

Child Maintenance

Options available to parents when dealing with child maintenance

Overview

This factsheet provides information about Child Maintenance, and how separating parents might resolve issues about the payment of maintenance for the benefit of their children. **Child Maintenance** here means regular (which might mean each week, month or year) financial support paid by one parent to the other to contribute to a child's everyday living costs. It's for children who are either under 16 or under 20 and in full-time education (but not higher than A-Level or equivalent).

You can arrange child maintenance yourself through the Child Maintenance Service (CMS). This organisation is part of the Department of Works and Pensions (DWP). It will work out how much maintenance should be paid. The CMS also has the power to collect the payments. All arrears under a CMS assessment have to be collected by the CMS. You have no right to enforce payments yourself.

The CMS has replaced another government body called the Child Support Agency (CSA) however the CSA is still in existence and has jurisdiction over any maintenance assessments for children that were done between 1993 and November 2013. NB: some jurisdiction was taken by the CMS from December 2012 depending on the number of children.

The DWP have said that it intends to migrate all assessments to the CMS by 2017.

For other types of financial provision for children, see our **Children – The range of court orders** factsheet (under the heading Order for Financial Provision for a Child).

Option 1: Private Agreements

If parents are able to agree on the level and frequency of Child Maintenance, then they can record this in a written document. The document does not have to be especially detailed, and we can provide a simple example. If a more complex arrangement is agreed – for example, with variable formulae for calculating maintenance – then the document would need to be correspondingly more thorough. The agreement does not have to be registered with the CMS or any other organisation. There is a very helpful website, cmoptions.org, which can help you reach agreement. Their helpline number is 0800 988 0988.

A Child Maintenance agreement is useful in situations where both parents trust one another and are prepared to be honest about their financial circumstances.

However, a private agreement is not legally binding. That is, if one party changes their mind, they will not be held to the terms of the agreement.

If one parent decides to ignore the agreement, it would be necessary to consider dealing with Child Maintenance issues under Options 2 to 4, below.

Option 2: Court Agreement

This is an option **only** as part of a divorce or dissolution.

A court agreement is very similar to Option 1. The difference is that the parents' agreement is recorded and approved by the court in the form of an order. Unlike a private agreement, a court agreement is legally binding. It remains binding for at least twelve months.

After a year, if either parent wishes to change the terms of the court agreement, and that change is not agreed, either may apply to the Child Maintenance Service.

Option 3: Using the Child Maintenance Service (CMS)

Most parents will be able to approach the CMS to resolve questions about child maintenance. See option 4 for situations where the CMS cannot become involved.

The parent who doesn't have day-to-day care of a child ('the 'paying parent') will pay Child Maintenance to the parent or person who does (the 'receiving parent'). Where care is shared exactly there is no child support liability, and you may well need the input of the court if this causes unfairness.

There are 4 rates of Child Maintenance when the CMS has jurisdiction. They're used with the paying parent's income to work out a weekly amount of Child Maintenance.

Nil rate

This means the parent the child doesn't live with doesn't have to pay Child Maintenance because they:

- are a student
- are a child aged 16 or under (or 20 or under if they're in full-time education not higher than A-level)
- are a prisoner
- get an allowance for work-based training or Skillseekers training (in Scotland)
- live in a care home or independent hospital and get help with the fees
- are 16 to 17 years old and they or their partner get certain benefits

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Flat rate

This is £5 per week no matter how many children are involved. It's used if the paying parent's weekly income is between £5 and £100 and they don't qualify for the nil rate.

It's also used if they get certain benefits, including (but not limited to):

- Armed Forces Compensation Scheme payments
- Bereavement Allowance
- Incapacity Benefit
- Income Support
- Employment and Support Allowance
- Jobseeker's Allowance
- Pension Credit
- State Pension
- Training Allowance
- War Disablement Pension

If the paying parent lives with a partner, the flat rate will be used if the partner gets:

- Income Support
- Income-based Jobseeker's Allowance
- Income-related Employment and Support Allowance
- Pension Credit

Reduced rate

This is used if the paying parent's net weekly income is between £100.01 and £199.99. They pay the flat rate of £5 plus a percentage of their net weekly income.

Basic rate

This is a percentage of the paying parent's gross weekly income. It's used if they have a gross weekly income of £200 or more. The percentage to apply depends on whether the paying parent's gross weekly income falls between £200 to £800 or between £800.01 to £3,000. There is also an income cap of £3,000 per week (£156,000 per annum). Any income above this level will be ignored. Pension contributions may be deducted from the gross income figure before the percentages are applied.

