

## **Volume 4 - Information Gathering (Chapters 37-41)**

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- Chapter 38 - Information gathering
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- Chapter 40 - Credit Reference Agency (CRA) disclosure
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# Chapter 37 - Applications

## Introduction

**37001** The statutory child maintenance scheme is based on the principle that each parent of a QC is responsible for maintaining their children<sup>1</sup>. An application for a child maintenance calculation can be made where the child's parent or parents fail to maintain them.

**Note:** With a view to reducing the need for CMS applications, DMs where they consider it appropriate encourage family based arrangements. On receipt of a CMS application, DMs may invite the applicant to consider whether a family based maintenance agreement could be made<sup>2</sup>. See [Chapter 9 - Child supported under family based arrangements](#) for further guidance.

1 CS Act 1991, s1; 2 CS Act 1991, s9(2A)

This guidance explains:

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## Who is liable to pay or receive child maintenance

**37002** Who is liable to pay or receive child maintenance depends on their role in relation to a QC.

**37003** NRPs must demonstrate that they are meeting their duty to maintain any QCs by paying child maintenance as calculated by the CMS.

**37004** PWCs and PeWCs are not required to demonstrate they are meeting this duty. They are assumed to be doing so through their day to day care of the QCs and are entitled to receive maintenance

payments to help them do this.

**37005** When dealing with a maintenance application, it is important that DMs understand each of the different roles that may be involved in an application. Refer to the appropriate guidance for the definition of

1. Who is a QC? - [Chapter 5 - Meaning of certain terms](#)
2. Who is a child? - [Chapter 5 - Meaning of certain terms](#)
3. Who is a NRP? - [Chapter 5 - Meaning of certain terms](#)
4. Who is a PeWC or PWC? - [Chapter 5 - Meaning of certain terms](#)
5. Persons who are not a PeWC- [Chapter 5 - Meaning of certain terms](#)
6. A child in Scotland – [Chapter 5 - Meaning of certain terms](#)
7. ROC - [Chapter 6 - Relevant other child](#)
8. CIFBA - [Chapter 9 - Child supported under family based arrangement](#)
9. Child abroad - [Chapter 8 - Child of the family or child abroad](#)

### **Who can apply**

**37006** Applications may be made by

1. a PWC<sup>1</sup>
2. a NRP<sup>2</sup>
3. a child in Scotland, aged 12 or over<sup>2</sup>. See paragraph **37007**.

1 CS Act 1991, s4(1); 2 CS Act 1991, s7

### **Applications by a Child in Scotland**

**37007** A QC who is at least 12 years old and is habitually resident in Scotland<sup>1</sup> may apply to the CMS for a maintenance calculation to be made, where an application has not been made by the

1. PWC, and, or
2. NRP.

**Note:** see paragraph **37015** for guidance where an application is also made by the PWC or NRP.

## **Minimum requirements for an application**

### **Minimum requirements: all cases**

**37008** All applications for statutory child maintenance must demonstrate that<sup>1</sup>

1. the child is a QC
2. one or both of the QC's parents is a NRP
3. the NRP is not living in the same household as the QC
4. the QC has their home with the person named as the PWC, and
5. the PWC has day to day care of the QC.

1 CS Act 1991, s3

**37009** At the application stage, DMs can normally accept the applicant's statement that the above criteria are satisfied. It is only if the other party disputes whether one or more of these are met that further investigation would be required by the DM.

### **Minimum requirements: applications by a PWC**

**37010** In addition to the minimum requirements for all cases in paragraph **37008**, a person who applies to the CMS must, so far as they reasonably can, provide such information as is required to enable the DM to

1. identify the NRP or to allow them to be traced (where that is necessary)
2. calculate the amount of child maintenance payable by the NRP, and
3. for that sum to be recovered from the NRP<sup>1</sup>.

1 CS Act 1991, s4(4), and CSMC Regs 2012, reg 9(1)

**37011** Generally, it is beneficial if the applicant has more information about the NRP. However, if an applicant cannot provide at least a first and surname of the NRP, then usually it would be expected that the application cannot proceed.

**Note:** it is not a requirement for the applicant to have the NINO of the NRP in order for the application to proceed.

## How an application can be made

**37012** Applications may be made

1. in writing
2. by phone, or
3. online.

**37013** The CMS's preferred method is for applications to be made via phone, but exceptionally DMs can require an application in writing in appropriate circumstances. For example, if a client wishes to apply over the phone, but has a lot of detailed information they want to provide, then it may be appropriate for the DM to request the application be made in writing.

## When an application can be treated as made

**37014** An application for child maintenance will be recorded as having been made on the day it is received by the CMS<sup>1</sup>

1. for written applications this will mean the date shown on the office date stamp
2. for telephone applications this will mean the date that the telephone conversation takes place
3. for online applications this will mean the date the client pressed the "send application" button.

1 CSMC Regs 2012, reg 9(2)

## Multiple applications

### Multiple applications: the general rule

**37015** If more than one person applies for maintenance for the same QC before the maintenance calculation has been completed, DMs must decide which application should proceed<sup>1</sup>. An application by a PWC or a NRP will take priority over an application made by a child in Scotland<sup>2</sup>. In all other cases, the earlier application will take priority over the one made later<sup>3</sup>.

1 CSMC Regs 2012, reg 10(1); 2, reg 10(2)(a); 3, reg 10(2)(b)

### Example 1

A child in Scotland Jack submits an application for maintenance on 3 June 2019. PWC Jackie submits a separate application on 5 June 2019. Although, Jack's application was submitted earlier, Jackie's application takes priority and will be taken forward. Jack's application will be rejected, although the information contained in that application may still be taken into account by the DM.

### Example 2

PWC David makes an application for maintenance on 5 July 2019. NRP Debbie makes a subsequent application on 6 July 2019. David's application was received first and will be taken forward. Debbie's application will be rejected, although the information contained in that application may still be taken into account by the DM.

