

National One Parent Family Alliance

CHILDREN'S
RIGHTS
ALLIANCE

SVP
Society of St. Vincent de Paul

onefamily

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

nwc
National Women's Council

Barnardos

flac
promoting access to justice

FOCUS
Ireland

treoir
information for unmarried parents

Position on Child Maintenance

National One Parent Family Alliance

March 2021

Members of the National One Parent Family Alliance:

Barnardos

Children's Rights Alliance

FLAC (Free Legal Advice Centres)

Focus Ireland

National Women's Council

One Family

Society of St Vincent de Paul

SPARK (Single Parents Acting for the Rights of our Kids)

Treoir

About the National One Parent Family Alliance

The National One Parent Family Alliance (NOPFA) was established in 2020 and comprises nine national organizations who are concerned about issues that cause poverty in one-parent families - Barnardos, Children's Rights Alliance, FLAC, Focus Ireland, National Women's Council, One Family, Society of St. Vincent de Paul, SPARK, and Treoir.

In line with changing family forms across Europe, 1 in 4 families with children in Ireland is a one parent family. While public policy is often blind to their needs, NOPFA calls for the needs of one parent families to be explicitly acknowledged and addressed in policy that affects their lives.

Background

One parent families, 86% of whom are headed by women, are among those most at risk of poverty in Ireland; 34% of one parent families are at risk of poverty compared to 14% of the overall population and they are more likely to live in consistent poverty (19%) or to experience deprivation (43%).¹ 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.²

Therefore, the effects of missing or late child maintenance payments can be very damaging. A survey by One Family in 2016 on Shared Parenting found that the most common financial problem identified by respondents was non-existent or insufficient child maintenance payments. In Ireland, a comparatively low level of maintenance is paid to lone parents by their former partners; in 2016 only 35% of social welfare customers were in receipt of child maintenance payments.³

What's the problem?

Unlike other jurisdictions, child maintenance is seen largely as a personal, parental obligation and therefore a matter of private Family Law.⁴ There is no state agency with responsibility for child maintenance payments and pursuit of maintenance is left up to the claiming parent on behalf of their child. Where a maintenance agreement cannot be reached by parents privately, they are forced to seek maintenance through an adversarial, costly and time-consuming court system.

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.

From our work with families, we are aware that there is a significant rate of non-compliance with child maintenance orders⁵, significant delays in the courts system and a high cost involved in engaging a litigious route.

Issues with this system include⁶:

- Courts cannot issue summons for maintenance unless the custodial parent can provide an address for the non-custodial parent – this is not always known.

¹CSO (2020). SILC 2018.

²UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 59.

³ Joint Committee on Social Protection (2017). Report on the Position of Lone Parents in Ireland.

⁴https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

⁵SPARK Survey (October 2017) showed 66% families either no maintenance or maintenance in arrears.

⁶NWCI (2017). Submission to the LRC on child maintenance. https://www.nwci.ie/images/uploads/2017_NWCI_Submission_to_LRC.pdf

- There are no statutory guidelines on the level that maintenance payments should be set; 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 payer is a PAYE worker. It is linked to an employer and is invalid if the payer 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 interaction of maintenance with the social welfare system creates additional barriers to lone parents in receipt of social welfare payments:

- In the shift from One-Parent Family Payment (OFP) to Jobseekers Transitional Payment (JST), the Department of Social Protection (DSP) expressly ends the child maintenance payment requirement of the other parent. This confuses often fragile maintenance agreements and can disrupt established maintenance payment arrangements.
- DSP assesses child maintenance as means in relation to a range of different supports, including HAP, Rent Supplement, the Medical Card and subsidies under the National Childcare Scheme. While there are disregards in place for some social welfare payments, these are not sufficient to prevent poverty. Maintenance is also subject to multiple means tests so the recipient can end up losing income.
- Child maintenance is assessed as means regardless of whether it is paid or not. This can leave a parent below social welfare rates, if the liable parent does not pay. Failure to provide proof of “efforts to seek maintenance” can lead to payments being suspended, cancelled or not awarded.
- Many people have been forced to forgo court ordered mortgage payments as it impacts on their eligibility for social welfare payments, leading to arrears problems and housing insecurity.

What’s the solution?

The UN Convention on the Rights of the Child provides that every child has the right to a standard of living that is adequate for their physical, mental spiritual, moral and social development.⁷ Parents and guardians have the primary responsibility to provide for the child’s material needs but the State is also responsible for assisting parents and guardians to alleviate poverty where necessary.⁸ In particular, Article 27 of the Convention is clear that States are required to ‘take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad’.⁹

⁷ UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27.

⁸ UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27.

⁹ UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27(4).

Ireland's child maintenance practices are not systematised or strategic and they require reform to meet the needs of one parent families, with a focus on the reduction of child poverty. 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 state should take responsibility for the impartial assessment of child maintenance payments and the appropriate enforcement to improve outcomes for children in one parent families.¹⁰

The Joint Committee on Social Protection¹¹ has called for the establishment of a statutory maintenance system and a review on how child maintenance is assessed by DSP. 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 has agreed to examine its approach to child maintenance on foot of these recommendations.

NOPFA recommends:

- A Statutory Maintenance Agency or equivalent mechanism to take maintenance out of the private sphere and ensure the State is responsible for assessment and enforcement of child maintenance.
- In the case where a liable parent does not pay or does not have sufficient income to pay the required maintenance payment, the State should take on the liability and ensure child maintenance is paid. Responsibility for recouping payments from the liable parent should lie with the State, where applicable.
- The Family Justice Oversight Group should review the issue of child maintenance assessment and enforcement as part of the reform of Family Law in Ireland.
- Child Maintenance should be a non-means-tested, non-taxable income for children, as with Child Benefit, to support one parent families out of poverty.
- Maintenance and mortgage payments should be separated in assessments of maintenance along with a complete reassessment of mortgage payments being calculated as means.
- The review group should commission research to examine what works internationally in terms of positive reductions in child poverty and family conflict in order to understand best what may work in Ireland.

¹⁰ One Family. Child maintenance position paper. <https://onefamily.ie/wp-content/uploads/2019/08/Child-Maintenance-Position-Paper-7.19-2.pdf>

¹¹ Joint Committee on Social Protection (2017). Report on the Position of Lone Parents in Ireland.

How would this benefit one parent families?

Such an approach to child maintenance 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 maintenance.¹²
- 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).¹³
- 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.
- Additionally, 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.

Ends

¹²Amato, 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

¹³Hakovirta, (2011). *Child maintenance and child poverty: a comparative analysis*”, *Journal of Poverty and Social Justice*, Volume 19, Number 3, pp. 249-262(14)