

Submission to the Government of Ireland's Child Maintenance Review Group

Office of Senator Lynn Ruane
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1. Preface

My interest in child maintenance reform stems from personal experiences of navigating the system and from many years of supporting families, primarily women, in a community setting. Many of them have tried and failed in developing or maintaining financial support from the other parent. The wrong in such a situation is clear; it should never be the caring parent’s responsibility to take on that complex role, in addition to the parental responsibilities they are already fulfilling.

As do the advocates in this area, I firmly believe that is a role for the State. Ensuring clear, cooperative, transparent avenues for children’s financial support is a sure way to address child poverty. Child maintenance is a child poverty issue. It has been recognised for many years that the courtroom’s adversarial nature is not the place to resolve these issues.

My central concern in reviewing the law here 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.

One Family, which works to improve many one-parent families, published a survey that showed that nearly half of these families have to manage without financial support from the children’s other parent and often have difficulty getting regular help, even if such arrangements are in place.

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

An analysis of Growing Up In Ireland data, Treoir has shown that around 80% of solo parents’ income is in the lowest income quintiles. Considering many one-parent households live at risk of poverty, there ought to be an imperative that legal entitlements that aim to fulfil parents’ obligations to their children are reasonably accessible and do not unjustifiably overburden one party more than the other.

It is also imperative to view this submission as just one of the building blocks in building a workable system that is ambitious, keeping in mind that guaranteed payments, recouped by the state, is the best possible outcome when we get the foundations right.

Best wishes,



Senator Lynn Ruane

2. Introduction

I am grateful for the invitation to make a submission to the Government's Child Maintenance Review Group, and I would like to wish you well in your important work.

I was delighted to see the explicit commitment in the *2020 Programme for Government - Our Shared Future* on this pressing issue and that the incoming administration would act on reforming our child maintenance system. Crucially, I welcome that specific mention was made of action on key dimensions such as calculation, facilitation and enforcement of child maintenance agreements.

These are the three necessary and interrelated ingredients for any successful statutory child maintenance system so as we move forward to reform a system which in my view, is in desperate need of structural review.

The issue crosses across many policy areas including social protection, justice and public expenditure and I would recommend taking as full and holistic a view of the complex and interlinked issues arising in this area as possible and to avoid solely using the prism of a single departmental responsibility.

Ireland is changing. Lone parent families are becoming increasingly common as social values change and in light of the social, political and legal changes in recent decades. As the structures of our families change, so must our social policies.

The payment of child maintenance to a caring parent or relative from a liable parent or relative is an important policy instrument in reducing child poverty, improving family outcomes, and achieving important equality markers as a society. Lone parents experience poverty, marginalisation and personal & familial difficulties at far higher rates than the general population. Ensuring appropriate financial inlays into such families is a collective, moral responsibility.

Therefore, our public policies must reflect this reality and engage in a targeted approach to alleviate poverty and challenge inequality, allowing families and children to flourish; I believe this to be the ultimate goal of the process in which we are all engaged.

My fervent wish that the results of this process will form the basis of a new era in social policy in this country, where women and men alike are supported in their caregiving roles and where children are free to grow up with a life of possibility and free from hardship. This is within reach with the right reforms of this area and I again wish you well in your deliberations.

3. Background

I have long been interested in reforms to child maintenance policy, both before my election to the Oireachtas and as a public representative since 2016.

In 2017, I made a submission to the Fifth Programme of the Law Reform Commission requesting that they develop proposals for legislative reform in the area of child maintenance and in particular to address enforcement of agreed child maintenance agreements between former partners.

Later that year, I tabled amendments to the Social Welfare Act 2017 that would have required the Minister for Social Protection to conduct preparatory work on the creation of a new State body to assist with and enforce child maintenance agreements.

In 2019, I tabled an amendment to the Social Welfare Act 2019 that would have disregarded child maintenance payments entirely in assessing income under our social welfare legislation. Also in 2019, I made a proposal to the Oireachtas Women's Parliamentary Caucus that the reform of child maintenance policy form our next major policy priority, following successful motions on period poverty in the Dáil and Seanad. This proposal was accepted and added to the caucus work programme.

With the support of the then-chair Catherine Martin TD and vice-chair Marcella Corcoran-Kennedy TD, I contacted the Office of the Parliamentary Legal Advisor to begin the process of drafting a legislative proposal on the creation of a State body to manage and enforce child maintenance agreements. This work began in October 2019 and has continued ever since, barring a period of abeyance for the 2020 Dáil and Seanad general elections.

I have now regularly met with legal advisors and parliamentary draftspeople for a number of months now on shaping proposals for legislative reform. I have also maintained close contact with key stakeholders at all points of the drafting process, updating them and allowing them to shape the proposal as they progressed.

I was also involved in the successful lobbying of government programme negotiators to ensure this area of policy reform was the subject of an explicit commitment in the finalised *2020 Programme for Government - Our Shared Future*.

As part of the aforementioned work, I have gained considerable insight and experience into the need and shape of reform in this area. I have drawn from all parts of these policy development processes in drafting the following submission.

4. Role of Child Maintenance

- It costs money to raise a child. Meeting their social, educational and wellbeing needs requires constant financial support, normally provided at the cost of the caring parent or relative.
- Where a parent is caring alone, it is in the interests of the child and broader fairness and equality considerations to ensure that the non-caring parent is providing adequate and appropriate financial support for the care of the child.
- As Irish society continues to transform and social, economic and legal conditions change, the prevalence of one-parent families has continued to increase in recent years.
- The 2016 Census found that the number of one-parent families in the State was 218,817, which represents over a quarter of all family units. 86% of these families were headed by mothers, giving policies relating to lone parent families a clear gender dimension.
- It is also the case that one-parent families are far more likely than other types of households to be at risk of poverty, to be in consistent poverty, to have an income in the bottom two household incomes deciles and to be reliant on social transfers.
- Faced with this reality, it must be an agreed outcome of State public policy to ensure that adequate financial resources are flowing into one-parent households. An obvious source of potential income is a non-caring parent with a responsibility to ensure the fair economic maintenance of their child.
- While the pursuit of fairness in ensuring a non-caring parent is contributing financially is a fair public policy outcome, ensuring agreed child maintenance is being paid is first and foremost an effective policy instrument for tackling and preventing child poverty.
- In light of the considerable evidence demonstrating the damaging effects of child poverty on development and eventual life outcomes, the enforcement of child maintenance agreements must be seen as a key tool of alleviating child poverty, especially in light of a stubbornly high 2019 CSO child poverty rate of 8.1% in Ireland.

5. Status Quo

- A successful child maintenance system is one where agreed maintenance amounts are legally enforceable, regular, reliable and which place the best interests and needs of the child at the centre. The current Irish system unfortunately does not meet these key requirements.
- Currently, where a private arrangement without the involvement of a third party is not possible, the parent seeking maintenance payments must apply for a maintenance order through the District Court.
- The District Court may issue an order for up to a maximum of €150 a week which is paid directly to the Clerk of the District Court and then transferred to the parent seeking maintenance.
- Where the liable parent does not comply with the maintenance order, the parent seeking maintenance may further apply for an Attachment of Earnings Order. This gives the Clerk the power to extract the maintenance from the liable parent's income at source.
- It is also open to the parent seeking maintenance to sue for an outstanding sum following a maintenance order as a simple contract debt under the Family Law (Maintenance of Spouses and Children) Act 1976.
- Furthermore, where a lone parent is in receipt of the one-parent family payment, they must, as a condition of receiving the payment, demonstrate that they are seeking payment from the liable parent.
- In a 2019 survey by One Family of their lone parent members in relation to child maintenance, only 51% received regular financial support from the other parent.
- Of these parents, 58% came to the maintenance arrangements via a court order and a court order was also found to be the most common way to arrange child maintenance payments.
- Furthermore, the National Shared Parenting Survey was conducted by Pobal, the Department of Social Protection and One Family in 2017 and found that 32.2% of lone parents received no financial support from the other parent.
- Overall, the system is complex, lengthy and based on the empirical evidence, not ensuring high levels of successful child maintenance agreements and eventual payments.

6. Current Challenges

1. The process itself deters parents who could seek maintenance from doing so as the current system is cumbersome, difficult, often expensive to access and crucially, due to the significant role of the court system, is unavoidably adversarial.
2. The delays involved in making an initial court application, subsequent court applications, waiting for court dates and later applying for an attachment of earnings order can exacerbate already difficult financial situations, increasing desperation and poor mental health outcomes in an already stressful process.
3. The adversarial nature of the system can exacerbate already fragile parental or familial relationships which can impact children, which evidence has demonstrated can result in lower socio-economic outcomes.
4. The court system is poorly equipped to deal with applications for child maintenance and leads to poor outcomes in child maintenance decisions, including inconsistency in amounts due to differences in approaches by individual judges and across different geographical areas.
5. The administrative and legislative structure of the system is such that it creates additional barriers to the payment of child maintenance, particularly the management of the transition from the One-Parent Family Payment to the Transitional Jobseekers payment when the child reaches the age of 7.

7. Guiding Principles

- As we consider reform in this area, it is important to concurrently consider the many dimensions of the multitude of legislative and policy issues that arise.
- A key aim of reform must be to disincentivise the use of the court system for maintenance arrangements. The system is ill-suited, inefficient, unreliable and can cause greater parental conflict.
- The burden of pursuing unpaid maintenance payments must be alleviated from the already caregiving parent, as this unduly interferes with their parenting role and responsibilities which they are already conducting on a solo basis.
- The responsibility to pursue unpaid maintenance payments must be borne by the State, to support the already caregiving parent in their role and due to the legal access that State institutions can enjoy to a liable parent's income stream.
- Child maintenance, once agreed, must be a guaranteed payment given by the State to the caregiving parent or relative. The cost of the child maintenance must then be recouped by the State from the liable parent.
- In addition to the creation of a mechanism that allows for the calculation, facilitation and enforcement of child maintenance agreements, a number of the legislative and administrative failings of the current system must be rectified simultaneously.