The amount of Child Maintenance payable will also be affected by:

- the number of children needing Child Maintenance
- the number of other children the paying parent or their partner get Child Benefit for ('relevant other children')
- the existence of a prescribed maintenance arrangement, pursuant to a family based arrangement or a court order
- the number of overnight stays with the paying parent

Gross weekly income up to £800

- One child: 12%
- Two Children: 16%
- Three or more children: 19%

Gross weekly income between £800 to £3,000

- One child: 9%
- Two Children: 12%
- Three or more children: 15%

Percentage reduction for relevant other children

- One relevant child: 11%
- Two relevant children: 14%
- Three or more relevant children: 16%

Where the paying parent pays child support in accordance with a maintenance calculation imposed by the CMS the process of apportionment will take place whereby the overall liability is simply apportioned per child. For example a gross income of £40,000 and four children will result in an overall liability of £7,600 (£40,000 x 19%). This is then apportioned per child, with each child receiving 1/4 of the liability.

Where the paying parent pays Child Maintenance for other children under a prescribed maintenance arrangement, pursuant to a family based arrangement (FBA) or a court order the amount of maintenance is adjusted to acknowledge the paying parents financial responsibility to other children. A child supported in this way will be notionally treated as a qualifying child for the purpose of the maintenance calculation. A paying parent will therefore be treated as if they were liable for two qualifying children. The liability will then be notionally apportioned between the children. The paying party will pay the sum to the real qualifying children but the sum due to the FBA or court order child as per the apportionment will not be paid. Instead the paying parent will simply pay to the FBA or court order child the amount specified in the FBA or court order.

For example if a paying parent has a gross income of £40,000 per annum, one FBA child requiring a payment of £1,000 per annum and one qualifying child then the calculation will produce a liability of £6,400 (£40,000 x 16%). The qualifying child after apportionment will receive half, £3,200 and the FBA child will continue to receive £1,000.

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For a FBA to be recognised by the CMS it must simply provide for the paying parent to make regular payments to a child of theirs who lives in the UK. This can even cover an oral agreement but the CMS will require some evidence of the arrangement. The form of this evidence is not specified but is likely to include bank statements showing the regular payment.

Shared care

Where the paying parent has overnight contact a reduction to their Child Maintenance will apply to reflect the shared care. The discount to be applied will be determined by the number of nights the paying parent is expected to have with the child over a 12 month period, beginning with the start date of the child support liability. In the absence of agreement or court order, the CMS will look to see what the pattern has been for the previous 12 months.

Where the principle of future shared care is agreed but there is an issue as to how many nights the child will spend with the paying parent the CMS is entitled to make an assumption where there is insufficient evidence of an established pattern of care to make a decision. The assumption is that the child will spend one night a week with the paying parent.

The assumption will continue until one of the parents applies for a supersession of the decision and provides sufficient evidence to enable the CMS to determine the number of nights.

- Fewer than 52 nights – no reduction
- Between 52 and 103 nights – 14.29%
- Between 104 and 155 nights – 28.57%
- Between 156 and 174 nights – 42.86%
- More than 175 nights – 50% plus £7 each week for each child

Six steps to work out the amount of Child Maintenance

Step 1 - Work out income

The CMS will be able to find out the paying parent's yearly gross income from information supplied by HM Revenue & Customs (HMRC) and check if they're getting benefits (student grants and loans don't count as income). Unearned income such as dividend, investment and property income, even if this is the paying parent's principal source of income is excluded.

Gross income includes any bonus, commission or overtime payments. It also includes receipts from any pension scheme, tax credits, employment credits and disabled person's tax credits. Gross income excludes investment income, State Benefits, student grants and loans.

CMS will use current income data supplied by the parents if either parent can show that current income differs from historical income data held by HMRC by 25%.

Step 2 – Apply deductions

Deduct pension payments and then convert the yearly gross income figure in to a weekly figure.

Step 3 – Apply the Child Maintenance rates

Step 4 - Other children

Apply the percentage deduction for any relevant other children the paying parent has to pay Child Maintenance for, including other children living with them and any arrangements that have been made directly with an ex-partner.

Step 5 - Shared care

Apply the percentage deduction for overnight stays with the paying parent.

