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## [Decision Making and Common Law Principles](#)

### Introduction

Child maintenance decisions are made by caseworkers, acting on behalf of the Secretary of State under the Carltona principle.

### **Carltona Ltd v Commissioners of Works and Others**

The Carltona principle dates from a judgement of the Court of Appeal in October 1943. The judgement stated that the Secretary of State could not possibly make every decision for which he is constitutionally responsible and accountable to Parliament. The Secretary of State is therefore entitled to authorise a person of suitable authority to exercise these functions on his behalf.

Caseworkers received training and appropriate guidance on how to make decisions on the Secretary of State's behalf. The Policy, Law and Decision Making Guidance (PLDMG) is one such form of guidance, which advises caseworkers on how to apply child support legislation. Approved guidance must be followed when the law is being applied to the facts of a case. However, caseworkers can seek advice from the Advice and Guidance Team on the application or clarification of the PLDMG if needed.

### Making decisions

Caseworkers making decisions must consider all the evidence and apply the law, including any relevant case law, to the facts of each case.

Where the legislation specifies or implies discretion, caseworker's judgement must be reasonable and unbiased. Refer to the [Discretionary Decision Making Guidance](#) for further advice about making and recording discretionary decisions.

Generally, each decision must be given on the facts as they exist at the date of the decision, and not in anticipation of a future state of facts. However, there are some exceptions, where it is known that a particular change will occur from a specific date. The PLDMG makes clear when a decision can be based on future facts.

Decisions can be revised or superseded for past periods if facts relating to the period were not known at the time. Refer to the guidance on [Revisions](#) and [Supersessions](#) for further advice on the circumstances in which decisions can be changed for past periods.

### **What is a 'fact'?**

For decision making purposes, a fact is a relevant circumstance or occurrence, which:

- exists at the time the decision is given, and
  - is known, accepted or proved to be true
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### **General principles of common law**

In addition to the above, decisions must take account of common law principles and relevant European law. The common law principles are:

### **Definitions of words and phrases**

Definitions of words and phrases can be found in:

- the Acts
- at the beginning of each set of Regulations
- in case law, and
- in the Interpretation Act 1978.

The Policy, Law and Decision Making Guidance also explains key words and phrases and how they apply in practice.

### **Relevant law**

When a decision is being made, the relevant law is the law applying at the time that it is being made. Where there is a change in a particular legal provision so that it:

- ceases to have effect, or
- begins to take effect

during the period when the decision is being made, caseworkers should only apply the change in the law from the date of change UNLESS it has retrospective effect or there are specific transitional provisions.

### **Estoppel (personal bar in Scotland)**

The doctrine of estoppel (personal bar in Scotland) has the effect in general law, of preventing a person from alleging or proving in later proceedings matters which have already been decided in earlier proceedings. This applies to decisions given by the decision making authorities, but not to advice given.

The doctrine of estoppel does not apply where advice or a promise has been given by a CMG officer, which has led a relevant person to form a view about future child maintenance calculations and caused a particular course to be taken.

Caseworkers must determine the calculation solely on the basis of the legislation, even though the decision may be adverse to the relevant person compared with the original advice or information given.

### **Res Judicata**

Res judicata prevents a judicial authority deciding a matter that has already been decided by a person of a similar status.

This means that once a caseworker has made a decision, a further decision cannot be given on the merit of that application or question, except where the later decision is given by way of:

- revision
- supersession, or
- appeal,
- correction, or
- setting aside

### **Natural Justice**

There is a common law requirement that caseworkers should observe the rules of natural justice when making a decision. The rules are not prescribed collectively, but they represent the manner in which justice is expected to be achieved.

An unbiased approach is needed, reflecting the principle that impartiality is at the heart of the judicial process.

### **Ultra Vires**

Decision making authorities have jurisdiction to decide whether regulations are invalid. A regulation that is made will be deemed invalid if no power to implement it exists in the Act. When this happens the regulation is said to be ultra vires: that is, made beyond the existing powers or without authority. In all cases where the validity of a regulation is challenged on the ground that it is ultra vires, the challenge should be submitted to Advice and Guidance colleagues for advice.

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## General principles of European Community (EC) Law

The following paragraphs set out the general principles of EC law that apply to child support legislation

The main sources of EC law are:

- treaties establishing the EC. The EC can only legislate on matters in areas where it has been given power to do so by the treaties
- secondary legislation (regulations, directives, recommendations, directives and opinions)
- judgements of the European Court of Justice (ECJ)

The following sections provide additional information about the sources and relevance of EC law.

