

Volume 5 - Reviews and Appeals (Chapters 42-48)

Subpages

- Chapter 42 - Revisions
- Chapter 43 - Supersessions
- Chapter 44 - Income reviews
- Chapter 45 - Parentage disputes
- Chapter 46 - Correction of decisions
- Chapter 47 - Mandatory reconsideration (MR)
- Chapter 48 - Appeals

Chapter 42 - Revisions

Introduction

42001 A revision revises or corrects a previous decision. The CMS may revise¹ certain decisions, including

1. maintenance calculations
2. DMDs
3. supersessions, and
4. tribunal decisions on a referral under section 28D of the Child Support Act 1991².

1 CSMC Regs, reg 14; 15 & 16; 2 CS Act 1991, s16(1A)

This guidance explains

[Grounds for revision](#) 42002 - 42012

[Who can apply for a revision](#) 42012

[Revision before appeal](#) 42013 - 42014

[Time limits](#) 42015 - 42020

[Notifications](#) 42021 - 42023

Grounds for revision

42002 Decisions can only be revised where there are valid grounds. The grounds on which a decision can be revised are

1. an application for a variation – see para **42003**
2. the original decision was wrong due to a misrepresentation or failure to disclose – see para **42004**
3. an appeal has been made but not determined – see para **42005**
4. the CMS initiates revision – see para **42006**
5. official error – see para **42007 - 42008**

6. information held by HMRC is amended – see para **42009**

7. person found not to be a parent of the QC – see para **420101**

8. information is provided to convert a DMD – see para **42011**

Variation

42003 If a client makes an application for a variation of a maintenance calculation that is in force, the maintenance calculation can be revised to take the variation into account from the initial effective date, providing the ground arose from that date and the application is made within

1. 30 days after the date of notification of the initial maintenance calculation¹
2. 30 days after the date on which notice of a correction of an accidental error is given², **or**
3. within such longer time as may be allowed³.

1 CSMC Regs 2012, reg 14(1)(a)(i); 2, reg 14(1)(a)(ii); 3, reg 15

Note: see [Chapter 27 - Variations overview](#), for further advice about variation applications.

Note: if the grounds for variation arose after the initial effective date then the application for variation should be treated as a supersession and normal effective date rules apply. Refer to [Chapter 14: Effective Dates](#).

Example

NRP Holly is assessed on contribution based benefit and due to pay the flat rate. PWC Trevor reports that Holly receives pension income on top of the benefits. This is confirmed by Holly and the maintenance calculation is revised to include the pensions income and the benefit information.

Misrepresentation

42004 The maintenance calculation can be revised if the decision maker is satisfied that the original decision was wrong due to a misrepresentation of, or a failure to disclose a, material fact, and the original decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would have been as a consequence¹.

1 CSMC Regs 2012, reg 14(1)(b)

Note: there is no time limit in relation to revisions on this basis.

Example

NRP John's maintenance liability is based on current income. PWC Jane disputes the liability and asks the

CMS whether the income used in the calculation included the £10,000 bonus John received earlier that year. After further investigation, it is found that John failed to notify the CMS of the bonus payment. The maintenance calculation is revised to take account of the bonus.

Appeal

42005 If a client submits an appeal against the original decision within the relevant appeal time limits, and the CMS identifies that there are grounds for a revision then it can revise the decision at any time before a Tribunal makes a decision on the appeal¹. That second decision may be revised at any time if the decision maker would have made it differently had they been aware of the First-tier Tribunal's decision².

1 CSMC Regs 2012, reg 14(1)(c); 2 reg 14(3)(A)

Example

PWC Janice appeals the maintenance calculation because she believes the HMRC data is incorrect. The CMS later receives confirmation that HMRC have amended their data due to an official error which produced an incorrect income figure for NRP David. The Tribunal have not yet made a decision on the appeal and therefore the CMS can proceed with the revision.

CMS Instigated

42006 If the CMS commences action leading to the revision of the decision within 30 days after the date of notification of the decision¹, then the maintenance calculation can be revised from the initial effective date.

1 CSMC Regs 2012, reg 14(1)(d)

Example

A third party notifies the CMS that NRP Mark has been in prison since a date before the initial effective date of the maintenance calculation. The CMS therefore needs to complete a revision to place Mark onto the nil rate.

Official Error

42007 If a decision arose from an official error¹, a revision will be completed.

1 CSMC Regs 2012, reg 14(1)(e)

42008 An official error means an error made by an officer of the DWP or HMRC to which no person outside the Department or HMRC has materially contributed. It excludes any error of law identified in any subsequent decision of an Upper Tribunal or court¹. There is no time limit in relation to revisions on this basis.

Note: If the official error appears to be accidental, for example a mistake of arithmetic, the CMS can be asked to correct this and can do so at any time – see [Chapter 46: Corrections of Decisions](#) for further guidance. If the CMS does this, the time limit for requesting a revision of the decision begins from the date of the correction².

1 CSMC Regs 2012, reg 14(4); 2 reg 14(1)(a) and 27A

Example

NRP Margaret and PWC George agree on 2 nights shared care of the QC Jack. When notified of the maintenance calculation George contacts the CMS to report that the decision has been incorrectly based on 3 nights shared care. The maintenance calculation is revised to reflect the correct 2 nights of shared care.

HMRC Information Amended

42009 A maintenance calculation can be revised if it is based upon information from HMRC, used to determine historic income or unearned income and that information is subsequently amended¹. There is no time limit in relation to revisions on this basis. For more information on historic income see [Chapter 18](#) and for more information on unearned income see [Chapter 33](#).

1 CSMC Regs 2012, reg 14(1)(f)

Example

The CMS completes an annual review based on gross weekly income of £550 from HMRC for the tax year 2016 to 2017. HMRC subsequently receive further information and amend their records to reflect £600 gross weekly income for the same period. The CMS updates their records and revises the maintenance calculation.

Parentage

42010 A maintenance calculation can be revised if a person with respect to whom a calculation was made was not in fact a parent of the child at the time the calculation was made¹. There is no time limit in relation to revisions on this basis.

1 CSMC Regs 2012, reg 14(1)(g)

Example

NRP Derek has a maintenance liability based on two QCs, Luke and Katy. Derek provides evidence in the form of a DNA test which confirms he is not the father of Luke. The CMS updates their records and revises the maintenance calculation.

DMD

42011 A DMD may be revised at any time. This means where the CMS was unable to obtain information or evidence relating to the NRP's income and imposes a DMD and the NRP subsequently contacts the CMS and provides full details of their earnings, the CMS will update their records and revise the maintenance calculation¹. Refer to [Chapter 26 - Default maintenance decisions](#) for further guidance.

1 CSMC Regs 2012, reg 14(3)

Example

NRP Yusuf has been assessed on a DMD since his benefit ended. Yusuf is contacted and provides evidence showing that he is self-employed and his company is running at a loss. The maintenance calculation is revised.

Who can apply for a revision

42012 Revisions can be made either within the prescribed period or in prescribed cases or circumstances either on an application made for the purpose, or on the Secretary of State's own initiative¹.

1 CS Act 1991, s16 and s28G; CSMC Regs 2012, reg 14(1)(a) and (d)

Revision before appeal

42013 Where a client receives written notice of a decision following consideration of an application for revision, and where that notice states that there is a right of appeal to a First-tier Tribunal¹, the notice must inform the client of the time limit (as detailed in paras **42015** and **42016**) for making an application for a further revision².

1 CSMC Regs 2012, reg 14A(1); 2, reg 14A (3)

42014 Where a decision notice is issued and an application for a revision has not been made no right of appeal exists. An application for appeal made in these circumstances may be treated as an application for a revision¹.

Note: for more information about revision notifications see paras **42022 – 42024**.

1 CSMC Regs 2102, reg 14A(4)

Time limits

42015 An application for revision should usually be made within 30 days from the notification of the decision or corrected decision, unless there is no time limit¹.

1 CSMC Regs 2012, reg 14(1)(a)

42016 If an application falls outside this time limit, it may be appropriate to consider whether an extension can be allowed. The time for making an application for a revision may be extended where specific provisions are satisfied¹.

1 CSMC Regs 2012, reg 15

Applications for an extension of time

42017 An application for an extension of time must be made by one of the parties or their authorised representative¹. The application must give the grounds on which an extension is sought and give details of the decision in respect of which a revision is sought².

1 CSMC Regs 2012, reg 15(2); 2, reg 15(3)

42018 An application for an extension of time may not be granted unless the applicant satisfies the DM that

1. it is reasonable to grant the application
2. the application for a revision has merits (except in cases where consideration is given to a revision before an appeal), **and**
3. relevant special circumstances meant that it was not practicable for the application to be made within the time limits specified¹.

1 CSMC Regs 2012, reg 15(4)

42019 DMs must consider the reasons the applicant states they could not make their application in time and consider whether these reasons seem valid. In determining whether it is reasonable to grant an application for an extension of time, the DM must apply the principle that the greater the amount of time between the end of the time specified in paras **42015** and **42016** and the date the application for an extension is made, the more compelling the special circumstances should be¹. For example

1. cases where the applicant was in hospital or out of the country might be accepted as special circumstances, as these factors could prevent an application being made in time
2. cases where the applicant had simply forgotten to send in their application for revision would not.

Note: this list is not exhaustive.

1 CSMC Regs 2012, reg 15(5)

42020 In determining whether it is reasonable to grant the application for an extension of time (except in those cases covered by para **42013** and **42014**) no account should be taken of the following

1. the applicant was unaware of or misunderstood the law applicable to the case (including ignorance or misunderstanding of the time limits imposed), **or**
2. the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied¹.

Note: if an application for extension of time has been refused it cannot later be renewed².

