

Divorce myth: A partner is entitled to maintenance for life



As part of any financial settlement, you will need to consider whether it is appropriate for the higher earner in the marriage to pay spousal maintenance to the lesser earning spouse.

In England and Wales, there is no automatic right to spousal maintenance. Unlike child maintenance payments, whether spousal maintenance should be paid is not assessed with reference to any statutory formula. Instead, the court will consider the lesser earning spouse's needs against the ability/affordability of the higher earning spouse to pay maintenance. It is the role of the family court to consider whether a clean break can be achieved (i.e. a termination of financial obligations between former spouses as soon as possible after divorce) or whether the lesser-earning spouse has a reasonable need for additional financial support from the higher-earning spouse.

In considering whether spousal maintenance is appropriate, the court will not only need to consider how much maintenance should be paid (often referred to as quantum) but just as importantly, the length of time for which the maintenance should be payable (referred to as term).

The law relating to spousal maintenance in England and Wales is arguably more generous than many other jurisdictions across the world. For example, in Scotland, the lesser-earning spouse can generally only seek spousal maintenance for no more than three years, except in circumstances of financial hardship. Meanwhile, in France, it is rare for the lesser-earning spouse to be awarded ongoing spousal maintenance at all.

If the court does consider it appropriate for the lesser-earning spouse to receive a spousal maintenance order, what should the length of that maintenance term be?

The law in this area has developed significantly over the last few years.

Generally, and particularly since the cases of *SS v NS* [2014] EWHC 4183 (Fam) and *Waggott v Waggott* [2018] EWCA Civ 727, the court's trend for awarding the lesser-earning spouse, joint lives maintenance orders in which maintenance is awarded for an indefinite period, has come to an end. In most circumstances, joint lives maintenance orders will continue to be rare, although not entirely obsolete, as cases will continue to be considered on their own facts.

In support of the court's duty to consider whether a clean break can be achieved, the courts now favour non-extendable term orders (i.e. one that specifically specifies a date in the future in which the maintenance payments will stop). These will generally provide the lesser-earning party a period of spousal maintenance – to give them the opportunity to adjust to financial independence by re-entering the workplace, or taking steps to maximise their earning capacity. This term might be with reference to a particular milestone in a child's education or perhaps the conclusion of the lesser-earning spouse's own training or higher education programme. Alternatively, if the lesser-earning spouse is reaching the end of their potential working life, the term may come to an end simultaneous to the first drawdown of any pension scheme.

If you think you are entitled to spousal maintenance or that you may have an obligation to pay spousal maintenance – please do seek advice. As while a 'spouse's entitlement to maintenance for life' is a myth, your particular entitlement or obligation wholly depends on your circumstances.

How can we help

Our expert family team are here to help you and advise whatever your situation may be. Find out more about our [family law](#) areas of expertise or [contact us](#) when you are ready.



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