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### Setting Aside Disposition Orders: Overview

Rule 25 of the [Civil Procedure Rules 1998](#)

[1991/48](#) Section 32L of the Child Support Act 1991

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

A setting aside disposition order is a court order that overturns the disposal / transfer of an asset, returning ownership to the non-resident parent.

The CMG can apply for an order of this type if the non-resident parent has:

- disposed of an asset within the last three years and after 6 April 2010 (when the relevant legislation came into effect); with the intention of avoiding paying their child maintenance.

Note: the 3 year rule will only apply for any referrals made after 6th April 2013.

For example: if the non-resident parent has transferred property to a friend / relative, to avoid it being available for enforcement action.

In principle, setting aside disposition orders can be requested in relation to a range of assets including: land, property, cars, jewellery, boats etc. However, in practice, they will normally be requested in relation to land or property, due to the difficulty in obtaining evidence regarding other assets and the costs involved in obtaining orders of this type.

When should a Setting Aside Disposition Order be considered?

Setting aside disposition orders should only be considered if:

- the value of the asset and the non-resident parent's arrears BOTH exceed £3,000 (NOTE: in cases where the asset is a property, there must be equity of at least £3,000)
- the non-resident parent has been notified of the arrears
- there is a liability order in place or action to apply for a liability order has commenced

- there is information / evidence to indicate that suitable assets were disposed of after 6th April 2010 or within the past three years
- there is information / evidence that the asset was transferred for less than its value in order to avoid payment of child maintenance arrears, and
- we have evidence that the non-resident parent owned the asset and evidence of the third party who now owns it

Refer to the [Decision Making Guidance](#) for further advice on these requirements.

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### [Setting Aside Disposition Orders: Process Overview](#)

An application for a setting aside disposition order should be considered if we are notified that a non-compliant non-resident parent has disposed of a suitable asset after 6th April 2010. You will need to obtain evidence that the asset has been disposed of and confirmation of the third party who now owns it.

If you decide to proceed with a setting aside disposition order, an application pack must be completed and submitted to the Judicial Review Team to check and forward to DWP Litigation, who will arrange the court hearing.

Applications for setting aside disposition orders should be made in the jurisdiction where the relevant property is located. This applies irrespective of whether the non-resident parent lives in that jurisdiction or not.

This means, if a non-resident parent lives in Scotland, but the relevant asset / property is located in England or Wales, the setting aside disposition order application must be made to the court in England or Wales and vice versa.

The judge will be asked to direct the third party (who received the asset) to complete any paperwork needed to return ownership of the property to the non-resident parent.

The non-resident parent and the third party (who received the asset) will both be given notice of the hearing, allowing them to make representations to the court.

If a setting aside disposition order is granted, section 32L(4) provides that the court may make such consequential provision as it thinks fit for the purpose of giving effect to the order. This includes the power to make provisions requiring the non-resident parent to make payments or for the disposal of property.

If the court orders that the relevant asset is to be returned to the non-resident parent, enforcement action can then be taken in relation to it. For example: a charging order

application can be made. If the application is rejected, you will need to consider the alternative action to enforce collection of the arrears.

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### [Setting Aside Disposition Orders: Decision Making Guidance](#)

If you are considering applying for a setting aside disposition order, you must be satisfied that all the following requirements are met:

**REMEMBER:** in addition to the following requirements, there must be a liability order in place, or action to apply for a liability order must have commenced.

#### **Arrears and value of asset exceed £3,000 and debt is enforceable**

The non-resident parent's arrears and the value of the asset you are seeking an order against must both exceed £3000.

This is because of the costs involved in obtaining an order of this type.

Cases will not be suitable for a setting aside disposition order if the entire debt is unenforceable (e.g. the debt became due prior to 13 July 2000).

