



myerson

Myerson **Family**

Our guide to child maintenance

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Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



Calculating child maintenance

In the first instance, parents can agree the amount payable for child maintenance payments after reference to the Child Maintenance Calculator available at: [Calculate your child maintenance - GOV.UK](#). This is known as a voluntary child maintenance payment.

Calculations are based on the Non Resident Parent (NRP)'s gross annual income and the amount of overnight stays the NRP has with the children. If the children stay an equal amount of nights with each parent, then generally, no child maintenance is payable.

Where there is a shared care arrangement there will be a reduction dependent on the average number of nights per year the qualifying children spend with the NRP:

- 52-103 nights = one seventh
- 104-155 nights = two sevenths
- 156-174 = three sevenths
- 175 or more up to half = minus a further £7

The Family Court typically has no jurisdiction to make child maintenance orders aside from in specific circumstances.



Circumstances where the court can make child maintenance orders

Agreement between the parties

The court can make an order for child maintenance where both parties have themselves agreed a maintenance figure. In this scenario the parties would be most likely to submit a draft consent order to the court which sets out their agreement including the sum payable and the frequency of the payments. The court will then approve the order if the agreement is fair and reasonable and then seal the order which makes the consent order a binding agreement between the parties.

A child maintenance order cannot be enforced beyond the first anniversary of the date of the order. If there is a subsequent dispute, either parent can apply for a child maintenance assessment via the Child Maintenance Service.

Where the payer's income exceeds £156,000 per annum

Where the non-resident parent earns over £156,000, this exceeds the CMS threshold. The CMS can then make a maximum assessment. With both these criteria satisfied the court has jurisdiction to make a top up maintenance order to ensure the child's needs are sufficiently met.

Where the child has special needs

The court retains jurisdiction to make orders for maintenance in respect of a child with special needs provided the following criteria is met:

- Personal independence payment (PIP) is paid to or in respect of the child. Where payment is not made, the child must have a disability which will be a question of fact in each case; and
- The order is made solely for the purpose of requiring the paying party to meet some or all of any expenses attributable to the child's disability.



A periodical payment order may extend beyond the child's 18th birthday under special circumstances, such as where the child has a severe disability as held by the Court of Appeal in *C v F (Disabled child: Maintenance Orders)* 1997.

Where the paying parent lives outside of the UK

Many countries are party to the framework, the Reciprocal Enforcement of Maintenance Orders (REMO). This allows UK maintenance orders to be registered and enforced in those jurisdictions. An application should be made under Schedule 1 of the Children Act 1989 to first obtain a court order in the UK. The court will then consider the paying parent's income, the nights per year the child will spend with the parent, whether the parent pays any child maintenance for any other children and the parent's costs involved with having contact with the child.

The court can still make an order in circumstances where the paying parent does not cooperate. Once you have the order, you can then begin the enforcement process by applying to the Central Authority with the order accompanying your application. You may need to evidence your attempts at obtaining child maintenance to support your application. The Central Authority will then liaise with the Central Authority in the paying parent's jurisdiction. Once the order has been registered there, enforcement can proceed as if it was that country that made the order.

Applying for child maintenance

Parents are always encouraged to try and reach their own private arrangements, but where this is not feasible, applications can be made online or by telephone by the parent of the child, a person with care (PWC) of the child or the non-resident parent (NRP).



There is no longer an application fee, however if you wish to use the Collect and Pay service, there will be a 20% collection fee on top of the usual child maintenance amount for NRPs using the service, and a 4% collection fee deducted from the usual child maintenance amount for PWCs using the service. This service is available for circumstances where neither parent wishes to use direct pay, or where payments have previously been missed or late.

There will be no collection charges where the parties make their own payment arrangements.

It is important to note that there are a range of enforcement charges for paying parents who do not pay child maintenance in full and on time.

The CMS will make a calculation of the maintenance payable, based on gross income and information provided by HMRC. Typically, this calculation will only be reassessed annually, unless there has been a change in income of an increase or decrease of over 25%.



Who is eligible for child maintenance?

For a child to be a qualifying child for child maintenance purposes, the child must live with only one or neither of their parents.

It is often assumed that once a child reaches 16 their eligibility for child maintenance comes to an end. This is not always the case. A young adult below the age of 20 can be eligible for child maintenance as long as the following criteria is met:

- They are in full-time education
- They are not employed to work 24 hours or more per week
- They are not in receipt of certain benefits such as child benefit
- They are not married or in a civil partnership
- They are habitually resident in the UK (unless they are employed in the civil, diplomatic or armed services of the Crown or employed by a company registered in the UK).

