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Tuarascáil maidir le Forfheidhmiú Orduithe Cúirte a bhaineann le Cothabháil Linbh, Rochtain ar Leanbh agus Coimeád Linbh

Iúil 2023

Joint Committee on Justice

Report on Enforcement of Court Orders relating to Child Maintenance, Access and Custody

33/JC/41

July 2023

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CATHAOIRLEACH'S FOREWORD

The Joint Committee on Justice was pleased to facilitate an examination of the topic 'Enforcement of Court Orders relating to Child Maintenance, Access and Custody.'

In undertaking this examination, the Committee recognised that the current system of seeking maintenance through the courts system proves ineffective for many families. The Committee heard that an ineffective child maintenance process can have significant impacts on those involved, including causing strained relations between the separated parents and between the non-resident parents and children; that the system can cause increased fear for those that may have been victims of domestic abuse or suffered coercive control from their former partners; and that unpaid maintenance is a significant contributory factor towards child poverty and deprivation.

In reaching out to stakeholders to gain diverse perspectives on this topic, the written submissions and witnesses provided the Committee with an insight into several key areas where they deemed it was most important to make improvements. These included the need to establish a child maintenance agency that would be responsible for establishing and enforcing maintenance arrangements; the need to introduce a penalty for non-compliance with maintenance orders; and the need to provide additional professional supports and mediation services to families, to help them cope with the separation process.

The Committee has made a number of recommendations and a copy of this report and recommendations will be sent to the Minister for Justice. The Committee looks forward to working proactively and productively with the Minister to address the issues identified in relation the enforcement of court orders relating to child maintenance, access and custody.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearing to give evidence and those who forwarded written submissions to the Committee.



James Lawless TD (FF) [Cathaoirleach]
July 2023

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Colm Brophy TD
(FG)



Patrick Costello TD
(GP)



Alan Farrell TD
(FG)



Pa Daly TD
(SF)



Aodhán Ó Ríordáin TD
(LAB)



Mark Ward TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

Senators



Robbie Gallagher
(FF)



Vincent P. Martin
(GP)



Michael McDowell
(IND)



Lynn Ruane
(IND)



Barry Ward
(FG) [Leas-Chathaoirleach]

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy Jennifer Carroll MacNeill elected as Leas-Chathaoirleach on 6 October 2020.
4. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
5. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.
6. Deputy Brendan Howlin discharged and Deputy Aodhán Ó Ríordáin nominated to serve in his stead by the Nineteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 8th November 2022.
7. Deputy Jennifer Carroll MacNeill was discharged, pursuant to Standing Order 34, on 21st December 2022.
8. Senator Barry Ward was elected as Leas-Chathaoirleach at the Committee meeting on 15th February 2023.
9. Deputy Colm Brophy nominated to serve on the Committee by the Twenty First Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 7th March 2023.
10. Deputy Martin Kenny discharged and Deputy Mark Ward nominated to serve in his stead by the Twenty-Third Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 26th April 2023.

COMMITTEE RECOMMENDATIONS

The following recommendations were made by the Committee in relation to the topic:

1. The Committee recommends that a statutory child maintenance agency be established, with responsibility for assessing and enforcing issues pertaining to court orders and child maintenance.
2. The Committee recommends that an examination take place to ascertain the possibility of modifying the attachment of earnings so that it is linked to an individual's PPS number to ease enforcement of maintenance orders and to lessen time spent under financial duress.
3. The Committee recommends that a mechanism is put in place to simplify the process by which maintenance arrears can be pursued against the maintenance debtor, without requiring recourse to a court application.
4. The Committee recommends that a minimum essential standard of living should be set for children and that guidelines be introduced to enable the courts to award maintenance rates appropriate to a child's individual needs and subject to means test of the non-primary care giver.
5. The Committee recommends that fixed, financial penalties should be established and applied in instances of non-compliance with court orders, providing an incentive to comply.
6. The Committee recommends the removal of the requirement for parents to prove that they have sought maintenance before being entitled to social welfare payments.
7. The Committee recommends that child maintenance payments should be decoupled from social welfare benefits, to ensure that non-payment of maintenance does not further child poverty rates.

8. The Committee recommends that child maintenance should be treated as a non-taxed, non-means-tested payment, similar to child benefit payments.
9. The Committee recommends that a prosecuting Garda should always be attached to bench warrants that are issued for non-appearance at court proceedings for maintenance arrangements.
10. The Committee recommends that the reliefs available under *the Children and Family Relationship Act 2015*, in cases of consistent breaches of access orders, should be utilised more frequently.
11. The Committee recommends that there is greater investment into the infrastructure of the courts, including an increase in the number of judges and the development of more court and research facilities.
12. The Committee recommends that a review of the procedural issues arising at the District Court and Circuit Court levels should be undertaken, to minimise the potential for delays in the progression of family law cases.
13. The Committee recommends that research is commissioned into maintenance systems in other jurisdictions, in order to best inform the development of any child maintenance agency in Ireland.
14. The Committee recommends that there be an increase in the number of professional supports, alternative dispute resolution mechanisms and mediation services available, to help families deal with the separation process.
15. The Committee recommends that there be greater regulation around the processes pertaining to section 47 Child Welfare reports under the *Family Law Act, 1995* to ensure informed decisions are made in regard to custody and access matters.

16. The Committee recommends that the procurement of section 32 reports under *the Children and Family Relationships Act 2015*, should be adequately resourced, to ensure that children's views are listened to during the separation process. Consideration should also be given to introducing measures so that the State would resource these assessments.
17. The Committee recommends that adequate training be provided to the Courts Service, legal professionals, court assessors and the Judiciary, ensuring a trauma-informed approach is prioritised. Training should acknowledge the prevalence of domestic violence, gender bias, discrimination and financial abuse.

SUMMARY

The Joint Committee on Justice selected the topic of the ‘Enforcement of Court Orders relating to Child Maintenance, Access and Custody’ from its Committee Work Programme for further examination and discussion.

In selecting this topic, the Committee acknowledged that the current system relating to child maintenance and custody arrangements is failing to provide an adequate resolution for many families. The Committee heard that the emotional toll or financial costs of seeking maintenance arrangements through the courts system process can result in some parents deciding to forgo maintenance payments owed to them. The Committee heard from stakeholders that a survey conducted had found that 36% of respondents stated they owed an average of €8,300 in maintenance arrears but had given up pursuing it and were no longer using the courts to enforce maintenance orders.¹

In an effort to review and discuss relevant areas in relation to the child maintenance system in Ireland, the Committee invited written submissions seeking the views of various stakeholders on this topic. Stakeholders were asked to comment, among other areas, on what the impacts of unpaid maintenance are; what the difficulties are relating to court orders and how effective they are; and what stakeholders views were on the potential establishment of a child maintenance agency that would deal with issues pertaining to court orders and child maintenance, separate from the courts system.

Based on the evidence presented to the Committee, it is clear that the majority of stakeholders were supportive of the establishment of a child maintenance agency, that would be responsible for assessing and enforcing issues pertaining to court orders and child maintenance. The Committee heard that such an agency would bring several benefits to the child maintenance process, including the faster resolution of cases regarding child maintenance; greater security around the payment of maintenance, therefore also reducing the incidence of child deprivation; reducing the potential of

¹ See page 3 of the transcript of the Committee’s engagement with witnesses: [main.pdf \(oireachtas.ie\)](#)

post-separation abuse; and fostering parent/child relationships by removing the financial element.

Alongside this, the Committee was informed that there are several measures that could be introduced in the shorter-term to improve the maintenance system, including the introduction of a set penalty for non-compliance with maintenance orders; that child maintenance should be treated as a non-taxed, non-means-tested payment; and that guidelines should be introduced to inform the determination of appropriate maintenance contributions.

The discussion surrounding court orders for child maintenance, access and custody and potential solutions to the issues identified with these orders are outlined in the following section.

CHAPTER 1 - Engagement with Stakeholders

Introduction

The Joint Committee on Justice invited submissions from stakeholders on the topic of 'Enforcement of Court Orders relating to Child Maintenance, Access and Custody'.

On 25th October 2022, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of public engagements with Stakeholders

| Organisation | Witnesses |
|-------------------------------|---|
| SPARK | Ms. Louise Bayliss, Co-Founder, SPARK Campaign Ireland |
| One Family | Ms. Karen Kiernan, CEO |
| Barnardos | Ms. Stephanie Whyte, Assistant Director of Children's Services |
| Treoir | Mr. Damien Peelo, CEO Ms. Gayle Smith, Information and Policy Officer |
| Law Society of Ireland | Mr. Mark Garrett, Director General Dr. Geoffrey Shannon SC, Director of Policy |

The primary focus of this meeting was to allow for an engagement between the Members and stakeholders to discuss the current maintenance system in Ireland, the shortcomings of this system and suggestions on how to improve it.

This report summarises the engagements and the key points considered by the Committee when drafting the recommendations set out in this report.

A link to the full transcript of the engagement can be found [here](#).

CHAPTER 2 - Summary of Evidence

In the course of the public hearing, a number of important points were raised. A summary of the main areas discussed in evidence to the Committee follows.

1. Problems identified in relation to the current maintenance system in Ireland

Members and witnesses discussed several issues relating to the current system of maintenance in Ireland, including some of the following:

- 1. Maintenance is a private law obligation:** Witnesses underlined that Ireland has a unique approach towards maintenance arrangements, whereby maintenance is considered a matter of private family law. This results in an unfair burden being placed on parents to pursue maintenance owed to them and witnesses highlighted that there should be more enforcement of maintenance obligations.

Witnesses told the Committee that maintenance should be removed from the courts system and that a statutory agency should be established, which would be responsible for issues relating to child maintenance and would have mechanisms to enforce compliance with court orders relating to maintenance ([see Point 5](#)). In the short-term, witnesses recommended that the attachment of earnings could be linked to an individual's PPS number, rather than their employer, to avoid situations where the maintenance payment cannot be drawn if the former partner's employment status has changed.

- 2. Guidelines in determining appropriate maintenance contributions:**

Witnesses also recommended that child-centred guidelines should be introduced to inform the determination of appropriate maintenance contributions, as currently judges have discretion over the amount of maintenance they grant, which leads to inconsistency in the amounts granted to different families.

- 3. Little sanctions for those who fail to comply with maintenance orders:** The Committee was told that as it stands, there are few effective sanctions that can be applied against those who simply do not comply with maintenance orders and that the current system, which operates on the assumption of compliance, enables non-payment and facilitates post-separation abuse. Witnesses recommended that set penalties should be applied against individuals who fail to comply with court orders, in order to decrease the incidence of non-compliance.

Witnesses recommended against imprisonment as a sanction for non-compliance and suggested that legislation could provide for measures such as garnishee orders or fines to be applied against those who do not comply with orders. Another possible sanction could be to allow the pursuit of an individual who failed to pay maintenance retrospectively, by targeting their assets for this purpose.

- 4. Burden on parents to seek maintenance in order to be eligible for certain social welfare payments:** The Committee heard in order to qualify for certain social welfare payments, parents must prove that they have tried to seek maintenance and been unsuccessful. Witnesses argued that this approach places an unfair burden on parents and recommended that this requirement should be removed.
- 5. Separate child maintenance from social welfare benefit:** The Committee was told that maintenance payments can also be assessed as a form of means for many payments including the Housing Assistance Payment (HAP), medical card and childcare schemes. In situations where maintenance goes unpaid, this can result in families receiving a lower income than the basic social welfare entitlements. Witnesses recommended that child maintenance should be separate from social welfare benefits and stressed particular concerns regarding the Liable Relative Unit.

6. Current system contributes towards child poverty and deprivation:

The Committee heard that the current approach towards maintenance is contributing towards the incidence of child poverty in Ireland and witnesses emphasised that the maintenance system must be reformed in order to truly work towards decreasing child poverty. Witnesses recommended that child maintenance should be treated as a non-taxed, non-means-tested payment, similar to child benefit.

7. Current system has a negative impact on the relationship between children and parents:

Witnesses highlighted that the financial burden and lack of available support leaves parents feeling powerless, some withdrawing access in hopes of recovering maintenance, which can have a negative impact on the relationship between children and parents, particularly with the non-custodial parent. Witnesses recommended that maintenance and access should be viewed as separate issues. They suggested that the establishment of a child maintenance agency, [\(see point 5\)](#) which would be responsible for guiding and pursuing maintenance payments, could remove this element of conflict away from families and allow them to focus separately on decisions around access and custody arrangements. Witnesses commended international models, whereby the State pays the child and custodial parent and recoups the payment from the liable relative.

The Committee heard that some circumstances prevent marginalised individuals from providing or receiving maintenance, particularly those in prison or parents whose partner has died. Witnesses stressed the need for a minimum essential standard of living that should apply to all children, and suggested where the liable relative is unable, the State should bridge the gap in the best interest of the child and the family unit.

