

Case 200501593: Scottish Legal Aid Board

Summary of Investigation

Category

Scottish Executive and Devolved administration: Scottish Legal Aid Board;
Handling of application.

Overview

The complainant (Mr C) was unhappy that the Scottish Legal Aid Board (SLAB) had terminated his grant for legal aid on the grounds that he had not informed them he was living with a partner (Ms C) and a report placed before a court said that he was. Mr C said he had not been living with Ms C and SLAB did not give him the opportunity to produce evidence concerning this.

Specific complaint and conclusion

The complaint which has been investigated is that SLAB terminated Mr C's legal aid without considering his evidence (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. A man, referred to in this report as Mr C was in receipt of legal aid. On 19 May 2004 the Scottish Legal Aid Board (SLAB) wrote to him to say they were aware that a report had been laid before the court that said Mr C lived with his partner Ms C. In his legal aid application, Mr C had indicated he was living alone. SLAB warned him if he had made a false statement they could withdraw legal aid and asked for an explanation. Mr C wrote to them to say that the report had contained a number of errors and that he could supply proof that Ms C was not living with him. After further correspondence, SLAB wrote, on 12 October 2004, to confirm that they had decided to stop making legal aid available. Mr C complained and on 22 November 2004 received a letter from SLAB which said that they considered the decision taken was correct based on the information available. In particular it said that Mr C had not challenged the report and had been prepared for it to be used in court as it stood. On 8 September 2005 Mr C complained to the Ombudsman.

2. The complaint from Mr C which I have investigated is that SLAB terminated Mr C's legal aid without considering his evidence.¹

Investigation

3. In investigating this complaint, I obtained and considered relevant correspondence between Mr C and SLAB. I also made enquiries of SLAB.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and SLAB were given an opportunity to comment on a draft of this report.

Complaint: SLAB terminated Mr C's legal aid without considering his evidence

5. In April 2004 an independent solicitors (the Reporter) prepared a report for a court in connection with contact arrangements concerning Mr C's son. This report stated that Mr C lived with Ms C and Ms C's son.

6. On 19 and 24 May 2004 letters were sent to Mr C and his solicitors asking for an explanation and stating that in terms of the Civil Legal Aid (Scotland)

¹ The decision to terminate legal itself can only be overturned by judicial review.

Regulations 2002 if, after the person was given the opportunity of submitting representations, the Board was satisfied that a person had made an untrue statement in an application, they may cease to make legal aid available. Mr C was given until 7 June 2004 to make such representation.

7. On 27 May 2004 Mr C wrote to SLAB to say the Reporter had been told that Ms C lived in X but stayed with Mr C when his own son visited so they could all be together. He said he and Ms C had no financial relationship and he could provide evidence of separate rent books and bills. He apologised for any confusion.

8. On 2 June 2004 SLAB wrote back to Mr C to say that the report clearly stated that Ms C had said she lived with Mr C and, in the notes of his interview that Mr C resided with Ms C. They asked where the Reporter could have received this information if not from Mr or Ms C. They asked for a response by 16 June 2006 and the letter was copied to Mr C's solicitors. On 13 June 2004 Mr C wrote that although he hoped to move in with Ms C in the future this was a long way off. He said he had filled in the legal aid forms honestly and had taken the legally binding declaration on the form seriously. Mr C said he had concerns about the contents of the report and would be happy to fund another. He also said as SLAB had not requested any of the information offered to clear this up that he was unsure how to bring this to a conclusion.

9. SLAB contacted the Reporter on 28 June 2004 and received a response on 7 September 2004. The Reporter apologised for the delay and said she had reviewed her notes. She had interviewed Mr and Ms C separately. When interviewing Mr C she noted that he told her they had been living together for two years, although Ms C retained a separate property. Ms C also told her they were living together and that her son was living with them but attending school in X.

10. An internal referral note indicated that this was considered by three SLAB officers. All three indicated they believed the Reporter. One officer felt that the 'normal' checks (see paragraph 12) should be undertaken but two recommended termination on the grounds that the report had not been challenged and that this was sufficient to show cohabitation. Further checks were not made and the decision to terminate was communicated to Mr C on 12 October 2004.

11. Mr C wrote to SLAB on 12 November 2004. He said he was concerned that SLAB said they had carefully considered this and not asked for any of the evidence he and Ms C could produce. He also said, if he had been aware that the report by the Reporter was not only for the court but for SLAB, he would have corrected the errors but did not think that the error would affect the court's decision on granting him access to his son and did not question them although these were detailed to his solicitors. He also pointed out that in the initial writ before the court his solicitors had indicated he lived alone.

12. In response to my enquiries, SLAB provided more detail on their 'normal checks' and said:

'These routine checks consist of enquiries to local authorities in relation to the payment of council tax, information held on the electoral roll and whether there is any other information a local authority can provide such as housing details where local authority housing has been provided or where housing benefit is in payment. These routine checks, however, are often unsatisfactory. We are aware that even where local authority records show, for example, that an individual is claiming council tax as a single occupant of a house, this is, of itself, not necessarily a categorical assurance that no cohabitation is taking place.

The alternative checks in this particular case involved examination of the court report and obtaining information from the Reporter. This gave us clear and direct information about the position presented to the court Reporter by [Mr C] and his co-habitee.'

13. Mr C responded to SLAB comments and said he was concerned normal and routine checks were not undertaken. He also said that he only received the report the day before he was due in court and he was not informed that he could contest or contradict the contents. It should be noted that in his initial letter to the Ombudsman Mr C also said he had only received the report the day before he was due in court. He stated that as his solicitors, to whom he pointed out the errors, advised him that the report was in his favour and, as he had not seen his son for some time, he did not contest the report.

Conclusion

14. SLAB have decided to accept a report prepared by an independent solicitors instead of carrying out further checks. I do not consider this to be unreasonable in the circumstances. They carried out checks with the

independent solicitors. Further, any of the checks referred to in paragraph 12 or the evidence volunteered by Mr C would not necessarily have confirmed the position. Mr C has consistently said he was unaware of the implications of his decision not to correct the errors in the report. This decision was, however, made with legal advice and, as he consistently stated, he was aware he had signed a legally binding declaration when he completed the legal aid form. In the circumstances, I do not uphold this complaint.

23 May 2007

Explanation of abbreviations used

Mr C	The complainant
Ms C	Mr C's partner
SLAB	Scottish Legal Aid Board
The Reporter	Independent Solicitor who prepared a report for the court
X	Location where Ms C lived

List of legislation and policies considered

The Legal Aid (Scotland) Act 1982

Civil Legal Aid (Scotland) Regulations 2002