

The Ultimate Guide to Spousal Maintenance

When a marriage or civil partnership ends, one spouse is often at a severe financial disadvantage compared to the other.

For example, if you stayed home to look after children when they were young, and your partner took on the role of “main breadwinner” for the family, they could be significantly further along in their career than you are. As a result, they could have a higher salary than you, and they could have greater earning potential in the future, as they are already firmly on the corporate ladder.

In cases like these, it is only fair that some provision is made by the court for the financially disadvantaged party. That provision is called spousal maintenance.

Spousal maintenance is separate from child maintenance, and follows less formulaic rules. It's a complex area of family law, but often an extremely important one. Below, we'll explain everything you need to know about the subject.

If you are considering a divorce or dissolution and you are worried about what your financial situation will be in the aftermath, we strongly recommend you read the following.

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What is Spousal Maintenance?

Spousal maintenance (also known as alimony in the US, or spousal support) is a legal obligation on a person (“the respondent”) to provide financial support to their former (or soon-to-be former) spouse (“the applicant”). The provision for spousal maintenance in England and Wales is embedded within Section 25 of the Matrimonial Causes Act 1973, which outlines the criteria courts consider when making orders for financial settlements.

The initiation of spousal maintenance requires a divorce petition, as maintenance orders generally cannot exist without it. This establishes the legal framework within which maintenance is considered, ensuring there is a formal process of marital dissolution underway.

An exception exists under the Domestic Proceedings and Magistrates' Courts Act 1978 (DPMCA), which permits the court to order maintenance in cases where one spouse claims the other has failed to “provide reasonable maintenance” for them, or for a child. This provision is seldom used and typically applies where parties opt not to divorce, often for religious reasons. Such cases were more prevalent in the past, and today, many lawyers, especially younger ones, may not be familiar with this act.

Jurisdiction plays a crucial role in spousal maintenance. To file a divorce petition, one must be habitually resident in the country or have a spouse who is. Challenges to jurisdiction can arise if parties have not resided in the country long enough. However, courts can issue temporary spousal maintenance orders while jurisdictional challenges are resolved.

In brief, spousal maintenance is an enforceable means of financial support that reflects both parties' circumstances and aims to provide for the lower-earning or non-earning spouse post-separation. It underscores the legal system's recognition of the financial interdependence of spouses during marriage and its potential continuation post-divorce.

Do I Need to be Living in the Country that Grants Spousal Maintenance?

The question of residency in relation to spousal maintenance is complex and hinges on jurisdictional rules.

Ultimately, a divorce petition and spousal maintenance claim should usually be filed in the country where both parties last resided together. For instance, if a couple last lived in France, but one partner files for divorce in England shortly after moving there, the English court may lack jurisdiction, and any spousal maintenance paid could potentially be contested in French proceedings.

Spousal maintenance is contingent upon the applicant's need and the respondent's ability to pay. An application for 'maintenance pending suit' (MPS) can be made for immediate financial support before main proceedings. If a jurisdictional challenge invalidates the claim at a later date, but the applicant lacks the financial means to repay the money, then reimbursement of maintenance payments will be impossible.

It's possible to apply for maintenance in England from another country under certain conditions, such as after a foreign divorce, but this requires specialist legal advice. If you are in such a situation, you should [contact Blanchards Law](#) directly to see how we can help.

How is Spousal Maintenance Calculated?

The primary criterion for spousal maintenance is the 'needs' of the claimant, which are "generously assessed" but also considered in light of the 'resources' of the payer.

The court considers several factors when determining spousal maintenance, including each party to the divorce's income, property, and other financial resources; the financial needs, obligations, and responsibilities each party has or is likely to have in the foreseeable future; and the standard of living enjoyed by the family before the breakdown of the marriage.

An immediate need for maintenance can be established if one party cannot meet their living expenses post-separation. This urgency is addressed through 'maintenance pending suit,' which focuses on essential needs rather than luxuries. For instance, if a stay-at-home parent becomes unable to pay for basic living costs due to the other spouse ceasing to contribute financially, they may apply for maintenance pending suit even if cohabiting under the same roof.

Resources play a crucial role in determining maintenance. If the payer's financial circumstances change, such as through redundancy, this will affect their ability to pay maintenance. The courts aim not to impose debt upon the payer to fulfil maintenance obligations.

