Shared Care: Decision Making Guidance
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Shared Care: Overview

The non-resident parent's income / benefit status determines the rate that their calculation is based on. However, a range of other circumstances may affect their maintenance liability. These include cases where the non-resident parent has shared care of the qualifying child/ren.

Shared care

1991/48 Schedule 1, Paras 7 – 9 of the Child Support Act 1991

2012/2677 Regulation 46 of the Child Support Maintenance Calculation Regulations 2012

Shared Care applies if the non-resident parent provides overnight care for a qualifying child for at least 52 nights per year. If shared care is agreed to, the non-resident parent's liability will be reduced.

Shared Care can be based on:

- a formal written agreement, for example a court order
- an informal written agreement, for example drawn up by a solicitor, or
- a verbal agreement between the parents

In certain circumstances you may be able to assume shared care of 1 night a week.

See guidance below on Assumed shared care.

See the Decision Makers Guidance for further details

Refer to the Decision Making Guidance for further details.

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Shared Care: Decision Making Guidance: Identifying Shared Care

1991/48 Schedule 1, Paras 7-9 of the Child Support Act 1991

2012/2677 Regulation 46, 47 & 50 of the Child Support Maintenance Calculation Regulations 2012

IMPORTANT NOTE: The following guidance relates to Shared Care only. If a non-resident parent states they have equal overall care of a Qualifying Child and not just nights shared care, then you need to consider whether they should be treated as a non-resident parent. Refer to section on equal day to day care below and the guidance on 'who is a non-resident parent' for further advice.

Equal Day to Day care:

Who usually provides day to day care

REMEMBER: Day to day care is not the same as 'nights of care' test, which is used to determine whether a Shared Care reduction should apply. Instead it covers the overall care arrangement of a child. A non-resident parent will only be considered as such if he or she provides day to day care of a child to a lesser extent than the person named in an application as the parent with care.

If the paying parent can satisfy CMS that both parents, in addition to sharing overnight care of their child almost equally, also have equal day to day care of the child, then there will be no requirement for either parent to pay maintenance.

There is no statutory definition of day to day care for these purposes. What it broadly means are the general things that go on, whether regularly or less frequently, which together would give a picture of how a child is cared for.

When deciding whether a person provides day to day care, you should consider the following questions:

- who does the child spend most of their time with when they are not at school / nursery / childcare?
- who pays for most of the child's clothes and meals?
- who arranges and pays for any childcare costs?
- who is the usual contact for the child's school / childminder etc.?
- whose GP / dentist is the child registered with and who arranges appointments / accompanies the child?
- who has the greatest involvement with the child's recreational activities and is responsible for paying for them?

- who already receives financial support if any, such as benefits or local authority assistance, for the child?

The aim of these questions is to try to determine who is taking responsibility for a child's care and whether, where more than one person has care, one of them can be viewed as having primary responsibility. In many cases the need for this action won't arise, as many parents will accept our presumption that the person receiving Child Benefit for the child is the one with primary responsibility for day to day care.

In a case where the Child Benefit presumption is being challenged, the onus is on the person making the challenge to support their claim. Any party disputing who should be treated as the parent with care should be required to submit evidence on the above points and any other factors that they wish to be considered. The other party should be given the opportunity to comment on any evidence provided and to submit their own information.

Verbal evidence can be accepted if it is agreed by the other parent. If verbal evidence is not agreed, the person making the challenge will be required to provide further evidence. Examples include the following:

- schools, GPs, dentists – evidence from these showing that they are the main contact , or an equal contact with the parent with care
- child care – written evidence from the care provider showing they are the main or equal contact; or had a main or equal part in the drawing up of any childcare contract
- evidence from bank statements, receipts, contracts etc which show they have a main or equal involvement in major spending decisions on the child.

You should then use the information provided by both parties to decide who, on the balance of probabilities, is providing the greatest level of day to day care for the qualifying child/ren. This person should be treated as the parent with care.

The required level of care

1991/48 Schedule 1,Para 7(4) of the Child Support Act 1991

2012/2677 Regulation 46(2&3) of the Child Support Maintenance Calculation Regulations 2012

For a shared care reduction to be considered, the non-resident parent must provide overnight care for a Qualifying Child for at least 52 nights per year.

Shared care is based on the number of nights for which the non-resident parent is expected to have overnight care during the 12 months beginning with the effective date of the Maintenance Calculation.

