

## Financial Arrangements for Children



### Child maintenance

The statutory child maintenance system is currently going through a period of change. At the time of writing, there are several different phases of the system operating, depending on whether you have previously made an application for child support and the number of children you have.

Under the laws relating to child support, the court is not able to make an order for child maintenance other than by consent (agreement). Orders by consent are only binding for one year, after which point either parent can apply to have the amount reassessed by the Child Maintenance Service.

If you and the child's other parent cannot agree the appropriate level of child support, the parent who lives with the child or children can apply to the Child Maintenance Service. A fee may be payable. The Child Support Agency now deals only with existing maintenance assessments. Although the formulas applied to income are worked out differently depending on which scheme your family falls under, the process for determining how much the non-resident parent should be paying as child support is broadly the same:

- child support is assessed on a percentage of the non-resident parent's income, depending on the number of children they have to support
- there is a reduction of 1/7 for each night per week, averaged over a year, that the child or children stay with the paying parent, and
- there is a reduction applied if the paying parent has any other children in their own household or if they are paying child support to more than one other parent

The child support scheme only operates up to a certain amount of the non-resident parent's income, which, again, differs depending on the scheme you fall under. If the non-resident parent earns more the court can make a top-up order under the provisions of Schedule 1 to the Children Act 1989 (see below).

Because the system is changing, we will be able to assist you in working out the right arrangements. You could also look at the calculator created by Alan Larkin of Family Law Partners <http://www.divorcefinancetoolkit.co.uk/child-maintenance-calculator/>

### Other financial provision for children

Where the parents of a child are married or are civil partners, the courts have the power to order the transfer of property to a child or to order the payment of a lump sum of money to a child within divorce or dissolution proceedings. We can advise you on whether an application under this provision may be appropriate in your case.

Under [Schedule 1](#) to the Children Act 1989, a parent, step-parent, guardian, special guardian or person with a residence order may be able to apply to the court for other financial provision for a child, usually from that child's other parent. In some cases it may be appropriate for the application to be made by the child themselves (see below). Often, this law is used for one parent to make an application against the other when they have not been married or civil partners.

In these circumstances the court does not have the wider powers it has on divorce or dissolution of a civil partnership to make financial orders that consider the children's needs outside of day-to-day maintenance that would be dealt with by the Child Maintenance Service or Child Support Agency. We can advise you on whether an application under this provision may be appropriate in your case.



### **What orders can the court make under Schedule 1 to the Children Act 1989?**

The court can order:

- a lump sum or sums to be paid, at once or in instalments, by one parent to the other, e.g. to reimburse expenses connected with the birth and to meet future expenses such as the purchase of a family car or to pay school fees, with no limit on the number of lump sum applications that can be made
- that a property should be transferred or held in trust for the benefit of a child until a certain event occurs, e.g. the child reaching the age of 18 or completing full-time secondary or university education, when the property will either be transferred back to the payer or sold and the proceeds given back to the payer
- regular payments of child maintenance where:
  - the non-resident parent's income is higher than the limit where the Child Support Agency/Child Maintenance Service deals with maintenance, or
  - in respect of educational expenses, or
  - for expenses connected with a child's disability

The court can also make an interim order for child maintenance while the main application is being dealt with. Regular payments of child maintenance may, in some circumstances, include an element of 'carer's allowance' for the parent with whom the child lives. The duration of the maintenance order is fixed by the court.

### **Can a child apply?**

If a child is receiving, or is intending to receive, instruction at an educational establishment or training, or if there are special circumstances such as a disability or illness, and the parents do not live together, a child over 18 can apply to the court for maintenance or a lump sum from one or both parents.

### **What is the procedure?**

The person applying for an order from the court is called the applicant, and the other person is the respondent. The applicant will complete a court form that is sent to the court, and then sent to the respondent, who must let the court know it has been received. After that, a court date is set and both the applicant and respondent have to complete a financial disclosure form (a Form E1) setting out all of their financial circumstances.

## How does the court decide?

When deciding what order to make, the court will consider:

- the income, earning capacity, property and other financial resources that each of the parent has or is likely to have in the foreseeable future
- the financial needs, obligations and responsibilities that each parent has or is likely to have in the future
- the financial needs of the child
- the income, earning capacity (if any), property and other financial resources of the child
- any physical or mental disability of the child, and
- the manner in which the child was being or is expected to be educated or trained



There are certain additional considerations if the person whom the application is against is not the child's other biological parent. It is also worth remembering that the judge has a wide discretion depending on the circumstances of the case and so the level of orders can be difficult to predict.

## How can we help?

We will advise you on the best way to proceed, whether you can start proceedings and when and if those proceedings should be issued. We will help you in drafting all the relevant documents and advise on a strategy and likely outcomes.