Deduction Orders

Deduction Orders: Decision Making Guidance: Contents

Deduction Orders: Referral Criteria

REMEMBER: Before Deduction Order action is considered it is essential that any outstanding changes of circumstances have been dealt with.

Cases should only be referred for Deduction Order (DO) action to be considered if certain threshold criteria are satisfied. These criteria are summarised below:

- we have a confident address for the non-resident parent, and
- the non-resident parent has missed a payment of child maintenance, and
- for employed clients a Regular Deduction Order may be considered for recovery of the arrears at the same time as a Deduction from Earnings Order is in force for deduction of ongoing maintenance and arrears, and
- we know that the non-resident parent has a financial relationship with a specific bank or building society, and
- the non-resident parent has refused to make / comply with a payment agreement that meets the debt steer, and
- a Deduction from Earnings Order is not available or cannot be implemented at a rate allowing an acceptable amount to be collected towards the arrears, and
- the non-resident parent is not in prison,
- there are no mandatory reconsiderations or appeals outstanding,

- there are no welfare of the child issues,
- an arrears warning notice has been issued and the non-resident parent has not since been compliant for a continuous period of twelve weeks,
- the parent with care has been contacted to ensure that they wish debt to be collected and direct pay is not being considered. Notes to be updated to reflect this contact,
- there are no outstanding change of circumstances on the case,
- the case has not been referred in last 12 months and rejected/deselected unless new intelligence has been found

Debt under £500

Although there is no legal deminimis limit on the amount of arrears that can be recovered using deduction orders consideration must be given to the reasonableness and proportionality of doing so where the arrears are low. It may not be viewed as reasonable to pursue a lump sum deduction order which attracts an enforcement fee of £200 when the debt is less than this sum unless there are compelling reasons to do so and the specific case circumstances warrant it.

As an example it may be appropriate to pursue a lump sum deduction order where the sum outstanding is under £200 and there is no on-going liability but the PWC wishes the arrears collected. If despite various attempts to negotiate payment the NRP failed to reach a payment agreement then it would be reasonable to undertake the deduction order action. As it is a discretionary decision to pursue the deduction order a welfare of the child decision must be made to support the decision.

Re-referring Cases

If a case has already been referred for a deduction order to be considered, it should not be referred again:

- unless / until new information becomes available; or
- there is a reported change in the non-resident parent’s circumstances; or
- the non-resident parent's payment agreement breaks down; or
- a reasonable period of time has elapsed. For example: if deduction order action failed because the non-resident parent's account was overdrawn, the case could be re-referred after a suitable period to see if funds are now available.

Example

- Non-resident parent owes £550 in arrears (or more than £250 in Northern Ireland). A financial relationship is identified and a Deduction Order is considered. The Deduction Order team confirm there are insufficient funds for a Deduction Order.
- The parent with care subsequently reports that the non resident parent has received a cash inheritance.
- The case should be resubmitted to the Deduction Order team with full details of the new information.

Fast Track Referrals

A fast track referral should be submitted if information is received indicating that the non-resident parent has had a significant increase in their financial status or that they are preparing to leave the country.

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Deduction Orders: Disclosure

Disclosure is the process used to ask the non-resident parent's bank or building society for information about their accounts.

Before issuing a disclosure request to an organisation it is important to be sure that they can be treated as a deposit taker. This is because deduction orders can only be made against organisations classified as deposit takers.

Who is a Deposit Taker?

1991/48 Section 54(1) and (2) of the Child Support Act 1991

In most cases it will be clear that the organisation can be treated as a deposit taker. All UK banks / building societies fall within this definition. However, if you are not sure whether an organisation can be treated as a deposit taker, you should follow the guidance below:

Deciding whether an organisation can be treated as a deposit taker

Step 1: Ask the following 2 questions:

1. Is the person or organisation receiving money as a deposit which it lends to others?; or

2. Is the person or organisation receiving money as a deposit which it uses to finance other activities, either as capital amounts or out of the interest they receive from those deposits?

An example of the above would be where wages are paid into a current account and those wages are then merged with all the other monies held by the deposit taker, out of which - for example - loans and overdrafts are given.

If the answer to one or both of these questions is yes, proceed to Step 2.

If the answer to both of these questions is no, then then organisation or person is not a deposit taker for our purposes and disclosure / deduction order action should not be pursued.

Step 2: You must now ask the following questions:

1. Is the money paid in on terms that it will be repaid on demand or by some other agreement between depositor and deposit taker, with or without interest or premium?

An example of the above would be where wages are paid into a current account and then the payee can withdraw that amount whenever they like: for example, at a cash point or by using their debit card.

