

Department for Work and Pensions (DWP)
Central Freedom of Information Team

freedom-of-information-request@dwp.gov.uk

Our reference: IR2020/16741

Date: 20 April 2020

Dear Mr McGregor

Thank you for your Freedom of Information review request received on 25 February. You asked:

I find it incomprehensible that you do not hold any information of the request made. The CMS deals with 100,000s of cases every month and the laws of probability alone would say this scenario must occur multiple times – in which case, you must hold information relating to the request.

As I have already pointed out in other FOI responses, there is Upper-Tier case law that confirms it is not solely HMRC's responsibility to check the income figures where disputes arise. The CMS are in fact duty-bound to check figures where queries arise relating to maintenance cases. Take an example of a NRP deliberately submitting a tax return late to hide income from the CMS – as the motive for doing so is to hide income from the CMS, it cannot be reasonably argued that the CMS doesn't have a responsibility to investigate that intentional hiding of income from the CMS.

DWP Response:

I am of a senior grade to the person who dealt with your request, I was not involved previously, and can confirm that I have carried out an internal review. I am now in a position to respond to you.

I am content that your original request was dealt with correctly. This is because in your request dated 11 February 2020 (6246) you asked:

Please could you provide information relating to your HMRC-linked interface. In particular, in situations where the NRP is employed through their own company and data is missing for one tax year, but is available for other years either side, does this mean that both a tax return and PAYE data was not submitted to HMRC for that year?

For example:

2013/14: X Income
2014/15: Y Income
2015/16: No data

2016/17: Z Income

Would the income later show up in the system if the tax return and/or PAYE data was submitted late? If so, how long after submission of the tax return and/or PAYE data would it take for the income to display in the system?

We advised we have no recorded information regarding your request. We advised that Child Maintenance Service use income information provided by HMRC.

HMRC interface provides Child Maintenance Service (CMS) with a historic income figure as HMRC record it for the latest available tax year that they have a record for, back to a maximum 6 years. Therefore, CMS system would hold whatever HMRC system holds and provides for the latest available tax year.

In your review you have now made what constitutes a new FOI request for information about disputes. Please find some information on HMRC income information and also disputes.

You also now make reference to an upper tier case law. Reg 36(2) of the Child Support Maintenance Calculation Regulations (CSMCR), 2012 has since been amended by the Child Support (Miscellaneous Amendment) Regulation, 2019 in which Reg 36(2)b was removed.

The removal was as a result of an upper tier tribunal case which found that it was incompatible with the broader Child Maintenance (CM) Policy around basing our maintenance calculation on taxable income. This relates to expenses.

You can find more information on page 6, points 7.15 and 7.16 of the 2019 explanatory memorandum. The link is below

http://www.legislation.gov.uk/ukxi/2019/1084/pdfs/ukxiem_20191084_en.pdf

As stated in previous FOI responses, where Child Maintenance caseworkers are alerted to any potentially fraudulent or criminal behaviour, in relation to the income they can refer the case and available evidence to Financial Investigation Unit.

I hope this is helpful but if you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central FoI Team

Your right to complain under the Freedom of Information Act

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF

Web: ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745