



# Special Payments Guide

## Contents

Introduction .....	3
Basic Principles Redress for Maladministration .....	6
Categories of Special Payments .....	13
Extra-Statutory .....	13
Ex Gratia - Actual Financial Loss .....	15
Ex Gratia Special Payments to Compensate for Unreasonable or Exceptional Delay .....	37
Ex Gratia - Consolatory Payments .....	43
Annex A .....	52
Annex B .....	54
Annex C .....	56
Annex D .....	57
Annex E .....	58

## Introduction

### About this guide

1 The guide sets out the approach to be taken when considering remedies for justified complaints. It describes the special payments scheme operated by the Child Maintenance and Enforcement Commission (**'the Commission'**) and provides advice on the consideration of financial redress in respect of maladministration. This guide covers cases dealt with under Child Support Acts 1991 and 1995, the Child Support Pensions and Social Security Act 2000, the Child Maintenance and Other Payments Act 2008 (under which the Commission has been established) and all subsidiary and related child support legislation and statutory instruments.

2 The Commission was established on 1 November 2008 and takes over responsibility for child maintenance with effect from that date under the Child Maintenance and Other Payments Act 2008. Reference to the Commission covers and includes any references to the Secretary of State for Work and pensions in respect of legislation, acts or omissions prior to that date.

3 Any application for special payments considered on or after 1 November 2008 will be considered under this guidance irrespective of when the alleged maladministration occurred or whether said maladministration was initially the responsibility of the Commission or the Secretary of State for Work and pensions.

4 The guide provides

- examples of what constitutes maladministration and sets a context in which to consider official error
- the circumstances when financial redress should be considered and
- the redress that may be appropriate for each type of case.

Examples of maladministration are shown at paragraphs 15 et seq. of this guide.

### **Defective legislation - extra-statutory payments not covered by this special payments scheme**

5 The guide does not cover the extra-statutory payments made where, for example because of official oversight, current legislation does not provide for payment as intended by Ministers. It is for the relevant policy and operational teams to determine whether extra-statutory payments should be made pending legislative change and to obtain the necessary authority from HM Treasury to make such payments.

### **For whom this guide is intended**

6 The guide is intended for staff within the Commission who are responsible for considering and making special payments and for other staff dealing with customer complaints.

## How to use this guide

7 The guide contains a description of the circumstances under which special payments can be made and provides advice on the considerative process, including methods of calculating payments. The guide **should not be read as a completely rigid set of rules**. Whilst it indicates the key principles, it cannot and does not seek to provide a blueprint for every situation. Each case must be considered on its own merits, in the light of the particular circumstances of the case. However, as the Commission aims to provide similar remedies for similar injustices, the principles must be applied to every case.

## Public access to this guide

8 Whilst this guide is not commercially available, it should be made available to members of the public on request.

## Delegated authority from HM Treasury

9 The Treasury has delegated responsibility to the Commission for its own special payments scheme, details of which are contained within this guide. In the event that the Commission identifies the requirement for a special payment for which it has no delegated authority, or which exceeds its authority, Treasury approval must be sought in advance of any decision to pay<sup>1</sup>.

## *Costs exceeding £250,000 – Commission Accounts noted*

10 Where a group of payments are paid (usually as part of a special exercise) and the special payments exceed £250,000, a note has to be added to the Commission's accounts explaining why the payments were made.

## *Novel and contentious cases: alerting Ministers*

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<sup>1</sup> With Treasury approval it is sometimes possible to rely on the Appropriation Act to avoid an undue burden on the Parliamentary timetable. So Parliament is routinely prepared to authorise certain expenditure through the Appropriation Act alone, subject to the conditions:

- The expenditure is no more than £1.5m a year; or
- It is expected to last for no more than 2 years

And

- Any explicit statutory limits are respected; and
- No specific legislation on the matter in question is before Parliament (See Managing Public Money paragraph 2.3.3 for details).

11 Ministers and senior officials must be alerted at an early stage to any difficult or controversial case - especially those likely to attract unwelcome publicity. It is important, therefore, to let Commission Policy have written details of such cases without delay so that Ministers and appropriate officials can be briefed.

## **Discretionary nature of the special payments scheme**

12 Ex gratia special payments are described in *Government Accounting* as 'payments which go beyond administrative rules or for which there is no statutory cover or legal liability'. As Parliament does not include provision for special payments when voting money or passing specific legislation, there is no legal liability to make such payments. Due to their exceptional nature, the payments may be made on a discretionary extra-statutory or ex gratia basis.

## **Taking complaints further**

13 As special payments are not covered by statute, the customer has no right of appeal against a special payment decision. Customers may, however, ask the Commission to look again at a special payment decision, for example, in the light of new evidence or may make a complaint about the level of an award of compensation. Where the Commission reconsiders a special payment decision and confirms that the original decision was correct, that confirmation does not constitute a new decision that can again be challenged.

## **The Independent Case Examiner for the Commission and Parliamentary and Health Service Ombudsman.**

14 A customer who is dissatisfied with the handling of his or her complaint or with any redress given may make a complaint to the Independent Case Examiner or the Parliamentary and Health Service Ombudsman. Details about this and contact details are contained in Annex A.

## **What is Maladministration?**

15 'Maladministration' is the term used to describe the action or inaction that leads to a failure in the processes of government. The term is not defined within the Parliamentary Commissioner Act 1967 but the following examples were quoted by Richard Crossman, Leader of the House of Commons, when the Parliamentary Commissioner Bill was taken through Parliament in 1966:

'bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness'.

16 A fuller interpretation of maladministration was given in the Parliamentary Ombudsman's Annual Report 1993. Treasury Ministers endorsed the interpretation in November 1994, in evidence to the then Select Committee on the Parliamentary Health and Service Ombudsman. Further information can be found in Annex A of the Cabinet Office publication *The Ombudsman in*

*Your Files.* The Ombudsman's examples of maladministration are repeated here for ease of reference:

- rudeness (though that is a matter of degree)
- unwillingness to treat the complainant as a person with rights
- refusal to answer reasonable questions
- neglecting to inform a complainant on request of his or her rights or entitlements
- knowingly giving advice which is misleading or inadequate
- ignoring valid advice or overruling considerations which would produce an uncomfortable result for the overruler
- offering no redress or manifestly disproportionate redress
- showing bias, whether because of race or ethnic origin, sex, or any other grounds
- omission to notify those who thereby lose a right of appeal
- refusal to inform adequately of the right of appeal
- faulty procedures
- failure by management to monitor compliance with adequate procedures
- cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service
- partiality, and
- failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment.

17 Neither of the lists at paragraphs 15 and 16 is intended to provide a comprehensive definition of maladministration.

## **Basic Principles Redress for Maladministration**

### **Overview**

18 Important points covered in this section:

- an extra-statutory special payment cannot be considered where a statutory remedy is or was available
- there are seven basic principles to be considered when determining whether or not maladministration (also referred to as official error) has occurred
- all cases must be considered in detail and on their individual merits
- advice can be found on what to do when the customer has died
- deciding cases can be difficult but they have to be resolved and judgements made, sometimes a case has to be decided on a balance of probability
- consideration has to be given to deducting any overpayment or overprovision of child maintenance from any proposed special payment before the balance of the payment is made
- remember that particularly difficult cases should be referred to Commission Policy

## Statutory Remedies

19 An extra-statutory special payment cannot be considered where there is or has been any other statutory remedy available to the customer, whether or not that statutory remedy has been used.

## Seven basic principles

20 Where maladministration has occurred, seven basic principles should be followed when considering redress. These are that

- all mistakes are admitted and put right
- a sincere and meaningful apology is offered. Sometimes this can be a sufficient remedy.
- redress is fair and reasonable
- as far as possible, redress restores the customer—or in very exceptional circumstances a third party—to the position that he or she would have been in but for the official error
- due account is taken both of the need to provide a suitable remedy for the customer and the need to protect the public purse
- where it is possible to remedy an error by statutory means that option must be used rather than resorting to an extra-statutory or ex gratia payment.

## Official error

21 For the purposes of this guide, the action or inaction by the Commission leading to the problem caused for the customer is defined as 'official error'. The term encompasses any error occurring within any part of the Commission and, exceptionally, government departments (GDs), statutory bodies and contracted bodies when acting on behalf of the Commission. Mistakes made by GDs, statutory bodies and contracted bodies not acting on behalf of Commission will ordinarily be the responsibility of those Departments or bodies.

### *Official error defined*

22 Official error can be broadly defined as occurring when

- a decision maker makes a wholly unreasonable or clearly incorrect decision (see paragraphs 23 and 148 et seq)
- the requirements of the law applicable at the time were not followed (but see paragraph 23)
- incorrect or inadequate action was taken
- correct action ceased prematurely
- a valid application was overlooked or ignored
- the customer was misdirected (that is, the customer acted on an incorrect or inadequate direction or instruction to his or her detriment).

### ***When will official error not normally be accepted?***

23 Official error will not normally be accepted when

- a reasonable decision was given based on the facts available at the time but following receipt of further information, the decision maker decides to interpret them differently or the decision was overturned on appeal. The overturning of a decision by a decision maker or a higher tier of authority is a routine event clearly envisaged in legislation. It will not, therefore, normally give rise to a special payment unless the first decision was wholly unreasonable or clearly incorrect, in the light of evidence held at the time (see paragraph 148 et seq for descriptions of these terms); or the process was excessively and unnecessarily delayed (see paragraph 143 et seq)
- a decision was made on the understanding of the law at that time but it is later interpreted differently by a Child Support Commissioner or the Courts
- the customer was ignorant of the law, did not seek advice and delayed requesting a special payment. This could apply when legislation is amended or new provisions introduced, as such changes are usually publicised by the Commission
- if helpful but not mandatory procedures fail.
- specific advice or a recommendation given was factually correct in relation to a specific enquiry (but see paragraph 24 below)
- actions taken by officials were justified in the pursuit of establishing or verifying liability for child maintenance
- delays were caused by industrial action, whether within or outside the Commission (see paragraph 150).

### ***Information and advice***

24 Officials should ensure that customers are given

- full and accurate **information** (that is, general factual data which is not customer specific) and
- **general advice** (where appropriate) to enable them to make their own decisions eg to encourage and support parents in making their own maintenance arrangements.
- **specific advice** where it is appropriate to do so (for example, information tailored to a customer's individual circumstances and requirements, which may identify a number of options but does not indicate the official's view of the best course of action). The specific advice provided should be full and accurate to enable the customer to make his or her own decisions
- **recommendations** where the Commission has specified that it is appropriate to do so (for example, a statement to a customer suggesting his or her best course of action). Under such specific circumstances, the member of staff may provide his or her view (as an official of the Commission) of the best option for the customer. Care must be taken when providing specific advice or (where appropriate) a

recommendation, to ensure that the customer's personal circumstances are fully taken into account.

25 The circumstances in which information, advice or recommendations should be made can be found in relevant procedural guidance.

26 Under the Decision Making and Appeals (DMA) arrangements, customers are able to dispute a decision within one month of the decision being made, this does not apply to special payment decisions. Disputed decisions can be re-examined and any mistakes corrected without the case having to go through a formal appeal process. Where an appeal seems appropriate, it should be established whether the customer has used the disputes process before the case is considered further. If the disputes process has been used but a Commission error has not been corrected, the continued failure to rectify the mistake may constitute maladministration. This is especially so if the outcome of the disputes process misleads the claimant into believing that an appeal would not be successful.