### **PeWC applications**

**37016** If a PeWC, for example a grandparent, applies for a maintenance calculation from both of the QC's parents, they will usually do this in a single application. However, if they make these applications separately, both applications should proceed and will be treated as a single application<sup>1</sup>.

1 CSMC Regs 2012, reg 10(3)(a)

**37017** Where the QC is cared for by a PeWC and both NRPs apply for a maintenance calculation, CMS will treat it as a single application<sup>1</sup>.

1 CSMC Regs 2012, reg 10(3)(b)

### **More than one PWC applies for maintenance**

**37018** If more than one person applies for a maintenance calculation on the basis that they are a PWC in respect of the same QC, DMs should consider whether both or all the applicants have parental responsibility (Parental Rights in Scotland) for the QC.

**37019** In these circumstances, DMs should only consider processing the application(s) made by individuals who can demonstrate that they have parental responsibility or rights. If only one of the applicants can demonstrate this, their application would proceed and the other application(s) would be rejected.

**37020** If more than one of the applicants has parental responsibility or rights, the general rule will apply and the earliest application will take priority, see paragraph **37015**.

### **Jurisdiction**

**37021** DMs have jurisdiction to make a maintenance calculation if the

1. PWC
2. NRP, and
3. QC

are all habitually resident in the UK<sup>1</sup>.

1 CS Act 1991, s 44(1) and CS (MAJ) Regs 1992, reg 7A

## What is the UK?

**37022** The UK means Great Britain and Northern Ireland. Great Britain includes England, Scotland and Wales, and some islands near to the mainland such as Orkney, Shetland, the Hebrides, the Isles of Scilly, the Isle of Wight and Lundy.

**37023** The UK does not include<sup>1</sup>

1. the Isle of Man
2. the Channel Islands
3. Gibraltar
4. British ships on the high seas other than Royal Navy vessels
5. British owned aircraft flying over the high seas or another State
6. British embassies or other diplomatic buildings abroad
7. British military bases abroad (see paragraphs **37035** to **37036** PWC living abroad exceptions).

**Note:** the territories at 1, 2 and 3 are separate Crown dependencies. Although Gibraltar is treated as part of the UK for some EU purposes, it is not part of the UK for child support purposes.

11 Act 1978, Sch 1

## Habitual residence

**37024** A habitual residence decision is a discretionary decision made by the DM, based on the balance of probability. For more information on discretionary decisions refer to [Chapter 96 - Evidence and decision making](#).

**37025** Habitual residence can be considered in four categories

1. **Actual habitual residence** - when a child maintenance application is received DMs need to be satisfied that all participants (the PWC, the NRP and the QC) are habitually resident in the UK. The exception to this rule is if the PWC is an organisation, in which case it does not have to meet the habitual residence requirements<sup>1</sup>. In order to meet the habitual residence requirements, two conditions must be satisfied (see also paragraph **37026** below)

1.1 the person must be resident in the UK (they must have established a home in the UK). The intention to establish a home in the UK is not sufficient, **and**

1.2 the person must have been resident in the UK for an appreciable period of time<sup>2</sup>. See paragraphs **37031** to **37034** for guidance on temporary absence.

**Note:** a person can habitually reside in more than one country, or in none<sup>3</sup>.

1 CS Act 1991, s44(2); 2 *Nessa v Chief Adjudication Officer* [1998] 2 All ER 728; 3 *CCS/2314/2008; AF v SSWP (CSM)* [2009] UKUT 3 (AAC); *Armstrong v Armstrong* [2003] EWHCC 777 (Fam), [2003] 2 FLR 375

**2. Retained habitual residence** - this applies where the CMS have been notified that one of the participants in the case has left the UK.

Where a person leaves the UK in circumstances that do not bring habitual residence to an end, the starting point in considering whether habitual residence is retained is the point at which the person leaves the UK, rather than the point at which they come back. DMs should consider what their intention was at the time the person left the UK (see also paragraphs **37027 – 37036** below).

**3. Resumed habitual residence** - this must be considered by the DM when someone who was habitually resident returns to the UK after a period where habitual residence was lost. This is established in a similar way to actual habitual residence although the appreciable period may be reduced or removed. This does not mean that habitual residence can be automatically resumed, and the following additional points must be considered:

3.1 the circumstances causing them to leave the UK

3.2 what links to the UK were retained during the period they were away, **and**

3.3 the circumstances causing them to return to the UK<sup>1</sup>.

1 R(CS) 5/96

**4. Deemed habitual residence** - an NRP may be deemed to be habitually resident where they are not resident in the UK but are employed abroad by<sup>1</sup>

4.1 the armed forces the civil service

4.2 a company registered in the UK, whose payroll is UK based

4.3 the NHS, or

4.4 a Local Authority.

1 CS Act 1991, s44(2A) and CS (MAJ) Regs 1992, reg 7A

**37026** When deciding whether the habitual residence requirements have been met DMs must consider

1. the length and continuity of residence in the UK



2. the length and purpose of any absence from the UK
3. their reasons for leaving the UK
4. the person's future intentions
5. the nature of the person's work
6. where the person's centre of interest lies, and
7. whether the person has a substantial connection with a place.

### **Has habitual residence been lost**

**37027** There may be circumstances where an individual no longer meets the habitual residence requirements, and in those circumstances DMs may also need to make a decision about whether habitual residence has been lost<sup>1</sup>.

1 (R(CS)(5/96))

**37028** In determining whether a person has ceased to be habitually resident, DMs must consider all the circumstances and determine whether, on the balance of probability, there is no longer the intent to regard the UK as a home (there can be more than one country regarded as a home). Important factors to consider are

1. the nature and degree of the person's past and continuing connection with the UK and their intentions as to the future. It is not enough merely to look at the length and continuity of their actual residence abroad
2. the length and continuity of the residence before the person moved
3. the length and purpose of their absence
4. the nature of the occupation in the country where they have moved.

