

## **Volume 7 - Evidence and Decision Making (Chapters 96-100)**

### **Subpages**

- Chapter 96 - Evidence and Decision Making
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# Chapter 96 - Evidence and Decision Making

## Introduction

**96001** CMS decisions are made by DMs who consider all the evidence and apply the law, including any relevant case law, to the facts of each case. DMs act for the CMS on behalf of the Secretary of State (SoS) under the Carltona principle.

**96002** The Carltona principle dates from a judgment of the Court of Appeal in October 1943. It stated that the SoS could not possibly make every decision for which they are constitutionally responsible and accountable to Parliament, therefore the SoS is entitled to authorise a person of suitable authority (DMs) to exercise these functions on their behalf.

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## Evidence

**96003** The following guidance sets out what the DM needs to follow when considering evidence, referring to the relevant DMG for individual decisions ensuring they correctly identify the evidence required.

**96004** To allow the DM to make an unbiased decision they should

1. gather all the necessary information
2. consider all the evidence, **and**
3. apply the law.

**Note:** decisions can be challenged through the appeals process, or by Judicial Review. Full consideration and accurate, careful recording of documentation and the DM's decision is essential. See [Chapter 48: Appeals](#).

## **Types of evidence**

**96005** The DM's decisions must be based on evidence. The three types of evidence are

1. direct, where a client tells the DM about their circumstances
2. indirect, where someone tells the DM about the client's circumstances
3. hearsay, where information is heard by one person about another.

**96006** DMs should use the three types of evidence to make decisions on a case by case basis, with direct evidence from a client being considered the most important. However, if a third party, for example employer or accountant or other parent, provides documentary evidence and the client does not, then indirect evidence may be more persuasive.

## **The burden of proof**

**96007** A clear understanding of where the burden of proof lies helps to weigh the evidence and decide if further evidence should be sought. DMs should consider the following points

1. initially, the burden of proof lies with the client to prove that the conditions for a claim or application are satisfied. The DM must ensure that the client has every opportunity to provide all relevant evidence
2. the DM must not make a presumption in favour of either client. Both clients have an equal right to be believed. When an allegation is denied by the client, it is generally for the DM to decide if further evidence is required
3. the burden of proving that the conditions for a revision or supersession are satisfied lies with the applicant. Whether the conditions are satisfied must be considered separately from the question of if the decision should be revised or superseded
4. in overpayment cases, the burden of proof for the purposes of determining the amount to be recovered, is the DM's decision.

## **Example 1**

At initial application, where the PWC applicant Sheila, cannot provide at least the title and full name of the alleged NRP, the application cannot continue. The burden of proof lies with the applicant to provide this.

## **Example 2**

When an NRP applicant Jamal requests a special expenses variation for contact costs, the burden of proof lies with the applicant to provide this.

## **Making decisions**

**96008** DMs receive training and appropriate guidance on how to make decisions on the CMS's behalf. The CM DMG is one such form of guidance, which advises DMs on how to apply CMS legislation.

**96009** Approved guidance must be followed when the law is being applied to the facts of a case. However, DMs may also seek advice from Advice and Guidance on the interpretation or clarification if needed.

**96010** Advice and Guidance will provide responses based on the information received, which will be case specific. The response is intended to assist DMs when making the relevant decision.

**96011** Decisions should be made

1. on the evidence, provided there is enough evidence for finding one way or another, **or**
2. on the balance of probability.

**96012** Where the legislation specifies or implies that the DM make a discretionary decision, the DM's judgement must be reasonable and unbiased, taking in all relevant matters and discarding irrelevant matters. See para **96029 – 96035**.

## **What is a `fact`**

**96013** For decision making purposes, a fact is a relevant circumstance or occurrence, which is available to the DM and

1. exists at the time the decision is given, **and**
2. is known, accepted or proved to be true.

**96014** Normally, every decision made by the DM must be made given the facts existing at the time it was made. However, there are some exceptions, where it is known that a particular change will occur from a specific date, guidance makes it clear when a decision can be based on future facts. See [Chapter 14: Effective dates \(Effective dates tables\)](#).

**96015** A DM can revise or supersede a decision for past periods if facts relating to the period were not

known at the time. See [Chapter 42 - Revisions](#) and [Chapter 43 - Supersessions](#).

## Exercising judgement

**96016** There are occasions where the DM has to make a decision based on incomplete or contradictory information.

**96017** If this is the case and the DM is unable to corroborate the information, they will have to exercise their judgement, considering the available evidence, and make a decision based on the balance of probabilities the information or allegation provided is true or not.

**96018** Examples of scenarios where the DM may have to exercise judgement

1. current income. See [Chapter 97: Evidence - income](#)
2. shared care changes. See [Chapter 99: Evidence - other factors affecting the MC](#).

**Note:** this list is not exhaustive.

## General principles of common law

**96019** In addition to the above, a DM's decision must take account of common law principles and relevant European law. For more information on general principles of European law and how they apply to decisions made on behalf of the SoS [see the DWP DMG website](#). The common law principles are;

### Relevant law

**96020** When a decision is being made, the relevant law is that which applies at the time the decision is being made.

**96021** Where a change in a particular legal provision means that it ceases or begins to take effect during the period when the decision is being made, DMs 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)

**96022** 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.

**96023** The doctrine of estoppel does not apply where advice or a promise has been given by a DM, which has led a relevant person to form a view about future child maintenance calculations and caused a particular course of action to be taken.

**96024** DMs must determine the calculation solely on the basis of the legislation, even if the decision may not support the original advice or information given to the client.

## **Res judicata**

**96025** 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 DM 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

1. revision
2. supersession
3. appeal
4. correction, **or**
5. setting aside.

## **Natural justice**

**96026** There is a common law requirement that DMs 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.

**96027** An unbiased approach is needed, reflecting the principle that impartiality is at the heart of the judicial process.

## **Ultra vires**

**96028** A decision or a regulation can be challenged if no power to make it exists in the law. For example, a regulation made without power under a relevant 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 for advice.

## **Discretionary Decisions**

**96029** CMS legislation places a duty on DMs to act in specific ways. When legislation places a specific duty on the CMS, DMs have no discretion to act in a different way.

**96030** However, legislation also contains statutory powers, which allow the DM to decide on the most appropriate action to take. This may include deciding not to take particular action in certain circumstances.

**96031** These statutory duties allowing discretionary powers can usually be identified by words in primary and secondary legislation (Acts and Regulations) such as "the CMS may or can", as opposed to the "CMS should or must".

**96032** These powers require the DM to exercise their discretion when making the decision. These are called discretionary decisions.

**96033** When making this type of decision, the DM must take into account the purpose and basic principles of the Child Support Act 1991, and all the relevant information, including the welfare of any child affected if the action being considered is taken. See [Chapter 4: Welfare of the child](#).

**96034** 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. The DM must not apply a rigid or one-size-fits-all policy and must consider the facts of the specific case. The DM must take into consideration all relevant matters, exclude irrelevant matters, consider procedural fairness and any legitimate expectations that have been created, and after balancing all these factors, must give reasons for their decision.

**96035** Discretionary decisions occur throughout the child maintenance process and individual instructions or CM DMG sections indicate where a discretionary decision is required. The following list provides some examples where discretionary decisions are required, but is not exhaustive

1. making a default maintenance decision
2. deciding if a variation is Just and Equitable. See [Chapter 27: Variation overview](#)
3. arrears agreements or debt steer or enforcement – if arrears are due, the consideration of whether to take enforcement action is a discretionary decision.
4. deciding whether to accept or reject direct payments. See [Chapter 60: Voluntary payments](#) and [Chapter 50: Direct non scheme payments](#).
5. unlikely to pay – when considering the unlikely to pay check, the decision of whether an NRP is unlikely to pay must be based on the facts of the case. However, the decision to make the case collect and pay as a result of finding a NRP unlikely to pay, is a discretionary decision. See [Chapter 49: Unlikely to pay](#).
6. overpayment reimbursements or recoveries – if an overpayment has been identified, the reimbursement and recovery of that overpayment is a discretionary decision see [Chapter 59: Overpayments](#).

### **Unusual or particularly complex cases**

**96036** If the DM has any concerns about making a discretionary decision in cases with unusual or particularly complex circumstances involved and has checked but is unable to find advice in the CMS DMG the DM should

1. discuss the case with their TL in the first instance, **and**

2. seek advice from the [Advice and Guidance Team](#) where appropriate.

**96037** If advice is needed from the Advice and Guidance Team, the DM should seek this as soon as possible and before discussing details with a client.

**96038** However, the DM should remember that the Advice and Guidance Team are not Decision Makers and cannot make a decision on their behalf, but can provide guidance on evidence and the points that need to be considered.

### **Revising discretionary decisions**

**96039** In case law it is established that different DMs can legitimately make a different discretionary decision based on the same facts or evidence, but to allow revisions solely on the basis that different DMs would have reached a different conclusion, based on the same facts or evidence, would undermine this principal.

**96040** For information on revising decisions see [Chapter 42: Revisions and Chapter 46: Corrections of decisions](#) and [Chapter 47: Mandatory Reconsiderations](#).

### **Unable to issue relevant notification**

**96041** In the event that it is not possible to send any legally required notification to the relevant parties involved, this should not prevent the DM from making a decision on the case. A decision is valid as soon as it is properly recorded by the decision maker. If a decision is not acted upon or not communicated to the relevant parties, this does not necessarily invalidate the decision. Reasonable efforts should be made to communicate notifications. See [Annex C: Notifications](#).

**96042** If the decision is later found to be inaccurate it can be altered by

1. revision
2. supersession appeal
3. correction, **or**
4. setting aside.

### **Discretionary decisions: examples**

**96043** The examples below relate to specific areas of work, but are only intended to provide an overview of some of the things the DM may need to consider when making this type of decision and illustrate how welfare of the child and the other considerations could apply in a range of cases.

**96044** As discretionary decisions are based on the circumstances of each individual case, they are not intended to cover everything the DM may need to consider.

### **Example 1**

NRP Tommy applies for a variation for contact costs of £40 per week to reduce his maintenance calculation of £50.

