

## Freedom of Information Act 2000 (the Act)

### Decision notice

**Date:** 8 July 2021

**Public Authority:** Department for Work and Pensions

**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### Decision (including any steps ordered)

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1. The complainant has requested the number of cases in which the Child Maintenance Service (CMS) has issued a fine for failure to notify it of a change in circumstances.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) does not hold information falling within the scope of the request. However, she finds that DWP failed to provide adequate advice and assistance in accordance with its obligations under section 16.
3. The Commissioner does not require DWP to take any steps.

#### Request and response

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

*"With reference to your document "How we work out child maintenance" which states that parents can be fined up to £1,000 if they fail to notify the CMS of certain changes, please could you provide the number of cases where the CMS has issued such fines. Please could you provide a breakdown by year. So for example:*

*2012: x cases*

*2013: x cases*

*2014: x cases*

*etc*

*Then, please could you provide a breakdown of the fines. So for example:*

*X fines for failing to notify 25% increase in income  
X fines for failing to notify change in working hours  
X fines for failing to notify a change in address etc"*

5. On 25 February 2020, DWP provided its response and confirmed that it did not hold any recorded information in relation to this request. DWP did, however, state:

*"It is pertinent to note the ability to fine a non-paying CMS parent is one of the numerous deterrent legal powers that are available to CMS to encourage compliance with Child Maintenance payments.*

*The CMS will always deploy these powers with consideration of the best interests of the child(ren) and the primary focus will be to enforce the payment of unpaid and ongoing child maintenance. CMS will select the most appropriate sanction powers for each non-paying case but will withdraw any sanctions in lieu of a suitable payment agreement".*

6. On 25 February 2020, the complainant requested an internal review stating only:

*"I find it incomprehensible that you do not hold any information on the request made. Please would you review my case accordingly and provide the information requested".*

7. DWP provided the outcome of its internal review on 11 March 2020 and upheld its original response. DWP stated:

*"We advised that we do not have any recorded information available to provide a breakdown of fines. We advised in 4670 [DWP's original response] that the ability to fine a non-paying CMS parent is one of numerous legal powers that are available to CMS as a deterrent".*

8. DWP explained that it had provided, in response to another request, a link to information already in the public domain<sup>1</sup>. DWP explained that table 12 in the National Data Tables available in the link provides information on enforcement and sanctions.

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<sup>1</sup> <https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-september-2019-experimental>

9. DWP stated that the available information shows that it does not record data on Child Maintenance systems about individual sanction types but shows them as sanctions.

### Scope of the case

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10. The complainant contacted the Commissioner on 17 May 2020 to complain about the way their request for information had been handled. Specifically, they disputed that DWP does not hold any information falling within the scope of the request.
11. This request is one of a series of requests made by the complainant to DWP seeking information regarding very specific scenarios that may occur as part of the Child Maintenance Service's assessment of paying parent liability.
12. On 26 March 2021, during the Commissioner's investigation, DWP wrote to the complainant to provide a further explanation regarding its position that no information is held.
13. DWP stated:  
  
*"Where Child Maintenance Service pursue civil enforcement action via Her Majesty's Courts and Tribunal Service [HMCTS] this relates to Driving License removal/suspension; Passport removal/suspension and imprisonment*  
  
*A court may choose to issue a fine, for any reason; this is at the discretion of the court and is issued by and payable to Her Majesty's Court and Tribunal Service. Therefore, data on the number of fines that HMCTS issue is at the disposal of and belongs to HMCTS, and this information should be requested from them accordingly".*
14. Following this, the complainant confirmed to the Commissioner that they did not accept DWP's explanation and maintained their position that DWP does hold information falling within the scope of the request.
15. The Commissioner considers that the scope of this investigation is to determine whether, on the balance of probabilities, DWP holds any recorded information falling within the scope of the request.

## Reasons for decision

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### Section 1(1) – General Right of Access

16. 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 sections or exemptions that may apply. A public authority is not obliged under the Act to create new information in order to answer a request.
17. Where there is a dispute between the information located by a public authority and the information the complainant believes is held, the Commissioner, following the lead of a number of First-Tier Tribunal (Information Rights) decisions applies the civil standard of proof – ie the balance of probabilities.
18. In the circumstances of this case, the Commissioner will therefore determine whether, on the balance of probabilities, DWP holds any recorded information that falls within the scope of the request.

### The complainant's position

19. The complainant disputed that DWP did not hold the requested information. They provided a document that is sent to each parent when assessing the child maintenance liability. The complainant set out that there are several references made to the fine of up to £1,000 and these are worded in such a way that implies that it is DWP that issues the fine.
20. The complainant considers that even if it is the court that makes the final decision over the fine, it can only do so following DWP making an application to the court to do so. The complainant disputes that DWP does not keep records of the number of cases they have referred to the courts for failure to update details.
21. The complainant also explained that their understanding of how HMCTS works is that they would expect DWP to set out in its application the level of fine they are requesting rather than asking HMCTS to decide. The complainant also explained that based on their own experience, when a parent appeals their case to HMCTS, it has no powers to collect monies and this responsibility lies solely with DWP. They therefore consider that DWP must hold the requested information as it is DWP's responsibility to collect any fines issued.

## **DWP's position**

22. DWP explained to the Commissioner that whilst the Child Maintenance website states that a non-resident parent may be fined, it does not state that CMS will issue the fine. DWP explained that this is because CMS has no power to issue fines. DWP set out that this is the domain of HMCTS which can impose a fine where it deems a criminal offence has taken place.

