



Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 4

LEGAL AID

75 Contributions, and payments out of property recovered

- (1) The 1986 Act is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund) in subsection (2), after paragraph (ab) insert—
 - “(aba) any sums repayable to a person in accordance with section 17(2C) of this Act;
 - (abb) any sums payable to a person in accordance with section 17(2D) of this Act;”.
- (3) In that section, after subsection (3)(c) insert—
 - “(ca) any sum recovered as to expenses under an award of a court or an agreement or otherwise in favour of any person in respect of any matter in connection with which advice and assistance has been provided to the person—
 - (i) by virtue of a grant made under section 4A; or
 - (ii) by a solicitor in the course of employment to which Part V of this Act applies;
 - (cb) any sum which is to be paid out of property (of whatever nature and wherever situated) recovered or preserved for any person in respect of any matter in connection with which advice and assistance has been provided to the person (including his rights under any settlement arrived at in connection with that matter in order to avoid or bring to an end any proceedings)—
 - (i) by virtue of a grant made under section 4A; or
 - (ii) by a solicitor in the course of employment to which Part V of this Act applies;”.

(4) In section 17 (contributions, and payments out of property recovered), after subsection (2B) insert—

“(2C) If the total contribution to the Fund made by a person in respect of any proceedings exceeds the net liability of the Fund on the person’s account, the excess shall be repaid to the person.

(2D) Any sums paid to the Board under subsection (2B) which are no longer required to meet the net liability of the Fund on a person’s account, having taken into account any relevant sums paid to the Board under subsection (2A), shall be paid to the person.

(2E) Nothing in subsection (2B) shall prejudice the power of the court to allow any damages or expenses to be set off.

(2F) In this section, the reference to a “net liability of the Fund” on a legally assisted person’s account is a reference to the aggregate amount of—

- (a) the sums paid or payable to a solicitor or counsel out of the Fund on the person’s account, in respect of the proceedings in question; and
- (b) any sums paid or payable to a solicitor, counsel or registered organisation (in respect of the advisers it approves) out of the Fund on the person’s account, for advice and assistance in connection with the proceedings in question or any matter to which those proceedings relate,

being sums not recouped by the Fund out of expenses in respect of those proceedings, or as a result of any right which the person may have to be indemnified against such expenses.

(2G) Where the solicitor for a legally assisted person is employed by the Board for the purposes of Part V of this Act, references in subsection (2F) to sums payable out of the Fund include references to sums which would have been so payable had the legal aid and, as the case may be, advice and assistance been provided in circumstances other than those specified in subsection (2I).

(2H) Where—

- (a) civil legal aid is or has been provided in respect of the proceedings in question by virtue of a grant made under section 4A; and
- (b) advice and assistance is or has been provided in connection with the proceedings by virtue of a grant made under section 4A,

references in subsection (2F) to sums payable out of the Fund include references to sums which would have been so payable had the legal aid and, as the case may be, advice and assistance been provided in circumstances other than those specified in subsection (2I).

(2I) The circumstances are that the legal aid and, as the case may be, advice and assistance has been provided—

- (a) by virtue of a grant made under section 4A; or
- (b) by a solicitor in the course of employment to which Part V of this Act applies.”.