

Article by **Rebecca Cockcroft, Consultant and Co-Head in the Family Department at Payne Hicks Beach**, originally published by eprivateclient online on 26 June 2020 and reproduced with kind permission

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Rebecca Cockcroft
Consultant and Co-Head, Family

The economic fallout of Covid-19 – What happens when I cannot continue to meet maintenance payments?

REBECCA COCKCROFT, CO-HEAD OF FAMILY, PAYNE HICKS BEACH,
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Since the UK was placed in lockdown on 23 March the impact on some businesses and, indeed, entire business sectors has been unprecedented. Hardest hit are the travel and hospitality industries but the impact of the Covid-19 pandemic has touched most sectors in one way or another.

Inevitably, many individuals have seen their income drop. Some have been furloughed under the government scheme. Others have taken voluntary reductions in pay at the behest of their employers. Others still have seen their income extinguished altogether. Bonuses are also under threat; the banking sector is turbulent, some magic circle law firms are putting distributions on hold and a deep global recession is now looking unavoidable.

The effect of a loss/reduction in income will be far reaching with many looking to reduce their outgoings. What therefore happens when someone is unable to keep paying the level of spousal maintenance mandated under a court order?

Maintenance is always variable – upwards or downwards on a change of circumstance. Loss or reduction of income is clearly a relevant circumstance that may justify a reduction in the amount of spousal maintenance payable. The court's power to vary emanates from section 31 of the Matrimonial Causes Act 1973.

If you are paying spousal maintenance under a Court order, there is an obligation on the payer to keep paying until such time as that Order has been revised by the Court or by agreement. Failure to pay will result in arrears accruing under the original order which can be collected by a number of enforcement methods.

On an application to vary, the court has broad discretion and will take into account all of the circumstances of the case. The court's first consideration will be the welfare of any minor children.

The court will not be minded to vary an order unless there has been a significant change of circumstances. A minor drop in income may not be sufficient to justify a change to the level of maintenance payable.

The pandemic has affected the administration of justice and getting time before a court at present is difficult. The court is having to prioritise urgent cases.

Therefore it may be many months before an application to vary can be dealt with by the Courts. So what can be done in the meantime?

It is important to keep lines of communication open and to engage a former spouse at an early stage to keep them informed of the relevant changes to income status.

Transparency is key and documentary evidence should be provided – for example communications from employers or payslips evidencing the change. Former spouses should endeavour to engage with one another directly and to resolve the question of maintenance directly where possible.

The government has implemented a number of financial schemes to assist people whose income has been affected by the pandemic. It is important to ensure that eligibility is explored and funds applied for where appropriate.

The court will certainly expect individuals to ensure they are in receipt of all income they are entitled to, particularly where this may enable them to continue to make their spousal maintenance payments, even if not at the full rate.

It is impossible to predict the length of the pandemic and it is therefore sensible for ex-spouses to seek to agree a temporary revised schedule and record this in a jointly signed document. The document should make clear that the reduction is temporary and will be reviewed regularly in the expectation that when the pandemic has abated the situation will be either restored or reviewed.

If the reduction is caused by furlough, then a temporary reduction of, say, three months might be appropriate. If the reduction is due to a loss of employment, it may be sensible to agree a more long-term variation, with a view to revisiting it when the paying party is once again in receipt of income.

The signed document recording the agreed reduction should be stored carefully (together with any correspondence) as it may well need to be shown to the court in the event of a later dispute.

Parties should also bear in mind that the court will expect them to engage in constructive discussions and to make serious endeavours to resolve matters directly. Failure to engage or a failure to take a realistic and reasonable position in negotiations may result in the court penalising that party by making a costs order against them.

If an agreement to vary cannot be reached directly then it would be advisable to engage the services of a mediator or arbitrator who may be able to assist. Court proceedings can take many months and be prohibitively expensive. It can be

disproportionate to the amounts of money involved to engage expensive lawyers to deal with variation applications as the fees can outweigh the reduction achieved.

Ultimately, if a consensus cannot be reached then an application to the court is the only alternative to avoid the payer being in breach of the order and liable to enforcement proceedings being taken against them.

10 New Square, Lincoln's Inn, London WC2A 3QG

DX 40 London/Chancery Lane

Tel: 020 7465 4300 Fax: 020 7465 4400 www.phb.co.uk

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