PWC Shannon receives Income Based JSA and the QC Brett is 17 years old. There are no children in Tommy's household.

Shannon agrees that the contact costs are incurred, but submits newspaper cuttings showing that Tommy recently won £60,000 on the National Lottery and stated he intended to spend the money on luxury items.

In considering if the reduction in liability is just and equitable to all parties, the DM would need to consider any evidence that Tommy has other financial resources available to him from which the costs claimed could be met, in addition to the welfare of Brett and other relevant considerations.

Although maintaining contact between Tommy and Brett is in the child's interest, the DM would need to take into account the fact that Tommy's contact costs could be met from his lottery winnings. The DM would also need to take into account the risk that reducing the calculation could cause Shannon hardship, and as a consequence adversely affect Brett's welfare.

### **Example 2**

Arrears have accrued over an extended period and the DM is considering making a deduction order against Neil, the NRP's, savings account. However, Neil has previously informed CMS 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 ROCs in Neil's household.

It is a basic principle of the Act that NRPs 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 ROCs may be affected by a decision to make a deduction order.

The DM would need to take into account the effect of making a deduction from Neil's savings against his liability to make financial provision for the ROCs. The DM would also need to take any information known about the QC's situation into account. In this type of case, the interests of different children are conflicting and the DM will need to try and achieve an outcome that provides the highest level of protection for each child's day to day welfare.

If Neil is paying their current maintenance assessment, it may be appropriate to impose a deduction order for an amount below the full arrears total, so that Neil 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 3**

Consideration is being given to decide if bailiff action is appropriate. The NRP Gary has previously informed the DM that his new partner and children are not aware of the CMS case. If bailiffs attend Gary's address, this information may come to light and have a negative impact on his relationship with his 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 QCs and enforcement powers are in place to give effect to this.

In these circumstances, it is entirely within Gary'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 4**

The DM is considering making an application for commitment. The NRP Barry has submitted evidence suggesting the QC is aware of this possibility and is very distressed by it.

The Act includes strong enforcement measures to ensure that NRP'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. This is a difficult issue from an evidentiary point of view and it is important to remember that the welfare of the child includes both emotional and practical wellbeing. While the child's emotional wellbeing may be affected by continued commitment action, their practical wellbeing will normally be affected by continued non-compliance.

Any suggestion that a decision will have a negative impact on a child's emotional wellbeing would need to be considered very carefully. In appropriate cases, supporting evidence may be required, e.g. where an NRP claims that the child suffers from specific behavioral or emotional problems. Supporting evidence in these circumstances might include evidence from a medical professional and or confirmation from the PWC.

**Note:** the weight given to any evidence may differ depending on which stage of commitment action is being taken. For example: different considerations may apply if the decision the DM is making is more or less likely to lead to actual imprisonment.

#### **Financial Investigation Unit**

**96045** The Financial Investigation Unit's (FIU) role is to investigate allegations of Fraud and Financial Inaccuracies that impact the amount of child maintenance due to be paid/collected.

**96046** Referrals to the FIU can be made at any point in the lifespan of the child maintenance case. Whilst the investigation is ongoing the case will be maintained by caseworkers and all standard activities such as annual reviews, change of circumstances and enforcement will continue.

**96047** The FIU investigate income related misrepresentation, fraud and diversions, and a wider variety

of allegations including, but **not limited** to;

- Allegations of fraud when attending or supplying a DNA test
- Allegations that the paying parent is a complex earner and has failed to report their true level of income.
- Challenges to the income used by CMS from HMRC, not being reflective of the NRP's true earnings. Including instances when a variation for unearned or diversion of income has been completed but the outcome is subsequently challenged.
- Employers who fail to comply with deduction from earnings orders (DEO)
- Offences that relate to client status, for example:
  - A Qualifying Child (QC) may no longer be a QC
  - The QC may no longer be in the Parent With Care's (PWC) household
  - A CIFBA (Child In Family Based Arrangement) is reported instead of a ROC (Relevant Other Child)

**96048** FIU will gather evidence independently from a range of sources, in line with legislation. Where evidence indicates a discrepancy in the information used in the maintenance calculation, the subject of the investigation will be invited to attend an interview.

The individual will have the opportunity to provide evidence/representation, which will be reviewed before a decision is made. Where information used in a maintenance calculation is found to be incorrect the FIU will direct a change to the maintenance calculation. All actions and decision made by the FIU will be documented on the FIU systems.

Where evidence shows the individual is suspected of committing a criminal offence, the investigator will refer the case to the Crown Prosecution Service or the Crown Office and Procurator Fiscal Service (COPFS) in Scotland. The Crown Prosecution Service or COPFS will consider the evidence presented and decide if prosecution is appropriate.

# Chapter 97 - Evidence - Income

## Introduction

**97001** DM's are required to obtain reasonable evidence in order to assist them in decision making. This chapter provides information on the types of evidence required in dealing with income related decisions. For more general information on evidence and decision-making principles, see [Chapter 96: Evidence and decision making](#).

This guidance explains the evidence requirements for

[Income](#) 97002 - 97005

[Pension contributions](#) 97006 - 97010

[Current income from employment](#) 97011 - 97028

[Current income from self-employment](#) 97029 - 97049

[NRP's employment has ceased](#) 97050 - 97059

[Income and Universal Credit](#) 97060 - 97063

[Umbrella companies](#) 97064

[Estimating current income](#) 97065 - 97067

## Income

**97002** If an increase or decrease to an NRP's income is being reported the DM should confirm there has been a change of at least 25% before continuing.

**97003** The evidence provided by the NRP needs to reflect either their income now and for the foreseeable future or income over a period preceding the effective date which allows a fair weekly average amount to be obtained.

**97004** If the NRP fails to provide evidence and the NRP's employer details are not known the DM must consider whether it is possible to estimate the current income. See para **97065 – 97067**.

**97005** If an NRP or PWC reports a change of income at annual review or current income review, see para **97011 – 97028**.

## Pension contributions

**97006** If an NRP reports that pension contributions have not been taken into account in the maintenance calculation, the DM will need to confirm whether the NRP is a basic or higher rate taxpayer

in the relevant tax year and obtain appropriate evidence of those contributions.

**97007** The onus will be on the NRP to provide evidence in the form of

1. employer confirmation that no adjustment has been made to their taxable earnings for workplace pension contributions, **or**
2. a copy of the annual statement for private pension contributions (providers are legally obliged to provide this each tax year), **or**
3. bank statements showing the
  - 3.1 payment amounts made to the pension provider, **and**
  - 3.2 frequency of payments, **or**
  - 3.3 a copy of the annual statement confirming that the NRP is a self-employed GP and making relievable pension contributions to the NHS Superannuation Scheme as both an employee and an employer.

**97008** For historic income cases with private pension contributions the preferred evidence is the annual statement, however, in current income cases, as it is only issued after the end of the tax year to which the payments relate, bank statements are acceptable.

**97009** Higher and additional rate taxpayers who want pension contributions to be deducted from their income must also provide a copy of their HMRC calculation notice, this will provide the amount of additional tax relief allowed.

**97010** If the NRP is able to provide the required evidence DMs should refer either to [Chapter 19: Current income employed](#) or [Chapter 20: Current income self-employed](#) for more information on dealing with cases where pension contributions are to be taken into account.

## **Current income from employment**

### **Evidence of income**

**97011** Verbal evidence can be accepted from the NRP at the application stage where there is no HMRC historic income available. The DM may check if the verbal evidence provided is confirmed on RTI.

**97011A** When an NRP contacts CMS to report a decrease to their income, the DM should first use RTI to attempt to confirm the verbal information provided by the NRP.

**NOTE:** For a reported increase to current income, refer to 97022

**97012** Should evidence of the change to income not yet be available on RTI the NRP must be asked to supply evidence of their current gross taxable income within a reasonable timescale. The preferred

types of evidence are

1. wage slips reflective of their income now and for the foreseeable future, the number of wage slips depends on pay frequency

1.1 weekly x 5 wage slips

1.2 fortnightly x 3 wage slips

1.3 4 weekly x 2 wage slips

1.4 Monthly x 2 wage slips

2. a written or verbal statement from the NRP's current employer

3. contact details for the NRP's current employer to gather verbal or written confirmation of the NRP's income.

**Note:** Printed pay slips can usually be taken at face value; but if they are handwritten, consider whether to seek further confirmation from the employer.

For more information on current income from employment, see [Chapter 19: Current income – employed](#).

### **Bonus, commission or similar payments**

**97013** Bonus, commission or other similar payments paid in the past 12 months are taxable and should be included in current income. They may either be paid together with regular pay or at different less frequent intervals such as annually or quarterly.

**97014** The DM should gather evidence of any amounts of taxable payments which are likely to be paid to the NRP at different intervals to regular pay, but are not expected to be “one-off” payments. These payments may include

1. profit-related pay

2. intermittent overtime payments

3. royalty payments

4. “Training” day payments to armed forces reservists

5. payments to part-time fire-fighters

6. payments to lifeboat crews, and those engaged in similar activities.

**Note:** although bonus and commission payments are the most common examples of such payments, the

relevant Regulations refer to “other payments” made separately from or at longer intervals to regular earnings.

**97015** Evidence of bonus or commission payments should be in the form of wage slips or statements. If the NRP is unable to supply this information, the DM may obtain this from their employer.

**97016** If any of the above payments are made with the same frequency as regular earnings, they will be shown on wage slips or a statement as a component of gross pay. That gross pay figure can be treated as the current income figure (subject to any conversion to a weekly amount). For more details, see [Chapter 19: Current income - employed](#).

### **Employer evidence**

**97017** If a signed statement from an employer is provided as evidence, but if the circumstances in which the statement was made appear suspicious, for example evidence has been provided that the NRP is related to or a close friend of the person providing the statement, the statement should be accompanied by a signed and dated explanation. This is particularly important where the statement may have a beneficial effect for an NRP.

**97018** If the evidence is from an employer, the DM should take into account whether the evidence includes

1. a company name, address or logo
2. contact details, **and**
3. the name and position of the person providing the information.

