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Case No: CA-2026-001068

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL FAMILY COURT
Deputy District Judge Hecht
ZC19P04111

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/10/2026

Before:

SIR STEPHEN COBB PRESIDENT OF THE FAMILY DIVISION
LADY JUSTICE KING
and
LADY JUSTICE ASPLIN

Between:

LEYLA SONER SOPHIA ANTONIOU

Claimant/
Respondent

- and -

WESTLEY NATHAN MORGAN

Defendant/
Appellant

Simon Charles & Christie O'Connell (instructed by **Hall Brown Family Law**) for the
Appellant
Nicholas Wilkinson KC, Phillip Blatchly & Henrietta Boyle (instructed by **Charles Russell**
Speechlys) for the **Respondent**

Case No: CA-2026-000664

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL FAMILY COURT
Her Honour Judge Hudd

Date: 21/10/2026

Before:

SIR STEPHEN COBB PRESIDENT OF THE FAMILY DIVISION

LADY JUSTICE KING

and

LADY JUSTICE ASPLIN

Between:

KARLA MORRELL

Claimant/

Appellant

- and -

WESTLEY NATHAN MORGAN

Defendant/

Respondent

Jody Atkinson (instructed by **Trinity Law Solicitors**) for the **Appellant**
Simon Charles (instructed by **Hall Brown Family Law**) for the **Respondent**

Hearing dates: 14-15 July 2026

Approved Judgment

This judgment was handed down remotely at 14:00pm on 21/10/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King:

Introduction

1. There are before the Court two appeals. The question that arises on each is whether, once a maintenance calculation has been made under sections 4 and 11 of the Child Support Act 1991 (“CSA 1991”), subsequent review, revision or supersession decisions, or an appeal in respect of the maintenance calculation made by the Child Maintenance Service (“CMS”), constitute the making of a fresh maintenance calculation for the purposes of determining whether a ‘top-up’ order legitimately made under section 8(6), ceases to have effect.
2. In order to answer that question, the key issue to be decided by this Court is whether section 11 produces one single maintenance calculation (which can thereafter be varied by decisions made on review, revision or supersession, or on appeal), or whether each such decision is a fresh maintenance calculation which, under section 10(1) and regulation 3 of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992 (“the CS(MAJ)R 1992”), results in any existing top-up order “ceasing to have effect”.
3. For the reasons discussed below, I am satisfied that a proper interpretation of the CSA 1991 demonstrates that there is one single maintenance calculation which continues until one of the events prescribed in paragraph 16 of Schedule 1 results in the maintenance calculation “ceasing to have effect”. Further, if every review, revision or supersession were to result in a fresh maintenance calculation, the practical outcome could only be regarded as absurd and wholly contrary to the policy imperative which underpins the CSA 1991, resulting, as it invariably would, in recurring litigation, expense and uncertainty, all as a direct consequence of the ordinary statutory review and variation process.

The Parties

4. The appellant in the first appeal is Westley Morgan (“the father”). He has a child, A, who is 12 years old. A’s mother is Ms Leyla Antoniou (“Ms A”). The father appeals against an order made by DDJ Hecht on 17 July 2025 in relation to A. The Deputy District Judge refused the father’s application to dismiss an application made by Ms A to enforce a Schedule 1 Children Act 1989 top-up order which had been made by consent on 15 September 2020, at a time when the father was earning in the region of £3 million a year. The top-up order was held to remain in force and, by the Deputy District Judge’s order, Ms A was therefore entitled to pursue arrears of maintenance of approximately £137,000 which had accrued under the order.
5. The father is the respondent in the second appeal. Ms Karla Morrell (“Ms M”) is the appellant. She also has a child by the father, a boy, N, who is eight years old. The father applied to dismiss Ms M’s application to enforce a top-up order which had been made by consent on 28 May 2019. DDJ Gleeson granted his application. On 8 December 2025, HHJ Hudd dismissed a fresh application made by Ms M to enforce the arrears, also of around £137,000, declaring that the order had ceased to have effect no later than 24 September 2021.

6. Each decision turned upon whether, for the purposes of the CSA 1991, there had been a fresh maintenance calculation resulting in the top-up order in question ceasing to have effect.
7. The father has two older children by his wife, Ms Fisher (“Ms F”); they are referred to as C and D in these proceedings. Two events in relation to that family unit are of significance: first, after a period of separation, the father moved in with Ms F, C and D in 2021; and secondly, child benefit ceased to be paid in respect of D on 31 August 2026, following his 18th birthday.
8. The application of the CMS formula system of assessment for child maintenance is intended to provide a predictable, speedy and efficient way in which to determine the liability of a non-resident parent to pay maintenance to the carer of a relevant child. It is unfortunate that notwithstanding that being the case, the courts and the First-tier Tribunal have now been involved for a period of over seven years in order to secure an outcome which will ensure that the father honours his obligations to these two children. This has been the case, notwithstanding that there has always been a maintenance calculation in place and the father has, throughout, earned considerably in excess of the current gateway figure of £3,000 gross per week, which income gives a court jurisdiction under section 8(6) of the CSA 1991 to make a top-up order.

The Court’s approach to the appeals

9. The Court has before it two first-instance decisions, with the father common to both sets of proceedings. The two courts reached opposite conclusions. Given the absence of authority on the specific point and the complexity of the CSA 1991, such an outcome is hardly surprising. No criticism is intended of any of the judges below, in particular DDJ Gleeson and HHJ Hudd, who were clearly uncomfortable with the decisions which they each felt they had no alternative but to make in allowing the father’s application to dismiss Ms M’s application to enforce her arrears.
10. Peel J transferred both appeals to the Court of Appeal under Family Procedure Rules 2010 r.30.13.
11. Given that this Court is now faced with a single issue of statutory interpretation, no disrespect is meant to DDJ Hecht, DDJ Gleeson or HHJ Hudd if I do not subject their respective judgments to close analysis. For the same reason, although Mr Charles and Ms O’Connell on behalf of the father, and Mr Atkinson on behalf of Ms M, have each drafted careful grounds of appeal, it is not necessary to consider these grounds in detail given that this is a single issue of statutory interpretation upon which the outcome of each appeal depends.

