

March 2021

# Submission to the Child Maintenance Review Group

## Introduction

Founded in 1973, the National Women's Council (NWC) is the leading national women's membership organisation in Ireland. We represent and derive our mandate from our membership, which includes over 190 groups and organisations from a diversity of backgrounds, sectors and locations across Ireland. Our mission is to lead and to be a catalyst for change in the achievement of equality for women. Our vision is of an Ireland and of a world where women can achieve their full potential and there is full equality for women.

We welcome the invitation to make a submission on the issues raised in the consultation document. In 2017, NWC outlined the challenges faced by women in securing child maintenance to the Law Reform Commission.<sup>1</sup> As Chair of the National Observatory on Violence Against Women, NWC has advocated on the challenges experienced by survivors of violence in the existing child maintenance process. NWC is also a member of the National One Parent Family Alliance, a coalition of national organisations advocating for the rights of lone parents, including in the area of income poverty which is directly related to this issue.

Maintenance is a gender equality issue, in Ireland, 86% of lone parents are women. The processes around how payment is determined and the impact of non-payment affect women disproportionately. As a consequence, child maintenance regulations and functioning should be considered as relevant not only to family life in general and the well-being of children, but also specifically to gender equality.

Unlike other jurisdictions, child maintenance in Ireland 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 pursuit of maintenance is left up to the claiming parent. Where an 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.

There is a significant rate of non-compliance with child maintenance orders<sup>2</sup>, significant delays in the courts system and a high cost involved in engaging a litigious route. The interaction of maintenance with the social welfare system creates additional barriers to lone parents in receipt of social welfare payments.

The difficulties posed by the non-payment of child maintenance have been widely documented. In 2017, the Joint Committee on Social Protection called for the establishment of a child maintenance system and a review on how child maintenance is assessed by the Department of Social Protection<sup>3</sup>. This echoes the recommendations of the UN Committee on the Elimination of All Form of Discrimination Against Women (CEDAW), which has asked the State to review the need for a child maintenance agency and to prescribe amounts for child maintenance. A particular issue identified was the burden of women to litigate for child maintenance orders.

In line with changing family forms across Europe, 1 in 4 families with children in Ireland is a one parent family. Without a comprehensive policy response to address the problems with the current maintenance system, women will continue to be disadvantaged. The decision by Government to examine the current child

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<sup>1</sup> Submission to the Law Reform Commission on areas requiring law reform: Examine legal infrastructures designed to secure maintenance payments'. Available at [https://www.nwci.ie/images/uploads/2017\\_NWCI\\_Submission\\_to\\_LRC.pdf](https://www.nwci.ie/images/uploads/2017_NWCI_Submission_to_LRC.pdf)

<sup>2</sup> SPARK Survey (October 2017) showed 66% families either no maintenance or maintenance in arrears.

<sup>3</sup> Joint Committee on Social Protection Report on the Position of Lone Parents in Ireland Op. Cit. (page 41)

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_social\\_protection/reports/2017/2017-06-15\\_report-on-the-position-of-lone-parents-in-ireland\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_social_protection/reports/2017/2017-06-15_report-on-the-position-of-lone-parents-in-ireland_en.pdf)

maintenance system on foot of these recommendations is an opportunity to mitigate the worst impacts of the current system and design a system that is truly fit for purpose.

## Issues with the current system

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<sup>4</sup>. In a 2016 survey of the main difficulties facing lone parents, 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<sup>5</sup>. If expected maintenance payments are not paid, or not paid on time, or if a second parent is unwilling to submit to an agreed maintenance schedule, then the custodial parent is required to seek payment of maintenance through adversarial and costly legal proceedings.

There are currently no statutory guidelines in place concerning maintenance amounts. Privately agreed maintenance arrangements are at the discretion of the parties. Where the custodial parent seeks a maintenance order, the statement of means submitted by the parties is the only reference material available to the judge to calculate the maintenance sum<sup>6</sup>. Such an ad hoc approach leads to inconsistent outcomes for court users and potentially fails to take account of unforeseen events and unexpected expenses.

