



# The Child Maintenance Compliance and Arrears Strategy

Government response to the consultation

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12 July 2018

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## Ministerial Foreword

The evidence is clear that children from separated families are more likely to have positive outcomes in later life if their parents can work together, without poorly resolved conflict. A successful, stable child maintenance arrangement can make a huge contribution towards this. Many parents feel able to make these arrangements between themselves, without State intervention; but for those who cannot make a family based arrangement, an effective statutory scheme is critically important.

I am pleased with the progress the Child Maintenance Service (CMS) has made since its introduction, but there is more to do to strengthen it. We recently consulted on a range of proposals to continue to drive compliance, including addressing the small, but determined, group of parents that seek to use complex financial arrangements to evade their obligations to their children.

The closure of the Child Support Agency (CSA) is almost complete, but thousands of CSA cases remain with arrears – often dating back many years. The impact this has had on the families concerned is regrettable, which is why we have made proposals which will give some certainty to these families over how these arrears will be treated. I am grateful to the range of stakeholders who took time to respond to our consultation. We received broad endorsement for the key principles which will underpin our new Compliance and Arrears strategy, which will:

- Continue to prioritise collecting money for today's children.
- Continue to encourage collaboration between parents.
- Build on the success of CMS by introducing tougher new enforcement measures and making the best use of current powers.
- Address historic arrears built up under the CSA schemes by offering a final chance at collection where this is possible at a reasonable cost to the taxpayer.
- Avoid taxpayers funding activity that won't result in money going to children.

This document sets out how we intend to achieve these, having given due consideration to the responses to the public consultation on our proposals. Our chosen approach is one that will allow the CMS to continue to support separated families, and tackle the historic CSA arrears, in a way that strikes the right balance between the needs of those families and the tax payer.

## Glossary of terms

<b>Child Support Agency (CSA)</b>	Administrative body for the 1993 and 2003 schemes of child maintenance.
<b>Child Maintenance Service (CMS)</b>	Administrative body for the 2012 scheme of child maintenance.
<b>Child Maintenance Options</b>	Free service provided on behalf of the Department for Work and Pensions, giving impartial information and support to help parents make informed choices about child maintenance. Parents must have a conversation with Child Maintenance Options before they can apply to the CMS.
<b>Paying parent</b>	The parent who does not have main day-to-day care of the qualifying children and is responsible for the payment of child maintenance. Previously known as the non-resident parent.
<b>Receiving parent</b>	The parent who has main day-to-day care of the qualifying children and should receive child maintenance. Previously known as the parent with care.
<b>Family-based arrangement (FBA)</b>	Child maintenance arrangement which parents agree between themselves, without the involvement of the statutory maintenance scheme. An FBA can involve financial and/or non-financial support.
<b>Direct pay</b>	Service type offered by the CMS, whereby the CMS calculates the maintenance liability, and provides a payment schedule, and parents arrange transmission of payments between themselves. No collection fees are incurred by either client. Either client can opt to make the case direct pay, regardless of the wishes of the other. The only exception is where the receiving parent requests collect and pay, and the CMS deems the paying parent to be unlikely to pay, based on evidence of their behaviour as part of their CMS case.
<b>Collect and pay</b>	Service type offered by the CMS, whereby the CMS calculates the maintenance liability, provides

	<p>a payment schedule, and facilitates transmission of payments between the clients. A collection fee is incurred by both clients. A 20% fee for the paying parent is added to the liability as it accrues, and a 4% fee is deducted from any money paid out to the receiving parent. Cases will only be placed in the collect and pay service if both clients in a case request this, or if the receiving parent requests collect and pay and the CMS deems the paying parent to be unlikely to pay. Charges are not applicable to arrears accrued under the CSA scheme.</p>
<p><b>Deduction from Earnings Order (DEO)</b></p>	<p>Deductions of child maintenance direct from paying parents earnings. A £50 enforcement fee is payable if a Deduction from Earnings order is enforced and collection fees also apply for 2012 scheme cases.</p>

## Executive summary

1. On 14 December 2017 the Government published 'Child Maintenance: A New Compliance and Arrears Strategy'. This public consultation put forward a range of proposals intended to further improve compliance in the Child Maintenance Service (CMS), as well as tackling historic arrears built up under the Child Support Agency (CSA).
2. The consultation closed on 8 February 2018 having received a total of 99 responses: 11 from organisations and 88 from private individuals, of which 21 identified themselves as paying parents and 24 as receiving parents. A full list of organisations who responded can be found at Annex A.
3. The consultation invited responses to 15 questions covering proposals for changes to how child maintenance liabilities are calculated, new enforcement powers for the CMS and how to deal with CSA arrears. The closure of the CSA was not within the scope of the consultation as this has been consulted on previously.
4. Not all respondents chose to answer the specific questions asked and many preferred to provide their views on the proposal in general. Where possible we have tried to reflect these responses in the appropriate sections. A large number of responses received from parents were about individual case circumstances, and therefore outside the scope of the consultation.
5. This publication summarises the main points made by respondents and provides the Government's full response to them. It also sets out how we will take these proposals forward in order to achieve the objectives of our new strategy.
6. The overall response to our proposals for improving the calculation of child maintenance liabilities was positive. There was a call for us to take steps to include unearned income automatically when we initially calculate a liability, as we do with historic income. As this would not be achievable without changes to primary legislation, we have begun to explore with Her Majesty's Revenue and Customs (HMRC) ways to speed up the current process for sharing the relevant unearned income data they hold.
7. Respondents offered a range of views on our proposed new power to allow the CMS to derive a notional income from an asset for the purpose of varying a calculation.
8. There was no clear consensus on the percentage rate we should use to derive a notional income or the minimum value of assets this should be applied to. We have therefore opted to proceed with the 8% rate proposed in line with the Judgment Debts (rate of interest) Order 1993 and we will set the minimum

