



# PUMP COURT

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# What is realistic and achievable in spousal maintenance claims, and how drastic must the change of circumstances be to vary upwards or downwards?

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# Spousal maintenance comes in many different forms

- MPS
- Interim PPs
- LSPOs
- A final order
- Variations
- Capitalisation



## Almost inexhaustible variations

- is it a substantive order? (S23)
- is it a nominal order, if so, what are the circumstances in which it might become substantive?
- is it fixed?
- is it part-fixed and part-percentage?



- does the percentage have a cap?
- is it a term order (*S25A*)?
- if it is a term order, what will bring it to an end?
- is it extendable (*S28(1A) or not*)?
- is it designed to meet reasonable needs only or includes some stockpiling (*Parlour*)?



- does the quantum change at some point in the future?
- is this because it is index-linked? ...
- ...or on the passing of time or another event?
- is it a sum to establish a capitalisation award (*Pearce*)?

...there will be more variations

## Highly discretionary:

*TL v ML* [2005] EWHC 2860: DHCJ: Nicholas Mostyn QC:

the sole criterion for assessing maintenance is ‘reasonableness’ which is synonymous with ‘fairness’ – a broad horizon



## **KV v KV [2024] EWFC 165 Peel J:**

cites *F v F* [1996] 2 FCR 397 Thorpe J - it is important as a matter of principle that:

*‘the court should endeavour to determine reasonableness according to the standards of the ultra-rich and avoid confining them by the application of scales that would seem generous to ordinary people’.*



## **Fertile ground for expense:**

- **Discretionary and variable**
- **Easily disproportionate**
- **Costs risks:** “general rule” applies to variation applications but not to MPS, LSPO and other interim applications: FPR 28.3 (4)(b)(i)
- **Realism and negotiation required**
- **Generates case law**



***PM v RM*** [2025] EWFC 11 DHCJ (Justin Warshaw KC) – MPS and LSPO

***HA v EN*** [2025] EWFC 48 DHCJ (Richard Todd KC) – MPS and LSPO

***Li v Simons*** [2024] EWFC 276 Moor J - variation

***SM v BA*** [2025] EWFC 7 DHCJ (Nicholas Allen KC) - LSPO



***TK v AC*** [2023] EWHC 2958 Sir Jonathan  
Cohen – funding PPs from debt

***KV v KV*** [2024] EWFC 165 Peel J – MPS and  
LSPO

***HAT v LAT*** [2023] EWFC 162 Peel J – MPS and  
LSPO following Separation Agreement

***DH v RH*** [2023] EWFC 111 and (No. 2) [2023]  
EWFC 210 MacDonald J - variation

## Key statutes:

**MCA s22:** MPS: *an order for maintenance pending suit*

**MCA s22 ZA:** LSPOs: *for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings*

**MCA s23:** Final order: *(1)(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*



## The statutory steer

**MCA s25A:** *(1) the financial obligations of each party towards the other will be terminated as soon ... as the court considers just and reasonable.*



**MCA s25A: (2)** *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*



**MCA s25A:** *(3) 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*

**MCA s28 (1A):** dismissing the right to apply to extend the term



## Variation

**MCA s31(1):** *power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended...*

**MCA s31(2):** ....any MPS, interim maintenance or PPs order



## Variation

**MCA s31 (7):** ..the court shall have regard to all the circumstances of the case, first consideration being ...the welfare ..of any child of the family ..., and the circumstances ..shall include **any change in any of the matters** to which the court was required to have regard when making the order to which the application relates



## Interim provision

***BD v FD (MPS) [2016] 1 FLR 390 Moylan LJ:***

*“[51] interim hearings are an expensive exercise and, in my view, they should be pursued only when, on a broad assessment, the court’s intervention is manifestly required. The jurisdiction to make an interim award is a very broad jurisdiction...”*



## Interim provision

***BD v FD (MPS) [2016] 1 FLR 390 Moylan LJ:***

*"[52] otherwise parties will be encouraged to engage in what can often be an expensive exercise... when the proper forum for the determination of those proceedings, if they cannot be resolved earlier... is the final hearing.."*