8. Best International Practice

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- I recognise that the accompanying public consultation document makes reference to the creation of a State Child Maintenance Agency.
 - The creation of an agency has been debated in the Irish public sphere for a number of years now as an authority that could be designated with the responsibility to assist, calculate, facilitate and enforce child maintenance agreements on behalf of parents and relatives.
 - I remain open to the option of the creation of a standalone agency to manage such affairs. However, following a considerable amount of research of various international models, I would like to draw the attention of the review group to the system used in New Zealand as a potential best practice model from which Ireland could draw.
 - There are obvious policy appeals to such an approach as New Zealand is also a small country with a similar social and economic profile to Ireland and crucially, also uses the common law system which would make any form of legislative transposition infinitely easier.
 - In New Zealand, the primary responsibility for the calculation, facilitation and enforcement of child maintenance agreements is undertaken by their equivalent of the Irish Revenue Commissioners.
 - Parents apply to Revenue for an assessment of their respective incomes and their care involvement with the child or children.
 - An assessment is made of the total income of the couple and total care responsibilities, and then their respective relative contributions to both are calculated.
 - Using this information, each parent's 'income cost percentage' and 'care cost percentage' is calculated, i.e. their relative incomes and relative care responsibilities are calculated and compared.
 - The two calculations are made according to a statutory formula set out in primary legislation with agreed inputs and outputs also set out in primary legislation.
 - The assessment of income formula is complex and comprehensive, including a full range of potential income sources with fair deductions then made for other dependent children and other care responsibilities.

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- The assessment of care formula largely relates to the amount of time spent caring for a child on a regular basis, e.g. per week.
 - Time spent caring for the child is used to generate a relative percentage that is then balanced against the other caring parent or relative. The balance in relative assessment of care responsibilities is therefore set. The cost of raising a child is also established in statute.
 - The respective liable and creditor parents are established and the Revenue automatically deducts the agreed maintenance amount directly from the income of the liable parent.
 - Where either parent feels that the maintenance amount is unfair or inaccurate, there is an option to appeal the amount to the Revenue Commissioners. There is then an opportunity for Revenue to depart from the set formula and include other important details in assessing income or care. Finally, if a parent still feels that the amount is not sufficient, there is an opportunity to challenge the decision of Revenue in the courts.
 - In my view, the appeal of the New Zealand model is as follows:
 - Its fundamental basis is quantitative, with agreed inputs and outputs set in primary legislation and by precedent. This reduces the chance of a potential challenge from a parent later in the process as an empirical formula rather than the use of a bespoke judicial decision.
 - The system also becomes far more transparent and predictable for all parties involved as the process becomes solely one of calculation, rather than one where sometimes emotive arguments before a judicial authority may result in higher or lower amounts being awarded.
 - The automatic deduction means that the potential for parental conflict is mitigated. Revenue facilitates maintenance arrangements on behalf of parents and relatives, meaning the familial relationship can be entirely de-financialised.
 - It removes an integral role for the courts. The adversarial nature of the Irish court system is a major failing of its usage as the forum in which maintenance decisions are currently argued and set.
 - However, the opportunity to still pursue maintenance in the courts is not removed; it is just an opportunity that will come when the administrative options have already been exhausted.
 - It anchors the calculation and facilitation of maintenance in a government body with high capacity in this area. Revenue normally handles the highly complex and detailed financial calculation and transactions for every category of economic actor; it is a function that they could perform with relative ease and to a high standard.

9. Recommendations

- Many former partners and relatives can organise successful child maintenance payment arrangements privately and without a third party. However, where a parent wishes to seek maintenance, we must legislate to ensure that the rate of maintenance, the facilitation of payments and, if necessary, the enforcement of unpaid maintenance is the responsibility of the State. If a parent is caring for a child solo, they should not be required, in addition to their caring responsibilities, to pursue maintenance from a liable partner who is not caring for the child.
- Therefore, child maintenance must become a guaranteed payment issued by the State, the cost of which the State must then recoup from the liable parent.
- Primary legislation should be introduced to set out a calculation formula in statute that allows parents to apply to have their income assessed, their relative care responsibilities calculated and a fair maintenance amount calculated on their behalf by the State.
- In the Irish context, this role would ideally be carried out by the Revenue Commissioners who would be legally empowered to use data they already hold in relation to parental income to calculate their entitlement to or liability for child maintenance.
- In the event of non-payment, Revenue would extract agreed maintenance payments at source from income or social protection payments. Child maintenance would become a reliable and guaranteed payment that a lone parent can rely on and use in long-term future financial planning.
- Where a parent wishes to challenge a determination of their liability or entitlement to maintenance, court applications should be made to the Government's proposed new family court system, as proposed in the General Scheme of the Family Court Bill published in September 2020.
- I am also of the view that in the event that a parent or relative feels an inaccurate amount of child maintenance has been calculated, then a court should be empowered to include an assessment of the value of the liable parent's assets in calculating liability for child maintenance.
- Notwithstanding the constitutional protections relating to private property, I believe that the 31st Amendment to the Constitution and the inclusion of explicit children's rights would allow for an appropriate

balancing of a child's rights to be economically maintained with their parent's right to hold assets in their private ownership. It would undoubtedly be within the purview of the Oireachtas to legislate in this area.

- Furthermore, a number of urgent legislative fixes are required to address problems with the current management of child maintenance policy.
 - The requirement to seek maintenance from a liable parent as a condition of receipt of the One Parent Family Payment must be removed.
 - The link between child maintenance and the One-Parent Family Payment must be severed altogether, and the two payments should be treated as entirely separate and distinct.
 - Child maintenance payments should be entirely disregarded when assessing income for the purposes of the One Parent Family Payment. This would have the potential to transform our collective efforts to tackle child poverty in one-parent families.
 - The practice of informing liable parents that their responsibility to pay child maintenance for the purposes of the One Parent Family Payment once the child reaches the age of seven and the parent moves to the Jobseekers Transitional Payment must end. If the State continues to recoup the cost of providing the OPFP from the liable parent, then it must do the same for the JTP, in line with the proposals contained in the Social Welfare (Payment Order) (Amendment) Bill 2018.

10. Conclusion

I'd like to wish you well in your deliberations on this important issue. We have an opportunity to revolutionise social policy as it relates to the economic wellbeing of one-parent families, and I'd urge all involved to ensure it is taken.

I look forward to supporting the work of the Child Maintenance Review Group as it works through the complex and important issues at play, both through direct engagement and with the private members' bill I intend to bring before the Seanad in 2021, that will reflect some of my proposals I have articulated in this submission.

I remain committed to pursuing reform in this area and to supporting your important work in whatever capacity I can; please let me know if there's a role I can play going forward.

Best wishes,



Senator Lynn Ruane

11. Acknowledgements

I'd like to start by thanking the Office of the Parliamentary Legal Advisor and particularly Kate Butler BL for her work on progressing our legislative reform proposals in this area. I'd also like to thank Catherine Lynch in the Oireachtas Library and Research Service for producing an excellent position paper that has formed the basis of my office's work.

I'd also like to thank the Oireachtas Women's Parliamentary Caucus for their support and the Violence Against Women Observatory at the National Women's Council of Ireland and the One Family organisation for their invaluable insights as we have further developed the shape of policy reform in this area.

Finally, I'd like to thank Sebastian McAteer in my office for his assistance in progressing legislative reform since 2016 and for his assistance in drafting this submission.

12. Appendix



L&RS and OPLA Briefing Paper

Child maintenance in Ireland

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25 October 2019
Enquiry Number: 2019/993



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Introduction

“Child Maintenance” is a regular financial contribution paid by a non-resident parent towards the financial cost of raising a child, which is usually paid to the parent with whom the child lives most of the time.¹ Child maintenance can apply where parents are divorced, separated either from marriage or co-habitation, or where a parent has never lived with or been married to or in a civil partnership with the co-parent. It is distinct from any other maintenance (intended for a spouse which is also defined as ‘alimony’).

While related to other issues of family law - guardianship, custody and access— child maintenance is separately provided for and can be separately arranged for through the courts. Sometimes applications for maintenance form part of other proceedings for example, [judicial separation](#) / [divorce](#) / [dissolution](#) in the Circuit Court or the High Court.²

Given the prevalence of one parent family households, child maintenance is an increasingly important issue in Irish society. One-parent households are and will continue to be a major group in Irish society.³ According to Census 2016, the number of one-parent families at 218,817 represents 25.4% of all family units with children. And 21.2% of all children (356,203 children) live in one parent family units.⁴ The majority of one parent families: 125,840 of 218,817 (57.5%) had just one child (one parent families have on average 1.63 children compared with 1.95 for two parent families). 189,112 of one parent families (86%) were headed by mothers and 29,705 were fathers.⁵ Of one-parent families headed by mothers, 44.5% of mothers were ‘single’ (never married), 30.75% were separated or divorced with just over 20% being widowed. Amongst the small number of one parent families headed by a father, on the other hand, in 68% of the cases the father was over 50 year of age and in 39% of the cases he was widowed.

This Research Paper

1. Sets out the legislative framework regulating child maintenance payments;
2. Examines the extent to which there appears to be a policy issue including poor socio-economic outcomes for one-parent households, available evidence on the incidence of payment of child maintenance by non-resident parents and whether or not research shows that regular child maintenance can reduce the risk that one-parent households are at risk of poverty;
3. Issues with the current child maintenance system which appear to cause low level of child maintenance payments;

¹ Hakovirta and Jokela ‘Contribution of child maintenance to lone mothers’ income in five countries’ *Journal of European Social Policy* vol. 29, 2: pp. 257-272.

<https://journals.sagepub.com/doi/full/10.1177/0958928717754295>

² Courts Service, Child Maintenance Courtservice.ie

³ Joint Committee on Social Protection (June 2017): Report on the position of lone parents in Ireland p.10 – based on its analysis of the data this conclusion is drawn.

⁴ Joint Committee on Social Protection (June 2017): Report on the position of lone parents in Ireland p.5 – data from CSO, Census 2016.

⁵ <https://www.cso.ie/en/releasesandpublications/ep/p-cp4hf/cp4hf/fmls/>

4. Gives an overview of comparative maintenance systems internationally;
5. Concludes by briefly looking at policy options with which to address the issues identified including the proposal to establish an authority the functions of which would be (a) to provide independent legal advice, legal representation and mediation services to those seeking child maintenance agreements; to facilitate collection and offer a maintenance collection service akin to the maintenance collection unit in the Department of Social Protection so that it can pursue defaulting liable relatives .