aggregate value of assets at £31,250. This allows us to align our overall approach with how we handle unearned income, and best balances the interests of all parties. There will also be legal safeguards to ensure this new power only targets appropriate assets.

9. Respondents were generally in favour of our proposal to extend our ability to make deductions from benefits to include Universal Credit (UC) for those with earnings who are liable to pay flat rate maintenance. We believe this is an important change as it has always been a key principal of our child maintenance scheme that parents should help support their children regardless of their own financial circumstances.
10. It is our intention to introduce new regulations to allow us to make these deductions at the rate of £8.40 a week, aligning our treatment of these clients with others in a similar situation. We also plan to extend deductions from benefit so that arrears can be collected when on-going maintenance ends. These deductions will be subject to the procedures already in place to stop deductions when paying parents are in receipt of hardship payments and to ensure the welfare of any children affected is considered when making the decision to deduct.
11. We have already announced our intention to introduce new powers to make deductions from jointly held accounts, and this consultation sought views on a proposal to extend this to jointly held and unlimited liability partnership business accounts. While respondents were supportive, they stressed the need for safeguards to prevent third party funds from being subject to deduction.
12. We have decided to amend our proposals to reflect these concerns. This means that as well as the proposed representation periods of 28 days for Lump Sum Deduction Orders (LSDOs) and 14 days for Regular Deduction Orders (RDOs) we will check up to the last six months' bank statements to establish ownership of funds before progressing the order. Where this isn't possible we will take a pro-rata approach and assume 50% of the funds in the account belongs to the paying parent unless evidence is received to the contrary. We will also not deduct from any unlimited liability partnership business accounts with a balance of less than £2000, and commit to reviewing our policy on deductions from unlimited liability partnership business accounts<sup>1</sup> every five years.
13. Our proposal to introduce a new power to confiscate passports from those who repeatedly refuse to meet their child maintenance obligations was well received. We plan to set out in regulations that the ban can be revoked or reduced where full and part payment of the arrears covered by the disqualification order is made. We will routinely request to the court that parents be given 48 hours to surrender their passport on conviction.

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<sup>1</sup> Where the partnership is formed in England or Wales

14. We are aware there is likely to remain a small group of parents who will always try to avoid contributing financially for their children so we asked respondents to suggest any new powers we don't have already that could help increase compliance for this group. We received a wide range of responses that included making better use of our current powers and the need to make better use of data sharing with HMRC. We are already putting improvements in place to maximise the use of our current powers for example setting up Deduction from Earnings Orders (DEOs) at the point of application where the paying parent doesn't set up a payment method. We have discussed with HMRC colleagues some options for making better use of the data they hold; we intend to develop specific proposals with HMRC to meet the needs of CMS in the light of the consultation.
15. On the whole our proposals for tackling the arrears built up under the CSA were well received. Many respondents agreed that clients should be given certainty over the status of this debt. Respondents also understood why we proposed to focus our efforts of collection on those cases where we can be reasonably certain of success.
16. We proposed to give receiving parents the opportunity to make written representations to us about their debt, for which they would have 60 days to respond.
17. We sought views on what type of information should be contained in the letter. Responses were mixed on whether we should include final debt balances and details about accrual periods. On this basis we believe it is reasonable to continue with our proposal not to include this information in the letter in certain circumstances. Others felt that we should include a formal apology and offer compensation. It is our intent to convey our regret to clients, but given that these maintenance debts are owed from one parent to their children, we do not believe that compensation from the taxpayer is appropriate.
18. The consultation also sought views on whether our thresholds were reasonable for not offering the opportunity to make representations, based on age of case and amount of debt, as well as our proposal to not send letters to cases with debt balances under £65. In both cases the majority of respondents agreed, with some exceptions who disagreed with the level of the thresholds but did not suggest an alternative amount and accepted that having a threshold was the right approach. On this basis we propose to proceed with our current proposals.

## **Responses**

### **Calculation changes**



19. The CMS already has access to a much wider range of information about a paying parent's income than the CSA, which means for the vast majority of cases liabilities are being calculated quicker, and accuracy is higher.
20. We are aware however that there are a small number of cases where paying parents use complex financial arrangements to disguise their income and artificially lower their child maintenance liabilities. We want to take steps to prevent their children losing out from this behaviour.
21. As a part of this we consulted on the introduction of a new power to allow the CMS to calculate a notional income from assets held by a paying parent. This variation will allow us to more reasonably take into account the ability of parents to support their children financially. We consulted on specific technical aspects of this new power.