1 CSMC Regs 2012, reg 15(6); 2, reg 15(7)

Notifications

42021 When a revision is completed on a maintenance calculation, notifications must be issued to all involved parties to advise of the revised calculation¹.

1 CSMC Regs 2012, reg 26

42022 If the decision is revised, this normally has the same effective date as the decision it replaces¹. However, if the effective date of that decision was wrong, the revised decision has the effective date that the replaced decision should have had².

1 CS Act 1991, s6(3); 2 CSMC Regs 2012, reg 16

42023 If a revision is refused, the notification of the decision must include the reasons for the refusal and details of how to appeal. The time limit for appealing against a decision that has been revised runs from the date of the notice of the revised decision¹.

1 TP (FtT) (SEC) Rules 2008, rule 22(2)

Chapter 43 - Supersessions

Introduction

43001 A Supersession is a type of decision used when there is a change of circumstances or new information is received that affects the maintenance liability on a case¹. This may be due to

1. a relevant change of circumstances since the decision had effect or it is expected that a relevant change of circumstances will occur
2. the decision was made in ignorance of, or was based on a mistake as to, some material fact
3. the decision was wrong in law (unless it was a decision made on appeal)
4. the relevant change of circumstances causes the maintenance calculation to cease²
5. the Secretary of State no longer having jurisdiction³, **or**
6. an application for a variation⁴.

1 CSMC Regs 2012, reg 17; 2 CS Act 1991, Sch 1, para 16; 3, s44; 4, s28G

This guidance explains

[When and how an application for a supersession can be made](#) 43002 - 43005

[Multiple case groups](#) 43006

[Benefit changes affecting the maintenance calculation](#) 43007 - 43011

[Income changes affecting the maintenance calculation](#) 43012

[Default maintenance decisions](#) 43013

[Other relevant changes](#) 43014 - 43016

[Supersession of a decision made by a tribunal](#) 43017

When and how an application for a supersession can be made

43002 A number of decisions may be superseded by the decision maker¹, including

1. maintenance calculations

2. default maintenance decisions
3. supersessions (whether originally made or revised)
4. certain decisions of the First-tier Tribunal, **and**
5. decisions of the Upper Tribunal on appeal from the First-tier Tribunal.

1 CS Act 1991, s17

43003 Supersessions can be made on an application or at the initiative of the Secretary of State¹. There are no time limits for supersession applications. Supersessions can be requested by

1. the NRP
2. the PWC
3. the CiS
4. an authorised representative, **or**
5. initiated by the CMS, following a reported change from a third party.

Note: following a decision being made on a supersession, the notification should communicate the same information which the original decision was required to include. For more details about the legal requirements of notifications, see [Annex C: Notifications](#).

1 CSMC Regs 2012, reg 17(1)

43004 A decision may not be superseded in circumstances where it may be revised. A decision to refuse an application for a maintenance calculation may not be superseded. In making a supersession decision, the decision maker need not consider any issue that is not raised in the application or did not cause the decision to be made by the decision maker's own initiative.¹

1 CSMC Regs 2012, reg 17(4),(5),(6)

43005 The general rule is that a supersession takes effect from the day on which the decision is made or the application for the supersession or variation was made¹. However, the effective date may be different in other circumstances². For more information on effective dates see [Chapter 14](#).

1 CS Act 1991, s17(4); 2 CSMC Regs 2012, reg 18

Multiple case groups

43006 If a NRP has more than one PWC and as a result of a supersession the NRP's maintenance liability is affected, the maintenance calculation will be apportioned between all PWCs.

Benefit changes affecting the maintenance calculation

43007 NRPs who are entitled to receive a prescribed benefit, are usually liable to pay child maintenance at the flat rate. If a NRP starts or stops being entitled to receive a prescribed benefit, then this may affect the maintenance calculation.

Entitlement to prescribed benefit stops: no historic income figure held

43008 If an historic income figure is not held DMs will need to check RTI for income information and if there is insufficient evidence they may need to contact the NRP to understand why benefit entitlement has ended and to establish how the NRP is being supported.

43009 If the NRP states that they are unemployed, with no income of their own and do not intend to make a new benefit application, a written declaration confirming that information and how they are being supported, should be obtained.

Table of benefit entitlement scenarios

43010

Reason why benefit is not payable

Outcome

Benefit entitlement continues - No change required

Sanction

flat rate maintenance to remain

Deduction from benefit not available, unpaid maintenance added to arrears

Benefit entitlement continues - No change required

Suspended

flat rate maintenance to remain

Deduction from benefit not available maintenance added to arrears

Underlying entitlement

Not entitled to benefit

Underlying entitlement refers to the overlapping of benefits (if a person's claim is reduced to nil because they earn too much, they are no longer entitled to that benefit).

Although an underlying entitlement may exist, they are technically not entitled in the same way as a person who earns too much for a claim to be awarded

"Benefit" flat rate maintenance to cease

Consider what the NRP is living on, nil rate a possibility

Not entitled to benefit

Disallowed

“Benefit” flat rate maintenance to cease

Consider what the NRP is living on, nil rate a possibility

Not entitled to benefit

The NRP will be having their national insurance contributions paid.

Credits Only

“Benefit” flat rate maintenance to cease

Consider what the NRP is living on, nil rate a possibility

Not entitled to benefit

Nil award

“Benefit” flat rate maintenance to cease

Consider what the NRP is living on, nil rate a possibility

Variations and benefit changes

43011 A variation will cease to have effect on the maintenance calculation if the NRP becomes liable to pay the flat or nil rate because they or their partner is in receipt of a prescribed benefit¹

1 CSMC Regs 2012, reg 44(2)

Refer to Chapters 27 – 36 for further guidance on Variations.

Income changes affecting the maintenance calculation

43012 Where there is a change to the NRP’s income refer to

1. [Chapter 19 - Current income](#), or
2. [Chapter 20 - Current income self-employed](#).

Default maintenance decisions

43013 Where the CMS obtain NRP employer information DMs must consider replacing the a DMD with a maintenance calculation, refer to [Chapter 26 - Default maintenance decisions](#).

Note: Please see [Chapter 14 - Effective dates \(Effective date tables\) | DWP Intranet](#) for further guidance.
- Default maintenance decision (DMD) in place – Income or employer information provided by the client.
& Default maintenance decision (DMD) in place – NRP employer information obtained from a third party (HMRC)

Other relevant changes

43014 When other relevant changes are reported that may affect the maintenance calculation, DMs must gather information and evidence to support the reported change. Further guidance can be found

1. Shared care arrangements - refer to [Chapter 11 - Shared care](#)
2. ROC - for changes to the care of a ROC or to determine whether a child is a ROC refer to [Chapter 6 - Relevant other child](#)
3. QC - for changes or to determine if a child is a QC refer to [Chapter 5 - Meaning of certain terms](#) (Who is a QC)
4. CIFBA - for change to the care of or to determine if a child is a CIFBA [Chapter 9 - Child supported under family based arrangement](#)
5. Jurisdiction - for changes affecting or to determine if the CMS have jurisdiction refer to [Chapter 37 - Application](#) (Jurisdiction).

Role reversal

43015 Role reversal is where a QC has stopped living with the PWC and started living with the NRP, meaning the parental roles have reversed. Refer to [Chapter 5 - Meaning of certain terms](#) (Who is a PWC).

Note: if the new PWC wants to claim child maintenance for the QCs they must submit a new application.

Reconciliation

43016 If parents have reconciled, then the case can be closed if it is the CMS applicant who requests closure. However, if the non CMS applicant requests closure, DMs must confirm the change with the other party **and**

1. if the other party confirms the reconciliation then DMs should complete a supersession to close the case, **or**
2. if the other party does not confirm the reconciliation DMs should reject the supersession. A notification confirming the refusal to supersede will be issued to all relevant parties.

A retrospective period of reconciliation that has ended cannot be accepted as a request to supersede.

Supersession of a decision made by tribunal

43017 A decision made by a tribunal can be subject to a supersession if the relevant supersession grounds exist. However, a decision made by a tribunal cannot be subsequently superseded on the ground that it is wrong in law.

For more information of the rules around effective dates for superseding a decision made by a tribunal see [Effective date table 5](#).

Chapter 44 - Income reviews

Introduction

44001 The CMS will carry out two different types of income check to ensure that a maintenance calculation (“MC”) is always based on the most up to date and reliable income information. These are

1. the annual review¹, **and**
2. the periodic current income check (PCIC)².

1 CSMC Regs 2012, reg 19; 2, reg 22

44002 The annual review is performed in all cases, whereas the PCIC will only be applied when an MC is based on current income that has been in place and unchanged for 11 months.

Note: both the annual review and PCIC are changes that are instigated by the CMS.

This guidance explains

[What is the annual review](#) 44003 - 44009

[HMRC interface](#) 44010 - 44014

[Updating the MC](#) 44015 - 44021

[Impact of changes reported](#) 44022 - 44027

[Periodic current income check](#) 44028 - 44037

[NRP provides new evidence of current income](#) 44039 - 44042

[NRP does not provide sufficient or any evidence of current income](#) 44043 - 44049

What is the annual review?

44003 The annual review is a process that the CMS will follow every year on all on-going cases to

1. obtain updated historic income information from HMRC¹, **and**
2. ensure MCs are based on the most up-to-date and reliable income information that is available.

1 CSMC Regs 2012, regs 19-21

44004 When an initial MC is completed, the CMS will automatically set an annual review date as 12 months from the initial effective date¹. Subsequent review dates fall on each anniversary of that date,

unless the Secretary of State decides in any particular case or class of case to fix a different date.

1 CSMC Regs 2012, reg 19(2)

44005 Where the initial effective date falls on 29 February, the annual review date will be set as 1 March.

44006 If there is a subsequent application in relation to a new qualifying child, the review dates are to be aligned so that the new application will be reviewed on the existing review date.

