

SPSO decision report

Case: 201200845, Office of the Accountant in Bankruptcy
Sector: Scottish Government and devolved administration
Subject: policy/administration
Outcome: upheld, recommendations

Summary

Mr C was owed a significant sum of money by a builder who had been declared bankrupt. In June 2005, the builder moved assets into his mother's name. The Office of the Accountant in Bankruptcy (AiB) successfully challenged this in court and raised an action against the builder. Mr C complained about the length of time that it took for the AiB to recover money from the builder and to pay creditors.

We found that the sequestration of the builder's estate was complex and was always going to take time. Ultimately it took more than seven years to pay creditors, and we did not consider this reasonable. Whilst there is no target timescale for the sequestration process and the relevant legislation allows unlimited extensions, our investigation found that the AiB themselves had caused at least fifteen months' worth of avoidable delays. We considered that the individual actions taken to sequester the estate were reasonable, but they were carried out in a very linear way and we felt that some tasks could have been completed concurrently rather than waiting for another task to be completed first. Furthermore, midway through the process the builder questioned the amount that Mr C was claiming. This led to the AiB reinvestigating the claim over several months in anticipation of a possible formal challenge. We considered that challenges should be anticipated as a matter of course and that the additional investigation should have either taken place at the start of the claim process, or upon submission of a formal challenge from the debtor.

Recommendations

We recommended that the AiB:

- apologise to Mr C for the delays to the completion of his claim;
- review Mr C's claim and their procedures with a view to identifying tasks that can be completed concurrently, or other opportunities to minimise delays to the completion of claims; and
- consider conducting a review of how and when they investigate creditors' claims in anticipation of challenges from debtors.