

CONSENT ORDERS INFORMATION SHEET

Please remember that each case turns on its individual facts and that this therefore is a general guide only and is not exhaustive. If you have any queries whatsoever then you must raise the same with the lawyer dealing with your case.

1. A consent order does not take effect until after the Decree Absolute. The Court have not got jurisdiction to deal with and approve a consent order until after Decree Nisi.
2. The Court does not rubber stamp consent orders. The District Judge looks at each consent order application individually and carefully to make sure that in the District Judge's view the agreed terms are "fair and reasonable". In particular a District Judge is likely to query a consent order application if one or both of the parties to the agreement have not received the benefit of independent legal advice.
3. Once an agreement has been reached you will be bound by it. This is even before the Court has approved it. Once an agreement has been reached it cannot be set aside unless very exceptional circumstances apply. You cannot dispute an agreement at a later date for example on the basis that a property has increased in value.
4. A consent order can be drafted on the basis that it provides for a "clean break" between the parties. A clean break means that after the consent order has been approved, neither party has any further or future claims against the other.
5. If the consent order does not provide for a "clean break", i.e. there is ongoing payment of maintenance to one of the parties to the consent application, then an application can be made by the payee (the party receiving the benefit of the maintenance) to the payor (the person making the payments) to increase those payments. The payee will have to demonstrate that there has been a material change in circumstances. This material change can either be in the payor or the payee's position. A material change can include a change in health.

On the application for an upward variation for maintenance, the increase in maintenance that the Court may order may be capitalised to produce a lump sum payment, notwithstanding that a previous lump sum was ordered to be paid in the previous proceedings/consent order.

6. If a court order does not provide for a "clean break" then the maintenance will be paid by the payor to the payee for a period of time. It may be for their joint lives or the payee's remarriage or the payee's continuous cohabitation or for a specific period of time. An application for variation cannot be made after a specified time limit has expired.

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7. Child maintenance can only be dealt with in a consent order if both parties agree to the level of the child maintenance. If there is not agreement then only the Child Support Agency have jurisdiction. It should be noted that if there is an agreement as to child maintenance, either party may apply to oust the jurisdiction of the Court and apply to the Child Support Agency. This may be done after the Court order has been in existence for one year, by either party, giving two months notice in writing to the other.