

Case 200503511: Scottish Legal Aid Board

Summary of Investigation

Category

Scottish Government and devolved administration; Policy/Administration

Overview

The complainant (Mr C) was a solicitor representing a company which was defending a court action. The pursuers in this case had applied for Legal Aid and Mr C complained that delays in reviewing the award of Legal Aid were prejudicial to his clients.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) there were unreasonable delays by the Scottish Legal Aid Board (SLAB) in reviewing Mr C's opponents' Legal Aid status and these delays 'disadvantaged' his clients (*upheld only to the extent that Mr C's clients experienced a period of uncertainty over the outcome of the consideration of representations*); and
- (b) these delays were in breach of the service standards set by SLAB (*not upheld*).

Redress and recommendations

The Ombudsman recommends that SLAB:

- (i) apologise to Mr C for failing to update him adequately about the progress of their considerations; and
- (ii) implement measures to ensure that information received regarding the ongoing grant of Legal Aid is processed efficiently and that communications with parties involved in this process are clear and timely.

The Board have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 25 August 2004, the complainant (Mr C) raised a formal objection with the Scottish Legal Aid Board (SLAB) to the ongoing grant of Civil Legal Aid to his opponents in a legal action. The action concerned a claim for compensation by a number of pursuers against a travel company (the Company) and Mr C represented the Company's insurers. Mr C argued that the Legal Aid certificates should be withdrawn from the pursuers on the grounds that, in other actions against the Company relating to the same incident, the court found in favour of the Company. Mr C was informed on 20 January 2005 that Legal Aid would not be withdrawn and he then made further verbal representations. SLAB accepted that these concerns should be examined and, after seeking clarification of some issues, they finally notified Mr C on 10 August 2006 that the grants of civil Legal Aid would continue. The case was heard in October 2006 and opinion given in February 2007, in favour of the Company.

2. Mr C complained to SLAB on 24 June 2005 and, after exhausting SLAB's own complaints procedure, he made a complaint on behalf of his clients to the Ombudsman on 16 March 2006.

3. The complaints from Mr C which I have investigated are that:

- (a) there were unreasonable delays by SLAB in reviewing Mr C's opponents' Legal Aid status and these delays 'disadvantaged' his clients; and
- (b) these delays were in breach of the service standards set by SLAB.

Investigation

4. In order to investigate Mr C's complaints, I reviewed correspondence between Mr C and SLAB. I made further inquiry of SLAB on 19 December 2006 and received their detailed response on 22 January 2007. This response included relevant parts of the Legal Aid (Scotland) Act 1986, information supplied by SLAB to opponents and the copies of SLAB's own service standards.

5. 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 the first draft of this report. As a result of comments received, a further draft was issued for comment to all parties.

Background

6. The legislation governing Legal Aid in Scotland (The Legal Aid (Scotland) Act 1986) allows for opponents in a case to make representations 'as to the application' of Legal Aid. An amendment to the legislation by the Scottish Parliament in 2002 formalised the existing practice of allowing opponents to bring to SLAB's attention any information that may have an impact on the three tests for eligibility for civil Legal Aid. These tests concern the financial position of the applicant; whether they have a legal basis for bringing the case; and the reasonableness of the use of public money in the pursuit of the case. The tests relate to the application for financial assistance and are not intended to prejudge the matters of fact in a case. SLAB are bound by strict confidentiality rules.

(a) There were unreasonable delays by SLAB in reviewing Mr C's opponents' Legal Aid status and these delays 'disadvantaged' his clients

7. In this complaint, it is necessary to establish whether there were unreasonable delays, whether Mr C's clients suffered disadvantage by any delays and whether Mr C was kept adequately informed of progress.

8. Mr C's initial objection to the granting of civil Legal Aid to his opponents was made on 25 August 2004 and this was acknowledged on 24 September 2004. A letter from SLAB on 8 December 2004 acknowledged a delay and apologised for it. Mr C eventually received confirmation of the continuation of Legal Aid for the pursuers on 20 January 2005.

9. Mr C was in regular correspondence with SLAB over this period, seeking an update on his opponents' position. After SLAB acknowledged delay in their letter of 8 December 2004, Mr C was sent updates on progress in response to his inquiries.

