

Chapter 11 - Shared Care

Introduction

11001 Shared care¹ applies if the non-resident parent (NRP) provides overnight care for a qualifying child (QC) for at least 52 nights per year. If shared care is agreed, the NRP's liability will be reduced.

¹ CS (NI) Order 1991, Sch 1, paras 7 & 8

This guidance explains

Shared care agreements 11002

What is overnight care? 11003 – 11005

Pattern of shared care 11006

Evidence 11007

Disagreement about shared care arrangements 11008 - 11009

Court Orders 11010 – 11012

Common ground 11013

PWC Agrees with the number nights of shared care claimed by the Nrp 11014

Nrp who works night shifts 11015

Equal shared care 11016-11020

The effect of shared care on the maintenance calculation 11022-11027

Care shared with a Health and Social Care Trust 11028 -11034

Shared care agreements

11002 Shared care is based on the number of nights the NRP is expected to have overnight care of a QC, usually within a 12-month Shared care arrangements should be taken into account by the DM from the effective date of the relevant maintenance calculation decision¹.

¹ CSMC Regs (NI) 2012, reg 45(2)

What is overnight care?

11003 For overnight care to be provided the QC will normally stay at the same address as the NRP¹ and be cared for by them². However, any night where the child is an in-patient in hospital or at boarding school may still be treated as a night's shared care, if the child would otherwise have been cared for by the NRP³.

¹ CSMC Regs (NI) 2012, reg 45(5)(a);² CSMC Regs (NI) 2012, reg 45(5)(b);

³ CSMC Regs (NI) 2012, reg 45(5)(c)

11004 Overnight care can take place one night per week, or in blocks of nights or weeks, providing it amounts to a minimum of 52 nights throughout the year.

Note: The Department may take into account a period of less than 12 months if a shorter timeframe is appropriate ¹ for example, when the parties have mutually agreed upon a reduced period.

CSMC Regs (NI) 2012, reg 45(3)

11005 The number of nights where the NRP has overnight care of the QC is divided into shared care bands. See paragraph **11025** for information on shared care bands and how they affect the maintenance calculation.

Pattern of agreed Care

11006 Where the parents agree with the number of nights shared then no further evidence is required.

Evidence

11007 In determining what shared care arrangements exist, DMs must consider whether any of the following exist :

1. a court order ¹ – providing for contact between the NRP and QC(see Chapter 12; Court Orders for further information)

NOTE: If QC is 16 years old or over, it might not be possible to obtain a court order. Please consider other evidence in these circumstances.

NOTE: If both NRP and PWC confirm there is no shared care or agree that there is a different level of shared care with the QC while a court order is in

place, the caseworker can accept this evidence over the contents of the court order. See paragraph 11010.

2. an agreement made between both parties ² - For example, a written agreement drawn up by a solicitor, or a verbal agreement providing for contact between the NRP and QC.

3. where this is no court order or agreement, whether a pattern of shared care has already been established over the last 12 months (or such period as the DM considers appropriate in the circumstances of the case)².

CSMC Regs (NI) 2012, reg 45(5)(a);² CSMC Regs (NI) 2012, reg 45(5)(b)

Note : If both parents have previously established a regular pattern of shared care , this can be considered as the basis for future shared care. But, determinations about shared care are based on the anticipated number of nights the NRP is expected to have care of QC, reflecting a forward-looking approach. Accordingly, a past pattern of care is not determination of the level of shared care if there is evidence that this no longer applies for example, because the parents dispute the evidence as to the pattern.

CSMC Regs (NI) 2012, reg 45(2)

Disagreements about shared care arrangements

Pwc disagrees, but number of nights fall within the same shared care band

11008 If the PWC agrees does not agree with the number of nights shared care but the number stated by both the NRP and the PWC falls within the same shared care band, no further evidence is required

PWC disagrees, and number of nights claimed fall into a different shared care band

11009 If the PWC and the NRP each specify a different number of nights shared care, each of which falls into a different shared care band, both parties may be asked to provide evidence to support their claims.

Formal evidence establishing the number of nights a NRP is expected to have care of a QC may include :-

1. a current court order providing contact between the NRP and the QC
2. a written agreement, for example drawn up by a solicitor, or
3. other official documents for example, Social Services or Children and Family Courts Advisory and Support Service (CAFCASS) reports,

This list is not exhaustive

Consideration of Court Orders in Shared Care Decisions

11010 If a court order is presented, DM should use it as the basis for shared care decisions unless there is evidence that it is not being followed. In such cases, DM's should consider the other evidence and make a decision on the balance of probabilities based on all evidence provided.

