



**Ballymun
Community
Law Centre**

Maintenance Payments & Covid-19

Family Law Advice and Information Service Information Note 3. 27 April 2020

Due to the COVID-19 pandemic many workers are affected by a loss of income and are relying on state income support from the Department of Employment Affairs and Social Protection and or may be on reduced income from their employer.

Practically this means that a person affected in this way may be unable to meet their normal maintenance obligations. Equally It may be the case that the party in receipt of maintenance is the person that finds themselves in difficulty because of a change in their financial circumstances.

In either situation it is important that parties communicate, cooperate and seek legal advice where required. The following note is set out to provide guidance and suggestions, the contents do not purport to constitute legal advice. Contact details for support organisations are at the end of the document.

Set out in brief is consideration of the following:

- Varying a maintenance agreement or order
- Practical steps
- Income supports
- Support services and contact information

Varying a maintenance agreement or order

In the case of an existing voluntary agreement (one that is not subject to a court order) variation in its terms without appropriate discussion and agreement may create tension which in turn could lead to legal proceedings being initiated in the future. It is therefore suggested that the basic steps set out in this note as applies to court ordered maintenance might usefully be employed in circumstances where the parties have to date voluntarily settled the issue of maintenance.

In normal circumstances where there is a maintenance order in place a person is legally obliged to comply with its terms unless and until the Court varies (changes) the order.¹ To obtain a variation order an application must be made to Court and evidence submitted to prove that the change in circumstances experienced by the Applicant supports the claim that the order should be varied. These are not normal circumstances and at present the Courts are only operating for urgent cases such as domestic violence situations. Maintenance and Access issues are generally not considered urgent.² That said, it is recognised that there may be circumstances where a non-urgent matter might be treated as urgent and therefore can be heard by the Court.³

Until the Courts are fully operational parties are generally obliged to deal with maintenance issues themselves and/or with the advice and support of their solicitor. The ‘maintenance debtor’ will need to mitigate the risk that they might experience adverse legal consequences at a future date and the ‘maintenance creditor’ will need, and be entitled to, continued financial support.

In recognition of the need for practical solutions and parental cooperation the President of the District Court issued a statement with respect to *Family Law Matters* that would ordinarily come before the Court. The statement presents as a derogation from the legal norm:

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As parents, if you agree that the arrangements set out in a court order should be temporarily varied you are free to do so. Make a note of this agreement by way of email or text message.⁴

Crucially, a party subject to a court order must remember that a ‘DIY variation’ is not a legal variation. Legally any monies not paid remain due until such time as the matter can be addressed by the Courts.

¹ Breach of a maintenance order amounts to contempt of court and can ultimately attract punishment in the form of a fine and or imprisonment. In this regard reference should be made to s31 of the Civil Law (Miscellaneous Provisions) Act 2011.

² Statement by His Honour Judge Colin Daly, President of the District Court, 26 March 2020, <https://beta.courts.ie/news/president-district-court-family-law-statement>.

³ According to the Practice Direction of the President of the District Court dated 16th March, 2020 which says that a case which does not come into the defined urgent category can be treated as urgent if a good case can be made. You can email your court office setting out the reasons why the case should be considered urgent. You should email the other side to let them know you have applied and they must be given a chance to set out their position. You will be notified of the Court’s decision by email. Contact details for offices are available on <https://beta.courts.ie/content/find-us>.

⁴ Statement by His Honour Judge Colin Daly, President of the District Court, 26 March 2020, <https://beta.courts.ie/news/president-district-court-family-law-statement>.

Practical steps

Where parties find themselves in financial difficulty with respect to maintenance, be that person the maintenance creditor or debtor, it is suggested that the following practical steps might be taken.

1. Keep making payments and get legal advice and support

- a. Payment of the maintenance due or whatever can be paid should continue to be paid at the intervals agreed/ordered (weekly, monthly etc).
- b. Obtain legal advice if possible and contact support organisations. A list of organisations is at the end of the document.
- c. Contact the Legal Aid Board or instruct a private solicitor to issue a maintenance, variation/discharge or enforcement application as necessary. In the event that the matter does come before the Court at a future date the Court will need to consider all aspects in relation to payment including any inability to make payment due to loss of earnings. Therefore, all written evidence will be of importance in providing the necessary proofs for the Court.
- d. Consider current position. Some matters classified as 'non-urgent' might be heard by the Court depending on the particular facts and circumstances. Seeking legal advice will help clarify if this is the case. Most maintenance matters will need to be resolved between the parties until such time as the Courts are in a position to provide a more normal level of service.

2. Communicate, cooperate & negotiate

- a. If you do not have a solicitor acting for you, contact the other side immediately and advise them of your position/change in circumstances.
- b. Consider how you will communicate. Confirming agreements in writing is recommended. This might be by text, email or letter.
- c. Exchange documentation with the other side - e.g. evidence of your loss of earnings and payments being received and all other relevant materials.
- d. Forward proposals for temporary maintenance payments and seek a response from the other side.
- e. Keep a record of all communications (written and oral). Do not record conversations, instead make a note of your conversation, sign and date it. Making recordings without a person's consent raises potentially significant legal issues.