**37029** A person who leaves the UK intending never to return to reside stops being habitually resident in the UK on the day s/he leaves<sup>1</sup>. Decisions must be made on the circumstances of each case, and on the settled intentions of the person in question<sup>2</sup>. There must be at least minimum evidence that the person has no intention to continue residence in the UK.

<sup>1</sup> *Re J (A Minor) (Abduction: Custody Rights)* [1990] 2 AC 562; 2, CCS/3574/2008, *H v CMEC* [2009] UKUT 84 (AAC)

**37030** Where the person leaving a country takes all their possessions, does everything necessary to establish residence in the new country before going there, seeks to take a family, already has 'durable

ties' to the country of new residence and severs ties with their former home, some or all of this may suggest they have ceased to be habitually resident in the latter country. Someone who goes abroad to take up a job without these sorts of indicators, however, would not, in general, lose their habitual residence immediately<sup>1</sup>.

1 CSCS/06/06 and Lord Slynn in *Nessa v Chief Adjudication Officer* [1999] 4 All ER 677, applied in *Gingi v SSWP* [2001] EWCA Civ 1685; *AJ v DM* [2019] EWHC 702 (Fam)

## **Temporary absence**

**37031** Temporary absences must be considered if the person concerned intends to return to the UK. A person returning after an absence for a period of time may still be considered to be habitually resident for CMS purposes. DMs will need to consider the circumstances of each case, taking into account factors such as

1. the length of the absence
2. if and when the absence is likely to end
3. the purpose of the absence, and
4. whether there is an intention to return.

**37032** DMs should not normally accept an absence of more than 12 months as temporary unless

1. there are special circumstances, such as an accident which delays the person's return, or
2. there is a reasonable prospect of the absence ending.

**37033** An absence from the UK should not necessarily be regarded as temporary because it has not lasted 12 months. DMs may decide from the start that an absence is not temporary, for example, if the DM is satisfied that the person intends to be away from the UK indefinitely or for a set period of time which is longer than 12 months.

**37034** A temporary absence should cease to be deemed as temporary if the person decides to stay outside the UK permanently, or if it becomes uncertain if they will return.

**37035** If an intended permanent absence becomes temporary, for child support purposes that absence is still deemed as permanent.

## **PWC living abroad exceptions**

**37036** If a PWC applies for child support maintenance and they are living overseas with their partner who is a member of the Armed Forces, the Diplomatic Service or the Overseas Civil Service, the normal habitual residence rules will apply to the applicant. It is likely in such circumstances that the partner, as a

member of the Armed Forces, Diplomatic Service or the Overseas Civil Service, is habitually resident in the UK.

**37037** However, the individual factors of each case, including things like the location of the family's main home, whether the PWC receives CHB for the QC and their future intention as to residence, must be considered.

### **Deciding on habitual residence**

**37038** If DMs are satisfied that all parties to a maintenance calculation (the PWC, the NRP and the QC(s)) are habitually resident in the UK

1. for new cases, the DM should proceed with the application , or
2. for an existing case, the case should remain open and any liability should be ongoing.

**37039** However, if the DM decides that a party to a maintenance calculation is not habitually resident in the UK they should

1. reject the application, or
2. for an existing case, close the case.

**37040** Any decision must be based on the facts available and any evidence supplied at the time the decision is being made and fully recorded.

### **Reciprocal Enforcement of Maintenance Orders (REMO)**

**37041** REMO is the name used in the UK for international claims for family maintenance, the process by which a person may claim financial support from an ex-partner living in a different country. In the UK, HMCTS process REMO claims.

**37042** The UK has arrangements with more than 100 countries and territories that allow a person living in one jurisdiction to claim maintenance from an ex-partner living in one of those countries or territories.

**37043** If it has been deemed that a NRP is not within the CMS's jurisdiction, PWCs should be directed to <https://www.gov.uk/child-maintenance-if-one-parent-lives-abroad/overview> for REMO information and a list of the applicable countries and territories.

**37044** Additionally, PWCs can be provided with contact information for REMO if they need further advice:

England: tel 01284 829518, email [mebc.bse@justice.gov.uk](mailto:mebc.bse@justice.gov.uk)

Wales: tel 0300 303 5175, email [mebc.wales@justice.gov.uk](mailto:mebc.wales@justice.gov.uk)

**37045** Where any party is dissatisfied with a habitual residence decision, they have the legal right to ask the CMS to look at the decision again and to appeal against it.

### **Maintenance orders and agreements**

**37046** An application for child maintenance cannot be accepted where certain types of maintenance orders and agreements are in force. Refer to [Chapter 12 - Court Orders](#) for guidance.

### **NRP notice of application**

**37047** When an application for child maintenance has been made, the NRP must be 'notified' of the application by the CMS in writing as soon as possible. This requirement also applies where the NRP made the application.

1 CSMC Regs 2012, reg 11

**37048** In most cases, notice of the application will include a provisional calculation. However, this will not be possible if there is no income information available. In these cases, the NRP will be asked for details of their current income. The notice of application must inform the NRP of the CMS's power to estimate income or apply a DMD if they fail to provide the information needed.

### **Determining the "household"**

#### **NRP claims they live in the same household**

**37049** If the NRP claims that they live in the same household as the QC, DMs will need to ask them to provide a range of evidence concerning their living arrangements. DMs should also request comments from the PWC.

**37050** When the NRP and PWC have both had the opportunity to provide information and/or evidence, DMs will need to decide on the balance of probabilities whether the NRP does live in the same household as the QC.

#### **Household - points to consider**

**37051** Household is not defined in legislation. However, it should not be presumed that because the NRP and the child share the same address, they share the same household. There may be more than one household at a single address, particularly where the address in question is the former matrimonial home.

