

## Citizens Information Board Submission to the Child Maintenance Review Group

### Introduction

The Citizens Information Board (CIB) welcomes the opportunity to make a submission to the Child Maintenance Review Group. Users of the nationwide network of Citizens Information Services (CISs), the Citizens Information Phone Service (CIPS) and the Money Advice and Budgeting Services (MABS), which are funded and supported by the Board, frequently raise issues about income supports for lone parents and family-related matters, including access or guardianship rights, child maintenance issues and, specifically, difficulties around enforcing maintenance orders and problems with payment arrears<sup>1</sup>.

It is clear that problems endemic in the child maintenance system have come very much to the fore during Covid-19 with payments regularly ceasing without notice. This has resulted in increased stress for lone parents who were already struggling to manage financially. CIB welcomes the fact that the Department of Social Protection (DSP) has simplified the system for lone parents to declare the non-payment of maintenance. This ensures that lone parents who are not receiving maintenance do not have to wait until a court order is changed to get their one-parent family or jobseeker's transitional payments reassessed. This is centrally relevant because of the risk of poverty among lone parent households.

This submission is set out in two sections. The first section identifies issues relating to the current child maintenance payment system identified by CISs. The second section addresses the specific questions raised in the consultation document.

### Issues relating to the current child maintenance system

#### Securing child maintenance

Feedback from CISs shows securing child maintenance can be a difficult and time consuming process in instances where there is no agreement between the parents as to the amount that should be paid. The only option in cases where a maintenance agreement cannot be reached between the parents is through the Irish courts system. The courts system falls short in relation to following up on non-compliant parents and the custodial parent may have to repeatedly engage with the courts system to resolve the issue of non-payment of court approved maintenance. Such engagement is

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<sup>1</sup> For example, in 2020, there were 7,653 queries relating to the One Parent Family Payment, 3,309 queries relating to maintenance, and 5,177 queries on Separation, and Divorce.

difficult for all parents, especially those with limited financial resources and/or experiencing difficulties with managing the day to day realities of parenting alone. It is particularly difficult where the relationship breakdown was associated with domestic violence and/or coercive control.

### Liabile relative provisions

The Liabile Relative clause in social welfare legislation allows the Department to pursue the other parent to pay maintenance and gives them enforcement powers. The legislation only covers the One Parent Family Payment (OFP) and does not include the Jobseeker's Transition payment (JST) or any other payment. This means that when the youngest child turns seven, the DSP writes to the liable relative informing them that under social welfare legislation they are no longer obliged to pay maintenance. This has led to a reduction in maintenance payments being made. As a result, JST recipients are asked to comply with the conditionality of seeking maintenance. This causes huge confusion for both the liable relative and the custodial parent and may add to tensions between them.

Confusion also results through the interaction between the amount of maintenance a liable relative is required to pay, as calculated by the DSP and any court order for maintenance.

The fact that once a Court Order for child maintenance is in place, an assumption is made by the Department that the recipient receives that maintenance on a weekly basis is a problem reported by CIS users. This is very often not the case. A court order does not guarantee payment, but merely a record of such a payment when and if it is made. The legal alternative, an attachment of earnings, is often unsatisfactory and, for example, can be difficult to implement when the person paying maintenance changes employment and another attachment of earnings must be sought. There is also the issue of how to deal with non-compliant self-employed people who may have fluctuating income.

CIS users have reported that there needs to be more clarity on payment of maintenance by liable relatives to either the parent of the child/children or to the Department directly. Overall, there needs to be more transparency around how the liable relative amount is calculated, how the Department pursues liable relatives, how disregards are applied and the advantages and disadvantages of the liable relative making a payment directly to the OFP claimant versus making a payment directly to the DSP.

### Impact of Covid-19 on child maintenance arrangements

CISs have been receiving additional queries relating to child maintenance since the onset of the pandemic. Feedback from CISs suggest an increase in non-payment of child maintenance in the aftermath of the Covid-19 crisis. In some instances, the issue highlighted is that maintenance payments stopped without notice. This is most likely related to the unemployment many thousands of people have been experiencing across the country. This has left families short of adequate income without notice and little options for redress as the courts were only dealing with emergency cases.

While court orders in relation to maintenance payments remain in place, the fact that courts are only open for essential business, and by appointment only, means that enforcement has become even more difficult than it had been prior to the pandemic. Indeed, some CIS clients expressed the

view that Covid-19 was being used by the non-custodial parent as an excuse not to pay the agreed maintenance.

