

# How to fund your case



*working for  
accessible justice*

Beck Fitzgerald is a specialist family practice based in central London and committed to accessible justice.

Our aim is to enable more families to get the expert help they need when they need it, at a price they can afford.

Alongside our casework with clients, we strive to challenge the family justice system to improve outcomes for the children and families we serve

We work tirelessly to improve the laws and protection for victims and their children so that they can feel safe.

We do not judge, and all our team are trained in trauma informed ways of working. We will help you find the best legal solution for you and your children.

At Beck Fitzgerald we know that the issue of costs and how to fund your case can cause a lot of stress at a time when there is already matrimonial or family breakdown and conflict.

Often parties are usually already struggling to adapt to financially supporting two separate households and may be unable to release funds from a joint asset especially if the money is tied up in bricks and mortar.

In the eye-opening 2023 Fair Shares Report funded by Nuffield Foundation and steered by Professor Hitchings of the University of Bristol, the reality of the "everyday divorce" emerged.

It appears most divorce cases had modest amounts of wealth on divorce with the median value of the total asset pool (including home and pensions) amounting to only £135,000.

London asset values are of course higher but the prospect of paying for legal advice is daunting for many clients which is why it is shockingly reported

that as few as 12% of divorcees took no advice whatsoever. Only 32% of divorcees made use of lawyers even though the costs of divorce advice were relatively low for the smaller money cases - a quarter of divorces had costs of less than £1,000 with a further 18% having costs between £1,000-£2,999.

Generally higher costs were associated with greater wealth which makes sense since for those divorcees they had greater assets to evaluate which often entailed greater complexity.

Arguably in cases like that it is usually unwise not to take advice since family lawyers can bring huge benefits both in terms of quantifying the assets in the first place (not easy task at times if assets, for example, need to be valued or are hidden away or overseas) and lawyers are expert in advising on distribution and negotiating a settlement or taking the matter to court if there is no other choice.

If you end up in a position where you need the advice but do not have the savings or resources to fund yourself, there are a few routes to consider with your lawyer when it comes to funding your family case:

### **Private borrowing/Bank of Mum & Dad**

In divorce proceedings the first port of call for many will be family and friends and new partners. This can have many advantages such as a lower rate of interest (if charged at all), more flexibility in terms of repayment dates and arrangements, quicker access to the funds required and no impact on the credit rating of the borrower.

However, the same advantages are also the reason why these are sometimes considered to be soft loans and the

other party may try to argue that these debts do not have to be repaid or, if it is accepted, that it is a loan rather than a gift, that the lender will not take any action to recover the debt and so the court does not need to accord it the same weight as other liabilities.

If you are considering this option, there are ways to try to protect your position, with varying degrees of effectiveness as follows:

### **Letter from the lender/ a formal Loan Agreement that can be drawn up**

This letter or Loan Agreement should refer to the amount of money loaned and should specify the purpose of the loan. Sometimes private borrowing will relate to general expenditure as well as legal fees and, if so, a breakdown is sometimes useful.

Depending on the agreement, the letter will need to set out any agreed terms relating to interest charges and how these will be calculated and implemented, repayment dates, and any specific reasons that repayment is required by that date. The letter should be signed by the lender and dated.

If the loan is provided by a more distant relative or a non-family member, it may also be helpful to refer to this so that it is more difficult to argue that the loan will simply be written off at the end of the proceedings.

### **Charge**

A private loan can be coupled with security provided by the borrower to allow the lender to recover the debt if repayments are not made as agreed.

There can also be considerable difficulties in creating and/or registering charges over assets held in joint names,

so it is easier to pursue this option if the secured assets are held in your sole name. However, in those circumstances, consideration should also be given to whether this creates a perception (or reality) that the you are putting the assets beyond the reach of your spouse.

### **Commercial borrowing**

You may be in a position to take loans from commercial lenders, including banks and credit card companies. There may also be the option of increasing existing mortgage facilities and using equity in property to secure funding.

The disadvantages of this approach include the higher rate of interest which usually accrues and the fact that repayments will usually commence shortly after the loan is drawn down.

If you are considering this route then it would be advisable to investigate deals such as 0% interest credit cards, which will limit as far as possible the negative aspects of this option.

These loans are likely to be considered hard loans by a court and taken into account in relation to a final settlement. The corollary to this is that any default is more likely to result in formal proceedings from the lender than with soft loans.

You should also remember that with commercial borrowing it is likely that repayments will most likely be due on a monthly basis from the start.

When using this option, you must be aware that this may affect your credit rating and mortgage capacity.