3. Set out your agreement in writing

- a. If agreement is reached the parties should set out its terms in writing and confirm that each party has agreed the terms by exchange of text or email.
- b. The terms of the agreement might include the following:
 - details of amount to be paid for whatever temporary period is agreed;
 - agreement that payment of the Court ordered figure will resume immediately on resumption of employment;
 - arrangements for payment of any arrears if necessary noting the amount of arrears outstanding;
 - noting that nothing undermines the Court's jurisdiction to make enforcement orders and/or variation/discharge orders;
 - measures for the parties (e.g. mediation) to reach further agreement wherever necessary.

4. Communication not possible or very difficult

It is not always possible to communicate with the other party and in some circumstances it may not be safe to do so and you should seek to instruct a solicitor. Where appropriate and or useful mediation might be considered. Further, parties need to be aware that mediation is an option available to them at any stage if it will assist in reaching an agreement.

Income supports

If you have experienced a change in your financial circumstances you may be entitled to income support from the Department of Employment Affairs and Social Protection (DEASP). The type and level of support will depend on what your situation was prior to the change in your circumstances.

In receipt of a 'means tested' social welfare payment prior to change in maintenance payment

Generally, if a person prior to any change was in receipt of maintenance payments and a reduced social welfare payment such as the One Parent Family Payment or Jobseekers Allowance they are advised to seek a revised means test if the level of their maintenance is reduced. For example; if a person's One Parent Family Payment had been reduced by €50 due to means from maintenance and now the rate of maintenance has halved then that person's means should also be reduced. In these circumstances the One Parent Family Payment should increase to reflect the reduction in means.

It is important to have a written record of the change in maintenance. The record should be specific as to the amount now in payment and from what date that new arrangement took effect.

When requesting a revised means test do so in writing, submit proof of the change in your financial circumstances and request that any change in your rate of payment take effect from the date that your circumstances changed. Keep a copy of your correspondence.

Losing a job and Covid-19 income support

The Covid-19 Pandemic Unemployment Payment is available to those who have lost their job/self-employment as a consequence of Covid-19 restrictions or have been temporarily laid off. It is important to stress that you cannot receive this payment if you are in receipt of any income support from your employer and you must have been in employment before **Friday 13 March 2020**.

The payment is awarded at a flat rate of €350 per week. It is available to people who were employed (part or full-time) and those who were working in a self-employed capacity.

Please note that the Covid-19 Pandemic Unemployment Payment is an emergency payment and while the DEASP have stated that it will be available for the duration of the public health emergency it is important to remember that this may change subject to public health and economic decisions made by government in the coming weeks. You should make enquiries about what other social welfare supports are available to you if you remain out of work; for example, Jobseekers Benefit or Jobseekers Allowance.

According to the DEASP you can claim the Covid-19 payment while continuing to receive the Working Family Payment (WFP), Carers income support or the One Parent Family Payment.

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If you were working and were also in receipt of any social welfare payment such as a Carer's Payment, [Working Family Payment \(WFP\)](#) or [One-Parent Family Payment](#), you can, provided you have lost your job due to COVID-19, also claim the COVID-19 emergency payment, in addition to retaining your existing welfare payment. The COVID-19 Payment Unemployment Payment will replace your employment income and will be regarded by the department as equivalent to employment income.⁵

An **enhanced Illness Benefit** payment is available to those who contract Covid-19 or those who are advised to self-isolate. This is available for two weeks (self-isolate cases) and a maximum of up to 10 weeks if you contract Covid-19. It is payable at the rate of €350.

If you are in private rented accommodation and you have lost your job you may be eligible for **Rent Supplement**.

⁵ <https://www.gov.ie/en/service/be74d3-covid-19-pandemic-unemployment-payment/>. Accessed 27 March 2020.

Support organisations and Contact Details

Legal Aid Board Legal & Mediation helpline.

Lines open Monday to Friday 10.00am to 12.30pm and from 2.00pm to 4.00pm:

lo-call 1890 615 200 or 01 646 9600

Or request a call back email your contact details under the email heading - "Helpline Call Back" to info@legalaidboard.ie

For further information on Legal Aid please see: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/> . Applications can be made online.

MABS Helpline (money advice): 0761 07 2000

FLAC helpline - for basic legal information - lo-call 1890 350 250

Treoir (information for unmarried parents): Information line 01-670 0120
One Family Ireland helpline: 01-662 9212

Barnardos Parent Support Line: 1800 910 123

Department of Employment Affairs and Social Protection (DEASP)

The quickest and easiest way to apply for the emergency COVID-19 payment is by applying online at mywelfare.ie.

DEASP Income Support Helpline for COVID-19

This helpline provides information on available income supports for people impacted by COVID-19. Our information team can advise on the most suitable income supports for your circumstances and provide information on how to make an application.

Phone: [1890800024](tel:1890800024)

For family law advice and information, information on welfare entitlements and information on mediation services you can also contact Ballymun Community Law Centre: 01 862 5805.

The information contained in this document does not purport to be legal advice.

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