1 CSMC Regs 2012, reg 19(3)

44007 Where an application for an MC in relation to two separate NRPs of the same QC is received, and the application is treated as a single application different review dates may be set for each NRP¹.

1 CSMC Regs 2012, reg 19(4)

Annual income update

44008 The annual review process will start 30 days before the annual review date, this is known as the annual income update. This is to ensure that there is sufficient time to obtain and check up to date information about the NRP's income or other circumstances before a formal decision is made at the annual review date.

44009 If no income information is available from HMRC the NRP will be provided the opportunity to submit any up to date information about their gross weekly income.

HMRC interface

44010 During the annual income update, the CMS will retrieve up to date information from HMRC. Where an updated figure is provided by HMRC for the latest available tax year, that figure applies for the purposes of determining historic income on and after the review date. If the NRP's gross weekly income has changed, the decision maker may make a supersession decision with effect from the review date. Please also see [Chapter 18 - Historic Income](#).

44011 The information retrieved will be notified in writing to each party of the active on-going case during the annual income update.

Variations

44012 If an unearned income variation is in place, the variation details will also be updated through the HMRC interface¹. In relation to a MC in force, where additional income has been taken into account by virtue of a variation, the decision maker may request from HMRC information relating to the NRP's unearned income for the latest available tax year. A supersession decision may then be made on the basis of the information effective from the review date.

Note: other types of variations are not affected by the annual review process.

44013 Where the existing unearned income variation is based on current income and HMRC provide an updated variation income figure, the CMS will check the new information provided by HMRC against the existing current income for the variation.

44014 If the new variation figure provided does not breach the threshold the variation will automatically revert to using the updated HMRC unearned income figure. See [Chapter 33 - Unearned income](#).

Example

NRP Scott is assessed on HMRC income of £15,000 and unearned income of £16,000 which is based on current income. During the annual review, HMRC provides income of £15,000 and unearned income of £18,000. The CMS will revert to HMRC income for the unearned income variation.

Updating the MC

44015 The annual review will update the new MC depending on what the existing MC is based on. The following paragraphs **44017** to **44022** contain scenarios where there are no further reported changes during the annual income update or annual review period. Where there are changes reported, refer to para **44022**.

44016 Where no new HMRC historic income figure is retrieved and the existing MC is based on DMD or an estimation of the NRP's earnings, the DM should

1. gather current income information from the NRP – refer to [Chapter 97: Evidence - Income](#),
2. implement a MC based on an estimation of earnings – refer to [Chapter 24 - Estimating current income](#), or
3. impose a DMD – refer to [Chapter 26 - Default maintenance decisions](#).

Existing MC based on historic income

44017 Where the MC is currently based on HMRC historic income, and HMRC provide either a nil income figure or a positive income figure at the annual review, the annual review will be completed on the new HMRC income figure and notified to all parties.

Existing MC based on current income

44018 If the MC is based on current income and HMRC provide a positive income figure at the annual review, the CMS will automatically compare the new historic income figure with the existing current income figure¹.

44019 If the existing current income figure is still at least 25% different (more or less) to the new historic income figure, then the MC will continue to be based on the existing figure.

Note: the existing current income figure will remain in place if HMRC does not provide a new historic income figure. If the existing current income figure is within 25% of the new historic income figure, then the new historic income figure will be used from the annual review effective date

Example

NRP Holden is assessed on current income of £35,000. During the annual income update, new HMRC information of £46,500 is received. As the current income is within 25% of the historic income figure, the MC will be updated to use the HMRC income of £46,500 from the annual review effective date.

Existing MC based on EET or DMD

44020 Where the existing MC is currently based on either an EET or a DMD, this will be reviewed during the annual review period. This is to ensure that if a further estimation of earnings is required it is based on the most current source of information.

Note: refer to [Chapter 24 - Estimating current income](#) and [Chapter 26 - Default maintenance decisions](#).

44021 Where HMRC income information has been received, the EET or DMD will be replaced by the HMRC income figure from the annual review effective date.

Example

NRP Tristan is assessed on an EET of £25,000. During the annual review period, the latest HMRC tax year is received with an income amount of £1,400. The MC is updated to HMRC income of £1,400 from the annual review date.

Impact of changes reported

44022 During the annual income update, the circumstances a party may report include

1. the CMS have anything wrong
2. other factors or changes that might affect their liability, **or**
3. the NRP's current income is at least 25% different to the latest HMRC figure.

44023 For non-income related changes reported during this period refer to [Chapter 23 - Other factors affecting the MC for further guidance](#), [Chapter 43 - Supersessions](#) and the relevant [Effective Date table](#).

Example

The annual review date is 1 January 2019 and on 12 December 2018 NRP John is issued with the annual income update based on the latest available income information from HMRC. On 18 December 2018 John reports that he has a new ROC Laura. A supersession is completed to take account of Laura with an effective date of 18 December 2018. On 1 January 2019 the annual review decision is made and this will also take account of Laura.

44024 Where a change of circumstances is reported before the annual review date and supporting evidence is only received after the annual review date the DM can complete the change from the effective date of that change. The DM can further revise the decision from the annual review effective date, if necessary, to take into account the change.

Example

The annual review date is 31 March 2019. The annual income update process will start on 1 March 2019 and informal notifications are issued on 11 March 2019. NRP John calls the CMS on 20 March 2019 to advise he now has a court order for shared care of QC Paul for 2 nights per week. As the CMS were unable to contact PWC Jean to confirm the shared care arrangements, John was asked to provide a copy of the court order as evidence of the shared care.

John is unable to provide a copy of the court order until 8 April 2019. In the meantime, the annual review is completed using the existing information without the shared care on 31 March 2019.

When John provides the court order, the CMS will complete a supersession from effective date 20 March 2019 and issue formal notifications to both parties.

Party reports current income is at least 25% different to HMRC figure

44025 During the annual income update period, a party may report that the NRP's current income is at least 25% different to the new historic income figure. The reporting party should be asked to provide evidence – the general rule for determining gross weekly income will apply¹. See [Chapter 97: Evidence – Income](#), for further guidance.

1 CSMC Regs 2012, reg 34

Note: if there is a variation in place then the 25% comparison should take place on the income figure before it is adjusted to take account of any variation, unless the change reported is to the current income for an earned or unearned income variation.

44026 When DMs have obtained the relevant evidence of the NRP's current income, they will need to carry out two checks depending on where the notified date falls in relation to the annual review.

1. Compare the current income figure against the existing historic income figure in place at the notified date. If

1.1 the current income figure is at least 25% different, a supersession should be completed

to reflect this change, **or**

1.2. it is not at least 25% different, the existing MC does not need to be altered at this point.

2. Compare the current income figure against the new historic income figure obtained from HMRC and used to produce the annual income update. If

2.1 the current income figure is at least 25% different, the historic income figure should be replaced with the new current income figure. The MC will be based on the new current income figure with effect from the annual review date, **or**

2.2 it is not at least 25% different, the MC will continue to be based on the new historic income figure with effect from the annual review date.

Example 1

NRP Mark's existing MC is based on gross annual income of £15,600. The annual review date is 23 October 2019. On 23 September 2019 HMRC provide a historic income figure for the latest available tax year of £13,000. On receipt of the annual income update 5 October 2019 Mark reports that his weekly current income is £175 which is £9,100 annually. Current income of £9,100 annually is firstly compared to the existing historic income of £15,600 at the notified date.

There is a 25% difference so a supersession is completed to take account of Mark's current income with an effective date of 5 October 2019. As the existing calculation is based on historic income, the effective date will be the date the change is reported, irrespective of whether the income has increased or decreased. Current income of £9,100 is then compared to the new historic income of £13,000.

There is still a 25% difference and therefore Mark is assessed on current income of £9,100 from the annual review effective date of 23 October 2019.

Example 2

NRP Oskar is currently assessed on HMRC historic income of £84,000. During the annual income update new HMRC income is received for £150,000 and informal notifications are issued to all parties. Oskar contacts the CMS before the annual review date but is unable to provide the evidence until after the annual review date that his income is £73,000.

The £73,000 is compared against the existing HMRC income figure at the notified date of £84,000. As tolerance is not breached the MC is not changed.

The income of £73,000 is then compared against the income figure received for the annual review and the 25% tolerance is breached against the £150,000. From the annual review effective date, a supersession is completed to update Oskar's income to the £73,000.

Example 3

NRP Karl is currently assessed on HMRC income of £17,000. The annual income update retrieves income of £10,000 from HMRC which is notified to all parties. Karl calls the CMS before the annual review date and reports his current income is £8,000. Evidence is provided after the annual review date to confirm this.

The £8,000 is first compared to the £17,000 effective at the notified date. This breaches tolerance and the MC is updated from the notified date to £8,000.

The £8,000 is then compared against HMRC income of £10,000 for the annual review date. This does not breach the 25% tolerance; therefore, the MC is updated to the HMRC income of £10,000 from the annual review date.

Income changes crossing multiple annual reviews

44027 There may be occasions where the effective date of a change to NRP income may fall before one or more annual review dates. This will need to be taken into account, applying the above process to each annual review. There are a number of reasons that a backdated change may be required including

1. Appeal outcome
2. Information obtained through an FIU investigation
3. NRP failed to report a change
4. MR decision made

Example

The initial effective date of the case is 15 August 2017.

NRP Sven has been assessed on current income of £12,000 since 21 June 2018 against a HMRC income figure of nil. PWC Adelaide disputes the income used in this decision, mandatory reconsideration is refused and an appeal is raised.

At the first annual review, on 15 August 2018, the HMRC income figure received is £35,000. As the current income is more than 25% different, the MC remains based on current income of £12,000.