However, in cases involving high-net-worth individuals, such as celebrities or athletes, maintenance may reflect a more generous understanding of needs relative to available resources. This can result in significant payments that maintain a lifestyle similar to that enjoyed during the marriage, including provisions for luxury items and expenses

How Long Does Spousal Maintenance Last?

Under the Matrimonial Causes Act 1973, maintenance is generally awarded for as long as it is needed. In practise, this is often as long as it takes to bring up the children.

There are three main types of spousal maintenance order, each of which has a different lifecycle:

- Maintenance Pending Suit: For immediate basic needs.
- Term Maintenance Order: Set for a specific term of years or months.
- Joint Lives Maintenance Order: Continues for as long as the payer lives.

Joint Lives Maintenance Orders are becoming very rare, as there has been a shift towards encouraging financial independence post-divorce. The courts now favour a 'clean break' approach where feasible.

Maintenance typically concludes at a 'specified event,' such as children reaching adulthood, the claimant finding employment (if previously unemployed), the retirement of the payer, or when the recipient becomes eligible for pension withdrawal.

High-earning individuals may have substantial pensions, leading to [pension sharing orders](#) to equalise retirement incomes, thus ending spousal maintenance upon pension access.

A decrease in spousal maintenance, or an earlier finish date, can be sought if there is a change in circumstances, such as a reduction in the payer's income, or if the recipient becomes self-sufficient.

Capitalisation is another factor that can affect maintenance duration. It involves paying a lump sum in place of ongoing payments, effectively bringing about an early 'clean break.'

Remarriage of the recipient automatically terminates spousal maintenance obligations, as it is assumed that financial support will then come from the new spouse. However, cohabitation without remarriage does not end maintenance payments; they continue unless agreed upon otherwise or ordered by the court.

What is a Nominal Order for Spousal Maintenance?

A Nominal Order for spousal maintenance is basically a legal safety net. It is an order where no immediate maintenance payment is required other than a "nominal" amount (usually, £1 annually). However, these orders preserve the claimant's right to seek maintenance in the future. This type of order is typically granted when the lower-earning spouse can meet their own needs, often because they are employed and receiving child maintenance, but there exists a potential future risk to their financial stability, such as illness or job loss.

Should a significant change in circumstances occur, the applicant can then apply for an upward variation of the maintenance amount.

What is the Relationship Between Spousal Maintenance and Child Maintenance?

Spousal maintenance and child maintenance are two separate things, and the latter can have a serious impact on the former. The reason for this is that [child maintenance orders](#) take priority and, therefore, a parent who is already obligated to pay child support will have fewer resources left over for spousal maintenance.

Additionally, other financial obligations, such as child maintenance or spousal maintenance orders from previous marriages, must also be factored into the payer's disposable income.

The Child Maintenance Service (CMS) employs a formulaic approach to determine child maintenance payments, which can be easily calculated using [their online tool](#). The formula considers a percentage of the paying parent's gross income, adjusted for the number of children they are supporting.

What Documentation do I Need to Make an Application for Spousal Maintenance?

The court requires full and frank disclosure of finances, including all income, assets, debts, and expenditures. This ensures that the court has a clear understanding of your financial situation and can make an informed decision regarding maintenance payments. The majority of this information will likely be taken at face value, as the costs will have been shared throughout the marriage. However, it is always wise to prepare for unexpected challenges.

As part of this disclosure, the one vital document you need to include is a detailed budget, which should list all of your monthly expenses, illustrate your cost of living, and justify the maintenance claim.

Other documents it is wise to prepare beforehand to defend oneself from challenges, include:

- Bank statements: These can be used to demonstrate your regular expenses and financial transactions if they are challenged in court. They can show grocery costs, mortgage payments, utility bills, and other household expenditures.
- Income evidence: Payslips, tax returns, or proof of benefits received to establish your income level.
- Mortgage statements: To show housing costs and any outstanding mortgage amount.
- Debt statements: Documentation of any loans or credit card debts.

It's important to note that if you have significant savings or undisclosed resources, this could affect your eligibility for maintenance. For instance, if you have recently received a large sum (e.g., from an employment tribunal award, or an inheritance), the court will consider this when assessing your need for spousal maintenance.

Frequently Asked Questions About Spousal Maintenance

Will the court treat me fairly?

