

## Overpayments

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### [Overpayments: Overview](#)

[1991/48](#) Sections 29 and 41 of the Child Support Act 1991

[2009/3151](#) Regulations 4, 8 and 9 of the Child Support (Management of Payments and Arrears) Regulations 2009

[1992/1816](#) Regulation 10A of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992

[1991/2628](#) Articles 29 and 38 of the Child Support (Northern Ireland) Order 1991

[2009/422](#) Regulations 4, 8 and 9 of the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009

(Link N/A) Regulation 10A of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992

### **What is an overpayment?**

An overpayment of child maintenance occurs when a non-resident parent pays, or has paid, an amount exceeding their child maintenance liability.

NOTE: it is important to understand the difference between an overpayment and an over-collection or mis-allocation.

- an overpayment occurs when the non-resident parent's payments exceed their liability
- a misallocation occurs where the non-resident parent has paid the correct amount, but the payments have not been correctly allocated by the CMG for example payments due to the Secretary of State have been allocated to a parent with care, or payments have been incorrectly, allocated between multiple parents with care
- an over-collection occurs where a deduction from earnings order is in place, and an amount has been collected which exceeds the protected earnings proportion

**This guidance solely deals with overpayments of child maintenance.**

Overpayments can arise for a number of reasons. The non-resident parent may simply pay more than they are required to. More commonly, overpayments occur because a change of circumstances leads to a backdated reduction in the non-resident parent's child maintenance liability. If the non-resident parent has already made payments at the previous, higher rate, then any amounts exceeding the new, lower liability will have been overpaid.

When an overpayment of child maintenance occurs, there are a range of options available to resolve the discrepancy between the amount that the non-resident parent has paid, and the amount that they are actually due to pay.

These options should be considered in the order that they are set out below. Use the drop downs and decision making guidance links for further information and advice on the points that you will need to take into account when you are considering each of these options.

NOTE: for these purposes, the 'same case' means the case that the overpayment occurred on (that means, with the same parent with care). 'Any other case' means any other case that the non-resident parent who has made the overpayment is liable to pay child maintenance for (that means, with a different parent with care).

REMEMBER: Whether you allocate an overpayment or not is a discretionary decision. When you are making your decision you will need to consider all of the circumstances of the case including the welfare of any children likely to be affected.

**Allocate the overpayment against any arrears due on the same case**

[2009/3151](#) *Regulation 8(1) of the Child Support (Management of Payment and Arrears) Regulations 2009*

[2009/422](#) *Regulation 8(1) of the Child Support (Management of Payment and Arrears) Regulations (Northern Ireland) 2009*

Overpayments of child maintenance can be allocated against any child maintenance arrears that are due on the case that the overpayment occurred on.

Refer to the Decision Making Guidance for further advice on allocating an overpayment against arrears due on the relevant case.

### **Allocate the overpayment to ongoing maintenance on the same case**

[2009/3151](#) *Regulation 8(2) and (3) of the Child Support (Management of Payments and Arrears) Regulations 2009*

[2009/422](#) *Regulation 8(2) and (3) of the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009*

Overpayments of child maintenance can be allocated against any on-going child maintenance payments that are due on the case that the overpayment occurred on.

Refer to the Decision Making Guidance for further advice on allocating an overpayment against on-going maintenance on the relevant case.

### **Allocate the overpayment against arrears due on any other case**

[2009/3151](#) *Regulation 4 of the Child Support (Management of Payments and Arrears) Regulations 2009*

[2009/422](#) *Regulation 4 of the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009*

Overpayments of child maintenance can also be allocated against any child maintenance arrears that are due on a different case.

NOTE: we cannot allocate an overpayment against on-going maintenance on a different case, because Regulation 4 only authorises us to allocate payments against arrears.

Refer to the Decision Making Guidance for further advice on allocating an overpayment against arrears due on another case.

### **Refunds and Reimbursement**

If none of the above options are appropriate / possible, you need to consider whether the non-resident parent should receive a refund or reimbursement. If a refund or reimbursement is made, you would also need to consider whether to try and collect the overpayment from the parent with care.