The PCIC is completed on 24 September 2018 and the decision is made to continue using the current income of £12,000.

During the second annual review on 15 August 2019, the HMRC income figure is updated to £47,000 and the current income of £12,000 remains in place as this is still 25% different to the HMRC income figure.

The appeal outcome is received on 25 September 2019 against the MC effective from 21 June 2018 which instructs the CMS that the correct current income to be used from this effective date is £50,000.

A change of income is completed to update the income to £50,000 from effective date 21 June 2018. At the first annual review for 15 August 2018, the current income is compared against the HMRC income figure received for £35,000. As the current income is 25% different to the HMRC income figure provided, the MC remains based on £50,000.

At the original PCIC on 24 September 2018, the decision was made to continue using the current income provided. This has now been updated to the £50,000.

The £50,000 income figure is then compared to the HMRC income figure of £47,000 retrieved during the second annual review for 15 August 2019. As the current income is less than 25% different, the MC is updated to £47,000 from the second annual review date of 15 August 2019.

Periodic current income check

44028 Where the NRP's gross weekly income is based on current income and no supersession decision changing that amount was made within the last 11 months, the DM should carry out a PCIC, requesting information from the NRP to validate that the current income figure used in the MC is correct.¹

Note: current income could have been in place from the initial effective date and an annual review will be due. Where this occurs the PCIC is carried out 58 days after the effective date of the annual review.

44029 The purpose of the PCIC is

1. to obtain up-to-date evidence of the NRP's current income, **and**
2. to assess whether the NRP's current income remains within the 25% tolerance range relative to any historic income figure available from HMRC.

1 CSMC Regs 2012, reg 22

Note: The PCIC should not be used to review the NRP's income history outside of the above purpose.

44030 If the NRP fails to provide information, the DM may make a supersession decision determining the NRP's gross weekly income on the basis of historic income¹. If the DM has sufficient information to make a determination of current income, they may make a supersession decision applying the general rules for current income². See [Chapter 19 - Current income – employed](#) and [Chapter 20 - Current income – self-employed](#).

1 CSMC Regs 2012, reg 22(2); 2, 22(3)

Note: if there is a variation in place then the 25% comparison should take place on the current income figure before it was adjusted to take account of any variation.

44031 A key aspect to consider for the PCIC is that

1. the CMS is obliged to review the income level being used at the PCIC review date, **however**

2. the CMS is not obliged to change the income used for the new MC.

Note: additional income variations are not subject to PCICs.

44032 The DM can make a discretionary decision and exercise judgement as to whether to update the MC or not. The DM should have regard to any evidence or information that is available or has been provided. Refer to [Chapter 96: Evidence and decision making](#).

44033 If the annual review has been completed and current income has remained in place then the retained current income will need to be reviewed using the PCIC.

44034 If the annual review has been completed and the NRP's income has reverted to HMRC income the PCIC is not required.

44035 The effective date of a PCIC is the date that the decision is made.

44036 Where the evidence shows the NRP has failed to report an increase of 25% to their current income, a standalone change to income must be completed before the PCIC is considered.

Note: such supersession decisions will have effect from the date on which they are made¹, or the date on which the change occurred, in the case of a change of circumstance that the NRP was required to report². For more information, see [Chapter 14 - Effective dates](#).

1 CSMC Regs 2012, reg 22(4); 2, reg 22(5)

Note: where the effective date of the increase falls before the annual review, refer to para **44027**.

44037 The PCIC is still required if the new current income has been in place for more than 11 months.

Example

NRP Eli is assessed on current income of £10,000 at the initial effective date of 25 September 2018 as there is no HMRC income. There are no reported changes to Eli's income up to the first annual review of 25 September 2019. The annual review retrieves no income from HMRC.

While gathering the evidence for the PCIC, the DM confirms that the increase to Eli's income occurred on 1 October 2018 and Eli's income at 1 October 2018 is £41,000. Eli had failed to report an increase to their earnings.

A standalone change to income is completed based on £41,000 with an effective date of 1 October 2018. If the change was reported and completed at the time, the income of £41,000 would still be in place at the annual review and would have remained in place for more than 11 months.

The PCIC is still required to be completed. From the effective date of the PCIC on 15 November 2019,

the DM confirms that Eli's current income is now £42,000 and the MC is updated.

44038 If the new income has been in place less than 11 months or at a previous annual review the income has reverted to HMRC income then the PCIC is not required. The income will be reviewed at the next annual review or where there is a future reported change to the NRP's income.

Example

NRP Taylor is assessed on current income of £5,000 at the initial effective date of 11 March 2019.

During the annual review on 11 March 2020, HMRC income of £25,000 is received and the MC remains based on current income of £5,000 as it is more than 25% different.

The PCIC is completed on 05 May 2020 and the DM identifies that Taylor's income had increased from 21 November 2019 to £42,000. Taylor had failed to report the increase to their earnings.

A change to income is completed effective from 21 November 2019 to update the income to £42,000. The new current income is then compared to the HMRC income retrieved during the annual review. As it still breaches tolerance and is more than 25% different to the HMRC income, the current income of £42,000 remains in place at the annual review date of 11 March 2020.

As Taylor's income had only been in place for 6 months if they had reported the increase at the time, a further PCIC is not required. Taylor's income will be reviewed at the next annual review on 11 March 2021 if there are no further reported changes to their income during the maintenance year.

NRP provides new evidence of current income

44039 Where the NRP provides evidence of up to date current income, this should be compared to the existing current income that is already in place. See [Chapter 97: Evidence - income](#).

44040 The new current income evidence should be compared against any new HMRC income figure retrieved during the last annual review. Where the new current income is less than 25% different to the HMRC income information, the DM should update the MC using the new HMRC income.

44041 Where there is no HMRC historic income held for the NRP and new current income evidence is provided, a decision will be made on whether to retain the existing current income or to use the new current income provided.

44042 The effective date will be the date the decision is made. Refer to [effective date tables](#).

Example 1

NRP Juliet is assessed on current income of £15,000. There has been no change to the calculation since the initial effective date of 2 June 2018. At the annual review on 2 June 2019, HMRC provided a new income figure of £9,000. As the current income was more than 25% different at the annual review, the MC was kept on Juliet's current income of £15,000.

During the PCIC on 4 September 2019, Juliet provides evidence which confirms that her new current income is £10,000. This is more than 25% different to the previous current income but less than 25% different to the HMRC income figure.

From the effective date, 4 September 2019, of the PCIC, the DM can decide to update the MC to the HMRC income figure of £9,000 or to continue to use the new current income of £10,000.

Example 2

NRP Jordan is assessed on current income of £49,000. There has been no change to the calculation for a period of 11 months. At the annual review, HMRC provide a new income figure of £85,000. The MC continued to be assessed on Jordan's current income of £49,000.

During the PCIC, Jordan provides evidence that confirms their new current income is £52,000. This is not 25% different to the previous current income but is more than 25% different to the HMRC income figure.

The DM could make a decision to change the income used for the assessment to £52,000 or the DM could keep the MC based on Jordan's current income of £49,000 if this is deemed more appropriate.

Example 3

NRP Callum is assessed on current income of £26,000. During the PCIC, Callum provides evidence that his current income is now £30,000. There is no HMRC income information available. The new current income is not more than 25% to the existing current income.

The DM could make a decision to update the income to £30,000 from the effective date of the PCIC or the DM could make a decision to retain the existing income figure of £26,000.

NRP does not provide sufficient or any evidence of current income

44043 Where the NRP does not provide sufficient or any evidence of current income for the PCIC, the DM must make a decision using the best available evidence. This will include reviewing the information retrieved from HMRC during the annual review process. There are 3 possible scenarios

1. a later HMRC historic income tax year was provided to the CMS,
2. the HMRC historic income tax year record has not been updated to a more recent HMRC tax year **or**
3. there is no HMRC income figure available

Note: refer to [Chapter 18 - Historic income](#) for further information.

Later HMRC tax year provided

44044 Where a later HMRC tax year has been provided at the most recent annual review, the DM should consider completing the periodic income check using the HMRC historic information.

Example

The existing calculation is based on current income of £37,000 supplied by NRP Mark at the initial effective date 23 October 2018.

During the annual review on 23 October 2019, the HMRC historic income received is £52,000 for 2019 tax year. As the existing current income is more than 25% different, the MC continues to be based on £37,000.

The DM is unable to obtain any up to date current income and from the effective date of the periodic income check, 18 December 2019, the DM could decide that the MC should be updated to the HMRC historic income of £52,000.

Later HMRC tax year not provided

44045 A decision can be made to exercise judgement as to the most appropriate evidence that is available to use where no up to date current income has been provided by the NRP.

44046 This could be to use the historic tax year to determine the income used in the MC or if the existing current income is for a more recent period of time, the DM could make a decision to retain the existing income used in the MC.

Example

NRP Jack reports and supplies evidence from July 2018 to August 2018 to confirm current income of £15,000 for the initial effective date of 06 July 2018. The HMRC historic income figure is £25,000 for tax year 2018.

At the annual review on 06 July 2019 HMRC supply the same 2018 tax year for income of £25,000.

The DM is unable to obtain up to date current income information.

The current income that is being used is for a later period of time than the latest available tax year. The CMS could therefore decide to retain the existing MC based upon the current income as this is more reflective of Jack's circumstances or use the historic income figure provided by HMRC when the PCIC is completed on 06 August 2019.

No Historic Income available

44047 Where there is no HMRC historic income information available, the DM may decide to retain the existing current income record as this is a more reflective representation of the NRP circumstances.

44048 Alternatively a decision may be made to base the MC on an estimate of the NRP's earnings or to

impose a Default Maintenance Decision. See [Chapter 24 - Estimating Current income](#) and [Chapter 26 - Default Maintenance Decisions](#).

