

2.2.5 Discretionary decision making

One of the difficulties we encounter is inconsistency, on the part of the Agency in making discretionary decisions. The Independent Case Examiner has expressed her concerns about the complexity of the process, which appears to hinder decision-makers, and she has asked the Agency to seek solutions to this problem. She has been assured that this issue will be addressed in the Agency's Child Support Reform programme (Chapter 2.7). Although we cannot investigate the judgement, which is made on behalf of the Secretary of State, we can and do comment on specific cases, sometimes providing new evidence and asking a decision-maker to reconsider. Whilst accepting that each case should be judged on its merits, the fact remains that the degree of discretion being used varies considerably between Business Units, and indeed in some cases within individual Business Units. One such example, which came to our attention this year, was the way in which the Agency was applying the criteria in respect of advance payments. We raised this with the Agency who agreed to issue revised instructions to Business Units on how to apply the criteria in respect of advance payments.

2.2.6 Interim Maintenance Assessments

Interim Maintenance Assessments (IMAs) are a punitive measure designed to encourage compliance. At 31 March 2001 the Agency had a total of 36,140 IMAs outstanding, but we are aware that as part of the preparations being made for the implementation of the Child Support Reforms (see Chapter 2.7) action is being taken to achieve a significant reduction during the coming year.

IMAs present a major source of complaint. They are reported as outstanding arrears to parents with care of the child/ren who gain unrealistic expectations of maintenance due. Once the interim assessment has achieved its effect and the outstanding information is provided to calculate a full maintenance assessment, the arrears outstanding can reduce dramatically. This is often a source of complaint and even distress to the parent with care.

We were pleased to see that the Agency took the initiative and provided fresh guidance to all staff in September 2000, aimed at replacing interim maintenance assessments, whenever possible, with full maintenance assessments.

The guidance encourages staff to obtain the outstanding information as proactively as possible, in order to convert the interim maintenance assessment to a full maintenance assessment. Staff have been advised that if all verification is not available, then the most recent evidence available should be utilised to reduce the lifespan of the interim maintenance assessment.

Although this is a positive move by the Agency, we expressed concern about a non-resident parent's liability from the original effective date to the interim effective date. However, the Agency have advised us that any liability before the imposition of an interim effective date remains payable.

The following case illustrates the kind of difficulties faced by one client surrounding the liability from the original effective date to the interim effective date.

Example 1

Mrs F complained that her case had been subject to excessive delays, and that it took the Agency almost four years to complete a full maintenance assessment.

She applied to the Agency for maintenance in April 1996, but the non-resident parents' whereabouts were not traced until the end of August 1996 when a maintenance enquiry form was issued. The maintenance enquiry form was not returned, but the Agency took no follow-up action. In 1998, the Agency accepted that the address held for the non-resident parent was confident, as Mrs F provided evidence to support this. An interim maintenance assessment was subsequently imposed in March 1998. In February 2000, the interim maintenance assessment was converted to a full maintenance assessment with an interim effective date in January 1999. The non-resident parent has never made any payments and enforcement action has not been taken, as he now has a nil assessment.

In addition a payment for financial loss can not be considered by the Agency for the period prior to the interim maintenance assessment (August 1996 to March 1998) as the non-resident parent remains liable for this period. Although he maintains that he can not now provide sufficient information to enable an assessment to be calculated for this period.

2.2.7 Departures

The Agency introduced the Departures scheme in December 1996. This scheme allows parents to apply to depart from the standard method of the assessment in certain specified circumstances. For example: where contact costs are incurred by non-resident parents to visit their children, or where costs are incurred because of illness or disability. Parents with care can ask for a departure from the formula where a non-resident parent's lifestyle suggests the maintenance assessment is too low.

The following examples are of complaints we received about the Departures scheme.

Example 1

Mr G complained that due to a nine-month delay in processing his departure application, arrears of over £7,000 accrued on his account, and the Agency refused to reduce or defer any of the arrears. (The deferred debt scheme at that time did not extend to deferral of arrears that had accrued due to a departure application.) He said that he was dissatisfied with the way in which his departure application was dealt with and felt that the compensation received was inadequate.

Notifications were sent to the departure's office to consider an award. His case was not dealt with until February 1999. As the accounts did not begin charging at the new rate until the end of February 1999, arrears of £6,926.94 accrued as a result of the delay.

We asked the Agency to consider deferred debt for the delay in calculating the change of circumstances review effective from 6 August 1997 but not calculated until June 1998. The request to defer further arrears due to delay by the operational accounts team in respect of the departures delay was added to our list of cases to be considered if the scheme was extended to include departures. The Agency is currently considering deferring £3,255.25 of the outstanding arrears.

