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### [Why do we need an unlikely to pay check?](#)

#### Overview

[1991/48](#) Sections 4 (2a) and & 7(3a) of the Child Support Act 1991

[2012/5](#) Section 137 of the Welfare Reform Act 2012

From summer 2014 collection and enforcement fees became payable under certain circumstances.

The introduction of Section 137 of the Welfare Reform Act 2012 changed the law so it is not possible for one client to force another into paying charges. The changes mean:

- Only a parent with care (or Child in Scotland / Person With Care) may request that we make arrangements for collection. This ensures that if the person with care requests Direct Pay this can be put in place without agreement from the non-resident parent (Section 4 (2)(a) of the Child Support Act 1991; and
- Where a request for collection is made this can only be carried out where the non-resident parent agrees or we are satisfied that the non-resident parent is unlikely to comply with the arrangement voluntarily. This means that a non-resident parent can only be compelled into the collection service if we consider them to be “unlikely to pay”. (Section 7 (3)(a) of the Child Support Act 1991)

The unlikely to pay check is designed to support this decision.

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### [How to perform the unlikely to pay check](#)

#### When To Perform The Check?

An “Unlikely To Pay” Check is required only where:

- The parent with care, person with care or child in Scotland has requested that their case be administered as Collect and Pay; and
- The non-resident parent does not consent to this arrangement

#### Format of the check

The unlikely to pay check is a decision made by a caseworker for each case using their judgement based on the merits of the individual case. When considering the case you need to decide if the non-resident parent is unlikely to make regular payments voluntarily. Any decision that you make in this area must be defensible, please bear in mind that you will need to be able to explain how you have come to your decision to both parties.

#### Basic Criteria

To support caseworkers in making a decision as to whether or not a non-resident parent is deemed unlikely to pay the following basic criteria have been developed.

This list is not definitive, nor does it mean that the non-resident parent will automatically be deemed to be unlikely to pay in these circumstances as consideration must be given to other relevant factors. A caseworker should feel confident in making any decision they believe is defensible. If you are unsure as to whether or not a non-resident parent should be found unlikely to pay please consult your Team Leader or Advice and Guidance.

The criteria you should use will depend on whether the case is an existing 2012 scheme case or reactively closed legacy case which is a 'segment 5' type.

#### 2012 scheme case

It is important to remember that these criteria are to be judged solely on the basis of behaviours shown on the 2012 scheme.

- **The non-resident parent pays via an enforced method** – for the majority of cases where a non-resident parent pays via an enforced Deduction from Earnings Order or Deduction from Earnings Request they will be determined as unlikely to pay.
- **The non-resident parent is undergoing Legal Enforcement action** – where a case is undergoing legal action to establish compliance it will usually be appropriate to determine them as unlikely to pay.
- **The non-resident parent has undergone Legal Enforcement action or paid via an enforced method in the past six months prior to requesting Direct Pay** – The non-resident parent will be determined as unlikely to pay unless a caseworker feels that there is a good reason to believe that they are

not to be deemed as unlikely to pay such as the full clearance of arrears via a voluntary lump sum.

- **The non-resident parent has missed one or more payments in the past six months** – Where a non-resident parent has missed payments caseworkers must use their discretion to determine whether or not these payments constitute an unlikelihood to pay. Where a payment has been missed a caseworker must evaluate any available evidence to determine whether or not there was a reasonable explanation for the payment being missed.
- **The non-resident parent has demonstrated a pattern of behaviour over the past six months which indicate a potential to be considered unlikely to pay** – Where a non-resident parent has made all the required payments over the past six months they will generally be considered not unlikely to pay. If, however, a pattern of behaviour is evident that indicates that they may be unlikely to pay privately, such as payments only being made following Child Maintenance Service action being undertaken, a caseworker may decide that the non-resident parent is unlikely to pay.

Reactively closed 'segment 5' legacy case

For the majority of cases the unlikely to pay check is performed only using information held on the 2012 Child Maintenance Scheme. The only circumstance under which 1993/2003 information may be taken into consideration is where a casegroup has been selected for [Reactive Case Closure](#) and that casegroup meets the criteria for Segment 5 (Paying by an enforced Method Of Collection or subject to ongoing enforcement action).

