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Recovery from deceased estates: process overview

When the CMG is notified that a non-resident parent has died, the case should be checked to confirm whether any collection / enforcement action is being taken. Refer to the [guidance on Enforcement Action](#) for further advice on cases where enforcement action is ongoing.

Once any action to stop / suspend enforcement action has been completed, the case should be checked to confirm whether there are child maintenance arrears outstanding. If not, there will be no need to consider making a claim against the non-resident parent's estate.

If there are arrears outstanding, then it is necessary to consider whether a claim against the estate is appropriate. This will involve taking into account:

- the amount / age of the debt
- the views of the parent with care
- the welfare of any child likely to be affected by your decision
- any other relevant circumstances

Refer to the guidance on [deciding whether Recovery from Deceased Estates action is appropriate](#) for further advice,

If you decide that claim should be made, the case should be referred to the Recovery from Deceased Estates team, based within DWP (in Northern Ireland, cases should be referred to the Recovery from Estates team in NI Debt Centre, which is within the SSA).

The Recovery from Deceased Estates team will:

- identify who is the non-resident parent's executor / personal representative
- notify them that the CMG (the Department in Northern Ireland) has a claim against the non-resident parent's estate
- manage the case until an outcome has been reached

The CMG will then notify the parent with care of the outcome and make any payment due to them.

What can be included in a claim against the estate?

If you decide it is appropriate to make a claim against the non-resident parent's estate, any of the following can be included:

- arrears owed to the Secretary of State (the Department in Northern Ireland) or the parent with care. NOTE: the six year rule that applies to enforcement action does not apply to recovery from deceased estates legislation
- court costs and / or interest awarded as part of a court decision

The following cannot be included:

- Agency fees / interest
- DNA testing fees

Arrears based on an Interim Maintenance Assessment or Default Maintenance Decision can be included. But if there is information / evidence available that would allow the decision to be replaced / converted, then this action must be completed.

Deferred debt

If the parent with care was paid arrears out of Treasury funds because of deferred debt, then this amount cannot be included in a claim against the non-resident parent's estate. This is because the non-resident parent is no longer liable to pay arrears for the Interim Payment Period.

However, if you are considering making a claim against the non-resident parent's estate, you can consider reinstating previously deferred debt if:

- you have identified that the deferred debt criteria were not met, or
- it is clear that the non-resident parent had failed to comply with the regular payment agreement

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[Recovery from Deceased Estates: Collection / Enforcement Action](#)

The following section provides advice on what action to take if there is enforcement or other collection activity ongoing when a non-resident parent dies.

Deduction from earnings order

If ongoing maintenance and / or arrears are being collected by a deduction from earnings order, this must be stopped if it is confirmed that the non-resident parent has died. Refer to the guidance on [Deduction from Earnings Orders](#) for further advice.

Deduction orders

Any lump sum or regular deduction order that is in place must be discharged immediately if the non-resident parent's death is confirmed.

Bailiff referrals

Any bailiff action must be stopped as a matter of urgency, to ensure a bailiff does not visit the non-resident parent's home.

Third party debt orders

A third party debt order is applied against the third party. If third party debt order action is incomplete when you are notified that a non-resident parent has died, you should not continue. However, if the third party debt order is already in place, then it is still valid and the third party deposit taker will still be required to comply with it.

You should complete the third party debt order action and collect the funds due before considering making a claim against the non-resident parent's estate, to ensure the final debt balance is accurate.

NOTE: If the third party is also the non-resident parent's executor they must release funds under the third party debt order before administering the estate.

Liability orders

If a non-resident parent dies before liability order action has been completed, you should not continue with this action. A liability order is not necessary for a claim to be made against the non-resident parent's estate.

If a liability order has been obtained, this may be useful in helping confirm the debt to the non-resident parent's personal representative or executor.

If a liability order has been obtained in Scotland, but a charge for payment has not yet been obtained, this action should not be pursued following the non-resident parent's death.

Inhibition orders (Scotland)

A Bill of Inhibition is attached to the individual it is made against. If the individual dies, the Bill of Inhibition will cease to have effect.

Interim charging orders

Any action to apply for / obtain an interim charging order should be stopped immediately if the non-resident parent dies.

If the interim charging order has already been obtained, it may be worth obtaining a final charging order to secure the debt. In these circumstances, advice should be sought from Policy colleagues.

Charging orders / order for sale

If a final charging order has been obtained, the Child Support debt is secured. This means it will be a priority debt when the estate is distributed.

If a non-resident parent dies after a final charging order has been obtained but before order for sale action has been completed, order for sale action should be withdrawn.

If a non-resident parent dies after an order for sale has been obtained no further action should be taken initially in respect of the order. The executor will have a number of options on how to settle the claim and DWP's Recovery from Estates team will negotiate with them. These options include:

- selling the property to clear the Child Support debt
- passing the property with the order for sale attached to the non-resident parent's beneficiaries, who then take on responsibility for clearing the debt by selling the property or using other funds (if they fail to do so the CMG can enforce the order for sale)
- clearing the debt from other estate funds without selling the property

If DWP do not think the estate is being properly administered they will inform the CMG. In this situation Policy colleagues should be consulted to decide whether to proceed with the order for sale.

Northern Ireland cases

Advice should be requested from the Crown Solicitors Office if a liability order, an order charging land or an order for sale has been applied for or obtained.

The Enforcement of Judgments Office must be informed about the non-resident parent's death immediately and asked to suspend their action. You should advise

that further information will be provided when you have obtained advice from the Crown Solicitors Office.

