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### Prior Debts Variations: Decision Making Guidance

#### What is a Prior Debts variation?

*2012/2677 Regulation 65 of the Child Support Maintenance Calculation Regulations 2012*

Prior debts cover certain debts that a non-resident parent is **legally required** to repay.

#### **Permitted Expenses**

There is not a prescribed list of permitted expenses for a Prior Debt Variation. A debt will only be a “permitted debt” that can be considered if the following criteria are all satisfied:

1. The debt must have been incurred:
  - before the applicant became a non-resident parent in relation to the qualifying child; and
  - while the non-resident parent was living with the parent with care and qualifying child; and
  - for the benefit of the individuals set out below (see Who was the debt intended to benefit).

2. The non-resident parent must be legally obliged to repay the debt; and

The debt must not fall within the categories of non permitted debts

The following sections provide additional information on terms within the criteria for Prior Debts.

### **Who was the debt intended to benefit?**

For a prior debt variation to be successful, the non-resident parent must show that the debt was incurred for:

- the qualifying child; or
- the joint benefit of the non-resident parent and parent with care; or
- the benefit of the parent with care only; or
- the benefit of a child who is not the qualifying child, but who at the time the debt was incurred:
  1. lived with both the non-resident parent and parent with care; and
  2. the parent with care is his / her parent; or
- the benefit of a person no longer classified as a child, but who at the time the debt was incurred:
  1. was classified as a child; and
  2. lived with both the non-resident parent and parent with care; and
  3. the non-resident parent / parent with care or both, are his / her parents

NOTE: a 'child' is defined according to the normal criteria for child support purposes.

### **Debts Incurred for a range of purposes**

A non-resident parent may be repaying a single debt that was taken out to clear / consolidate a number of previous debts. If this is the case, you can only consider any part of the debt that relates to a permitted debt type.

Example:

- When the non-resident parent and parent with care were in a relationship, the non-resident parent took out a £10,000 loan. £8000 was used to buy a car and £2000 was used to pay off an existing credit card.
- Following separation, the parent with care retained the car and the non-resident parent continued to make the monthly repayments as he was legally liable for the loan.
- Only the element relating to the car loan can constitute special expenses. The amount used to pay off a credit card is not a permitted cost.

### **Joint mortgage between the parent with care and non-resident parent**

Applications will be accepted from non-resident parents who are jointly named on a mortgage, providing the parent with care and qualifying child are living in the property and the non-resident parent isn't.

If the non-resident parent is paying half of the mortgage then you should only consider a variation for the amount they are paying.

If the non-resident parent is paying the whole mortgage then you should consider the whole amount.

### **Mortgage solely in non-resident parent's name**

Applications will be accepted from non-resident parents if they are paying the mortgage of a property which is solely in their name, providing the parent with care and qualifying child are living in the property and the non-resident parent isn't.

Non Permitted Debts

### **Informal Debts**

Loans and other debts incurred by the non-resident parent can only be considered if they have been obtained from:

- a qualifying lender (such as a bank, building society or mortgage lender); or
- the non-resident parent's current or former employer

Loans from friends or family therefore cannot be considered unless they are classed as the non-resident parent's employer and the loan was provided in this capacity.

### **Debts Incurred Under a Financial Settlement**

A variation cannot be considered for any debts that a non-resident parent has agreed / been ordered to pay as part of a financial settlement with the parent with care or under a court order.

### **Non-resident parent has retained the benefit of the debt**

A variation cannot be considered for debts incurred during the relationship if the non-resident parent has retained the benefit associated with the debt for his personal use following separation from the parent with care.

Example:

Non-resident parent took out a car loan to purchase a family vehicle while living with the parent with care. The non-resident parent has retained the car following separation.

### **Trade Debts**

Any debts incurred for the purposes of a trade / business.

### **Gambling Debts**

Any loans or other debts incurred by the non-resident parent to pay a gambling debt.

### **Fines**

Any loans or other debts incurred by the non-resident parent to pay a fine.

### **Credit Card Debts**

This includes outstanding balances on credit cards or any debts incurred to pay off a credit card debt.

### **Legal Costs**

Unpaid legal costs relating to the non-resident parent's separation / divorce from the parent with care or other debts incurred by the non-resident parent to pay for them.

### **Secured Mortgage and Loan**

These are excluded UNLESS:

- they were taken out to purchase the property, or to make repairs / improvements to the property which was, and continues to be, the home of the parent with care and qualifying child/ren; and
- payment of these debts by the non-resident parent was not agreed as part of a financial settlement / court order.

