



**Submission to the Law Reform Commission on areas
requiring law Reform:**

**Examine legal infrastructures designed to secure
maintenance payments**

INTRODUCTION

Established in 1973, the National Women's Council of Ireland (NWCI) is the leading national women's membership organisation in Ireland. NWCI seeks full equality between men and women and we draw our mandate from a membership of over 180 groups and organisations across a diversity of backgrounds, sectors and locations. We also have a growing, committed individual membership.

NWCI's Strategic Plan 2016-2020, Driving Women's Equality, aims to build on the progress that NWCI has helped to bring about for women in Ireland to date and sets out our vision for the future. It includes two main goals, one in relation to progressing key human rights and equality issues for women and one in relation to further developing NWCI as a stable, diverse, sustainable and highly visible organisation.

The plan highlights four key policy priorities over the next four years: (1) Women realise their right to health and bodily integrity, including reproductive rights. – (2) Women have economic independence. (3) Women's care roles are recognised and valued. (4) Women lead and are represented on and can meaningfully participate in all decision-making spaces that affect their lives.

BACKGROUND

In Ireland 58% of lone parents, (the vast majority of whom are women), experience deprivation and 22% are in consistent poverty rates (CSO 2016). Furthermore, the 2016 Women's Homelessness in Europe study found that almost two-thirds of families who are homeless in Ireland are headed by lone mothers aged in their 20s or 30s, who became homeless after losing privately rented housing. Therefore the effects of missing or late child maintenance payments on these families can be very damaging. The payment of child maintenance by the non-custodial parent may serve to reduce child poverty, as it supplements the income of the custodial parent.

1. Title of project for law reform

Examine legal infrastructures designed to secure maintenance payments¹

2. What issues have arisen in relation to this area that have caused you concern?

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 If expected maintenance payments are not paid, are not paid on time or if a second parent is unwilling to submit to an agreed maintenance payment regime, then parents are forced to seek payments through an adversarial and costly court system. In other jurisdictions, for example, this would take the form of an administrative process. The guaranteed payment of maintenance is becoming increasingly important with the growing number of divorces and the increased prevalence of lone-parent families across Ireland. It is questionable whether such an issue should be dealt with by our already strained court system.³

3. What problems does this give rise to in practice?

- When faced with a non-payment of agreed maintenance, a parent's only method of securing payment is through the courts. Such action may prove costly and time consuming while the need for money may be immediate. Furthermore, it does not guarantee that maintenance will be paid. Even where maintenance is initially paid matters will have to revert to court if the amount needs to be varied. Again, the person seeking the maintenance payment (henceforth 'the maintenance pursuer') will have to take time off work, arrange

¹ Drafted in consultation with SPARK, PILA and Ms Lyndsey Keogh BL. The views expressed in this paper are those of NWCI and consistent with our policy as agreed by our members.

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

³ Single Parents Acting for the Rights of Kids (SPARK), CHILD MAINTENANCE - A KEY TO REDUCING POVERTY AMONG LONE PARENT FAMILIES?, Social Policy in Recession and Recovery' 1st July 2016. See http://www.ispa.ie/images/seminars/conference_2016/conf2016_slides/Louise_Bayliss.pdf See also <http://www.thejournal.ie/readme/maintenance-defaulters-we-have-no-legal-remedies-for-parents-who-refuse-to-pay-3479857-Jul2017/> (last accessed 15 September 2017)

child care, and perhaps engage the services of a solicitor to navigate the court system.

- When applying for an initial maintenance order, the maintenance pursuer cannot obtain an 'attachment of earnings' order until they can prove that the person owing the maintenance (henceforth the 'maintenance defaulter') has not complied with the maintenance order. The difficulty is that maintenance orders are often sought because the agreed maintenance has not been paid, therefore there is already a history of non-payment, so even though the maintenance pursuer knows that the order will not be complied with, an attachment of earnings order cannot be obtained at first instance.
- There are no guidelines on how many maintenance payments must be missed before a maintenance pursuer can seek an attachment of earnings order. Anecdotally we have been told that a maintenance defaulter might have missed several months of payments before they are brought to court seeking such an order, the judge is then likely to give them a further opportunity to comply and so sets a return date, (which may be anything from a couple of weeks to three months), by then the defaulter could be six months in arrears before an attachment order is applied.
- Each return to the court could see a different judge assigned to the case, as there is no particular judge attached to each case; it is just who happens to be sitting on the day. The case and circumstances will have to be explained each time to the new judge who hears the case.
- Courts will not issue a summons for a maintenance order unless they have a current address for the maintenance defaulter. The maintenance pursuer must provide this information. This leads to obvious difficulties. Although there are ways around this for example – issuing a summons via facebook.

