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[Diversion of Income: What is a diversion of income](#)

[2012/2677](#) *Regulation 71 of the Child Support Maintenance Calculation Regulations 2012*

This would be income that would normally be taken into account as Gross Weekly Income but has been diverted elsewhere.

A diversion of income variation may apply if the non-resident parent has the ability to control the income they receive, by:

- Diverting it to another person; or
- Diverting it in another way that means it cannot be included in the maintenance calculation.

This includes income from employment and self-employment.

A variation can be allowed if income has been diverted unreasonably. This means that when you are considering a diversion of income variation, you will need to decide:

- Whether the non-resident parent has diverted income and if so, how much; and
- Whether that diversion is reasonable.

Ways to divert income

The most common ways to divert income are as follows:

Diversion to a third party

Example:

The non-resident parent is the director of a limited company. He registers his partner as a director or company executive in name only and pays them a salary (usually higher than or equivalent to their own).

Diversion of income by this method is likely to be made to someone that the non-resident parent has a close relationship with. It may be their current spouse/ partner, but could also be a sibling, parent or friend.

Diversion to a business

Example:

- The non-resident parent accepts a low salary to enhance the capital growth or value of their company; or
- The non-resident parent pays themselves a low salary, but makes pension contributions directly through their business. NOTE: although these cases involve pension contributions, they should be treated as diversion of income through a business.

Excessive pension contributions

The non-resident parent is paying a high percentage of their gross weekly income into a private or occupational pension.

REMEMBER:

It is perfectly acceptable for a non-resident parent to make high pension contributions or accept a minimal wage to help their business. The non-resident parent may not consider this to be unreasonable and it may not be intended to deliberately reduce their child maintenance.

It is important when you are dealing with a diversion of income application to clearly explain that we are solely trying to confirm whether the maintenance calculation accurately reflects the non-resident parent's ability to pay child maintenance. You are not saying the non-resident parent cannot use their income in any manner that they choose, but where this affects their ability to support their child/ren, we may need to take it into account.

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[**Diversion of Income: Decision Making Guidance: Application / Permitted Grounds**](#)

The applicant must state a permitted ground or provide enough information for you to identify the appropriate ground.

Diversion of Income: Permitted Grounds

Some applicants may be aware of the variations scheme and specifically ask for a variation, stating the grounds on which they wish to apply-they might ask for a variation based on an unearned income ground without realising that 'diversion of income' is a different variation. In other cases, a parent may call you to query that the maintenance calculation does not reflect the non-resident parent's actual income. If a 'diversion of income' ground is established, further information is required to establish the details of the ground.

Example

'It isn't fair that they only have to pay this amount. My ex is the director of a company and can pay him/herself what they like'.

In these circumstances, you should try and establish whether a variation may be appropriate. If so, you should advise the applicant of the variations scheme and explain the process to them.

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[Diversion of Income: Decision Making Guidance: Preliminary Consideration](#)

Preliminary Consideration

Once an application has been accepted, it must be given a preliminary consideration.

Preliminary consideration is an initial sifting process, which allows applications with no prospect of success to be filtered out at the earliest opportunity. This is not intended to be a significant barrier to prevent parents applying.

Fact based reasons for rejection

An application should be rejected immediately if any of the following apply:

- the non-resident parent's gross weekly income is the capped amount (£3000 per week);
- the amounts claimed do not meet the threshold;
- a default maintenance decision (DMD) is in force;
- the non-resident parent is liable to pay the flat rate or nil rate because they or their partner are in receipt of certain benefits.

Discretionary reasons for rejection: general

Applications may also be rejected if you consider that the applicant has:

- not stated a ground or provided enough information for you to identify a ground;
- stated a ground, but has not provided any facts to support that ground or justify further enquiries;
- stated a ground and provided facts, but those facts do not fit that ground or any alternative ground.

Diversion of income: discretionary reasons for rejection

'Diversion of income' applications are more complex than other variations. You will be heavily reliant on the parent with care and the non-resident parent to provide you with all the information needed to make a decision. It is therefore particularly important that you encourage the parent with care to provide as much supporting information / evidence as possible.