Where a Reactive Case Closure case from Segment 5 exists the following criteria should be considered:

- **Enforced Method Of Collection** - Where a non-resident parent made payments on their Legacy case via an enforced Method Of Collection (Regular Deduction Order or Deduction from Earnings Order/Request) at the point of Case Closure and this was set up within the past three years the non-resident parent is likely to be found unlikely to pay unless there is a clear indication that the non-resident parent subsequently showed compliant behaviours e.g. additional lump-sum payments made voluntarily or the arrears were caused by agency error/maladministration and have since been cleared.
- **Legal Enforcement** - Where a non-resident parent is currently subject to Legal Enforcement action and has failed to pay a minimum of 75% of the ongoing maintenance due in the previous 12 months they are likely to be found Unlikely To Pay.

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## [Additional Considerations](#)

### Welfare Of The Child

The unlikely to pay check does not take into account Welfare Of The Child. This is because the decision that the Secretary of State is being asked to make is an evidence-based decision over whether or not a non-resident parent is unlikely to pay. The welfare of any child affected by this decision is not relevant to this judgement. The decision that the Secretary of State must make is one based around evidence to consider whether or not maintenance is unlikely to be paid in line with the calculation.

If a caseworker does find a non-resident parent unlikely to pay, however, they must consider the welfare of any child affected by the decision to instigate collections. It is possible that a caseworker may feel that the welfare of a child associated with the case may be adversely affected by the decision to keep the non-resident parent within the collection service. Should a caseworker feel that there is a strong case based upon welfare of the child considerations to allow a non-resident parent who has been found unlikely to pay to move to direct pay this must be referred to Advice and Guidance before making any final decision.

### Multiple Cases

Where a non-resident parent has multiple parents with care each case should be judged on its own merits. An unlikely to pay check should be carried out independently on each case for which the non-resident parent has elected for Direct Pay. Where there is evidence that a non-resident parent is likely to make payments to one parent with care and not another, the non-resident parent must be found unlikely to pay in one case but not the other.

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## [Next Steps](#)

### Possible outcomes

Be aware that there are only two possible outcomes of an unlikely to pay check:

- The non-resident parent is unlikely to pay; or
- The non-resident parent is not unlikely to pay

All non-resident parents must be presumed to be not unlikely to pay unless there is evidence to the contrary.

## Recording the decision

In order to enable us to show the reasons for decisions thus ensuring that we will be able to demonstrate that they are defensible and reasonable caseworkers must record any unlikely to pay check outcome within the SR notes. The system must be kept updated with a record of any decision that has been made, the date upon which this was made and the full rationale behind this. It is important that this is recorded and that any caseworker picking the case up in the future will be able to fully understand the decision that was made and, crucially, the rationale behind this.

### **Example (a good example of recording the decision)**

“01/07/2014: Non-Resident Parent Mr X made contact to request Direct Pay with his ex-partner Mrs X. Contacted Parent With Care Mrs X to confirm if she was agreeable, she did not agree to this. Both clients informed that a check would be performed.

Client history checked and Mr X currently pays via Deduction from Earnings Order. Mr X informed that he is considered unlikely to pay due to his enforced payment method but will become eligible for Compliance Opportunity in one month. Advised Mr X to call back on 01/08/2014 to request Compliance Opportunity. Contacted Mrs X and advised that the case will remain on Collect and Pay but that if Mr X makes his next payment he will become eligible to request a Compliance Opportunity. Advised if Mr X requests a Compliance Opportunity I will contact Mrs X to confirm.”

### **Example (a bad example of recording the decision)**

“01/07/2014: Mr X contacted to request Direct Pay. History checked and Mr X advised he is considered unlikely to pay”

## Informing clients

The Child Maintenance Service has a legal obligation to inform both parties of the outcome of any unlikely to pay decision as well as the rationale behind our decision.

On making a decision around unlikely to pay the caseworker must contact both parties and explain the decision that has been made, why they have come to this decision and any relevant other information.

This should be supplied to both parties via telephone. Only where the parties cannot be reached by telephone should a notification by post confirming the decision and inviting representations be considered.