Since the family courts are not hearing maintenance cases during the pandemic, there is a need for strong vigilance on the part of Government and, particularly the DSP, to ensure that quick remedies are found to deal with situations where maintenance payments have ceased.

Other issues identified by CISs in relation to child maintenance are:

- Custodial parents not being able to serve a maintenance order because of not having any contact address for the other parent
- Non-custodial parent paying child maintenance but unable to use these payments as expenses in respect of means-tested social welfare payments or eligibility for social housing
- Additional child maintenance paid to custodial parent but having no impact on their household income because of knock-on effect on housing rental costs
- Issues with Medical Card applications and verification of child maintenance income

#### Key contextual points identified by CIB

- Child maintenance should be viewed as a payment towards the child's upbringing, not as household means in the context of means-testing for social welfare payments that are needed by lone parent families in order to avoid financial hardship.
- Poverty reduction: Lone parent families are one of the groups experiencing the highest poverty and deprivation rates –for a one parent family household, already on a low income, with no savings, the non-payment of child maintenance can have a huge impact in terms of poverty reduction.
- In the UK, child maintenance is excluded from social welfare assessments as a child poverty measure.
- People's ability to pay utility bills and essential food bills becomes largely undermined if maintenance ceases and their only income is a social welfare payment – this can quickly lead to such families having to rely on moneylenders and experiencing over-indebtedness.
- The liable relative is pursued by the DSP when recouping costs under the OFP but they are not pursued where there is a failure to pay child maintenance as agreed.
- All of child maintenance paid (under €75 per week) is deducted from Rent Supplement. Most court orders are well under this amount, so there is no incentive for a custodial parent on rent supplement to seek maintenance.
- Child maintenance is also counted as means by the Legal Aid Board when people are applying for legal aid. If a single parent with children is in receipt of HAP and maintenance, it

is very likely that they will be over the threshold for legal aid.

In practice, it can be difficult to ensure compliance. While the option of an attachment to earnings can work in some instances, this can easily be circumvented if the non-custodial parent moves jobs or fails to tell the other parent, the name of their employer. Unlike Local Property Tax, for example, Revenue cannot deduct the maintenance payment at source. In cases of coercive control, domestic violence and abuse, child maintenance processes can exacerbate hostilities and be very daunting for the custodial parent. It is of course important to note that a significant proportion of child maintenance arrangements are resolved amicably and that issues with payments typically do not arise in such instances.

## CIB Response to specific consultation questions

### **Treatment of income from maintenance in the means test for social welfare payments**

A recurring issue for custodial parents who contact CISs is the fact that child maintenance income is not household income similar to other income and, therefore, should not be considered as means in the same way when it comes to other State supports. Child maintenance is assessed as means and, whether paid or not, 50% is deducted from social welfare payments. The One Parent Family increase for a Qualified Child is €38 per child<sup>2</sup>- this means that maintenance payments above this, are being deducted from the parent's primary social welfare payment of €203 a week. Thus, parents may be entitled to less than their statutory social welfare payment because of money paid for their child. It is also the case that once a maintenance order is in place regardless of whether or not it is paid, the maintenance is treated as income calculated as means which results in a reduction of other social welfare payments. This is in contrast to the situation where rent or mortgage repayment up to a maximum of €95.23 per week can be offset against income from maintenance payments.

CIB believes that child maintenance should be disregarded in the means test. This is important because child maintenance payments are paid to contribute to the cost associated with raising children and as such should not be means tested.

CIB also believes that the disregard for housing costs should remain in place as housing costs can be a significant drain on lone person households. A shortage of housing and soaring rents already create difficulties for many people parenting alone and removing this disregard would further exacerbate this ongoing issue.

### **The obligation on an applicant for OFP or JST to make “efforts to seek maintenance”**

An important underlying principle of the child maintenance system is that parents who can pay for the upkeep of their children should do so. This is necessary irrespective of what system is in place. Parents should be obliged, enabled and supported to discharge these responsibilities in a fair and transparent manner.

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<sup>2</sup> The IQC is €38 for a child aged under 12 years, and €45 for a child aged 12 years and over

CIB believes that in a general way claimants should be expected to seek maintenance from the non-custodial parent on the basis that children are the responsibility of both parents. However, parents should not be obliged to engage in an adversarial system that is not set up to deal with what are sometimes very complex dynamics. There should be a supportive mechanism available to parents to enable them to do this in a fair and non-intimidating way. A statutory Child Maintenance Agency, if established with an appropriate remit and functions, has the potential to provide such a mechanism. Some parents clearly need support in obtaining maintenance payments where the other parent is not co-operating.

