Parentage Disputes: Contents

Note: The Advice and Guidance Team should be contacted in any instance where you require further guidance to make decisions around paternity issues.

Parentage Disputes: Overview

1991/48 Sections 26, 27 and 28 of the Child Support Act 1991

1991/2628 Articles 27 and 28 of the Child Support (Northern Ireland) Order 1991

What is a Parentage Dispute?

A Parentage dispute is where a person named as a non-resident parent in a maintenance application, or included in a case that is already ongoing, states they are not a parent of the qualifying child/ren.

Parentage disputes can be made before or after the initial maintenance calculation has been completed. The steps you need to take will depend on the status of the case at the point when the dispute is raised.

- refer to the Decision Making Guidance on Pre-Calculation Disputes for cases where the non-resident parent disputes parentage before the initial Maintenance Calculation has been completed;
- refer to the Decision Making Guidance on Post-Calculation Disputes for cases where the non-resident parent disputes parentage after the initial Maintenance Calculation has been completed.

See also the Decision-making Flowcharts:

- Pre-initial MC parentage dispute

- Post-initial MC parentage dispute, parentage originally ASSUMED
- Post-initial MC parentage dispute, parentage NOT originally assumed

NOTE 1: alleged non-resident parents should be treated as parents unless / until they deny parentage. If a non-resident parent fails to respond to the notice of application or any further notice from the Child Maintenance Service then you would treat them as a parent unless / until they actively dispute parentage.

NOTE 2: Either party to a case may apply at any time for a court declaration of parentage (or 'non-parentage') under section 55A of the Family Law Act 1986 (or declarator of parentage / non-parentage, in Scotland, under the Law Reform (Parent and Child) (Scotland) Act 1986) and in Northern Ireland under Article 31 B of the Matrimonial and Family Proceedings (NI) Order 1989.

Also refer to the mandatory reconsideration guidance.

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Pre-calculation Disputes: Decision Making Guidance

Note: For **NRP applications** where the NRP disputes parentage pre-initial MC, DNA testing should not automatically be offered. Only if the NRP raises a particularly novel reason (e.g. since applying, the PWC has told him he's not the father) should an offer be considered, and only after discussion with the local Parentage Ambassador.

If the alleged non-resident parent denies being a parent of the qualifying child or children **before** the initial maintenance calculation has been made, you will need to consider what evidence is available and if that would:

1. provide a basis for parentage to be **assumed**. In these circumstances, the maintenance calculation must be completed. Refer to the guidance on Assumed Parentage for advice on the situations where this applies; or
2. prove that the alleged non-resident parent is **not** a parent of the qualifying child/ren named in the application. In these circumstances, the application should be closed, unless there are other children that the non-resident parent **is** the parent of. In this situation, you would just remove any child/ren that the alleged non-resident parent has proved they are not the father of.

If neither of these situations applies the maintenance calculation cannot be completed until the parentage dispute has been resolved. You must therefore invite all parties to take a DNA Test. Refer to the guidance on DNA Testing for further advice.

See also the Pre-initial MC parentage dispute flowchart

Parent with care refuses to undertake DNA testing, pre-MC

Where a parent with care refuses to undertake DNA testing, and is unable to provide any further evidence that would allow for parentage to be assumed, they should be contacted and advised that / asked whether:

- if we cannot resolve the parentage dispute (because they will not consent to DNA testing and / or cannot provide any further evidence that would allow us to assume parentage) but they wish to continue with the application against the father they have cited, we will refuse to calculate an initial Maintenance Calculation; and / or,
- there is another person who could be the father of the child(ren). If so, they should be advised that their current application will be cancelled, they will have to make a new application (including application fee, where applicable) and may still be asked to undertake a DNA test again if that person disputes parentage too; or
- they wish to withdraw their application for statutory maintenance altogether.

NOTE: In any case where the parent with care claims there is an exceptional reason for not undertaking a DNA test, please contact the Advice and Guidance Team for help in how to proceed.

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Post-calculation Disputes: Decision Making Guidance

If a non-resident parent denies being a parent **after** the maintenance calculation has been made, then you will need to consider whether there is conclusive evidence to confirm that the non-resident parent is **not** a parent of the qualifying child or children.

See the Post-initial MC Flowcharts: Post-initial MC parentage dispute parentage originally ASSUMED or Post-initial MC parentage dispute, parentage NOT originally assumed.

Conclusive evidence is either a DNA test (from an approved tester) or a court declaration of parentage (or non-parentage).