Example 2

Mrs H complained that after a failed departure's application, she requested an appeal. She said that before the appeal was heard, the submission writer found that the departure's office had made an error. The error was subsequently corrected, however over £3,000 in arrears had accrued, which were owed to Mrs H and she complained that it would take over nine years for her to recoup the arrears.

Prior to our involvement, the Agency had accepted maladministration and had compensated the client £50 for gross inconvenience, plus £10 for her communication costs. However, we asked that they consider awarding an advance payment, as the non-resident parent had since established a regular payment pattern. The Agency agreed and subsequently made Mrs H an advance payment of £1,700.55 (the remaining arrears) plus £108.08 interest. Mrs H was happy with the action taken and agreed that the complaint had been resolved.

The wording of the departure decisions can cause confusion.

Example 1

Mr J applied for a departure, it was refused overall, but some elements were allowed. As a result, there were a number of Appeal Tribunal hearings on the issue, some of which directed that the disallowed departure be implemented or that the parts of the departure that had been allowed be implemented.

Our investigation highlighted that there had been considerable confusion surrounding the departure due to the ambiguity of the notification. In this case, the decision on the departure application was that no award could be made because the resulting change in the maintenance assessment would be less than the minimum amount allowed. However, the decision notification went on to set out decisions on individual grounds and some of these were, in fact, allowed.

It was clear that Mr J found the notification confusing, first to be told that an award could not be made, but then the decision-maker had allowed the application for a departure on certain grounds. Having identified this problem

we recommended that the wording on the notification be changed to be less confusing for their customers. However, the Agency advised us that because the Departures scheme would no longer feature once the Child Support Reforms were implemented and the existing notifications had a limited use prior to implementation, a major change such as this would not be an effective use of resources. We have regretfully accepted their response.

2.2.8 Enforcement

Problems in enforcement have continued to be a source of complaint during this year.

Complaints reaching us highlighted many instances of parents with care being let down by the Agency not pursuing enforcement proactively.

However, the Independent Case Examiner has acknowledged that tougher enforcement and information gathering powers are being introduced by the Agency to enable it to progress such cases. One example is the introduction of closer working between the Agency and the Inland Revenue. New legislation grants the Agency access to information from the Inland Revenue. Although we welcome this initiative, we have noted the following restrictions:

- The Agency can only approach the Inland Revenue as a last resort, and must therefore ensure that defined steps have been taken first.
- Third party organisations cannot direct the Agency to obtain information from the Inland Revenue, where a non-resident parent has already supplied information.
- The Inland Revenue can only provide information about non-resident parents.

Despite the restrictions, we are encouraged by this initiative, and have already seen it work to the client's advantage.

Another measure taken by the Agency, was the production of a revised *Enforcement Guide*. The Guide explains: the methods of enforcement available to the Agency; the way enforcement could be achieved; and also the action to be taken if enforcement is not appropriate – for example, making contact with the parent with care to advise why enforcement action is not being taken. The publication of the Guide is encouraging, but only time will tell if it is used to good effect. We will continue to monitor progress.

The following case illustrates the difficulties faced by one client surrounding enforcement. He felt that the Agency had not taken account of all of the facts.

Example 1

Mr K complained that the Agency were pursuing him for maintenance he owed to his former wife, despite the fact that he was now a parent with care, and his former wife was a non-compliant non-resident parent.

Enforcement action against Mr K was suspended, as when arrears owed by his former partner were deducted and shared care applied retrospectively, the arrears he owed reduced to £173.54. Our investigation also highlighted that due to his former wife's non-compliance, an interim maintenance assessment had been imposed for £102.83 a week, and she had accrued further arrears as a result of this. However, she was unwilling to offset Mr K's remaining arrears of £173.54 against those she now owed. Under the circumstances, we asked the Agency to consider suspending (not collecting) the arrears owed by Mr K, until his former wife complied, or successful enforcement action had been taken against her. The Agency agreed to our request, and arrears were suspended.

This year the Agency's Board issued guidance (Reasonableness Steer), to help staff place greater emphasis on achieving regular maintenance payments from non-resident parents to parents with care. This provides the Agency's decision-makers with greater flexibility to negotiate and take account of individual circumstances when discussing payment arrangements. It also encourages staff to speak to non-resident parents before issuing computer-generated forms and demands, and avoids raising the parent with care's expectations of what payments to expect. If effective this initiative could increase compliance and reduce complaints.

2.2.9 Accounts statements

In the past we criticised the Agency for issuing accounts statements which were difficult to understand. Procedures have been introduced to adopt a standard template for clerical account statements, to improve account statements generated by the child support computer system and (from end of May 2000) to send non-resident parents a customer account statement every six months. (The statement shows an opening and closing balance, the assessments used during the six months, plus every payment due and received.)