### **Regulations**

Regulations apply to all European Economic Area (EEA) countries. They become part of the national law as soon as they are agreed by the Council of Ministers. There is no need for a separate Act of Parliament or secondary legislation.

### **Directives**

Directives are binding, in terms of the result to be achieved, upon each Member State to which they are addressed. But it is left to the national authorities to decide the form and methods used to achieve the result. In the UK an Act of Parliament or regulations made under a statute is / are usually needed.

A directive may have "direct effect" (meaning a person can rely on its provisions) if:

- it, or part of it, is clear and precise
- it, or part of it, is unconditional, and
- the time limit within which it had to be implemented has passed

### **Opinions and recommendations**

Opinions and recommendations have no legally binding force but they state the collective view of the EC. The ECJ and national courts must take opinions and recommendations into account when deciding cases.

### **Supremacy of European Community Law**

EC law is supreme. This means that where there is a conflict between the provisions of EC law and that of any EEA national law:

- EC law must be applied, and
- the national law must be set aside or amended as appropriate

Where EC law is applied directly to set aside or amend UK law, the UK law may be changed so that the disadvantaged group is brought up to the level of the advantaged group. This is called levelling up.

Where an EEA country amends the legislation to provide equal treatment for men and women, it can specify any conditions provided that from 23rd December 1984, those conditions apply equally to men and women. This is so even if conditions are harder to satisfy than before that date. This is called levelling down.

### **Referring questions to the European Court of Justice**

When there is doubt about the correct interpretation of EC legislation, the:

- First Tier Tribunal
- Upper Tribunal, or
- Court of Appeal

can refer a question to the ECJ for a preliminary ruling.

If a case is before the Supreme Court and there is still an outstanding question involving EC law, the Supreme Court must refer a question to the ECJ. When the ECJ has answered the question, the Supreme Court decides the appeal.

As a general rule, where an appeal can be made to a higher court from the authority currently considering the case, it is better to give a decision on the question at that level and leave the higher court to make a reference to the ECJ.

If the question of a referral arises during the course of a First Tier Tribunal, the Tribunal should be asked to consider the matter without referring the questions to the ECJ at that stage. If the First Tier Tribunal refuses to decide the question before them, an adjournment should be requested so that legal advice and representation can be arranged.

If the First Tier Tribunal refuses to adjourn, a request should be made for this refusal to be included in the note of evidence and the papers should be passed to the Judicial Review & Litigation Support Team.

### **European Convention on Human Rights**

The European Convention for the Protection of Human Rights and Fundamental Freedoms is a treaty of the Council of Europe. The Convention contains Articles which guarantee a number of basic human rights. In addition, Protocols have been signed which are to be regarded as additional articles to the Convention.

## Human Rights Act 1998

The Human Rights Act 1998 which gives effect in the UK to the rights and freedoms guaranteed under the European Convention on Human Rights came into force on 2nd October 2000.

Public authorities, including courts and Tribunals, are under a duty to act compatibly with the Convention rights and all legislation must also be read compatibly with the Convention rights as far as it is possible to do so.

Also, courts and Tribunals should have regard to the jurisprudence of the European Court of Human Rights and decisions of the CMG and Committee of Ministers.

All our legislation, policies and procedures have been checked and we are satisfied that they are compatible with the Human Rights Act.

Caseworkers applying the normal principles of decision making, which are:

- natural justice
- consideration of evidence
- standard of proof, and
- application of the relevant law

should not find themselves in breach of the Convention. This is because they are already expected to determine questions without bias or discrimination and within a reasonable timescale.

## Useful Links

The following links provide additional guidance on:

- [Effective dates](#): which confirms when different decisions take effect from; and
- [Notifications](#): which confirms what information must be included when different decisions are notified to clients.

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## [Evidence](#)

### Introduction

The guidance in the following paragraphs solely sets out the general principles that caseworkers should follow in relation to evidence. Individual sections of the Policy, Law and Decision Making Guidance explain the specific evidence requirements for particular decisions and it is important that you refer to the appropriate section of the guidance when you are making and recording decisions.