In terms of equity, it is also important to have full record transparency to show that applicants have sought maintenance in order to avoid the occurrence of cash payments being made and left undisclosed.

## **Establishment of a Child Maintenance Agency**

It is widely acknowledged that there is huge pressure on the family courts system generally, impacting on the time available in child maintenance cases for decision-making that is inclusive of all parties involved. While people should always have the option to refer decisions to the courts system, initial child maintenance decisions should be removed from the courts system and should only be used as a last resort means of redress. It has been argued that a Child Maintenance Agency would enable a more consistent approach across the country.

The current system for setting the amount of, and enforcing child maintenance payments is unsatisfactory mainly because there are no statutory guidelines on the level that maintenance payments should be set and it is left to the discretion of each court. Also, currently, there is no formal procedure in place for the collection of child maintenance. Under the current system, the DSP does not pursue the liable relative for child maintenance which has to be done through the courts system by the custodial parent without any meaningful assistance from the State.

The Family Courts system is not user-friendly because of its adversarial nature and its very heavy workload. Custodial parents frequently decide not to pursue a case in court because they do not want to be in that system. There is widespread reporting of a lack of consistency between judges in determining the amount of child maintenance. This is clearly a matter of concern. While there are some judges who are highly skilled in this area, there are others who do not have the relevant skills and experience and who sometimes do not have the time or the information to make a fully informed decision.

It is critically important that parents (custodial and non-custodial) can be facilitated to resolve child maintenance payment issues as far as possible outside of the courts system. Side by side with a new system for agreeing and deciding on levels of child maintenance, there is a need for a strong early intervention approach when arrangements break down. The current situation where the only mechanism for resolving issues is through the courts system is unsatisfactory and, particularly so, for people who have no experience of the family courts system.

CIB believes that the establishment of a statutory Child Maintenance Agency would be an important and very positive step forward. Such an Agency would provide a more user-friendly system than the court system. It would also bring a level of consistency which is not there at present.

Any alternative system in the form of a Child Maintenance Agency as proposed must have transparent guidelines in place as to how the level of maintenance is assessed but must also allow for some discretion where there are unusual or exceptional circumstance relating to either parent.

The functions and operational structures of such an agency must allow for an engagement with both parents as required before, during and after child maintenance arrangements are agreed. This is critically important in order to address fears and anxiety that are frequently associated with parental separation associated with domestic violence and/or coercive control.

It is also important that mediation or alternative resolution mechanisms are available and easily accessible by both custodial and non-custodial parents.

### **Interaction of Proposed Child Maintenance Agency with the social welfare system**

There are important GDPR factors that need to be considered. It would seem inappropriate that a Child Maintenance Agency would have direct contact or exchange of personal information with the DSP. There is already an obligation on social welfare claimants to inform the Department of any change in their circumstances, financial or otherwise. It should be sufficient that claimants are reminded of their obligation to inform the Department of receipt of a maintenance payment and offer proof of such payment. The matter evidently becomes more complex when the payment of maintenance that has been taking place for a period ceases.

Notwithstanding the difficulties arising from GDPR legislation, the Agency will need to identify mechanisms for liaising with other key relevant agencies – DSP, Tusla, the Courts, Revenue and the Legal Aid Board.

### **Powers of the proposed Child Maintenance Agency**

The Child Maintenance Agency should have the power to issue a child maintenance order to the non-custodial parent. It should also have power to seek maintenance from a parent living abroad.

The Agency should have the powers to get an attachment of earnings, an attachment on Social Welfare payments and an investigation into the company accounts of a parent who is self-employed. It would also be important that a Child Maintenance Agency has a mechanism for interacting with the court system if a Child Maintenance Order is not being adhered to.

The Child Maintenance Agency should have enforcement powers to the extent of initiating court proceedings, if mandated payments cease and/or acting as mediation authority where agreed non-court mandated maintenance payments fail.

### **Specific measures that should be considered by the Review Group**

- Post Covid-19, the DSP should continue to act in a timely manner when the claimant informs them that maintenance has stopped and adjust their social welfare payment accordingly and

without delay. This is vital in order to avoid undue hardship to the claimant and their children.

- Efforts to get people to seek child maintenance in domestic abuse situations should have the same requirements as those pertaining to the One Parent Family Payment – the custodial parent should be required simply to declare that they are a victim of domestic abuse.
- Where parents are paying for childcare, there should be a disregarded amount of maintenance income in relation to the fees payable, similar to the disregard of up to €95.23 a week where there is a mortgage or rent payment.