The Child Maintenance Service

12. On 18 July 1990, the then Prime Minister, Margaret Thatcher, gave a wide-ranging speech in her Pankhurst Lecture to the ‘300 Group’. In it, she referred to the need for parents to accept responsibility for their children and said that ‘parenthood is for life’. She said that the child maintenance arrangements then in place, which were largely (but not exclusively) court-based, were ‘too inconsistent, too slow and too complicated’, and that a new child support agency would be established, with maintenance assessed through a standard administrative formula. Complicated cases might, she said, still have

to be referred to the courts, but the existence of such a formula would assist in those cases.

13. A White Paper, *DSS, Children Come First: The Government's Proposals on the Maintenance of Children* (Cm 1264-I and II), followed in October 1990. The White Paper identified a number of problems, in particular those arising from the division between local DHSS offices and the courts. The result was reliance on discretion, inconsistent levels of awards, delays, a lack of automatic reviews, a prevalence of arrears and ineffective enforcement. This led to a large number of mothers receiving no maintenance from absent fathers, while having to rely on income support.
14. The policy imperative was for a clear formula which would be applied administratively rather than through the courts.
15. The Child Support Act 1991 received Royal Assent on 25 July 1991, and the Child Support Agency (the predecessor of the CMS) was established in 1993 as a Next Steps agency within the then Department of Social Security.
16. The Child Support Act 1991 created a statutory scheme by which the state calculates and collects child maintenance using a standard formula. The objective was that children should receive maintenance based on a consistent national scheme rather than on case-by-case judicial discretion.
17. Parliament therefore chose to replace much judicial discretion with a statutory formula. The CMS aims to provide consistency, predictability and effective collection of routine child maintenance, while the Family Court acts as a safety net for cases requiring discretion, exceptional provision or remedies beyond periodic maintenance. The role of the courts is governed by section 8. If the Secretary of State has jurisdiction, then, save for the exceptions provided by subsection (3A), "no court shall exercise any power which it would otherwise have to make, vary or revive any maintenance order in relation to [a] child".
18. The Act is supported by the CS(MAJ)R 1992, the Child Support (Management of Payments and Arrears) Regulations 2009 and the Child Support Maintenance Calculation Regulations 2012.

The father's CMS history in brief

19. The father was a Premier League footballer and was captain of Leicester City FC when it won the Premier League in May 2016 and the FA Cup in 2021.
20. Following the birth of A, the CMS carried out a maintenance calculation requiring the father to pay maintenance at the maximum amount as his gross weekly income was more than £3,000.
21. In March 2015, shortly after A was born, Ms A issued a claim under Schedule 1 to the Children Act 1989 for financial provision. A final order was agreed and made on 2 June 2016 by HHJ Booth. The Schedule 1 Children Act 1989 consent order specified that the father was to fund the purchase of a property for A and Ms A and that he would make periodical payments of £36,000 per annum.

22. On 5 November 2019, Ms A's solicitors wrote to the father concerned that he was approaching the end of his football career and would potentially be unable to meet A's needs after a change in his income. She suggested that a stockpiling element should be added to the maintenance payment or that funds should be set aside to operate as a security for the ongoing maintenance payments. The father responded to this by stating that the affordability of any periodical payments should be assessed at the end of his playing career. The father received his last payment from Leicester City FC in August 2021.
23. A final order was thereafter made by consent following a private Financial Dispute Resolution appointment. It did not include any stockpiling provision. The order was made by DJ Ashworth on 15 September 2020. It included provision for a top-up order, under which the father was now to pay Ms A £44,000 per annum.
24. Payments under that order began on 7 July 2020 and continued until September 2021. Thereafter the father continued to pay some maintenance at a significantly lower rate.
25. Meanwhile, on 28 May 2019, a consent order was made by Recorder Hay in relation to N. In addition to capital provision, the order provided for the father to pay Ms M £36,000 per annum, payable monthly on conventional terms, to continue until N attained the age of 18 or ceased full-time education, whichever was later, or further order, with annual increases by reference to the Consumer Prices Index. Unlike in A's case, no further order was made in relation to N, which is why Ms M's order is for a lesser amount than Ms A's.
26. During 2021, the father, who had been apart from Ms F and their children, C and D, resumed his relationship with her. He moved in with her and, in due course, they married.
27. On 24 September 2021 having retired from Leicester City, the father informed the CMS that he was unemployed. This was treated by the CMS as an application for supersession, a term of art which is explained below. On 16 February 2022, the CMS made a decision to supersede the existing calculation to a nil rate with effect from 24 September 2021, the date of the father's application ("the effective date").
28. Upon being informed of the outcome of the supersession, both Ms A and Ms M requested a revision of the decision of 16 February 2022. This was a step under the CSA 1991 which it was necessary to take before they were able to exercise their right of appeal against that CMS decision under section 20 of the CSA 1991 to the First-tier Tribunal (Social Entitlement Chamber) ("FTT").
29. On 25 February 2022, the father applied to the court to dismiss Ms M's application to enforce her top-up order. DDJ Gleeson granted his application on 1 March 2022 and his Order records that:

“(i)... in the absence of the CMS making a maximum assessment,... the court did not have jurisdiction to make a ‘top up’ child maintenance order under s.8(6) of the CSA 1991; [and]
(ii)... that section 13 of the 2019 consent order was not enforceable, as it had ceased to have effect by virtue of a CMS calculation made on 24 May 2021.”