### ***We asked***

- Where an asset does not generate an income, a notional income would need to be determined. In previous schemes of maintenance this was at a set rate of 8% of the value of the asset. What notional income should be assumed?

### ***You said***

22. The majority of respondents were supportive of the introduction of the power, but we received a wide range of suggestions in relation to the rate of interest. One respondent suggested 6.75%, the highest of the responses received. Three respondents raised the idea of a tracker rate, set at 2% above the Bank of England Base Rate.
23. When considering the responses received there was no clear consensus on an alternative to our proposed 8% rate which is in line with the Judgment Debts (rate of interest) Order 1993, nor did the majority of respondents suggest that this rate was unreasonable.

### ***What we are doing***

24. We plan to continue with our proposed rate of 8%, as this strikes the best balance between allowing the new power to have a meaningful impact on child maintenance liabilities without being overly punitive. The National Association for Child Support Action (NACSA) stated that they felt the rate had created financial hardship for paying parents in the past.
25. The CSA had a similar power, and the figure of 8% was used to calculate a notional income from assets. The use of the figure for this purpose was also subject to scrutiny by tribunal and upheld.

26. This variation will be useful in a range of scenarios including where we believe paying parents have made an effort to use complex financial arrangements to evade their responsibility. We believe across such a range of circumstances the 8% figure is justifiable. It could also act as a nudge to encourage paying parents to consider how best to arrange their financial circumstances, in their interest and that of their children.
27. We considered the practicalities of introducing a tracker rate, but discounted this idea on the basis that we want our method of calculating child maintenance liabilities to be consistent from year to year. This is important to ensure parents can clearly understand how liabilities are calculated; and a tracked interest rate would add significant complexity.

### ***We asked***

- Do you agree that these measures strike the right balance between improving how we calculate maintenance for complex earners, while protecting tax payers' money by focusing on only those cases most likely to be affected?

### ***You said***

28. We received a range of suggestions for what the minimum value to an asset should be. While there was no clear consensus there was a trend towards a higher value. The Family Law Bar Association (FLBA) suggested an annual notional income of £25,000 as a reasonable level, while the Law Society Scotland felt that £65,000 was acceptable.

### ***What we are doing***

29. Having considered responses received we have set a minimum aggregate value of assets at £31,250, after deductions have been made for mortgages or charges on the assets. When used in conjunction with a notional income rate of 8% this means we will only vary a calculation where can calculate a notional income of £2,500 or more.
30. This will align with our current approach to varying a calculation where unearned income is declared, creating a consistent approach to variations across a range of case circumstances.
31. Where we have identified that a paying parent possesses assets higher than the minimum amount we will calculate the notional income at the 8% rate, and then divide that figure by 52 to arrive at a weekly amount. This will then be used to vary the calculation. The resulting income will be used to create a liability either by itself or added to other income that has already been established.

*Example - notional income liability calculation for one Qualifying Child:*  
 $£79,750$  (total combined value of assets)  $\times 0.08 = £6,380$  (notional income from assets)  
 $£6,380 / 52 = £122.69$  (weekly amount added to income)  
 $£122.69 \times 0.12$  (12% of gross income which is standard rate for one child) =  
 $£14.72$  (weekly amount added to liability at 12% of gross income)

32. A range of respondents raised the issue of safeguarding assets in certain circumstances, particularly where the asset in question is property serving as a family home. This assumes that, where we take an asset into account for the purposes of a variation, this will require the paying parent to sell that asset. This will not necessarily be the case. We are creating an additional liability for paying parents which many should be able to pay without the need to sell the asset in question.
33. An asset which is the primary residence of the paying parent; the home of the paying parent's children; being used for the paying parent's business purposes; or jointly owned will not be taken into account for the purposes of the new power. We will specify in regulations the asset types which we will take into account. We will not require the paying parent to pay more maintenance where this would mean that assets would have to be sold and this would cause hardship to the paying parent or any child of the paying parent.

### **Deductions from benefits**

34. We believe parents should support their children whatever their financial circumstances. Our consultation included plans to extend deductions from UC to include cases where the paying parent is liable to pay flat rate maintenance and their household has earnings. It also included plans to extend deductions from benefit so that arrears can be collected when on-going maintenance ends.

### **We asked**

- Do you think it's reasonable to extend the facility to make flat rate deductions of maintenance from UC to those who have earnings?

### **You said**

35. Responses were generally in favour of introducing this change with one respondent stating that "these changes in principle bring more consistency and strengthen maintenance collection". Respondents also suggested we introduce the UC changes at a faster pace saying "these changes should not be delayed until UC is fully rolled out"

36. Some respondents commented that whilst deduction from UC is already in place at the £8.40 rate for those without earnings, there should be no increase above this level for UC recipients in receipt of earnings. They also suggested that in both types of case provision should be put in place for a reduction where hardship can be demonstrated as a result of these charges.

