

**One Family Submission to the
Child Maintenance Review Group**

March 2021

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Summary Recommendations

- 1. Develop a cross Government framework guided by principles with children at its core.**
- 2. Commission comprehensive, independent, principles led research examining the design, operation and outcomes of child maintenance systems in other jurisdictions and provide a comparative analysis.**
- 3. Include child maintenance as a mechanism to reduce child poverty in the next iteration of the overarching national policy framework for children and young people and in all Government anti-poverty strategies and frameworks.**
- 4. Expedite the provision of, previously promised, evidence based information and training on domestic abuse to all frontline and decision making staff within the Department.**
- 5. Take immediate steps to resolve current technical and training issues with the DSP's approach to child maintenance.**
- 6. The State should adopt an honour approach to believing parents when they say they have made every effort to retrieve maintenance payments and accept responsibility for recouping payments from the liable parent.**
- 7. The Government and all its Departments should treat child maintenance as an independent and ring-fenced form of support directly for children and not an income for parents. As with Child Benefit, it should not be subject to taxation or means testing.**
- 8. Establish a Child Maintenance Agency or equivalent system, informed by robust evidence, guided by principles and independently managed.**

1. About One Family

One Family is Ireland's leading support organisation for people parenting alone, sharing parenting, separating, and those in crisis pregnancy. We were established in 1972 as Cherish and provide specialist parenting and family support services around Ireland. We train professionals on working with one-parent families and we promote policies that actively support diverse families. Children are at the centre of our work.

2. Introduction

One Family welcomes the opportunity to make a submission to the Child Maintenance Review group on the statutory processes and structures pertaining to child maintenance. One-in-five children in Ireland live in a one-parent family, while 25% of families in Ireland are headed by a lone parent. Child maintenance, therefore, is an issue affecting a significant cohort of adults and children and the provision of State policy, structures and supports should reflect this.

There are complex layered and multi-faceted issues with the current statutory approach to child maintenance in Ireland, causing untold stress and harm to children and families. A fundamental failing of the current approach in Ireland is that, unlike other jurisdictions, child maintenance is seen as a personal, parental obligation and therefore the domain of private family law. In this submission One Family will propose a fundamental reorientation of Ireland's child maintenance system towards a child-rights centred model.

Our submission outlines the legal and social policy contexts which underpin the State's current child maintenance system. We examine the everyday effects the administration of this system has on one-parent families and those who are negotiating parental separation, particularly for those children and parents who are vulnerable in various ways.¹We will respond to questions posed by the Review group:

- setting out issues with and offering solutions to the current treatment of child maintenance payments by the Department of Social Protection (DSP);
- outlining the impact of the liable relatives' provisions on families and how these can be ameliorated;
- recommending the establishment of a statutory Child Maintenance Agency which would provide positive resolutions to the personal and social difficulties arising in family transition.

¹The *Children and Family Relationships Act 2015* allows maintenance claims where a cohabitant is not the parent of the dependent child, but has been appointed guardian. This paper will use the term 'parent' to indicate both parent and guardian.

We will illustrate some of the issues the families we work with face because of the Government's approach to child maintenance through the provision of brief case studies throughout this document.

Case Study 1 - Mary's Story

Mary is in receipt of the One-Parent Family Payment (OFP) from DSP and she receives €80 per week in child maintenance for her two children from their father. She was evicted from her rental property and is living in one room with her children at her mother's house. As Mary has no official housing costs or rental agreement she does not qualify for the housing disregard and half of her maintenance payment is assessed as means. Mary receives €239 per week in OFP to live on as her payment is reduced by €40 as a result of the means test. Mary knows that her maintenance will also be means tested if she receives HAP. She can't find any property to rent within Housing Assistance Payment (HAP) limits. She does not want to be dependent upon her mother and is worried about her children's future.

3. A Cross-Departmental Approach

One Family recognises the scope of this consultation as determined by the terms of reference of the Child Maintenance Review Group; however, we believe any changes to how the State interacts with child maintenance must be made in the context of a broader restructuring of existing systems and reimagining of the role the State plays in reducing poverty and family conflict, upholding children's rights and promoting family wellbeing. In short, there is no existing 'system' of child maintenance in Ireland. What has evolved over time is a range of different Departments and State actors administering a variety of schemes, mechanisms and structures. On the whole, Departments are working in silos without having direct, or in some cases any, contact either in relation to the day-to-day administration of their function or at a policy planning level in relation to child maintenance.