1. Child Maintenance System and legislative framework

There are different options for parents seeking to arrange for the payment of child maintenance depending on their circumstances. The first two apply where the 'resident parent' is not in receipt of the one-parent family payment.

First, private arrangements may be made between parents without involvement of third parties;

Secondly, where such private arrangements are difficult to reach there is provision in law for a maintenance creditor (parent seeking maintenance payment) to ensure regular maintenance payment (maintenance order) through the District Court. Under these provisions, the maintenance creditor applies for a 'maintenance order' either through a solicitor or directly (via a maintenance summons) to the Clerk of the District Court.' According to the Court Services, the District Court may supply a maintenance order of up to a maximum of €150 a week for a child which is paid to the District Court and transferred to the maintenance creditor. Where the 'liable parent' does not comply with the 'maintenance order,' the maintenance creditor may apply to the Clerk of the District Court for an 'attachment of earnings order' (see below). This means that the maintenance payment is automatically extracted from his or her income at source.

Thirdly, if a maintenance creditor is in receipt of the **one-parent family payment**, he or she is obliged to seek maintenance under legislation (different obligations depending on their prior relationship – see below) from the other parent (referred to in the legislation as the liable parent). Where maintenance is provided in these instances it is frequently paid directly to the Department of Social Protection which sets this payment off against the One Parent Family Payment i.e. the maintenance does not go directly to the parent but to the Department and is a condition of the parent receiving the payment (this is fully described in below and discussed in Section 3 of the paper). In this scenario it is the Department which seeks the attachment of earnings order.

The legislative provisions underpinning child maintenance payments and the enforcement of such payments it is set out in more detail below under (a) family law and (b) social welfare law.

Maintenance payments and enforcement in family (private) law⁶

1.1. In the domain of private law, maintenance orders are pursued through the following legislation:

- Family Law (Maintenance of Spouses and Children) Act 1976 – Section 5
- Guardianship of Infants Act – Section 11
- Family Law Act 1995 – Section 7
- Family Law (Divorce) Act 1996 – Section 12
- Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 – Section 45(1)⁷

1.2. Where a person has successfully obtained a maintenance order but needs to enforce it, there are two options open to him or her. Firstly, section 9 of the 1976 Act provides that the

⁶ This section was provided by the OPLA.

⁷ Other relevant legislation includes: Illegitimate Children (Affiliate Orders) Act 1930; Status of Children Act 1987; Maintenance Act 1994; Civil Law (Miscellaneous Provisions) Act 2011; SI 274/2011 European Community (Maintenance Regulations) 2011; Children and Family Relationships Act 2015

Court shall direct that payments under the order shall be made to the District Court clerk, unless the maintenance creditor requests it not to do so; any enforcement is conducted through the DC clerk. Secondly, section 20 of the 1976 Act provides that a maintenance creditor may sue for a maintenance sum outstanding as a simple contract debt.

1.3. Where payments are going through the District Court, and where there are arrears, the maintenance creditor may request in writing that the DC clerk takes steps as he or she considers reasonable to recover. The DC clerk is entitled to seek an attachment of earnings order against the liable parent⁸.

1.4. Further, section 9A of the 1976 Act provides that failure to pay maintenance under an order, is contempt of court. This provision allows a maintenance creditor to apply to the DC clerk to issue a summons directing the liable parent to appear before the District Court. If the liable parent fails to appear, the court may issue a warrant for arrest.

1.5. In summary, in the private sphere, there is provision for a maintenance creditor to enforce through a third party, i.e. the District Court clerk.

Maintenance payments and enforcement in social welfare law

1.6. The main provisions that govern the One-Parent Family Payment (OFP) are:

- Social Welfare Act 1996 – Part V
- Social Welfare (Consolidation) Act 2005 – Part 3, Chapter 7 and Part 12
- SI 142/2007 – Chapter 3

1.7. The legislation views parents as being either a parent who is acting as the main carer for a child/children ("the maintenance creditor"), or a liable parent/maintenance debtor. A liable parent is one who has a duty to pay maintenance towards the keep of the dependent child, and/or maintenance to the former spouse/civil partner/cohabitant.

1.8. Where a maintenance creditor qualifies for the OFP, the liable parent may be liable to make a contribution to the competent authority (the Liability to Maintain Family section of the Department of Social Welfare).⁹ It appears that this works on a set-off basis: the competent authority provides the OFP and the liable parent pays an amount of maintenance (to be determined based on income and needs) to the competent authority.

1.9. Where the liable parent fails to make payments, the competent authority has powers of recovery, including seeking an attachment of earnings order.¹⁰

1.10. Shannon, in *Child Law*, understands the process for arranging child maintenance through the social welfare acts in the following terms: "A distinct advantage of entitlement to one-parent family payment, is that the payment is guaranteed. The recipient is not forced to pursue a reluctant spouse or parent for maintenance."¹¹

1.11. However, this is incorrect. The Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (SI 142/2007) sets out that **a maintenance creditor must seek**

⁸ Section 9(2)

⁹ S. 346, Social Welfare Consolidation Act 2005

¹⁰ Part 12 of Social Welfare Consolidation Act 2005

¹¹ Round Hall/Thomson Reuters, Second Edition, para 13-135

maintenance from the liable parent in order to qualify for the OPF¹². There is a distinction between married and non-married parents here.

- 1.12. The legislation says that a separated spouse must make “and continues to make appropriate efforts, in the particular circumstances, to obtain maintenance from a liable relative”.¹³
- 1.13. It then says about a non-married parent, that he or she must make “such reasonable efforts, as may be required from time to time by an officer of the Minister, to obtain maintenance from a liable relative.”¹⁴
- 1.14. This has been interpreted by the Department of Social Welfare as meaning the following:
- “If you are separated, divorced or your civil partnership is dissolved you must: Have made efforts to get maintenance from your spouse or civil partner (if your civil partner is the parent of the child/ren)... If **you were not married** to the parent of your child/children you **do not** need to seek maintenance from the other parent when you first claim OPF. However, you must make efforts to seek maintenance from the other parent to continue to be eligible for OPF.”¹⁵
- 1.15. The “efforts” required to be made by the maintenance creditor to seek payment from the liable parent include using section 9 of the Family Law (Maintenance of Spouses and Children) Act 1976 (see above),¹⁶ which requires the maintenance creditor to request the District Court clerk to enforce the payment. This process is explained in Box 1 below.
- 1.16. In summary, the social welfare regime provides the OPF to qualifying parents, so long as the parents make ongoing efforts to get maintenance from the liable parent. This appears to put the burden of enforcement on the maintenance parent, albeit at one step remove via the District Court clerk. However, once these steps have been taken by the maintenance creditor, he or she will receive the OPF, regardless of the success or otherwise of the enforcement proceedings.

Box 1: Liable relatives, OPFP, child maintenance and the role of the Department of Social Protection

The purpose of the ‘Liable relatives’ section is to recoup as much money possible from liable relatives (generally non-resident parents) to off-set against the cost of the One Parent Family Payment.

Where a solo parent is seeking to receive the One Parent Family Payment he or she is obliged to seek maintenance from the other parent. The primary carer who is in receipt of (or applying to receive) the One Parent Family Payment may receive maintenance from a liable parent in one of two ways:

1. The primary carer arranges and agrees the maintenance payment with the liable parent privately - either informally between the parents or through the family law (i.e. the court order system described above). Where this is the case the recipient of the OPFP must disclose this amount and it is taken into account for the assessment of the one-parent family payment. On assessment the

¹² Note that this policy was implemented by secondary legislation and it is questionable whether there are sufficient principles and policies to provide for this level of delegation in the principle act (Social Welfare Consolidation Act 2005)

¹³ Article 125 of SI 142/2007

¹⁴ Article 126 of SI 142/2007

¹⁵ http://www.welfare.ie/en/Pages/278_One-Parent-Family-Payment.aspx

¹⁶ <http://www.welfare.ie/en/Pages/One-Parent-Family-Payment.aspx#guidesep> – Appendix 1 of this document sets out “Guidelines on Efforts Condition for Separated Claimants” and “Guidelines on Efforts Condition for Unmarried Claimants.”

One Parent Family Payment may be reduced by up to half but the amount received plus the maintenance payment will be higher than if the primary carer was only receiving the full One Parent Family Payment¹⁷;

2. Alternatively, the primary carer can give the Department contact details for the liable parent who will write to the liable parent informing them of their duty to pay maintenance under the Act. At this point the liable parent can decide to pay the primary carer directly (as described at point 2 above) or to pay the Department directly. Where he/she chooses to pay the Department directly, all of the maintenance received is kept by the Department and used to offset the cost of the One Parent Family Payment i.e. so the creditor parent receives the OPFP (and no maintenance).

Confusion about a non-resident parent’s obligation to financially support his or her child through maintenance has arisen from the link between the OPFP and child maintenance in the Social Welfare Act. As the One Parent Family Payment is only paid out until a child has reached the age of seven years, non-resident parents are no longer liable to pay maintenance to the Department (i.e. under the second arrangement above) when the payment stops and the primary carer moves onto the Jobseekers Transitional However, they remain under obligation to pay maintenance under Family law. **This is discussed further in Section 3 below (point 7).**

International position

- 1.17. Enforcement of maintenance across jurisdictions is made possible by the Maintenance Act 1994, which gives effect to international conventions in relation to simplifying the recovery of maintenance. It provides that the Central Authority (the Civil Law Reform division of the Department of Justice and Equality) shall have authority to act on behalf of a maintenance creditor under the 1976 Act.¹⁸
- 1.18. The European Council Regulations EC No 4/2009 is directly applicable and provides common rules relating to the recovery of maintenance, including mutuality of recognition and enforcement of orders. It’s designed to bring about co-operation between central authorities. The objective is that a maintenance creditor should be able to obtain easily in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.

