

Legal Services Payment Order:

The Court can make Orders requiring one party to the marriage to pay to the other an amount for the purpose of enabling the Applicant to obtain legal services for the purposes of the proceedings. These Orders are referred to as Legal Services Payment Orders ("LSPOs").

A LSPO is an interim Order which Application is made pursuant to specific provisions in the Family Procedure Rules requiring fourteen days' notice to the Respondent prior to the hearing date.

The Application must be supported by written evidence and must include a detailed estimate of the costs both incurred and to be incurred in the proceedings.

The 'no order principle' which applies to Financial Remedy proceedings does not apply to Interim Applications, and therefore Costs Orders may be made in favour of the successful spouse.

The Court cannot make an Order unless it is satisfied that without funding the Applicant would not reasonably be able to obtain appropriate legal services for the proceedings. The Applicant must show that he or she is not reasonably able to secure a litigation loan to pay for the services. It is therefore usual to produce evidence of refusal by the Applicant's bank and two commercial lenders.

In determining whether the Applicant can reasonably obtain funding from another source, the Court would be unlikely to expect him or her to sell or charge their home or to deplete their savings.

Solicitors acting for the Applicant will also need to provide a statement that the firm is unwilling to enter into a Sears Tooth arrangement, which in effect means the solicitors require periodic payment of their fees during the course of the case.

The Court cannot make an Order unless it is satisfied that without payment the Applicant would not reasonably be able to obtain appropriate legal services for the proceedings. Therefore, the exercise essentially looks to the future and a LSPO will only be awarded to cover historic unpaid costs where the court is satisfied that without such a payment the applicant will not reasonably be able to obtain in the future appropriate legal services for the proceedings.