

# **Paying for your Divorce or Family Law case**

From 1st April 2013 Legal Aid disappeared for many families who needed it in order to resolve the children and financial aspects of Divorce and separation. Although Legal Aid still remains in a much reduced form, to qualify your case must involve;

1. public care proceedings;
2. representation of a child;
3. child abduction issues;
4. forced marriage;
5. injunction advice and proceedings;
6. human rights issues;
7. if there are issues relating to domestic abuse, including "any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional)" and an application has to be made to court to deal with children or financial matter.

It is important to note that a simple allegation of domestic abuse will not be enough. Allegations will have to be proven and the criteria for doing so are very defined.

Since the availability of Legal Aid has shrunk we have found that concerns about how to fund a case concerning children and the financial aspects of Divorce or separation is one of the main reasons why some people choose to go it alone without a solicitor. In our experience this can be disadvantageous to the party not in receipt of legal advice and more costly in the long run. In reality there is no substitute for taking good legal advice and acting on that advice as failure to do so can cost a client dearly, not only in the short term during the legal process but long after the proceedings are over when that client's lifestyle will have been needlessly and irreparably altered. We have found that good legal advice and representation can often produce or contribute to a speedier and more advantageous result for our clients and a more "level playing field". From our experience it is amazing how some cases settle swiftly as soon as the previously unrepresented party receives legal advice and representation.

Given that the costs of cases can range from hundreds of pounds in the most straightforward divorces, to tens of thousands of pounds depending on the complexities of the overall work, the short-term problem of funding those costs does need to be weighed against the benefit of the overall sum likely to be received on divorce. So clients need to think commercially about how costs will be paid while the case is ongoing. This general guide will look at the various options for financing your case in approximate order of total financing cost. This is a non-exhaustive list and one or more options may apply to you. We advise all clients to take independent financial advice before deciding on which funding option(s) to take as some options may be more preferable to you than others.

## **1 Soft loans from family and friends.**

In our experience these loans are usually made interest free, and with no fixed date for repayment. There are pros and cons to these types of loans. For example, a loan is included as a liability on ultimate division of the matrimonial pot. But a "soft loan", particularly from close family members, is often treated as a gift. This can result in further costs being incurred in arguing on that very point, which then further increases the costs involved in the proceedings. Accordingly to avoid this from happening and to ensure the loan is regarded as a "hard loan" we suggest that the loan is evidenced in writing (preferably prepared by solicitors acting for both parties) and signed by both parties to avoid the loan being discounted as a liability when deciding finances.

## **2 Bank accounts, savings and investments.**

Bank accounts in joint and sole names will rarely pay any meaningful rate of interest in the current economic climate, so the loss of any interest is a negligible cost. This might be a good source of funding and will be taken into account in the schedule of assets and liabilities.

Savings and investments will generally provide a greater return than a bank account, but these are still likely to be modest when considered against the cost of borrowing. Advice should be sought however as to which investments to cash in, to ensure that tax liabilities are minimised.

## **3 Remortgage of property.**

Additional security must be provided, so there is an inherent risk if the loan is not repaid. However one advantage of this option, assuming there is sufficient equity in a property, is that the loan can last beyond the duration of the proceedings. The interest rate should also be modest, at least in the present climate.

Remortgage finance may not be available when there is insufficient equity in a property, or when the property is in joint names and the other party does not consent to the remortgage.

## **4 Personal bank loans.**

These may typically be obtained from a high street bank, with an APR of about 7 per cent upwards (rates may change). However the actual rate will be dependent upon circumstances. The loans are for a fixed period. They may carry an upfront arrangement fee, but will typically be up to £25,000. Their availability is highly dependent upon the individual's ability to repay on a capital and interest basis from income or other capital resources. It is possible to have the interest rolled up until the debt is repaid.

Personal loans of more than £25,000 remain available from private banks and from the wealth departments of high street banks. In our experience this is a common source of funding, but the interest rate needs to be acceptable to the client who is advised independently. Such loans are generally only made available to persons who the bank hopes will invest a substantial portion of their settlement (think: six figures) with the bank upon receipt. The bank will require an irrevocable undertaking from the solicitor and the client to ensure that on payment their debt will be paid. The solicitor's bills will then usually

be paid monthly, direct from the bank, after the client confirms to the bank that payment should be made.

## **5 Litigation Loan Funding.**

At March Solicitors we can arrange Litigation Loan Funding to help pay the legal costs of people going through Divorce, TOLATA, Collaborative Law and Mediation cases. To qualify you will need some capital assets (such as property) in order to pay off the loan at the end of the case.

We do not recommend this option above any other option listed in this Guide and this option should be considered as one funding option potentially available to you. This Company does not receive any financial incentive from the Litigation Loan Funding Company.

For more information on Litigation Loan Funding please ask for the Client Frequently Asked Questions brochure.

## **6 Credit cards.**

If the balance cannot be cleared on a monthly basis, a credit card is an expensive source of finance and overall is best avoided for use in family proceedings. It is doubtful these could be used to any great extent for most people, because of the generally limited funds available. However certain credit cards do have large credit limits and might be an immediate – albeit short term – answer if proceedings are being instigated. If the credit card is in joint names, its use might also serve to galvanize the other spouse to assist with funds.

Rates of 0 per cent can still be obtained for some credit cards, albeit rarely and should only be used if a meaningful credit limit can be obtained and the case timetable will allow for repayment of the debt within the 0 per cent period. Eye-watering interest rates may follow if repayment is not made by the end of that period.

## **7 Sears Tooth Agreements.**

Under a Sears Tooth Agreement, the client irrevocably agrees by deed to pay the solicitor's fees from their capital settlement at the end of the case. An interest charge will be made. They are by no means freely available. Solicitors know they are very risky, given the potential risk of non-payment if the settlement doesn't materialise, for example if the paying party defaults or goes bankrupt. Sears Tooth Agreements do not cover income (maintenance) awards and where other debts need to be repaid by the client to the paying party, the solicitor's fees are likely to end up bottom of the heap.

## **8 Interim Lump Sum Order.**

Sections 22ZA and 22ZB of the Matrimonial Causes Act 1973 create a statutory regime which provides for "*an order or orders requiring one party to the marriage to pay the other ("the Applicant") an amount for the purposes of enabling the Applicant to obtain legal services for the purposes of the proceedings*". Payments can be in a lump sum or by instalments.

Such an application first requires the client to show they cannot reasonably secure a loan for external funding, usually from one or two potential lenders. In addition a client must show that they could not persuade their solicitor to enter into a Sears Tooth Agreement referred

to in part 7 above. Only when those two elements are proven can the client proceed with the application to court.

Production of correspondence between the client and at least two banks resulting in a negative response should normally suffice the external funding requirement, and a simple statement from a solicitor stating that they are not prepared to enter into a Sears Tooth Agreement should ordinarily deal with the second requirement.

If an application is made and the court is satisfied the other party can afford to contribute, it can order periodic payments or a global advance payment, to avoid the added complications of monthly recovery. Such an order can have a significant impact against the wealthier party, to redress the balance.