Caseworkers should always approach any decision objectively, by:

- considering the evidence
- using that evidence to establish the facts of the case, and
- applying the law to those facts

REMEMBER: decisions can be challenged through the appeals process, or by Judicial Review (discretionary decisions only). Proper consideration and careful recording of evidence when making and recording decisions is essential. It is particularly important that telephone conversations / interviews are accurately and sufficiently recorded.

### Types of Evidence

All decisions should be based on the available evidence. There are three types of evidence:

- direct evidence: for example: a statement by a client about their circumstances
- indirect evidence: for example: a statement by a third party who knows about the client's circumstances
- hearsay: for example: a statement by someone recording what they have been told about the client's circumstances

Each type of evidence can be either:

- documentary evidence: for example: certificates or wage slips
- oral evidence: for example: a statement given by a client
- real evidence: something tangible

Caseworkers can use all three types of evidence. Some carry more weight than others and the weight given should be carefully judged in the circumstances of the case.

As a general rule, direct evidence provided by clients will be more significant than indirect evidence provided by third parties, but this will not always be the case. For example: if the third party is able to support their statement by provision of documentary evidence and the client is not.

### The Burden of Proof

A clear understanding of where the burden of proof lies helps to weigh the evidence and decide whether or not further evidence should be sought. Consider the following points:

- initially, the burden of proof lies with the client to prove that the conditions for a claim or application are satisfied. Do as much as possible to ensure that the client has every opportunity to provide all relevant evidence. REMEMBER: both the non-resident parent and the parent with care are clients;
- there is no presumption in favour of the client. You must not make a presumption in favour of the parent with care over the non-resident parent (or vice versa). Both clients have an equal right to be believed
- when an allegation is denied by the client, it is generally for the CMG to prove the facts
- the burden of proving that the conditions for a Revision or Supersession are satisfied lies with the person who applies for the Revision / Supersession. The question of whether the conditions for the Revision / Supersession are satisfied must be considered separately from the question of whether the decision should be revised or superseded
- in overpayment cases, the burden of proof for the purposes of determining the amount to be recovered rests with the CMG

### **Examples:**

#### **Example 1**

A parent with care names the non-resident parent as A N Other on the application form, but gives no other information. The burden lies with the parent with care to supply the CMG with the necessary information about the non-resident parent to continue with the application. The caseworker should consider treating the application as withdrawn if the parent with care fails to do this within a reasonable period of time.

#### **Example 2**

A non-resident parent claims they have contact costs and want to make an application for a special expenses variation. The burden lies with the non-resident parent to provide sufficient information / evidence to confirm the amount of costs they incur.

### **Corroboration of evidence and the balance of probabilities**

There is no rule in law that corroboration of a client's own evidence is necessary. However, evidence should not be accepted uncritically from the client or anyone else. It must be weighed carefully in the light of the circumstances of the case and all other information / evidence provided.

The balance of probability involves making a decision on whether it is more likely than not that an event has occurred, or that an assertion is true.

It does not mean that the client can be given the benefit of the doubt. If the evidence is contradictory, caseworkers must decide whether there is enough evidence in favour of one conclusion or the other to show what is more likely. Decisions should be made:

- on the balance of probability, or
- that there is enough evidence for finding one way or another

In some cases the decision may be that a client's statement is inherently improbable. In such circumstances it is very unlikely that what has been asserted can be true.

### **Example**

A non-resident parent states that they have shared care of the qualifying child for one night a week. The parent with care states there is no shared care. These statements must be given equal weight.

However, the non-resident parent fails to provide any evidence confirming they have regular care of the qualifying child. In addition the parent with care lives in Norwich and the non-resident parent lives in Edinburgh.

Due to:

- the distance between the parent with care, and
- the non-resident parent's failure to provide supporting evidence

The decision is made that, on the balance of probabilities, there is no shared care.

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### [Discretionary Decision Making: Overview](#)

Child Support legislation places a range of duties on the Secretary of State, which require caseworkers (acting on behalf of the Secretary of State) to act in specific ways. When legislation places a duty on the Secretary of State, caseworkers have no discretion to act in a different way.

For example: Section 11 of the Child Support Act 1991 requires the Secretary of State to calculate a maintenance liability in accordance with the statutory rules set out in Schedule 1 of the Act and the supporting regulations. There is some, but very little, opportunity for applying discretion in the calculation of maintenance liability.

Statutory duties can usually be identified by words in primary and secondary legislation (Acts and Regulations) such as "the Secretary of State must / will / should".