Overnight care can take place one night per week, or in blocks of nights / weeks, providing it amounts to at least 52 nights throughout the year. Shared care is usually determined over a twelve month basis, but you can consider shorter periods in appropriate cases. For example: if the child will cease to be a Qualifying Child in six months time, you can consider whether there is an agreement of shared care for a minimum of 26 nights in the next 6 months.

What counts as overnight care

1991/48 Para 7(2), Schedule 1, Child Support 1991

2012/2677 Regulation 46(2) & (5) of the Child Support Maintenance Calculation Regulations 2012

The Qualifying Child must normally stay at the same address as the non-resident parent and be cared for by that parent. However, any night where the child is in hospital or at boarding school can still be treated as a night's shared care, if the child would otherwise have been cared for by the non-resident parent.

Any day time care provided by the non-resident parent is ignored when deciding whether shared care applies. This is because shared care rules need to be applied simply, and nights of care provides a reasonably straightforward test. Day time care has more potential for dispute between what is 'care' and what is 'contact' and would make it difficult for consistent decisions to be made.

Shared care: non-resident parent who works night shifts

Non-resident parents who work night shifts will be given a reduction for shared care if the following criteria are met:

- the qualifying child stays overnight at the same address as the non-resident parent
- the non-resident parent returns to the same address each day before commencing another night shift, and
- the non-resident parent could return immediately if there was an emergency

Example

A non-resident parent staying in a hotel because of a business meeting the next day could be treated as providing shared care, whereas a non-resident parent working on an oil rig would not.

Shared Care: Decision Making Guidance: Shared Care Process

If a non-resident parent reports that they have shared care of the qualifying child for at least 52 nights per year then you should contact the parent with care for confirmation.

NOTE: evidence from the non-resident parent will only be required if the parent with care disputes the shared care.

NOTE: following a non-resident parent reporting that there is shared care, where the parent with care does not respond to requests to provide evidence of that care, a decision could be made to accept the level of care that has been stated by the non-resident parent.

Use the appropriate section below for further advice:

Parent with care agrees the number of nights of shared care

If the parent with care agrees the number of nights shared care, then no further evidence is required.

Parent with care disagrees, but number of nights fall within the same shared care band

If the parent with care does not agree the number of nights shared care but the number of nights stated by both parties fall within the same shared care band then no further evidence is required.

Parent with care disagrees and number of nights fall into a different shared care band

If the parent with care disagrees with the number of nights shared care and provides a different number of nights which fall into a different shared care band, then you will need to contact both parents for evidence.

The evidence acceptable in these circumstances is:

- a current court order, or
- an in-formal written agreement, for example drawn up by a solicitor

NOTE: Where a (current) court order is provided as evidence that should be used as the basis for the determination of the level of shared care unless one of the parents provides further evidence that indicates action is being taken to have the order amended, as a result of a subsequent change to the level of shared care.

Example 1: non-resident parent states 2 nights of care applies but the parent with care states it's only 1. The non-resident parent provides a copy of a (current) court order, stipulating 2 nights of care.

1. If the parent with care provides evidence that they have contacted the appropriate court to request that the order be amended, because the current level of care being provided does not match the level outlined in the (current) order, the terms of that (current) court order do not need to form the basis of the shared care allowance. The further guidance below should be followed to make that determination, or

2. If the parent with care cannot provide any evidence that they are taking steps to have the current court order amended, the shared care level should be based on that (current) court order. The parent with care should be advised to contact the court that made the order, to seek to have it amended.

Example 2: non-resident parent states they have 3 nights of care but the parent with care states it's only 2. The parent with care provides a copy of a (current) court order, stipulating 2 nights of care.

1. If the non-resident parent provides evidence that they have contacted the appropriate court to request that the (current) order be amended, because the current level of care being provided does not match the level outlined in the (current) order, the terms of that (current) court order do not need to form the basis of the shared care allowance. The further guidance below should be followed to make that determination, or

2. If the non-resident parent cannot provide any evidence that they are taking steps to have the (current) court order amended, the shared care level should be based on the (current) court order. The non-resident parent should be advised to contact the court that made the order, to seek to have it amended.

Informal evidence such as diaries, statements from friends / relatives will not be accepted. In order to make a fair decision, the CMG requires robust evidence.

If neither parent can provide the above types of evidence

If neither parent can provide the above types of evidence then you should consider whether there has been an agreement about passed shared care.

If both parents agree a regular pattern of past care then you may consider this as the basis for future shared care.