NOTE: So called "peace of mind" DNA tests are not legally acceptable for Child Support purposes. For further assistance, contact the Advice and Guidance Team.

Alleged non-resident parent is not the parent

If there is conclusive evidence to confirm the alleged non-resident parent is not a parent, the maintenance calculation should be revised to remove the relevant qualifying child/ren from the date they first featured in the maintenance calculation.

This will usually be the initial effective date, but could be a later date depending on when they joined the case.

2012/2677 Regulation 14(1)(g) of the Child Support (Maintenance Calculation) Regulations 2012

2012/427 Regulation 14(1)(g) of the Child Support Maintenance Calculation (Northern Ireland) Regulations 2012

Example

- a maintenance calculation is made for QC1 with an initial effective date of 3 December
- on 1 April the following year,a supersession is completed to add QC2 (same non-resident parent)
- the non-resident parent denies parentage of QC2, which is confirmed by a negative DNA test
- a revision is completed to remove QC2 from 1 April

NOTE 1: As revising the first decision which included the relevant child or children to remove them from the case will lead to the system automatically attempting to reimburse the non-resident parent any payments they may have made, a system workaround is to be used. If the parentage dispute occurs at the beginning of a case (i.e. initial MC stage), this is not such a significant issue. However, where parentage is disproven after a significant period of time has passed (for example, after a number of months or even years), the workaround must be followed.

NOTE 2. : if the child being removed is the last qualifying child in the case, then the case should be closed. If there are qualifying children remaining for whom the non-resident parent is the parent, then the maintenance calculation will continue for those qualifying children.

No Conclusive Evidence Alleged Non-resident Parent is not the Parent

If there is no conclusive evidence (i.e. approved DNA test result or court declaration) to confirm whether the non-resident parent is a parent of the qualifying child/ren, and no ground that would have allowed for an assumption of parentage pre-initial MC has come to light you will need to invite them to take a DNA test to resolve the dispute (Refer to the guidance on DNA Testing).

If the father remains adamant that the Maintenance Calculation itself is 'wrong', and does not wish to take up the option of DNA testing, a notification advising them that we are not revising the decision should be issued, providing them with a right of appeal (to court, see later).

The non-resident parent's liability will continue until the parentage dispute is resolved. The next action will depend on the outcome. Refer to the appropriate link below for further advice.

See the Post-initial MC Flowcharts: Post-initial MC parentage dispute parentage originally ASSUMED or Post-initial MC parentage dispute, parentage NOT originally assumed.

If a parent with care or a qualifying child aged over 16 refuses to undertake DNA testing once a case is established, and provides no good reason as to why the test cannot be undertaken contact your local Parentage Ambassador. If they cannot assist in resolving the issue, contact the Advice and Guidance Team.

DNA test positive

If the DNA test confirms that the non-resident parent is a parent of the qualifying child or children, you will proceed with the case as normal. You should notify both parents that the parentage dispute has been resolved.

DNA test negative

If the DNA test confirms the non-resident parent is not a parent of the qualifying child or children, you should complete a revision to remove the relevant child/ren from the date they first featured in the maintenance calculation. This will usually be the initial effective date, but could be a later date depending on when they joined the case.

2012/2677 Regulation 14(1)(g) of the Child Support (Maintenance Calculation) Regulations 2012

2012/427 Regulation 14(1)(g) of the Child Support Maintenance Calculation (Northern Ireland) Regulations 2012

NOTE 1: As revising the first decision which included the relevant child or children to remove them from the case will lead to the system automatically attempting to reimburse the non-resident parent any payments they may have made, a system workaround is to be used. If the parentage dispute occurs at the beginning of a case (i.e. initial MC stage), this is not such a significant issue. However, where parentage is disproven after a significant period of time has passed (for example, after a number of months or even years), the workaround must be followed, to avoid the system automatically attempting to reimburse the (now 'former') non-resident parent.

NOTE 2: If the child being removed is the last qualifying child in the case then the case should be closed. If there are qualifying children remaining for whom the non-

resident parent is the parent, then the maintenance calculation will continue for those qualifying children.

Payments already made by the non-resident parent before they raised the dispute may or may not be refundable. Refer to the guidance on Overpayments, Refunds and Reimbursements for further advice about when a refund will / will not be appropriate, or contact the Advice and Guidance Team.

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Assumed Parentage: Decision Making Guidance

1991/48 Section 26 of the Child Support Act 1991

1991/2628 Article 27 of the Child Support (Northern Ireland) Order 1991

NOTE: 'Assumed Parentage' is the correct legal term to use, but client notifications may use the term 'Presumed Parentage'. For the purposes of this guidance, we use the term 'Assumed Parentage', but you should be aware that clients may refer to 'Presumed Parentage'. Both terms have the same meaning.

