



# **Paul Brady & Co. Solicitors**

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## **Marital Breakdown**

### **Maintenance in more detail**

In our last article, we gave a brief outline of the ancillary reliefs available when a marriage breaks down. One of the most common applications we see before the courts are applications for maintenance payments.

The law provides that both spouses have an obligation to maintain one another and any dependent children. Maintenance applications can be stand-alone applications, made at any point, usually in the District Court. They can also be brought in the Circuit Court or the High Court but are not normally stand alone, instead forming part of an application for divorce or judicial separation.

The District Court limits on orders for maintenance are as follows:

Spouse: €500 per week

Child: €150 per week per child

Maintenance orders can take the following forms:

- Periodic Payment Orders:-
  - Most common;
  - Payments from one spouse to the other (or to the other on behalf of the dependent children);
  - If order for both spousal and child maintenance, it must be apportioned.
- Secured Periodic Payment Orders:-
  - Can be secured against specific assets of paying spouse;
  - Rare.
- Lump Sum Orders:-
  - Can be either in conjunction with periodic payments or without;
  - Can be used for payments for big occasions (Christmas).
- Interim Maintenance Orders:-
  - Sometimes used to cover a period up until the substantive hearing (divorce or judicial separation) is held and a further maintenance hearing is held;



- Not always satisfactory as Judge maybe reluctant to increase payment even where there has been a change in financial circumstances.

In a marriage, there is a duty to maintain:

- Dependent Children
- Spouse

### **Dependent Children**

Either:

- Children of the marriage;
- Children of both spouses born outside the marriage;
- Adopted children; or
- Children to whom either spouse is in loco parentis (i.e. being aware that you are not the parent of the child but treating the child as a member of the family anyway).

Who:

- Are Under 18; or
- Under 23 and in full time education; or
- Are suffering from a mental or physical disability.

### **Dependent Spouse**

- Gender neutral;
- No definition;
- Subjective test based on the circumstances of the individual case;
- Factors/criteria to consider:
  - Income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future;
  - Financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future;
  - Standard of living enjoyed by the family before proceedings instituted;
  - Any physical or mental disabilities of either spouse;
  - Accommodation needs of each spouse.
  - Effect on earning capacity of each spouse of the marital responsibilities they assumed during the marriage and degree to which future earning capacity has been impaired;
  - Contributions of each spouse to the welfare of the family;
  - Any statutory income benefits either spouse is entitled to;
  - Conduct of each spouse;

- Age of each spouse, duration of marriage and time they spent living together;
- The rights of any person other than the spouses.

How do the Courts calculate maintenance?

- Both parties provide vouched statements of finances (Affidavit of Means);
- All sources of income must be disclosed;

### **Finality / Variation**

The duty to maintain one another survives even after a marriage ends. There is no clean break principle in Irish Law in terms of your financial obligations to your spouse.

It has been quoted in case law that “Irish law does not establish a right to a “clean break”. However, it is a legitimate aspiration”.

So, there will always be the opportunity to vary maintenance orders, either to increase or decrease, but in investigating matters, the Courts will only do so if there is a significant or fundamental change of circumstance.

We at Paul Brady & Co., Solicitors have over 40 years’ experience in dealing with marriage breakdowns and if we can be of any assistance to you in relation to any of the above matters, then please contact us at the below details.

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