

Getting the right child support

The child support system is only simple in outline – the detail can be very complex. But, by keeping a clear eye on what you are trying to achieve, you should secure the right outcome in the end. There is a separate system hidden behind the main formula of the Commission that can have really major impacts on the level of provision, particularly for those applicants seeking support called “variations” which this note aims to explain.

Remember too that there may be other ways of achieving better support:

- For those who are married
 - o Spousal maintenance
 - o Sharing pensions or capital
- For those who have never been married
 - o Securing your entitlement out of jointly owned assets
 - o Lump sums to meet capital needs of the children
 - o Provision of housing
- For all
 - o Top up maintenance where the person paying maintenance is very high earning
 - o Help with educational costs or costs of disability

For those who are continuing to work with the child support system, the variation scheme may provide the answer.

1) **Considerations that may reduce the level of payment**

- a) The person paying child support (called “the non-resident parent” or NRP) can apply for its level to be reduced on the following grounds
 - i) He (assume he) faces significant costs – usually in excess of £15 per week – **maintaining contact** with the child.
 - ii) He must meet costs relating to the **long-term illness or disability** of another child in his household.
 - iii) He must meet on-going liabilities for **debt**, which were incurred for the joint benefit of both parents or for the benefit of the child. There are, however, many exceptions here. Debts which are fines, credit cards, legal costs, business-related, informal or a bank overdraft will not count.
 - iv) The NRP is paying the **boarding school fees** of the child. Here, the boarding element (and if not clear, then up to 35% of the fees), may count to reduce the payments, but not by more than 50%.
 - v) Finally, if the child is living in a house with the parent with care and the NRP is still paying the **mortgage**, then these payments can count (but only if the NRP has no interest in the property at all).
- b) These expenses are not offset against the child support liability. Broadly, they go to reduce the NRP’s income as it enters into the formula on a pound for pound basis – so an additional £1 of debt payments may reduce the assessment for one child by say 15pence.

- 2) Categories which may increase the level of payment
- a) The person seeking child support (called “the Parent with Care”) can apply for an increase. If the NRP, let us call him “Jim” has **assets** outside his business and apart from his home, which exceed £65,000 in value, then these may be treated as earning an income at 8% net, whatever the circumstances and however low the income actually earned may be. The formula is run against the total of the maintenance.
 - b) If the parent with care can show that Jim’s **lifestyle is inconsistent** with the level of income that C-MEC is working to, then s/he may persuade C-MEC to assume a new level of income. For example, Jim may have declared an income of only £12,000 per annum but he lives in a substantial four bedroom house, has three holidays a year and drives a brand new Mercedes. Here the Tribunal will endeavour to assess the level of income that it believes Jim is likely to really require to support this sort of lifestyle and will then finalise a level of liability assuming this level of income. C-MEC is not permitted to do this if:
 - i) Jim’s lifestyle is funded out of capital or borrowing;
 - ii) The lifestyle is funded by his partner and he has no obvious control over how his partner’s resources are spent.
 - c) If Jim has **additional income resources** that are not otherwise taken into account in the calculations. (but very tight other restrictions apply to this category).
 - d) If he has **unreasonably reduced** his income or has **diverted** his income.
- 3) All of these categories have all sorts of exceptions and conditions but where you think that you may qualify, you will want to have further information.
- 4) *PWC problems ?*
- a) ***If you are having difficulties in securing the payments to which you believe you are entitled, this is most likely to be because of one or more of the following:-***
 - i) **Fact Manipulation:** The formula depends entirely on variables over which you have very little control and the NRP usually has total control:
 - ii) **Fobbed off:** C-MEC may prove to be ill-equipped to carry out a sufficiently rigorous examination to get to the bottom of the financial realities.
 - iii) **False teeth:** Whilst C-MEC has good enforcement teeth, it may prove slow to use them and may be insufficiently vigorous, creative or effective when it does so. Increasingly we are finding the Commission very effective indeed – however in any system, there will be cases that get through the net.
 - iv) **Confusion:** The law governing the area is a labyrinth and your CSA Officer may not know the relevant rules that apply and therefore certainly is unlikely to be able to guide you on them.
 - b) It is therefore tragically the case that for too many families, C-MEC does not deliver what is required and for many families, the parents with care give up and accept whatever payments C-MEC can encourage the other parent of a child to provide, including no payment at all.

