



Myerson Family

Our guide on
how much spousal maintenance
you can claim on divorce

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The solicitors that will be working with you are specialists.

All members of your Family Team are full members of **Resolution** (a body of family lawyers committed to adhering to the Resolution Code of Practice which promotes working constructively in an attempt to avoid unnecessary conflict) and individually ranked by international legal directory The Legal 500. You can find out more about our Family Law Team by clicking [here](#).

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Spousal Maintenance

What is spousal maintenance?

Spousal or civil partner maintenance is also known as a periodical payments order. This is an order that either party to the marriage or civil partnership shall make to the other periodical payments (maintenance) for such term as specified by the order.

Whilst there is an expectation in the eyes of the Family Law courts that both parties will contribute financially to their own needs as far as they can, decisions made during the marriage or civil partnership may mean that one spouse may not have sufficient income to meet their needs. In such circumstances, it may be appropriate for that party to seek spousal maintenance.

Who can apply?

Either spouse or civil partner is eligible to make an application to the court for maintenance.

The parties may be able to reach an agreement directly about the appropriate level and period of maintenance. Mediation must be considered, if appropriate to see if it is possible to reach agreement outside of court.

If you and your partner cannot reach an agreement about maintenance, then a court application will be required. When either party makes an application to the court, the court will make several standard directions to progress the application and a hearing will be listed.

What will the court consider?

The court will follow the legal principles from legislation and case law. The court has a very wide discretion which means the outcome of financial proceedings can be difficult to predict.

The court will have regard to the welfare of any children of the family and the factors listed within section 25 of the Matrimonial Causes Act 1973, namely

- a) The income and earning capacity that each of the parties has or is likely to have in the foreseeable future.
- b) Earning capacity, any increase in that capacity that it would be reasonable to expect the parties to take steps to acquire.
- c) The financial needs, obligations, and responsibilities that each of the parties have or are likely to have in the foreseeable future.
- d) The standard of living enjoyed by the family before the breakdown of the marriage or civil partnership.
- e) The age of the parties and the length of the marriage or civil partnership.
- f) Any physical or mental disability either of the parties has.
- g) Contributions made, or likely in the foreseeable future to be made, to the welfare of the family, including any non-economic contribution.
- h) Conduct, if that conduct is such that it would, in the court's opinion, be inequitable to disregard it.
- i) The value of any benefit that either party will lose the chance of acquiring.

The court will want to make sure any order made is fair.

How long does maintenance have to be paid for?

The court can order one party to pay maintenance to the other:

- for the rest of the joint lives of the parties
- for a fixed period that cannot be extended in any circumstances
- for a fixed period that can be extended
- for a nominal sum for a specified period

A joint-lives order is typically more appropriate after a long marriage or civil partnership where there is a large disparity in income/earning capacities.

The court must consider whether a clean break is achievable in all cases and will also consider whether a capitalised clean break is appropriate, i.e., a one-off lump sum payment rather than ongoing maintenance and a dismissal of maintenance claims. The court is under a duty to consider whether the financial obligations between the parties can be terminated by way of a capitalisation of a maintenance claim.

Maintenance pending suit / Interim maintenance

The court also has power to make an order for maintenance pending suit, or interim maintenance. This means a divorcing spouse/civil partner can apply to the court for an order for maintenance pending suit to assist him/her in meeting necessary and immediate monthly expenses, pending the termination of the marriage. After divorce, the maintenance pending suit order can be converted and altered into a substantive order for maintenance for joint lives or for a longer period of time, as required.

A divorcing spouse/civil partner may also apply to the court for a Legal Services Payment Order, which is an order requiring their spouse /civil partner to contribute towards the cost of their legal fees. Before making such an application, enquiries must first be made to ascertain whether litigation funding may be available to the divorcing spouse/civil partner.

Typically, how much maintenance will be received?

There is no strict formula to calculate spousal/civil partner maintenance. It is quantified by applying the discretionary checklist set out in section 25 MCA 1973 as listed above. In broad terms, it is quantified by balancing the income/earning capacity of each party against their needs, considering all circumstances of the case.

Can a spousal maintenance order be varied?

A spousal maintenance order is always capable of variation, and either party can make an application. A significant change in circumstances since the making of the original order may warrant a variation or termination of the maintenance order.

What happens if I remarry?

A maintenance order will terminate if the party receiving the maintenance remarries or enters a civil partnership.



You're in safe hands!

If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our Family Law Team today.

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