However, legislation also contains statutory powers, which allow caseworkers to decide on the most appropriate action to take. This may include deciding non to take particular action in certain circumstances.

When making this type of decision, caseworkers must take into account all the circumstances of the case, including the welfare of any child(ren) that would be affected if the action being considered is taken / not taken.

Because these powers require caseworkers to exercise their discretion when making the decision they are called discretionary decisions.

Discretionary powers can usually be identified by words in primary and secondary legislation such as "the Secretary of State may / can", as opposed to the "Secretary of State should / must".

For example: Section 29 of the Child Support Act 1991 provides the Secretary of State with a statutory power to collect child maintenance. Because the Section reads "...the Secretary of State may" - whether and how we collect maintenance is at the Secretary of State's discretion.

Discretionary decisions must be taken in accordance with basic public law principles of legality, rationality and fairness. If not, they can be challenged by Judicial Review.

It is therefore **essential** that discretionary decisions are reasonable, unbiased and clearly recorded.

### **Examples of discretionary decisions**

Discretionary decisions occur throughout the child maintenance process and individual Procedures / Policy Guidance sections indicate where a discretionary decision is required. The following list provides some examples of discretionary decisions, but is not exhaustive. If you are not sure whether a particular decision requires you to exercise discretion, you should consult the relevant Procedures / Policy Guidance in the first instance and seek advice from your Team Leader if needed.

#### **Examples:**

- making a default maintenance decision
- deciding whether a variation is Just and Equitable (additional guidance on this is covered in the Variations Overview)
- deciding whether to take enforcement action and if so, which is the most appropriate action
- deciding whether a reimbursement/refund is appropriate
- deciding whether to accept / reject direct payments

Discretionary decisions: what needs to be considered?

When making a discretionary decision, you need to consider all the circumstances of the case / clients and decide the most appropriate course of action, taking into account:

- the Welfare of any children that the decision potentially affects
- the Purpose and Basic Principles of the Child Support Act 1991, and
- other relevant factors

Refer to the [Decision Making Guidance](#) for further advice about these considerations.

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### Discretionary Decisions: Decision Making Guidance

**REMEMBER:** if you have any concerns about making a discretionary decision, for example, if there are unusual or particularly complex circumstances involved, you should always consider:

- discussing the case with your Team Leader in the first instance; and
- seeking advice from the Advice and Guidance Team where appropriate.

If advice is needed from the Advice and Guidance Team, you should seek this as soon as possible and before discussing details with a client.

However, you should remember that the Advice and Guidance Team are not Decision Makers and cannot make a decision on your behalf. They can provide guidance on evidence and the points that need to be considered, but cannot make the actual decisions. ALWAYS check the relevant section of the PLDMG before seeking advice from the Advice and Guidance Team.

Making discretionary decisions: what to consider

Welfare of child consideration: overview

When making any discretionary decision, it is essential to consider the welfare of any child that may be affected by the outcome. This is a legal requirement and it is important to record the fact that welfare of the child issues have been considered in all cases.

When making a Welfare of the Child decision the full name should be used (where available, unless those names are not known i.e. in the residual arrears only cases).

The legal requirement is set out in Section 2 of the Child Support Act 1991, which states:

'Where, in any case which falls to be dealt with under this Act, the Secretary of State is considering the exercise of any discretionary power conferred by this Act, it shall have regard to the welfare of any child likely to be affected by its decision.'

Considering the Welfare of the Child means reviewing any relevant information and evidence and determining whether the relevant discretionary decision if it is made will have a negative impact on any child that it potentially affects. If so, it may be appropriate for a different discretionary decision to be made.

**However, it is essential to remember that the Act only requires us to have regard to the welfare of the child issues. It is not required to be the first or paramount consideration and in practice, welfare of the child decisions will often have little effect on the decisions being made.**

The following sections provide further guidance on considering welfare of the child issues.

### **Which children should be considered?**

Welfare of the child consideration is not restricted to the qualifying child(ren).

Other children potentially affected may include:

- other children of the non-resident parent
- other children of the parent with care
- children of the non-resident parent's / parent with care's new partner who live in the same household
- remember: one or both of the parents may be a child within the meaning of the Act. These cases will require handling sensitively

It is important to identify all children that are potentially affected by a discretionary decision and to consider the impact it will have in relation to them each individually.

### **Relevant evidence**

There is no obligation to pro-actively seek evidence relating to welfare of the child issues. However, where relevant evidence / information is held on our records or submitted by either of the parties, it must be fully considered.

