

## Articles

# Spousal Maintenance: Are Family Courts Doing Enough to Prevent Financial Hardship After Divorce?

Kate Brett, a Senior Associate at Dawson Cornwell LLP considers if the Family Courts are doing enough to prevent financial hardship after divorce.



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### **Introduction**

Divorce causes a dramatic shift in a party's financial stability. The resources that were available to one household have to stretch to meet the needs of two separate households. For many women, especially those in primary caregiving roles and those whose careers may have been paused for any number of years, the dissolution of marriage results in immediate and often significant economic vulnerabilities.

Under English law, the courts retain the power to make spousal maintenance orders under the Matrimonial Causes Act 1973. However, the extent to which these powers are exercised remains a pressing question. Are the courts utilising their powers in a manner that sufficiently protects financially weaker spouses, normally women, post-divorce?

### **The Legal Framework**

The legal basis for spousal maintenance orders lies primarily in sections 23 and 25 of the Matrimonial Causes Act 1973. Section 23 enables the court to make various financial orders, including periodical payments, while section 25 sets out the factors to be considered. The court must also consider whether a 'clean break' is appropriate, meaning the aim is to achieve financial independence for both parties as soon as reasonably possible.

### **Economic Realities for Women**

The financial fallout of divorce is not gender-neutral. Numerous studies, including a recent Legal & General Survey, have documented that women tend to fare worse economically after divorce than men. This is unsurprising given that it is usually women who suffer from interrupted career trajectories, reduced earning capacity as the primary carer for the children, and unequal access to joint financial resources during the marriage.

This is not a new phenomenon. A report in 2022 by the Institute for Fiscal Studies found that women's household incomes fall by 33% on average following divorce, compared to just 18% for men. The role as primary carers of children further limits women's ability to engage in full-time employment and rebuild financial independence quickly after the divorce. For many, the first year post-divorce is the most precarious, with immediate needs for housing, childcare, and basic living expenses. These are not matters for longer-term financial planning.

### **Judicial Trends and the Preference for Independence**

The judicial steer towards financial self-sufficiency and reducing reliance on long-term maintenance, evident in *Wright v Wright* [2015] EWCA Civ 201 and *Mills v Mills* [2018] UKSC 38, has continued but has the focus on limiting women's perceived 'entitlement' to lifelong support gone too far? Is it a relevant principle that can and should be applied in every-day, small money cases? Economically weaker spouses face significant hurdles immediately after separation, but difficulties remain, often on an open-ended basis. We as practitioners are told not to 'crystal ball gaze' but that is exactly what judges are required to do when exercising their powers and too much focus is placed on the ideal of independence.

A recent matter of which I am aware is an example of this. The parties' marriage lasted over 17 years including some years of cohabitation which led seamlessly to marriage. The wife had been out of work for over 10 years, a decision made jointly by the parties, caring for and bringing up the children. The wife's return to work, after the divorce, was precarious at best, having been unemployed from an industry which had moved on dramatically in the 10 years. No substantive spousal maintenance was ordered despite the wife, at the time of the order, suffering undue hardship. The prospect of her suffering easing was uncertain. She will continue to experience financial disadvantages whilst the husband is able to further the career that he maintained and advanced throughout their marriage.

### **Discretion and calls for reform**

The discretionary nature of spousal maintenance awards can lead to significant regional and judicial variation, causing unpredictability. Such uncertainty is unhelpful at a time of financial insecurity.

Reform of the current system could centre around the terms of maintenance being set in statute or, for example, development of a formula to calculate the appropriate level of maintenance.

### **Conclusion**

The power of the family courts to make spousal maintenance orders exists to mitigate financial hardship and ensure fairness upon the breakdown of a marriage. However, the focus on achieving a 'clean break' may not adequately protect women from the sharp economic decline that often follows divorce. Particularly in the critical first year, there is a need for courts to be more willing to grant meaningful maintenance to allow financially weaker spouses time to adjust and rebuild.

Rather than considering maintenance as continuing the dependency between the parties, it should be reframed as a mechanism of transitional or rehabilitative justice, ensuring that short-term vulnerability does not cement long-term disadvantage. The law must not only permit courts to act but also encourage them to do so where fairness demands it.