### **What are refunds and reimbursements ?**

You would consider a refund to non-resident parents where the money has not been paid to the parent with care.

You would consider reimbursements to non-resident parents where the money has paid out to the parent with care.

### **Issue a refund to the non-resident parent / recover from parent with care**

[1991/48](#) *Section 41B(2) of the Child Support Act 1991*

[1991/2628](#) *Article 38B(2) of the Child Support (Northern Ireland) Order 1991*

If an overpayment of child maintenance cannot be allocated against arrears or on-going maintenance, we can issue a refund/reimbursement to the non-resident parent.

NOTE: this action should only be taken if there is no alternative route for allocating the overpayment; and the criteria for a refund/reimbursement are satisfied.

Refer to the Decision Making Guidance for further advice on Refund criteria.

If a reimbursement is issued to the non-resident parent, we can seek recovery of the overpaid amount from any parent with care that received the excess amounts.

Section 41B(3) of the Child Support Act 1991 and regulation 10A of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992 / Article 38B(3) of the Child Support (Northern Ireland) Order 1991 and regulation 10A of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992.

Refer to the Decision Making Guidance for further advice on seeking recovery of an overpayment from a parent with care.

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### [Allocating overpayments against Same Case Arrears: Decision Making Guidance](#)

An overpayment of child maintenance can be allocated against any arrears that are due on the same case. This means it can be used to reduce or clear any arrears due to:

- the parent with care who received the overpayment, or
- the Secretary of State in respect of the parent with care who received the overpayment

If there are arrears on the same case, the overpayment should be used to reduce these arrears. The reason the overpayment occurred is not relevant for these purposes.

NOTE: if there is suspended debt on the case, you will need to consider whether this should be reinstated when you are deciding whether the overpayment can be allocated against arrears on the same case.

### **Overpayments is lower than the total arrears due**

If the arrears exceed the overpayment total, you should reduce the arrears by the amount overpaid, and continue normal action to collect the balance.

Where arrears are owed to both the Secretary of State and the parent with care you would allocate the overpayment to the parent with care's arrears first.

### **Overpayment exceeds arrears or no arrears due on the same case**

- if there are no arrears due on the same case, or
- if there are arrears, but the amount overpaid exceeds the total owed

You will need to consider whether the overpayment (or the balance that is left after any arrears have been taken into account) can be allocated in either of the ways listed below.

- against on-going maintenance to the same parent with care
- against arrears owed to a different parent with care

If not, it will normally be appropriate to issue a refund to the non-resident parent.

Refer to the sections below for further guidance on the above options.

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[Allocating overpayments against On-going Maintenance: Decision Making Guidance](#)

[2009/3151](#) Regulation 8 of the Child Support (Management of Payments and Arrears) Regulations 2009

[2009/422](#) Regulation 8 of the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009

You can consider allocating the overpayment against on-going maintenance on the same case if:

- there are no arrears due on the same case, or

- there is a balance remaining after any arrears on the same case have been cleared

Overpayments are allocated in this way by adjusting the amount that is collected from the non-resident parent. This will normally continue until the overpayment has been cleared. Remember that if the case closes with the balance of the overpayment outstanding, you will need to issue a refund/reimbursement at that time.

REMEMBER this does not affect the non-resident parent's liability to pay child maintenance. You are solely adjusting the amount they are required to pay for a specific period, to reflect the amount they have already overpaid.

When you are deciding whether this action is appropriate, you do not need the permission of either customer, but legislation requires you to consider the following points:

- the circumstances of the non-resident parent and the parent with care
- the amount of the overpayment and the period of recovery
- the welfare of any children affected by your decision

Refer to the guidance on Discretionary Decision Making for further advice.