DMs must also recognize that there may be other relevant factors influencing shared care decisions¹. If additional evidence is presented that indicates the court order is not being followed, this information should also be taken into account. The DM should carefully consider and balance such evidence against the court order to ensure an accurate and fair assessment of the actual shared care situation.

11011 Evidence that a court order is not being adhered to could include,

1. Both parties agree that it is not being followed.
2. Recent contradictory evidence from a trusted and verified source – such as court, solicitor, social services, CAFCASS.
3. Practical evidence such as customer location with makes contact improbable where otherwise unexplained,

This list is not exhaustive.

Other types of evidence

11012 Where no formal evidence (e.g. court order or written agreement exists, DMS should consider if there is other evidence which establishes the number of nights the NRP is expected to have care of the QC. This could be independent and verified evidence, such as information from schools or doctors.

Informal, unverified information such as diaries, receipts or statements from friends can be considered, but such evidence is generally less robust than verifiable or formal evidence e.g. a court order. DMs should consider whether the evidence provided is sufficient to reach a decision on the balance of probabilities about the number of nights the NRP is expected to have care of the QC.

Common Ground

11013 If there is no formal evidence or agreement between the RP and NRP and a pattern of care has not already been established, DMs will need to consider whether there is any agreed common ground. To do this DMs will look for any points of agreement in what both parents have said. Even where parents don't agree on the total amount of shared care, they might agree that at least a certain amount is happening. In these cases, the DM can make a decision based on the lowest level both parents agree on and use that as the care level until the parents can reach an agreement or provide official proof.

Examples

1. NRP John and PWC Mary agree that QC Ben stays with John 2 nights per week (Saturdays and Sundays). John also claims that Ben stays with him on Tuesdays, but Mary disagrees. Where there is no evidence to verify John or Mary's claim. DMs may decide that the shared care arrangement means that John looks after Ben for 2 nights per week. There is clear evidence of a common ground of this between the parties.
2. NRP Derek and PWC Dawn agree that QC Mark stays with Derek 1 night a week (Saturdays). Derek also claims that Mark stays with him on Thursdays, but Dawn disagrees. Where there is insufficient evidence to verify Derek's or Dawn's claim. DMs may decide that the shared care arrangement is that Derek looks after Mark 1 night per week, as there is common ground as to this between the parties.

Parents disagree on the number of nights but agree in principle that there is shared care

11014 Where there is a dispute DMs should consider each party's statements, the evidence provided and then make a decision on the balance of probabilities. Where the parties agree in principle that there is a level of shared care but there is insufficient evidence to make the decision on the basis set out in paragraph **11007**, (for example because the parents have not agreed a pattern of care or the evidence about a past pattern of care is disputed) DMs can make an assumption of shared care of one night per week¹. If either party disagrees with the decision, they are able to request that it be superseded, after which they may choose to appeal.

¹CSMC Regs (NI)2012 Reg 46(2)&46(3)

Nrps who work night shifts

11015 NRPs who work night shifts may be given a reduction for shared care if

1. the QC stays overnight at the same address as the NRP
2. the NRP returns to the same address each day before commencing another shift, **and**
3. the NRP is able to return immediately if there is an emergency.

Examples:

1. NRP Lisa works night shifts at a hospital but has overnight care of her son, QC Alex on Tuesdays and Fridays. On nights when Lisa is scheduled to work, Alex still stays overnight at Lisa's home. Before each shift, Lisa returns home after her previous shift has ended and is always able to come back immediately if there's an emergency with Alex. Because Alex consistently stays overnight at Lisa's address, and Lisa is able to return quickly in emergencies and comes home before starting each new night shift, Lisa may be eligible for a reduction for shared care based on these arrangements.

2. NRP David has overnight care of QC Peter on Fridays and Saturdays. David works on an oilrig, his working pattern is 3 weeks on and 1 week off. Due to the nature of his work during his 3 weeks on he does not return home between shifts. In these circumstances, as Peter is not residing at the same address as David on the nights that David is on the oilrig, the total number of nights per year for which shared care can be considered to be provided is less than 52. David would therefore not be treated as providing shared care for Peter.

