

Rising living costs can affect your maintenance order

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In many cases, the cost of living crisis is likely to affect ongoing maintenance payments. Family partner Vandana Chitroda explores the topic and the solutions available.

What is a maintenance order?

The Court can make an order known as a [maintenance order](#) whereby one person pays another person periodical payments to support their living costs. Maintenance orders are a legal responsibility usually made following a divorce or separation where the parties are not married but have children. As maintenance orders are Court orders, they must be complied with, and failure to do so could result in penalties against the defaulting party.

The problems arising from maintenance orders

As maintenance orders often cover long periods, they can vary annually to keep pace with inflation, known as index linking. Having a maintenance order which is index linked usually means that the monthly payments will increase over time in line with inflation. So, when living costs rise, maintenance payments increase so that the receiving party can still pay their outgoings.

Whilst this may be positive for the party receiving the maintenance, you may ask how this will affect the paying party. Many paying parties may find themselves in a situation where living costs have increased, but their wages have not. Despite this, they must pay increased maintenance payments under the court order if it provides for index linking. Increased costs may leave them feeling aggrieved and potentially cause them to fall into financial difficulties.

If the maintenance order is not index-linked, this could cause problems for the receiving party. Maintenance orders are needs-based, i.e., what does the receiving party need to meet their or their children's outgoings? If living costs increase, it follows that needs will also increase. However, suppose there is no mechanism in the maintenance order for the monthly payments to grow in line with inflation. In that case, the paying party is under no obligation to increase them accordingly. As a result, the receiving party may face financial difficulties in trying to meet the shortfall that will arise from the increased cost of living.

Solution

Luckily, there is a solution to combat rising living costs in both situations. The Court has the power to increase or decrease the payments under a spousal maintenance order. If the circumstances warrant it, the Court can also change the period over which the paying party makes maintenance payments. The Court can also make variations to child maintenance orders during the minority years of the children. Maintenance orders need to be variable as life is unpredictable, and it would be unfair for these orders to be rigid and inflexible. Evidence can be put forward to the Court by either party to support their argument that the maintenance order needs to be varied.

As with any Court application, there are various considerations to be taken into account. The most important is whether the application has merit and whether it is cost-effective to make the application.

Speak to our family team today to understand your options and decide whether applying for a variation is your best course of action.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