Issues with the current system include<sup>7</sup>:

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

## Lone parents & poverty

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<sup>4</sup> Joint Committee on Social Protection published a Report on the Position of Lone Parents in Ireland (2017)

<sup>5</sup> One Family - National Shared Parenting Survey 2016, available at <https://onefamily.ie/policy-irelands-first-national-shared-parenting-survey-results-recommendations/>

<sup>6</sup> Regard must be also had to the jurisdictional limits of the court in which maintenance order is sought. The maximum amount 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 relate 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 €2000. 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 €6350. If greater amounts are sought than it is necessary to apply to the Circuit Court or the High Court, available at [www.courts.ie](http://www.courts.ie)

<sup>7</sup>NWCI (2017). Submission to the LRC on child maintenance. [https://www.nwci.ie/images/uploads/2017\\_NWCI\\_Submission\\_to\\_LRC.pdf](https://www.nwci.ie/images/uploads/2017_NWCI_Submission_to_LRC.pdf)

The effects of missing or late maintenance payments can be very damaging. The risk of poverty is very high amongst one parent families at a rate of 33.5%., lone parents are approximately 2.5 times more likely to experience poverty than two parent households. In comparison with the national average, deprivation rates remain high for lone parents at 42.7% in 2018.<sup>8</sup> In 2018, the consistent poverty rate was 5.6%. In comparison, the consistent poverty rate for one parent families was 19.2% , three times the national average<sup>9</sup>. Two-thirds of families in emergency accommodation in Ireland are headed by lone mothers who become homeless after losing privately rented housing<sup>10</sup>.

The payment of child maintenance by the non-custodial parent can mean the difference between financial security and the stress of not knowing how to make it to the end of the month. International experience indicates that where child maintenance is a reliable source of income, there was a 30 % reduction in the poverty gap<sup>11</sup>. The unfortunate reality for a significant proportion of lone parents is that securing regular maintenance payments is an ongoing struggle that is impeded by the administration and legal hurdles that currently govern the process.

## Treatment of Child Maintenance Payments in the Department of Social Protection

### Child maintenance & means assessment

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 DSP expressly ends the child maintenance payment required from the other parent. This can undermine often fragile maintenance agreements and can disrupt established maintenance payment arrangements.

Under the current system, the Department of Social Protection (DSP) assesses court-ordered 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 and this layering of means-testing can lead to a parent having even less income.

Moreover, the Department of Social Protection assesses court ordered maintenance as means regardless of whether it is paid or not. This can leave a parent below welfare rates, if the liable relative does not pay. The onus to seek maintenance is on the lone parent, while there is no reciprocal measure for those obliged to pay it. Failure to provide proof of “efforts to seek maintenance” can lead to payment being suspended, cancelled or not awarded.

Many people are forced to forgo court ordered mortgage payments as it impacts on their eligibility for social welfare payments, leading to arrears problems and housing insecurity.

While the DSP no longer requires survivors of domestic violence to contact their abuser or provide evidence of efforts to seek maintenance from them in order to assess social welfare payment, the issue remains that

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<sup>8</sup> CSO (2020). SILC 2018.

<sup>9</sup> CSO(2020). Survey of Income and Living Conditions (SILC) Data 2018. Available at <https://www.cso.ie/en/releasesandpublications/ep/p-silc/surveyonincomeandlivingconditionssilc2018/>

<sup>10</sup> 2017 Women’s Homelessness In Europe – Ireland <http://womenshomelessness.org/resources/statistics/ireland/>

<sup>11</sup> ‘Family Policy and Shared Parenting in Nordic Countries’, available at <https://journals.sagepub.com/doi/10.1177/138826271101300203>

survivors of domestic violence lose out on maintenance payments due to safety risks posed by the courts process.

## Minimum Essential Standard of Living (MESL)

As the data on poverty clearly shows, for many lone parents, social welfare payments fall below the threshold that is needed to ensure they have an adequate standard of living.