What is Assumed Parentage?

If parentage is disputed **before** a maintenance calculation has been completed, we cannot make a maintenance calculation UNLESS one of the assumptions of parentage listed in Section 26(2) of the Child Support Act 1991 / Article 27(2) of the Child Support (Northern Ireland) Order 1991 applies.

Section 26(2) and Article 27(2) allow us to make decisions on parentage in specific, scenarios only. These are given in the 'Grounds for assuming parentage' section. If none of the assumption grounds apply, then we cannot make an initial maintenance calculation until the parentage issue is resolved. The usual course of action will to offer a DNA test to resolve the dispute.

Where parentage can be assumed, it must be. However, if ground for assumption has been provided but, before the initial MC is calculated, the alleged father can provide conclusive evidence that they are not the father (i.e. a negative DNA test result from an approved tester or a court declaration) the initial maintenance calculation **must** be calculated but then **immediately revised** to close the case.

NOTE: this may appear 'awkward' procedurally but follows the requirements of the legislation. See the Pre-initial MC parentage dispute flowchart.

Example:

REMEMBER: the powers to assume parentage (section 26 of the Child Support Act 1991/ Article 27 Child Support Northern Ireland Order 1991) only apply in cases

where the non-resident parent has disputed being a parent **before** the maintenance calculation has been completed. Disputes made after the maintenance calculation has been completed will require a DNA test to resolve the dispute or evidence of a court declaration of parentage / non-parentage (see conclusive evidence).

Challenging a maintenance calculation (including initial MCs) on the basis of paternity

A non-resident parent can apply to a court for a declaration of (non)parentage, under Section 55A of the Family Law Act 1986 (in Scotland, under the Law Reform (Parent and Child)(Scotland) Act 1986 and in Northern Ireland, under Article 31b of the Matrimonial and Family Proceedings (NI) Order 1989) at any time. This is also true for a parent / person with care and could be before making the initial maintenance calculation, or at any time during the lifetime of a case.

If a non-resident parent challenges the making of an initial maintenance calculation (or any later maintenance calculation) once it's been calculated, that should be treated as a request for revision in the first instance (mandatory reconsideration). However, unless the non-resident parent can provide 'conclusive evidence' that they are not the father, or offering them a DNA test is not appropriate in the circumstances of the case, a revision of the existing decision would be refused (mandatory reconsideration notice, 'no change') and they would need to appeal the decision, under section 20 of the Child Support Act 1991 (Article 22 of the Child Support (Northern Ireland) Order 1991 in Northern Ireland.

Note: Appeals are made to HM Courts and Tribunals Service, as with other appeals about MCs. However, in accordance with Arts. 3&4 of the Child Support (Jurisdiction of Courts) Order 2002, HMCTS should ensure that appeals on the basis of parentage are handled though the courts, not a tribunal as for other appeals against MCs.

Definitions

The following definitions apply for the purposes of assumed parentage:

Adopted

Means adopted within the meaning of:

- Part IV of the Adoption Act 1976, or
- Chapter 4 of the Adoption and Children Act 2002, or
- Part IV of the Adoption (Scotland) Act 1978, or
- Part V of the Adoption (Northern Ireland) Order 1987

Affiliation proceedings

In relation to Scotland means:

- any action of affiliation or aliment (refer to the Advice and Guidance Team if this situation arises)

Grounds for assuming parentage

1. Alleged parent married to child's mother between conception and birth

1991/48 Section 26(2) of the Child Support Act 1991 Case A1

1991/2628 Article 27(2) of the Child Support (Northern Ireland) Order 1991 Case A1

- where the alleged non-resident parent was married to the child's mother at some time between the date of conception and the child's birth; and
- the child has not been adopted; and
- the child is habitually resident in England, Wales or Northern Ireland.

Suitable evidence: marriage certificate.

2. Alleged parent named on birth certificate

1991/48 Section 26(2) of the Child Support Act 1991 Case A2

1991/2628 Article 27(2) of the Child Support (Northern Ireland) Order 1991 Case A2

- where the alleged non-resident parent is registered as the father on the child's birth certificate
- the child has not subsequently been adopted
- the child is habitually residentin England, Wales or Northern Ireland

Suitable evidence: birth certificate.

