in both children’s and criminal accounts reflects the earlier measures taken to improve performance, which included some additional use of overtime, as well as recruitment to back fill vacancies and cross-skilling to improve the resilience of some smaller teams to cope with staff movements and absence.

The KPI Criminal Initial Assessments % paid in full also only varies within quite a narrow range – between 88 and 90%. But the benchmark was set at 93% with quite a wide zone. Performance is mostly meeting the benchmark zone but while on average better than last year it is consistently at the bottom of the zone. A narrower zone centred more on the desired level of performance might be more effective for monitoring. Note the difference in the scale of the vertical axes between the charts in Table 3 and Table 2.

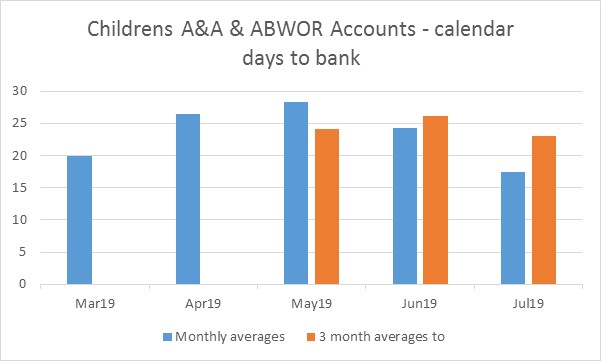
Table : Criminal Initial assessments % paid in full

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A balance needs to be struck between an overly, or insufficiently, sensitive indicator and benchmark and met zone.

The basis of the indicators used within SLAB’s operational performance reporting is 3 month averages. This approach smooths out fluctuations which may occur in the figures for events happening in any one month so that we aren’t overly sensitive to any short-term fluctuations – see example in Figure 1 below. This helps ensure that we focus on longer term and more strategic improvements to processes, rather than knee-jerk reactions to what may turn out to be one-off or less significant variations in month to month performance.

Figure : Monthly vs 3-monthly indicators











Appendix 1: Graphical Comparison of Performance

Civil Applications Performance

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| Benchmarking Performance | Current Performance | Commentary |
|  |  | Benchmark set according to predicted impacts of proactive changes in resource allocation at the time. But performance has improved back to the previous level. |
|  |  | Despite the dip around Dec’18 we set BM to be achievable which has been done and surpassed. |
|  |  | Similarly we set BM from average of 12 months. Performance decreased slightly but then returned to the BM level. |
|  |  | The % granted has continued to increase beyond the level of last year and where the BM was set.  A higher BM may be appropriate for 20-21. |
|  |  | The % with further work KPI has stayed within the met zone although with a general slight improvement. |

Criminal Applications Performance

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| Benchmarking Performance | Current Performance | Commentary |
|  |  | Indicator dropped slightly, note axis, Jan/Feb19.  Currently within met zone. |
|  |  | Performance currently, and over past 12 months, within met zone. |
|  |  | Performance meeting BM. |
|  |  | Note similar seasonality to solemn.  Perf now better than BM. |
|  |  | Variation in indicator.  Met zone quite narrow – only 1%.  Maybe widen next year. Solemn is set at 2% for this KPI. |
|  |  | General trend of improvement in this KPI. |

Children’s Applications Performance

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| Benchmarking Performance | Current Performance | Commentary |
|  |  | Performance centred on BM. |
|  |  | Performance currently, and past 12 months, within met zone.  Met zone maybe now too wide. |
|  |  | Performance meeting or better than BM. |

Civil Accounts Performance

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| Benchmarking Performance | Current Performance | Commentary |
|  |  | BM set at 22.1 based on previous 12 months. Has not been achieved for some time. |
|  |  | BM set at 24.2 to be achievable which it has been. Performance steadily improved since Dec18. |
|  |  | Performance Met or Better Than. |
|  |  | Performance has consistently met the BM. |
|  |  | Recent Worse than performance affected by volumes being submitted. |

