

# GUIDE TO PARTY AND PARTY COSTS

## 1. The General Rule

The rules as to whether the court can order one party to the proceedings to pay the other's costs have radically changed in relation to applications for ancillary relief in proceedings for divorce (see our Ancillary Relief Guide).

However the rules have not changed in relation to other proceedings relating to financial provision such as:

- Inheritance Act Claims
- Applications under the Trusts of Land and Appointment of Trustees Act 1996
- Schedule 1 of the Children Act 1989 (application for financial provision for a child)
- Part III of the Matrimonial and Family Proceedings Act 1984 (application for financial provision following an overseas divorce)

If you win your case, the general rule is that your opponent will be ordered to pay all or part of your legal expenses referred to as "costs". There is always the possibility that the other side may not be able to pay the money it is ordered to whether because your opponent has the protection of a Legal Services Commission Public Funding Certificate or is bankrupt.

## 2. Protection for your Publicly Funded Opponent

Limited cost protection is given to Publicly Funded persons where a Costs Order is made against them. In those circumstances the publicly funded person will not normally be expected to contribute to his or her opponent's costs beyond any contribution they may have made during the case. They can however, despite the fact that they are publicly funded, be Ordered to pay, by way of costs, what is reasonable, having regard to all the circumstances. In particular, this refers to financial circumstances. It also can take into account conduct (for example, where the publicly funded person has behaved unreasonably throughout the conduct of his/her case).

The normal Order that the Court makes, however, in such circumstances against a publicly funded person would be "not to be enforced without leave of the Court". However, at any time in the following six years from the date of this Order the opponents can apply to vary the costs Order in an attempt to obtain their costs. Such an application can be made if new information comes to light about the publicly funded person's means which could not have been obtained with reasonable diligence at the time the Order was made or there has been a change in the publicly funded person's circumstances since the date of the Order for example if they received a lump sum.

## 3. Your liability to pay your opponent's costs

The Court may make Orders during the proceedings, up to and including the final hearing:-

- (a) for the payment of a proportion of another party's costs;
- (b) for the payment of a stated amount in respect of another party's costs;
- (c) for costs to be paid from or until a certain date only;
- (d) for the payment of costs incurred before proceedings were begun;
- (e) for the payment of costs relating to a particular step in the proceedings;
- (f) for the payment of costs relating only to a distinct part of the proceedings;
- (g) for the payment of interest on costs from or until a certain date.

If the smooth conduct of the proceedings is adversely affected as a result of action taken by you or your failure to co-operate with any procedural requirements, it is possible that the Court will Order you to pay your opponent's costs relating to that particular stage of the proceedings.

When deciding whether to make an Order for costs, the Court must consider the conduct of the parties, whether a party has succeeded with all or part of his case and any attempts to settle the matter which have been drawn to the Court's attention. Broadly if you lose your case you are likely to have to pay your opponent's costs but there are complex rules as to what matters a Court must take into account.

#### **4. Assessment**

At any stage, the Court can make an Order for the payment of a specified sum (which is decided by a "Summary Assessment"), in which case payment must be made within 14 days of the Order. In many circumstances, it will not be possible to enforce such an Order against a publicly funded opponent.

Where the Court makes an Order for a Detailed Assessment of costs instead of a Summary Assessment Order, the Court must assess those costs under a procedure known as the "Detailed Assessment Procedure" (formerly known as "taxation").

This procedure involves drawing up a detailed bill setting out exactly what has been done and the amount charged for each item. The Court will allow an amount which it considers reasonable, even though you may have had to pay more. In reaching a decision, the Court must consider the conduct of the parties and whether the costs were reasonably incurred and reasonable in amount after taking into account the amount of money involved, the importance and complexity of the matter and the respective financial positions of each party.

#### **5. The Basis of Assessment**

The court will normally order that costs should be assessed on a "Standard Basis" and will only allow costs which are proportionate to the matters in issue and resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party. The amount that you are likely to recover will be significantly less than the amount you will be liable to pay your solicitor

In some circumstances the court may order costs to be assessed on an "Indemnity Basis" in which case the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party. The amount that you would be likely to recover is likely to be close to the amount you will be liable to pay your solicitor

#### **5. The Practical Effect for you**

The total cost of the case to you is called "solicitor and own client costs". The amount you get back from the opponent is called "party and party costs" and is likely to be significantly less than your solicitor and own client costs.

You will be responsible for paying this firm's bill in full (our "solicitor and own client accounts") regardless of any Order for costs made against your opponent.

You must remember that you can win your case and still be out of pocket in respect of your costs, especially if your opponent has no funds with which to pay your costs. There is the added problem that, if your opponent is Publicly Funded, it is often impossible to enforce an Order for costs against him/her. This is something which you should bear in mind at all times, especially when attempts are made to negotiate a settlement.

The purpose of this guide is to give an overview of the impact of legal costs and is not intended to replace expert advice on your own position. You should not rely on what is said in this fact sheet alone. If you would like advice as to your individual position we would be happy to accept instructions to advise you.

William Sturges & Co  
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