**97019** If the DM is in any doubt about whether evidence from an employer is genuine or reliable, they should contact them directly to confirm the details provided, either verbally or in writing.

**Note:** in these circumstances, the DM may wish to check any contact details given on the evidence via the internet.

**97020** If an employer is willing to and provides evidence verbally the information does not need to be requested in writing. However, the DM must be satisfied that

1. the employer is not being misleading and the evidence supplied is correct
2. the evidence provided is not improbable or self-contradictory, **and**
3. there is no known relationship between the NRP and employer that may cast doubt about the accuracy of the evidence provided.

**97021** All evidence gathered over the telephone should be recorded at the point the information was obtained.

## **Increase in current income**

**97022** If the NRP reports a 25% increase in their current income from employment, DMs can accept a verbal statement from the NRP. This can be done without requiring supporting evidence as NRPs have a legal obligation to report changes of this type and it therefore ensures the process to do so is as simple as possible. For more information on dealing with increases in current income reported by the NRP, see [Chapter 19: Current income - employed](#).

**97023** If there is doubt about the income figures provided, the DM must ask if the NRP can provide further information from their employer or consider contacting the employer directly to clarify any allowable and non-allowable expenses that are in payment.

**97024** Where additional information is supplied either verbally or written by the NRP's employer see para **97017 – 97021**.

## **Income from a pension**

**97025** Where the DM is made aware that the NRP is receiving income from a personal pension and the NRP has confirmed this, the preferred evidence is an annual statement from

1. the former employer (if an occupational pension), **or**
2. the pension provider (if a personal scheme).

**97026** If the only evidence supplied by the pension provider shows payments being made at other intervals, this evidence should be accepted, as pension payments are unlikely to have many fluctuations throughout the year.

**97027** The evidence will be acceptable if it provides either a weekly figure or one which the DM can convert to a weekly average figure over such period as the DM considers appropriate<sup>1</sup>.

1 CSMC 2012 Regs, reg 41

## **NRP paid in a foreign currency**

**97028** If an NRP states, or provides evidence showing they are paid in a currency other than sterling, the DM should ask them to confirm the amount of these charges for the period that their current income evidence relates to. This can be provided in the form of

1. a letter or receipt provided by their bank or exchange bureau, **or**
2. copies of bank statements, with the charges shown.

## **Current income from self-employment**

### **Evidence of income**

**97029** CMS can accept verbal evidence where an NRP reports an increase of 25% for current income from self-employment. As with current income from employment, DMs can accept verbal evidence of income from self-employment at the initial application stage, where there is no HMRC historic income available. Verbal evidence cannot be accepted where a decrease in current income is reported.

**Note:** Where the PWC reports an increase in current income of more than 25% for a self-employed NRP, a substantial reason must be provided by the PWC and written evidence must be obtained from the NRP. See [Chapter 20 - Current income - self-employed](#).

**97030** Evidence required for self-employed NRPs falls in to 2 categories

1. established self-employed NRPs, requiring self-assessment tax returns (SARs), **and**
2. newly self-employed NRPs.

**97031** Legislation requires current self-employed income to be calculated by reference to the most recently completed tax year in respect of which the NRP should report any profits or losses to HMRC in a SAR<sup>1</sup>, see [Chapter 20: Current income - self-employed](#).

1 CSMC Regs 2012, reg 39(4)

**Note:** Although DMs can access information about SEISS payments made by HMRC from the SEISS database, this information alone should not be used to supersede or revise a maintenance calculation. For self-employed current income, evidence of profits should be requested from the NRP. Any SEISS payments included in a historic income figure received from HMRC or shown on a SAR supplied by the NRP can be included in the maintenance calculation and do not need to be deducted from the profit figure. See Chapter 38 - Information gathering for civil enforcement for more information on the SEISS.

**97032** Where the NRP's self-employed income is from a partnership, the evidence should show the profits attributable to the NRP's share of the partnership.

**97033** If the NRP has more than one business, a supplementary SAR for each business is required to show the total taxable profits.

**97034** Where a loss of income is recorded against one business it can be offset against other income, including taxable profits for another business for the same tax year.

### **Evidence of income by self-assessment tax return (SAR)**

**97035** The DM should request that the NRP provide evidence of self-employed current income in the form of a completed SAR (which can be hand-written), for the most recently completed relevant period. This will need to be for a period later than the one currently used by CMS and the SAR must already have been submitted to HMRC.

**97036** Where an NRP has a full set of business accounts for a 12-month period later than the one used

for the current maintenance calculation, but has not yet submitted a SAR the DM should advise the NRP that CMS can only consider the profits figure in the accounts once it has been submitted to HMRC.

**97037** The DM should consider the evidence provided by the NRP in relation to the historic income information supplied by HMRC. If the NRP

1. cannot supply a more recent SAR in relation to the most recent complete tax year and HMRC historic income is available for this period, HMRC income figure should be used in the maintenance calculation, **or**
2. has completed and submitted a SAR for the most recent tax year and HMRC evidence is older, the NRPs evidence should be used as the basis for the maintenance calculation.

**Note:** for more information on the HMRC historic income figure see [Chapter 18: Historic Income](#).

### **Types of self-assessment tax return**

**97038** There are two ways a NRP can provide self-employed information to HMRC

1. via the HMRC self-assessment on-line service, **or**
2. by posting the relevant forms to HMRC.

### **Client elects to use the self-assessment on-line service**

**97039** When the self-assessment on-line service is used, the client is provided with details of their overall self-assessment calculation and any tax liability that may be due.

**97040** Self-employed clients can elect to print the summary or alternatively can request a paper copy from HMRC. They can also elect to print out a full copy of their on-line self-assessment return. If the client's income information has been received by HMRC, the print out will show a status of "submitted" in the top right-hand corner.

**97041** Only print-outs of the summary or SAR for the last completed tax year that have their status as **submitted** can be used to determine the gross profits for the purposes of current self-employed income.

**97042** The correct level of self-employed earnings to take into account, is the 'profit from self-employment' figure shown on the 'View your calculation summary'.

### **Client elects to provide self-assessment paper forms**

**97043** There are four different types of tax return that a self-employed NRP may submit as acceptable evidence of their gross taxable profits

1. SA103F - self-employment (full) which the NRP is required to complete if the NRP is self-employed, has more complex tax affairs and the NRPs annual business turnover was £85,000 or

more

2. SA103S - self-employed (short) if the NRP is self-employed, has relatively simple tax affairs and the NRPs annual business turnover was below £85,000

3. SA104F - self-employed (partnership) full which the NRP is required to complete if the NRP does not qualify to use the SA104S

4. SA104S - self-employed (partnership) short which the NRP is required to complete if the NRP is a member of a partnership and the NRP is only declaring trading income, and interest or alternative finance receipts received after tax was deducted from banks or building societies.

**97044** No other forms provide the necessary evidence and therefore cannot be accepted to verify self-employed income.

**Note:** DMs can use an incomplete tax-return as long as the NRP has provided confirmation that it has been accepted by HMRC

**Example form - SA103F**











Your name <input type="text"/>	Your Unique Taxpayer Reference (UTR) <input type="text"/>
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Complete a 'Partnership' page for each partnership of which you were a member and for each partnership business. For help filling in this form go to [www.gov.uk/taxreturnforms](http://www.gov.uk/taxreturnforms) and read the notes and helpsheets.

Partnership details

<p>1 Partnership reference number <input type="text"/></p> <p>2 Description of partnership trade or profession <input type="text"/></p> <p>3 If you became a partner after 5 April 2019, enter the date you joined the partnership DD MM YYYY <input type="text"/></p>	<p>4 If you left the partnership after 5 April 2019 and before 6 April 2020, enter the date you left <input type="text"/></p> <p>5 If the partnership used cash basis, money actually received and paid out, to calculate its trading and professional income and expenses, put 'X' in the box <input type="checkbox"/></p>
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Your share of the partnership's trading or professional profits

Please refer to the Partnership Statement to complete these pages and if you need any help, read the 'Partnership (full) notes'. If you want to enter a loss, or an adjustment needs to be taken off, put a minus sign (-) in the box next to the £ sign.

<p>6 Date your basis period began DD MM YYYY <input type="text"/></p> <p>7 Date your basis period ended DD MM YYYY <input type="text"/></p> <p>8 Your share of the partnership's profit or loss – from box 11 or box 12 on the Partnership Statement £ <input type="text"/> . 00</p> <p>9 If your basis period is not the same as the partnership's accounting period, enter the adjustment needed to arrive at the profit or loss for your basis period £ <input type="text"/> . 00</p> <p>10 Adjustment for change of accounting practice – from box 11A on the Partnership Statement £ <input type="text"/> . 00</p> <p>11 Averaging adjustment – only for farmers, market gardeners and creators of literary or artistic works £ <input type="text"/> . 00</p> <p>12 Foreign tax claimed as a deduction – only if Foreign Tax Credit Relief is not being claimed on the 'Foreign' pages £ <input type="text"/> . 00</p> <p>13 Overlap relief used this year £ <input type="text"/> . 00</p>	<p>14 Overlap profit carried forward £ <input type="text"/> . 00</p> <p>15 If box 8 includes any disguised remuneration income, put 'X' in the box – from box 12A on the Partnership Statement <input type="checkbox"/></p> <p>16 Adjusted profit for 2019-20 (see the Working Sheet in the notes) – if this is a loss put '0' in this box and enter the amount of the loss in box 21 £ <input type="text"/> . 00</p> <p>17 Losses brought forward from earlier years set off against this year's profit (up to the amount in box 16) £ <input type="text"/> . 00</p> <p>18 Taxable profits after losses brought forward (box 16 minus box 17) £ <input type="text"/> . 00</p> <p>19 Any other business income not included in the partnership accounts £ <input type="text"/> . 00</p> <p>20 Your share of the total taxable profits from the partnership's business for 2019-20 (box 18 + box 19) £ <input type="text"/> . 00</p>
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Example form - SA104S short SAR where the NRP is a member of a business partnership



<b>Your name</b> <input type="text"/>	<b>Your Unique Taxpayer Reference (UTR)</b> <input type="text"/>
------------------------------------------	---------------------------------------------------------------------

Complete a 'Partnership' page for each partnership of which you were a member and for each partnership business.  
For help filling in this form, go to [www.gov.uk/taxreturnforms](http://www.gov.uk/taxreturnforms) and read the notes and helpsheets.