¹⁷ The Liability to maintain family Section in the Department of Employment Affairs and Social Protection sets out that all income from maintenance is assessed as means (for the One Parent Family Payment) but only up to half of the income from maintenance would be subtracted from (set off) from your payment (i.e. there is a limit to the amount lost, <https://www.welfare.ie/en/Pages/Liability-to-Maintain-Family.aspx>)

¹⁸ Section 4

2. What policy problem has been identified with the current child maintenance system?

The broad policy issue is the relatively high levels of poverty experienced by solo parent families; the secondary issue is that the available evidence suggests a relatively low incidence of the payment of child maintenance to solo parents from a non-resident parent and there is the possibility that this is one of the factors placing one-parent families at a greater risk of poverty. Thirdly, and more specifically, it is argued by some stakeholders and studies that there may be systemic, legislative and/or policy causes of the low incidence of payment of child maintenance in Ireland. We next evaluate the evidence base of these policy issues. Section 3 sets out these systemic issues.

2.1 Poor socio-economic outcomes for one parent families

Analysis of CSO (Survey and Living and Income C – SILC) data¹⁹ which measures deprivation, the 'at risk of poverty' rates and the 'in consistent poverty' levels experienced by households in Ireland, **one-parent households in Ireland are more likely than other types of households:**

- **To be 'at risk of poverty':**²⁰ an analysis by socio-demographic characteristics in 2017 found that the 'at risk of poverty rate' for individuals in one parent households (with one adult and one or more children aged under 18) was 39.9% compared to 15.7% for the State. In 2016, the at risk of poverty rate for one parent household was 40.2% compared with 16.5% in the State. Corrigan's analysis of Growing Up in Ireland Survey data (described next page) find similarly that while 1 in four families were at risk of poverty, this role to 1 in 2 amongst 'solo parent families';²¹
- **To be in consistent poverty:** individuals living in one parent family households had the highest consistent poverty rate at 24.6% (compared to a consistent poverty rate of 8.3% (of all households).²² In 2017, the consistent poverty rate for all individuals in the State was 6.7% compared with 20.7% for individuals living in households where there was one adult and one or more children aged under 18. Watson et al²³ examine SILC data (longitudinal data i.e. using same households) across different waves of the SILC survey (2005 and 6, 2008 and 9, 2013 and 2014) and found that persistent poverty (defined as being at risk of poverty in both survey years) was particularly pronounced among lone parents and was 26% points higher among lone parents (compared to average percentage point gaps in other European countries of between 5 and 20%).

¹⁹<https://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2016/>

²⁰ Defined as the share of persons with an equivalised income below a given percentage (60%) of the national median income. The rate is calculated by ranking persons by equivalised income from smallest to largest and then extracting the median (middle) value. Anyone with an equivalised income of less than 60% of the national median is considered to be at risk of poverty. Equivalised income is the total disposable income of a household divided by household size. See [CSO here](#)

²¹ Corrigan Owen (2014) Watch them Grow p.15

²² The consistent poverty rate was lowest for individuals living in households with two adults, at least one of whom was aged 65 or over, and where there were no children (1.7%).

²³ Watson et al (2018)

- **And are consistently more likely to have an income which the bottom two household income deciles** regardless of the performance of the economy. This was the case for the pre-recession years 2004-5 - 70% of one parent households were located in the bottom deciles, for recession years (2008 -2012) when 61% were located in the bottom deciles and did and post-recession years) and during 2013 – 2014 when 53% were located in these lower deciles.²⁴
- **To be more reliant on social transfers:** the proportion of one parent households concentrated in the lower two income deciles (reported above) reduces when social transfers are taken into account and, in fact, one parent households experience the largest benefit of any other type of household in terms of income after social transfers.
- Have (at least single mothers have) significantly lower employment rates than partnered mothers. OECD data in 2014 find that 63% of partnered mothers and 46% of single mothers are in employment. This 46% is 19% points lower than the OECD average employment rate for single mothers.²⁵

This is consistent with data from the Growing Up in Ireland Survey.²⁶ Analysis of the first two waves found that three-year-olds in one-parent families: **had a much higher chance than other types of household of being in low-income households**, a trend that has been found to persist when the children were at aged 9 (box 2).

Box 2: Growing up in Ireland Study: Income depending on family type

35% of one-parent families with one child, and almost half (48%) of one-parent families with two or more children, were in the **lowest income quintile**. Only 11% of children in two-parent families with one child and 18% of two-parent families with two or more children fall into the low income quintile.

Only 6% of one-parent families with one child and a smaller proportion of the one-parent families with two or more children were in the **highest income quintile**. This compares respectively with 27% and 17% of two parent families with one child and two parent families with two or more children.

This trend was found to persist when the child is 9 years old: analysis of the fourth wave (when children were 9) found that children in one-parent families were nearly three times more likely to be in the lowest family income group than two parent families (43% compared to 15%). And one-parent families were considerably less likely to be in the top income group (only 8% were in the highest income group compared with 22% of two-parent families).²⁸

²⁴ In 2004/5 70% of lone parent families Regan, Keane, Walsh (2019) [Budget Perspectives Paper 1 Lone parent income and work incentives](#) ESRI p.3-4

²⁵ Regan, Keane, Walsh (2019) [Budget Perspectives Paper 1 Lone parent income and work incentives](#) ESRI p.5.

²⁶ The Growing up in Ireland Study (Infant Cohort), a longitudinal study of 11,134 children born between 1 December 2007 and 30 June 2008, enables researchers to track the development of this cohort of children and their families over time. Wave 1 was a set of interviews conducted when the child was 9 months; wave 2 when the child was 3 and wave 3 when the child was 5 years old and (wave 4) when the child was 9 years.

²⁷ [Growing up in Ireland Key Findings Infant Cohort \(at 3 years\)](#) (2011) ESRI, Trinity College p.4

²⁸ [Growing up in Ireland Key findings Cohort '08 at age 8/9](#) (2018) ESRI, Trinity College p.3

So one-parent families are at greater risk of poverty and are concentrated in lower-income households. However, there is variation across one-parent families. Corrigan, who carried out an in-depth analysis of the Growing up in Ireland data (Infant Cohort waves 1 and 2) found **considerable variation in socio-economic outcomes for 'solo parent' category** depending on income, education levels, labour market attachments, living arrangements, family size and age of parents which suggests that up to 58% of one-parent families were struggling financially. Corrigan identifies five sub groups and urges that policy makers are cognisant of these groups which have different needs (Box 2A)

Box 2A: different groups of solo parents identified by Corrigan (2014):

1. Strivers,
2. Thrivers
(both of which tend to be active in the labour market and have low to middling earnings and who account for 38% of solo parents),
3. High fliers
(have high levels of income and education and comprise less than 5% of solo parents);
4. Struggles
5. Poor Single Mothers
(both strugglers and poor single mothers are not to be active in the labour market, rely on social transfers, tend to have larger families and depend on social housing. These sub groups together comprised **58% of all solo parents** (50% strugglers, 8% Poor Single Mothers).

Neither SILC data nor Growing Up in Ireland data is not collected at a level that allows us to assess whether contact with the other parent (e.g. via a co-parenting or joint custody arrangement) and/or receipt of maintenance is associated with the levels of deprivation experienced or the extent to which a household is at a greater risk of poverty or is experiencing consistent poverty.²⁹ However, having completed his analysis Corrigan argues on the subject of child maintenance Corrigan that:

'serious questions must be asked about any policy which makes it less likely that non-resident parents will meet their maintenance payment obligations (Corrigan, 2014, 102).'

To what extent does a low incidence of child maintenance by the primary carers in one parent households contribute to the poor socio-economic outcomes documented above? We next look at the available data on the incidence and level of maintenance payments

2.2 Payment of child maintenance related to poor socio-economic outcomes?

To what extent does the rate of payment of child maintenance contribute to poor socio-economic outcomes for one parent families?

The data is not complete on the incidence of maintenance payments from non-resident to solo parents in Ireland. Some recent surveys suggest that the incidence of maintenance payment is quite low; although care should be taken as the methodology employed the first two surveys

²⁹ CSO in correspondence with L&RS explains that the sample size does not suffice for a further breakdown of household type by marital status. As to *whether or not lone one-parent families in which the lone parent is co-parenting with the other parent have different economic outcomes*, this is not something that can be answered using the SILC survey - we survey a household as a single entity and cannot link co-parents living in separate households.

means the findings are not generalisable to the full population of one parent families and the information from the Department relates only to one-parent families in receipt of the One Parent Family Payment.

First, *One Family* conducted a *Child Maintenance Survey* (published 2019) to which there were 1,063 respondents from the One Family's database of members/clients. Note that the extent to which the sample of respondents is representative of all people in the One Family database or, indeed, the extent to which One Family's database is representative of the general population of one parent families in Ireland is not known.³⁰ The findings are of interest however, in particular when considered alongside the broadly similar findings of another study (on shared parenting) in 2017 and finding from Owen Corrigan's Growing up in Ireland study (see below). Key findings in the *Child Maintenance Survey* are that:

- **51.21% of respondent parents who are primary carers received a financial contribution/maintenance from the other parent** while 41.8% did not and 10% received irregular or one-off contributions (contribution as required);³¹
- Of those primary carers who do receive a financial contribution, 75% reported that they received it regularly;
- Of these primary carers receiving a maintenance payment, **58% came to the arrangement via a Court Order** with 33.7% making it privately and 8% through mediation;
- Whether a respondent was a primary carer, shared responsibility for caring, or was a non-primary carer, a court order was the most frequent way to arrange child maintenance (58%, 50% and 57.7% respectively).

The *National Shared Parenting Survey* was first undertaken in 2017 by Pobal, the Department of Social Protection and One Family (it has not been repeated yet to our knowledge).³² The survey, which was disseminated using survey monkey and via One Family's website, ezine, email and social media platform, aimed to capture information about and the views of parents who are sharing parenting. While the results cannot be generalised to the whole population because a self-selected, convenience sampling method was used, it does throw light on the experiences of parents who are either seeking or have child maintenance arrangements. Of note is that:

- Of the over 1,000 respondents to the survey, 84% reported that the child(ren) lived with them all or most of the time (primary carers). Of this group **62% state that the other parent contributes financially, while 32.2% reported that he or she receives no financial contribution.**

In his analysis of the Growing up in Ireland Survey data which draws on a representative sample of parents in Ireland, Corrigan finds that 53.7% of solo mothers were not receiving any financial contribution from the non-resident father of their three-year old children and only 35.4% received a

³⁰ The survey report does not include a section on methodology and, as such, no information on response rate. L&RS contacted One Family which gave the following information: it was an online survey (survey monkey) and respondents self-selected to take part with 1,063 responses. It was ran in April and May this year and was sent out via our ezine (1,500 recipients) and on our social media channels (Facebook 10k followers & Twitter 3.5K followers).