If the above criteria are not met for young adults up to the age of 20, child maintenance payments will cease on 31 August after the child's 16th birthday.

Considerations and enforcement

Where you are the parent or NRP, it is important to be aware that:

- It is a criminal offence to fail to comply with requests for information from the CMS, provide false information to the CMS and to fail to notify the CMS of a change of address once a calculation is in place
- If the NRP does not cooperate with the CMS' enquiries, the CMS can make a default maintenance decision which it can then enforce
- Enforcement lies with the Department for Work and Pensions (DWP) acting through the CMS. To name a couple of consequences where payments are missed, they can make an administrative order for there to be deductions from earnings or for the collection of future maintenance payments



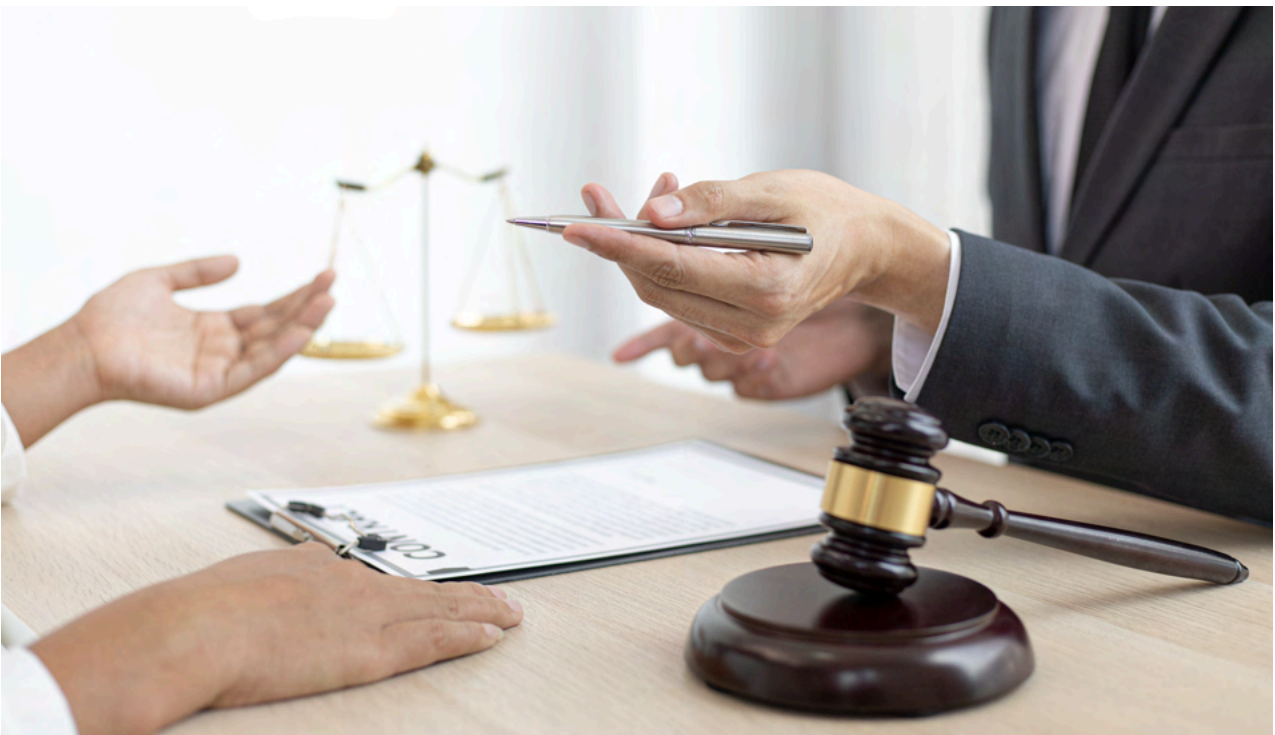
Appealing the calculation

You can challenge a decision regarding your payment amount within 30 days of the date of your decision letter. This is called a mandatory reconsideration.

You may challenge the decision after the 30 days have expired if you have a good reason for the delay, such as hospitalisation or a bereavement.

Find more information or begin the process here: [Mandatory Reconsideration](#)
If you are unhappy with the decision of a mandatory reconsideration, you can appeal to the Social Security and Child Support Tribunal within one month of the mandatory reconsideration date.

You will need to complete form SSCS2 ([Form SSCS2](#)) and send to the address on the form once completed. It is up to you whether you attend the tribunal hearing where they will make a decision. It usually takes around 6 months for your appeal to be heard.



You're in safe hands!

If you would like further information about how we can help you with your **child maintenance**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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