

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 9 July 2021

Public Authority: The Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested information regarding amending child maintenance payments without supporting evidence.
2. The Commissioner's decision is that DWP does not hold information falling within the scope of the request.
3. The Commissioner does not require DWP to take any steps.

Request and response

4. On 2 February 2020, the complainant wrote to DWP and requested information in the following terms:

"Further to your FOI response 43026 sent on 17th December 2019 where you state:

"Where evidence is required, Child Maintenance Service would routinely await this evidence before amending any payment schedules"

Please could you provide information on your protocol for the situation where your caseworkers implement a reduction without receiving any supporting evidence from the NRP¹ or any other sources? When such

¹ Non-resident parent

decisions are made in error, please could you provide information on your protocol for correcting these?"

5. DWP provided its response on 27 February 2020 and confirmed that it does not hold any information in relation to a caseworker implementing a reduction without evidence. DWP explained that where an error is identified, this process will be dealt with by the owning caseworker at the time it is identified.
6. The complainant requested an internal review on 27 February 2020 stating only *"I find it incomprehensible that you do not hold any information in relation to my request"* as their reason for disputing that no information is held.
7. DWP provided the outcome of its internal review on 11 March 2020 and upheld its original response. DWP confirmed that it had previously provided the complainant with policy guidance which related to negotiating payments and advised that it used a range of available information including credit reference agency information and earnings information from HM Revenue and Customs.

Scope of the case

8. The complainant contacted the Commissioner on 17 May 2020 to complain about DWP's handling of their request. The complainant confirmed that they believe that DWP does hold information falling within the scope of the request.
9. The Commissioner considers that the scope of the case is to determine whether, on the balance of probabilities, DWP holds information falling within the scope of the request.

Reasons for decision

Section 1(1): General right of access to information

10. Section 1(1) of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request and, if so, to have that information communicated to them. This is subject to any procedural section or exemptions that may apply. A public authority is not obliged under the Act to create new information in order to answer a request.

11. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions applies the civil standard of proof – ie on the balance of probabilities.
12. In the specific circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, DWP holds recorded information that falls within the scope of the request.

The complainant's position

13. The complainant confirmed to the Commissioner that they believe that DWP does hold the requested information as they are aware of an incident in which DWP reduced a paying parent's monthly child maintenance payments due to alleged hardship. The complainant stated that this reduction had been applied without any supporting evidence and the Child Maintenance Service failed to rectify this reduction in payments.
14. The complainant considers that the above incident is not an isolated case and is a widespread issue within the Child Maintenance Service.

DWP's position

15. DWP explained to the Commissioner that caseworkers may not need to receive evidence to make a decision. DWP explained that the Child Maintenance Decision Making Guide² applies to decision making and paragraph 96033 onwards refers to discretionary decisions.
16. DWP confirmed that this guide does not refer to the exact scenario that the complainant set out in the request. DWP explained that its "Debt Steer" guidance applies to caseworkers making decisions on debt or arrears and this guidance was provided to the requester as it is contained within the Child Maintenance Decision Making Guide³. The Commissioner also notes that this guidance was provided to the complainant in response to the previous request referenced in paragraph 4.
17. DWP explained that the Child Maintenance Service regularly makes routine evidence based decisions to amend payments. This evidence

² <https://www.gov.uk/government/publications/child-maintenance-decision-makers-guide>

³ Volume 6.

does not need to come from the customer. Child Maintenance Service has a range of information available to them including Credit Reference Agency information and earnings information from HM Revenue and Customs, to help in arrears discussion decisions. This may mean that the Child Maintenance Service does not require the parent to provide information to support a request. DWP confirmed that the paying parent may ask to submit evidence and DWP would take a view as to whether it would await or accept any evidence.