In diversion of income cases, parents with care are unlikely to have documentary evidence to confirm the facts their application is based on. However, they are more likely to know the non-resident parent's financial history / circumstances, and should be able to explain why and how they think the non-resident parent is diverting income.

It is important to remember that some parents may assume that because the income used in the maintenance calculation is low, that the non-resident parent has diverted it and therefore apply under the Diversion of Income grounds.

It could however, be the case that the non-resident parent has an element of unearned income, especially if they are a Director and pay themselves in Dividends.

Regulation 56(4) allows SoS to treat an application for a variation made on one ground as made on another ground if that other ground is more appropriate to the facts alleged in that case.

Unearned Income is much easier to determine than Diversion of Income, therefore you should check with the parent with care whether the Unearned Income ground would be more suitable to the non-resident parent's circumstances. Refer to [What is an Unearned Income variation](#) for further advice on what types of income fall within this category.

- If the parent with care agrees that the Unearned Income ground is more suitable for this application then you should proceed with the application on this basis. Refer to the Preliminary Consideration guidance for further advice on what is required for the application to pass preliminary consideration.

- If the parent with care is certain that the Diversion of Income ground is more suitable then use the following links for further advice on what information will be required from them for the application to pass preliminary consideration.

REMEMBER: the parent with care can apply on BOTH grounds if they think the non-resident parent diverts part of their income and has unearned income.

Income diverted to a third party

- the name and / or address of the company that the non-resident parent is the director of; and
- the name of the third party and details of their relationship to the non-resident parent.

Example

'My ex-partner is the director of Company X and is diverting income to his current partner, Sandra. She is a registered director, but only works part time'.

'My ex-partner now works for his new partner and she is not paying him a full wage even though he is working full time for her.'

Income diverted to a business

- the name and / or address of the company that the non-resident parent is the director of; and
- an explanation of how they know the non-resident parent is diverting income through their business

Example

'My ex-partner is the director of Company X and is paying himself a minimal salary and the drawings from the company aren't accurately reflected in his tax return'.

Excessive pension contributions

The information needed for an application on the basis of pension contributions will depend on whether the non-resident parent has an occupational or a private pension.

NOTE: the following dropdowns apply where the pension contributions are being made directly from the non-resident parent's income / wage. If the non-resident parent is paying pension contributions through their company, and paying themselves a low salary, the application should be dealt with as diversion through a business.

Private pensions

Non-resident parents who are paying into a private pension can have their gross weekly income reduced to take their contributions into account. If a parent with care asks for a variation to be considered because they consider the private pension contributions to be excessive, you should check whether these contributions have been declared by the non-resident parent and taken into account in the maintenance calculation.

Private Pension: contributions declared and taken into account

If the private pension contributions have been declared then you should consider whether they seem excessive compared to their personal circumstances, for example their age. The former Financial Services Authority (FSA) guidelines should be used for comparison.

Note: The FSA was abolished from 1 April 2013, to be replaced by two new bodies: the Financial Conduct Authority (FCA) and; the Prudential Regulation Authority. Neither of these has provided any new guidelines at present so the previous FSA guidelines should still be referred to, for comparison purposes.

Considering whether there are grounds for excessive pension contributions

Your first consideration in whether pension contributions are excessive is whether the parent with care has sufficient grounds for us to accept a variation on the ground of 'Diversion of Income'. We would need to be satisfied with the parent with care's explanation for how they know that the non-resident parent is diverting their income.

If, after taking due consideration of the parent with care's grounds for the variation application, you decide that there are insufficient grounds to accept the variation then you would refuse to supersede.

If, however, you are satisfied that the parent with care has sufficient grounds for the variation and you decide to accept the variation application, then the following guidance and considerations will need to be taken.

It is important when you are dealing with a diversion of income application to clearly explain that we are solely trying to confirm whether the maintenance calculation accurately reflects the non-resident parent's ability to pay child maintenance. You are not saying the non-resident parent cannot use their income in any manner that they choose, but where this affects their ability to support their child/ren, we may need to take it into account.

If the parent with care has grounds and figures we can use the information below to assist in our decision on whether excessive pension contributions are being made or not.