### **Where the non-resident parent has not been found unlikely to pay**

- **Both parties** must be informed that the available evidence has been considered and it does not suggest that the non-resident parent would be unlikely to pay maintenance privately. As such a Direct Pay arrangement will

now be set up. The parent with care should supply a reasonable method by which the non-resident parent can make Direct Payments, the Child Maintenance Service may (with permission) transfer details such as bank account information from one party to another if the two parties do not have contact.

- **Both parties** must be informed that they will continue to receive annual schedules informing them of the dates and amounts of maintenance that must be paid and that these must be met.

### **Where the non-resident parent has been found unlikely to pay**

- **Both parties** must be informed of this.
- **The non-resident parent** must be informed by what basis we have determined them to be unlikely to pay and the approximate date they will become eligible for Direct Pay or a Compliance Opportunity.
- **The parent with care** must be informed that the case will continue to be managed under Collect and Pay provisions however this will not necessarily be a permanent state of affairs. The non-resident parent will have the opportunity to demonstrate their compliance within the collection service and will, if they remain compliant, become eligible for Direct Pay in the future. The parent with care must be informed that if this does happen they will be fully informed of this prior to any change to Direct Pay.

For more information see [The Compliance Opportunity](#)

### Appealing the decision

The unlikely to pay check is not a decision that can be appealed and both parties must be informed of this fact when they are told of the decision.

This decision is not appealable.

If either client is unhappy with the decision they may ask for it to be looked at again by a Team Leader who will check that they agree with the decision made by the caseworker and the rationale behind this.

If, following this, the client remains unhappy they have the option to raise a formal complaint. They may also take their case to the Independent Case Examiner or, if they allege maladministration, the Ombudsman. Clients also have the right to seek an independent Judicial Review.

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[The compliance opportunity](#)

## Overview

Client behaviour can change over time. It is possible that a non-resident parent who was once deemed unlikely to pay may now be willing to comply with a voluntary arrangement.

To ensure that only those clients who need to be are managed in Collect and Pay, and pay the associated fees, we offer a compliance opportunity so non-resident parents previously deemed to be unlikely to pay can demonstrate a positive change in behaviour. If they are successful then they are eligible to move to Direct Pay.

The compliance opportunity is a reactive process and therefore is only offered at the request of a non-resident parent. The exact format of the compliance opportunity will depend on the circumstances of the case.

### **NRP paying by a non-enforced method of payment**

The NRP must make 6 months' worth of payments in full. If the case is less than 6 months old then they must have made all payments due to date.

The compliance opportunity is about demonstrating a consistent pattern of behaviour. If an NRP offers to pay off any arrears in a lump sum payment we should encourage it, but it will not shorten the compliance period. The NRP will still have to make all the scheduled payments for the compliance period. Having said that, when it comes time to review the unlikely to pay decision, any positive behaviour on the NRP's part can be considered as supporting evidence.

If they have then they will be eligible to switch to Direct Pay unless there is any evidence that suggests this would not be appropriate. The parent with care must be contacted and informed that the case is moving to Direct Pay due to the non-resident parent displaying acceptable compliant behaviours.

If they have not then the missed payments must be investigated. If there is no good reason for the missed payments, or the caseworker believes that there is another reason why the non-resident parent is not unlikely to pay, then the caseworker must notify them that they will not qualify for Direct Pay until they have made 6 months' worth of payments on time and in full inclusive of payments already made.

### **Example**

A non-resident parent requests Direct Pay and the caseworker reviews the Promise To Pay schedule for the past six months. This shows two payments were missed. On investigation these payments were missed due to a lapsed standing order that was not updated due to the non-resident parent having an extended period in hospital. As these payments were subsequently paid in full and the standing order re-established the caseworker determines that the payments were missed for a valid reason and,

as no other payments have been missed in the previous six months, declares that the non-resident parent is not unlikely to pay.

### **Example**

A non-resident parent requests Direct Pay but the Promise To Pay schedule shows that a payment was missed two months previously. On investigation this payment was missed due to a maintenance dispute with the Parent With Care. The caseworker determines that this was not a valid reason for having missed the payment and the non-resident parent is declared unlikely to pay. The caseworker is satisfied that there is no case to be made for moving the case to direct pay on Welfare of The Child grounds. The non-resident parent is informed that they have made the past two payments in full and on time therefore if they continue to make these payments for the next four months they will be likely to be allowed to move to Direct Pay at that point.