Worked example

Doug's salary is £40,000 per annum and he pays £300 per month into his company pension.

He has two daughters Chloe and Emma with his former wife, Anne. Chloe and Emma live with Anne and have contact with Doug one night each week. Doug lives with his new partner, Monica. Monica has twin sons, Chris and Casper, who live with her and Doug. What is Doug's maintenance liability for Chloe and Emma?

- Doug's gross income after deduction of his pension is £36,400. His gross weekly income is therefore £700
- Doug's gross weekly income is under £800 so the applicable rate is 16%. 16% of £700 is £112
- Doug's income is then reduced by 14% because there are two "relevant" children – Chris and Casper. His liability is reduced to £96.32 (14% of £112 is £15.68, therefore £112 – £15.68 = £96.32)
- Doug's maintenance liability is then reduced by 14.29% because Chloe and Emma stay with him for more than 52 nights a year (14.29% of £96.32 is £13.76, therefore £96.32 – £13.76 = £82.55)
- Doug's maintenance liability is £83 per week. The CSA/CMS round up payments to the nearest pound, so he must pay Anne £83 each week for Chloe and Emma's benefit

Fees

The Child Maintenance Service does charge fees. An assessment costs £20. If you want the CMS to collect the assessment for you as the receiving parent, they will reduce the amount you receive by % and they will charge the paying parent an extra 20%. That is, if the assessment is for £100 it will cost the paying parent £120 and the receiving parent will only receive £96.

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You can avoid this cost where you have got the CMS to work out how much you should pay by the paying parent paying the money directly to the receiving parent.

If you use Direct Pay (where you get the Child Maintenance Service to work out how much you should pay, but pay the receiving parent directly instead of through the service), there usually won't be any collection fees.

Variations

Either the receiving or paying parent can ask the CSA/CMS to take into account additional information or circumstances. This is called a variation application. A variation application is appropriate where the standard formulae does not do justice to the case. A variation application may be made by telephoning the CSA/CMS or writing to them.

The categories of variation application that might reduce maintenance liability are if:

- the paying parent pays significant costs in maintaining contact with the child
- the paying parent must meet costs relating to the long-term illness or disability of a child living with him or her
- the paying parent must pay debts incurred for the joint benefit of both parents and / or the child (but some debts, like credit cards and overdrafts, are excluded)
- the paying parent is paying the child's boarding school fees, and
- the paying parent is paying the mortgage on the property where the child lives

The categories of variation application that might increase maintenance liability are if:

- the receiving parent applies for a variation on the basis that the paying parent's unearned income should be taken into account. The onus is on the receiving parent to make the application

There is an appeal system within the CMS is either parent believes the maintenance liability calculation is with a variation application has not been dealt with properly.

Option 4: Court-ordered maintenance

There are some situations where the CMS will not be able to assist. These include the following:

- when a paying parent lives abroad the CMS can only help if the paying parent is:
 - a civil servant
 - working in Her Majesty's Diplomatic Service
 - a member of the Armed Forces
 - working for a company that is based and registered in the UK
 - working on secondment for a 'prescribed body', like a regional health authority or local authority

If the receiving parent or the child lives outside the jurisdiction:

- where the paying parents gross weekly income is more than £156,000 (£3000 gross per week being the maximum gross income that the CMS can take into account)
- Where there is a court order about maintenance made prior to March 2003
- Where there are school fees to be paid
- Where a child has special needs
- Where a child is beyond secondary education but still needs financial help (such as at university or due to disability)

In these situations, the court retains the ability to look at what level of regular financial support by the NRP is appropriate. The court will be guided by, but not bound by, the CMS formula.

Resources

Child Maintenance Service

Website: www.gov.uk/child-maintenance

Telephone: 0845 266 8792

Textphone and textphone: 0845 266 8795

Opening hours are:

8am to 8pm - Monday to Friday

9am to 5pm - Saturday

By letter:

Child Maintenance Service

PO Box 249

Mitcheldean

GL17 1AJ

Child Support Agency Helpline

Telephone: 0845 713 3133

Textphone: 0845 713 8924

Child Maintenance Options Service

Website: www.cmoptions.org/

Telephone: 0800 988 0988

Opening hours are:

8am to 8pm - Monday to Friday

9am to 4pm - Saturday

Please feel free to discuss your own position and concerns. Contact your nearest office on:

T: 0800 916 9055

E: enquiries@slatergordon.co.uk

W: www.slatergordon.co.uk

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