³¹ Primary carers make up the vast majority of respondents in the survey) 993 of the 1063 respondents are primary carers, 30 non-primary carers and 36 have 'equal caring responsibilities.'

³² https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

regular contribution.³³ He also found that a non-resident parent was more likely to make a regular financial contribution when a child was 3 (at wave 2) if the parents had lived together at wave 1 (9 months). And that if non-resident fathers were making a regular financial contribution at wave 1 the majority continued to do so at wave 2(65%). On the other hand, if a non-resident father was making no financial contribution at 9 months, he was unlikely to be making one at 3 years (only 1 in 5 of those making no contribution at 9 months were making one at 3 years). **This suggests that where a financial contribution arrangement is made early on in the child's life, it may be more likely to endure.**

Data from the Department of Social Welfare also gives some idea of the incidence of maintenance payments. In its submission to the Joint Committee on Social Protection in 2017, the Department stated that 35% of solo parents were receiving maintenance payments from the non-resident parent. It is not clear from the committee hearings but it would appear that this figure applies to solo parents who are in receipt of social transfers (One Parent Family Payment) as the Department would not have other data.³⁴

Annual report of the Court's Service³⁵ shows the number of maintenance orders granted by the courts annually (does not seem to give stats on enforcement orders). There is an optino to examine these.

In sum, there are different figures depending on the surveys but child maintenance is not received by a either a majority or a significant minority of solo parents. The evidence also suggests that where it is received, Court Orders, rather than private arrangements, are the most common way to arrange child maintenance payments. Further, the *National Shared Parenting Survey (2017)* reported that insufficient or unpaid child maintenance were the most common financial problems identified by respondents. The next logical question therefore is whether regular child maintenance payments would have the potential to lift one parent families out of the at risk of poverty category (and into higher income categories)? In other words, is it worth pursuing the goal of increasing the level and incidence of maintenance payments (other than, for example, just increasing social transfers)?

Box 3 Would a greater incidence of maintenance payments help to reduce the at risk of poverty rate?

Comparative empirical research shows that regular payment of child maintenance can lift solo parents and children of solo parents out of poverty *under certain circumstances (for example when public policy supports this outcome).*

International research finds that child maintenance affects poverty levels where it is consistently paid (Hakovirta, 2011 in One Family report p.8) Davidson and Skinner (2009) using data from Luxembourg IS from 14 states finds that, while there is a variety of types of lone parent families with dependent children across countries, child maintenance has the potential to contribute to poverty reduction in all countries. It found that in 7 of the 12 countries for which the data was available less than half of lone parent families actually received child maintenance (c2000).

³³ Corrigan (2014) cited above pp.91-94.

³⁴ [Joint Committee Social Protection, 6 October 2016](#) Barry Egan, Department of Social Protection

³⁵ [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/C2B4BFC1AFEC7B098025842D00473F25/\\$FILE/Courts%20Service%20Annual%20Report%202018.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/C2B4BFC1AFEC7B098025842D00473F25/$FILE/Courts%20Service%20Annual%20Report%202018.pdf)

A 2018 article by Hakovirta and Jokela (Journal of European Social Policy) says that while current public policy (in five countries studies) tends to see work as the best route out of poverty for lone parents (mothers in the case of this study), the role of child maintenance is not sufficiently recognised. (i.e. work alone will not guarantee poverty reduction). Hakovirta and Jokela cite earlier studies which conclude that child maintenance overall (accumulative) may only have a modest effect on reducing poverty amongst solo parents but that studies find that child maintenance can have a relatiely large impact on reducing poverty for those who do receive it. (page 8 of 23). Their article assesses how child maintenance is working for those with various income levels. They look at Finland, Germany, Spain, the UK and the US. **They argue that the poverty reduction effect of child maintenance depends on the rate of receipt among lone parent population and on the amounts received. They explore rate of receipt by poverty income group (lone parents divided into five quintiles) to see if child maintenance might actually benefit those with the most resources ?**

After dividing lone parents into income quintiles based on their overall reported net income, the study finds significant differences between countries regarding the proportion of lone mother households receiving child maintenance.

In Germany, **lone mothers with low income seem to benefit most from child maintenance** as the proportion of lone mothers receiving child maintenance payments is highest in the two lowest income quintiles and lowest among the wealthiest income group. In Finland, it is the **second and third lowest income quintiles** that are most likely to receive child maintenance payments from non-resident parents. In Spain, there are **no significant differences between incomes quintiles**, except that lone mothers in the second quintile are less likely to receive child maintenance payments than the other income groups. Smallest variation between income quintiles is found in the United States where lowest income groups are unlikely to benefit from the child maintenance system more than the highest income quintiles. In the United Kingdom, **it is clearly the highest income groups that have a greater likelihood of receiving child maintenance payments from the non-resident parent.** This is interesting as the Members want to model the system on the UK system (note that this data is from 2013 although the article is published in 2018). I look at this in more detail below (SOLUTIONS).

Data from the Hakovirta (2018) study. Note that this reports the amount received per anum. The data shows that of the five states child maintenance accounts for the lowest proportion of all lone parents' income in the UK (it accounts for about 5% of the total income of lone parents). This compares with about 11% in Spain (highest). The low numbers receiving child maintenance, however, may explain these low percentages. Out of those lone parents who do receive child maintenance, child maintenance accounts for the highest proportion of income in Spain (25%) followed by Germany and the US (both about 20%). Note that the LIS database does not distinguish between child maintenance and alimony.

Table 2. Proportion of non-widowed lone mother families receiving child maintenance (CM) and value of child maintenance for those non-widowed lone mother families receiving it, annual amount in US\$ppp.

	Lone mother families (N)	Receiving CM	Proportion (%) receiving CM	Mean CM (US\$ppp)	Median CM (US\$ppp)	SD (US\$ppp)
Finland	276	214	80.25	2943	2309	2032
Germany	1211	471	37.61	3699	2837	3019
Spain	273	128	42.02	3175	2430	3035
United Kingdom	1422	516	36.84	1933	1663	1799
United States	2796	1018	34.06	7152	4242	12,798

Source: Own calculations based on Luxembourg Income Study 2013.
CM: child maintenance; SD: standard deviation; PPP: purchasing power parity.

The comparison of mean and median amounts show that the level of child maintenance payments varies considerably between households, particularly in the United States

3. What is causing the low incidence of child maintenance payments?

A number of stakeholders and empirical studies have highlighted systemic, legislative and/or policy causes to low incidences of child maintenance payments in Ireland. It would also appear that these same causes may discourage parents from considering a shared-parenting arrangement or even discourage parents from supporting a relationship between the child and the non-resident parent. The causes identified are set out below.

1. Firstly, it is argued that the **process deters people from seeking maintenance**: the process through which people must go to seek child maintenance (outside of private arrangements) is cumbersome, difficult to access³⁶ and, by requiring people to go through the courts, it is unavoidably adversarial - this puts people off seeking child maintenance;
2. Secondly, **the delays – from making applications to the court, to getting a date for court, to applying for an attachment of earnings order if required – can exacerbate already-difficult financial situations** and can push people into debt thereby increasing the at-risk of poverty rates among one parent households;

The cumbersome system (described in Section 1) can precipitate protracted and often hostile parental negotiation, while parents await decisions on child maintenance applications they experience financial difficulties which increases poverty levels.³⁷ And if, having secured a maintenance order from the Court, the party (non-resident parent) ordered to pay maintenance misses a payment, the only course of action open to the maintenance recipient is to apply for an attachment of earnings order which requires them to return to the Court. The *National Shared Parenting Survey (2017)*³⁸ reported that insufficient or unpaid child maintenance were the most common financial problems identified by respondents. As expressed in a Joint Committee on Social Protection Report (2017, 27)- *while the need for money may be immediate and desperate, when faced with a lack of maintenance a lone parent's only method of forcing payment is through the courts*. Further, the arrangements (maintenance orders) are difficult to enforce (and onerous for the parent seeking maintenance).

3. Thirdly, the adversarial nature of the system which, by necessity pitches one person against the other, **can exacerbate what are frequently already-fragile relationships; and, as reported above, adversarial relationships between parents have been shown to have poor socio-economic outcomes for children**. This combines with other factors (see points 5 and 6 below) to create barriers to good relations between parents;

Quite apart from the time delay and the increased financial difficulties which are likely to result from this, the impact of the 'adversarial' system can exacerbate tensions between parents in already-fragile relationships (either separating from marriage or co-habitation, in a relationship but living separately, trying to put a relationship together). Representatives from the Bar Council note how

³⁶ For example, without a solicitor (who frequently would have to be sought from FLAC), an applicant for a court order may represent himself or herself. Where he or she elects to do so the maintenance order must be sought by way of a 'court summons.'

³⁷ One Family, Child Maintenance 2019 pp.5-6. *One Family* was founded as Cherish in 1972 provides support services and advice to all parents in Ireland who are parenting alone, sharing parenting or separating.

³⁸ Pobal, the Department of Social Protection and One Family (2017) reported above.

the locations for family law hearing are inadequate, unsuitable to highly emotive issues involved and that these conditions can increase stress and anxiety.³⁹ Yet the evidence suggests that good relations between parents results in better socio-economic outcomes for children. Research by Corrigan which draws on data from the Growing up in Ireland Study finds 'that increased father-child contact and improved quality of parents' relationship may be beneficial to both child development and maternal health'; this, the author argues, **underscores the relevance of facilitating the involvement of NRFs in their family's lives where practicable and removing barriers to shared parenting wherever they might be found**. Evidence presented to the UK House of Commons Committee also suggests that good relations between parents is best for a child's outcome (HoC 2017 p.13).⁴⁰ A court-based system, which can encourage parents to see child maintenance as something conflictual, can lead to poor relations between parents.

The court-based system does not only present barriers to good relations between parents but, as highlighted by *One Family*, it is inadequate in situations where relations are already extremely poor and involve abuse or violence: the system does not attend to safety and stability those exposed to coercion abuse and violence (page 5-6, 2019 i.e. as they must also seek a maintenance order through the courts.

