

The child maintenance service

A banana-skins edition

James Pirrie jp@flip.co.uk Jul 2018



Scenarios we come across... Yes?

- 1) Doing a maintenance deal in our court cases:
 - 1) What should we expect from the CMS?
 - 2) Can we structure our case safely to protect against CMS interference?
 - 3) If not what are the risks and what should we warn clients about?
- 2) Order being brought back to you for guidance
- 3) Client moving abroad – or coming here from abroad (no time to do EU Maintenance Regulation today).
- 4) Helping your client to make a claim through the CMS

The stand-alone CMS “nasty”-scenario

Mona has 3 yr old Thomas and 5 yr old Fifi – father is Falcon. They started living together six years ago and separated about a year back. They never married.

For the first year, Falcon paid 1,250 a month on a voluntary basis – but after moving in with Gina the girlfriend, says that he has new responsibilities and cut the provision to 375 a month from 1st July, saying that this is in line with the on-line calculator.

Falcon works in IT and used to be employed by one company. However, he has now “gone freelance”, taken on ‘some other clients’ and set up a company “F-IT” ltd through which his income is channelled. The online report shows that Gina is a co-director though the one time Mona met her, she seemed clueless about IT, save for deft operation of her eye-lash curler.

During the relationship some of Falcon’s income came in cash, which is how they used to fund their annual Disney trip.

AGENDA

Ch1: The formula

Jurisdiction

Paying parent

Income, pension, other kids, due kids, stays

Ch2: Complex families

[Interlude for nerds: other rates]

Ch3: Variations

[Interlude for history geeks]

~~Ch4: Overview of CS1, CS2, CS3~~

Ch5: 10 traps to catch you out

Ch 6: Process

Ch 7: What solutions can we adopt for our clients?

Ch 8: Key points

Interruptions and questions welcomed.

CS1	1993-2003
CS2	2003- 2012 +
CS3	2012 ->

NRP = non resident parent = paying parent
PWC = Parent with care = receiving parent

The stages of the CS3 formula

Jurisdiction:	G eography	A ge	P arentage	S eparation	O rder:	pre 3/3/2003; or Less than 12 months
Paying parent	NB Reg 50; JS v SofST [2017] UKUT 296					who provides less of the care? assumption
I ncome	usually on basis of last tax return					"escape" to current income where +/-25%
P ension contributions deducted O ther children (discount for) D ue children S tays (discount for)						
V ariations:	U p:	Investment income	D iversion		No longer: lifestyle inconsistent or underused assets	
Only imposed if applied for and where just & equitable	D own:	School fees	C ontact costs	I llness of NRP child	D ebt	M ortgage

Where CS has jurisdiction then PPs orders only:	
by agreement	s8(5)
to top up a maximum assessment	s8(6)
for educational costs	s8(7)
for costs of disability	s8(8)
reverse orders	s8(10)

Collection service
deducts 4% from PWC
charges 20% to NRP
collection service imposed where NRP deemed "unlikely to pay"
"pay in full, on time, all the time" (and ask for a refund)

Protection/ promotion for CMS:	
Freedom to go to CMS after 1 yr. The crt order is discharged.	s4(10)(aa)
Agreements to exclude it are void	s9(4)
The court may not make up for the inadequacy of the CSA/ CMS	phillips v peace
The court should apply its formula in court jurisdiction cases	GW v RW
Adopt the percentages in top up cases too	re TW&TM

Sanity for clients
Your only chance to protect against this may be at the first financial order. Consider:
1) the global or "Segal" order
2) the Christmas order
3) use an undertaking to pay or contractual agreement (which are not discharged by s4(10)(aa))

The CMS jurisdiction and formula are central in never married cases.

Protect yourself ... warn clients:

the end point: 1st mon in sept after A-levels THEN back to court
efficacy of enforcement system
esp PWCs
potential transience of court order
NRP options to manipulate
options for protection of crt order
esp NRPs
the fees system

Help

The CS (Maintnce Calculation regs 2012) have a lot of the answers	
eg www.nacsa.org.uk	
Resolution website	
Various counsel	
Resolution committee	
me! jp@flip.co.uk	

CHAPTER 1: CS3 FORMULA

	Current scheme ("CS2")	New scheme ("CS3")	
Income	Net income as identified by the Agency	Gross previous year's income as declared to HMRC	
Tax	Fully accounted	Ignored	
In excess of	£104,000 net income	£156,000 gross income	
Levy for:		<i>First £800 pw</i>	<i>Above £800 (income taxed at higher rate)</i>
1 child	15%	12%	9%
2 children	20%	16%	12%
3 or more children	25%	19%	15%
Deductions where NRP has child in his household			
1 child	15%	11%	
2 children	20%	14%	
3 or more children	25%	16%	
Variations scheme	<p><u>Potentially increases where:</u></p> <ul style="list-style-type: none"> • Assets over £65,000 "underused" • Dividends • Income being diverted • Lifestyle inconsistent with declared income <p><u>Potential reductions where</u></p> <ul style="list-style-type: none"> • Boarding school fees being paid • Contact costs • Illness • Debt or Mortgage from the relationship 	The new variations scheme is similar save that crucially there is to be abolished the underused assets and lifestyle categories. Once again, millionaires with careful arrangements will enjoy minimal levels of child support (and thus be out of reach of the court's making a top-up award).	
Change of circumstances review	Available to reflect most changes, subject to the threshold that it made a difference of roughly £15 pw	Reassessments to be carried out each year on the previous year's declared income. Changes in the meantime where a 25%+ change of income	
Duties to report changes of circumstance	Minimal duties on PWC where child falls out of the scheme.	Now, additional duties on NRP to report change of address.	

The stages of the CS3 formula

- 1) Jurisdiction: In relation to each family arrangement, identify first whether the children are within jurisdiction of the CMS or not
- 2) Paying parent: Then identify the paying parent
- 3) Income: what does [he] earn for CS purposes
- 4) Pension: Take off private pension contributions.
- 5) Other kids: Then count up the number of children in the NRP's (paying parent's) new family to establish the discount
- 6) Due kids: Then count the number of children for whom there is an obligation; and Divide the amount between them per capita ...
- 7) Stays discount: Then apply the overnight stays discount in relation to each child.

We could summarise this:
CS3 = “JP IPODS”

1. J urisdiction
2. P aying parent
3. I ncome (as varied)
4. P ension
5. O ther kids
6. D ue for kids (allocate)
- 7 S tays



Jurisdiction where there's GAPS'0

1. (G eography):

1. the child is living in the UK
2. the NRP is resident in the UK
or if overseas then at least 1) on government service or 2) employed by a UK based company.

2. (A ge and stage): The same test as for child benefit (broadly 1) below 20 & 2) not in work 3) in secondary education or similar.

3. (P arentage): that person is the legal parent of that child

4. (S eparation): there must be a parent living in a separate household from the child.