If the answer to question 1 is yes, proceed to question 2.

If the answer to question 1 is no, then then organisation or person is not a deposit taker for our purposes and we cannot pursue disclosure / deduction order action.

2. Do those terms refer to the provision of property (except currency), services or the giving the security?

An example of the above would be where the loan is only agreed on the basis that the payee's property is security for the loan and that the organisation has a registered interest on the deeds of that property while the loan is active.

If the answer to question 2 is no, proceed to Step 3.

If the answer to question 2 is yes, then then organisation or person is not a deposit taker for our purposes and we cannot pursue disclosure / deduction order action.

Step 3: you have now established that the organisation or person is a deposit taker for our purposes and may consider disclosure or deduction order action.

However, if the organisation or person disputes that they are a deposit taker, you

should ask if there are any legislative provisions which they consider exclude them from being a deposit taker. If they confirm that there are such provisions, you should ask them to cite the relevant legislation which (on receipt) should be referred to policy for advice.

If there is any doubt, you should refer the case to Policy colleagues for further advice.

What if the non-resident parent has more than one financial relationship?

If you have identified that the non-resident parent has a financial relationship with more than one bank / building society, you should issue disclosure requests to them all. This will ensure you obtain as much information as possible about the non-resident parent's financial circumstances and can properly identify the most appropriate action.

If you issue disclosure requests to more than one organisation you should normally wait for all responses to be returned before deciding what (if any) action is appropriate. However, this will not be necessary if the first response you receive identifies an account with sufficient funds for the full arrears to be targeted.

Disclosure Requests: Bank / Building Society Obligations

When we ask a bank or building society for information they must provide any information which we require, which is needed in connection with the enforcement of child support or other maintenance. This can reasonably include:

- full details of all accounts held where non-resident parent is the sole account holder; and
- details of any accounts closed in the last 12 months.

There is no legal time limit for the banks to provide this information: the legislation solely states this must be done within a "reasonable period". However, we have an informal agreement with the British Banking Association that disclosure requests will receive a response within 14 days.

If a response has not been received within 21 days a reminder should be issued. NOTE: this can be done by phone call where contact details for the bank / building society are held. Any written reminder should include a copy of the original referral.

Regular problems with the same organisation should be brought to the attention of your Team Leader, who will inform Policy colleagues.

Disclosure Response Received: Next Steps

When the disclosure response is received you must check whether the non-resident parent has made any payments or a payment agreement since the disclosure request was issued. If they have:

- paid their arrears in full; or
- made a payment agreement that complies with the debt steer;

it will not be appropriate to continue with deduction order action. If neither of these outcomes has been reached you must review the information provided to decide whether deduction order action can be taken.

What information will the bank / building society provide?

Banks / building societies must provide any information we require which fits the criteria above. Typically this would include:

- whether the non-resident parent holds any accounts with them;
- confirmation if any of these accounts are: joint accounts; trust accounts; charity accounts; or non sole trader accounts. No additional data will be disclosed about these types of accounts as deduction order action cannot be taken against them.

If the non-resident parent is an account holder with the bank / building society, they should also confirm:

- their most recent postal address (if this is different to the address you included in the disclosure request);
- any telephone numbers they hold for the non-resident parent; and
- any other names or pseudonyms that the non-resident parent uses.

For each sole account that the non-resident parent holds, they should also confirm:

- the name in which the account is held;
- the account type, number and sort code;
- details of any withdrawal restrictions on the account;
- the account balance and confirmation of the date the balance check was taken;
- an account transaction history for the last 3 months (starting back from the date the disclosure request is actioned);

REMEMBER: Data obtained for Deduction Order action must be retained securely until Deduction Order action is complete and then destroyed. If we intend to take

further enforcement action (beyond Deduction Order action),this data can be legitimately retained for enforcement purposes, but you should contact policy colleagues for guidance.

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Deduction Orders: Decision Making Guidance

When you have received all the information requested from the bank / building society you need to decide:

- whether it is possible / appropriate to implement a deduction order; and
- if so, what type of deduction order should be imposed and for what amount.

Is there an appropriate account?

1992/1989 Regulation 25X of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25X of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

You can only make a deduction order if the disclosure response confirms the non-resident parent holds an appropriate account. Deduction orders can be applied to any accounts, except those listed below.