## Litigation funding

There are a number of providers that offer specific litigation loans which are designed specifically for the purpose of funding court proceedings for financial remedies and TOLATA (Trusts of Land and Appointment of Trustees Act 1996) cases. The terms will vary between providers and offer some advantages that the commercial loans do not provide.

The main features of these arrangements include:

- The interest rates will often be high, so a cost-benefit analysis should be conducted, bearing in mind the amount you will eventually repay.
- Some providers enable the money to be drawn in tranches and, given the high interest rates, it is essential to negotiate this when funding legal proceedings where the funds will not all be required in the short term and may not be required at all.
- Such providers will often require security (such as an equitable charge) over assets and are more likely to require undertakings as to outcome without it.
- Many providers will defer repayment until the conclusion of the matrimonial proceedings. You should be aware that whilst this can alleviate short-term needs it does mean that the total interest repayments are likely to be higher.

## Public Funding / Legal Aid

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has governed the provision of legal aid since 1 April 2013.

This means that legal aid for most children and finance matters in private

family cases will only be available where you have specific evidence in relation to domestic violence and you can satisfy certain means/merit criteria which means detailed information will need to be taken about your financial circumstances.

Additionally in many cases, those that are eligible for legal aid will have to pay back some of the cost if you "win" money or property from the case which is called the "statutory charge".

Legal aid will continue to be available for cases concerning domestic violence, forced marriage, international child abduction and public law proceedings.

At Beck Fitzgerald, we are delighted to be one of the few family law firms that can still offer legal aid if circumstances allow and the means/merit criteria can be met.

## Insurance

You should check whether any insurance policies you hold provide assistance with the payment of legal costs. Some general insurance policies (which can include household contents cover) include an element of cover for legal expenses or advice and assistance, or it may be that you have a specific legal expenses insurance policy.

Whilst it is not usual for such policies to cover the costs in matrimonial proceedings or otherwise in relation to the breakdown of a relationship, it is worth establishing this in relation to each individual policy at an early stage.

## Legal Services & Payment Orders (LSPOs)

An application can be made to the court for a costs allowance to be paid from one party to the other which in practice means you may be able to obtain an order compelling your ex-spouse / partner to pay your legal costs. The relevant legislation is s22ZA(1) of the Matrimonial Causes Act 1973 and the court will take into account certain statutory considerations such as income, earning capacity resources of the parties along with the reasonableness of the client's stance.

Evidence will need to be obtained demonstrating you have no recourse to funds from other sources (eg loan or savings). This can include confirmation from the solicitors that a deferred payment arrangement is not available and similar letters from litigation loan companies.

LSPOs are by their nature and definition the last option to be considered in respect of funding financial proceedings.

## Maintenance Pending Suit

Where a Legal Services Payments Order is not available, it may be worth considering an application for a legal costs allowance as part of a Maintenance Pending Suit application which is an application for maintenance "as the court thinks reasonable".

Strict criteria apply and the costs of such an application can be high and/or disproportionate to the issues at stake so, as with all litigation, a careful risk assessment and exercise in cost proportionality needs to take place.

## Litigants in Person / Pay As You Go Orders

In some cases, you may have little or no resources to fund your case or to pay for formal legal advice and are compelled to act in person i.e. unrepresented.

This can be tricky since although there is lots of information online and court forms can be downloaded, it can be very tricky to navigate the legal landscape without help especially when the issues are complex.

It may be possible to work in a hybrid relationship with your lawyer so that your lawyer only provides limited or partial advice on a pay as you go basis i.e. you pay for the legal advice you can afford rather than obtain full representation which means you still run your case yourself.

Alternatively, a litigant in person may be able to find the support of a McKenzie friend or from the Citizens Advice Bureau or a pro bono legal clinic although the quality and availability of these services can be hit and miss.

## Fixed Fees & Dispute Resolution Options

Some firms, although disappointingly not enough, offer a fixed fee service for certain categories of work such as divorce or assisting with the preparation of an important application or document such as a pre or post nuptial agreement.

Please have a chat with us to assess this option since even if we can't fix the fee, we can most likely clearly signpost the costs you can expect along the way as well as mapping out the best route you can take to help reduce the cost

## Speak to us

and minimize the conflict. All of our lawyers are committed to dispute resolution, and we will very early on, consider all the non-court routes alongside our client.

It's a lot to take on board so please come and have a complimentary chat to see if we can help you locate a funding source if needed and make an assessment as to what you need and how you may be able to fund it.

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For more information please contact us on:

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