Rt Hon. Frank Field MP

- 9 OCT 2018

Dear Frank,

Thank you for your letter dated 13 September 2018 requesting further clarification to the Department’s written statement on 12 September 2018. Please find below a response to all your questions.

**Historic Debts**

You asked for further information about the full rationale for the Department’s approach to writing off debt, including details of how the write off thresholds were reached.

Debt on the Child Support Agency (CSA) schemes has built up since the launch of the statutory maintenance service in 1993. Much of this debt is now extremely old, and relates to children who are now adults. We have tried various options to collect this debt, including using external debt collection companies, and negotiating with clients to reach agreements on part payment in full and final settlement. None of these approaches has proved effective.

In many of these cases, the paying parent cannot afford to pay the debt. We know that there were serious issues with accuracy in the early years of the CSA schemes, and as such many of these debts do not reflect financial circumstances of the paying parent, and are unaffordable.

We want to create certainty for both the receiving parents and paying parents in these historic cases about the status of their debt. We also want to be able to draw a line under the issues of the past, and focus our efforts and resources on the new Child Maintenance Service, to best serve the children of today. Our approach provides the opportunity for one last chance of collecting the debt in cases where the receiving parent wants this and it is cost effective to do so. As I’m sure you understand, action to collect and enforce
maintenance is expensive, so we cannot justify use of taxpayers’ money to take this action on low value debts when the prospects of successful recovery as so poor.

The thresholds we propose are based on the approximate cost of enforcement action. Depending on which actions we use, activity to attempt collection costs around £1000 per case. Older debt is typically more difficult to collect. We have therefore set a higher threshold of £1000 for cases over ten years old, and a reduced threshold of £500 for newer cases where the debt should be easier to collect.

You asked how the Department intends to go about explaining this approach to claimants who are owed debts that the Department intends to write off.

Depending on which category a case falls into, a client will receive a different letter or series of letters explaining what is happening and why, and where appropriate giving them the opportunity to ask us to try to collect their debt. These letters will be sensitively worded and acknowledge that this may not be the outcome a client was hoping for.

**Assets and lifestyle inconsistent with income**

You asked if it is the Department’s intention that notional income inferred from assets applies to both those registered in the UK and offshore.

It does. The drafting as it stands is sufficient to capture assets outside the UK, without having to make specific reference to this.

You asked for clarification on some details of the regulations, specifically: The Variation Regulations 2000 referred to “beneficial interest on land and rights in or over land”. The new regulations use the wording “land or rights in or over land”. You asked for an explanation for this change in wording.

The reference to beneficial interest has not been removed. It is now in paragraph (1) of proposed new regulation 69A, so it refers to all assets, not just land or rights in or over land. This is to ensure that we have a broad definition of what constitutes an asset.

You asked what will happen in discretionary trust cases in which the trustees are not making distributions to the beneficiary. Will the
Department distinguish between such cases where distributions are being made, and where they are not?

This proposed new power is concerned with calculating a purely notional income from an asset, not the level of funds the individual actually receives from the asset. The ultimate use of this power is discretionary, and consideration will be given to what is reasonable before any action is taken. In the case of a fixed trust, the intention would be to treat the paying parent as owning an asset to the value of his/her share of the trust assets. Even where the paying parent’s share is extremely valuable, in practice this will translate to a fairly modest addition to the maintenance calculation. Where a paying parent is unable to realise the value of his/her share by way of a distribution, consideration will be given as to whether he/she is able to fund the maintenance increase. If not, we may exercise discretion not to make a variation but we anticipate this to be rare. Experience of cases where paying parent have trust funds set up for their benefit tend to show that these paying parent have very affluent lifestyles. In the case of discretionary trusts, there will be complications in valuing the paying parent’s share.