Excluded accounts

- joint accounts
- accounts where the non-resident parent does not have a beneficial interest in the funds. This means the money is held on trust by them for someone else. NOTE: you would not normally be able to identify this at the disclosure stage, but would need to take any evidence indicating this applies into account, if the non-resident parent makes representations to this effect
- accounts that are used wholly or in part for business purposes. The only exception to this are regular deduction orders, which CAN be applied to sole trader accounts. However, you should only consider this if there are no alternative accounts available
- offshore accounts held with UK banks (see the additional note below for further information about this)

NOTE: although we cannot take deduction order action on offshore accounts held with UK banks, we CAN take deduction order action on UK accounts that are held with foreign banks.

Examples:

- the non-resident parent holds an account with the Halifax in Jersey - we CANNOT take deduction order action on this account
- the non-resident parent holds an account in the UK with the Central Bank of India - we CAN take deduction order action on this account

Bank Charges and Minimum Balances

1992/1989 Regulation 25Q(2) and Regulation 25Z of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25Z of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

Banks can impose charges on the non-resident parent for making deductions under a regular or lump sum deduction order. It is also necessary for the non-resident parent to have a minimum credit balance before any deduction can me made. The details for different types of deduction order are provided below.

Lump sum deduction orders

Banks and building societies can charge the non-resident parent for making deductions under a deduction Order. This charge can be up to £55 for every deduction made under a Lump Sum Deduction order. If the bank / building society are going to make a deduction of this type, they will do so at the point the deduction is made from the account on the Child Maintenance Group's behalf. E.g. not at the point that the funds are frozen.

Example

- we ask the bank to deduct £3000
- the balance in the account is £2500
- the bank charge is £55
- the bank will take their £55 first and then release £2445 to the Child Maintenance Group

A deduction can only be made if the account has a credit balance above a prescribed minimum amount PLUS the bank's administrative charge on the date the deduction is due to be made.

For lump sum deduction orders, this means there must be a minimum balance of £110 (the prescribed minimum amount of £55 + the amount of the bank's administrative charge - also £55).

Regular deduction orders

For regular deduction orders, the bank can make a £10 charge for every deduction made.

A deduction can only be made if the account has a credit limit above a prescribed minimum amount PLUS the bank's administrative charge on the date a deduction is due to be made.

The prescribed minimum amount is:

- £40, where the deduction period is monthly, or
- £10, where the deduction period is weekly, or
- £10 for each whole week in the period and £1 for each additional day

Example

If the bank chooses to charge £10 per regular deduction and the deductions are being made monthly, the account must be at least £50 in credit on the date the deduction is due to be made. If there are insufficient funds, the bank will not pay the order and will inform the Child Maintenance Group of this.

Regular or Lump Sum Deduction Order?

When you are deciding what type of deduction order to impose you should consider the disclosure information and the arrears owed.

A lump sum deduction order will always be the preferred method of collection if the non-resident parent has a balance available that will allow a one off payment to be collected towards their arrears.

A regular deduction order should only be considered:

- if there are insufficient funds for a lump sum deduction order to be attempted (on either a savings or a current account); or
- you are dealing with a self employed referral, where the arrears are below the £500 deminimis for a lump sum deduction order to be considered (£250 in Northern Ireland).

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Lump Sum Deduction Order: Interim Order

1992/1989 Regulations 25M - AD of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulations 25M - AD of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

If you decide to try and collect arrears using a lump sum deduction order (LSDO) an interim order must be issued first. This freezes funds in the specified account adding up to the value specified in the order, ensuring they cannot be withdrawn. The bank / building society must comply with an interim lump sum deduction order as soon as possible after it is served but will only freeze an amount that is in credit. Please note a Lump Sum Deduction Order cannot be made where the funds in the account are less than the minimum amount i.e. £55 plus the administration charge of £55 = £110.

Before you can issue a lump sum deduction order you must decide how much the order should be made for:

- if you are making a lump sum deduction order against a savings account, you should make the order for the full amount of the child maintenance arrears;
- if you are making a lump sum deduction order against a current account, you must consider what will be an appropriate amount to avoid the non-resident parent suffering hardship in meeting their ordinary living expenses. The following sections provide guidance on this point

Example

The child maintenance debt is £4500 and the current balance on the account is £4852.26. Throughout the previous 3 months, money has gone in and out of the account, but the balance has never fallen below £2312.00. This suggests that the non-resident parent is meeting their ordinary living expenses without drawing on at least £2312. In these circumstances, a LSDO can be made for £2312.

Lump Sum Deduction Orders Against Current Accounts

Lump sum deduction orders can be made against current accounts, if the evidence suggests that making the order is unlikely to result in the non-resident parent suffering hardship in meeting their ordinary living expenses.

In deciding whether there is a risk of hardship, you should consider the account balance in the previous 3 months. If, during that period, the balance in the account has never fallen below an amount equivalent to the child support debt, then an order can be considered for the full debt. If the balance in the account is lowers than the full debt, but has never fallen below an identifiable amount, then an order can be considered for that identified amount.