44049 Where a DMD or an EET is used for a PCIC, the effective date is always the date the decision is made.

Example

NRP Delia provided evidence of current income of £1,600 when her benefits ended on 12 May 2018. During the annual review on 29 September 2018 no HMRC income record was provided and the MC continued to be based on £1,600 income.

The periodic income check is completed on 12 April 2019. Delia does not provide further evidence of her current income but CiS Claire advises the CMS that Delia is self-employed as a child minder.

A decision could be made to update the MC to an EET or to retain the existing current income of £1,600.

Chapter 45 - Parentage disputes

Introduction

45001 Where a person named as a NRP in an application for child maintenance, denies that they are one of the child's parents, DMs must determine whether or not there are grounds upon which an assumption of parentage can be made¹.

This guidance explains

[When a parentage dispute can be made](#) 45002

[Pre MC disputes](#) 45003 - 45009

[Post MC disputes](#) 45010 – 45015

[Arrears only cases](#) 45016 - 45018

[Assumed parentage](#) 45019 – 45040

[DNA testing](#) 45041 - 45055

[DNA test outcomes](#) 45056 - 45062

[Who pays for DNA testing](#) 45063 - 45066

[DNA testing brothers and identical twins](#) 45067 – 45070

1 CS Act 1991, s 26(1)

When can a parentage dispute be made

45002 Parentage disputes can be made before or after the initial maintenance calculation has been completed.

Pre MC disputes

45003 If the alleged NRP denies being a parent of the QC(s) before the initial maintenance calculation has been made, DMs will need to consider what evidence is available.

45004 If evidence is available which provides a basis for parentage to be assumed, the maintenance calculation should be completed refer to the paras **45016 - 45037** for more information on Assumed Parentage.

45005 If evidence is available that proves that the alleged NRP is not a parent of the QC or QCs named in the application the application must be closed.

45006 Where the application includes children that the NRP is proven not to be the parent of as well as children that the NRP does not dispute parentage of, the application should continue only for those children for whom parentage has not been disputed.

45007 If the situations described in paras **45016 - 45037** do not apply, the maintenance calculation cannot be completed until the parentage dispute has been resolved and DMs will need to invite all parties to take a DNA Test. Refer to paras **45038 - 45067** for more information on DNA testing.

Note: for NRP applications where the NRP disputes parentage pre-initial MC, DNA testing should not automatically be offered and local Parentage Ambassadors must be consulted.

PWC refuses to undertake DNA testing

45008 Where a PWC refuses to undertake DNA testing, and is unable to provide any further evidence that would allow for parentage to be assumed, they should be contacted and advised that if the parentage dispute cannot be resolved, the CMS may refuse to calculate an initial maintenance calculation.

45009 In any case where the PWC claims there are exceptional reasons for not undertaking a DNA test, DMs should contact their local Parentage Ambassador for advice.

Example

Jane makes an application for maintenance naming Darren as the alleged NRP for QC Bethany. Darren denies parentage of Bethany and claims that he has never had a sexual relationship with Jane. There are no grounds upon which parentage can be assumed and Darren and Jane are offered DNA testing. Darren agrees to the test but Jane states that she has a mental health condition that would prevent her from participating in the DNA testing process.

The DM should contact their local Parentage Ambassador who will be able to support them in deciding the appropriate course of action.

Post MC disputes

45010 If a NRP denies being a parent after the maintenance calculation has been made, DMs will need to consider whether there is conclusive evidence to confirm that the NRP is not a parent of the QC or QCs. This does not relate to arrears only cases, for more information on these see para **45016** below.

45011 Conclusive evidence is either

1. a DNA test result (from an approved tester), **or**
2. a court declaration of parentage or non-parentage.

Note: so called 'peace of mind' DNA tests (those from non-approved testers – see para **45043**) are not legally acceptable for Child Support purposes.

Note: it is CMS general policy not to accept "motherless" DNA tests, however in exceptional circumstances, such as where the biological mother is deceased, a "motherless" DNA test can be accepted as evidence. In all other cases, DMs should refer to their local Parental Ambassador who will liaise with A&G as appropriate.

Conclusive evidence that the alleged NRP is not the parent

45012 If there is conclusive evidence that the alleged NRP is not a parent, the maintenance calculation must be revised to remove the relevant QC¹.

1 CSMC Regs 2012, reg 14(1)(g)

No conclusive evidence that the alleged NRP is not the parent

45013 If there is no conclusive evidence to confirm whether the NRP is a parent of the QC, and there are no grounds that would have allowed for an assumption of parentage pre-initial MC, DMs will need to invite the alleged NRP to take a DNA test to resolve the dispute. For more information on DNA testing see paras **45038 - 45043**.

45014 If the alleged father does not agree to DNA testing, he should be advised of his right to appeal against the decision. See paras **45041 - 45043** for more info.

45015 If a PWC or a QC aged over 16 refuses to undertake DNA testing once a case is established, and provides no good reason as to why the test cannot be undertaken, a decision can be made to close the case, as it cannot be established whether there is a QC in the case.

Note: although the QC will need to be removed from the case from the date they were included, there would be no question of a reimbursement as parentage still has not been proven or disproven. For case specific advice on such scenarios DMs should contact their local Parentage Ambassador.

Arrears only cases

45016 If a NRP disputes paternity on an arrears only case, regardless of which scheme the arrears accrued, the NRP should be advised to seek independent legal advice.

45017 Advice or information regarding DNA tests or court declarations on non-parentage should not be given by caseworkers as there is a risk that information vital to their own particular circumstances may not be fully known or taken into account.

45018 Discussing their case with advisory bodies or other legal professionals will enable the NRP to make a decision on how to pursue the matter, based on independent legal advice.

Assumed parentage

45019 Where a person who is alleged to be a NRP denies that he is one of the child's parents, a maintenance calculation can only be made if an assumption of parentage can be made¹.

1 CS Act 1991 s 26(1)

45020 The circumstances on which a DM can make an assumption about parentage are prescribed in legislation. If none of the assumption grounds apply, then a maintenance calculation cannot be made until the parentage dispute is resolved.

Adoption

45021 An assumption of parentage can be made where the alleged NRP has adopted the child¹.

1 CS Act 1991 s 26(2) Case A

Alleged parent married to child's mother between conception and birth

45022 An assumption of parentage can be made where

1. the child is habitually resident in England or Wales
2. the alleged NRP was married to, or the civil partner of, the child's mother at some time between the date of conception and the date of birth, **and**
3. the child has not been adopted¹.

1 CS Act 1991 s 26(2) Case A1

Alleged parent named on birth certificate

45023 An assumption of parentage can be made where

1. the child is habitually resident in England or Wales
2. the alleged NRP has been registered as a father on the child's birth certificate, or any relevant register, **and**
3. the child has not subsequently been adopted¹.

1 CS Act 1991 s 26(2) Case A2

DNA test refused by NRP or DNA test confirms parentage

45024 An assumption of parentage can be made where a DNA test would determine the child's parentage and

1. the NRP refuses to take a DNA Test, **or**

2. a test has been undertaken and there is no reasonable doubt that the NRP is the parent¹.

CS Act 1991 s 26(2) Case A3

Parental Orders

45025 An assumption of parentage can be made where a court parental order has been made under

1. section 30 of the Human Fertilisation and Embryology Act 1990, **or**

2. section 54 or 54A of the Human Fertilisation and Embryology Act 2008¹.

1 CS Act 1991 s 26(2) Case B

45026 Such orders may be made where

1. neither party making the application for the parental order was the woman who carried the child,
and

2. the gametes (the sperm and ovum) of either or both of the applicants have been used in creating the embryo.

Child conceived by assisted reproduction

45027 An assumption of parentage can be made where a child was conceived by assisted reproduction under the conditions set out in

1. section 27 or 28 of the Human Fertilisation and Embryology Act 1990, **or**

2. sections 33 – 46 of the Human Fertilisation and Embryology Act 2008¹.

1 CS Act 1991 s 26(2) Case B1

45028 In such cases the mother is the person who has carried the child as a result of the placing in her of an embryo or of sperm and eggs and where the child has not subsequently been adopted.

45029 In addition to the requirement in para **45025** further conditions must be met depending on whether treatment took place before or after 6 April 2009.

Treatment before 6 April 2009

45030 If the person carrying the child was married at the time the treatment took place, the husband is the father, whether or not the husband's sperm was used to create the embryo, as long as he consented to the treatment.

45031 If the person carrying the child was not married at the time the embryo was implanted, but was receiving treatment together with a partner, even if his sperm was not used to fertilise the egg, then that partner shall be treated as the legal father of the child.

45032 Where the sperm is donated by another man who gives consent to his sperm being used in fertility treatment by the clinic, he is not to be treated as the legal father of the child¹.

1 HFE Act 1990, s 27 & 28

Treatment after 6 April 2009

45033 If the person carrying the child was married to a man, at the time treatment took place, the husband is the father, whether or not the husband's sperm was used to create the embryo, unless he did not consent to the treatment or at the time of the treatment was legally separated from the woman.

45034 If the person carrying the child was not married to a man at the time the embryo was implanted, but was receiving treatment together with a male partner, then even if his sperm was not used to fertilise the egg, that partner will be treated as the legal father of the child, as long as he has given his written consent and the mother consented to the man being regarded as the child's father.

45035 If the person carrying the child was married to a woman, or in a civil partnership, the other party to the marriage or civil partnership is considered to be the parent, unless it is shown that she did not consent to the treatment taking place.

45036 If there is not a civil partnership, but the mother is in a relationship with a woman, that woman is to be treated as a parent of the child, as long as the "agreed female parenthood" conditions are met. These include things such as each woman giving to the other a notice stating that they consent to the partner being treated as a legal parent to the child¹.