Criminal Accounts Performance

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| Benchmarking Performance | Current Performance | Commentary |
|  |  | BM set at 9.6 to be achievable which it has been. Performance steadily improved since Dec18. |
|  |  | Performance mostly within BM (6.4) zone. |
|  |  | Performance steadily improved since Oct18.  BM set at 12.3 to be achievable which it has been. |
|  |  | Performance mostly within BM (6.4) zone. |
|  |  | BM set at 12.7. This has been harder to achieve although performance is closer to the BM level now. |
|  |  | BM set at 18.1. |
|  |  | BM set at 39.9. Performance has been mostly better than this. |
|  |  | BM set at 93% but quite a wide zone.  Performance is mostly meeting the BM zone but is at the bottom of it. |
|  |  | BM set at 4.5%. Performance has been stable in this zone. |

Childrens Accounts Performance

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| Benchmarking Performance | Current Performance | Commentary |
|  |  | BM set at 23. Performance has been maintained around this level. |
|  |  | BM also set at 23. Performance has been slightly longer than this. |
|  |  | BM set at 31.4. Performance has been stable at this level. |
|  |  | BM set at 35.3% anticipating the effect of the change in process in assessing children’s accounts. The % paid in full has declined but has remained just within the Better Than zone. |
|  |  | Similarly the BM here was set higher at 19.3% but this has not been achievable so far this year. |

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|  | **Governance Links** |
| 1 | **Finance and Resources**  Resources are key to the delivery of good performance. This paper sets out a number of current resourcing challenges that we are dealing with across the applications and accounts departments. |
| 2 | **Risk**  Applications  This report gives assurance that we are managing the functional risks identified in relation to: (i) Failure to accurately assess applications and increases in accordance with SLAB's policies and procedures; and (ii) Failure to take operational decisions within agreed service standards.  Accounts  This report gives assurance that we are managing the functional risks identified in relation to: (i) Failure to pay solicitors within a timeframe that is acceptable to the profession and enables management of the Legal Aid Fund; and (ii) Inconsistent approach to assessment of accounts. |
| 3 | **Legal and Compliance**  No issues of note. |
| 4 | **Performance**  No issues of note. |
| 5 | **Equalities Impact**  An impact assessment is not required for this paper. |
| 6 | **Privacy Impact and Data Protection**  No privacy or data protection issues identified. |
| 7 | **Communications and Engagement**  This paper has been agreed for publication and we are also publishing separate information regarding our performance via our website. |

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| **Conclusion and next steps** |
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Members are asked to note the report.

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| **Appendices** |
| Appendix 1: Graphical Comparison of Performance  Appendix 2: - Guide to the SLAB Operation Performance Overview Report (SOPOR) |

**Appendix 2**

Guide to the SLAB Operation Performance Overview Report (SOPOR)

STRUCTURE

Information is grouped by operational area and type of measure. The first 3 reports are on Applications areas: Civil; Criminal and Children’s, and the bottom 3 on Accounts areas.

In Civil we report Adults with Incapacity cases separately. These are high in volume and we take decisions on these in a much shorter timescale because the statutory tests are more straightforward. These are separated out to avoid a disproportionate impact on performance statistics.

In Criminal we report on summary and solemn cases separately: SL = Solemn cases; SC= Summary cases.

## PERFORMANCE REPORTING IN THE SOPOR

A rolling 3-month average (i.e. a mean) is the basis for calculating and reporting performance. This is compared against a static benchmark with performance reported in terms of three zones:

1. Met (the benchmark)
2. Worse than (the benchmark)
3. Better than (the benchmark)

A green-yellow-blue colour highlighting scheme is used. Green indicates a benchmark is being met. Yellow highlights the ‘Worse than’ zone and Blue highlights the ‘Better than’ zone.