IMPORTANT NOTE: Ensuring up to date information is used in current account cases

It is particularly important that up to date balance details are used when deciding an appropriate amount to pursue in current account cases. As current account details are based on the non-resident parent's monthly income / expenditure. Up to date statements should be requested to ensure the amount pursued reflects the non-resident parent's current financial position. You should prioritise current account cases as needed to minimise situations where this will be needed.

Exceptional Lump Sums Paid In: balance exceeds exceptional amount

We can also take LSDO action where a current account is in credit, and there is evidence to suggest an amount has been paid in, which is not part of the non-resident parent's usual income. For example: an inheritance or lottery win.

In these circumstances, a LSDO can normally be made for either the amount paid into the account or the amount of the child maintenance arrears if this is lower. The balance on the account throughout the previous 3 months will not be relevant, unless the account was overdrawn before the money was paid in, as a LSDO can only be made for an amount up to the balance on the account.

Example

The child maintenance debt is £7000 and the current account is overdrawn by £3000. The non-resident parent inherits £5000, which is paid into the current account, so the account moves into credit with a balance of £2000. In these circumstances a LSDO can be made for £2000.

The recommended approach in exceptional payment cases is therefore: that we do not need to consider the account balance in the last 3 months, but can make an LSDO for the full amount of the exceptional payment, or the full amount of the child support debt if this is lower.

The rationale behind this approach is that we can assume targeting an exceptional payment will not cause financial hardship, as it will not be intended for ordinary living expenses. Non-resident parents have the opportunity to apply for funds to be released if the exceptional payment is intended to cover other, essential expenditure.

This approach can be applied in cases where the balance in the account at the date of disclosure exceeds the amount of the exceptional payment. However, a different approach is needed in cases where the non-resident parent has received an exceptional payment, but has subsequently made withdrawals against the account, so that at the point of disclosure action, the balance in the account has reduced below the amount of the exceptional payment.

Exceptional Payment In: balance below exceptional amount

In these circumstances, we should attempt to make an order for an amount equivalent to the remaining balance of the exceptional payment, to reduce the risk of financial hardship. 2 types of action will be appropriate:

- you should look at any "usual income" amount(s) paid in between the date of the exceptional payment and the date of disclosure and deduct these from the total balance into the account to ensure you will not be targeting any of the non-resident parent's usual income; and
- you should also look at the non-resident parent's usual monthly expenditure and ensure that deducting usual income payments in from the account balance will leave the non-resident parent with a sufficient amount to cover their usual monthly expenditure.

Expenditure

Non-resident parent receives an exceptional payment of £10K. Between the date of the exceptional payment and the date of the disclosure, their usual income of £1500 is also paid into the account. The non-resident parent has usual monthly outgoings of £1K. Between the date of the exceptional payment and the date of disclosure, these usual outgoings leave the account, but a further £3K in exceptional outgoings is paid out. The balance at the date of disclosure is therefore:

£10K + £1500 - £1K - £3K = £7500.

Child maintenance arrears are £8K at the date of disclosure. Following the principles outlined above you should target £7000 this leaves the non-resident parent £500 of their usual monthly income after their usual expenses of £1000 are paid. This is because you are not targeting their usual monthly income.

Ensuring up to date information is used in current account cases

As current account orders are based on the non-resident parent's usual monthly income/expenditure, a period of one month is appropraite. If this period is exceeded, up to date statements should be requested to ensure the amount pursued reflects the non-resident parent's current financial position and usual income/expenditure. You should prioritise current account cases as needed, to minimise situations where this action will be required.

Recording an Interim Lump Sum Deduction Order Decision

Deciding whether or not to impose a deduction order is a discretionary decision. If you decide to take this action you must fully record the reasons for your decision. This decision should include details of why the action is considered appropriate (e.g. the non-resident parent has refused to make an agreement and funds have been identified) and why it has been made for the relevant amount. The Welfare of the Child decision should also be considered and recorded.

Interim Lump Sum Deduction Order: Authorisation

The deduction order process is administrative. There is no need to get court authorisation before an order is imposed. However, it is important key details on the case are checked before the order is issued. These details should include:

- the debt amount / period;
- whether the non-resident parent has made a payment since the case was referred;
- that the order is for an appropriate amount and does not exceed the total arrears;
- if there are multiple orders that the total value does not exceed the total arrears;
- that the bank / building society name, account and sort code number specified on the order match the disclosure details.