3. DNA test refused by non-resident parent OR confirms parentage

1991/48 Section 26(2) of the Child Support Act 1991 Case A3

1991/2628 Article 27(2) of the Child Support (Northern Ireland) 1991 Case A3

- where the alleged non-resident parent refuses to take a DNA test, or
- a DNA test shows that there is no reasonable doubt that the alleged non-resident parent is a parent of the qualifying child or children.

Suitable evidence:

- any record (written or otherwise - such as a record of a telephone conversation) of an outright refusal

- non-resident parent opted for an independent test and fails without good reason to submit the test results within 40 working days
- a positive DNA test result which has been done by an approved testing company

4. Adoption

1991/48 Section 26(2) of the Child Support Act 1991 Case A

1991/2628 Article 27(2) of the Child Support (Northern Ireland) Order 1991 Case A

- where the alleged non-resident parent has adopted the child

Suitable evidence: a full adoption certificate

NOTE: a short adoption certificate may not be acceptable on its own if it does not give details of the adoptive parents

5. Child conceived by IVF / artificial insemination (parental orders)

1991/48 Section 26(2) of the Child Support Act 1991 Case B

1991/2628 Article 27(2) of the Child Support (Northern Ireland) Order 1991 Case B

Where the alleged non-resident parent is a parent of the qualifying child by virtue of an order under:

- section 30 of the Human Fertilisation and Embryology Act 1990, or
- section 54 of the Human Fertilisation and Embryology Act 2008

A court may make a parental order for two applicants to be regarded as the parent of a child if:

- neither applicant was the woman who carried the child
- the gamete (a male or female germ cell, able to join with another of the opposite sex to reproduce - simply, a sperm and / or an egg) of at least one applicant was used to bring about the creation of the embryo
- the applicants are married, in a civil partnership or in a stable relationship

Note: see the additional guidance re: children conceived by assisted reproduction (below)

6. Child cnceived by assisted reproduction

1991/48 Section 26(2) of the Child Support Act 1991 Case B1

1991/2628 Article 27(2) of the Child Support (Northern Ireland) Order 1991 Case B1

The alleged parent is a parent of the qualifying child by virtue of:

- section 27 or 28 of the Human Fertilisation and Embyology Act 1990; or
- sections 33 - 46 of the Human Fertilisation and Embryology Act 2008 (which relate to children conceived by assisted conception

Additional guidance re assisted reproduction cases (5 and 6 above)

For these cases, different parentage rules apply depending on whether treatment took place before or after 6 April 2009.

NOTE: this is a complex area and the following guidance only provides a summary of the most common methods of assisted conception, which are in vitor fertilisation (IVF), artificial insemination or surrogacy.

If a parent refers to another method or uses terminology which means you are unsure how to proceed, ask to see any evidence about the treatment held by them. If you (or your Team Leader) are still unsure how to proceed, refer to the Advice and Guidance Team.

Treatment before 6 April 2009

Mother

- the woman who carries the child is its legal mother, regardless of whether the child was created using one of her eggs.
- NOTE: this will not apply if, as a result of adoption, the woman is no longer the child's parent.

Other Parent

- if the woman is married, the husband is the father, whether or not the husband's sperm was used to create the embryo, as long as he consented to the treatment.
- if the woman was not married at the time the embryo was implanted, but was receiving treatment together with a partner, even if his sperm is not used to fertilise the egg, then that partner shall be treated as the legal father of the child.
- where the sperm is donated by another man who gives consent to his sperm being used in fertility treatment by the clinic, he is not to be treated as the legal father of the child.

Treatment after 6 April 2009

Mother

- the woman who carries the child is its legal mother, regardless of whether the child was created using one of her eggs.
- NOTE: this will not apply if, as a result of adoption, the woman is no longer the child's parent.

Other Parent

- if the woman is married, the husband is the father, whether or not the husband's sperm was used to create the embryo, unless he did not consent to the treatment or at the time of the treatment was legally separated from the woman;
- if the woman was not married (or in a civil partnership) at the time the embryo was implanted, but was receiving treatment together with a partner, then even if his sperm was not used to fertilise the egg, that partner will be treated as the legal father of the child, as long as he has given his written consent and the mother consented to the man being regarded as the child's father;
- if there is not a civil partnership, but the mother is in a relationship with a woman, that woman is to be treated as a parent of the child, as long as the "agreed female parenthood" conditions are met. These include things such as each woman giving to the other a notice stating that they consent to the partner being treated as a legal parent to the child. NOTE: in these cases there will be no "father" of the child.

Suitable evidence for these cases:

Birth certificate: parental order (surrogacy cases); record of consent to treatment (the parent with care may have a copy of this if an alleged non-resident parent disputes parentage).