- Attachment of earnings orders are not without their own difficulties. While they are orders directing the maintenance defaulter's employers to deduct a specified sum from their wages, they can be circumvented if the defaulter moves jobs or fails to tell the maintenance pursuer, the name of their employer. Revenue cannot deduct the payment at source, unlike, for example, property tax. Furthermore, this option is unavailable where the maintenance defaulter is self-employed.
- When a court makes an attachment of earnings order it must specify the normal deduction rate and the protected earnings rate. The normal deduction rate is the amount to be deducted and paid over to the maintenance pursuer. The protected earnings rate is the rate beneath which the defaulter's income will not fall and is designed to match the reasonable needs and expenses of the debtor. One anomaly occurs as follows: the defaulter makes 400 a week, the maintenance order is for 150 a week, the protected earnings rate is for 300 a week, therefore they only have to pay 100 a week in maintenance but every week they are still incurring maintenance arrears of 50.
- If the maintenance defaulter changes jobs, the maintenance pursuer must return to court for a new attachment order. However, if they do not know the new employer then they cannot obtain the order. We have been told that some resort to private investigators to find out this information attracting additional expense.
- If there is non-compliance with a maintenance order, the maintenance pursuer must issue enforcement proceedings, and if the maintenance defaulter fails to attend court a bench warrant is issued. However, bench warrants are seldom executed in family law cases as there is no prosecuting Garda, but the courts will not issue any further proceedings until the bench warrant is executed. Bench warrants could take several weeks before they are executed (the defaulter found and brought to court by the Gardaí). However, when they do appear in court, it is just to execute the bench warrant, and not to deal with

the maintenance arrears. The judge will ask them why they did not previously attend court and then ask them to appear on a new date. Only then is the maintenance pursuer notified with a new court date, and on that date, if the defaulter does not appear, and the cycle starts again.

- A maintenance defaulter who consistently does not pay court ordered maintenance can be jailed. While jail is not an appropriate option for dealing with maintenance defaulters, there are currently limited legal remedies available for dealing with those that do not pay. It is also only used as a method of last resort. In 2015, it was reported that only one parent was jailed for not paying child maintenance; in the same period, almost 10,000 people were jailed for not paying a court fine. When the maintenance defaulter emerges from jail, unlike the non-payment of a fine, they are still liable for the maintenance.
- The burden of proof of non-payment is on the person seeking payment of maintenance arrears.
- There are no statutory guidelines concerning maintenance amounts. Maintenance arrangements made outside of the court are not subject to any limit while those made inside the court are subject to judicial discretion within certain parameters (for example, each court has proscribed limits⁴). The amounts ordered depend on the judge assigned to the case. The judge also relies on the statement of means to assist in calculating the maintenance sum. Therefore it is very hard to account for 'unforeseen events'.

⁴ The maximum that the District Court can order for maintenance of a child is €150 per week from either parent. The maximum that the District Court can order a spouse/civil partner to pay for the other spouse is €500 per week. A parent can seek a contribution from the other parent towards expenses related to the birth of a child, or funeral expenses if a dependent child dies. The maximum that can be awarded in the District Court in each of these circumstances is €2,000. A parent can also seek special one-off lump sum payments (for example, at Christmas time or at the start of the school year) from the District Court up to a maximum of €6,350. If greater amounts are sought then it is necessary to apply to the Circuit Court or the High Court. (See courts.ie last accessed on 18 September 2017)

- A number of marriages and partnerships break down as a result of domestic violence. Forcing parents back into an adversarial context to ensure maintenance is inappropriate. Furthermore, this provides additional scope for further abuse where the abuser can use the court process as a way to delay maintenance payments and utilise processing time to liquidate assets to cause financial hardship. In a martial breakdown a spouse can make an application to the court to prevent the liquidation of assets, but you cannot do so if you were never married.
- Court is an alienating and intimidating place for many people. It is especially so for those that are in financially precarious circumstances. Lack of understanding about court procedures can impact a person's ability to successfully communicate their particular set of circumstances. For example, if appearing before a judge and you are not totally prepared (detailed proof of lack of payment, the amount owed etc..), the judge may tell you to come back later while you sort out your figures – therefore you lose your place in the line and you could be waiting hours to be heard again. Dolphin House has a small waiting room, and while there are Gardaí present who provide assistance to those seeking to obtain orders, that is not their role.
- The Department of Social Protection assesses court ordered maintenance as means regardless of whether it is paid or not.⁵ The Department does so even when it is proven that the maintenance was not paid. The Department also puts pressure on lone parents to seek maintenance while there is no reciprocal measure for those obliged to pay it.

4. What would be the potential benefits of reform of this area?

- Reduce conflict between parents and between spouses and ex-spouses about future continuing financial obligations while also encouraging shared parental financial responsibility.

⁵ 100% of maintenance is deducted from rent allowance; 50% from JST/JSA; 60% from Family Income Supplement.

- Ensure maintenance is paid in full and on time creating certainty and ultimately financial security.
- Ensure 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.
- Parents who pay child maintenance are more likely to have frequent contact with their children than those who do not pay child maintenance (Amato and Gilbreth, 1999; Wikeley et al, 2008).
- Research (Hakovirta, 2011) 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).
- Given the clear pressure that the Legal Aid Board is under, devising a new method to deal with maintenance orders would provide significant relief to the Board.

5. Any other general comments.

The debate around alleviating poverty in lone parent families has centred on either social welfare benefits or paid employment, with child maintenance payments largely been ignored as a possible solution in Ireland. (SPARK) However, in June 2017, the Joint Committee on Social Protection published a Report on the Position of Lone Parents in Ireland which called for a statutory child maintenance system and a review on how child maintenance is assessed by the Department of Social Protection. In March of the same year, the UN Committee on the Elimination of All Forms of Discrimination Against Women called on the State to consider establishing a statutory maintenance authority and prescribing amounts for child maintenance in order to reduce the burden of women to litigate for child maintenance orders.