**Partnership details**

<p><b>1 Partnership reference number</b> <input type="text"/></p> <p><b>2 Description of partnership trade or profession</b> <input type="text"/></p> <p><b>3 If you became a partner after 5 April 2019, enter the date you joined the partnership DD MM YYYY</b> <input type="text"/></p>	<p><b>4 If you left the partnership after 5 April 2019 and before 6 April 2020, enter the date you left</b> <input type="text"/></p> <p><b>5 If the partnership used cash basis, money actually received and paid out, to calculate its income and expenses, put 'X' in the box – read the notes</b> <input type="checkbox"/></p>
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**Your share of the partnership's trading or professional profits**

Please refer to the Partnership Statement to complete these pages and if you need any help, read the 'Partnership (short) notes'.  
If you want to enter a loss, or an adjustment needs to be taken off, put a minus sign (-) in the box next to the £ sign.

<p><b>6 Date your basis period began DD MM YYYY</b> <input type="text"/></p> <p><b>7 Date your basis period ended DD MM YYYY</b> <input type="text"/></p> <p><b>8 Your share of the partnership's profit or loss</b> – from box 11 or box 12 on the Partnership Statement £ <input type="text"/> . 00</p> <p><b>9 If your basis period is not the same as the partnership's accounting period, enter the adjustment needed to arrive at the profit or loss for your basis period</b> £ <input type="text"/> . 00</p> <p><b>10 Adjustment for change of accounting practice</b> – from box 11A on the Partnership Statement £ <input type="text"/> . 00</p> <p><b>11 Averaging adjustment</b> – only for farmers, market gardeners and creators of literary or artistic works £ <input type="text"/> . 00</p> <p><b>12 Foreign tax claimed as a deduction</b> – only if Foreign Tax Credit Relief is not being claimed on the 'Foreign' pages £ <input type="text"/> . 00</p> <p><b>13 Overlap relief used this year</b> £ <input type="text"/> . 00</p>	<p><b>14 Overlap profit carried forward</b> £ <input type="text"/> . 00</p> <p><b>15 If box 8 includes any disguised remuneration income, put 'X' in the box – from box 12A on the Partnership Statement</b> <input type="checkbox"/></p> <p><b>16 Adjusted profit for 2019–20</b> – see the working sheet in the notes £ <input type="text"/> . 00</p> <p><b>17 Losses brought forward from earlier years set off against this year's profit (up to the amount in box 16)</b> £ <input type="text"/> . 00</p> <p><b>18 Taxable profits after losses brought forward (box 16 minus box 17)</b> £ <input type="text"/> . 00</p> <p><b>19 Any other business income not included in the partnership accounts</b> £ <input type="text"/> . 00</p> <p><b>20 Your share of total taxable profits from the partnership's business for 2019–20 (box 18 + box 19)</b> £ <input type="text"/> . 00</p>
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Use the Profit from self-employment figure



Ref :  
 Year : 2016  
 OUD :  
 Name :

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**Tax Calculation for 2015-16** (year ended 5 April 2016)

**Income received (before tax taken off)**

Profit from self-employment	£	
UK pensions and state benefits	£	
<b>Total income received</b>		£
minus Personal Allowance		£ 10,000.00
<b>Total income on which tax is due</b>		£

**How I have worked out your Income Tax**

Pay, pensions, profit etc	£	x 20% =		£
<b>Total income on which tax has been charged</b>				£
<b>Income Tax charged</b>				£

plus Class 4 National Insurance contributions £ x 9% = £

plus Class 2 National Insurance contributions £

**Total Class 2 and Class 4 National Insurance contributions due** £

**Income Tax, Class 2 and Class 4 National Insurance contributions due** £

minus Tax deducted

CIS and trading income	£	
<b>Total tax deducted</b>		£
<b>Income Tax, Class 2 and Class 4 National Insurance contributions due</b>		£

## Evidence of income for Newly self-employed NRPs

**97048** An NRP is considered to be newly self-employed if they commenced trading after the start of the latest tax year and have not yet completed a relevant period, so have not yet been required to submit a SAR declaring their self-employed trading income to HMRC.

**97049** In these circumstances, an NRP who has requested a maintenance calculation based on their current income will be required to provide a written statement of their projected profits of the current relevant period. The statement should show a three-line estimate of turnover, expenses and profit.

**Note:** As with cases where the NRP reports an increase to their income of more than 25%, where an NRP reports that they are newly self-employed and where that change is likely to result in an increase to the maintenance liability, a verbal statement of the projected or estimated profits, which is based on the above, can be accepted.

**Note:** New Enterprise Allowance (NEA) is an allowance given to individuals coming off a prescribed benefit and starting their own self-employed business and is not taken into account for child maintenance purposes.

## NRP's employment has ceased

**97050** If a DM receives information that an NRP has left employment, they will need to obtain evidence of their current circumstances. See [Chapter 19: Current Income -Employed](#).

## NRP ceases trading

**97051** If an NRP reports that their business has ceased trading, they will need to confirm this by providing a written declaration that they are no longer self-employed.

**97052** Income from this business may be included in the historic figure and the current income figure will still need to differ from the historic income figure by 25%, if the current income is to continue to be used.

**97053** Where evidence provided by the NRP confirms that the business has ceased trading and it is accepted that the income from that business is nil, DMs will need to establish whether the NRP has income from another source. If not, DMs should consider whether the NRP is in receipt of a prescribed benefit, in which case a supersession based on the flat or nil rate should be considered. See [Chapter 25: Rates and rules](#)

**97054** DMs should not accept that a business has ceased trading and that the NRP's income from this business is nil where any evidence provided indicates that there is solely a temporary interruption in trading. If for example the business is seasonal, and it is the off-season, or the business has no current contracts, but the NRP continues to advertise for work, the NRP is sick but intends to resume that business when they are well again.

**97055** In some instances, an NRP may be receiving a prescribed benefit because they are receiving no income from their business even if it has not actually ceased trading. In these circumstances when the benefit eligibility ceases because the business has begun again to generate an income, the maintenance calculation will be based on the historic figure provided by HMRC. If the NRP then wishes to move to current income see para **97029 – 97049**.

#### **NRP employed and self-employment ceases**

**97056** If the NRP is both self-employed and employed and only their self-employment status ceases, but the employment income continues, this income will be the NRP's current income used in the new maintenance calculation. The DM should gather evidence of the NRP's current income from employment. See para **97011 – 97028**.

**97057** Where self-employment ceases the NRP is required to report this to HMRC and the DM should ask them to provide a copy of their HMRC on-line tax return that reflects this having been recorded.

**97058** The NRP needs to update section (4) 'Fill in your return' with the date that their business has ceased by entering the final date of trading (as seen below).

#### **Example form - HMRC Self Assessment Tax Return**

HM Revenue & Customs Home Cymraeg Contact HMRC Help Sign out

▲ Your HMRC Services  
▲ Self Assessment

**Helpdesk Individual's tax return: 2015-16 IN PROGRESS**  
Your tax return is 90% complete

### 4. Fill in your return

**Details for Self employment (Page 2 of 2)**

\* indicates required information

Business name:

Business description:

Postcode of your business address:

Has your business name, description, address or postcode changed in the last 12 months?

If your business **started** after 5 April 2015, enter the start date:

If your business **ceased** before 6 April 2016, enter the final date of trading:

[Delete Self employment section](#)

**File a return**

- 1. Welcome
- 2. Tell us about you
- 3. Tailor your return
- 4. Fill in your return**
- 5. Check your return
- 6. View your calculation
- 7. Save your return
- 8. Submit your return
- Provide feedback
- Tax return options
- How to pay

The non resident parent needs to complete this box.

## NRP self-employed and employment ceases

**97059** If the NRP is both self-employed and employed and only their employment status ceases, the self-employment income from the last available HMRC tax year continues to become the NRP's current income.

## Income and Universal Credit

### NRP starts employment and entitlement to UC ends

**97060** In these circumstances, where an historic income figure is available, DMs should use this as the basis of the new maintenance calculation. DMs can then consider any request for current income. For information on the types of evidence required for a change to current income see para **97011 – 97028**.

**97061** Where no historic income figure is available, DMs should check RTI for evidence of current employment income. If there is insufficient information on RTI, the DM should gather evidence of the NRPs circumstances.

**97062** Where benefit entitlement ends and no historic income or current income is available, the NRP should be asked to provide a written declaration confirming that they have no income and how they are being supported. See para **97002 – 97005**.

### NRP starts employment and entitlement to UC continues

**97063** For CMS purposes, an NRP in receipt of UC with earned income from employment will not be considered as being in receipt of benefit. Their liability will be calculated on historic income, unless evidence of current income is provided by the NRP. See para **97011 – 97028**.

**Note:** for more general information about Universal Credit and its effect on a maintenance calculation, see [Chapter 21: Universal Credit](#).

### **Umbrella companies**

**97064** Should the DM believe that an NRP is employed through an umbrella company, they should not rely solely on the verbal information provided by the NRP. The DM should request payslips and if necessary, contact the employer to obtain evidence of the NRP's earnings. See [Chapter 22: Umbrella companies](#) for more information.

### **Estimating current income**

**97065** Where the DM is satisfied that the NRP is engaged in a particular occupation, they may assume that the NRP's weekly income is the average weekly income of a person engaged in that occupation<sup>1</sup>.

1 CSMC Regs 2012, reg 42(2)

**97066** An estimation of earnings is only appropriate if the evidence available to the DM on the effective date of the decision confirms

1. the NRP is actively employed or self-employed,
2. the type of occupation, **and**
3. no historic income information is available from HMRC for the NRP.

**97067** The DMs must ensure that all possible sources available for gathering a NRP's income have been exhausted before the estimation of earnings tool can be used to produce an estimated income for a client. See [Chapter 24: Estimating current income](#).