### ***What we are doing***

37. We plan to introduce the changes outlined in our consultation to extend deductions of UC to those liable to pay flat rate maintenance with earnings. We are also investigating the possibility of introducing the change earlier than planned. This is subject to information technology constraints and maintaining the smooth roll out of UC.
38. Respondents raised the issue of protecting paying parents in receipt of hardship payments. We already have procedures to stop deductions when a paying parent is in receipt of hardship payments and these will apply to parents in receipt of UC with earnings.

### ***We asked***

- Do you agree deductions for arrears should be aligned with deductions for on-going maintenance at the equivalent of £8.40 per week?

### ***You said***

39. Respondents were generally in favour of our approach to introduce a consistent amount for deductions for on-going maintenance and arrears. It was suggested that we consider whether the deduction rate should remain at £8.40 week after the maintenance liability has ended, or whether a lower rate of deduction from benefits should continue after the child turns 20, as this will be to pay off the arrears rather than supporting the child. A number of respondents were also keen that we ensure robust investigations are in place and that we should ensure the welfare of all affected children is considered.

### ***What we are doing***

40. We plan to change regulations to allow us to continue deducting at the flat rate amount of £8.40 per week when liability ends and there are arrears on a case. We also plan to impose a deduction at the flat rate for arrears if a benefit award starts after liability has ended. This will mean that the maximum a paying parent would pay from their benefit would be £8.40 per week.
41. We propose to take deductions for arrears of unpaid maintenance from these benefits:
- Carer's Allowance
  - State Pension
  - Contribution based Employment and Support Allowance
  - Contribution based Jobseeker's Allowance

- Industrial Injuries Disablement Benefit
- Widowed Parent's Allowance
- Widow's pension
- War Widow's payments
- Maternity Allowance
- Severe Disablement Allowance

42. And income related benefits including:

- Income Related Employment and Support Allowance (ESA)
- Income Based Jobseeker's Allowance (JSA IB)
- Income Support (IS)
- Pension Credit (PC)
- Universal Credit (UC)

43. We propose that deductions would apply if the paying parent or their partner is in receipt of an income related benefit.

44. We considered the suggestion that a lower deduction rate should apply when liability ends or the qualifying child reaches 20. As on-going maintenance will have ended, paying parents will have financial capacity to make payments towards their arrears at the same rate as the deductions for on-going maintenance – we see no reason to reduce this so that the debt is cleared more slowly. Introducing differing rates for on-going maintenance and arrears would introduce complexity.

45. Concerns were also raised that we should ensure the welfare of all children affected is considered. We will ensure that existing procedures which ensure that the welfare of all affected children is considered in benefit deduction cases, are applied to deductions made under these new proposals.

### **Deductions from joint and business accounts of sole traders and partnerships without limited liability**

46. We have already announced our plans to legislate to enable us to deduct maintenance from joint bank accounts. Our consultation included proposals to extend these powers to sole trader and partnership accounts where liability is not limited.

#### ***We asked***

- We intend to consider representations for both lump sum and regular deductions prior to money being removed from an account. We intend to offer a 28 day and 14 day period respectively in line with our plans for joint accounts. Is there any reason why we shouldn't mirror the process for partnership accounts?

#### ***You said***

47. There was general agreement amongst respondents about the need to ensure that maintenance is not deducted from the other party's funds. Respondents also suggested safeguarding other accounts holder's funds. They suggested this could be done by having a requirement for the paying parent to repay the other account holders money that is deducted in error.
48. One respondent commented on the need to ensure that all parties to the account were aware of their right to make representations about the proposed deduction by notifying them using residential as well as business addresses.
49. Respondents also said that we needed to ensure there were sufficient staff with the appropriate expertise to do deductions from joint and business accounts of sole traders and partnership without limited liability.

### ***What we are doing***

50. We plan to change legislation to enable deductions from unlimited partnership business accounts as outlined in our consultation. Deductions from unlimited partnership business accounts will be a last resort. In circumstances where a paying parent has more than one bank account, we propose to target their solely held accounts first, then any jointly-held private accounts and finally business accounts, for instance if there are insufficient funds in other accounts.
51. To address the respondents concerns in relation to deducting other account holder's funds, we will introduce robust checks to establish the ownership of funds. We plan to check the last six months' bank statements to establish ownership of funds. Where this is not possible we will take a pro-rata approach and assume that an equal share of the assets in the account belongs to each of the parties to it unless evidence is received to the contrary.
52. We will also give joint account holders representation periods of 14 days for RDOs and 28 days for LSDOs. Since we cannot freeze the funds for RDOs we will hold the funds for a period of time before paying them out to the receiving parent. This will give the other account holders extra time to provide evidence that the funds do not belong to the paying parent before we pay them out to the receiving parent. All parties to a partnership business account will also have a right of appeal against the making of a regular or lump sum deduction order.
53. We have a specialist team already in place who deal solely with deductions from bank accounts. This team will receive training so they can also handle deductions from joint, sole trader and partnership accounts where liability of the partnership is not limited.
54. We also considered the suggestion to send representation letters to the other account holder's residential address as well as their business address. It is unlikely we will have up to date private addresses for the other account holders (who may also see sending letters to their residential address an

infringement of their privacy). As we are contacting other account holders in their business capacity, it is appropriate to use their business address.

