

Submission to Law Reform Commission,
Fifth Programme of Law Reform,
35-39 Shelbourne Road,
Ballsbridge, Dublin 4.
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**1. Submission to Law Reform Commission, Fifth Programme of Law Reform:
Review of Child Maintenance legal framework.**

1.1. I suggest that for the fifth programme of Law Reform that the Commission look into reform surrounding the creation and enforcement of child maintenance agreements between parents. To my knowledge the Law Reform Commission has not researched the issue by itself before, though it was covered somewhat in the Law Reform Commission Consultation Paper on the Family Courts 1994.¹ My central concern in reviewing the law here, as I will outline, is that evidence shows that many one-parent families avoid, or are unsatisfied with the legal framework in place which aims to facilitate vindication of their rights and the enforcement of parental duties. This lack of realisation poses serious problems for this class of parents and their children, and, by extension, the common good.

1.2. Currently formal remedies for seeking maintenance agreements and their enforcement rest entirely upon those who are seeking the payment. The legal framework in which parents seek maintenance agreements and their enforcement are accessed through the Family Law Courts. Maintenance

¹ <http://www.lawreform.ie/fileupload/consultation%20papers/cpFamilyCourts.htm>

applications are regulated for in the Family Law (Maintenance of Spouses and Children) Act 1974. Where an order for maintenance is granted but unfulfilled the solo parent must resort to further court action, or the threat thereof, to remedy non-compliance. This can be achieved through the Civil Law (Miscellaneous Provisions) Act, 2011. The process in general requires legal advice especially where complex issues arise such as were the non-custodial parent is not resident in the state. Limited legal aid may be provided in certain circumstances by the Legal Aid Board.

1.3. There are less formal arrangements in which parents can come to an agreement for example through mediation, with, for example, the Family Mediation Services. Such agreements must be formalised to be legally binding. Where there is no agreement there are further services which are likely to cost the parties money if both are willing to come to some agreement. If no agreements are reached or there is unwillingness by a party to agree at all, then the courts are the last resort. In a way the courts are the first and last resort with binding child maintenance agreements/orders.

1.4. Maintenance can provide for extra stability in a one parent family which in turn can provide extensive benefits to the common good. In this sense the child may have better access to education and better quality of life which is inevitably good for the rest of the community.

1.5. In analysis of *Growing Up In Ireland* data, *Treoir* have shown that around 80% of solo parents' income is in the lowest income quintiles.² Solo parents are likely to be ten times more dependent on welfare than married parents.³ Furthermore, sole parents fare worse on every measure of deprivation.⁴

² <http://www.treoir.ie/cms-assets/documents/118514-700161.seehowthey-grow.pdf> at pg 19; <http://www.treoir.ie/cms-assets/documents/182410-886165.watch-them-grow-final-report-2014.pdf> at pg 66; <http://www.treoir.ie/policy-statistics.php#2>

³ Ibid.

⁴ Ibid.

Considering the disadvantages associated with being a solo parent and the child of a solo parent, there ought to be an imperative that legal entitlements which aim to fulfil the obligations of parents to their children are reasonably accessible and do not unjustifiably over-burden one party more than the other.

1.6. In the same data analysis by *Treoir*, they show that 50% of solo parents received no financial assistance from the father of their child. 39% made regular payments, and just 14% made the required payment. Even starker is that 89% of fathers who reside outside of the state made no financial payment.⁵

1.7. *One Family*, a group that represents one parent families, has argued that there is a chasm in the provision of legal family law services in Ireland due to lack of a court advisory and services body which exists in other jurisdictions such as the UK.⁶ They recommend that more state intervention is needed due to the prevalence of domestic violence and financial abuse in respect of child maintenance.⁷

1.8. Where parents are dependent on social welfare payments, maintenance could be sought by the maintenance recovery unit directly from the non-custodial parent under Sections 345, 346(1) of the Social Welfare Consolidation Act 2005. However, this does not apply where the custodial parent moves, for example, from the One-Parent Family Payment to Jobseekers Transitional payment when their youngest child reaches 7 years old. There are a number of practical problems that can and tend to arise from this. Firstly, the Department of Social Welfare inform the non-custodial parent that their liability to pay the Department's assessed contribution has ended.

⁵ Ibid

⁶ https://onefamily.ie/wp-content/uploads/2017/07/One-Family_Pre-Budget-Submission-2018.pdf

⁷ Ibid; https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf.

This tends to have the effect of the non-custodial parent ceasing maintenance payment altogether. Secondly, if payments cease, the custodial parent may need to seek legal proceedings under the pressure of possibly have social welfare payments reduced or cut off. Finally, and most seriously, where the parent has suffered abuse from the other parent, and as result, is reluctant to identify their address, the parent may find themselves in a position of deciding between her well-being and being cut off social welfare. Thus, the effect of this change of welfare payment seems heavily unreasonable and places an unjustified burden on the parent that is actually carrying out her parental duties.

1.9. There also seems to be an issue with the enforcement of bench warrants, the in-efficiency of which weighs heavily against the custodial parent in seeking maintenance. This, again seems an unreasonable burden, considering many solo-parents rely on state welfare, which may be offset against maintenance entitlements. Moreover, such burdens are objectively unreasonable because they weigh heavily against the parent who, in carrying out a very important social function, is in full compliance with their obligations to the child/ren.

1.10. While the current framework of realising maintenance agreements may be amenable to family break ups and separations that proceed through the family courts, though the problem of default on maintenance remains, it seems it may struggle to realise the rights of many solo parents and their children, who tend to avoid the formal and informal legal structures in place to fulfil their entitlements and the rights of their child/ren by having the other parent provide financial assistance in the form of child maintenance.

1.11. Review in this area could look at other past and present common law models of child maintenance (including possibly moving maintenance away from the courts and towards executive agencies such as a ministerial department) with a view to supplementing or overhauling the framework in

Ireland to provide for reasonable access to entitlements surrounding child maintenance.

1.12. Parents play an essential and fundamental role in the common good by raising children. Solo parents in general have a more difficult task and tend to be most vulnerable. The parental duties, which the state has recognised, in the context of solo parents, provides for financial assistance in the form of maintenance. It seems these entitlements are not being availed of by a large class of people. When this happens the family suffers as well as the state. A more accessible maintenance framework may provide solo parents and their child/ren with more reasonable access to opportunities in life. Ultimately, there seems to be an under-fulfilment of entitlements and rights recognised by the state.

1.13. To conclude, I would like to suggest that in the fifth programme of Law Reform that the Commission look into reform surrounding the creation and enforcement of child maintenance agreements between parents. This should be as wide ranging as possible. The central concern in reviewing the law here is that many one-parent families avoid, or are unsatisfied with the legal framework in place which aims to facilitate vindication of their rights and enforcement of parental duties.

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