# Chapter 98 - Evidence - Variations

## Introduction

**98001** DM's may be required to obtain evidence in order to assist them in decision making where a variation application has been made. This chapter provides information on the types of evidence required. For more general information on evidence and decision-making principles, see [Chapter 96: Evidence and decision making](#).

This guidance explains the evidence requirements for

[Variation applications](#) 98002

[Special expenses variations](#) 98003 - 98020

[Additional income variations](#) 98021 – 98034

## Variation applications

**98002** An application may be made by the PWC, NRP or CiS to have a maintenance calculation varied. Variations allow some circumstances to be considered which are not taken into account in the normal maintenance calculation rules. See [Chapter 27: Variation overview](#).

## Special expenses variations

### Contact costs

**98003** A special expenses variation for contact costs will only be agreed if the expenses are equal to or exceed a financial threshold amount of £10.00 per week.

**98004** Contact costs are certain expenses for travel and accommodation that an NRP has incurred or may reasonably be expected to incur in order to maintain regular contact with a QC<sup>1</sup>. See [Chapter 28: Contact costs](#).

1 CSMC Regs 2012, reg 63

**98005** Where, at the date on which the variation application is made, the NRP has received, is in receipt of or will receive financial assistance towards the contact costs, other than a loan, evidence of this must be provided.

**98006** Acceptable evidence for contact costs would be

1. public transport tickets<sup>1</sup> for any form of public transport necessary for maintaining contact with a QC
2. taxi fares<sup>2</sup> if the disability or long-term illness of the NRP or the QC makes it impracticable for

any other form of transport to be used for that journey or part of that journey

3. car hire<sup>3</sup> where the cost of the journey would be less in total than it would be if public transport or taxis or a combination of both were used

4. fuel<sup>4</sup> costs for travel by private vehicle (a vehicle which is not carrying fare-paying passengers)

**Note:** if the DM or PWC consider fuel costs to be unreasonably incurred or high, DMs can use the engine size, fuel type and mileage to calculate costs using fuel costs applicable at the effective date provided by HMRC Advisory Fuel Rates guidance.

5. overnight accommodation<sup>5</sup> for the NRP or QC's may be considered a special expense where

5.1 the NRP's return journey on the same day is or would be impracticable

5.2 there is an established or intended pattern of contact with the QC which includes contact over two or more consecutive days

5.3 an NRP has a court order directing that they secure a specific type of accommodation in a specific area to maintain contact with the QC (in these cases a proportion of these costs must be considered)

6. minor incidental costs<sup>6</sup> can be permitted if related to

6.1 tolls, **or**

6.2 other fees that are payable for the use of a particular road or bridge, **or**

6.3 breakfast where it is included as part of the accommodation costs referred to in overnight accommodation

7. third party costs<sup>7</sup> including the cost of another person traveling with the NRP or QC where the DM is satisfied that a third party is required on the journey, for example where it is necessary due to

7.1 the young age of the QC

7.2 long term illness or disability of the NRP

7.3 long term illness or disability of the QC

7.4 a court decision which requires any form of contact to be supervised.

## Illness or disability of a ROC

**98007** Certain expenses incurred for the care of a ROC as a result of illness or disability can be taken into account where the illness or disability is considered to be long term. See [Chapter 29: Illness or disability of a ROC](#).

**98008** The DM must obtain evidence of the amount and type of expenses in respect of a long-term illness of a ROC, that the NRP wants to claim for. This should be in the form of appropriate documentary evidence, such as

1. receipts
2. bank statements
3. utility bills.

**98009** Where there is an increase in usual expenditure on things such as grocery bills or fuel costs, if necessary, evidence may be supported by a letter of confirmation from the ROC's GP.

**Note:** the DM can only consider additional expenses relating to the ROC's health or disability, if for example the ROC has special dietary requirements, only the difference between the normal cost of the item and the special product required will be allowed.

**98010** Where the cost of specialist equipment is being claimed a letter from the ROC's GP, hospital or specialist should be obtained confirming the need for such equipment.

**98011** If an aid or appliance can be provided on the NHS, a variation is not normally agreed, even if the item is not available because of a lack of funds at a particular time. However, a variation may be considered if there is likely to be a serious delay in supplying an item which would prevent the QC's condition from seriously deteriorating.

**98012** If an NRP is unable to provide documentary evidence, the DM may still proceed with an application making a decision based on the balance of probabilities, taking into account the information or evidence the NRP or PWC has provided.

## Prior debts

**98013** Prior debts are certain debts that an NRP is legally required to repay that can be taken into consideration<sup>1</sup>. See [Chapter 30: Prior Debts](#).

1 CSMC Regs 2012, reg 65

**98014** The DM must obtain details of the amount and type of expenses that the NRP wants to claim for. The following evidence should be provided when the NRP requests a prior debt variation in respect of a

1. car loan, agreement documents
2. bank or building society loan, agreement documents
3. mortgage, agreement documents
4. bank statements confirming ongoing repayments made in relation to prior debt.

**Note:** original documents are required.

### **Boarding school fees**

**98015** The maintenance element of boarding school fees represents a special expense, that can be taken in to consideration. See [Chapter 31: Boarding school fees](#).

**98016** The NRP should provide evidence of the cost of the maintenance element, including food and accommodation, of the overall fees paid solely by the NRP. A letter from the educational establishment would be acceptable evidence.

**98017** If the NRP is unable to provide the maintenance element, the DM can use an estimated amount. The maximum amount that can be allowed in these circumstances is prescribed in legislation as 35% of the total fees payable<sup>1</sup>.

1 CSMC Regs 2012, reg 66 (2)

### **Certain payments**

**98018** Certain payments made by the NRP which they are not legally required to pay, such as payments to a mortgage lender or insurance company, can be considered to be a special expense<sup>1</sup>. See [Chapter 32: Certain payments](#).

1 CSMC Regs 2012, reg 67

**98019** The DM must obtain evidence of the amount and type of expenses that the NRP wants to claim for, this should be official documentation confirming

1. the amount of the payments being made by the NRP
2. the purpose of any mortgage, loan or insurance policy
3. that the NRP does not have any legal obligation to make these payments, **and**
4. that the NRP does not have any legal or financial rights in the property or policy.

**98020** Evidence can be in the form of

1. mortgage agreements
2. bank statements, **or**
3. if the NRP is unable to provide the above, a written statement confirming that this is the case.

**Note:** if the PWC states the NRP does have a legal or financial interest, they should be in a position to provide documentary evidence confirming this.

### **Additional income variations**

**98021** A PWC, CIS or the NRP can apply for an increase in child maintenance if the NRP has, or has control of, income that has not been taken into account in the maintenance calculation.

### **Unearned income**

**98022** Certain categories of taxable income that are not captured by the standard calculation are classed as unearned income. As this represents additional income it can be taken into account in the maintenance calculation. See [Chapter 33: Unearned income](#).

### **Evidence of additional income**

**98023** The DM may need to ask for additional evidence or information from the NRP if the information from HMRC states that unearned income is nil, below the threshold of £2500 or where no unearned income details are held.

**98024** The DM should obtain evidence from the NRP of any savings or investments where the NRP is employed and may not be required to complete a tax return. Acceptable evidence for this purpose would be up to date statements from their bank or building society, or copies of stocks and shares statements.

**98025** The DM should consider if a more recent complete tax year has passed since the last HMRC information was received, if so, the DM should ask the NRP for evidence of their unearned income for the most recent complete tax year. Acceptable evidence for these purposes would be a completed self-assessment return (SAR). See [Chapter 97: Evidence - Income](#).

**98025a** Where the NRP has unearned income and makes relievable pension contributions, which have not been otherwise taken into account for the purposes of the maintenance calculation a deduction must be made from the additional weekly income figure. An amount must only be deducted where the relievable pension contributions relate to the same tax year that has been used for the purposes of determining the additional weekly income.

### **Representations**

**98026** If the NRP contests the application on the basis that the figure obtained from HMRC does not reflect their current unearned income, the DM should ask the NRP to provide evidence confirming

1. their current unearned income is a different amount, by providing a completed SAR for a full tax year later than the one used for the HMRC figure
2. they no longer have any property or assets generating additional income. Acceptable evidence for these purposes will be documents confirming that the relevant property or asset has been sold and they no longer have or are benefiting from the proceeds.

### **Assets exceeding a prescribed value**

**98027** Where an NRP has a legal or beneficial interest in an asset and the value of that asset exceeds the prescribed value, a notional income can be taken into account in the maintenance calculation. See [Chapter 34: Assets exceeding a prescribed value](#).

**98028** Where an application for a variation is made on such grounds, the DM must first obtain reliable evidence from the PWC that the NRP has assets exceeding a prescribed value of at least £31,250. This can be provided as a verbal statement of fact.

**98029** If an NRP has assets that are valued in excess of £31,250, the DM should request evidence of this, which could be in the form of

1. insurance documents
2. independent valuation, **or**
3. receipts.

**Note:** original copies of these documents must be requested.

**98030** Where information is already held about the value of assets as a result of a previous variation or departure decision on a CSA case, the DM can use that evidence for the purpose of the variation application on CMS.

### **Representations**

**98031** If the NRP contests the application on the basis that the figure obtained, does not reflect the value of the asset, the DM should ask the NRP to provide evidence confirming

1. the value of the asset is a different amount: in these circumstances, evidence will be required to verify the value of the asset. See para **98029 – 98030**.
2. they no longer have the asset. Acceptable evidence for these purposes will be documents confirming that the relevant asset has been sold and they no longer have or are benefiting from the proceeds.

**Note:** if the NRP provides evidence for a more recent valuation of the asset, the DM should use that income figure to determine the variation.

## **Earned income**

**98032** Where a variation application is made on the grounds that the NRP has additional earned income, evidence of that income must be obtained as detailed in [Chapter 97: Evidence - Income](#). For more information on earned income variations, see [Chapter 35: Earned income](#).

## **Diversion of income**

**98033** Where it is alleged that income is being diverted to a third party the PWC should be asked to provide

1. the name and or address of the company that the NRP is the director of, **and**
2. the name of the third party and their relationship to the NRP.