8. Lack of prosecuting Garda: Witnesses highlighted that, while a judge may issue a bench warrant if an individual fails to appear for a court appointment relating to maintenance arrangements, there is no prosecuting Garda in family law cases. This means that often, these warrants are not executed and the

court cases are effectively halted. Witnesses highlighted that a prosecuting Garda should always be attached to bench warrants issued in these circumstances.

9. **Non-compliance with court order as a form of abuse:** Witnesses highlighted that non-payment of child maintenance is considered a form of financial abuse and that non-compliance with courts orders can be used as a means of abusing or controlling a former partner.

2. Access arrangements and breach of access orders

During the engagement members and witnesses discussed issues around access arrangements.

Witnesses told the Committee that there are several reasons why one parent may not facilitate access of the other parent to their child. This may stem from concern or fear a parent may have about granting the other parent access to their child. Witnesses highlighted that the courts may not be given important information, such as assessments, in time, which in certain instances could result in a court order being granted to allow a parent access to a child, even if this may not be safe for the child.

The Committee also heard that some parents may withdraw access if maintenance has not been paid to them, which is ultimately unfair on the children impacted by this. Witnesses highlighted that if the payment of child maintenance was guaranteed through another method, such as a child maintenance agency, then this would remove the need for a parent to deny access on the basis of outstanding maintenance payments.

Witnesses highlighted that the *Children and Family Relationships Act 2015* provides sanctions that can be applied against those who breach access orders. Witnesses told the Committee that the provisions under this Bill should be utilised more frequently and that, where necessary, solicitors and the judiciary should be educated around the applicability of provisions under this legislation.

3. Delays in family court proceedings within the courts system

The Committee and witnesses acknowledged that there are significant delays in progressing cases through the courts system and that such delays cause emotional distress for both parents and children, who must wait for long periods to have their cases heard. In addition, some families may have paid significant amounts of money to have an assessment of their child compiled for the courts but that by the time a court hearing is scheduled, these reports may have already gone out of date and must be redone.

Witnesses also underlined that there is a persistent under-investment in the infrastructure of the courts and that this results in additional costs being borne by the taxpayer, to make up for the shortfall in facilities. Witnesses recommended that there should be an increase in the number of judges and that more court and research facilities should be developed to account for this under-investment.

Alongside this, witnesses noted a repeated and inappropriate use of courts. It was recommended that a review of the procedural issues arising at the District Court and Circuit Court levels should be undertaken, to ascertain how cases are being handled, what may be causing delays, and how responsibilities could be delegated to the proposed agency.

The Committee also heard that training should be made available to the Judiciary and those working within the courts and legal system to prevent against institutionalised discrimination and to ensure they have a greater awareness of the particular issues minority groups may have when engaging with the courts on maintenance and access arrangements.

Members and witnesses welcomed the progression of the Family Courts Bill 2022 and expressed hope that it would assist in the wider reform of the family court system and introduce some positive changes, for example, the proposed introduction of specialist judges, which would help to alleviate delays within the system. Witnesses underlined the need for there to be adequate supports and wraparound services to support the new family court system, including counselling and mediation services.

4. Systems of maintenance in other jurisdictions

Members raised questions around the maintenance systems in other jurisdictions and whether Ireland could learn from any of the approaches taken in other jurisdictions.

The Committee heard that there are several models of maintenance systems that Ireland could examine. These include

- Systems where maintenance is guaranteed by the State (e.g., in Australia, Sweden and Germany);
- Systems where maintenance is guaranteed by particular bodies that are indirectly governed by the State (e.g., in France, Slovakia and Belgium);
- Systems where maintenance is governed by Local Authorities (e.g., in the Czech Republic, Denmark and Finland);
- Systems where maintenance is guaranteed by special funds (e.g., in Latvia, Lithuania, Poland); and
- Systems where maintenance is guaranteed by special agencies (e.g., in the UK and the Netherlands).

Witnesses recommended that further research should be undertaken into child maintenance systems in other jurisdictions in order to best inform the development of a child maintenance agency in Ireland.

The Committee was informed that, in assessing whether elements of other maintenance systems could be introduced in an Irish context, it is essential to engage with those in other jurisdictions and find out their experience of using the system and any shortfalls their systems may have. For example, the Committee was told that in the UK, parents must pay to use the maintenance system.

5. Establishment of a child maintenance agency

During the engagement, Members and witnesses discussed the establishment of a child maintenance agency, with the majority of witnesses in favour of establishing such an agency.

The Committee heard that this agency could be tasked with the following responsibilities:

- That the agency would provide guidance and ensure a consistent approach towards determining the level of maintenance payments and that a minimum maintenance payment should be established. It was recommended that maintenance should be deducted by the agency immediately in order to protect families, as individuals will still have the right to apply for a judicial review if they disagree with the maintenance arrangements reached.
- That the agency would help parents to reach maintenance agreements;
- That the agency would bring forward court applications to determine maintenance when it is being disputed;
- That the agency would act as the collecting agent for maintenance payments, where warranted;
- That the agency would ensure the enforcement of maintenance arrangements and collection of any arrears.

The Committee was told that the advantages of establishing a child maintenance agency include,

- That it would remove the burden on parents to pursue maintenance owed to them;
- That it would remove an area of conflict between parents during the separation process, thus allowing them to focus more on caring for their children;
- That it would guarantee greater security of maintenance payment to families and help to reduce the incidence of child deprivation; and
- That it would result in the faster resolution of cases relating to child maintenance, particularly those of extremely vulnerable persons.

Witnesses pointed to examples of child maintenance agencies in the UK, Scandinavia and the Netherlands, as models that Ireland could try and emulate. Stakeholders suggested that such an agency could be established under statute and that its orders would be appealable to the District Court, thus allowing it to handle many typical or common applications that would be lodged. Stakeholders recommended that the agency should be granted significant powers, while also being cognisant that the powers of the agency should work in tandem with but should not infringe on the powers of the courts.

Witnesses recommended that any agency must work closely with the Department of Social Protection and be sufficiently resourced to carry out its functions effectively. It was highlighted that it is imperative for the agency to be supported by additional measures, including the provision of alternative dispute resolution measures, the provision of a maintenance fund, whereby cost can be recouped from the liable relative where possible and additional sanctions for non-compliance with maintenance orders.

6. Need for additional supports for families engaging in court proceedings

The Committee heard that there are not enough professional supports made available for families to help them cope with the separation process, changes to the family dynamic and to help parents develop strategies to deal with the process.

Witnesses highlighted that such training is important to make parents aware of the negative consequences that inter-parental conflict has on children and to educate them around making decisions with the best interests of their child at heart.

Witnesses told the Committee that family support services can involve helping parents to come to terms with the new relations between them and their former partner. For example, these services can teach them to create constructive means of communication and negotiation with their ex-partner, in advance of them having to formally engage with them on maintenance or custody arrangements.

These services also foster discussions and provide space for parents to reflect on the choices they make and the consequences of their actions, e.g., non-compliance with maintenance orders and the impact this has on their relationship with their child.

Witnesses pointed to international evidence which demonstrates the value of providing alternative dispute resolution mechanisms and engaging with parents at an early stage to try and help them to reach an agreement between one another, without the need for enforcement measures to be applied.

These supports may also help some families to resolve maintenance arrangements outside of the courts process and reduce the numbers of families that must go through the courts system to negotiate maintenance arrangements.

7. Children should be central to maintenance system

The Committee heard that the best interests of the child should always be at the centre of decisions made during in relation to custody and access arrangements, particularly given that children are the ones that are ultimately impacted by any decisions made.

Witnesses stressed that there must be adequate mechanisms in place to ensure that children's views are listened to during the separation process and custody arrangements. Witnesses pointed to provisions under section 32 of the *Children and Family Relationships Act 2015*, which allow children to be heard through voice-of-the-child reports, that are compiled by child experts. However, the Committee heard that these provisions are under-resourced and it was recommended that these services should be adequately funded to ensure their successful continuation.

Members and witnesses also discussed section 47 of the *Family Law Act, 1995* and the provision that a judge or party to the proceedings may request an assessment to be undertaken and a report compiled in relation to the welfare of an individual involved in the court proceedings, which generally relates to the child involved in proceedings.²

Witnesses informed the Committee that, compared with the clear regulations around the voice-of-the-child reports, there is very little regulation around the processes relating to section 47 assessments. For example, there are few guidelines around the level of qualifications required by the assessors and there is no designated body which people can contact and lodge complaints about the process.

It was also highlighted that the cost of acquiring these assessments prevents many from requesting them and witnesses argued that there should be a procedure for the State to resource these assessments.

Witnesses highlighted that these reports carry significant weight, as they inform decisions made regarding who may be granted access or custody to their child and emphasised that there needs to be much greater regulation around the processes pertaining to section 47 reports.

² [Family Law Act, 1995, Section 47 \(irishstatutebook.ie\)](http://irishstatutebook.ie)

CHAPTER 3 - Summary of Submissions

The Committee received submissions from the following Stakeholders.

- SPARK
- Barnardos
- One Family
- Treoir
- Law Society

These submissions highlighted, among other areas, the impact of unpaid maintenance; the complexities and effectiveness of court orders; potential solutions to remedy the issues identified with maintenance payments and court orders; and expressed support for the establishment of a child maintenance agency to deal specifically with issues relating to maintenance payments, rather than this being dealt with through the courts system.

1. General comments in relation to unpaid maintenance

Submissions discussed the prevalence of unpaid maintenance and reasons why maintenance may be unpaid.

Stakeholders outlined that there was a general dearth of research into child maintenance and custody in Ireland. One stakeholder outlined a recent survey they had taken in relation to the experience of participants with current procedures around maintenance. While acknowledging the survey's limitations (as participants self-identified), it was found that

- 35% of parents reported they had received maintenance without arrears.
- 36% of parents reported that they were owed significant maintenance payments but had given up looking for it.
- 8% of parents were owed arrears and were pursuing this through the courts system
- Almost a quarter (23%) of parents never looked for maintenance in the first instance
- The average amount of maintenance arrears owed was €8,313.

Some submissions said that many primary care parents (PCP) they have supported do not seek maintenance support from their partners for several reasons, including fear of increasing the tension between them and their former partner; a belief that they will never get the maintenance from the non-resident parent (NRP) or that it will be too difficult and time consuming to seek maintenance from the NRP; or fear of engaging with the NRP again as they were controlling or abusive.

Other submissions pointed out that at it stands, there are little sanctions for those who fail to comply with maintenance orders, even where they give no reason for non-compliance, which provides no impetus for the NRP to comply with these orders. While the NRP may be ordered by the court to pay the maintenance required that there is no additional penalty for non-compliance.

In addition, where maintenance goes unpaid, the current system places the onus on the PCP to prove that this maintenance was not paid and to have their claim

assessed. For these reasons, parents can feel let down by the courts system when it appears that there are little consequences for the NRP to abide by a court order.

Stakeholders recommended that a financial penalty should be imposed across all jurisdictions for non-compliance with court orders.

2. Impact of unpaid maintenance

Submissions outlined several of the knock-on effects that unpaid maintenance has on families and dependent children, including:

- **Maintenance needed for essential costs:** Submissions said that often maintenance is used to cover heating, food, electricity and other essential costs. PCPs are often not in a position to supplement the shortfall if maintenance is not received from the NRP, which results in the dependent children suffering.
- **Unpaid maintenance contributes towards child poverty and deprivation:** Census data from 2016 identified that one in five children in Ireland live in a one-parent family, (with many of these having some form of shared parenting). Stakeholders pointed out that one-parent families have higher rates of poverty and deprivation than other households, as figures from 2021 found that 13.7% of households with one parents were in consistent poverty compared with 3.5% in two-parent households. Evidence also shows that a lack of maintenance is a significant factor in the poverty experienced by one parent households.
- **Financial abuse:** Non-payment of court ordered maintenance is acknowledged as a form of financial abuse, as it constitutes ongoing coercive control of a parent after they have left an abusive relationship.
- **Impact on relationship between child and NRP:** Stakeholders highlighted that parents who honour their child maintenance payments are more likely to have frequent contact with their children than those who do not.
- **Increase inter-parental conflict:** Refusal to pay maintenance can increase conflict between parents, which can result in arguments over allowing the NRP access to the children, further damaging the relationship between the children and the NRP.

➤ **Disproportionate impact of housing crisis on lone parent families:**

Submissions highlighted that lone parent families are disproportionately affected by the housing crisis, are more likely to experience poor quality accommodation than other households and are more likely to live in emergency accommodation, with 54% of families living in emergency accommodation classified as lone parent families in June 2021. In addition, Local Authorities include court ordered maintenance in rent assessments and failure to receive maintenance can leave a household at danger of being in rent arrears or mortgage arrears.

