

Chief Executive
Colin Lancaster

Thistle House, 91 Haymarket Terrace
Edinburgh EH12 5HE



www.slab.org.uk

PE1570/B

DX ED555250 EDINBURGH 30

Legal Post LP2 EDINBURGH 7

Telephone 0131 226 7061

Fax 0131 516 5580

Ms Sigrid Robinson
Assistant Clerk
Public Petitions Committee
Room T3.40
The Scottish Parliament
EDINBURGH EH99 1SP

Direct Dial Number: 0131 240 2060

Your Ref:

Our Ref: CL/CAW/cs

*Please quote the department
above and our reference*

20 October 2015

Dear Ms Robinson

CONSIDERATION OF PETITION PE1570

Thank you for your letter of 23 September 2015 requesting information from SLAB in relation to two issues which are

- What is the current timescale for processing applications?
- What proposals does the Board have for how processing timeframes could be further truncated?

SLAB has published service standards for dealing with all aspects of the processing of civil legal aid applications. Currently, these state that 96% of initial applications for civil legal aid should be processed within 31 working days. Where an application for civil legal aid is refused our legislation provides the opportunity for an applicant, through their solicitor, to seek a review of that decision. Our service standard for dealing with review applications is that 96% will be dealt with within 29 working days. For the current financial year we are exceeding the service standards with 99.3% of initial applications being processed within 31 working days and 98.5% of review applications being dealt with within 29 working days.

Our service standards are calculated on the time an application is in our hands and capable of being considered. It does not include any period when we have asked for further information from the applicant or the solicitor acting for the applicant.

Over the three month period July to September 2015 the average number of working days taken to decide applications in our hands was 16.3 days. Over the same period the average total duration (based on calendar days) between an application being received and decided was 46.3 days. This includes time when the application was continued to get further information.

The statutory tests to be applied to such applications require that we get detailed information from an applicant and their solicitor. There are three tests that need to be met. These are

- whether an individual is financially eligible both in terms of their disposable income and disposable capital;
- whether they have a probable cause or simply put a legal basis for their case; and
- whether it is reasonable in all the circumstances to make legal aid available.

Assessing financial eligibility can be complex. While there are some welfare benefits which, if paid to an individual applying for civil legal aid, essentially passport them on to legal aid so far as financial eligibility is concerned, for any individual in employment or who is self-employed a full financial eligibility test requires to be carried out. We need to get information about all of the income that an individual expects to receive over the 12 month period following the submission of a legal aid application. From that we need to deduct all reasonable expenditure that that individual expects to incur over the same period. Obtaining adequate information about both income and outgoings often means we need to continue an application for the provision of further information about and verification of, financial matters. It is only when this work has been fully completed that we can be satisfied whether or not someone qualifies based on their income. We also have to assess what disposable capital an individual may have and again this requires us to be provided with verification of any capital held by an applicant.

In assessing the legal merits of an application for civil legal aid we consider the material provided by the applicant's solicitors in support of the application. The test of probable cause is generally straight-forward in contact proceedings. Provided the action is raised in an appropriate Court and the applicant is entitled to seek contact

then this test will be met. However, we also have to consider whether it is reasonable to make public funding available for any case. In assessing the reasonableness test we will take into account a broad range of factors including

- the prospects of success for any action;
- what attempts have been made to settle matters without recourse to litigation;
- the practical benefit that an individual will get from the litigation; and
- what a private fee-paying client of modest means would do when faced with the same set of circumstances.

Determining all of these aspects of a civil legal aid application can be complex and very much depends on the quality of information provided by the applicant and their solicitor. We publish detailed guidance for solicitors, which sets out these factors and the information we need to come to a decision. In many cases, as with financial matters, we find that information about the case is incomplete, or does not sufficiently address the factors set out in our guidance. Where the necessary information is provided at the outset, we are generally able to reach a decision quickly, as the figures set out above demonstrate. However, where we have to seek further information on either financial circumstances or the legal basis of the application, this will inevitably extend the overall timescale.

Added to this, we are in most cases obliged by law to notify the opponent or the opponents in any action of the application for civil legal.

We send a copy of the statutory statement to the opponent. The statutory statement is a document which sets out the nature of the proceedings for which legal aid is being sought and the applicant's interest in those proceedings. We also need to tell an opponent about their opportunity to make representations to us about the application.

The legal aid regulations give an opponent 14 days, or 28 days if resident outwith the United Kingdom, to lodge representations about an application in writing. We must consider any such representations received within this time frame before deciding the legal aid application. We are not able to take a decision to grant civil legal aid until the appropriate period for lodging representations has elapsed although, from time-to-time, we may take a decision to refuse an application for civil legal aid if it is

lacking in fundamental information that makes it clear from the outset that the statutory tests for civil legal aid cannot be met.

The requirement both to notify an opponent about an application for civil legal aid and to give them 14 days to make representations means that a decision to grant civil legal aid cannot be taken in any shorter timescale than 14 days. Where representations are received and they contain information we need to consider further we send the representations to the applicant, through their solicitor, for comment. It would be inappropriate for us to take into account what is said in representations without allowing the applicant the opportunity to comment on them. This does mean that in such situations the time frame for taking a decision is extended.