**98034** If it is alleged that the NRP is diverting income to another business the PWC should be asked to provide

1. the name and or address of the company that the NRP is the director of, **and**
2. an explanation of how they believe the NRP is diverting income through their business.

**Note:** for further information see [Chapter 36: Diversion of Income](#).

# Chapter 99 - Evidence - other factors affecting the MC

## Introduction

**99001** DM's may be required to obtain evidence in order to assist them in decision making where an application is made or change is reported. This chapter provides information on the types of evidence required. For more general information on evidence and decision-making principles, see [Chapter 96: Evidence and decision making](#).

This guidance explains the evidence requirements for

[Care of QCs](#) 99002 - 99015

[Parentage disputes](#) 99016 - 99017

[Relevant other child](#) 99018 - 99019

[Child of the family or child abroad](#) 99020 - 99022

[Child supported under family-based arrangements](#) 99023 - 99026

[Shared care](#) 99027 - 99028

[Arrears accrued while a case was direct pay](#) 99029

[Revisions](#) 99030 - 99031

[Variations](#) 99032

[Supersessions](#) 99033

[Mandatory reconsideration](#) 99034 - 99035

[Direct non scheme payments](#) 99036 - 99045

[Verification of death](#) 99046 - 99048

## Care of QCs

### Child Benefit in payment, but to someone else

**99002** Where, during the application process, checks show that CHB is in payment to someone other than the PWC, the DM should ask the PWC to provide evidence confirming that they are the person with whom the child has their home and who usually provides day to day care for the qualifying child.

## Who usually provides day to day care?

**99003** Verbal evidence can be accepted where both parties agree who usually provides day to day care. If not, the person making the challenge will be required to provide further evidence. This can be in the form of

1. confirmation from schools, GPs or dentists showing the NRP to be the main or equal contact
2. written confirmation from a child care provider showing the NRP is the main or equal contact or had a main or equal part in the drawing up of any childcare contract, **or**
3. bank statements, receipts or contracts which shows the NRP has a main or equal involvement in major spending decisions on the QC.

**99004** If any of the information provided by the NRP is disputed the PWC can provide their own evidence to dispute this. For more information on day to day care see [Chapter 5: Meaning of certain terms](#).

## Temporary absences of the QC from the home

**99005** If the NRP believes that child maintenance liability should stop because the QC temporarily no longer resides at the PWC's home, the DM should request evidence in the form of written confirmation

1. from a hospital to the PWC that the QC has been admitted
2. from a boarding school that the QC is registered with them as a boarder and the school's term dates

**Note:** if the NRP already receives a special expense variation for boarding school fees for the QC in question, no further evidence is needed from a local authority that the QC is in their care.

**99006** If the PWC does not supply the requested evidence, or gives another reason for the QC's absence, the DM will have to consider if they are still likely to be providing day to day care for the QC. For more information on temporary absences see [Chapter 5: Meaning of certain terms](#).

## QCs aged under 16

**99007** If during the application process CIS Searchlight is unable to confirm a child's full name, date of birth and address the DM should obtain evidence of the child's age and identity from the PWC, this can be

1. a birth certificate or passport, or
2. a record provided by the child's school, GP or dentist, or
3. from the NHS or a local authority if the child receives specific services from them.

**Note:** remember that for a ROC, even if the above conditions are fulfilled, Child Benefit must still be in payment for them to fulfil that role.

## **NRP disputes the QCs status as a QYP**

**99008** If the NRP believes that child maintenance liability should cease because a QC no longer meets the statutory definition of a QYP but CHB checks disagree, the DM can ask the PWC to provide

1. verbal confirmation of the QCs status if they agree that the NRPs statement is correct, or
2. where they disagree with the NRP, a letter from the school or college confirming the QCs status, or
3. written confirmation from an employer that the QC has started work.

**Note:** the DM is not legally entitled to contact a child's employer, school or college for information.

## **Maintenance orders and agreements**

**99009** The CMS cannot accept an application for child maintenance if any of the following apply

1. a written maintenance **agreement** made before 5 April 1993 is still in force
2. a maintenance **order** made **before** 3 March 2003 is still in force
3. a maintenance **order** has been made **after** 3 March 2003 and has not yet been in force for one year.

**Note:** this exclusion does not apply to court orders. For more information on maintenance orders and agreements see [Chapter 12: Court orders](#).

### **Maintenance orders**

**99010** The NRP or PWC should provide written confirmation of the court maintenance order that requires a person to make or secure periodical payments to, or for the benefit of, a child.

**99011** For child support purposes in Scotland, the CMS treats a written maintenance agreement in the same way as a maintenance order, providing it is registered for preservation and execution in the Books of Council and Session.

**Note:** if it is registered for preservation only, and the registration occurred after 5 April 1993, the minute of agreement does not constitute a court order and the application can be progressed.

### **Written maintenance agreements**

**99012** The NRP or PWC should provide a copy of the written agreement for the making or securing of periodical payments for the benefit of the QC.

**Note:** payments do not have to be made directly to the PWC or the QC. For example: an agreement to make mortgage payments on the QC's home could be included.

## Christmas consent orders

**99013** A 'Christmas consent order' automatically renews each year so for a DM to accept it as evidence it must be less than 12 months old.

## Demonstrating parental responsibility

**99014** In multiple application cases, DMs must use evidence to determine which of the applicants has parental responsibility for the QC. For more information on dealing with multiple applications see [Chapter 37: Applications](#).

**99015** Acceptable evidence in such cases includes

1. a valid parental responsibility agreement
2. a valid court order stipulating parental responsibility
3. a document showing the applicant is registered under the applicable births and deaths legislation as the QC's parent
4. a valid will or court order stating a person is appointed as the QC's guardian
5. the QC's birth certificate, this is sufficient to confirm that the mother has parental responsibility
6. confirmation that the parents were married to each other or in a civil partnership at the time the QC was born
7. a birth certificate with an unmarried father's name on it will also be sufficient for births registered in England and Wales on or after 1 December 2003 or in Scotland on or after 4 May 2006, or
8. if an unmarried father's name appears on a birth certificate issued before this date, one of the additional documents referred to above will be required to confirm they have parental responsibility.

## Parentage disputes

**99016** Parentage disputes can be made before or after the initial maintenance calculation has been completed. The steps the DM need to take will depend if the case is pre or post-calculation. See [Chapter 45: Parentage Disputes](#).

**99017** Legislation allows the DM to assume parentage in certain circumstances. Where the DM is considering a decision to assume an NRP's parentage of a QC, the following table details the grounds for assuming parentage and the evidence required.

Grounds	Evidence
Parent married to child's mother between conception and birth	Marriage certificate
Alleged parent named on birth certificate	Birth certificate
Adoption where the alleged NRP has adopted the child,	Full adoption certificate <b>Note:</b> a short adoption certificate may not be acceptable on its own if it does not give details of the adoptive parents
Child conceived by assisted reproduction	Birth certificate: parental order (surrogacy cases); record of consent to treatment (the PWC may have a copy of this if an alleged NRP disputes parentage)
Court declaration states alleged parent is the child's parent,	Record of court declaration; birth certificate (if this has been amended to reflect the court's declaration)
Child habitually resident in Scotland and legal presumption applies	Marriage or birth certificate

## Relevant other child

**99018** A child will be a relevant other child (ROC) for maintenance purposes if they are not a QC in the case concerned, but are a child for whom the NRP or their partner receives Child Benefit. See [Chapter 6: Relevant other child](#).

### PWC disputes ROC

**99019** If a PWC disputes the ROC, then further evidence from the NRP will be required. Sufficient evidence for these purposes will normally be

1. proof that Child Benefit payments are being made to the NRP or their partner at the NRP's address, or
2. that the NRP or their partner have elected not to receive Child Benefit payments, or
3. if the PWC states the child has left school and started employment the DM will need to confirm if they can still be treated as a child for CMS purposes. See [Chapter 5: Meaning of certain terms](#).

## Child of the family or child abroad

**99020** Where the NRP is liable to maintain a child of the family or a child abroad due to a court order (or under other relevant legislation), this may affect the calculation of the NRP's liability under the statutory child maintenance scheme. See [Chapter 8: Child of the family or child abroad](#).

### **Evidence of a `child of the family` order**

**99021** If an NRP states that they are supporting a child under a 'child of the family' order, the DM should request a copy of the court order confirming this.

### **Evidence of a child supported abroad**

**99022** If an NRP states they are supporting a child who lives abroad, the DM should request the NRP provides one of the following types of evidence

1. a foreign court order, or
2. liability order set under a foreign state's child support scheme.

**Note:** there is no requirement to check whether Child Benefit is in payment because a child abroad will not be eligible for Child Benefit.

### **Child supported under family based arrangements**

**99023** The NRP may have another child or children habitually resident in the UK that they are supporting under a family based arrangement or court order. See Chapter [09: Child supported under family based arrangement \(CIFBA\)](#).

### **Evidence of a family based arrangement where there is a dispute**

**99024** The following types of evidence will be sufficient to confirm that the NRP is supporting a child under a family-based arrangement

1. a court order (whether for a British or foreign court)
2. a written maintenance agreement (drawn up by a solicitor)
3. an informal written agreement signed by both parents (such as using the Options template), or
4. an informal verbal agreement.

**99025** The above types of evidence must provide for the NRP to make regular payments for the benefit of that child. This can include

1. maintenance for the child's general day to day needs
2. regular payments for specific costs (such as mortgage payments, school fees, holidays), or

3. payments in kind (such as the NRP regularly buys clothing for the child).

**99026** If the NRP does not have the required evidence, the DM may contact the other parent. However, if that parent is not a client of CMS, they are not under any obligation to reply.

## Shared care

**99027** Shared care applies if the NRP provides overnight care for a QC for at least 52 nights per year. If shared care is agreed, the NRP's liability may be reduced. See [Chapter 11: Shared care](#).

