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Our reference: C2105350



**In Confidence**

Mr Daniel McMorrow  
110A Sylvan Avenue  
London  
N22 5HY  
United Kingdom

27 March 2020

Dear Mr McMorrow

**Your complaint about the Legal Aid Agency (the LAA) and the Information Commissioner's Office (the ICO)**

We have completed our consideration of your complaint about the LAA and the ICO and I am writing to tell you the outcome. To reach this decision we reviewed the information you have provided and additional information provided by the LAA. Having done this, we have decided not to consider your complaint further; this is because the LAA and the ICO have already taken appropriate action to put things right for you.

I will explain the reasons for this and the factors we have considered in our assessment of your complaint.

**Your complaint**

You complain that the LAA provided you with a bill for services from a solicitor it employed on your behalf in 2017 on 25 February 2018. As a result, you say you were unexpectedly charged for the bill. You say this has impacted on you financially.

You also complain that when you made a Subject Access Request (SAR) to the LAA for all its communication with you, the LAA did not include copies of its call recordings. You complain that it did not include any information about a '*substantive amendment*' your solicitor made to the legal aid claim and a reinstated legal aid certificate.

You also complain that the ICO did not properly consider your request for it to review LAA's response to your SAR request.

As a result of all these alleged failings, you say you have not received all the information you need from the LAA to make a complaint to the Legal Ombudsman. You say this has caused you distress and frustration.

As an outcome, you are seeking a financial remedy and a review of the LAA procedure.

## Reasons for our decision

### Complaint about the LAA's Bill

You complain that on 25 February 2018 the LAA provided you with a bill for services from a solicitor it employed on your behalf in 2017.

*The Community Legal Service (Funding) Order 2007* details the billing powers the LAA has under law. It does not say there is any restriction on when solicitors can provide the LAA with bills for their services or when the LAA can ask customers to pay for the bills, if the services were provided before 2007. As the solicitor provided the services in 2017, LAA's decision to charge you for this bill does not appear outside of relevant guidelines.

### Complaint about the LAA's response to your SAR

You also complain that when you made a SAR to the LAA for all its communication with you, the LAA did not include copies of its call recordings. You complain that it did not include any information about a '*substantive amendment*' your solicitor made to the legal aid claim before reinstating the legal aid certificate.

The ICO's guidance *Subject Access Request Code of Practice*, published on its website, says that organisations have a responsibility to provide copies of personal data within 40 days of receiving a SAR.

You made an SAR to the LAA on 19 July 2019 and requested a copy of the communication made between yourself and the LAA. In response to this, the LAA sent you 13 files in July 2019. You noticed that it did not include the audio recordings of your phone calls with the LAA. The ICO considered your request and the ICO asked the LAA to provide copies of the phone call recordings to you. The LAA provided copies of its call recordings to you on 19 February 2020.

You made a SAR for a copy of the substantive amendment the LAA made to your legal aid claim in 30 September 2019. You followed this up with emails on 1 and 2 October 2019 saying you would bring your complaint to the ICO if it did not fulfil the requests on the same working day. You contacted the ICO, but it did not address this complaint. The LAA provided a copy of the substantive amendment on 19 February 2020.

The LAA wrote to you on 12 March 2020 and in this letter, it apologised that its original response to your SAR did not include all the relevant documents. It also said it was making changes to how it approached SARs to prevent similar issues happening in future.

The evidence shows that the LAA did not provide both the call recordings and the substantive amendment to you with 40 days. This is not in line with the ICO's guidance for SARs.

We then considered how this affected you. You say that this has affected your ability to raise a complaint with the Legal Ombudsman. The Legal Ombudsman's *Scheme Rules* published in April 2019 lists the powers it has under law. It says that the Legal Ombudsman has the power to request any information it needs from the organisation it is investigating. This means that if you did raise a complaint with the Legal Ombudsman, it has the power to request the information you sought through a SAR. Therefore, we cannot say that the LAA's actions have affected your ability to complain to the Legal Ombudsman.