4. Fourthly, it is argued that the **court system does not have the capacity to adequately deal with applications for child maintenance** (as well as other matters relating to family law), and that this can result not only in long delays but in **poor outcomes to child maintenance decisions**;

In evidence to the Joint Committee on Justice and Equality, representatives from the Bar Council noted that outside of Dublin the family law 'system is creaking' and cases are subject to delays. One comprehensive empirical study noted that of the 375 family related cases she heard in the District Court fewer than ten minutes is the full hearing time per case.⁴¹ This leaves little time for thoughtful consideration and means that judges tend to resort to formulaic court orders which do not suit all circumstances. O'Shea notes that maintenance is at the discretion of the judge (beyond the limits of the amount per week which are set by statutory instrument) who have little time to consider the unique aspects of each case and are not issued with any other guidelines (e.g. parenting guidelines) or formulas for calculating the amount the financial contribution should be depending on the different circumstances (e.g. different custody and access agreements and different incomes).⁴²

As such, it would appear that problems stem not only from conflict encouraged by the adversarial nature of a court system, its lack of capacity to deal with the numbers of family law cases and the delays in hearings on maintenance orders, and consequential financial hardship that result (i.e. points 1-4 above), but also from the policy and legislative context in which child maintenance decisions are made. This is discussed at point 5 below,

5. The outcomes to child maintenance and other family law cases are **in part determined by a system whose roots of which originate in a different society or era**.

³⁹ Bar Council in hearings with Joint Committee on Justice and Equality on Reform of the Family Law Courts, 6 March 2019

⁴⁰ UK House of Commons (20??)

⁴¹ O'Shea Roisin during hearings with the Joint Committee on Justice and Equality (6 March 2019) on reform of the family law court system. Details of Roisin O'Shea's empirical study are available [here](#).

⁴² O'Shea Roisin (6 March 2019) Joint Committee on Justice and Equality

This is a point which has been raised in the international literature on child maintenance. Traditionally, Claessens and Mortelmans (2018) explain that child maintenance policies were very much designed to address the post-divorce/separating family; traditionally, the mother would have custody and the father would pay for the cost of raising the children. However, today child maintenance policies must adapt to the greater variety of circumstances which lead to solo parenting: now a range of arrangements and different types of shared care are possible, each with different resource implications. Yet in the general model as time spend minding the child rises the contribution to the primary carer drops – with this policy, obstacles to shared parenting are created.

6. A further and related cause of the adversarial nature of child maintenance negotiations raised by stakeholders in Ireland is the **different (and unequal) rights to parenthood depending on whether a parent is a mother or a father** which is provided for in the Guardianship of Infants Act 1964 (as amended most recently by the Children and Family Relationships Act 2015) (see Box 4 below). Under the Act, a father does not have automatic guardianship rights to a child if he is not married to (or in a civil partnership with) the mother. This issue, which has been raised for many years, has recently been raised by Treoir and Roisin O’Shea in hearings with the Joint Committee on Justice (March 2019) and in a report commissioned by Treoir and the Community Foundation of Ireland on unmarried fathers in Ireland (Kiely and Bolton, 2018) as a deterrent to child maintenance payments.

Damien Peelo (Treoir) argues that conflict between unmarried parents is often exacerbated because fathers do not have automatic guardianship rights (even if his name is on the birth cert). This creates inequality in terms of parental rights and responsibilities which often results in the parents going to court (Treoir). Dr Ruth Barrington (also of Treoir) points out that while the *Children and Family Relationships Act 2015* extended unmarried father’s rights to apply for guardianship in a limited way (the rights of fathers who have lived with the mother for three months before the birth of the child), this guardianship is not registered anywhere. Fathers who meet these requirements may apply to be the guardians of the child but, unlike in the case of a marriage, for example, for which there is a marriage cert and which is lodged in the marriage register, there is no register of guardianship rights (it is by statutory declaration). This needs to be addressed. According to Peelo, this certainly has a ‘big impact on the attitudes of fathers to their responsibilities in terms of their children’ Mary Roche (Treoir), also in hearings with the Justice and Equality Committee, argued this legislative issue should be addressed as part of holistic reforms - a broad suite of system reform. O’Shea draws on her empirical work to argue that in general the role of non-residential parents is not supported by the current approach.⁴³

This is a broader issue than child maintenance but would appear that a more progressive system of child maintenance, in which non-resident parents are likely to contribute financially to their child’s upbringing, is more likely to emerge in the context of these broader legislative and policy reforms.

Box 4: Guardianship (parenting rights) for mothers and unmarried fathers

Under the *Guardianship of Infants Act 1964* a mother and a father had joint parenting rights (s6), but a father of an illegitimate child was not included in the definition of father (s2 definitions). [The 1987 Status of Children Act](#) changed the language (removes ‘illegitimate’) but the essential meaning remained: the **definition of father “does not include the father of an infant who has not married that**

⁴³ O’Shea Roisin (6 March 2019) based on a three-year empirical study, Reference provided above.

infant’s mother’ except for in circumstances outlined in the Act (which were not particularly extensive). The 2015 Family and Relationships Act inserted a new interpretation section including for the interpretation of a ‘father’:
father’ includes a male adopter under an adoption order but **subject to section 11(4), does not include the father of a child who has not married that child’s mother unless—**
(a) an order under section 6A is in force in respect of that child,
(b) the circumstances set out in subsection (3) of this section apply,
(c) the circumstances set out in subsection (4) of this section apply,
(d) the circumstances set out in subsection (4A) of this section apply, or
(e) the father is a guardian of the child by virtue of section 6D;]
‘maintenance’ includes education;
The Law Reform Commission has published an [unofficial revised version of the 1964 Act](#) which is available here and in which the provisions on the rights of parents to guardianship are set out.
11(4)
F19[(4) Where the mother of a child has not married the child’s father, she, while living, shall alone be the guardian of the child, unless the circumstances set out in section 2(4) apply or there is in force an order under section 6A (inserted by the Act of 1987) or a guardian has otherwise been appointed in accordance with this Act.]

Finally, there are **specific legislative and administrative barriers to the payment of child maintenance found in the Social Welfare Acts**, in particular the manner in which the One Parent Family Payment and child maintenance are linked (which are set out in Section 1 above). Stakeholders highlight two specific issues here:

7. *Arrangements around the administration of the OPFP have created a disincentive to non-resident parents (the ‘liable’ parent under the Social Welfare legislation) to pay maintenance after the child reaches the age of 7*

Since the Social welfare act 2005 (s346 and Part 12) when a child of a parent in receipt of the one-parent family payment reaches the age of 7, the parent (maintenance creditor) moves off the OPFP and to the Transitional Job Seeker’s payment. The rationale behind this reform was to encourage single parents back into the workforce (Active labour market policy); however, there have been unintended consequences for the payment of child maintenance.

Under the Social Welfare legislation, the Department of Social Protection’s duty to collect maintenance from the ‘liable parent’ ceases when a person who is in receipt of the OPFP moves on to the Transitional Job Seekers payment (which is mandatory when a child reaches the age of 7)). This transition appears to have been interpreted by some ‘liable parents’ as ending their requirement to pay child maintenance, an interpretation encouraged by a letter sent by the Department informing them that it is no longer a requirement that the child maintenance payment is made to the Department. Yet the end of the liability to pay maintenance to the Department does not end the requirement that a non-resident parent has under Family law (see Section 1) to pay child maintenance. It would appear that this has not been made clear and, as a result, there has been a significant decrease in the payment of child maintenance (Barnardos, One Family) at this point.

Where a liable parent has been paying maintenance through the Department (rather than directly to the creditor parent) and ceases do so after the child reaches age 7, the creditor parent must

either obtain a maintenance order through the courts or pursue an existing maintenance order (arranged through the Department) by seeking an attachment of earnings order. Sensible policy would see the Department of Social Protection link into the child maintenance system to ensure continuity of payments. Perhaps the absence of any authority or agency to link in with has created difficulties.

In sum, the fact of coming off the OPFP and the end of the liable parent's requirement to pay child maintenance directly to the Department need to be explicitly de-coupled from their general obligation to pay maintenance (either by Department continuing to pay an intermediary role after the solo parent has ceased to receive the OPFP or by the Department automatically referring the creditor and liable parent to a mediation service (for example) to ensure that the application for a maintenance order is made.

One Family in its position paper on Child Maintenance (2019) say:

'in the shift from OFP to JST payment the Department expressly ends the child maintenance payment requirement of the other parent. This confuses often fragile maintenance agreements and can disrupt established maintenance payment arrangements.

A report by the Joint Committee on Social Protection (2017, 34) states that the 'most significant issue affecting lone parents since 2012 has been the changes to the administration of the OFP' (commenced in the Social Welfare and Pensions Act 2012).

8. Child Maintenance is means tested for purposes of state supports and this may (a) be a disincentive to seek child maintenance as it can push an income above certain thresholds with the result that a non-resident parent is not contributing financially to the upbringing of her or her child and is less likely to be involved in parenthood or (b) leave a solo parent worse off financially for having received maintenance.

One Family highlights how this 'layering of means' testing can result in a parent having less rather than more income as a result of receiving child maintenance. If the policy is to encourage the incidence of child maintenance payments and their contribution to poverty reduction for one-parent families, as a general principle a solo parent should not be worse off financially because her or she receive maintenance. There is not the time or scope to consider this in detail in this paper. How to bring about this situation by exempting child maintenance from means test for example, without disadvantaging parents who choose to marry, enter a civil partnership or co-habit, is an issue for further research (and on which we are certain there is some research conducted).

4. Child Maintenance Systems – a comparative overview

Before briefly outlining policy options for addressing the problems with the child maintenance system in Ireland, we provide a short comparative overview of child maintenance systems internationally. The purpose of this section is to help with the evaluation of the policy options for Ireland and with developing the policy proposal.

4.1 Child maintenance systems – general overview

In their comparison of child maintenance systems in select OECD countries, Skinner and Davidson⁴⁴ categorise child maintenance systems according to core variables which we summarise in Table 1 and the paragraphs below it.

