

### Case study 3 - family law - maintenance - England and Wales

In this case study on family law – child maintenance, Member States were asked to provide information for the suing party on litigation costs on litigation costs in order to consider the following situations:

**Case A – National situation:** Two persons have lived together unmarried for a number of years. They have a three year old child when they separate. A court decision grants custody of the child to the mother. The only outstanding dispute relates to the amount of the child maintenance owed to the mother by the father for the support and education of the child. The mother sues on this.

**Case B – Transnational situation where you are a lawyer in Member State A:** Two persons have lived together unmarried in a Member State (State B). They have a three year old child. They separate. A court decision in Member State B gives the child's custody to the mother. With the agreement of the father, the mother and the child move to live in another Member State (Member State A) where they establish their residence.

An outstanding dispute remains. This relates to the amount of the child maintenance owed to the mother by the father for the support and education of the child. The mother sues on this in Member State A.



#### Important Points to Note About the Information Provided

It should be noted that there are many influences that dictate the process and therefore costs involved in such a case in the courts in England and Wales, so it is not possible to give definitive costs and the matters included below are indicative only. Where possible actual fees have been included for certain aspects of the processes but these should be viewed as a guide only.

Court fees often depend on the tier of court used and the steps involved in the individual case, a full list of fees charged can be found at the [website of Her Majesty's Courts Service](#) . Information will also be required on other cost sources, such as legal representation. The [Law Society](#) and [Bar Council](#) may be helpful in finding a legal representative, but they do not hold information on costs of legal representation as this will depend on many factors of the particular case concerned.

For the examples given in the case study description above, we assume in addition that:

#### Case A:

- The parents were unable to agree between themselves with whom the child should live and so the case had to go to court for a decision. (90% of cases do not go to court.) The mother made an application for custody ("custody" is called "residence" in England and Wales). The father was the respondent to the mother's application and also made an application of his own for custody of the child.
- The court also decided at the same time how much access ("access" is called "contact" in England and Wales) the non-resident father should have to the child.
- For this example we assume the parents cannot agree between themselves on the maintenance for the child.
- In this example we assume the mother applies to the Family Court for a maintenance order. (In some circumstances the court does not have the power to hear a contested application for child periodical payments.)

**Case B:**

- This case study refers to the law as it was in mid-2009. The law will change when the EU Maintenance Regulation 4/2009 applies, which will be in 2011, subject to the Protocol to the 2007 Hague Maintenance Convention then being in force.
- For this case we assume that there has been no maintenance order made in State B at the time of the court's decision on custody. If there had been such an order, the more usual situation, it would be for the mother to apply to the court in State B to vary the amount. The court in State A would not be able to vary the amount of an order made in State B.]
- The mother applies to the court in Member State A for a maintenance order. There may then be additional costs involved with applying to the England and Wales Central Authority for service of the order on the debtor father in Member State B.
- In this case we assume that the creditor mother is habitually resident in the England and Wales jurisdiction of the UK.

**Note that:**

- Fees are correct as at 22 April 2014. Court fees are subject to change, so you should always check with the court, legal representative and any other individuals or organizations who are involved that an amount is still the current fee.
- You have to pay a court fee to make an application to the court and pay further court fees at different stages of the court case. You may qualify for a “fee remission” (depending on your personal circumstances) which means that you may not have to pay a court fee or only have to pay part of it. However, you have to apply for a separate remission for each fee payable throughout the court process. So, for example, applying for a remission when the first application is made would only give you the remission for that first “issuing” fee. This is because your personal circumstances might change during the court action, and you might no longer be eligible for a remission later in the case. Or you might become eligible for a fee remission during the case.
- There are also likely to be costs that you need to pay as your case goes forward. Costs might include legal fees, travel and accommodation, loss of earnings and witness costs. In some instances, at the end of the case, the court may decide that you also have to pay the costs of the other party to the case or they have to pay yours. If the court decides to make an order about costs at the end of the case the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order. The judge assesses the costs at the end of the case. So, if you lose, you may have to pay the costs of the winning party. And even if you win, you may not get back all the costs that you have had to meet during the claim. Costs can vary considerably depending on the case. There are some specific rules that apply on costs, depending on the particular court and procedures involved.

N/A is shown in the tables where the answer is Not Applicable and N/K is shown in the tables where the answer is Not Known.

