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# Myerson **Family**

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## **Different Types of Spousal Maintenance Available and the Court's Approach**

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# Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

## Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



# Types of Spousal Maintenance Available and the Court's Approach

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## 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.

The Court has a statutory duty to consider whether the parties can live independently from each other as soon as possible post-divorce. This may be easier to achieve in some cases, and impossible in others. Each case will be determined according to its own facts. It is, therefore, dangerous to assume that all cases are dealt with in the same way.

## What are the types of spousal maintenance?

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

- For the rest of the joint lives of the parties (known as a Joint Lives Order)
- For a fixed period that cannot be extended in any circumstances or for a fixed period that can be extended (known as a Fixed Term Spousal Maintenance Order)
- For a nominal sum for a specified period (known as a Nominal Spousal Maintenance Order).
- By way of a global order, which means maintenance is paid for the payee spouse and the children



# What is a Joint Lives Order?

A Joint Lives Order is where maintenance is paid for the rest of the payee's life or until their remarriage, or further order.

Joint lives orders are generally more appropriate after a long marriage or civil partnership where the parties have a wide disparity in their respective income/earning capacity or where the receiving spouse is the main caregiver to children.

It is a misconception that joint lives orders guarantee payments to the payee forever. Joint lives maintenance orders are capable of being varied, discharged and or capitalised if there has been a significant change in circumstances since the order was made.

Currently, the Family Court tends to lean in favour of term orders, rather than joint lives orders.

# What is a Joint Lives Order?

A Fixed Term Spousal Order is where maintenance is paid regularly for a set period of time. The Court can order the maintenance shall not be extended in any circumstances, or that it can be extended.

The aim of a fixed term order is to provide a financial cushion to support the payee for a period of time and to encourage the payee to move towards financial independence. If the payee is unable to achieve financial independence by the end of the term, it may be possible to apply to court to extend the term of the order before it expires, provided the original order did not prevent that application being made



# What is a Nominal Spousal Maintenance Order?

A Nominal Spousal Maintenance Order is where a nominal amount of money usually £1 is paid to the receiving spouse each year for the sole purpose of keeping the receiving spouse's claim open. It is typically more appropriate in circumstances where the court consider it likely that the payer's earning capacity may improve in the future.

# What is a Global Maintenance Order?

A Global Maintenance Order is a maintenance order providing maintenance for the spouse and children of the family to enable the payee to provide for the needs of the children during their minority and provide the payee with financial support at a time when his/her earning capacity may be compromised by childcare commitments.

# Is a Clean Break possible??

The court has a statutory duty to consider whether a clean break is appropriate in all cases.

A clean break is where the financial obligations of each party towards the other terminate as soon as reasonably possible after the Order is made and may be appropriate in the following circumstances:

- Where there is a short marriage.
- Where the spouses have reasonable earning capacity or the prospect of an earning capacity in the foreseeable future.



A clean break is often not appropriate in the following circumstances:

- Where there is a long marriage.
- Where a spouse has no earning capacity or a reduced earning capacity.
- Where a spouse is the primary carer of a child
- Where a spouse is unable to work due to age or ill-health or has an uncertain future due to age or ill-health.

## What will the Court consider?

Spousal maintenance is often appropriate when one spouse does not have sufficient assets or income to cover their expenditure and whether it is necessary to achieve a fair outcome on divorce.

When considering an application for spousal maintenance, the court will have regard to the Section 25 Factors:

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



The approach taken by the court is a complex balancing exercising in trying to achieve fairness. The court will consider both parties' reasonable needs and try to achieve an Order which meets those needs.

Consideration will be given by the court as to how much of the payee's reasonable needs can be met by their own resources including their income, child support and any state benefits they may be entitled to receive. The court expects that the payee spouse will make all reasonable efforts to maximise their income.

## Joint Lives Order v Fixed Term Order – Court's Recent Approach

Historically, the Courts generally steered towards Joint Lives Orders as opposed to Fixed Term Orders as it is difficult to predict when the payee spouse would be able to adjust without financial hardship and without the financial support from their former spouse. Joint Lives Orders were often made in favour of financially weaker spouses.

In more recent times, the Courts seem to be moving away from Joint Lives Orders and moving towards Fixed Term Orders should a clean break not be possible immediately upon divorce.

In **SS vs NS (Spousal Maintenance) [2014] EWCA 4183**, Mostyn Justice explored Joint Lives Orders and Fixed Terms Orders for spousal maintenance. He considered that unless undue hardship would likely be experienced by the receiving spouse, the Court must provide an end date to a maintenance order. He acknowledged that it is acceptable for there to be some degree of hardship in making the transition to financial independence but if there is a choice between an extendable term and a joint lives order, an extendable term should be chosen.



In **White vs White [2015] EWCA Civ 201**, the Court reduced a Joint Lives Order to a Fixed Term Spousal Maintenance Order. In this case, a Joint Lives Order was made in 2008. In 2012, the Husband's income declined, and he applied to vary the spousal maintenance downwards. The Court found that the Wife had not made efforts to obtain employment or update her skills. The Court found that it would not be appropriate to terminate the payments immediately but that payments should be reduced over a period of 5 years when it would be terminated.

In **Waggott vs Waggott [2018] EWCA Civ 727**, the Wife had previously been awarded a divorce settlement of £9.76 million plus £175,000 per year in spousal maintenance by way of a Joint Lives Order. The Wife appealed to vary the Order asking for an increase in maintenance of £23,000 per year. The Court of Appeal ordered a 3 year Fixed Term Spousal Maintenance Order instead of a Joint Lives Order.

Whilst it does appear that the Courts are moving away from Joint Lives Orders towards Fixed Term Orders should a clean break not be possible immediately on divorce, the Court's have a wide ranging discretion and each case will depend on its own facts. Spousal maintenance is ultimately decided by reference to a parties needs which tends to outweigh all other factors.



# You're in safe hands!

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

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