You also say that it caused you distress and frustration waiting for the information from the LAA. Your communication with the LAA shows that you were distressed and frustrated due to the amount of time you were waiting for this information, which indicates to us that you were impacted by the LAA's actions. We do note most of your distress was because you wanted to make a timely complaint with the Legal Ombudsman.

We can see that the LAA has already apologised to you and is reviewing its approach to SARs. We considered whether it needs to take any further action to remedy the distress and frustration it caused.

*Our Financial Remedy Guidance* published by the Parliamentary and Health Service Ombudsman in 2018 says that when there is an administrative failing which causes a short period of frustration and distress, the named organisation should not provide a financial remedy and instead should apologise to the person affected. As the LAA has already apologised for the issues in its handling of the SAR and is making changes to its service, we are satisfied that it has taken enough action to put things right for you.

#### The ICO's handling of your request for a review

You also complain that the ICO did not properly consider your request for it to review LAA's response to your SAR request.

You contacted the ICO on 2 October 2019 and asked the ICO to review the LAA's response to your SAR. You told the ICO you did not feel the LAA's response was complete as it did not include any of its internal correspondence and the solicitor's claim was not complete. You also said it included financial records which you had not requested.

The ICO asked you which information you felt the LAA had not included in the SAR. You again said the solicitor's claim was incomplete, some abbreviations had not been explained to you and you said it did not include a substantive amendment to your legal aid claim.

The ICO responded on 2 January 2020. It included a summary of the complaint that it investigated, which said it had considered whether the LAA had provided a copy of all its communication records. The ICO said that the LAA had not provided copies of its recorded phone calls and asked the LAA to provide these, which it did in February 2020.

You then requested a review of the complaint, as you felt the ICO caseworker had not addressed all your complaints. The ICO agreed that the caseworker had not considered all the issues you raised. It apologised to you for not addressing the concerns, but said it was satisfied that the LAA had not breached the *Data Protection Act 2018* or that it warranted further involvement from the ICO. When we discussed the LAA's response to your SAR sent on 20 February 2020, you said that as far as you were aware it had provided all the documents you had requested.

The evidence shows the ICO did not consider all the issues you raised in your request for its review. We then considered whether this had an impact on you. We can see from your correspondence with us and the ICO that its omissions caused you frustration and distress until the LAA provided you with all the documents you required.

We then considered *Our Financial Remedy Guidance*, which says that we should generally recommend that an organisation apologises to the person affected when it causes them a short period of distress and frustration due to an administrative failing, without the need for a financial remedy. As the ICO has already apologised to you, we are satisfied that it does not need to take any further action to put things right for you.

In summary, we have decided we will not take further action on your complaint. I hope I have explained the thorough consideration we have given to our decision and clearly outlined the reasons for it.

If you have any feedback about our service or decision then please let me know within *one month* of the date of this letter.

We recognise that everyone has different needs and circumstances and these are likely to influence the way you access our service. If you need this letter in a different format please contact me on the details at the top of this letter to discuss your accessibility requirements.

Please note there are some important details about how we use your information at the bottom of this letter.

Yours sincerely



Holly Greaves  
Caseworker

### Important details about how we use your information

We want to make sure that we provide a good service. We might use your complaint for training, monitoring and evaluation purposes or invite you to meetings where we explain more about the Ombudsman's roles and responsibilities, and ask for your feedback. We will only share any information you provide with our staff or people acting on our behalf.

Your responses will only be shared in an anonymous format, unless you tell us otherwise. The law allows us to use your contact details in this way. This is known as legitimate interest. If you do not want to take part please tell your caseworker, call us on 0300 061 4222, or email [customersurvey@ombudsman.org.uk](mailto:customersurvey@ombudsman.org.uk).

You can change your mind at any time and this will not have any impact on how we handle your complaint.

You can read more about this in our privacy policy. The policy explains how we use and look after information about you, or that could identify you, and how long we keep it. It also explains your rights and how to request your information. You can find the privacy policy online at [www.ombudsman.org.uk/information-you-give-us](http://www.ombudsman.org.uk/information-you-give-us). If you would like a copy in a printed or other format, please contact [informationrights@ombudsman.org.uk](mailto:informationrights@ombudsman.org.uk) or call the number at the top of this letter.