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### [Allocating overpayments against Other Case Arrears : Decision Making Guidance](#)

You can consider allocating all or part of an overpayment to arrears that are due on another case (that is, to a case with a different parent with care) if:

- the overpayment cannot be allocated in full to arrears on the same case, or
- the overpayment cannot be allocated to on-going maintenance on the same case, and
- a refund / reimbursement would otherwise need to be issued to the non-resident parent

Before deciding whether an overpayment can be allocated to other case arrears, you would need to decide whether a refund / reimbursement is appropriate.

If the requirements for a refund / reimbursement are satisfied, then you can use the overpayment to reduce / clear any arrears that are owed by the non-resident parent on a different case, rather than issuing the payment to the non-resident parent.

If there are no arrears on another case, then the refund / reimbursement would need to be issued.

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## [Is a Refund / Reimbursement Appropriate?: Decision Making Guidance](#)

### Refunds

A refund is a repayment of money that the non-resident parent has paid in which is returned without having been paid out to the parent with care. These payments do not involve money being drawn from the Department central budget, but they can be a missed opportunity to reduce outstanding debt. Refunds are dealt with by caseworkers wherever the case is located.

### Considering a refund

**Please note it is not an automatic right for a non-resident parent to receive a refund.** The non-resident parent may owe debt which has been previously suspended or adjusted incorrectly.

Colleagues may use their discretion and request a lump sum refund, where it is verified no debt exists, or in exceptional circumstances where a debt remains. However you must take into account the following:

- the particular circumstances of the case. You need to be fully aware of the circumstances of the case and clients before you can decide on the most appropriate course of action
- the case must be fully reviewed
- all previous decisions with regards to the suspension and adjustment of debt, or where a previous decision is obviously wrong, must be checked to ensure they are correct
- where necessary the case must be brought up to date and the amount of the overpayment confirmed before proceeding
- any other relevant guidance which relates to the specific decision being made

### Making and recording your decision

When making a discretionary decision colleagues should refer to the guidance on [Evidence and Decision Making](#) which refers to other factors that must be considered when making a discretionary decision.

Any discretionary decision to take (or not take) action in a particular way can be challenged by Judicial Review.

It is therefore essential to fully consider all relevant evidence and information before a decision is made. The discretionary decision must be reasonable, unbiased and fully recorded in case notes whether the payment is approved or rejected.

## Reimbursements

A reimbursement is repayment of money returned to the non-resident parent for overpaid maintenance, which has already paid out to the parent with care. These payments involve money being drawn from the department central budget and have a detrimental impact on the department budget if they are not recovered. Reimbursements are dealt with by caseworkers wherever the case is located.

**Please note: Before considering a reimbursement, allocation of an overpayment against arrears or on-going maintenance under Regulation 8 should have already been considered and either it was not possible, not appropriate, or an overpayment remained even after this action had been taken.**

As a result of an overpayment a reimbursement may be proposed when:

- implementing a new Maintenance Calculation
- closing a case, or
- after completing an account breakdown, you find the non-resident parent has overpaid.

**It is not an automatic right for a non-resident parent to receive a reimbursement.** This should be on an exceptional basis as the CMS no longer holds the funds.

Section 41B (2) Child Support Act 1991 allows the Secretary of State to make such reimbursement as he considers appropriate. This means we can consider reimbursing, some, all or none of the overpayment.

## Direct Pay

In most cases, overpayments that occur in a direct pay arrangement are resolved by the parties involved and do not require a decision regarding a reimbursement by the CMS. If a client requests a reimbursement where the service type has been direct pay please seek advice from the Advice and Guidance Team.

## Considering a reimbursement

Reimbursement decisions are discretionary decisions. This means caseworkers have the authority to make a judgment on what they think is the most appropriate action to take. However you must take into account the following:

- the particular circumstances of the case. You need to be fully aware of the circumstances of the case and clients before you can decide on the most appropriate course of action
- the case must be fully reviewed
- all previous decisions with regards to the suspension and adjustment of debt, or where a previous decision is obviously wrong, must be checked to ensure they are correct
- where necessary the case must be brought up to date and the amount of the overpayment confirmed before proceeding
- any other relevant guidance which relates to the specific decision being made, such as the debt steer etc.