5. (O: rder): if there is a court maintenance order:

1. It is post 3/3/2003; or
2. It is over 12 months old.

*If the CMS has jurisdiction,
then the court's powers are restricted to:*

- Where there is agreement s8(5)
- Where there is a maximum calculation s8(6)
- Where the order is for educational costs s8(7)
- Where it is to meet the costs of disability s8(8)
- Reverse orders s8(10)



Court & CMS ...

(cms trumps all ... however rubbish it may be)



1. CSA 1991 s4(10)(aa): if there is an order in place, you can't go to the Agency/ Service unless:
 - The order was made before 3/3/2003
 - The order has been running 12 months
 - But that means there is an open door after a year.
2. S 9(4) an agreement to exclude the CMS is void
3. Phillips –v- Peace “it is not for the courts to make up for the inadequacies of the CSA”
4. (it follows) Dorney-Kingdom –v- Dorney-Kingdom that an order for spousal maintenance must be genuine.
5. GW-v- RW where the CSA does not apply, use the formula anyway ... and
6. Re TW&TM Mostyn J goes on to say in terms “continue to apply the formula percentages up above the cap too.”



2) Find the **PAYING** Parent

CS2

- From date of application (roughly)
- Look back 12 months
- Who has more overnights



cs2

CS3

- Who has more care
- (Start by looking at child benefit)
- Equal care excludes jurisdiction (see CS MCR 2012) regulation 50



cs3

What of

- Schools
 - Children in care
- (where the child would have been – we guess).

CS3

Fill in the boxes marked in:

				<u>c/f</u>
	<i>p/a</i>	<i>p/m</i>	<i>p/w</i>	
1 I ... <u>income</u> (gross)	0	-	-	-
		<u>p/m</u>		
2 P ... payments to personal <u>pension</u> (ie the gross payments made)	0	-	0	-
3 O... other Kids: those in the PP's h'hld allowance therefore:	0		0	0
4 D... Due Kids: number being supported	0	<u>brtb</u>	<u>hrtb</u>	
If income under £200 then fixed/ reduced rate applies (see hidden cells for workings),	0			0
otherwise:		<u>brt</u>	<u>hrt</u>	
('brt' = basic rate tax bracket and 'hrt' is higher)		0	0	0
sums that are falling into assessment in the 2 tax brackets:		-	-	total:
apply above % to these figures to give liability		0	0	0
sum c/f				0
5 S ... allowance for overnight <u>Stays</u>				
per fortnight	0			
add holidays	0			
so total for year is approx #	0			
discount is therefore			0	0
TOTAL SUMS DUE under CS3	<i>p/a</i>	<i>p/m</i>	<i>p/w</i>	
	-	-	-	

Email me if you want help
jp@flip.co.uk

example

Mother (Mona) is claiming for Thomas and Fifi.

Falcon was on a salary of £70,000

His PAYE income is £11,000

He takes dividends of around 25,000

And has cash income of around £6,000 p/a

Gina has 50% of the shares in the company;

And a 5 year old and is expecting her next baby in 2 months' time.

Fifi & Thomas stay with dad overnight on Saturdays every fortnight and both children went away with dad for 5 days to Disney at Easter.

The income minefield

- Income

- The CMS usually does not try to identify income:
- Earnings as reported on last tax return
- Where that job has terminated – it is taken as nil.

- Dividends are not earned income

- They are investment income for the tax man
- (Even though they have been the standard means for the business owner to extract income from the business at lower cost
- The applicant must
 - Know about them;
 - Know about the scheme
 - Make an application for a “variation

- Historic > Current

- A change by 25% permits a move to current, when the CMS does have the duty to investigate
- (and the NRP has a duty to report

Analysis

1. Jurisdiction:	GAPS test	• CS3 ✓
2. Paying parent:	Overnights	• P= PP
3. Income		• 70kp/a?
4. Pension		• 0
5. Other kids		• 11%?
6. Due for kids		• 16% & 12%
7. Stays		• 1/7th

CH 2: COMPLEX FAMILIES

Peter and Rita

example

- 1) Peter's step child: To what extent does the fact that Peter treated Rita's child from an earlier relationship (Erica) as a child of the family affect things?
- 2) Peter's new child: Peter duly has a child with Sasha - how does this change things?
- 3) Peter on his own again: They then separate - what does he pay in total now? Does it matter whether or not it is a formal arrangement or an agreement
- 4) Rita's new relationship: Meanwhile Rita forms a relationship with £100k p/a Richie and gives up work –
 - 1) what are the impacts on Peter?
 - 2) ... Rita's new child: What are the impacts on Peter when they have a child Randolph?
 - 3) ... and separation from Richard: What are the impacts on Rita when they separate, never having married?
- 5) Other children: Peter remembers that he has a child in America for whom he pays £100 a year – does this impact on matters?

Jurisdiction	Paying Prnt	Income Variations	Pension contribns	Other children	Due 4 Kids	Stays



CHAPTER 3: VARIATIONS

PPs bring it down ... SCIDM

S chool fees where boarding (35% of the fees netted off income)

C ontact costs

- For CS2, not where shared care – CS3 permits both
- Lots of detailed rules

I llness or disability of NRP resident child

D ebt

M ortgage



PWCs push it UP ADDL

A ssets

D ividends

D iversions

- Girlfriend in the business suddenly earning a fortune
- Leaving money in the company
- Suddenly outlandish pension contributions

L ifestyle inconsistent



To ID rps pushing it up

~~Assets~~

~~Dividends~~

Other Income

- Unearned income of £2500 pa from property/ savings / part 5 ITTOIA

Diversion

- Girlfriend in the business suddenly earning a fortune
- Leaving money in the company
- Suddenly outlandish pension contributions

~~Lifestyle inconsistent~~



Example

- Judith, impressed by your schedule 1 credentials, has approached you to pursue a claim in respect of her new born.
- She says that she knows a lot about the father, Alfonso, who is her former boss, a former city star now focusing more on his polo ponies and Scottish fishing interests
- Alfonso lives in a 5 bed property in Mayfair with his wife and 3 children.
- Judith is particularly verbal about the underground swimming pool and cinema complex at the property
- Are you right to be rubbing your hands as regards the potential “brutal remoteness” arguments?



Analysis

1. Jurisdiction

• CS3 ?

2. Paying parent

• A= PP

3. Income

• ?

4. Pension

• ?

5. Other kids

• 16%?

6. Due for kids

• 12% / 9%

7. Stays

• 0

Schedule 1 claims

1. Accommodation
2. Equipping
3. Lump sum(s) for car / other child needs
4. [general maintenance – eg via top up]
5. School fees/ disability costs
6. Costs provision

- Can Charles J in CF-v-KM save us? [ie the court can determine that the CS award is at the maximum]

Chapter 5: Ten Traps



1) A different role for CM option



Blog

Accessibility

Cookies

Contact us

Cymraeg

Search this site...