- **Seeking maintenance can be a requirement for certain social welfare payments or grants:** Stakeholders highlighted that in order to qualify for certain social welfare payments, such as the one parent family payments and for grants for third level education for children, PCPs must prove that they have tried to seek maintenance from the NRP. Stakeholders underlined that this approach places the burden on the PCP even though there could be many reasons that the PCP may not want to contact the NRP again. Stakeholders highlighted that parents can be assessed for social welfare on the basis of a maintenance payment that they may not actively be receiving, which can reduce the amount they receive in their social welfare payment. Submissions underlined that trying to have their claim re-assessed can be very time consuming and in the meantime, impacts on the wellbeing of the child.

Stakeholders recommended that, in order to protect against children suffering from poverty, the minimum level of social welfare that a single parent is entitled to should not be reduced based on the failure of the NRP to pay their agreed maintenance.

It was also recommended that the approach taken during lockdown, where the Department of Social Protection (DSP) took parents at face value and believed them when they said they had tried to regain their maintenance arrears, should be retained and adopted as the default approach. The current questioning and, at times,

suspicious approach taken towards parents regarding proof of efforts to seek maintenance causes unnecessary stress for parents when they are trying to seek support.

3. Complexities of court orders

Submissions outlined that the entire court process can be very complex and confusing for families that are separating.

The court environment can appear intimidating and adversarial and submissions highlighted that families felt that the courts are not a suitable environment for dealing with the emotional trauma involved in familial separation. The process of engaging in court proceedings can have a significant and destructive impact on family relations, as the other party can view this as a hostile move, even if the PCP was told to seek a summons by the DSP. On top of this, court proceedings can frequently occur when both parties have already failed to reach an informal arrangement surrounding maintenance and there can often be significant levels of acrimony, distrust and anger between the two parties.

Parents can experience significant stress and anxiety in going to court and stakeholders outlined that parents have told them that they are unsure of how the court processes work and feel there is little support or guidance in preparing for their appearance in court. The lack of certainty about the timelines of cases can lead to further confusion about the process, and children have particular difficulties understanding the timelines involved in court process.

Parents can find seeking a court order to be a stressful, draining, costly and time-consuming endeavour and many may give up or avoid pursuing options through the courts. Parents are already under pressure during this period trying to take care of their child and the experience of going to court can have a detrimental impact on the parent's mental health and can further strain the effectiveness of co-parenting arrangements with the NRP.

Pursuing a court order can also incur prohibitive costs, particularly if private legal aid is sought. For those on lower incomes the costs of making an application for maintenance may not be worth the small amounts they might receive, alongside the fact that the costs of their application cannot be passed onto the defaulter. There are currently long lists for Legal Aid and availing of this also incurs a financial contribution which some may not be able to afford. On top of this, frequent trips to

court can also be disruptive to one's employment and result in additional childcare costs.

There can be delays in receiving court dates and families can feel that there is very little time to hear their case to an adequate degree as the daily court lists are long. Stakeholders said that some parents reported that they felt like their evidence was not adequately examined and the orders stemming from the court do not seem reflective of their case or the evidence they put forward. Sometimes hearings can be adjourned which causes delays for these very important issues for parents and children.

Other issues relating to the courts process include:

- An address is required to issue a summons for child maintenance; however, the PCP may not always know the NRP's address and may not want to contact them to ask for this, particularly if the former relationship had been abusive or controlling.
- The State and Revenue do not have the power to deduct maintenance at source. If the NRP does not comply with maintenance, the PCP is responsible for starting enforcement proceedings. Furthermore, an attachment of earnings order can only issue when the NRP is a PAYE worker and this is linked to the employer and becomes invalid if the individual changes jobs or becomes self-employed.
- While a bench warrant can be issued if the NRP does not appear at court proceedings, this warrant is rarely acted upon as there is no prosecuting Garda for the warrant and this prevents the warrant from being executed and proceeding further.
- For some survivors of domestic abuse, there is no guarantee that their address will be redacted if they request this, as it is based on the discretion of the judge. Some survivors may choose not to seek maintenance payments rather than potentially risking their safety and security.

Stakeholders recommended that a provision be made for imposing a financial sanction for non-compliance with court orders to dissuade non-compliance from occurring as frequently.

The Courts should also be urged to use the reliefs available under *the Children and Family Relationship Act 2015* more frequently, especially in cases where there have been consistent breaches of access orders. Submissions recommended that the award of costs provision should also be increased to reduce the financial costs on PCP seeking maintenance payments and to penalise the NRP.

4. Effectiveness of court orders

Submissions were critical of the current maintenance and enforcement system.

Submissions underlined issues with the current approach, where Courts operate on the basis that there is compliance with Court Orders, resulting in the PCP being responsible to seek remedy where they have not received maintenance. This system places a burden and increased pressure on PCPs at a time when they are already feeling vulnerable and when they would be better helped to focus their energy on their children.

Stakeholders also highlighted that for victims of domestic violence, victims of abuse and their children can be left in an extremely vulnerable position if court orders are ineffective. In other situations, court orders have directed parents to make supervised visits available to the other parents even when a safety order is in place. The lack of adequately resourced or available supervised access services can often result in the parent who has the safety order in place organising and overseeing the supervision, despite the obvious risks posed by this.

In addition, stakeholders said that while court orders can provide a useful framework on how to co-parent their children, these orders will only be effective if parents are willing to co-operate and communicate regarding the implementation of the court order, which can be difficult to achieve when there is conflict between the two parties.

Treoir pointed out that they receive referrals from the National Family Mediation Service for their 'Let's Work it Out' parenting support programme, which aims to provide extra support to families that require this in order to implement custody and child maintenance arrangements. However, the lack of other or additional family support services means that Treoir's programme does not have the capacity to meet the demand there is for these kinds of mediation services.

Stakeholders recommended that costs should be awarded more frequently and legislation should be amended to allow for a mandatory award of costs if a breach of court orders occurs.

5. Suggested solutions to remedy the issues identified

Submissions provided several solutions for some of the problems in relation to the child maintenance system outlined above.

- Child maintenance as a matter of Private Family Law

Submissions highlighted that Ireland differs from other jurisdictions, as child maintenance is viewed largely as a personal, parental obligation and therefore a matter of private Family Law. There is no State agency with responsibility for child maintenance payments and the pursuit of maintenance is left up to the claiming parent on behalf of their child. Submissions stressed that this approach should be shifted and that the State should take a more proactive role in the management of child maintenance support payments and to view it as an approach towards decreasing child poverty among lone parent families. Submissions recommended that that maintenance should be removed from the courts system and instead enforced by a statutory agency that would provide clear guidelines on the amount of maintenance awarded and include mechanisms to enforce compliance ([see Point 6](#)).

- Guidelines in determining appropriate maintenance contributions

It was pointed out that there are currently no specific guidelines on determining the payment of maintenance. This results in judges differing in their approach to certain cases and differing in the decisions they make in terms of maintenance that must be paid, resulting in a lack of consistency of payments. Stakeholders pointed out that inflation also impacts on these payments and as maintenance rates are not indexed, payments will likely have lost some of their value even within the space of a year.

It was recommended that guidelines be established for determining appropriate maintenance contributions and that set penalties for breaching court orders would be introduced.

- Research into child maintenance systems in other jurisdictions

Submissions recommended that more research be undertaken into the design, operation and effectiveness of child maintenance systems in other jurisdictions. This research should evaluate the strengths and weaknesses of these other systems and also evaluate how suitable they would be for an Irish context.

- Training on domestic abuse

Submissions recommended that the Government should advance training on domestic abuse, including financial abuse and coercive control, to all frontline staff and decision-making staff across the public sector.

- Recognise child maintenance and child poverty

Submissions recommended that child maintenance should be included in all Government anti-poverty policies to reduce the prevalence of child poverty in one parent families. It was recommended that child maintenance should be approached as a non-taxed and non-means tests payment contributing to the wellbeing of the individual child, similar to the Child Benefit payment.

- Increase professional supports and resources for families to deal with separation

Submissions highlighted that there should be an increased emphasis on the needs of the children involved when court orders are being made, as often children can feel lost in this process despite the decisions being made having the most impact on them. In this regard, there should be a larger emphasis on helping children prepare for and understand the legal system and access arrangements.

Parents and children should also receive more professional supports and information in relation to the separation process and family transition. Submissions pointed out that court orders are not best way to deal with familial conflict around maintenance

and suggested that it would be beneficial for parents to have greater awareness about the negative impacts of separation if it is not handled well.

Investments in parenting support programmes and mediation services should also be increased.

Other recommendations include

- Commissioning research that would evaluate which international maintenance model would be best applicable to Ireland's welfare, taxation and family law regime;
- That greater investment is put into establishing supervised access centres, to enable parents to have a safe and appropriate place to engage with their child and to meet the terms of their court order.

6. Perspectives on the establishment of a child maintenance agency to deal with these issues separate to the courts system

All stakeholders outlined their support for the creation of a child maintenance agency to deal specifically with the issues pertaining to court orders and child maintenance and welcomed the removal of child maintenance matters from the family court. Stakeholders underlined that this Agency should be designated as a ‘one-stop-shop’ guiding and providing parents with evidence-based maintenance and enforcement services. Submissions highlighted that both the Joint Oireachtas Committee on Social Protection, in a report from 2017, and the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) have recommended that a statutory maintenance agency should be founded to guide the prescribing of maintenance payments and pursue those who do not comply with payments.

Among the powers envisaged for this Agency include:

- The capacity to set maintenance payment levels to ensure a consistent and fair approach to all maintenance payments;
- The payment rates devised by the Authority would be transparent and available for further scrutiny, where desired;
- The Agency should be provided with enforcement powers allowing it to act as a collecting agent and directly recover payments;
- The Agency should assist parents in deciding on arrangements in relation to maintenance;
- The Agency should have a new specialist mediation service available to it to help parents reach an agreement over maintenance payments.

Among the benefits stakeholders believe this Agency would introduce include some of the following:

- Would help to reduce child poverty levels in children living in single parent families and reduce the burden of litigation costs involved in maintenance orders;
- Would decrease conflicts between parents and fostering better co-parental action and engagement;

- Provide more certainty that maintenance would be paid in full and on time, thus providing more security to families and preventing against poverty;
- Provide greater protection to survivors of domestic abuse from allowing the court system to be utilised by perpetrators who wish to continue their control of the victim.

Stakeholders recommended that international comparators could be considered when establishing this Agency but that these should be assessed as to whether they would be suitable in an Irish context.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)³; and

³ Retained pending review of the Joint Committee on Public Petitions

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁴

⁴ Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,
shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).'

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

The Committee received submissions from the following stakeholders

- SPARK
- Barnardos
- One Family
- Law Society of Ireland
- Treoir

[Submissions are available in the online version of the Committee's Report, which will be accessible at <https://www.oireachtas.ie/en/committees/33/justice/>].



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S.P.A.R.K – Single Parents Acting for the Rights of Kids

SPARK is a peer led advocacy campaigning group representing lone parents and their children. We were formed in December 2011, and we have almost 5,000 members. During this period, we have made submissions to Oireachtas Committees, The CEDAW committee and various Ministerial meetings. We campaign for supports for our families to ensure full inclusion and best outcomes for our children.

Background

One parent families, 86% of whom are headed by women, are among those most at risk of poverty in Ireland. They represent the highest proportion of families living in emergency accommodation. In 2016, the UN Committee on the Rights of the Child expressed its deep concern at the 'significant increase in the number of children living in consistent poverty' and in particular referred to one-parent households.¹

The effects of missing or late child maintenance payments can be very damaging. In Ireland, a comparatively low level of maintenance is paid to lone parents by their former partners; currently only 35% are in receipt of child maintenance payments.²

SPARK response:

This paper will respond to the five questions posed by the Joint Oireachtas committee.

- The impact of unpaid maintenance.
- The complexities involved in court orders.
- The effectiveness of court orders.
- The steps that could be taken to remedy the issues.
- Our views on a child maintenance agency, to deal with these issues separate from the court system.

¹ UNCRC 'Concluding Observations: Ireland' (20) UN Doc CRC/C/IRL/CO/3-4 para 59.

² Joint Committee on Social Protection (2017). Report on the Position of Lone Parents in Ireland.

The impact of unpaid maintenance.