30. On 13 October 2023, the CMS Financial Investigation Unit, having carried out an investigation, revised the decision which had been made by the CMS on 16 February 2022 to supersede the calculation to nil on the basis of misrepresentation by the father. The father appealed against that decision to the FTT.
31. It took until March 2025 for the father's appeal and each of the mothers' appeals against the nil assessment to be heard; they were listed for hearing together over two days. All of the appeals, including the father's, were allowed and remitted to the Secretary of State to recalculate the father's liability for child support for the relevant periods. The FTT found that the father's annual income in the previous four years had been between £220,000 and £240,000. It remitted the matter to the CMS for a fresh decision.
32. On 25 June 2025, the CMS implemented the FTT's decision, with the result that the father was assessed as having had a gross weekly income of more than £3,000 at all times.
33. Unsurprisingly, in the light of the finding that the father had remained above the statutory maximum throughout, Ms A made her first application to enforce.
34. On 3 July 2025, Ms M made a fresh application to enforce the child maintenance provision of the consent order which DJ Gleeson had refused to enforce. She sought arrears in excess of £137,000, plus inflation linking. On 20 August 2025, the father applied to dismiss the enforcement application. The father contended that the questions before HHJ Hudd had already been decided by DDJ Gleeson, that this determination had never been appealed and that the 2019 consent order was not enforceable.
35. The father confirmed in a witness statement dated 15 July 2025 that he knew the CMS decision to reduce his maintenance to nil had been wrong, as he had other rental income.
36. On 17 July 2025, DDJ Hecht refused the father's application to dismiss Ms A's application to enforce the arrears notwithstanding the nil assessment which had been backdated to 24 September 2021.
37. On 8 December 2025, HHJ Hudd dismissed Ms M's application to enforce the arrears, apparently unaware that DDJ Hecht had reached the opposite conclusion in respect of another of the father's children.

How is maintenance calculated?

38. An application for a maintenance calculation is made under section 4 of the CSA 1991. A person with care, or the non-resident parent, of a qualifying child "may apply to the Secretary of State for a maintenance calculation to be made under this Act".
39. The term "maintenance calculation" is defined in section 54(1) of the CSA 1991 as meaning a "calculation of maintenance made under this Act and, except in prescribed circumstances, includes a default maintenance decision and an interim maintenance decision".
40. The mechanics of the maintenance calculation are found in section 11 of the CSA 1991:

“11(1) An application for a maintenance calculation made to the Secretary of State shall be dealt with by the Secretary of State in accordance with the provision made by or under this Act.

(2) The Secretary of State shall (unless the Secretary of State decides not to *make a maintenance calculation* in response to the application, or makes a decision under section 12) *determine the application by making a decision* under this section about whether any child support maintenance is payable and, if so, how much. *(my emphasis)*

41. The maintenance calculation under section 11 is made in accordance with Part I of Schedule 1, using the non-resident parent’s gross weekly income and the statutory formula. A default maintenance decision under section 12 is imposed where there is insufficient information and is, essentially, a holding calculation.
42. Part I of Schedule 1, referred to in section 11(6), sets out the rules for the calculation of child support and sets the ceiling for the inclusion of income for the purposes of the calculation. Paragraph 10(3) of Schedule 1 provides that “any amount of gross weekly income (calculated as above) over £3,000 is to be ignored for the purposes of the Schedule”. It follows that, however much a non-resident parent earns above £3,000 gross per week, the maximum sum payable under the CMS formula (which varies depending on a number of dependency factors) will not increase any further.
43. The statutory scheme does not treat an initial decision under section 11 as final. There is a comprehensive scheme under the Act for annual review (regulation 19), as well as correction (section 16: revision), replacement (section 17: supersession) and appellate review (section 20: appeal).
44. The Child Support Maintenance Calculation Regulations 2012 (“the 2012 Regulations”) set out the finer details of the calculation.
45. Regulation 3 (ibid.) sets out the meaning of “calculation decision”.

“3. In these Regulations “calculation decision” means a decision of the Secretary of State under section 11 (the maintenance calculation), section 16 (revision) or section 17 (supersession) of the 1991 Act determining the amount of child support maintenance to be fixed in accordance with Part 1 of Schedule 1 to that Act.”

46. Mr Charles on behalf of the father, submits that this definition expressly identifies separate categories of calculation decision. A supersession, he argues, is therefore a distinct and new maintenance calculation decision and not merely an amendment to an existing calculation. Mr Atkinson on behalf of Ms M, for his part submits that identifying sections 11, 16 and 17 individually would make no sense if decisions under sections 16 and 17 were themselves new maintenance calculations. Deliberately distinguishing between a maintenance calculation and later supersessions or revision decisions suggests, he submits, that there is one continuing maintenance calculation.

Review:

47. By regulation 19(1), headed “Setting the review date”, the Secretary of State “must in relation to each application for a maintenance calculation, fix a date at which the non-resident parent’s gross weekly income is to be reviewed by reference to an updated HMRC figure”.
48. By paragraph 19(2), “the first review date falls 12 months after the initial effective date”. Subsequent reviews fall on the anniversary of that date. The “initial effective date” is the date on which the non-resident parent was notified of the application (regulation 12).
49. Changes to maintenance calculations are dealt with in section 16 of the CSA 1991 (revision) and section 17 (supersession).

Revision:

50. Section 16 says:

“(1) Any decision to which subsection (1A) applies may be revised by the Secretary of State—

(a) either within the prescribed period or in prescribed cases or circumstances; and

(b) either on an application made for the purpose or on the Secretary of State’s own initiative;

and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised.