23. DWP explained that the sanctions available to CMS are:

- Driving licence removal/suspension
- Passport removal/suspension
- Imprisonment

24. DWP explained that if the court decides to issue a fine, instead of or in addition to a sanction that CMS has requested, it is at the discretion of the court. DWP explained that these fines are payable to HMCTS. DWP explained that CMS does not count or record fines as a data item as it is not a sanction it has requested.

25. DWP directed the Commissioner to the Child Support Act 1991<sup>2</sup> and quoted section 14A:

*"(1) This section applies to –*

- (a) persons who are required to comply with regulations under section 4(4) or 7(5); and*
- (b) persons specified in regulations under section 14(1)(a).*

*(2) Such a person is guilty of an offence if, pursuant to a request for information under or by virtue of those regulations –*

- (a) he makes a statement or representation which he knows to be false; or*
- (b) he provides, or knowingly causes or knowingly allows to be provided, a document or other information which he knows to be false in material particular.*

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<sup>2</sup> [https://www.legislation.gov.uk/ukpga/1991/48/pdfs/ukpga\\_19910048\\_300620\\_en.pdf](https://www.legislation.gov.uk/ukpga/1991/48/pdfs/ukpga_19910048_300620_en.pdf)

*(3) Such a person is guilty of an offence if, following such a request, he fails to comply with it.*

*[(3A) In the case of regulations under section 14 which require a person liable to make payments of child support maintenance to notify*

*–*

*(a) a change of address, or*

*(b) any other change of circumstances, a person who fails to comply with the requirement is guilty of an offence]*

*...*

*(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale."*

26. DWP explained that HMCTS can impose a fine under this legislation, however, it may rule under any other legislation available to it. DWP also explained that the "Level 3" fine was set by the judiciary and CMS has no influence over this. DWP confirmed that Level 3 is up to £1,000 fine.

27. DWP also directed the Commissioner to section 15(9) of the Child Support Act 1991 which states:

*"[Subject to subsection (9A),] if any person –*

*(a) intentionally delays or obstructs any inspector exercising his powers; or (b) without reasonable excuse, refuses or neglects to answer any question or furnish any information or to produce any document when required to do so under this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale".*

28. DWP confirmed that HMCTS does have the power to collect monies for fines it has imposed and provided a link to a webpage where fines can be paid<sup>3</sup>.

29. DWP confirmed that it cannot apply to the court to have a fine imposed and that is solely at the discretion of the court.

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<sup>3</sup> <https://www.gov.uk/pay-court-fine-online>

## **The Commissioner's position**

30. In making her determination, the Commissioner has considered DWP's submissions and the specific wording of the request.
31. The Commissioner is satisfied that, on the balance of probabilities, DWP does not hold information falling within the scope of the request.
32. The Commissioner accepts DWP's position that it does not have the power to issue fines. However, she is concerned that DWP appears to be perpetuating incorrect information that it is able to issue such fines.
33. The Commissioner understands why the complainant would believe that CMS has the ability to issue a fine in light of information issued by DWP stating that failure to update a change in circumstances could result in a fine. DWP had two opportunities to correct this misunderstanding and confirm that it is at the discretion of HMCTS to issue a fine in addition to or instead of sanctions applied for by DWP. DWP instead chose to perpetuate this incorrect information and provide a confusing response stating that it did not hold the requested information with an explanation that appears to confirm that it does.
34. Despite this, the Commissioner accepts DWP's position that it does not hold information falling within the scope of the request as it does not have the power to issue fines. She cannot require DWP to confirm that it holds information that it does not.
35. The Commissioner has considered whether information relating to the fines issued by HMCTS would fall within the scope of the request. It is important to note the specific wording of the request:

*"...please could you provide the number of cases where the CMS has issued such fines" [emphasis added]*

36. The Commissioner accepts that as CMS does not have the power to issue a fine, DWP will not hold information falling within the scope of the request. Given the specific wording of the request, she considers that as these fines are not issued by CMS, any information relating to these fines would not fall within the scope of the request.

## **Section 16: Duty to provide advice and assistance**

37. Section 16(1) of the Act states:

*"It shall be the duty of the public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".*



38. Whilst the Commissioner has accepted that DWP does not have the power to issue a fine, DWP's explanation in both its response and internal review states that it does. DWP states in its response dated 25 February 2020 and confirms in its internal review:
- "... the ability to fine a non-paying CMS parent is one of numerous deterrent legal powers that are available to CMS to encourage compliance with Child Maintenance payments" [emphasis added].*
39. The Commissioner is concerned that DWP is issuing misleading statements as part of its responses under the Act. Whilst the Commissioner would encourage public authorities to provide context to aid a requester's understanding of why information is not held, this context and explanation needs to be accurate and reflect the circumstances of the request. In relation to this request, DWP provided an inaccurate and unhelpful statement which wrongly confirmed that CMS is able to issue fines when DWP's position was entirely dependent on the fact that it could not.
40. The Commissioner considers that DWP breached section 16 as it did not confirm to the complainant that it did not have any power to issue fines, or that HMCTS would be the appropriate public authority to direct the request to, until after the Commissioner started her investigation.

## Other matters

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41. The Commissioner wishes to place on record her understanding of the immense pressure placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the Act.
42. However, the Commissioner has significant concerns regarding the handling of this request.
43. As set out in the above notice, DWP confirmed in its response and internal review that the power to fine parents was a power available to the CMS. However, it subsequently confirmed to the Commissioner that it has no such power and only HMCTS can impose a fine.
44. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by providing misleading explanations in relation to its responses under the Act.
45. The Commissioner considers that the DWP FOI team has the experience and knowledge to ensure that requests are handled correctly. Where



appropriate, she expects the wider DWP to use its resources, and her published guidance, to improve its request handling in future.

## Right of appeal

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46. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

47. 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.
48. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**