



## **CHILD SUPPORT AND EDUCATION COSTS**

A parent or non-parent carer can apply for a change of assessment in special circumstances if the costs of maintaining a child are significantly affected by high costs of caring for, educating or training the child in the way both parents intended.

An assessment can be changed if, in the special circumstances of the case, the costs of maintaining a child are significantly affected because the child is being cared for, educated or trained in the manner that was expected by the parents.

The phrase 'special circumstances of the case' is not defined in the CSA Act. The Family Court has held that 'it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary' .

A party can apply to change their child support assessment if they consider that the cost of meeting the parents' expectations significantly affects the costs of maintaining the child.

The party applying for a change to their assessment has to show that there are additional costs involved in maintaining the child because of an agreement between the parents about how the child will be maintained. The ordinary costs incurred in raising a child will not be considered under this reason as those costs do not set a particular case apart from other cases in a way that establishes special circumstances.

*The usual costs associated with a child attending a government school would not normally constitute special circumstances.*

### **When is the cost of maintaining the child significantly affected?**

Once the costs associated with educating, maintaining or training a child in the manner expected by the parents have been calculated, the Registrar will consider whether the additional amount is significant in relation to the assessed costs of the child.



If the additional amount is small in comparison with the assessed costs, the Registrar may find that the costs of maintaining the child are not significantly affected and that there is no reason to change the assessment.

**Example:** *David and Marion have agreed to send Annie to a private school. The cost of Annie's attendance is only slightly higher than it would cost for Annie to attend a government school, and the additional amount is only a small proportion of Annie's existing assessed costs. The Registrar finds that the costs of maintaining Annie are not significantly affected by the costs of educating Annie in the manner intended by the parents.*

### **Is the child being cared for, educated or trained in a manner expected by his or her parents?**

The most common application for this reason involves the payment of private school fees and whether the child is being educated in a manner expected by the parents. However, this reason can apply to education and/or training outside the school environment.

The consideration is not limited to private school fees. Other costs may also be considered where they are above what would normally be incurred, and the way the parents intended to care for, educate, or train the child involves the incurring of these additional costs. For example, the costs of uniforms or computer requirements of some private schools may be significantly higher than would be incurred at a state school.

In cases involving school fees and other associated costs, the Registrar will generally determine whether both parents agreed to the child being educated in the way outlined in the application. The Registrar will also consider the financial situation of both parents. The fact that a payer can afford to pay the fees, or is a wealthy person, is not in itself a reason for imposing a liability to contribute to school fees.

Where a parent agreed to the child attending a private school they will be liable to contribute to the fees to the extent that they have the financial capacity. Where a parent has not agreed to the child attending a private school they will not be liable to contribute to the fees unless there are reasons relating to the child's welfare that mean that the child should attend a private school (and the costs would then relate to the child's special needs).

In deciding whether the reason is established the Registrar will consider the type of education intended by both parents for the child, rather than any particular school intended by the parents.



The Registrar will also consider the circumstances at the time of separation. If the child was attending a particular private school, or was participating in a particular extracurricular activity, then this element will usually be established.

If not, evidence of the parents' expectation would need to be provided, for example, the payment of fees, evidence of joint enrolment, contribution towards a scholarship fund to pay private school fees. The parents' expectation can be created at any time, not just during the period that the parents lived together.

If the parents had an expectation that the child should attend a particular type of primary school, the Registrar will not presume that the same expectation automatically applies to a similar type of secondary school.

When considering the parents' expectations, the Registrar will take into account all relevant evidence. In some cases, evidence may exist that clearly indicates that the parents jointly intended to educate their child in the private school system. However, if more recent evidence indicates that the parents' expectations have changed, the older evidence may be irrelevant.

For example, prior to separation, the parents enrol their child in a private school and that evidence is provided to the Registrar in support of an application for a change. The other parent responds to the application and provides a copy of a parenting plan that the parents entered into after separation. The parenting plan clearly states that the child will be educated at a public school, thereby providing more recent evidence about the parents' expectations regarding schooling. In this instance, the reason would not be established.

### **What is 'just and equitable' when considering the expectations of the parents?**

If the reason is established, the Registrar must consider whether it would be just and equitable to the child, the payer, and the payee and otherwise proper to make a particular determination.

The Registrar will consider the financial circumstances of both parents and decide whether the child's needs, including the additional costs, can be met as part of the costs of the child as assessed under the formula (as can be the case where the assessed costs of the child are already high). Either parent may be able to contribute towards the child's additional expenses taking into account that parent's circumstances.



it is important to maintain the expectations of both parents and the primary purpose of the CSA Act in ensuring that children receive a proper level of financial support from both parents. This has to be balanced against the capacity of either or both parents to meet those expectations. Changes to the financial circumstances of either parent may mean that earlier expectations for a child's care or education are no longer possible.

While the reason may be established, a parent may claim that the child has been enrolled, without their consent, in a more expensive school than was initially agreed. If this claim is supported with evidence, the Registrar will take this into consideration when making any change to the assessment.

### **Changes that reflect educating the child in the manner expected**

The Registrar will consider the financial circumstances (including assets) of the parents in deciding if they have the capacity to meet the additional expenses as well as the costs of the child already assessed and the rate of child support already paid. The Registrar must consider the effect of any decision on the amount of Family Tax Benefit received by the payee, bearing in mind that it is the primary duty of the parents to support the child.

The costs of educating or training a child in accordance with the expectations of the parents are usually readily identifiable and verifiable.

If the payee is meeting the additional costs, a decision will usually increase the child support liability by an appropriate proportion of those additional costs. The length of time and stability of the education costs can determine the period of time that any change to the assessment will apply.

Where the payer is meeting the costs, it may be appropriate to reduce the assessment to reflect that the payer is directly meeting more than their appropriate share of the costs. However, another alternative is to increase the assessment and for the payer to claim credit (as non-agency payments) for any payments that they make directly to third parties in relation to training and education costs for the child.

The Registrar will still need to be satisfied that the parties mutually intended that these payments were for child support for the child when a payer makes a claim for a credit. If mutual intention is not satisfied, the payer may make a claim for credit under the prescribed non-agency payment provisions if the payer had less than regular care of any of the children at the time the payment was made. They must also have less than regular care at the time of crediting the prescribed non-agency payment against the liability.



### **The interaction with credit of prescribed non-agency payments**

A payer who makes certain types of payments to third parties, including child care costs or fees charged by a school or preschool for a child, is generally able to have those payments credited towards their liability to pay child support for that child, even if the payee did not intend that the amount be for child support.

However, this option is not generally available if the Registrar has already taken into account those costs met by the payer in making a decision to reduce, or refuse to change the assessment.

### **More questions?**

The above information is general information only. If you have further questions as to how these issues will be dealt with in your particular circumstances, please talk to our experienced lawyers for specific advice.