

FINANCIAL PROVISION FOR CHILDREN

Child Support Agency becomes Child Maintenance Service

Following the implementation of the Child Support Act in 1991 the court's ability to make financial provision for children was curtailed and this was now to be dealt with in the main by the Child Support Agency (CSA). The CSA is now itself to close and will be replaced by the Child Maintenance Service. This means that in time (if Government plans come to fruition) all parents using the CSA will have their cases closed and will have to make a decision as to whether or not to use the services of the Child Maintenance Service (CMS). These changes started to take place in December 2012 and from the end of July 2013 the number of parents included in the new system was increased. The plan is that by 2014, all CSA cases will be closed and transferred to the CMS. The underlying aim is to encourage parents to agree their own maintenance arrangements by way of what is to be known as a Family Based Arrangement (FBA).

In summary the key changes will be:

Current CSA cases will be closed/transferred to the CMS (6 months' notice will be given).

The maintenance calculation will be based on the gross weekly income of the paying parent.

Charges will be levied in the event that a couple cannot agree maintenance between them and choose to use the collection services of the CMS.

Prior to using the services of the CMS parents will use a telephone gateway service which will aim to assist them in undertaking a collaborative approach to the question of child support.

Under the existing and, soon to be previous, system we had become used to calculating the maintenance payable by the Non-Resident Parent (now referred to as the 'Paying Parent' under the new system) to the Parent With Care (now referred to as the 'Receiving Parent' under the new system) paying a percentage of his or her net weekly income where the payment would have equated to 15% for one qualifying child, 20% for two and 25% for three or more. Incomes in excess of £2,000 per week were ignored and the maximum sum payable

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Under the new system it is the gross weekly income of the Paying Parent that will now be used to calculate the maintenance payable to the Receiving Parent. It is envisaged that HMRC will provide evidence of a Paying Parent's gross income to the CMS directly.

In future where the Paying Parent's income is between £200 and £800 per week the rates used to calculate the level of maintenance payable will be:

12% for one child.

16% for two children.

19% for three or more children.

Where a Paying Parent's gross income is less than £200 per week, or more than £800 per week, a different calculation will be applied. Now any gross income in excess of £3,000 per week is ignored for the purpose of any calculation of levels of maintenance payable and the option to use Schedule 1 of the Children Act 1989 is still available to make applications for 'top up' orders in the event that the Paying Parent is in receipt of a large income.

Some discounts can still be applied, as before, by the Paying Parent:

If the child or children stay with the Paying Parent overnight for 52 or more nights a year the maintenance payment can be discounted by one seventh for each child with shared care. There is a two sevenths discount able to be applied when the Paying Parent has the child or children for 104 to 155 nights per year and a three sevenths discount when this is between 156 to 174 nights per year. In the event that the paying parent has the children for in excess of 175 nights per year a 50% discount can be applied with an extra £7 reduction per child included within this calculation.

If the Paying Parent has other children living with him or her that parent will be entitled to treat their gross income as reduced by –

12 % if one child.

16% if two children.

19% if three or more children.

Other provision for a child in respect of unmarried couples:

Financial Applications for a Child under Schedule 1 of The Children Act 1989

Introduction

When a relationship between an unmarried couple breaks down it is possible for an application to be made to the court in respect of children under Schedule 1 paragraph 1(2) of the Children Act 1989 for:

In respect of children under 18 years of age –

- Periodical payments.
- Secured periodical payments.
- A lump sum.
- A settlement or transfer of property.

Please note that step-children can be included if the parents were married or civil partners but see below with respect to the Matrimonial Causes Act route that would be available to such couples. Please also note that a court is unable to make any order for another person's child if the parties are not married or have not been civil partners.

In respect of children over 18 years of age in certain limited situations –

- Periodical payments.
- A lump sum.

Certain limited situations include 'special circumstances' which may include physical and other disability.

The type of provision that can be expected under Schedule 1 is different to that which married parents can expect under the Matrimonial Causes Act 1973. Even though Schedule 1 applications can be made by married parents it is fair to say that the Matrimonial Causes Act route will provide more generous and less restricted provision for them. A Schedule 1 application is now to be considered a 'Financial Remedy' application. However unlike a Matrimonial Causes Act financial remedy application parties have to file a shorter version of the Form E known as Form E1. Any applicant should follow the pre-action protocols and when doing so parties are reminded of the general principles namely:

the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved;

the needs of any children should be addressed and safeguarded;

the procedures which it is appropriate to follow should be conducted with minimum distress to the parties and in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances;

the principle of proportionality must be borne in mind at all times that is to say that it is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute.

Factors to be taken into consideration when making a decision

Paragraph 4 of Schedule 1 of the Children Act 1989 outlines that when deciding if and how to exercise its powers the court shall have regard to the following factors:

the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;

the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;

the financial needs of the child;

any physical or mental disability of the child;

the manner in which the child was being, or was expected to be, educated or trained.

Sub-paragraph (4) outlines those whose financial situation needs to be taken into account as being:

in relation to a decision whether to exercise its powers in respect to children less than 18 years of age any parent of the child;

in relation to a decision to exercise its powers in respect to children over 18 years of age the mother and father of the child;

the applicant for the order;

any other person in whose favour the court is proposing to make an order.

Type of Order that the Court can make

Child maintenance by way of periodical payments if the Child Support Agency (CSA) or Child Maintenance Service (CMS) does not have the jurisdiction or if the court has retained its jurisdiction i.e. such payments can be ordered in what is known as a 'top up' case where the level of maintenance to be paid is generally above the level set by the CSA or CMS.

A lump sum can be ordered to be paid to the applicant as a contribution to costs related to the birth of a child for example the costs incurred in the equipping of the child's home. Such lump sums can be paid by way of instalments with the court having the ability to amend the level of payments and the term over which these are to be paid.

A transfer or settlement of property, the purpose of which will be to provide a home for the child during their minority, usually taken to mean the completion of secondary education or in some circumstances tertiary education with the property transferred or settled usually returning to the parent who funded or provided it at that time.