

## **1. About One Family**

One Family welcomes the opportunity to make a submission to the Law Reform Commission on possible areas of law to be considered for inclusion in the new Programme of Law Reform. We wish to address the issue of child maintenance, including its underpinning legal framework, and the impact of the current system on separated parents and their children.

One Family, founded in 1972 as Cherish, offers support, information and services to all people parenting alone, sharing parenting and separating as well as to those experiencing an unplanned pregnancy and to those working with families. One Family believes in an Ireland where every family is cherished equally, and enjoys the social, financial and legal equality to create their own positive future.

One Family believes that all children have a right to a happy family life so we help people parenting on their own and sharing parenting of their children to create strong families, often in difficult circumstances. In late 2016, we undertook Ireland's first national survey on people who share parenting of their children or who attempted to do so. We received over 1,000 responses to our online survey, including over 3,500 individual comments. We launched an analysis of this survey in January this year entitled *National Shared Parenting Survey- Results & Recommendations*<sup>1</sup>. Non-existent or insufficient maintenance payments was the most common financial problem discussed by respondents.

## **2. Legal Framework**

Child maintenance is 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 most of the time (the resident parent). In Ireland, under the Social Welfare Act, 2005, and the Statutes of Children Act, 1987, (and subsequent acts), there is a legal obligation placed on both parents of a child(ren), irrespective of their cohabiting, civil partnership or marital status, to financially support their child dependants up to varying ages of 18 to 23, depending on their participation in education and training. If parents separate, get divorced, cease cohabitation or have never cohabited; the non-resident parent must make financial contributions payable to resident parents by way of 'child maintenance'. The Family Law Act (Maintenance of Spouses and Children), 1976, governs maintenance orders issued in Ireland through the courts system. This legislative framework, however, is not supported by an effective mechanism which allows parents to access their entitlements to support from the other parent.

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<sup>1</sup> [https://onefamily.ie/wp-content/uploads/2017/01/One-Family\\_Shared-Parenting\\_Results-and-Recommendations\\_FINAL-REPORT\\_Online.pdf](https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf)

### **3. Accessing Child Maintenance**

Current mechanisms available to parents to seek maintenance orders, and their subsequent enforcement, rest with those who are seeking the payment. Parents can utilise the family law courts to legally seek and enforce these requests. Where a court ordered maintenance payment is granted, the parent who sought the order must resort to further court action through the Civil Law (Miscellaneous Provisions) Act, 2011, where non-payment of the order arises. Many parents find the court process daunting and overwhelming and require, often costly, legal advice in order to fully utilise the family courts system effectively. There is also inconsistency and a lack of transparency regarding how the courts decide how much maintenance should be paid by the non-resident parent.

We are aware of extremely long wait lists in some courts around Ireland which cause stress in families and increases the direct costs of separation and divorce. We know that long wait times to appear in courts and long wait times while in court causes hardship for families and parents. These wait times may be normal to those working within the courts system but they are not always adequately explained to court users to manage their expectations.

One Family are also aware that many parents have informal agreements regarding child maintenance, some of which are agreed in mediation and can then be made legally binding by the courts. Where agreement cannot be reached amicably between parents, which is often the case, the only remaining mechanism is to follow the court route which causes huge stress to families and indeed often increases conflict between both parties.

### **4. Child Maintenance – overview of key issues**

#### *4.1 Court Welfare & Child Maintenance Services*

There is a chasm in the provision of legal family law services in Ireland due to the lack of a Court Welfare or CAFCASS<sup>2</sup> type system, which exist in other jurisdictions such as the UK. The UK also provide a State funded Child Maintenance Service<sup>3</sup> to separated parents, which acts as an intermediary and alleviates the burden on resident parents seeking maintenance. This is the type of investment that is required to keep children safe, to decrease familial conflict and to strengthen family relationships post-separation in Ireland. Good practices by individual legal practitioners, judges and progressive legislation such as the Children & Family Relationships Act should be built on so that all family law work is child and client centred with accessible family support services that work positively with the courts. One Family are aware through our work with parents that payment of child maintenance and domestic violence are significant issues for separated families, requiring more comprehensive supports than are currently available.

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<sup>2</sup> CAFCASS: Children and Family Court Advisory and Support Service. <https://www.cafcass.gov.uk/>

<sup>3</sup> <https://www.gov.uk/child-maintenance>

## *4.2 Liable Relative Legislation*

The provisions relating to Liability to Maintain Family are contained in the Social Welfare (Consolidation) Act 2005, as amended<sup>4</sup>. In order to ensure that liable relatives financially support their dependents, the Maintenance Recovery Unit within the Department of Employment Affairs & Social Protection engages with liable relatives. The Maintenance Recovery Unit has the sole remit of recovering revenue from liable relatives in respect of children who are being supported through the provision of the One-Parent Family Payment. Maintenance recovered from liable relatives is absorbed by the Department of Social Protection; recompense is not extended to resident parents in receipt of State supports.