Fairness is a cornerstone of family court proceedings. While the law provides broad guidelines (such as the 1973 Matrimonial Causes Act), case law plays a crucial role in shaping judgments. Judges recognise that spousal maintenance should be equitable, considering factors like need and available resources. Recent pronouncements emphasise

that the applicant isn't automatically entitled to share in the respondent's increased income. The court aims to strike a balance between financial support and encouraging self-sufficiency.

How is spousal maintenance enforced?

When a court order mandates spousal maintenance, the recipient has legal avenues to enforce it. These include:

- Attachment of Earnings Order: The court can direct the paying spouse's employer to deduct maintenance directly from their wages.
- Charging Order: If the paying spouse owns property, a charging order can secure the debt against it.
- Third-Party Debt Order: The court can order a third party (e.g., a bank) to pay maintenance directly from the paying spouse's account.
- Seizure of Assets: The court may seize assets or funds to satisfy maintenance arrears.
- Imprisonment: In extreme cases, the court can imprison the paying spouse for non-compliance.

It's crucial to seek legal advice promptly if maintenance payments are not being made.

What happens if my ex lives or moves abroad after being ordered to pay spousal maintenance?

When the paying spouse lives abroad, enforcing spousal maintenance becomes complex. Reciprocal arrangements exist in some countries through international conventions (e.g., the Hague Convention). However, the process can be slow due to differing legal systems and bureaucratic hurdles. You should consult legal experts experienced in cross-border family law to navigate these challenges effectively.

Should we attempt mediation before going to court?

Yes – it's advisable to explore mediation or negotiation before resorting to court proceedings. Mediation will allow you to discuss your needs, concerns, and financial arrangements with a neutral mediator. It can lead to mutually acceptable solutions, reducing the emotional and financial toll of litigation. However, if mediation fails, court proceedings remain an option to resolve disputes definitively.

Is spousal maintenance taxable?

Spousal maintenance received is not typically considered taxable income for the recipient. This means that the person receiving the payments does not need to declare them on their tax return. However, it's essential to consult with a tax advisor or accountant to understand the specific implications based on individual circumstances. On the other hand, the paying spouse will not be able to claim tax relief on the payments, which are made from post-tax income.

Can spousal maintenance be backdated?

Yes, the court has the authority to backdate spousal maintenance to specific points in time. The circumstances under which backdating is allowed include:

- Date of Separation: If the couple separated before the divorce proceedings, the court may backdate maintenance to the date of separation.
- Divorce Petition Date: Maintenance can also be backdated to the date when the divorce petition was filed.

- **Reasonable Delay:** The court considers whether there was a reasonable delay in applying for maintenance. If there's a valid reason for the delay (e.g., negotiations or legal processes), backdating may be allowed.

I have heard that courts in England and Wales are more generous when making spousal maintenance orders – is that true?

Although it may be surprising, yes, this is true. Courts in England and Wales are the most generous in the world when it comes to awarding spousal maintenance. However, they are moving to be more in-line with courts elsewhere, and are increasingly balancing the needs of the applicant against the resources of the respondent more fairly. In other words, they are not prioritising the needs of the applicant as significantly as they once were. For reference, many of England and Wales's closest neighbours are significantly less generous – in Scotland, for example, it is impossible to receive spousal maintenance for a term of longer than one year.

Some Parting Advice if you are Seeking Spousal Maintenance

When considering spousal maintenance, it is crucial to be fully informed. Investigate all entitlements, such as benefits, which may influence the outcome of a claim. This due diligence is particularly important when seeking emergency orders, as these can be expensive and may result in the applicant being ordered to pay the respondent's costs in the event of an unsuccessful claim.

Engagement is key for both applicants and respondents. Applicants should exhaust all avenues to agree on maintenance terms before resorting to court, such as mediation. Respondents must engage with the process to avoid cost orders against them (a cost order is an instruction to pay all or part of the cost of the court proceedings).

The assessment of spousal maintenance considers the standard of living maintained during the marriage. However, post-divorce, it is often unrealistic to expect the same standard due to separate lives being funded by what was once a shared income. You should prepare for this, and adjust your lifestyle expectations accordingly.

Both parties are expected to mitigate their losses. The party seeking maintenance should seek employment to contribute towards their financial needs, even if it is at a lower level than previously experienced.

Finally, whether you are an applicant or respondent to a spousal maintenance claim, it is vital that you seek professional legal advice from a qualified lawyer. Our friendly and experienced legal experts will be happy to help in this instance.