1 HFE Act 2008, s 33 – 46

Court declaration states alleged parent is the child's parent

45037 An assumption of parentage can be made where

1. there is a court declaration that the alleged NRP is a parent of the child in question under section 55A or section 56 of the Family Law Act 1986, **or**
2. there is a declarator by a court in Scotland that the alleged NRP is a parent of the child in question, **and**
3. the child has not subsequently been adopted¹.

1 CS Act 1991 s 26(2) Cases C

Child habitually resident in Scotland and legal presumption applies

45038 A presumption of parentage can be made in relation to a child who is habitually resident in Scotland, if one of the presumptions set out in section 5(1) of the Law Reform (Parent and Child) (Scotland) Act 1986, applies¹.

1 CS Act 1991 s 26(2) Case E

45039 In such cases parentage can be presumed where

1. the NRP was married to the mother of the child at any time in the period between conception and birth, or if that does not apply
2. the NRP and the mother of the child have acknowledged that he is the father and he has been registered as such in any register of births¹.

1 LR (PC)(S) Act 1986, s 5(1)

Alleged parent found to be the father through court proceedings

45040 An assumption of parentage can be made where

1. the alleged parent has been found to be the father of the child
 - 1.1 in civil proceedings before any court in England and Wales which are relevant proceedings under section 12 of the Civil Evidence Act 1968,
 - or**
 - 1.2 in affiliation proceedings before any court in the United Kingdom, and that finding or adjudication still subsists, **and**
2. the child has not subsequently been adopted¹.

1 CS Act 1991 s 26(2) Case F

Note: where parentage can be assumed, it must be. However, if a ground for assumption has been provided but before the initial MC is calculated the alleged NRP provides conclusive evidence that they are not the father, the initial MC must be completed and then revised to close the case.

DNA testing

45041 Deoxyribonucleic Acid or DNA profiling is the analysis of a person's unique genetic blueprint, which shows who are the parents of a child. The result of DNA paternity testing is virtually conclusive, as the chance that two people have the same pattern is extremely low. Identical twins are the exception, as they have the same DNA structure.

45042 The CMS can arrange for DNA tests to be carried out by approved provider Cellmark Ltd, in order to resolve a parentage dispute, if both parties agree and where discussions with both parties have failed to resolve the dispute.

Note: some test providers offer what are known as `peace of mind` tests. These are not acceptable for Child Maintenance purposes. Such tests can often be identified by the inclusion, by the tester, of a disclaimer to the effect that the test result may not be defensible in a court of law for the establishment of paternity and other legally related issues and that the result from the test is only for personal knowledge.

NRP will not agree to DNA testing

45044 If parentage is disputed prior to the initial MC but the NRP will not agree to DNA testing DMs must consider whether there are grounds upon which parentage can be assumed, see paras **45016 - 45037**.

45045 If parentage is disputed after the initial MC has been made and the NRP refuses to participate in DNA testing without good reason and where no other conclusive evidence is available, the case will continue.

45046 Where the NRP's reason for not participating in DNA testing is that he cannot afford the test fee, the CMS can agree to pay the fee on their behalf. However, the NRP must agree to repay the fee if the test proves that they are the parent. See para **45063** for more information on who pays for DNA testing.

NRP agrees to testing by Cellmark

45047 If the NRP agrees to DNA testing by Cellmark, DMs will need to obtain consent from

1. the PWC, **and**
2. the QC if they are aged 16 or over.

45048 Where consent has been given verbally, written consent must also be obtained for disclosure of the PWC's name and address to Cellmark.

45049 Where DMs receive information indicating that a person who is required to provide a DNA sample, has a mental illness which requires them to have a representative who has power of attorney, DMs will need to obtain consent from the person with responsibility for the individual.

PWC or QC refuses to give consent

45050 If the PWC or the QC (if they are aged 16 or over) refuses to undertake DNA testing once a case is established and if they provide no good reason for refusing to undertake a test, DMs should inform the PWC that, if the CMS cannot determine conclusively that the QC is the NRP's child, they may be forced to remove the child in question from the case, from the date they were first included. If they are the only

QC this would also result in the case being closed.

45051 If the PWC remains opposed to DNA testing, DMs should contact their local Parentage Ambassador for advice.

45052 Spare

45053 Spare

45054 Spare

45055 Spare

DNA test outcomes

Pre initial MC cases

45056 If the DNA test confirms the NRP is a parent of the QC, the DM will proceed with the case as normal notifying both parents that the dispute has been resolved.

45057 If the DNA test confirms the NRP is not a parent of the QC, the application should be closed, unless there are other QCs for whom the NRP is the parent.

Post initial MC cases

45058 If the DNA test confirms the NRP is a parent of the QC, the DM will proceed with the case, notifying both parents that the dispute has been resolved.

45059 If the DNA test confirms the NRP is not a parent of the QC, the MC should be revised to remove the relevant QC from the date they first featured in the maintenance calculation¹ This will usually be the initial effective date, but could be a later date depending on when they joined the case.

1 CSMC Regs 2012, reg 14(1)(g)

45060 If the child being removed is the last QC in the case then the case should be closed. If there are QCs remaining for whom the NRP is the parent, then the maintenance calculation will continue for those QCs.

45061 Payments already made by the NRP before they raised the dispute may or may not be refundable. Refer to [Chapter 59: Overpayments](#) for further advice about when a refund or reimbursement will be appropriate.

45062 Any arrears of child maintenance for periods before the parentage dispute was raised should not be pursued, since the liability no longer exists.

Note: Either the PWC or the NRP has the right to challenge the outcome of a DNA test. On receipt of a challenge DMs must refer the case to FIU for further investigation.

Who pays for DNA testing

45063 If the alleged parent states that they cannot afford to pay the cost of the DNA test, consider if the alleged parent is eligible for payment assistance. This is a discretionary decision based on the circumstances of the case. There is **no** set income limit for payment assistance and each case must be considered on its own merits.

45064 During the provisional calculation stage a breakdown of the alleged parent's ability to pay is performed. Go to the most recent calculation SR and select the calculation breakdown button to view the alleged parent's finances. Make a note of any decision made with regards to payment assistance including the amount, if awarded, within the notes section of the parentage SR and the case notes. The alleged parent's outgoings should also be considered as part of this decision.

45065 Advise the alleged parent that, if eligible to pay, they must agree to repay the cost of the DNA test if they are proven to be the parent of the child/ren. The offering of payment assistance is discretionary; however, a team leader must agree to the offer of payment assistance and update the parentage SR notes to confirm the offer of payment assistance before continuing.

45066 Where an application for child maintenance has been made or a maintenance calculation is already in place and the CMS have paid for scientific tests to be carried out to determine whether the alleged NRP is a parent of the QC, any fee paid by the CMS can be recovered from the NRP if

1. the results of the tests do not exclude the alleged parent from being one of the child's parents; and either
2. the alleged parent does not deny that he is one of the child's parents, **or**
3. a court declaration has been made that the alleged parent is a parent of the QC¹.

1 CS Act 1991, s 27A

DNA testing brothers and identical twins

45067 If the alleged NRP disputes being the father because he states his brother had a sexual relationship with the PWC, and DNA testing is to be undertaken, the company carrying out the testing must be notified that there is a possibility that a "first degree male relative" could be the father.

45068 There is no DNA test available that can confirm a father's identity if the alleged NRP is an identical twin. In these circumstances, the DNA test can only confirm either that both of the identical twins **could** be the parent or that neither of them is.

45069 If the alleged NRP disputes being the father because they state their identical twin had a sexual

relationship with the PWC, they will be required to provide evidence. See [Chapter 99 Evidence – other factors affecting the MC](#).

45070 If the DNA test is positive, and the alleged NRP still claims that their identical twin brother had a sexual relationship with the PWC, the case will continue and the alleged NRP will need to consider going to court for a declaration of parentage as conclusive evidence of paternity. DMs should seek the advice of their local Parentage Ambassador in such cases.

Chapter 46 - Correction of decisions

Introduction

46001 An accidental error in a Secretary of State decision made under the child support legislation¹, or in any record of such a decision, may be corrected² by the Secretary of State.

This guidance explains

[What is an accidental error?](#) 46002

[What is a correction?](#) 46003

[When a correction can be applied](#) 46004

[Multiple accidental errors reported by client](#) 46005

[Accidental errors reported by client after 30+2 days](#) 46006 - 46007

[Notifications, mandatory reconsiderations and appeals](#) 46008 – 460011

1 CS Act 1991; 2 CSMC Regs 2012, reg 27A

What is an accidental error?

46002 An accidental error is the legislative term¹ used to describe any error, for instance a mistake in transcription, made by a DM where the correct information is known at the time the error occurred. In other words, the true facts are known but incorrect information has been entered. It may be corrected at any time. Such a correction is to be treated as a part of the decision or record.

1 CSMC Regs 2012, reg 27A

Example

NRP Neil's income is £290.00 per week but, on 5 February 2019 when entered onto the system (for a maintenance calculation), it is entered as £920.00, in error. Neil contacts the CMS 15 February 2019 (within time, see paragraph **46005**) to point out the accidental error in the level of his income, which can immediately be seen when the decision is looked at. The DM will correct the decision and a new notification will be issued to Neil and the PWC.

Note: Neil would not have a right of appeal regarding the income error, however does have the right to appeal the new notification decision.

What is a correction?

46003 A correction is intended to redress simple accidental errors identified by the client. It offers a

light touch approach, where the alternative would be the use of a mandatory reconsideration and result in clients then being able to appeal.

