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# Matrimonial Finance

Maintenance: Which way is the wind blowing for the quantum and duration of maintenance orders including lifetime maintenance? What can you realistically secure for your clients?

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Legislation

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# Legislation

Section 23(1)(a) and (b) Matrimonial Causes Act 1973

## **23 Financial provision orders in connection with divorce proceedings, etc.**

(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

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# Legislation

Section 23(1)(a) and (b) Matrimonial Causes Act 1973

(a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;

(b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;

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# Legislation

## Section 25A Matrimonial Causes Act 1973

### **25A Exercise of court's powers in favour of party to marriage on decree of divorce or nullity of marriage.**

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24 or ... in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

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# Legislation

## Section 25A Matrimonial Causes Act 1973

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured 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 his or her financial dependence on the other party.

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# Legislation

## Section 25A Matrimonial Causes Act 1973

(3) Where on or after the grant of a decree of divorce or nullity of marriage an application is made by a party to the marriage for a periodical payments or secured periodical payments order in his or her favour, then, if the court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the court may dismiss the application with a direction that the applicant shall not be entitled to make any further application in relation to that marriage for an order under section 23(1)(a) or (b) above.

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# Legislation

## Schedule 5 Civil Partnership Act 2004

2(1)The orders are —

- (a) an order that either civil partner must make to the other such periodical payments for such term as may be specified;
- (b) an order that either civil partner must secure to the other, to the satisfaction of the court, such periodical payments for such term as may be specified;
- (c) an order that either civil partner must pay to the other such lump sum or sums as may be specified;

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# Legislation

## Schedule 5 Civil Partnership Act 2004

(d) an order that one of the civil partners must make —

(i) to such person as may be specified for the benefit of a child of the family, or

(ii) to a child of the family,

such periodical payments for such term as may be specified;

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# Legislation

## Schedule 5 Civil Partnership Act 2004

(e) an order that one of the civil partners must secure—

(i) to such person as may be specified for the benefit of a child of the family, or

(ii) to a child of the family,

to the satisfaction of the court, such periodical payments for such term as may be specified;

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# Legislation

## Schedule 5 Civil Partnership Act 2004

(f) an order that one of the civil partners must pay such lump sum as may be specified—

(i) to such person as may be specified for the benefit of a child of the family, or

(ii) to a child of the family.

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# Purpose of Spousal Periodical Payments

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# Purpose of Spousal Periodical Payments

## Needs

Mostyn J – “almost unbounded discretion”

FF v KF [2017] EWHC 1093 (Fam)

## Compensation

VB v JP [2008] 1 FLR 742

## Sharing

Waggott v Waggott [2018] EWCA Civ 727

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# Purpose of Spousal Periodical Payments

## Bonuses

- H v W [2015] 1 FLR 75
- SS v NS [2015] 2 FLR 1124
- B v B [2014] EWHC 4545 (Fam)

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# Consideration of a Clean Break

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# Consideration of a Clean Break

Applying Section 25A MCA 1973

- Term Orders
- Use of Section 28(1A)

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# Consideration of a Clean Break

## Relevant Principles

- SS v NS [2015] 2 FLR 1124
  - Mostyn J's 11 principles. Paragraph 46
- Mills v Mills [2018] UKSC 38
  - Refusal to vary PPs

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# Consideration of a Clean Break

## Relevant Principles

- Waggott v Waggott [2018] EWCA Civ 727
  - Earning capacity is not a matrimonial asset
- The sharing principle should not extend to post-separation earnings
- Wife's capital could be used to meet income needs
- Four year term with a s. 28(1A) bar

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# Divorce (Financial Provision) Bill

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# Divorce (Financial Provision) Bill

## The Future?

- PPs not more than 5 years
- Serious financial hardship
- Baroness Deech: Hansard Extract of Second Reading
  - [https://hansard.parliament.uk/lords/2017-01-27/debates/D2A8E873-A6D0-42FB-8138-3C6114A1EDD4/Divorce\(FinancialProvision\)Bill\(HL\)](https://hansard.parliament.uk/lords/2017-01-27/debates/D2A8E873-A6D0-42FB-8138-3C6114A1EDD4/Divorce(FinancialProvision)Bill(HL))

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# Divorce (Financial Provision) Bill

## The Future?

- Baroness Shackleton: North / South Divide
- Speech by Mr Justice Mostyn to the Devon and Somerset Law Society (16 October 2018)
  - Where did it come from, where is it now, and where is it going?

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Spousal PPs: What can  
you realistically secure for  
your clients?

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# Example 1

Mrs J

H - 36, W - 42, 2 children (aged 4 & 8), 6 year marriage inc. cohab

No matrimonial assets

W employed FT earning £40k p/a

H discretionary beneficiary to various family trusts (rights to capital and income); FMH owned by trust and argument as to nuptial settlement

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# Example 1

Mrs J

H unemployed currently (previous earnings £40-75k p/a), nominal trust income, regular payments from his mother

Capital provision agreed with trustees – W and children able to remain in FMH until youngest child 18 and W to receive 45% interest therein by way of charge (which can be realised earlier if she chooses to vacate)

Settled at 2<sup>nd</sup> FDR (following robust indications from the Judge): Periodical Payments outcome...

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## Example 2

### Mrs M

H - 46, W - 50, 2 children (9 & 12), 19 year marriage inc.  
cohab

£74k matrimonial capital less £131k liabilities = -£57k  
asset pot

Pensions of £99k

W – homemaker, H – Solicitor (equity partner) drawing £9k  
pcm

Settled at FDR:

FMH transferred to W (£47k net equity)

Periodical Payments outcome...

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Thank you.

Any questions?

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