Where information or evidence relating to welfare of child issues has been submitted by either party, it may be appropriate to make further enquiries, including contacting the other party for their comments. Whether it is necessary to contact other parties and who you may need to contact will depend on the particular circumstances of your case.

You may need to contact any of the following: Note this list is not exhaustive.

You must also ensure any contact complies with relevant legislation (i.e. Child Support Act 1991 (disclosure of information), Data Protection Act 1988 etc.):

- all parties involved in the case
- other parents with care (where there are multiple parents with care)
- parties who are in a position to provide relevant information (for example non-resident parent's new partner)

If you are uncertain whether further enquiries should be made / whether contact is appropriate you should always consider discussing the case with your Team Leader in the first instance, seeking advice from the Advice and Guidance Team where appropriate.

To be relevant, information / evidence must show either:

- that the discretionary decision being made will have a negative impact on a child that it potentially affects, or
- that the discretionary decision being made will have a positive impact on a child that it potentially affects. Evidence of this type will be relevant where the interests of different children affected by the decision need to be weighed against each other

Negative and positive impacts on the welfare of a child

Welfare of the child consideration should involve taking into account the physical, mental, emotional, educational and social needs of all the children that the relevant discretionary decision will potentially affect.

Caseworkers will need to consider whether there is evidence to suggest that the discretionary decision would have a negative impact on these needs, which goes beyond the usual and inevitable impact of a maintenance assessment on a non-resident parent's available income.

A negative impact might be shown in the following circumstances:

Please note that this list is not intended to be exhaustive. Where evidence is provided to indicate that the welfare of a child may be affected in a way that is not covered by this list, it should be taken into account as appropriate.

## **Contact**

Between any child the decision affects and either parent. For example, where there is evidence to show that a particular course of action would prevent a non-resident parent visiting their child. However, any asserted negative impact that this would have on the child's emotional well-being would need to be weighed against the positive impacts of maintenance being collected.

## **Living standards**

Of any child that the decision affects. For these purposes it will not be sufficient for a non-resident parent to simply argue that a decision affecting their available resources will have a detrimental impact on their general ability to provide for a child. There must be evidence to show that the impact on the non-resident parent's resources will have a particularly detrimental effect on their ability to meet a child's specific needs.

## **Relationships**

Such as between a child's parents. For example, where a parent with care and non-resident parent have reconciled and continued action to recover arrears might place the relationship under strain.

## **General health / well being**

Including any negative impact on the child's physical or emotional well-being.

Positive impacts of the decision

Any negative impact of the decision must be weighed against the positive impacts that it may have. A decision may have both negative and positive impacts for the same child. Alternatively, a decision may have a negative impact on one child, but a positive impact for another.

Where the interests of children conflict in this way, it is necessary to weigh up all the circumstances of the case carefully. One child should not be unduly disadvantaged in favour of another. The best outcome will be one that provides the highest possible protection for all of the children potentially affected. As a minimum, the aim should be to ensure that each child's day to day basic living requirements can be met.

Weighing Welfare of Child Considerations against Other Relevant Factors: Overview

Welfare of the child issues are not the sole, or even the primary, consideration in discretionary decision making. The full circumstances of the case need to be taken into account and consideration must also be given to the purpose and basic principles of the Act and the advantages of receiving child maintenance. There may also be other relevant factors to take into account, such as the particular circumstances of the non-resident parent at the time the relevant decision is being made.

## **The purpose and basic principles of the Act**

The purpose of the Child Support Act 1991 is to make sure that parents maintain their children whenever they can. The basic principles as outlined in Section 1 of the Child Support Act 1991 are that:

- non-resident parents should pay maintenance as assessed by application of the statutory maintenance formula, and
- it is the responsibility of the non-resident parent to make such payments, and
- both parents have a duty to maintain their children

In making a discretionary decision, you should also take into account the fact that regularly receiving maintenance increases the range of choices open to the parent with care. For example, it may help them to make informed financial decisions or to take up employment.

### **Any other relevant factors**

It is not possible to provide a comprehensive list of the range of considerations that may arise in making a discretionary decision. However, in addition to the specific considerations that have been highlighted above, you may also need to take into account a range of other relevant factors, including:

- any Policy Steers on the exercise of discretion in particular circumstances

Where a statutory power is very wide, the Secretary of State may have given a Policy Steer as to how that discretion is to be exercised, for example when deciding whether a parent should have maintenance reimbursed when paternity is disproved. You should follow guidance but bear in mind that there are exceptional cases where it would not be fair or reasonable to do so. Another example is the aim in the Debt Steer to achieve full recovery in two years.