### **Customer's own actions**

27 There may have been clear and unambiguous Commission error or, on the balance of probabilities, the Commission may accept that there has been Commission error. It will then be necessary to consider whether there has been any fault on the part of the customer or anyone acting on the customer's behalf. In this context, 'fault' refers to whether incorrect or inadequate action or inaction by the customer was a significant contributory factor to the error, either because

- it helped cause the error in the first place or
- it caused the error to continue for longer than necessary.

28 The Commission is not responsible for delays which result from a failure to co-operate by either the Non-Resident Parent (previously referred to as the Absent Parent) or the Parent With Care, providing the Commission has done all that is reasonable to obtain co-operation. Before coming to a decision, it should be established whether the Commission's maladministration led to the failure to co-operate. Nor is the Commission responsible for any unjustified delay by the customer in raising a complaint relating to maladministration or applying for a special payment. Such periods of unjustified delay would not attract payment of interest on any subsequent special payment for example.

### **Effect of a customer's actions**

29 If fault is considered to be a relevant factor, it could affect any special payment in one of two ways, depending upon the extent of the customer's contribution to the error. It could either

- remove the need to make a special payment altogether, for example when it is considered that it would have been reasonable for the

- customer to have acted promptly to counteract the effect of the Commission error (see paragraph 30 regarding excessive time); or
- reduce the amount of the special payment.

### ***Correction of an error relies upon information being provided by the customer***

30 A reduction in the amount of a special payment may be due when an error is discovered after a period of time but its correction relies on information being provided by the customer. If the customer was clearly asked to provide such information and, without good cause, failed to provide it for an excessive period of time, then such periods of contributory delay should be excluded from the calculation of the special payment.

### ***Deciding whether the customer acted reasonably in relation to their dealings with the Commission***

31 Each case should be considered on its own merits when deciding whether the customer acted reasonably in relation to their dealings with the Commission. The following factors should be taken into account before making such a decision:

- the customer's age and health
- the customer's knowledge of or ability to deal with such issues
- whether a reasonable person of the customer's age, health and knowledge would have acted as they did
- whether the customer gave false, misleading or incomplete information which the Commission could not have been expected reasonably to challenge
- the nature, standard, accuracy of the official information provided to the customer, either orally or in leaflets, letters, or forms and the ease with which such information could be understood
- the length of time before a customer acted, if there is no reasonable explanation for the delay. Where repeated delays are experienced because of customer action/inaction, consideration should be given to the aggregate effect.

### ***Deciding individual cases***

32 Deciding individual cases can be problematic because, for example

- there is often a long time between the date of the alleged error or misdirection, the date its effect becomes apparent and the date the request for a special payment is made
- there may be little, or no, written evidence available to support or contradict the customer's assertion that misdirection or error occurred, and
- the individual's assessment of financial loss may not seem reasonable.

Nevertheless, a fair and defensible decision must be reached using whatever evidence is available.

### ***Evidence to support the customer's assertions***

33 Documentary or incontrovertible proof of misdirection is not an essential requirement for the authorisation of a special payment. The fact that documents may have been routinely and correctly destroyed in the normal course of events or that an officer cannot remember the case, would not in itself justify a refusal to make a special payment.

### ***Judgement must be made on the plausibility of the allegation***

34 Each case must be decided on its own merits. When there is no, or little, clear and confirmed evidence of official misdirection or error, a judgement must be made on the plausibility of the allegation. In making such a judgement the following points should be considered:

- the likelihood that wrong advice could have been given in the particular situation - taking into account the experience of the staff involved and whether the particular statutory provisions/procedures were well known or new
- whether the customer's account of events seems reasonable
- the consistency of the allegations made
- whether the passage of time could have distorted the customer's recollection of events
- the level of knowledge the customer could reasonably be expected to have from their past contacts with the Commission
- whether there has been confusion rather than misdirection, for example, where a customer is involved in more than one maintenance application and misinterpreted advice intended for one application with another
- the fact that whilst an enquiry or question may be a routine transaction for the Commission, it could be more complicated for the customer.

### ***Balance of probabilities***

35 A decision on whether or not an official error occurred may ultimately depend on the balance of probabilities. It is **not** a case of giving the customer the benefit of any doubt. It is not necessary to prove a point beyond reasonable doubt. However a mere possibility is not sufficient. It is a matter of weighing the evidence and judging the most likely of any options. If something is more likely than not, it has been proved on the balance of probabilities. The decision must not be arbitrary, based on bias or prejudice and must be publicly defensible. If an error is accepted, the customer should be afforded redress which, as far as possible, restores him or her to the position he or she would have been in but for the error.

### ***Offsetting amounts against the overpayment or arrears of child maintenance***

36 Deducting a previous overpayment of child maintenance from a special payment should be considered if the PWC had been informed of the overpayment before the request for a special payment was made. Offsetting a special payment against child maintenance arrears should also be considered if the NRP had been informed of the arrears before the request for special payment was made. Deductions should not be made from consolatory payments.

### ***Alternative arrangements - need to consult Commission Policy***

37 If, exceptionally, alternative arrangements are proposed on a particular case, Commission Policy should be consulted without delay.

### **Death of customer**

38 In the event of the death of a person who has either submitted a request for a special payment because of Commission maladministration or in respect of whom the need to consider a special payment has been identified, action should be taken as follows.

### ***Decision made to award a special payment before the death of the customer***

39 If, prior to the death of the customer, it has been decided that a special payment should be made, payment should be issued to the person dealing with the deceased person's affairs.

### ***Next of kin or a third party submits a request for a special payment***

40 If the next of kin or a third party (for example a friend of the deceased person) submits a request for a special payment because

- he or she has suffered an actual financial loss
- that loss was incurred because he or she helped support the deceased person and
- such support was offered because maintenance to which the deceased person was entitled had not been paid because of maladministration

then redress should be offered in respect of the actual financial loss suffered by the next of kin or third party, rather than that suffered by the deceased person.

### ***Next of kin or a third party submits a request for a consolatory payment***

41 In addition, the next of kin or a third party (for example, a friend of a deceased person) may request a consolatory payment because of their personal suffering (rather than that suffered by the deceased person) as a result of Commission's maladministration. These cases should be referred to Commission Policy where consideration will be given to the individual

circumstances of each case and to any objective evidence that has been provided.

### ***Referral of cases to Commission Policy***

42 All other requests for redress on behalf of a deceased person and cases that cannot be resolved because they are complex should be referred to Commission Policy for consideration and advice.

## **Categories of Special Payments**

### **Overview**

43 It is essential to categorise special payments accurately for Commission accounting purposes. All special payments in respect of financial redress for maladministration should be considered under the following categories:

#### ***Extra-statutory***

- extra statutory payments (see paragraphs 45-57)

#### ***Ex gratia***

- actual financial loss (see paragraphs 58-133)
- delay (see paragraphs 134-164)
- consolatory payments
  - gross inconvenience resulting from persistent error (see paragraphs 172-182)
  - gross embarrassment, humiliation or unnecessary personal intrusion (see paragraphs 183-191) and
  - severe distress which has significantly impacted on a customer's physical or mental health (see paragraphs 192-206).

### **Exceptional cases not covered by specific instructions/guidance**

44 Exceptionally, cases may arise which provide a very strong case for sympathetic treatment but which are not specifically covered by the categories and the criteria described in this guide. Such cases should not be rejected automatically but referred to Commission Policy for consideration.

## **Extra-Statutory**

### **Overview**

45 A special payment must not be made where a statutory solution is available. In other words, where the possibility of error or delay has been anticipated and provision included within Child Support law to resolve the

case. A special payment will therefore not be made, where existing powers can be used to revise decisions on child maintenance.

## **Defective Legislation**

46 Where it was the intention of the policy to provide a solution, but the related law does not adequately cater for the circumstance, pending legislative change and with permission from HM Treasury, a special payment can be considered. Because this type of payment is outside the specific provisions of the law, it is made on an extra-statutory basis.

These payments are considered to be within the broad intention of the statute or statutory regulation, but go beyond a strict interpretation of its terms.

## **Cases authorised for consideration of an extra-statutory payment**

47 These scenarios, applicable to old rules cases only, explain the circumstances in which the Commission has authority to make extra-statutory payments.

## **Imposition of defective or invalid interim maintenance assessment (IMA) (extra-statutory payment)**

48 Since 16 February 1995, there has been provision under Child Support legislation to correct an IMA that is found to be defective. However, where a defective IMA was in place before that date it can only be corrected from 16 February 1995. In such cases the period during which defective IMA has to remain in place is known as an IMA gap. Although the IMA cannot be replaced for that period it cannot be enforced.

49 The Commission will consider making an extra-statutory payment in IMA gap cases providing

- the maintenance is due to be paid to the PWC and not the Secretary of State
- the NRP is complying or has complied with the maintenance assessment (either a Full Maintenance Assessment or an IMA) sufficient to have established a payment pattern or there are good reasons to believe he would have done so, if the Commission had taken steps to collect maintenance

50 Any special payment made is equivalent to the amount of child maintenance that would otherwise have been paid, less any payments (e.g. benefits or voluntary payments) received by the client that they would otherwise not have received. This ensures the client is restored to the position they would have been, but for the error.

**Note:** Compensation, in the form of interest, is also considered on amounts paid under these circumstances.

## **Delay in reviewing the NRP's liability for child maintenance has resulted in the NRP overpaying**

51 Delay in reviewing a maintenance assessment, where the NRP continues paying at the rate of the existing assessment, often leads to the NRP either overpaying or underpaying child support maintenance. This was envisaged in legislation and Parliament provided options for handling such situations.

52 Where such an over/underpayment occurs, the situation is usually corrected by adjusting future payments of child maintenance under regulation 10 of the Arrears, Interest and Adjustment of Maintenance Regulations 1992. This allows the NRP to either make good any underpayment or recoup any overpayment over a period of time.

53 Where the revised maintenance liability is too low, or reduced to nil, to effectively allow the NRP to recoup their overpayment in a realistic period of time, the NRP can be reimbursed in a lump sum the amount overpaid.

54 Cases where the overpayment has accrued on or after 4 September 1995 are covered by legislation under section 41B of the Child Support Act 1991 and are therefore not special payments.

55 However, if the overpayment covers a period prior to 4 September 1995, this predates the change in legislation. In this case, the NRP is refunded the amount overpaid, up to and including 3 September 1995, as a special payment. These payments are made on an extra-statutory basis and must be recorded as such.

56 Where either a statutory or extra-statutory payment as described at paragraphs 45 et seq is made, it is appropriate to consider an interest payment for delay to redress the customer's loss of use of the money. These interest payments for delay are classed as ex gratia special payments.

## **Cases not authorised for consideration of an extra-statutory payment**

57 Any new cases identified, where as a result of defective legislation, there is a detrimental impact on the client, must be referred to the relevant policy and operational sections for consideration. Commission Policy must also be involved in discussions at an early stage where such payments are being considered.

