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## Unearned Income: Decision Making Guidance

What is an Unearned Income variation?

[2012/2677](#) Regulation 69 of the Child Support Maintenance Calculation Regulations 2012

An Unearned Income Variation may apply where the non-resident parent has income from one of the following categories:

### **Property income**

If a non-resident parent is in receipt of rental income as a result of renting properties or land. This also applies to properties / land being rented in foreign countries, providing the rental income is subject to UK Income Tax.

### **Savings and investment income**

If a non-resident parent earns interest on savings or receives income from investments / trusts. This also includes income in the form of dividends received by company directors.

Dividends are payments issued to shareholders from a company's annual profits after tax. Company directors determine how much of the company's profits will be distributed in this way and they often take minimal salaries and receive a large amount of their income as dividends.

For child support purposes, dividend payments are treated as unearned income. If a variation application is made on unearned income grounds, then we will check HMRC data for dividend payments.

## Miscellaneous income

This captures a small minority of income types that do not fall into the other income categories, for example: casual earnings from one-off jobs, or late payments received for a business that is no longer active.

Unearned income can broadly be recognised as any form of taxable income that is not taken into account in the maintenance calculation.

**IMPORTANT NOTE:** Any unearned income figure must always be based on evidence for a complete tax year. This is because a **taxable** income figure must be identified and this will not be possible until the end of a full tax year.

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## [Unearned Income: Decision Making Guidance: Application / Permitted Grounds](#)

For a variation application to be considered, applicants must state a permitted ground, or provide enough information for you to identify the appropriate ground.

Where a non-resident parent has income from gambling activities (e.g. a professional poker player), that income cannot be taken into account for the purposes of Child Support.

As a source of income that is not earned from self-employment, it will not be declared to HMRC as such, so is not a factor in any Historic Income considerations. Where applicable consider whether variation under 'interests on savings' (see guidance below) can be used.

### Unearned income: permitted grounds

Some applicants may be aware of the variations scheme, and specifically ask for a variation, stating the grounds on which they wish to apply. In other cases a parent with care may call you to query that the maintenance calculation does not reflect the non-resident parent's actual income.

#### Example:

'It isn't fair that they only have to pay this amount, I know they get money from renting out properties'.

In these circumstances, you should try to establish whether the non-resident parent's income would fall within the grounds for an unearned income variation. If so, you should advise the applicant of the variations scheme and explain the process to them.

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## Unearned Income: Decision Making Guidance: Preliminary Consideration

Once an application has been accepted, it must be given preliminary consideration.

Preliminary consideration is an initial sifting process, which allows applications with no prospect of success to be filtered out at the earliest opportunity. This is not intended to be a significant barrier to prevent parents applying.

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:

- The non-resident parent's gross weekly income is the capped amount (£3000 per week)
- The amounts claimed do not meet the threshold
- 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.

### **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

### **Unearned income: discretionary reasons for rejection**

For the ground to be identified, the applicant must confirm:

- The type of unearned income that the non-resident parent receives (e.g. is it dividend income or income from properties?)
- The period the application relates to (e.g. past, present or future). This will be helpful if you take an application forward where there is no HMRC data.

If the parent with care has applied:

- How they know about the non-resident parent's unearned income. This information must be provided, so you can be satisfied that the application is not spurious / speculative.

However, remember that unearned income applications are based on the non-resident parent's income. A parent with care therefore cannot be expected to have all the evidence needed to support their application. For parent with care applications, Section 18 of the Child Maintenance and Other Payments Act 2008 places a duty on the CMG to consider any further information or evidence that is available to it, and to take steps to obtain this information, if it is satisfied that it might affect its decision on whether to agree to a variation.

**Example of a satisfactory statement:**

'My ex-partner is the Director of his company and has been for the past ten years. He has a known history of drawing dividends.'

**Example of an unsatisfactory statement:**

'I know my ex-partner has other income coming in because he lives a luxury lifestyle'.

