

[Direct \(Non Scheme\) Payments: Contents](#)

- [Direct \(Non Scheme\) Payments: Overview](#)
 - [Direct \(Non Scheme\) Payments: Process](#)
 - [Making and recording a Direct \(Non Scheme\) Payment Decision: Decision Making Guidance](#)
 - [Evidence of a Direct \(Non Scheme\) Payment](#)
 - [Allocating a Direct \(Non Scheme\) Payment against arrears / future payments](#)
-

[Direct \(Non Scheme\) Payments: Overview](#)

What is a direct (non scheme) payment?

A direct (non scheme) payment is a payment in lieu of child maintenance that is made by the non-resident parent:

- directly to the parent with care instead of by their set method of collection, and
- after the maintenance calculation has been completed and notified to the clients

We refer to these payments as “in lieu” of child maintenance, because although the clients intend them to be treated in this way, they have not been made according to the set method of collection.

Payments made before the calculation is completed / notified can be treated as voluntary payments in certain circumstances. Direct (non scheme) payments cannot be considered if the payment can be taken into account as a voluntary payment or under offsetting provisions (see below).

What is not a direct (non scheme) payment

- a payment covered by Voluntary Payments/Offsetting provisions (see sections below)
- payments made directly to the qualifying child/ren
- a non-resident parent providing or paying for non-prescribed goods in relation to the child (for example holidays, clothes, birthday presents etc.)
- a payment by the non-resident parent to the parent with care in addition to the regular periodic payment of child maintenance

- the transfer of property or assets by the non-resident parent to the parent with care
- any payments or goods for which the non-resident parent is ordered by a court to pay to the parent with care (for example as part of a divorce settlement)
- payments not provided for in this guidance, which have resulted in the Parliamentary Health Service Ombudsman (PHSO) / Independent Case Examiner (ICE) / Member of Parliament (MP) involvement or could provide embarrassment to Ministers or the CMG
- a payment of child maintenance arrears due to the Secretary of State paid directly to the parent with care by the non-resident parent with their regular maintenance

Voluntary payments

Voluntary Payments occur when:

- an application for child maintenance has been made
- the maintenance calculation has not yet been completed and notified
- the non-resident parent has made voluntary payments to the parent with care, the CMG or a third party such as a mortgage lender, and
- the payment is made on or after the effective date

Refer to the guidance on [Voluntary Payments](#) for additional information.

Offsetting

Offsetting Debt is a discretionary power which enables the Commission, in specific circumstances, to offset parents' liabilities to pay child maintenance against debt on a case and/or current liability.

Refer to the guidance on [Third Party Offsetting](#) or [Role Reversal / Split Care Offsetting](#) for further advice.

Direct (non scheme) payments can be taken into account by treating them as overpayments

Child Support Law allows the CMG to take certain direct (non scheme) payments into account by treating them as overpayments of child maintenance and using them to reduce arrears or ongoing maintenance. An overpayment has not actually been made in the usual sense, but we treat them like this for adjustment purposes.

Whether this action is taken or not is at the CMG's discretion and will depend on the circumstances of the case.

NOTE: There is no specific legislative provision for this action. It is based on the policy supporting the collection of Child Maintenance.

[Return to contents](#)

[Direct \(Non Scheme\) Payments: Overview of decision process:](#)

Despite having a set method of collection, it is recognised that some clients may continue to make occasional direct (non scheme) payments in lieu of child maintenance. The CMG should consider these exceptional payments and take them into account in certain circumstances.

If a parent with care or non-resident parent reports receiving or making direct (non scheme) payments in lieu of child maintenance, you need to:

- collect evidence supporting the payment;
- decide whether the payment has been made;
- decide whether the payment should be taken into account, and if so;
 - adjust the arrears /ongoing maintenance to reflect the payment.

The decision making guidance explains when payments can be accepted and how they can be allocated.

