

# GUIDE TO FINANCIAL PROVISION FOR CHILDREN

## 1. Terminology

- Qualifying Child (QC)** A Child under the age of 16 or a child under the age of 19 who is receiving full time education at school (but not a child who is receiving advance education) in respect of whom a child support assessment is being sought.
- Parent/Person with Care (PWC)** The parent or person with whom the child (children) live.
- Non-Resident Parent (NRP)** A natural parent of the child, with whom the child does not live.
- Child Support Agency (CSA)** The Government agency with responsibility for the assessment and collection of child support.

## 2. Child Support

As a general rule income provision for children is calculated by the Child Support Agency under Child Support Acts 1991 and 1995 (as amended) where the NRP and QC are habitually resident in the United Kingdom. The Courts deal with lump sums, property adjustment, school fees and income payments in limited circumstances.

Where parents share the care of a child (for instance the child spends one week with one parent and another week with another parent) there are a complex set of rules under which the CSA attempts to establish which parent is the NRP and which parent is the PWC. If an answer cannot be established under the rules, it is the person who receives Child Benefit for the child who will be deemed to be the PWC.

## 3. Calculation of Child Support Maintenance

- (a) NRPs who are in paid employment must pay: 15% of their net income for one QC; 20% for two QCs and 25% for three or more QCs.

Net income is the NRP's gross pay including bonuses and overtime but excluding benefits in kind such as tips and expenses, less income tax, Class 1 National Insurance contributions and pension contributions (70% for pension mortgages).

For self employed earners, the net income is the taxable profit in accordance with their Inland Revenue returns or gross receipts less income tax National Insurance contributions and pension contributions (70% for pension mortgages).

- (b) The following is not included:

Investment income, benefits in kind, income above £104,000 per annum (referred to as capped weekly income) although variation provisions may enable the CSA to take account of notional and other undeclared income.

The income of the PWC is not taken into account when an assessment is made.

- (c) In addition, there may be relevant other children living in the same household as the NRP such as step-children, in which case the NRP's net income is reduced by 15% for one relevant child, 20% for two and 25% for three or more.

- (d) A flat rate of £5 per week is payable in low income cases.
- (e) Where care is shared or an NRP has generous contact, the amount payable is reduced by reference to the number of nights QC stays with NRP as follows:
- 52 to 103 nights (one night a week on average) by 1/7
  - 104 to 15 nights (on average two nights per week) by 2/7
  - 156 to 174 nights (on average three nights per week) by 3/7
  - 175 nights or more (half a year throughout the year) by ½
- (f) The CSA has power to vary the assessment to take into account a number of factors outside the scope of this fact sheet.

#### **4. Enforcement of Child Support**

The CSA has extensive powers to enforce payments under an assessment, including if all else fails an application for an Order of disqualification from driving, details of which are outside the scope of this fact sheet.

#### **5. Financial Provision by Order of the Courts**

The Courts have power to make the following types of Orders for financial provision for children:

- (a) Income Orders topping up the amount due under a Child Support Assessment when NRP's net income exceeds £2,000 per week.
- (b) School fees.
- (c) Lump sum.
- (d) Property Adjustment.
- (e) Income Orders by consent (although 14 months later either parent will be entitled to apply to the CSA for a child support assessment in which case the Court Order will lapse).

#### **6. Financial Support for the Children of Married Parents**

Where an application is made in relation to divorce proceedings, the application will normally be brought under the Matrimonial Causes Act 1973 and you are referred to the fact sheet on financial disputes within divorce proceedings.

#### **7. Financial Support for the Children of Unmarried Parents**

- (a) Who may apply?

Where there are no divorce proceedings and/or the parties have not been married, the application will be brought under the Children Act 1989. The application can be made by a parent (including unmarried fathers), guardians and any person in whose favour a Residence Order is in force. A young person over the age of 18 may apply on their own behalf if they are in education or training or if there are special circumstances, but only if his or her parents are not living together at the time.

- (b) Against whom may an order be made?

Orders may be made against either or both parents of the child, including unmarried fathers and also any party to a marriage in relation to whom the child is a child of the family (normally step-children cases). Where the child is resident outside of England and Wales

with a parent, guardian or person in whose favour a Residence Order has been made, the Court has power to order the parent living in England and Wales to make income payments for the benefit of the child. If the non-resident parent is living outside England and Wales, the Court has power to order them to make payments for the benefit of the child.

An application can be made in respect of a child up to his or her 17<sup>th</sup> birthday and beyond if the child suffers from a disability or whilst the child is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation.

(c) What must a Court take into account?

When deciding whether to exercise its powers to make financial provision for children, the Court must have regard to all the circumstances including:-

- (i) The income, earning capacity, property and other financial resources which any parent, the applicant and any other person in whose favour the Court proposes to make the Order has or is likely to have in the foreseeable future.
- (ii) The financial needs, obligations and responsibilities which any of the people at (a) above has or is likely to have in the foreseeable future.
- (iii) The financial needs of the child.
- (iv) The income, earning capacity (if any), property and other financial resources of the child.
- (v) Any physical or mental disability of the child.
- (vi) The manner in which the child was being or was expected to be educated or trained.

When exercising its discretion to make financial Orders for children, the Court is not required to give paramount consideration to the welfare of the child. However, it is likely that the Court will give a great deal of weight to the child's welfare when deciding what Orders to make.

(d) What is a court likely to do?

As a general rule the Court is unlikely to require a parent to provide for able bodied non-dependent adult children. Lump sums are therefore normally used in three circumstances:-

- (i) To provide a home for the child throughout his or her dependency. This is likely to be held on trust for the benefit of the child and when the child ceases to be dependent upon its parents, the property will revert to the person against whom the lump sum Order was made.
- (ii) expenses in connection with the birth of the child.
- (iii) expenses reasonably incurred before the making of the Order.

A lump sum Order cannot be made by way of capitalisation of income payments in an attempt to circumnavigate the Child Support Act 1991.

There are very few reported cases towards which to turn for guidelines on how much money a NRP is likely to be ordered to pay under the Children Act 1989. In a 1994 case,

the parents owned assets worth £74,000. The father was ordered to pay the following lump sums:-

- (i) £29,000 to clear school bills; and
- (ii) £36,000 to purchase a property to be held on trust pending the time when the youngest child was no longer to be dependent.

This was a high proportion of the available capital

In a 1996 case, the father owned assets worth nearly £3,000,000. He was ordered to make a lump sum payments of:

- (i) £90,000 for the purchase of a property on trust and
- (ii) £24,500 for furniture and expenses in connection with the birth.

This was a relatively small proportion of his total asset base.

The purpose of this guide is to give an overview of the applications that can be made to the child support agency and/or the court for the financial provision of children and is not intended to replace expert advice on your own position. You should not rely on what is said in this fact sheet alone. If you would like advice as to your individual position we would be happy to accept instructions to advise you.

William Sturges & Co  
March 2005