### ***We asked***

- By leaving a minimum balance in a debtor's account, DWP needs to strike a balance between the impact on legitimate business activities and collecting maintenance owed in an efficient manner. Are there any reasons you consider we should not follow HMRC's approach of leaving £2000.

### ***You said***

55. We received a very small number of responses to this question although respondents were generally in favour of leaving a minimum amount in business accounts. The responses did not suggest a different approach or a different figure from that which we proposed.

### ***What we are doing***

56. We, therefore, plan to introduce a minimum balance of £2000. This amount will be protected from deductions in unlimited partnership business accounts to help ensure the business has enough cash flow to continue to run effectively. We don't plan to set this figure in legislation to enable us to monitor how the process is working as we roll out the change.
57. We also plan to review our policy relating to deductions from unlimited partnership business accounts every five years as is required by the Small Business, Enterprise and Employment Act 2015.

## **Passports**

58. Our consultation included plans to commence an existing power in the Child Maintenance and Other Payments Act 2008 to enable us to disqualify a paying parent with child maintenance arrears from holding or obtaining UK travel authorisation – a passport. This power would only apply to paying parents living in England, Scotland and Wales.

### ***We asked***

- The paying parent is advised to bring their passport with them to the court hearing, and if they fail to do so we intend to ask the court to order the paying parent to surrender it to the court within 48 hours (the deadline would be at the discretion of the court). Is this timescale reasonable?

### ***You said***

59. We received a very few responses to the question although overall respondents agreed with our proposed timescales.

### ***What we are doing***

60. We therefore intend to request that the time period a paying parent has to hand their passport in to court is set at 48 hours, although this is at the discretion of the court. We plan to monitor the process and we will work with Her Majesty's Courts and Tribunal Service to adjust these timescales if appropriate.

### ***We asked***

- Do you think that disqualification of a paying parent's passport for two years would be more effective than current alternative actions, such as commitment to prison or disqualification from driving?

### ***You said***

61. The proposed introduction of this new power was generally welcomed by respondents. Respondents felt this may prove an effective power but suggested that we should apply to the courts for the disqualification order to be revoked if payment is made in full.
62. Respondents also suggested that applications for disqualification of either a driving licence or a passport should be de-linked from committal applications. So they could be sought on a free-standing basis and the civil standard of proof applied.

### ***What we are doing***

63. We are pleased respondents are in favour of commencing our powers to disqualify non-compliant parent's passports and plan to legislate to introduce this power. We plan to commence powers in legislation to revoke the ban if full payment is made of the arrears covered by the disqualification order. If part payment of arrears are made then the ban could be reduced.
64. We note the respondent's comments relating to de-linking passport applications from committal applications. Given the serious nature of this power we need to ensure appropriate safeguards are in place to ensure it is used appropriately, which is why it can only be ordered by a court. We will give consideration to this as a possible future change, but for now we want to implement it in a controlled way, using the established court-based process that is already in place for commitment and disqualification from driving.

### ***Call for evidence***

65. We know there is a small group of parents who will go to great lengths to avoid contributing financially for their children. Our consultation included



proposals on how we want to target this group to improve levels of compliance and make clear to paying parents their financial responsibility to their children.

### ***We asked***

- Can you think of any powers that we don't already have that would help us increase compliance and recover arrears within these difficult groups?

### ***You said***

- We need to make better use of our existing powers.
- We need to introduce behaviour change by creating a paying culture and improve our calculation and enforcement communications to help increase compliance.
- We need to make better use of data sharing with HMRC.
- We should ensure an effective process for escalating cases to our Financial Investigation Unit (FIU), with focus on early identification of cases that need to be referred, those that will require referral to tribunal and ensuring cases referred to FIU are likely to have successful outcomes.
- We need to review the interaction between direct pay and collect and pay.
- We need to make better links with the Reducing Parental Conflict Programme.
- The 2012 scheme calculation needs to be reviewed to consider the issues surrounding those in receipt of UC.
- We should consider using collect and pay as an incentive by reducing charges if first payment in collect and pay is made on time.
- Child maintenance payments should be collected as Student Loans.
- We should allow receiving parents to pursue their child maintenance privately via the courts.

### ***What we are doing***

#### **Making better use of our existing enforcement powers**

66. We have already made a number of improvements to our processes for using our existing enforcement powers. For example

- We have made changes to processes to make better use of Deduction from Earnings Orders, so that they can be set up at the point of application when the paying parent does not get in touch with us to set up a method of payment within the required time.
- We are making better use of our credit reference agency tools to determine the most effective actions to take earlier in the process
- We have brought forward the point in the process where we make deductions from bank accounts. This has not only increased the volume of deductions from bank accounts but also means we are getting money to children more quickly.
- To shorten the Enforcement Agent (bailiff) process where the location of the paying parent is in doubt, we are trialling a new approach to make the best use of our trace powers earlier in the process. This will allow Enforcement Agents to attempt contact using the new address in the first few weeks rather than later in the process which is the current design.

