

Your guide to funding legal costs

Having to fund legal fees can be a worry and add to the pressure at an already stressful time. Accessing funds for legal fees may be difficult if assets are tied up, or income streams are for whatever reason inaccessible.

This guide will help you understand how we will charge you for the work we do for you and your options if you are going to struggle to pay your legal costs.

How do we charge you?

Your legal costs will be a combination of professional fees and any expenses (disbursements) incurred on your behalf. Disbursements will include expenses such as court fees, barrister fees or fees for expert reports. Professional fees are charged for the time your lawyer spends working on your case and are usually charged at an hourly rate plus VAT. Some work we do is offered on a fixed fee basis. We will let you know if we can agree a fixed fee with you. VAT will be added to our professional fees and disbursements unless for any reason you are exempt.

We will give you an estimate of what your legal costs are likely to be for each stage of your case and review the estimate with you on a regular basis. We are very mindful that what you spend on legal fees will reduce your resources and can impact on the outcome of your case. Therefore, we will always advise you about the cost rules and the likely impact they may have in your case.

What are my options if I cannot pay my legal costs upfront?

- **Ask the other party to voluntarily make payment**

Usually the most straightforward and risk-free option is to ask the other party to make a voluntary payment towards your legal costs. If however they refuse or are only prepared to make a payment up to a certain amount you will need to consider the alternative options below.

- **Help from family and friends**

Your friends or family may be willing to help you with your legal fees either by way of a gift or by way of a loan. Their help may be more appealing than taking out a commercial loan, however, before any money is advanced you will need to understand the terms on which they are prepared to advance funds, as well as understand the potential impact their help may have on your case. It is therefore essential you take early legal advice.

In divorce and dissolution proceedings the court will distinguish between 'hard' and 'soft' loans. A hard loan is akin to a loan from a commercial lender; it has to be repaid and if not the borrower can expect legal action to be taken to recover the funds. A court is likely to conclude there is a soft loan where the obligation is to a friend or family member with whom the debtor remains on good terms and who is unlikely to want the debtor to suffer hardship. If you borrow from friends and family there is a risk that the loan will be regarded as a soft loan and either not taken into account when deciding how the assets should be divided, or if it is taken into account it may not be given priority and the court could take a view that it will be repaid if and when your resources permit.

- **Personal loans, credit cards and re-mortgaging property**

There is nothing to stop you taking out a personal loan, using a credit card or looking at re-mortgaging a property to cover your legal costs. You should take legal and financial advice to consider the advantages and disadvantages of the various options.

You should try and keep expenditure on legal costs separate from other expenditure, so that you can easily identify what has been spent on your legal costs and if necessary provide evidence of the expenditure to the other party or the court.

- **Litigation loans**

You may be eligible to apply for a loan from a specialist legal fee loan provider. Security for these loans is usually given over your capital assets and becomes repayable at the end of your proceedings. If you would like to consider this option we can provide you with details of loan providers. We cannot however give you financial advice.

- **Legal services order – available in divorce, dissolution and judicial separation proceedings**

The court can make an order requiring one party to the marriage/civil partnership to pay to the other an amount for the purposes of enabling the applicant to obtain legal services for the purpose of the proceedings. It is possible for a legal services order to be made to fund any form of dispute resolution, including mediation and arbitration.

To make an application you will need to show that:

- You are not reasonably able to secure appropriate legal services for the proceedings without such an order;
- You are not reasonably able to secure a loan or charge over your assets. Usually, this would require you to produce two negative letters from potential lenders; and
- The other party has the ability to pay.

- **Interim Legal Funding Order – financial provision for a child or following an overseas divorce**

If you have made an application for financial provision for a child or an application for financial relief following an overseas divorce, you may be able to apply for an interim order for the other party to pay towards your legal costs. The criteria to obtain an order is broadly similar to the criteria for a legal services order.

- **Legal aid**

Legal aid can help meet the costs of legal advice, family mediation and representation in a court or tribunal. You will need to show that your case is eligible for legal aid, the problem is serious and you cannot afford to pay for legal costs. In family cases legal aid is usually only available if you or your family are at risk of abuse or serious harm, for example domestic violence or forced marriage or you are making legal arguments or bringing a case under the Human Rights Act.

You can check if you are eligible for legal aid on the government website at [Check if you can get legal aid](#)

What are the cost rules in family cases?

In family proceedings the court may make such order as to costs as it thinks just. Cost orders in Children Act proceedings are generally rare, although the court may take into account conduct of the parties.

In financial remedy proceedings there is a 'no order as to cost rule' which means the court will not make a cost order unless appropriate to do so taking account of the conduct of one of the parties (whether before or during the proceedings). Financial remedy proceedings are defined narrowly and a distinction is made between proceedings that are made for a final financial order (which most applications will be) and those which are 'in connection with' proceedings for a financial order (for example interim applications, applications for a legal services order and applications under Schedule 1 of the Children Act 1989). In these cases the court has 'a clean sheet' as to what order to make. The starting point will be that 'costs follow the event' which

means the unsuccessful party will be ordered to pay the costs of the successful party.

The Civil Procedure Rules will apply to unmarried couples applying for declaratory relief under the Trust of Land and Appointment of Trustees Act 1996. The usual order in civil cases is that costs orders following the event, with the unsuccessful party paying the costs of the successful party.

We will advise you on the cost rules applicable in your case and whether you can apply for cost orders against the other party.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.