There is an emerging consensus internationally on the need for reference budgets that meet a Minimum Essential Standard of Living (MESL)<sup>12</sup> and the MESL has also been established in Irish research and policy as a credible benchmark for adequacy. The standard is calculated by identifying the goods and services required by different household types in order to meet their minimum needs.

In the interaction between child maintenance and social welfare payments, no lone parent's income should fall below what is required to sustain an adequate standard of living.

### Recommendations

- 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 re-assessment of mortgage payments being calculated as means.

## Violence Against Women

The obligation on the applicant for One-Parent Family Payment (OPF) or Jobseekers Transitional payment (JST) to make "efforts to seek maintenance" places the applicant in the undesirable position of pursuing the non-custodial parent for and effectively usurping the role of the state to enforce a legal obligation<sup>13</sup>. Failure to provide proof of 'efforts to seek maintenance' can lead to payments being suspended, cancelled or not awarded.

The offence of coercive control was introduced by the Domestic Violence Act 2018<sup>14</sup>. Coercive control is emotional and psychological abuse in intimate relationships that causes fear of violence or distress that has a substantial adverse impact on a person's day-to-day life. Financial abuse, for example, whereby a liable relative uses access to money to exert psychological pressure on the custodial parent, is a recognised form of coercive control and domestic violence.

Where a marriage or partnerships has ended as a result of domestic violence, forcing parents back into an adversarial context to ensure maintenance poses the risk of re-traumatising the survivor. While in cases of domestic violence, or where there is such a risk from a former partner, no effort or attempt to seek maintenance is expected to be made<sup>15</sup>, the onus is on the survivor to assert this. The survivor may be reluctant to reveal the existence or extent of abuse, or be fearful of retribution for revealing that abuse occurred. In the case of coercive control, the survivor may not recognise the nature or extent of the abuse. Drawn out and repeat court appearances can be weaponized by the abuser to torment the survivor through non-appearances and delays or to use processing time to liquidate available assets to cause financial hardship<sup>16</sup>.

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<sup>12</sup> Further information on reference budgets at an EU level can be found on [www.referencebudgets.eu](http://www.referencebudgets.eu)

<sup>13</sup> The liability to maintain a family is set out at S345 of the Social Welfare (Consolidation) Act 2005

<sup>14</sup> Domestic Violence Act 2018, S.39, 'Offence of Coercive Control'

<http://www.irishstatutebook.ie/eli/2018/act/6/section/39/enacted/en/html#>

<sup>15</sup> 'Operational Guidelines: Liability to Maintain a Family', available at <https://www.gov.ie/en/publication/7e1920-operational-guidelines-liability-to-maintain-a-family/>. This guidance does not provide any definition of domestic violence.

<sup>16</sup> The option to seek a court order preventing the liquidation of assets is only available to ex-spouses.

Cosc<sup>17</sup> recognises that the withholding of child maintenance is a form of financial abuse that is located on the continuum of coercive control. Moreover, in cases of coercive control and domestic violence, efforts by the custodial parent to seek child maintenance can exacerbate hostilities between the parties. While the Department of Social Protection accepts verbal assertion of these constraints in principle there is no agreed definition of domestic violence for these purposes. Training for Intreo staff should be delivered as a priority in order to properly deal with these issues.

## Recovering maintenance through court proceedings

When faced with a non-payment of agreed maintenance, the custodial parent is required to make an application to the courts<sup>18</sup>. This is a costly and lengthy process that ignores the pressing-reality of poverty. The courtroom is an alienating and intimidating place for many people. It is especially so for those that are in financially precarious circumstances. A lack of understanding of court procedures can impact a person's ability to successfully prepare for their appearance in court and to communicate their particular set of circumstances further distressing family law users. For those making an application to the court, there are no on-site support services to assist them.

There are no domestic guidelines on how many maintenance payments must be missed before the custodial parent can seek an attachment of earnings order<sup>19</sup>. Without specific guidance the making of an order is left to judicial discretion<sup>20</sup>, which may err of the side of giving the maintenance defaulter a 'last chance' to voluntarily comply with the liability to maintain the family. As these proceedings drag on, the defaulter may be many months in arrears before an attachment of earnings order is eventually applied.