## **Ex Gratia - Actual Financial Loss**

### **Overview**

58 Actual financial loss considerations apply where maladministration (or official error) has resulted in a customer or third party incurring additional expense or a loss of child maintenance. Child maintenance can only be defined as 'lost' where the circumstances of the case are such that, due to maladministration, the child maintenance can **never** be recovered by the Commission and received by the customer. A decision has to be made on whether that maladministration or official error led to actual financial loss.

## **Definition**

59 Actual financial loss applies to cases where maladministration has directly caused the customer to incur additional expenditure that would not have been incurred otherwise, for example:

- in pursuit of their application for child support maintenance
- pursuing justified complaints of maladministration or compensation claims
- when failure by the Commission to transfer funds timeously results in bank charges, for example, late payment into a bank or building society account (see paragraph 64).

### ***Financial assistance provided to a customer, during a period when maintenance has been delayed or interrupted***

60 Expenses may also be incurred by a third party who provided financial assistance to a customer, during a period when child maintenance has been delayed or interrupted. In these circumstances, the majority of claims will be in respect of lost bank interest on savings or bank charges suffered as a result of withdrawing funds to support the customer.

### ***Distinguishing between financial loss and financial disappointment***

61 Financial loss must be distinguished from financial disappointment. For example, where the Commission has led a customer to expect payment of child maintenance:

- at a higher rate than the NRP is actually liable for, or
- on an earlier date than when payments are actually received and due for payment

In this instance, the customer has not lost anything financially but will have suffered a financial disappointment (see paragraph 79).

## **What can be treated as an actual financial loss?**

62 Considerations for actual financial loss may include the following:

### **Additional costs**

- letters, phone calls, e-mails, faxes, fares and other travel costs (see paragraph 63)
- bank charges and/or fees (see paragraph 64)
- professional fees (see paragraphs 66- 69)
- accrued mortgage interest (see paragraph 70)
- costs arising from failure to make timeous payments into bank/building society accounts (see paragraph 71)

### **Lost income**

- loss of earnings (see paragraph 73)
- loss of income on interest bearing accounts (see paragraph 74)

### **Other losses**

The above list is not exhaustive. Claims in respect of other losses will be received from time to time. They should be considered on their own merits on a case by case basis.

### ***Letters, phone calls, faxes, fares and other travel costs***

63 Where a customer incurs reasonable additional expenses in connection with the resolution of his or her complaint a special payment may be made to reimburse him or her for those additional costs. For example, if the customer's complaint was fully addressed but he or she continued to make unreasonable further representations a special payment would not be made for any further additional costs.

### ***Bank charges/fees***

64 When payment of child maintenance has been delayed due to Commission error, the customer may become overdrawn on a bank account or incur fees. In such cases, the special payment should be equivalent to either

- the interest payment calculated by the Commission for the delay (see paragraph 134 et seq) or
- the amount of interest and any fee that is charged by the bank

whichever is higher.

### ***Interest on credit cards***

65 Similarly, when payment of child maintenance has been delayed due to Commission error, the customer may use a credit card to secure funds. In such cases, the special payment should be equivalent to either

- the interest payment calculated by the Commission for the delay or
- the amount of interest that is charged by the credit card company

whichever is higher.

### ***Professional fees - circumstances when they can be met***

66 The reimbursement of reasonable professional fees is only considered where maladministration has occurred, the customer has incurred an actual financial loss in engaging in such services, and the engagement of such services was justified in the resolution of a child maintenance issue. Given the availability of free alternative remedies such as the Commission's formal complaints procedures, the Independent Case Examiner and the Parliamentary Ombudsman only very exceptional, complex cases should require a customer to engage professional legal services, such as a solicitor, for example. Each application for reimbursement of professional fees should be examined on its own merits and the decision should be made in the light of the circumstances of the case.

### ***Matters to consider***

67 When deciding whether a special payment in respect of professional fees should be made, consideration should be given to

- the circumstances which led to the engagement of professional services
- the complexity of the subject matter
- the experience of the customer in dealing with such matters
- the availability of official advice from other sources, such as through Citizens Advice Bureaux, or legal advice and services obtained under the Legal Aid scheme at no actual financial cost to the customer
- whether the customer should have been aware or should he or she have made themselves aware, of such advice.
- the **actual** financial loss incurred by the customer

### ***Could the matter have been resolved within a reasonable timescale, had the customer not sought professional assistance?***

68 In assessing whether a special payment is appropriate, it should be established whether the matter would have been resolved within a reasonable time-scale, had the customer not sought professional assistance. If the answer is 'no', then payment should be considered in respect of the cost of the fees incurred, providing such fees are reasonable. If the answer is 'yes', the criteria at paragraph 67 should be applied to the case.

### ***What, if any, actual financial costs has the customer incurred in engaging professional advice or assistance?***

69 In considering whether a special payment to reimburse professional fees is appropriate the customer must have incurred additional financial costs or loss to themselves. For example, where a customer engages legal representation through a "no-win/no-fee" arrangement or has obtained Legal Aid for those services they may not have incurred any actual financial costs to themselves and reimbursement should not be considered where no financial loss has been suffered by the customer.

### ***Accrued mortgage interest***

70 When payment of child maintenance has been delayed due to official maladministration or error, and not through protracted non-compliance of the other party to the maintenance application, the customer may have fallen behind with mortgage payments. If the lender charges additional interest or other costs as a result, a special payment may be considered. In such cases, the special payment should be equivalent to either

- the interest payment calculated by the Commission for the delay (see paragraph 134 et seq) or
- the amount of interest and any other costs that is charged by the lender

whichever is higher.

### ***Failure to make timeous payments into bank/building society accounts***

71 Where a customer's child maintenance is paid into a bank or building society account and the payment is not made timeously, or maintenance is stopped or reduced and the customer is not notified, the customer may incur bank charges. It is important to establish that the delay resulted from a Commission error, before considering reimbursement of such charges. If the Commission's error did result in the bank charges, reimbursement of the charges by way of special payment should be considered, to place the customer in the position he or she would have been in had the error not occurred. Such payments should be considered in addition to any payment for compensation for delay (see paragraph 134 et seq), as the payment for delay is for loss of use of funds, whereas the bank charges are an additional financial expense imposed by the customer's bank or building society.

### ***Circumstances when a payment will not be made***

72 Where the Commission has followed correct procedures and was not at fault, it would not normally be appropriate to make a special payment for the bank or building society charges incurred. It may be that such charges have been incurred for other reasons.

### **Examples:**

- the customer may not have given the Commission a sufficient or reasonable period of time to process an application for child maintenance or to act upon notice of a change of circumstances (for example, when requesting that payment of child maintenance be made into a new bank account)
- child maintenance may have been suspended correctly by the Commission (for example, the customer may have repeatedly failed to respond to correspondence or to supply information requested in connection with their child maintenance application)
- bank charges may have been incurred because of a pre-existing overdraft. However, if further charges are incurred directly because of Commission error, those further charges should be reimbursed
- the customer may provide incorrect account details or may change their account details without notifying the Commission

Care should be taken when considering whether a special payment is appropriate. Each case should be considered on its own merits.

### ***Loss of earnings***

73 Payments for loss of earnings will be very exceptional. Care must be taken to ensure any loss resulted from the maladministration and not some other cause. Refer any cases where this is considered justified to Commission Policy who may need to consult HM Treasury.

### ***Loss of income on interest bearing accounts***

74 Payments for delay will normally be calculated in the form of interest, to recognise the customer's loss of use of a sum of money (see paragraph 134 et seq). However, there may be occasions when it can be clearly demonstrated that money has been withdrawn from an interest bearing account because of a Commission error, for example, delay in paying child maintenance. In such cases, the amount paid should be the higher of the interest payment calculated by the Commission for the delay or the amount of interest actually 'lost' on the account.

### ***What to pay***

75 The emphasis should be on trying to restore the customer to the position that he or she would have been in had the error not occurred or had they not

proceeded on the basis of wrong advice. Any special payment made must not exceed the amount of child support maintenance that the customer would have received, plus compensation for sums actually spent in reliance on the wrong information.

### ***Actual financial loss***

76 In most cases of actual financial loss, the amounts involved will be simple to both identify and verify, for example, costs incurred by the customer for phone calls made to try and resolve an Agency error. However, some categories of claim may be more complicated. The following paragraphs give examples of situations where the loss may not be easily calculated.

### ***Evidence***

77 In considering the type and amount of evidence required to substantiate a financial cost or loss, regard should be had to the nature and size of the expense involved. Where expenses are small then a reasonable estimate may be appropriate (for example, routine telephone calls, postage costs, photocopying or travel costs). However, bank statements must be checked before making any payment in respect of bank charges. It is not necessary for the costs to have been incurred through dealing directly with the Commission. It is possible that they may have been incurred as a result of obtaining professional or similar advice, for example travelling to or from meetings with welfare rights advisors or solicitors, or contacting them by phone.

### ***Special payments based upon an actuarial calculation***

78 It will usually be possible to determine the amount of an actual financial loss. However, there will be occasions when, although there has been no **actual** financial loss, the customer states that the financial compensation payable under normal Commission arrangements does not adequately compensate for the effects of the error.

### ***Financial disappointment***

79 Special payments are not generally made for financial disappointment. Financial disappointment may arise when a customer is advised that the maintenance assessment/calculation will be at a higher rate than the NRP's actual liability for child maintenance, when a formal decision is made. Where a customer has waited longer than expected for payment of child maintenance they may also have suffered financial disappointment (rather than financial loss), as the Commission does not operate as a guaranteed maintenance scheme.

### ***Customer has altered his or her circumstances as a direct result of incorrect Commission advice***

80 If a customer alters his or her circumstances to his or her financial detriment as a direct result of incorrect Commission advice, a special payment should be considered for the resulting actual financial loss.

***Matters to consider before making a payment where a customer has altered his or her circumstances as a result of incorrect Commission advice***

81 It is necessary to consider whether it was, in all the circumstances, reasonable for the customer to have accepted in good faith and to have acted upon, the incorrect information provided. Depending upon the circumstances, there are a number of options, including:

- to make continuing payments if, for example, the customer has taken on a regular financial commitment or
- to make a lump-sum payment to clear any debt incurred as a result of such incorrect advice.

The circumstances of the case should be carefully examined to determine appropriate redress.

**Example**

Where a customer has entered into a financial arrangement on the strength of information provided by the Commission, for example, purchasing an item on credit, it may be appropriate to make either a continuing special payment or a lump sum payment to clear the debt.

**Loss of Child Maintenance**

82 Loss of child maintenance cannot be calculated where an appeal, variation or departure is outstanding on the case, where the outcome may have an impact on the period being considered for a special payment, including potential changes to the assessment/calculation(s).

83 If a Category A Interim Maintenance Assessment (IMA) is in place on an old rules case, or a Default Maintenance Decision (DMD) is in place on a new rules case, it must be converted and/or replaced by a Maintenance Assessment/Calculation before calculating the special payment.

***Payment Patterns***

84 Financial redress for the loss of opportunity to receive maintenance is normally considered where a payment pattern has been established. The Commission must be satisfied that on the balance of probabilities the NRP would have complied with the maintenance assessment/calculation at the time had it not been for maladministration.