In practice this means parents must move between various Departments and institutions in the best case causing often severe delays to a resolution of their case and in worse cases causing severe emotional hardship, worsening of relations within the family and putting children at risk of poverty. As we will demonstrate in this submission, the absence of an inter-departmental child maintenance framework, strategy or agency means a lack of consistency is inherent in the existing patchwork of systems. This approach costs the State and families, both financially and in terms of the time absorbed going back and forth between departments to resolve a case.

Whilst this review group has originated from the Department of Social Protection, we believe that broader responsibility for the establishment and implementation of a statutory system requires support from other departments. One Family recommends that the Department for Children, Equality, Disability, Integration and Youth (DCEDIY) and the Courts

Service be formally consulted and included in this review at a minimum. It would also be relevant for the Child Maintenance Review Group to liaise with the Family Justice Oversight Group, chaired by the Department of Justice, in relation to the reform of family law and the integral issue of child maintenance.

Recommendation 1: Develop a cross Government framework guided by principles with children at its core.

The Government should develop an inter-departmental child maintenance framework guided by principles which place children's rights at its centre and hold reduction in child poverty as its primary goal. As part of this broader framework Government should adopt the following guiding principles as the foundation to all child maintenance systems and structures it develops;

- **Protect Children's Rights:** the protection, vindication and promotion of children's rights as set out in the UN Convention on the Rights of the Child. Children's voices must be heard in all decisions which affect them.
- **Reduce Child Poverty:** all policies and procedures in relation to child maintenance should have the primary purpose of reducing the rate and risk of child poverty.
- **Reduce Familial Conflict:** avoid exacerbating conflict between parents and recognise the role objective child maintenance supports can have in reducing conflict and promoting shared parenting.
- **Prevent financial abuse and all other forms of domestic violence:** child maintenance should never cause or increase the risk of abuse occurring. Specific operational procedures, policies and training should directly flow from this principle. Treat non-payment of child maintenance as financial abuse as defined by COSC.
- **Efficient:** the DSP should be efficient in all its endeavours with parent claimants. This includes preventing multi-layered means testing and requiring claimant parents to embark on lengthy court proceedings to prove they have sought maintenance payments.
- **Holistic:** there should be a 'whole-family' approach where parents are viewed as more than individual claimants and the welfare of their family and children is paramount.
- **Inter-Departmental cooperation:** each individual interaction with parents in the child maintenance system should be seen as part of a broader engagement across multiple agencies and Departments. The onus should rest on the State parties to take into account how engagement with other statutory bodies can impact a parent's claim, work collaboratively with other agencies and share information in a timely fashion where appropriate.

4. Research and Data on Child Maintenance

One-parent families are indicative of rapidly changing family forms throughout Europe. As such, they offer direct insight into the emergent needs and requirements of parenting itself, especially in the context of a post-pandemic world. A contemporary, evidence based, child-centred approach to the issue of child maintenance is urgently required. There are multiple examples of child maintenance systems in operation in other jurisdictions which Ireland could emulate – all with their positive outcomes and challenges; however, policy making will be hindered by the lack of evidence available.

4.1. International Evidence

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 across the EU. 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 fully, 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.²

Seminal research carried out in 2011 by Hakovirta³, 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.”*⁴The 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.”*⁵

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 and children associated with different approaches in different countries. There are particular examples from abroad of critiques of individual systems. For example, in Scotland where one study found 78% of respondents believed the Scottish Child Maintenance Service was

² EU Directorate General for Internal Policies: ‘Child maintenance systems in EU Member States from a gender perspective’ (2014, p 6ff) [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/474407/IPOL-FEMM_NT\(2014\)474407_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/474407/IPOL-FEMM_NT(2014)474407_EN.pdf)

³Hakovirta, M., ‘Child maintenance and child poverty: A comparative analysis’ Op. Cit. (2011, p249)

⁴ EU Directorate General for Internal Policies: ‘Child maintenance systems in EU Member States from a gender perspective’ Op. Cit. (2014, p 16ff)

⁵Hakovirta, M., Op Cit (2011 p259ff).

performing poorly.⁶One Family is aware of emerging research, as yet unpublished study, which found the Australian government's child maintenance policy perpetuated and entrenched poverty in one-parent families. Such studies demonstrate the need for robust research if Ireland is to successfully adopt or adapt a model from another country.