When a correction can be applied

46004 Although an accidental error can be corrected at any time, corrections can only be applied to decisions relating to the maintenance calculation **without** the need for a review of the decision, where an error is identified in

1. a decision that has been made relating to the maintenance calculation
2. a challenge that has been raised by a client, **and**
3. the challenge is raised 'within time' (30 + 2 days from the date the decision was notified), **and**
4. the only issue is that the challenge has identified a single accidental error made by the Secretary of State.

Multiple accidental errors reported by client

46005 If the client raises more than one accidental error, or any other issue(s) in addition to a single accidental error, a mandatory reconsideration (revision) may be appropriate. Refer to [Chapter 47: Mandatory Reconsideration](#) for further guidance.

Note: As part of that mandatory reconsideration action, any accidental errors should be put right (revised), regardless of the further issue(s) raised by the client.

Accidental error(s) reported by client after 30+2 days

46006 Where a client contacts CMS more than 30+2 days after a decision is made, to notify there is an accidental error, or accidental errors, in that decision, the decision may be revised, not corrected. It does not matter if the client provides good reason for any delay in making contact, as the outcome should be the same: the decision should be put right with no new appeal rights being created. Appeal rights may follow after revision of a decision¹. See [Chapter 48 Appeals](#).

1 CSMC Regs 2012, reg 14A

46007 Where additional issues are reported at the same time as accidental errors, after 30+2 days, the accidental errors should be dealt with as detailed in paragraph **46006**, and the additional issues should be dealt with as a separate revision. If a decision arose from an official error, this provides grounds for revision¹. Refer to [Chapter 42: Revisions](#).

1 CSMC Regs 2012, reg 14(1)(e)

Notifications, mandatory reconsiderations and appeals

46008 Where a correction is made, both clients must be notified in writing. The DM must give written notice of the correction as soon as practicable, to any persons notified of the original decision¹.

1 CSMC Regs 2012, reg 27A(3)

46009 The effect of this notification will be to extend the period for a mandatory reconsideration to 30 days plus 2 days following the date the correction notification is issued.

46010 A correction is treated as part of the decision that it corrects. In calculating the time within which an application may be made for a revision no account is to be taken of a day falling before the day on which notice of any correction was given¹.

1 CSMC Regs 2012, reg 27A(4)

46011 If a challenge is raised within this timescale then mandatory reconsideration procedures and subsequent appeal rights will apply.

Chapter 47 - Mandatory reconsideration (MR)

47001 Legislation¹ requires a person to request the revision of a Secretary of State decision before they accrue a right of appeal.

WR Act 2012, s 102 and Schedule 11

This guidance explains

[What is a MR](#) 47002

[What decisions are subject to MR](#) 47003 - 47006

[Policy and legal principles](#) 47007 - 47008

[Exceptional scenarios](#) 47009 - 47014

What is a MR

47002 MR¹ is a request for a decision to be reconsidered. It is a process that must be completed before the right to appeal to an independent tribunal accrues – His Majesty’s Courts and Tribunals Service (HMCTS).

1 CSMC Regs 2012, reg 14A(1)

What decisions are subject to MR

47003 MR applies where a written notice of a decision which contains appeal rights has been issued¹, see [Annex C: Notifications](#) and [Chapter 48: Appeals](#).

1 CSMC Regs 2012, reg 14(1)

47004 Where an appeal is attempted against a decision before an MR has been completed, the appeal can be treated as a request for a revision. Once the decision is made whether to revise or not, this will generate appeal rights¹. See [Chapter 42: Revisions](#) and [Chapter 48: Appeals](#).

1 CSMC Regs 2012, reg14A(4)

47005 MR will apply to any original decision made on or after 28 October 2013. An original decision is the first time the decision was made. Original decisions therefore are

1. initial decisions,¹
2. supersession decisions,²
3. default maintenance decisions,³

4. revisions⁴

1 CS Act 1991, s11, ; 2 CS Act 1991, s17; 3 CS Act 1991, s12; CS Act 1991, s20(1)(a)

47006 Decisions subject to MR include any decision made to decline or reject a change as evidence was not received within 14 days, but evidence is then received within allowable time. This is 30 days + 2 days for posting, from the date the decision to decline or reject the change was made.

Note: this can apply when a new application is made and the application is rejected by the CMS. See [Chapter 5: Meaning of certain terms](#).

Note 2: For variation application decisions see **47011-47014**.

Note 3: For “slip of the pen” errors (e.g. transposing two numbers by mistake when recording a person’s income) follow the light touch process (meaning DMs can put the decision right rather than handing the case off to an MR trained colleague). See [Chapter 46: Corrections of decisions](#).

Policy and legal principles

47007 In order to consider a MR

1. a client must request the reconsideration (not the SoS or a third party). Revisions undertaken when not client-driven (such as when an “official error” is discovered) will not lead to a right of appeal accruing, but a client would be entitled to request a MR of such a decision.

2. the request to reconsider a decision must be made “in time”¹, which is within 30 days of the date of notification of the decision. If a client makes their request beyond this time the caseworker should consider if the request may still be accepted as a late request for revision. There is no upper limit to this timescale, however the client would need to provide good reason for their delay and the longer the time taken to make the request the more exceptional must be the reasons². See [Chapter 42 Revisions](#).

1 CSMC Regs 2012, reg 14(1); 2 CSMC 2012, reg 15

Example 1

Original decision notified on 01/11/13. NRP John requests that a decision be looked at again on 06/12/13 (almost 1 week beyond the 30-day timescale). John’s request is late but he explains that he has just returned from a month-long holiday, so could not have got back in touch sooner. The DM decides that this is an acceptable reason for the request being made late, so accepts it. The decision will be looked at again under MR.

Example 2

Original decision notified on 11/05/14. On 13/10/14, NRP Jack requests that the decision be looked at again.

As Jack is late in making the request, the DM asks him to provide a reason for the delay. Jack, who CMG are now attempting to undertake enforcement action against for non-payment of maintenance, states "Because you're trying to take me to court." The DM does not consider that this is sufficiently good reason as to why Jack could not have made their request sooner so refuses to enter into the MR process.

Example 3

Original decision notified on 11/05/14. On 13/10/14, NRP Mary requests that the decision be looked at again. As Mary is late in making the request, the DM asks her to provide a reason for the delay. Mary states, "I was involved in a serious car accident back in mid-May and doctors induced me into a coma to speed up my recovery. I have only been out of hospital for a week now but I can get my doctor to confirm what I've said." The DM considers that this is a sufficiently good reason as to why Mary could not have made her request sooner so accepts the late request and the decision enters into the MR process.

Note: A MR will only be considered where the above legal principles are met and:

-the client is actively disputing a decision and the CMS has previously been notified of the change, **or**

-the disputed decision involves an initial maintenance calculation or a change instigated by the CMS (Annual Review, PCIC, On/Off Benefit via interface)

Where the client is not asking that we reconsider a previous decision, either at the initial maintenance calculation or a subsequent calculation and is reporting new information, then the guidance for supersessions should be followed.

47008 Although not legally required the CMS also expects the following to occur when dealing with MRs:

1. All parties to the case or any other case that could potentially be affected by a change in the decision will be invited to be part of the MR process. This includes any case involving one NRP and two or more PWCs - if the issue raised is specific to one of the cases in particular, all parties must nonetheless be included in the process. For example, this may occur where the issue is around shared care.
2. All elements of the decision being reconsidered will be verified, not just those raised by the client.
3. Any particular decision will only go through the MR process once. Although there is no legal restriction to the number of times a decision could be revised, it only need happen once in respect of any particular decision before a client is directed to make an appeal to HMCTS.

Exceptional scenarios

Parentage disputes

47009 Issues of paternity are exceptional as although they have an impact on the calculation of a maintenance liability and carry an underlying right of appeal, on the basis of parentage must be made to a

court, e.g. magistrates' court rather than to a tribunal. For further guidance refer to [Chapter 45: Parentage disputes](#) for further guidance.

Outside formula MR requests

47010 When a client disagrees with a maintenance liability decision made on their case, they may raise issues which would not affect the decision itself, as they fall outside of the legal formula used to calculate it. Such revision requests are known as outside formula MR requests, and require certain actions depending on the type of request.

1. client is reporting a change that has occurred since the effective date of the decision that has prompted their contact. CofC action should be undertaken rather than a MR. If this is accepted by the client, there is no need to treat this as a MR. Only if the client insists that they wish to appeal the recent decision should an outside formula MR be issued.
2. client contact is in relation to an administrative issue. General client issues such as the quality of service do not affect the calculation of a maintenance liability. The client's issues should be discussed and, if appropriate, they should be referred to Complaints. If this is accepted by the client, there is no need to treat this as a MR. Only if the client insists that they wish to appeal the recent decision should an outside formula MR be issued.
3. client contact is in relation to an administrative issue that is linked to the courts, such as the imposition of a DEO or DO. Where a client is unhappy at court action, they should be signposted back to the relevant court. If this is accepted by the client, there is no need to treat this as a MR. Only if the client insists that they wish to appeal the recent decision should an outside formula MR be issued.
4. client contact is in relation to an issue that may appear to have a bearing on a maintenance calculation, but does not. This could include such things as housing costs, expenses incurred in travelling to and from work and the cost of domestic bills, none of which are taken into account in the 2012 scheme formula. Although we cannot revise the decision this should be treated as an outside formula MR.
5. client contact is in relation to an issue that has no bearing on a maintenance calculation, nor is an alternative course of action relevant. It may be where the client's reasons for requesting revision are unclear or irrelevant, such as simply stating "the decision is wrong". Although we cannot revise the decision this should be treated as an outside formula MR.

Variations as a revision or supersession

47011 Where an application for a variation is received in relation to a recently notified decision, that is

effectively a request for MR as it is asking for a revision of that decision.

