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**A GUIDE TO FUNDING FINANCIAL  
PROCEEDINGS UPON DIVORCE**

The funding of a case is always a delicate subject, but it is something which needs to be addressed at the very outset of a matter because the general rule in family cases is that each side will be responsible for paying for their own legal costs.

The curtailing of legal aid means that it has become increasingly common for solicitors to encounter clients who are not eligible for assistance and yet who do not have sufficient resources to pay fees on a privately paying basis. Luckily there are several funding solutions available to clients who find themselves in this position, as discussed below.

### **A 'Sears Tooth Agreement'**

A Sears Tooth agreement is a deed that assigns the client's financial settlement to the solicitor, to cover the cost of the legal fees which are incurred throughout the life of a case.

A lump sum settlement awarded in a divorce can be legally assigned in this way.

This funding option is usually particularly attractive to client's who have a limited income stream but who have significant capital assets at their disposal.

The advantage of this option is that there are absolutely no upfront costs to pay other than disbursements (such as court fees and barrister fees).

It offers clients flexibility and peace of mind knowing that they will not have to overstretch themselves financially in order to find money upfront.

## **Loans**

In some instances, the only practical solution may be for a client to borrow money from a third party, on a credit card or from a bank, in order to meet the cost of their legal fees.

It has become increasingly common for banks to lend money to fund matrimonial litigation. There are a number of lending institutions who now offer specialist financing for matrimonial cases. These lending institutions will fund a client's case and the fees will be repaid out of the financial settlement which is reached. The lender may also agree to "roll up" the interest payments into the final payment, so that no repayment is made before the case is over.

## **Court Orders**

In some circumstances, the court can order one party to contribute towards the other party's ongoing legal fees. The statutory provision that is likely to be invoked most frequently is section 22ZA of the MCA 1973, which enables the court to make a legal services order requiring one party to pay an amount for the purposes of enabling the other party to obtain legal services (an order for payment in respect of legal services). The court will not make an order for payment of legal costs out of the other party's income unless there is absolutely no other possible way of having the costs paid. That must include the solicitors of the applying party refusing to enter into a "Sears Tooth" agreement, and banks/commercial lenders having rejected funding applications.

**To discuss where you stand in relation to finances as part of a divorce please speak to one of our family law experts today by contacting our Brighton office on 01273 696962 or London office on 020 3358 0058.**

**Alternatively, you can request a callback, or email us at info@arlingsworth.com.**

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*Please note that the above guide only provides a very brief and generalistic overview of the law and procedure pertaining to funding financial proceedings upon divorce. The guide should not be relied upon in any way as constituting formal legal advice, as it has not been tailored to the specific facts of an individual's case.*