### **Example**

A non-resident parent requests Direct Pay and the Promise To Pay schedule for the past six months shows that all payments were made, however for the past three months payments have been made late and only after the non-resident parent has been chased up. The caseworker determines this as a pattern of behaviour indicating an unlikelihood to pay and the non-resident parent is informed that their request for Direct Pay is rejected. The caseworker is satisfied that there is no case to be made for moving the case to direct pay on Welfare of The Child grounds. The non-resident parent is advised that they must start making payments on time, it is not sufficient just to pay this must be in line with the scheduled date. If the non-resident parent makes payments on time for the next six months they will be likely to be allowed to move to Direct Pay at that point.

### **NRP paying by enforced method of payment**

The NRP must first have successfully made 6 months' worth of payments by their current enforced method. This is to ensure that the parent with care experiences a period of stability after the non-resident parent is found unlikely to pay.

If they **have** then they are eligible for a compliance opportunity. They must make 6 months' worth of payments by a non-enforced method of payment. If they do this successfully then they will be eligible to move to Direct Pay. The parent with care must be contacted and informed that the case is moving to Direct Pay due to the non-resident parent displaying acceptable compliant behaviours.

If they **have not** they should be informed of the earliest date on which they can ask again.

**Remember:** any decision to discharge a DEO/R for reasons of a compliance opportunity must take into account all relevant considerations including Welfare of

The Child. If a caseworker believes that there is good reason not to discharge a DEO/R after six months has been served they should refer this query to Advice and Guidance to consider.

### **Example**

A non-resident parent has requested Direct Pay but on investigation it is determined that they make their payments via an enforced Deduction from Earnings Order. The non-resident parent is informed that they are considered unlikely to pay. As the Deduction from Earnings Order was applied over six months previously and all payments for the past six months have been received the caseworker considers it appropriate to discharge the Deduction from Earnings Order to allow the non-resident parent to demonstrate their ability to comply. The non-resident parent is informed that they may take up a six month compliance opportunity in order to demonstrate their ability to comply. Should they complete this opportunity they will be entitled to pay via Direct Pay in the future.

### **Example**

A non-resident parent has requested Direct Pay but on investigation it is determined that they make their payments via an enforced Deduction from Earnings Order. The non-resident parent is informed that they are considered unlikely to pay. As the Deduction from Earnings Order was applied over six months previously and all payments for the past six months have been received the caseworker considers it appropriate to discharge the Deduction from Earnings Order to allow the non-resident parent to demonstrate their ability to comply. The non-resident parent is informed that they may take up a six month compliance opportunity in order to demonstrate their ability to comply. Should they complete this opportunity they will be entitled to pay via Direct Pay in the future.

### **Example**

A non-resident parent requests to pay via Direct Pay but as they make their payments through an enforced Deduction from Earnings Order they are found unlikely to pay. The caseworker determines that the DEO has been in force for two months and both payments have been made. The non-resident parent is informed that they only have two months of compliance with their enforced method, they should therefore get back in contact in four months' time at which point, if they have complied, consideration will be given to allowing them to take up a compliance opportunity and demonstrate their ability to comply with an un-enforced collection method.

### **NRP is undergoing Legal Enforcement action (including Regular Deduction Orders)**

If the non-resident parent is managed in enforcement they must first make an effective arrangement with legal enforcement before being eligible for the

compliance opportunity. A non-resident parent must be informed that first they must make an acceptable arrangement with Legal Enforcement.

Once an effective agreement is in place they must then make **9 months' worth** of payments on time and in full by a voluntary method of payment. Once this is completed then they will be eligible to switch to Direct Pay. The parent with care must be contacted and informed that the case is moving to Direct Pay due to the non-resident parent displaying acceptable compliant behaviours.

Where an acceptable arrangement is already in place any time which has already been spent under this agreement may be offset against this nine month period.

### **Deduction From Benefit**

Where the non-resident parent makes their payments via Deduction From Benefit this is classed as neither an enforced nor a non-enforced method, it is a mandatory method. Therefore any periods in which a non-resident parent has been paying via a Deduction From Benefit are to be disregarded for the purposes of the unlikely to pay check and classed as a pass regardless of any missed payments in this period.