In this situation, there are insufficient facts stated to assure you that this is not a spurious or speculative claim. You should explain this to the parent with care and clarify what type of information is needed.

NOTE: applications based on the non-resident parent's lifestyle cannot be considered. The applicant must specify an income type.

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[Unearned Income: Decision Making Guidance: Gathering Information and Evidence](#)

If the application is not rejected at preliminary consideration, you will need to obtain information and evidence in order to progress.

The first step for an Unearned Income Variation will be to request unearned income details from HMRC. Depending on the outcome of that request, you may need to ask for additional evidence / information from the non-resident parent. If so, you should do this as part of the Representations process.

Use SIEBEL to request the non-resident parent's unearned income figure for the latest available tax year from HMRC. The next action will depend on the information provided.

## Understanding HMRC information

HMRC will only look back to the latest available complete tax year for the non-resident parent.

**NOTE:** the latest available tax year will not necessarily be the latest actual tax year. The 'available' tax year means the last year that HMRC hold complete data for.

- If a positive figure is found, HMRC will provide a breakdown showing the income element for each unearned income category.
- If the non-resident parent has no record of unearned income, HMRC will provide a response stating 'nil income'.
- If there is no record of the non-resident parent on the tax system, HMRC will provide a response stating 'no income details.'

### Examples

#### Tax Year: 2013 – 2014

Savings and Investment income: £12,000

Property Income: £50,000

Miscellaneous Income: Nil

#### Tax Year: 2013 – 2014

Savings and Investment Income: No income details

Property Income: No income details

Miscellaneous Income: No income details

#### Positive figure for the latest available tax year

If the income figure obtained is £2500 per year or more, you should proceed with the application and invite representations from the non-resident parent.

#### Nil HMRC figure / figure less than £2,500 / no income details held

If the response from HMRC states that:

- the unearned income figure is nil; or
- the unearned income figure is below £2500 (the threshold for an Unearned Income Variation); or
- no unearned income details are held / there is no match for the non-resident parent;

you need to consider whether it is appropriate to obtain evidence of Current Unearned Income from the non-resident parent. Refer to the specific guidance below for advice on Savings and Investment cases where the non-resident parent is employed (and therefore may not be required to complete a tax return).

For all other cases, you need to consider whether a more recent complete tax year has passed that the non-resident parent may have evidence for.

**REMEMBER:** unearned income figures are always based on complete tax years.

- If a more recent complete tax year has not passed, then you should reject the application.
- If a more recent complete tax year has passed then you should proceed with the application.

In these circumstances you should ask the non-resident parent whether they have evidence of their unearned income for the most recent complete tax year. Acceptable evidence for these purposes would be a completed self assessment return.

However, depending on the time of year, the non-resident parent may not have completed this. The guidance below indicates when tax returns must be submitted by. Non-resident parents are not required to have evidence of their unearned income available before these dates. If they state this is the case, you should accept this and reject the application. Refer to the guidance on HMRC tax years and self assessments for an example of this scenario.

### **HMRC tax years and self assessments**

HMRC tax years run from 6 April to 5 April.

Self assessment returns are due by:

- 31 October - paper returns;
- 31 January - electronic returns.

### **Example**

A parent with care makes an application in September 2014. The current tax year runs from 6 April 2014 to 5 April 2015.

The latest available tax year that HMRC hold a record for is 2012 – 2013. HMRC provide a nil figure for this year. Although this is the latest tax year that HMRC have data for, it is not the most recent complete tax year.

The most recent complete tax year is 2013 – 2014. Although the non-resident parent has until 31 January 2014 to submit their self-assessment, they may already have evidence of their taxable profits for that year.

Because a more recent complete tax year has passed, you would ask the non-resident parent for evidence of their Current Income. However, if they state that this is not available yet, you would accept this statement and reject the application.