We are aware that being involved in civil litigation is stressful for all involved. This is particularly so in family actions. Equally however in determining whether the statutory tests for civil legal aid are met we have to consider applications fully taking into account all relevant information we have whether from the applicant, their solicitor or the opponent and their solicitor. The time taken to consider each individual application will vary depending on the issues raised within that application.

The assessment of a civil legal aid application has the potential to be complicated and careful examination of relevant issues is crucial: while the applicant is clearly keen that legal aid be granted as quickly as possible, SLAB's role is not simply to 'rubber stamp' applications, but to carry out a proper assessment of an application to ensure that the appropriate decision is reached. In doing so, we are applying tests set down by Parliament which make clear that legal aid is not simply available as of right if certain boxes are ticked. The tests, and their application by us, seek to ensure an appropriate balance between the interests of applicants, opponents, the justice system, the taxpayer.

While the petitioner rightly points to research evidence that the interests of children will usually be best served by ongoing contact with both parents, this is obviously not always the case. There is also research evidence that court proceedings in relation to contact can themselves be stressful and damaging for all involved, including the children. It is therefore important that court proceedings are not considered a first resort where contact difficulties arise. The legal aid tests, and our guidance on contact applications in particular, emphasise this point.

Excessive delay in getting appropriate contact arrangements in place can also be detrimental, but it would be inappropriate and counter-productive for the legal aid process to be in some way short-circuited to allow speedier access to the courts when alternative and in most circumstances preferable routes to arranging contact have not been fully explored. We have recently published revised guidance on this very topic, emphasising the importance of informal and consensual approaches to making contact arrangements prior to any application for legal aid being made. Of course, if such approaches prove unsuccessful, as might be the case where there is an intransigent parent with residence who rejects reasonable proposals or refuses to engage in any informal process, court action may be necessary. In such circumstances, we are keen that the process of applying for legal aid should be as smooth and quick as possible for all concerned, whether the end result is a grant or refusal. For all of the reasons outlined above, that is not always the case, although we strive to ensure that our own internal processing is as speedy as is consistent with the proper application of the relevant tests.

As with other types of case, and in addition to the complexities that might be thrown up by the circumstances of the case, the time taken to reach a decision on an application for legal aid for contact proceedings varies according to whether the individual applying for legal aid is in receipt of one of the benefits that passports financial eligibility for civil legal aid or requires a full assessment of financial eligibility. For passported cases, the average time taken by SLAB to decide the application is currently 16 working days. For applications where a full assessment of financial eligibility is needed the average time for SLAB to reach a decision is 20 working days. However the difference in the total duration between the application being made and the decision – including time both in SLAB’s hands and back with the applicant or their solicitor - is significantly longer if a full financial assessment is needed. For those applications that do not need a full financial assessment the average total duration is 33 calendar days and for those applications where a full assessment is required it is 69 calendar days.

The difference in the duration reflects the time taken to get all the information we need from the applicant or their solicitor to decide whether or not to grant legal aid. It illustrates how important it is for us to receive applications which are complete in

terms of the information that will be needed to carry out our assessment of the statutory tests.

The Committee asks what proposals SLAB has for truncating timescales. As the above figures and description of the process and factors make clear, the overall timescale for reaching a decision is often not under SLAB's control and indeed on average more time is spent back with the applicant or their solicitor than is spent by SLAB in coming to a decision. Our published service standards and key performance indicators have always focused on time in our hands – the part of the process that is more directly within our control – and on this measure we have very significantly improved our efficiency over recent years. Within current resources, I believe that our own handling times reflect sound, efficient processes and deliver a strong and continuously improving performance.

Our own research with those applying for legal aid suggests that most find the process straightforward and only 15 out of 765 respondents suggested that the process should be made faster. However, the process as described to the Committee by Mr Lee, while only partly relating to legal aid, is clearly seen as complex, confusing and frustrating. It is also clear that the experience of those applying for legal aid (and indeed their opponents) is only partly determined by SLAB's ability to efficiently perform its own functions of applying the statutory tests for legal aid.

As the figures above suggest, a significant factor influencing timescales is the need for detailed financial information and verification of income and capital. We have recently reviewed the form used to gather this information with a view to making it more straightforward and will continue to review it. We are also currently developing proposals to enable applicants to submit financial information online (our interaction with solicitors has been fully online for several years). Further work is underway to identify other ways of streamlining the process, including the extent to which we request full verification of financial information at the outset. A careful balance has to be struck here between improving ease of access to the system while ensuring that those granted legal aid do in fact meet the statutory tests and minimising the risk of fraud.

We are engaging widely with the legal profession and others to develop proposals. Where it is within our power to implement these, we will do so following appropriate consultation. Other proposals may require new regulations, or even primary legislation. Paul Wheelhouse MSP, Minister for Community Safety and Legal Affairs, has asked SLAB to develop streamlining proposals and has indicated a willingness to consider regulations or legislation should the current process of engagement indicate that either may be necessary to provide a modern, accessible and fair legal aid system.

I hope that the Committee finds this information helpful. If there is any further information we can provide, please do not hesitate to contact us.

Yours sincerely

Colin Lancaster
Chief Executive