85 A payment pattern may be established for a past or current period or both, depending on the circumstances of the case. For example, the establishment of a recent payment pattern only after considerable and protracted enforcement action may not necessarily indicate that, on the balance of probabilities, the NRP would have complied at the time the maladministration occurred, and all other relevant circumstances need to be considered.

86 A payment pattern should ideally be at least 26 weeks or six months payments at the full assessed rate, with additional payment of arrears where appropriate. However, in some exceptional cases a shorter payment pattern may be appropriate, where there may come a time when it can be decided that either a payment pattern has been established or it has not. If not, the reasons should be clearly documented on the appropriate form. It is recommended that a minimum of at least three months payments be recorded before a payment pattern is established.

**Examples of payment patterns:**

NRP paid a court order for maintenance regularly before the Commission became involved and has recently started to comply and is making payments of their assessed maintenance and an arrears agreement.

NRP has a nil assessment and a new assessment is calculated with a monetary value. Prior to the nil assessment the NRP paid regularly and has now begun to make payments at the new amount. In this situation the Commission could consider the previous payment pattern in conjunction with the current circumstances of the case.

***Delay in Setting Effective Date***

87 Delays on the part of the Commission can put back the start date from which child maintenance becomes due. This occurs when the Commission has delayed the contact associated the:

- issue of the MAF or contact that sets the application start date
- issue of the MEF or contact that first informs the NRP of the application

Note: The delay described often refers to the issue of the MEF or MAF; however, this also applies to the phone contact that sets the application start and effective date.

***88 Unreasonable delay in issuing a MAF or contact that sets the application start date.***

89 A delay in the issue of the MAF to the PWC (or contact that sets the application start date) puts back the point at which the application for child support maintenance can be made. This in turn puts back the effective date from which the non-resident parent's liability for child support maintenance

commences. The issue of a MAF should not therefore, be unreasonably delayed.

90 Since **1 April 1996** the Commission has accepted that if (without good cause) a MAF is not issued or contact made to set the application start date within a month of it being requested then redress should be considered.

In recognition of the unexpected demands on the Child Support Agency in its early days, **before 1 April 1996** the Commission has allowed:

- three months for the issue of a MAF where no court order was in place
- six months where a court order was in place

91 Although not legally required to do so, the Commission is willing to do this because this undue delay in turn delays its return and the commencement of action to establish any liability for child support maintenance that the non-resident parent may have.

92 The Commission recognises that unreasonable delay in these early stages can cause the PWC to miss the opportunity to obtain some child support maintenance that she might otherwise have received. In recognition of this the Commission will make good any loss caused by its failings by way of a special payment.

**Example 1: Unreasonable delay in issue of the MAF - application received from private client**

Mrs A requested a MAF on 12 May 2008. The Commission should have issued the MAF or contacted the PWC to complete the application by 11 June 2008, but without good reason did not do so until 9 July 2008 (28 days late).

The Agency received a completed MAF from Mrs A on 16 July 2008. No further action was required on the MAF and the NRP was contacted to notify him of the application on 21 July 2008, setting the effective date for the maintenance calculation.

It is reasonable to assume that had the PWC been contacted (or MAF issued) by 11 June 2008 (last day of the waiting period), the PWC would have provided the information required for the application and the NRP would have been contacted sooner.

The Agency took 5 days to contact the NRP therefore the earliest possible effective date would be 12 June 2008 (the date following the last day of the waiting period) plus 5 days = 17 June 2008. The period of loss runs from the earliest date the Agency could have set the effective date to the day before the actual effective date, 17 June 2008 to 21 July 2008 (35

days).

If the NRP's first liability was assessed to be £25 a week Mrs A could have expected to receive £125.00 ( $£25/7 = 3.5714 \times 35\text{days}$ ) from the NRP in the 35 days concerned. This amount would reduce to take account of any voluntary payments of child maintenance received by the PWC during this period (paragraph 193).

To establish if the potential loss was actually incurred, the Commission must be satisfied that on the balance of probabilities the NRP would have complied with the maintenance assessment at the time had it not been for maladministration.

Consideration would also be given to adding interest for loss of use of the sum.

93 If the NRP had made any payments, in respect of child maintenance during that period the PWC will only have lost the difference between the amount that she might have received from the NRP and the amount that she actually received from him. In those cases the special payment will be the amount actually lost.

94 Similarly, if the PWC was receiving any benefit that would have ceased or been reduced if the NRP paid child support maintenance then the special payment will be adjusted to make sure the PWC's position is properly restored to the position that it would have been but for the Commission's failing.

95 From **3 March 2003** a claim to benefit was automatically a claim to Child Support Maintenance, where children are included in the claim and there is a Non Resident Parent. This means that a delay in MAF issue will not occur for those clients who were in receipt of an income based benefit for applications made on or after 3 March 2003 until 13 July 2008.

96 From **14 July 2008** clients in receipt of a prescribed benefit are not required to apply to the Commission for Child Support Maintenance. Therefore any delay in issuing the MAF, or contacting the client to complete the MAF, may delay the effective date of the maintenance calculation.

**Example 2: Unreasonable delay in issue of the MAF - client in receipt of an income based benefit and application received prior to 3 March 2003**

Mrs B requested a MAF on 7 May 2001. The Commission should have issued the MAF or contacted the PWC to complete the application by 6 June 2001, but without good reason did not do so until 18 July 2001 (42

days late).

The Agency received a completed MAF from Mrs B on 23 July 2001. No further action was required on the MAF and the NRP was contacted to notify him of the application on 5 August 2001, setting the effective date for the maintenance assessment.

It is reasonable to assume that had the PWC been contacted (or MAF issued) by 6 June 2001 (last day of the waiting period), the PWC would have provided the information required for the application and the NRP would have been contacted sooner.

The Agency took 13 days to contact the NRP therefore the earliest possible effective date would be 7 June 2001 (the date following the last day of the waiting period) plus 13 days = 20 June 2001. The period of loss runs from the earliest date the Agency could have set the effective date to the day before the actual effective date, 20 June 2001 to 4 August 2001 (15 days).

If the NRP's first liability was assessed to be £35 a week a total sum of £75.00 ( $£35/7 = 3.5714 \times 15$  days) would have been due from the NRP in the 15 days concerned. As the PWC was in receipt of an income based benefit during the period of loss, she would have been able to keep £10.00 per week (this being the amount of disregard applicable at the time) before adjustment of benefit to take account of child maintenance payments. The potential financial loss incurred is therefore £21.43 ( $£10/7 = 1.4285 \times 15$  days).

To establish if the potential loss was actually incurred, the Commission must be satisfied that on the balance of probabilities the NRP would have complied with the maintenance assessment at the time had it not been for maladministration.

Consideration would also be given to adding interest for loss of use of the sum.

**Example 3: Unreasonable delay in issue of the MAF - client in receipt of an income based benefit and application received on or after 14 July 2008**

Mrs C requested a MAF on 28 October 2008. The Commission should have issued the MAF or contacted the PWC to complete the application by 27 November 2008, but without good reason did not do so until 18

December 2008 (21 days late).

The Agency received a completed MAF from Mrs C on 22 December 2008. No further action was required on the MAF and the NRP was contacted to notify him of the application on 6 January 2009, setting the effective date for the maintenance calculation.

It is reasonable to assume that had the PWC been contacted (or MAF issued) by 27 November 2008 (last day of the waiting period), the PWC would have provided the information required for the application and the NRP would have been contacted sooner.

The Agency took 15 days to contact the NRP therefore the earliest possible effective date would be 28 November 2008 (the date following the last day of the waiting period) plus 15 days = 12 December 2008. The period of loss runs from the earliest date the Agency could have set the effective date to the day before the actual effective date, 12 December 2008 to 5 January 2009 (25 days).

If the NRP's first liability was assessed to be £25 a week a total sum of £89.29 ( $£25/7 = 3.5714 \times 25$  days) would have been due from the NRP in the 25 days concerned. As the PWC was in receipt of an income based benefit during the period of loss, she would have been able to keep £20.00 per week (this being the amount of disregard applicable at the time) before adjustment of benefit to take account of child maintenance payments. The potential financial loss incurred is therefore £71.43 ( $£20/7 = 2.8571 \times 25$  days).

To establish if the potential loss was actually incurred, the Commission must be satisfied that on the balance of probabilities the NRP would have complied with the maintenance assessment at the time had it not been for maladministration (paragraph 210 et seq).

Consideration would also be given to adding interest for loss of use of the sum (paragraph 198 et seq).

### ***Unreasonable delay in the issue of a MEF or contact that first informs the NRP of the application***

97 A delay in contacting the NRP to inform them of the child maintenance application can put back the effective date from which the non-resident parent's liability for child support maintenance commences. The issue of a MEF or first contact should not therefore, be unreasonably delayed. Once the MAF is received from the PWC, or equivalent contact has set the application start date, the Commission needs to make checks of it before first contact with the NRP can be made. The time needed at this initial stage will depend on

whether further action is required and whether or not a court order for child maintenance is already in place.

98 Since **1 April 1996** the Commission has accepted that where no existing court order is in place for child maintenance and no further action is required on the MAF, a MEF should be sent to the NRP, or contact made to inform the NRP of the application, within a month of receipt of the MAF or setting the application start date (unless the NRP's whereabouts cannot be established).

99 The Commission has accepted that if in such cases (and without good reason) contact to inform the NRP of the application has not occurred within a month then redress should be considered.

100 In the same way, where either a court order for child maintenance is already in place or further action is required on the MAF, a MEF should be sent to the NRP, or contact made to inform the NRP of the application within two months of receipt of the MAF. See paragraph 116 for the overall time allowed for assessing court order cases.

101 Where both a court order for child maintenance is already in place and further action is required on the MAF, a MEF should be sent to the NRP within four months of receipt of the MAF.

102 In recognition of the unexpected demands on its early days, **before 1 April 1996** the Child Support Agency allowed:

- three months for the issue of a MEF where no court order was in place
- six months where a court order was in place

If the NRP would have qualified for a **deferred effective date**, a further eight weeks should be added to the waiting period.

**Example 4: Unreasonable delay in the issue of a MEF to the NRP – client is private client**

The Agency received a MAF from Mrs D on 28 October 2007. There was no existing court order for child maintenance and no further action was required on the MAF.

The Agency should have sent a MEF or contacted the NRP to inform him of the application within a month that is by 27 November 2007, but did not issue one until 19 December 2008, setting the effective date for the maintenance calculation.

It is reasonable to assume that had the MEF been issued earlier, the NRP would have become liable for child support maintenance from an earlier date. The period of loss runs from the earliest date the Agency could have

set the effective date, 28 November 2007, to the day before the actual effective date, 18 December 2008 (21 days).

If the NRP's first liability was assessed to be £30 a week a total sum of £90.00 ( $£30/7 = 4.2857 \times 21$  days) would have been due from the NRP in the 21 days concerned. This amount would reduce to take account of any voluntary payments of child maintenance received by the PWC during this period.

To establish if the potential loss was actually incurred, the Commission must be satisfied that on the balance of probabilities the NRP would have complied with the maintenance assessment at the time had it not been for maladministration.

Consideration would also be given to adding interest for loss of use of the sum.