7. Court declaration states alleged parent is the child's parent

1991/48 Section 26(2) Child Support Act 1991 Case C;

1991/2628 Section 26(2) CSA 1991 Case C is Article 27(2) Child Support (Northern Ireland) Order 1991 Case C.

- Where there is a declaration in force that the alleged non-resident parent is a parent of the qualifying child under section 55A or 56 of the Family Law Act 1986 (NB the equivalent Northern Ireland provisions are Articles 31B or 32 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989) ; or
- There is a declarator by a court in Scotland that the alleged non-resident parent is a parent of the qualifying child (or a declarator which has that effect in force)

AND the child has not been subsequently adopted.

Suitable evidence: Record of court declaration; birth certificate (if this has been amended to reflect the court's declaration

8. Child habitually resident in Scotland and legal presumption applies

1991/48 Section 26(2) Child Support Act 1991 Case E

- where the child is habitually resident in Scotland; and
- the CMG is satisfied that one of the presumptions set out in section 5(1) of the Law Reform (Parent and Child)(Scotland) Act 1986 applies; and
- the child has not been subsequently adopted.

Section 5(1) of the Law Reform (Parent and Child)(Scotland) Act 1986 provides that parentage can be presumed where:

- the non-resident parent was married to the mother of the child at any time in the period between conception and birth; or if that does not apply
- both he and the mother of the child have acknowledged that he is the father and he has been registered as such in any register of births.

Suitable evidence: marriage / birth certificate.

9. Alleged parent found to be the father through court proceedings

1991/48 Section 26(2) Child Support Act 1991 Case F

1991/2628 Article 27(2) Child Support (Northern Ireland) Order 1991 Case E

- Where the alleged parent has been found or adjudged to be the father of the qualifying child in:
- Civil proceedings before any court in England / Wales, which are relevant proceedings for the purposes of section 12 of the Civil Evidence Act 1968 or proceedings in any court in Northern Ireland which are relevant proceedings for the purposes of section 8 of the Civil Evidence Act (Northern Ireland) 1971. (Most "relevant proceedings" will be under either the Children Act 1989 (to establish and resolve parental responsibility matters) or under GB social security provisions which require a person to support their children); or
- In affiliation proceedings before any court in the United Kingdom (whether or not he offered any defence to the allegation of paternity); and that finding or adjudication still stands;

AND

- The child has not been subsequently adopted.

NOTE: the court proceedings do not have to have been for the purpose of deciding parentage. If the issue was raised in the context of other proceedings, but a decision on parentage has been made by the court, then this will be sufficient. Additionally, a non-resident parent may have evidence from a court hearing to prove they are not the father of a particular child (declaration of non-parentage – England or Wales - or declarator of non-parentage – Scotland). See NOTE in Assumed Parentage section, earlier.

Suitable evidence: record of court ruling

Conclusive Evidence to confirm the alleged non-resident parent is no a parent: Decision Making Guidance

When considering an assumption of parentage, before making an initial Maintenance Calculation - See NOTE in Assumed Parentage section, earlier

When paternity is disputed after making an initial Maintenance Calculation (regardless of whether or not an Assumption has been made). There are only two types of evidence that can be accepted as conclusive evidence that the non-resident parent is not a parent of the qualifying child or children.

These are:

NOTE: If a non-resident parent provides evidence of a 'motherless' DNA test, or that the child(ren) having been adopted, contact the Advice and Guidance Team.

DNA Testing: Decision Making Guidance

What is DNA Testing?

DNA is an abbreviation of Deoxyribonucleic Acid. A DNA profile is an analysis of a person's unique genetic blueprint, which shows who are the parents of a child. The result of DNA paternity testing is virtually conclusive, as the chance that two people have the same pattern is extremely low. Identical twins are the exception, as they have the same DNA structure.

The CMG can arrange for DNA tests to be carried out by an approved provider if the parties agree. However, non-resident parents can arrange an independent test with an approved provider if they wish to do so. Tests from any source other than an approved provider will not be accepted.

NOTE 1: So called 'peace of mind' DNA tests are not legally acceptable for Child Support purposes. For further assistance, contact the Advice and Guidance Team.

These types of tests can often be identified by the inclusion, by the tester, of a disclaimer to the effect that the test result may not be defensible in a court of law for the establishment of paternity and other legally related issues and that the result from the test is only for personal knowledge.

NOTE 2: In a case involving a person with care (PeWC), it is more likely (but not always certain) that there may only be two people available for testing: the alleged father and the child.