Go

[What is child maintenance?](#)

[Family-based arrangements](#)

[Other arrangements](#)

[Tools and guides](#)

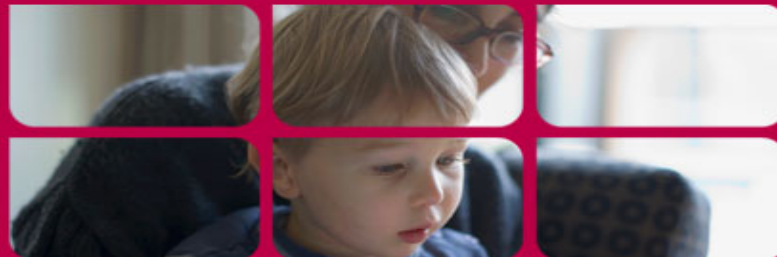
[Help dealing with separation](#)

[About us](#)

[FAQs](#)

We're here to help you work it out

Child Maintenance Options is a free service that provides impartial information and support to help separated parents make decisions about their child maintenance arrangements.



What is child maintenance and how can it be arranged?

It's regular support from parents living apart from their children. Currently half a million children in the UK benefit from a [family-based arrangement](#).

People we have helped

Many parents like you have gone through separation and survived. Read and be inspired by their stories in our [People we have helped](#) section.

Contact us

0800 988 0988

Lines are open:
8am to 8pm Monday to Friday.
9am to 4pm Saturday.

Breaking down barriers to child maintenance

Sometimes emotions, money worries or conflict stop you from sorting out child maintenance. There can also be practical issues you need help with. Get [help dealing with separation](#).

Sorting out separation web app

Work out what you need help with, and then find organisations that offer specialist support on the issues affecting you as a separated parent.



Tools & leaflets



2) Shared care / equal care etc

- Shared care assumption (reg 47)
 - If there is some but no agreement as to amount then take one night p/w.
 - (then evidence can be provided)
- A child will be relevant in the count if the PP is paying for them by a written or oral arrangement
- If care is completely equal then there may be no NRP (reg 50)

3) Different take on income

Under CS1 & CS2, the CSA would identify the NRP's real income (and the findings could be appealed to a CS tribunal)

Under CS3,

- the PWC is stuck with what is reported for tax ...
- There is no appeal to the CMS or tribunal that he is obviously lying
- There is no Lifestyle argument
- Only if his income has arguably gone up by 25% can she ask for the NRP to be assessed on current income (see below).

Beware

- partners in law firms
- Film schemes
- Tax schemes etc


“historic & current income”

- Take the income on which the NRP was last charged to tax for the latest available year (up to 6 yrs preceding the request)
- If current income varies by over 25% then you can move to current income.

example

- Freda instructs you on 10th April 2014. She is married to Silas, a farmer trading as a partnership with his mother and expects to remarry shortly after the deal. She wants to be sure about the payments for their 3 children.
- Silas' share of gross profits have been:
 - y/e 30/4 2013 125,000
 - y/e 30/4/2014 350,000
 - y/e 30/4/2015 250,000
 - y/e 30/4/2016 250,000
 - y/e 30/4/2017 250,000
 - y/e 30/4/2018 125,000
 - Current year 156,200, expected
- His last tax return is for the year ended 5/4/2008.

<u>tax year one</u>				<u>tax year two</u>				<u>tax year three</u>				<u>tax year four</u>			
April	July	October	January	April	July	October	January	April	July	October	January	April	July	October	January
								In theory the target period							
							But a business with its year to 30th april would be back here								
															And if behind with its accounts may be very historical



request



4) Narrower diversion grounds

A ssets

D ividends

D iverision

- Girlfriend in the business suddenly earning a fortune
- Leaving money in the company
- Suddenly outlandish pension contributions

L ifestyle inconsistent



From ADDL To ID

~~Assets~~

~~Dividends~~

other Income

- Unearned income of £2500 pa from property/ savings / part 5 ITTOIA

~~Diversions~~

- Girlfriend in the business suddenly earning a fortune
- Leaving money in the company
- Suddenly outlandish pension contributions

~~Lifestyle inconsistent~~



(5) The Lying NRP

The café owner with imaginative accounting?



- No longer can the PWC appeal saying *“I know he is lying on his tax return because I used to work there too.”* The CMS is bound to use what is on the tax return. The only challenge is to the tax authorities (and they will deal with the case in line with their own priorities not hers).
- Historic v current income does not save you because he will say *“whatever it may be it definitely hasn’t changed by 25% this year.”*

Can we export court findings to the CMS as a challenge?

- TAKE CARE! Not without permission *
- But how is it going to help you anyway?

6) A clearer 'choice' of arrangement aka FEES !

Direct pay

- What the CMS wants
- You may be helped with Quantum, but whether the payments are made is managed directly