**Indicative costs in England & Wales**

**Costs for court, appeals and alternative dispute resolution**

Case Study	Court		
	Initial court fees	Transcription fees	Other fees
Case A	£215 for mother's application for a maintenance order	Agreed between court reporter and appellant – max rate £1.63 per 72 words/min fee: £15.75	N/K
Case B	£215 for mother's application for a maintenance order	Agreed between court reporter and appellant – max rate £1.63 per 72 words/min fee: £15.75	N/K

Case Study	Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs

<b>Case A</b>	£215	Agreed between court reporter and appellant – max rate £1.63 per 72 words/min fee: £15.75	N/K	Information about alternative dispute resolution following breakdown of a family relationship (including costs) is available at the website of the <a href="#">Family Mediation Helpline</a> (or by calling the Helpline on 0845 6026627 from within the UK and +44 1823 623650 from outside the UK).	Information about alternative dispute resolution following breakdown of a family relationship (including costs) is available at the website of the <a href="#">Family Mediation Helpline</a> (or by calling the Helpline on 0845 6026627 from within the UK and +44 1823 623650 from outside the UK).
<b>Case B</b>	£215	Agreed between court reporter and appellant – max rate £1.63 per 72 words/min fee: £15.75	N/K	As above.	As above.

**Indicative costs for lawyer, bailiff and expert**

Case Study	Lawyer	
	Is representation compulsory?	Average costs
<b>Case A</b>	No	The <a href="#">Law Society</a> and the <a href="#">Bar Council</a> may be helpful in finding a legal representative but they do not hold information on the costs of legal representation as this will depend on many factors of the particular case concerned.
<b>Case B</b>	No	As above, though there may be two sets of lawyers' fees involved in cross-border hearings.

Case Study	Bailiff			Expert	
	Is representation compulsory?	Pre-judgement costs	Post-judgement costs	Is use compulsory?	Cost
<b>Case A</b>	No.  When cases are issued, the court serves documents automatically by postal service. There is a cost of £110 for service by the court bailiff if the applicant does not want the court to serve documents by post.  Note: information about the role of bailiffs and enforcement officers in	See left.	See left.	No	Information on experts can be found at the website of the <a href="#">Ministry of Justice</a>

	England & Wales can be found at: Her Majesty's Courts Service (bailiffs)				
<b>Case B</b>	Costs for the service of divorce documents on a respondent depend on the type of service accepted in the member state where service takes place.	See left.	See left.	See above.	See above.

**Indicative costs for witness compensation, pledge or security and other relevant fees**

Case Study	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated?	Cost	Does this exist and when and how is it used?	Cost	Description	Cost
<b>Case A</b>	N/A	N/A	N/A	N/A	N/K	N/K
<b>Case B</b>	N/A	N/A	N/A	N/A	N/K	N/K

**Indicative costs for legal aid and other reimbursement**

Case study	Legal Aid		
	When and under what conditions is it applicable?	When is support total?	Conditions?
<b>Case A</b>	Legal Aid will only be available for this type of work where there has been, or there is a risk of, domestic violence and where suitable evidence is provided in respect of this. The normal means and merits tests apply (see section on Legal Aid).	Where funding is granted, and where appropriate, Full Representation may be granted.	Suitable evidence demonstrating that there has been or is a risk of domestic abuse or child abuse must be provided.
<b>Case B</b>	Legal aid is available only for proceedings that take place in England and Wales (see above).	See above	See above

Case study	Reimbursement		

	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total, what is the percentage in general?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation?
<b>Case A</b>	It is possible for a party to make an application to a family court for reimbursement of costs. Costs will only be awarded to the applicant if the judge considers that the other party has acted in a way that causes unnecessary costs to be incurred.	See the answer to the left.	See the answer to the left.	Clients may be liable to pay a contribution depending on their income and capital. (See Case 1A)
<b>Case B</b>	It is possible for a party to make an application to a family court for reimbursement of costs. Costs will be awarded to the applicant only if the judge considers that the other party has acted in a way that causes unnecessary costs to be incurred.	See the answer to the left.	See the answer to the left.	See above

#### Indicative costs for translation and interpretation

Case study	Translation		Interpretation		Other costs specific to cross-border disputes?	
	When and under what conditions is it necessary?	Approximate cost?	When and under what conditions is it necessary?	Approximate cost?	Description	Approximate cost?
<b>Case A</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Case B</b>	Translation of documentation required	There are no regulations governing translators' fees. The translator or translation company fix their own fees.	See section on Translators' and Interpreters' Fees for information	See section on Translators' and Interpreters' Fees for information	N/K	N/K

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