Mandatory Reconsideration

Contents

Please also refer to the following flowcharts:

- Revisiting decisions flowchart

Flowchart to provide additional clarity when determining if a Mandatory Reconsideration is applicable.

- Variation Process or Mandatory Reconsideration Flowchart

Flowchart to provide additional clarity when a client requests a variation and whether it should be investigated via the variation or mandatory reconsideration process.

Note: In law, a Mandatory Reconsideration is just about applying the power to revise (existing) maintenance decisions (section 16 of the Child Support Act 1991) when those are challenged by a client. A decision must have been reconsidered before it can be appealed.

Note: if a client makes contact ot report a single, accidental (clerical or "slip of the pent") error in a decision, the guidance for Corrections of decisions should be followed, not the guidance below.

Mandatory Reconsideration: Overview

A flowchart to assist decision making is available here

Mandatory Reconsideration came into force in respect of the Child Maintenance Group (CMG) on 28 October 2013, and in Northern Ireland Child Maintenance Service (NICMS) from 11 July 2016.

2012/5 The Welfare Reform Act 2012

2015/2006 The Welfare Reform (Northern Ireland) Order 2015

2012/2677 The Child Support Maintenance Calculation Regulations 2012

2012/427 The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

The Welfare Reform Act 2012 and the Welfare Reform (Northern Ireland) Order 2015 provide the legal foundation for the introduction of a number of changes. These include reforms intended to improve the quality of decisions made by the Secretary of State (SofS) and streamline the process of appealing against those decisions, and are not just changes that apply to Child Support. The key change relating to appeals is the introduction of Mandatory Reconsideration of decisions, prior to appeal.

Two other appeal reforms have been introduced, under changes to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008:

- Direct Lodgement of appeals, with (Great Britain) HM Courts and Tribunals Service (HMCTS) or (Northern Ireland) The Appeals Service (TAS); and,
- the introduction of a 42 day appeal timescale (GB only), in which to bring appeals to an outcome once accepted by HMCTS.

Section 102 and Schedule 11 of the Welfare Reform Act 2012 and Section 107 and Schedule 11 of the Welfare Reform (Northern Ireland) Order 2015 in particular bring in the reforms to the pre-appeal process, requiring a person to request the revision of a SofS decision before they accrue a right of appeal. This is the “mandatory” part of the phrase Mandatory Reconsideration – a client must allow the Secretary of State the opportunity to reconsider a decision before an appeal can be made to Tribunal.

Regulation 6 of the Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013 amends the Child Support Maintenance Calculation Regulations 2012 and Regulations 5 of the Social Security, Child Support and Mesothelioma Lump Sum Payments (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2012 amends the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 inserting a new Regulation into them, to allow for a Mandatory Reconsideration to be undertaken.

Why introduce this new requirement?

There are a number of reasons for a person to ask for a decision to be looked at again before they can make an appeal to an independent tribunal. Broadly, these are:

1. To improve the quality and accuracy of decision making by the SofS -The SofS must be given the opportunity to review any maintenance liability decision before someone can appeal against it.

As such, there is an early opportunity for any errors in decisions to be identified and corrected, without need for the client(s) to enter into a protracted legal process;

2. To improve the client experience of interacting with government bodies by resolving client issues at the earliest opportunity and increase confidence in the quality and accuracy of decision making by the SofS -

Although it may seem like a “hurdle” is being placed in front of clients, by forcing them to have a decision reconsidered before they can appeal, the fact is that many appeals could have been averted prior to Mandatory Reconsideration being introduced if the SofS had been given the opportunity to examine decisions before an appeal was made. Clients also often don’t realise that the process of appealing is a time-consuming, legal process, which will see decisions on their case examined by a judge (albeit, in an informal court). Whilst it is recognised that such a process is ultimately required, engaging directly with clients as early as possible is often the quickest way of resolving any issues they may have with maintenance liability decisions.

3. To reduce the number of appeals to HM Courts and Tribunals Service (HMCTS or TAS) -

This is a knock-on effect of the earlier two points. If decisions are thoroughly examined at the earliest possible opportunity, their accuracy can be confirmed or any issues addressed quickly, improving customer service and potentially reducing the likelihood of the client subsequently appealing. Equally, when a decision is accurate (including if it has been revised to be made accurate, under MR), and if the client still wishes to appeal, we can feel more confident that, when examined by a judge, our decision will not subsequently require further amendment. Over time, and if less of our decisions require further amendment following tribunal hearings (because thorough checking under MR has either corrected any errors that may have existed, or confirmed decisions as fully correct in law), any consequent reputational improvement should mean that even clients who remain displeased with a decision we’ve made may be more willing to accept our explanation of it and choose not to appeal.

