

Business case for additional funding

1. Purpose

This paper outlines the requirement for additional funds of £1,133,450 to clear a backlog of 500 complex and 275 less complex FOI and EIR cases which has developed at the Information Commissioner's Office (ICO).

2. Background

A backlog of cases has built since the Freedom of Information Act 2000 was brought into force in January 2005. Whilst there are numerous factors for this, it can be summarised as:

- There was an initial surge of complaints, reflecting that experienced by public authorities at the start of 2005 (albeit this was expected) and case intake has been sustained at a higher level than projected
- Many of the early complaints were more difficult "boundary-testing" cases because they were the first of their kind (and so more time consuming)
- We have had to invest time on numerous complaints which required a lot of early work to prepare them for consideration - complaints often do not have all the required supporting documentation, or lack clarity
- Equally public authorities have been learning themselves and have not always been clear about the Act's requirements or their reasons for refusal. Complaints have required far more "dialogue" than expected and we have been deliberately reluctant to use our formal powers (e.g. Information Notices) in the early days
- We have learned many lessons over the first 9 months of active complaint handling, productivity is gradually increasing and we have developed an FOI Casework Recovery Plan (Recovery Plan) to close the performance gap.

In reviewing case handling to date and developing proposals for the future, it has been recognised that FOI funding can be split, for the purpose of this business case, into three separate funding streams. Namely

- Funding 'recovery costs';
- Funding for 'steady state' (i.e. where case clearance equal case receipts); and
- Funding for backlog clearance (where the backlog is deemed to be all unallocated cases)

2.1 Recovery costs

Whilst the implementation of the Recovery Plan is expected to extend throughout 2006, there will be an intensive phase of design and development work during the last quarter of 2005/06. Because there are multiple workstreams, there is a need for formal project management to co-ordinate the delivery of timely, quality outputs. This requires a dedicated, expert resource for a short period and this will supplement and complement the additional ICO management resources which have been assigned to the FOI division for the duration of the FOI Recovery Plan. It is anticipated that the dedicated role will be filled by an external resource which will co-ordinate the delivery of the plan (the draft proposal for consultants is attached as Annex A). Consequently costs for this resource are expected to be confined to the 2005/06 year.

However, there is an opportunity to utilise surplus OGD staff in the North West Region, on a secondment basis. On this basis it is proposed to use a cluster 6 equivalent officer for the 06/07 year in a support role, to develop formal procedures and training material. This will cost approximately £30,000 for the year. There are also additional costs for IT kit, IT

support, desks and office space. Our estimate is that this equates to approximately £4250 per person.

Total cost = £34,250

Finally, it would be helpful for DCA to indicate that it would be acceptable for us to carry over any 2005-6 under-spend into 2006-7 to fund any further recovery costs which prove to be necessary in that FY.

2.2 Steady state

This request for funding does not include a requirement for additional steady state funds. Whilst a backlog of complaints has built up during the first year of FOI case handling, it is expected that with the additional senior management support and implementation of the operational actions in the Recovery Plan this will enable steady state to be achieved by autumn 2006.

Once it is clear what resources can be made available in response to this Business Case, we will be able to indicate the service standards (in terms of cases closed respectively inside 3 and 6 months) which we would expect to be delivering by the end of 2006-7 and (in steady state) during 2007-8 and 2008-9.

The absence of a requirement for additional steady state funds assumes that:

- there will not be demands from the Information Tribunal for more detailed investigation of complaints than so far contemplated;
- the participation of case officers will only be required rarely for oral hearings at the Tribunal;
- updated forecasts will not point to higher volumes than we have assumed in Annex B.;
- the recovery plan will achieve the expected productivity improvements.

If any of these assumptions prove to be wrong, we would need to bid for additional resources to fund the shortfall through subsequent funding negotiations.

2.3 Backlog clearance

This request for funding is for the additional costs which will be incurred during 2006/07 to clear the accumulated backlog of cases.