103 If the NRP had made any payments, in respect of child maintenance during that period the PWC will only have lost the difference between the amount that she might have received from the NRP and the amount that she actually received from him. In those cases the special payment will be the amount actually lost.

104 In some cases the PWC will have been receiving a benefit that would have ceased or been reduced if the NRP paid child support maintenance. In these cases the PWC's potential loss has been lessened to some extent (sometimes removed altogether) by the Secretary of State awarding her more benefit than would have been the case but for the Agency's maladministration. Any special payment will be reduced to recover the extra benefit that the Secretary of State has paid. That is to make sure that the PWC's position is properly restored to the position that it would have been but for the Commission's failing.

**Example 5: Unreasonable delay in issue of the MEF- client in receipt of an income based benefit**

The Agency received a completed MAF from Mrs E on 30 October 2008. There was no existing court order for child maintenance and no further action was required on the MAF.

The Agency should have sent a MEF or contacted the NRP to inform him of the application within a month that is by 29 November 2008, but did not issue one until 10 December 2008, setting the effective date for the maintenance calculation.

It is reasonable to assume that had the MEF been issued earlier, the NRP would have become liable for child support maintenance from an earlier date. The period of loss runs from the earliest date the Agency could have set the effective date, 30 November 2008, to the day before the actual effective date, 9 December 2008 (10 days).

If the NRP's first liability was assessed to be £15 a week a total sum of £21.43 ( $\text{£}15/7 = 2.1428 \times 10 \text{ days}$ ) would have been due from the NRP in the 10 days concerned.

As the PWC was in receipt of an income based benefit during the period of loss, she would have been able to keep the full amount of £15.00 per week. This is because an amount of up to £20.00 is disregarded before any adjustment to benefit. In this scenario the client has therefore not suffered an actual financial loss.

105 To ensure the client is properly restored to the position they would have been any benefit disregards must relate to the amounts applicable at the time. Prior to 27 October 2008, the PWC was allowed to keep up to £10.00 before any adjustment to benefit. If the period of loss bridges this date then adjustments must be made to take account of the different disregards applicable pre and post 27 October 2008.

***Delay in assessing child support maintenance - arrears due when first maintenance assessment or calculation made***

106 Under Child Support legislation, when a maintenance assessment or calculation is made the Commission has to determine when the NRP's liability begins. In some cases that date may already have passed and so unless the NRP has been making payments to the PWC pending the assessment, arrears may well have arisen. This period is known as the 'Interim Payment Period'. The NRP is asked to clear those arrears in a lump sum or, if he is unable to do so, through regular payments along with his regular maintenance. That is a situation clearly envisaged by Parliament and, although it does mean the PWC having to wait for the money due to her, a special payment cannot be made in the absence of maladministration.

107 An advance payment of child support maintenance may be appropriate where clear Commission error or delay has caused the accrual of child support maintenance arrears.

108 Six criteria must be met before an advanced payment of maintenance can be considered:

1. the arrears owed to the PWC for the period of maladministration must be over £100, and the NRP should be making payment of regular maintenance at the current liable amount and has made and is paying

an arrears agreement, which will take more than 26 weeks to pay the arrears

2. there must be clear evidence that Commission maladministration caused the arrears to accrue
3. the Commission must be satisfied that on the balance of probabilities the NRP would have complied with the maintenance assessment had it not been for maladministration.
4. the PWC must have shown an interest in the progression of their case during the period of the delay
5. allowance must be made for normal processing times involved in carrying out a new assessment or change of circumstances. Only time lapsed beyond this period will be considered as delay for payment purposes.
6. the PWC must sign a declaration slip agreeing to the Commission's retention of arrears payments or to refund any relevant direct payments or payments which are appropriate to recover

109 When an advance payment of maintenance is made, consideration is also given to adding interest for the loss of use of the child maintenance payments. For more information on the Advance Payment of Maintenance scheme see the Commission's Advanced Payment of Maintenance Guide.

### ***Court order for child maintenance incorrectly superseded where the Commission has no jurisdiction<sup>2</sup>***

110 When the Commission makes a maintenance assessment or calculation in court order cases that causes the automatic cessation of any existing court order for child maintenance. So, where the Commission incorrectly makes a maintenance assessment or calculation even though it has no jurisdiction the PWC may lose child maintenance for a period until such time as the court accepts a reapplication. Should this occur, redress should compensate the customer for any financial loss, after taking into account any payments, in respect of child maintenance, made by the NRP and any benefits which would not have been paid had the court order continued in force throughout.

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<sup>2</sup> **Note:** This does not include cases where the Child Support Agency has made a defective Interim Maintenance Assessment (IMA) where there is an existing court order and the case was otherwise within jurisdiction. Those cases should be dealt with under paragraph 197 below.

111 Any special payment would not normally exceed the amount prescribed by the court, unless the PWC provides sufficient evidence that a higher amount would have been awarded but for the Commission's intervention.

***Court Order cases - delay in assessment of liability resulting in loss of child support maintenance***

112 Since **13 March 1997** it has been possible to consider a special payment where a court order was in force for payment of child maintenance and the Commission delayed calculation of the initial assessment/calculation.

**Note:** The application and court order must be in respect of the same PWC, NRP and qualifying child(ren).

113 Where an application is received from a PWC who is in receipt of an income based benefit and at the time of application, a court order for child maintenance is already in place, the effective date of liability for child support maintenance is two days after the date that the assessment is completed. In these cases, any unreasonable delay in the maintenance process will put back the effective date of the maintenance assessment or calculation and may lead to:

- a loss of opportunity to receive maintenance
- causing the NRP to pay more than he might otherwise have been required to do.

114 The Commission did not have jurisdiction for old rules cases where a court order existed and the application was made by a private client before A-Day (3 March 2003). However, if the court was unable to enforce or vary the order, an application could be accepted, the effective date of which is two days following calculation of the assessment.

115 For new rules cases, if a court order is in place, the Commission can accept applications from private clients received on or after 3 March 2003. In these cases, the effective date is set two months and two days from the date of application and is not affected by any delay in calculating the NRP's liability.

116 For applications received on or after 1 April 1999 where a court order is in place, the Commission is allowed 20 weeks to make an assessment/calculation. The 20 weeks is counted from the date in which the PWC first applies (or issue of the MAF). It anticipates that barring delays or non-co-operation of the PWC or NRP most cases will be assessed within that time. Where this is exceeded and the Commission accepts that the delay in assessing the case was due to its failings, a special payment will be considered.

117 In 1996/97 and 1997/98, 26 weeks were allowed for the assessment. The time allowed reduced to:

- 22 weeks for 1998/99
- 20 weeks from 1999/2000 onwards.

118 Any special payment is paid at a rate equivalent to the difference between the level of the court order and the maintenance assessment or calculation made by the Commission. If the maintenance assessment or calculation would have been:

- higher than the court order, a special payment can be made to the PWC in recognition of the lost opportunity to receive higher payments of child support
- lower than the court order, a special payment may be made to the NRP - providing evidence shows that he was complying with the court order. This is in recognition that he lost the opportunity to reduce his liability. In both cases payment is subject to adjustment to take into account any benefits that would not have been paid had the NRP's liability been assessed sooner.

119 In both cases payment is subject to adjustment to take into account any benefits that would not have been paid had the NRP's liability been assessed sooner.

**Example 5: Court order case where delay in assessing the NRP's liability resulted in loss of child support maintenance**

Ms F was issued with a MAF on 4 March 2002. The completed MAF, in respect of Ms F, who was in receipt of a prescribed benefit, was received by the Commission on 13 March 2002. Ms F gave details of an existing court order for child maintenance under which Mr X (the NRP) was paying £15 a week. No further action was required on the MAF.

The Commission sent a MEF to the NRP on 26 March 2002, which he promptly returned confirming he was the father of Ms F's child and the court order for £15 a week which he said he was paying.

The Commission failed to act timeously on the application and did not make an assessment until 2 December 2002. Mr X was then found to be liable for child support maintenance of £38 a week from 4 December 2002 and the court order was superseded from that date.

**Impact of error**

But for Commission error Ms F could have expected the Commission to make that assessment by 22 July 2002. The court order would then have been replaced by a maintenance assessment from 24 July 2002 rather than 4 December 2002.

Mr X would have then been required to pay an extra £23 a week from 24 July 2002. Ms F lost the opportunity to receive that from Mr X and the Commission will make good that loss. A special payment is made

- from 24 July 2002 to 3 December 2002 at £23 a week
- less any benefits that the Secretary of State paid to the PWC in that period that would not have been paid if child support maintenance of £38 a week had been in payment at the time.

Consideration would be given to adding interest for the loss of use of this sum.

### ***Delays affecting Multiple Assessment Unit Cases***

120 Original child support legislation made provisions for the assessable income of an NRP to be apportioned between the assessment units when more than one application for child support had been made. However, where there had not been an assessment already made there was a problem in establishing the effective date of any subsequent assessment(s) as the maintenance periods were subject to MAPS reg 33(6) which stated that an assessment had to be in force.

121 On 5 August 1996, legislation (MAPS reg 33(6)) was amended which allowed multiple applications to be calculated accurately with a correct apportionment of the NRP's assessable income, the effective date being seven days from notification of the assessment. This change is not retrospective.

### ***First application received before 5 August 1996***

122 On the first application, a number of PWC's suffered financial loss because of the wording of the original legislation. This is where the first application was received before 5 August 1996 and the subsequent application was received before an assessment had been calculated.

123 Where maladministration has been identified, it must be established if the first application was received on or after 5 August 1996 and the order that the assessments were calculated.

124 There are four common types of cases where due to the defective legislation the PWC may qualify for a special payment if the conditions are met. Each case depends on the individual circumstances of the case and must be judged on its own merits.

Note: The criteria are stipulated in the Commission's special payment procedures.

***First application received on or after 5 August 1996***

125 Where there has been Commission delay in processing the second application, a notional calculation date is used to establish the date that the new assessment would have been made, had there not been Commission delay in dealing with the application. The notional date must take account of the relevant waiting periods at Annex B.

126 The notional effective date of the new application is the first day of the maintenance period of the first assessed AU, in the seven days following notification of the MA for the subsequent assessed AU.

127 The period of delay is counted from the date of the notional effective date up to the day before the actual effective date of the first correct FMA of the second AU. The weekly rate of the assessment is used to calculate the financial loss. If the client received benefits during the period of delay, that would otherwise not have been made, these must be deducted from the calculated financial loss.

**Example 6:**

PWC1's assessment was calculated on 10/7/99 with an effective date of 7/05/99 (Friday). MAF received from PWC2 on 22/02/00 and MEF issued on 9/06/00. PWC2's FMA was calculated on 20/03/01 with an effective date of 23/03/01 at £25.00 per week

**Calculation**

The financial loss caused by the delay in calculating PWC2's assessment would be calculated as follows:

22/02/00 (date of MAF receipt) + 20weeks (standard processing period) gives the date 11/07/00. Aligning PWC2's effective date with PWC1's effective date (Friday) gives the date 21/07/00. The delay period to consider for financial loss will therefore be from 21/07/00 to 23/03/01 which is 35 weeks

35 weeks x £25 = £875.00

PWC2 would be paid £875.00 for financial loss

### ***Delay or error in enforcement of child support maintenance liability***

128 A special payment can be considered where a client has lost the opportunity to obtain child support maintenance because the Commission has delayed enforcement action when

- there was a reasonable expectation of collecting maintenance and
- when action is finally taken, the NRP has undergone a change of circumstances, is no longer able to pay maintenance and/or arrears or maintenance and the maintenance and arrears can never be recovered by the Commission and paid to the PWC.