- Lone parent households consistently face higher poverty rates than any other group in Ireland. The most recent survey³ showed that lone parent households are over four times more likely to experience deprivation and consistent poverty than two parent households with three or less children. The poverty experienced by lone parent households is multi-factorial, however lack of maintenance is a significant factor. In the UK, there was a 30% reduction in the poverty gap as a result of child maintenance payments (where there was compliance with orders)⁴. Lack of maintenance is a factor in child poverty for all households, however, it is particularly damaging for households reliant on a social welfare payment. It is a condition of a social welfare payment that maintenance is sought and anecdotally, we are aware of lone parents claiming they are in receipt of maintenance to avoid the court process, and this means they are assessed on a maintenance payment they are not receiving, and their primary social welfare payment is reduced. In the case where a parent has gone to court, the Department of Social Protection will assess the full payment that was ordered, whether it is received or not. This means that where maintenance payments are not being made, not only is a child deprived of their legal right to be maintained by both parents, but they can be living on an income lower than their social welfare entitlement.
- Non payment of court ordered maintenance has been recognised as a form of financial abuse⁵ and facilitates the ongoing coercive control of a parent, even when they have left an abusive relationship.
- Lack of maintenance can also impact on the non-custodial parent/ child relationship. Parents who pay child maintenance are more likely to have frequent contact with their children than those who do not pay child maintenance⁶.
- Lone parent households face higher deprivation and consistent poverty, so irregular or late payments can make budgeting particularly onerous for households who do not have the financial capacity to manage missed or late payments. This uncertainty adds to huge stress for struggling households. In our group, many parents have reported that missed payments frequently occur around important and expensive times such as Christmas, Back to School and a child's birthday. This can be part of an ongoing pattern of abuse.
- Lone parents are disproportionately impacted by the current housing crisis and are over-represented in emergency accommodation. They are also much more likely to experience poor housing than other household types⁷. Local authorities include court ordered maintenance in rent assessments and rent is calculated on maintenance that may not be

³ EU SILC (Survey of Income and Living Conditions) (2021), Central Statistics Office

⁴ Hakovirta, (2011). Child maintenance and child poverty: a comparative analysis", Journal of Poverty and Social Justice, Volume 19, Number 3, pp. 249-262(14)

⁵ COSC includes economic abuse as an important element in domestic violence. (2010, p1ff)
<http://www.cosc.ie/en/COSC/Final%20Electronic%20NS%20Ex%20Summary%205%20March.pdf/Files/Final%20Electronic%20NS%20Ex%20Summary%205%20March.pdf>

⁶ Amato, P. and Gilbreth, J. (1999) „Non-resident fathers and children's well-being: a meta-analysis", Journal of Marriage and the Family, 61 (3): 557–73.

⁷ IHREC and ESRI, "Monitoring Adequate Housing in Ireland", September 2021

received, which puts additional financial strain on struggling households. Failure to receive maintenance can put a household at risk of rent and mortgage arrears.

We welcome the fact that the Department of Social Protection no longer requires survivors of domestic violence to contact their abuser or provide evidence of efforts to seek maintenance from them in order to access social welfare payments, however, it does not solve the problem that domestic abusers can avoid paying child maintenance payments and the survivors of domestic violence lose out on maintenance payments due to safety risks posed by the Courts process.

The complexities involved in court orders.

The process of entering the court system and successfully obtaining a court order is complex and daunting, and more so for parents who can't afford their own legal representation, are above the income thresholds for Legal Aid or can't afford the financial contribution payable to Legal Aid. In any case, the current waiting lists for Legal Aid are prohibitive and many parents feel compelled to represent themselves so they can get a child maintenance or access order in as timely fashion as possible. Processes in the Courts are difficult to enforce, precipitate protracted and often hostile parental negotiation, contribute to poverty and have little regard to the safety of those who have been subjected to domestic abuse, violence, coercion, and financial abuse.

In the first instance, many parents will start their journey seeking maintenance in the District Court. Lone parents on a social welfare payment are obliged to seek child maintenance and prove that they have done so. In many cases, this proof can only be satisfied through issuing a court summons for child maintenance and subsequently producing the court order. Separating married and co-habiting families also look for ancillary orders in the district court for maintenance and access, while waiting for divorce or separation decrees.

Parents report to us that courts are intimidating and adversarial and are not suited to dealing with the emotional trauma involved in a family breakdown. Court clerks are helpful to lay litigants and do assist parents in issuing summons and proceedings, nevertheless, for many parents entering the family court system is an extremely stressful experience at a particularly vulnerable point in their lives. Family district courts are not psychologically informed environments and due to the nature of in-camera proceedings, many parents in high conflict proceedings are forced to wait together in crowded public spaces before they present their case in front of a judge, and this only adds to the trauma and can increase conflict among both parties. Daily court lists are extremely long, and parents often feel they have very little time to present their case and that there is little examination of the evidence. Parents consistently report that carefully prepared evidence has been brushed aside and arbitrary orders are issued, that do not seem to reflect the individual case. There is scant research in this area and therefore we can only reference the experiences of our parents.

From our work with families, we are aware that there is a significant rate of non-compliance with child maintenance orders⁸, significant delays in the courts system and a high cost involved in engaging a litigious route. Issues with this system include:

- Parents cannot issue a summons for child maintenance unless they can provide an address for the non-custodial parent – this is not always known.
- There are no statutory guidelines; and instead, they are at the discretion of the court
- Revenue does not have the power to deduct maintenance at source. If the non-custodial parent fails to comply with the maintenance order, it is up to the custodial parent to issue enforcement proceedings. An attachment of earnings order can only issue when the payee is a PAYE worker. It is linked to an employer and is invalid if the payee changes jobs.
- If the liable parent fails to appear at court proceedings, a bench warrant is issued but rarely acted upon as there is no prosecuting Garda involved – this stops any further proceedings while the warrant remains unexecuted.
- In cases of domestic abuse, the system places survivors in a difficult situation. While survivors can request that their address be redacted, there are no specific rules to deal with this and it is dependent on the discretion of the judge. In some cases, survivors forgo maintenance payments rather than risk compromising their safety and security.

The Effectiveness of Court Orders

Unlike other jurisdictions, child maintenance is seen largely as a personal, parental obligation and therefore a matter of private Family Law. There is no state agency with responsibility for child maintenance payments and the pursuit of maintenance is left up to the claiming parent on behalf of their child. Many parents believe that after successfully obtaining a court order for maintenance, that they will have the ordered payments as part of their budget, however, this is far from the case. The Courts operate on a basis that there is compliance with Court Orders and in cases where this does not happen, it is the responsibility of the custodial parent to seek remedy. This is unwieldy, time consuming and extremely waring on parents who are already under strain raising a child alone. Recurrent trips to court, are costly, can be disruptive to paid employment and incur high child costs. It can also have a hugely negative impact on the mental well-being of a parent and is not conducive to effective co-parenting of a child. As outlined previously, there are many issues in enforcing maintenance orders and for many parents, the process is too draining, and they give up which means children are forgoing their right to be financially supported by both parents.

SPARK recently⁹ carried out a survey (246 participants), which highlighted the inadequacy of procedures around maintenance. There are obvious limitations around the survey, as the participants

⁸SPARK Survey (October 2017) showed 66% families either received no maintenance or maintenance was in arrears.

⁹ SPARK, 'Child Maintenance Survey', May 2022

self-identified, however, in the absence of any other research it provides a snap-shot of the experience of parents. The headline results are below, and the full survey can be accessed [here](#).

Headline Results

- 35% of parents reported receiving maintenance without arrears.
- 36% of parents are owed significant maintenance arrears but have given up looking for it.
- 8% of parents are owed arrears and are pursuing it through the courts.
- 23% of parents have never looked for maintenance.
- The average maintenance arrears owed is €8,313.

The steps that could be taken to remedy the issues.

Ireland's child maintenance framework is archaic, disjointed and does not reflect the changing nature of modern day families. The state needs to take a more proactive role in the management of child support payments and to see it as a tool in reducing child poverty among lone parent families. We need a future-proofed, publicly accessible, and holistic approach to child maintenance, set within a wider court welfare system which provides stability for families and children. The Joint Committee on Social Protection¹⁰ has called for the establishment of a statutory maintenance system and a review on how child maintenance is assessed by the Department of Social Protection. This is echoed in recommendations from the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has asked the State to review the need for a statutory maintenance agency and to prescribe amounts for child maintenance. We welcome that Government agreed to examine its approach to child maintenance on foot of these recommendations and we look forward to seeing the report from the Maintenance Review Group.

We believe that in the first incidence, maintenance should be taken out of the adversarial court system and should only be used as a final relief to execute rights under current legislation and in such instances, the courts should be granted enhanced powers to enforce compliance.

We believe that maintenance should be taken out of the private family domain and enforced by a statutory agency, that has clear guidelines on amounts awarded and strong mechanisms to enforce compliance. There should be an appeals process that either parent has recourse to if they feel any award is not applicable because of specifics in their circumstances.

¹⁰ Joint Committee on Social Protection (2017). Report on the Position of Lone Parents in Ireland.

We believe that Revenue should have a role in enforcement, similar to how they enforce property tax obligations, in cases of non-compliance.

We acknowledge that while many jurisdictions have a more advanced maintenance system compared to Ireland, they can still be problematic. We believe that this is an opportunity for us to learn from other jurisdictions and that we can design a fit-for-purpose system that can be world leading.

Child Maintenance System separate to the Courts.

We believe separating child maintenance from the courts would have many benefits, including:

- Reducing child poverty levels in children living in one-parent families who are currently the majority of consistently poor children.
- Reducing the burden on lone parents to litigate for child maintenance orders by doing away with an adversarial, Court based approach
- Reducing conflict between parents while also encouraging shared parental responsibility. Parents who pay child maintenance are more likely to have frequent contact with their children than those who do not pay child maintenance¹¹
- Ensuring maintenance is paid in full and on time, creating certainty and security and helping to prevent poverty. Research has shown that in the UK, there was a 30% reduction in the poverty gap as a result of child maintenance payments (where there was compliance with orders)¹²
- Protecting survivors of domestic violence and guarding against the court system being used by perpetrators to continue domestic abuse, violence and control
- Ensuring the recovery process for maintenance is not overly burdensome, time-consuming or costly to the party who has already obtained a final maintenance order from the courts
- The administrative blocks and backlogs within the Courts and Social Welfare systems are eased by having an independent service which can process the layered bureaucratic demands of family dissolution and transition.

¹¹Amato, P. and Gilbreth, J. (1999) „Non-resident fathers and children's well-being: a meta-analysis", *Journal of Marriage and the Family*, 61 (3): 557–73.

Wikeley, N., Ireland, E., Bryson, C. and Smith, R. (2008) Relationship separation and child support study, DWP Research Report No 503, London: DWP

¹²Hakovirta, (2011). Child maintenance and child poverty: a comparative analysis", *Journal of Poverty and Social Justice*, Volume 19, Number 3, pp. 249-262(14)

Conclusion

We welcome the current examination of maintenance procedures in Ireland. We believe the current systems are failing parents and more importantly children. It is putting lone parent households at risk of poverty and homelessness. The adversarial court system is not conducive to healing fractured relationships and does not support the relationship between non-custodial parents and their children. District court buildings are hostile environments and can increase tensions among parents. Family breakdown can be a traumatic event and having systems in place to support families is more humane and effective than expecting family courts to be the solution.

August 2022

**For further clarification, please contact Louise Bayliss at
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Submission to the Joint Oireachtas Committee on Justice

Enforcement of Court Orders relating to child maintenance, access and custody

About us

Barnardos provides frontline services to children and their families. We work with children and families who are affected by traumatic life situations such as poverty, abuse, parental mental health challenges, neglect, separation, bereavement and parental addiction. We offer a range of early intervention and targeted services in our 45 service locations, in family homes, schools, early learning and care settings and communities.

Introduction

A significant proportion of families/children that Barnardos supports are living in households in which their parents are separated. In a recent survey carried out among Barnardos staff it was estimated approximately one third of cases we support involve current parental separation.

Staff across our services, across the country, have repeatedly stated that the issue is getting worse. They are seeing more and more families dealing with issues relating to parental separation in which children are negatively affected. Unfortunately, in the many situations parents actions are not child centred, often they are being driven by anger and rage. Relationships have become toxic and as a result one or both parents cannot deal with the separation in an amicable way that is most beneficial to any children involved.

- What is the impact of unpaid maintenance?

Many of the families and children we support, living in separated households, are reliant on maintenance payments for meeting essential costs, such as housing, heating, electricity and food.

If maintenance goes unpaid it can drastically affect their budgets and jeopardise their ability to afford these necessities, resulting in children going without. The families that we support, in general, have extremely limited disposable income. The non-payment of maintenance, particularly where it is regular and consistent, can be very hard to manage. Primary care parents (PCP) will not necessarily be in a position to cover the sudden shortfall.