### **PWC disagrees and number of nights fall into a different shared care band**

**99028** If the PWC alleges a different number of nights shared care provided by the NRP and where the number of nights fall into a different shared care band, then the DM will need to contact both parents for acceptable evidence, which can be

1. a current court order
2. an in-formal written agreement, for example drawn up by a solicitor, or
3. other official documents for example, Social Services or Children and Family Court Advisory and Support Service (CAFCAS) reports.

**Note:** where a court order is provided as evidence, that should be used as the basis for the level of shared care. Unless one of the parents provide further evidence that indicates action is being taken to have the order amended.

### **Arrears accrued while a case was direct pay**

**99029** If a PWC alleges that payments of maintenance have been missed during a period of direct pay and the NRP disputes this the NRP will need to provide acceptable evidence confirming the payments were made. This can be

1. bank statements
2. a duplicate of any cashed cheques, or
3. any form of receipt from the PWC.

## Revisions

**99030** A revision revises or corrects a previous decision that was incorrect, it can be requested by an NRP, PWC, an authorised representative, or initiated by the CMS. See [Chapter 42: Revisions](#).

**99031** If a client makes an application for a revision within 30 days of the initial maintenance calculation being notified, the DM will need relevant evidence. For changes relating to

1. income, see [Chapter 97: Evidence - Income](#)
2. parentage disputes, see para **99016 – 99017**
3. ROCs and CIFBAs, see para **99020 – 99026**.

## Variations

**99032** If a client makes an application for a variation the type of evidence required will depend on the grounds upon which the variation is requested. See [Chapter 98: Evidence - Variations](#).

## Supersessions

**99033** Supersession is a process used when there is a change of circumstances that affects the maintenance liability on a case, see [Chapter 43: Supersessions](#). For the evidence required for

1. shared care, see para **99027 - 99028**
2. care provided in part by a Local Authority, see para **99005**
3. relevant other children, see para **99018 - 99019**
4. qualifying child, see para **99002 - 99008**
5. children supported under family based arrangements, see para **99023 - 99026**
6. children supported abroad, see para **99020 - 99022**
7. PWC or NRP status, see para **99002 – 99017**
8. variations, see [Chapter 98: Evidence – Variations](#).

## Mandatory reconsideration

**99034** An MR is a request for a decision to be reconsidered by CMS before appeal to an independent tribunal – Her Majesty’s Courts and Tribunals Service (HMCTS). See [Chapter 47: Mandatory reconsideration](#).

**99035** Evidence required for an MR would be either verbal or written, in keeping with the evidence requirements relating to the original decision. Reference should be made to the guidance specific to the original decision.

## Direct non scheme payments

**99036** Where an NRP makes payments in lieu of child maintenance directly to a PWC the CMS may decide to accept these payments as child maintenance. See [Chapter 50: Direct non scheme payments](#).

**99037** To confirm that a direct non-scheme payment of child maintenance was made by the NRP and received by the PWC it is essential that the DM gathers evidence, this can be in the form of

1. verbal confirmation from both NRP and PWC, and
2. where appropriate a written declaration to support this.

**99038** The evidence that the DM should gather depends on who reports the payment, whether the parties agree and whether the PWC returns the written declaration.

### **PWC or NRP reports the payment and both parties agree**

**99039** If the PWC or NRP reports the payment, they should provide the following information

1. period that the payments were received
2. amount of the payments
3. purpose of payments, and
4. that they were accepted in lieu of child maintenance.

**99040** If it is the NRP reporting the payments this can be done verbally, but the DM should consider if a written statement is appropriate should the case be complex or where there is the possibility of a dispute. If the PWC agrees with the details provided, no additional evidence is required.

**99041** If it is the PWC reporting, a verbal statement is acceptable evidence and if the NRP agrees with the details provided, no additional evidence is required.

**Note:** in complex cases the DM may decide that even though the parties agree, it is worthwhile asking the NRP for a written declaration.

### **When the parties do not agree**

**99042** If the PWC and NRP dispute any of the details provided by the other party the DM should obtain further evidence of payment to support their claim or to counter the other party's claim from both parties.

**99043** Evidence of payments made will not be sufficient in itself, there must be evidence that it is reasonable to treat them as a direct non scheme payment of child maintenance.

### **PWC evidence**

**99044** Evidence of direct non scheme payments from the PWC may often be solely a written statement advising what payments were received and what they were received for. Where the PWC disputes a payment, the evidence must show the payment was

1. not received as claimed

2. made for an excluded reason, see [Chapter 50: Direct non scheme payments](#)
3. made under a court order and was not made in respect of any payments due under child support law, or
4. received for another specific purpose, in which case receipts or invoices should be provided.

### **NRP evidence**

**99045** Where the payments are disputed by the PWC the NRP will be required to provide a statement explaining why the payments should be treated as child maintenance. Any evidence must show

1. the frequency of the payments
2. the amount of the payments
3. that the payment was made in respect of child support maintenance for the QCs, and
4. where or how the payment was made for example copies of their bank statements showing the transfer of money into a PWCs bank account.

### **Verification of death**

**99046** When a report of a death is received, verification of the date of death must be obtained wherever possible and with additional sensitivity. See [Chapter 41: Verification of death](#).

### **Primary evidence**

**99047** Certain primary evidence, is sufficient for the DM to take action on a case. This can take the form of

1. death certificates issued by a registrar. The registry office local to where the death occurred may be able to provide this or a copy of the certificate is sufficient, or
2. death status verified by CIS, to a minimum verification level 1.

### **Secondary evidence**

**99048** Where primary evidence is not available the DM can use secondary evidence to confirm death as long as the evidence provided is sufficiently robust to satisfy them that the death has occurred. The DM should aim to have at least two pieces of secondary evidence, which can include

1. an interim death certificate
2. confirmation from the DVLA or Passport Office that the alleged deceased drivers licence or passport has been cancelled as a result of their death

3. any documentation relating to funeral arrangements
4. any specific articles relating to the death given in the media
5. information from life insurance providers confirming a non-fraudulent claim on the deceased's policy.

**Note:** this list is not definitive.

# Chapter 100 - Evidence - collection and enforcement

## Introduction

**100001** DM's may be required to obtain evidence in order to assist them in decision making where enforcement action is required for collection. This chapter provides information on the types of evidence required. For more general information on evidence and decision-making principles, see [Chapter 96: Evidence and decision making](#).

This guidance explains the evidence requirements for

[The unlikely to pay check](#) 100002 - 100004

[Enforcement and collection of CSA debt on CMS](#) 100005 - 100006

[DEOs and DERs](#) 100007 - 100009

[Deduction orders](#) 100010 - 100016

[Suspending or pausing debt](#) 100017 - 100023

[Offsetting](#) 100024 - 100026

[Overpayments](#) 100027 - 100029

[Voluntary payments](#) 100030 - 100031

[Arrears Write Off](#) 100032 - 100036

[Liability orders](#) 100037 - 100038

[Order for sale](#) 100039 - 100040

[Assets](#) 100041 - 100046

## The unlikely to pay check

**100002** An unlikely to pay check is required where the PWC or CiS has requested that their case be administered as collect and pay, and the NRP does not consent to this arrangement. See [Chapter 49: Unlikely to pay](#).

**100003** The DM should gather evidence from the PWC of any missed, short or late payments from the NRP and where relevant, should include details of the NRP's behaviour in relation to making payments, for example has the NRP held on to payments in an attempt to exert some control over the PWC.

**100004** For information about the type of evidence required from an NRP when a PWC states that they

have failed to make direct payments and wishes their case to be moved to the collect and pay service type, see [Chapter 99: Evidence - other factors affecting MC](#).

### **Enforcement and collection of CSA debt on CMS**

**100005** Arrears cases that have moved from the CSA to the CMS where write off is not appropriate and have been through the representation process without an agreement being made with the NRP, will normally move to the collections and enforcement area. See [Chapter 54: Enforcement and collection of CSA debt on CMS](#).

### **NRP disputes arrears**

**100006** Where the NRP states that the arrears figure is incorrect or that they do not agree with the figure then acceptable evidence to support this claim would be

1. a confirmation letter from the CSA stating debt no longer exists or is different
2. bank statements confirming payments made to the CSA which may not have been taken into account, **or**
3. signed letters or receipts from the PWC confirming that the arrears have been paid in full or in part.

### **DEOs and DERs**

**100007** A DEO operates as an instruction (or DER as a request) to an employer to make deductions from the NRP's earnings and pay the amounts deducted to the CMS. See [Chapter 55: DEOs and DERs](#).

### **Good reason not to impose a DEO**

**100008** A DM may consider there to be `good reason` not to impose a DEO if there is evidence that

1. making the DEO is likely to lead to the disclosure of the parentage of the QC, resulting in an adverse impact on the NRP's employment status or relationship with family or a third party, **or**
2. a member of the NRP or PWC's family is employed by the same employer as the NRP and is likely to have knowledge of the employer's functions in administering a DEO, for example if they work in payroll.

### **NRP disputes DEO**

**100009** Where the NRP disagrees with CMS's intention to impose a DEO, they would need to provide evidence that the

1. money being deducted is not classed as 'earnings' for DEO purposes, **or**

2. DEO is defective, in that

2.1 it does not comply with the regulatory requirements, **or**

2.2 failure to impose the DEO correctly has made it impracticable for the employer to comply with their obligations.

### **Deduction orders**

**100010** Deduction orders allow the CMS to instruct a bank or building society to deduct payments from an NRP's bank account. See [Chapter 56: Deduction Orders](#).

### **Interim LSDO disputes**

**100011** Any representations against a DO must be made directly to the CMS in writing, by email or by phone. Representations must be made within 14 days of the date that the order is served.

**100012** For interim orders against joint and business accounts, the account holders have 28 days in which to make representations.

### **NRP Representations**

**100013** The grounds on which a representation can be made are not prescribed in legislation. However, where representations are made, evidence to support the NRP's dispute must be sought. Evidence may demonstrate claims by the NRP, such as

1. they do not owe the amount specified in the interim order
2. their bank or building society state that the CMS is targeting the wrong individual
3. they do not have a beneficial interest in the targeted account, for example the money is held on trust for a third party
4. they have already made an alternative arrangement to pay their arrears, **or**
5. another account holder believes that it is unreasonable to take money from their account.