(1A) This subsection applies to—

(a) a decision of the Secretary of State under section 11, 12 or 17;”
51. Revision is the term used where it is said that a decision was wrong at the effective date on which the maintenance calculation was made.
52. One of the ways that a maintenance calculation can be revised is by what is described in the statute as a variation. A variation can increase the amount of income that is taken into account when calculating maintenance. There are a number of different ‘grounds’ for variation enumerated in the Regulations, and the Secretary of State cannot agree to a variation of the maintenance calculation unless the case falls within one of those grounds.
53. The relevant grounds for variation under section 16 in this appeal were:
 - i) (a) Regulation 69, ‘unearned income’, enabling the Secretary of State to take into account taxable income other than earned income (e.g. property income or dividends).

- ii) (b) Regulation 69A, ‘assets’, enabling the Secretary of State to attribute to the non-resident parent a notional income calculated by applying the judgment rate (8%) to his qualifying assets.
 - iii) (c) Regulation 71, ‘diversion of income’, enabling the Secretary of State to attribute a notional income to the non-resident parent where the non-resident parent has the ability to control their income and has unreasonably reduced the income that is taken into account. The Upper Tribunal has held that, where the non-resident parent controls a company, they will be diverting their income where they choose not to receive dividends.
54. Any application for an additional-income variation will, by regulation 57(1)(f), be rejected at a preliminary stage if the non-resident parent’s income is already above the capped amount of £3,000. In other words, so far as Ms M and Ms A were concerned when seeking a revision of the nil assessment made by the CMS with effect from September 2021, it did not matter, for the purposes of either protecting or obtaining a top-up order, whether the father was earning £200,000 a year or £3 million a year, provided it could be established that he was earning more than £3,000 gross per week.
55. Regulation 73 is headed “Effect on the maintenance calculation — additional income grounds” and regulation 74 is headed “Effect on maintenance calculation — general”. The two regulations set out how effect is to be given to a variation in the amount to be paid by the non-resident parent. In my judgment, it is significant that the Regulations refer to the ‘effect’ on the maintenance calculation, rather than providing that there will be a fresh maintenance calculation replacing the calculation made under section 11 of the CSA 1991.

Supersession:

56. Section 17 permits the Secretary of State to supersede a decision where there has been a change of circumstances since the effective date of the last decision. It provides:

“Decisions superseding earlier decisions:

(1) Subject to subsection (2), the following, namely—

(a) any decision of the Secretary of State under section 11 or 12 or this section, whether as originally made or as revised under section 16;

(b) any decision of an appeal tribunal or the First-tier Tribunal under section 20;...

(c).

(d) any decision of an appeal tribunal or the First-tier Tribunal on a referral under section 28D(1)(b);

(e) any decision of a Child Support Commissioner or the Upper Tribunal on an appeal from such a decision as is mentioned in paragraph (b) or (d),

may be superseded by a decision made by the Commission, either on an application made for the purpose or on the Secretary of State's own initiative."

57. There are a number of circumstances in which a maintenance calculation may be superseded. The annual review may for example result in the calculation being superseded.
58. It is important, for a proper understanding of the structure of the scheme and of the effect of applying the statutory formula to a variety of different circumstances, to emphasise that a change in income, or a section 16 revision on the ground of additional taxable income, is not the only means by which a supersession leading to an alteration in the maintenance calculation may occur. The structure of the CMS is such that a change may occur even where there has been no alteration in the income position of the non-resident parent.
59. Contrary to Mr Charles' case, it is submitted by Mr Atkinson and by Mr Wilkinson on behalf of Ms A, that the principle underlying the CMS is that there is only one enduring maintenance calculation. That calculation can be superseded at a new rate to reflect a number of changes in circumstances. The Court was referred to three examples each of which have arisen in the present case:
- i) Where there is a second person with the care of a qualifying child, as became the case when Ms M gave birth to N, there was not a new and separate maintenance calculation for Ms M. Rather, by paragraph 6 of Schedule 1, the maintenance (which was at the maximum prescribed under the Act) was thereafter apportioned between the two carers by reference to the number of qualifying children each mother had. The amount received by the first person with care, Ms A, was as a consequence significantly reduced when the second person with care, Ms M, was added to the calculation.
 - ii) For a substantial period of time, the father was not living with the mother of his other two children. In 2021, however, he moved in with Ms F. As both C and D were eligible for child benefit, the father was entitled to a 'relevant other child' reduction. This applied notwithstanding that the father's income exceeded £3,000. The result was that the maintenance payable to both Ms M and Ms A was further reduced.
 - iii) Since the appeal hearing (in July 2026) there has been a further supersession, as D, the elder of the father's two other children, ceased to be eligible for child benefit on 31 August 2026. As there will now be two qualifying children and only one, rather than two, 'relevant other children' entitling the father to the relevant other child reduction, there will be a very modest increase in the amount payable to Ms A and Ms M.
60. Mr Charles submitted that paragraph 15 of Schedule 1 to the CSA 1991 reinforces his submission that there can be many maintenance calculations and that each revision or supersession is one. Paragraph 15 provides:
- "Where the Secretary of State is satisfied that the circumstances of a case require different amounts of child support maintenance

to be assessed in respect of different periods, the Secretary of State may make separate maintenance calculations each expressed to have effect in relation to a different specified period.”

61. In my judgment, this provision is of no assistance to Mr Charles, as it applies to changes in circumstances between the effective date and the decision date (as well as to future changes which can be anticipated) and so bypasses the need to utilise the revision and supersession rules. In my judgment, the fact that sections 16 and 17 each relate to the revision or supersession of decisions reinforces a construction that decisions under either section simply amend the figures under the single enduring maintenance calculation.

Appeals

62. Section 20(3A) of the CSA 1991 is supported by regulations 14 and 14A(2) of the 2012 Regulations. Regulation 14A(2) provides that a person has a right of appeal only if the Secretary of State has considered an application for revision under section 16.

