



## News Release

Telephone: 0131-244 1111

ISSUED ON BEHALF OF THE SCOTTISH EXECUTIVE, THE  
SCOTTISH LEGAL AID BOARD AND THE LAW SOCIETY OF  
SCOTLAND

7 March 2001

### LEGAL AID - SETTING THE RECORD STRAIGHT

Refunds, together with compensation are to be made available to litigants who had too much deducted from their winnings in respect of 'Advice and Assistance' in a small proportion of legal aid cases.

This was announced today by the Scottish Executive, the Scottish Legal Aid Board and the Law Society of Scotland.

The move follows a review of legal aid procedures, carried out internally by the Board, and subsequent legal advice. 1988 legislation, mainly affecting England and Wales, inadvertently removed the Board's power to recoup the costs of advice and assistance provided before full civil legal aid was granted from sums recovered as a result of court proceedings.

As a result, a number of people who received advice and assistance and subsequently civil legal aid for their court case between 1991 and 1999, and who gained or kept money or property as a result, may not have received the full amount to which they were entitled. This means they may be able to get a refund with compensation.

In the vast majority of cases, fairly small amounts of money are likely to be involved, around £115. This relates to advice and assistance given by solicitors before full civil legal aid was granted.

It is difficult to estimate the number of people affected, since it will be for solicitors to determine if their client has a claim. However, it may be around 500 each year out of the 300,000 advice cases the Board dealt with on average each year during the period concerned.

Advertisements are to be taken out to ask affected people to come forward and contact their original solicitor to claim any money due to them.

The Executive will consider legislation in due course to restore the original power.

Justice Minister Jim Wallace said:

“This is a complex issue, and since it came to light the Board, Executive officials and The Law Society of Scotland have worked closely together to find a solution.

“I am pleased that the organisations concerned are progressing this in an open and transparent way, and that steps are being taken to refund all those affected, together with compensation.

“No-one has lost a case or failed to receive winnings as a result of this. However, it is regrettable that some people have received slightly less than their full entitlement. This, having come to light, it is important to make amends.”

The Board’s Chairman, Mrs Jean Couper, said:

“As part of our continuing efforts to improve our service, we constantly review our processes and the way that the legal aid legislation is being applied. Having identified this complex anomaly, the Board sought legal advice. Through discussion with The Law Society of Scotland and the Scottish Executive, we have changed the practice in this area and agreed the way to return money to those affected.

“We are doing all that we can to help anyone who thinks that money may be due to them, and to make the necessary refund and compensation payments as quickly as possible. Our telephone help-line (0131 225 4042) is open to provide advice to members of the public who think they may have a claim.”

Alastair Thornton, President of The Law Society of Scotland, said:

“The Law Society of Scotland and Scottish solicitors will help people to claim any money which is due to them. The Society is sending every firm of solicitors a letter today. It explains the situation and asks solicitors to represent clients without charge so they can receive the compensation due to them in full.

“The Law Society of Scotland is happy to work with the Scottish Executive and SLAB to resolve this matter.”

#### NOTES TO NEWS EDITORS

1. The Legal Aid (Scotland) Act 1986, as originally enacted, gave the Board statutory authority to recoup the Fund’s “net liability”. “Net

liability” was clearly defined in the Act as being the aggregate of the sums paid out under civil legal aid for the proceedings and the sums paid out under advice and assistance in connection with those proceedings.

2. The Legal Aid Act 1988 (whose principal purpose was to create the English Legal Aid Board, now the Legal Services Commission) had, as part of its list of minor amendments, the entirely unintended effect of repealing the Board’s statutory authority to recoup these costs.

3. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 restored the Board’s authority to recoup the costs of the civil legal aid by referring to the “net liability” in any proceedings. However, it did not restore the definition of “net liability”. Formerly it was clear that the costs of advice and assistance and civil legal aid could be recouped from any property recovered and preserved but that clarity was lost by the wording of the 1990 Act.

4. It appears to have been the interpretation of the parties at the time that the reference to “net liability” meant much the same as originally enacted and consequently aggregation could continue on an administrative basis. However, subsequent legal advice interpreted the legislative changes as meaning that the Board had no such power to aggregate.

5. There will be no time limit on members of the public claiming a refund of the sums retained.

6. New information will shortly be available on Dial-a-Law, the Society’s telephone information and referral service (tel. 0870 545 5554) which aims to give helpful information to people who want to claim money due to them. The information will also be available from today on the Society’s website at [www.lawscot.org.uk](http://www.lawscot.org.uk), The website also has a list of all solicitors in Scotland and their contact details. Anyone who cannot contact their solicitor can contact the Society who can put them in touch with a solicitor who should be able to help them.

Contacts:

Scottish Executive  
Gareth Williams  
Tel: 0131 244 3073

The Scottish Legal Aid Board  
Tom Murray  
0131 226 7061

The Law Society of Scotland Media Relations Office:  
Gillian Meighan/Suzy Powell  
Tel: 0131 476 8167/0131 476 8115