

## Third Party Offsetting

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## Offsetting: Overview

### [What is Offsetting?](#)

[1991/48](#) *Section 41C(1)(b) of the Child Support Act 1991*

[2009/3151](#) *Regulations 6(1),(2) and (3) of the Child Support (Management of Payments and Arrears) Regulations 2009*

[1991/2628](#) *1991/Article 38C(1) of the Child Support (Northern Ireland) Order 1991*

[2009/422](#) *Regulations 6(1),(2) and (3) of the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009*

Offsetting is a process that allows us to adjust child maintenance payments and arrears in three specific situations:

1. where a non-resident parent has made certain payments to a third party, either directly or via the parent with care
2. where two clients both owe each other arrears, and
3. where one client is liable to make ongoing payments to a client that owes them arrears

This guidance deals with offsetting payments made to a third party.

### Offsetting: Important Points to Remember

- Whether to offset is a discretionary decision. There is no right of appeal, but any decision to allow / refuse offsetting can be challenged through Judicial Review. It is therefore essential that you fully record the reasons for your decision and that you have considered the welfare of any child the decision potentially affects. Refer to the Discretionary Decision Making Guidance for further advice;
- Offsetting only applies to parent with care arrears or ongoing payments. **We cannot offset against Secretary of State arrears in any circumstances.**
- We do not need to obtain consent from clients in order for offsetting action to be taken, but we must inform them that we are proposing this and invite them to comment.

### Offsetting Decision Making Process: Overview

- When you are considering offsetting, you will need to decide in the first instance whether offsetting is possible and if so, how this would be done;
- You would then need to notify both clients about the proposed action and invite their comments. You should allow the clients 14 days to respond.
- At the end of this period, you should consider any information / evidence submitted by both clients and decide whether offsetting is appropriate;
- You would then notify the parties of your decision and complete any offsetting action you have decided is appropriate.

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### Decision Making Guidance: Third Party Payments

Third Party Payments are prescribed payments made by a non-resident parent to a Third Party, either directly, or via the Parent with Care.

Offsetting for Third Party Payments will only be considered if requested by either the non-resident parent or the parent with care.

#### **You should ensure non-resident parents understand that:**

- we can only consider certain types of payments (see below), and
- they may need to provide evidence confirming that (1) the payment was made and (2) the parent with care had agreed to the payment being made on their behalf

## **What type of third party payments can be considered?**

The type of Third Party Payments that can be considered for offsetting are prescribed in legislation. The payments can be made by the non-resident parent:

- directly to the Third Party, or
- via the parent with care, providing it was paid to them for this purpose

But they must be for one of the purposes listed below:

- payments on a mortgage or loan that was taken out to buy, or make essential repairs / improvements to the qualifying child's home;
- rent on the qualifying child's home;
- gas, water or electricity charges on the qualifying child's home
- essential repairs to heating systems in the qualifying child's home
- essential repairs to maintain the fabric of the qualifying child's home
- Council Tax payable by the parent with care in respect of the qualifying child's home

## **Client reports a third party payment**

When a client reports that a third party payment has been made, you must ask them to provide full details of the amount(s) and purpose of these payments. If the purpose does not fall within the list of prescribed payments, you must advise the client that offsetting cannot be considered.

If the purpose of the payment(s) falls within the list of prescribed payments, you should contact the other client to confirm whether they agree with the amount / purpose stated.

- if the other client agrees with the information provided, you do not need to request further information / evidence and should check the case to confirm whether offsetting is possible
- if the other client does not agree with the information provided, you should ask the party who reported the payment to provide information / evidence confirming the details. You should allow them 14 days to provide this. If they fail to do so, then offsetting should be refused. If they provide information / evidence confirming that the reported payments were made, you should check whether offsetting is possible

**NOTE:** clients reporting third party payments should be reminded that offsetting is not an alternative method of payment, and that whether individual payments are offset is a discretionary decision. If third party payments are likely to continue, clients

should be encouraged to consider a family based arrangement or paying by maintenance direct.

