

From the Ombudsman **Robert Behrens CBE**

Mr William Wragg MP
Chair, Public Administration and Constitutional Affairs Committee
Sent via email



2 November 2021

Dear William,

I am writing to share a complaint I have recently investigated about the Legal Aid Agency (LAA). A full summary of the case and our findings is annexed to this letter.

My investigation found the LAA unreasonably delayed reaching its decisions to award legal aid for three clients who were facing deportation, represented by the Public Interest Law Centre (PILC). LAA procedures for deciding legal aid applications also meant that it could not backdate legal aid certificates, even following appeal or review, potentially leaving vulnerable individuals without access to justice. The LAA should have addressed this unfairness, and not to have done so was maladministration.

As the LAA now has the specific power to backdate legal aid certificates, I have recommended it apologises to the PILC, and pays the costs the PILC was unable to recoup. I have also recommended the LAA examine the findings of this investigation in detail, to address the reasons for the delays, and to eliminate the unfairness identified in this investigation.

I will also be writing to the Lord Chancellor and Secretary of State for Justice, the Shadow Lord Chancellor and Shadow Secretary of State for Justice, and the Chair of the Justice Select Committee to make them aware of the findings of this investigation and would be happy to discuss the findings further at our next meeting. In the meantime, please do not hesitate to contact me should you appreciate further information.

Yours sincerely,

Rob Behrens

Rob Behrens CBE
Ombudsman and Chair
Parliamentary and Health Service Ombudsman



Millbank Tower
Millbank
London SW1P 4QP

Telephone: 0300 061 4308

Email: Rob.Behrens@ombudsman.org.uk

www.ombudsman.org.uk



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Legal Aid Agency processes had unfair outcomes for vulnerable people

Organisation we investigated: Legal Aid Agency

Date investigation closed: 15 September 2021

The complaint

A law centre complained to us about decisions the Legal Aid Agency made on legal aid applications for three of its clients. The three clients were EU nationals the Home Office had found rough sleeping in the UK and ordered to be deported. The law centre said the Legal Aid Agency's decisions to award the aid were delayed and the Agency had refused to backdate the legal aid certificates. This caused the law centre losses of around £50,000, which it was unable to recoup.

Background

In 2017, the law centre was representing three clients the Home Office had decided should be deported. At the time, a Home Office policy said EU citizens living in the UK must exercise their EU Treaty rights to free movement in order to stay in the country. The Home Office found the three clients rough sleeping and said this was evidence they were not exercising their EU Treaty rights.

The law centre applied for judicial review of this decision on behalf of its three clients. It argued the Home Office policy was unlawful and was being used to systematically identify and deport EU citizens. At the same time, the law centre applied to the Legal Aid Agency for legal aid for each of its three clients.

The Legal Aid Agency initially decided against awarding legal aid to two of the EU citizens. One of these decisions was overturned at review, seven weeks from the date of initial application. Another was overturned at appeal stage around 13 weeks after the initial application. It took six weeks for the third EU citizen to be awarded legal aid.

At the time, regulations only permitted legal aid certificates to be issued from the date the Legal Aid Agency made a decision in favour of awarding the aid. The law centre asked the Legal Aid Agency to backdate the legal aid certificates, particularly given the delay caused by having to appeal the initial decisions. The Legal Aid Agency said it did not have the power to do that.

The law centre's case representing the EU citizens was successful at judicial review. The Home Office was ordered to pay the law centre's costs.

However, the law centre was unable to recoup all of its costs because its clients had not been getting legal aid when the judicial reviews began. The clients had not agreed to pay the law centre if their legal aid application was unsuccessful.

What we found

The Ombudsman's investigation found the Legal Aid Agency had unreasonably delayed reaching decisions on the legal aid applications of the law centre's three clients.

We also found that:

- the Legal Aid Agency's procedures for deciding the outcome of legal aid applications, together with its interpretation of the legislation (that it could not backdate legal aid certificates, even following appeal or review) led to an unfair situation for some groups of people
- the law centre brought that unfairness to the Legal Aid Agency's attention through its complaint
- the Legal Aid Agency should have done something to address that unfairness - not to have done so was maladministration.

Putting it right

The regulations governing the way the Legal Aid Agency works changed in 2019. The Legal Aid Agency now has the specific power to backdate legal aid certificates. We therefore recommended to the Legal Aid Agency that it:

- examine this case in detail to learn why there were such long delays and to make sure its policy on backdating will eliminate any unfairness to specific groups, as seen in this case
- apologise to the law centre
- pay the law centre the costs it was unable to recoup as a result of the Legal Aid Agency's failings.