Where there is non-compliance with a maintenance order, it is left to the custodial parent to chase it through the courts system. Should the maintenance defaulter not appear in court a bench warrant is issued<sup>21</sup>. Bench warrants are seldom executed in family law cases as there is no prosecuting Garda as in criminal proceedings; however, the courts will not issue any further proceedings until the bench warrant has been executed. At the next appearance in court, the judge will ask them to explain the previous non-appearance and then ask them to appear on a new date it is just to execute the bench warrant. The issue of maintenance is set aside until the next appearance and on that date if the defaulter does not appear, a new bench warrant is issued and so on and so forth.

An application to the courts does not guarantee that maintenance will be paid; the applicant can be faced with a circular scenario. To obtain an 'attachment of earnings' order the maintenance seeker must provide evidence that a maintenance order has not been complied with, even where a lapse in maintenance payment is the sole reason for making an application to the court. This means that even when a previous

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<sup>17</sup> Cosc – The National Office for the Prevention of Domestic, Sexual and Gender-based Violence endeavours to ensure the delivery of a co-ordinated 'whole of Government' response to domestic, sexual and gender-based violence. More information is available at <http://www.justice.ie/en/JELR/Pages/Cosc>

<sup>18</sup> Department of Social Protection, 'Operational Guidelines: Liability to Maintain a Family' "The OFP claimant is under a general obligation to seek maintenance from the other parent/parents of her or his child(ren) and to demonstrate this. The 'efforts to seek maintenance' condition is regarded as being satisfied once appropriate attempts have been made to seek maintenance even if this does not result in a maintenance arrangement. This includes evidence of private maintenance arrangements, court proceedings or of a family mediation process." Available at, <https://www.gov.ie/en/publication/7e1920-operational-guidelines-liability-to-maintain-a-family/>

<sup>19</sup> An attachment of earnings order instructs an employer to divert money directly from their employee's wages to meet a financial obligation. 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.

<sup>20</sup> As cases are assigned to the judge who happens to be sitting that day, each return to court could see a different judge assigned to the case inevitably leading to inconsistencies in the types of orders made.

<sup>21</sup> Bench warrants are issued by judges when a suspect fails to turn up for a court date. They authorise a garda to arrest a person on sight and bring them before the court.

order has not been complied with, an attachment of earnings order cannot be obtained by the custodial parent at first instance.

The order can be easily circumvented if the defaulter moves jobs or fails to tell the custodial parent the name of their employer. If the maintenance defaulter changes jobs, the maintenance pursuer must seek a fresh order return and the cycle begins again. Furthermore, an attachment of earning order is not available if the liable relative is self-employed.

There are limited legal remedies for dealing with those who do not pay court-ordered maintenance. The ultimate sanction for a liable relative is jail, which is also only used as a method of last resort. In 2015, it was reported that only one parent was jailed for not paying a court fine.

### **Recommendations**

- Victims of domestic violence must never be required to make contact with the non-custodial parent at any stage in order to seek maintenance. Training should be prioritised for all staff on domestic violence and there should be a fast-track option for cases where domestic violence is a feature
- Introduce effective criminal sanctions when avoidance of maintenance payments amounts to a form of psychological violence in line with the provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic violence (CETS No.210, Istanbul Convention)
- Promote a ‘culture of paying’, by conducting information and awareness-raising activities on the harmful consequences of failed, partial or delayed payments on children and resident parents, also with a view to preventing debt accumulation

## **Possible establishment of a State Child Maintenance Agency**

The difficulties identified in securing child maintenance from the liable parent is not unique to Ireland. The gender differentiated impact of seeking personal and child maintenance for one-parent families has been documented globally and a range of policy responses have been adopted to mitigate the negative impacts of non-compliance with maintenance orders. These policies recognise that placing the burden of non-payment of maintenance entirely on the person seeking payment of arrears, as is the case in Ireland, is inefficient, exacerbates poverty and disproportionately affects women.