5) **Survival strategies for the PWC**

- a) **Be realistic:** Endeavour to avoid having to rely on child support payments (easier said than done of course) because where we become desperate, in our need to push C-MEC to take prompt action, we may well go mad.
 - b) **Back it up with other claims:** Consider where possible wrapping up child support in some other way. For example, you are likely to have far more control over the process where you are dealing through the courts. Where it is not prohibitively expensive to do this, can you obtain a spousal maintenance order for the global sum to which you are entitled? (i.e. including child support). In this way you could pursue enforcement through C-MEC as well as through the Court if you needed to.
 - c) **Don't get mad get clever:** Try to get clever rather than mad when things go wrong. The extremes of anger and despair are common-place for C-MEC officers and they are likely to have acquired immunity to displays of both. If instead, you use the energy to get clever, you may secure advances far beyond where you will get simply with anger. Some of the key areas are set out in the next paragraph.
 - d) **Three powerful tools:** Make use of your three key tools:
 - i) Is it viable to pursue a **court claim** in parallel to the claim through C-MEC? If you seek orders for educational costs or for a lump sum to house the child or pay for basic capital necessities, you may find information in the court process that advances your C-MEC case. If you have your spouse maintenance claims alive, these may be more viable to pursue despite the complexity of the legal process (and its expense if you obtain legal assistance and representation).
 - ii) **Complain.** Your only real tool of control over C-MEC is the formal complaint. If things are not done within 28 days, complain. If your complaint is not acknowledged and advancing within 28 days, complain about the failure to deal with the complaint. Eventually, your case will be referred to the Chief Executive's officer and if that does not resolve matters, you can go to the Independent Case Examiner. If you are turned down at that level, then you were probably barking up the wrong tree anyway.
 - iii) **Variation.** Consider pursuing a variation; see categories below and information at para 23 above.
 - e) **The PWC's application for a Variation.** Where an application is pursued, it is likely to be on one or more of 3 bases:
 - i) Because income is being taken out as dividends
 - ii) because there are **assets** exceeding the prescribed value of £65,000;
 - iii) because the other parent's **lifestyle** is inconsistent with the income C-MEC is working on; or
 - iv) because there is other income not taken into account in the calculations or because s/he has unreasonably reduced or **diverted** his/her income.
- 6) It may seem strange (given how many business owners use dividends to receive income to reduce taxes and national insurance) that **dividends** are not currently included in child support. The situation is easily remedied by making an application to include dividend income.

- 7) The next category is **“underused assets”**
- a) As with the other categories, such assets will never be considered until there is an application for a variation.
 - b) The application must identify assets which are:
 - i) not the NRP’s house; and
 - ii) not invested in his business.
 - c) Where these exist, they must be worth more than £65,000
 - d) A variation will only be granted where this is just and equitable; but
 - e) If you can overcome all the various hurdles then, these assets are all assumed to be producing income at **8% net** which will make a significant difference to the income that a person is deemed to earn.
- 8) **Lifestyle inconsistent**
- a) The questions for the tribunal are as follows:
 - i) What income figure does C-MEC assume the NRP to have ?
 - ii) What evidence is there that should be considered which shows the lifestyle of the NRP
 - iii) Is this lifestyle provided by the partner (spouse or heterosexual partner) of the NRP ? (If no, then the variation can proceed If yes, then the variation cannot proceed UNLESS the NRP has control over how his/ her partner spends the money
(For example, Boris has the latest 7 series BMW but declares an income of £10,000 pa. If his partner Kylie gave him the car, then no departure is possible unless Boris’ former partner can show that Boris has a high degree of control over how Kylie spends her money.)
 - iv) Is this lifestyle funded out of capital or increasing debt ? (If no, then the variation can proceed If yes, then the variation cannot proceed
 - b) The lifestyle that the person is likely to need to have to support that sort of lifestyle will then be adopted as the NRP’s net income.
- 9) **Diversion of income**
- a) This rule was brought in to address the problem of self-employed earners taking in a new partner or family member and “diverting” the income that he would have had to that family member.
 - b) A diversion may also exist where a person tried to manipulate the child support he pays by inflating his pension contributions.
 - c) Finally a diversion may exist where the paying parent reduces the level of child support by leaving in the business income that realistically ought to be distributed in dividends or pay.
- 10) *Checklist for paying parents*
- a) *Paternity.* You do not have a liability to this child unless you are the natural parent or you have adopted the child.
 - b) Who is the parent with care ? Usually this is defined by the adult who has more of the overnight stays (or who would do, for example if the child were not at boarding school).