## *4.3 Access to State Payments*

As part of the rules set by the Department of Employment Affairs & Social Protection, resident parents seeking One-Parent Family Payment must present evidence of having sought a maintenance order from the liable relative through the family court system, if an agreement cannot be made amicably. Applications for One-Parent Family Payment must contain proof of maintenance payments if such agreements are in place, or their intention to actively seek maintenance. Failure to do so may lead to sanctions placed on payments, or even lead to their One-Parent Family Payment being suspended, cancelled or not awarded<sup>5</sup>. This places the onus on the resident parent to seek maintenance, and provide evidence of same, to access State supports which presents various challenges, particularly in cases of domestic violence.

Any financial losses experienced by lone parents where agreed maintenance payments are unpaid must be absorbed by the parent. The Department of Employment Affairs & Social Protection require parents to return to court as evidence that payment of maintenance has ceased before reassessing a parent's income. This applies to a number of State supports including One-Parent Family Payment, Family Income Supplement, Rent Supplement and Jobseeker's payments. In the interim period, parents continue to be means tested for unpaid child maintenance payments.

## *4.4 Financial Abuse*

Another common problem regarding child maintenance is that of financial control exerted over resident parents by non-resident parents. Some parents are reluctant to pursue maintenance for fear of abusive and harassing behaviour from non-resident parents. Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence<sup>6</sup>, has now named non-payment of child maintenance as a form of financial abuse, which raises serious concerns regarding the effectiveness of current mechanisms available to families to access their legal entitlement to maintenance for their children.

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<sup>4</sup> <http://www.welfare.ie/en/Pages/Liability-to-Maintain-Family.aspx>

<sup>5</sup> <http://www.welfare.ie/en/Pages/One-Parent-Family-Payment.aspx>

<sup>6</sup> <http://www.cosc.ie/>

#### 4.5 Child Poverty

Recent statistics from the Survey on Income and Living Conditions (SILC 2015) showed that children living in one-parent families had the highest consistent poverty rate at 26.2%, an increase from 25% in 2014. This is compared to a consistent poverty rate of 7.7% for two-parent households. This means that children living in these households are almost four times more likely to be experiencing consistent poverty on a daily basis. Consistent poverty means that children are living in households with incomes below €229 per week and experiencing deprivation such as not being able to replace worn shoes and going without heating through lack of money. Growing up in poverty has a devastating and lasting impact on children's lives.

In October 2015, a child poverty subgroup was established under the auspices of the Advisory Council under *Better Outcomes, Brighter Futures*. The subgroup comprises both statutory and non-governmental (NGO) representatives, including One Family, and was co-convened by the Department of Social Protection and the Children's Rights Alliance. The NGO representatives on this subgroup – Barnardos, the Children's Rights Alliance, the National Youth Council of Ireland, One Family and the Society of St. Vincent de Paul – developed a paper to inform the whole of Government approach to tackling the number of children in consistent poverty<sup>7</sup>.

One Family believes that a more robust child maintenance system which incorporated State intervention on behalf of parents could be an effective mechanism for the Government to honour commitments made in *Better Outcomes, Brighter Futures* to lift over 100,000 children out of poverty by 2020.

### 5. Recommendations

The payment of child maintenance is a perennial problem for parents, children and the courts, particularly where domestic violence and financial abuse is a factor. Research is required into the best systems internationally, where State intervention is often the most effective way to ensure consistent payment.

We recommend the following to be considered for inclusion in the new Programme of Law Reform:

- A Court Welfare Service and Child Maintenance Service, as referenced above, would provide the best legal mechanism for families to safely and consistently access child maintenance payments, while reducing the burden currently placed on resident parents.
- Ensure equal access to courts through the resourcing of the Legal Aid Board, the Family Mediation Service and ensure that families with low incomes can access family assessments and support services as required by courts.

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<sup>7</sup> <https://onefamily.ie/wp-content/uploads/2017/06/NGO-Submission-on-Actions-to-Achieve-Child-Poverty-Target.pdf>

- Ensure that long delays in relation to court dates, assessments and reports do not result in children and parents being denied their right to access financial support from the other parent
- Cooperation is critical by Government agencies requiring proof of earnings or maintenance, as the family law courts are not an appropriate avenue to obtain such proof.
- A clear and transparent system on how child maintenance payments are calculated by the courts is needed to ensure clarity, consistency and equity for families.