Equal shared care

11016 Equal shared overnight care applies where the NRP has care of a QC for 175 nights or more within a 12-month period.

Note : equal shared care differs to equal day to day care. See Chapter 5: Meaning of Certain terms, for more information on determining who has day to day care.

Abatement for equal shared care

11017 Abatement is an adjustment made to the NRP's liability where there is equal shared care of a QC.

11018 Where shared care applies and an equal shared care adjustment of one half has been made to the maintenance liability in respect of a specific QC, a further reduction (abatement) of £7.00¹ is made to the amount payable in respect of that child.

Note: abatement applies to each QC for whom there is equal shared care.

1 CS (NI) Order 1991, Sch1,
7(6)

11019 If, after allowing for abatement for any QC, the total weekly amount of child maintenance payable by the NRP would decrease to less than £7.00, the NRP will instead be liable to pay a weekly rate of £7.00.

11020 Similarly, if, after abatement for any QC, the total weekly payment by the NRP to all the PWCs within the case group falls below £7.00, the NRP will instead be liable to pay a weekly rate of £7.00¹. Where this applies, the £7.00 is subject to apportionment.

1 CS (NI) Order 1991, Sch1,
7(7)

Example

John has a QC - Ben, John's maintenance liability is £60.62. John has shared care of Ben for 180 nights of the year. A shared care reduction of 1/2 applies plus the abatement. $£60.62 \div 2 = £30.31 - £7 = £23.31$. John's maintenance liability is £23.31.

Spare 11021

The effect of shared care on a maintenance calculation Basic, basic plus or reduced rate liability

11022 If it is accepted that the NRP has care of a QC for 52 nights or more during a 12-month period, the following reductions will apply to the child maintenance calculation:

Shared care bands¹

Number of nights	Reduction
52 – 103	1/7th
104 – 155	2/7th
156 – 174	3/7th
175 or more	1/2 Plus an additional further decrease in the total amount of maintenance by £7 for each child for whom the NRP provides this level of care.

¹ CS (NI) Order 1991, Sch1, 7(4)

Note: Where the NRP is liable to maintain a child abroad or a child of the family, or is supporting a child under a family based arrangement, and the rate of child maintenance is determined on that basis, a reduction for shared care can still be considered in the usual way for QCs under the statutory scheme¹.

¹ CS (NI) Order 1991, Sch1, 5A

Flat rate liability

11023 Where a flat rate maintenance calculation is in place, the effect of shared care will depend upon the reason for the flat rate maintenance calculation. The flat rate of £7 will either be in place because

1. the NRP or their partner is in receipt of a prescribed benefit, pension or allowance, or
2. the NRP's gross weekly income is £100 or less¹.

¹ CS (NI) Order 1991, Sch1, 8

11024 If the flat rate is as a result of a prescribed benefit, pension or allowance being in payment for the NRP or his partner, any level of overnight care of more than 52 nights per year will result in the maintenance calculation reducing to Nil.

11025 If the flat rate is in place because the NRP's gross weekly income is less than £100, the weekly rate will be £7, irrespective of the degree to which overnight care is provided.

Different levels of shared care for different QCs

11026 A NRP may provide different levels of shared care for each child. The shared care reduction in these circumstances is calculated by

1. working out the shared care reduction for each child, and adding them together, then
2. dividing the result by the total number of QCs¹.

¹ CS (NI) Order 1991, Sch1, 7(5)

Example

NRP John has 2 QCs - Ben and Anne. His maintenance liability is £40. John has shared care of Ben for 156 nights of the year, but has no shared care for Anne. A shared care reduction of 3/7th will apply for Ben. There will be no reduction for Anne. The reduction is therefore $(3/7 + 0) \div 2 = 3/14$. $£40 \div 7 = £5.71428$. $£5.71428 \times 3 = £17.142857$. $£17.142857 \div 2 = £8.57$. $£40 - £8.57 = £31.43$. John's maintenance liability is £31.43.