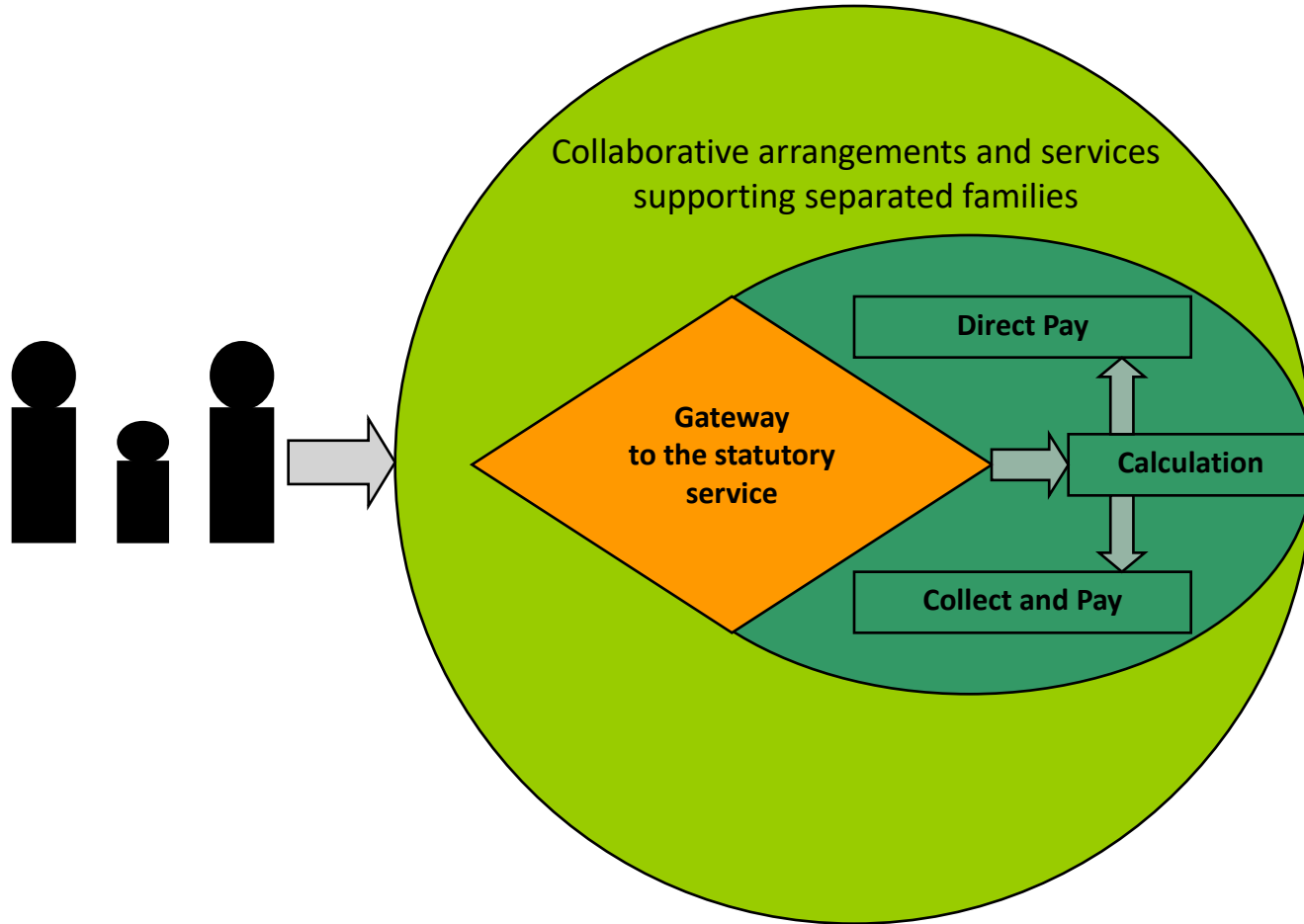
Collection service

- An administration service
- Aims to discourage its use through charging fees
- PPs in particular will want to avoid it

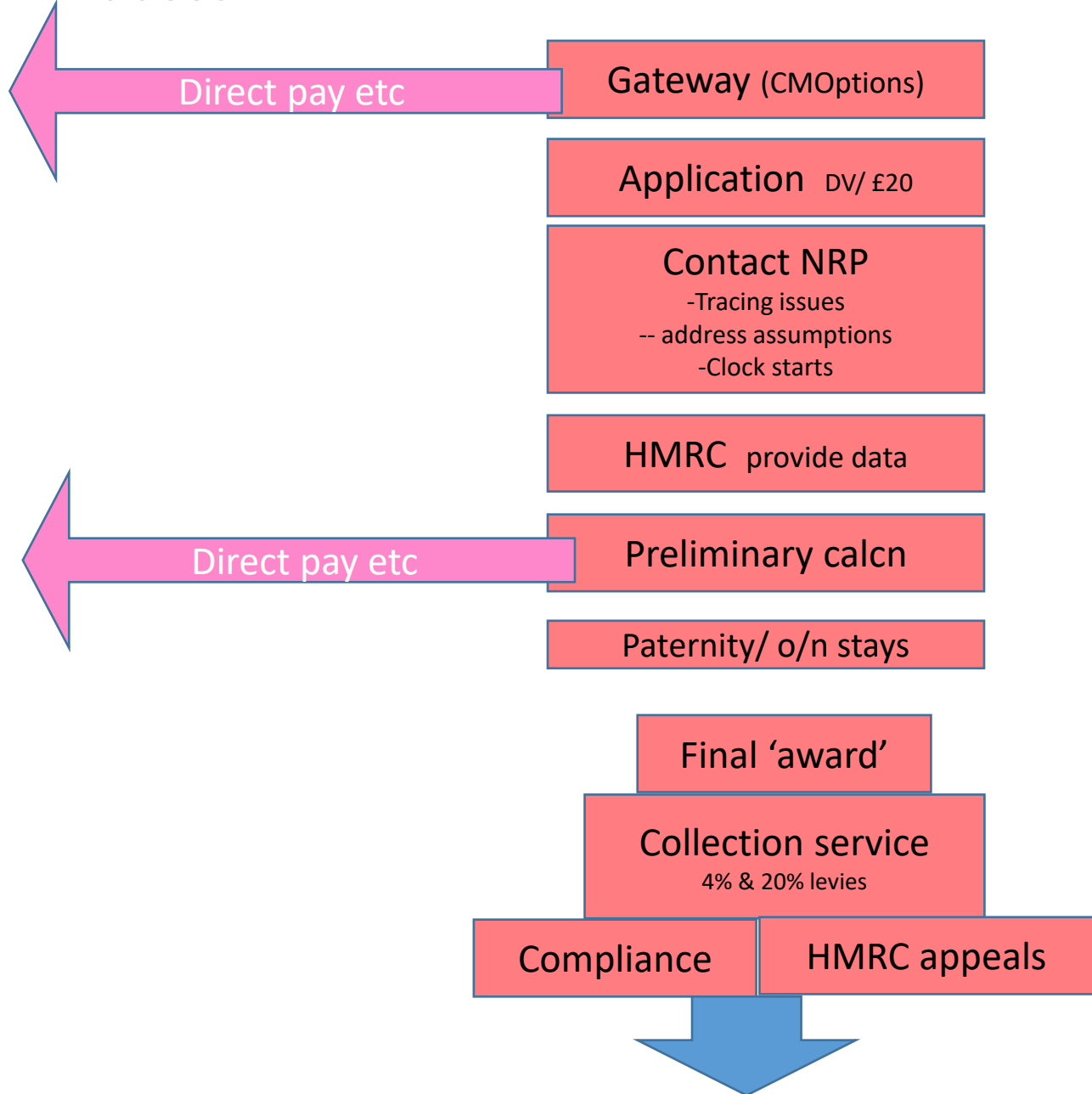
Charging & the Collection Service

- The RP has 4% deducted
- The PP is charged 20% on top ...
- So with a payment of £100,
 - The PP pays £120
 - The RP receives £96
 - The CMS keeps all the rest.
- The RP has different incentives
 - May be willing to have deduction given advantages
 - May use it strategically
- Where there is a dispute, the RP can insist on using the Collection service if the RP is assessed as ***unlikely to pay.***
- Profound problems over this test.