63. Section 20 provides:

“A qualifying person has a right of appeal to the First-tier Tribunal against—

(a) a decision of the Secretary of State under section 11, 12 or 17 (whether as originally made or as revised under section 16);

(b) a decision of the Secretary of State not to make a maintenance calculation under section 11 or not to supersede a decision under section 17;”

64. In my judgment, a natural reading of the section as a whole, and of subsection (b) in particular, shows that supersession is to be regarded as a decision separate from the making of a maintenance calculation and indicates that a decision not to supersede under section 17 does not result in the making of a new maintenance calculation.

65. Finally, for the purposes of tracing the structure of the CMS, Part II of Schedule 1 of the CSA 1991, referred to in section 11(8) (ibid.), sets out in paragraph 16 when a maintenance calculation “shall cease to have effect”, namely:

“(a) on the death of the non-resident parent, or of the person with care, with respect to whom it was made;

(b) on there no longer being any qualifying child with respect to whom it would have effect;

(c) on the non-resident parent with respect to whom it was made ceasing to be a parent of—

(i) the qualifying child with respect to whom it was made; or

(ii) where it was made with respect to more than one

qualifying child, all of the qualifying children with respect to whom it was made.”

66. Significantly, paragraph 16 does not provide for a maintenance calculation to cease to have effect each time there is a supersession, revision or review.
67. Pulling the threads together so far: section 11 provides for the Secretary of State to determine an application for a maintenance calculation by “making a decision”, and the figure payable by the non-resident parent is “determined” by a computer programme utilising the prescribed formula. There are thereafter a number of means by which the decision underpinning the calculation can be varied or updated, as examined above. Each of those routes—review, revision and supersession—use the word ‘decision’ to describe the process. In my judgment, these decisions vary the figure and do not make a fresh maintenance calculation. This is reinforced by the fact that the duration of a maintenance calculation is “bookended” by the terms of Schedule 1, paragraph 16, as incorporated by section 11(8), which provides for the circumstances in which a maintenance calculation will cease to have effect and does not include decisions altering the figure to be paid from time to time by virtue of the existence of a maintenance calculation.
68. The question then is whether the provisions relating to orders of the court and top-up orders in particular undermine that analysis.

Top-up orders

69. Having, it is hoped, explained the basic structure of the Act, it is possible to move on to consider the limited circumstances in which the courts retain jurisdiction to make orders for child maintenance in addition to that which has been ordered under the CSA 1991. These appeals concern applications made under Schedule 1 to the Children Act 1989, headed “Orders for financial relief against parents”, but the issue applies equally to orders made under any of the various provisions set out in section 8(11).
70. In some cases, as here, there will be circumstances in which the normal child support formula does not produce an appropriate or fair outcome. The exceptions to the general embargo on making child maintenance orders, found in section 8(3), are intended to address that situation. Section 8(6) makes provision for so-called top-up orders, whereby the court’s jurisdiction may still be invoked subject to the following three conditions:

“(6) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

(a) a maintenance calculation is in force with respect to the child;

(b) the non-resident parent’s gross weekly income exceeds the figure referred to in paragraph 10(3) of Schedule 1 (as it has effect from time to time pursuant to regulations made under paragraph 10A(1)(b)); and

(c) the court is satisfied that the circumstances of the case make it appropriate for the non-resident parent to make or secure the making of periodical payments under a maintenance order in addition to the child support maintenance payable by him in accordance with the maintenance calculation.”

71. It follows, therefore, that the top-up order supplements the maximum maintenance calculation. In *Dickson v Rennie* [2014] EWHC 4306 (Fam), [2015] 2 FLR 978, Holman J confirmed that section 8(6) means that there needs to be a determination by the Secretary of State that the non-resident parent’s gross weekly income exceeded £3,000, that is not a task for the court.

Regulation 3 CS(MAJ)R 1992

72. Section 10 of the CSA 1991 and regulation 3 of the CS(MAJ)R 1992 provide that any subsequent maintenance calculation made whilst a maintenance order is in force, has the effect of bringing that order to an end (*my emphasis*).

“10 Relationship between maintenance calculations and certain court orders and related matters.

(1) Where an order of a kind prescribed for the purposes of this subsection is in force with respect to any qualifying child with respect to whom a maintenance calculation is made, the order—

(a) shall, so far as it relates to the making or securing of periodical payments, cease to have effect to such extent as may be determined in accordance with regulations made by the Secretary of State; or

(b) where the regulations so provide, shall, so far as it so relates, have effect subject to such modifications as may be so determined.

73. Regulation 3 of the CS(MAJ)R 1992 provides:

“(1) ...

(2) Subject to paragraphs (3) and (4), where a maintenance calculation is made with respect to—

(a) all of the children with respect to whom an order falling within paragraph (1) is in force; or

(b) one or more but not all of the children with respect to whom an order falling within paragraph (1) is in force and

where the amount payable under the order to or for the benefit of each child is separately specified,

that order shall, so far as it relates to the making or securing of periodical payments to or for the benefit of the children with respect to whom the maintenance calculation has been made, cease to have effect on the effective date of the maintenance calculation.

(3) The provisions of paragraph (2) shall not apply where a maintenance order has been made in accordance with section 8(7) or (8) of the Act.

(4) In Scotland, where—

(a) an order has ceased to have effect by virtue of the provisions of paragraph (2) to the extent specified in that paragraph; and

(b) the Secretary of State no longer has jurisdiction to make a maintenance calculation with respect to a child with respect to whom the order ceased to have effect,

74. The dispute before the Court is as to what amounts to a “maintenance calculation” for the purposes of section 10 and regulation 3. A fresh maintenance calculation would undoubtedly affect the continued enforceability of the top-up orders made in favour of Ms A and Ms M. The father’s case is that those top-up orders were each discharged on the effective date of 24 September 2021 after the CMS made a nil assessment in February 2022. Mr Charles submits that this is the position regardless of the fact that that decision was (i) wrong, as was acknowledged by the father; (ii) found to be wrong by the FTT; and (iii) superseded by the CMS by a decision assessing the full amount payable under the Act and backdated to 24 September 2021.