- We have streamlined the summons process for liability orders, driving disqualification and committal cases to make it simpler for our caseworkers to apply for these sanctions.
  - We have introduced dedicated teams for parts of the enforcement process, to deal with committal to prison and driving disqualification cases, charging orders, and orders for sale; and put steps in place to move the cases into these teams more quickly. This enables us to maximise efficiency by building expertise in specific processes.
  - We are looking into the options available to improve arrears recovery where a charging order is registered with Land Registry. We aim to review the type of restrictions which may be registered with Land Registry and the conditions attached to them. Alongside this work, we will consider whether it will be possible to oblige solicitors handling the sale of a property to pay the debt secured by a charging order from the equity released.
67. We are planning a trial referring low debt cases to external contractors to undertake limited arrears recovery action and encourage parents who are liable to make child maintenance payments to engage with CMS. These external agents will request lump sum payments of unpaid child maintenance arrears in cases where the arrears have not yet reached the level at which we would apply for a liability order. If no payments are forthcoming the agent will ask that the liable parent contacts CMS to negotiate payment of the arrears.
68. We are also reviewing how we can make the best use of powers we have to prevent paying parents disposing or transferring assets to avoid paying their child maintenance. This will involve refreshing our guidance to ensure staff dealing with arrears recovery are aware of the availability of these powers, and when they are appropriate to use.
69. We will continue to monitor the effectiveness of our compliance and enforcement actions, and work within our current powers to maximise maintenance collections.

### **Creating a paying culture**

70. We want to create a paying culture amongst parents. We have already started to put steps in place to improve communications to make it easier for parents using our service to interact with us. We are continuously reviewing and improving multiple communication channels, including letters, SMS texting and the Self Service website.
71. We will continue to review the effectiveness of these changes, and make further improvements as appropriate

### **Making better use of data sharing with HMRC**

72. Some respondents suggested that we automatically request information about unearned income from HMRC, in the same way as we currently do for historic income. Doing this would require both a change to primary legislation and changes to our current IT system, which are unlikely to be possible in the near future.

73. Instead we have begun to explore with HMRC how to enhance our existing client communications and case worker training to raise awareness across the two departments about unearned income. Our aim is to ensure clients understand what constitutes unearned income, the affect it can have on a child maintenance liability, and the importance of raising the issue at the start of the case. We believe this, along with enhancing our procedures, will help factor unearned income into the initial calculation in more cases.
74. We have also been working with HMRC to see what more we can do together to tackle child maintenance cases with complex earners. We are currently jointly exploring:
  - The additional information HMRC can make available to our FIU to help assess a paying parent's income, such as self-assessment tax data for multiple tax years.
  - Improved channels of communication between the FIU and HMRC's Fraud Investigation Service (FIS), including a formal process for referring cases investigated by the FIU to FIS where there may be tax irregularities that require investigation.

#### **Improving our Financial Investigation unit**

75. We already have processes in place that allow for the effective identification and referral of cases to FIU, as demonstrated by the steady increase in effective referrals and positive outcomes.
76. We will continue to monitor our effectiveness in this area, publishing statistics quarterly.

#### **The interaction between direct pay and collect and pay**

77. As part of the 30 month review of charging, we carried out analysis on the effectiveness of direct pay. We are implementing the improvements resulting from these findings, focussing on setting clear expectations for customers, ensuring that customers are only placed in direct pay where this is appropriate, and that where direct pay arrangements break down, cases are moved quickly into the collect and pay service and action taken to recover arrears and re-establish compliance.
78. We will continue to monitor the effectiveness of direct pay and the interplay between service types, and will implement further improvements to the process as appropriate

#### **Making better links with the Reducing Parental Conflict Programme**

79. Evidence shows that conflict between parents (whether they are together or separated) that is frequent, intense, and poorly resolved, can be damaging to children's long term outcomes. Where separated parents remain in conflict it can be harder for them to achieve sustainable child maintenance arrangements.
80. The Reducing Parental Conflict Programme is working with all top tier authorities in England to support them to integrate proven help to address

parental conflict into their local work with families – including in separated families. This will include providing training for frontline practitioners to support them to recognise where conflict may be an issue between parents. We would expect that over time this will promote greater collaboration between parents across a range of issues, including financial support for their children post-separation.

81. We are committed to building the evidence base for what works to reduce parental conflict (including where parents have separated) – so will be letting contracts to test around ten interventions in 30 English local authority areas to find out more about what works to reduce parental conflict for disadvantaged families. We are working with the Early Intervention Foundation to share evidence with local areas.
82. We also recognise that some parents like to access help digitally. We will be working with stakeholders across Government to explore the need for digital information and signposting to help separating parents resolve conflict. Our Child Maintenance Options service also has information to help signpost parents to support and we continue to keep this service under review.