- c) *Jurisdiction*. C-MEC's role has distinct limits:-
- i) **It cannot start earlier than the child's birth nor last later than the child getting to the age of 16 (or the end of secondary education, if later);**
 - ii) If a child is out of the UK, then the matter is out of the hands of C-MEC;
 - iii) If you are out of the UK (and are not on Government service and not employed by a UK based company) then again C-MEC cannot be involved. You are more likely to be dealt with by the Agency in the country in which you live. Some agencies have far higher levels of assessment and even more effective enforcement.
- d) What of other claims?
- e) The first stage in the formula is your income. Study the rules so that you know how they will apply to you.
- f) Pension contributions may reduce the income being taken into account on a pound for pound basis (but not where they are artificially inflated).
- g) Where there are other children living apart from you, for whom you are providing, then ensure that C-MEC is notified. You may be unable to afford to pay large sums of support on a voluntary basis without taking this step. (However contributions to children at University will not count, nor will maintenance paid to a former spouse).
- h) Overnight stays make a difference.
- i) Consider your vulnerability to variations which may increase the level of payment.
- j) Other variations may assist you by reducing the payments.
- k) Care is required as regards "initial arrears".
- i) These is the debt that can suddenly "appear" as C-MEC deals with the case and backdates its assessment to the effective date.
 - ii) There are strict rules as to what can "count" against these arrears and what will not.

will count	will not count
Mortgage, gas electricity telephone, council tax, heating, repairs, food and clothing	household goods and gifts

and please note that these payments only count in the period prior to the first calculation.

- iii) To make matters more complicated, 1) we find that often C-MEC will fail to apply these rules and will refuse to bring into account various payments; and 2) where benefits have been claimed by the PWC, it may be impossible for the PWC to admit that various payments have been made without facing a challenge of having defrauded the Benefits Agency by failing to report all sources of income.

But above all remember that this is about financial support for children, who need and will benefit from the financial assistance that you make.

11) What to do next

- a) First think through what is going to be your best strategy. If you are not coping, would it be better to make contact with your ex and talk through adjusting the level of child support. If you are able to make progress it may still be worth speaking to an advisor about the proposal and ensure that it is finalised in a way that ensures that your interests are protected.
- b) Only if you can't reach agreement, will you need to consider taking matters further.
- c) A first step will be to go onto the website www.csa.gov.uk for contact details, speak to a child support officer and make clear that you want to apply for a variation and ask them for the relevant form. Make a note of the conversation and how long you were told it would take so you can chase it up if need be.
- d) Variation applications often take time to progress (but they will be backdated and have effect from the date of your application so – where an application could be made and you want to pursue it – apply quickly.
- e) An application for a variation can be made at any time; however, where it is made before – or within a month of the date that a calculation is made then it will be backdated and have effect from the original date (*“the effective date”*) of the calculation.
- f) Often variation applications will be dealt with by a child support officer. In other circumstances the child support officer will refer the matter directly to a Tribunal
- g) Keep the dialogue with your ex going, where appropriate. It may be that as things unroll you are able to find a way that resolves all of the different issues without the long process that you may face if things become complicated through the child support system.