### **Example**

A non-resident parent currently pays via Deduction From Benefit and requests Direct Pay. On investigation they have paid via Deduction From Benefit for the past six months in their entirety. Regardless of any missed payments in this period the non-resident parent is determined not unlikely to pay and allowed to move to Direct Pay.

### **Example**

A non-resident parent currently pays via Direct Debit and requests Direct Pay. On investigation two payments were missed in the past six months whilst the non-resident parent was subject to a previous Deduction From Benefit due to sanctions being imposed. These missed payments are disregarded as they occurred during a period of Deduction From Benefit and as no other payments have been missed the non-resident parent is determined not unlikely to pay and allowed to move to Direct Pay.

### **Reactively closed 'segment 5' legacy case**

N.B: The following only applies where liability on the legacy case ended within the last 13 weeks.

If the non-resident parent was paying by an **enforced method of payment** on legacy and it was set up **6 months or more** before liability ended on legacy then they will be eligible for a compliance opportunity straight away. They must make 6 months' worth of payments by a non-enforced method of payment. If they do this successfully then they will be eligible to move to Direct Pay. The parent with care

must be contacted and informed that the case is moving to Direct Pay due to the non-resident parent displaying acceptable compliant behaviours.

If the non-resident parent was paying by an **enforced method of payment** on legacy and it was set up **6 months or less** before liability ended on legacy then they must first make 6 months' worth of payments by that enforced method. The non-resident parent should be informed of the earliest date on which they can ask again.

**Remember:** any decision to discharge a DEO/R for reasons of a compliance opportunity must take into account all relevant considerations including Welfare of The Child. If a caseworker believes that there is good reason not to discharge a DEO/R after six months has been served they should refer this query to Advice and Guidance to consider.

### **Policy rationale**

Our approach to offering a compliance opportunity for these clients is different to balance the interests of the non-resident parent and the parent with care. Not all non-resident parents who were paying by an enforced method of payment on legacy were doing so due to recent non-compliance, but at the same time we must try to minimise payment disruption and provide a period of payment stability for the parent with care. That is why we only require those non-resident parents who were placed into an enforced method of payment recently to make 6 months' worth of payments by an enforced method of payment on 2012

If the non-resident parent was undergoing **enforcement action** on their legacy case they must first make an effective arrangement with legal enforcement before being eligible for the compliance opportunity. A non-resident parent must be informed that first they must make an acceptable arrangement with Legal Enforcement.

Once an effective agreement is in place they must then make **9 months' worth** of payments on time and in full by a voluntary method of payment. Once this is completed then they will be eligible to switch to Direct Pay. The parent with care must be contacted and informed that the case is moving to Direct Pay due to the non-resident parent displaying acceptable compliant behaviours.

### **Example**

A non-resident parent has requested Direct Pay but the parent with care is not willing to agree to this. An unlikely to pay decision is therefore required. On interrogation of the notes it is found that it is a Segment 5 type case closed reactively within the past thirteen weeks and therefore interrogation of the 1993/2003 history is required. The note confirms that the non-resident parent was placed onto a Deduction from Earnings Order 12 months prior to the liability being ended. As the non-resident parent has already served over 6 months on an enforced payment method and the caseworker is satisfied that there is no reason not to discharge the DEO they are informed that they are determined unlikely to pay as a result of their enforced

payment method. They may however, enter directly into a six month compliance opportunity if they wish which, once complete, will allow them to enter into Direct Pay.

### **Example**

A non-resident parent has requested Direct Pay but the parent with care is not willing to agree to this. An unlikely to pay decision is therefore required. On interrogation of the notes it is found that it is a Segment 5 type case closed reactively within the past thirteen weeks and therefore interrogation of the 1993/2003 history is required. The note confirms that the non-resident parent was placed onto a Deduction from Earnings Order 2 months prior to the liability being ended. As the non-resident parent has not served over 6 months on an enforced payment method they are informed that they are determined unlikely to pay as a result of their enforced payment method and must serve a period of six months paying via an enforced method on the 2012 scheme. After this period they may be considered for entry into a six month compliance opportunity.

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