If parents agree on established patterns of past shared care but cannot agree on the pattern itself then you will need to consider whether there is any written evidence of past care. This must be:

- a previous court order (which has now come to an end), or
- an in-formal written agreement, for example drawn up by a solicitor

If the above evidence is unavailable; both parties agree past care is no longer reflective of what is happening now and you are unable to come to a conclusion on expected level of shared care on the basis of evidence then provided, then you may need to consider whether there is an agreed common ground – see below.

Parents disagree on total number of nights but agree on a degree of shared care

Parent with care and non-resident parent disagree on total number of nights but agree on a degree of shared care:

In the event there is a dispute and evidence is lacking, you should take all reasonable steps to proactively assess each parent's statement, if necessary cross-referencing to confirm understanding and- (as far as possible) reliability.

Where having done the above it is apparent both parties agree on the child staying with the non-resident parent 2 nights a week, e.g. on Saturdays and Sundays, but there is a question mark on the third night, we could decide on two nights as there is clear evidence of a common ground on the two nights.

Note: this is not to say a rule of 'apply the lowest figure' in every dispute should be adopted in all circumstances.

If none of the above applies and both parties are stating shared care of one night or more, see complete guidance on Assumed Shared Care (see below).

Parent with care states no nights shared care

If a parent with care states there is no shared care then you will need to contact the non-resident parent for evidence.

The evidence acceptable in these circumstances is:

- a (current) court order, or
- a formal written agreement, for example drawn up by a solicitor

NOTE: informal evidence such as diaries and statements from friends / relatives will not be accepted. In order to make a fair decision, the CMG requires robust evidence. The examples of an informal written agreement are not exhaustive.

If a current court order is provided, the terms of that order should be used as the basis of any shared care decision unless the parent with care can provide evidence that action is being taken to have the order amended (e.g. evidence of application to the court for an amendment of the order).

If no current court order exists, consider any other evidence of current or previous arrangements.

If no agreed position can be reached (i.e. the parent with care insists there is no shared care but the non resident parent states there still is) you will not be able to use the power to assume 1 night of care (as that power only exists where both parents agree there is shared care, but disagree on the level of that care).

Instead, you will need to base any decision on the information available, clearly documenting why you have chosen to rely on any particular evidence used. That could be either to reject any deduction for shared care, or allow it.

There is no "right or wrong" here but a decision has to be made one way or the other. If either parent is unhappy with that decision, they will be able to request that it be reviewed (Mandatory Reconsideration) after which they may choose to appeal.

Assumed shared care

1991/48 Schedule 1, Paragraph 9(2) of the Child Support Act 1991

2012/2677 Regulation 47 of the Child Support Maintenance Calculation Regulations 2012

In all circumstances it is important to remember that it is up to you as decision makers to decide on expected level of shared care (such as what is happening now and is expected to continue for the next 12 months), based on the facts of the case and the evidence presented.

The fact parents are in a disagreement on the level of shared care does NOT mean 1 night assumed shared care applies automatically.

In the event there is a dispute and evidence is lacking, decision makers should take all reasonable steps to proactively assess each parent's statement, if necessary cross-referencing to confirm understanding and- (as far as possible) reliability.

Where having done the above it is apparent both parties agree on the child staying with the non-resident parent 2 nights a week, e.g. on Saturdays and Sundays, but there is a question mark on the third night, we could decide on two nights as there is clear evidence of a common ground on the two nights.

Remember: this is not to say a rule of 'apply the lowest figure' in every dispute should be adopted in all circumstances.

For example, where the scenario is such that the parent with care's evidence/account on shared care is self-contradictory and unreliable, it will be difficult for us to validate we are acting reasonably in applying the lowest, figure. Instead, you have to reach the most appropriate decision based on the facts of each case.

Assumed shared care can apply in a number of circumstances but the 2 main ones are outlined below.

1. Where parents agree in principle that there is to be shared care during the 12 month period beginning with the effective date (or any shorter period if this is appropriate) but both parties state they have not yet agreed the number of nights the child will spend with each parent, for example, because they split up recently and have not yet finalised agreements shared care of one night per week may be assumed

2. Shared care of one night per week may also be assumed in cases where evidence presented suggests there are existing arrangements for shared care but parents differ in their accounts of how many nights the child spends with each parent and most crucially having looked at all the evidence (presented in writing or as a statement from both parties) you are certain there is insufficient evidence upon which to reach any conclusion about expected level of shared care

In these cases it will be necessary to:

1. consider the evidence provided by each parent on expected level of shared care making further enquiries if necessary; and in the absence of such evidence

2. consider whether there is an established pattern of past shared care over the last 12 months (or shorter period where appropriate) which may be used to reflect existing shared care

in order to see if a conclusion can be reached on a pattern of shared care. You should only assume shared care of one night per week if you are unable to reach a conclusion.