### **Other Insurance Policies**

Amounts due to be paid by the non-resident parent under an insurance policy can only be considered if the policy was obtained and has been retained to release a mortgage or loan that was taken out to:

- purchase the property; or
- pay for Repairs or Improvements to the parent with care and qualifying child's home.

For these purposes, repairs or improvements means major repairs necessary to maintain the fabric of the property; or any of the following:

- installation of a fixed bath, shower, wash basin or lavatory and any necessary associated plumbing work;
- damp proofing;

- provision / improvement of ventilation or natural light;
- provision of electric lighting / sockets;
- provision / improvement of drainage facilities;
- improvement of the property's structural condition;
- improvement of facilities for storing/ preparing / cooking food;
- provision of heating, including central heating;
- provision of storage facilities for fuel / refuse;
- improvements to insulation;
- any other improvements the Commission considers reasonable in the circumstances.

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#### [Prior Debts: Decision Making Guidance: Application](#)

All applicants must state the ground they want to apply on or provide enough information for an appropriate ground to be identified.

#### **Prior Debts: is the ground identified?**

For a prior debts application to be considered, the non-resident parent must state a permitted ground, or provide sufficient information for a permitted ground to be identified.

Some non-resident parents may be aware of the variations scheme, and specifically ask for a variation to be considered. In other cases, they may just say their assessment is too high and / or they cannot afford to pay it, because they have to pay debts that arose while they were living with the parent with care / qualifying child.

Example:

'I can't afford / it isn't fair that I have to pay this amount. I'm still paying off a car loan from when I was living with him / her and they have kept the car.'

- In these circumstances, you should try to establish whether the non-resident parent's costs fall within the grounds for a prior debts variation. If so, you should advise the non-resident parent of the variations scheme and explain the process to them.

If the non-resident parent would then like to apply for a variation, you should try and obtain as much information as possible for the application to proceed.

### [Prior Debts: Decision Making Guidance: Preliminary Consideration](#)

All applications should be given preliminary consideration and rejected immediately if certain criteria are not met / apply.

If an application is made on multiple grounds, then preliminary consideration is applied to each ground individually. Only the ground(s) that fail preliminary consideration would be rejected on this basis. Any other ground(s) can be taken forward.

#### **Fact based reasons for rejection**

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

- 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;
- the amounts claimed do not meet the threshold. REMEMBER: applications on multiple special expenses grounds will only be rejected if none of the Special Expenses thresholds are satisfied. Otherwise, you would only reject the ground(s) that failed to meet the threshold;
- the non-resident parent's maintenance liability is £7 or less;
- the non-resident parent's gross weekly income would still exceed the capped amount (£3000) after deducting the special expenses claimed

#### **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.

#### **Prior Debts: Discretionary Reasons for Rejection**

For this ground to be identified, the non-resident parent must confirm that:

- they are legally required to pay debts that arose while they were living with the parent with care; and
- before they became a non-resident parent in relation to the qualifying child.

### Examples

The following type of statement will be sufficient to pass preliminary consideration:

- I took out a loan before we split up to pay for repairs to the house they're still living in

The following type of statement will not be sufficient to pass preliminary consideration.

- I had to take a car loan after we split up because he / she kept our car.

In this situation, the facts stated do not fall within the allowable costs for this ground. You should explain this to the non-resident parent and clarify what type of costs can be considered.

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### [Prior Debts: Decision Making Guidance: Gathering information and evidence](#)

If the case passes preliminary consideration, you need to obtain the necessary information and evidence from the applicant.

Prior Debt applications relate to the non-resident parent's own expenditure and so they can be expected to provide any information / evidence needed to support their application. You must obtain details of the amount and type of expenses that the non-resident parent wants to claim for. This is basic factual information that a non-resident parent must provide for an application to be properly considered.

You will also need to obtain appropriate documentary evidence to confirm the expenses claimed. Non-resident parents should be encouraged to provide supporting evidence, as this will help you to make an accurate decision.

#### **Details of the amount / type of expenses**

Example:

'I am still liable to pay £200 a month for the mortgage on my child's home'.

Both the amount (£200) and type (mortgage payments) have been provided.

#### **Details of the amount / type of expenses not provided**

If the non-resident parent does not know the exact amount, you can either agree an amount using available information sources, or allow them 14 days to provide the actual details. If the information is not provided, you can reject the application without inviting representations from the other party.

#### Example

The non-resident parent applies for a variation because they are paying off a car loan and the vehicle has been retained by the parent with care following their separation. They state they will send details of the outstanding amounts and the payments due.

The case passes preliminary consideration because the facts stated fall within the Prior Debts ground, and there are no reasons for immediate rejection. However, there is not enough information about the amount / type of costs to be considered

If this information is not provided within 14 days, the application can be rejected on the basis that there is insufficient information for a decision to be made.