However, many PCP we support do not seek maintenance from their previous partners. This may be as a result of difficulties between the parties, wider acrimony between families in some communities and fear of increasing tensions, and history/belief that they simply will

never get money from the non-resident parent (NRP). Or, that to do so would be so complicated, timely, and generally extremely difficult. Often times the NRP may have been controlling or caused the PCP considerable abuse, and so the PCP wants to have little or nothing to do with them.

In these situations, the PCP and their children will go without money that they are entitled to, meaning in some circumstances greater and more entrenched deprivation. This deprivation can have a considerable impact on children's current and future wellbeing and development. This is often in addition to the trauma they may have faced/are facing as a result of the separation.

The costs to make applications for maintenance for those on modest incomes can outweigh the benefit of pursuing small amounts, (even if you qualify for Legal Aid there is still a contribution) means that parents will wait for weeks before launching an application by which time they can be under serious financial pressure. And the costs of making the application cannot be passed on to the defaulter.

For PCP attempting to access certain social welfare payments such as one parent family payment they are required to prove they have sought maintenance from the NRP. The onus is placed on them despite the potential for there to be legitimate reasons, falling short of the exemption of domestic violence, not to want to interact and pursue their previous partner, finding it very emotionally difficult to do so.

In some circumstances, they will avoid seeking the welfare payment, meaning they and their children miss out on further income. Those sums can mean a huge difference to those households.

- **What are the complexities involved in court orders?**
- **How effective are these orders?**

From our experience the court experience for families in which parents are separating can be complex and confusing for all parties involved, in particular for children. What can make things so complex is the history of the parties involved, the fact that potentially life changing decisions are being made for all concerned, and oftentimes considerable levels of acrimony, distrust and general anger between the parents.

Parents can often be very stressed and anxious about going to court regarding access and custody. They generally report to us that they were unaware of what exactly to expect from the process and at times can get limited support preparing for it.

The entire process, going to court, the language used, seeing solicitors and judges can be very confusing, particularly for children. Additionally, the lack of certainty and clarity about timelines can make things appear very complex. Children often report being confused as to how long it will take for a case to go through court and what will happen at various stages. In one instance a family we were supporting there were several daughters living with their mother. Their father was going through the court to gain access, although the children

suggested they would prefer not to see him. The court process went on for almost two years, throughout which the children constant were under the belief a conclusion to the case was only a matter of weeks away.

Generally, one of the most complex elements of court orders is balancing the individual rights of parents and the children involved. Unfortunately, what can make orders particularly ineffective is getting the balance wrong, namely too often the rights of the parents are given primacy over what is in the best interests of the child.

We frequently support who are routinely forced to spend time with a parent when not only do they not wish to do so, but it is not in their best interests and could be argued it is actually harmful to them. A court order enforcing this could never be said to be effective.

Quite often long periods of toxic communication between parents has led to court proceedings in relation to access and custody. It is vital that this continued acrimony on one or both sides does not infringe on the best interests of the child within court proceedings and court orders. As things currently stand there are not enough safeguards in place to guarantee this.

It is understandable that the views of children themselves cannot be the sole determining factor in court cases regarding access and custody. However, it should at the very least be given adequate attention and consideration. Children too often see this huge decision being made with little or no attention given to their own thoughts or views, despite the any court order having potentially having life altering impact on them. Balancing the right for children to have their voices hear and their parents legal rights is far from straightforward.

Additionally, there are not enough mechanisms in in court proceedings and fulfilling court orders to take into consideration the practical impact of court orders. For example, we supported a child whose parents separated. They could not agree on custody and so went to court. For the period the boy remained with his mother. The court agreed the father should get joint custody. However, the court ordered it should have immediate effect. The boy was ordered to go stay with his father the next day, having not spent a night with him for over 6 months, with no preparation or support planning.

Enforcement of court orders is something that routinely comes up in our services. In which the NCP does not pay maintenance for example, it can be a lengthy process and time consuming. Additionally, access arrangements are complex often and locations and supervision no often child friendly.

A significant proportion of the children engaged with our services are living in homes in which domestic violence is or has been present. Court orders in these circumstances can be extremely complex and difficult. Children may not want to go to the NCP who might be using the access to continue exerting control over the PCP.

- **What steps could be taken to remedy these issues?**

First, the best interests of the child should be placed as the greatest priority throughout the court process and how the court orders are handed down. In general, there should be a greater emphasis placed on the needs of the child/children when making court orders.

Greater efforts need to be given towards helping children prepare for, understand and cope with legal system and access agreements. The more aware children are of what is happening, how decisions are reached the better. Additionally, there should be improved arrangements to hear the voice of the child and understand exactly what they wish and what their opinions are on varying aspects of their lives.

In relation to child access and custody there is a lack of professional supports for parents and children post separation and family transition. More resources and funding should be directed earlier to parents and children to deal with separation. This might reduce the number of families having to go to court to seek orders in the first place. Court orders are often a less than ideal way of managing family conflict. The greater awareness parents have of the negative impact separation can have on children, if not handled well, the better.

- **What are your views on a child maintenance agency, to deal with these issues separate from the court system?**

Last year Barnardos gave evidence to the Child Maintenance Review Group stating we are very much in favour in the establishment of a child maintenance agency.

We do not believe that the current system is working well for many individuals, particularly children. In too many circumstances PCPs who are already feeling stressed and financially pressured are being required to pursue the NRP for maintenance. This can make them become further stressed and anxious about their situation. Children within these households are going without as a result.

PCP are being asked to do too much in stressful circumstances, often with poor outcomes. Separation is a very stressful situation. The PCP should be able to focus their energy on their children, not chasing down maintenance payments. Therefore, we believe that the establishment of a child maintenance agency would be a positive step forward.

Enforcement of Court Orders Relating to Child Maintenance, Access and Custody

August 2022



1. Introduction

One Family welcomes the opportunity to make a submission to the Committee on Justice on the enforcement of court orders relating to child maintenance, access, and custody. One Family has extensive experience providing specialist family support services to families during and post separation. This year One Family is proud to be celebrating 50 years of working to improve the lives of adults and children in one-parent families. During this time, we have consistently seen parents and children struggle to navigate and be disadvantaged by the lack of a coherent, functioning child maintenance system in Ireland.

In 2021 One Family made a submission to the Child Maintenance Review Group on the statutory processes and structures pertaining to child maintenance in Ireland. The report of the Review Group has yet to be published and there have, yet been, no policy changes to correct the serious shortcomings in how child maintenance is administered for the benefit the thousands of children who rely on maintenance payments for their wellbeing. The responses below to the questions posed by the Committee are largely drawn from our direct experience working with families.

2. About One Family

One Family is Ireland's organisation for people parenting alone, sharing parenting, and separating. We were established in 1972 as Cherish and provide specialist parenting, therapeutic and family support services around Ireland. Children are at the core of our work, and we seek to improve their lives by empowering, supporting and up-skilling their parents. We campaign against child poverty, for reform of the family justice system and for the State to recognise and cherish all families equally, regardless of their marital status. More information on One Family can be found at www.onefamily.ie. This submission is informed by our direct work with one-parent families and our role representing these families at a local and national level over the last 50 years.

3. Background

The most recently available Census data from 2016 tells us that one-in-five children in Ireland live in a one-parent family, while 25 per cent of families are headed by a lone parent.¹ There is limited data available on shared parenting families; however, we know from our work that many families described as one-parent families would have some degree of shared parenting. The majority (86 per cent) of one-parent families are headed by a woman.

One-parent families experience higher levels of poverty and deprivation than other households. In 2021 13.7 per cent of households headed by one adult with children were in consistent poverty, compared with 3.5 per cent of two-parent households.² Almost half

¹ Central Statistics Office, (2017), *Census 2016*.

² Central Statistics Office, (2022), *EU SILC 2021*.

(44.9 per cent) of households headed by one adult with children were in enforced material deprivation in 2021.³ One-parent families consistently represent the highest proportion of family types living in emergency accommodation. In June 2021 54 per cent of families living in emergency accommodation were one-parent families.⁴ One-parent families are also more likely to live in poor quality accommodation, such as housing with damp or lack of central heating, than the general population.⁵

4. Research and Evidence

a) Evidence from Ireland

There have been many significant independent and Government commissioned research reports published in relation to one-parent families since 2016 alone (see Appendix A). Most notably the 2017 report of the Oireachtas Committee on Social Protection, the recommendations of which are referenced and committed to in the current Programme for Government.⁶ All of these reports indicate that the poorer financial outcomes experienced by one-parent families urgently need to be addressed.⁷ However, in contrast there is a dearth of research and data into child maintenance, access and custody in Ireland. Below is an overview of the few surveys and statistics which give an insight into child maintenance, access and custody orders.

In 2016, One Family undertook Ireland's first *National Shared Parenting Survey*.⁸ Almost 51 per cent (n=1,014) of respondents arranged contact time between a parent and child with difficulty, through mediation or via a court order. While the majority (62 per cent) of parents whose child lives with them most or all the time stated their child's other parent contributes financially to their child's costs, 38 per cent said the other parent does not contribute financially. The most common financial problem identified by respondents was non-existent or insufficient child maintenance payments by the non-resident parent to support children of the relationship. More than half of respondents said they do not make decisions jointly about issues affecting their child(ren). When deciding on custody or access, many respondents felt those in the legal profession did not always have the child's best interest at heart.

Another survey carried out by One Family specifically on Child Maintenance in 2019 found 42 per cent (n=1,068) of primary care givers received a financial contribution from their child/children's other parent. Of these, a quarter said child maintenance was not regularly paid. The majority (58 per cent) reached an agreed child maintenance arrangement via court order. Furthermore, our survey found just 9 per cent of respondents' child

³ Ibid.

⁴ Department of Housing, (2022), June 2022 Monthly Homeless Report.

⁵ Russell, H., Privalko, I., McGinnity, F. & Enright, S. (2021). *Monitoring Adequate Housing in Ireland*.

⁶ Government of Ireland, (2020), Programme for Government: Our Shared Future.

⁷ One Family, (2022), *Pre-Budget Submission 2023*, Available at: https://onefamily.ie/wp-content/uploads/2022/08/PBS_2023_final-1.pdf

⁸ One Family, (2016), *Ireland's First National Shared Parenting Survey*, Available at: https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

maintenance agreements were based on the child's needs.⁹ In May 2022 SPARK Ireland published a survey on child maintenance. Of those responding 58.5 per cent (n=246) reported they had a court order in place, 18.3 per cent had an out-of-court agreement and 23.3 per cent had never sought maintenance. Of those with a court order for maintenance 34.8 per cent reported the other parent was usually in compliance, 20.2 per cent reported the other parent was in substantial arrears but paying some maintenance, 9 per cent said that maintenance was not being paid and they were returning to court, while the remaining 36 per cent per cent had not received the maintenance and had given up trying to re-coup it. The average arrears from 84 respondents were €8,313.

One Family experienced a significant increase in the need for our services during the pandemic.¹⁰ For many families the pandemic and lockdowns acted as a pressure cooker exasperating grievances and increasing conflict. The impact of this can be seen in the increase of applications to the Courts in 2021. The Courts Service Annual Review 2021 provides some insight into the rate of child maintenance orders, access and custody orders.¹¹ There were 10,061 guardianship, custody and access applications made in 2021, an increase of 14.5 per cent on 2020. There were 5,451 applications to the District Court for maintenance orders in 2021, an increase of 8 per cent on 2020. There were 5,856 applications for divorce in 2021, an increase of 11 per cent on 2020.

b) Evidence from abroad

In the EU, all member states make payment of child maintenance by the secondary caregiver parent a legal obligation. This obligation, however, is framed and regulated in different ways. Scandinavian countries, for example, guarantee child maintenance payments through their welfare system as a matter of social policy, whereas in Ireland, child maintenance is not integrated into social policy, other than for means-testing various supports. It is largely seen as a personal, parental private obligation and therefore a matter of private Family Law alone.

Seminal research carried out in 2011 by Hakovirta supports the argument for the direct engagement of government showing that *"in countries where maintenance payments are seen as a private family matter, without guaranteed maintenance schemes, the proportion of lone-parents receiving child maintenance is low."*¹² The research further notes that child maintenance only impacts poverty levels positively where it is consistently paid - and closes the poverty gap as follows: *"in the UK (30%), followed by Canada (23.9%) and the USA (20.5%), indicating that child maintenance is quite an important source of income for those receiving it"* and *"lifts most poor children out of poverty in Denmark and Sweden."*¹³

Notwithstanding the studies previously mentioned, there is a scarcity of independent, internationally comparative research on approaches in different jurisdictions. Specifically, there is a shortage of evidence showing the positive and negative outcomes for parents

⁹One Family Ireland, (2019) Child Maintenance Survey. Available at: <https://onefamily.ie/majority-of-parents-resort-to-court-to-agree-child-maintenance-and-childs-needs-do-not-determine-amount-paid/>

¹⁰ One Family, (2021), *Tsunami of separations/divorce on the way with little or no support available*. [Press Release] Available at: <https://onefamily.ie/press-release-tsunami-of-separations-divorce-on-the-way-with-little-or-no-support-available/>

¹¹ The Court Service, (2022) *Annual Review 2021*.