### **Savings and investment income: employed non-resident parents**

In Savings and Investment cases:

Non-resident parents who are employees (e.g. are not self-employed as well) and are subject to PAYE only, are not required to complete a self-assessment return if their net income from savings or investments is less than £10,000 per year.

This means a non-resident parent may have Savings and Investment income which meets our financial threshold of £2,500, but HMRC will not have any details unless the income exceeds their threshold of £10,000 per year.

If you are satisfied that a non-resident parent may have Savings and Investment income of at least £2,500 per year, you should take the application forward and request evidence from the non-resident parent. Acceptable evidence for these purposes would be up to date statements from their bank / building society or copies of stocks and shares statements.

### **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.

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### [Unearned Income: Decision Making Guidance: Representations](#)

This part of the process gives the other parties notice of the application and the opportunity to comment on it.

**Remember: Evidence of current unearned income must be for the most recent complete tax-year.**

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

2012/2677 Regulation 59(2)(b) of the Child Support Maintenance Calculation Regulations 2012

- It is clear from information provided by the applicant / other available sources that the variation will not be successful; or
- HMRC have provided a nil income figure; a figure below the financial threshold; or 'no income details held' and you are not satisfied that it is appropriate to take the application forward on the basis of establishing current income (See below).

Because unearned income variations are based on information from a complete tax year, it will not be appropriate to take an application forward on the basis of establishing current income if:

- HMRC does not hold any income data for the non-resident parent; and
- a more recent complete tax year has not passed that you could establish current unearned income for.

In these circumstances, you do not have sufficient factual information to justify seeking comments from the non-resident parent.

If you need to invite Representations, the process required will depend on who has made the application. The sections below provide further advice for each type of application.

Representations: Application made by parent with care

If the application has been made by the parent with care, the non-resident parent must be:

- notified that an application has been made; and
- informed of the grounds that the application has been made on, including the information obtained from HMRC and any information / evidence provided by the parent with care (unless it falls within the excluded information category); and
- asked to submit any information / evidence that is needed for a decision to be made (refer to the section on Gathering Information and Evidence for details of the information you may need).

The non-resident parent should be given 14 days to respond. Additional time can be allowed if you are satisfied it is reasonable in the circumstances of the case.

The next action will depend on the non-resident parent's response. Refer to the drop downs below for further advice.



### **Non-resident parent agrees the application: positive HMRC figure**

If the non-resident parent agrees the figure supplied by HMRC, then you do not need to obtain any further information. In these circumstances you should notify the parent with care of the income figure obtained before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

### **Non-resident parent agrees application: nil / no income or income below £2,500**

If the response from HMRC stated that:

- the unearned income figure is nil; or
- the unearned income figure is below £2500; or
- no unearned income details are held / there is no match for the non-resident parent

but the non-resident parent:

- agrees that they have unearned income of £2500 or more; and
- provides evidence confirming what this is;

you should notify the parent with care of the income figure obtained before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

### **Non-resident parent fails to respond: positive HMRC figure**

If the non-resident parent fails to respond, but you have obtained a positive income figure from HMRC, you should:

- notify the parent with care of the income figure obtained from HMRC. Refer to the section on notifying the applicant about Representations for further advice and then;
- decide the application on the basis of this figure.

### **Non-resident parent fails to respond: nil / no income below £2,500**

In these circumstances, you should refer the case to Criminal Compliance for them to try and obtain the information / evidence needed.

### **Non-resident parent contests the application: positive HMRC figure**

If the non-resident parent contests the application on the basis that the figure obtained from HMRC does not reflect their current Unearned Income, they will be required to provide evidence confirming this.

Remember: If the non-resident parent provides evidence for a more recent complete tax-year, you should use that income figure to determine the variation. They do not have to show that their Current Unearned Income is at least 25% different to the figure provided by HMRC.