A discretionary decision to approve or a reject a reimbursement must be recorded in case notes.

Making and recording a reimbursement discretionary decision guidance

When making a discretionary decision colleagues should refer to the guidance on [Evidence and Decision Making](#) which refers to other factors that must be considered when making a discretionary decision. In a reimbursement case, these will generally include:

- **Who was responsible for the overpayment occurring?**

Was it the non-resident parent, CMG, the parent with care or a combination of these?

The balance of responsibility will be a factor to consider when determining whether a reimbursement is appropriate and if so how much.

The degree of responsibility on the part of the non-resident parent should be reflected in any decision made as to how much, if any, reimbursement is considered appropriate:

- if it was entirely CMG's responsibility it is likely a reimbursement would be appropriate. Who the money was paid to etc. is unlikely to alter this view (although you would need to be alert to cases where it might)
- if it was entirely the non-resident parent's responsibility it is likely that a reimbursement would not be appropriate
- if the parent with care was entirely responsible for the overpayment, it may be appropriate to consider a partial or full reimbursement

- if multiple parties contributed, it may be appropriate to consider a partial reimbursement for any period of overpayment not contributed to by the non-resident parent.

- **Who was overpaid?**

Was it the parent with care, the Secretary of State, or both?

Again, the individual circumstances must be considered but in general:

- any maintenance overpaid to the Secretary of State for CSA arrears should following consideration be returned. (i.e. arrears due to the Secretary of State for a period the PWC was in receipt of a prescribed benefit prior to the repeal of Section 6 of the Child Support Act on 27 October 2008)
- if both the Secretary of State and parent with care were overpaid, these are two separate decisions. The money retained for Secretary of State should following consideration be returned. This does not mean you have to reimburse the amount paid to the PWC. You should only reimburse this if you consider it appropriate.

- **Has the maintenance gone to the benefit of the qualifying child(ren)?**

A parent's responsibility to support their child(ren) is essentially a private matter. The role of the statutory scheme is to assist those parents who cannot resolve maintenance issues between themselves.

Where we have administered the case correctly and passed maintenance on to the parent with care for the benefit of the non-resident parent's child(ren) for a period they meet the requirements to be a Qualifying child a reimbursement may not be appropriate.

### **Example 1**

The parent with care fails to inform the CMS that the last qualifying child started full time work on 25 April 2016 having left education. The non-resident parent becomes aware of this change and informs the CMS of the change on 25 July 2016. The case is closed from 25 April 2016. An overpayment is identified of £500 due to the NRP continuing to pay after 25 April 2016 having been up to date with all payments. This money was paid to the PWC. The NRP requests a reimbursement. The amount of the overpayment is verified following a full review of the case. The NRP has no other CMG cases and owes no other CMG debt. A decision is made to reimburse the NRP.

### **Example 2**

Both parties fail to inform the CMS that the only qualifying child, who is 14, has moved to live with the parent with care's sister from 12 April 2016. The sister was the primary day to day carer of the QC from this date. The non-resident parent continues to make payments which the PWC forwards to the sister for the benefit of the QC. On 15 July 2016 the NRP informs the CMS that the child has been living with the PWC's sister. This is verified with the PWC and the case is closed from 12 April 2016. The sister makes an application to the CMS for child maintenance for the QC. The PWC and sister verify that payments were forwarded to the sister for the benefit of the QC. A decision is made not to reimburse the NRP as the payments have gone to the benefit of the QC.

### Making your decision

The full circumstances of the case need to be taken into account together with:

- the purpose and basic principles of the Act
- the advantages of receiving child maintenance
- all relevant other factors (which would generally include those above)
- and the welfare of any child affected

Case closure will not automatically mean a reimbursement is appropriate. You still have to consider whether a reimbursement is appropriate in the particular circumstances of the case.

Everything must be considered in the round, each piece of guidance carries equal importance regardless of its numbering or particular order. For example, if the overpayment occurred solely as a result of an error on our part, the fact that the money has been paid to the parent with care for the benefit of the non-resident parent's child(ren) is unlikely to alter the view that a reimbursement may be appropriate.

