

Enforcement of Court Orders Relating to Child Maintenance, Access and Custody

August 2022



1. Introduction

One Family welcomes the opportunity to make a submission to the Committee on Justice on the enforcement of court orders relating to child maintenance, access, and custody. One Family has extensive experience providing specialist family support services to families during and post separation. This year One Family is proud to be celebrating 50 years of working to improve the lives of adults and children in one-parent families. During this time, we have consistently seen parents and children struggle to navigate and be disadvantaged by the lack of a coherent, functioning child maintenance system in Ireland.

In 2021 One Family made a submission to the Child Maintenance Review Group on the statutory processes and structures pertaining to child maintenance in Ireland. The report of the Review Group has yet to be published and there have, yet been, no policy changes to correct the serious shortcomings in how child maintenance is administered for the benefit the thousands of children who rely on maintenance payments for their wellbeing. The responses below to the questions posed by the Committee are largely drawn from our direct experience working with families.

2. About One Family

One Family is Ireland's organisation for people parenting alone, sharing parenting, and separating. We were established in 1972 as Cherish and provide specialist parenting, therapeutic and family support services around Ireland. Children are at the core of our work, and we seek to improve their lives by empowering, supporting and up-skilling their parents. We campaign against child poverty, for reform of the family justice system and for the State to recognise and cherish all families equally, regardless of their marital status. More information on One Family can be found at www.onefamily.ie. This submission is informed by our direct work with one-parent families and our role representing these families at a local and national level over the last 50 years.

3. Background

The most recently available Census data from 2016 tells us that one-in-five children in Ireland live in a one-parent family, while 25 per cent of families are headed by a lone parent.¹ There is limited data available on shared parenting families; however, we know from our work that many families described as one-parent families would have some degree of shared parenting. The majority (86 per cent) of one-parent families are headed by a woman.

One-parent families experience higher levels of poverty and deprivation than other households. In 2021 13.7 per cent of households headed by one adult with children were in consistent poverty, compared with 3.5 per cent of two-parent households.² Almost half

¹ Central Statistics Office, (2017), *Census 2016*.

² Central Statistics Office, (2022), *EU SILC 2021*.

(44.9 per cent) of households headed by one adult with children were in enforced material deprivation in 2021.³ One-parent families consistently represent the highest proportion of family types living in emergency accommodation. In June 2021 54 per cent of families living in emergency accommodation were one-parent families.⁴ One-parent families are also more likely to live in poor quality accommodation, such as housing with damp or lack of central heating, than the general population.⁵

4. Research and Evidence

a) Evidence from Ireland

There have been many significant independent and Government commissioned research reports published in relation to one-parent families since 2016 alone (see Appendix A). Most notably the 2017 report of the Oireachtas Committee on Social Protection, the recommendations of which are referenced and committed to in the current Programme for Government.⁶ All of these reports indicate that the poorer financial outcomes experienced by one-parent families urgently need to be addressed.⁷ However, in contrast there is a dearth of research and data into child maintenance, access and custody in Ireland. Below is an overview of the few surveys and statistics which give an insight into child maintenance, access and custody orders.

In 2016, One Family undertook Ireland's first *National Shared Parenting Survey*.⁸ Almost 51 per cent (n=1,014) of respondents arranged contact time between a parent and child with difficulty, through mediation or via a court order. While the majority (62 per cent) of parents whose child lives with them most or all the time stated their child's other parent contributes financially to their child's costs, 38 per cent said the other parent does not contribute financially. 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. More than half of respondents said they do not make decisions jointly about issues affecting their child(ren). When deciding on custody or access, many respondents felt those in the legal profession did not always have the child's best interest at heart.

Another survey carried out by One Family specifically on Child Maintenance in 2019 found 42 per cent (n=1,068) of primary care givers received a financial contribution from their child/children's other parent. Of these, a quarter said child maintenance was not regularly paid. The majority (58 per cent) reached an agreed child maintenance arrangement via court order. Furthermore, our survey found just 9 per cent of respondents' child

³ Ibid.