**100014** If the NRP, another account holder, their bank or building society needs to submit additional information or evidence to support their representations, they must be given a reasonable amount of time, dependent on the circumstances of the case and the type of information that they need, to submit.

### **RDO disputes**

**100015** An NRP, their bank or building society can dispute an RDO. To do so they must provide evidence that

1. the NRP does not have a beneficial interest in some or all of the amount held in the specified account
2. there has been a change in the maintenance calculation
3. any amounts payable under the order have already been paid
4. a maximum deduction rate has been calculated but there has been a change to the maintenance calculation, **or**
5. an incorrect amount has been specified in the order.

**100016** Should any joint and business account holders wish to dispute the RDO, they may do so on additional grounds, providing evidence that

1. the amount being contributed to the account by the NRP has decreased
2. the amount being contributed to the account by the NRP is expected to decrease within the next three months, **or**
3. representations against the proposed order were not made and the CMS is satisfied that the account holder had a reasonable excuse for not doing so.

### **Suspending or pausing debt**

**100017** Where it is not appropriate to collect arrears, the CMS may suspend or pause arrears. See [Chapter 57: Suspending or pausing collection of Child Maintenance arrears.](#)

### **NRP in residential care**

**100018** Where the NRP is in a residential care home or nursing home, has no income and is unlikely to be discharged, evidence would be required from the

1. nursing or residential home, confirming that the NRP is a permanent resident, **or**
2. local authority, confirming that they are meeting the whole or part of the cost of the NRP's accommodation.

### **NRP abroad**

**100019** If the NRP is reported to no longer be habitually resident in the UK, but CMS are unable to confirm this, the DM can suspend or pause debt. This would be until such time that the NRP either returns to the UK or is confirmed to no longer be habitually resident.

**100020** For evidence required to confirm if an NRP is habitually resident in the UK see the section NRP or PWC no longer habitual residence, in [Chapter 99: Evidence – other factors affecting the MC.](#)

## **Sequestered debt**

**100021** When an NRP is subject to sequestration, payments may still be made from their estate by the trustee dealing with the sequestration. When the NRP has been discharged they may also provide confirmation if any further payments are to be made. See [Chapter 94: Sequestration](#).

## **NRP in prison**

**100022** Where an NRP is in prison, enforcement action may be appropriate if there is evidence of the NRP having received an amount of income either before being committed to prison or whilst in prison. The DM should attempt to obtain evidence to confirm if the NRP has

1. received income from the sale of goods or a vehicle
2. received a divorce settlement, **or**
3. property that has or is to be sold.

**Note:** this list is not exhaustive.

**100023** On the NRP's release from prison they may start receiving a regular or irregular income. Any party in the case may provide verbal or written evidence of this.

## **Offsetting**

**100024** Offsetting is a process that allows the CMS to adjust child maintenance payments and arrears in specific scenarios. See [Chapter 58: Offsetting](#).

## **Evidence that a prescribed payment has been made**

**100025** When a client reports that a third party payment has been made, the DM must ask for information to confirm this. Where both clients agree on the amount and purpose of any payments made, no evidence is required.

**100026** Where both parties do not agree, evidence confirming any amounts paid and the purpose of the payments should be obtained. Evidence can include

1. statements from both parties
2. copies of bank statements
3. receipts, copies of bills or such like.

**Note:** there may be cases where the PWC can provide evidence that they have given the money back to the NRP.

## **Overpayments**

**100027** An overpayment of child maintenance occurs when an NRP pays, or has paid, an amount exceeding their child maintenance liability. See [Chapter 59: Overpayments](#).

## **Reimbursement following a negative paternity result**

**100028** When the DM is considering a reimbursement for overpayments following receipt of a negative paternity test, there should be evidence such as, the alleged NRP

1. communicated doubts of paternity to CMS
2. was provided with insufficient information on how to disprove paternity by the CMS
3. was incorrectly assumed to be the parent of the QC by the CMS
4. complied with a DNA testing process, either instigated privately or via CMS which proved negative, **or**
5. successfully applied for a declaration of non-parentage from a court.

## **Prompt action was not taken by the NRP**

**100029** If the NRP states they were unable to take prompt action on information or a request made to them by the CMS, the DM should request evidence which may include

1. details of a long-term illness or hospitalisation of the alleged NRP
2. the alleged NRP is a member of the Armed Forces who is serving abroad (or was due to serve abroad very shortly after being informed of the steps they were required to take)
3. a disability of the NRP (including mental health condition, learning impairment, sensory impairment impacting upon communication for example deafness or blindness)
4. the alleged NRP has language needs.

**Note:** this list is not exhaustive and each case should be considered on its own merits.

## **Voluntary payments**

**100030** Voluntary payments are payments made when an application for child maintenance has been made but the maintenance calculation has not yet been completed. They are payments that the NRP has made to the PWC, CMS or a third party on or after the effective date. See [Chapter 60: Voluntary Payments](#).

## **What is evidence of a voluntary payment?**

**100031** The DM should request that evidence confirming payment be provided by the NRP in the form of

1. bank statements confirming payments to PWC or a third party
2. duplicates of cashed cheques
3. receipts from the payee
4. receipts, bills or invoices from a third party
5. other oral or written verification, **or**
6. statements from a third party confirming payment.

**Note:** payments made directly to the QC cannot be treated as voluntary payments

### **Arrears Write Off**

**100032** In certain circumstances and where the DM is satisfied that it would be unfair or inappropriate to enforce liability, the CMS is able to write off arrears owed by an NRP to a PWC or CiS. See [Chapter 63: Arrears Write Off](#).

### **Death of PWC or CiS**

**100033** Where the person with care has died and arrears owed to them are still outstanding, the DM should locate the person with care or CiS's executor. Acceptable evidence of the person being the executor must be a letter from a solicitor.

**100034** Where a next of kin has obtained a grant of representation proving their entitlement to deal with the deceased's estate due to there being no will or appointed executor, acceptable evidence of this would be a copy of the court issued document confirming this.

**100035** Should the executor provide representations against write off of the arrears, evidence must confirm that

1. the money will provide financial support for any QCs, **and**
2. any QCs do not reside with the NRP.

### **NRP advised arrears would not be collected**

**100036** If during collection or enforcement activity an NRP alleges that they were advised no further action would ever be taken to recover the arrears, the DM should seek acceptable evidence that can be checked against system records. This may include details such as

1. the date or an indication of a date that the NRP was advised the debt would not be collected
2. the method by which they were informed, by telephone or in writing (the NRP must provide a copy of any letter or notification where appropriate), **and**
3. if there was complaints or appeal action ongoing on their case at that time.

**Note:** the DM must be aware that evidence of temporary suspension action is standard business practice and does not mean that the arrears would never be collected.

### **Liability orders**

**100037** A liability order (LO) provides legal recognition that a debt exists. Applications for LOs in Scotland are heard in the sheriff court. The sheriff will consider whether the debt in question has become payable and whether it has not been paid. See [Chapter 83: Liability orders](#) (Scotland) and [Chapter 73: Liability orders](#) England and Wales.

### **Evidence the NRP may become violent to the PWC or QC**

**100038** During the LO process should the PWC state that they do not wish to proceed with enforcement action due to the NRP potentially becoming violent towards either the PWC or any QC in the case, the PWC should provide evidence in line with the guidance laid out in [Definition of domestic violence and abuse](#).

### **Order for sale**

**100039** An order for sale (OFS) is an enforcement action available to the CMS in England and Wales. CMS solicitors may apply for a court order allowing the sale of an NRP's assets or property. See [Chapter 77: Order for sale](#).

### **The relevant property and NRP's circumstances**

**100040** When considering applying for an OFS in relation to property that is in joint ownership, the NRP may provide evidence of their financial interest by way of a copy of a declaration of trust, also known as a deed of trust. This is a legally-binding document recording the financial arrangements between joint property owners, and or anyone else with a financial interest in the property.

**Note:** a declaration of trust may show on the Land Registry entry as a restriction.

### **Assets**

**100041** In England and Wales, a freezing order prevents an NRP from disposing of or dealing with their assets. This allows the CMS to take enforcement action against that asset. See [Chapter 78: Freezing orders](#).

**100042** In Scotland, an interdict can be used to freeze various assets owned by an NRP, to prevent them

disposing of or moving an asset or assets and a reduction order can be used to overturn the disposal and return ownership of land and buildings to the NRP. See [Chapter 82: Order for interdict or action for reduction](#).

**100043** In order for a freezing order or interdict to be used, the value of the asset must exceed £3,000 and evidence must be provided that the NRP is the sole owner of the asset and that there is sufficient equity. Evidence should confirm that the NRP has

1. property registered in the United Kingdom in the NRP`s name, owned solely by the NRP and not used for business purposes
2. capital assets that produce an income (for example, where the NRP rents out residential property which is solely owned
3. vehicles of any type of vehicle registered in the NRP`s name not used for business purposes
4. financial portfolio items such as stocks, shares, securities or other commodities, **or**
5. collectable assets such as valuable works of art or jewellery.

**Note:** this list is not exhaustive list.

#### **Evidence NRP is disposing or intending to dispose an asset**

**100044** Acceptable evidence that the NRP is disposing or intends to dispose of an asset may be

1. information confirming where the asset is advertised, for example local papers, adverts or on the internet
2. details of the progress of the sale if know, for example if an offer has been made, **or**
3. the approximate value of the asset.

#### **Property**

**100045** Where a freezing order or interdict is being sought in relation to property, the DM should obtain additional evidence, this can be information such as

1. a "for sale" board is outside the relevant property and if so, the name of the estate agent
2. the NRP is the sole owner of the relevant property, **or**
3. the NRP is transferring ownership, rather than selling, the property, (including who the title is being transferred to).

#### **Financial portfolio items**

**100046** Where the NRP is believed to have assets in the form of financial portfolio items, additional evidence should be sought. Evidence should confirm details such as

1. the type of financial items that the NRP owns and how they are intending to dispose of them, **or**
2. the name of the NRP's accountant.