1. Living areas - does the NRP share areas of the house with the PWC and, or the QC? For example: do they sit and watch television together and eat at the same dining table? Or do they have their own designated areas?

2. Food - does the NRP buy, prepare and cook food for the QC or do they only do this for themselves? Is the food between the NRP, PWC and QC stored together?

3. Household bills - does the NRP contribute towards household bills or only pay for what they use?

4. Laundry and cleaning - does the NRP ever do any of the QC's laundry?

**37052** If the majority of the answers to the above questions indicate that living areas, food, household bills, laundry and cleaning etc. are shared, it is reasonable to assume the party lives in the same household as the child. In these circumstances, there is no NRP and the case should be closed.

**37053** If the majority of the answers to the above questions indicate the NRP has separate living areas and responsibility for their own food, bills and cleaning, it is reasonable to assume they do not live in the same household as the child and can be treated as a NRP.

### **Example 1**

NRP Derek shares the same address as PWC Jean and QC Angela. The house is a 3-bedroom semi-detached. Derek has his own bedroom, but shares the same bathroom, kitchen, living and dining room. Derek and Jean sometimes sit and eat dinner together with Angela and they sometimes prepare and cook Angela's dinner. Derek shares the household bills with Jean, although Jean does pay out more on these bills because she earns more money than Derek. Derek could be considered to be living in the same household as Angela.

### **Example 2**

NRP Janice shares the same address as the PWC Dean and QC Carol. The house is a 3 bedroom semi-detached. Janice has her own bedroom, but shares the same bathroom and kitchen. Janice always buys, prepares and cooks her own dinner and always eats in her bedroom. Janice and Dean never share preparing or cooking food for Carol. Janice and Dean do not use the living or dining room and do not share the household bills. Janice could be considered not to be living in the same household as Carol.

# Chapter 38 - Information gathering

## Introduction

**38001** Gathering information effectively helps CMS to determine the most appropriate civil enforcement action available to try and collect child maintenance arrears, and to undertake that enforcement action.

This guidance explains

[What types of information parties can be compelled to provide?](#) 38002 - 38003

[Sources of information](#) 38004

[Who can be compelled to provide information for collection and enforcement?](#) 38005

[Duty to provide information](#) 38006 - 38007

[Failure to provide information: Information offences](#) 38007 - 38014

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## What types of information can parties be compelled to provide?

**38002** There is a duty imposed on a prescribed list of persons to provide DMs with information or evidence that is needed for the determination of applications under the Child Support Act 1991, including for the purposes of determining questions, decisions (including the imposition of conditions or requirements), or collection and enforcement associated with an application (see also [Chapter 37: Applications](#))<sup>1</sup>.

1 CSI Regs 2008, reg 4

**38003** The duty to provide information is broad, and it can include (amongst other things) requiring information to be provided about the NRP's

1. property, any intention to sell or otherwise dispose it, or any recent disposal
2. assets such as money owed or due to be paid to them under a contract, or lump sums due to be paid to them such as endowment policies or pension payouts
3. bank details
4. professional status, and

## 5. contact information

### Sources of information

**38004** A number of sources can be used to obtain information to support civil enforcement decision making, some of which are publicly available and others which we have the specific power to obtain<sup>1</sup>

1. Benefit screens, Child Benefit and CIS - These sources can be used to confirm or obtain details of the NRP's address, bank details, contact numbers and benefit awards
2. Public Sector Gateway (PSG) - PSG can be used to check for up to date details of names and address history. It can also be used to check whether the NRP has a bank account, mortgage, loans or credit cards. It can also indicate whether the NRP is up to date with loan or credit card payments and whether there is an IVA or Bankruptcy Order in place.
3. Bank Wizard - If the NRP's sort code and account number are known, Bank Wizard can be used to obtain details of their bank name and branch.
4. Companies House - Companies House can clarify whether the NRP is the director of a company
5. Employers - Employers can provide evidence of the NRP's address, bank details and income where necessary
6. Accountants - Accountants may be able to provide bank details as well as evidence of income and assets, including shares and property
7. Local authorities - Local authorities can provide address details (including work address), bank details and indicate whether a property is privately owned. Outside London, local authorities are responsible for licensing taxis and Private Hire Vehicles (PHVs). Therefore, where the NRP is a taxi driver (outside London). The taxi licensing department can provide evidence of address including work address, make, model and registration of vehicles, how private hire licenses are paid for and the date the licence expires
8. Transport for London (TFL) - In London, taxis and PHVs are licensed annually by TFL.
9. Land Registry - If there is information or evidence to indicate that the NRP owns property in England or Wales, then ownership can be confirmed by obtaining Land Registry Official Copies. These copies will also confirm whether the NRP is the sole or joint owner
10. Registers of Scotland - If there is information or evidence to indicate that the NRP owns property in Scotland, then ownership can be confirmed by obtaining the Title Sheet Record
11. Mortgage Providers - If there is information to indicate that the NRP owns property and details of a mortgage provider are known the mortgage provider can be contacted and asked to provide further information. This information may be for the purpose of tracing the NRP, carrying out a

maintenance calculation or enforcing arrears under a charging order or order for sale

12. Occupational Pension Providers - Whilst pension income information is provided through HMRC, information may be required from pension providers for the purpose of carrying out a variation to the calculation of income, due to diversion of funds into a pension

13. The Driver and Vehicle Licensing Agency (DVLA) – Where details of a NRP's vehicle and registration number are known, DVLA are required to provide information enabling the NRP to be traced

14. Driver Validation Service (DVS) - The DVS facility may be used for FIU and Enforcement Agent purposes. In addition to providing details of any vehicles the NRP may own, search of the DVS site can be used to establish if there is a photograph of the NRP that could be downloaded to identify the NRP

**Note:** the photograph can be provided to the Enforcement Agents, as an additional means of identifying the NRP

15. Prison Service - If CMG are informed that the NRP is, or is believed to be, in prison, but cannot provide further details, DMs can contact either the National Offender Management Service (NOMS) or Her Majesties Prison Service (HMPS)

16. Internet - The internet can be accessed to gather information regarding the NRP, for example from a company website if they own one.