Remember: The CMG supports and encourages Family Based Arrangements. Clients making direct (non scheme) payments should be reminded of this option and encouraged to make a Family Based Arrangement (particularly if direct (non scheme) payments have been for a prolonged period as opposed to one off payments). Clients should also be reminded that direct (non scheme) payments are not an alternative method of payment and may not always be taken into account.

[Return to contents](#)

[Making and Recording a Direct \(Non Scheme\) Payment Decision: DMG:](#)

Whether a direct (non scheme) payment should be accepted or rejected is a discretionary decision. This means that clients cannot appeal against the decision, but they can challenge it through a Judicial Review.

It is essential that you record the reasons for your decision and the evidence you have taken into account. You must also demonstrate that you have considered the welfare of any child that your decision is likely to affect.

Refer to the Discretionary Decision Making Guidance for further advice on making and recording [discretionary decisions](#).

Remember: any decision whether to accept or reject a direct (non scheme) payment must be reasonable in light of the evidence provided by both parents and any other information held by CMG. This is so that if the decision is challenged via a Judicial Review, the court will agree that the caseworker's decision was the only reasonable decision that could have been taken in light of the evidence presented to them.

When making your decision, you must take into account the welfare of any children likely to be affected, assess all the evidence provided by both parents and make a balanced decision on whether it is reasonable to accept that a direct (non scheme) payment has been paid. The decision and the evidence used to inform this decision should be clearly and correctly recorded in Notes.

Please remember: if a parent with care does not agree that direct (non scheme) payments have been made, there must be very persuasive evidence to prove that the direct (non scheme) payment was paid as the non-resident parent claims and that it was made in respect of child support maintenance in order to decide in favour of the non-resident parent.

[Return to contents](#)

[Evidence of a Direct \(None Scheme\) Payment: Decision Making Guidance:](#)

To confirm that a direct (non scheme) payment of child maintenance was made by the non-resident parent and received by the parent with care it is essential that you:

- speak to both parents to confirm the details of the payment, and
- where appropriate get a written declaration from them to support this

This written declaration is important and must be retained, as it could be used as evidence if the decision is challenged.

What evidence you gather and how you gather it will depend on who reports the payment, whether the parties agree and whether the parent with care returns the written declaration.

Parent with care reports the payment and both parties agree

If the parent with care reports the payment, you need to confirm the period, amount, and purpose of the payments. (i.e. that the payments were made in lieu of child maintenance). You should consider whether it is appropriate to request a written declaration / evidence of the payment(s) from them

You will also need to speak to the non-resident parent. If the non-resident parent agrees the period, amount and purpose of the payment then no additional evidence is required and the non-resident parent does not need to complete a written declaration.

In these circumstances you can accept the payment. See the decision making guidance for details of how to treat the payment.

NOTE: In complex cases you may decide that even though the parties agree, it is worthwhile asking the non-resident parent for a written declaration.

See the relevant section below for guidance on the action to take when the parties do not agree.

Non-resident parent reports the payment and both parties agree

If the non-resident parent reports the payment, you should consider whether it is appropriate to request a written declaration / evidence of the payment(s) from them. This will only be used if the parent with care subsequently disputes the payment. However, you may decide it is appropriate to request this from the outset to avoid having to go back and ask for it after you have spoken to the parent with care. For example: this may be appropriate in complex cases (e.g. multiple payments) or in cases where the non-resident parent indicates the payment is likely to be disputed.

When you speak to the parent with care, you will need to check if they agree with the amount and purpose of the payment(s). You should consider whether it is appropriate to request a written declaration / evidence of the payment(s) from them.

In these circumstances you can accept the payment. See the decision making guidance for details of how to treat the payment.

See the relevant section below for guidance on the action to take when the parties do not agree.

When the parties do not agree

If the parent with care and non-resident parent dispute:

- that a direct payment has been paid, or
- the amount of a direct payment

You must obtain information / evidence from both parties. When this has been obtained you will need to decide whether the payments that have been made should be treated as Direct (Non Scheme) Payment.

We will usually base our decision on whether the parent with care accepts that a payment was made in respect of child maintenance.