4.2. Evidence from Ireland

There have been no less than twelve significant independent and Government commissioned research reports published in relation to one-parent families since 2016 alone. All indicate that the poorer financial outcomes experienced by one-parent families urgently need to be addressed.⁷However, in contrast there is a dearth of research and data into how child maintenance operates in Ireland. Below is an overview of the few surveys and reports that give an insight into the experience of parents navigating this complex personal and policy issue.

In 2016, One Family undertook Ireland's first *National Shared Parenting Survey*.⁸ 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.⁹ Another survey carried out by One Family specifically on Child Maintenance in 2019 found 42% (n=415) of primary care givers received a financial contribution from their child/children's other parent. Of these, a quarter (n=143) said child maintenance was not regularly paid. The majority (58%, n= 328) reached an agreed child maintenance arrangement via court order. Furthermore, our survey found just 9% (n=50) of respondents' child maintenance agreements were based on the child's needs.¹⁰ This led to the development of our *Child Maintenance Position Paper* where we called for the establishment of a statutory Child Maintenance Agency as part of family law reform.¹¹

In March 2017, as part of the Irish periodic country-reporting structures, the UN *Convention on the Eradication of all forms of Discrimination Against Women* (CEDAW) observed:

⁶One-parent Families Scotland. (2016) *Submission to the UK Work and Pensions Committee: Inquiry into the Child Maintenance Service*.

⁷ One Family Pre-Budget 2020 Submission: <https://onefamily.ie/wp-content/uploads/2019/07/Budget-2020-One-Family-Pre-Budget-Submission-2020-1.pdf>

⁸ One Family Ireland: 'Ireland's First National Shared Parenting Survey'(2017, p9ff) https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

⁹ Joint Committee on Social Protection *Report on the Position of Lone-parents in Ireland* found that only 35% of parents in receipt of OPFP received child maintenance: (2016, p.27.) <https://webarchive.oireachtas.ie/parliament/media/committees/socialprotection/reports/joint-committee-on-social-protection-report-on-the-position-of-lone-parents-in-ireland-june-2017.pdf>

¹⁰One 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/>

¹¹ One Family Child Maintenance Position Paper, 2019. <https://onefamily.ie/wp-content/uploads/2019/10/Child-Maintenance-Position-Paper-7-19.pdf>

“(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”.¹²

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*”.¹³

The Courts Service Annual Review 2019¹⁴ provides some statistics on applications to District Court for maintenance orders where they have had 8,000-9,000 applications in 2018 and 2019. This data includes orders for variation and arrears and it has not been possible to acquire disaggregated data but our understanding is that there are significant levels of return to court for unpaid arrears.

Recommendation 2: Commission comprehensive, independent, principles-led research examining the design, operation and outcomes of child maintenance systems in other jurisdictions and provide a comparative analysis.

One Family recommends the Child Maintenance Review Group commission independent research before the development of a new system in Ireland. This research should be carried out by an independent research body and examine the various practices and structures in operation in other jurisdictions. This research should analyse not only the objective strengths and weaknesses of these systems, but also assess their appropriateness in an Irish context paying particular attention to areas which may lead to worsening of outcomes for children and families or other unintended consequences if applied here. The research should rely on the guiding principles proposed in section 3 above to inform its approach. It is imperative Ireland does not simply ‘cut and paste’ a model from abroad without carrying out a thorough independent review in advance.

