



Department
for Work &
Pensions

Welfare of the Child Consideration 2012 Scheme

Background

- When making discretionary decisions decision makers are required by law to consider the welfare of any child that may be affected by that decision.
- Following a Judicial review the Child Maintenance Group (CMG) was criticised for failing to apply and document welfare of the child decisions correctly. Judicial reviews are extremely time consuming and costly to the CMG and can result in major reworking of cases if decisions are not documented correctly.
- In response to the criticism the procedures surrounding welfare of the child were reviewed and re-implemented with full policy and operational approval.
- However, there is still some confusion over when and how welfare of the child decisions are required.
- This presentation has been created to help clarify when a welfare of the child decision is required.
- Client and Process assurance have provided actual live examples of welfare of the child decisions. These examples highlight common errors which are occurring and demonstrate how the decision should be documented.

Which decisions are Discretionary?

- Discretionary decisions occur throughout the child maintenance process and mainly occur where, in law, the Secretary of State (SoS) has a choice when making a decision i.e. there is more than one decision that can be applied. For example, the decision to impose a DEO or DMD is a discretionary one as there are alternative choices we could make. However, decisions where there is no choice, for example, utilising income supplied by HMRC, is not discretionary.
- 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 the welfare of the child issues have been considered in all cases.
- If you are in any doubt as to whether a decision you are making is discretionary and requires consideration to welfare of the child consult:
 - 2012 Scheme Procedures on SharePoint
 - The section on Evidence and Decision Making within the Policy, Law and Decision Making Guidance on SharePoint
 - With your team leader/SME/Advice and Guidance team.

Discretionary Decision Making – Examples

It is **essential** that discretionary decisions are reasonable, unbiased and clearly recorded. Caseworkers can use their discretion in the following 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 is appropriate
- Deciding whether to accept / reject direct payments.

This list is not exhaustive.

Which Children should be included in the Decision?

- The simple answer is **All children that are affected by the decision** must be included and it is not just restricted to the Qualifying Child(ren).
- Other children potentially affected are:
 - Relevant Other Children (ROC) of the Paying Parent (PP)
 - ROC of the Receiving Parent (RP)
 - Children of the PP/RP new partner who live in the same household.
- 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.

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.
- For example, some evidence that could be deemed as having a negative impact is as follows:
 - where there is evidence to show that a particular course of action would prevent a non-resident parent visiting their child
 - where a parent with care and non-resident parent have reconciled and continued action to recover arrears might place the relationship under strain.

Negative and Positive Impacts on the Welfare of a Child (continued)

- 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.

Recording Discretionary Decisions

- 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 that 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.

Please Note:

- 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.

Recording No Negative Impact Decisions

- 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 Negative Impact Identified Decisions

- 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.

Appendix

- All Discretionary Decisions should be recorded in the relevant Service Request (or in the Notes facility on SIEBEL where the SR facility is not available).

Example 1

Background

The caseworker is performing an initial calculation on the Paying Parent, however, we were unable to obtain an income figure from HMRC. As the caseworker has been unable to estimate the Paying Parent's income and there are no previous income records held on the system then a default maintenance decision (DMD) must be calculated.

As this is a discretionary decision the SR Notes should be updated to record the reason(s) for your decision and to reference that the welfare of the child(ren) has been considered.

This is what the Perform Calculation SR Notes should show:

Please be aware that the children listed below may not relate to or be known to this case participant.

As HMRC has not returned an income figure and it hasn't been possible to estimate current income, I have applied a Default Maintenance Decision (DMD).

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 Jack Smith and Jill Smith.

Example 2

Background

The Paying Parent has missed a payment and the system has automatically moved the case to the Maintenance team for enforcement action. As the Paying Parent is employed the caseworker has decided to impose a Deduction from Earnings Order (DEO) as this is the next appropriate action.

As this is a discretionary decision the SR Notes should be updated to record the reason(s) for your decision and to reference that the welfare of the child(ren) has been considered.

This is what the DEO SR Notes should show:

Please be aware that the children listed below may not relate to or be known to this case participant.

As the Paying Parent has missed a payment, I have imposed a DEO at xx% (include breakdown).

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 Katie White.