2.3.1 Backlog clearance - Why has a backlog built up?

Complaint intake 2005-06

Forecast receipts: 2,250 cases (comprising 750 more complex cases and 1,500 less complex cases)

Actual receipts (to 31.12.05) 2023 cases (comprising 740 exemption cases and 1,283 procedural and broadly speaking these equate to complex and non-complex¹)

¹ It is accepted that some exemptions cases are relatively straightforward and some procedural cases are complex. However, for the purposes of these figures, and the remainder of this paper, the split is the most accurate available.

Projecting intake to the end of 05/06 the overall intake is expected to be between 2500 and 2600. The projected range reflects the variable levels of receipts throughout the year. This is 11/16% higher than projected.

Productivity 05/06

Productivity assumptions

- 50 per annum per caseworker for complex cases
- 100 per annum less complex cases

Actual productivity

Between 1 April and 31 December 2005 the complaint resolution teams closed 943 cases, split into 128 exemption and 836 procedural cases. This averages out at:

- 11.5 per caseworker for complex cases (which equates to 15 for the year)
- 75 per caseworker for less complex cases (which equates to 100 for the year)

Productivity for less complex cases is in line with predictions albeit we have fewer staff in post than we projected and this is being addressed.

Productivity for complex cases is significantly below projections and this is due, partly, to initial projections being too ambitious and partly to business processes and procedures being less effective than planned. Whilst we expect productivity on complex cases to increase through the actions in the Recovery Plan, it isn't expected that this will rise to 50 cases. The revised figure is in the range of 35-40 cases (see Annex B for further explanation of this revised projection).

Time taken to close cases

The corporate target for 2005-06 is to close 50% of cases within 60 working days. At 31 December 2005, 48% of cases had been closed within this time. We project that we will be within +/- 5% of the target by the year end.

2.3.2 Backlog clearance – how many cases are in the backlog?

On a month by month basis the cases cleared have consistently been below the cases received. Whilst the gap is narrowing each month, the effect is that we have built up a backlog of cases and even the planned improvements in productivity will not be sufficient to clear this backlog of cases, in addition to new cases, in an acceptable timeframe.

At present there are 1325 FOI cases in total in the organisation. Of those 550 have been allocated to case officers and are in progress, 775 remain unallocated. Because productivity in the exemption teams hasn't increased in the way the productivity in the procedural teams has, the backlog has a disproportionate number of older complex cases.

Of the 775 cases which are currently unallocated there are approximately 500 complex cases and 275 less complex. It can be predicted that, as a general rule, delays with the complex cases are more likely to attract political and media criticism.

This request for funding is to clear these 775 cases.

3. Assessing the options

Relevant considerations in assessing the options must be, not only the amount of the financial requirement (total cost) but also the duration of that requirement. A long term resource requirement, which will permanently increase ICO baseline staffing, is regarded as

less favourable because of the longer term requirements for efficiency savings (duration). In addition, the window for additional funding is understood to be restricted to the 2006/07 financial year.

From a business perspective we must also consider the service levels the office is providing to individual complainants. An option which provides a shorter term solution would be preferable from this perspective (customer service). Any option must also take account of the lead in time and costs for recruitment and training (lead in time).

Finally, the working assumptions for the calculations are the backlog position as at 6 January 2006 and the projections for future productivity and intake. It is accepted that the backlog position will change and the projections may need to be amended as the Recovery Plan is developed and implemented. For now they represent the best information available.

3.1 Option 1 – Recruit additional full time staff

A working assumption is that the lead in period for different grades of staff is the same. Whilst in practice this may differ slightly, it is considered that the difference isn't so great to necessitate different calculations. Based on projected productivity levels (using an average of 35 closures per annum per caseworker), and the requirement for the bulk of the expenditure to be in 2006/07 this would require:-

Complex Cases

500 complex cases @ 35 cases per officer – 14.25 cluster 6 officers @ £32,750 = £466,688

Assuming recruitment started immediately, and staff were in place from March 2006, there would still be a 3 month period for training during which time productivity would be virtually nil. Therefore, to achieve the clearances in the remaining 9 months there would need to be additional officers.