Note: The simultaneous introduction of “Direct Lodgement” means that clients will also have to make a proactive choice to appeal directly to HMCTS or TAS. This should mean that it is only those instances where the client feels genuinely aggrieved at our decision, and cannot be convinced of its legal accuracy, that progress to becoming actual appeals.

What decisions are subject to the new process?

Only new original decisions made on or after 28 October 2013 (GB) and 11 July 2016 (NI) will be subject to the Mandatory Reconsideration process. Original decisions made prior to this date will follow the older disputes process, even if they have been subsequently revised, and regardless of whether that revision was undertaken before, on or after 28/10/13 (GB) or 11/07/2016 (NI).

Therefore, to determine whether a particular decision should undergo Mandatory Reconsideration (or a dispute instead), caseworkers must establish the date the original decision was made.

For clarity, to be able to revise (reconsider) a decision, that decision must exist in the first instance. The original decision is the "first time" the decision was made. Original decisions therefore are decisions:

- made under section 11 of the Child Support Act 1991 – Initial decisions;
- made under section 17 of the Child Support Act 1991 – Supersession decisions;
- made under S.12 CS Act 1991 – Default Maintenance Decisions.

This also includes any decision made to decline /reject a change as evidence was not received within 14 days, but evidence is then received within allowable time i.e. 30 (+2) days, from the date the decision to decline/reject the change was made.

Note 1: Variations are made either as supersessions (S.17 CS Act 1991), or as revisions of existing decisions (S.16 CS Act 1991) when made in relation to a recently made MC. "Supersession" Variation decisions are subject to Mandatory Reconsideration, as for any supersession decision. Variations made under the power of revision are examined in the Exceptional Scenarios section – see later.

Note 2: If a client makes contact "in time" (see next section) to report a single, accidental (clerical or "slip of the pen") error in a decision, and no other issues, the guidance for Corrections of decisions should be followed. If the contact to report a single, accidental (clerical or "slip of the pen") error is made "out of time", the decision should be altered as a Secretary of State "own initiative" revision.

E.g. 1 – Original decision made prior to 28/10/13, by way of supersession. Client also requests revision prior to 28/10/13. Caseworker should follow the dispute process to resolve the client's issues.

E.g. 2 – Original decision made prior to 28/10/13, by way of supersession. Client requests a revision of the decision after 28/10/13. Caseworker should still follow the dispute process to resolve the client's issues as the original decision was made before 28/10/13.

E.g. 3 –Original decision made on 30/10/13, by way of supersession. Client subsequently requests revision. Decision would follow the Mandatory Reconsideration process as the original decision was made on or after 28/10/13.

Policy and legal principles behind the MR process, for CMG

The following points are crucial when undertaking, or considering undertaking, the Mandatory Reconsideration process:

- the client must drive the reconsideration (legal requirement):

For a right of appeal to accrue against a decision, the request to review (revise) that decision must be instigated by a client (i.e. not the Secretary of State or a Third Party) - this is the 'mandatory' part of the phrase 'mandatory reconsideration'. Revisions undertaken when not client-driven (such as when an “official error” is discovered) will not lead to a right of appeal accruing (but a client would be entitled to request a Mandatory Reconsideration of such a decision);

- the request to reconsider a decision must be made “in time” (legal requirement):

When a client requests a decision be looked at again (reconsidered / reviewed / revised), that request must be made “in time” for a Mandatory Reconsideration to be undertaken. In the 2012 scheme, the standard timescale in which a revision may be requested is within 30 days of the date of notification of the decision. Procedurally, we allow a further 2 days, for posting.

If a client makes their request beyond 30 (+2) days of the date of notification, the caseworker should consider if the request may still be accepted as a late request for revision. In the 2012 scheme, there is no “upper limit” to this timescale, however the client would need to provide good reason for their delay and the longer the time taken to make the request, the more extreme / exceptional the reason for making the request late needs to be before a late revision request can be accepted.