The assumption will apply until the number of nights for which the paying parent is expected to have care of the child can be determined. This will normally be when sufficient evidence of the actual level of care is provided or when parents reach an agreement.

Remember: Assumed share care cannot be applied where you are able to come to a conclusion on expected level of shared care on the basis of evidence provided.

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Shared Care: Decision Making Guidance: Shared Care Reductions

This section provides guidance on the reductions to be applied where shared care is agreed or assumed. Shared care reductions are applied to the non-resident parent's liability for the qualifying child/ren, **not** their income.

Shared care reduction: basic, basic plus or reduced rate liability

1991/48 Schedule 1, Para 7 of the Child Support Act 1991

If you accept that the non-resident parent has care of a qualifying child for 52 nights or more during a twelve month period, the following reductions will apply:

Number of Nights	Reduction
52-103	1/7
104-155	2/7
156-174	3/7
175 or more	1/2 Plus an additional £7 for each additional child that the Non resident parent provides this level of care for

NOTE: Minimum liability following an adjustment for shared care

A shared care reduction on a Basic, Basic Rate Plus or Reduced Rate case cannot result in a liability below the flat rate amount. If this would be the outcome, then the non-resident's liability must be set at the flat rate amount.

Different levels of shared care for different qualifying children

A non-resident parent who has more than one qualifying child may not provide the same amount of care for all the qualifying children. The shared care reduction in these circumstances is calculated by:

- working out the shared care reduction for each child, and adding them together
- dividing the result by the total number of qualifying children

Example:

The non-resident parent has 2 qualifying children. He shares the care of qualifying child 1 for 156 nights of the year, but has no shared care for qualifying child 2. Maintenance liability for 2 children = £40

A shared care reduction of 3/7 will apply for qualifying child 1, with no reduction for qualifying child 2. The two adjustments are added together and divided by the total number of qualifying children. The reduction is therefore (3/7 + 0) ÷ 2 = 3/14

£40 / 7 = £5.71 x 3 = £17.14 / 2 = £8.57

£40 - £8.57 = £31.43

The non-resident parent's maintenance liability is £31.43

Shared Care Reductions: Flat rate liability

1991/48 Schedule 1, Para 8 of the Child Support Act 1991

In Flat Rate cases, the effect of shared care on the maintenance calculation depends on why the non-resident parent's liability is calculated at the Flat Rate.

Non-resident parent or their partner receives prescribed benefits

1991/48 Schedule 1, Para 8(2) of the Child Support Act 1991

Note: This includes Universal Credits with 'No earnings' element

In these circumstances, the non-resident parent's liability will be reduced to nil.

Use the drop down below for advice on Shared care reductions when the non-resident parent has more than one parent with care.

Non-resident parent has gross weekly income below £100

1991/48 Schedule 1, Para 8 of the Child Support Act 1991

In these circumstances, there is no reduction for shared care. The non-resident parent's liability remains at the Flat Rate of £7.

Shared care reductions: more than one parent with care

1991/48 Schedule 1, Para 6 of the Child Support Act 1991

In these circumstances, any shared care adjustment should be made after the non-resident parent's liability has been apportioned between the parents with care. This is to ensure that the adjustment is only applied to the amount of maintenance due for the qualifying children that the non-resident parent shares care of.

Example One

The non-resident parent has a gross weekly income of £200. They have two qualifying children with different parents with care (PWC1 and PWC2). They share the care of one qualifying child with PWC1 for 52 nights a year. They do not share care of the other qualifying child with PWC2.

The non-resident parent's maintenance liability is apportioned between PWC1 and PWC 2:

£200 x 16% (for 2 QCs) = £32

£32 / 2 = £16

PWC1 = £16

PWC2 = £16

Shared care reduction for 52 nights per year with PWC 1 would be 1/7 of £16 = £2.28 which reduces the liability to £13.72 for PWC1.

Example Two

The non-resident parent is liable for the Flat Rate because they receive a prescribed benefit. They have two qualifying children with different parents with care (PWC1 and PWC2). They share the care of one qualifying child with PWC1 for 52 nights a year. They do not share care of the other qualifying child with PWC2.