10. Mr C made further representations to SLAB on 3 February 2005, disagreeing with the decision to allow Legal Aid to continue and asking for an explanation of the decision. SLAB agreed that the convener of the Legal Services sub-committee would consider the representations lodged and this was notified in letters of 2 March and 16 March 2005, the latter saying that Mr C would be informed of any change of his opponents' Legal Aid status. Further updates on progress were sent to Mr C in response to his inquiries on 12 May 2005 and 22 June 2005.

11. In the midst of this exchange of correspondence, Mr C made his formal complaint to SLAB about delays and received responses from the Chief Executive on 5 and 19 July 2005.

12. From this period until the final notification that Legal Aid would continue on 10 August 2006, SLAB offered updates on the progress of their considerations, in response to inquiries by Mr C. At times, there were periods when no updates on progress were provided, including the periods from 19 July 2005 to 11 October 2005 and from 8 December 2005 to 10 March 2006.

13. Mr C also asked for a statement of the reasons for this delay on a number of occasions. He had been advised that SLAB were bound by strict confidentiality rules and were, therefore, unable to provide reasons for the delay as this would breach confidentiality (see paragraph 6). Mr C did not believe that the debate over the reasonableness of the case necessitated a breach of confidentiality. SLAB did ask the pursuers' solicitors if they would be prepared to waive the confidentiality in this case, in order to give Mr C an indication of the nature of SLAB's inquiries, but this was refused.

14. In their correspondence with the Ombudsman's office, SLAB maintained that their inquiry into the merits of allowing Legal Aid to continue involved some complex legal issues. They said that it was reasonable for them to grant extensions of time to the legally aided parties' solicitors so that the relevant information could be sought for SLAB's sub-committee to make a decision. In response to Mr C's complaints, they stated that they did not allow unlimited time for responses to their inquiries but that it would be disproportionate to withdraw Legal Aid certificates on the grounds of delays. They further stated to this office that their primary client in any application for Legal Aid is the applicant and that the withdrawal of financial assistance would be a decision with serious consequences.

15. From evidence supplied by SLAB, I am of the view that they were generally attentive in seeking information from the pursuers' solicitors. Indeed, SLAB reminded these solicitors that Mr C was anxious for a resolution to the review. However, SLAB did not appear to have chased up information promised by the pursuers' solicitors on 25 November 2005 until 26 April 2006. At that time, they set a date of 15 May 2006 as a deadline for submitting the necessary information. In the absence of that information, they stated that SLAB's sub-committee would reach its decision based on the available

evidence. The information was received shortly after that, on 8 May 2006. Thereafter, the process was progressed until its final resolution when SLAB notified Mr C that the grant of Legal Aid would continue.

(a) Conclusion

16. SLAB have already acknowledged and apologised for the delay in considering Mr C's initial representations regarding the ongoing granting of Legal Aid to his opponents. On 2 March 2005, the relevant committee within SLAB decided to review the cases and asked for further information from the pursuers' solicitors on 12 May 2005. They did not receive that information until 8 May 2006, almost one year later. This was a significant period of time.

17. I accept that SLAB were exercising their responsibilities towards the applicants carefully and the issues at hand were complex. Indeed, it may have been prejudicial towards the applicants for SLAB to have come to a conclusion about the representations without the information they were awaiting.

18. From the correspondence I have seen, it appears that ongoing updates to Mr C were offered only in response to his requests for information.

19. Mr C stated that his clients suffered disadvantage as a result of the delays in reviewing these Legal Aid certificates because the uncertainty of the pursuers' status delayed the process. Even once the date for hearing the case was set in mid-2005, he claimed that there was uncertainty over whether Legal Aid would continue and this was unfair to his clients. There is no evidence of material disadvantage to Mr C's clients as a result of the length of time it took for SLAB to complete their considerations and they made it clear to him that the pursuers' legally aided status continued. However, I accept that a delay in concluding a process whose outcome could, in theory, have resulted in the termination of the legal action was a matter of some inconvenience to Mr C's clients.