Submissions

75. Section 2 of the CSA 1991, headed “Welfare of Children: the general principle”, requires that, where the Secretary of State is considering the exercise of any discretionary power conferred by the Act, they must have regard to the welfare of any child likely to be affected by the decision.
76. Mr Charles, on behalf of the father, initially sought to persuade the Court that significant discretion is embedded in the Act on the part of the Secretary of State, coupled with the requirement to ‘have regard’ to the welfare of the child. The proposition that the Secretary of State has a discretion whether to make a maintenance calculation at every stage was, to an extent, the anchor for his arguments on statutory interpretation.
77. It is indeed the case that reference is made to ‘discretion’ in various sections of the Act, for example: section 11(2), ‘if the Secretary of State decides not to make a decision’; section 16(1), ‘[a]ny decision ... may be revised by the Secretary of State’; and section

17(1), ‘any decision may be superseded by a decision ... on the Secretary of State’s own initiative’. Mr Charles’ argument is as follows: as the Secretary of State has a discretion not to make a decision under section 11, the exercise by her of that discretion would ensure that no new maintenance calculation is made where it would not be appropriate, having regard to the welfare of the qualifying child. Ultimately, however, Mr Charles conceded that, notwithstanding the wording of these sections, the scope of any discretion is, if it exists at all, extremely limited, and he was unable to give us any example of it having been exercised.

78. Thorpe J (as he then was) considered the scope of section 2 in *R v Secretary of State for Social Security, ex parte Biggin* [1995] 1 FLR 851, saying at 855E:

“Section 2 is headed, ‘Welfare of children: the general principle’. It is manifest that it has no influence on the quantification of liability. If it has so little influence on the discretion to enforce the formula assessment that the agency only has to notice it in passing, the heading words of the section seem hollow indeed.”

79. The force of Thorpe J’s observation is confirmed by the fact that the calculations are performed by computer, as was recognised when section 50A was inserted into the Act on 1 November 2008.

Use of computers

“50A. Any decision falling to be made under or by virtue of this Act by the Secretary of State may be made, not only by a person authorised to exercise the Secretary of State’s decision-making function, but also by a computer for whose operation such a person is responsible.”

80. I approach the issue of interpretation in this appeal on the basis that maintenance is calculated, and decisions are made, by the application of a formula by a computer. This is supported by the fact that the annual review is carried out in part against the backdrop of a computer-to-computer link, through which the CMS obtains up-to-date information about the payer’s gross weekly income from HM Revenue and Customs.
81. Mr Charles submitted that regulation 3(2) of the CS(MAJR) 1992 supports the argument that every supersession is a maintenance calculation which results in a top-up order ceasing to have effect. Not so, submitted Mr Atkinson. It is not the case that the inclusion of supersession as a fresh maintenance calculation is necessary to make sense of the regulation. There are a number of circumstances he submitted, in which a court initially has jurisdiction to make an order but in which a subsequent maintenance calculation can be anticipated and when made, will mean that the periodical payments order ceases to have effect under regulation 3. By way of example, he says, a court can make an order for periodical payments if the non-resident parent is not habitually resident in the UK, or the parents can agree a consent order under section 8(5). Once, however, the non-resident parent becomes habitually resident in the UK, or after a maintenance order made by agreement has been in force for a year, either parent can apply for a maintenance calculation and, under regulation 3, the court order will then cease to have effect from the effective date of the maintenance calculation.

82. As the Family Court has jurisdiction to make a school fees order (section 8(7)) or an order for a disabled child (section 8(8)) regardless of whether a maintenance calculation is in place, it was, Mr Atkinson submitted, necessary to include a saving provision in regulation 3(3) to prevent those orders from ceasing to have effect if an application for a maintenance calculation were made subsequently. No such saving, Mr Atkinson submits, is required for a section 8(6) top-up order because such an order can be made only if there is already a maintenance calculation in force. In my judgment, that interpretation fits logically with his overall submission that there is only a single maintenance calculation, which remains in force until the child ceases to be a qualifying child (or a parent dies), and that a new maintenance calculation is not made each year on annual review or on each supersession or revision.
83. The force of this argument is, in my judgment, demonstrated by two practical matters. First, any other interpretation means that every top-up order ever made by a court will cease to have effect every 12 months at the annual review. This is what Mr Charles called the “*seeds of its own destruction*”. His argument is that, notwithstanding the expense and impracticality of such an outcome, that is what the statute and regulations say and is therefore the law. In any event, he submits, the Secretary of State has the option to exercise her discretion to decline to make a decision at the annual review.
84. Secondly, Ms A returned to court and obtained a fresh top-up order in June this year, shortly before this appeal was heard in July 2026. If Mr Charles is right, that top-up order ceased to have effect on 31 August 2026 a few weeks after it had been made when there was a supersession under section 17 as a consequence of D ceasing to be entitled to child benefit. The absurdity of that outcome is reinforced by considering the outcome of the fact that D is no longer a relevant other child. On the one hand, Ms A’s CMS payment would increase by about £6 per week, whilst on the other, she would lose without any reference back to the court, more than £25,000 per annum in top-up payments. It should be remembered that throughout all of this, the father continues to have an income far in excess of the £3,000 maximum for the purposes of the CMS. Ms A can therefore immediately reapply for a fresh top-up order which on Mr Charles’ case will again be discharged at the next annual review when he says a fresh maintenance calculation will be made.