In an international study of the key characteristics of child support regimes<sup>22</sup>, Ireland was among the minority of countries that did not provide advance child support payments to guarantee that children receive a minimum allowance where ‘non-resident parents’ do not meet their financial obligations, and in turn authorities pursue absent parents to re-claim the relevant funds<sup>23</sup>. In Ireland, recourse to these supports is only possible once the judicial options, so called “efforts to seek maintenance”, have been exhausted.

NWC considers that a child maintenance system that allows for child maintenance payments to be made upon request of the custodial parent – with no precondition of engaging in legal proceedings – is the most effective way of protecting the rights of lone parents and their children. This approach would help to alleviate poverty, relieve the custodial parent of the burden of taking legal action while ensuring their security. The interest of the child is also most effectively protected by an early intervention of the State. Surrogate payment can then be recouped from the debtor<sup>24</sup>.

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<sup>22</sup> Broadly the types of child support systems that have emerged can be distinguished as agency-lead, court enforcement proceedings and a hybrid of the two. ‘Separated families and Child Support Policies in Times of Social Change: A Comparative Analysis’, Skinner, Hakovita 2020. Available at [https://link.springer.com/chapter/10.1007/978-3-030-54618-2\\_12](https://link.springer.com/chapter/10.1007/978-3-030-54618-2_12)

<sup>23</sup> OECD – PF1.5: Child Support, available at <https://www.oecd.org/els/family/41920285.pdf>

<sup>24</sup> Parliamentary Assembly of the Council of Europe, Doc. 14499 15 February 2018 ‘Gender equality and child maintenance’. Available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24279&lang=en>

Our recommendations set out principles for the operation of a child maintenance agency and the objectives that should be prioritised<sup>25</sup>.

### Recommendations

- Establish a child maintenance agency that takes maintenance out of the private sphere and ensure the State is responsible for assessment and enforcement of child maintenance
- Where a 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.
  - Effective substitute maintenance mechanisms should be based on advance payment by the State. Advance payment should be possible upon request and be granted within a reasonable time
  - Responsibility for recouping payments from the liable parent should lie with the State, where applicable
  - Ensure adequate and sustainable funding for substitute maintenance payment and adequate investment in the relevant infrastructures for case management
- The role of Revenue is integral to the success of a child maintenance agency. Ongoing consultations and engagement on the overlapping role of the entities and the capacity of Revenue to support the objectives of the child maintenance agency is key
- The review group should commission research to examine what works internationally in order to understand best what may work in Ireland.
- 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

### Conclusion

Irrespective of the model adopted, any proposed statutory child maintenance agency must ensure that it upholds the objective of reducing poverty levels for lone parents and their children and reducing the burden on lone parents to litigate for child maintenance orders by doing away with an adversarial approach. In addition, the State must meet its obligations to ensure that women involved in domestic violence are shielded from having to pursue their abuser for maintenance and that legal processes cannot be used to perpetuate further abuse of women.

The potential benefits to reform to the current child maintenance framework are multi-fold:

- Reducing conflict between parents and between spouses and ex-spouses about future continuing financial obligations while also encouraging shared financial responsibility
- Ensuring maintenance is paid in full and on time creating financial security and helping to alleviate poverty
- Streamlining the recovery process for those who have already obtained a maintenance order reduces costs, short-circuit delays and associated stress for court petitioners
- Improving relations and increasing contact between children and the non-custodial parent as parents who pay child maintenance are more likely to have frequent contact with their children as compared with those who do not pay child maintenance<sup>26</sup>
- Reducing pressure on an overstretched Legal Aid Board to provide services in maintenance proceedings

It is not acceptable that in a prosperous country with a well-established social protection system as we have in Ireland, lone parents, along with their children, continue to live in poverty and social exclusion.

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<sup>25</sup> ibid

<sup>26</sup> (Amato and Gilbreth, 1999; Wikeley et al, 2008)