#### **The non-resident parent has been notified about the debt**

We must be able to demonstrate that the non-resident parent knows about the arrears in order to pursue a setting aside disposition order. This means that:

- a confident address must be held for the non-resident parent, and
- notification of the liability must have been issued to that address. This means the latest issued arrears notice, to demonstrate awareness of the arrears due

The CMG must also have sent and be able to produce a copy of at least one arrears notice. Where more than one arrears notice has been issued, the most recent copy should be provided. Providing this action has been taken, any subsequent disposal / transfer of an asset can automatically be deemed by the court as an attempt to avoid paying maintenance.

#### **There is a suitable asset**

The following types of assets may be suitable for a setting aside disposition order, but remember that the value of the asset must exceed £3000 and be solely owned by the non-resident parent.

**Property** - any property registered in the United Kingdom in the non-resident parent's name (as per the Land Registry) and which is owned solely by the non-resident parent and not used for business purposes:

- **capital assets** - any asset that produces an income. For example: where the non-resident parent rents out residential property which is solely owned
- **vehicles** - any type of vehicle that is registered in the non-resident parent's name (as per the DVLA) and is not used for business purposes
- **financial portfolio items** - stocks, shares, securities or other commodities that are owned by the non-resident parent
- **collectable assets** - such as valuable works of art or jewellery

NOTE: this is not an exhaustive list. Setting aside disposition orders will normally be requested in relation to land or property, due to the difficulty in obtaining evidence regarding other assets and the costs involved in obtaining orders of this type. If you think another type of asset is appropriate to be considered, contact the Advice and Guidance Team.

### **Evidence that disposition of the asset fell within section 32L of the Child Support Act 1991**

The CMG will need to provide evidence that the non-resident parent has disposed of an asset (including the date of transfer / sale) and confirm the third party who now owns the asset.

You will also need to consider whether there is any evidence that the type of disposition means a setting aside disposition order is not appropriate. The CMG cannot make an application for a setting aside disposition order if:

- a deceased non-resident parent's assets were disposed of as part of their will, or
- the relevant asset / property has been repossessed by a mortgage or other lender
- the asset was sold for less than the (market) value to a third party purchaser who bought the item in good faith. See the paragraphs below for further advice on this point

Section 32L(5) of the Child Support Act 1991 expressly prohibits applications if the person who purchased the non-resident parent's property did so in good faith. E.g. they had no knowledge of the non-resident parent's intention to dispose of the property to avoid paying maintenance.

- If the third party who obtained the property is known to the non-resident parent (e.g. they are a friend, partner or relative) you should assume they knew the disposition was to avoid child maintenance unless evidence is submitted to the contrary.

- If there is no known relationship between the non-resident parent and the third party, you should assume the purchase was made in good faith and not proceed with the application.

### Setting Aside Disposition Order Application is Appropriate: Next Steps

If you decide it is appropriate to make a setting aside disposition order application, you will need to complete an application pack. The following sections provide additional information about the type of details / evidence you will need to include.

#### **Application: required contents**

A setting aside disposition order application must include:

- a list and hard copies of all evidence gathered in support of the application, ensuring any photocopies are certified as true copies by including the following wording: "I certify that this is a true copy of the original (insert name of document: For example: arrears notice)" and signing and dating this statement
- where the application is in respect of a property, a request to the High Court judge to direct the third party to complete the relevant land registry form to return ownership to the non-resident parent within 4 weeks of the order being served
- details of the next intended enforcement action that will be taken, if the setting aside disposition order is granted
- a request to the High Court to freeze the asset (once ownership has been returned) to prevent the non-resident parent from further dealing with it for a length of time that will allow the next enforcement action to be completed
- the amount of time that will be required for the next enforcement action to be completed (see the section on order duration for further advice)
- confirmation that the welfare of any child potentially affected by the granting of a setting aside disposition order has been considered
- the account breakdown
- any other supporting evidence attached as an appendix
- a system issued copy of the original arrears notice
- a statement confirming the CMG wishes to apply for any costs incurred in obtaining the order

#### **Application: duration of order**

Setting aside disposition order applications will include a request to the High Court to freeze the asset (once ownership has been returned to the non-resident parent) to prevent them dealing with the asset again for a period of time that will allow the next enforcement action to be completed.

