

The cost of living crisis and maintenance orders

Briefing Summary: A cost of living crisis is upon us.

Service Area: Dispute Resolution and Litigation, Civil and Family Disputes, Private Client, Family Law

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The Jersey Retail Price Index ("JRPI"), the main measure of inflation, was 7.9% higher in June 2022 than it was 12 months before – the highest rate of increase seen since 1992. ¹

The next JRPI is due to be released in October 2022 and further significant increases are expected. Such a hefty rise in inflation is concerning – it is inevitable that people will suffer from a worrying financial squeeze.

One of the immediate issues being caused by this hike in the JRPI is in the context of maintenance orders, whether they be for spousal or child maintenance. When these orders were made, they will have been based on 'need', those needs having been assessed at the time and usually index-linked, so that maintenance payments automatically increase on the annual anniversary of the order at the rate of JRPI in the preceding 12 months. The intention of this index-linked increase is to protect the 'buying power' of the recipient from being eroded by inflation on a year-by-year basis. However, for the paying party, a rocketing JRPI will cause a significant increase in their monthly payments, which they may be ill-able to afford, an issue that will be compounded the longer that JRPI continues to rise at a rapid rate.

By way of example, if child maintenance was ordered to be paid at a rate of £1,000 per month in September 2016 and the relevant order included provision for an automatic JRPI increase on an annual basis (a standard order), the payer's liability would be £1,229.87 per month in June 2022 – a circa 23% increase. Notably, "2001 to 2022 saw earnings remain essentially flat in real terms, decreasing by 1.1% over the 21-year period". ²

One can easily see that further significant increases in JRPI in the year to come are likely to cause paying parties difficulty when coupled with increases in their own living costs (and without a reciprocal increase in their income). One can also easily foresee scenarios in which a receiving party finds themselves in real financial hardship.

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What can be done?

If you cannot agree a variation to maintenance payments with your spouse, and you cannot agree to use a form of alternative dispute resolution (“ADR”) (discussed in more detail below), you will need to make an application to the Court for a variation in child maintenance. The court has a wide discretion to consider a change in maintenance but will only do so where there has been a material change in financial circumstances. The Court’s starting point in its assessment will be the previous order/ what has been previously agreed. The Court will then consider the needs of both parties, the child(ren) and their ability to meet their respective needs. If an application is being brought by a payer for a downward variation on the basis of affordability, they will need to evidence their financial difficulty. The Court is highly unlikely to order a downward variation to child maintenance payments (which are based on need) if a payer’s bank statements evidence high levels of discretionary expenditure.

Notably, litigation associated with variation applications can incur legal fees which are entirely disproportionate to the claims involved, and costs awards are commonly made against ‘losing’ applicants. Parties need to be cautious, and it is highly recommended that expert advice be sought at the outset as to the merits of a variation application in your specific circumstances.

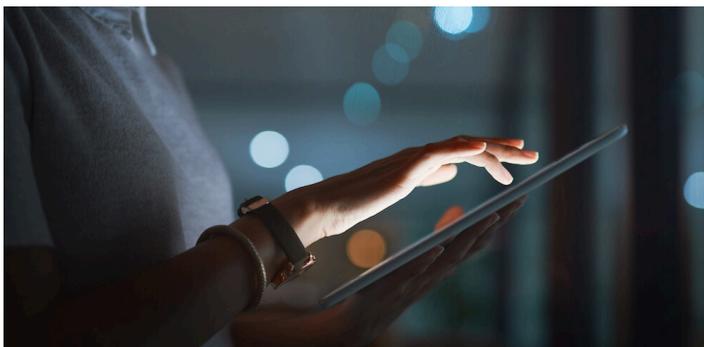
Parties will understandably be cost conscious at a time when they are seeking to vary a maintenance order based on a strained financial position. There are alternative, often significantly more cost-effective, ways to settle your dispute out of court, such as mediation. In Jersey, we have one main organisation offering mediation services – Family Mediation Jersey – although other mediators (usually from the UK) can be instructed ‘privately’ outside of this organisation. More information in respect of Family Mediation Jersey is available [here](#). Mediation involves the appointment of an independent and neutral third party to help parties to negotiate and come to an agreement. The mediator usually charges a fee. Further, the Family Division has recently launched Family Foundation, a free ADR service and more. Forms of ADR should be explored in every case but are particularly useful in circumstances in which the legal costs associated with going to court are disproportionate to the claim at hand. However, ADR is a voluntary process, and a court application will be necessary if the other side will not come to the table to engage in an alternative means of settling your dispute.

1 <https://www.gov.je/Government/JerseyInFigures/BusinessEconomy/pages/inflation.aspx>

2 <https://www.gov.je/Government/JerseyInFigures/EmploymentEarnings/pages/earningsincomestatistics.aspx>

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