

## CBPG9520 – Rival Claims Legislative: Discretionary Decisions

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### Introduction

If 2 or more people claim ChB for the same child in the same week and all meet the basic responsibility conditions of entitlement, only one of them can be entitled to ChB in respect of that child for that week

Schedule 10 of the Social Security Contributions & Benefits Act 1992 sets out the rules for determining who has priority of entitlement; these rules must be considered in order. Only when both claimants have met the basic responsibility conditions, is schedule 10 a factor. The priority rules are subject to each other in order and the discretionary decision only comes into force at Priority rule [CBPG91250](#) of schedule 10. If entitlement has already been decided using priority rules 1-4, if not, at priority rule 5 the customers must be given the opportunity to elect (agree) who will be entitled. If this fails only then is there legal provision to make a discretionary decision.

A Commissioners decision often has to be made in these cases after considering other facts. The steps below should be considered before making a decision on behalf of the commissioner

### Guidance

<p><b>Step 1</b></p>	<p>Explanation of rule 5</p> <ul style="list-style-type: none"> <li>• it may be entitlement has already been decided using priority rules 1-4, if not, at priority rule 5 the customers must be given the opportunity to elect (agree) who will be entitled. If this fails only then is there legal provision to make a discretionary decision</li> <li>• once the priority rules have been exhausted and a discretionary decision is required, to try and apply rules to a Commissioners decision restrains discretion and could lead to an unfair decision. The decision maker on behalf of the Commissioners for HM Revenue and Customs must look individually at each case on its own merits. Cases might appear similar, but each one is unique because the facts of each case are unique to that child and the people looking after them</li> <li>• go to <a href="#">Step 2</a></li> </ul>
<p><b>Step 2</b></p>	<p>Establishing the facts</p> <ul style="list-style-type: none"> <li>• facts are obtained from enquiry forms such as CH15C(DC)</li> <li>• evidence is also collected from other sources such as <ul style="list-style-type: none"> <li>– statements on the ChB claim form</li> <li>– letters from the customer or their solicitor</li> <li>– court orders such as a residence order</li> <li>– telephone conversations</li> <li>– information from Jobcentre plus offices, Enquiry Centres</li> <li>– information from an impartial third person such as a Social Worker or teacher</li> </ul> </li> <li>• it is essential to look at all the information provided, and take all the available evidence into account in order to build up an accurate factual picture of the customers and the child's circumstances</li> <li>• record each piece of information on the evidence summary sheet as it is received to prove that the decision maker has considered all the evidence in reaching their decision</li> <li>• go to <a href="#">Step 3</a></li> </ul> <p><b>Note:</b> some information will be more reliable than others and the decision maker will have to bear this in mind when making the final decision. If some information is regarded as unreliable, or if there is conflicting information, this should be recorded on the written reasoning kept on the file</p>
<p><b>Step 3</b></p>	<p>Examples of common relevant facts - Physical responsibility</p> <ul style="list-style-type: none"> <li>• the number of hours each parent has responsibility for the child each week</li> <li>• normally there is no need to make a distinction between time spent in school and time at home. This may have a special significance, however, and must be recorded in the written reasoning if, for example <ul style="list-style-type: none"> <li>– the child is away at boarding school</li> <li>or</li> <li>– spends some time in residential care because they are disabled</li> </ul> </li> <li>• the existence of a court order specifying arrangements for the care of the child(ren)</li> <li>• separated parents sometimes agree to unofficially vary the terms of a</li> </ul>

