

SCHEDULE

LITIGATION AND CONTENTIOUS EMPLOYMENT WORK

1. Charges and Expenses

Our aim in litigation will always be to achieve your objectives efficiently and cost-effectively. We will explain to you the issues raised in your case, and how to go about resolving the dispute so that you end up with the best result possible, as quickly and economically as possible. We will also assess and discuss with you at appropriate stages whether the likely outcome of your case will justify the expense and risk involved. We will always keep you informed of progress throughout.

In any litigation we would always advise you to go forward in stages, and at each stage to review the arguments, the chances, the risks and the costs before proceeding to the next stage. By breaking down the litigation in this way we can regularly reassess with you how much has been spent, how much is still likely to be spent and whether the likely outcome will justify the risks and cost.

2. Funding Your Case

We hope, wherever possible, to resolve our clients' disputes without resorting to litigation, by taking a firm approach to negotiation or using mediation or other forms of alternative dispute resolution when appropriate. If litigation becomes unavoidable however the question of how to fund your case becomes vital. We will discuss with you and explain in detail the variety of options you may have so that you can make an informed choice. These may include, depending on the case:

- Private funding by you throughout - we will give you estimates and agree budgets with you wherever possible and bill you as regularly as you would like (usually monthly) to avoid costs building up unexpectedly
- Fixed or capped fees for certain stages of the litigation
- Reduced hourly rates if your case is unsuccessful
- A conditional fee which will depend on success. This means we will charge you a success fee if you win (at an agreed percentage of our normal costs with an agreed cap) but nothing if you lose
- Insurance to cover your opponent's costs if you lose, or insurance to cover both your own and your opponent's costs if you lose. It may be possible to defer payment of the insurance premium until the end of the case, and even to insure payment of the premium itself so that it will not become payable if you lose. It may also be possible to arrange funding through the insurer for the expenses or disbursements which will be incurred during the litigation

- Any existing insurance cover you may have in place to cover the costs of the litigation.
- Legal aid, if your income and capital are within certain limits. (We do not generally operate under the statutory schemes for legal aid or legal advice and assistance so if you are eligible, and do not want to consider other funding options, you should instruct a firm which does operate under these schemes - we will try to recommend someone to you).

3. Our Fees

Because our time and expertise are the core elements of our service, whichever method you choose to fund your case (except in the case of fixed fees), we will base our charges for the work carried out for you on the amount of time spent on your case. This will include time spent:

- Seeing you or talking to you on the phone
- Writing to you, to the Court or to the representatives for the other side
- Talking to your witnesses or experts
- Preparing statements for you and your witnesses
- Researching the legal position
- Reading and studying the papers and documents in your case
- Preparing papers for your Barrister and the Court
- Preparing for and attending any mediation on your behalf
- Travelling to and attending meetings with your barrister
- Travelling to and attending Court on your behalf

We charge one tenth of our hourly rate for short letters written and short telephone calls. Longer letters and telephone calls, and other activities, are charged according to the time spent on them.

4. Billing Arrangements and Costs On Account

When your case is funded privately (with or without insurance cover) we usually ask for money on account of costs before commencing work, and for further money on account at appropriate stages as the matter proceeds. We will send you regular interim bills (usually monthly) which will be final bills for the period they cover and will summarise the work we have done during that period. If you require a more detailed narrative, we reserve the right to charge you for the time spent preparing one. Any money you have paid us on account will be offset against our bills. We will always ask you to let us have payment in advance to

cover any disbursements to be incurred by us on your behalf such as barristers' or experts' fees and Court fees (unless you have arranged funding for these through your insurer). All this enables you (and us) to properly budget for costs as the litigation progresses.

5. Opponents' Costs

5.1 Recovering Costs

If you are ultimately successful in your case, the Court will usually order your opponent to pay a contribution towards your costs. It is very unlikely that you will ever be awarded all your costs. You should expect to recover a contribution of about 75% of the actual costs you will have incurred. This is another factor to encourage early settlement on both sides because as costs increase, the potential shortfall on the ultimate costs contribution also increases and so reduces your eventual recovery.

