

Variation Orders

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What is a Variation Order?

If a judgment or order has been given or made for the payment of money, but the non-resident parent is unable to meet the debt in full, they can apply for a variation order.

A variation order allows the creditor (the CMG) or the non-resident parent to apply for a separate arrangement to be made between themselves and the judge to repay the judgment / order. They can arrange for payment of the debt by instalments, by smaller instalments where already payable by instalments or for the debt to be paid at a later date. The non-resident parent must make an application for a variation order to the county court.

When can a Variation Order be made?

A variation order can be applied for at any time after the application to register the liability order in the county court.

The CMG can object to a Variation Order:

If a non-resident applies for a variation order, the CMG is given an opportunity to respond to the application, and notify the court of our objection to the order being granted. It is important to ensure that cases where these occur are prioritised, as there are strict timescales for the CMG to respond (14 days) and failure to do so will lead to the court agreeing to the non-resident parent's proposals.

Please refer to the Decision Making Guidance for guidance on the Variation Order process and the points you will need to consider.

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[Variation Order: Decision Making Guidance](#)

The CMG will be notified if an application for a variation order is made. The application must be reviewed and you can choose to accept or reject the proposed offer of payment. The following links provide guidance on the application process and the points that you would need to consider.

REMEMBER: whether you should object to a variation order application is a discretionary decision. In addition to the points listed below it is therefore essential that you consider the welfare of any children potentially affected by your decision and record the reasons for your decision in full. Refer to the Discretionary Decision Making Guidance for further advice.

CMG is notified of variation order application

The court will send a blank form (N246) to the Civil Enforcement Team giving 14 days' notice, during which the CMG can respond. A copy of the non-resident parent's application for a variation order (N245) will also be enclosed to enable the CMG to respond to the non-resident's reasons why the variation order would be appropriate. The CMG can either accept or reject the proposed offer of payment.

REMEMBER: it is essential that these notifications are dealt with in the timescales allowed, or the CMG's comments will not be taken into account.

Reviewing the variation order application

On receiving the notification from the county court that the non-resident has applied for a variation order, you must review the application.

You will need to review the information regarding the non-resident's income and circumstances and consider whether the repayment offer meets the requirements set out in the Arrears Negotiation (Debt Steer) Guidance.

REMEMBER: whether you should object to a variation order application is a discretionary decision. In addition to the points listed below, it is therefore essential that you consider the welfare of any children potentially affected by your decision and record the reasons for your decision in full. Refer to the Discretionary Decision Making Guidance for further advice.

Points to consider when reviewing a Variation Order application

You should consider whether in the circumstances the offer represents the best possible agreement to pay the debt. Points to consider when reaching this decision are (this list is not exhaustive):

The amount of arrears outstanding

If the proposed variation order agreement will take a long time to pay the amount due, it may be more appropriate to object to the variation order application. However,

you should also take into account the amount of the debt and any information provided about the non-resident parent's financial circumstances.

Previous compliance

If the case history shows that the non-resident parent has a history of failing to keep to agreements, object to the variation order application.

Maintaining regular maintenance and arrears

You will need to consider whether the non-resident parent has sufficient income to allow them to pay a reasonable amount towards their arrears in addition to regular maintenance. If not, you should object to the variation order application on the basis that the non-resident parent is not in a financial position to keep to any agreement, and that other enforcement action may be appropriate (e.g. if the non-resident parent has a property, a charging order application can be considered).

How the arrears have accrued

You will need to consider whether the arrears have accrued due to non-compliance or due to the non-resident parent's financial circumstances.

If the arrears have accrued due to the non-resident parent's financial circumstances, it is unlikely that they will keep to the variation order and other methods of enforcement may be more appropriate.

How long the arrears have been outstanding

Consider how long the arrears have been outstanding. If the parent with care has been without their full maintenance for a significant period of time, it may be appropriate to continue with charging order / third party debt order action to try and obtain payment in a shorter timescale for the benefit of the parent with care and the qualifying child.

Decision to accept or reject the payment offer

When you have decided whether to accept or reject the payment offer, a response must be sent to the court. If the CMG has accepted the offer, the court will normally grant a variation order ex parte (i.e. without the need for a hearing) and will inform the CMG of this. If the CMG has rejected the offer, the court will normally arrange a hearing date for the application to be considered.

The Court Presenting Officer (CPO) should be contacted when the date is known and they can then make arrangements to attend the hearing. The CPO will notify you of the outcome and whether the non-resident parent's application was successful.

Note: the court may grant the order or dismiss the non-resident parent's application without a hearing, but in some instances they will schedule a hearing so that all the arguments can be fully considered.

What if the Variation Order is granted?

If the variation order is granted, the CMG cannot make an application for a third party debt order unless the non-resident parent defaults on the payments ordered by the court on that specific variation order.

Note: The Tribunals, Courts and Enforcement Act 2007 amended the Charging Orders Act 1979. s.93 of the new act provides that where the debtor (non-resident parent), is ordered by a county or High Court to pay a sum of money by instalments, this in itself does not prevent a charging order from being made in respect of that sum of money. Therefore where the variation order has been granted on or after the 19th July 2007, a charging order application may be made, whether the non-resident parent is complying with the order or not. However, order for sale action would not be appropriate where the non-resident parent is adhering to the variation order.

NOTE: a charging order application is not appropriate where the variation order was granted on or prior to 18th July 2007

You should still:

- make attempts to secure regular maintenance payments from the non-resident parent;
- monitor the case closely and take prompt action if the non-resident parent defaults on the variation order.

What if the non-resident parent defaults on the variation order?

If a variation order is in place, CMG cannot take further proceedings on that liability order, unless the non-resident parent breaks the terms of the variation order, in which case enforcement action may be taken.

However, a variation order on one liability order does not affect what we do to enforce any other debt that may have accrued.

We are free to take any other enforcement action on the unaffected debt but it would be sensible to take action that does not involve registering the liability order in the county court, at least initially, as the likelihood is that the non-resident parent will apply for another variation order if this was successful for them previously.

Appealing the Variation Order decision

If the decision the court makes is not acceptable, the CMG can apply for the matter to go before a district judge. The hearing will be held in the district judge's chambers and when all parties have presented their case, the district judge will either:

- confirm the order as it stands;
- change the amount of instalments or the date of payment; or
- cancel the variation order

Refer to the guidance on CMG appeals against enforcement action for further advice.

Application to have a Variation Order varied

Where a variation order has been granted and we hold evidence that the non-resident parent's circumstances have changed i.e. the non-resident parent is in a financial position to pay higher instalments, an application can be made to the court to have the variation order varied. The application is made to the county court on the N244 Application notice.

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PLDMG @ 09.03.2017