	<p>court order, for example during school holidays. Consider how the child is actually cared for if this is different to arrangements set down in the residence order. This is acceptable if there is some stability and pattern to the new arrangements</p> <ul style="list-style-type: none"> <li>• record in the written reasoning whether you are accepting the evidence of the residence order or the actual caring arrangements (If these are different state why you are accepting one rather than the other)</li> <li>• in some cases parents will deliberately keep varying the arrangements made under the residence order to try and gain the advantage, such as each parent arranging to be away from home when the other parent came to collect the children, to gain an extra day when they could say the children had stayed with them</li> <li>• this should not be treated as a relevant change of circumstances for ChB purposes. In this type of case consider accepting the arrangements set down in the residence order (which were decided by a family law judge after careful consideration of the parents circumstances)</li> <li>• record in the written reasoning why you are accepting the residence order arrangements rather than the actual fluctuating arrangements that have no settled pattern</li> <li>• go to <a href="#">Step 4</a></li> </ul>
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<b>Step 4</b>	<p>Examples of common relevant facts - Address of child</p> <ul style="list-style-type: none"> <li>• it is possible for the parents different addresses to be used in all or any of these circumstances but it is relevant evidence to be considered <ul style="list-style-type: none"> <li>– the child's recognised address for registration with school, doctor</li> <li>– the address where the child's possessions are mainly kept</li> <li>– the address the child stays when ill</li> </ul> </li> <li>• if the information given does not help decide entitlement, such as the evidence given by the parents does not agree or both addresses are the first point of contact because the care is shared, record this in the written reasoning</li> <li>• state what you are accepting, or cannot accept as reliable evidence</li> <li>• give the reasons for what you are accepting, or cannot accept as reliable evidence</li> <li>• go to <a href="#">Step 5</a></li> </ul>
<b>Step 5</b>	<p>Examples of common relevant facts - Contributions</p> <ul style="list-style-type: none"> <li>• the costs incurred by each parent generally give some indication of the parental responsibility, who buys what, such as the child's food and clothes</li> <li>• what other expenses in respect of the child are met by either customer, such as cost of footwear, school uniform, school fees/trips, pocket money, holidays and entertainment, books/toys/ computer, extra curricular activities</li> <li>• this may not be conclusive, one parent may be able to afford to spend more on the child than the other parent. Particularly if that person is dependent on state benefits the other in a high paid job, investigations into income should not be considered, ChB is not a means tested benefit</li> <li>• record the evidence, stating in the written reasoning why it does or does not carry weight when reaching the decision</li> <li>• go to <a href="#">Step 6</a></li> </ul>
<b>Step 6</b>	<p>Consequences of a disallowance - Considerations</p> <ul style="list-style-type: none"> <li>• the main factor in considering shared care cases is to decide whether one parent or the other has the greater responsibility of care</li> <li>• where this is not clear it is important to consider the impact the decision will have on each parent</li> <li>• ChB is not a means tested benefit but where one or both parents rely on other benefits, a disallowance may have a potentially more adverse affect. The decision will not be seen in law as a 'fair' decision if this is not taken into account in the consideration</li> <li>• consider 'who stands to lose most'</li> <li>• go to <a href="#">Step 7</a></li> </ul>
<b>Step 7</b>	<p>Exercising discretion - Consequences of a disallowance - Examples</p> <ul style="list-style-type: none"> <li>• if ChB is disallowed will it mean one or both parents will also lose CTC or a family premium and/or child allowance paid with another benefit</li> <li>• if a persons only source of income is IS or JSA the impact of a disallowance may make it difficult to provide for the child's needs during the time they care for them</li> </ul>

