

Case 200502372: Scottish Legal Aid Board

Summary of Investigation

Category

Scottish Executive & Devolved Administration: Legal Aid; Delay

Overview

The complainant (Ms C) was concerned that it was not until six years after the conclusion of her divorce that she was presented with her bill for legal services. She believed this was an unreasonable length of time to have elapsed and that the actions of the Scottish Legal Aid Board (SLAB) had been responsible for causing a delay to the presentation of her final liability.

Specific complaint and conclusion

The complaint which has been investigated is that the SLAB unreasonably delayed the presentation of Ms C's final liability relating to her divorce proceedings (*upheld*).

Redress and recommendations

Prior to the publication of this report, SLAB apologised to Ms C for the delay as the Ombudsman had recommended in a draft version of this report. The Ombudsman has no further recommendations to make.

Main Investigation Report

Introduction

1. On 20 December 2005 a woman (referred to in this report as Ms C) complained to the Ombudsman that six years had passed between the conclusion of her divorce and the presentation of her bill for legal services. Ms C believed that the actions of SLAB had been responsible for causing a delay to the presentation of her final liability.

2. The complaint from Ms C which I have investigated is that SLAB unreasonably delayed the presentation of Ms C's final liability relating to her divorce proceedings.

Investigation

3. I have examined the relevant correspondence and complaint file from SLAB. I have reviewed the copies of correspondence and comments submitted to this office by Ms C. I have examined correspondence between SLAB and the solicitors who represented Ms C during her divorce. I have set out my findings of fact and conclusion. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and SLAB have had the opportunity to comment on a draft of this report.

Complaint: The Scottish Legal Aid Board unreasonably delayed the presentation of Ms C's final liability relating to her divorce proceedings

4. When Ms C was divorced in 1998 she was in receipt of civil legal aid. Civil legal aid is defined in section 13 of the Legal Aid (Scotland) Act 1986 as 'representation by a solicitor'. Civil legal aid can only be delivered through a solicitor. The solicitor makes the application for legal aid and the grant of legal aid is made through the solicitor. It is, therefore, consistent with SLAB's governing legislation that their communication should be with an assisted person's solicitor and not directly with the assisted person themselves. Direct communication with the assisted person should only be undertaken by the solicitor.

5. Ms C was advised by her solicitor at the outset of the proceedings how SLAB would calculate her liability and that the amount she would be required to pay had been estimated as £12,000 plus counsel's fees.

6. In October 1998, SLAB contacted Ms C's solicitors to confirm that, once the matrimonial home was transferred to Ms C, she would have made a 'recovery of property' (see Annex 2) and, therefore, be liable to pay SLAB to cover the cost of the solicitors' account.

7. The solicitors sent their account to SLAB in June 1999. SLAB staff assessed the account in accordance with legal requirements and proposed alterations. An offer of payment was made by SLAB to the solicitors on 19 August 1999. Debate between SLAB and the solicitors concerning the amount to be paid continued until April 2001 and the solicitors' costs were agreed in May 2001.

8. Following the agreement of the costs, SLAB entered into correspondence with the solicitors in order to clarify the terms of the divorce settlement and the value of the property concerned. This information would be used to determine Ms C's final liability to SLAB.

9. Between August 2001 and June 2004 SLAB wrote to the solicitors nine times for information, asking each time for a response within a particular timescale. In the case of six of these requests the solicitors responded to the requests within the given timescale or SLAB followed-up the letters within a reasonable period of the given timescale being exceeded. However, in the case of the other three requests for information the solicitors did not respond to the requests within the timescale and the time taken for SLAB to follow-up this lack of response is laid out in the table below:

Date of letter from SLAB	Timescale given for response	Date of follow-up letter	Timescale given for response	Date of response letter	Time from initial letter to response
2 August 2001	28 days	27 February 2002	28 days	11 March 2002	7 months
11 April 2002	28 days	4 October 2002	By return	15 October 2002	6 months
26 October 2002	28 days	25 March 2004	28 Days	29 June 2004	20 months

10. The response received on 29 June 2004 enabled SLAB to calculate Ms C's liability and this was communicated to the solicitors in July 2004. In August 2004, the solicitors informed SLAB that they had had no contact with Ms C since 1999 but that she had been advised of her liability to pay SLAB.

11. SLAB sent Ms C a letter via the solicitors in November 2004. They were again advised that the solicitors had not been in contact with Ms C since 1999 and that they did not know her whereabouts. SLAB sent a letter to Ms C's previous address in December 2004, advising her of the amount she was liable to pay, which was £18, 716.03. This reached Ms C in late December 2004 and she began correspondence with SLAB in January 2005.