More than one PWC

11027 Any shared care adjustment must be made after the NRP's liability has been apportioned between the PWCs¹.

¹ CS (NI) Order 1991, Sch1, 6

Example 1

NRP John has a gross weekly income of £200. John has 2 QCs, Ben and Anne, with different PWCs Jean and Mary. John shares care of Ben for 52 nights a year (PWC Jean). John does not share care for Anne (PWC Mary). John's maintenance liability is apportioned between Jean and Mary. $£200 \times 16\%$ (for 2 QCs) = £32. $£32 \div 2 = £16$. Shared care reduction for 52 nights per year with Jean would be 1/7th of £16 = £2.29 which reduces the liability to £13.71 for Jean.

Example 2

John is liable for the flat rate because he receives a prescribed benefit. There are 2 QCs, Ben and Anne with different PWCs Jean and Mary. John shares care of Ben for 52 nights a year (PWC Jean). John does not share care for Anne (PWC Mary). John's maintenance liability is apportioned between Jean

and Mary. $\pounds 7 \div 2 = \pounds 3.50$. John's liability for Jean is reduced to nil because there is shared care. John's liability for Mary is $\pounds 3.50$, as there is no shared care.

Care shared with an authority

Care provided in part by an authority

11028 There may be cases where a QC spends at least 52 nights per year in the care of an authority¹. These cases are covered by different legislation to normal shared care cases. However, the effect on the child maintenance calculation is the same, as the NRP's liability will be reduced according to the amount of time the QC child spends in the care of an authority in the same way as it is in shared care cases.

¹ CSMC Regs (NI) 2012, reg 52

11029 Accordingly, the maintenance liability will be reduced by applying the appropriate shared care reduction as set out in the following table¹.

Number of nights	Adjustment
52 - 103	1/7 th
104 - 155	2/7 th
156 - 207	3/7 th
208 - 259	4/7 th
260 - 262	5/7 th

¹ CSMC Regs (NI) 2012, reg 52(6)

Note: an adjustment only applies if the NRP is liable to pay maintenance at the basic, basic plus or reduced rates or has a flat or nil rate case which has been adjusted following an additional income variation¹.

¹ CSMC Regs (NI) 2012, reg 52(1)

More than one QC

11030 Where there is more than one QC and an authority does not provide shared care for all of the children, the shared care fraction must be divided by the total number of QCs¹.

¹ CSMC Regs (NI) 2012, reg 52(4)

Example

NRP David and PWC Linda have 2 QCs Ben and Tracey. David's weekly maintenance liability is £40. Ben is in care of an authority for 104 nights a year. Tracey is wholly cared for by Linda. A shared care reduction of 2/7th will apply for Ben, with no reduction for Tracey. The two adjustments are added together and divided by the total number of QCs. The reduction is therefore $(2/7 + 0) \div 2 = 2/14$. Maintenance liability for 2 QCs = £40. $£40 \div 14 = £2.85714$. $£2.85714 \times 2 = £5.71$. $£40 - £5.71 = £34.29$. David's total maintenance liability is £34.29. If the reduction takes the liability to below the flat rate, the liability will be increased to £7.

Care of an Authority is more than 262 nights per year

11031 If an authority provides shared care of a QC for 263 nights or more per year, the maintenance liability will be reduced to nil¹.

¹ CSMC Regs (NI) 2012, reg 52(10)

Care shared between PWC, NRP and an authority

11032 If care of a QC is shared by a PWC, NRP and an authority, the total shared care reduction is combined¹.

¹ CSMC Regs (NI) 2012, reg 52(8)

Example

PWC Lynn has one QC Zoe. NRP John has shared care for 104 nights per year and an authority has shared care of 52 nights per year. The reduction is $2/7$ (NRP) + $1/7$ (An Authority) = $3/7$ combined.

Care provided by an authority over a period of less than 12 months

11033 The number of nights for which care is shared with an authority is usually determined over a 12-month period, but DMs may make use of a shorter or longer period where they consider that period to be more representative of the current arrangements for the care of the QC. For example, if the child will cease to be a QC in 6 months' time, the DM may consider the level of care an authority will provide during the next 6 months. In these circumstances, a reduction for shared care can only be made if the number of nights of care is in the same ratio as 52 nights to 12 months¹.

¹ CSMC Regs (NI) 2012, reg 52(2)(b)

Evidence that a QC is in care of an authority

11034 The following types of evidence will be required to confirm a child is in care of an authority:

1. a care order

2. a letter from an authority or children`s residential home, providing it clearly identifies that the child in question is in their legal care.

For further information on gathering evidence, refer to **Chapter 96 - Evidence and Decision Making**.