⁴ Department of Housing, (2022), June 2022 Monthly Homeless Report.

⁵ Russell, H., Privalko, I., McGinnity, F. & Enright, S. (2021). *Monitoring Adequate Housing in Ireland*.

⁶ Government of Ireland, (2020), Programme for Government: Our Shared Future.

⁷ One Family, (2022), *Pre-Budget Submission 2023*, Available at: https://onefamily.ie/wp-content/uploads/2022/08/PBS_2023_final-1.pdf

⁸ One Family, (2016), *Ireland's First National Shared Parenting Survey*, Available at: https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

maintenance agreements were based on the child's needs.⁹ In May 2022 SPARK Ireland published a survey on child maintenance. Of those responding 58.5 per cent (n=246) reported they had a court order in place, 18.3 per cent had an out-of-court agreement and 23.3 per cent had never sought maintenance. Of those with a court order for maintenance 34.8 per cent reported the other parent was usually in compliance, 20.2 per cent reported the other parent was in substantial arrears but paying some maintenance, 9 per cent said that maintenance was not being paid and they were returning to court, while the remaining 36 per cent had not received the maintenance and had given up trying to re-coup it. The average arrears from 84 respondents were €8,313.

One Family experienced a significant increase in the need for our services during the pandemic.¹⁰ For many families the pandemic and lockdowns acted as a pressure cooker exasperating grievances and increasing conflict. The impact of this can be seen in the increase of applications to the Courts in 2021. The Courts Service Annual Review 2021 provides some insight into the rate of child maintenance orders, access and custody orders.¹¹ There were 10,061 guardianship, custody and access applications made in 2021, an increase of 14.5 per cent on 2020. There were 5,451 applications to the District Court for maintenance orders in 2021, an increase of 8 per cent on 2020. There were 5,856 applications for divorce in 2021, an increase of 11 per cent on 2020.

b) Evidence from abroad

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. 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, 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.

Seminal research carried out in 2011 by Hakovirta 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."*¹² The 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."*¹³

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

⁹One 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/>

¹⁰ One Family, (2021), *Tsunami of separations/divorce on the way with little or no support available*. [Press Release] Available at: <https://onefamily.ie/press-release-tsunami-of-separations-divorce-on-the-way-with-little-or-no-support-available/>

¹¹ The Court Service, (2022) *Annual Review 2021*.

¹² Hakovirta, M., (2011) 'Child maintenance and child poverty: A comparative analysis'

¹³ Ibid

and children associated with different approaches in different countries. There are some examples from abroad of critiques of individual systems. For example, in Scotland where one study found 78 per cent of respondents believed the Scottish Child Maintenance Service was performing poorly.⁶ A common criticism across different jurisdictions is that child maintenance systems do not take enough account of the actual needs of children, they lack transparency in how maintenance is calculated and are not reliable. Comparing child maintenance regimes is difficult due to dissimilar data available from different jurisdictions.¹⁴ These challenges underline the need for robust, independent research if Ireland is to successfully adopt or adapt a model from another country.

5. What is the impact of unpaid maintenance?

A most fundamental impact of unpaid maintenance at a national level is an increase in child poverty, and at a personal level a worsening of a child's circumstances and wellbeing. Where family budgets include a maintenance payment, unpaid maintenance means the family must cutback, bills cannot be paid, and families can go into arrears or debt. Unpaid maintenance causes stress and frustration. Parents report feeling let down by the court system if they perceive their child's other parent can defy a court order without consequence. Return visits to court to resolve issues are a further cause of distress for parents. Unpaid maintenance can increase inter-parental conflict and lead to denial of contact/access for children with the non-paying parent, although these issues should be considered separately. Children can be negatively impacted by increasing conflict between their parents or if they lose contact with a parent due to unpaid maintenance.

