

Spousal Maintenance - How much?

The quantification of spousal maintenance is always a difficult issue. This is because the court does not adopt a formulaic or uniform approach to calculating maintenance and instead applies a broad brush to its assessment which varies considerably across the country.

The governing statute is the Matrimonial Causes Act 1973 which, at Section 25, says that the court must “*have regard to all the circumstances of the case*” to include the “*financial resources*” of the parties, their “*financial needs*” and the “*standard of living enjoyed ... before the breakdown of the marriage.*”

In simple terms, maintenance is paid to meet income needs and is calculated by reference to the needs of the payee, the ability of the payer to pay and the standard of living enjoyed by the parties during the marriage. In many cases, this is a question of affordability, with most couples’ resources struggling to stretch to two households following their divorce. However, what is more difficult, and therefore the subject of the leading cases on maintenance, is how maintenance should be assessed when there is a surplus of income remaining after both parties’ reasonable needs have been met.

So how is maintenance calculated?

The courts say that the outcome of any case must be fair. Fairness comprises the principles of need, compensation and sharing.

The principle of sharing is that the resources of the marriage must be shared equally (unless there are good reasons not to, for example, inherited wealth). However, the courts have said that the principle of sharing (and thus equality) does not apply to the assessment of maintenance. In other words, it does not automatically follow that each party to the marriage should have the same income as each other after their marriage. This is because the courts have decided that the requirement to share the resources of the marriage ends upon the parties’ separation.

As for compensation, there has only been one reported case (in 2006) where the wife shared the husband’s surplus income by way of “compensation”. In that case, the wife had given up a career as a city solicitor to raise the parties’ three children and to support the husband who went on to have a very successful career as an accountant. The House of Lords awarded the wife maintenance of a sum which was in excess of what she reasonably needed on the ground that it was fair to do so because of the career sacrifice she had made. This was an exceptional case and the principle of compensation will apply very rarely.

So, if sharing and compensation are not relevant to the assessment of maintenance, how should it be calculated? The answer is by reference to need. In the recent case of *B v S* [2012], the judge held that save in the exceptional case where the principle of compensation applies, maintenance should be calculated by reference to “*the principle of need alone*”.

But what are “*needs*” and how are they calculated? The answer is that needs (which encompass both income and capital) depend on the facts of each individual case and in some cases “*needs*” will be “*generously interpreted*” such that a court will award more maintenance than is strictly needed because it considers it fair to do so, even in circumstances where compensation is not relevant.

This arbitrary approach of the courts towards assessing “*needs*” makes maintenance a difficult and uncertain issue in each case and is one of the matters currently being considered by the Law Commission in its supplementary consultation paper on matrimonial property, needs and agreements.

If you have a question about maintenance or would like advice on your relationship breakdown generally then please contact Camilla Thornton or another member of the family team.

Camilla Thornton

Partner

+44(0)207 440 4844

Camilla.Thornton@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP. © Russell-Cooke LLP. November 2012.

www.russell-cooke.co.uk