1 CSI Regs 2008, reg 4

## **Who can be required to provide information for collection and enforcement?**

**38005** The following parties<sup>1</sup> can be required to provide information to DMs

1. the NRP, unless the alleged NRP has disputed parentage, except where parentage can be assumed<sup>2</sup> (see [Chapter 45 - Parentage Disputes](#) for more information)
2. a current or previous employer of the NRP
3. a person for whom the NRP is providing or has provided services under a contract for services
4. a person who acts or has acted as an accountant for the NRP
5. a person, other than the applicant, who provides day to day care for a child in respect of whom an application for a maintenance calculation has been made or in respect of whom a maintenance calculation is or has been in force
6. a credit reference agency within the meaning given by the Consumer Credit Act 1974



7. a local authority in whose area the NRP or the PWC resides or has resided
8. employees in the service of the Crown or otherwise in the discharge of Crown functions
  - 8.1 under the Road Traffic (Northern Ireland) Order 1981, sections 97 to 99A of the Road Traffic Act 1988 or Part II of the Vehicle Excise and Registration Act 1994; or
  - 8.2 under the Prison Act 1952, the Prison Act (Northern Ireland) 1953 or the Prisons (Scotland) Act 1989
9. a person who, in the course of business, may lawfully accept deposits in the United Kingdom
10. a person who, within the meaning of the Electricity Act 1989, distributes or supplies electricity
11. a person who is the holder of a licence under section 7 of the Gas Act 1986 to convey gas through pipes or the holder of a licence under section 7A(1) of that Act to supply gas through pipes
12. a qualifying lender (within the meaning given in s19(7) of the Welfare Reform and Work Act 2016)
13. a trustee, manager or administrator of an occupational pension scheme (within the meaning of s1(1) of the Pension Schemes Act 1993).
14. a trustee, manager or administrator of a personal pension scheme (within the meaning of s1(1) of the Pension Schemes Act 1993).
15. a proprietor of an Academy where "proprietor" and "Academy" have the same meaning as in section 579 of the Education Act 1996.
16. the Motor Insurers' Bureau (or its officers).
17. a person engaged in investment management of share trading activities.

1 CSI Regs 2008, reg 4(2); 2 reg 5 and CS Act 1991, s26(2)

### **Duty to provide information**

**38006** Any persons requested to provide information, must provide the information or evidence if it is in their possession or if they can reasonably be expected to obtain it. The information requested must be provided to the CMS as soon as is reasonably practicable<sup>1</sup>.

1 CSI Regs, reg 7(1) and 7(2)

### **Failure to provide information: Information offences**

**38007** The CMS notice requesting information must include a warning of the consequences of failure to

provide the requested information or evidence, including details of the offences<sup>1</sup>.

1 CSI Regs, reg 8

**38008** Any individual is considered to have committed an offence if, upon request for information, they

1. make a statement or representation which is known to be false, or
2. provide, or knowingly cause or knowingly allow to be provided, a document or other information known to be false, or
3. fail to comply with the request<sup>1</sup>.

1 CS Act 1991, s14A(2) and s14A(3)

### **Investigating Officers (IO)**

**38009** Where face to face information gathering is required, DMs may request that a Financial Investigation Unit (FIU) IO to collect information. IOs must hold a certificate of appointment<sup>1</sup> that can be produced when entering premises<sup>2</sup>. Premises which can enter are those not wholly used as a dwellings house and the IO has reasonable grounds for suspecting are

1. premises at which the NRP is or has been employed
2. premises at which the NRP carries out, or has carried out, a trade, profession, vocation or business
3. premises at which there is information held by a person (A) whom the IO has reasonable grounds for suspecting has information about the NRP acquired in the course of A's own trade, profession, vocation or business.

1 CS Act 1991, s15(3); 2 CS Act 1991, s15(4A)

### **Warrants of Entry**

**38010** Where premises are occupied, and where the IO has sought entry which has been refused, IOs must obtain from the court a warrant authorising entry before accessing premises<sup>1</sup>.

1 CS Act 1991, s15(4ZA)

**38011** Notice of the intention to apply for a warrant must be given to the occupier of the premises at least 21 days before the warrant is issued. A warrant is valid for one month from the date it is issued and authorises the inspector to enter the premises at any reasonable time, but only when the occupier is present<sup>1</sup>.

**38012** When entering the premises IOs should take a copy of the warrant and may

1. be accompanied by anyone the IO thinks is appropriate
2. make whatever examination and inquiry they think necessary
3. question anyone over 18 who is on the premises, and
4. require any such person to provide such information as is considered necessary.<sup>1</sup>

1 CS Act 1991 s15A

## **Offences**

**38013** It is an offence to intentionally delay or obstruct an IO exercising their powers. If, at the time of the delay or obstruction of the IO enter, entry was authorised by a warrant.

**38014** It is also an offence to fail to answer an IO's question or produce a requested document without reasonable excuse<sup>1</sup>.

1 CS Act 1991, s15(9)

## **The self-employment income support scheme (SEISS)**

**38015** In response to the Covid 19 pandemic the Government introduced a scheme to provide support to self-employed workers or members of partnerships in the form of a cash grant of 80% of their profits, up to £2,500 per month. This is known as the Self-employment Income Support Scheme (SEISS).

**38016** HMRC are responsible for administering the scheme and for providing DWP with details of the scheme in relation to its clients. Details of SEISS can be provided to DWP for a number of purposes<sup>1</sup>.