The new child maintenance model

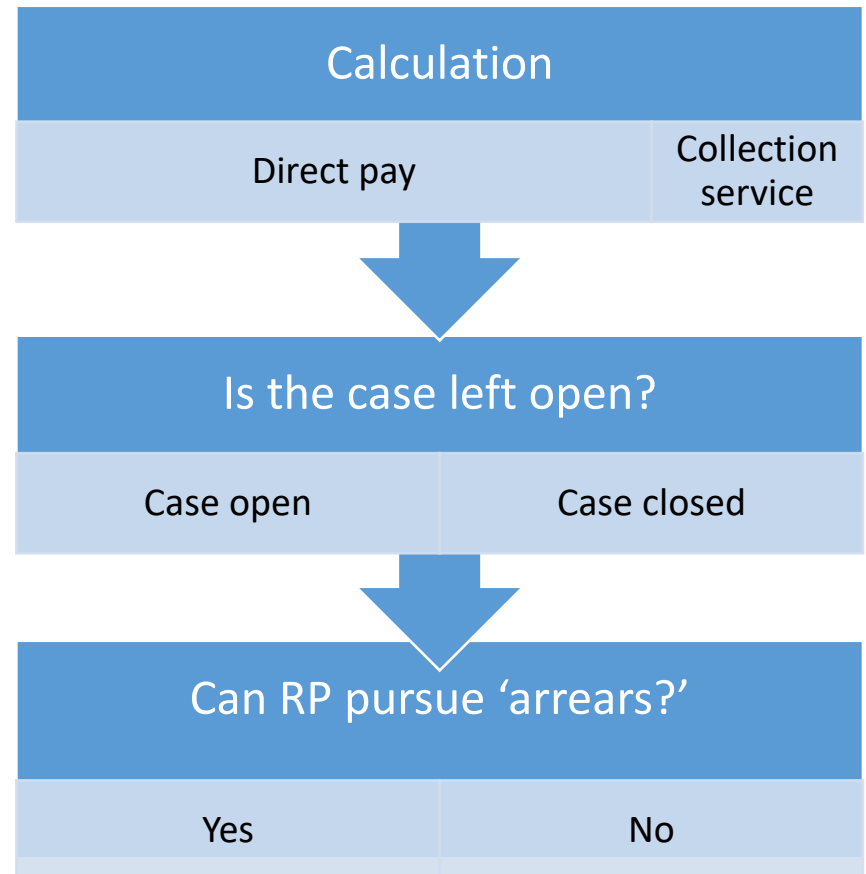


Process



7) The invisible branch in the track when going 'direct pay'

- ▶ Take care when helping a client into a direct pay (=self managed) arrangement.
- ▶ There is a choice as to leaving the case open or closing it.
- ▶ Even if the PP complies with the agreement, if he cannot prove payments, he may be called to pay [again] under the scheme.
- ▶ We are pressing for this to be highlighted



8) Early enforcement / the fees trap

- Pay first argue later ...
- CMS says
 - Pay in full
 - on time
 - All the time

Charging example

- Debbie tells CM Option that she is worried about Victor's reluctance to pay and how he has been abusive in the past around money and that she has reported this to her solicitor. CM Options give her a reference number and passport her through to CMS.
- She tells the CMS about these behaviours and so is passported past the £20 fee.
- The CMS tell her that she is able to set up a variety of arrangements that will ensure her safety and that merely Victor's past abuse does not necessitate the use of the collection service.
- They tell her that they will contact Victor and report back.
- When they do so, after sending out the preliminary calculation indicating £200 pw. Victor tells the CMS officer that they had better send the bailiffs because there is no way they are getting money any other way.
- The Officer concludes that Victor is unlikely to pay and puts him within the collection service, meaning
 - Debbie will receive £192 pw
 - Victor will pay £240 pw.
- There is no current clarity around
 - How Victor will escape the collection service; and
 - The criteria by which he would be brought back in again.

9) Time limits for appeals

- Don't just sit there bleating that the CMS has got it wrong – the time-limits will go by.
- You must appeal to force the issue and you must do it quickly.
- Worse than that, you must first ensure that you have completed the “mandatory review”



The appeals obstacle course (cont)

Is it appealable?

Only Facts wrongly interpreted or
Law incorrectly applied
NOT poor service

Within 28 days

Ask for a review

This is called “Mandatory reconsideration”

Within 28 days of mandatory reconsideration

Appeal

Directly to HMCTS (“direct lodgement”)

Form SSCS 002, attach MRN (mandatory reconsideration notice)

If late, grovel ... abs cut off 13 months after decision

Decision by **1st tier tribunal**

Findings of fact will bind – so prepare well

(with permission) Further appeal to **second tier tribunal**

On law – a supervisory jurisdiction

Appeal to Crt of Appeal/
Supreme crt



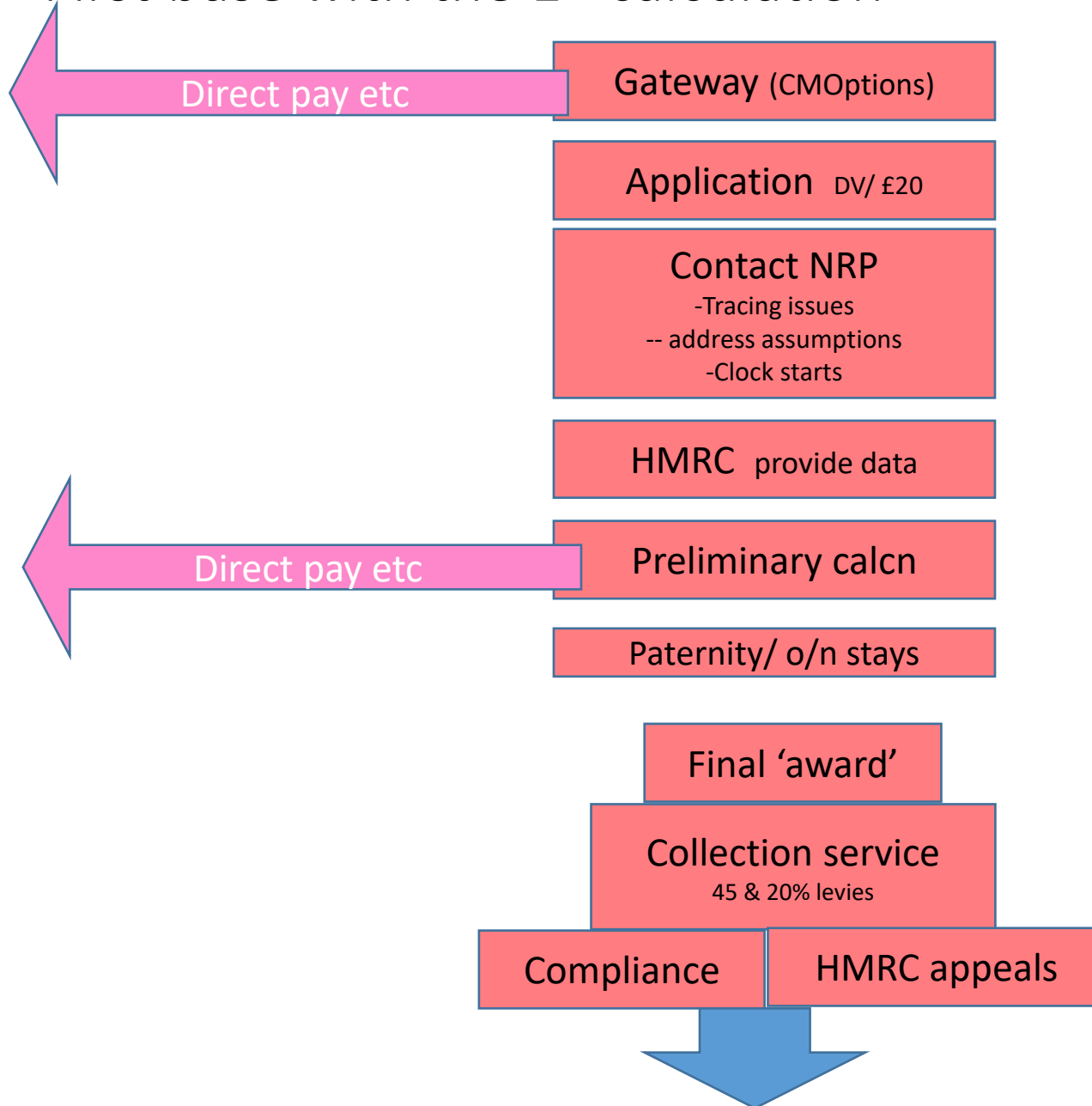
10) Termination of court orders with limited recourse

- Rhiannon is a stockbroker working long hours (and paying high child-care to keep her £100k pa career on track, following her separation from Paul, 14 years her senior, two years ago.
- She started to breath somewhat easier when you were able to secure a £35k p/a order for their daughter in their 2011 schedule 1 proceedings.
- Rhiannon is now back on the phone saying that David is threatening to make an application to the CMS, following his starting to wind down his own career somewhat now he is 50.
- What do you advise Rhiannon?