20. The primary cause of this inconvenience was a delay by the applicants' solicitors in supplying essential information to SLAB. This delay meant that Mr C's clients experienced an extended period of uncertainty over the outcome of the consideration of the representations. This uncertainty may have been mitigated by a more proactive approach by SLAB in providing updates to Mr C and, to that extent, I uphold this complaint.

(a) Recommendation

21. I am conscious that SLAB do not have specific responsibilities towards opponents in their handling of requests to review Legal Aid status but, in view of the impact of delays on all parties involved in the process, the Ombudsman recommends that SLAB apologise to Mr C for failing to update him adequately about the progress of their considerations. A further recommendation relating to this complaint is made below (see paragraph 26).

(b) These delays were in breach of the service standards set by SLAB

22. Mr C complained that, in taking the time they did to conclude their consideration of representations about the continuation of Legal Aid in this case, SLAB breached their own service standards. These standards are agreed annually by SLAB and advertised publicly. They include targets for meeting timescales for the initial consideration of applications for Legal Aid and for the review of applications which have not been successful. These targets are in the form of an agreed proportion of applications to be considered within an agreed period of time and these targets are reviewed each year. Other targets are set for the handling of correspondence of applicants and objectors. The service standards also take the form of commitments to supply certain information and to conduct business in accordance with qualitative factors such as courtesy and respect.

23. In their submission to the Ombudsman's office on 22 January 2007, SLAB stated that they did not believe it would be appropriate to grant 'rights' to opponents who are, by definition, taking a conflicting stance to the applicant for Legal Aid. The applicant is regarded as the primary 'customer' of the Legal Aid process. Therefore, SLAB have not set out specific time periods for the conclusion of their consideration of representations made by opponents. However, they have set timescales for the acknowledgement of and response to correspondence from opponents (seven and 28 days respectively).

24. SLAB have also indicated to the Ombudsman's office that they have considered the introduction of timescales for the first substantive action they take in consideration of representations from opponents. Because of the complex nature of the issues behind many such representations, they do not feel it would be realistic to set timescales for concluding their considerations.

(b) Conclusion

25. It is the case that there were no specific service standards set for the consideration of Mr C's representations. There were some initial delays in responding to Mr C's first contact with SLAB and these were in breach of the service standards relating to the general handling of correspondence. However, as noted above (see paragraph 8), SLAB apologised for this before Mr C complained to this office. On all other occasions, SLAB were attentive in responding to Mr C's correspondence. I do not, therefore, uphold this complaint.

26. However, other issues arise from this particular complaint. SLAB have stated that they regard the time taken to consider the ongoing grant of Legal Aid in this case to be reasonable because of the complex nature of the information they were seeking from the applicants' solicitors. Although there is not a specific service standard relating to this process, Mr C argued that this timescale was 'unreasonable' and 'prejudicial'. I did not find that Mr C's clients were prejudiced or disadvantaged and upheld this complaint only to the extent that aspects of SLAB's administration inconvenienced Mr C's clients (see paragraphs 16 to 20). I did so on the basis that public bodies have a duty to conduct administrative processes effectively, having regard to parties whose legitimate interests are affected by these processes. SLAB have argued against setting artificial timescales for concluding representations on the grounds of the complexity of the cases they consider and I accept that this position is reasonable. However, it is also reasonable to expect that the consideration of representations is processed as quickly as is practical, without compromising the integrity of the process, and that the expectations of affected parties are managed efficiently.

(b) Recommendation

27. The Ombudsman recommends, therefore, that SLAB implement measures to ensure that information received regarding the ongoing grant of Legal Aid is processed efficiently and that communications with parties involved in this process are clear and timely.

28. The Board have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Board notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The solicitor who made a complaint on behalf of his clients
SLAB	The Scottish Legal Aid Board
The Company	A travel company whose insurers were represented by Mr C

Glossary of terms

Civil Legal Aid

Funding to help people who qualify to get legal advice and 'representation' (where a solicitor puts their case in court) in civil cases

List of legislation and policies considered

Scottish Public Services Ombudsman Act 2002

Legal Aid (Scotland) Act 1986

SLAB Service Standards 2004/05 and 2006/07