It should also be confirmed that deduction order action is appropriate. The following factors should therefore also be checked:

- that an attempt to make positive contact with the non-resident parent was made before deduction order action started;
- that there was not an agreement in place that met the debt steer;
- that there was not an appeal on-going unless the appeal is against a maintenance decision which will not affect the amount of debt sought under the deduction order;
- that there are no outstanding changes of circumstance.

Serving the Interim Lump Sum Deduction Order

When you have decided how much the order should be made for, a copy should be issued to the non-resident parent's bank / building society.

Once the order is treated as served on the bank / building society a copy must be issued to the non-resident parent as soon as practically possible. An interim lump sum order ceases to be in force six months after the order is served on the non-resident parent's bank/building society.

Date of Service

1992/1989 Regulation 25A (3) of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25A(3) of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

The date of service for an interim lump sum deduction order depends on the method of communication used and who it is being served on:

- **deposit takers**

1992/1989 Regulation 25A (3)(a)(i) and (ii) of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25A (3)(a)(i) and (ii) of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

  - if the order is issued by email / fax, it is treated as served at the end of the first working day after the day it is sent
  - if the order is issued by post, it is treated as served at the end of the second working day after the date it is posted

- **non-resident parent**

1992/1989 Regulation 25A (3)(b) of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25A(3)(b) of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

If the order is sent by post to the non-resident parent's last known or notified address it is treated as served at the end of the day on which it is posted.

Interim Lump Sum Deduction Order: Response from the bank / building society

1992/1989 Regulation 25O of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25O of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

Banks / building societies must comply with a lump sum deduction order as soon as practically possible. Within 7 days of the date that the order is served, the bank / building society must inform the CMG:

- whether the account specified in the order does not exist, cannot be traced or has closed;
- whether the amount standing to the credit of the account specified in the order is at least the same or less than the amount specified in the order, and where it is less, that amount;

- where the name of the liable person specified in the order is different to the name in which the account specified in the order is held, whether the account was previously held in that name and if so, the new name in which the account is held.

Interim Lump Sum Deduction Order Not Implemented

If the bank/building society cannot set up the order they must inform Child Maintenance Group:

- if the account specified in the order does not exist, cannot be traced or has been closed;
- if there are insufficient funds in the account (balance below the £110 minimum); or
- if there is a different name on the account to that specified in the order; and.
- may supply additional information, if appropriate.

Interim Lump Sum Deduction Order Implemented

Where the bank / building society is able to implement the lump sum deduction order they must tell the Child Maintenance Group whether the amount in the account is the same or less than the amount in the order.

No action should then be taken for a period of 14 days from the date that the order was served as the non-resident parent can dispute the order within this period by making representations.

If the non-resident parent does not dispute the order within 14 days a final order should be served. Refer to the section on Final Lump Sum Deduction Orders for further advice.

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Interim Lump Sum Deduction Order: Disputes

If a non-resident parent or their bank / building society want to challenge an interim lump sum deduction order they can:

- make Representations against the interim order; or
- make an application for all / part of the funds that have been frozen to be released.

Representations

1992/1989 Regulation 25M of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25M of the Child Support (collection and Enforcement) Regulations (Northern Ireland) 1992

Non-resident parents and their bank / building society can make Representations against an interim order if they do not think the action proposed is correct.

Representations must be made directly to the Child Maintenance Group and can be submitted in writing, by email or by phone. Representations must be made within 14 days of the date that the order is served.

It is essential that any Representations are fully considered and responded to before a final order is issued. This requirement is prescribed in legislation.

Representation Grounds

The grounds on which a Representation can be made are NOT prescribed in legislation. However, representations will normally be based on an objection to the proposed action as incorrect, due to an issue with the debt or the targeted account. For example:

- the non-resident parent claims they do not owe the amount specified in the interim order;
- the non-resident parent or their bank / building society state that the CMG is targeting the wrong individual;
- the non-resident parent does not have a beneficial interest in the targeted account (e.g. the money is held on trust for a third party);
- the account targeted is not suitable for deduction order action. For example: it is a joint / business account;
- the non-resident parent states they have already made an alternative arrangement to pay their arrears.

If the non-resident parent or their bank / building society needs to submit additional information / evidence to support their representations, they must be given a reasonable amount of time to do this. What is reasonable will depend on the circumstances of the case and the type of information that they need to submit.

If they fail to supply the information needed at the end of the time agreed, you can either allow additional time (if appropriate) or make your decision based on the information / evidence already submitted.

REMEMBER: there is no right of appeal against the decision you make on a Representation. Any appeal would need to be made against the subsequent final order.

