GUIDE

Spousal Financial Support (spousal maintenance)

The purpose of this guide is to assist separating couples, working with the mediator, to reach their own decision about spousal maintenance by providing information about the law and current legal approach to spousal maintenance.

The first point to make is that this guide has nothing to do with child maintenance. That is a different topic. There is a separate guide covering the workings of the Child Maintenance Service ('CMS') and child maintenance calculation. However, that is not to say that the amount of child support being paid will not have an impact on how much spousal maintenance is to be paid, if any, because of course it will affect the amount of the payer's disposable income (monthly income less outgoings) from which spousal maintenance is to be paid.

Every separating couple's circumstances are of course different so maintenance will always be 'fact specific'. It will be a question of you and your former partner working together with the mediator to calculate **how much maintenance is to be paid (if any), for how long and what is to happen at the end of this period or term**.

The mediator will provide you with a monthly expenses schedule (excel spreadsheet) to complete with a guide to help you do this, since the first stage is to agree your current and, to some extent, future outgoings (where you know what these are likely to be at a given point) since calculating spousal maintenance requires a **balancing of the needs of the payee for maintenance with the ability of the payer (resources) to pay maintenance.**

The mediator is likely to spend some time with you in mediation going through your respective monthly expenditure and incomes before going on to discuss with you whether and how much maintenance support is going to be paid and for how long.

The work on this topic in mediation takes place 'within the shadow of the law' so it is worth setting out some of the factors under the Matrimonial Causes Act which you may want to consider, the range of possible maintenance outcomes and the approach the court is likely to take if you are unable to sort this out in mediation.

Having said this, the mediator will focus on the reality of your circumstances and is only likely to refer to the law if the mediator feels that you might be straying 'off track' (outside the parameters of what a Judge might order) and need a little steer or nudge. The mediator may do this by asking you whether you have thought about particular factors you may be overlooking or not placing enough emphasis on.

These factors may include:

Earning capacity- Are you doing you best to maximise your earning capacity in your circumstances?

Outgoings- Are these reasonable and proportionate to your incomes or do economies need to be made?

Standard of living-If economies need to be made, how do you ensure that your standards of living are similar?

The legal approach

A judge has a statutory duty to consider whether a maintenance clean break is possible and if so, whether this might be possible immediately or on the happening of a specific future event.

This duty extends to considering what should happen at the end of the maintenance term. The challenge is to agree something that will not place the recipient of maintenance under 'undue hardship' when maintenance comes to an end whilst accepting that maintenance ought to come to an end at some point. This is often a difficult balance but there is usually an answer. Please remember that unless you and your former partner are able to find the answer with the mediator's help, the Judge will.

This guide sets out some possible outcomes for you and your former partner to consider.

Outcome options

The following are possible outcomes;

1. An immediate **maintenance clean break** or on a future date or event- a dismissal of any future right to make an application for maintenance
2. **Capitalisation of maintenance**- This involves first agreeing a monthly figure for a set period of time and then calculating if there is sufficient capital to capitalise this at the point of settlement or at a specific point in the future.
3. **Nominal maintenance**- this is usually for £0.05 pa in order to keep open the payee's right to ask for a variation of maintenance in the future if needed and in justifiable circumstances.
4. **Joint lives order**- an order which lasts until the death of the payer or payee remembering that this is subject to variation at any stage in justifiable circumstances.
5. Maintenance automatically ends on the **remarriage of the payee but what about co-habitation?** Will it not depend on the circumstances of co-habitation ie fact specific
6. **Term order**- an order which lasts for a defined period but permits the payee to make an application to extend the term up to the last day of the term.
7. Term order with a **S28 1(A) bar**- this is an order for a defined period which denies the right to the payee to extend the period or term.

Some other things to think about- 'What if'

A. Consider what will happen if the payer dies while the payee is still in receipt and in need of maintenance?
B. Consider whether maintenance insurance is available and affordable? Consider whether it is possible for example to nominate or leave in trust, the payer's pension death benefits in favour of the payee to cover the payee's loss of maintenance in whole or in part if the payer dies before the payee?
C. Don't forget to have a Will and take legal advice about this in order to avoid the possibility of an inheritance act claim being made by the payee in the event that the payer does not provide for the payee in the Will whilst the payee is still receiving maintenance and dependent on the payer to some extent.
D. Consider the relationship of maintenance and welfare benefits especially where the welfare benefit are means tested. The amount of maintenance may affect entitlement to the amount of welfare benefits.
E. Consider the option of 'buying off' maintenance with capital at any time before the end of the period of maintenance thereby achieving a maintenance clean break.

We hope that this guide is helpful but please remember that it is a guide and not a substitute for legal advice, which we recommend you obtain from your solicitor. Your mediator will recommend that you take legal advice at an appropriate stage during the mediation, which is usually when you have sufficient information about your income and outgoings for your solicitor and you to consider. Please remember that the purpose of this is for you and your solicitor to consider some options which might appeal to both of you, for you to bring back into mediation and explore with your former partner.