Recent data from the Department of Social Protection (DSP) would suggest around 45 per cent of recipients of One Parent Family Payment (OFP) and around 12 per cent of recipients of Jobseekers Transitional Payment (JST) report being in receipt of a maintenance payment for their child.¹⁵ There are also a wide range of additional support payments for which maintenance is calculated as means, such as HAP, Rent Supplement, the Medical Card and subsidies under the National Childcare Scheme.¹⁶ While there are disregards in place for some payments, these are not sufficient to prevent poverty and are not applied across the board. Maintenance is also subject to multiple means tests across the system meaning forcing some parents to forgo the payment or risk losing money. We are aware from services that some parents tell DSP they receive maintenance even when they do not in order to avoid stress. Furthermore, mortgage or rent payments made by non-resident parents are treated as maintenance by the DSP. This forces some social welfare claimants to forgo these payments in order to access social protection supports. This can cause families to go into mortgage arrears and increases housing insecurity.

Child maintenance is often assessed as means whether the payment is received or not. Where maintenance is unpaid the onus is on the applicant to prove this to have their claim reassessed. Applying to have a claim reassessed can take time and can be complicated if maintenance payments are sporadic. The approach by DSP can be inconsistent with some

¹⁴ Department of Work and Pensions UK, (2014), Child support policy: An international perspective.

¹⁵ Minister for Social Protection (Heather Humphries), Dáil Question, vol 1017, 24 March 2021.

¹⁶ National One Parent Family Alliance, (2021) *Submission on Child Maintenance*.
<https://onefamily.ie/wp-content/uploads/2021/03/NOPFA-Child-Maintenance-Submission-3.21.pdf>

social welfare offices restoring a parent's full payment upon proof that maintenance is not being paid, while others continue to deduct maintenance despite the payment not being made. Failure to provide proof of 'efforts to seek maintenance' can lead to payments being suspended, cancelled or not rewarded. This means parents are often required to issue court proceedings. This is problematic given the significant delays in getting court dates, that the courts are not adequately resourced to determine fair child maintenance arrangements and that issuing a summons can be seen by the other parent as an aggressive tool resulting in further deterioration of the inter-parent relationship.

During pandemic lockdowns there was a marked difference in how DSP sought proof of 'efforts to seek maintenance;' essentially the Department took parents at face value and believed them when they said they had tried to recoup maintenance arrears. One Family would strongly recommend this approach is mainstreamed. Taking an overly investigative and oftentimes suspicious approach to parents adds to the administrative burden in the Department and causes unnecessary stress to parents when seeking support.

6. What are the complexities involved in court orders?

a) Logistical issues

Court orders can be a useful tool in requiring a parent to pay maintenance; however, where someone defaults on maintenance there is no consequence, and it is largely up to the other parent to recoup any arrears. Compliance is therefore often dependent on the attitude and ability of the non-custodial parent to make the payment and the determination of the custodial parent to follow up and make applications to the court. Time and cost can also be significant barriers for parents. There are lengthy delays in accessing court appointments for maintenance cases. The cost of hiring legal representation can be prohibitive and forces some parents to go without legal advice. The Court does not have the ability to ensure maintenance is paid. There are a multitude of opportunities for respondents to block or obfuscate proceedings if they choose to.

Maintenance orders are often heard alongside custody and access so there is not enough time or consideration of key details, such as when and how maintenance will be paid, what happens when the payment is late etc. The inclusion of maintenance hearings with custody and access also impacts negatively on the quality of the hearing for these issues. There is no consistent approach to assessing what maintenance should be paid. Judges may have to calculate costs themselves in the court room. There is often not enough time to hear everything, and hearings are adjourned causing delays for very important issues for parents and children. This can be very stressful for all parties. The *In Camera* rule can impact a parent's ability to share data with DSP, threatening their access to support. Once an order is in place the maintenance payment is assessed as means, whether the payment was received or not.

b) Domestic abuse

Domestic abuse does not necessarily end with the termination of the relationship. Financial abuse, including the withholding of child maintenance, is recognised as a common

continuation of abuse post-separation.¹⁷ Court-ordered child maintenance can be problematic for families who have experienced or are experiencing domestic abuse, with the current system placing survivors in a difficult situation. In these cases, parents must manage continuing interactions with an abusive ex-partner to comply with a court order.