In such cases, having both parents involved in testing will produce a more precise result so the person with care should be asked if testing of the mother might be possible. If not, 'motherless DNA testing' (as it is sometimes referred to) can still be undertaken and (usually) produce a result which is sufficiently conclusive for us to determine how to proceed.

You should contact the Advice and Guidance Team if the specifics of any case might make such a DNA test less likely to be conclusive (e.g. the non-resident parent has a brother who it has been alleged could also possibly be the father).

The Child Maintenance Service should only accept the results of a DNA test which it has not helped arrange, if we are satisfied that:

Non-resident parent will not agree to DNA testing

If the alleged non-resident parent will not agree to DNA testing:

Pre-calculation cases: you can assume parentage and complete a maintenance calculation. Refer to the Decision Making Guidance for further advice on assumed parentage.

Post-calculation cases: you should reject the parentage dispute and the non-resident parent's liability will continue.

NOTE: The above rules only apply where the non-resident parent is refusing without good reason to a DNA test. They should not automatically apply where a non-resident parent says they cannot afford the test fee. Refer to the guidance on "Non-resident Parent states they cannot afford test fees" for further advice.

Non-resident parent will not agree to DNA testing

If the alleged non-resident parent agrees to DNA testing, but does not want to use Cellmark, they can arrange a DNA test with any approved company listed by the Ministry of Justice. See the Decision Making Guidance for a list of the approved companies.

If the non-resident parent wants to arrange an independent DNA test, they should be advised that:

Pre-calculation cases: parentage may be assumed and a maintenance calculation made if the test is not completed by an approved provider within a reasonable period from the date of their dispute. This is usually 40 working days but additional time can be allowed if the non-resident parent provides a valid reason for the delay. For example: they are away for part of the period and the test cannot be completed within the time allowed.

Post-calculation cases: the parentage dispute can be rejected so that the maintenance calculation continues if the test is not completed by an approved provider within a reasonable period from the date of their dispute. This is usually 40 working days but additional time can be allowed if the non-resident parent provides a valid reason for the delay.

In either situation: if the non-resident parent submits evidence of their private test after more than 40 working days and the results are negative, then a new parentage dispute should be raised. Any refund of maintenance will then only apply from the latest dispute date. Please refer to the Advice and Guidance Team if you have a case where this occurs.

All cases where the non-resident parent does not use Cellmark:

- they will not be reimbursed for the cost of a negative, private test
- the costs for an independent test are usually higher than those for Cellmark
- the parent with care is not obliged to co-operate with an independent test, and no sanctions can be imposed against them for refusing to do so
- the non-resident parent must know the parent with care's address in order for the independent company to arrange DNA testing. If the non-resident parent does not have this information, the CMG cannot provide it and the test cannot proceed

Non-resident parent agrees to testing by Cellmark / approved provider

If the alleged non-resident parent agrees to DNA testing, you need to obtain:

- the parent with care's consent; and
- the qualifying child's consent if they are aged 16 or over

See the additional guidance re: Consent (below

DNA test outcomes

Pre-calculation cases:

- If the DNA test confirms the non-resident parent is a parent of the qualifying child or children, you will proceed with the case as normal. You should notify both parents that the dispute has been resolved.
- If the DNA test confirms the non-resident parent is not a parent of the qualifying child or children, the application should be closed, UNLESS there are other children remaining for whom the non-resident parent is the parent of.

Post-calculation cases:

- If the DNA test confirms the non-resident parent is a parent of the qualifying child or children, you will proceed with the case as normal. You should notify both parents that the dispute has been resolved;
- If the DNA test confirms the non-resident parent is not a parent of the qualifying child/ren, the maintenance calculation should be revised to remove the relevant qualifying child/ren from the date they first featured in the maintenance calculation. This will usually be the initial effective date, but could be a later date depending on when they joined the case.

2012/2677 Regulation 14(1)(g) of the Child Support Maintenance Calculation Regulations 2012

2012/427 Regulation 14(1)(g) of the Child Support Maintenance Calculation (Northern Ireland) Regulations 2012

Example

- A maintenance calculation is made for QC1 with an initial effective date of 03 December
- On 01 April the following year a supersession is completed to add QC2 (same non-resident parent)
- The non-resident parent denies parentage of QC2, which is confirmed by a negative DNA test
- A revision is completed to remove QC2 from the 01 April

NOTE 1: As revising the first decision which included the relevant child or children to remove them from the case will lead to the system automatically attempting to reimburse the non-resident parent any payments they may have made, a system workaround is to be used. If the parentage dispute occurs at the beginning of a case (i.e. initial MC stage), this is not such a significant issue. However, where parentage is disproven after a significant period of time has passed (for example, after a number of months or even years), the workaround must be followed, to avoid the system automatically attempting to reimburse the (now “former”) non-resident parent.