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[Is Recovery from Deceased Estates action appropriate?](#)

When you are deciding whether Recovery from Deceased Estates action is appropriate, the first point to consider is whether the total arrears owed exceed £65. Making a claim for amounts below this threshold is not considered cost effective and it will therefore only be appropriate to consider making a claim in these circumstances if:

- some / all of the arrears are owed to the parent with care; and
- they contact the CMG to specifically ask for this action to be taken.

If the arrears owed exceed £65, you must contact the parent with care so that their views can be taken into account when you are deciding whether it is appropriate to make a claim against the estate.

Contacting the parent with care

When you are contacting the parent with care you must:

- ensure at least seven days have elapsed since the non-resident parent's date of death
- remember that this will often be the CMG's first contact with the parent with care since the non-resident parent's death and that the conversation must be handled sensitively
- be aware that the parent with care may not yet know that the non-resident parent has died

When you contact the parent with care you must explain that if a claim is made, it may be necessary for information about them to be disclosed to the non-resident parent's Personal Representative / Executor if this is requested. You should make it clear that only information that the Personal Representative / Executor is legally entitled to receive will be provided and that this will never include their address or any information that could lead to their location being identified.

If the parent with care does not want ANY information about them or the qualifying child to be disclosed, you should ask them to provide reasons for this and take this into account.

Parent with care wants a claim to be made

If the parent with care wants a claim to be made, you should take this into account when deciding whether to proceed.

NOTE: this does not necessarily mean that a claim will always be made. However, if you decide it is not appropriate to make a claim for arrears owed to the parent with care because of errors / maladministration by the CMG it may be necessary to consider whether the parent with care is entitled to financial redress. Refer to the guidance on [Special Payments](#) for further advice.

If a parent with care states they want a claim to be made but subsequently changes their mind the claim should be withdrawn if it relates to arrears owed to the parent with care.

Parent with care does not want a claim to be made

If the parent with care does not want a claim to be made, your next action will depend on whether the arrears are owed to the parent with care or the CMG.

If the full arrears are owed to the parent with care, you should record their request that a claim is not made. No further action to make a claim against the estate should be taken. (NOTE: we are checking whether we will write off these types of arrears under new write off policy)

If some / all of the arrears are owed to the Secretary of State / Department, you should take the parent with care's views into account. However, this will not necessarily mean you decide that it is not appropriate for a claim to be made.

In these circumstances, you should ensure you obtain full details from the parent with care regarding why they do not want a claim to be made, so that all the relevant information is considered when you make your decision. It is particularly important that you record full details of any negative impact that the parent with care states making a claim might have on any child this action would be likely to affect.

REMEMBER:

- if arrears are owed to both the Secretary of State / Department and the parent with care, and
 - the parent with care does not want a claim to be made, but
 - you decide this action is appropriate in order to collect public funds
 - you should only make a claim in respect of the arrears owed to the Secretary of State

A claim should never be made for arrears owed to a parent with care if they have specifically stated that they do not want this action to be taken.

Once you have contacted the parent with care, you should decide whether it is appropriate for a claim to be made.

REMEMBER: this is a discretionary decision and it is essential you take all the circumstances of the case into account and fully record the reasons for your decision. It is particularly important that you consider the following:

- the age / amount of the arrears
- the welfare of any child/ren likely to be affected by your decision, remembering that welfare of child consideration does not apply solely to any qualifying child/ren
- any information / opinion provided by the parent with care, or any relevant third party, such as the non-resident parent's surviving spouse / partner

Refer to the guidance on [Discretionary Decision Making](#) for further advice about making and recording discretionary decisions.

NOTE: in some circumstances it may be necessary to take the circumstances of the non-resident parent's death into account. Particular care must be taken in cases where the non-resident parent has committed suicide, and it is alleged that the CMG was a contributory factor in the non-resident parent's suicide. Contact Policy colleagues for advice if you are dealing with a case where this applies.

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[Disclosing Information to Personal Representatives / Executors](#)

[2009/3151](#) Regulation 13 of the Child Support (Management of Payment and Arrears) Regulations 2009

When a claim is made against an estate the Personal Representative (rep) / Executor will always be told the amount of the debt and the fact it is due to the CMG.

If a Personal Representative / Executor requests any additional information, this can be provided if you are satisfied it is needed for them to properly administer the estate. For example:

- to prove that the claim for child maintenance arrears is valid, or
- to appeal the maintenance calculation or dispute parentage

If a Personal Representative / Executor wants any additional information it should be requested in writing including full reasons why the information is required. Refer to

the guidance on [Contacting a Parent With Care](#) for information about obtaining the parent with care's consent.

REMEMBER: You should never disclose:

- the address of the parent with care and / or any qualifying children, or
- any information which could be used to identify their location, or
- any other information which could be used to identify the location of any person who is not a party to the maintenance calculation

Unless you have written permission from the relevant party.

NOTE: Additional information should never be disclosed by telephone.

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[Appeal Rights of Personal Representatives / Executors](#)

When a claim is made against a non-resident parent's estate, their Personal Representative / Executor takes over any appeal rights the non-resident parent had before they died. This means they can:

- dispute parentage
- continue with or withdraw an appeal made by the non-resident parent
- make a new appeal against a maintenance calculation made before the non-resident parent died

Time Scales

The non-resident parent's Personal Representative / Executor has the remainder of any existing time limits to progress / withdraw any appeal that had been made by the non-resident parent.

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[Recovery from Deceased Estates: Outcomes](#)

DWP will retain any cases referred to them until one of the following outcomes has been reached:

- the arrears are paid in full or in part from the non-resident parent's estate, or

- it has been confirmed that the non-resident parent did not leave any estate from which the arrears could be paid, or
- 2 years have passed since the non-resident parent's death and there has been no grant of probate / executor identified that would allow a claim to be made, or
- the non-resident parent's executor / representative has refused to pay the arrears.

The action you will need to take will depend on which of these outcomes applies.

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