18. DWP confirmed that where it has enough evidence from other sources, it can make a decision based on that information. Where a parent has been asked to provide evidence, DWP explained that it will allow them reasonable time to present their evidence before it takes any action or decision whether to amend the payment.
19. DWP explained that there may be circumstances to consider, as well as the welfare of the children, which are not documentary evidence based decisions. DWP explained that these would not necessarily be exceptional circumstances but would mean that the caseworker would use their judgement and discretionary decision making ability to do this, and this would not be covered by guidance as it is on a case by case basis, based on a conversation with the paying parent.
20. DWP confirmed that, as stated above, the Child Maintenance Decision Making Guide gives guidance on using discretion. DWP also confirmed that the debt steer guidance does not state that no amendments should be made without first receiving evidence from a parent and explained that evidence may not be required from the paying parent. DWP confirmed that should the parent fail to provide evidence, the caseworker will make a decision based on available information available from other sources.
21. With regards to the request for the protocol on rectifying a reduction in payments made in error, DWP confirmed that in addition to the specific guidance requested, it also does not hold any general guidance on how to rectify an error made whilst assessing child maintenance. DWP confirmed that there is no requirement to escalate errors to a manager and there is no specified timeframe in which an error must be rectified. DWP stated that caseworkers understand the importance of dealing with all work in a timely fashion and that accuracy is important.
22. DWP confirmed that searches had been conducted of its Policy, Law and Decision Making Guide and online guidance.
23. DWP confirmed that it had used the following search terms:
 - No evidence

- Arrears
 - Debt
 - Error
24. DWP confirmed that the guidance that refers to amendment of an arrears agreement is the Debt Steer and this had been provided to the complainant.
25. DWP stressed, however, that this does not tell a case worker what to do in every case or scenario as it is a high level set of principles and caseworkers should have a conversation with the paying parent. DWP confirmed that judgement is allowed and caseworkers can make discretionary decisions by law. It explained that two different caseworkers could make two different decisions in the same scenario and neither decision would be incorrect.
26. DWP considers that the complainant is seeking guidance for very specific scenarios and that the nature of guidance is that it is more often than not unspecific. DWP considers that there are few scenarios where it states a caseworker must or must not do something as it can only cover general or routine scenarios, allowing the caseworker to exercise judgement on a case by case basis.
27. DWP directed the Commissioner to specific paragraphs within the Decision Makers Guidance which did not answer the specific request but does confirm how caseworkers deal with individual cases.

"Exercising judgement

96016 *There are occasions where the DM⁴ has to make a decision based on incomplete or contradictory information.*

96017 *If this is the case and the DM is unable to corroborate the information, they will have to exercise their judgement, considering the available evidence, and make a decision based on the balance of probabilities the information or allegation provided is true or not".*

"Discretionary Decisions

96035 *Discretionary decisions occur throughout the child maintenance process and individual instructions or CM DMG sections indicate where a*

⁴ Decision Maker

discretionary decision is required. The following list provides some examples where discretionary decisions are required, but is not exhaustive

- 1. making a default maintenance decision*
- 2. deciding if a variation is Just and Equitable. See Chapter 27: Variation overview*
- 3. arrears agreements or debt steer or enforcement – if arrears are due, the consideration of whether to take enforcement action is a discretionary decision”.*

The Commissioner's position

28. In making her determination, the Commissioner has considered DWP's submissions, the complainant's arguments and the specific wording of the request.
29. The Commissioner notes that the request is focussed on a very specific situation and the complainant is seeking information regarding how DWP would deal with this situation. In light of the specific nature of the request, the Commissioner considers that it is unlikely that DWP would not be able to easily locate any information falling within the scope of the request as this information would form part of DWP's guidance for child maintenance caseworkers. The Commissioner would not expect that in depth searches would be required to locate the requested information, if held. She would expect DWP to have knowledge of its own protocols during casework.
30. The complainant also notes that DWP had already provided the complainant with its decision making guidance, including the Debt Steer guide. The Commissioner considers that if the information were held, it would be held as part of this guidance.
31. The Commissioner considers that the searches performed by DWP were adequate and proportionate in the specific circumstances of this case. She is satisfied that these searches would locate any information falling within the scope of the request.
32. The Commissioner notes the complainant's argument that they are aware that DWP has reduced maintenance payments without supporting evidence and they believe that this is not an isolated case within the Child Maintenance Service.
33. The Commissioner does not dispute the complainant's experience in this matter, however, she accepts DWP's arguments that caseworkers have discretion to use the guidance available and their experience to determine the appropriate next steps. The Commissioner accepts that it

would not be feasible to create specific guidance to meet each and every scenario that a caseworker may encounter.

34. For the reasons set out above, the Commissioner accepts that, on the balance of probabilities, DWP does not hold information falling within the scope of the request.

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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