



The Family law team at Worthingtons recognise that Divorce and the legal process in Northern Ireland can be confusing and technical. We hope that the attached Guide explains some of the more technical terms that are used during the course of Divorce proceedings

Child and Spousal Maintenance Issues

Following upon any marriage breakdown one of the immediate concerns for the parties is how to keep the family finances afloat. Dividing a family's income over 2 separate households inevitably results in the need for separating couples to adjust their expenditure and we are often asked to advise clients on who is entitled to what money, and who is obliged to discharge ongoing bills, in the period immediately after separation and before a cleanbreak agreement is finalised. When dealing with issues of maintenance there are 2 separate areas to look at; firstly any entitlement/ obligation to pay ongoing child maintenance and secondly any entitlement/ obligation to pay ongoing spousal maintenance.

Maintenance for Children

Under Article 3 of the Domestic Proceedings (NI) Order 1980, either party to a marriage may apply for maintenance on the grounds that the other party has failed to make a proper contribution towards reasonable maintenance for any child of the family. An application for child maintenance on this ground can usually be resolved either by agreement or through an application to the Child Support Agency, where the amounts cannot be agreed between the parties. Even if a Court Order is made in respect of child maintenance, a parent can still apply to the Child Support Agency for an assessment and any results of this assessment will replace the order made by the Court.

If the parents are in agreement about the sum of maintenance that will be paid for a child, they can apply to the Court to make an order for financial provision in the agreed terms thereby making it enforceable through the court.

The Court can make Orders for periodical payments and/or a lump sum of up to £1000 in the Family Proceedings Court. Applications for larger lump sums can be made in certain circumstances in the County Court or High Court. An application can be made under Schedule 1 of the Children Order (NI) 1995 for financial provision for children for a lump sum or for an order for settlement to be made for the benefit of the child of property, in certain circumstances.

An order can also be made in favour of a child over 18 who is in ongoing education or training or in certain other special circumstances if the parents are living in separate households.

In making any of the above orders the court will take in to account the income, earning capacity, property and other financial resources which each person has or is likely to have in the foreseeable future, their financial needs, obligations and responsibilities, the financial needs of the child, the income, earning capacity, property and other financial resources of the child, any physical or mental disability of the child, the manner in which the child was being, or was expected to be, educated or trained.

Spousal Maintenance

While the parties are still married:

Either party to the marriage can apply to the Court for an Order for maintenance on the grounds that the other party:

Has failed to provide reasonable maintenance for the applicant; or

Has since the date of marriage, committed adultery; or

Has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or

Has deserted the applicant.

Once parties have divorced:

When deciding what financial provision to make for either party, the Court must take into account a number of factors, including the income, earning capacity, property and other financial resources each party has or is likely to have; the financial needs, obligations and responsibilities each party has or is likely to have; the age of the parties and the duration of the marriage.

There are a number of Orders the Court can make on divorce. The Court can make an Order for periodical payments, which are ongoing regular payments of maintenance designed to meet the day to day living expenses of the party. The Court can also make an Order for secured periodical payments where a lump sum is invested to produce an income that will be paid periodically. The Court can make a lump sum Order which is a 'once and for all' payment. Finally, the Court can make a property adjustment Order which gives the Court power to transfer or settle the parties' property.

Buy out of Maintenance:

This is a term used to describe making a lump sum or property adjustment Order instead of periodical payments. The periodical payments mean an ongoing financial relationship between the parties. A lump sum or property adjustment Order will mean that the applicant will receive a larger sum of money initially or be given a transfer of property instead of receiving regular smaller payments. The person making the one-off payment is 'capitalising' or 'buying out' the maintenance, in the sense that they are paying a greater amount at the beginning to avoid having to make weekly or monthly payments.

The idea of a buyout of maintenance in relation to spousal maintenance on divorce is in keeping with the notion of a 'clean break' to which the Court must have regard. The clean break principle means that the parties should be encouraged to make arrangements about their finances which enable them to finalise matters and move on. The idea that there should be no ongoing financial relationship between the parties if possible does not however apply with such force to the relationship between parent and child. Lump sum Orders, as an alternative to, rather than as an addition to an Order for periodical maintenance are not considered by the Courts as an appropriate way of dealing with a child's ongoing long-term needs, and it is therefore rare for there to be a buyout of a child's maintenance.

Should you have any queries about any Family law matters please contact clare@worthingtonslaw.co.uk or elaine@worthingtonslaw.co.uk