The non-resident parent's maintenance liability is apportioned between PWC1 and PWC 2:

£7 /2 = £3.50 for each PWC

The non-resident parent's liability for PWC 1 is reduced to nil because there is shared care.

The non-resident parent's liability for PWC 2 is £3.50.

Assumed shared care reductions: basic, basic plus & reduced rate

1991/48 Schedule 1, Para 9(2) of the Child Support Act 1991

2012/2677 Regulation 47 of the Child Support Maintenance Calculation Regulations 2012

In these circumstances, any shared care adjustment should be made for one night per week.

Example

The non-resident parent has a gross weekly income of £300. They have one qualifying child. The parent with care states the non-resident parent shared care for 90 nights last year. The non-resident parent states they shared care for 150 nights last year. The caseworker decides that there is shared care but cannot make a decision as to how much there is.

The non-resident parent's maintenance liability is £36 per week

Shared care reduction for 52 nights per year would be 1/7 of £36 = £5.14 which reduces the liability to £30.86.

Assumed shared care reductions: flat rate

1991/48 Schedule 1, Para 8(2) of the Child Support Act 1991

2012/2677 Regulation 47 of the Child Support Maintenance Calculation Regulations 2012

The same shared care rules apply as for cases of agreed shared care.

- If the non-resident parent is on benefit, the flat rate reduces to nil. Refer to Shared Care Reductions: more than one parent with care if the non-resident parent has more than one parent with care.
- If the non-resident parent has weekly income of under £100, there is no shared care reduction.

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Shared Care: Decision Making Guidance: Care provided in part by a Local Authority (Special Case)

1991/48 Section 42 of the Child Support Act 1991

2012/2677 Regulation 53 of the Child Support Maintenance Calculation Regulations 2012

There may be cases where a qualifying child spends at least 52 nights per year in the care of a local authority. These cases are covered by different legislation to normal Shared Care cases. However, the effect on the child maintenance calculation is the same, as non-resident parent's liability will be reduced according to the amount of time the qualifying child spends in the care of the Local Authority.

Effect of care provided in part by a local authority

The maintenance liability will be reduced by applying the usual shared care reduction below:

Number of Nights	Adjustment
52-103	1/7
104-155	2/7
156-207	3/7
208-259	4/7
260-262	5/7

NOTE: these adjustments ONLY apply if the non-resident parent is liable to pay maintenance at the Basic, Basic Plus or Reduced Rates OR has a Flat / Nil Rate case, which has been adjusted following an Additional Income Variation.

Local authority care - more than one qualifying child

If there is more than one qualifying child and a Local Authority only shares the care of one of them, the shared care fraction should be divided by the number of qualifying children.

Example

Non-resident parent and parent with care have 2 qualifying children; One is in local authority care for 104 nights a year; the other is wholly cared for by the parent with care.

A shared care reduction of 2/7 will apply for qualifying child 1, with no reduction for qualifying child 2. The two adjustments are added together and divided by the total number of qualifying children. The reduction is therefore (2/7 + 0) ÷ 2 = 2/14

Maintenance liability for 2 qualifying children = £40

£40 / 14 = £2.85 x 2 = £5.71

£40 - £5.71 = £34.29

The non-resident parent's maintenance liability is £34.29

If the reduction takes the liability to less than £7, it will be increased to £7.

Local authority care is more than 262 nights per year

If a local authority provide care of a qualifying child for more than 262 nights per year, the maintenance liability will be reduced to nil.

Care shared between PWC, NRP and local authority

If care of a qualifying child is shared by a parent with care, non-resident parent and a local authority, the total shared care reduction is aggregated.

Example

Parent with care has 1 qualifying child

Non-resident parent has shared care for 104 nights per year

Local authority has shared care for 52 nights per year

The reduction is 2/7 (NRP) + 1/7 (LA) = 3/7

Care provided by a local authority over a period less than twelve months

Shared care is usually determined over a twelve month basis, but you can consider shorter periods in appropriate cases. For example: if the child will cease to be a qualifying child in six months time, you can consider the level of care the LA will provide during the next 6 months.

Evidence that a child is in local authority care

Evidence that a child is in local authority care

The following types of evidence will be required to confirm a child is in local authority care:

- a care order (England & Wales); a supervision requirement order or court order granted by a sheriff (Scotland), or
- a letter from the local authority or children's residential home, providing it clearly identifies that the child in question is in their legal care

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