If you have any concerns about making a reimbursement decision, for example, if there are unusual or particularly complex circumstances involved, you should always consider discussing the case with your team leader in the first instance, and seeking advice from the Advice and Guidance Team where appropriate. If advice is required from the Advice and Guidance Team, it is essential you seek this as soon as possible and before discussing details with a client. As with all reimbursements, approval must be given before the reimbursement can be issued to the client. Until approval has been given it is essential that clients are not informed that we are going to make a reimbursement.

### Recording your decision

Any discretionary decision to take (or not take) action in a particular way can be challenged by Judicial Review.

It is therefore essential to fully consider all relevant evidence and information before a decision is made. The decision must be reasonable, unbiased and fully recorded.

#### Making a reimbursement following a negative paternity result

CMS does not automatically reimburse all maintenance overpaid by the (alleged) non-resident parent following a parentage dispute and upon them successfully disproving paternity (either by a negative DNA test result or Court Declaration of Non-Parentage), or where a child has been removed from the case due to the CMS being unable to determine parentage of a child, due to a refusal by a parent with care to take a DNA test.

Colleagues should follow the guidance below for new paternity dispute cases that are post-Maintenance Calculation and where it is established that the (alleged) non-resident parent is not the parent of the Qualifying Child(ren) (by DNA test results or Court Declaration of Non-Parentage or where a child has been removed from the case due to the CMS being unable to determine parentage of a child, due to a refusal by a parent with care to take a DNA test.). The examples provided are to illustrate how this guidance would apply in a range of cases, however they are not exhaustive.

Caseworkers should be aware that making a reimbursement to the (alleged) non-resident parent for maintenance paid is a discretionary decision under child support legislation. The CMS therefore has the discretion to decide:

- whether to make any reimbursement at all to the non-resident parent, and
- if the decision is taken to make a reimbursement, whether it is for the full amount of maintenance paid by the (alleged) non-resident parent or a proportion of it

Because the decision to reimburse overpaid maintenance is a discretionary one, caseworkers must have regard to the welfare of any child affected by the decision. Additionally, if you have a case that you consider to be particularly novel or exceptional, additional guidance should be sought from the Advice and Guidance team. It is essential that you do this as soon as possible and before discussing any potential reimbursement with a client. As with all reimbursements, approval must be given before the reimbursement can be issued to the client. Until approval has been given it is essential that clients are not informed that we are going to make a reimbursement.

#### Overpaid maintenance paid to parent with care

If the parent with care has received the overpaid maintenance, the caseworker must determine when the (alleged) non-resident parent took action to dispute the paternity of the child(ren) in question and provide us with conclusive evidence (negative DNA test results or Court Declaration of Non-Parentage) that confirms they are not the

parent. The point when they took action determines from what point they may be reimbursed.

Caseworkers must consider whether we have evidence that:

- the (alleged) non-resident parent communicated doubts of paternity to us
- we provided them with sufficient information about how to disprove paternity
- if we have not made the (alleged) non-resident parent aware what action to take to disprove paternity, then we may need to consider reimbursing them from the point at which they first raised doubts regarding paternity as any delay in the (alleged) non-resident parent taking action would be the result of our maladministration
- we assumed parentage. If so, was it correctly assumed
- if the assumption was made incorrectly and not within the circumstances allowed in child support law, then it may be that no case should have been established and we need to consider reimbursing the (alleged) non-resident parent in full
- the (alleged) non-resident parent complied with a DNA testing process (instigated privately or via CMS) which proved negative? Or the (alleged) non-resident parent successfully applied for a Declaration of Non-Parentage from a court
- that where a child has been removed from a case due to the CMS being unable to determine parentage of a child, due to a refusal by a parent with care to take a DNA test, that the decision has been correctly documented

### **Prompt action was not taken**

If we have evidence that the non-resident parent communicated doubts of paternity to us but then did not take prompt action to disprove this and it is decided that a reimbursement should be made, then the (alleged) non-resident parent should only be reimbursed the money paid in relation to maintenance due from the first day in which the (alleged) non-resident parent provided evidence to disprove paternity (negative DNA test results or a Court Declaration of Non-Parentage). This may apply in cases where:

- the (alleged) non-resident parent originally accepted paternity, but disputed it at a later date and there was a delay in providing evidence, or
- we assumed paternity in one of the scenarios permitted under child support law and the (alleged) non-resident parent disputed paternity soon after receiving the maintenance calculation but there was a delay in providing evidence

Delays in this process may be caused by the parent with care, for example if they fail to respond to, or delay responding to DNA testing letters or fail to attend a DNA sampling appointment. Delays of this type caused by the parent with care should not be taken into account when determining if the non-resident parent acted promptly. Only delays caused by the non-resident parent should be considered.

Scenarios 1 and 2 below are case examples of an (alleged) non-resident parent failing to take prompt action to provide evidence that they are not the parent:

**Scenario 1:** (alleged) non-resident parent originally accepted paternity, but disputed it at a later date and there was a delay in providing evidence.

Application received 14 August 2015 and (alleged) non-resident parent accepts paternity during initial gather stage.

- maintenance calculation of £20 per week calculated on 14 September 2015 with an effective date of 21 August 2015
- (alleged) non-resident parent contacts the CMS on 25 October 2015 with doubts about paternity and is provided with the information to enable them to pursue the dispute and disprove paternity
- (alleged) non-resident parent continues to make maintenance payments and does not then contact the CMS again until 16 June 2016 to raise the issue of disputed paternity
- (alleged) non-resident parent provides results of DNA from a test conducted by Cellmark on 4 July 2016.

In this scenario the (alleged) non-resident parent should receive a reimbursement from 16 June 2016 (the first day of the (alleged) non-resident parent's most recent contact to dispute paternity). The (alleged) non-resident parent would not be reimbursed for any maintenance payments in relation to the period between 21 August 2015 and 15 June 2016 as despite being provided with the information to enable them to disprove paternity, the (alleged) non-resident parent did not take prompt action to do so.

**Scenario 2:** We assumed paternity in one of the scenarios permitted under child support law, the (alleged) non-resident parent disputed paternity soon after receiving the maintenance calculation but there was a delay in providing evidence.

- on 15 April 2015 the parent with care contacts the CMS to make a maintenance application for one qualifying child. During the initial gather stage the (alleged) non-resident parent disputes paternity during a telephone conversation and does not provide further information to complete the call. However the CMS assumes paternity and makes an initial maintenance calculation because the (alleged) non-resident parent is registered as the

father of the child on the child's birth certificate (under section 10 or 10A of the Births and Deaths registration Act 1953). As the case falls within a scenario where parentage can be assumed (section 26 of the Child Support Act 1991) then the (alleged) non-resident parent is assumed to be the parent

- on 26 May 2015 the case is set-up and the initial maintenance calculation is calculated using historic income. The parent with care and (alleged) non-resident parent are notified of the calculation
- after three months of non payment, the CMS seeks (and secures) a Deduction from Earnings Order against the (alleged) non-resident parent's wage. The (alleged) non-resident parent's wage slip for September 2015 shows a deduction for Child maintenance, so the (alleged) non-resident parent contacts the CMS to dispute paternity on 3 October 2015
- the caseworker explains the assumption of paternity provisions and explains the processes to disprove paternity. The (alleged) non-resident parent must also be advised that the level of any reimbursement they may receive will depend on how quickly they now take action to have the paternity disproved
- on 31 October 2015, CMS is provided with DNA test results which show that he is not the father.

As the (alleged) non-resident parent did not take prompt action to dispute and disprove paternity after having been notified of the initial maintenance calculation until 3 October, a reimbursement of any monies paid could only be considered for the period from 3 October 2015 to the present time.