You must state how long the CMG needs the order to last. The time required will depend on which is the next enforcement action to be taken. Details of the most appropriate action and the time that will be required to complete it are as follows:

Action	When Appropriate	Time Required
<b>Liability Order</b>	If there is no liability order in force	20 weeks
<b>Order for Recovery</b>	To register the liability order in the county court	4 weeks
<b>Charging Order</b>	If the non-resident parent has property	20 weeks
<b>Bailiff Action</b>	If the non-resident parent has vehicles, collectable assets or capital assets	23 weeks
<b>Third Party Debt Order</b>	If the non-resident parent has financial portfolio items	15 weeks

#### **Application pack completed**

When the application pack has been completed it will need to be checked and approved by Judicial Review colleagues and the DWP Litigation team. Further information / evidence may be required at this stage. If not, and the decision is made to proceed, the Judicial Review Team will send the application to DWP Litigation, who will make arrangements for the High Court hearing. When a hearing date has been set, the CMG is required to serve notice of the hearing on the non-resident parent and the third party who now owns the property

**NOTE:** In England and Wales all setting aside disposition order hearings will be held at the High Court in London, to ensure the availability of barristers / DWP Litigation.

Setting Aside Disposition Order Hearing: Outcomes

At the hearing the judge will normally grant or reject the order or adjourn the hearing. The action you need to take will depend on which of these outcomes applies.

### **Hearing adjourned**

The hearing may be adjourned for additional information / evidence to be obtained. if this is the case, DWP Litigation will liaise with the Judicial Review Team re: any additional requirements.

### **Order granted**

REMEMBER: if the setting aside disposition order is granted, it will normally be appropriate to ask the court to award costs.

If the setting aside disposition order is granted, it must be served on the non-resident parent and the third party. This can be done at the court if both parties attend the hearing. Otherwise, the order must be served at their addresses by 'process service', which is carried out by the contracted bailiffs.

The order should be checked for any specific directions from the High Court. For example: the court may give directions about what is the most appropriate enforcement action. In these circumstances, any such directions must be adhered to. Otherwise, you would decide on the most appropriate next enforcement action, depending on the circumstances of the case and the type of asset involved.

The case will need to be monitored to ensure that ownership of the asset is returned to the non-resident parent within any specified timescales, and that the next appropriate enforcement action is then taken (in accordance with any court directions, where these apply).

### **Order rejected**

If the application is rejected, DWP Litigation will notify the CMG via the Judicial Review Team of this and will also advise whether there are grounds for an appeal to be made against this decision.

If DWP Litigation advise that there are no grounds for appeal, then no further action should be taken in relation to the setting aside disposition order.

If DWP Litigation state there are grounds for an appeal, then any appeal must be made to the Court of Appeal within a period of time specified by the court. It is therefore important that any action required to ensure an appeal is submitted in time is completed as a priority. DWP litigation will liaise with the Judicial Review Team to ensure the necessary requirements are completed.

Variation of a Setting Aside Disposition Order

The non-resident parent, the CMG or an affected third party can ask for the setting aside disposition order to be varied.

Reasons for requesting a variation could include:

- asking for a different asset to be considered
- asking for a different time period (For example: where the CMG has been given six months to complete its next enforcement action, the non-resident parent might ask for this period to be reduced)

Any requests for a variation will be dealt with through DWP Litigation.

Withdrawing a Setting Aside Disposition Order Application

In certain circumstances, it may be appropriate for a setting aside disposition order application to be withdrawn. For example:

- if the non-resident parent pays their arrears in full
- if the non-resident parent dies
- if the parent with care states they do not want the CMG to pursue arrears due to them

In these circumstances, DWP Litigation must be informed as soon as possible so that they can send the application for withdrawal to the court.

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