47012 In these circumstances DMs should follow the normal variation process, rather than the MR. When a decision is reached, however, all parties to the case or casegroup should be notified of the outcome of the variation activity, to ensure all parties are aware they can apply to HMCTS for an appeal.

47013 The variation notifications issued to the clients in such circumstances will include a statement about their right of appeal but will also contain a message encouraging them to contact CMG in the first instance, if they disagree with the decision. If they choose to follow this approach, the decision will then be looked at again as a full reconsideration.

47014 Where a variation is applied for as a supersession, that is not a request for MR as they are not asking for a decision to be revised. Rather, once the supersession decision is notified, a client would then have to request a MR of that decision before they could seek to appeal.

Refer to Chapter 27 to 36 for variations guidance.

Chapter 48 - Appeals

Introduction

48001 A PWC, NRP or child in Scotland, who disagrees with certain decisions of the DM has the right to appeal to an appeal tribunal and ask that the decision be looked at again¹.

1 CS Act 1991 s20(2)

This guidance explains

[What can be appealed](#) 48002 – 48007

[Who can appeal to a tribunal](#) 48008

[How are appeals made](#) 48009 – 48014

[Can the disputed decision be revised](#) 48015 – 48019

[Time limits for appeals](#) 48020 – 48023

[Responding to appeals](#) 48024 – 48031

What can be appealed

What decisions carry the right of appeal?

48002 An appeal may be made against any decision to

1. make an initial calculation of maintenance
2. make a supersession of a maintenance calculation
3. make a revision of a maintenance calculation
4. refuse to make a maintenance calculation
5. refuse to supersede a maintenance calculation or
6. refuse to revise a maintenance calculation.

48003 An appeal might include a dispute about any of the following

1. income levels
2. effective dates
3. number of ROCs or QCs

Note: this list is not exhaustive.

48004 An appeal may be brought on the grounds of fact or law and the tribunal will deal with the matter by way of rehearing. The tribunal can substitute its own decision or remit the matter back to the CMS with appropriate directions.

What decisions do not carry the right of appeal?

48005 Some decisions may be appealable, but the appeal right only accrues after the decision has been subject to Mandatory Reconsideration first¹. See [Chapter 47: Mandatory reconsideration](#).

1 CSMC Regs 2012, reg 14A

48006 Procedural issues carry no right of appeal such as

1. the rate of regular maintenance or the level of collection for arrears
2. service failures
3. delays in taking action on cases or
4. impolite or inaccurate customer contact

Note: such decisions can be appealed against, but the tribunal will treat any appeals made on this basis as outside jurisdiction.

48007 The following decisions do carry rights of appeal, but any appeal must be made directly to a court, rather than to a tribunal

1. decisions relating to child maintenance enforcement made by a court; rather than the CMS (for example the imposition of a liability order, court orders for levels of care etc. These appeals will be dealt with by the Family Court.)
2. parentage (these appeals would be dealt with by magistrates' courts)
3. appeals against DEOs and DOs (these appeals are dealt with by magistrates' courts)

Who can appeal to a Tribunal?

48008 Appeals against a decision made by the CMS can be made by any party to the maintenance calculation, or a representative acting on their behalf¹, including

1. someone who has been authorised by the CMS to administer the client's application, such as an appointee
2. a solicitor, barrister or legal organisation who is acting for the client in the matter of their appeal
3. an executor who is administering the estate of a client who is deceased
4. person given power of attorney or a similar appointment made by a court

5. a nominated representative who has previously been accepted by the CMS to act on behalf of the client in Child Support matters

6. any person or organisation, when the letter of appeal is accompanied by a letter of authority signed by the client

Note: The DM should not accept an appeal from anyone other than PWC, NRP, child in Scotland or a person acting on their behalf.

1 TP(FtT) (SEC) Rules 2008 r 11

How are appeals made?

48009 An appeal must be made in writing. All appeals made to the CMS are dealt with by the Central Appeals Unit. An appeal cannot be lodged against a decision before the MR process has been completed¹. See [Chapter 47: Mandatory reconsideration](#).

1 CSMC Regs 2012, reg 14A(4)

Note: where an appeal has been attempted before the MR process has been completed, the MR or Revisions process must be completed first. These processes are not dealt with by the Central Appeals Unit. See [Chapter 47: Mandatory Reconsideration](#) and [Chapter 42: Revisions](#).

Is the appeal duly made?

48010 An appeal will be duly made if it

1. has been made by a person with a right of appeal
2. has been made against an identifiable decision that carries a right of appeal
3. has been made against a decision that falls within the tribunal's jurisdiction
4. has been made within the prescribed time limits (including any extension where this can be allowed)¹.

1 SS CS (DA) Regs 1999, reg 33; TP (FtT) (SEC) Rules 2008 r 23

48011 If the appeal is not duly made, the DM should attempt to contact the client for further information. If this is unsuccessful the appeal should be sent to the Tribunals Service for them to decide if it can be admitted.

48012 If the Tribunals Service rejects the appeal, they will inform the CMS and the client that the appeal has been rejected and cannot proceed.

Appeal duly made or admitted by the Tribunals Service

48013 If an appeal is duly made, or is admitted by the Tribunals Service, the DM must notify all parties to the calculation that the appeal has been made. The DM must also ask the parties whether they want any

information submitted by them or the CMS to be edited (for confidentiality of whereabouts only purposes) before it is issued to the other party.

48014 The DM should then check the decision that is being disputed to determine whether it can be revised.

Can the disputed decision be revised?

48015 If the disputed decision can be revised, this may prevent the need for the case to proceed to an Appeal Tribunal¹. Refer to [Chapter 42 Revisions](#) for further advice about the circumstances in which a decision can be revised.

1 SS CS (DA) Regs 1999, reg 30; CS Act 1991, s16

48016 If the decision is altered by BAU and is financially advantageous to the appellant before the appeals officer reviews the decision, the appeal will lapse¹ and the newly revised decision will contain fresh appeal rights.

1 CSMC Regs 2012, sch, para 1

48017 Where an appeals officer reviews the original decision and identifies a revision can be completed without tribunal input which is financially advantageous to the appellant, the appeals officer can take action to revise the original decision and the appeal will lapse. The revision action is taken and all parties including the tribunal will be notified of the outcome.

48018 Where a decision is revised before the appeal is heard and it is not financially advantageous to the appellant, the original appeal will continue against the newly revised decision.

Note: an appeal is raised against an individual decision. A client may raise individual appeals against each decision the client disagrees with.

48019 If the DM decides that the disputed decision cannot be revised they should proceed with the appeal, unless the client informs them that they wish to withdraw their appeal.

Time limits for appeals

48020 An appeal must be made within one month of the notice of the disputed decision being sent to the appellant.

48021 However, if the client requests an explanation of the decision or a revision first, this may change the appeal time limits¹.

1 TP(FtT) (SEC) Rules 2008, Sch 1

Client requested a statement of reasons for the decision

48022 If a written statement for reasons for a decision was requested within one month of that decision, the time limit for an appeal is 14 days after the later of

1. the end of that month or
2. the date on which the written statement of reasons was provided¹.

Late appeals

48023 In some circumstances the tribunal judge may agree to extend the time limit in which an appeal can be made, if they are satisfied that it is in the interests of justice. This means that

1. special circumstances apply and
2. as a result of those circumstances, it was not practicable for the appeal to be made within the normal time limit and
3. no appeal may be brought after 12 months after expiry of the normal time in which the appeal should have been brought¹.

1 TP (FtT) (SEC) Rules 2008, r22

Note: any late appeal must include a request for an extension of time and the reasons why the appeal was not made in time.

Responding to appeals

48024 There is a legal requirement for CMS to respond to appeals within 42 days of being received by the Tribunal Service¹.

1 TP(FtT) (SEC) Rules 2008 r24(1)

48025 The CMS response must set out various matters including

1. the name of
 1. the decision maker and
 2. their representative,
2. an address for service,
3. grounds of opposition to the appeal,
4. copies of written records of
 1. the decision being challenged and
 2. reasons for that decision,
5. copies of all documents and

6. a copy of the notice of appeal with any exhibits received.

48026 The response may also include an invitation for the matter to be dealt with on paper without a hearing.¹ There is no requirement for Family Court permission to disclose information in such Tribunal proceedings.² However, a party may make a confidentiality application under the Tribunal Procedure Rules.

1 TP (FtT) (SEC) Rules 2008, r24; 2 FP Rules 1991, 29.2

48027 The timescale for responding to an appeal may be extended beyond 42 days if a request for an extension is approved by a judicial member. However, requesting such an extension should only be considered in highly exceptional circumstances unless:

1. an appeal is received late and the views of other parties to the case or casegroup are being sought as to whether the appeal should be accepted, but have yet to confirm if the appeal is accepted, or
2. an appeal has been accepted as “duly made” but, after two weeks, there are outstanding confidentiality issues, where one or more of the parties to the appeal have failed to indicate whether or not they require their details to be edited from any written response.

48028 Where CMS are unable to proceed with issuing appeal papers, because it has not yet been established that one or more parties to the appeal require confidentiality editing, a request for an extension of time will be issued as a matter of course.

48029 The tribunal will not consider matters that did not exist at the time of the decision¹.

1 CS Act 1991, s20(7)

48030 Any party to an appeal may request a written statement of the reasons for a decision within a month of the appeal decision being made. This will be provided within a month of the request¹.

1 TP (FtT) (SEC) Rules 2008, r34

48031 An application for permission to appeal to the Upper Tribunal must be brought on a ground of law only and must be brought within a month of the decision and is made to the FtT¹. If permission is refused an application may be made to the Upper Tribunal. An onward appeal lies to the Court of Appeal².

1 TP (FtT) (SEC) Rules 2008, r38; 2, r21; r 44