129 The special payment is calculated by applying the maintenance assessment/calculation (or the difference between the court order and the maintenance assessment/calculation where paragraphs 184-186 apply) that would have applied, based on the best evidence available to the number of weeks/months falling within the period of lost child maintenance, less the waiting period.

130 Account is taken of any voluntary maintenance paid by the NRP or benefit payments made in this period to which the PWC would not have been entitled had a maintenance assessment/calculation been in force.

### ***Notional Old Scheme Maintenance Assessments***

131 The Commission will consider making a special payment to redress financial loss where a PWC applied to the Commission prior to February 2003, and should have received an old scheme maintenance assessment, but as a result of Commission maladministration, has instead received a new scheme maintenance calculation.

132 The PWC may have suffered a financial loss from the delay in setting the effective date, if:

- A financial loss has occurred, because the parent with care was not receiving Income Support or was receiving a lower rate of Income Support than the maintenance calculation during the relevant period.
- The loss arose as a result of Commission mistakes or delays (as opposed to delays in tracing the non resident parent, or unwillingness to co-operate, or other factors outside of the Commission's control).
- The loss spans A-day, that is the effective date of liability should have been before 03 March 2003, and,
- The parent with care asks the Commission to establish whether a higher assessment would have been received under the old scheme than under the new scheme.

133 The Commission will consider making a notional assessment to determine what the old scheme liability would have been if all of the above criteria are met. The Commission will only consider a special payment if requested, and will not pro-actively identify such cases.

## **Ex Gratia Special Payments to Compensate for Unreasonable or Exceptional Delay**

### **Overview**

#### ***What is the legal position?***

134 There is no comprehensive entitlement in law to interest for a period during which individuals or bodies may have been denied money to which they are entitled.

#### ***What about unreasonable or exceptional delay?***

135 Delay is among the examples of maladministration quoted during the passage of legislation relating to the Parliamentary Ombudsman and this section explains when the Commission will provide redress for unreasonable or exceptional delay.

#### ***How does the Commission compensate for delay?***

136 Where the arrears of child support maintenance concerned are at least £100 compensation for delay is considered. It is generally calculated as if it was an interest payment and, in line with HM Treasury guidance, is normally calculated on the basis of simple interest. Compound interest is however used if the delay has been for a very long period. The interest rate used is currently the bank of England base rate. Prior to 1 January 2008 the interest rate used was based on the average of the base-lending rate applied by the Bank of Scotland, Barclays Bank, HSBC Bank, Lloyds TSB Bank, National Westminster Bank and The Royal Bank of Scotland<sup>3</sup>. However, payment for delay will not be made where any compensation calculated is less than £10. In the vast majority of cases this approach provides reasonable compensation for loss of value or loss of use of the funds.

#### ***What if the person has incurred greater costs than those generally provided for?***

137 Where the customer has been forced, as a result of the maladministration, to borrow, either by loan or overdraft, a different approach may be appropriate. These are cases of additional expenditure that may be greater than the interest due under our normal formula. If that is the case, it

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<sup>3</sup> The formula is contained in the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998 and is used by HMRC when making tax repayments. HMT suggests Departments should consider using this in its guide to government accounting: *Managing Public Money* Annex 4.14 paragraph A.4.14.11

might be appropriate to reimburse the actual interest paid instead of using the Average Retail Shares and Deposits rate.

### ***What does the Commission take into account?***

138 In considering compensation for delay, the Commission takes into account any relevant factors including:

- the need to allow for normal delay - the span of time which normally elapses because of the administrative procedures properly involved in dealing with the matter. This does not mean that compensation is appropriate simply because this period has been exceeded - the test is whether the delay is exceptional or unreasonable
- any contribution to the delay by the customer's own conduct - his or her actions or inaction - which may be a material factor, and
- the degree to which the customer can be considered to have suffered financially as a result of the delay.

**Note:** As stated above, an interest payment for delay will not be made where the arrears of the child support maintenance concerned is less than £100 or any compensation calculated is less than £10.

### **Details of the scheme**

#### ***Allowing reasonable time for the proper processing of claims and applications***

139 All dealings with the Commission take time, whether or not errors occur, as officials are required to make sure that they have sufficient information to determine the NRP's liability for child maintenance. If they have insufficient information, any further details must be gathered before the NRP's liability for child maintenance can be established. Due to the different nature of individual circumstances, the time needed for this proper process varies from case to case. So, although such delays may understandably be frustrating for the customer they are not, of themselves, unreasonable and do not automatically lead to interest being paid.

#### ***Claims clearance targets***

140 As an indicator of the anticipated timescales likely to be involved in establishing entitlement to child maintenance the Commission uses internal operational clearance targets. These targets are **indicators** of what should normally be achieved, although they are **not guarantees**.

Delays must be unreasonable and exceptional before redress can be considered

141 In the majority of cases, the Commission should process applications within the timescales set out in the appropriate targets. However, some cases

will legitimately take longer to process than others because of the complex nature of the case and the degree of work involved. Therefore:

- failure to process an application within the clearance target will **not**, in itself, give rise to a special payment
- a special payment for compensation for delay will **only** be considered when
  - unreasonable and exceptional delay has occurred **and**
  - maladministration has contributed significantly to that delay.

### ***Waiting Periods***

142 To help officials decide promptly whether unreasonable or exceptional delay has occurred, objective **waiting periods** have been produced for use as a measure. Where it is accepted that payments are accepted as having been unreasonably and exceptionally delayed due to official error, a special compensatory payment will be considered. This is in recognition of the loss of the use of a sum of money that the customer would have enjoyed but for that delay.

A list of waiting periods can be found in Annex B.

### ***Delays that are not regarded as unreasonable or exceptional***

#### ***Decisions overturned on revision or supersession, or appeal***

143 Parliament has laid down that decisions relating to child support should be determined by the Commission and that those decisions should be subject to appeal to an independent tribunal or higher tier such as a Child Support Commissioner. It follows that Parliament clearly envisaged some decisions being open to legitimate debate and provided a degree of independent decision making to resolve such issues. The higher tiers of adjudication can occasionally have fresh information given to them that was not available at the time that the original decision was made, can take oral evidence from the parties involved or may take a different view of the facts. As a result they may form a different judgement on how the NRP's liability for child maintenance has been decided. That does not of itself mean that the original decision was unreasonable.

147 The overturning of decisions by higher tiers was clearly envisaged by Parliament. However, no provision was made for interest to be paid in such cases or for the reimbursement of legal costs and expenses even though such processes would inevitably delay the point at which liability for child maintenance was settled and some additional costs would sometimes be involved. We would not therefore in normal circumstances pay any interest or meet any costs involved when a decision is overturned on appeal.

148 There is, however, an exception to this general policy. Whenever the Commission accepts that maladministration has occurred, the general principle that we adopt is to provide redress which is fair and reasonable in

the light of all the facts and circumstances of the case. On that basis, where the original decision was **wholly unreasonable** or clearly incorrect based on the evidence available at the time, the Commission will accept that the overturning of the decision was in correction of maladministration. In such cases there should have been no need to go through an appeals process and the delays involved should have been avoided. Where this applies the Commission will consider making a special payment for the delay in payment being made and will meet any additional costs that were reasonably incurred in getting the matter corrected.

### ***What is a 'wholly unreasonable' or 'clearly incorrect' decision on an application?***

149 The position that is to be adopted is similar to that used in Judicial Review. To be regarded as wholly unreasonable, it is not sufficient for the decision to be one that another person would not have made.

As Lord Hailsham observed:

**'Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'**

Lord Diplock expanded on that principle by saying that to be **'wholly unreasonable'** the decision must be:

**'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'**

A decision may be regarded as 'clearly incorrect' if it is self-evident that it is wrong. Other accidental or 'slip of the pen' errors that might have adversely affected the customer could be considered under this category.

### ***Cases delayed due to industrial action***

150 In the absence of specific guidance from HM Treasury, compensation for delays caused by industrial action, whether within or outside the Commission, should not be paid: the Commission has been prevented from achieving the normal standard of effective administration by circumstances beyond its control. This does not preclude the payment of financial redress for **other** reasons coincident with the industrial action.

### ***Areas where unreasonable and exceptional delay may occur***

151 Consideration can be given to special payments following unreasonable and exceptional delay in the assessment and review of child support

maintenance. Whenever a payment is to be considered under this category, the first criterion that must be satisfied is whether the unreasonable and exceptional delay amounted to or resulted from, maladministration.

### ***Two types of maladministration***

152 Maladministration in the context of delay will fall into two types - where either:

- an administrative error has prevented a payment being made or has prevented a correct payment being made; or
- the actual delay constitutes the maladministration (that is, all relevant information was available but the Commission failed to act upon it).

### **Maladministration must contribute significantly to the time taken**

153 In deciding whether to award a special payment for delay we must take into account the degree to which any maladministration was involved. If this was not significant (see paragraph 154) then redress is not appropriate.

### ***Where the waiting period is breached has a significant element been caused by maladministration?***

154 As indicated in paragraph 141, where the waiting period is breached, it is necessary to assess whether maladministration has added **significantly** to the delay experienced. The term 'significant' in this context should generally be interpreted as being

- when the period (or aggregated periods) of maladministration contributed to **at least one third of the time taken to process the application.**

However, each case should be considered on its own merits.

155 The period over which a special payment for delay is calculated will not include the period covered by the waiting period. When a case has not taken longer than the waiting period, a payment for delay will not normally be considered. This is in recognition of the fact that all applications take time to process and that the delay encountered was neither unreasonable nor exceptional.

### ***Start of waiting period***

156 For the purposes of calculating the special payment, the waiting period will start from either:

- the date of request for special payment or first contact or
- the date of child maintenance entitlement

whichever is the later.

## **Calculating the special payment**

157 Where a special payment for delay is to be calculated, the method of calculation is determined by the period of the child maintenance arrears.

### ***Method 1- simple interest***

158 Special payments are normally calculated as simple interest using the rate described in paragraph 136. In these cases the arrears are allocated to the tax years in which they accrued and interest is calculated separately from the start of the arrears period and then for each subsequent tax year, to the date arrears were paid. See Annex C for an example of the simple interest calculation and Annex D for the interest rates.

### ***Method 2 - delay of 10 years or more - compound interest***

159 In very exceptional cases, where delays of 10 years or more are involved, any special payment is calculated as compound interest.

### ***Request from customer for a special payment not required***

160 It is not always necessary for the customer to request a consolatory payment or financial redress, nor to state that a loss has occurred, for the consideration of a special payment to be undertaken. As officials may hold details of the circumstances of the maladministration or delay and how this has affected child maintenance due to the customer, a special payment for delay may be considered in such circumstances.

