

25. CHILD SUPPORT

Parents are legally responsible for providing financial support for their children. The Child Support Agency (CSA), provided by the Child Maintenance and Enforcement Commission, presently calculates and collects child maintenance from parents who do not live with their children.

Either parent can ask the CSA to work out and collect child maintenance for children living in the UK as long as the person with care and the non-resident parent also live in this country. In Child Support Law, the parent who has caring responsibility for the child for the **larger number of nights** is called the "**Parent With Care**". The parent who has caring responsibility for the **smaller number of nights** is called the "**Non-Resident Parent**". If care is shared equally, the Non-Resident Parent is the one who is not getting Children Benefit. The CSA may also be able to handle child maintenance for some Non-Resident Parents living abroad, if their employer is based in the UK.

Children are those under 16, or aged 16 – 19 and in full time secondary education.

Since March 2003, the amount of maintenance due has been based on the Non-Resident Parent's net income. For most people this will mean earnings after tax, national insurance and pension contributions are taken off. In all cases the maximum income that can be taken into account by the Child Support Agency is £2,000 per week.

Child maintenance can be paid through the CSA, by a private agreement or Court Order. If you choose to go through a private agreement you can still use the CSA for free advice and support via www.cmoptions.org or 08009880988.

Payments

1) For Non-Resident Parents whose income is £200 per week or more, the rates are :

15% of net income for one qualifying child

20% of net income for two qualifying children

25% of net income for three or more qualifying children.

2) Those with income of between £100 and £200 per week will pay: -

reduced rates of maintenance - £5 per week plus a percentage of the weekly net income over £100.

3) Those with income of more than £5 but less than £100 per week and those on specified benefits (including but not limited to Retirement Pension, Incapacity Benefit, Job Seekers Allowance and Income Support) will pay (no matter how many children are involved): -

a flat rate of £5 per week.

4) A small number of Non-Resident Parents are **nil-assessed**, including students in full time education doing over 12 hours tuition at a recognised school/college; persons under 16, prisoners and persons living in a residential/care home and getting help with fees (although there are exceptions meaning they should still pay).

Reduced rate

The maintenance will **be reduced by one seventh** for every night per week on average over a year the children spend with the Non-Resident Parent, as follows:

- Under 52 nights = no reduction
- 52 – 103 nights = 1/7 reduction
- 104 – 155 nights = 2/7 reduction
- 156 – 174 nights = 3/7 reduction
- 175 nights or more = 1/2 reduction

Where care is shared equally (175 nights per year or more) between both parents, maintenance will be reduced by an additional £7 for each child.

A Non-Resident Parent on DWP benefits who shares the care of the child for at least 52 nights of the year, will usually be exempt from paying the £5 flat rate.

If a Non-Resident Parent has to pay child maintenance to more than one parent (a "multiple case"), an **appropriate reduction will be made** and the same amount paid for each child (except where resolved through private agreements).

In assessing the paying parent's ability to pay, the calculation **will** take account of all children in a Non-Resident Parent's current family, including stepchildren, and this **will** reduce the liability for existing/other children.

The net income used to calculate maintenance will be **reduced** by: -

- 1) **15% for one relevant child in the current family**
- 2) **20% for two relevant children**
- 3) **25% for three or more relevant children.**

In some situations the CSA can consider disabled children, particularly high travel costs, a suggestion that the Non-Resident Parent's income is controlled by them or their lifestyle suggests they have access to more money or a higher income than they have declared and alter the payments due.

In assessing the paying parent's ability to pay, the calculation does not take account of: -

- 1) **The income of the Parent With Care**
- 2) **The income of either parent's current partner**
- 3) **Housing costs**
- 4) **Travel to work costs.**

The maintenance can be paid to the Parent With Care by Standing Order, to the CSA by Direct Debit, through earnings or direct from benefits. Payment can also be by BACS or Debit/Credit card in some circumstances.

Phasing-in provisions

If you have an existing child maintenance assessment which precedes this scheme, the CSA will have written to you with a child maintenance calculation to explain the transfer to the new scheme. If the new arrangements meant there would be a large change to the assessment, it will have been phased-in over a period of years.

Basically, **any increase or decrease** in the amount of child maintenance payable under the new law **will have been capped to £10 per week per year**. So for example if under the old law, child maintenance payable was £100 per week and under the new law the amount payable was £150, in the first year the amount payable would have been £110 per week, increasing annually by £10.