Representation: Outcomes

When you have considered the Representations, you will need to decide either:

- that the representations should be accepted. This would mean it is not appropriate to proceed with the lump sum deduction order. In this situation, the interim order should be discharged; or
- that the representations should be accepted in part. This would mean that it is appropriate to proceed, but that the final order should be for a lower amount (because e.g. the non-resident parent proves that they do not owe the full amount specified in the interim order); or
- that the representations should be rejected. This would mean you should proceed to make the final order for the same amount as was specified in the interim order.

Application to Release Funds

1992/1989 Regulation 25N of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25N of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

Non-resident parents and their bank / building society can apply to the Child Maintenance Group for all or part of the funds frozen under an interim order to be released. This type of application is required where the non-resident parent or their bank / building society does not dispute the Child Maintenance Group's right to collect the amount claimed by a deduction order, but states they need all or part of the funds to be released so they can be used for other purposes.

Applications for funds to be released can be made at any time from the date an interim order is served until the date the funds have been released and paid to the Child Maintenance Group.

The permitted grounds for an Application to Release Funds are set out in Regulations and are as follows. IMPORTANT NOTE: you can ONLY consider releasing all / part of the funds secured under the interim order, if the non-resident parent or their bank / building society provides sufficient information to confirm that one of these grounds applies:

- that the non-resident parent, their partner or any relevant child is suffering hardship in meeting ordinary living expenses because of the deduction order;

- that the non-resident parent is under a written contractual obligation to make a payment, which was agreed before the interim order was served;
- the bank / building society is able to show that within the 30 days prior to the interim order being made, it intended to use funds in the account to settle outstanding debts;
- the bank / building society has a contractual obligation with the non-resident parent requiring a specified amount of credit to be available in the targeted account. For example: the bank gave the non-resident parent a loan / mortgage on condition that they maintain a credit balance in their account as security;
- any other circumstances that the Child Maintenance Group considers appropriate.

Application to Release Funds: Decision Making Guidance

Deciding whether to allow funds to be released is a discretionary decision. You must take all the circumstances into account, including any information / evidence submitted by the non-resident parent or their bank / building society. If additional information is needed, the non-resident parent / their bank / building society should be allowed reasonable time to provide it. What is reasonable will depend on the circumstances and the type of information / evidence required.

If the non-resident parent / bank / building society fails to provide the required information by the end of the time allowed, you can either allow additional time or a decision on the basis of the details held.

You must ensure that the reasons for your decision are recorded in full. Refer to the guidance on discretionary decision making for further advice about making and recording these types of decisions. In particular you must have regard to the welfare of any child likely to be affected by your decision.

REMEMBER: non-resident parents / banks can appeal against any decision made on an application to release funds.

Application to Release Funds: Outcomes

The outcome of an application to release funds will be one of the following:

- application allowed in full: all funds should be released;
- application allowed in part: some funds released;
- application rejected: no funds released.

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Final Lump Sum Deduction Order: Decision Making Guidance

A final lump sum deduction order notifies the non-resident parent and the bank / building society of the final figure being requested. The amount in the final lump sum deduction order will therefore reflect any adjustments that have been made since the interim order was issued.

It is essential that you do not issue a final lump sum deduction order until;

- 14 days have elapsed since the interim order was served; and
- any Representations against the interim order have been dealt with and responded to

Serving the Final Lump Sum Deduction Order

As the funds in the non-resident parent's account are already frozen, the final order should be served on the bank / building society and the non-resident parent at the same time.

Once the final order is served no further action should be taken for a period of 21 days as the non-resident parent can appeal against the final order in this period.

If the non-resident parent does not make an appeal within this period you should request the funds from the bank / building society.

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Final Lump Sum Deduction Order: Disputes

Non-resident parents or their bank / building society can appeal against the making of a final lump sum deduction order.

REMEMBER: Non-resident parents and their bank / building society can also:

- appeal against any decision made on an Application to Release Funds; and
- still apply for funds to be released after the final order has been served until the funds have been paid to the Child Maintenance Group.

Appeals against a Final Lump Sum Deduction Order

1992/1989 Regulation 25AB of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25AB of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

Appeals must be lodged within 21 days of the order being served with:

- the county court in England and Wales;
- the sheriff court in Scotland;
- the magistrates' court in Northern Ireland;

using one of the following forms which should be sent directly to the court and NOT the Child Maintenance Group.

In England and Wales: Form N161 which is available from the county court or on the internet at www.hmcourts-service.gov.uk. Guidance on completing the appeal form is also available from either of these sources.

