

Divorce: who pays?



One of the first questions asked by most family clients in an initial client meeting is “who pays for this?” The answer, as is the case with many family law queries, depends on the circumstances of the case, so we do have to advise on an individual basis. We outline here the different factors to be considered.

Divorce application

At this stage in proceedings, there *is* a straightforward answer to the ‘Who pays’ question: the individual applying for divorce (the petitioner) is responsible for the initial £550 court fee. This fee covers the paper side of the divorce or dissolution of the marriage. It can, however, be recoverable from the respondent either by mutual agreement between the divorcing parties or by way of a costs order. A costs order may be granted by the court if the divorce is obtained on the basis of the fault of the respondent (i.e. on the facts of adultery or unreasonable behaviour). If the petitioner instructs a solicitor to action the divorce for them, then normally some or all of the solicitor’s costs are also recoverable.

Financial remedy

In the unfortunate event that a financial side of the divorce (dividing up the assets and making arrangements for maintenance) cannot be agreed between the parties, and it is necessary to instruct solicitors and attend court, the fees associated with divorce are likely to rise into the tens of thousands.

If it is necessary to make an application to the court to resolve the finances – known as financial remedy proceedings – then the general rule is that each party bears their own costs. Solicitors will expect to be paid at regular intervals throughout, although it may be possible to obtain a specialist litigation loan to cover these costs.

Any unpaid costs or such loans will be taken into account by the final hearing judge, to allow both parties to meet their liabilities, but it is rare to obtain an order that one party should pay the other's costs.

The court will make a costs order in limited circumstances, which include the following:

- Litigation misconduct within the proceedings – non-disclosure. If, for example, the court makes an order for disclosure of certain assets against the wife, and she fails to comply, then the husband can seek enforcement action and his costs of that action will be recoverable against the wife. The wife can also be held in contempt of court in such circumstances.
- Litigation misconduct within the proceedings – failure to engage. The court will set out a timetable of steps which must be followed. If one party fails to comply with those steps, or fails to attend hearings, then the other party will be able to recover their costs relating to the hearing from the defaulting party.
- Financial misconduct, such as a husband deliberately seeking to hide or dispose of certain assets, in order to deprive the wife of her claims. In such circumstances, the wife could make a good case for a costs order, as it is likely that her costs would have increased as a result of the husband's conduct.

Although they are rare, there have been cases where the conduct of one party warranted the court making a costs order against them, including:

- The husband created, and failed to fully disclose, a complex offshore company structure holding the family assets resulting in a £1.5 million indemnity costs order against him ([M v M \[2013\] EWHC 3372](#))
- The husband failed to provide financial disclosure requests and failed to attend final hearing resulting in a combined £1 million costs order in favour of the wife ([Thiry v Thiry \[2014\] EWHC 4046](#)).
- The husband spent £182,000 more on legal costs than the wife. The court ordered that the wife should receive an additional £182,000 in the settlement in order to balance the party's positions ([J v J \[2014\] EWHC 3654](#)).

These cases demonstrate extreme and extraordinary conduct. It is worth remembering that a very small number of cases are reported (normally those involving more money than the average family has) and most proceedings are private. However, we have experience making and defending applications for costs.

If you need specific advice, please contact Helen Fisher at helen.fisher@cripps.co.uk explaining your circumstances.

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