¹² 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>

¹³Joint Committee on Social Protection *Report on the Position of Lone-parents in Ireland*. Op.Cit. (p. 41)

¹⁴<https://www.courts.ie/acc/alfresco/9bd89c8a-3187-44c3-a2e9-ff0855e69cb5/CourtsServiceAnnualReport2019.pdf/pdf#view=fitH> page 62

Case Study 2 - Sarah's Story

Sarah was receiving OFP until her youngest child reached 7 years old and she was then required to move to a Job Seeker's Transition Allowance (JST) payment. While receiving OFP, the father of Sarah's child had been pursued by the Department as a liable relative and he had been required to pay child maintenance to DSP of €75 per week. Sarah and her child did not benefit from this payment, despite her struggling financially on just €241 per week. When she transitioned to JST, the Department wrote a letter to her child's father informing him that he no longer needed to pay child maintenance to them. He has told Sarah that he won't continue the payment to her as he has a letter from the Government telling him that he doesn't have to pay maintenance.

5. About Child Maintenance

Child maintenance is traditionally 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 most of the time"*.¹⁵ Child maintenance negotiations can provide a starting point for wider agreements on shared parenting.¹⁶ A UK report into the enforcement of child maintenance payments, and parental behaviours associated with it, found that affordability and the duration and quality of parental relationships were core drivers. In particular, it noted that the quality of the relationship between parents was crucial in determining the success of child maintenance arrangements.¹⁷

5.1. Child Maintenance and Children's Rights

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' in Ireland and in particular referred to single-parent households.¹⁸ 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.¹⁹ 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.²⁰ In particular, Article 27 of the Convention is clear that States are required to 'take all

¹⁵Hakovirta, M., 'Child maintenance and child poverty: A comparative analysis' (2011, p249)https://www.researchgate.net/publication/233665642_Child_maintenance_and_child_poverty_A_comparative_analysis

¹⁶ Henry, P.A., 'Child Maintenance, Father Child Relationships and Family Wellbeing' (2015) <https://doi.org/10.5296/iss.v3i2.7693>

¹⁷ Andrews, S., et al (2011) *Promotion of Child Maintenance: Research on Instigating Behaviour Change*. <https://webarchive.nationalarchives.gov.uk/20120716162148/http://www.childmaintenance.org/en/pdf/research/Main-Report-Vol-I.pdf>

¹⁸UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 59.

¹⁹ UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27.

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

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'.²¹

When focused on the rights and needs of children child maintenance can contribute to the children's development and well-being by supporting their relationships with their parents. When done well, it can de-personalise conflicting parental negotiations by providing third-party support at all stages of the maintenance process.²² Parents who pay child maintenance are more likely to have frequent contact with their children than those who do not pay child maintenance.²³ This dynamic creates better relationships for children with both parents, increasing their overall well-being.²⁴ In the context of increasing focus on the importance of child-centred parenting arrangements as contained in the Government's *First 5 Strategy for Babies, Young Children and their Families*, and the realities of changing family forms internationally, child maintenance negotiations are no longer reducible to 'financial contribution' alone.²⁵

Case Study 3 - John's Story

John receives €120 per week in child maintenance for his three children and is in receipt of OFP. He lives in Dublin and has rent of €2,100 per month. He qualifies for the OFP housing disregard but it is only a fraction of his actual housing costs. When the housing disregard is deducted, his means from child maintenance is assessed as being €12.50 per week and this amount is deducted from his OFP. John also qualifies for Rent Supplement but as there is no housing disregard allowed for this payment, the first €95 per week of his child maintenance payment is assessed in full and deducted from his Rent Supplement payment. Overall, of the €120 per week John receives in child maintenance for his children, a total of €107.50 is deducted from his payments by DSP. As Rent Supplement limits do not meet the cost of his rent, John has to top up his rent each month and he is struggling to keep his family's head above water.

5.2. Child Maintenance and Child Poverty

When done well, effective management of child maintenance through wider social structures can positively impact child poverty rates as discussed earlier.

²¹UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 27(4).

²²For further discussion on these points, see point 6.1 *ff*, below.

²³ UK Government, Dept. Of Work and Pensions, Report No. 503: *Relationship separation and child support study*. Wikeley, N., et al. National Centre for Social Research, (2008)
<http://lx.iriss.org.uk/sites/default/files/resources/rrep503.pdf>

²⁴ One Family National Shared Parenting Survey, (Op. Cit.p4 *ff*)

²⁵ Government of Ireland, (2018) *First 5: A Whole of Government Strategy for Babies and Young Children and their Families 2019-2028*.