## Interim provision

**Key cases:** *TL v ML* [2005] EWHC 2860 approved by CofA in *Rattan v Kuwad* [2021] EWCA Civ 1

- “*Reasonableness*” means “*fairness*”
- Standard of living “*very important factor*”
- Must be a “*specific MPS budget*” which should be “*examined critically*”
- If payer’s disclosure deficient court should make robust assumptions



# LSPO

## Key cases: *Rubin* [2014] EWHC 611

- Court required to have regard to all matters in S22ZB (1)–(3)
- The ability of the payer should be judged by reference to *TL v ML*
- Where the claim appears doubtful the court should exercise caution
- Order can only be made if the court is satisfied that applicant would not reasonably be able to obtain legal services without the payment



# LSPO

## Key cases: *KV v KV* [2024] 2 FLR 951

- cites *Rubin* and *DH v RH* [2023] EWFC 111
- order for payment of past costs can be made for present legal team but not former
- applying 15% (or more) discount for standard basis of assessment may be useful cross-check for reasonableness but may be wrong in some cases: see *SM v BA*



## Final orders

### ***The Law Commission:***

*“we conclude that the objective of financial orders made to meet needs should be to enable the transition to independence to the extent that that is possible in light of the choices made within the marriage, the length of the marriage, the marital standard of living, the parties’ expectation of a home, and the continued shared responsibilities (importantly childcare)..”*



# Final orders

## Key sources:

- **MCA S25(2)**
- **Family Justice Council: “Guidance on Financial Needs” on divorce**
- ***SS v NS (Spousal Maintenance)* [2014] 4183**  
Mostyn J cited with approval many times



# Final orders

Note the emphasis on:

- choices made during the marriage that have generated hard future needs, the duration of the marriage and the presence of children are pivotal factors.
- an award should only be made by reference to needs, save in a most exceptional case where it can be said that the sharing or compensation principle applies.



## Final orders

- where the needs ..are not causally connected to the marriage the award should generally be aimed at alleviating significant hardship.
- the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of (not undue) hardship in making the transition to independence is acceptable.



## Final orders

- If finely balanced an extendable term is favoured over a joint lives order
- Standard of living is relevant to the quantum of spousal maintenance but is not decisive.
- If the choice between an extendable and a non-extendable term is finely balanced the decision should normally be in favour of the economically weaker party.



## Final orders

**FJC:** “Guidance on Financial Needs”:

*“the term ‘needs (generously interpreted)’ has gained acceptance to assist determination in higher resource cases”* and was adopted in ***Radmacher***.



# Variation

## Key sources: MCA S31

*Morris v Morris* [2016] EWCA Civ 812 Moylan J: "On a variation application, is the court required to consider the matter de novo? In my view, the simple answer is that it is not. The court must conduct an exercise which is proportionate to the requirements of the case. They might warrant a complete review but they can also justify...a light touch review".



## Variation

*"Almost invariably, an application to vary an earlier periodical payments order will be brought on the basis that there has been some change in the circumstances since the original order was made; otherwise, except in exceptional circumstances, the application will, in effect, be an appeal."*



## Variation

*"If an order is not appealed against, or is made by consent, then the presumption must be that the order was correct when made. If it was correct when made, then there will usually be no justification for varying it unless there has been a material change in the circumstances."*



## Variation

***“a material change in circumstances”:***

- changes in the law – see *James v Seymour*
- changes in income or capital resources eg through inheritance: *Hvorostovsky* [2009] EWCA Civ 791
- new relationships or the end of a relationship, which alters level of past or potential support

## Variation

***“a material change in circumstances”:***

- changes to the health of either party or a child
- changes to past expenses eg school fees or the need for a nanny or older children becoming more expensive
- inflation if the order is not index-linked

# Variation

- important to establish the circumstances at the time the initial order was made
- does the initial order set out the circumstances in which it intended its order to be varied?
- must not be a disguised appeal: ***Morris***
- no entitlement to share in the payer's increased wealth unless needs dictate

## Variation

- change does not have to be significant but must be material
- change must not be self-engineered
- a party, whether applying to vary upwards or downwards, should have tried to mitigate position: *Li v Simons*





**Thank you**

**Edward Boydell KC**