E.g. 1 - Original decision notified on 01/11/13. Client requests that a decision be looked at again on 09/12/13 (about 1 week beyond the 30 (+2) day timescale). Their request is late but they explain that they have just returned from a month-long safari so could not have got back in touch sooner.

The caseworker decides that this is an acceptable reason for the request being made late (by about a week), so accepts it. The decision will be looked at again under Mandatory Reconsideration.

E.g. 2 -Original decision notified on 11/05/14. On 13/10/14, around 5 months aftr the decision was notified, the client requests that the decision be looked at again. As they are late in making the request, the caseworker asks them to provide a reason for the delay. The client, who is an NRP we’re now attempting to undertake enforcement action against for non-payment of maintenance states, “Because you’re now trying to take me to court.”

The caseworker does not consider that this is sufficiently good reason as to why the client could not have made their request to review the decision sooner so refuses to enter into the Mandatory Reconsideration process.

E.g. 3 -Original decision notified on 11/05/14. On 13/10/14, the client requests that the decision be looked at again. As they are late in making the request, the

caseworker asks them to provide a reason for the delay. The client, states, “I was involved in a serious car accident back in mid-May and doctors induced me into a coma to speed up my recovery. I have only been out of hospital for a week now but I can get my doctor to confirm what I’ve said.”

The caseworker considers that this is a sufficiently good reason as to why the client could not have made their request to review the decision sooner so accepts the late request and the decision enters into the Mandatory Reconsideration process.

- All parties to the case / casegroup who could potentially be affected by a change in the decision will be invited to be part of the Mandatory Reconsideration process (policy principle):

This ensures that any person who could be affected by any change to the decision being reconsidered has the opportunity to provide any evidence they have which they believe may be relevant to the calculation being re-examined.

Where the scenario is such that the decision being reconsidered relates to a casegroup involving one paying parent and two (or more) receiving parents, and even if the issue raised is specific to one of the cases in particular, all parties must nonetheless be included in the process. Typically, this occurs where the issue is around shared care.

The reason for including all parties, even in the situation above is that, after the Mandatory Reconsideration has been completed, an appeal can be made. If at appeal, the tribunal judge finds some further element of the calculation is incorrect, even if that wasn’t the issue that lead to the Mandatory Reconsideration being undertaken in the first instance, all parties to the casegroup could then be affected. If those parties were not included in the original Mandatory Reconsideration action, however, they would not be parties to the appeal and, as such, would have no legal rights to return to the tribunal and request they look at the decision again (under an appeal).

- All elements of the decision being reconsidered will be verified, not just those raised by the client (policy principle):

There is no legal requirement to do this. However, to ensure the best possible decision making quality, and client service, the policy here is that the whole of the decision being looked at again should be checked as part of the Mandatory Reconsideration process.

- Any particular decision will only go through the Mandatory Reconsideration process once (policy principle):

Although there is no legal restriction to the number of times a decision could be revised, but because of the planned thoroughness of the Mandatory Reconsideration process, and the fact that after it has been undertaken a client will then have a right

of appeal to tribunal, a policy has been agreed that Mandatory Reconsideration will only happen once in respect of any particular decision before a client is directed to make an appeal to HMCTS or TAS (Northern Ireland).

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Mandatory Reconsideration: Process

Detailed procedural guidance on completing a full Mandatory Reconsideration is available. Exceptional scenarios involving “outside formula” requests for reconsideration / revision and variations are explained in greater detail later in this section.

When conducting a full Mandatory Reconsideration, the key points to bear in mind are:

- in law, a Mandatory Reconsideration is just about considering applying the power to revise decisions (S.16 CS Act 1991);
- request and / or gather evidence from all parties who could potentially be affected by any change to the decision being reconsidered, as per the online guidance, in the relevant timescales;
- check all elements of the calculation for accuracy, not just the areas raised by the client as part of requesting the Mandatory Reconsideration;
- whatever the outcome of the reconsideration activity (be that to revise the decision being reconsidered or refuse to revise it), remember that the parties to the case / casegroup decision being reconsidered will have a right of appeal following the Mandatory Reconsideration activity.

Exceptional scenarios

1.Parentage disputes

Issues of paternity are exceptional as, although they have an impact on the calculation of a maintenance liability and carry an underlying right of appeal under Section 20 CS Act 1991 (as with all liability-related decision types), appeals on the basis of parentage must be in a formal court (e.g. magistrates’) rather than at tribunal.