#### Important considerations and potential exceptions

There may also be specific reasons why an (alleged) non-resident parent cannot act on the information provided to them, so a caseworker should consider whether the (alleged) non-resident parent has acted on the information given in a reasonable time. As a broad guideline, the non-resident parent should take initial action to have paternity disproved within one month of being provided with sufficient information (such as arranging a DNA test, even if that test may take place at a later date, or initiating Court proceedings to obtain a Declaration of Non-Parentage, even if the court hearing date itself is at a later date). The one month timescale is not defined in legislation; it is a sensible guide only. There may also be other factors that need to be taken into account that prevent the non-resident parent taking prompt action.

These may include

- long-term illness / hospitalisation of (alleged) non-resident parent
- (alleged) non-resident parent is a member of the Armed Forces who is serving abroad (or is due to serve abroad very shortly after being informed of the steps they need to take)

- disability of non-resident parent (including mental health condition, learning impairment, sensory impairment impacting upon communication for example deafness or blindness)
- (alleged) non-resident parent has language needs

This list is not exhaustive and each case should be considered on its own merits. As with any other action taken on a case, it is essential that caseworkers clearly document their decisions with regard to paternity disputes and reimbursements.

Where the above, or similar exceptional circumstances, apply then caseworkers should seek additional guidance by contacting the Advice and Guidance Team.

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### [Recovery of overpayments from parents with care: Decision Making Guidance](#)

We have a legal requirement to advise the parent with care of the overpayment, even if they cannot or refuse to pay it back.

You should consider recovering an overpayment of child maintenance from the parent with care who received it if:

- a reimbursement has been issued to the non-resident parent, or
- the overpayment has been allocated against arrears due on another case

Remember: we can only recover the amount that has been refunded / reimbursed / allocated to other arrears. Any overpaid amount exceeding this cannot be recovered from the parent with care.

NOTE: Although legislation only allows us to recover an overpayment if a reimbursement has been made, allocations to arrears on a different case can be viewed as refunds in principle, because they reduce the amount owed. The non-resident parent therefore still receives the benefit of the reimbursement. Any amounts that have been allocated to a different case can therefore be included in any sum we try to collect from the parent with care.

When you are deciding whether to recover an overpayment from a parent with care, you need to consider the following:

- the welfare of any child affected by this action; and
- whether recovery will cause the parent with care financial hardship.

NOTE: Recovering an overpayment from a parent with care will always have a financial impact on the household but this is not the same thing as financial hardship.

You need to consider the effect that recovering the overpayment will have on the household and balance this against the importance of protecting public funds.

#### Recovery not appropriate

If you decide it is not appropriate to seek recovery of an overpayment from the parent with care, you must record the reasons for your decision. This is important for audit purposes.

A parent with care may indicate that recovery of the overpayment is not appropriate at this time but may be in the future. In these circumstances you should decide when and whether it is appropriate to contact the parent with care again.

#### Recovery is appropriate

If you decide it is appropriate to seek recovery of the overpayment, there are two ways this can be done, which are listed below. NOTE: You should always attempt to gain the parent with care's agreement to repayment first.

#### **Ask the parent with care if they are willing to repay the overpayment**

If the parent with care is willing to repay the overpayment, they can use the following methods of collection:

- a lump sum payment by credit/debit card
- by regular instalments using a preferred method of collection
- by taking payments from their on going maintenance

#### **Recover from the non-resident parent's ongoing payments**

[1992/1816](#) *Regulation 10A of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992*

*(Link N/A) Regulation 10A of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992*

You can not consider this action where the parent with care was in receipt of prescribed benefit (Income Support, income-based Jobseekers Allowance, and State Pension Credit) at any point in the period when the overpayment occurred or when the reimbursement was made to the non-resident parent.

You should consider this action where:

- it is not possible to recover the overpayment by reducing the non-resident parent's on-going payment
- because we have already issued them with a refund or reimbursement

The non-resident parent will therefore be liable to pay his on-going maintenance at the full amount due. But we can consider recovering the overpayment from the parent with care, by reducing the amount of these payments that we pass on to them.

POLICY STEER: You must have the parent with care's agreement before recovering the overpayment by this method.

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PLDMG @ 09.03.2017