Excessive Pension Contributions

A percentage of a non-resident parent's income which could be considered a reasonable deduction could be estimated at around 12% of the gross income figure. However, when considering whether a non-resident parent's pension contributions are excessive we need to have a wider view than just this percentage figure. Therefore, when we make these decisions we would consider each situation on a case by case basis, taking into account all the information available to us.

Some examples of information we should take into account are:

- are the pension contributions being paid into occupational or private?
- are there no employer pension contributions being paid?
- has occupational/private pension amounts already been taken into account in the gross income figure? (If private pension amounts have not been declared by the non-resident parent for their gross income figure, then the gross income figure has not been reduced)
- are the non-resident parent's pension contributions over 12% of the non-resident parent's gross income?
- the age of the non-resident parent and how old was the non-resident parent when they started contributing to their pension? For example, a non-resident parent who began making pension contributions in their 40s could be paying a significantly higher amount of pension contributions than someone in their 20s
- have we checked the FSA table for comparison purposes?
- have lower than 12% pensions contributions been paid by the non-resident parent in the past?

Below is the FSA table for use in your decision making. NOTE: The table is only to be used as a guide to aid your decision.

Remember: It is perfectly acceptable for a non-resident parent to make high pension contributions. The non-resident parent may not consider this to be unreasonable and it may not be intended to deliberately reduce their child maintenance.

[Financial Services Authority Guidelines](#)

The FSA previously provided the following guidelines: on adequate pension contributions (depend on the age at which the individual started making their contributions).

Private Pension: contributions not declared and taken into account

If the private pension contributions have not been declared then you should reject the application. The non-resident parent's income has not been reduced and they are therefore not diverting income.

Age contributions started	Required % of income
30	12 - 18%
35	16 - 22%
40	18 - 25%
45	25 - 30%
50	30 - 45%
55	45 - 70%

When taking the above considerations into account, pension contributions of approximately 12% or when also considering the age of the non-resident parent, percentages appropriate to their age could be acceptable. Where pension contributions relate to a mortgage on the non-resident parent's home, we should consider ignoring around 25% of those contributions.

If the parent with care does not have any figures, then we should request the non-resident parent to provide details of their pension and salary:

- annual benefit statement- Remember the Annual Benefit statement should be relevant to the tax year in which the maintenance calculation is for;
- occupational pension;
- private pension not declared and taken into account?
- private pension declared and taken into account?
- amount of pension contributions being paid.
- If you do not consider the contributions to be excessive, then you should reject the application on the basis that although a ground has been stated, the facts do not support that ground or justify further enquiries.
- If you do consider them to be excessive, then you should proceed with the application and seek representations from the non-resident parent.

Occupational Pensions

The gross weekly income figure provided to the Commission by HMRC is usually automatically adjusted to take occupational pension payments into account. You will therefore not be able to identify whether the non-resident parent is paying into an occupational pension from our records. If a parent with care wants to apply for a variation on the basis of occupational pension payments, you should ask them to

provide as much information as possible.

You should only reject an application if:

- it is clearly speculative and the parent with care has no real basis for asserting that these payments are being made;
- the parent with care states that the non-resident parent is contributing an amount that is clearly not excessive. Refer to the FSA Guidelines.

Example of a satisfactory statement

'I don't know how much my ex pays into their pension now, but when we were together they were paying £500 a month and their income was only £1500 a month'.

Example of an unsatisfactory statement

'I think my ex partner must be paying a lot of his income into a pension, because I'm sure he earns more than the figure you have provided'.

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[Diversion of Income: Decision Making Guidance: Gathering Information and Evidence](#)

If the application has passed preliminary consideration then this means you are satisfied that the non-resident parent could be making excessive pension contributions compared to their personal circumstances, i.e. their age. You can therefore proceed straight to the Representation stage on these cases.

Diversion to a third party / business

For applications based on diversion to a third party or diversion to a business you should seek advice from your team leader. This is because these scenarios are exceptionally complex and require detailed knowledge of Company Accounts and Tax Law.

You should however, try to obtain as much information from the parent with care as possible to show:

- why they believe the non-resident parent is diverting income; and
- how exactly they think income is being diverted.

When dealing with diversion of income it is usual practice to try and identify trends in

the way the non-resident parent has run their business / finances in the past.

