

PE1372/B

*Ext. No. 688*  
*Fax Number: 0131 225 3705*

Public Petitions Committee  
TG.01  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

*Your Ref:*  
*Our Ref: CAW/CS*

29 December 2010

Dear Sirs

### **CONSIDERATION OF PETITION PE1372**

The Scottish Legal Aid Board has not been asked any specific questions in relation to consideration of Petition 1372 by Duncan McLaren on behalf of Friends of the Earth Scotland in relation to access to the Scottish Courts and its compliance with the Aarhus Convention.

In considering applications for civil legal aid in relation to environmental issues the Board has to consider, as is the case with all civil legal aid applications, whether the tests of

- financial eligibility both in terms of disposable income and disposable capital;
- probable cause or simply put a legal basis for the case; and
- whether it is reasonable in the circumstances to make legal aid available

are met in the application.

In considering matters specific to environmental issues the Board will also have to consider whether there are others with a joint or common interest in the proceedings.

Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002 deals with questions of joint and common interest. It states

- where it appears to the Board that a person making an application for legal aid is jointly concerned or has the same interest in the matter in connection with which the application is made as other persons, whether receiving legal aid or not, the Board shall not grant legal aid if it is satisfied that:
  - (a) the person making the application would not be seriously prejudiced in his or her own right if legal aid were not granted; or
  - (b) it would be reasonable and proper for the other persons concerned with or having the same interest in the matter as the applicant to defray so much of the expenses as will be payable from the Fund in respect of the proceedings if legal aid was granted.

In deciding whether applications meet the statutory test for civil legal aid the Board takes into account the guidance it has issued about such matters. This guidance is available in the Board's Civil Legal Assistance Handbook on its website at [www.slub.org.uk](http://www.slub.org.uk). As part of the guidance on the approach to be taken to considering whether it is reasonable to make civil legal aid available, reference is made to the terms of regulation 15 and its potential consequences when considering a civil legal aid application.

At paragraph 3.17 of the guidance it is specifically stated that in terms of regulation 15 we can only grant legal aid to someone who is jointly concerned with or has the same interest in the matter as other people if we are satisfied that

- the applicant would not be seriously prejudiced in their own right if legal aid were not granted; or
- it would not be reasonable and proper for the other people concerned to pay the expenses that would be paid under legal aid if it was granted.

The guidance also states that where there are a number of individuals who all appear to share a broadly similar objective in an action, public funding will not generally be made available to fund a case unless strong evidence is provided to show that an individual will suffer serious prejudice. Examples given of serious prejudice include the owner of a flat in a tenement faced with litigation over bills for common repairs while examples of cases where it is not considered that an applicant would suffer serious prejudice include closure of a school, a community centre, a swimming pool or other cultural or a leisure institution.

Environmental issues are likely to raise questions of joint and common interest because there is more likely to be a number of individuals who may have the same concerns about any issue that would be the subject of court proceedings than would be the case where an individual is litigating in respect of some issue that concerns themselves personally alone.

The Board is however obliged to consider legal aid applications in terms of the existing legal aid legislation and the questions of joint interest do have to be considered in all such applications for legal aid.

Yours faithfully

Catriona Whyte  
Head of Legal Services – Civil