

# Clean break

It is very common for Husbands in particular to say that they want to end their marriage with a “clean break”. What does this mean?

Well to most people it means that their spouse cannot come back to them to ask for more money later.

For the higher earning party a full clean break means that they can go off and concentrate on earning more money without having to worry that a proportion of it will go to their ex-spouse.

Sometimes the financially weaker party will want a clean break. Sometimes e.g. a Wife will say: “I don’t want maintenance from my Husband, he won’t pay anyway and he always lies about his income. I would rather have more money now.”

If one of the parties, e.g. the Husband earns quite a lot of money, the price of obtaining a clean break might be quite high. In some cases they may need to agree to their spouse having the vast majority of the assets to secure a clean break. In some cases there may not be enough assets for there to be a clean break.

If the parties are intending to bring about a clean break they will need to pay careful attention to the terms of the “clean break” provision in the final order. If there is to be a total clean break the wording of the order will be something like this:

“Save as provided for in this order, the applicant’s and the respondent’s claims for periodical payments orders, secured periodical payments orders, lump sum orders, property adjustment orders, pension sharing orders and pension attachment orders shall be dismissed, and neither party shall be entitled to make any further application:

in relation to the marriage for an order under the Matrimonial Causes Act 1973 section 23(1)(a) or (b); or,

Upon the death of the other for an order under the Inheritance (Provision for Family and Dependants) Act 1975, section 2.”

Note: the reference to the Inheritance (Provision for Family and Dependants) Act 1975 is there to close off any claims when the other party dies. That Act effectively allows a court to re-write a will. Where e.g. a Husband dies it is likely that he will not leave anything to his ex-wife. Under the Act his ex-wife would be allowed to go to court and say “my ex-husband’s will did not make reasonable financial provision for me. I should have some more money.” This draft clause prevents the ex-wife from bringing such a claim.

Note: The draft above deals with both capital and income. In other words, after the making of this order, neither party would be allowed to come back to court to ask for more money from the other party.

If a matrimonial case goes to a contested hearing the court has a duty to consider whether there can be a “clean-break”. This comes from section 25A of The Matrimonial Causes Act 1973:

“Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24 or above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.”

It is usual for there to be a capital” clean break. In some rare cases a court might be persuaded that capital claims should be adjourned to a later date.

However, in many cases an income” clean break is more difficult to achieve. This is because very often the financially weaker party will need monthly financial support from the stronger party (maintenance). From the stronger party’s point of view the ideal situation is if there can be an income clean break. In order of preference for the stronger party, with the best first, the options are:

- Income clean break (as in the draft clause above);
- Term order with a bar against extension e.g. Husband to pay maintenance of £500 per month for 5 years with a bar to prevent an application to extend the term;
- Term order without a bar e.g. Husband to pay maintenance of £500 per month for 5 years. In theory the Wife could come back within the 5 years to ask the court to extend the term to e.g. 10 years;
- Term order with a “step down”, e.g. Husband to pay maintenance of £500 per month for 3 years and then £200 per month for 2 years.
- Joint lives order, e.g. Husband to pay maintenance of £500 per month until either he or his Wife dies.

Under the Matrimonial Causes Act 1973 section 28(1)(a), maintenance will come to an end if the receiving party gets married again.

If the order is a joint lives order or one for a long term, some thought should be given to whether there should be a provision for the amount of maintenance to go up in accordance with the cost of living.

Many term orders are set out to end when a certain event occurs. For example it is quite common for a Husband to pay maintenance until the youngest child of the family reaches the age of 18 or completes their full time secondary education.