For example, if the non-resident parent has been running his own company for the last 10 years, which has been considerably successful for the past 6 years, resulting in them taking a good regular wage. However, since the parent with care applied for child maintenance, the business seems to have taken a dip / the non-resident parent is no longer earning as much of a wage. This could suggest that income is deliberately being diverted to avoid / reduce child maintenance payments.

Any information of this sort will help determine whether income is in fact being unreasonably diverted.

You must remind parents with care that maintenance calculations are based on taxable income, therefore if a non-resident parent has not declared income to HMRC then this does not mean they qualify for a variation. In this situation, you should reject the application and advise the parent with care to report this matter to HMRC.

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[Diversion of Income: Decision Making Guidance: Representations](#)

Representations

This part of the process gives the non-resident parent notice of the application and the opportunity to comment on it.

The non-resident parent must be:

- notified that an application has been made;
- informed of the grounds that the application has been made on, including any information / evidence provided by the parent with care (unless it falls within the excluded information category); and
- asked to submit any information / evidence that is needed for a decision to be made.

The non-resident parent should be given 14 days to respond. Additional time can be allowed if you are satisfied it is reasonable in the circumstances of the case.

Excluded information

[2012/2677](#) *Regulation 59(5) of the Child Support Maintenance Calculation Regulations 2012*

1. Medical evidence / advice that has not been disclosed to the applicant or the other party and that you consider could be harmful to the health of the applicant or the other party if disclosed
2. The address of the other party or qualifying child and any other information that could lead to that person / child being located

Excessive Pension Contributions

- If the parent with care does not have any figures, then we should request the non-resident parent to provide evidence of their pension and salary and contributions:
 - annual benefit statement. Remember the annual benefit statement should be relevant to the tax year in which the maintenance calculation is for
 - occupational pension;
 - private pension not declared and taken into account;
 - private pension declared and taken into account;
 - amount of pension contributions being paid.
- If the parent with care claims that the non-resident parent is making contributions to an occupational pension scheme then you should ask the non-resident parent to provide evidence of the contributions they make, including details of the pension provider.
- If the non-resident parent is making contributions to a private pension scheme then you should provide the non-resident parent with the amount of weekly contributions that we hold on our system and ask them to explain why they are making contributions at this rate.

The next action will depend on the non-resident parent's response. Refer to the drop downs below for further advice.

Non-resident parent responds

If the non-resident parent responds and provides the required evidence then you may, if you consider it reasonable to do so (i.e. if it differs from the applicant's evidence), notify the parent with care of these representations and invite any further comments from them within fourteen days.

Once the non-resident parent provides the information, for excessive pension contributions, we should refer to the FSA table above and consider the percentage of 12% as a guide of what might be reasonable amounts of contributions to make

towards their pension.

If you are satisfied that further representations from the parent with care aren't required then you can proceed with the application and decide whether to allow the variation.

Notifying the applicant about representations

NOTE: any information from the non-resident parent that falls within the excluded categories should not be disclosed to the parent with care.

If they agree with the facts provided and do not want to make further comments, you can proceed with the application and decide whether to allow the variation.

If they disagree with the facts provided, and want to provide further comments then they need to do so within fourteen days. If they fail to provide their comments within this timescale and have not provided any reasons as to why an extension of time is required then you should proceed with the application and decide whether to allow the variation.

Non-resident parent fails to respond

- If the parent with care claims that the non-resident parent is making contributions to an occupational pension scheme then you should contact their employer, if known for details of their pension contributions. If the employer details are not known and you are unable to trace them, then you should consider referring the case to Criminal Compliance.
- If the non-resident parent is making contributions to a private pension scheme then you should proceed with application using the amount of contributions that are recorded on our system.

You will now need to decide whether to allow the variation.

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[Diversion of Income: Decision Making Guidance: Deciding whether to allow the variation](#)

Deciding whether to allow the variation

When you have details of the payments being made to a pension scheme, you will need to consider the following:

- is the non-resident parent diverting income?

- if so, is the amount being diverted unreasonable?

REMEMBER:

- In some cases, the non-resident parent will not be reducing their income in order to reduce their child maintenance liability. However, what you must consider is whether the reduction in the gross weekly income used to calculate the maintenance liability is reasonable.
- You do not necessarily need to take into account the whole amount of the diverted income. You will only take into account the amount that is being unreasonably diverted.