### **Review the 2012 scheme calculation and consider the issues surrounding those in receipt of UC**

83. The 2012 scheme uses a method of calculation very similar to the previous scheme of maintenance in using a proportion of a paying parent's income to calculate the liability. In the 2003 scheme "net" income information was provided directly to the service by paying parents. This often led to delays in setting up maintenance arrangements to the detriment of the children involved. For the 2012 scheme we use income information provided directly to the service by HMRC which necessitated a change to using "gross" income. Using HMRC information is more accurate and more efficient. We are pleased with the improvements these changes have brought to the calculation of maintenance, but we continue to monitor the effect of these changes on the statutory scheme on both the clients involved.
84. We believe that parents should pay maintenance in line with their earnings. Where parents earn below £100 per week or are on specified benefits, including the out of work component of UC then their liability is capped at £7. We also disregard UC payments as income when calculating child maintenance. We are grateful to a stakeholder for raising the potential issue of the interaction between the UC taper rate and child maintenance calculation. We have committed to investigate this, working closely with the stakeholder group concerned.

### **Consider using collect and pay as an incentive by reducing charges if first payment in collect and pay is made on time.**

85. One of our main aims in introducing fees is to increase compliance. Incentives to pay already exist for clients using both the direct pay and collect and pay

service. Where a parent complies with a collect and pay arrangement for a sustained period, the case may be moved into direct pay where fees do not apply. Those on direct pay are incentivised to continue paying to avoid being moved into collect and pay where fees apply.

86. The CMS scheme is intended to be simple, so that it is easy for our customers to understand, and can be administered effectively. Introducing different fee rates could introduce additional complexity because cases may have to be dealt with clerically, leading to significant costs and delays for our customers.
87. As we are already planning several changes to our arrears and enforcement processes in order to drive compliance, we want to embed these, so we can understand their effectiveness, before considering whether any changes to the fees and charging approach may be warranted.
88. We would also need evidence to show that changing the fee regime in this way would lead to increased compliance.

### **Child Maintenance payments should be collected the same way as Student Loans**

89. Payments towards student loans are paid through Pay As You Earn (PAYE) at fixed percentage (9%) on earnings over a stipulated threshold. Child maintenance payments are not set at a single fixed rate and the percentage of income to be paid varies from person to person depending on their circumstances.
90. We want to drive a culture of parental responsibility and collaboration. If we collected child maintenance payments at source in a similar way to a tax it would remove the responsibility from the paying parent. It would also mean parents with income below the set threshold would not be contributing financially towards their children's upbringing. We have always maintained that parents should support their children regardless of their financial circumstances.

### **Removing cases from CMS to go through the courts process**

91. A permanent arrangement cannot be ordered by a court as part of any settlement action in respect of regular child maintenance payments. This longstanding legal position has been established for over 20 years.
92. The statutory child maintenance system was established because outcomes for families were inconsistent and uncertain when these matters were reserved for the courts. The statutory service offers a service which court ordered maintenance does not, such as an annual review of maintenance liability using updated paying parent income information obtained from HMRC. Obtaining an update of liability within the court system requires all parties to return to court for evidence to be presented. This is an inherently slow, adversarial and costly process.
93. Furthermore not all CMS customers are likely to be able to afford to make private claims.

94. We have a wide range of strong enforcement powers including deduction from earnings orders, order for sale, removing non-paying parent's driving licences and committal to prison so we do not believe this proposal would benefit our customers.

### **Proposed new approach to CSA debt owed to parents**

95. Our consultation included our plans to address the £3.7bn historic arrears built up on CSA schemes. As we approach the end of CSA case closure there is a pressing need to address the issue of CSA arrears. Taking action now will allow us to draw a final line under the problems of the previous child support systems and focus on building on the success of the CMS.
96. We want to do this by giving parents an opportunity to tell us if they want us to try to collect their debt one last time where it is cost effective to do so.

### ***We asked***

- Bearing in mind we have limited resources which we need to focus on collecting money for today's children what degree of action do you think is reasonable for historic CSA cases?

### ***You said***

97. Overall respondents agreed we should take action to recover arrears where the receiving parent ask us to, but they also acknowledged the need to focus resources on collecting money for today's children.
98. Some of our respondents said we shouldn't restrict court based action to exceptional circumstances and we should explain what exceptional circumstances are. Respondents also asked for clarity on the checks we will do to establish if collection is worthwhile.

### ***What we are doing***

99. We will write to parents with non-paying debt over £1000 (for applications made before November 2008) or £500 (for applications made after November 2008) that built up on CSA schemes to ask them to tell us if they want us to try to collect their debt.
100. If the receiving parent responds to our letter telling us they still want their arrears we will determine whether there is a reasonable chance of collection. This will be done by conducting some of the following checks:
- Whether we can establish where the paying parent lives.
  - What enforcement action we have already taken on the case previously.
  - What financial information we can gather through credit reference agencies.