The Met zone is defined initially as the benchmark plus or minus 5%. The ‘Better than’ and ‘Worse than’ zones are above or below the Met zone – depending on the type of measure. For example with the First Decision % Granted measure in general higher figures are better. So the ‘Better than’ zone is above the Met zone, i.e. above 105% of benchmark. But we aren’t necessarily aiming to be as high as possible – we may find issues with accuracy and quality if we get too high or we may need to expend a disproportionate amount of effort.

With the Duration and Further Work ratio measures the ‘Better than’ zones are below the benchmark (less than 95% of benchmark).

The starting point for defining the width of the Met zone is plus or minus 5%. In some cases it has been necessary to adjust it. This adjustment is because of the differences in application and account types and processes which produce different distributions for the different measures – some are more variable than others. This is especially so in relation to the size of the measure value. For example plus or minus 5% covers a wider range of values at 90% than it does at 20%[[1]](#footnote-1).

The benchmark approach has facilitated the re-inclusion of AWI within civil and a more detailed breakdown of accounts to be presented.

All measures are calculated for the most recent 3 month period and the 11 previous results are also shown so that trends over 1 year can be seen.

## DESCRIPTION OF MEASURES IN THE SOPOR

Duration

The key duration shown for applications is the average time, in calendar days, from receipt of a main legal aid application by SLAB, to when we take the first official decision on it.  This duration includes all weekends and holidays.  It also includes any period where we are asking the solicitor, or applicant, for more information to help us take the decision.

This indicator measures both the workflow performance of SLAB but also the degree to which solicitors and applicants are managing to provide all necessary information.

Simply put **lower** is better.

In accounts the first instance duration is a very similar measure – it is from registration of the account to the date payment is received into the solicitor’s bank account.  It is in calendar days and again includes any period where we are asking the solicitor for more information to help us assess the account.

The negotiation duration is the same measure but for accounts that are follow-up accounts to negotiate sums that we have abated from initial accounts.

Grant / paid in full rate

The first official decision on a legal aid application can be one of 3 main types: grant; refuse; or not consider due to lack of information.  The percent granted measure is the number of grants divided by (i.e. indexed) by the total number of first decisions in the period and expressed as a percentage.

This indicator measures the effectiveness with which SLAB and the profession are facilitating solicitors to make appropriate and complete applications.

Simply put **higher** is better.

In accounts the equivalent measure is the percent of accounts that we are able to pay all that solicitors are claiming, i.e. without abating them.

‘Abatement’ describes the process by which the amount paid by SLAB includes one or more deductions from the amount claimed by a solicitor.  This can occur for many different reasons.  Subsequent negotiations with firms can result in part or all of the sum abated being reinstated, often because we are provided with further information that allows us to be satisfied that a claim is valid or reasonable. This can be additional information (such as vouching) to support a claim, or an explanation to justify a particular activity which had appeared to us on the face of it to be unnecessary, unreasonable or uneconomical.

SLAB needs to protect the Legal Aid Fund from unjustified expenditure; however this needs to be undertaken in a manner that is seen to be fair, transparent and done in a consistent and efficient manner.

Ultimately we will be using the information on what we finally pay against, the original lodged amount and the initial payment to understand how we can ensure more could be paid at the first instance.

Ratio of Further Work (Negotiation) to First Decision (First Instance)

In applications this indicator is the number of cases requiring further work divided by the total number of first decisions in the period and expressed as a percentage.    In accounts it is the number of negotiation accounts paid compared with the number of first instance accounts.

This indicator measures a number of different key elements of the process:

1. the effectiveness with which SLAB is getting correct applications/accounts in the first instance;
2. that SLAB is making correct decisions;
3. the effectiveness with which SLAB is communicating those decisions.

Poor performance in any of those areas could result in an increase in this ratio.  Simply put **lower** is better.

1. For more information please see Board paper SLAB-2019-11 Benchmark Proposals for 2019-20. [↑](#footnote-ref-1)