- the circumstances at the time the relevant decision is being considered, particularly where evidence has been provided to suggest that these will change in the near future

### **Recording Discretionary Decisions**

**IMPORTANT NOTE: Data Protection** When a discretionary decision is made, it is essential that all the children considered are listed by name to demonstrate that they have each been taken into account. This means you may be recording information about a child that is not known to the other party. Data Protection colleagues have confirmed that this is acceptable, as we need to demonstrate all children have been properly considered. However:

- you **MUST** ensure that the decision is recorded on the relevant account, for example a decision relating to the non-resident parent's Relevant Other Child is recorded on the non-resident parent's account, and
- entries must always start with - 'Please be aware that the children listed below may not relate to or be known to this case participant'

Any discretionary decision to act / not act in a particular way can be challenged by Judicial Review. It is therefore essential that all discretionary decisions are properly recorded, including the reasons for the decision and any particular evidence / information that has been taken into account.

Discretionary Decisions should be recorded in the relevant Service Request (or in the Notes facility on SIEBEL where the SR facility is not available). There is no requirement to complete a clerical decision in addition to this.

Discretionary decisions must demonstrate that the welfare of any child(ren) has been fully considered. Any discretionary decision must therefore specifically refer to this.

Please note: Welfare of the child is an integral part of any discretionary decision. It is not a separate decision. Welfare of the child needs to be included as part of the relevant discretionary decision, which must demonstrate:

1. that welfare of the child issues have been considered, and
2. any impact that welfare of the child consideration has had on the decision made

The detail needed will often depend on whether the evidence suggests that the discretionary decision will have a negative impact on the welfare of the child or not.

#### **Recording welfare of child consideration: no negative impact**

A standard form of wording can be used to record the welfare of the child consideration in cases where there is no evidence to suggest that the discretionary decision will have an unduly negative impact on:

- contact between either parent and any child affected by the decision;
- the living standards of any child affected by the decision;
- the relationship between any child affected by the decision and their parent(s) / siblings;
- any other aspect of the child's general health / well being.

In these circumstances, a standard entry can be recorded in SR facility / Notes as follows:

Insert details of the discretionary decision being made (e.g. Decision to impose a DEO)

In making the above decision, I have considered all the available evidence and information, taking into account Section 2 of the Child Support Act 1991 and operational guidance on this issue.

I am satisfied that there is no evidence to suggest the decision being made will have a negative impact on the welfare of (insert names of all children whose welfare has been considered).

REMEMBER: entries must always start with: Please be aware that the children listed below may not relate to or be known to this case participant.

### **Recording welfare of child consideration: negative impact identified**

Full details of the welfare of the child consideration must be recorded in all cases where there is evidence to suggest that the discretionary decision being made will have a negative impact on a child that it affects.

The fact that a potentially negative impact has been identified does not mean that a different discretionary decision will necessarily be made, but full details must be recorded of:

- the names of the children that have been considered
- the reasons underlying the decision
- the evidence that has been considered, and
- the weight that has been given to it

Entries must always start with: Please be aware that the children listed below may not relate to or be known to this case participant.

### **Discretionary Decisions: Examples**

The examples below are provided to illustrate how welfare of the child and the other considerations could apply in a range of cases.

Even though they relate to specific areas of work they are only intended to provide an overview of some of the things you may need to consider when making this type of decision.

As discretionary decisions are based on the circumstances of the individual case, **they are not intended to cover everything you may need to consider.**

#### **Example 1**

A non-resident parent applies for a variation for contact costs of £40 per week to reduce his maintenance calculation of £50.

The parent with care receives Income Based Jobseeker's Allowance and the qualifying child is 17 years old. There are no children in the non-resident parent's household.

The parent with care agrees that the contact costs are incurred, but submits newspaper cuttings showing that the non-resident parent recently won £60,000 on the National Lottery and stated he intended to spend the money on luxury items.

In considering whether the reduction in liability is Just and Equitable to all parties, you would need to consider any evidence that the non-resident parent has other financial resources available to them from which the costs claimed could be met, in addition to the welfare of the qualifying child and other relevant considerations.