Discharge of Court Orders

85. For my part, I would add this. The Court has power to make a top-up order if the conditions are met. Such orders are routinely made with provision for maintenance to be paid until the child attains the age of 18 or ceases full-time education, whichever is later. Section 8(4) however expressly preserves the court’s power to revoke a maintenance order. Mr Wilkinson submitted that this power, expressly conferred by Parliament, recognises that it is for a court to bring a court order to an end; it should not be brought to an end by an administrative decision made by a computer programme. I agree. In my judgment, the starting point must be that only a court has power to discharge a court order. It would be unconstitutional for the Secretary of State, through secondary legislation, to confer that power upon an administrative decision-making process operated by a computer programme.
86. Recognition of this constitutional principle may explain why section 10(1)(a), rather than using the expression “discharge”, provides that a court order is to “cease to have effect to such extent as may be determined in accordance with the regulations”. That

language is reflected in regulation 3(2), which likewise provides that the order shall “cease to have effect”.

87. If, contrary to my view, each decision made after the initial maintenance calculation under section 11 is caught by regulation 3, the maintenance orders which were made by the court are not, in my judgment, discharged as a consequence; rather, they “cease to have effect”. I do not accept Mr Charles’ submission that “cease to have effect” is equivalent to “discharge”. Mr Atkinson submits that the prohibition in section 8(3) on reviving or varying an order does not support Mr Charles’ case, because section 8(3) does not apply once section 8(6) applies. As Mr Atkinson submits, at that stage the Court has jurisdiction to make such order as it considers appropriate and fair. It may then exercise its conventional powers to suspend, enforce, vary or revive the order, subject always to the requirements of section 8(6) continuing to be met and to no fresh maintenance calculation having been made.
88. It follows, in my judgment, that once the true state of affairs was brought to the attention of the court following the successful appeal to the FTT, the two family courts could have rectified the position speedily and at modest cost. They could have dealt with the arrears and confirmed the orders, including varying the quantum as each court thought fit.
89. It follows that HHJ Hudd was in error in dismissing Ms M’s application to enforce the arrears under her top-up order.

Reported cases

90. Mr Charles relies on a number of reported cases which, he submits by analogy, support his case that each new decision amounts to a fresh maintenance calculation. He relies on *Wood v Secretary of State for Work and Pensions* [2003] EWCA Civ 53 in support of his submission that revisions and supersessions are fresh maintenance calculations. This was a welfare benefits case in which the ratio of the Court was that, without a relevant finding of a change in circumstances, a decision to supersede could not be made. Arden LJ did not agree with Rix LJ as to the effect of the relevant provision, considering that there were real linguistic obstacles. Dyson LJ was inclined to prefer the view of Rix LJ, who at [42] considered that supersession ‘altered’ a decision rather than ‘replacing’ it. Dyson LJ concluded at [78] that, at the end of the day, it made no practical difference and that any view expressed was “no more than obiter in any event”.
91. I do not find Mostyn J’s obiter observations in *TW v TM (Minors) (Child Maintenance: Jurisdiction and Departure from Formula)* [2015] EWHC 2054 (Fam), [2016] 2 FLR 1386, to be of any assistance. This was not a top-up case, but an appeal against a Deputy District Judge’s decision in relation to an application to vary a section 8(5) consent order. Such remarks as Mostyn J made at [7] were made without the benefit of argument, as there was no maintenance calculation in force and section 8(6) played no part in the issues before the court.
92. I note that, more recently, in *H v I* [2024] EWHC 3512 (Fam), Williams J at [59], also in the absence of full argument, expressed the ‘tentative view’ that:

“... the Annual Reviews do not constitute a maintenance calculation within the meaning of CSA 1991 ss4 and 54 and Reg

3(2) CSMAJR and this would not mean the April 2020 maintenance order ceased to have effect. Although the issue may strictly be a matter of law the father has not equipped the court with either the evidence or the submissions which enable me to confidently determine the point.”

93. These brief references to obiter observations in other cases do not, in my judgment, assist the Court in reaching a decision on the central issue in this case, which all parties agree has not, until now, been the subject of full argument before this or, it would seem, any other court.

Discussion

94. In my judgment, Mr Charles’s approach creates the sort of power imbalance which the introduction of the state-run child maintenance system was designed to correct. I do not agree with his submission that that power imbalance is redressed by the discretion which he says the Secretary of State retains under the Act and which Parliament intended the Secretary of State to have.
95. The fact that the Secretary of State does not exercise her discretion well does not, Mr Charles says, mean that the Court should not follow the language of the Act. In my view, not only is the discretion essentially illusory but, under the system which Mr Charles submits represents the law, the caring parent who has the benefit of a top-up order must each year find the money to make an application to the court for a fresh order. That is not however the end of it, as any change in the non-resident parent’s chosen domestic arrangements, or a relevant other child of the non-resident parent achieving his or her majority can nevertheless result in a caring parent finding that her top-up order has ‘ceased to have effect’, even between annual reviews and in circumstances where his gross weekly income continues to be over £3,000.
96. Mr Charles accepted that it would be open to a non-resident parent who knew that their financial circumstances were changing themselves to make an application to the court, if necessary at short notice, to have a top-up order suspended. That is not, however, necessary on his case, as the top-up order would be discharged by virtue of regulation 3 each time there was a review, revision or supersession.
97. At the end of the day, Mr Charles submitted that Parliament intended the Secretary of State to exercise discretion not to make a decision—that is, a fresh maintenance calculation—at any particular annual review. The exercise of that discretion would mean that the top-up order continued undisturbed for another year, and that this statutory construction, rather than how matters operated in practice, should be the focus of the Court. Even if that were a submission which I felt able to accept, it would not answer the problem of intervening supersession decisions.
98. Mr Charles submitted that the only way to preserve the ‘barrier’ between the CMS and the courts created by section 8 was to regard each and every decision made under sections 11, 16 and 17 as a new maintenance calculation. I do not agree. The policy imperative of limiting the role of the courts is supported not only by regulation 3, but also by the terms of section 8 itself and the ability of any non-resident parent to seek a variation or the discharge/revocation of an order in the event that the circumstances of the non-resident parent no longer satisfy the requirements of section 8(6). It should be

borne in mind that not only must there be a maintenance calculation in place, and the gross weekly income of the non-resident parent exceed the figure referred to in Schedule 1, paragraph 10(3), currently £3,000, but critically, that the court must continue to be “satisfied that the circumstances of the case make it appropriate” to make an order.