Table 1: Key variables in child maintenance systems

Variable	Different models
1 Locus of responsibility for decision making	1.1 Courts, 1.2 Agency 1.3 Hybrid (a role for both courts and agency);
2 How child maintenance amounts are assessed and calculated	2.1 Rigid formulae already drawn up; 2.2 Formulae with decision maker discretion, 2.3 Full discretion for decision maker).
3 Irrespective of whether there are strict formula in place for deciding amounts (or whether this is at discretion of decision maker), what are the core principles underlying decisions and what factors are taken into account when setting the child maintenance to be paid	3.1 Whose income is taken into account when calculating maintenance due? 3.2 Are assets taken into account as well as income? 3.3 How is information accessed on income and assets (apart from declaratory statements)? 3.4 What other factors are taken into account such as time the non-resident parent spends with the child
4 How agreed child maintenance amounts are paid	4.1 Direct payment between parents privately; 4.2 Direct payment privately but checked by third party (which can assist in cases of non-compliance); 4.3 Pay and collect: indirect payment through an agency i.e. non-resident parent pays the agency which pays the resident parent (and will tend to chase up non-compliant payments). This model is common (though not exclusive to) where the resident parent is in receipt of social welfare payments (and the child maintenance frequently offsets the social welfare payment i.e. is not directly received by the resident parent).
5 Enforcement: in the event that the child maintenance as agreed is not paid by the non-resident parent	5.1 Seek attachment of earnings order through courts;

⁴⁴ Davidson and Skinner (2009) 'Recent trends in child maintenance schemes in 14 countries' *International Journal of Law, Policy and the Family* 23. **Unless otherwise cited the information in section 4.2 is from Davidson and Skinner.**

what course of action is taken and by whom?	<p>5.2 Approach agency/third party which will contact the non-resident parent and apply an attachment of earnings order or other further sanctions if he/she does not comply;</p> <p>5.3 Agency/third party contacts non-resident parent and pays the maintenance while it is seeking to enforce the maintenance payment;</p> <p>5.4 Use of enforcement powers: irrespective of who has responsibility for enforcement (e.g. courts, agency) a variety of enforcement powers exist but the extent to which they are used can vary greatly.</p>
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Source: L&RS based on reading of literature primarily Skinner and Davidson (2009)

Locus of decision making and how maintenance amounts are calculated (Variable 1, Table 2)

Skinner and Davidson categorise systems depending on the weight they give to either the courts or to an agency. They also place systems along a continuum according to the extent to which decisions about child maintenance are at the discretion of the decision maker or set out in formulae or rules. The authors also note a general trend that where married parents are divorcing, child maintenance decisions (and the adequacy of child maintenance) tend to be a factor considered in a granting of a divorce. On the other hand, while parents who are separating or were never married or were never in a civil partnership may seek to ratify their arrangements through a third party (either the courts of an agency depending on the system), they are not obliged to do so. The authors note that this has implications for the support for the children.

Table 2A: Systems according to locus of responsibility⁴⁵

Court	Agency	Hybrid: court and agency
Courts have main responsibility for determination of formal child maintenance obligations. In most cases the courts (a) determine maintenance in divorce settlements and (b) may play a role in ratifying agreements on maintenance made by separating parents. In Belgium and Germany, the courts decide maintenance where there is parental conflict.	An administrative body or agency is responsible for either or all of the assessment, collection and transference of child maintenance obligations.	Decision power is located in several institutions. In Finland, if parents cannot reach agreement they must seek advice from the Municipal Social Welfare Board or the Court and both use the same formal guidelines on child maintenance to help them. In the Netherlands, a tripartite system operated between the courts, a national collection and support agency and the municipal social assistance office.
Belgium France	UK Australia	Finland Netherlands

⁴⁵ Child maintenance systems may have been subject to reform. Research – see below - indicates there has been considerable reform to child maintenance systems since 2009. But in general the core categorisation of systems according to locus of responsibility is likely to still stand. Research by Claessens Elke and Dimitri Mortelmans (2018) *Challenges for child support schemes: according for shared care and complex families* Journal of European Social Policy Vol 28 (3) 211-223.

Germany Sweden France	Child Support Agencies with authority to make maintenance orders based on formulae Denmark (a quasi-judicial regional body) Norway New Zealand (Inland Revenue)	USA
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Calculating child maintenance (Var 2 and 3, Table 2)

Irrespective of whether the decision maker is the court or an agency, there is the question of how the amounts are calculated. Some systems use principles (generally set out in legislation) to develop statutory formulae which are used to calculate maintenance, while in other systems the decision-maker has discretion but makes decisions based on core principles (generally set out in legislation). Skinner and Davidson note that while a defining feature of court systems is their discretion to take account of individual situations, courts in some countries operate nearer the rules end of a continuum (with Tables and Guidelines to decide on amounts of maintenance) while others (France, Belgium) had no fixed rules or methods to determine amounts.

Regardless of whether formulae are used, or the decision maker has discretion, there will be established principles on which the guidelines are based or the decision making is based including, for example, issues such as:

- a. whether the primary carer’s income is taken into account,
- b. whether and how the non-resident parent’s income, expenses and other sources of wealth are taken into account
- c. whether the extent to which care is shared by parents is taken into account or
- d. the extent to which the cost of raising a child are taken into account;
- e. whether the ‘best interest of child’ is a key consideration (though this is more likely in cases of guardianship, custody etc and, by extension, to decisions on maintenance).

Looking at these principles, Skinner and Davidson found that half of the states did not take the **primary carer parent’s income** into account when calculating child maintenance amounts due. On the other hand, in all states the income and expenses of the non-resident parent formed an important part of the consideration. In most cases (though not all), basic living expenses of non-resident parents was exempted before child maintenance was calculated. In agency systems, pre-tax, gross income was commonly used whereas net income was more commonly used in court or hybrid systems. In the Netherlands a threshold was applied for deciding whether gross or net income is used.

All countries take into account the **contact time** spent by the non-resident parent with children (as this incurs a financial cost on the non-resident parent) when calculating the level of child maintenance obligations. In ten countries where the children spent almost equal time living with both parents, the child maintenance obligation could be annulled in principle in ten countries (this excluded New Zealand, Australia, Austria and the UK).

Claessens and Mortelmans (2018) examine the extent to which shared care is acknowledged in the determination of child maintenance and how it is applied in eight countries. Where the amount

of time a non-resident parent is taken into account to calculate child maintenance due, a threshold that distinguishes ordinary visitation rights (as in the case of sole custody) from residential shared care is required. Claessens and Mortelmons note that there is a complex, but not necessarily a linear, shift in expenses as a result of sharing care. For example, if a child(ren) resides with both parents, certain expenses are divided (e.g. food) while others (e.g. housing) are duplicated. As this relationship between time and cost is complicated and not linear, Melli recommends that a wide range of possible shared-care arrangements should be taken into account and linked to different reductions in child maintenance due: varying from the minimal threshold (i.e. minimum amount of time required to involve a reduction in child maintenance paid to primary carer) to perfectly equal shared care.⁴⁶ This is similar to the system in Australia (described below). They also note that the child maintenance scheme in a state will be influenced, in general, by policy on gender equality (e.g. maternity leave, paternity leave etc) as well as the underlying assumptions behind who is responsible for raising a child e.g. is it automatically presumed in law that both parents are and have a right to (irrespective of marital or legal partnership status).⁴⁷

Skinner and Davidson found little evidence of the calculations being based on the **cost of raising a child** except in the Netherlands which uses a national index. More recent research by L&RS finds that this may have changed and that more states may take into account the cost of raising a child in the calculations.

Method of payment (Var 4, Table 2)

In some states – e.g. in France and Belgium (both courts-based systems) - **all payments are directly from one parent to the other** (even when they are the result of a court order and when they are private but ratified by the courts). There is no collection agency except in cases of non-compliance (see below).

Other states encourage private payments from the non-residential parent to the primary carer but **make a mediated collection and forwarding service available** for those who wish to use it (e.g. UK).

In some cases, this agency is only responsible for collecting and forwarding child maintenance - In Canada, USA, Netherlands, Sweden agencies which were not involved in assessing and setting the maintenance to be paid have a relatively wide duty to collect and forward it. In fact, some states do not encourage direct payment between parents especially if the receiving parent is in receipt of social protection payments and some make it compulsory to use collect and pay under these circumstances.⁴⁸ In other cases the agency with responsibility to collect and pay has already been involved in assessing and setting the child maintenance payment. Agencies with this wider scope exist in New Zealand, Australia, UK, Norway, Denmark and Finland. The agency's scope is widest in New Zealand where it is responsible for collecting and forwarding all child maintenance payments, regardless of how the arrangement was made in the first place (whether through an assessment by the agency using statutory formula or by a registered voluntary agreement). The agency is Inland Revenue (see New Zealand described below).

⁴⁶ Melli (1999) Guideline Review: Child Support and Time Sharing by parents ' *Family Law quarterly* 33: 219-34.

⁴⁷ Claessens and Mortelmans (2018) pp. 213-214

⁴⁸ This policy seems to be as much to do with ensuring the cost of the social security is recouped by the state as to do with making the child maintenance process easier for parents.

Enforcement (Var 5, table 2)

Many states, regardless of whether court or agency-based, give a body extensive powers to recover child maintenance in the event of non-compliance. Key is the extent to which these authorities have the capacity – including resources – to use these powers.

For example, in France and Belgium – both court-based systems - in the event of non-compliance with a maintenance payment, the primary carer approaches the Family Court (France) or Court Service for Maintenance claiming (Belgium) to apply for sanctions. In other systems, such as agency-based systems described below, the receiving parent approaches the agency which follows up the payment on his or her behalf – either outside and sometimes within the court system.

In both cases the decision maker– whether a court or the agency - has recourse to a range of sanctions including penalties charged to the liable parent for late payment⁴⁹ In general sanctions include an attachment of earnings order, a deduction from bank accounts/savings/pensions order, recovery through tax and can extend to criminal prosecution, imprisonment, interest on debt.

Guaranteed maintenance schemes - whereby in the event of non-compliance the child maintenance will be paid and the agency will chase up the payment – are more common in European states and do not appear to exist in Anglophone countries. Of the systems examined by Skinner and Davidson, guaranteed schemes did not exist in Australia, New Zealand, UK, Canada and USA) while they are in place in Austria, Belgium, Denmark, Finland, France, Germany, Norway and Sweden. In Finland and Denmark the recovery rate is 65% and 88% respectively. The recovery rate is far lower in other states (ref).