¹² Hakovirta, M., (2011) 'Child maintenance and child poverty: A comparative analysis'

¹³ Ibid

and children associated with different approaches in different countries. There are some examples from abroad of critiques of individual systems. For example, in Scotland where one study found 78 per cent of respondents believed the Scottish Child Maintenance Service was performing poorly.⁶ A common criticism across different jurisdictions is that child maintenance systems do not take enough account of the actual needs of children, they lack transparency in how maintenance is calculated and are not reliable. Comparing child maintenance regimes is difficult due to dissimilar data available from different jurisdictions.¹⁴ These challenges underline the need for robust, independent research if Ireland is to successfully adopt or adapt a model from another country.

5. What is the impact of unpaid maintenance?

A most fundamental impact of unpaid maintenance at a national level is an increase in child poverty, and at a personal level a worsening of a child's circumstances and wellbeing. Where family budgets include a maintenance payment, unpaid maintenance means the family must cutback, bills cannot be paid, and families can go into arrears or debt. Unpaid maintenance causes stress and frustration. Parents report feeling let down by the court system if they perceive their child's other parent can defy a court order without consequence. Return visits to court to resolve issues are a further cause of distress for parents. Unpaid maintenance can increase inter-parental conflict and lead to denial of contact/access for children with the non-paying parent, although these issues should be considered separately. Children can be negatively impacted by increasing conflict between their parents or if they lose contact with a parent due to unpaid maintenance.

Recent data from the Department of Social Protection (DSP) would suggest around 45 per cent of recipients of One Parent Family Payment (OFP) and around 12 per cent of recipients of Jobseekers Transitional Payment (JST) report being in receipt of a maintenance payment for their child.¹⁵ There are also a wide range of additional support payments for which maintenance is calculated as means, such as HAP, Rent Supplement, the Medical Card and subsidies under the National Childcare Scheme.¹⁶ While there are disregards in place for some payments, these are not sufficient to prevent poverty and are not applied across the board. Maintenance is also subject to multiple means tests across the system meaning forcing some parents to forgo the payment or risk losing money. We are aware from services that some parents tell DSP they receive maintenance even when they do not in order to avoid stress. Furthermore, mortgage or rent payments made by non-resident parents are treated as maintenance by the DSP. This forces some social welfare claimants to forgo these payments in order to access social protection supports. This can cause families to go into mortgage arrears and increases housing insecurity.

Child maintenance is often assessed as means whether the payment is received or not. Where maintenance is unpaid the onus is on the applicant to prove this to have their claim reassessed. Applying to have a claim reassessed can take time and can be complicated if maintenance payments are sporadic. The approach by DSP can be inconsistent with some

¹⁴ Department of Work and Pensions UK, (2014), Child support policy: An international perspective.

¹⁵ Minister for Social Protection (Heather Humphries), Dáil Question, vol 1017, 24 March 2021.

¹⁶ National One Parent Family Alliance, (2021) *Submission on Child Maintenance*.
<https://onefamily.ie/wp-content/uploads/2021/03/NOPFA-Child-Maintenance-Submission-3.21.pdf>

social welfare offices restoring a parent's full payment upon proof that maintenance is not being paid, while others continue to deduct maintenance despite the payment not being made. Failure to provide proof of 'efforts to seek maintenance' can lead to payments being suspended, cancelled or not rewarded. This means parents are often required to issue court proceedings. This is problematic given the significant delays in getting court dates, that the courts are not adequately resourced to determine fair child maintenance arrangements and that issuing a summons can be seen by the other parent as an aggressive tool resulting in further deterioration of the inter-parent relationship.

During pandemic lockdowns there was a marked difference in how DSP sought proof of 'efforts to seek maintenance;' essentially the Department took parents at face value and believed them when they said they had tried to recoup maintenance arrears. One Family would strongly recommend this approach is mainstreamed. Taking an overly investigative and oftentimes suspicious approach to parents adds to the administrative burden in the Department and causes unnecessary stress to parents when seeking support.

6. What are the complexities involved in court orders?

a) Logistical issues

Court orders can be a useful tool in requiring a parent to pay maintenance; however, where someone defaults on maintenance there is no consequence, and it is largely up to the other parent to recoup any arrears. Compliance is therefore often dependent on the attitude and ability of the non-custodial parent to make the payment and the determination of the custodial parent to follow up and make applications to the court. Time and cost can also be significant barriers for parents. There are lengthy delays in accessing court appointments for maintenance cases. The cost of hiring legal representation can be prohibitive and forces some parents to go without legal advice. The Court does not have the ability to ensure maintenance is paid. There are a multitude of opportunities for respondents to block or obfuscate proceedings if they choose to.

Maintenance orders are often heard alongside custody and access so there is not enough time or consideration of key details, such as when and how maintenance will be paid, what happens when the payment is late etc. The inclusion of maintenance hearings with custody and access also impacts negatively on the quality of the hearing for these issues. There is no consistent approach to assessing what maintenance should be paid. Judges may have to calculate costs themselves in the court room. There is often not enough time to hear everything, and hearings are adjourned causing delays for very important issues for parents and children. This can be very stressful for all parties. The *In Camera* rule can impact a parent's ability to share data with DSP, threatening their access to support. Once an order is in place the maintenance payment is assessed as means, whether the payment was received or not.

b) Domestic abuse

Domestic abuse does not necessarily end with the termination of the relationship. Financial abuse, including the withholding of child maintenance, is recognised as a common

continuation of abuse post-separation.¹⁷ Court-ordered child maintenance can be problematic for families who have experienced or are experiencing domestic abuse, with the current system placing survivors in a difficult situation. In these cases, parents must manage continuing interactions with an abusive ex-partner to comply with a court order.

In our experience, it is extremely stressful and challenging for a parent to bring their abuser to court over non-payment of maintenance. We are aware of incidences where abusers who have chosen to represent themselves in court at maintenance hearings have been permitted to cross examine their ex-partner. Situations become even more complex when a parent has been convicted of domestic abuse but still has court-ordered access with children. While survivors can request their address be redacted from court orders and summons, there are no specific rules to deal with this and it is dependent on the discretion of the judge. In some cases, survivors forgo maintenance payments rather than risk compromising their safety and security.

c) Adequacy of maintenance payments

There are no statutory guidelines on the level at which maintenance payments should be set; instead, they are at the discretion of the court. This leads to a lack of consistency, with awards being largely *ad hoc*. The lack of resources available to courts to set maintenance rates using evidence-based guidelines or system for assessment, means all too frequently maintenance payments are not set according to the child's needs. Furthermore, inflation is currently increasing at an extremely fast pace with the latest data indicating the rate was 9.1 per cent from June 2021 to June 2022.¹⁸ Maintenance rates are not indexed meaning a payment set as recently as a year ago could have lost significant value in the last twelve months.

7. How effective are these orders?

The existence of a maintenance order does not mean there will be compliance with the order. We know from our work with families there is a high rate of non-compliance and a high rate of return to court. In our experience, there is no follow up by the court or any other public system and it is incumbent upon the person seeking maintenance to re-apply to the courts for another hearing. Parents often feel helpless and give up on engaging with the court as they see no benefit. Courts cannot issue a summons for maintenance unless the claimant parent can provide an address for the liable parent. This is not always available. If the liable parent fails to appear in court, a bench warrant can be issued. However, many warrants are simply not served as there is no prosecuting Garda involved and this prevents further proceedings while the warrant remains unexecuted.

Another issue is that the State does not have the power to deduct maintenance at source. If the non-custodial parent fails to comply with the maintenance order, it is up to the custodial parent to issue enforcement proceedings. An attachment of earnings order

¹⁷ Women's Aid, (2021), *Submission on Child Maintenance*.
https://www.womensaid.ie/assets/files/pdf/child_maintenance_review_group_submission_womens_aid_march_2021.pdf

¹⁸ Central Statistics Office, (2022), *Consumer Price Index*.

can only issue when the payee is a PAYE worker. It is linked to an employer and is invalid if the payee changes jobs or becomes self-employed.

In general, there is a lack of understanding the impact court proceedings have on family well-being. Issuing a summons can be fundamentally destructive to existing family relationships, particularly where parental conflict already exists. Embarking on court proceedings can be akin to a declaration of war between parents, regardless of whether the claimant parent was directed to seek a summons by DSP or other State body.¹⁹ In cases of domestic abuse or coercive control the ineffectiveness of orders leaves the victim of the abuse and any children in the family in a very vulnerable position.

8. What steps could be taken to remedy these issues?

a) Research and evidence

There is a great need for independent research examining the design, operation, and outcomes of child maintenance systems in other jurisdictions. Such comparative analysis should be based, not only on evidence from official and academic sources, but also on the lived experiences of parents in these jurisdictions by engaging with their representative organisations. Such research should examine not only the objective strengths and weaknesses of individual systems, but also their appropriateness in an Irish context. Particular attention should be paid to unintended adverse consequences or worsening of children's outcomes because of particular systems or policy decisions. One Family also recommends that the Justice Committee consults with the Court Service and the judiciary on this issue.

b) Training for staff

The recently published Third National Strategy on Domestic, Sexual and Gender-Based Violence contains several commitments to training for frontline staff on domestic abuse and gender-based violence. In line with this, the recommendations of the 2017 Joint Oireachtas Committee Report, and commitments previously made by then Minister for Social Protection Regina Doherty, decision making and frontline staff in DSP, the Court Service staff, legal professionals and the judiciary, the Government should expedite training on domestic abuse (including financial abuse and coercive control) to all frontline and decision-making staff across the public sector.

c) Recognise child maintenance and child poverty

Child maintenance should be included in the next national policy framework for children and young people and all Government anti-poverty policies, to prevent and reduce incidents of child poverty in one-parent families. Child maintenance should be treated as a non-taxed, non-means tested payment for the wellbeing of the child, as is the case with Child Benefit.

d) Remove child maintenance from the Family Court

Child maintenance should be taken out of the family court setting and separated from other issues such as custody or access. The court system is not well equipped to deal with the lived realities of shared parenting and separation. There should be a mechanism for recovering unpaid means that does not require a parent to go to court. Ideally a child

¹⁹ One Family, (2021)

maintenance agency should be developed as a 'one-stop-shop' for parents to access evidenced based maintenance and enforcement services for the benefit of the child.

9. Child maintenance agency

One Family believes the only adequate response to the need to reform how child maintenance is administered in Ireland is the establishment of an independent child maintenance agency or analogous system. We are not alone in recommending the establishment of such a body. In March 2017, as part of the Irish periodic country-reporting structures, the UN *Committee on the Eradication of all forms of Discrimination Against Women* (CEDAW) observed:

"(a) There are no data on the economic consequences of divorce on women and girls in the light of reports of increasing rates of poverty among single mothers;

*(b) There is no statutory maintenance authority and no amounts are prescribed by legislation, which compels women into litigation to seek maintenance orders".*²⁰

In June 2017, the "Report on the Position of Lone-parents", by the Joint Oireachtas Committee on Social Protection also noted that Ireland has no state body with responsibility for child maintenance payments and recommended that "A state body, similar to that in other countries, should be put in place to appropriately seek and pursue maintenance payments".²¹

A separate agency would give significance to the importance of child maintenance for the fulfilment of children's rights and addressing child poverty. The available research, along with the experiences of our service users demonstrate that Ireland needs a child maintenance framework which has the capacity to meet the needs of families when they separate, whether parents are parenting alone or sharing parenting. As it stands, current systems across Government, are difficult to enforce, precipitate protracted and often hostile parental negotiation, increase poverty levels, particularly among children in one-parent families, and do not sufficiently attend to the safety and stability of those who are exposed to coercion, abuse, and violence. The State must take responsibility for the management of child maintenance, putting a stop to it being primarily a private family matter.

Such an agency should be granted powers and capacity to set payment levels that are in line with ensuring a Minimum Essential Standard of Living and with the resources to carry out an assessment of the child's needs. This would ensure a consistent, fair and child centred approach to all child maintenance payments in the State. Payment rates set out by the proposed Agency would be transparent and open to scrutiny. The Child Maintenance Agency should also be granted enforcement powers to recoup payments directly and independently of either parent. The Agency should have powers to assess, determine, collect, transfer, and enforce the determination in a swift and efficient manner.

²⁰ CEDAW/C/IRL/CO/6-7 2017: *Concluding observations on the combined sixth and seventh periodic reports of Ireland*, (paras 56/57) <http://www.refworld.org/docid/596f48a94.html>

²¹Joint Committee on Social Protection, (2017), Report on the Position of Lone parents in Ireland.