1 WR Act 2012, s127(7)

**38017** The CMS will only use this information to inform discussion with non-compliant NRPs. Details of a non-compliant NRP can be checked against the SEISS data to see if a grant has been made. Where a grant has been made the DM should use that information as a basis for attempting to re-establish compliance.

**38018** Identifying the sum paid and when paid will allow CMS to

1. undertake 'compliance' conversations when discussing both arrears of child maintenance and ongoing liabilities with NRPs who may have only just begun to display non-compliant behaviours
2. negotiate payment compliance with long term non-compliant NRPs and challenge claims of no income or access to funds

3. demonstrate the NRP's ability to pay if non-compliance persists and court action or other enforcement sanctions are required, and

4. consider the potential to apply for lump sum or regular deduction order.

**38019** Decisions must be made on case by case basis considering all of the facts of the case and the welfare of any children affected by the decision.

**Note:** Although DMs can access information about SEISS payments made by HMRC from the SEISS database, this information should not be used to supersede or revise a maintenance calculation. For self-employed current income, evidence of profits should be requested from the NRP. Any SEISS payments included in a historic income figure received from HMRC or shown on a SAR supplied by the NRP do not need to be deducted from the profit figure. See Chapter 97 for more information on evidence of income from self-employment.

# Chapter 39 - Last known or last notified address

## Introduction

**39001** To fulfil the legal requirement to set an effective date and to allow enforcement action to be taken where appropriate, DMs must issue notifications and documents to a client's 'last known or notified address'.

This guidance explains:

[Duty to send notifications or documents to a person's "last known or notified address"](#) 39002

[What is the "last known or notified address"?](#) 39003 - 39004

[How to identify the "last known or notified address"](#) 39005 - 39007

[Dealing with cases where address used was not the "last known or notified address"](#) 39008 – 39009

## Duty to send notifications or documents to a 'last known or last notified address'

**39002** A written notification or document is treated as given or sent on the second day after the DM sends it by post to a person's last known or notified address.<sup>1</sup>

CSMC Regs 2012, reg 7(2)

## What is the 'last known or last notified address'?

**39003** 'Last known or last notified address' is not defined within legislation. However, the definition was considered in detail in a Child Support Commissioners Decision in 2005<sup>1</sup>.

1 [2006] UKSSCSC CCS\_2288\_2005

**39004** The Commissioner stated that the DM can send a document either to the address last known **by** the DM or last notified **to** the DM. Rather than focusing on how DMs acquire this information, the Commissioner stated that DMs must form a judgement, on the balance of probabilities, as to whether an address given for the NRP is likely to be an effective address. This includes consideration of all the circumstances and the exercise of reasonable diligence.

**Note:** A person liable to make payments of child support maintenance are under a duty to notify DMs of a change of address, and a person who fails to comply is guilty of an offence<sup>1</sup>.

1 CS Act 1991, s14A(3A)

## How to identify the 'last known or notified address'

**39005** When obtaining an address for the NRP, DMs should ask the PWC for as much supporting

information as possible including the date that they were last aware or informed of the address and how they became aware or notified of the address.

**39006** In addition to information obtained from the PWC, DMs will need to fully utilise the other information sources including CIS Searchlight and CRA. Using these information sources will help DMs to determine, on the balance of probabilities, which is the correct last known or last notified address.

**Note:** these information sources obtain clients' addresses and dates from a wide range of information providers when particular activities take place. For example, when a client applies for a mortgage, or credit loan, or has been awarded a state benefit etc. Therefore, the more recent the date the more likelihood that this will be the last known or last notified address.

**39007** The following examples are designed to assist DMs understand when an address may or may not be suitably effective to be treated as a "last known or notified address".

### **Example 1**

PWC Jacky is very confident of NRP Clive's address because she currently drops QC Daisy off at Clive's home when Daisy stays overnight at weekends. CIS Searchlight and CRA do not contain any more recent evidence to suggest that Clive has changed address. Jacky's information is a 'sufficiently reliable address' and can be accepted as a last known address. The fact that Clive's address is not in departmental records does not prevent it from being a "last known or last notified address".

### **Example 2**

PWC Karla notifies CMS that NRP Bobby lives at 45 Quiet Street. Karla knows this because she regularly dropped her son, QC Stephen, off there for contact visits until January 2019. However, she has not had any further contact with Bobby since. The DM checks the address against CIS Searchlight and CRA. Both CIS Searchlight and CRA present an address of 78 Other Street. CIS Searchlight records show notification of the addresses as recorded in April 2019 and CRA in May 2019. As Karla's information is not current, and because it is contradicted by both CIS Searchlight and CRA it is not likely to be the most effective address. It should not be treated as a "last known or last notified address" and CMS should send notifications to 78 Other Street.

### **Example 3**

PWC Daniel has not had regular contact with NRP Emma. Daniel informs CMS that he knows Emma lived at 118 Busy Road six months ago. CMS checks its other information sources and finds no evidence to suggest that Emma has changed address. Given Daniel's recent knowledge and no other evidence of a change of address, his information is the most reliable information available, and 118 Busy Road may be treated as Emma's "last notified or known address".

### **Example 4**

PWC Georgina states that NRP Brian was living at 45 Any Close when their son QC Aaron last had a

contact visit with Brian in August 2019. Neither Georgina nor Aaron have had contact with Brian for several weeks and are not 100% confident that Brian still lives at this address. The DM checks the address against CIS Searchlight and CRA. Both CIS Searchlight and CRA present an address of 78 Other Street. CIS Searchlight records show the address was notified in April 2019 and CRA in May 2019. As the address and notified date provided by Georgina is the most recent, it would be reasonable to determine that 45 Any Close is the “last notified or known address”.