Our intention will be to look at the trust deed and the history of previous distributions. We will also need to consider whether the distributions could be caught under the existing regulation 69 of the Child Support Maintenance Calculation Regulations 2012 (unearned income), as we need to ensure that we use the appropriate provision to account for income from assets, and that the same asset is not taken into account twice – both as generating notional and actual income.

You asked about why the Department decided the 8% rate of interest was appropriate, and if it would be open to a Tribunal to impose a lower notional interest rate, and if so would this not risk creating uncertainty.

The 8% figure was chosen on the basis that it had been used previously and has been upheld by tribunal as a reasonable figure to use for this purpose. We consulted on this figure and we received limited and mixed responses, often with no rationale. In the absence of a clear consensus, we decided to proceed with the 8% figure as a reasonable rate of interest.

It is our view that the Tribunal’s remit is confined to a reconsideration of whether it is “just and equitable” to make a variation. The basis for calculating the amount of any variation is set out in regulation 18(5) of the Child Support (Variations) Regulations 2000, and in sub paragraph (7) of the new draft proposed regulation 69A(7) of the Child Support Maintenance (Calculation) Regulations 2012 which require that the amount must be calculated using the statutory rate of interest (currently 8%). The Tribunal could amend the amount of a variation if there has been an error made by the Secretary of State, but
we do not consider that the Tribunal can apply a method of calculation of its own choosing.

You asked about scenarios where an asset would need to be sold in order to meet any additional maintenance payments. The new regulation 69A provides an exemption where the sale of the asset would cause hardship to a child of the non-resident parent/paying parent, or otherwise be unreasonable in the circumstances. You asked for an explanation for this wording, which differs from that used in the 2000 regulations.

The new regulation on notional income from assets is not intended to exactly replicate the provisions in the 2000 regulations. One of our overarching policy priorities is to protect the welfare of all children affected by our decisions, and to promote healthy relationships within separated families.

This provision is intended to protect the welfare of all children affected by our decision to derive notional income from an asset. It would not be reasonable to increase the maintenance calculation to benefit a child in one household, if that had a significant detrimental impact on a child in another household.

**Enforcement powers**

You asked what effect the Department expects the new enforcement power to have on compliance rates, and what work has been undertaken to understand its likely effectiveness.

Prior to launching the consultation on the Compliance and Arrears Strategy in December 2017, we undertook some analysis to understand the likely impact of the enforcement powers we are proposing.

Based on that information, we estimated that the new powers to deduct from joint and business accounts would enable an additional 400-500 actions per year, yielding around £840,000 in additional maintenance collected. Our use of our existing deduction order powers has increased significantly since then, and this, coupled with the natural growth in our caseload, could mean that volumes of cases in which we use this new power is higher than our initial estimate.

At the same time we also estimated that we might use the proposed power to disqualify a parent from holding or obtaining a passport in around 20 cases per year. This would be an action of last resort, only used where there was clear evidence of wilful refusal or culpable neglect to pay child maintenance. Its primary purpose is to have a deterrent effect, and our intention is that it will
lead to payment in many more cases than just those in which the action is actually used.

You asked if the Department intends to encourage or instruct Child Maintenance Service (CMS) to take a more consistent and extensive approach to using its enforcement powers.

The CMS already makes good use of the range of available enforcement powers to recover child maintenance arrears and re-establish compliance with on-going maintenance commitments. Data on the number of cases in which enforcement action is taken has recently been added to our regular statistical publications. We recognise however that there is always room for improvement.

The CMS is always looking for ways to maximise the effectiveness of its debt recovery function. We will continue to look for ways to use our existing powers more effectively in order to provide the best service to our clients, and the best value to the taxpayer.

I am very grateful for your contribution to these important regulations and hope you agree that they demonstrate my commitment to ensuring maintenance liabilities are based on a rounded picture of a paying parent’s financial means, and to ensuring that non-compliance with child maintenance obligations is tackled effectively.

I hope you find this reply useful.

Kind regards,

Justin Tomlinson MP

Minister for Family Support, Housing and Child Maintenance