In Scotland the forms to be used when appealing against deduction orders are:

- An application for appeal against withholding of consent to the disapplication of section 32G(1) or 32H(2)(b) of the Child Support Act 1991 should be made on Form 5AC-A
- Form of application for appeal against a lump sum deduction order should be made on Form 5AC-B

In Northern Ireland: Form 55 (Notice of Appeals to the magistrates' court) should be used. This is available from any court or on the internet at www.courtsni.gov.uk.

NOTE: when an appeal is made against the making of a final lump sum deduction order, funds cannot be requested from the bank until the outcome of the appeal is known. When you receive confirmation that an appeal has been made (either from the non-resident parent / bank or directly from the court) you should not take any further action on the case until the appeal has been dealt with.

The party making the appeal is supposed to inform the Child Maintenance Group at the same time as the appeal is lodged with the court, by sending us a copy of form N161 for England & Wales or Forms 5AC-A or Form 5AC-B in Scotland. In England and Wales where this happens, an appeal pack must be completed and submitted to the County Court within 14 days of the date that form N161 is received.

In Scotland as soon as the appeals forms are received the contracted lawyer (Harper Macleod) should be instructed of the appeal having been lodged in the Sheriff Court and provided with any information relating to assigned hearing dates so that they can take the necessary steps to represent the Child Maintenance Group at the hearing. The appeal pack should then be prepared and submitted to the contracted lawyers within 14 days of the copy of the Form 5AC-A or Form 5AC-B being received.

If the party making the appeal fails to inform the Child Maintenance Group that they have done this, and we receive confirmation of the appeal from another source, we must inform the court of this and advise them:

- how we heard about the appeal
- the date that we heard about the appeal
- that we are responding to the notification of appeal

A copy of the notification we received about the appeal should also be included, to confirm how we received this information.

IMPORTANT NOTE: whenever we receive notification of an appeal, it is essential that the details of the case and the order are checked to ensure that everything is accurate and that there are no grounds on which we should vary / lapse or discharge the order. If you are in any doubt at this stage, you should consult Policy colleagues.

If it is appropriate for the order to be changed in any way, the court must be informed of this immediately.

Appeal Outcomes

The court will decide the outcome of the appeal, which could be any of the following:

- affirm the order or decision (this means the appeal is not allowed because the court considers the original order / decision is correct);
- set aside the order or decision (this means the appeal is allowed and the order / decision appealed against no longer exists);
- send the order of decision back to the Child Maintenance Group to reconsider with directions (e.g. that the order should be varied or that funds should be released);
- refer any application or issue back to the Child Maintenance Group for determination (e.g. where we have previously refused to review a decision, the court can ask us to look at the decision again);
- costs order (where the court orders us or the appellant to pay the other party's costs).

Depending on the court's decision, you will need to either:

- release all the funds (Lapsing / discharging the order as directed);
- release some of the funds (varying the order as directed); or
- continue with our action.

NOTE: where the appeal is not allowed, non-resident parents / their banks / building societies have 14 days to challenge this decision. It is therefore essential that, where an appeal has not been allowed, you do not request funds from the bank for 15 days following the court's decision.

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Regular Deduction Order: Decision Making Guidance

1992/1989 Regulation 25C of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25C of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

A regular deduction order (RDO) instructs the non-resident parent's bank / building society to deduct amounts from the non-resident parent's account on a regular basis and transfer the funds to the Child Maintenance Group. Regular deduction orders do not freeze funds.

If you decide to impose a regular deduction order you must decide an appropriate deduction rate.

Maximum Deduction Rate for a Regular Deduction Order

The amount deducted by a regular deduction order must not exceed:

- 40% of the non-resident parent's gross weekly income; or
- £80 per week if a default maintenance decision is in place

Regular Deduction Order: Deduction Frequency

Regular deduction orders should normally be based on a monthly frequency. An alternative frequency should only be applied if the disclosure information indicates this is more appropriate. For example: there is evidence that the non- resident parent is paid weekly.

Selecting the First Deduction Date

When you issue a regular deduction order you must indicate the date that you want the first deduction to be made on. This date must be at least 7 days after the date that the order will be treated as served. This is to ensure the bank / building society has sufficient time to implement the order before the first payment is due. However, you should not set a first deduction date more than 12 days after the order is treated as served to reduce the risk of the non-resident parent moving their funds.

When you are deciding the most appropriate date for the first deduction you should use the disclosure information to identify a date that will provide the highest chance of a full deduction.

Key transactions to look for are dates where regular payments come into the account (e.g. wages). Where such payments are identified the first deduction should be scheduled for that date or the day after.

Serving a Regular Deduction Order

When you have decided an appropriate deduction rate, frequency and date of first deduction, the regular deduction order can be served. The order should be sent to the non-resident parent and their bank / building society at the same time.