Child Support and DWP Benefits

When Parents With Care are on Income related benefits or Pension Credit, they will be permitted to keep up to a total of **£20 per week of the maintenance paid for their children**. This will be called the "**Child Maintenance Premium**". If the money is paid direct to the Parent With Care it **must** be declared to the DWP.

Child Support and the Court

a) **maintenance**

Normally, the Child Support Agency (CSA) work out and collect child maintenance, according to a pre-set formula. The children covered are:

- children under 16
- children 16 – 19 in full time secondary education.

There are circumstances where the CSA cannot assist, and under those circumstances child maintenance has to be agreed or sought through the court:

- i) children and parent with care not living in the UK
- ii) paying parent not living in the UK (unless the employer is based in the UK)
- iii) children in vocational training or full time tertiary (college) education
- iv) older children whom disability will make financially dependent indefinitely
- v) maintenance is sought by a non-parent with a residence order / guardian
- vi) children with non-standard / unusually high living expenses.

Courts can put agreed maintenance payments into a Consent Order and **we are able to assist you in this regard**.

b) capital

In divorce, there can be only one lump sum order made – if it is appropriate to make any lump sum order at all – in favour of either spouse.

For dependent children, there is no limit on how many lump sum applications are made. This is because quite apart from the divorce proceedings, there is provision to seek a lump sum under the Children Act 1989 S2(c)

It is anticipated by the Court that child support / child maintenance, covers a child's basic needs. However if there is a worthy and one-off expense that the parent with care has to meet e.g. expensive private orthodontic treatment, then the paying party can be invited to contribute to that expense up to £1,000. If the Court believes that the absent parent has the means to contribute significantly, then it can order such a contribution to be made. This applies to children under 18, or over 18 and still in education / vocational training. However such orders are rare, as it is difficult to show that a child, as distinct from the parent with whom he or she lives, has a need or reasonable requirement for capital.

Even more rare – but nonetheless available – are orders under the Children Act 1989 for settlement of property on a child, or transfer of property to a child (including a tenancy). Only one such order can be made, and like all financial applications for maintenance or capital under the Children Act, can be sought by a parent, a guardian or a carer with a residence order.

Timescales

The CSA aim to contact the non resident parent within 4 weeks of being contacted and work out figures within 12 weeks. During this interim period it is worth the Non-Resident Parent making some payment to the Parent With Care as the obligation to pay runs from the date that the Parent With Care applied. Both parents should keep a record of payments made and received, as these can be deducted from the final calculation. Alternatively the Non-Resident Parent could just put some money aside each week for when the calculation process is complete.

Penalties

Generally, if you fail to provide information when the Child Support Agency requires it, or if you knowingly provide false information, you can be prosecuted and fined up to £1,000.

If the CSA can not find the Non Resident Parent they have powers to help them look for that person, including accessing other agencies and organizations databases in this regard.

If a non-resident parent refuses payment, claiming not to be the natural father of the children and when that party's name is not on the child's Birth Certificate, and was not married to the Mother at any point between the date of conception and the birth of the child, the Child Support Agency will interview both Parties and suggest that they take a DNA test. If the person disputing parentage refuses to take a DNA test, the Child Support Agency will treat that person as the child's parent anyhow. If the parent with care refuses to take the DNA test, if they receive Income Support or Income Based Job Seekers Allowance, their benefit may be reduced. If the test result is positive, then arrears can be claimed for the maintenance, along with the cost of the DNA test.

The Child Support Agency has other powers to make sure the non-resident parent pays. This can include deducting money straight from earnings and taking Court action. Courts can take away non-resident parent's driving licences or even send them to prison. There are also fixed rates "default maintenance decisions" which can be applied where the necessary information is not provided and the arrears can be re-claimed in the future.

If the Parent With Care doesn't provide the information needed the case can be closed and no maintenance paid.

Further Information

This Fact Sheet is intended only by way of outline guidance. For further information, we recommend obtaining from the Department for Work and Pensions, a copy of their Child Support leaflet. This can be obtained from the CSA National Enquiry Line on **08457 133 133** or from their website address www.csa.gov.uk, as this Fact Sheet is simply a very basic outline of the scheme. If you need further information or advice about child maintenance, the CSA National Enquiry Line is open from 8am to 8pm Monday to Friday and 9am to 5pm Saturday.

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Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.