500 complex cases @ 26.25 cases per officer – 19 cluster 6 officers @ £32,750 = £622,250

Added to this calculation there would need to be additional costs for IT kit, IT support, desks and office space. Our estimate is that this equates to approximately £4250 per person.

$£622,250 + (19 \times £4250) = £703,000$

Less complex cases

275 less complex cases @ 100 cases per officer – 2.75 cluster 4 officers @ £20,300 = £55,825

As before, to achieve these clearances in 9 months would require:

275 complex cases @ 75 cases per officer – 3.6 (rounded to 4) cluster 4 officers @ £20,300 = £81,200

Plus support costs @ £4250 per person

$£81,200 + (4 \times £4250) = £98,200$

Total cost of Option 1 £703,000 + £98,200 = £801,200

Total Cost	Duration of financial requirement	Customer Service	Lead in time
£801,200	Goes beyond 2006/07 – long term financial commitment. Particularly at cluster 6 where staff turnover is lower than at cluster 4.	Should clear cases within the financial year. Whilst newer staff would not be working on the oldest cases, they would still have complex work to do and may not achieve the productivity levels of their more experienced colleagues.	Recruitment - 3 months at best Training – 3 months

3.2 Option 2 – Second staff from OGDs or ex Civil Service staff on fixed term contracts

We have already seconded 2 staff from the Parliamentary Ombudsman’s Office in London and at the moment they are contracted to work for us until April 2006. We have also recruited on temporary contracts 2 other expert case workers who were formerly employed there. All four are experienced in investigating complaints made under the Code of Practice on Access to Government Information. We have dedicated office space in Millbank Tower which has electronic links from the office to our case management system database. Our first proposal is that these four staff are extended throughout 2006/07.

In addition, there is the potential to increase the number of individuals within this office, preferably on 12 month contract basis, although the extent of any expansion will be limited to the space we have available. The unknown factor in this option is the number of suitable staff who may be available (whether as secondees, early retirees or otherwise) within this timeframe.

For evaluation purposes we have estimated a total cost of £50,000 per annum per person, plus the £4,250 per person ‘set up’ costs. We have also assumed that this calibre of staff would only work on complex cases. Most sensibly, these would be central government cases which currently represent 31% of the caseload. A further consideration is some reduced ‘lead in’ period for any individuals in this category – they are likely to have “Whitehall knowledge” and may have some skills and experience relevant to complaint-handling, but they would still need familiarisation training with FOIA and with ICO policies and procedures.

This calculation starts with the maximum costs of this option.

Backlog = 500 complex cases

Assume each officer can clear 35 cases per annum

Maximum number of officers = 14

Maximum cost = 14 x £50,000 = £700,000 + (14 x £4250) = £759,500

Realistically it is neither feasible, nor desirable, to attach 14 staff to the London office. A more realistic estimate would be to retain those individuals we already have and place a further 4 staff. This option also needs to include the costs of a senior secondee to manage the London office, to provide improved liaison with Whitehall departments and to strengthen the “Whitehall knowledge” of ICO’s overall FOI effort. This is estimated at £75,000 + set up costs.

8 officers £50,000 + (8 x £4350) + (£75,000 + £4250) = £513,250

This option provides the potential to clear 280 complex cases.

Total Cost	Duration of financial req't	Customer Service	Lead in time
£513,250	Restricted to 2006/07	Provides complaint resolution within the financial year	The main factor will be in identifying suitable additional staff and securing their release in time for the start of the financial year.

3.3 Option 3 – Contract services of locum lawyers

We have already contracted the services of 2 locum lawyers during the 2005/06 year, with 2 more scheduled to start work during January 2006. Initially their duties have been restricted to reviewing draft decision notices. Recently, as part of the Recovery Plan, they have been used to review cases in the exemptions backlog to identify common issues, lead cases which may set precedents and high priority cases. Although this work is still in its infancy, it appears to have gone well and their duties will be expanded to case investigations.