Excessive Pension Contributions Borderline/Complex cases

There are additional information sources available to help you decide whether pension contributions should be considered excessive / unreasonable for these purposes.

When you are considering whether pension contributions are unreasonable in this sense, you should refer to the guidelines provided below. The FSA's previous guidelines should be referred to in the first instance, with the Pension Commission guidelines to be used as an alternative source in borderline / complex cases, or cases where the non-resident parent / parent with care disputes the initial decision.

Remember: The FSA was abolished from 1 April 2013, to be replaced by two new bodies: the Financial Conduct Authority (FCA) and; the Prudential Regulation Authority. Neither of these has provided any new guidelines at present so the previous FSA guidelines should still be referred to in the first instance, for comparison purposes.

Pension Commission Guidelines

Please do remember to take into individual circumstances of the non-resident parent and their age.

Pensions Commission guidelines: % of current income that a pension plan needs to generate. You should use this table to check the non-resident parent's projected pension income. This will be provided on their Annual Benefit statement. If the projected pension income exceeds the % of the non-resident parent's current income that is indicated on the table below, it may be appropriate to treat part of their pension payments as an unreasonable diversion of income.

Gross Income	Benchmark gross replacement rate %
Less than £9,500	80
£9,500 - £17,499	70
£17,500 - £24,999	67
£25,000 - £49,999	60
£50,000 +	50

Example

Non-resident parent's gross income is £30000. If the Annual Benefit Statement shows a projected pension income of £25000.00, the benchmark gross replacement rate is 60%. Work out 60% of the current gross income figure ($£30000 \times 0.6 = £18000$) and if the projected income (e.g. £25000) exceeds 60% of the non-resident parent's gross income (£18000) then the difference between that amount and the projected amount could possibly be treated as unreasonable. So we could possibly apply the variation and increase the income of the non-resident parent by £7000.00.

- If you decide that the non-resident parent is not unreasonably diverting their income, then the variation application should be rejected.
- If you decide that the non-resident parent is unreasonably diverting their income, you will need to be clear on the amount that is being unreasonably diverted. This is the amount that will be used to calculate the variation.
- If you are unable to make a decision, seek advice from your team leader.

Is it just and equitable to allow the variation

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[Effect of a Diversion of Income Variation](#)

There is no ground specific guidance for the effect of a variation. The effect of a diversion of income variation is that the amount of the variation will be added to the Gross Weekly Income figure used to determine liability.

[Diversion of Income: Decision Making Guidance: Changes to a Diversion of Income Variation](#)

Note: Diversion of Income variations are not subject to annual review.

If a Diversion of Income Variation is already in place, there are two types of changes that can affect it:

- the amount of income being diverted increases / decreases, or;
- the diverted income ceases.

The following guidance provides advice on the action you should take if these types of changes are reported and it is advisable to seek advice from the caseworker that made the decision on the variation.

Diverted Income Amount Increases / Decrease

Notification of changes to Diverted Income amounts will normally be received from the:

- Non-resident parent; or
- Parent with care.

The action you need to take will depend on who has reported the change.

Parent with care reports change

If a parent with care reports a change in the non-resident parent's Diverted Income, you should ask them to provide a valid reason why they think the change has occurred, and whether they can provide any evidence to confirm this.

REMEMBER: evidence requirements will be dependent on the ground that the variation was agreed evidence that supported the decision. Possible evidence could include: a later Annual Benefit Statement for Pension contributions, a more recently completed tax return or more recent company accounts and possibly up-to-date bank statements.

Before contacting the non-resident parent you should:

- consider the evidence;
- check the tax-year that the existing Variation is based on; and
- decide whether a more recent complete tax-year has passed.

Once you have gathered evidence, consider the changes in relation to the original evidence used to decide the variation and consider seeking advice from your team leader.

Diversion of Income Amount Ceases

If a non-resident parent states that they no longer have any Diverted Income because their circumstances have changed. you would need to request documentary evidence confirming:

- that they are no longer in receipt of the income.

Consider seeking advice from a complex caseworker if the evidence is quite complex.

Variation ceases or to be reinstated

Refer to [Variations Overview](#)

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