### **Example 5**

PWC Gary tells CMS that NRP Nadine’s ‘last known address’ was 27 Very Close, last time they had contact in July 2018. The DM performs a check of CIS Searchlight and this displays a different address of 31 Leafy Avenue, last updated in September 2018. The DM checks other information sources to see if they display the same address of 31 Leafy Avenue. If CRA also displays 31 Leafy Avenue, then it can be treated as a “last notified or known address” because there is a secondary source that matches the address. If other information sources do not show a more recent address, then it would be reasonable to decide that, on the balance of probabilities, 27 Very Close is sufficiently reliable to be treated as the “last notified or known address”.

### **Dealing with cases where the address used may not have been the 'last known or notified address'**

**39008** Where the NRP informs the DM that they do not live at the address held on the CMS system or the notification is returned ‘Dead Letter Office’ (DLO), if the guidance and instructions were correctly followed at the time the notification was issued, the effective date has still been set. A notification returned DLO does not necessarily mean that the address used was not the ‘last known’ or ‘last notified’ address

**39009** Provided the decision was correctly documented and gave due consideration to the elements required in support of that decision then it does not mean that the decision was incorrect. An alternative DM could have made a different decision based upon the same facts. This does not mean that the decision was incorrect providing grounds to revise the effective date.

# Chapter 40 - Credit Reference Agency (CRA) disclosure

## Introduction

**40001** In prescribed circumstances the CMS has the power to share relevant information about NRPs with CRAs.

This guidance explains

[What information the CMS can share with CRAs](#) 40002 - 40003

[When the CMS can share information with CRAs](#) 40004 - 40006

[Does the decision to share information with CRAs carry a right of appeal?](#) 40007

[Sharing information about a liability order being set aside or quashed by a court](#) 40008

## What information can the CMS share with CRAs

**40002** The CMS may supply information to CRAs that is relevant to a NRP's financial standing<sup>1</sup>

1 CS Act 1991, s49D(1)

**40003** The CMS can share the following information in relation to a NRP when appropriate<sup>1</sup>

1. name
2. last known or notified address
3. date of birth
4. the date on which a LO in force against that person was made
5. the amount in respect of which a LO was made including any charges, costs or expenses awarded by the court if included within the LO
6. the address stated in the LO, if different from the last known or notified address
7. the reference number used by the CMS to identify the person's case
8. where relevant, confirmation that the amount in respect of which the LO was made has been paid in full and the date on which the final payment was made. This information can be shared with CRAs without the need for consent or a LO being in place<sup>2</sup>.

1 CSI Regs 2008, reg 14A; 2, reg 14A(f)



**Note:** the CMS must not share any other information with CRAs.

## **When can the CMS share information with CRAs**

**40004** The CMS can share prescribed information with CRAs where either

1. NRPs give their consent, or
2. without the NRP's consent if a LO is in force against that NRP<sup>1</sup>.

1 CS Act 1991, s49D(3)

**40005** However, the CMS may only share information with CRAs if the following circumstances are met

1. a LO is in force against the NRP
2. 21 days (plus 2 days for postage) have passed since a written notice was posted to the NRP advising them that the CMS intend to supply information about them to a CRA<sup>1</sup> (this requirement does not apply where a person cannot be traced<sup>2</sup>)
3. the welfare of the child has been considered and sharing information with a CRA will not adversely affect a child's welfare, and
4. the NRP has not made a payment agreement where the outstanding amount will be repaid in line with the CMS debt steer.

1 CSI Regs 2008, reg 14A(2); 2, reg 14A(3)

**40006** If there is an on-going appeal or judicial review against the granting of the LO, the CMS must not share a NRP's information with CRAs.

## **Does the decision to share their information with a CRA carry a right of appeal?**

**40007** The decision to share information with a CRA does not carry a right of appeal.

## **Sharing information about a liability order being set aside or quashed by a court**

**40008** If information has been shared about a NRP with a LO and that LO is subsequently set aside, for example, following a late appeal or successful dispute of parentage, DMs can contact the CRA to advise that the order has been set aside or quashed (as appropriate). Consent of the NRP to share this information is not required<sup>1</sup>.

1 CSI Regs 2008, reg 14A(1)(g) and (2)

# Chapter 41 - Verification of death

## Introduction

**41001** It is important to establish the effective date of any new supersession decision. Therefore, when a report of a death is received, verification of the date of death must be obtained wherever possible.

**41002** A change as a result of a death needs to be treated with additional sensitivity by DMs as the people concerned may be emotionally distressed at their recent loss. DMs must still try to take appropriate action to progress the child maintenance case.

This guidance explains

[Report of death](#) 41003

[Date of death - verification levels](#) 41004 – 41006

[Key points to remember during contact](#) 41007

[Decision Making with primary evidence](#) 41008 – 41009

[Potential financial benefit](#) 41010 – 41012

[Secondary evidence](#) 41013 – 41015

## Report of death

**41003** When a report of a death is received, the CMS will have to check whether the death has been verified by another government department and consider whether further evidence is required. The Customer Information System (CIS Searchlight) is DWP's generic data storage system for client's personal details. Where a date of death has already been reported to another part of DWP, the level to which the date of death has been verified will have been recorded on CIS Searchlight. Verification requirements are not prescribed by law.

## Date of death - verification levels

**41004** There are four levels of verification for a date of death, from 0 to 3. The CMS minimum verification level as primary evidence for a date of death is level 1. For a verification level of 0, secondary evidence is required.

### Verified to level 3 (full supporting documentation provided)

1. death certificate BD8
2. notification (system or clerical) from General Registrars' Office (GRO)

3. certificate of registry showing given names and family name
4. GROs' office copy
5. notification of death issued by the Forces Department of the Ministry of Defence (MOD)
6. notification of death issued by the Registrar General of the Shipping and Seamen (Mercantile Marine)
7. death certificate issued by the Foreign and Commonwealth Office (Full British consular, embassy or high commission)
8. coroners interim certificate as to fact of death.

**Verified to level 2 (partial supporting documentation provided)**

1. documented coroner's verdict or Procurator Fiscals report (in Scotland)
2. presumption of death by a court of Law in England, Scotland or Wales.