### **Check whether offsetting is possible**

When you have confirmed that a third party payment has been made that may be appropriate for offsetting, you should check whether this is possible. We can only offset if:

- the non-resident parent has outstanding arrears that can be reduced to reflect the Third Party Payment(s), or (if not)
- the non-resident parent is liable to pay ongoing maintenance payments

If offsetting is possible, you would notify both clients that we are considering offsetting arrears / future payments to reflect third party payments that have been reported. Both clients should be invited to submit any comments on our proposed action and any further information or evidence that they wish to be considered when we are deciding whether or not to offset. You should allow 14 days for the clients to respond.

At the end of this period, you should consider all the information / evidence submitted and decide whether to offset.

### **Deciding whether to offset**

When you are deciding whether or not to offset a third party payment, there will be two key points to consider:

- is there sufficient evidence to confirm that an amount has been paid by the non-resident parent for a purpose falling within the list of prescribed payments? At this stage you are determining whether there is sufficient evidence of a payment that would be suitable for offsetting.
- if so, what type of offsetting (if any) is appropriate, taking into account any comments on the proposed action that have been submitted by the clients?  
**REMEMBER:** even if you decide a payment has been made that is suitable for offsetting, whether / how you do so is a discretionary decision. At this stage you will need to consider the financial impact of offsetting on all parties potentially affected by this action.

**NOTE:** to avoid the possibility of a double benefit to the non-resident parent, a third party payment should not be offset in respect of any payment that has been taken into account as a variation and vice versa.

### **Sufficient evidence that a prescribed payment has been made**

- if both clients agree on the amount and purpose of the payment(s) made, this will be sufficient evidence
- if not, you would need evidence confirming (1) the amount(s) paid; and (2) the purpose of the payments
- evidence for these purposes might include statements from both parties, copies of bank statements and / or receipts, copies of bills etc.

NOTE: it is an underlying principle of third party offsetting that the parent with care should have agreed to the payment(s) being made on their behalf. However, providing you have evidence that relevant payments were made, you should assume that the parent with care agreed to this. The only exception would be cases where the parent with care can prove that they have given the money back to the non-resident parent.

You would need to consider all the information / evidence submitted and decide whether, on the balance of probabilities, a third party payment has been made and if so, for what amount.

If you decide there is insufficient evidence that a Third Party Payment has been made, you should refuse the request for offsetting.

If you decide there is sufficient evidence that a Third Party Payment has been made, you should consider the type of offsetting that is appropriate.

### **What type of offsetting (if any) is appropriate?**

If there is sufficient evidence a payment has been made that is suitable for offsetting, you need to consider what (if any) type of offsetting is appropriate. There are two types of action that can be considered in third party payment cases:

- offsetting against arrears – where we reduce any arrears owed by the non-resident parent to reflect the Third Party Payments; and
- offsetting against current liability – where the non-resident stops making ongoing payments for a specified period. The amount we have agreed to offset is attributed against these payments as they become due, until the amount allowed has been cleared.

You should only consider offsetting against current liability if there are:

- no arrears available for offsetting action to be taken, or
- insufficient arrears for the full third party payment(s) to be offset. In these circumstances, you should offset against any arrears that are available first, and only consider offsetting any balance against ongoing payments

When you are deciding whether offsetting is appropriate, you must consider:

- the circumstances of both clients
- the welfare of any children potentially affected by your decision
- any comments the clients have made about our proposed action and the impact this would have on them

If you are considering offsetting against current liability, you must also consider the amount of time that it will take for the offset to be completed.

REMEMBER: when we offset against current liability, the parent with care will not receive maintenance payments for a period of time and you must consider the impact of this carefully, taking into account all the circumstances of the case.

There is no maximum period for offsetting against current liability, but you can consider a partial offset if the amount of time that it will take for a full offset to be completed seems excessive.

If you agree to offset a third party payments against current liability, you can revisit this decision at any time if you receive information to indicate that suspending payments is not longer appropriate. For example, if the parent with care's circumstances change so that not receiving maintenance payments will cause financial hardship.

### **Recording the offsetting decision**

When you have decided whether or not offsetting is appropriate, you should record the full details of your decision, including: welfare of the child consideration, all the information / evidence that you have considered and the reasons for your decision.

Both clients should then be notified of the outcome.