
STATUTORY INSTRUMENTS

1989 No. 339

The Civil Legal Aid (General) Regulations 1989

PART V

REFUSAL OF APPLICATIONS

Notification of refusal

34.—(1) Where an application for a certificate is refused on one or more of the following grounds, namely, that

- (a) the assessment officer has assessed that the applicant has disposable income which makes him ineligible for legal aid; or
- (b) the assessment officer has assessed that the applicant, having disposable income of an amount which makes him eligible for legal aid, has disposable capital of an amount which renders him liable to be refused legal aid and it appears to the Area Director that, without legal aid, the probable costs to the applicant of the proceedings in respect of which the application was made would not exceed the sums payable by the applicant on account of his contribution; or
- (c) the proceedings to which the application relates are not proceedings for which legal aid may be given; or
- (d) the applicant has not shown that he has reasonable grounds for taking, defending or being a party to the proceedings; or
- (e) it appears unreasonable that the applicant should receive legal aid in the particular circumstances of the case,

the Area Director shall notify the applicant of the grounds on which the application has been refused and inform him of the circumstances in which he may appeal to the appropriate area committee for the decision to be reviewed.

(2) Where an application is refused on either of the grounds specified in sub-paragraphs (d) and (e) of paragraph (1), the notification given under that paragraph shall include a brief statement of the reasons why that ground applies to the applicant's case.

Right of appeal against refusal

35.—(1) Where an Area Director refuses an application for a certificate or an applicant is dissatisfied with the terms upon which the Area Director would be prepared to issue it, the applicant may, subject to paragraph (2), appeal to the appropriate area committee.

(2) No appeal shall lie to an area committee from—

- (a) an assessment of the assessment officer, or
- (b) any decision by an Area Director as to the sums payable on account of the applicant's contribution or the method by which they shall be paid except a decision as to sums payable under regulation 32(3) or 33.

Time and form of appeal

36. Every appeal shall be brought by giving to the appropriate area committee, within 14 days of the date of notice of refusal of a certificate or of the terms upon which a certificate would be issued (or such longer period as the appropriate area committee may allow), notice of appeal in writing either on a form approved by the Board or in such other written form as the Area Director may accept as sufficient in the circumstances of the case.

Nature of appeal

37. Every appeal shall be by way of reconsideration of the application.

Representation at appeal or other final application

38.—(1) Upon an appeal the appellant may—

- (a) furnish further statements, whether oral or in writing, in support of his application; and
- (b) conduct the appeal himself, with or without the assistance of any person whom he may appoint for the purpose, or be represented by counsel or a solicitor or legal executive.

(2) With any necessary modifications, paragraph (1)(a) shall apply to any appeal to an area committee and, subject to regulation 58(3), paragraph (1)(b) shall apply to any appeal to an area committee on which the committee finally determines the applicant's right to receive legal aid.

Determination of appeal

39.—(1) The area committee shall determine the appeal in such manner as seems to it to be just and, without prejudice to the generality of the foregoing, may—

- (a) dismiss the appeal; or
- (b) direct the Area Director to offer a certificate subject to such terms and conditions as the area committee thinks fit;
- (c) direct the Area Director to settle terms and conditions on which a certificate may be offered; or
- (d) refer the matter, or any part of it, back to the Area Director for his determination or report.

(2) Any decision of an area committee with regard to an appeal shall be final, and it shall give notice of its decision, and the reasons for it, to the appellant and to any solicitor acting for him on a form approved by the Board.

Repeated refusal of certificates

40.—(1) Where a person has applied for and been refused a certificate on three separate occasions and it appears to the Area Director to whom such person applies that his conduct may amount to an abuse of the facilities provided by the Act, then the Area Director may report the matter to the appropriate area committee.

(2) If a report under paragraph (1) has been made, the area committee may—

- (a) enquire whether any other area office has received an application from the person named in the report;
- (b) call for a report as to the circumstances of any other such application; and
- (c) if it considers that the person named in the report has abused the facilities provided by the Act, report thereon to the Board, making such recommendations as seem to the area committee to be just.

Power to make prohibitory directions

41.—(1) The Board, on receipt of a report made under regulation 40(2)(c), shall give the person named in it an opportunity of making (either by himself or by some other person acting on his behalf) representations in writing on the matter, and shall make such other enquiries as seem to be necessary; and, if they are satisfied that his conduct has amounted to an abuse of the facilities provided by the Act, may make a direction (in this regulation referred to as a “prohibitory direction”) that no consideration shall, for a period not exceeding five years, be given by any Area Director either—

- (a) to any future application by that person for a certificate with regard to any particular matter; or
- (b) in exceptional circumstances, to any future application by him whatsoever.

(2) The Board may in its discretion—

- (a) include within the terms of any prohibitory direction any receiver, next friend or guardian ad litem who applies for a certificate on behalf of the person referred to in the prohibitory direction; and
- (b) at any time vary or revoke any prohibitory direction in whole or in part.

(3) Where the Board makes a prohibitory direction, it shall inform the Lord Chancellor and shall, if so requested, give him its reasons for making it.