



Statement

17 February 2011

Statement re press coverage of legal aid for ex-tycoon divorce case 17th February 2011.

A spokesperson for the Board said, “The Board understands the concerns expressed following Lady Clark’s decision in this case. However, the Board properly applied the legal aid legislation and regulations.

Clearly legal aid is not there to fund cases which parties could otherwise fund themselves. However, as outlined below, there are circumstances where the governing legislation can allow those whose dispute may involve large sums of money access to legal aid.

Legal aid legislation (Section 42 Legal Aid (Scotland) Act 1986) makes it clear that where resources or assets that an applicant holds are at issue in a case, this makes them the subject of the dispute; and they cannot be taken into account in the assessment of financial eligibility.

The Board has no discretion in this.

This will typically be the situation in a divorce case where parties are fighting over matrimonial assets. In some cases, one or both of the parties may not have access to any of the sometimes significant assets or resources with which to pay for their lawyers privately.

However, at the end of such cases there will usually be no or minimal cost to the legal aid fund because parties are required to pay contributions; expenses are awarded which will pay for one party’s legal aid costs; or parties recover or preserve assets or money which is used to pay for their legal aid (“clawback”).

Cases involving significant matrimonial assets are rare in legal aid as the vast majority of such cases are funded privately.

To grant legal aid we have to decide that:

- an applicant qualifies financially
- an applicant has a legal basis for their case
- it is reasonable that they receive legal aid (“reasonable” here means considering matters like: should legal aid be granted if the case was unlikely to succeed, is the application frivolous etc.)
- that financial help is not available to them from another source.

We are constrained in what we can say about the facts of individual cases or how we have applied the tests to those facts; release of information relating to an individual application without the applicant’s consent would be a breach of confidentiality and a criminal offence under the legal aid legislation.

As Lady Clark of Calton made clear in her judgement on the case, one of the parties only applied for and received legal aid for the final stages of the proceedings. It is also the case that neither party had legal aid for the whole of the proceedings.

However, the Board will pursue the matters in this case to ensure that there is little or no cost to the taxpayer.”

Ends

Journalists please contact:
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Notes for editors

Legal aid is help towards the costs of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system. There are two main types of legal assistance: advice and assistance and legal aid. Together these are called legal assistance. Legal aid may be free, or someone may have to pay towards the cost of their case, for example through paying a contribution or from the money or property that they win or keep as a result of their legal action. Legal aid is accessed through a solicitor. Unlike most public expenditure, the legal aid fund is not cash limited. The Scottish Government will provide the Board with the funds required to meet the cost of cases which have been granted.