In Ireland, the consistent rate of child poverty remains stubbornly high (8.1% in 2019).²⁶This resulted in Government failing to reach its commitment set out in *Better Outcomes, Brighter Futures* to lift 70,000 children out of poverty by 2020. While a new national strategy for children and young people has yet to be developed, child maintenance offers an effective mechanism in combating child poverty and should be viewed as a central part of the Government's strategy to tackle the entrenched problem of child poverty in Ireland; particularly as most child poverty occurs in one-parent families.

Indeed, one-parent families are at a significantly higher risk of poverty (29.7%), compared with the overall population (12.8%). One-parent families have the highest rate of consistent poverty (17%) and deprivation (45.4%) of any family type.²⁷ Furthermore, one-parent families are consistently overrepresented in the types of families presenting as homeless. Currently 49% of families living in emergency accommodation are one-parent families.²⁸ There is extremely limited research or data available on child maintenance in Ireland; however, in 2016 DSP reported that just 35% of all its claimants who were eligible for child maintenance actually received a payment.²⁹

Traditionally, one-parent families have made visible the usually hidden work of all primary parental care work. This has never been more relevant than during the Covid-19 pandemic when one-parent families have faced immense additional challenges navigating the practicalities of social distancing, maintaining employment during school and childcare closures, increased food and energy bills, lack of access to support relationships, home-schooling and isolation.³⁰ Child maintenance must be recognised as an integral part of the State's response to child poverty and should be integrated into a broader statutory understanding of the supports and services children require up to the age of 18 or 22 if in education, regardless of their family situation.

Recommendation 3: Include child maintenance as a mechanism to reduce child poverty in the next iteration of the overarching national policy framework for children and young people and in all Government anti-poverty strategies and frameworks.

5.3. Child Maintenance and Domestic Abuse

Child maintenance is problematic for families who have experienced or are experiencing domestic abuse. In cases of domestic abuse, the current system places survivors in a difficult situation. 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

²⁶ CSO. (2021), SILC 2019.

²⁷ Ibid.

²⁸ Department of Housing. (2021) Monthly Homelessness Report January 2021.

²⁹ Joint Committee on Social Protection (2017). Report on the Position of Lone-parents in Ireland.

³⁰ Darmody, M., Smyth, E. & Russell, H. (2020) *The Implications of the Covid-19 Pandemic for Policy in Relation to Children and Young People: A Research Review*. ESRI.

of the judge. In some cases, survivors forgo maintenance payments rather than risk compromising their safety and security. The withholding of child maintenance has been recognised as a form of financial abuse by COSC and reinforces the stresses that these negotiations can have on vulnerable families.³¹ In 2017, Minister Doherty identified and committed to DSP staff training as an important element in this matter; yet we are unaware that this training has as yet taken place.³² We appreciate that Minister Doherty committed to a new policy to ensure that DSP customers who declared domestic abuse would not have to seek maintenance from the abuser; however our understanding is that this is not rigorously applied by all DSP staff.

Recommendation 4: Expedite the provision of, previously promised, evidence-based information and training on domestic abuse to all frontline and decision making staff within the Department.

Ensure that all staff are also trained on coercive control and that there is consistent application of the policy in relation to claimants not having to independently pursue maintenance where there has been abuse, including where there is no court order in place.

Case Study 4 - Patricia's Story

Patricia is separated from her husband and as part of the legal separation agreement her ex-husband pays €1200 per month towards the mortgage on the family home. While married, Patricia had been a stay at home parent for 8 years so she hasn't been in employment in a long time. The €1200 per month mortgage payment is considered to be maintenance and is assessed as means by DSP. This means Patricia qualifies for a significantly reduced social welfare payment of just €100 as her 'means' are too high. She is worried about losing her home and doesn't want the mortgage payments to be stopped. Patricia would love to go back to college to upskill so she can have a career but she can't afford to go back to education as her income is too low to cover the costs of books, childcare and travel.

³¹ 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>

³² Oireachtas - Parliamentary Questions: 29.11.17. <https://www.oireachtas.ie/en/debates/question/2017-11-29/33/>

6. Issues with the Current Approach to Child Maintenance in Ireland

Currently, child maintenance poses serious personal and administrative blocks within Irish social protection and legal systems. In the case of those in need of income supports who parent alone, and where there is an absent or refusing other parent, current social welfare payment and child maintenance regulations can reduce, rather than increase, the level of a family's income. In these cases, the level of regulatory complexity presents a significant structural block to one-parent families accessing the income support they need. Irish courts are not currently resourced or designed to cope with large volumes of private family law cases in relation to child maintenance.

