



Family Department

Maintenance of Children – Unmarried Couples

If a marriage or civil partnership breaks down the Courts have wide powers to deal with the couple's assets to ensure that the children are properly housed and adequately provided for financially. However, if the parents are not married or in a civil partnership the situation is very different; the parent with day to day care of the child can only seek financial provision for the child under Schedule 1 of the Children Act 1989 and through the Child Support Agency, now known as the Child Maintenance Service.

Who can apply to the Court for maintenance for a child?

The Schedule 1 application can be made by the parent actually caring for a child, a Guardian or anyone with a child arrangement order where the child lives. Most applications brought under Schedule 1 involve cases where one party has considerably more assets and income than the other.

What powers does the Court have in these circumstances?

The Court has the power to make a number of different Orders under Schedule 1 of the Children Act 1989:

- Periodical Payments (usually in the form of monthly maintenance payments)
- Lump sum payments
- Transfer / settlement of property

How are Periodical Payments assessed and ordered?

At present there are two systems used to assess applications for statutory maintenance; the Child Support Agency (if there has been a previous assessment) and the Child Maintenance Service (the current system for new applications). The Child Support Agency can only make an assessment on net income up to £2,000 a week and the Child Maintenance Service can only make an assessment on gross income up to £3,000 a week.

If the weekly income of the non-caring parent exceeds these maximum sums then an application to Court, for “top up” maintenance under Schedule 1 of the Children Act, will be necessary.

The Court can also order payments to be made towards a child's educational needs, school fees or towards the expenses connected with a disability such as special transport, medical treatment or respite care etc.

When would the Court make a Lump Sum Order?

The Court can make a lump sum order if the money is for the benefit of a child. For instance, a lump sum order could be made for the purchase of a car, if needed for the transportation of the child, or for furnishing the home.

The Court can make a series of lump sum orders as needed.

When would the Court make an Order for the transfer / settlement of property?

The Court can make a settlement or an Order to transfer a property (in order to provide a home for the child). The non-caring parent might be required to purchase or contribute towards the purchase of a suitable property for the child. Repayment of any contribution or purchase monies provided by the non-caring parent will normally be required once the child reaches 18 years or ceases to be in full time education. This type of order is relatively unusual and will only be applicable where the non-caring partner has substantial assets or income.

The Process

If you instruct us to seek an Order for financial provision for a child, under Schedule 1 of the Children Act 1989, we will take the following steps:

- We will meet with you to take your initial instructions;
- We will obtain any relevant financial and other information from you,
- We will advise you on the likely outcome of any application to the Court, having regard to your circumstances;
- We will advise you on the most appropriate procedure for obtaining an Order, as this may differ depending on your instructions and individual circumstances.
- Once we have agreed this procedure with you we will provide you with further details of likely timescales and cost.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.