#### **Requesting additional information from applicants**

*2012/2677 Regulation 58 of the Child Support Maintenance Calculation Regulations 2012*

If you need more information / evidence from an applicant in order to proceed with the application, you can ask them to provide this and allow fourteen days for their response. You may allow additional time if you are satisfied it is reasonable in the circumstances of the case.

#### **Documentary evidence**

For most prior debts applications the non-resident parent will be required to submit documentary evidence to support their application. It is very unlikely that a non-resident parent will be unable to provide any documentary evidence to support a claim for variation on the grounds of prior debts. However, if this does happen, you should seek advice from your Team Leader / the Advice and Guidance Team.

For further information about the requirements for a prior debts variation, please refer to the individual sections on permitted expenses.

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#### [Prior Debts: Decision Making Guidance: Representations](#)

This part of the process gives the other parties notice of the application and the opportunity to comment on it. This step should be completed once any information /

evidence to support the application has been obtained from the applicant / other available sources.

**Representations do not need to be invited if:**

- It is clear from information provided by the applicant / other available sources that the variation will not be successful; or
- The non-resident parent has not provided details of the specific amount / type of their special expenses. In this situation you do not have enough basic information to make a decision on the application. Regulation 59(2)(a) of the Child Support Maintenance Calculation Regulations 2012

**When you invite the other parties to make representations, they must be:**

- Notified that an application has been made; and
- Informed of the grounds that the application has been made on, including any relevant information / evidence that has been provided by the applicant or obtained from other sources, unless it falls within the excluded information category.
- The other party should be allowed fourteen days to respond. You may allow additional time if you are satisfied it is reasonable in the circumstances of the case. If the other party fails to respond in the time allowed, you should decide whether to proceed with the application on the basis of the information held.

**Notifying the applicant about representations:**

If the other party / parties agree with the facts provided by the non-resident parent, and do not wish to make any further comments, you can proceed with the application and decide whether to allow the variation. It is not necessary to invite further comments from the non-resident parent in these circumstances.

If the other party / parties disagree with the facts provided and submits additional information / evidence that conflicts with the details provided by the non-resident parent, then you may need to go back to the non-resident parent for their comments. However, this will only be necessary if you are unable to make a decision on the basis of the information / evidence submitted.

**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.

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### Prior Debts: Decision Making Guidance: Deciding whether to allow the variation

When you are deciding whether to allow a prior debts variation, you need to consider all the following points:

- **Do the expenses claimed fall within the permitted expenses?**
- **Are the expenses claimed linked to current / future expenditure?**

The costs that the application is based on must be:

- in place at the time of the application; or
- due to start at a known future date that is agreed by both parties.

#### **Example:**

While the non-resident parent and parent with care were living together, the non-resident parent took out a hire purchase agreement to pay for furniture for their home. The payments were not due to start for a further twelve months. In the interim, the parent with care and non-resident parent have separated and the parent with care has retained the furniture. A variation can be considered from the date the payments are due to start.

A variation can also be considered where the relevant expenses were in place at the time of the application, but have ceased by the time a decision on the application is made.

In these circumstances, the variation can be considered for the period between the effective date of the variation and the date the expenses ceased.

#### **Example:**

The non-resident parent applied for a variation based on a qualifying car loan in May 2010. The application is not decided until September 2010 and the repayments ended in August. A variation can be considered from May 2010 until the repayments ceased.

- **Does the Non-resident parent receive any Financial Assistance?**

A non-resident parent may receive financial assistance towards their expenditure from a friend, relative or official source.

In these circumstances, the non-resident parent should not receive an allowance for costs that are effectively being paid by someone else. An amount equivalent to the financial assistance that the non-resident parent receives must be deducted from the expenses total, before the variation is calculated.

• **Is the Financial Threshold still satisfied?**

An application for prior debts will only be agreed if the expenses are equal to or exceed the threshold amount of £10.00 per week. When you are deciding whether to allow the variation, you will need to consider whether this threshold is still satisfied following any adjustment for reasonableness/ financial assistance

If the financial threshold is satisfied, the whole amount of the expenses claimed can be considered – you do not have to deduct an amount equivalent to the threshold.

REMEMBER: if the application is based on more than one ground, the threshold applies separately to each ground. For example: if a non-resident parent applies for prior debts and contact debts, both types of expenses must equal or exceed £10.00 per week individually.

- Finally, taking all of the above into account, is it Just and Equitable to allow the variation?

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[Prior Debts: Decision Making Guidance: Effect of a variation](#)

There is no ground specific guidance for the effect of a variation. Please refer to the overview.

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