Regular Deduction Order Not Implemented

If the bank / building society are not able to set up the regular deduction order they must inform the Child Maintenace Group of this and confirm:

- if the account specified in the order does not exist, cannot be traced or has been closed

If there is a different name on the account to that specified in the order they must inform the Child Maintenance Group:

- if the account was previously held in the name on the order. If so, they must also confirm the name in which the account is now held.

Regular Deduction Order Implemented

The non-resident parent's bank / building society must comply with the regular deduction order immediately. The first deduction should be made on the date specified in the order.

The bank / building society should ensure this payment is received by the Child Maintenance Group within 10 calendar days from the date the deduction is due.

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Regular Deduction Orders: Disputes

1992/1989 Regulations 25G and 25AB of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulations 25GB and 25AB of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

If a non-resident parent or their bank / building society wants to challenge a regular deduction order, they can:

- apply to the Child Maintenance Group for the order to be reviewed: or
- make an appeal to the county court / the sheriff court in Scotland.

Appeals to the county court can either be:

- against the regular deduction order being made; or
- against the Child Maintenance Group's decision on an application for review.

Reviews:

Appeals against a Regular Deduction Order / Refusal to Review

1992/1989 Regulation 25AB of the Child Support (Collection and Enforcement) Regulations 1992

1992/390 Regulation 25AB of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

Appeals must be lodged (within 21 days of the order being served) at:

- the county court in England and Wales;
- the sheriff court in Scotland; or
- the magistrates' court in Northern Ireland;

using one of the following forms, which should be sent directly to the court and NOT the Child Maintenance Group:

In England and Wales: Form N161 which is available from the court or on the internet at www.hmcourts-service.gov.uk. Guidance on completing the appeal form is also available from either of these sources.

Scotland

An NRP or deposit taker who is based in Scotland can lodge an appeal in the Sheriff Court by completing Form 5AB. This form can be accessed at the Scottish Court Service webpage.

The NRP and/or the Court should then provide a copy of this Form to the Child Maintenance Group. Once the copy of Form 5AB is received by the Deduction Order Team contact should be made with the contracted Solicitors (Harper Macleod) to advise of the appeal hearing date and instruct that they will be required to represent the Child Maintenance Group at the appeal hearing. An appeal pack should then be

prepared and submitted to the solicitors within 14 days following the receipt of the Form 5AB.

NOTE: When an appeal is made against a regular deduction order / refusal to review, is not necessary for deductions to be suspended under the order UNLESS the court orders a stay of proceedings or directs that regular deductions must cease pending the court hearing outcome being decided. If this happens, any action on the case MUST be suspended until further notice from the court.

There are no prescribed grounds for an appeal against the making of a regular deduction order. The contracted solicitors will guide the deduction order team as to the court procedure and action required to be taken.

The party making the appeal is supposed to inform the Child Maintenance Group at the same time as the appeal is lodged with the court, by sending us a copy of form N161. Where this happens, an appeal pack must be completed and submitted to the court within 14 days of the date that form N161 is received.

If the party making the appeal fails to inform the Child Maintenance Group that they have done this, and we receive confirmation of the appeal from another source, we must inform the court of this and advise them:

- how we heard about the appeal;
- the date that we heard about the appeal; and
- that we are responding to the notification of appeal.

A copy of the notification we received about the appeal should also be included, to confirm how we received this information.

IMPORTANT NOTE: whenever we receive notification of an appeal, it is essential that the details of the case and the order are checked to ensure that everything is accurate and that there are no grounds on which we should vary / lapse or discharge the order. If you are in any doubt at this stage, you should consult Policy colleagues.

If it is appropriate for the order to be changed in any way, the court must be informed of this immediately. The party that made the appeal should also be informed of the action we have taken and asked if they now wish to withdraw their appeal. if the appeal is not withdrawn you should await notification of the hearing date.

Appeal Outcomes

The court will decide the outcome of the appeal, which could be any of the following:

- affirm the order or decision (this means the appeal is not allowed because the court considers the original order / decision is correct);

- set aside the order or decision (this means the appeal is allowed and the order / decision appealed against no longer exists);
- send the order or decision back to the Child Maintenance Group to reconsider with directions (e.g. that the order should be varied or that funds should be released);
- refer any application or issue back to the Child Maintenance Group for determination (e.g. where we have previously refused to review a decision, the court can ask us to look at the decision again);
- costs order (where the court orders us or the appellant to pay the other party's costs).

Depending on the court's decision, you will need to either:

- review the original review decision (as directed by the court);
- vary / lapse / discharge the order; or
- leave the order as it stands.

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