The evidence required will depend on whether:

- the non-resident parent states their Current Unearned Income is a different amount: in these circumstances, they will be required to submit a completed self assessment return for a full tax year later than the one used for the HMRC figure;

or

- the non-resident parent states they no longer have any property or assets that they obtain Unearned Income from. Acceptable evidence for these purposes will be documents confirming that the relevant property / asset has been sold and that they no longer have the proceeds e.g. because they have been used to pay a mortgage or other debts. In these circumstances, the non-resident parent's Unearned Income can be treated as nil.
- This will not apply in cases where the non-resident parent has sold property / assets that they obtained Unearned Income from and invested the proceeds or purchased other property or assets, as they will still have Unearned Income from the new source. In this situation the non-resident parent should be advised that we will continue to take into account the HMRC information unless / until they can provide evidence for a more recent tax year.

If the non-resident parent does not provide the necessary evidence within fourteen days, you should proceed on the basis of the information held.

If the non-resident parent provides the necessary evidence, notify the parent with care of the income figure obtained before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

### **Non-resident parent contest: no / nil HMRC figure / less than £2,500**

If the response from HMRC stated that:

- the unearned income figure is nil; or
- the unearned income figure is below £2500; or
- no unearned income details are held / there is no match for the non-resident parent;

and the non-resident parent responds to your request for information, stating that they do not have any current Unearned Income, you will need to notify the parent

with care of this before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

When you are deciding whether to accept the non-resident parent's statement that they do not have any Unearned Income, you should take into account all the information / evidence provided by both parties.

If you are not satisfied that the non-resident parent does not have any current Unearned Income, you should consider a referral to Criminal Compliance.

Notifying the applicant about representations (parent with care applied)

Where the application has been made by the parent with care, they should always be notified about the income figure identified and any representations made by the non-resident parent before you make a decision. They should be given 14 days to respond. You may allow additional time if you are satisfied it is reasonable in the circumstances of the case. The next action will depend on the parent with care's response.

NOTE: any information from the non-resident parent that falls within the excluded categories should not be disclosed to the parent with care.

### **Parent with care: response to representations**

If the parent with care agrees with the facts provided and does not want to make further comments, you can proceed with the application and decide whether to allow the variation.

If they disagree with the facts provided then they should provide further supporting information / evidence.

On receipt of the parent with care's response, you may need to request further information / evidence from the non-resident parent. This will only be necessary if you are unable to make a decision on the basis of the information / evidence provided.

### **Excluded information**

[2012/2677](#) Regulation 59(5) of the 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

Representations: Application made by the non-resident parent

If the application has been made by the non-resident parent, the parent with care must be:

- Notified that an application has been made; and
- Informed of the grounds that the application has been made on, including any information / evidence obtained from HMRC or provided by the non-resident parent (unless it falls within the excluded information category); and
- Asked to submit any relevant information / evidence that they would like to be considered.

REMEMBER: if the non-resident parent has more than one parent with care then you should invite representations from all of them

The parent with care should be given 14 days to respond. You may allow additional time if you are satisfied it is reasonable in the circumstances. The next action will depend on the parent with care's response.

#### **Parent with care agrees the application**

If the parent with care agrees with the facts provided and does not want to make further comments, you can proceed with the application and decide whether to allow the variation.

#### **Parent with care contests the application**

If the parent with care contests the application then they should provide further supporting information / evidence to support their case.

On receipt of the parent with care's representations, you may need to request further information / evidence from the non-resident parent. This will only be necessary if you are unable to make a decision on the basis of the information / evidence provided.

#### **Parent with care fails to respond**

If the parent with care fails to respond then you should proceed on the basis of the information held and decide whether to allow the variation.

In most cases, the potential income figure in an unearned income variation will not be identified until we have checked our information sources and / or provided details from the non-resident parent. Although the parent with care has applied for the variation, they will therefore not normally be aware of the income figure that may be used. In view of this, parents with care should always be given the opportunity to comment on the information provided by the non-resident parent during Representations.