6.1. Issues Related to Current DSP Approach to Child Maintenance

- i. We hear from parents through our range of services that there is a **lack of consistency** in how policies relating to child maintenance are applied. The varying, sometimes haphazard, way in which policies are applied to different claimants can cause financial hardship, emotional distress and weaves inequity into the fabric of DSP's child maintenance procedures.
- ii. DSP regulations require the parent seeking income support to present proof of maintenance agreements or demonstrate 'efforts to seek maintenance' from the 'liable relative'.³³ This may require a parent to issue court proceedings which is highly problematic given the significant delays in getting court dates, the fact that a summons is issued which is an aggressive tool and courts are not adequately resourced to determine fair child maintenance arrangements. **Failure to provide proof of "efforts to seek maintenance"** can lead to payments being suspended, cancelled or not awarded.
- iii. There is a significant rate of non-compliance with child maintenance orders. Yet in our experience working with families, **child maintenance is often assessed as means regardless of whether it is paid or not**. This can leave a claiming parent with reduced social welfare rates, if the liable relative does not pay and DSP does not immediately make up any reductions in social welfare payments as a result of child maintenance being assessed.
- iv. In the shift from OFP to JST, the Department expressly ends **the child maintenance payment requirement of the other parent who had been identified as a liable relative**. This confuses often fragile maintenance agreements and can disrupt established maintenance payment arrangements.

³³ Citizen's Information: One-Parent Family Payment Regulations:
https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/social_welfare_payments_to_families_and_children/one_parent_family_payment.html

- v. The **treatment of mortgage or rent payments made by the non-resident parent as maintenance** by DSP means some claimants are forced to forgo these payments in order to access social welfare supports. This can cause claimants to go into mortgage or rent arrears and increase housing insecurity.
- vi. Maintenance recovered by the Maintenance Recovery Unit of DSP is absorbed by the Department. **Recompense is not extended to resident parents in receipt of State supports.** Any income received by DSP, where agreed maintenance payments are paid, must be forwarded to the resident parent, for the direct benefit of the child.

Recommendation 5: Resolve technical issues in the DSP approach to child maintenance immediately.

As outlined, there are a number of technical issues with child maintenance which could be resolved immediately through policy or procedural changes within DSP. It is therefore One Family's recommendation that DSP implements the following immediate changes:

1. Stop multiple means assessment of child maintenance across different DSP payments and other State supports.
2. Stop assessing child maintenance as means where it has not been paid as this is a frequent occurrence – a new system is required to ensure families do not lose out.
3. Stop requiring parents to go to Court to prove they have sought maintenance or that maintenance has ceased - accept self-declarations or another less onerous method of proof.
4. Ensure that JST is underpinned by liable relative legislation in the same way that OFP is, to prevent the need for DSP to end child maintenance payments when claimants move from OFP to JST. Child maintenance should be available until a child reaches 18 or 22 if in education. They require child maintenance throughout this life-stage regardless of the 'activation' category their parent may be in.
5. Ensure when the MRU recovers a maintenance payment, the claimant parent is recompensed for any maintenance recovered before DSP absorbs any monies.
6. Stop treating mortgage or rent payments made by the non-resident parent as maintenance when assessing eligibility for social welfare payments.
7. Ensure DSP staff are adequately trained and resourced to deal consistently and fairly with the complexities of issues facing lone parent claimants, as recommended in the *JOC Report on the Position of Lone-parents in Ireland*.

Recommendation 6: The State should adopt an honour approach to believing parents when they say they have made every effort to retrieve maintenance payments and accept responsibility for recouping payments from the liable parent.

One Family proposes that DSP use its discretionary powers and *believe* claimant parents when they provide a written declaration they have tried to seek maintenance. Staff training is essential here. As with the policy of acceptance of verbal statements about violence and abuse, we strongly suggest that this also be the protocol for child maintenance. Furthermore, in the case where a parent does not pay or does not have sufficient income to pay the required maintenance payment, the State should take on liability and ensure child maintenance is paid.