- If the paying parent has been sequestered for any period of the debt.
101. This will only apply to debt that built up on CSA schemes (although the information about the debt may have been moved to the CMS system as part of the closure of a CSA case).
102. If there is a reasonable chance of collection we will make reasonable attempts to collect the outstanding debt.
103. Potential collection activities may include:
- Deduction from benefit (including extended powers detailed on page 11).
  - Deduction from earnings.
  - Regular or lump sum deduction order (including extended powers proposed in this consultation).
104. In exceptional cases, we may use court based enforcement powers such as liability order. The decision to progress a case through to enforcement will be discretionary and will depend on the individual circumstances of the case.
105. Some of the factors that caseworkers will consider when deciding whether to progress cases through our court based enforcement powers is the amount of debt and the likelihood of recovery. Decisions would also take into account value for money for the taxpayer. For example if we have evidence that suggests the paying parent owns a property on which we can get a charging order or take order for sale action on, the likelihood is that the case will be progressed through our court based enforcement powers.
106. The debt will be written off if either:
- The receiving parent doesn't respond to our letter; or
  - There isn't a reasonable chance of collection; or
  - We have exhausted our enforcement options and have been unable to collect the debt in which case we will notify both clients.

***We asked***

- Do you think 60 days is a reasonable period of time to allow representations regarding write-off, or would a shorter period be appropriate?

***You said***

107. We had a mixed response to this question. NACSA felt this period was too long because they feel receiving parents who want their arrears will also want to see a productive conclusion to their case sooner rather than later, and reducing the representation period will help facilitate this. Other respondents felt this period was too short although their reasoning for a longer period was that receiving parents need time to consider their options and compared this process to that of case closure, which involves a six month period.

***What we are doing***

108. We considered the responses very carefully and decided on balance, to set the period of representation at 60 days with a reminder letter being sent at 21 days. We considered aligning the time limits with those which applied to the closure of cases with a live maintenance liability. For these cases receiving parents have a number of options to consider. For arrears only cases parents options are limited to whether to request that the debt is collected or not.

**We asked**

- What information do you think should be included in all write-off notification letters?

**You said**

109. There was a strong consensus that we should put steps in place to ensure addresses are up to date for receiving parents. We received a mixed response in relation to including the debt amounts in our letters. Some respondents felt this should be included despite the problems with the accuracy of older debt balances, whereas others agreed that it made sense not to include debt balances. Some respondents also felt we should make a formal apology in our letters to parents about their debt and consider offering compensation.

**What we are doing**

110. We are putting steps in place to ensure addresses are correct, and where necessary we will undertake trace action on cases and update addresses only. We remain of the view that we shouldn't include debt balances for older cases or accrual periods in our letters. We do not feel adding this information will help customers in their decisions making. Also due to the inaccuracies of older debt balances, it is likely that we would see an increase in complaints from parents due to confusion this might cause.

111. Our letters informing receiving parents that their debt has been written off will include a statement of sincere regret. We do not however think it is appropriate to offer compensation for uncollected maintenance. Responsibility for unpaid maintenance sits with paying parents who have failed to meet their responsibilities for their children.

**We asked**

- Do you think the proposed thresholds for not offering the opportunity to make representations, based on age of case and amount of debt provide a reasonable balance between cost to taxpayers and fairness to receiving parents?

**You said**

112. The consensus was in agreement with our proposed approach. Although a couple of respondents disagreed with the amount we proposed for thresholds, they did not suggest an alternative and accepted the premise of having a threshold.

**What we are doing**



113. We, therefore, plan to maintain the approach outlined in our consultation. It is not cost effective to attempt collection on individual debts of £500 or less (or debts of £1000 or less where the case is ten or more years old), so we propose to write off all non-paying debt at or below this amount. It costs on average between £500 and £1000 to investigate and take action on these cases. This includes collection activity in our arrears teams and enforcement processes. We feel that the thresholds based on age of case and amount of debt provide a reasonable cut off point to ensure that we do not pursue cases at disproportionate cost to the taxpayer.

### **We asked**

- Do you think it is reasonable to not send write-off notification letters on cases with debt balances under £65?

### **You said**

114. Overall respondents agreed that we should not send letters in cases with debt balances under £65. Some respondents felt this amount is too high but did not suggest an alternative amount.

### **What we are doing**

115. We intend to proceed with the plan outlined in our consultation to not send letters to cases with debt balances under £65. Sending letters to customers with debt below these amounts is likely to cause confusion, some may even be unaware they have any outstanding debt. Our approach aligns with DWP policy for debt owed to Government under £65.

## **Next Steps**

116. We are planning to make changes in secondary legislation to bring into force changes to:

- The Child Maintenance Calculation Regulations 2012 to introduce notional income from assets held by a paying parent.
- The Child Maintenance Collection and Enforcement Regulations 1992 to enable deduction from joint and business accounts.
- Commence powers to remove passports (for England, Scotland and Wales).
- Amend the Child Maintenance Management of Payments and Arrears Regulations 2009 to extend our write off powers.

117. We are aiming to bring these changes into force during autumn 2018, It is intended that Northern Ireland will take forward corresponding Regulations.

118. We plan to make changes in regulations for deduction from benefits in a second package of legislative changes at a later date.

## **Annex A**

### **Organisations who responded to the consultation**

Gingerbread

Families Need Fathers (FNF)

Law Society Scotland

Family Law Bar Association (FLBA)

National Association for Child Support Action (NACSA)

Fife Gingerbread

Children Services London Borough of Tower Hamlets

Relate

Money Advice Service

Public Service Union (PCS)

Northern Ireland Public Service Alliance (NIPSA)