NOTE 2: If the child being removed is the last qualifying child in the case then the case should be closed. If there are qualifying children remaining for whom the non-resident parent is the parent, then the maintenance calculation will continue for those qualifying children.

Payments already made by the non-resident parent before they raised the dispute may or may not be refundable. Refer to the guidance on Overpayments, Refunds and Reimbursements for further advice about when a refund will / will not be appropriate.

You should consider the normal procedures for dealing with overpayments in these cases and also in deciding whether to seek repayment from the parent with care. Any arrears for the child or children for periods before the parentage dispute was raised should not be pursued, since the liability no longer exists.

Refer to the Decision Making Guidance for advice on cases where the DNA test results are inconclusive.

The DNA testing process

A cheek cell sample must be taken from the parent with care, the alleged non-resident parent and the qualifying child (click her for 'motherless tests'). This is a simple procedure, which involves the doctor rubbing a small swab around the inside of the mouth.

The cheek cell samples do not have to be taken on the same day, as the laboratory prepares each sample for testing on receipt. A delay between samples will therefore not affect the test results.

When a case is referred for DNA testing, Cellmark write to the alleged non-resident parent and the parent with care, providing:

- a booklet on DNA testing
- a list of local samplers
- a letter that can be used if the individual wants their sample to be taken by their own doctor, and
- an appointment form

The appointment forms are returned by the alleged non-resident parent and the parent with care, when they have made their cheek cell sample appointments.

When Cellmark have been told of the appointment date(s), they send sample kits to the samplers, who take the samples and send them to Cellmark for testing. Cellmark tell us when all the samples have been received and testing starts. Testing is

normally completed within 5 working days and the results are sent to the alleged non-resident parent, the parent with care and the CMG.

Who pays for DNA testing?

When you contact a non-resident parent to ask if they will agree to DNA testing, you should explain that the CMG can arrange a test through Cellmark. The non-resident parent will be required to pay Cellmark directly, but will be reimbursed if the test proves that he is not a parent.

Non-resident parent states they cannot afford DNA test fee

If a non-resident parent is unable to afford to pay for the DNA test, the CMG can do so on their behalf. However, the non-resident parent must agree to repay the cost if the test proves that they are the parent.

The onus is on the non-resident parent to request help towards the cost of a DNA test. If they do not do this then you can assume that they can afford to pay the fee upfront.

A non-resident parent who is (or once the necessary information comes to light-would be) liable to pay the Nil or Flat Rate liability can in exceptional circumstances receive help towards their DNA test fee as it is more likely that clients in this group would need this.

Use the information already held on the case which has been used to make a full or provisional calculation to decide if the non-resident parent would qualify for assistance.

REMEMBER: in a small number of pre-calculation cases, relevant information may only come to light during the conversation with the non-resident parent, resulting in a nil or flat rate, contrary to what was suggested by the provisional calculation. Examples of this include:

- the non-resident parent is a prisoner;
- the non-resident parent is aged under 20 and still in full-time, non advanced education (and is therefore a child);
- the non-resident parent has a partner who receives, for the two of them, a benefit which would result in a flat rate.

A non-resident parent who is liable to pay the Reduced, Basic or Basic Plus rate should pay their test fee in full. This is caseworker discretion; however, any offer to the non-resident parent will require a Team Leader sign off.

As part of this negotiation, you should ask the non-resident parent:

- whether the fee can be met from savings;

- about the possibility of them borrowing the fee (an overdraft, credit card, family etc.).

If the options above are not available, then you can offer payment assistance for the full cost of the DNA test fee. However, you should reiterate to the non-resident parent that they will be expected to reimburse the Child Maintenance Service the fee if the tests prove they are the parent.

DNA Testing: brothers/twins

If the alleged non-resident parent disputes being the father because he states his brother / twin had a sexual relationship with the parent with care, you should follow the process outlined below, depending on whether they are identical twins or not.

