Spousal Maintenance in Divorce – How Does it Work?

What is spousal maintenance?

The law and in particular the Matrimonial Causes Act 1973 provides the courts with the power to order that one party (the "payer") pays spousal maintenance to their spouse (the "payee"). This form of maintenance is sometimes referred to as periodical payments.

In circumstances in which a claim for spousal maintenance is being pursued by a party, the courts will have consideration to all the s.25 factors, but in particular, the court will consider the needs of the parties, giving first consideration to the needs of any children, the resources available to the parties, alongside the parties' ages and any health relating issues that may impact an award.

Are spousal maintenance and child maintenance the same thing?

No, they are not.

Child maintenance is a statutory payment scheme applicable to parents of children, irrespective of whether they are married or not. The scheme is operated by the Child Maintenance Service, which calculates the level of child maintenance payable on a statutory formula. The formula is based on a paying party's income and discounted for the number of overnight stays the child may spend with the paying party.

Spousal maintenance is a discretionary payment scheme operated by the court when determining the terms of a financial settlement between a husband and wife. Spousal maintenance is not awarded to cohabiting couples. The level of any spousal maintenance award and the term that level is payable for will depend on the parties' individual circumstances.

How much spousal maintenance is applicable in my case?

No strict formula applies to the calculation of spousal maintenance, which is quantified by applying the discretionary checklist set out in s.25 Matrimonial Causes Act 1973. The level of any periodical payments

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ordered by the court is assessed by balancing the income of the parties against their respective needs. Leading case law on the topic acknowledges that this is an art, not a science.

What is the court's approach to spousal maintenance?

Case law on the issue of spousal maintenance has provided a comprehensive checklist of the factors considered by the court on an application for periodical payments, including:

- a spousal maintenance award is made correctly where the evidence shows that choices made during the marriage have generated hard future needs on the part of the claimant party. The duration of the marriage and the presence of children are pivotal factors.
- an award will ordinarily only be made by reference to needs.
- where the needs in question are not causally connected to the marriage, the award should generally be aimed at alleviating significant hardship.
- in every case, the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the end of payments. A degree of hardship suffered by the claiming party, in making the transition to financial independence, is acceptable to the court.
- if the choice between an extendable term and a joint lives order is finely balanced, then the court should favour the former. If the choice between an extendable and a non-extendable term is finely balanced, the decision should normally be in favour of the economically weaker party.
- the marital standard of living is relevant to the quantum of spousal maintenance but is not decisive. The standard of living should be carefully weighed against the desired objective of eventual financial independence.
- the essential task of the judge is not merely to examine the individual items in the claimant's income budget, but also to stand back and to look at the global total and to ask if it represents a fair proportion of the payer's available income that should go to the support of the claimant
- where the respondent's income comprises a base salary and a discretionary bonus, the claimant's award may be equivalently partitioned, with needs of strict necessity being met from the base salary and additional, discretionary, items being met from the bonus on a capped percentage basis.

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What is a joint lives maintenance order?

If the court is to award spousal maintenance, it is tasked with determining the quantum and term. In short, how much and for how long should the maintenance be paid.

If the payments are to be made on an open-ended, indefinite basis, this is known as a "joint lives" order. The starting point for such an order is that the payments continue during the joint lives of the two parties. The order will automatically terminate if the recipient party remarries or forms a subsequent civil partnership, or on the death of either party.

Will I be successful in securing a joint lives maintenance order?

As set out in the leading case of Waggott v Waggott, the court's appetite for joint lives orders has diminished in recent years. There has been a continued shift towards non-extendable terms for spousal maintenance, designed to encourage the receiving party to re-enter the workplace and become financially independent, where possible. This approach supports the court's duty to try and seek out a financial clean break where possible within any matrimonial settlement.

The court sees divorce settlements as key to providing both parties with "an equal start on the road to independent living". As ever, each case will turn on its own facts, but it seems increasingly likely that joint lives maintenance orders will become increasingly rare.

What if I have a joint lives order and my circumstances change?

A significant change in the circumstances of either party since the date of the original order may warrant a variation of the quantum spousal maintenance payments. Such circumstances may include:

- a significant increase or reduction in either party's income
- either party coming into significant capital that could be used to generate income (e.g. an inheritance)
- the retirement of either of the parties
- the cohabitation of one or both of the parties

None of the factors set out above will automatically lead to the termination of a spousal maintenance order. Whether a variation, or indeed a termination, of payments is appropriate will depend on the particular facts of a case. It may be necessary to consider a further application to the court in order to vary the terms of the original

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order, so as to end the joint lives payments.

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