

## Spousal maintenance – How long?

Section 25A(2) of the Matrimonial Causes Act 1973 requires a court, when making an order for the payment of maintenance, to consider whether *“it would be appropriate to require those payments to be made ... only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination”* of their maintenance.

Maintenance cases fall into two categories as follows:-

1. Where a court concludes that the payee of the maintenance will never become financially independent from their paying ex-spouse, e.g. because the marriage has been long, the parties are middle aged and one of the spouses has never worked. In such cases, the maintenance will be expressed to be for *“joint lives”* which means until the death of either the payee or payer of the maintenance, or until *“further order”* usually made following an application by one of the parties to vary or terminate the maintenance, e.g. as a consequence of the retirement of the payer of the maintenance.
2. Where a court concludes that the payee of the maintenance will become financially independent from their former spouse after a specified period of time such that they will no longer need maintenance. In these cases, the order will provide that the maintenance shall be payable for a term of years, whereupon it will cease.

### How is the term determined?

The leading authority on when a term maintenance order is appropriate is that of *C v C* [1997]. In that case the court said that the test for imposing a term order was that the court had to be certain (in the form of real evidence) that the wife would become financially independent within the specified period. It went on to say that *“crystal ball gazing”* was not sufficient and if the court was in any way uncertain, it should make a joint lives maintenance order and require the payer to seek a variation of the maintenance in due course.

### Can the term be extended?

Term maintenance orders can be extended beyond the end of the term specified in the order in certain limited circumstances. Firstly, there must be no express bar to an extension (called a Section 28(1)(A) bar) and secondly, the application to extend must have been made before the expiry of the original term of the maintenance.

The test to be applied on an application to extend the maintenance term is not certain. In *Fleming v Fleming* [2003], the court found that “*exceptional circumstances*” had to be shown in order to justify an extension of the term. However, in *McFarlane v McFarlane* [2009] the judge said that this was not the test and instead, the court must consider, as one of the circumstances of the case, whether the purpose of the original maintenance order had been fulfilled.

Although we now await formal clarification as to the test to be applied, what is clear is that the burden remains on the payee of the maintenance to show why their maintenance should be extended beyond the original term envisaged.

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

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