These locum lawyers cost approximately £300 per day and costs are only incurred for the days they work. It is assumed that one locum would work for 200 days per year and that this would provide the same productivity as a full time cluster 6.

It is fair to assume their productivity would equal that of an experienced case officer and so calculations are based on the same working assumptions for productivity.

This calculation starts with the maximum costs of this option.

Backlog = 500 complex cases

Assume each locum can clear 35 cases per annum

Maximum number of locums = 14

Maximum cost = 14 x £60,000 = £840,000 + (14 x £4250) = £899,500

The lead in time to obtain these individuals is very short, and our experience is that people can be contracted within a couple of weeks and should become productive shortly thereafter. These individuals are comfortable working with legislation, but they would also still need familiarisation training with FOIA and with ICO policies and procedures.

This is a scalable option and whilst the maximum costs have been calculated here, these can be adjusted according to the capacity required.

Any more than 4 locum lawyers would create a separate requirement for management support. This could be provided by a more senior locum who would co-ordinate the work of the locum lawyers and liaise with internal legal and operational management. It has been assumed that this type of resource would cost £400 a day.

Total Cost	Duration of financial req't	Customer Service	Lead in time
Maximum cost for locums £899,500	Restricted to 2006/07	Provides complaint resolution within the financial year	Short lead in time, minimal training albeit there will be an ongoing

Total Cost	Duration of financial req't	Customer Service	Lead in time
			requirement for ICO management support and quality reviews.
Senior Locum (management) £84,250	Restricted to 2006/07	Provides complaint resolution within the financial year	Short lead in time, minimal training albeit there will be an ongoing requirement for ICO management support and quality reviews.

Option 4 - Do nothing

This option relies totally on the productivity gains for the exemptions caseworkers projected in the Recovery Plan. However, as these improvements are projected to create the capacity for fully staffed teams to clear projected intake i.e. achieve steady state, this doesn't create any spare capacity to clear the backlog.

The only way this option would create any further capacity, would be if intake dropped significantly. Annex B summarises the assessment of projected intake and productivity for 06/07.

Total Cost	Duration of financial req't	Customer Service	Lead in time
Nil	N/A	Cases in the backlog would not be cleared unless intake dropped dramatically – even then this is likely to take several years.	N/A

5. Recommendation

None of the options on their own provide a viable solution. However, a *combination* of the options, excluding option 4, has the capacity to provide additional capacity to clear the backlog and contain the bulk of the additional cost within the 2006/07 financial year.

It is recommended that:

From Option 1, we recruit 4 permanent cluster 4 staff to clear the less complex cases. Whilst these are permanent staff the current turnover rate for staff in this grade is 15% (which equals 11 officers per annum against the current total complement of cluster 4s) and, in addition, this is the most common grade within the Wilmslow office. These two factors significantly reduce the risk of an overbearing long term financial commitment.

Costs £98,200

Total cases cleared 275 less complex cases

From Option 2 (London) we retain the 4 existing temporary secondees/staff and place a further 4 expert case officers, plus an experienced senior secondee.

Costs £513,250

Total cases cleared 280 complex cases

From Option 3, we contract locum lawyers in sufficient numbers to clear 220 cases. This equates to 6.3 individuals for a full year (although we may choose to engage their services in alternative working patterns for operational and accommodation convenience).

Costs £403,500
(£378,000 + (6 x 4250))

Total cases cleared 220 complex cases

Total requirement for additional funding

Recovery Costs	£ 34,250
Option 1	£ 98,200
Option 2	£ 513,250
Option 3	£ 403,500
Option 3 management costs	<u>£ 84,250</u>
TOTAL COST	<u>£1,133,450</u>

Total backlog cleared (500 complex cases & 275 less complex cases)

ANNEX A

Requirement for consultancy support for the FOI Casework Recovery Plan

Background

The Information Commissioner's Office (ICO) has been handling complaints under the Freedom of Information Act 2000 since the legislation was brought into force in January 2005. As part of a review of internal process and procedures across the FOI Division we produced the FOI Casework Recovery Plan (6.12.05) which included a summary action plan for implementation from January 2006. This initial document has been developed into a Workstream Action Plan where actions are grouped by function rather than by their stage in the complaint process (which is how the FOI Casework Recovery Plan was presented). The primary purpose of the plan is to:

- Clear the backlog of FOI complaints within the 2006/07 financial year
- Organise the FOI division to achieve corporate FOI performance targets
- Make best use of existing resources
- Improve existing performance

Whilst the implementation of the plan is expected to extend throughout 2006, there will be an intensive phase of design and development work during the first quarter of 2005/06. Because there are multiple workstreams, there is a need for formal project management to co-ordinate the delivery of timely, quality outputs.

Workstreams

The FOI Casework

- Process Design and Case Handling;
- Performance Management and Quality;
- Induction & Training;
- Guidance and Best Practice Development;
- Organisation Design;
- Benchmarking; and
- Project Management.

Key tasks within each of the workstreams

Process Design and Case Handling

- Map existing process
- Identify bottlenecks & double handling
- Develop future streamlined process and implementation approach

Performance Management and Quality

- Define case states for caseload analysis and future management
- Develop performance framework with KPIs
- Develop quality system – initial case planning, investigation checklists, etc

Induction & Training

- Recruitment strategy for FOI resources
- Develop FOI technical training package for 'classroom' delivery

Guidance and Best Practice Development

- Develop comprehensive procedures manual
- Develop approach to capture 'best practice' & policy lines

Organisation Design

- Assess the existing functions and tasks within all the FOI teams in the ICO
- Taking account of the overall organisation structure, to develop organisation structure recommendation(s) for the FOI Division
- Develop proposals for the development of a London ICO office

Benchmarking

- From October 2006, schedule possible benchmarking activity

Project Management

- Co-ordinate the delivery of workstream deliverables and provide regular progress reports to ET
- Monitor budget expenditure and overall progress
- Organise regular briefing and progress meetings
- Report variances

External Support Requirement

Support is needed to:-

- Co-ordinate delivery of the Workstream Action Plan using an appropriately formal project management approach
- Take lead responsibility for the Organisation Design Workstream tasks
- Provide input to the other workstreams to influence outputs
- Provide regular progress reports to the ICO Executive Team
- Brief the Information Commissioner on progress

It is expected that this support will be required until the end of March 2006.

ANNEX B Projected case intake and productivity rates for 2006/07

Total case intake

- To date monthly receipts have varied between 290 and 150.
- Average receipts for the last six months were 210 and, for September to November, it was 203.
- Based on evidence from the DCA clearing house, central government referrals seem likely to fall.
- Evidence from other jurisdictions supports this, but there are some reports of increased referrals to other public bodies (which represent the majority of the ICO work) and some aspects of this Business Case would need to be re-visited if our assumptions prove to be significantly lower than reality.

The ICO has however assumed that total receipts will stabilise at between 170 and 200 per month (2040 and 2400 per annum).

Breakdown of case types

Based on the existing split between procedural and exemption cases there is a decline in the number of exemption cases referred to the Office. This peaked at over 100 in summer 2005 and by the Q3 had even out to less than 50 each month. Our assumption based on this recent information is that between 40 and 50 cases that can be classified as complex will be received each month (480 to 600 per annum).

The remainder 130 and 150 per month (1560 and 1800 per annum) are expected to be less complex cases.

Future productivity

We expect that the actions in the Recovery Plan, strengthened by increased management support, will increase productivity, particularly in the exemptions teams where there hasn't been the steady improvements we have seen in the procedural teams. Whilst there may be scope for further improvements, it is fair to assume that these are less than they were in the autumn.

Based on the anticipated improvements in:

- Early case reviews
- Improved case investigation process
- Improved procedural guidance
- A tougher approach towards public authorities, especially the poorly prepared or uncooperative
- Streamlined decision production and sign off
- Improved intelligence about case queues and case states

It is projected that future productivity per annum will be:

- 35 - 40 per caseworker per for complex cases
- 100 per caseworker for less complex cases