A robust evidence base is essential in developing such an Agency. There are international examples available, but it is crucial they are subject to a thorough review. One such example is the Swedish Social Insurance Agency, Forsakeringskassen.²² It offers support for the range of issues which arise during family breakdown. It provides information and support in agreeing child maintenance independently online, with web-meetings and in-person professional advisory support available when necessary. It provides links to the independent Swedish Consumer Agency for established 'living costs' when parents are self-assessing online to agree maintenance for their children.

Ireland requires a transformational change in how child maintenance is administered. It is clear what is needed is a policy shift that will take maintenance out of the private sphere and transfer responsibility for assessment and enforcement of child maintenance to the State. Children in one-parent families deserve the same opportunity to grow up free from the threat of poverty as children in two-parent families; creating a child maintenance agency as outlined above would be a step towards this reality.

Ends.

²² <https://www.forsakringskassan.se/english/parents/parents-who-do-not-live-together>

Appendix A - Significant Research and Policy Reports on One-Parent Families Published since 2016

(2021) Russell, H., Privalko, I., McGinnity, F. & Enright, S. *Monitoring Adequate Housing in Ireland*. Dublin: Irish Human Rights and Equality Commission.

(2021) Roantree, B. Et al. *Poverty, Income Inequality and Living Standards in Ireland*. Dublin: ESRI & Community Foundation Ireland.

(2019) Society of St Vincent de Paul. *Working, Parenting and Struggling? An analysis of the employment and living conditions of one parent families in Ireland*. Dublin: Society of St Vincent de Paul.

(2018) Regan, M., Keane, C., and Walsh, J.R. *Lone Parent Incomes and Work Incentives. Budget Perspectives*. Dublin: ESRI.

(2018) Millar, M., Crosse, R., Canavan, J. *Understanding, negotiating, and navigating the politicisation of evidence-based policy research: the case of Irish research on lone parent labour market activation policy*. Bristol: University of Bristol.

(2018) Millar, M., Gray, J., Et al. *In-Work Benefits: The (in)adequacy of in-work benefits in Irish lone parent labour market activation policy*, Journal of Poverty and Social Justice. Policy Press, University of Bristol.

(2017) Delma Byrne and Clíona Murray. *An Independent Review to Identify the Supports and Barriers for Lone Parents in Accessing Higher Education and to Examine Measures to Increase Participation*. Maynooth University: Jointly Commissioned by DES, DEASP and DCYA.

(2017) Houses of the Oireachtas Joint Committee on Social Protection. *Report on the Position of Lone Parents in Ireland*.

(2017) Indecon. *Independent Review of the Amendments to the One-parent Family Payment since January 2012*. Presented to Department of Employment Affairs and Social Protection Prepared by Indecon Research Economists www.indecon.ie.

(2016) Millar, M and Crosse, R. *Lone Parents and Activation, What Works and Why: A Review of the International Evidence in the Irish Context*. Galway: The UNESCO Child and Family Research Centre, National University of Ireland Galway.

LAW SOCIETY SUBMISSION



**ENFORCEMENT OF COURT ORDERS RELATING TO CHILD
MAINTENANCE, ACCESS AND CUSTODY**

JOINT COMMITTEE ON JUSTICE

SEPTEMBER 2022

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1. The Law Society of Ireland (“the **Society**”) welcomes the invitation from the Joint Committee on Justice (“the **Committee**”) to provide a submission on the topic of “enforcement of court orders relating to child maintenance, access and custody”. The Society is cognisant of current issues surrounding child maintenance in Ireland and commends the Committee for its consultation process allowing input from representative bodies and civil society organisations in relation to same.
- 1.2. The Society provided a submission to the Child Maintenance Review Group in March 2021 (“the **2021 submission**”) which noted the importance of child maintenance, both from a financial and social policy perspective, for the support and wellbeing of the child. The submission welcomed the proposal for the establishment of a State Maintenance Agency and outlined in detail the services and supports that could be provided by same. The comparison contained in the 2021 submission of enforcement provisions across different jurisdictions may be of interest to the Committee in its assessment of the enforcement of court orders related to child maintenance in Ireland.
- 1.3. The following submission contains responses to the five questions set out in the letter from the Committee to the Director General of the Law Society on 18 July 2022, and provides a list of recommendations in relation to same.

Summary of Recommendations:

- Increase the use of the award of costs provision to alleviate the financial burden on lone parents when seeking payment of maintenance owed and to act as a penalty for the respondent party.
- Maximise the reliefs available under the Children and Family Relationship Act 2015 where there have been consistent breaches of access orders.
- Introduce guidelines to assist in determining appropriate maintenance contributions.
- Establish set penalties for breaching court orders relating to child maintenance, access and custody.
- Establish a State Child Maintenance Agency to assist in issues relating to child maintenance.

2. What is the impact of unpaid maintenance?

- 2.1. Unpaid maintenance can cause significant hardship to all separated families. Families availing of legal support from private practitioners in particular face additional costs of enforcing proceedings when seeking repayment of child maintenance, with no guarantee that these costs will be recovered. Clients who qualify for legal aid can usually seek a new legal aid certificate to enforce proceedings.
- 2.2. It is generally not advised to seek enforcement proceedings in the Circuit Court, unless significant levels of maintenance arrears have accumulated, due to the prohibitive costs related to such proceedings. The significant costs involved can leave vulnerable citizens in abeyance for long periods of time with no maintenance being paid. In addition, the defaulting party is often not penalised for failing to comply with court orders even where there is no available evidence to justify the default. In some cases, the defaulting party will be required to discharge monies owed, but there is no additional penalty of disincentive orders by the court.
- 2.3. When applying for certain public funds, such as social welfare payments or grants for third level education, State authorities often take into account monies payable under a maintenance order when calculating whether the primary care parent to whom maintenance would be paid (“the **PCP**”) qualifies for same. This is despite maintenance payments having not actually been received in certain cases.
- 2.4. Unpaid maintenance can cause particular hardship for lone parents in receipt of social welfare payments. The level of social welfare payments received will be reduced depending on the amount of maintenance obtained. The 2021 submission outlined how, if maintenance payments go unpaid, the PCP will suffer a loss of income and will require a reassessment of their social welfare payments until such time as payment of maintenance re-commences. If repayments do not occur, the PCP may be required to apply to Court to seek an enforcement order which may take a considerable amount of time. This in turn has a direct impact on the ability of the PCP to provide for the basic needs of his/her child.
- 2.5. The Society previously recommended that the basic level of social welfare to which a lone parent is entitled to should be maintained at all times and should not be reduced due to the refusal or failure of the non-resident parent (“the **NRP**”) to pay the requisite maintenance in order to ensure that the rights of the child to be free from poverty is maintained by the State.

3. What are the complexities involved in court orders?

Court orders for payment of maintenance

- 3.1. The recovery through court orders of maintenance for educational, medical, dental and extracurricular expenses is often met with additional levels of complexities. As the Committee may be aware, it is standard practice for judges to order the payment of a set amount of maintenance plus half of educational, medical, extracurricular and dental expenses of the child. These half payments cannot be paid through the District Court Clerk, and often require a return to court to recover outstanding expenses which may act as a deterrent to the PCP seeking to recover outstanding expenses. This procedure often causes major difficulty for both parties and can be a source of significant hostility.
- 3.2. Although such orders appear fair in theory, in reality it often involves one parent pleading with the other for reimbursement of expenses which can be significantly demeaning. Members of the Society have often cited examples of the NRP complaining about frequent requests for additional monies. This can cause additional frustration, particularly in cases where cash payments of expenses may occur, such as for educational grinds or childcare.
- 3.3. Solicitors have also cited a reluctance and refusal by certain judges to allow the payment of maintenance through the District Court office. This results in removing an enforcement option through the District Court.
- 3.4. Orders requiring the attachment of earnings can be useful. However, the courts generally require documentation indicating the party's default of previous maintenance payments prior to making such an order. Again, this results in additional enforcement costs, particularly for private family law clients. Private family law clients often question the value of pursuing enforcement orders where the outstanding arrears are less than legal costs related to seeking an order.
- 3.5. In the general absence of meaningful penalties for non-compliance, there is no incentive to comply with additional court orders. The Society recommends that this be reviewed and provision be made for imposing a financial penalty across all jurisdictions for non-compliance with court orders.

Court orders related to access and custody

- 3.6. There are numerous complexities in relation to custody and access orders. The Children and Family Relationship Act 2015 ("the **2015 Act**") contains a provision to allow the courts to order expenses incurred as part of the reliefs available under enforcement applications. However, in practice, the courts appear reluctant to enforce same, and rarely award costs under the enforcement of access or custody provisions contained in the 2015 Act. The Society recommends that the courts should be encouraged to more frequently utilise the innovative reliefs available under the 2015 Act, particularly where there has been continued and consistent breaches of access orders.

- 3.7. The former enforcement procedure involving summons for attachment and committal can be viewed as a double-edged sword. If parent alienation was already present, the summons could cause further damage to the non-resident parent and child relationship.
- 3.8. The penalties set out in the 2015 Act appear to be under-utilised and fail to place any meaningful sanctions on parents who willingly breach access orders that do not involve imprisonment. As such, the Society submits that the award of costs provision should be used more frequently by the courts to alleviate the financial burden placed on lone parents seeking payment of maintenance and to act as a penalty for the respondent party.

4. How effective are these orders?

- 4.1. The majority of maintenance orders made in the District Court are made without the benefit of a full Affidavit of Means. Normally a statement of means is exchanged on the court date which sets out the income and expenses of both parties, but excludes monies held in bank accounts, as the statement does not require the declaration of all assets.
- 4.2. The Society submits that costs should be awarded more frequently, and relevant legislation should be amended, to specifically provide for a mandatory award of costs if there has been a breach of court orders.

5. What steps could be taken to remedy these issues?

- 5.1. There are currently no specific guidelines on the payment of child maintenance resulting in the following issues frequently arising:
 1. **Maintenance payable when the child is not at home:** NRPs voice frustration with the requirement to pay maintenance while the child is away, when for example, they are travelling abroad on a student holiday visa or on holidays with the NRP.
 2. **Maintenance payable when the child is in full-time education or living away from home:** usually the PCP will argue that they should continue to receive maintenance given that the child may return home on weekends and require, for example, food or laundry.
 3. **Maintenance payable where parties are to equally share educational expenses, but one parent qualifies for additional financial supports such as the back-to-school allowance or the SUSI grant:** the parent qualifying for such payments may argue that their allowance covers their share of the expenses and the other parent should pay the balance in its entirety. However, the paying parent may argue that any allowances should be deducted from the overall costs and the net cost shared equally between the parties.

- 5.2. Judges often differ in their approach to the above-mentioned cases in determining the level of maintenance contributions that must be paid. In its 2021 submission, the Society noted that, where certain jurisdictions have child maintenance agencies, they usually have established guidelines and rules to assist judges in determining appropriate maintenance levels.
- 5.3. As the Irish family law system adopts a discretionary approach to family law matters, the Society suggests that guidelines rather than rules be established for determining appropriate maintenance contributions. The Society further submits that set penalties for breaching court orders are also introduced.

6. What are your views on a child maintenance agency to deal with these issues separate from the court system?

6.1 The Society welcomes the establishment of a State Child Maintenance Agency (“the **CMA**”), similar to the UK Child Maintenance Service, and considers that it would be of significant benefit to families and society generally. The 2021 submission sets out, in detail, the specific benefits of the proposed CMA in assisting in issues relating to child maintenance, and provides useful comparisons with similar agencies established in other jurisdiction. The Society believes, that in particular, the CMA could:

1. Provide guidance in relation to the calculation of appropriate levels of maintenance;
2. Assist parents in reaching agreed arrangements in relation to maintenance;
3. Assist in (or, where appropriate, bring) Court applications to determine maintenance when in dispute;
4. Act as the collecting agent for maintenance payments in appropriate cases; and
5. Engage in the enforcement of maintenance and the collection of arrears (whether directly or in concert with other State agencies).

6.2 The ultimate effect of the implementation of this proposal would be to reduce legal fees and minimise arguments and acrimony between parties which would ultimately benefit the children of the parties and society as a whole. Therefore, the Society recommends the establishment of a State Child Maintenance Agency to assist in issues relating to child maintenance.



**Submission to the
Joint Committee on Justice
on
“The Enforcement of Court Orders
relating to Child Maintenance”**

August 2022

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1. BACKGROUND TO TREOIR

Founded in 1976, Treoir is the national federation of services for parents of children who are not married to each other. Treoir, in partnership with its member agencies, promotes the rights and best interests of unmarried parents.