Statutory Interpretation

99. In my judgment, a careful distinction is drawn in the CSA 1991 between a maintenance calculation under sections 4 and 11 and a “decision” in the context of variation or review; when looked at in the context of the statute as a whole and its contemplation that the calculation (subject to any variation by revision, supersession or review) will subsist for as long as the child remains a qualifying child or the non-resident parent is alive, the conclusion is inexorably reached that there is one single maintenance calculation.
100. If I am wrong in concluding that the wording of the statute itself leads to that conclusion, my view remains the same when the Act is considered against the background of conventional principles of statutory interpretation. For these purposes, it is necessary only to seek support from the judgments of Lord Sales in three recent Supreme Court cases.
101. In the well-known case of *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28, Lord Sales said:
- “40. The basic task for the court in interpreting a statutory provision is clear. As Lord Nicholls put it in *Spath Holme*, at p 396, “Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.”
- “41. As was pointed out by this court in *Rosendale Borough Council v Hurstwood Properties (A) Ltd* [2021] UKSC 16; [2022] AC 690, para 10 (Lord Briggs and Lord Leggatt), there are numerous authoritative statements in modern case law which emphasise the central importance in interpreting any legislation of identifying its purpose.”
102. Lord Sales went on:
- “43. The courts will not interpret a statute so as to produce an absurd result, unless clearly constrained to do so by the words Parliament has used: see *R v McCool* [2018] UKSC 23, [2018] 1 WLR 2431, paras 23-25 (Lord Kerr of Tonaghmore), citing a passage in *Bennion on Statutory Interpretation*, 6th ed (2013), p 1753. See now *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), section 13.1(1): “The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature”. As the authors of *Bennion, Bailey and Norbury* say, the courts give a wide meaning to absurdity in this context, “using it to include virtually any result which is impossible, unworkable or

impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief”. The width of the concept is acceptable, since the presumption against absurdity does not apply mechanistically but rather, as they point out in section 13.1(2), “[t]he strength of the presumption ... depends on the degree to which a particular construction produces an unreasonable result”. I would add that the courts have to be careful to ensure that they do not rely on the presumption against absurdity in order to substitute their view of what is reasonable for the policy chosen by the legislature, which may be reasonable in its own estimation. The constitutional position that legislative choice is for Parliament cannot be undermined under the guise of the presumption against absurdity. There is an issue between the parties whether the presumption against absurdity provides relevant guidance in the circumstances of this case.

44. In certain circumstances, subordinate legislation made pursuant to powers in a statute can be an aid to interpretation of the statute. There is an issue as to how far this principle extends. The parties are agreed that the Scope Order is an admissible aid to interpretation of the 2006 Act. It was promulgated at a time roughly contemporaneous with the 2006 Act itself, and in *Deposit Protection Board v Dalia* [1994] 2 AC 367 the House of Lords held that it is permissible to refer to such contemporaneous subordinate legislation as an aid to interpretation: p 397 per Lord Browne-Wilkinson. ...”

103. In *Darwall v Dartmoor National Park Authority* [2025] UKSC 20, Lord Sales and Lord Stephens said in a joint judgment:

“14. The present appeal turns on a short point of statutory construction regarding the meaning of section 10(1).

“15. Normal principles of statutory interpretation are engaged. The courts, in conducting statutory interpretation, are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision: *R (N3) v Secretary of State for the Home Department* [2025] UKSC 6; [2025] 2 WLR 386, paras 61–63. As noted there, a leading statement of principle was given by Lord Hodge, with whom those in the majority agreed. He stated, at para 29:

"The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.' (*R v Secretary of State for the Environment, Transport*

and the Regions, Ex p Spath Holme Ltd [2001] 2 AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained.”

104. Most recently, in *CG Fry & Son Ltd v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 35, Lord Sales again referred to the domestic principles of statutory interpretation, emphasising at [46] that there is no “dichotomy between looking at the natural and ordinary meaning of legislation and a purposive approach to legislation”. As Lord Hodge said in *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, in the passage set out in Lord Sales’ judgment in *Darwall* above: “A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context”.
105. It follows that, in interpreting the CSA 1991, the Court must have regard to its purpose and context. I bear in mind that “the constitutional position that legislative choice is for Parliament cannot be undermined under the guise of the presumption against absurdity”. In the present case, however, the passage from *Bennion* quoted at [43] in Lord Sales’ judgment in *PACCAR* is particularly apt: the result of the interpretation advanced by the father can appropriately be described as “impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief”.
106. As submitted by Mr Wilkinson, these well-established canons of construction point away from an interpretation of the Act which treats every subsequent review, revision or supersession as constituting the making of a fresh maintenance calculation, notwithstanding that Parliament never described those decisions in those terms.

Conclusion

107. It follows that Ms M’s appeal in *Morrell v Morgan* is allowed and the father’s appeal in *Morgan v Antoniou* is dismissed.
108. It is to be hoped that some form of agreement can now be reached between each of the parties which will bring this litigation to an end in the interests of all concerned. If not, both cases will be remitted to the Designated Family Judge at the Central Family Court to be listed for directions and allocation hearings.

Sir Stephen Cobb President of the Family Division:

109. I agree.

Lady Justice Asplin:

110. I also agree.