You should follow the guidance on “Parentage Disputes” if a parentage dispute is raised and contact your local Parentage Ambassador if you remain uncertain as to how to proceed thereafter.

2. – “Outside formula” requests

When a client disagrees with a maintenance liability decision made on their case, they may raise issues which could never make any difference to the decision itself as they fall outside of the legal formula used to calculate it.

Such revision requests are known as “outside formula” requests. They can range from issues which it may appear could affect the maintenance liability (particularly to someone unaware of the legal formula), right through to extremes which could never be taken into account.

Additionally, some “outside formula” requests are made on grounds where, although the grounds do not apply to the particular decision being challenged by the client, they may require other action to be taken. This could be, for example, requesting a decision be looked at again as a result of a change of circumstance that only occurred after the effective date of the decision being challenged.

When a client makes contact, seeking to have a decision looked at again on an “outside formula” issue, caseworkers should endeavour to find out if there is any “in formula” reason for considering revision of the decision, underlying or in addition to the “outside formula” issue the client has raised.

If an “in formula” reason for reconsidering the particular decision can be determined, the full Mandatory Reconsideration process should then be entered into.

Where no “in formula” ground can be ascertained, but if the client’s request should be addressed by some other action, that action should be taken on the case and / or the client should be signposted appropriately.

REMEMBER: Mandatory Reconsideration only applies to maintenance liability-related decisions. Unless such a decision has recently been made (i.e. within 30 days (+2) of a client requesting a decision be looked at again), there will not normally be a decision in respect of which you could consider a revision, on either an in formula or outside formula basis – see “in time”.

Examples of outside formula issues / grounds are given below.

- Client is reporting a change that has occurred since the effective date of the decision that has prompted their contact.

This is a request for a Change of Circumstances supersession and that should be explained to the client. CofC action should be undertaken rather than a Mandatory Reconsideration.

- Client contact is in relation to an administrative issue that is linked to the courts, such as the imposition of a Deduction from Earnings Order (DEO) or Deduction Order (DO).

Where a client is unhappy at court action, they should be signposted back to the relevant court as soon as possible (because of the legal timescales that may apply to them). A Mandatory Reconsideration would not be entered into.

- Client contact is in relation to an administrative issue that is not linked to the courts.

General client service issues fall into this category as issues of the quality of service provided to a client do not affect the calculation of a maintenance liability. The client's issues should be discussed and, if appropriate, they should be referred to Complaints. No Mandatory Reconsideration will be undertaken.

- Client contact is in relation to an issue that may appear to have a bearing on a maintenance calculation, to someone who is not familiar with the formula, but does not – "outside formula" Mandatory Reconsideration Notice to be issued.

For 2012 scheme cases, this could include such things as housing costs, expenses incurred in travelling to and from work and the cost of domestic bills, none of which are taken into account in the 2012 scheme formula.

- Client contact is in relation to an issue that has no bearing on a maintenance calculation, nor is an alternative course of action relevant– "outside formula" Mandatory Reconsideration Notice to be issued.

Similar to the previous bullet. However, contacts under the bullet here also include extremes, such as clients requesting that their maintenance calculation be looked at again as a result of them having a green front door or "because I just think it's wrong."

Note: In all outside formula scenarios, a right of appeal can accrue.

In respect of the first three bullet points though, action other than reconsidering the latest maintenance liability decision will be the appropriate course of action. If this is explained and accepted by the client, there is no need to issue a notification that the (recent maintenance liability) decision has been reconsidered and can now be appealed (the "outside formula" Mandatory Reconsideration Notice). Only if the client insists that they wish to appeal the recent decision should an "outside formula" Mandatory Reconsideration Notice be issued.

In respect of the final two bullet points, the client is automatically provided with appeal rights despite us not being able to take other action or look at reconsidering any particular decision.

In all "outside formula" scenarios, if appeal rights have been provided and the client still wishes to appeal on the same "outside formula" ground(s) they raised to CMS, the issue(s) will be "out of jurisdiction" for a tribunal to consider. Therefore, it is likely that their appeal request would simply be rejected by the judiciary.

3 – Variations, as revisions (see Variation process or Mandatory Reconsideration? Flowchart)

Where an application for a variation is received, in relation to a recently notified decision (i.e. the client is asking for the variation to be applied to the recently notified decision), the legal mechanism by which consideration is given to that variation application comes from the power to revise a decision (S.16 CS Act 1991).