You can decide that a direct (non scheme) payment has been made without the parent with care's agreement. But this would only be in exceptional cases, where there is persuasive evidence to support the non-resident parent's claim.

The direct (non scheme) payment declarations issued to the parent with care and in exceptional cases to the non-resident parent, make it clear that in cases of dispute, any evidence and information given to the CMG by either party will be taken into account when making a decision about direct (non scheme) payments.

In the event of a dispute, both the non-resident parent and parent with care may provide further evidence of payment to support their claim or to counter the other party's claim.

Remember: evidence payments were made will not be sufficient in itself, there must be evidence that it is reasonable to treat them as a Direct (Non Scheme) Payment of child maintenance.

Parent with care evidence

Evidence of direct (non scheme) payments from the parent with care may often be solely a written statement advising what payments were received and what they were received for. Although if the parent with care has additional evidence that confirms their position they should be encouraged to submit it (e.g. parent with care states the payment is for a holiday and provides a receipt / invoice).

As a minimum, any evidence must show:

- the payment was not received as claimed
- the full payment was not received as claimed
- the payment was made for one of the excluded reasons listed in the overview "What does not constitute a direct payment?", or
- the payment was made under a court order and was not made in respect of any payments due under child support law

Non-resident parent evidence

Evidence from a non-resident parent will normally be required to show that payments were made if this is disputed (for example – copies of their bank statements showing the transfer of money).

If the reason for the payment is disputed it will normally only be possible for the non-resident parent to provide a statement to explain why the payments should be treated as child maintenance.

As a minimum, any evidence must show:

- the frequency of the payments
- the amount of the payments
- that the payment was made in respect of child support maintenance for the qualifying children
- where / how the payment was made (e.g. into Parent with care's bank account)

What if the parent with care does not return the written declaration?

If the non-resident parent states that a direct (non scheme) payment has been made but the parent with care does not return the written declaration, this should be treated as though the direct payment is disputed.

The parent with care should be allowed 14 days to return the declaration. If they do not return it in that time you should make a further attempt to telephone the parent with care to ask them if they agree with the direct payment and to submit any evidence. This attempt and the outcome should be clearly documented.

If the parent with care fails to respond after a period of seven days, you would have to make your decision based on the evidence available to you. See 'When the parties do not agree' for more information.

[Return to contents](#)

[Allocating a Direct \(Non Scheme\) Payment against arrears / future payments](#)

If you accept that a Direct Payment has been made, you need to decide how it should be taken into account. There are two ways of doing this:

- you can reduce any outstanding arrears by the amount of the direct payment, or
- you can allocate the direct payment against the non-resident parent's ongoing maintenance liability (such as reducing the amount they are required to pay for a specific period).

Using a direct (non scheme) payment to reduce arrears

You can reduce outstanding arrears to reflect a direct payment if:

- arrears have accrued on an ongoing case because the non-resident parent has been making direct payments
- a case is closed, but the non-resident parent has been making direct payments to the parent with care

Allocating a direct (non scheme) payment against ongoing payments

Regulation 8 of the Child Support (Management of Payments and Arrears) Regulations 2009

Regulation 8 of the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009

Because we treat direct payments as overpayments for adjustment purposes, you can allocate a direct payment against ongoing child maintenance payments. However, before doing this, you should encourage the parties to agree to make a Family Based Arrangement. If they agree to do this, then future payments will not need to be made through the CMG, so there will be no requirement to allocate the payments already made (this applies solely to future / ongoing payments, not to the adjustment of any arrears).

In deciding whether to reduce the non-resident parent's ongoing maintenance to take account of these payments, you need to consider:

- the circumstances of the relevant persons
- the welfare of any child potentially affected by the decision whether to accept / reject the direct payment
- the amount of the 'overpayment' (remember if direct payments are accepted, they are treated as overpayments of child maintenance), and
- the period over which it would be reasonable to adjust the amount payable by the non-resident parent for 'overpayment' to be rectified

[Return to contents](#)