DNA testing: brothers / non identical twins

- offer DNA testing
- if the alleged non-resident parent refuses, make an assumption of parentage in accordance with section 26 CSA 1991 (Case A3(a)) / Article 27(2) Child Support (Northern Ireland) Order 1991 Case A3(a)
- if the alleged non-resident parent agrees to testing, you must notify the testing company there is a possibility a 'first degree male relative' could be the father of the child
- if the test result is positive, you should make an assumption of parentage in accordance with section 26 CSA 1991 (Case A3(b)) / Article 27(2) Child Support (Northern Ireland) Order 1991 Case A3(a)

DNA testing: identical twins

If the alleged non-resident parent disputes being the father because they state their identical twin had a sexual relationship with the parent with care, they should firstly be required to confirm that they are one of a pair of such twins. The onus is on the non-resident parent to supply conclusive evidence. The CMG cannot approach the alleged twin, since they are not yet a party to the calculation. Documentary evidence is preferred, such as a birth certificate, but you can accept other less formal evidence (such as photographs) if you are satisfied that it is unlikely to be not genuine.

You can also consider asking the parent with care of they can confirm if the alleged non-resident parent is an identical twin.

There is no DNA test available that can confirm the father's identity if the alleged non-resident parent is an identical twin. In these circumstances, the DNA test can

only confirm either that both of the identical twins could be the parent or that neither of them is.

If the DNA test is positive, but the alleged non-resident parent still claims that their identical twin brother had a sexual relationship with the parent with care, you should refer the case to court for a declaration of parentage, with a request that their twin is made a party to the proceedings.

DNA Testing: consent

A DNA test can only be taken from a person who has consented to it. Consent to a DNA test can be obtained at a face to face interview, over the telephone or in writing. Caseworkers **must** clearly record any verbal consent given, including the date it was given.

The parent with care must also be sent a consent form for disclosure of her name and address to the DNA testing company, even if consent has been given verbally. However, we can proceed with testing without the form being returned (provided consent has already been given and has been recorded). Refer to the following dropdowns for further advice.

Child in Scotland

It should not be presumed that a child in Scotland cannot give consent for their own DNA test. But if you think that a particular child should not be required to do this, for example if you think they do not understand the implications of what it is they are being asked to consent to, refer to Advice and Guidance for further advice.

Parent with care refuses to give consent

If a parent with care refuses to undertake DNA testing once a case is established and if they provide no good reason for refusing to undertake a test, you should inform the parent with care that, if we cannot determine conclusively that the qualifying child is the non-resident parent's child, we may be forced to close the case (or remove the child in question from it, if there are other qualifying children). Such situations must be handled very sensitively and there must be no suggestion that, by failing to undertake a DNA test, the parent with care has deliberately misrepresented who the father may be.

If the parent with care remains opposed to DNA testing, contact your local Parentage Ambassador. If they cannot assist in resolving the issue, contact the Advice and Guidance Team.

Qualifying child over 16 refuses to give consent

If a qualifying child aged over 16 refuses to give their consent for DNA testing, you should discuss the case with your local Parentage Ambassador and / or the Advice and Guidance Team.

If there is no good reason provided for refusing to undertake a test, you should inform the parent with care that, if we cannot determine conclusively that the qualifying child is the non-resident parent's child, we may be forced to close the case (or remove the child in question from it, if there are other qualifying children). Such situations must be handled very sensitively and there must be no suggestion that, by failing to undertake a DNA test, the parent with care has deliberately misrepresented who the father may be.

If the parent with care advises the qualifying child remains opposed to DNA testing, contact your local Parentage Ambassador. If they cannot assist in resolving the issue, contact the Advice and Guidance Team.

Consent: person providing the sample has a mental illness

If you receive evidence indicating that an adult, who is required to provide a DNA sample, has a mental illness which requires them to have a representative who has power of attorney, you will need to obtain consent from the person with responsibility for the individual.

List of Approved DNA Test Providers

Other than Cellmark, as used by CMG, the Ministry of Justice also approve the DNA testing providers in the link below. Results from any of these providers would be accepted.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336127/approved-dna-companies.pdf

NOTE: Courts have a statutory power to direct a scientific test to ascertain the parentage of a child in civil proceedings under section 20 of the Family Law Reform Act 1969 (but section 20 directions are not given in every case where parentage is an issue). If the court makes such a 'section 20 direction', they must choose a tester from the list of accredited bodies.

Details of how to apply for accreditation, the application form and further background information on court-directed paternity testing are on Her Majesty's Courts and Tribunals Service, or, in Northern Ireland, the Northern Ireland Courts and Tribunals Service.

Name: Orchid Cellmark Ltd (trading as Cellmark)
Address: Blacklands Way, Abingdon Business Park, Abingdon, Oxon OX14 1YX
Tel: 01235 528 609
Fax: 01235 528 141

Click here to return to DNA Testing: Overview