Note: The request for a variation in this kind of scenario is essentially a request to revise the decision recently notified, but for an exceptional (i.e. variation) reason.

E.g. Variation as a revision – appeal rights to be provided

Recent MC notified, based on the level of shared care of the QC having changed. Within 30 (+2) days of being notified of the new MC, the Receiving Parent contacts CMS to advise that the Paying Parent's company has done particularly well over the last year (PP is a director of their own company) and that they paid themself significant dividends in the last 6 months. The RP is requesting a variation, as a revision of the recent MC, on the ground of "Non-resident Parent with unearned income" (Regulation 69 of the Child Support Maintenance Calculation Regulations 2012).

As this is the same legislative power used when undertaking a Mandatory Reconsideration (the power to revise an existing decision), a request for a variation in such scenarios means that, following completion of the variation action, the (original) decision has been reconsidered (in law) and the clients must legally accrue a right of appeal.

In circumstances where a variation is requested by way of revision, caseworkers should follow the normal variation process, rather than the Mandatory Reconsideration process. When a decision is reached, however, all parties to the case / casegroup should be notified of the outcome of the variation activity, to ensure all parties are aware a right of appeal now exists.

The variation notifications issued to the clients in such circumstances will include a statement about their right of appeal but will also contain a message, clearly worded, to try to encourage them as strongly as possible to come back to us in the first instance, if they disagree with the decision.

If they choose to follow this approach, the decision will then be looked at again but as part of a full Mandatory Reconsideration.

Note: Where a variation is applied for as a supersession, no right of appeal will accrue. Rather, a client would have to request a Mandatory Reconsideration of that decision before they could seek to appeal.

E.g. Variation as a supersession – no appeal rights

Case has been ongoing for some time, no recent changes of circumstance reported (or actioned). Receiving Parent contacts CMS to advise that the Paying Parent's company has done particularly well over the last year (PP is a director of their own company) and that they paid themself significant dividends in the last 6 months. The RP is requesting a variation, as a supersession, on the ground of "Non-resident Parent with unearned income" (Regulation 69 of the Child Support Maintenance Calculation Regulations 2012).

The caseworker should follow the usual Variation process, with the outcome being notified to all parties. The new (varied) decision will not have appeal rights but any party to the decision could ask for it to be reconsidered (the Mandatory Reconsideration process), after which an appeal could be made.

If a client challenges a Varied MC which was calculated as a supersession, that decision should be reviewed by following the Mandatory Reconsideration process, after which appeal rights will be provided.

Actions to take

Mandatory Reconsideration required –

Once it has been established that the client's request for a decision to be looked at again will require a Mandatory Reconsideration, the caseworker should follow the Mandatory Reconsideration procedures and notify the client of the outcome of that action.

All parties to the case / casegroup will be notified of the decision and will have the right to appeal against it (regardless of whether or not it has been changed as part of the Mandatory Reconsideration action).

Outside formula revision requests – Other action / signposting

If the reason for a client requesting a decision be looked at again falls outside of the maintenance formula but some other action is required, or signposting is necessary, the caseworker should initiate that other action (as appropriate) and / or signpost the client appropriately.

Outside formula revision requests – No other action / signposting

If the reason for a client requesting a decision be looked at again falls outside of the maintenance formula and no other action is required, or signposting necessary, the caseworker should issue the outside formula Mandatory Reconsideration Notice to the parties to the case / casegroup.

Variation – As a revision of a recently made decision

Where a client is requesting a revision of a recent decision on the basis that a ground for variation should be applied, the normal variation process should be followed – see previous.

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Mandatory Reconsideration; Decision Making Guidance:

Caseworkers should follow the guidance provided in procedures.

The following key points must be considered:

- for Mandatory Reconsideration to apply to a decision, the original decision must have been made on or after 28 October 2013 (HMCTS) or 11 July 2016 (TAS);
- all parties in the case / casegroup that could be affected by altering the decision must be invited to provide information in relation to it; and,
- if a client does not query a decision made “in time”, or does so "late" but provides no good reason for their delay in making contact, the Mandatory Reconsideration process cannot be entered into and there will be no right of appeal.

Mandatory Reconsideration does not alter the way in which we calculate maintenance, or the actions that should be taken to check any element of a decision for legal and mathematical correctness (except that all elements of the decision being reconsidered should be checked). It does not affect the way in which we revise decisions either.

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