In our experience, it is extremely stressful and challenging for a parent to bring their abuser to court over non-payment of maintenance. We are aware of incidences where abusers who have chosen to represent themselves in court at maintenance hearings have been permitted to cross examine their ex-partner. Situations become even more complex when a parent has been convicted of domestic abuse but still has court-ordered access with children. 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 of the judge. In some cases, survivors forgo maintenance payments rather than risk compromising their safety and security.

c) Adequacy of maintenance payments

There are no statutory guidelines on the level at which maintenance payments should be set; instead, they are at the discretion of the court. This leads to a lack of consistency, with awards being largely *ad hoc*. The lack of resources available to courts to set maintenance rates using evidence-based guidelines or system for assessment, means all too frequently maintenance payments are not set according to the child's needs. Furthermore, inflation is currently increasing at an extremely fast pace with the latest data indicating the rate was 9.1 per cent from June 2021 to June 2022.¹⁸ Maintenance rates are not indexed meaning a payment set as recently as a year ago could have lost significant value in the last twelve months.

7. How effective are these orders?

The existence of a maintenance order does not mean there will be compliance with the order. We know from our work with families there is a high rate of non-compliance and a high rate of return to court. In our experience, there is no follow up by the court or any other public system and it is incumbent upon the person seeking maintenance to re-apply to the courts for another hearing. Parents often feel helpless and give up on engaging with the court as they see no benefit. Courts cannot issue a summons for maintenance unless the claimant parent can provide an address for the liable parent. This is not always available. If the liable parent fails to appear in court, a bench warrant can be issued. However, many warrants are simply not served as there is no prosecuting Garda involved and this prevents further proceedings while the warrant remains unexecuted.

Another issue is that 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

¹⁷ Women's Aid, (2021), *Submission on Child Maintenance*.
https://www.womensaid.ie/assets/files/pdf/child_maintenance_review_group_submission_womens_aid_march_2021.pdf

¹⁸ Central Statistics Office, (2022), *Consumer Price Index*.

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

In general, there is a lack of understanding the impact court proceedings have on family well-being. Issuing a summons can be fundamentally destructive to existing family relationships, particularly where parental conflict already exists. Embarking on court proceedings can be 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.¹⁹ In cases of domestic abuse or coercive control the ineffectiveness of orders leaves the victim of the abuse and any children in the family in a very vulnerable position.

8. What steps could be taken to remedy these issues?

a) Research and evidence

There is a great need for independent research examining the design, operation, and outcomes of child maintenance systems in other jurisdictions. Such comparative analysis should be based, not only on evidence from official and academic sources, but also on the lived experiences of parents in these jurisdictions by engaging with their representative organisations. Such research should examine not only the objective strengths and weaknesses of individual systems, but also their appropriateness in an Irish context. Particular attention should be paid to unintended adverse consequences or worsening of children's outcomes because of particular systems or policy decisions. One Family also recommends that the Justice Committee consults with the Court Service and the judiciary on this issue.

b) Training for staff

The recently published Third National Strategy on Domestic, Sexual and Gender-Based Violence contains several commitments to training for frontline staff on domestic abuse and gender-based violence. In line with this, the recommendations of the 2017 Joint Oireachtas Committee Report, and commitments previously made by then Minister for Social Protection Regina Doherty, decision making and frontline staff in DSP, the Court Service staff, legal professionals and the judiciary, the Government should expedite training on domestic abuse (including financial abuse and coercive control) to all frontline and decision-making staff across the public sector.

c) Recognise child maintenance and child poverty

Child maintenance should be included in the next national policy framework for children and young people and all Government anti-poverty policies, to prevent and reduce incidents of child poverty in one-parent families. Child maintenance should be treated as a non-taxed, non-means tested payment for the wellbeing of the child, as is the case with Child Benefit.

d) Remove child maintenance from the Family Court

Child maintenance should be taken out of the family court setting and separated from other issues such as custody or access. The court system is not well equipped to deal with the lived realities of shared parenting and separation. There should be a mechanism for recovering unpaid means that does not require a parent to go to court. Ideally a child

¹⁹ One Family, (2021)

maintenance agency should be developed as a 'one-stop-shop' for parents to access evidenced based maintenance and enforcement services for the benefit of the child.