Although maintaining contact between the non-resident parent and the qualifying child is in the child's interest, in this situation, you would need to take into account the fact that the non-resident parent's contact costs could be met from their lottery winnings. You would also need to take into account the risk that reducing the calculation could cause hardship to the parent with care, and adversely affect the welfare of the qualifying child.

### **Example 2**

Consideration is being given to whether bailiff action is appropriate. This could include seizure of the family car. The non-resident parent has submitted evidence that he lives some distance away from the qualifying child and the family car is essential for him to have continuing contact with the qualifying child.

The purpose of the Act is to ensure financial provision for Qualifying Children. However, continuing contact with the non-resident parent will normally be in the child's best interests. There is therefore a potential conflict between the purpose of the Act and the welfare of a child potentially affected by the decision being considered.

You would need to take all the circumstances into account, including whether there is a reasonable alternative means of transport available for contact to continue. Relevant additional information here might include any illness / disability of a child, which would make public transport unsuitable. Depending on the circumstances, it may be appropriate to exclude the family car from bailiff action.

### **Example 3**

Arrears have accrued over an extended period and you are considering making a Deduction Order against the non-resident parent's saving account. However, the non-resident parent has previously informed us that his income has reduced due to a temporary change of circumstances, and he is using his savings for day to day expenditure. There are two relevant other children in the non-resident parent's household.

It is a basic principle of the Act that non-resident parent's have a duty to make the payments that are due, and this includes the prompt payment of any arrears.

However, in this situation there is evidence to suggest that the welfare of the relevant other children may be affected by a decision to make a Deduction Order.

You would need to take into account the effect of making a deduction from the non-resident parent's savings against his liability to make financial provision for the relevant other children. You would also need to take any information known about the Qualifying Child(ren)'s situation into account. In this type of case, the interests of different children are conflicting and you will need to try and achieve an outcome that provides the highest level of protection for each child's day to day welfare.

If the non-resident parent is paying his current maintenance assessment, it may be appropriate to impose a Deduction Order for an amount below the full arrears total, so that the non-resident parent retains some funds for day to day expenditure. Alternatively, it may be appropriate to defer further recovery of the arrears until his financial situation improves.

#### **Example 4**

Consideration is being given to whether bailiff action is appropriate. The non-resident parent has previously informed you that their new partner and children are not aware of the Child Support case. If bailiffs attend the non-resident parent's address, this information may come to light and have a negative impact on the non-resident parent's relationship with their new partner and children.

There is information to suggest that this action might have a negative impact on a child that it potentially affects. However, the purpose of the Act is to make financial provision for Qualifying Children and enforcement powers are in place to give effect to this.

In these circumstances, it is entirely within the non-resident parent's ability to prevent the negative impact identified by reaching an acceptable repayment agreement. There would need to be very exceptional factors, such as severe ill health or a more efficient enforcement option, for considerations of this type to affect the decision in these circumstances.

#### **Example 5**

You are considering making an application for Commitment. The non-resident parent has submitted evidence suggesting the Qualifying Child is aware of this possibility and is very distressed by it.

The Act includes strong enforcement measures to ensure that non-resident parent's meet their maintenance obligations. Considering welfare of the child requires us to take into account the possibility of emotional distress to any child affected by our decisions, but this is a difficult issue from an evidentiary point of view and it is important to remember that welfare of the child includes both emotional and practical well being. While the child's emotional welfare may be affected by continued

Commitment action, their practical well being will normally be affected by continued non-compliance.

Any suggestion that a decision will have a negative impact on a child's emotional welfare would need to be considered very carefully. In appropriate cases, supporting evidence may be required, e.g. where a non-resident parent claims that the child suffers from specific behavioural / emotional problems. Supporting evidence in these circumstances might include evidence from a medical professional and / or confirmation from the parent with care.

Please note: the weight given to any evidence may differ depending on which stage of Commitment you are at. For example: different considerations may apply if the decision you are making is more / less likely to lead to actual imprisonment.

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### Revising Discretionary Decisions

You should follow normal revisions guidance/procedures.

**However, please note:** It is well established in case law that different caseworkers can legitimately make a different discretionary decision based on the same facts / evidence.

To allow revisions solely on the basis that different caseworkers would have reached a different conclusion, based on the same facts / evidence, would undermine this principal.

To constitute an 'Official Error' the original caseworker would have had to have acted unlawfully or drawn conclusions so flawed as to defy logic.

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