### ***Failure to consider a special payment: 'compensation on compensation'***

161 A failure to consider a special payment automatically when arrears are paid to correct the effects of maladministration can be in itself an official error. The value of a special payment is eroded if unreasonably delayed and when this happens the special payment should be calculated in two stages:

- the payment for delay that should have been made as soon as possible after the arrears have been issued and
- a further sum to compensate the customer for the delay in making the first special payment should be calculated on the first compensation payment, without applying any waiting period up to the date that this second further sum is actually paid. For this stage of the calculation, the date of error will be the date that the arrears of child maintenance were paid.

### ***Compensation for loss of use of child support maintenance***

162 Compensation for the loss of use of child support maintenance can be considered on top of certain ex gratia and extra statutory payments made to

provide redress. The compensation takes the form of interest - see paragraph 134 et seq. Examples of situations where interest may be added are:

- delay in setting the effective date
- delay in assessing or calculating child maintenance (court order cases)
- delay leading to lump sum payment of advance maintenance
- delay in reviewing the assessment/calculation leading to an overpayment of child maintenance which cannot be recouped by the imposition of regulation 10

163 Interest is not considered in cases where a delay in review has caused an overpayment of child support maintenance by the NRP which is recouped by payments under regulation 10 of the Arrears, Interest and Adjustment of Maintenance Regulations 1992, or a reduction in outstanding arrears. Parliament envisaged such situations when passing legislation and made no provision for the NRP or PWC to pay interest on the sums overpaid or underpaid.

164 In all Commission cases of compensation in the form of interest, the customer has already had to wait a period of time before the special payment award begins. In view of this waiting period, interest is calculated from the period that the special payment award covers up to the time that the special payment is made.

## **Ex Gratia - Consolatory Payments**

### **Overview**

165 A consolatory special payment may be considered in very exceptional circumstances, where maladministration has had a direct adverse effect on the life of the customer or, much more exceptionally, on the life of another person, for example the customer's spouse or another family member. For example, where official error has resulted in

- gross inconvenience resulting from persistent error (see paragraphs 172-182)
- gross embarrassment, humiliation or unnecessary personal intrusion (see paragraphs 183-191)
- severe distress which has significantly impacted on a customer's physical or mental health (see paragraphs 192-206).

167 The customer does not have to demonstrate that he or she suffered any financial loss and the special payment should be considered regardless of whether or not any other form of redress payment has been made.

168 It should be remembered that all dealings with the Commission, regardless of whether or not errors occur, do take time. Complying with the law can be frustrating or inconvenient and sometimes stressful. It is also

natural for customers to feel annoyed, angry or upset at any mistake, even a relatively trivial mistake. But, regrettably, mistakes do happen.

**169 This background inconvenience and frustration is not the context in which the Commission would normally consider a consolatory payment.** Nevertheless, in very exceptional circumstances a consolatory payment may be appropriate.

170 A consolatory payment will not be appropriate if the actions of the Commission were reasonable and therefore do not constitute maladministration, given

- the circumstances of the case and
- the processes officials must necessarily undertake to establish or verify the NRP's liability for child support maintenance.

171 Any consolatory special payment is to acknowledge and apologise for the way that we have treated the person. These payments, which are not intended to put a value on the distress suffered, will usually range from £25 to £500 but bigger payments may be made in appropriate circumstances. In extreme cases a much higher payment may be considered but is unlikely to exceed £2,000. Where it is considered that consolatory payments that would in total exceed £2,000 the special payment decision should be authorised by the Special Payments Team.

## **Gross inconvenience resulting from persistent error**

### ***Overview***

172 A consolatory payment under this category is intended to cover situations where the errors made were so persistent and over such a protracted period of time as to cause the customer gross inconvenience in the pursuit of child support maintenance or pursuing a justified complaint about child maintenance matters. It is not intended that a payment should be made for general inconvenience arising from normal dealings with the Commission, even when errors occur. These payments are exceptional and are intended to cover the more serious cases.

### ***What is gross inconvenience?***

173 It is difficult to give examples of specific situations that would give rise to payment under this category. Each case should be considered on its own merits. However, as a guide, it would be expected that the customer would have experienced a combination of some of the following:

- very frequent and unnecessary disruptions to payments as a result of maladministration
- repetitive loss of information by the Commission
- Unwarranted repetitive requests for the same information.

- excessive use of customer's time (where there is no actual financial loss - as this comes within its own separate category)
- gross mishandling of complaints (sometimes referred to as 'botheration').

**Note:** This list is not exhaustive but the examples above are the most significant.

## **Gross inconvenience - factors to be taken into account**

### ***Has there been persistent error? If so, how serious were the errors?***

174 Whether errors can be regarded as persistent as in paragraph 172, depends upon the regularity of the errors and the individual circumstances of the case.

### ***How long have the errors persisted?***

175 Whether the circumstances constitute persistent error may depend on the severity of the impact of the errors. Therefore there is a need to look at the overall circumstances of the case before deciding whether the errors have persisted for a sufficiently long period to warrant consideration of a consolatory payment.

#### **Examples:**

Individual errors in 1996/1999/2002 might be regarded as regular but not persistent.

Repeated failure to deal with correspondence fully.

Cases may combine more than one issue

### ***In cases of delay, has there been contact from the customer?***

176 If a customer regularly contacts the Commission to progress an issue and the Commission fails to act upon that contact to progress the matter, the resulting delay may be considered as persistent error.

Full regard should be given to the individual circumstances of each case when deciding if there has been persistent error.

### ***What is the impact of the error?***

177 The impact of errors can differ in its severity. For example, failure to reply fully to a query may not have as severe an impact as the failure to make payment of child maintenance timeously.

***Taking into account the severity of impact when deciding on how much to award***

178 The severity of the impact should also be taken into account when deciding upon the scale of the award.

***Relationship of severity of impact of the errors to level of their persistency***

179 The greater the severity of the impact of error on a customer's life, the less persistent the error needs to have been and/or the shorter a period over which error occurred is required before a consolatory payment would be considered.

***Has the customer contributed to the situation?***

180 There may be situations where a customer has contributed to the problems on a case by a lack of co-operation. Take this into account when assessing the size of the award.

***How much should be paid?***

181 If the circumstances of an individual case indicate that there has been persistent error it will be necessary to decide on the scale of the award. The factors to be considered are:

- the size of awards in similar types of cases (to ensure, as far as possible, equity of treatment)
- the persistence and longevity of errors (to recognise the effects on the particular case)
- the seriousness of the impact of the errors (to judge the case on its individual merits).

***Gross inconvenience - delegated limit***

182 A consolatory payment for gross inconvenience will normally be in the range of £25 to £250 and can be made without referral to the Special Payments Team. The vast majority of payments would be expected to be within this range. However, each case should be decided on its own merits. In very exceptional cases a higher award of up to £500 may be appropriate. Any proposal to exceed the delegated limit of £500 must be referred to the Special Payments Team for consideration.

***Gross embarrassment, humiliation or unnecessary personal intrusion***

## **Overview**

183 This category of consolatory payment covers the situations where, through the action (or inaction) of the Commission, a customer is unnecessarily placed in a position likely to cause gross personal embarrassment. This may have been caused either by error or failure on the part of the Commission or may have arisen through an unnecessary personal intrusion.

### ***What constitutes gross embarrassment?***

184 Gross embarrassment, humiliation or unnecessary personal intrusion is best illustrated through some examples:

#### **Examples of actions which might give rise to the above:**

- wrongful arrest
- wilful misuse of information or position by officers of the Commission
- wrongful issue of a summons or a bailiffs order/summons
- negligent action leading to incorrect identification of alleged parents
- disclosure of sensitive information to a third party
- unnecessary gathering of personal information
- insensitive information gathering
- inappropriate methods of information gathering.

The above list is not exhaustive. Each claim made under this category will be considered on its own merits, taking into account the full circumstances and facts of the case.

### **Gross embarrassment, humiliation or unnecessary personal intrusion - factors in considering payment**

#### ***Has there been error?***

185 As with any other category, before a special payment is appropriate, the Commission must have made an error.

#### ***Has embarrassment been caused by error?***

186 It is necessary to look at the circumstances of the case to establish whether it is likely that embarrassment has been caused by the error(s). If not, another category of consolatory payment may be appropriate, such as for severe distress. Establish whether the case comes under one of the examples at paragraph 184 above, thus causing humiliation or unnecessary personal intrusion. Remember that the examples at paragraph 184 are not exhaustive.

### ***How serious is the impact?***

187 The amount of embarrassment caused can vary greatly according to the situation. For instance, it is likely that, in most cases, incorrect arrest and detention by the police would have a greater impact than disclosure of child maintenance information to a third party. Always consider the circumstances of the individual case.

### ***What is the likely duration of the impact?***

188 Depending upon the circumstances of the individual case, the duration of the impact of an error can vary. An incident where the error is discovered, properly handled and corrected quickly would probably have an impact of a shorter duration than circumstances where highly personal information is disclosed to a third party who has long term contact with the customer.

### ***Has the customer contributed to the situation?***

189 There may be instances where the customer has deliberately sought publicity as a result of an error. A decision on the special payment should be based upon the impact of the error rather than the impact of the publicity. There have also been instances of a customer deliberately informing another party of an error and then claiming that the error has caused embarrassment.

### ***How much should be paid?***

190 The factors outlined in paragraphs 183 to 189 should be taken into account when deciding whether a special payment should be made and the amount of that payment. Payments made in similar cases should be considered when deciding on the amount.

### ***Delegated limit***

191 When, in exceptional cases, making a consolatory payment for gross embarrassment, humiliation or unnecessary personal intrusion, is considered, payment can be made up to the maximum delegated limit of £750. It is expected that the vast majority of cases will be within that delegated limit. However, each case must be decided on its own merits. Any proposal to exceed the delegated limit of £750 must be referred to the Special Payments Team for consideration.

## **Severe distress which has significantly impacted on a customer's physical or mental health**

### ***What constitutes severe distress?***

192 A payment for severe distress should be very exceptional and considered only when there has been a significant deterioration in a customer's physical or mental health as a direct result of Commission maladministration. In very rare cases, the severe distress may be experienced by another person, for

example, a spouse or other family member, as well as, or rather than by, the customer.

## **Factors in considering payment for severe distress**

### ***Has there been error?***

193 As in any other claim for a special payment it has to be established that there has been official error.

### ***Has there been a serious impact upon health as result of the error?***

194 There has to be a direct link between the error made and the impact upon health. Bear in mind that there can be situations where the very involvement of the Commission can be a cause of stress. Such cases would not merit a special payment unless the stress is severe and can be directly linked with a Commission error.

### ***Customer claiming to be upset, angry or distressed by an error is not sufficient***

195 The fact that a customer may claim to be upset, angry or distressed by an error is not sufficient in itself to justify a special payment for severe distress. The impact must be serious.

### ***Is there objective evidence of the impact?***

196 The customer should normally be asked to provide objective evidence of the impact of the error on their physical and/or mental health. This may take the form of a report from a GP or any other appropriate medical practitioner, evidence from an employer that the customer has been unable to work as a direct result of health problems arising from an error. In exceptional circumstances the Commission would wish to obtain its own medical or other evidence and the customer would be expected to co-operate fully in this. Please note that other forms of objective evidence can also be accepted.

