

Who pays the legal costs?

Clearly legal proceedings can be expensive. At the end of a legal case the question arises who is to pay those costs?

In financial remedy proceedings the rules are different to most other areas of the law.

If you bring a personal injury case, in relation say to a road traffic accident, the winner will usually get their costs paid by the loser. Let's say you are driving along and someone goes into the back of you. You go to the county court and the judge finds that the driver of the other car was negligent and they should pay you damages. Generally as the winner you will be entitled to your costs. The other driver will have to pay for your legal costs.

In financial remedy proceedings however, the starting point is that there should be no order for costs. This is the rule in Family Procedure Rules rule 28.3(5):

"Subject to paragraph (6) the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party."

The idea behind this rule is that it simplifies the proceedings. Generally speaking at the end of the case the parties know they will each have to pay their own costs.

There are however, a number of situations where the "general no costs order rule" does not apply:

(a) There are parts of the proceedings which are not categorized as "financial remedy proceedings":

- An application for maintenance pending suit;
- An application for a legal services payment order; and,
- An application for another interim order (i.e. before the final hearing)

(b) Parts of the proceedings involving a 3rd party. For example, a case involves a property which is in the name of the Husband's parents. The Wife says it is really the Husband's property. There is a preliminary hearing to determine whether the Husband does really own the property. The Husband's parents are allowed into the proceedings as "third parties". Whoever wins on the third party issue is likely to receive an order for their costs from the losing party.

(c) A case falling in Family Procedure Rule 28.3(6) where the court considers it appropriate to make an order for costs because of the conduct of a party in relation to the proceedings. Note: the reference to "the proceedings". In other words the court can't make an order for costs on the basis that someone behaved badly during the marriage itself. The conduct complained of has to have something to do with the proceedings themselves. In rule 28.3(7) are set out a list of things which the court is to take into account when deciding whether to make an order for costs under 28.3(6):

- any failure by a party to comply with these rules, any order of the court or any practice direction which the court considers relevant;
- any open offer to settle made by a party;
- whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- the manner in which a party has pursued or responded to the application or a particular allegation or issue;
- any other aspect of a party's conduct in relation to proceedings which the court considers relevant; and
- the financial effect on the parties of any costs order.

Examples of where a party might be able to get an order for costs against the other party under this last section are:

- At a final hearing lasting 3 days, the Wife asked the court to take into account the Husband's conduct during the marriage. This resulted in the hearing lasting 3 days rather than 1. In its final judgment the court finds that "conduct" is not relevant. The Husband asks for an order for his costs for 2 days of the hearing.
- At a different final hearing the court finds that the Wife failed to disclose her assets properly and that she has "hidden assets". The Husband applies for an order that the Wife pay the costs which he incurred in trying to show that there were hidden assets.
- In January the Husband made an open offer. He offered to settle the case in return for paying the Wife £100,000. 6 months later there is a final hearing and the judge orders the Husband to pay the Wife £100,000 in full and final settlement. The Husband asks for an order that his costs between the date of the open offer and the final hearing be paid by the Wife. He makes the point: if my Wife had accepted my open offer back in January, I would not have had to incur these extra costs.