



# Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

## 2018 asp 10

### PART 1

#### SUCCESS FEE AGREEMENTS

#### 6 Personal injury claims

- (1) This section applies to a success fee agreement entered into in connection with a claim for damages for—
  - (a) personal injuries, or
  - (b) the death of a person from personal injuries.
- (2) The agreement must provide that the recipient of the relevant services is not liable to make any payment (including outlays incurred in providing the services) to the provider in respect of the services, apart from the success fee, regardless of whether any damages are obtained.
- (3) In subsection (2), “outlays” do not include any sums paid in respect of insurance premiums in connection with the claim to which the agreement relates.
- (4) The agreement—
  - (a) may provide that any damages for future loss obtained in connection with the claim (the “future element”) will be included in the amount of damages by reference to which the success fee is to, or may, be calculated (the “relevant amount of damages”) if the future element is within subsection (5), but
  - (b) otherwise, must provide that any future element will not be included in the relevant amount of damages.
- (5) The future element is within this subsection if it is to be paid in a lump sum and—
  - (a) does not exceed £1,000,000, or
  - (b) exceeds £1,000,000 and—
    - (i) the provider had not advised the recipient to accept that the future element be paid in periodical instalments, and
    - (ii) the condition in subsection (6) is met.

- (6) The condition is—
- (a) in the case where the damages are awarded by a court or tribunal, that the court or tribunal in awarding the future element has stated that it is satisfied that it is in the recipient's best interests that the future element be paid as a lump sum rather than in periodical instalments,
  - (b) in the case where the damages are obtained by agreement, that an independent actuary has, after having consulted the recipient personally in the absence of the provider, certified that in the actuary's view it is in the recipient's best interests that the future element be paid as a lump sum rather than in periodical instalments.
- (7) The agreement is unenforceable to the extent that it makes provision contrary to subsection (2) or (4).
- (8) The Scottish Ministers may by regulations substitute another sum for the sum for the time being specified in subsection (5)(a) and (b).
- (9) In subsection (1), "personal injuries" include any disease and any impairment of a person's physical or mental condition.
- (10) In subsection (6)(b), "actuary" means an Associate or Fellow of the Institute and Faculty of Actuaries.