**Verified to level 1 (limited supporting documentation provided)**

1. notification from hospital
2. police statement
3. return of product with a declaration of death document. This can be in the form of a letter from a relative or representative of the deceased, press release or memorial card
4. telephone call from the next of kin, other relative or representative of the deceased.

**Note:** DWP will accept and record this verification at Level 2 based on the fact that GRO confirmation will be received by CIS.

**Not Verified will show as '0'**

**41005** Where the death has not been verified it will be shown as '0'.

**41006** Where further evidence is required it is generally obtained by requesting that the caller reporting the death provide the evidence or, if the death is of a client, the name of the client's executor. It is not necessary that the caller is the other client or a representative, i.e. the caller may be a relative or a friend. Obtaining this information is not a breach of data protection law.

**Note:** DMs must always make a check of the case to ensure that there is no contradictory evidence held, for example, by considering any other evidence that has been gathered before making a decision.

## Key points for DM to remember during contact

### 41007 Whilst being courteous and considerate

1. offer the caller your condolences
2. remain empathic at all times during the conversation
3. apologise but explain that the CMS require some information. Remember to gather as much information as possible and advise that although this may be disturbing during their time of loss, the CMS may have to make further contact
4. pose any questions in a non-confrontational manner
5. use a moderate tone of voice – this is vital as, although some of the questions may be probing, if the questioning shows sensitivity, the person may still be prepared to answer any questions
6. If the caller becomes emotionally distressed, offer to arrange a call-back
7. thank the caller at the end of the call, for having understood the reason for the questions asked and sparing the time to answer such difficult questions during their time of loss
8. wherever possible, obtain primary evidence. Check CIS searchlight in all cases, regardless of any “financial benefit” considerations, the status should be recorded in any decision notes
9. if unable to obtain primary evidence, consider if the caller can gain financially
10. treat all cases on their own merits
11. decisions should be fully recorded.

## Decision Making with primary evidence

### Death certificates

**41008** If a death certificate can be provided, this evidence is sufficient to allow for a supersession decision to be made and any appropriate action to be taken on the child maintenance case. A copy of the certificate is sufficient, rather than the original but, if an original is received, DMs should copy it and return the original.

**Note:** an interim death certificate cannot be accepted as primary evidence to verify a death. The date of death given may be subject to change (which could cause issues trying to rectify the amount of any debt or overpayments resulting from having to revise any decision that may already have been made). However, in conjunction with further supporting evidence an interim certificate could be considered as secondary evidence.

### No primary evidence

**41009** Where primary evidence has not been obtained, DMs will have to consider if the person reporting the death may benefit financially because of it. Once it has been considered if there would be any financial benefit, consider secondary evidence see paragraphs **41013-41015** for further information.

### **Potential financial benefit**

**41010** As with any supersession, the death of a party to a case may benefit one “party” of the case financially (in respect of the child maintenance liability), whereas one party will lose out. This must be considered in all cases, and documented in the decision notes. At no point, in any conversation with a person in which the death of a party to a case is discussed should any reference be made to “financial benefit” (e.g. do not say, “If I action the change you’ve reported, you would stand to gain financially, so I need more evidence....”).

**41011** If the person notifying the death does not stand to gain financially by any resulting supersession, the change could be actioned based on their statement alone.

**41012** However, if the person reporting the death could stand to gain financially, DMs will have to make a decision based on any other evidence that can be obtained - consider secondary evidence (see paragraphs **41013 – 41015** for further information).

### **Examples of instances where there would be no financial benefit**

1. a PWC reports the death of a QC, in respect of whom they receive maintenance
2. a NRP reports the death of their ROC, or any child in respect of whom an allowance is made in the calculation (child of the family or child abroad)
3. a PWC’s death is reported by their third party representative, their solicitor or a relative.

### **Instances where there could be a financial benefit**

1. a NRP reports the death of a QC, in respect of whom they pay maintenance
2. a PWC reports the death of a NRP’s ROC, or any child in respect of whom an allowance is made in the calculation (child of the family or child abroad)
3. a NRP’s death is reported by their third party representative, a solicitor or a relative (in particular the NRP’s partner).

### **Secondary evidence**

**41013** Secondary evidence does not necessarily provide conclusive proof but may be highly indicative of the reported death having occurred. Even if there may be primary evidence that can be provided following the contact, DMs should still endeavour to gather as much secondary evidence in the initial conversation with the caller reporting the death.

**41014** When making a decision based on secondary evidence alone, DMs should always aim to have at least two pieces of secondary evidence which indicate the death has occurred before actioning a supersession. Even then, DMs may not feel that the secondary evidence is sufficiently substantive to satisfy that the death has occurred. However, if the DM feels that one piece of secondary evidence provides sufficient proof of the death, they could still base a decision on that (for example, the NRP was a well-known celebrity and their death is reported in the national media).

**41015** In all cases, DMs must clearly document the reasons why they are either

1. satisfied that the evidence confirms the death, or
2. the evidence is not sufficiently robust to satisfy the DM that the death has occurred, beyond reasonable doubt.

### **Examples of secondary evidence**

1. interim death certificate
2. confirmation from the DVLA and, or Passport Office that a drivers' licence and, or passport in the name of the alleged deceased has been "cancelled" as a result of the person having died
3. any documentation relating to funeral arrangements
4. any information relating to the death given in the media - specific articles, rather than just an entry in the births and deaths section
5. information from life insurance providers – for example, a letter from the provider confirming that a life insurance policy will now pay out. As there could be potential insurance fraud, additional secondary evidence will be required to support information from life insurance providers.

**Note:** this list is not exhaustive and the caller should be asked if there is anything else that can be forwarded on to the CMS, relating to the death.

**Note:** information from social networking sites is not considered as being acceptable secondary evidence.