

Reviewing Refusals of legal aid

Legislative Provisions

The purpose of this article is to inform applicants for legal aid, and those legal practitioners who undertake legal aid work, about the way in which legal aid decisions can be reviewed.

The Review Provisions

The review provisions are contained in Part 5 of the Legal Aid Commission Act 1990, and some of the provisions of Part 4 of the Act are also relevant to the nature of reviews. These current provisions have been in force since the commencement of the Act. They are the basis on which all reviews take place.

The relevant sections of the Act are 25 to 34.

The Legal Aid Commission Act provides for the review of decisions made in relation to the provision of legal aid or the making of a payment for costs (sections 25 and 26). The description of the decisions that are subject to review, are set out in s.28.

Under s.29, a person notified of a decision may, by notice in writing, request the Commission to refer the decision to a Review Committee. This request has to be made within 14 days after the person receives a notice of the decision, or within such longer period as the Commission may determine. The Commission has delegated this power to determine a longer period to the Director.

Section 30 provides that the Commission may establish such review committees as it thinks necessary. The Commission has established three Review Committees under this section.

Under s.31, a Review Committee consists of three members appointed by the Commission. One is a private legal practitioner, as required by s.31(1)(a). One is an officer, as required by s.31(1)(b) - officer is defined in s.3. And one is a person who is not a private legal practitioner, nor an officer, but who has qualifications or experience relevant to the performance of the function of a Review Committee, as required by s.31(1)(c).

S.31(2) provides for the Commission to appoint a member of a Review Committee as Chairperson of that Committee. For each of the three Review Committees, the Commission has appointed the officer of that Review Committee as Chairperson.

The Commission has made some additional appointments for Review Committees, to accommodate those relatively rare situations where the usual members of a Review Committee are conflicted in relation to a matter before the Committee.

The function of a Review Committee is to review any decision referred to it under s.29. That is, it is a review of a decision made about the provision of legal aid or the making of payment for costs: see s.28(1)(a) and (b).

The way the Review Committee exercises its function is set out in s.33.

S.34 covers the decisions of Review Committees. The Committee may confirm the decision, vary it, or set it aside and substitute another decision in its place. In other words, it is a completely new decision, and overtakes the original decision made by the Commission. Decisions of Review Committees are final - s.34(2).

The Review Committee is required to notify the Commission and the person requesting the review of its decision, in writing, within 14 days after the decision is made. That notification takes the form of a letter written by the Chairperson. The Chairperson is the only member of the Review Committee who is identified.

S.34(5) provides for the Commission to provide written reasons for any Review Committee decision at the request of a person.

A person whose circumstances in relation to a matter change after a Review Committee has made a decision may apply again for legal aid in respect of that matter - s.34(6).

Commentary

Steps for Review

The material above sets out the formal requirements contained in the Act for Review Committees and their operation. But it is always useful to know the Commission's internal processes for handling requests for review, and they are as follows:

A request for review can come from the applicant for legal aid or from that person's lawyer when they are instructed to do so by the applicant. Requests may come in any of the forms which the law recognises as being in writing.

When a request for a review is received, it goes first to the Grants Officer. It is open to them, in the light of any information contained in the request which is additional to the information contained in the original application for aid, to make a reassessment of their original decision and decide to grant aid. If they do not do that, then they prepare a brief statement of the reason for the making of the original decision to refuse aid. The Grants Officer, of course, cannot decide to reject the review, or to conduct the review. The Grants Officer can, as noted above, change the original decision into a decision to grant aid.

Where the Grants Officer does not alter their original decision, the request for a review then goes to the Director. It is open to the Director in the light of any information contained in the request for a review, which is additional to the information contained in the original application for aid, or contained in the Grants Officer's brief statement of reasons for making the original decision to refuse aid, to make a reassessment of the original decision and decide to grant aid. If the Director does that, it will usually be in consultation with the Grants Officer.

If the Director does not do that, then the Director will consider the nature of the request for review, the reason for the original decision to refuse aid, and any additional material provided with the request. The Director holds a delegation from the Commission to exercise the Commission's power to refer requests to a Review Committee.

What can be reviewed

There are three broad categories of original decisions:

1. the first is those decisions where the decision to refuse aid involves the exercise of discretion or making a judgement about the circumstances of the matter;
2. the second is those decisions where the decision to refuse aid involves a circumstance where the applicant did not satisfy an objective test required by the Commission's guidelines. These will generally be where the applicant's income, or assets exceed the Commission's guidelines for the grant of aid; and
3. the third is those decisions where the decision to refuse aid involves a circumstance when the aid relates to a matter in a category which the Commission is not currently funding

Where the original decision to refuse aid involves the exercise of any discretion or the making of a judgment about the circumstances of the matter, the Director will refer the request to a Review Committee.

Where the reason for the initial decision refusing aid is that the applicant did not satisfy an objective test required by the Commission's guidelines, the Director will not refer the request to a Review Committee.

What will not be reviewed

Where the reason for the initial decision refusing aid is that the aid relates to a matter in a category which the Commission is not currently funding, the Director will not refer the request to a Review Committee.

The Commission is able, under its guidelines, to refuse applications for aid on the basis of lack of funds. When the Commission has refused aid for this reason, the Commission has determined that those decisions are not reviewable. Applicants refused for this reason must wait thirty days to reapply for aid.

Process of Review

A matter referred by the Director to a Review Committee is passed to the next appropriate meeting of a Committee. The three Review Committees meet on a rolling schedule.

It usually takes three to four weeks from the time a request for review is received to the finalisation of the request by a Review Committee. Because Review Committees are made up of volunteers, the Commission does not ask them to hold irregular meetings at short notice.

Once the Review Committee has notified the Commission of its decision, any decision to grant aid, either the aid originally requested or some other amount of aid, is implemented by the Grants Officer. The applicant receives that aid as if that decision of the Review Committee had been an original decision of the Grants Officer.