One Family is aware of a scoping exercise examining the removal of the liable relative provision, carried out by DSP in 2017. Responsibility for recouping payments from the liable parent should lie with the State, where applicable. Reducing the burden on one-parent families to litigate for child maintenance orders by moving away from an adversarial, Court based approach is essential.

6.2. Issues Related to Government wide Approach to Child Maintenance

- i. As previously outlined, the **lack of a cross-Government, inter-departmental approach** is inefficient, costly and causing real emotional harm and distress to families and children.
- ii. In general, there is a **lack of understanding** at a policy and practical level in DSP, and across wider public policy, **of the impact court proceedings have on family well-being**. Issuing a summons can be fundamentally destructive to existing family relationships. Embarking on Court proceedings has been described to One Family and DSP officials in a meeting in 2018 as being 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.
- iii. **Various Government departments assess maintenance as means and in various ways** for a range of different supports, including Housing Assistance Payment (HAP), Rent Supplement, the Medical Card and subsidies under the National Childcare Scheme. This is overly complex and while there are disregards in place for some of these supports, they are not consistent or sufficient.
- iv. There are **no statutory guidelines** on the level that maintenance payments should be set; instead, they are at the discretion of the court. This leads to a lack

of consistency and as our research has shown, child maintenance agreements are frequently not based on the child's need.

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

- vi. In the case of a court-ordered Bench Warrant for non-payment of maintenance, the normal practice of a particular Garda holding responsibility for its execution does not hold. Many **warrants are simply not served**, causing unnecessary further delays in court determinations, and consequently, DSP payments.

Recommendation 7: The Government and all its Departments should treat child maintenance as an independent and ring-fenced form of support directly for children and not an income for parents. As with Child Benefit, it should not be subject to taxation or multiple means testing.

If this is not possible, then child maintenance should qualify for a single disregard which is benchmarked against an objective measure such as the Minimum Essential Standard of Living (MESL).

While there should be a single disregard for child maintenance across all government departments, parents should qualify for a separate disregard for each of their dependent children. This would prevent the same child maintenance payment being means tested multiple times. Where two-parent families apply for a payment from DSP, the amount they pay towards meeting their child/ children's needs is not means tested. The State must ensure that means testing child maintenance does not result in children in one-parent families being inequitably disadvantaged based on their family status, prohibited under the Equal Status Acts 2000-2018.

7. The Creation of an Independent Statutory Child Maintenance Agency

There are two parallel issues which arise when considering child maintenance mechanisms. One issue is the cumbersome administration processes in relation to collecting child maintenance, as outlined. The other issue is the punitive effects these administrative mechanisms can and do have on parents in these situations. Overall, existing research and experience of our service users demonstrate that Ireland must develop a child maintenance framework which has the capacity to meet the needs of families when they separate and

where individuals parent alone or share parenting. As it stands, current systems across Government, are difficult to enforce, precipitate protracted and often hostile parental negotiation,³⁴ increase poverty levels, particularly among children in one-parent families,³⁵ and do not sufficiently attend to the safety and stability of those who are exposed to coercion, abuse and violence, which seriously restrict abilities to access and negotiate child maintenance.³⁶

Section 6 details some of the difficulties in relying on the courts to determine and enforce child maintenance orders.

Recommendation 8: Create a statutory Child Maintenance Agency.

One Family is in favour of the establishment of a Child Maintenance Agency or an equivalent system managed by an independent body. Ireland requires a social policy framework for child maintenance that is founded on children's rights, ensures children do not live in poverty, helps families maximise their incomes, and eases the often conflictual processes of family separation. This policy shift would take maintenance out of the private sphere and transfer responsibility for assessment and enforcement of child maintenance to the State.

Such an agency should be granted powers and capacity to set payment levels, linked to the MESL or other standardised measurement. 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.

As recommended previously, 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 [<https://www.forsakringskassan.se>]. It offers support and connections 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.

Ends

³⁴Smallhorne Dunne, S.p 81, 2016.

³⁵ Ibid. p 81ff and Watson, D., et al, ESRI, 2018, p75ff

³⁶ One Family Ireland: 'Ireland's First National Shared Parenting Survey'(2017, p8ff)