The process of determining how much your opponent should pay towards your costs is known as detailed assessment. Unless an amount can be agreed, this will involve preparing a detailed bill of costs in the format required by the Court and submitting it, together with all our files and papers on your litigation, for the determination by a Costs Judge of the amount of your opponent's contribution. Our time spent dealing with the detailed assessment and the recovery of your opponent's contribution will be charged in the usual way, although a further contribution towards these additional costs (i.e. the costs of determining how much your opponent should pay towards your costs!) will usually also be paid by your opponent in addition to the contribution towards the costs of the litigation. This of course encourages your opponent to try to agree the amount of the contribution at an early stage to avoid these further costs mounting up.

You should bear in mind that unless a conditional fee arrangement applies you will still be responsible for our costs whether you win or lose the action and that a Court Order for costs against your opponent helps you only to the extent that those costs are actually recovered. For example your opponent may not have the means to be able to pay. Also, if your opponent was in receipt of legal aid, it is very likely that you will not be permitted by the court to recover your costs from your opponent.

If you are successful and the costs are paid by the other party, we will be able to claim interest on those costs from the date when the costs order is made. We will retain this interest and offset it against any of our charges which may have accrued.

5.2 Losing your Case

There are inherent risks in all litigation and, however strong you or we may think your case is, there is always the possibility you might lose. If you lose your case, you will probably be ordered to pay your opponent's costs (in effect a significant contribution towards them after a detailed assessment as described above) as well as having to be responsible for your own costs.

6. Your Financial Position

We generally do not operate under the statutory schemes for legal aid, advice and assistance for those within certain capital and income limits. If you are eligible it may be best for you to instruct solicitors who do operate under those schemes. Please let us know without delay if you believe that this applies to you.

Please also let us know if you have any insurance that might cover charges and expenses (yours or another party's) or if you would like to see if insurance can be arranged for your matter.

You should also consider and tell us if some other person might cover all or part of the costs and expenses (for example, an employer or trade union).

MATRIMONIAL PROCEEDINGS

7. Liability for our Legal Fees, Costs of the Other Party, Recovery of Costs

The rules relating to orders for costs in matrimonial financial proceedings changed on 3 April 2006. Previously, you could be ordered to pay the other party's costs (as well as your own) if you did not accept a Without Prejudice offer (sometimes referred to as "Calderbank offers") from them during the case, which was later held by the Court to have been a reasonable offer in light of the result of the case. This is no longer the case. This is a very important change and you will need to understand the potential consequences for your case. I will discuss these with you in detail in light of your particular circumstances.

In brief, the new starting point in matrimonial financial proceedings commenced after 3 April 2006 is that there will be no order for costs and that no account will be taken of any Without Prejudice offers. Generally speaking, each party will have to pay their own legal fees although the amount would be considered by the Court as a liability of that party and may be taken into account in the financial award made. However the Court still has the power to make an order where it considers it appropriate to do so because of the conduct of one party in relation to the proceedings. This may include one party's failure to comply with orders of the Court, their reasonableness in pursuing a particular issue and any open offers to settle which have been made. I will therefore consider with you carefully what open offers should be made in your case.

At the moment, these rules are very new so it remains to be seen how frequently costs orders will be made and how the rules will be interpreted. Please also note that these new rules only apply to matrimonial financial proceedings and not to other forms of litigation such as under Schedule 1 Children Act 1989 and The Trusts of Land and Appointment of Trustees Act 1996. We will advise you in more detail on these points if relevant to your case.

Even if costs are ordered in your favour it is rare for the amount to be the full amount of your legal fees. We would try and agree the amount with the other solicitors. If that is not possible, the amount would need to be assessed by the Court. In most cases you would only recover standard basis costs which are usually about one half to two thirds of the actual legal fees incurred.



Even if you do obtain an order for costs, the other party may not be in a position to pay. Further, the Court will not usually make an Order for costs at all if the other party is Legally Aided.

You will also be responsible for paying our charges and expenses (including if necessary those of a costs draftsman to prepare a detailed bill) of our seeking to obtain any costs which you are entitled to recover from the other party.

13.2

You should be aware that under the Insolvency Act 1986 any property that you receive from your spouse as part of the divorce settlement (including a house) is liable to be set aside if your spouse becomes bankrupt within 5 years of the final settlement. This is a risk that all spouses take in divorce proceedings. There is little that can be done to avoid the risk. If you believe this problem might affect you, please let us know.