We are pleased to report that these positive steps have led to a significant reduction in the number of complaints to the Independent Case Examiner, where confusion over accounts is the primary area of concern.

However, the problem of accuracy of arithmetic (particularly in the calculations of arrears), highlighted in previous years continues to be a common cause of complaint.

Example 1

Miss L complained that she was notified in May 1999 that arrears owing to her had reduced from over £6,000 to £1,522.

We asked the Agency to look into her concerns, and whilst examining her records it was discovered that the arrears had been calculated using an incorrect maintenance assessment (£97.44 a week instead of £39.82 a week). The Agency subsequently: wrote to Miss L apologising for the poor handling of her case; awarded her a consolatory payment of £100, in recognition of the poor service she had received; and finally, awarded her an advance payment of the arrears outstanding, which had, during the course of the investigation, reduced to £1,275.16.

However, the Agency failed to explain adequately that the arrears had reduced because of their error in using the incorrect assessment figures. We therefore, asked that an accounts expert telephone Mrs L to provide a full explanation of the error. Following this, we contacted Mrs L who advised that she now understood why the error had occurred and she accepted that her complaint had been resolved.

Example 2

Mr M complained that the Agency had not taken into consideration, when calculating his arrears, the voluntary payments that he had made to the parent with care.

The Agency had originally allowed £500 voluntary payments when Mr M believed he had paid in the region of £1,100.

The evidence provided by Mr M showed that he had paid £1,000 in voluntary payments to the parent with care and as such the Agency reconsidered their decision and allowed the full amount of £1,000.

A sequence of problems then arose. There was a delay in reviewing Mr M's case that resulted in him being entitled to deferred debt of £619.37, however, because of the time taken to calculate his entitlement, Mr M had already paid some of the arrears, and was therefore only given deferment of £291.95. When the Agency was reconciling his accounts after allowing the rest of the voluntary payments, deferred debt was properly recharged, therefore Mr M did not benefit from the deferred debt scheme at all.

As a result of Mr M's complaint to this office, the Agency completed an accounts check and discovered that they had made an accounting error. It was calculated that Mr M actually owed arrears of £1,342.19. We therefore asked that deferred debt be re-applied, and that a consolatory award be considered for the inconvenience caused. The Agency agreed, and £619.37 was deferred, reducing arrears to £722.82. In addition Mr M was also awarded a consolatory payment of £50.

2.2.10 Paternity

Following the reservations expressed in the Independent Case Examiner's last annual report, the Agency reviewed the advice it provides, to both staff and customers, concerning disputed paternity.

The new advice to staff seems to have had a positive effect. We have encountered fewer occasions where staff of the Agency have made mistakes due to a lack of understanding of the procedures. The Agency's leaflet CSA2090, which gives advice to customers on what happens if there is a dispute about paternity, has been rewritten. We welcomed the opportunity of commenting on the new leaflet before it was published.

Early indications are that this is an area that has been successfully and effectively addressed by the Agency.

2.2.11 Decision Making and Appeals processes

The Social Security Act 1998 introduced the Decision Making and Appeals processes. This is designed to streamline the decision-making process and it is pleasing to report that we have not received any complaints about the process itself. Clients can discuss assessments with a decision-maker, who can revise

assessments rather than going straight to appeal. The option to appeal remains if the client is still unhappy with what the decision-maker has done. The objective of streamlining the process seems to have been achieved.

The introduction of the Decision Making and Appeals processes replaced the periodic review system (which required the Agency to re-examine cases every two years). Instead periodic case checks are to be carried out as part of the Decision Making and Appeals processes. We were concerned that some of the Agency's clients may not have fully understood the effect of the changes. For example, if clients expected the Agency to make contact every two years, they may not have taken the initiative to report changes. It is important for clients to be aware that they will need to ask for a case check if their circumstances change, as the Agency has advised us it has introduced a system of planned case checks, which is customer driven. Guidance states that all cases should be subject to a periodic case check within any four-year period. We intend to monitor the Agency's performance in the coming year and will report our findings in our next annual report.

We have been assured that any periodic reviews that have already been initiated by customers will be dealt with and that all known changes in circumstances will be taken into account – even if one of the parties to the maintenance assessment fails to co-operate.

2.2.12 Agency bias

Our investigations suggest that many clients perceive Agency bias as being an issue in their particular case. However, our analysis suggests that Agency bias has not occurred in the cases we have examined. This perception is often the result of the Agency's failure to progress their case in a timely and efficient manner or to give a clear explanation why information cannot be shared, or their failure to notify one parent of a change which has been actioned. The Agency needs to consider how to tackle this problem, given the importance of client perceptions in terms of securing compliance.

We will continue to monitor this area in the coming year.