If they agree with the facts provided and do not want to make further comments, you can proceed with the application and decide whether to allow the variation.

If they disagree with the facts provided, you should allow them fourteen days to provide further information / evidence.

NOTE: any information from the non-resident parent that falls within the excluded categories should not be disclosed to the parent with care.

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### [Unearned Income: Decision Making Guidance: Deciding whether to allow the variation](#)

When you are deciding whether to allow an earned income variation, you will need to consider:

- is the financial threshold satisfied?

An application for unearned income can only be agreed if the income amount is equal to or exceeds £2500 per year.

If the financial threshold is satisfied, the whole amount of the income can be considered. You do not have to deduct an amount equivalent to the financial threshold.

- Is it just and equitable to allow the variation

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### [Unearned Income: 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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### [Unearned Income: Decision Making Guidance: Changes to a Variation](#)

If an unearned Income Variation is already in place, there are two types of changes that can affect it:

- The unearned income amount increases / decreases, or;
- The unearned income ceases.

The following guidance provides advice on the action you should take if these types of changes are reported.

### **Unearned Income Amount Increases/Decreases**

Notification of changes to Unearned Income amounts will normally be received from the:

- Non-resident parent; or
- Parent with care.

The action you need to take will depend on who has reported the change.

#### **Parent with care reports change**

If a parent with care reports a change in the non-resident parent's Unearned Income, you should ask them to provide a valid reason why they think the change has occurred, and whether they can provide any evidence to confirm this.

**REMEMBER:** The non-resident parent must have evidence for a more recent complete tax year than the year that the current figure is based on for a change in Unearned Income to be taken into account.

Before contacting the non-resident parent you should:

- Check the tax year that the existing Variation is based on, and
- Decide whether a more recent complete tax year has passed.

If a more recent complete tax year has not passed, then you should refuse to accept the application for supersession. This is not a refusal to supersede and therefore you do not need to notify the non-resident parent of this decision. An official refusal to supersede decision (which carries appeal rights) only occurs when you have accepted an application for supersession and have made a decision based on further investigation, e.g. you have contacted the non-resident parent.

If a more recent complete tax year has passed you should ask the non-resident parent whether they have evidence of their unearned income for the most recent complete tax year. Acceptable evidence will be a completed self assessment return

Depending on the time of year, the non-resident parent may not have this return ready. If this is the case, you should reject the application. Refer to the guidance on HMRC tax years and self assessments for an example of this scenario.

If the non-resident parent does have evidence for the most recent complete tax year then you should proceed with the supersession to update the variation.

If the non-resident parent does not have evidence because it's not yet required for HMRC purposes, then the application for supersession should be rejected. A notification confirming the refusal to supersede will be issued to all relevant parties.

REMEMBER: the 25% tolerance rule does not apply to changes in Unearned Income.

### **Non-resident parent reports change**

If a non-resident parent reports a change in their Unearned Income, you should ask them to provide a self-assessment return for the most recent complete tax year.

- If the non-resident parent provides a self-assessment return then you should proceed with the supersession to update the Maintenance Calculation
- If the non-resident parent does not have a self-assessment return then you should reject the supersession. A notification will be issued to all relevant parties confirming the refusal to supersede.

### **Unearned income amount ceases**

If a non-resident parent states that they no longer have any Unearned Income because they have disposed of the capital, property or assets that the income was obtained from, you would need to request documentary evidence confirming:

- That they no longer have the relevant capital; or
- That the property/asset has been sold and they no longer have the proceeds from the sale e.g. because they have been used to pay a mortgage or other debts

If the non-resident parent provides evidence confirming they no longer have Unearned Income, you should proceed with the supersession to update the variation.

If the non-resident parent does not provide evidence, you should reject the supersession. A notification will be issued to all relevant parties confirming the refusal to supersede.

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### **Variation ceases or to be reinstated**

Refer to [Variations Overview](#)