9. Child maintenance agency

One Family believes the only adequate response to the need to reform how child maintenance is administered in Ireland is the establishment of an independent child maintenance agency or analogous system. We are not alone in recommending the establishment of such a body. In March 2017, as part of the Irish periodic country-reporting structures, the UN *Committee on the Eradication of all forms of Discrimination Against Women* (CEDAW) observed:

"(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".*²⁰

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*".²¹

A separate agency would give significance to the importance of child maintenance for the fulfilment of children's rights and addressing child poverty. The available research, along with the experiences of our service users demonstrate that Ireland needs a child maintenance framework which has the capacity to meet the needs of families when they separate, whether parents are parenting alone or sharing parenting. As it stands, current systems across Government, are difficult to enforce, precipitate protracted and often hostile parental negotiation, increase poverty levels, particularly among children in one-parent families, and do not sufficiently attend to the safety and stability of those who are exposed to coercion, abuse, and violence. The State must take responsibility for the management of child maintenance, putting a stop to it being primarily a private family matter.

Such an agency should be granted powers and capacity to set payment levels that are in line with ensuring a Minimum Essential Standard of Living and with the resources to carry out an assessment of the child's needs. 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.

²⁰ 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>

²¹Joint Committee on Social Protection, (2017), *Report on the Position of Lone parents in Ireland*.

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.²² It offers support 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.

Ireland requires a transformational change in how child maintenance is administered. It is clear what is needed is a policy shift that will take maintenance out of the private sphere and transfer responsibility for assessment and enforcement of child maintenance to the State. Children in one-parent families deserve the same opportunity to grow up free from the threat of poverty as children in two-parent families; creating a child maintenance agency as outlined above would be a step towards this reality.

Ends.

²² <https://www.forsakringskassan.se/english/parents/parents-who-do-not-live-together>

Appendix A - Significant Research and Policy Reports on One-Parent Families Published since 2016

(2021) Russell, H., Privalko, I., McGinnity, F. & Enright, S. *Monitoring Adequate Housing in Ireland*. Dublin: Irish Human Rights and Equality Commission.

(2021) Roantree, B. Et al. *Poverty, Income Inequality and Living Standards in Ireland*. Dublin: ESRI & Community Foundation Ireland.

(2019) Society of St Vincent de Paul. *Working, Parenting and Struggling? An analysis of the employment and living conditions of one parent families in Ireland*. Dublin: Society of St Vincent de Paul.

(2018) Regan, M., Keane, C., and Walsh, J.R. *Lone Parent Incomes and Work Incentives. Budget Perspectives*. Dublin: ESRI.

(2018) Millar, M., Crosse, R., Canavan, J. *Understanding, negotiating, and navigating the politicisation of evidence-based policy research: the case of Irish research on lone parent labour market activation policy*. Bristol: University of Bristol.

(2018) Millar, M., Gray, J., Et al. *In-Work Benefits: The (in)adequacy of in-work benefits in Irish lone parent labour market activation policy*, Journal of Poverty and Social Justice. Policy Press, University of Bristol.

(2017) Delma Byrne and Clíona Murray. *An Independent Review to Identify the Supports and Barriers for Lone Parents in Accessing Higher Education and to Examine Measures to Increase Participation*. Maynooth University: Jointly Commissioned by DES, DEASP and DCYA.

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

(2017) Indecon. *Independent Review of the Amendments to the One-parent Family Payment since January 2012*. Presented to Department of Employment Affairs and Social Protection Prepared by Indecon Research Economists www.indecon.ie.

(2016) Millar, M and Crosse, R. *Lone Parents and Activation, What Works and Why: A Review of the International Evidence in the Irish Context*. Galway: The UNESCO Child and Family Research Centre, National University of Ireland Galway.