	<ul style="list-style-type: none"> <li>• if they have been claiming IS as a lone parent and receiving ChB, a disallowance will mean they lose their IS entitlement altogether and will have to sign on as available for work and claim JSA as a single person</li> <li>• consider, if the loss of a child allowance paid with IS would result in an adverse affect on one claimant's income, would a decision to award to that claimant result in a greater loss to the other claimant</li> <li>• if the potential loss of a child allowance and family premium paid with IS/JSA could have an adverse affect on one claimant, will a decision to award to that person constitute a greater injustice to the other claimant</li> <li>• if one of the customers is in receipt of DLA on behalf of their disabled dependant, they may lose entitlement</li> <li>• it is important to look at the facts of each case individually and record the reasoning</li> <li>• consider the overall impact of the decision and record this in writing</li> <li>• CSA may make a decision affecting one party, based on ChB decision, however, we cannot pre-empt a decision by CSA</li> <li>• Child Benefit processing do not have to take account of the CSA decision, even if the customer complains that the CSA are treating them as the absent parent because they have been disallowed ChB</li> <li>• go to <a href="#">Step 8</a></li> </ul>
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<p><b>Step 8</b></p>	<p>Exercising discretion - Considering the evidence</p> <ul style="list-style-type: none"> <li>• complete the evidence summary sheet (CH1781) as information is gathered from phone calls, letters, replies to enquiry forms</li> <li>• it is essential that the written record held on file records <ul style="list-style-type: none"> <li>– all the facts of the case, from the information and evidence supplied</li> <li>– the consideration given to each fact</li> <li>– the decision</li> <li>– the reasons for the decision, in the light of the facts/evidence</li> <li>– the reasons why an alternative decision was rejected</li> </ul> </li> <li>• record your reasoning in writing, to show why you are deciding in favour of one person rather than the other <ul style="list-style-type: none"> <li>– each piece of evidence should be referred to, if you are not accepting a piece of evidence as reliable, state why</li> <li>– show that you have considered the consequences of a particular decision, compared with the consequences of making an alternative decision (sometimes several alternative decisions) and that you have come to a reasonable decision in the light of this</li> </ul> </li> <li>• go to <a href="#">Step 9</a></li> </ul>
<p><b>Step 9</b></p>	<p>Exercising discretion - Reaching a reasonable decision</p> <ul style="list-style-type: none"> <li>• after considering the evidence it is quite possible to reach more than one reasonable decision. It is not a case of one decision being 'right' and the other 'wrong'. If the decision is challenged the court will look at 2 things <ul style="list-style-type: none"> <li>– is the decision a reasonable one</li> <li>– is it fair in the light of all the evidence available at the time</li> </ul> </li> <li>• if the decision maker has made an unfair decision, or reached the decision in an unreasonable way, it is an abuse of the power conferred by Parliament <ul style="list-style-type: none"> <li>– a decision which has not taken all the available evidence into account can never be a reasonable and fair decision</li> </ul> </li> <li>• the courts will not usually overturn an unfair or unreasonable decision but will ask the decision maker to review the decision, taking all the facts into account so as to reach a fair and reasonable one <ul style="list-style-type: none"> <li>– the decision following review may be the same, but because all the available evidence has been taken into account and carefully considered it should have been arrived at properly</li> </ul> </li> <li>• go to <a href="#">Step 10</a></li> </ul> <p><b>Note:</b> The decision maker should ask, as a last check once a decision has been made, 'Taking all the evidence into account, is the decision to award ChB to X rather than Y a fair and reasonable one (and would any ordinary person think it is fair and reasonable)'</p>
<p><b>Step 10</b></p>	<p>Exercising discretion - Examples of reasonable decisions</p> <p><b>Scenario 1</b></p> <ul style="list-style-type: none"> <li>• If one customer has the greater responsibility of care, for example one customer has the child living with them the majority of time, it is fair and reasonable to award ChB to them</li> </ul>

	<p><b>Note:</b> You must record on file the evidence you relied on in deciding that customer A has more responsibility than customer B</p> <p><b>Scenario 2</b></p> <ul style="list-style-type: none"> <li>it is a good indication that the court had good reason to give one person the greater responsibility if a residence order <ul style="list-style-type: none"> <li>gives one customer 'residence' and the other parent 'contact'</li> <li>or</li> <li>states that the child shall mainly live with one of them</li> </ul> </li> <li>if daily care of the child is shared more or less equally, it is fair and reasonable to accept the residence order as a deciding factor. Although, you must take into account if following information/evidence it is determined the care is equal and conflicts with the court order, then the decision to award as per the court order wouldn't be fair or reasonable</li> </ul> <p><b>Note:</b> Record this on file</p> <p><b>Scenario 3</b></p> <ul style="list-style-type: none"> <li>If care of 2 or more children is shared equally, and a residence order does not give one customer greater responsibility than the other it may be appropriate to pay each customer for one or more child each</li> </ul> <p><b>Note:</b> Record your reasons for doing so on file</p> <ul style="list-style-type: none"> <li>go to <a href="#">Step 11</a></li> </ul>
<b>Step 11</b>	<p>Exercising Commissioners discretion - Communicating the decision</p> <ul style="list-style-type: none"> <li>it is important that we communicate decisions to our customers in a clear manner. We must ensure that our customers fully understand how we reached the decision. Refer to the written reasoning documented on CH1781, to construct an easily understandable paragraph for inclusion in the letter. Detail what facts have been considered, what facts have not been considered and why</li> <li>when drafting a letter to a customer remember to <ul style="list-style-type: none"> <li>explain the law in relation to rival claims to ChB</li> <li>explain discretionary decisions, when and why they are used</li> <li>explain the process we go through</li> <li>keep the explanation straightforward and relevant to the specific circumstances of the case. Do not go into great detail</li> </ul> </li> <li>our duty is to give fair and reasonable decisions, which we can justify. If the customer remains unhappy and asks for a reconsideration then our explanation could go into further depth</li> </ul>

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