12. Ms C and SLAB corresponded about the amount of her liability, the length of time it had taken to present her final liability and the responsibilities of SLAB, Ms C and her solicitors. In September 2005 Ms C made a formal complaint to SLAB.

13. On 17 October 2005, in response to Ms C's complaint, SLAB's Director of Corporate Services and Accounts wrote 'we will change our practice to inform people in receipt of legal aid when their solicitor fails to respond promptly to our correspondence'.

14. Having completed SLAB's complaints process, Ms C complained to the Ombudsman on 20 December 2005.

15. In responding to Ms C's complaints and my enquiries about the length of time it had taken to present a bill for legal services to her, SLAB have clearly and convincingly argued that they have a legal right to pursue Ms C for payment. They have explained that, in cases such as Ms C's, this right is not exhausted until 25 years have elapsed and that it is reasonable for them to expect that a solicitor had kept their client informed of the progress of discussions relating to SLAB liabilities and, indeed, the solicitor-client relationship is such that by corresponding with a solicitor SLAB are considered, in law, to be corresponding with that solicitor's client.

16. SLAB's strategic objectives, available to view on their internet site, include the aims to achieve consistent, timely and sound decision making at all stages of assessing and paying accounts and to communicate effectively with

applicants, opponents, their advisers and other stakeholders in a clear, concise, timely and pro-active manner.

17. SLAB have provided evidence that shortly after Ms C's initial enquiry in January 2005 the relevant team were instructed to write to recipients of legal aid at an early stage and advise them of the actions SLAB were taking in regard to agreeing and recovering costs, and that they should keep the recipient informed throughout the process. Following the letter from the Director of Corporate Services and Accounts (see paragraph 13) this procedure was expanded and incorporated into the departmental procedures manual. As a result SLAB now inform the recipient of legal aid at the outset of the case of their potential liability for payment and keep them updated throughout the process. Follow-up letters following requests for information to solicitors are now copied to the recipient of legal aid. Keeping the recipients of legal aid informed in this way means that the recipient remains aware of their liability, the costs involved and that they can take the matter up with their solicitor if they have concerns about how the correspondence is proceeding.

Conclusion

18. While it is clear that SLAB have not contravened any legislation in their presentation of Ms C with her final bill, in my view there is an element of expected service to the assisted person. This is acknowledged in SLAB's strategic objectives set out in paragraph 16.

19. In the case of Ms C's account, this aim was not achieved. On two occasions, six months passed before follow-up letters were sent to Ms C's solicitors, and on a further occasion, 17 months passed (see paragraph 9). In terms of legislation, it is clear that it was Ms C's solicitors' responsibility to keep her informed of matters relating to her legal representation and liability and, clearly, responsibility for responding to SLAB's requests for information lay solely with Ms C's solicitors. However, SLAB also had a responsibility to ensure that they were properly pursuing information to enable calculation and, thereafter, recovery of the monies potentially due to them. In line with legislation, they did not pursue the information they required to do this directly with Ms C but through her solicitors. SLAB were responsible for pursuing this information within a reasonable timescale. Given that the nature of SLAB's work means they are often dealing with large sums of money and events that applicants may understandably wish to put behind them, waiting six months and

more to follow-up letters with expected response times of one month is unreasonable. Therefore, I uphold the complaint.

20. I would point out that, apart from the unreasonable delays in following up requests for information detailed in the table in paragraph 9, SLAB's handling of all other parts of the administration, calculation and presentation of Ms C's final bill was correct and reasonable. During the time Ms C's liability was being finalised, SLAB introduced a new case management system which improved the information available to them about outstanding responses to correspondence. This has reduced the likelihood of similar delays in following up correspondence occurring. Also, I acknowledge that SLAB have responded to the procedural deficiencies brought to light by Ms C's complaint and have altered their processes to ensure recipients of legal aid are aware of their liabilities and are kept informed of SLAB's actions relating to them. I commend SLAB's action in this regard.

Recommendation

21. Ms C is liable to pay SLAB for her legal representation during her divorce, and the process for settling this liability is outside the scope of this investigation, but SLAB did unreasonably delay the presentation of this bill by not following up the information requests to her solicitors noted in paragraph 9 in good time. While Ms C has not been financially disadvantaged by this delay, the procedures that caused this were reviewed and new procedures to prevent recurrence of this situation had been implemented by SLAB, they had not formally apologised to Ms C for the delay that caused the injustice in her specific case. As a result, a draft of this report recommended that SLAB apologise to Ms C for the unreasonable delay in presenting her final liability. I note that SLAB have now apologised to Ms C. The Ombudsman has no further recommendations to make.

20 June 2007

Explanation of abbreviations used

Ms C

The complainant

SLAB

Scottish Legal Aid Board

Glossary of terms

Recovery of property

The getting of property or another's interest in property as part of the settlement of a divorce