Treoir works to achieve this aim by:

- providing a National Specialist Information Service to parents who are not married to each other, their extended families and those working with them through answering queries, our information website, publications, and outreach workshops;
- co-ordinating the National Teen Parents Support Programme;
- promoting change at every level to achieve constitutional and legal equality for unmarried parents, and to improve services and attitudes to unmarried parents;
- hosting Kinship Care Ireland;
- promoting and supporting shared parenting;
- promoting/undertaking research to better understand the situation of parents who are not married and their children in Ireland;
- collaborating with other agencies to promote our aims through the federation of Treoir and agencies outside of it.

Treoir recognises the diversity of family life in Ireland and believes that all families, especially those where the parents of children are not married to each other should have equal rights to respect, care, support, and protection. In addition, Treoir supports and promotes the rights of all children as outlined in the Irish Constitution and in the United Nations Convention on the Rights of the Child.

Treoir welcomes the opportunity to make a written submission to the Department Justice on this important issue. Every year Treoir's National Specialist Information Service responds to thousands of calls, a significant number of which are from female lone parents, unmarried fathers, extended family, and professionals. The recommendations in this submission are based on the experiences of those contacting Treoir's National Specialist Information Service and on input from our member organisations throughout the country.

2. Context:

SOCIAL PROTECTION, POVERTY AND LONE PARENT FAMILIES

Every year Treoir deals with thousands of queries about child maintenance. A majority of these concern the interaction of maintenance payments with the One Parent Family Payment. Under current social welfare legislation, once a lone parent has been approved the One Parent Family Payment (OPF) there is an obligation on the claimant to seek maintenance from the non-resident parent. This is usually done via court order and assumes the mother has an address for the father in order to make such an application to the court. If harassment, coercion and/or domestic violence was a feature of the relationship having to engage again with the father can be extremely stressful. Even where a mother does get a court maintenance order the Department of Social Protection will assess this as means, irrespective of whether or not it is actually paid. In many cases in Treoir's experience a lone parent's weekly income can be adversely impacted where maintenance goes unpaid, with very little pathways out of that situation given the Departments governing guidelines and difficulties with maintenance hearings.

Child maintenance schemes cannot be understood in isolation, as systems in their own right. Such schemes interact with social assistance benefits and social security systems, with family law, with local institutions as well as with national governmental institutions, with policy making bodies and with public policy in general.

For example, where child maintenance has gone unpaid the parent may apply to the family court to pursue arrears and an enforcement order. In Treoir's experience, arrears are paid at a very low rate (e.g., €70 per week maintenance with an additional €5 per week arrears). These low rates of repayment have little impact where a household has been living in poverty due to low income over an extended period. In addition, if the respondent fails to appear in court due to non-payment of maintenance a Judge can issue a bench warrant, but since Family Law Courts are in essence civil courts, there is no prosecuting Guard to execute these warrants. Where a bench warrant exists, the applicant cannot pursue unpaid maintenance until such warrants are executed leaving enforcement orders ineffective in these cases.

In another example, Treoir recently had a call from a lone parent in receipt of OPF, working part-time, and getting maintenance was also told she was not entitled to legal aid as her income exceeded the threshold. In this instance, maintenance was counted as means. This young woman who was struggling to pay creche fees ended up representing herself in court during a child custody hearing. She also had a safety order against the father of her child.

In the context of the persistence of child poverty in lone parent families, discussion about the establishment of a statutory maintenance agency has the potential to open new possibilities about the role of public policy in addressing this important issue,

particularly in relation to a minimum standard of living and adequate income.¹ Child maintenance is not the solution to child poverty. However, decoupled from social welfare and not counted as means, it has the potential to improve life for struggling parents.

3. What is the impact of unpaid maintenance?

Child maintenance can be defined as ‘a regular contribution from a non-resident parent towards the financial cost of raising a child, usually paid to the parent with whom the child lives.’² According to CSO data there were 218,817 one parent families in Ireland in 2016 of which 189,112 were headed by mothers and 29,705 by fathers. Single women made up 44.5 per cent of one parent mothers, while a further 58,127 women were either separated or divorced, accounting for 30.7 per cent of the group. Conversely, among one parent fathers widowhood dominated, accounting for 39.4 per cent of the total while just 1 in 5 one parent mothers were widowed.

Of course, not all parents in receipt of or entitled to child maintenance are lone parents. Lone parents often marry or remarry, they may form new relationships and cohabit with a partner and have additional children with this person, who themselves might have children from a previous relationship. Nonetheless the gendered profile of the lone parent with an entitlement to maintenance is striking and shows that while child maintenance may in theory at least be an issue for both parents, it is most certainly an issue for women.

A survey of calls to Treoir’s National Information Service shows the non-payment of maintenance and the accumulation of arrears is a huge area of concern for people. Under the current welfare regime non-payment can result in a person’s income dropping below supplementary welfare rates and exacerbate child poverty. Child poverty is a significant issue in families headed by female lone parents.³ The entrenched and intergenerational nature of this poverty makes it imperative the state seeks to ensure that women who are parenting alone have access to sufficient income and appropriate services especially in relation childcare and housing.⁴

Child maintenance policy has been developed to secure the living standards of children after parental relationship dissolution, with the aspiration that child maintenance will reduce the poverty of children whose parents do not live together (Maclean and Warman, 2003; Bradshaw, 2006; quoted in Hakovirta, 2011: 249).

¹ NOLAN, A., ‘Article 27: The Right to a Standard of Living Adequate for the Child’s Development’. in J. Tobin (ed) *The UN Convention on the Rights of the Child: A Commentary*, Oxford University Press, 2019.

² HAKOVIRTA, M., ‘Child Maintenance and Child Poverty: A Comparative Analysis’, *Journal of Poverty and Social Justice*, Vol 19 (3), October 2011.

³ REGAN, M., MAITRE, B., ‘Child Poverty in Ireland and the Pandemic Recession’, *Economic and Social Research Institute*, Paper 4, July 2020.

⁴ Society of St Vincent de Paul, *Working, Parenting and Struggling? An analysis of the employment and living conditions of one parent families in Ireland*, March 2019.

Reform of Ireland's child maintenance system should be seen as an opportunity and as part of a broader project by the state to support parents and children. This includes reform of the family law system, reform of the social welfare regime and child maintenance system, and efforts to assist the meaningful involvement of non-resident fathers in their child's life. As demonstrated through international research, non-custodial parents who financially contribute to their children's upbringing are more likely to have a positive and active role in their children's lives. However, the removal of obligation upon custodial parents to seek maintenance has a huge part to play in parents relationships in terms of positive shared parenting⁵.

In Ireland, reform of child maintenance is long overdue as is the related need for the development of a modern family law system.⁶ In the context of the ongoing work by the Minister for Justice to reform the latter, the establishment of a working group to explore the possibility of a statutory child maintenance system is a timely intervention.

Going forward, the proper functioning of both systems, which are closely inter-linked, will be of critical importance to the state in dealing with ongoing changes in family formation.

These trends which are evident across the EU⁷ and not unique to Ireland can be characterised as an increase in cohabiting couples with children, a decline or delay in marriage, and an increase in one parent families.⁸

Recommendations

- The Maintenance Review Group be put on a statutory footing.
- Consideration be given to establishing a state Maintenance Agency and the Department of Social Protection to cease its involvement in this area.
- The Agency should have statutory responsibility for determining maintenance payments, the rules for determining amounts of payments, and enforcement.
- Priority to be given to the enforcement aspect of maintenance through the establishment of a robust enforcement section that is properly resourced and has the legislative power to carry out its work.
- Consideration be given to the enactment of legislation whereby it is a requirement that the Agency be notified of all maintenance agreements, formal or informal.

⁵ Dunne, S., 'Child Maintenance Position Paper', October, 2017.

⁶ Houses of the Oireachtas Joint Committee on Justice and Equality, *Report on Reform of the Family Law System*, October 2019.

⁷ IAKOVOU, M., SKEW, A., 'Household structure in the EU', Iser Working Paper Series, No 2010-10, April 2010, Institute for Economic and Social Research.

⁸ OECD, 'Families are Changing: Doing Better for Families', June 2011.

- That a specialist mediation service be available to the new Agency to assist parents reach agreement over maintenance.

4. What are the complexities involved in court orders

In the first six months of 2022 Treoir's National Information Service has dealt with 1,435 queries in relation to Access and Custody alone. Many of the queries are to do with the implementation of a court order, enquiring about breaches of such orders or how to vary an order. Parents often end up in the family courts when mediation hasn't helped reach agreement or the agreement, whether court ordered or a private agreement, breaks down.

It can be as result of difficulties parents have in resolving disputes or disagreements and seek the intervention of the Court. In our experience many parents are relieved to have a court order in place initially as they feel it will help resolve the conflicts. It is in the implementation of those agreements that problems arise.

When communication between parents is difficult, implementing a court order can be very challenging. Parents often try to implement the order verbatim and leave no room for flexibility.

The lack of interaction between the criminal courts and the family courts means that parents who have safety orders in place are often asked to confront and deal with their abuser in the implementation of the court order. Treoir has dealt with several cases where the mother, who has a safety order to protect her from the father of the child, is then left to arrange and sometimes supervise visits with the father.

The lack of available and appropriate child centred contact centres means that complying with a court order for supervised access can be difficult for both parents. It does not foster relationship building and bonding for the non-resident parent when, shopping centres, parks or fast-food chains are the locations for supervised access. The complete lack of impartial reporting on these interactions to the court, means the court cannot appropriately assess the intentions and outcomes of the order.

5. How effective are these orders?

Court orders can be very effective in providing parents with a framework to parent their children.

However, court orders are only as effective as the parents who are willing to work together and communicate effectively on their implementation. This requires a level of flexibility and communication and putting the child's best interests at the centre of their parenting. This is difficult to do when there is conflict in the adult relationships.

Referrals to Treoir's '**Let's Work it Out**' parenting support programme, from the National Family Mediation Service are parents who have legally binding

access/custody and child maintenance orders in place through the family mediation service but who need ongoing support in the implementation of such arrangements. The Family Mediation Service have stated that they could continue to refer hundreds of cases to this programme if it had the capacity to manage such a caseload. Let's Work it Out has acted as a complimentary service to the FMS as this service seeks to fill a recognised gap in family support services where parents try to share parenting in difficult relationships following the breakdown of former relationships.

Court orders that do not recognise the serious issues of domestic violence can continue to put victims of domestic violence in harms way. Court orders have instructed parents to make supervised visits available to a parent even when a safety order is in place. Without proper access and availability to properly resourced and funded supervised access services, the parent with the safety order is often left to organise and engage with the supervision.

6. What steps could be taken to remedy these issues

The modernisation of Ireland's child maintenance system to bring it into line with European norms will require significant involvement by government in terms of investment of resources and commitment to ongoing reform. It requires among other things a complete overhaul of the state's family law system, the legal aid system and national mediation service so that they are fit for purpose. Changes to existing legislation to ensure the names of both parents are recorded on a child's birth certificate can no longer be delayed. All the above require a cultural shift from everyone involved (politicians, policy makers, the legal profession etc.), and buy-in from the public and the ongoing dissemination of information via public information campaigns.

In the coming years Ireland's Family Policy will be forced to change due to pressure from unprecedented social and demographic change. As a nation state we may be satisfied to adapt in a piecemeal way to changes in family formation or we can plan-ahead and put in place institutional and legislative structures that are flexible and fit for purpose. These should be child centred, grounded in an ethos of social justice and universal access, and ensure the rights of those who are less well off or vulnerable, are vindicated and protected. The family is not what we thought it was and social policy must reflect this going forward.

Recommendations

- Investment in supervised access centres is critical to ensure parents can avail of safe, child appropriate places to engage children and meet the terms of court orders.
- Investment in parenting support programmes and mediation services

- The Central Statistics Office (CSO) be charged with collecting data on fathers who do not live with their children. This should include questions about the numbers of children they have, if its more than one if they live with different mothers, and if there are informal/ formal maintenance arrangements in place. Question 13 on the 2016 Census form asks, 'how many children have you given birth to'. This question is clearly aimed at women. We need a corresponding question for men.
- Research be commissioned to explore which maintenance model would best suit Ireland's current welfare, taxation, and family law regimes.
- Research be commissioned to establish what if any are the poverty reduction outcomes produced by child support when taking account of policy principles and programme interactions.
- Research be commissioned to look at the impact of child maintenance payments on different categories of liable relative, paying particular attention to recent shifts in family formation.
- Review custodial sentencing for liable relatives upon non-payment of court ordered maintenance with a focus on removing barriers to custodial parents seeking maintenance in the Courts.
- Ongoing data collection and reporting on agency tasked with collecting attachment of earnings orders.

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