Ch 6: The process in detail

First base with the 1st calculation



Enforcement

1) DEO – “the norm” – up to 40% of net income

Liability order, paving way to:

3) Bailiffs

4) Charging order

6) 3rd party debt order

7) Driving licence removal

8) Passport removal

9) Curfew

10) Prison

Also

11) Freezing orders

12) Deduction from accounts

Lump sum deductions

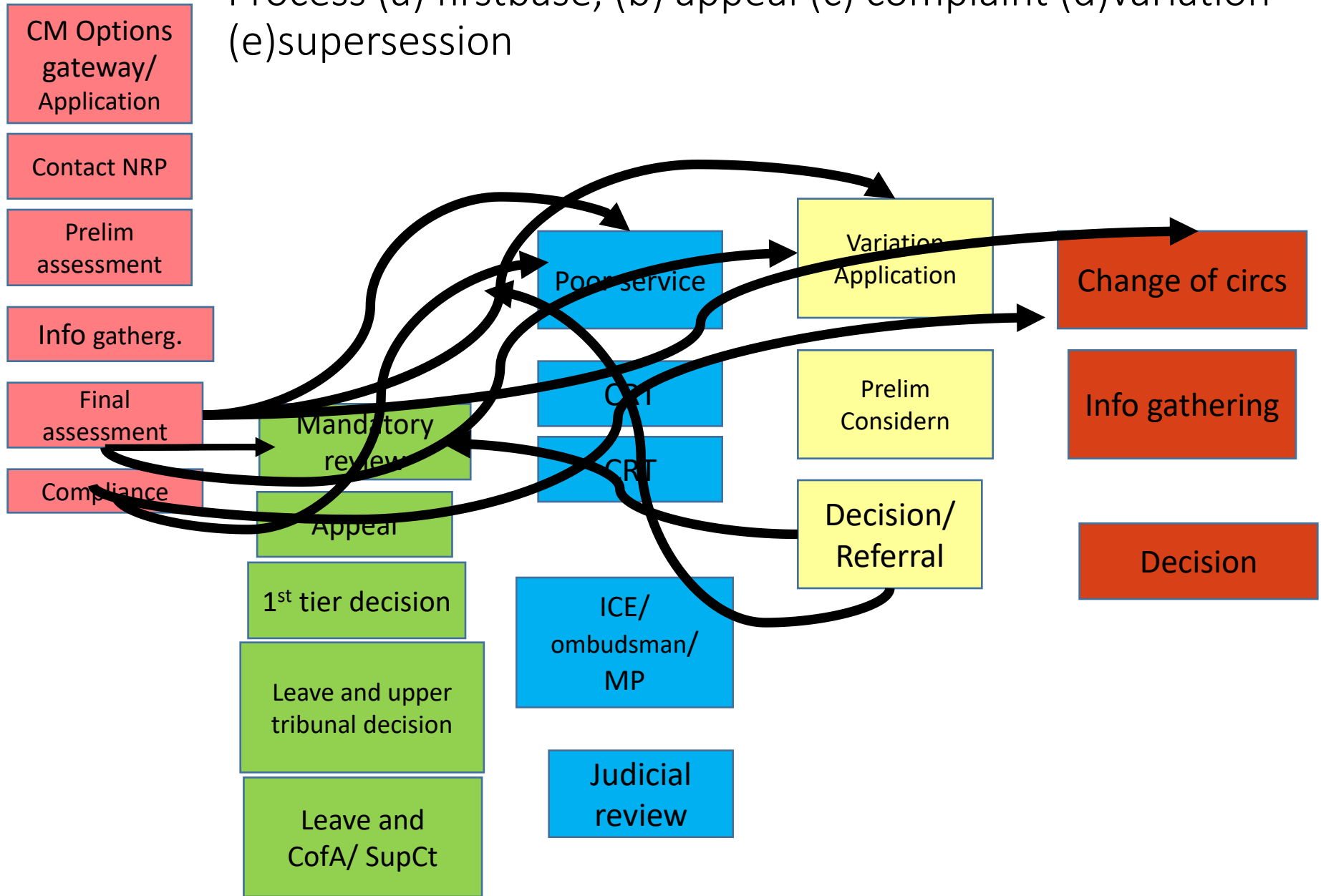
Later

13) Administrative liability orders

14) Administrative passport removal

15) Administrative disqualification (driving/
travel)

Process (a) firstbase, (b) appeal (c) complaint (d)variation (e)supersession

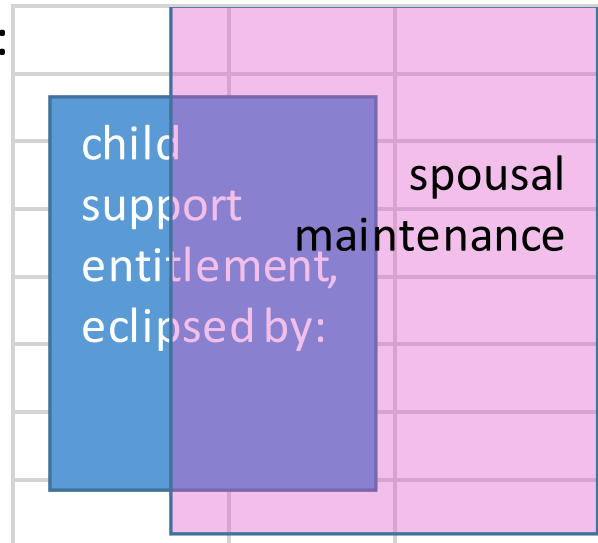


Ch 7:

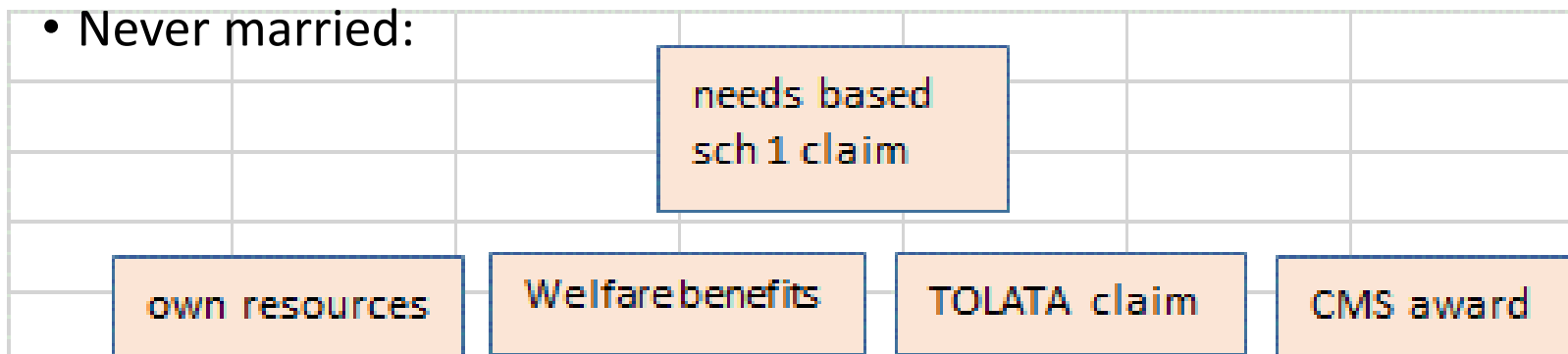
what solutions can we offer our clients?

Where the CMS slots in

- Divorce/ dissolution:



- Never married:



The CMS Ambush

- The interests and circumstances of the parties may dictate a specific set of arrangements.
- Litigation-weary clients may be desperate for closure rather than focusing upon the risk of a CMS ambush 12 months down the road.
- But
 - we cannot exclude the right to apply to the Service (s9(4) CSA 1991);
 - The application can be made when the order is 1 yr old (s4(10)(aa); &
 - The Service's calculation will terminate the court order.
- The situation is even tougher now:
 - Reduced variation grounds mean:
 - Fewer cases as maximum calculation cases
 - So fewer cases will be determined at court
 - So more exposed to the rigors of the CSA labyrinth.
- What can we offer clients:
 - To cap increases (protecting the Paying parent)
 - To collar reductions (protecting the recipient)?



In court cases, as applicant always:

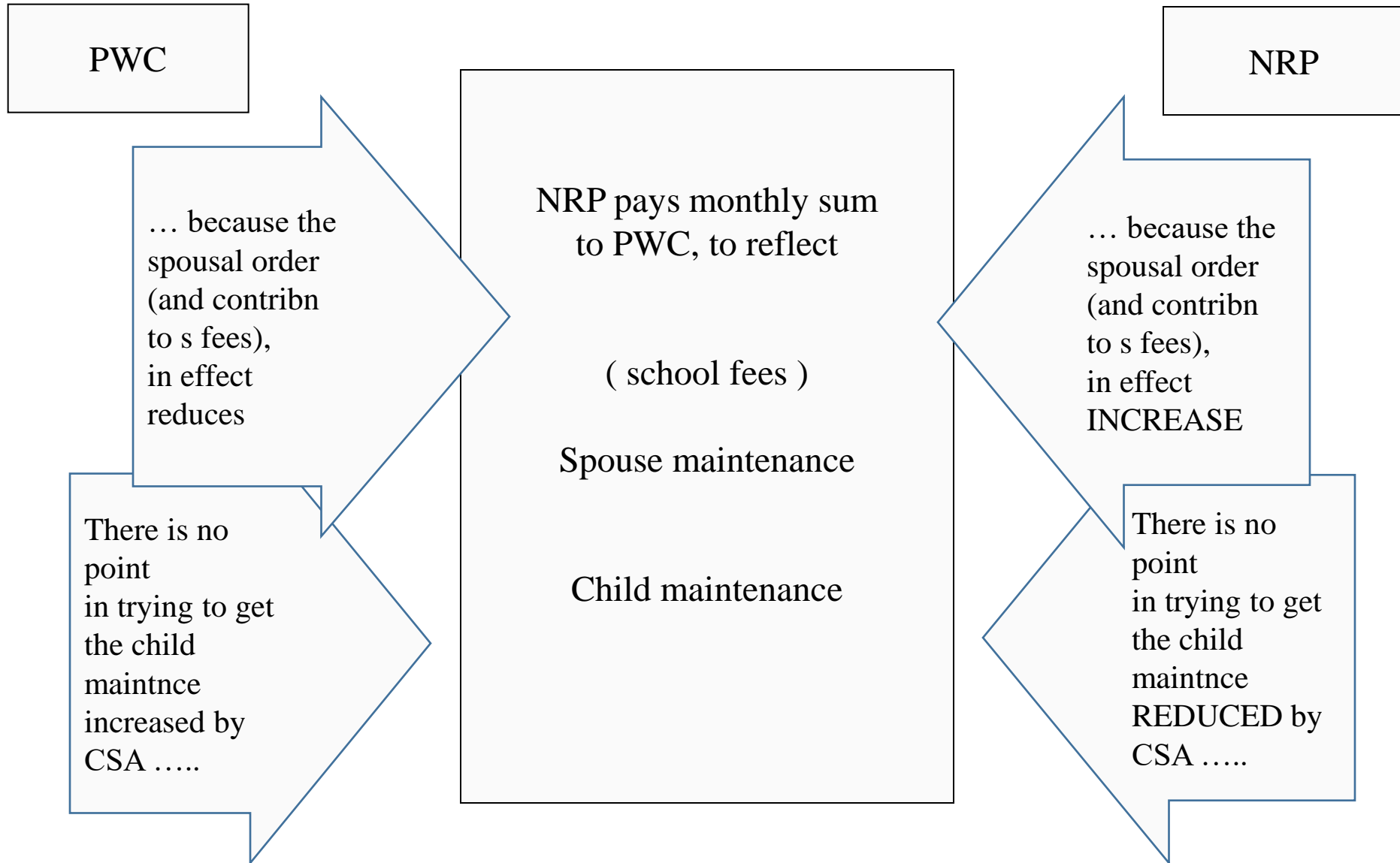
1. Advise clients about the CMS (even if they are currently abroad or it is a shared care situation – this could change) and remind them that an agreement not to apply is void (s9(4)).
2. Consider and advise on options to CMS-proof the order and see if this could be agreed at the outset ... if not remind the client what to what this exposes them.
3. Always get the payer's last tax return ... to be able to see what the CMS award is likely to be build on (if nothing else)
4. Carry out and share with your client what the CMS award would look like.
5. Consider applying to the CMS and building the award around that (it might be safer to be clear how little you are going to get now).

The President's prescribed orders

Contains only:

- Declaration that no intent to apply to CMS (of little protection)
- Global order(ok for spouses without incomes who won't remarry but!)
- Claw-back (adjournment of capital orders to permit clawback.)
- Though Mostyn J has previously indicated (as an author) that agreements should be enforceable.
 - So we can double up with an agreement
 - It will not be terminated by a later CS calculation
 - It could be enforced as a contract
 - Or we use an undertaking and court's powers to enforce that in E&W cases.