### ***Cases where objective evidence may not be needed***

197 In some circumstances it may not be necessary to obtain objective evidence. This will be where it is clearly self-evident that the error would have caused severe distress. An example of this is where a parent may be incorrectly informed of the death of their child. Such cases should be few and far between. It will often be to the customer's advantage to obtain evidence of the impact in his or her case in order that any award can reflect the individual circumstances of the case.

### ***What is the degree of impact of the error?***

198 An error will impact upon the health of different people to a different extent. For special payment purposes, it is the degree and duration of the impact that is normally more important than the scale of the error. The more serious the impact, the greater the payment to be considered, subject to the following paragraphs.

***Are there factors, other than Commission error, affecting the customer's health?***

199 There will be cases where the objective evidence indicates that there have been other factors, such as personal problems, that have also affected the customer's health. It will be necessary to decide the relative importance of these other factors and the error of the Commission when reaching a decision on the special payment.

***Is there a pre-existing health condition?***

200 In many cases the customer may have a pre-existing health condition that has been affected by the errors of the Commission. This does not preclude consideration of payment. The error may have caused a delay in recovery from illness or worsened the condition. In such cases, it will be necessary to ascertain the extent to which the errors have affected the pre-existing condition when deciding whether a special payment is due and how much should be paid. In doing so the Commission should ordinarily establish the state of the customer's health prior to the error, during the error and the likelihood of the customer's health improving following resolution of the error.

***What is the duration of the impact of the error upon the customer's health?***

201 Once it has been established that there has been a serious impact upon health as a result of error, it is necessary to consider the duration of the impact when deciding on the scale of payment.

**Example:**

The same degree of impact that lasts for two years would warrant a higher payment than a case where the customer has recovered three months later.

***How much should be paid?***

202 In deciding how much to award remember the following points:

- payment is only considered in exceptional cases
- take into account the range of payment available

- consider the degree of culpability of the Commission, any pre-existing health conditions and scale and duration of the impact as described above.

### ***Delegated limit of £2,000***

203 These payments are not intended to put a value on the distress suffered, and will usually range from £25 to £500. However, payment can be made up to the maximum delegated limit of £2,000. The vast majority of payments are expected to be within the normal range. However, each case will have to be decided on its own merits. Any proposal to exceed the delegated limit of £2,000 must be referred to the Special Payments Team for consideration.

### ***Issue of a MEF to a person wrongly identified by the PWC as the non-resident parent of the child(ren) concerned***

204 When a PWC applies for child support maintenance she is asked to give details of the non-resident parent of the child(ren) included in the application. In the absence of any evidence to the contrary the Commission will accept that information in good faith and will contact or send a MEF to the alleged non-resident parent and give him the opportunity to dispute parentage if he has valid cause to do so.

205 Where a PWC has (whether through genuine confusion or for some other reason) given the Commission details of somebody who is not the father and the Commission acts on this in good faith that is not maladministration and a special payment will not be appropriate.

### ***Issue of a MEF to a person wrongly identified by the Commission as the non-resident parent of the child(ren) concerned***

206 A consolatory payment of £100 should be paid when it is identified that a MEF or contact has been directed to the wrong person as a result of an error by the Commission. The £100 is made in recognition of the upset and inconvenience caused by the error. In these circumstances, no objective evidence of impact on health is required to support the payment. The award of £100 does not preclude a higher award, but any claim for a higher consolatory payment should be supported by objective evidence of the adverse effect of the error. For example, when the person indicates that he suffered exceptionally.

## Annex A

### Contact details

#### **Independent Case Examiner**

PO Box 155  
Chester  
CH99 9SA

Tel: 0845 606 0777

E-mail: [ice@dpw.gsi.gov.uk](mailto:ice@dpw.gsi.gov.uk)

Website: <http://www.ind-case-exam.org.uk/>

The Independent Case Examiner (ICE) investigates complaints against the Child Support Agency and Child Maintenance and Enforcement Commission. Details of the service offered by ICE and advice on how to complain may be found in leaflet ICE 1 or on ICE's website.

#### **Parliamentary and Health Service Ombudsman**

Millbank Tower  
Millbank  
London  
SW1P 4QP

Tel: 0845 015 4033

E-mail: [OPCA.Enquiries@ombudsman.gsi.gov.uk](mailto:OPCA.Enquiries@ombudsman.gsi.gov.uk)

Website: <http://www.ombudsman.org.uk/pca/index.html>

The Parliamentary Ombudsman deals with complaints from members of the public that they have suffered injustice because of maladministration. A person wishing to have their complaint investigated by the Ombudsman should approach his or her Member of Parliament (MP), as the Ombudsman can only accept complaints referred to her by an MP.

Customers may put their complaint to the Ombudsman at any stage, irrespective of whether it has been investigated by ICE. However, in practice there is normally an expectation that the complaint has been seen by the Commission and pursued through internal complaints procedures, before being referred to the Ombudsman.

Further information on complaints procedures, maladministration, learning from mistakes and the role of the Parliamentary Ombudsman is contained in

the booklet *The Ombudsman in Your Files*. This is produced by Cabinet Office and published by The Stationery Office Limited. A leaflet available from the Ombudsman's office entitled *The Parliamentary Ombudsman: How to complain to the Ombudsman* explains what the Ombudsman can do and how to complain to her.

Inland Revenue  
National Insurance Contributions Office  
Benton Park View  
Newcastle upon Tyne  
NE98 1ZZ

Telephone (0191) 213 5000

<http://www.inlandrevenue.gov.uk/nic/offices.htm>

## Annex B

### Waiting Periods

#### Delays occurring on or after 1 April 1996

Type of Delay	Waiting Period
	From the date in which the PWC first applied (to request an application)
Delayed issue of the MAF where payment pattern established	One month
Delayed issue of the MEF where no further action on the MAF is required	One month
Delayed issue of the MEF where no further action on the MAF is required. Court Order cases.	Two months
Delay in issue of the MEF where further action on the MAF is required. Normal cases.	Two months
Delay in issue of the MEF where further action on the MAF is required. Court Order cases.	Four months

Note – Eight week Deferment. This no longer applies and is applicable to old rules cases only. Compensation is not paid for the deferred period. If at the time, the NRP would have qualified for the new deferment, a further 8 weeks must be added to the waiting period before calculating the start of the delay period.

#### Delays occurring before 1 April 1996

In recognition of the unexpected demands on it in its early days, before 1 April 1996 the Child Support Agency allowed:

- Three months for the issue of a MEF in cases where no court order for child maintenance was in place
- Six months where a court order was place

Type of Delay	Waiting Period
	From the date in which a valid MAF is received
Delayed issue of the MAF where payment pattern established	Three months
Delayed issue of the MEF where no further action on the MAF is required	Three months

Delayed issue of the MEF where no further action on the MAF is required. Court order cases.	Six months
Delayed issue of the MEF where further action on the MAF is required. Normal cases.	Three months
Delayed issue of the MEF where further action on the MAF is required. Court order cases.	Six months

**Delays occurring on or after 13 March 1997**

<b>Type of Delay</b>	<b>Waiting Period</b>
	From the date in which a valid MAF is received
Delay in calculating MA/MC where the Agency knew a court order was in existence.	1996/97 26 weeks 1997/98 26 weeks 1998/99 22 weeks 1999/00 20 weeks  <b>Note:</b> These are based on the Agency's reporting year which is 1 April - 31 March

## Annex C

### Example of simple interest calculation when delay is less than 10 years

The example below shows how simple interest is calculated in a theoretical case where a special payment is being made to compensate the customer for a loss of child maintenance. In this example, the special payment in respect of child maintenance arrears is being paid for the period 3 March 1997 (the date of application) to 14 September 1998, as a result of the Commission's error. A special payment of £1,749.21, in respect of child maintenance arrears, was paid to the customer on 5 January 2000.

In this example a waiting period of one calendar month has been applied. The waiting period runs from 3 March 1997 to 2 April 1997. Interest is therefore payable on the arrears for the period from 3 April 1997 to 5 January 2000.

#### Method

Tax Year	Amount	From	To	Months	Interest rate	Amount of interest
1996/97	£258.30	03/04/97	05/04/97	0.10	3.596%	£0.08
		06/04/97	05/04/98	12	4.552%	£11.76
		06/04/98	05/04/99	12	4.881%	£12.61
		06/04/99	05/01/00	9	3.952%	£7.66
1997/98	£1,010.40	06/04/97	05/04/98	12	4.552%	£45.99
		06/04/98	05/04/99	12	4.881%	£49.32
		06/04/99	05/01/00	9	3.952%	£29.95
1998/99	£480.51	06/04/98	05/04/99	12	4.881%	£23.45
		06/04/99	05/01/00	9	3.952%	£14.24
1999/00	£0.00	06/04/99	05/01/00	9	3.952%	£0.00
Totals	£1,749.21					£195.06

#### Rules to follow

1. The arrears of child maintenance upon which interest is due are allocated to the tax years in which they were due, that is, within periods from 6 April to 5 April.

2. The arrears for each tax year are multiplied by the interest rate (shown at Annex D). Interest is calculated from the day following the waiting period up to the date in which the special payment, in respect of child maintenance arrears, is paid.
3. When Interest is due for part of a tax year, the total amount of arrears is divided by 12 and this amount multiplied by the number of months (or proportion of the month).
4. For any arrears of child maintenance due in the current tax year:
  - the previous years interest rate is used, or
  - where an alternative rate has been supplied by Commission Policy, the alternative rate. An alternative rate is supplied by Commission Policy if the average of the monthly rates for the current year varies from the rate being used by more than 0.5%.

**Note:** This example is for illustrative purposes only.

## Annex D

### RATES OF SIMPLE INTEREST FOR USE WHEN DELAY IS LESS THAN 10 YEARS

Tax Year	Yearly Interest Rate %
86/87	7.74
87/88	7.2
88/89	7.7
89/90	9.55
90/91	10.44
91/92	7.54
92/93	5.69
93/94	4.22
94/95	4.1
95/96	4.04
96/97	3.596
97/98	4.552
98/99	4.881
99/00	3.952
00/01	4.369

01/02	3.551
02/03	2.915
03/04	2.691
04/05	3.305
05/06	3.363
06/07	3.421
07/08	4.090

**Note:**

- See paragraph 158
- Example of how to use these simple interest rates is at Annex C.

## Annex E

### INTEREST FOR DELAY - OVERVIEW

1	Check that child maintenance arrears are £100 or more.	Paragraphs 136 & 138
2	Check that period of delay exceeds relevant indicator.	Paragraphs 139-143
3	Check that maladministration has occurred.	Paragraph 141
4	If maladministration has occurred is the delay arising out of the maladministration significant	Paragraph 153 & 154
5	Apportion the arrears to the tax years in which they fell due.	Paragraphs 157-159 Annex C
6	If the delay in payment of child maintenance arrears has been less than 10 years, from the first day following the waiting period up until the date the client is paid the arrears, calculate the compensation as simple interest.	Annex C
7	If the delay in payment of child maintenance arrears has been 10 years or more, from the first day following the waiting period up until the date the client is paid the arrears, calculate the compensation as compound interest.	
8	If it is necessary to deduct any overpayments from the compensation payment ensure recovery is completed before the payment is issued.	Paragraphs 36-37
9	Do not pay compensation if the result of the calculation is less than £10.	Paragraphs 136 & 138

You may find the examples in Annex C helpful.