

FOI RESPONSE ISSUED - 24 JUNE 2021

REQUEST

“ 1. Who at the Board considers post-grant representations? Are they legally qualified?

2. I’m curious as to the number of lawyers who submit unprompted stage reports regarding their own cases in relation to changes in their assessment of the prospect for success. Does the Board keep statistics here?”

OUR RESPONSE TO THE INFORMATION REQUEST UNDER THE 2002 ACT

1. Decisions on civil legal aid applications are taken by both SLAB solicitors and our team of paralegals.

SLAB solicitors can take decisions on any type of applications at first instance and on review. If an application is refused at first instance, and a review is submitted, then the review will be undertaken by a different decision maker. Our paralegals have authority to take decisions on a specified range of first instance applications including family matters, housing matters, and applications relating to adults with incapacity. They are fully trained in these subject matters.

In general we always attempt to have representations considered by the decision maker who granted the application. If this is not possible the representations will be referred to an alternative decision maker with the necessary authority to consider the application.

The specific scenario you mention relates to a child welfare report being produced which does not support the position of the assisted person. In this situation it is not uncommon for us to receive representations from the opposing party advising that prospects of success are poor and so it is no longer be reasonable for legal aid to be provided.

In order to fully consider representations we need to ask the solicitor for the assisted person for their comments on the information provided to us. When we ask for comments we very often find that the solicitor for the assisted person will take issue with the terms of the child welfare report, and give information about available evidence which will address some of the concerns of the reporter. When we look at representations we need to decide whether the tests of probable cause and reasonableness continue to be met. When the solicitor for the assisted person tells us that it is their professional judgement that the terms of the child welfare report are not likely to determine the outcome of the case, and that

prospects of success remain reasonably good notwithstanding the terms of the report, then we cannot say that the test of reasonableness is not met.

2. Number of solicitors making unprompted stage reports in the three years requested:

	2018-19	2019-20	2020-21
Number of solicitors	447	344	199

Number of unprompted stage reports received in the three years requested and their reason type:

Count	FYR			
Reason Type for Report	2018-19	2019-20	2020-21	Grand Total
A	395	265	68	728
B	7	8	6	21
C	22	15	4	41
D	45	27	5	77
E	7	9	7	23
F	113	105	57	275
G	80	60	33	173
H	10	3	3	16
I	11	14		25
J	21	20	13	54
K	59	54	39	152
L	151	81	16	248
M	412	309	94	815
Grand Total	1333	970	345	2648

Reason Type Code	Reason Description
A	The case has been sisted other than for legal aid
B	The outcome of any debate or hearing has changed the nature of the assisted person's case
C	The proof diet has been adjourned
D	Any hearing of any sort of three days or more has been fixed
E	A minute of tender has been lodged

F	Information has been given, or there is information, to suggest that the prospects of success in a case and/or the prospects of recovery have altered
G	The total cost of the case is likely to increase significantly compared with the information on cost given either at the time the application for civil legal aid was made or in any stage report already lodged
H	The grant of civil legal aid has been transferred to you and your assessment of the merits of the case, or the appropriateness of legal aid continuing, is different from that of the solicitor who made the original application
I	This is a case involving children where allegations of abuse or sexual abuse of any sort arise
J	An expert has been instructed and their report shows a material difference from that advanced in the assisted person's position or case
K	A report has been obtained in a case involving children and the reporter is not supportive of the assisted person's position or case
L	The case has been sisted other than for legal aid, and the sist has been recalled
M	Other