1. The global order



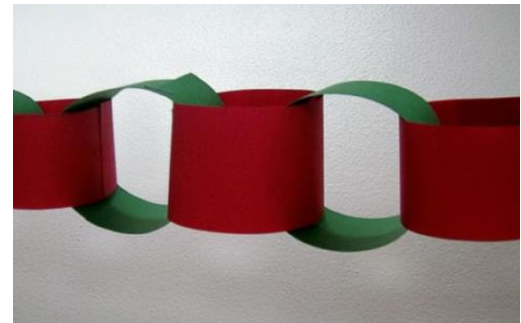
BUT global orders won't always work

- The court may not make up for the inadequacy of the CMS (1)
- It follows that spousal maintenance must be genuine (2)
- So we can't use the global order where:
 - Parties never married
 - RP will re-marry
 - She has no genuine spousal claim

Now that maintenance is strict needs, what figure would prevent the applicant parent from having a spousal order?

2. Christmas order

- The only real way of restoring powers to the court, to make a genuine child maintenance order.
- Briefly
 - A series of orders
 - Each order a fraction less than a year
 - Seamless start to next order
- Consequence is
 - There is never no order in place
 - And never an order of a year or more that is susceptible to s4(10)(aa)
- But dismissed by Mostyn J (as an author).
- See if your Judge will make one?



3. Undertaking and contract?

Agreements and undertakings

- 1) (the cap preventing reduction is) the PP's agreement & undertaking to pay the amount of order 1.
- 2) (the collar preventing increase is) the RP's agreement & undertaking to repay & agreement to off-set any additional sums paid through the CMS
OR an indemnity

[THE ABOVE OBLIGATIONS ARE NOT TERMINATED BY THE SUBSEQUENT CMS AWARD - IT ONLY TERMINATES ORDERS]

Order

- 1) Usual form of order for child PPS

4. Lump sums?

- Prevent the Paying parent from paying less by:
 - An order for periodical payments
 - A lump sum order that just happens to equate to the annual maintenance (less whatever has been paid in maintenance).

[AGAIN, WHILST THE PERIODICAL PAYMENTS ORDER IS TERMINATED THE LUMP SUM ORDER IS NOT ... MIGHT THIS FALL FOUL OF THE PHILLIPS-V- PEACE ARGUMENT, THOUGH?]

- Receiving parent is constrained from pursuing more from the CMS for example by:
 - Agreement to repay overpayments
 - Agreement to offset
 - Indemnity

Claimant facing reduced CS payments

What to check for

- 1) When was the first order made
 - 1) Pre 3/3/2003
 - 2) Within the last 12 months
- 2) Is it ok that he will apply
 - 1) Think “GAPS”
 - 2) Who is the paying parent
- 3) Are all his obligations to pay knocked out by the CMS application? for example was the order backed by an agreement?
- 4) What will be the level of the award?
 - 1) Last tax return (which he probably will have managed to a specific figure).
 - 2) Is there permission to produce court disclosure to the CMS? (see note)
 - 3) Is he now breaching a 25% threshold?
- 5) Can you go top up?
- 6) Go back to the rationale of the earlier order (so D081 and recitals vital protection) – what of varying the spousal maintenance? Have him meet not 50% but all of the school fees?
- 7) Put up and live with it? Think of duration of CMS jurisdiction.

Ch 8: Wrapping up

Essentials to warn clients about:

1. Potential transience of court order
2. The extent of the protection afforded by the court alternatives where this can be agreed
3. That the children will exit the scheme at university anyway (and gap years may be un-provided for)
4. The Service's approach to
 1. Jurisdiction (esp geographical)
 2. Criteria for identifying the paying parent
 3. Income
 4. Variables (Pension payments - other children – overnight stays)
 5. Variations (school fees – contact costs – Illness/ disability – Debt (other income – diversion)
5. The CMS process and the fines (ahem – fees) system
6. The efficacy of its enforcement mechanism.
7. The lizard-brain mindset of the CMS ... that it is about rules not about fairness.

Going further:

Resources

Child support problems come in 2 flavour:

- Creating the safe court order;
- Fighting the CMS' intervention

Where to go for that?

- Resolution [Committee members / website]
- Gingerbread
- NACSA
- CPAG handbook
- Counsel –
- Some specialist advisors
- And ?? (*apologies for omissions*)

Going further: ***Child Support
Maintenance Calculation regs 2012***



CS1	1993-2003
CS2	2003- 2012 +
CS3	2012 ->

NRP = non resident parent = paying parent
PWC = Parent with care = receiving parent

The stages of the CS3 formula

Jurisdiction:	G eography	A ge	P arentage	S eparation	O rder:	pre 3/3/2003; or Less than 12 months
Paying parent	NB Reg 50; JS v SofST [2017] UKUT 296					who provides less of the care? assumption
I ncome	usually on basis of last tax return					"escape" to current income where +/-25%
P ension contributions deducted O ther children (discount for) D ue children S tays (discount for)						
V ariations:	U p:	Investment income	D iversion		No longer: lifestyle inconsistent or underused assets	
Only imposed if applied for and where just & equitable	D own:	School fees	C ontact costs	I llness of NRP child	D ebt	M ortgage

Our one-sheet summary...

how are you doing?

Where CS has jurisdiction then PPs orders only:	
by agreement	s8(5)
to top up a maximum assessment	s8(6)
for educational costs	s8(7)
for costs of disability	s8(8)
reverse orders	s8(10)

Collection service
deducts 4% from PWC
charges 20% to NRP
collection service imposed where NRP deemed "unlikely to pay"
<i>"pay in full, on time, all the time" (and ask for a refund)</i>

Protection/ promotion for CMS:	
Freedom to go to CMS after 1 yr. The crt order is discharged.	s4(10)(aa)
Agreements to exclude it are void	s9(4)
The court may not make up for the inadequacy of the CSA/ CMS	phillips v peace
The court should apply its formula in court jurisdiction cases	GW v RW
Adopt the percentages in top up cases too	re TW&TM

Sanity for clients
Your only chance to protect against this may be at the first financial order. Consider:
1) the global or "Segal" order
2) the Christmas order
3) use an undertaking to pay or contractual agreement (which are not discharged by s4(10)(aa))

Protect yourself ... warn clients:

the end point: 1st mon in sept after A-levels THEN back to court
efficacy of enforcement system
<u>esp PWCs</u>
potential transience of court order
NRP options to manipulate
options for protection of crt order
<u>esp NRPs</u>
the fees system

Help

The CS (Maintnce Calculation regs 2012) have a lot of the answers	
eg www.nacsa.org.uk	
Resolution website	
Various counsel	
Resolution committee	
me! jp@flip.co.uk	

Circulations available:

1. These slides
2. CS calculator
3. Summary tables
4. End of jurisdiction for young people table
5. Orders
6. Resolution's binding agreement (contrast FBA (the agency's family based agreement))
7. University fees agreement
8. CS MC Regs pdf

jp@flip.co.uk