



Spousal maintenance

The purpose of this Stowe guide is to give an understanding of the different options available to you if you are entitled to spousal maintenance.

Spousal maintenance is a monthly payment that is made by someone (the payer) to his or her former spouse (the payee) following a divorce or dissolution.

When does spousal maintenance start?

You can start to receive spousal maintenance during the divorce proceedings and this is referred to as interim spousal maintenance (also known as maintenance pending suit). Once your financial settlement is agreed, (either through negotiation or a final Court decision) longer term spousal maintenance will begin. It is also referred to as "periodical payments".

How much spousal maintenance can you expect to receive?

This very much depends on your needs and your ex-spouse's ability to pay.

To work this out, the Court will determine what reasonable outgoings you have and what income you receive from other sources to cover them. They will look at earned income or rental or investment income, state benefits, tax or universal credits and any child support payments. They will then look at what income your ex-spouse has and how much of your reasonable outgoings they can afford to cover.

The shortfall between the payee's outgoings and income can be met by spousal maintenance, provided the payer has sufficient disposable income (after payment of his/her own reasonable outgoings) to meet the maintenance.

The Court can also consider what steps the payee should take to increase his or her earning capacity to maximise their income.

There is no set formula and the Court has to carry out a balancing exercise between the payee's needs and the payer's ability to pay. The Court will consider the standard of living you had before the marriage broke down, how long you were married, the ages of any dependent children and the impact this might have on the payee's ability to find employment. An assessment of "reasonable outgoings" means that the Court may not accept all the payee's claimed items of expenditure, nor may it accept that all the payer's outgoings are necessary.

Who decides the amount of spousal maintenance?

Your solicitor will advise you of how much maintenance a judge is likely to award you, and this will inform any negotiations you have.

If you are unable to agree on an amount either directly or through solicitors and your case goes to Court, the judge will decide how much you should receive.



Alternatively, you could use arbitration to get a decision as to how much maintenance should be paid. This can either be dealt with in isolation if all the other financial issues have been agreed, or together with any other issues that need to be sorted out, such as dividing up the property or capital issues.

Ideally you will be able to reach an agreement without a judge or an arbitrator having to decide the outcome. In this case you can consider mediation to discuss the issue or your lawyer can suggest a Private FDR to get the opinion of a neutral barrister or senior lawyer to help you to reach a settlement.

How long do maintenance payments last?

Maintenance is either for a fixed term (which can be extended in rare circumstances) or for the spouses' joint lives, meaning until either the payee or payer dies.

It is expected that a joint lives order will end at some point before one party dies. They are made because the Court cannot be certain when the payee will be able to live without

the maintenance. The onus is therefore placed on the payer to apply to the Court to end the maintenance in the future.

At any point during the maintenance term, either party can apply to the Court to vary the amount upwards or downwards, or have it stopped altogether. The maintenance can be varied if there is a change in circumstance of either the payee or payer, i.e. illness, redundancy, a reduction in income.

If the payee remarries, maintenance stops automatically.

What can I do if my ex-spouse cannot keep up with the payments?

You can take enforcement action against your ex-spouse if he or she is not paying the correct amount and is falling into arrears, for example, getting an order that his employer deducts the amount due to you from salary so that you receive it automatically. This is called an attachment of earnings order. Your ex-spouse can also apply to the Court to reduce the maintenance if he is struggling to make the payments.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowefamilylaw.co.uk