Below we describe the child maintenance system in four agency-based systems: New Zealand, Norway, UK, Australia. We endeavour to also describe the family law system (or at least to give the relevant legislation) but given the time available there may be more information on this in some cases than in others. L&RS can follow up on specific questions regarding each and/or point the Senator to further sources.

4.2.1 New Zealand⁵⁰ : Child maintenance and Inland Revenue

Child maintenance in New Zealand is primarily the responsibility of an agency with a residual role for the family court. Liability to pay child maintenance, and the process of claims for child maintenance, are governed by the [Child Support Act 1991 \(as amended\)](#) which provides for the assessment, collection and payment of child support, and the collection and payment of partner maintenance (by Inland Revenue).⁵¹ Liability under the Act can only exist if the child in respect of

⁴⁹ There is a discussion about the effectiveness of penalties in particular as it gives rise to mounting debt and, in cases where affordability is an issue, may be counter-productive.

⁵⁰ The information below unless otherwise referenced is directly from **Family law in New Zealand: overview by Anita Chan QC, Anita Chan QC, New Zealand** published by [Thomson Reuters](#) and from New Zealand Ministry of Justice, Care of Children (Child Support) [accessed 20 October 2019]

⁵¹ The Inland Revenue Department is the public service department of New Zealand charged with advising the government on tax policy, collecting and disbursing payments for social support programmes, and collecting tax. See [here](#)

whom support is sought is ordinarily resident or domiciled in New Zealand.⁵² A person can be a "liable parent" under the Child Support Act if they are a New Zealand citizen, ordinarily resident in New Zealand or resident of a country with which New Zealand has a reciprocal agreement for enforcement of maintenance (currently only Australia). It is also possible to bring a financial claim to the family court under the Property Relationships Act. Under this Act, the family court may make an order settling a property for the benefit of the child(ren) of a relationship. This provision is not used commonly as it can infringe property rights.

Other legislation which provides the framework for family law and the family courts is listed in the box below.

- **Family Court Act 1980.** This establishes the Family Court and provides for its constitution, jurisdiction, powers and procedures.
- **Marriage Act 1955 and Civil Union Act 2004.** These provide for the legal union of couples by marriage or civil union.
- **Family Proceedings Act 1980.** This regulates matrimonial and Family Court proceedings, and provides for paternity, partner maintenance, dissolution and voiding of marriage and civil union.
- **Property (Relationships) Act 1976.** This provides a code for how the property of married, civil union and *de facto* couples (including same sex couples) is to be divided when they separate, or when one of them dies.
- **Care of Children Act 2004.** This defines and regulates the care and guardianship of children. Subpart 4 of the Act enacts into domestic law New Zealand's obligations under the HCCH Convention on the Civil Aspects of International Child Abduction 1980 (Hague Child Abduction Convention).
- **Oranga Tamariki Act 1989.** This provides for state intervention in respect of children in need of care and protection, and children and youth who criminally offend.
- **Domestic Violence Act 1995.** This provides for protection from family violence.
- **Human Assisted Reproductive Technology Act 2004.** This regulates assisted reproductive procedures.
- **Status of Children Act 1969.** This provides for the status of children and determines parentage of children born with the aid of assisted reproductive procedures.
- **Adoption Act 1955.** This provides for and regulates the adoption of children.
- **Adoption (Intercountry) Act 1997.** This makes provision for intercountry adoptions.
- **Trans-Tasman Proceedings Act 2010.** This provides for the hearing and enforcement of cases to be streamlined where one party is in New Zealand and one in Australia.

⁵² If the child is not domiciled in NZ an application for child maintenance may be brought under the residual provisions of the Family Proceedings Act (once the country in which the child is ordinarily resident or domiciled is a party to the United Nations Convention on the Recovery of Maintenance Abroad 1956.

- **Family Dispute Resolution Act 2013.** This provides for parties to attend mediation as the first step in disputes involving the care of children.

Process: child maintenance agreements and legal status (enforceability)

To agree child maintenance, parents have three key options:

- (a) Make a **private agreement** which is not registered with Inland Revenue and is, therefore, directly paid from parent to parent with no third party involvement. If a liable parent does not comply with a private agreement, it can be enforced under ordinary principles of contract law and unpaid child support would then be recoverable as a debt;
- (b) Make a **voluntary agreement** which is similar to a private agreement but is written up as a child maintenance agreement and **registered with Inland Revenue**.⁵³ This is enforceable by Inland Revenue (with a residual role for the Family Court);⁵⁴
- (c) Approach Inland Revenue and request that it calculate a child maintenance agreement. Inland Revenue uses a **statutory formula** (discussed below) to calculate maintenance due. Where a party disagrees with the figure calculated by Inland Revenue in the first instance he or she writes to Inland Revenue explaining why. If Inland Revenue rejects this complaint the party may either accept the original figure or appeal the decision to the Family Court.

Payment

Where the arrangement is private (i.e. as per (a) above) Inland Revenue has no involvement in payments between parents. Where it is either voluntary (b) and therefore registered with Inland Revenue, or calculated by Inland Revenue (c), Inland Revenue collects the payments and forwards it to the receiving parent. In the case of either (b) or (c) where child maintenance is not paid as per the agreement, Inland Revenue will know.

Formula for calculation

The amount of child support that a liable parent must pay is determined according to a statutory formula (accessible on-line). The incomes of both parents are taken into account as is the proportion of time that each parent has care of the child. Where a liable parent has significant care duties this may modify the amount of child support payable. A good overview of what is taken into account is published by the Community Law NZ (free legal advice) [available here](#).

Enforcement and the Family Courts

A penalty regime is in place, though there are some questions about whether this really does create an incentive to pay child maintenance or whether it just leads to mounting debt.⁵⁵ Under the regime there is an incremental set of sanctions applied to late payments (e.g. one penalty immediately, a further penalty at 7 days). Inland Revenue has recently been given more powers of discretion to waive penalties if the liable parent re-enters a payment agreement.

⁵³ Registration of a voluntary agreement does not prohibit either party from applying for formula assessment at any time.

⁵⁴ Note that where the receiving parent is receiving social benefits Inland Revenue can only accept a voluntary agreement between the parents if the amount to be paid under the agreement is at least as much as under the formula assessment.

⁵⁵ See a [Report by the Comptroller and Auditor General \(2010\)](#) on Inland Revenue's management of child support debt. Note that this debt is private (i.e. it is the debts of the liable parents).

Under the legislation, Inland Revenue (the Commissioner) has certain powers of enforcement including:

- The right to place a deduction notice against your benefit, bank account or wages, requiring a single or a regular deduction to pay off child support debt (Child Support Act s134):
- The right to bring the case to the Family Court for enforcement Child Support Act 1991, ss 130-131, Part 10 (ss 153-177). The enforcement options are similar to civil court cases when the District Court has given a judgment stating that someone owes a certain amount. In child support cases the District Court can
 - o Under Child Support Act 1991, ss 183-185, 190 issue a warrant for property to be seized so that it can be sold to pay off the debt (these used to be called “distress warrants”)
 - o put a charge over any property (including any life insurance) – this will stop the liable parent selling the property until the debt is paid
 - o issue a summons requiring you to come to court to have financial situation examined. If a liable parent does turn up in court, they can be arrested. If the Family Court decides you don’t have the money to pay the child support, it could cancel your debt or let you pay it later.

Note that the Family Court may decide that a liable parent cannot afford to pay some child support, it can make an order changing the amount. If the Family Court decides the liable parent can afford to pay the child support but are refusing to do so, it could sentence community work. If the Family Court believes a liable parent is planning to leave New Zealand to avoid paying the child support, it may issue a warrant for your arrest. There is provision for the enforcement of overseas orders in New Zealand and of New Zealand orders overseas.

4.2.2 Norway – child maintenance and the NAV⁵⁶

Norway is an agency-based system in that the locus of responsibility for child maintenance lies primarily with the Norwegian Labour and Welfare Administration (NAV (see below). The legislation is the Children Act, Maintenance Recovery Act 2005.

Process

Parents may:

- (a) enter into a private agreement on child support or
- (b) apply for an agreement to be established by the Norwegian Labour and Welfare Administration (NAV) which costs a fee (860 NOK).

Payment

Payment can be:

- (a) directly between parents or
- (b) parents may require that NAV administer the transfer of payment (this entails no charge regardless of how the agreement was made i.e. privately or through NAV).

⁵⁶ Information is from ECPRD Survey (European Centre for Parliamentary Research and Documentation (May 2016) unless otherwise referenced.

In the case of (b) it is organised by the Collections Unit in NAV.

How calculated

According to Norwegian **law**, child support is calculated according to the **cost of supporting a child (Children Act)**. Parents are required to support their child; provide food, clothes and a roof over their head. In addition to this, they are required to pay expenses for the child and make sure they get their education and can take part in meaningful leisure activities.⁵⁷

NAV has a child support calculator which it uses to calculate amounts due. Factors taken into account include the cost of raising a child, the age of the child, the income of both parents, how much time the non-custodial parent spent with the child.

Role for Court

While most decisions are decided either privately or administratively through NAV, child support may be settled by courts where requested (a) in divorce proceedings, (b) or in proceedings relating to parental responsibility, custody and visiting rights or (c) if NAV refers parties to the courts (under the Children Act section 70).

Enforcement

In terms of enforcement of maintenance payments, the Collections Unit of NAV is responsible for collections and is empowered under the Maintenance Recovery Act (2005) to enforce payment where the non-resident parent does not pay voluntarily. These powers include:

- Withholding of wages (s11 of the Act)
- Deduction from social insurance payment (s11 of the Act)
- Report the person to a credit bureau (s30 of the Act)
- Withhold a tax refund (s14 of the Act)
- Seize and forcible sell assets and property (s13 and s16 of the Act)
- Claim bankruptcy (s31) or impose travelling restrictions (i.e. seize passport) s15, s33)
- If child maintenance is not paid and the non-resident parent is judged to have the means or be capable of procuring the means, he or she may be prosecuted (this is a last resort and happens infrequently) (s.33).

General background to family law in Norway

With a view to incentivising non-adversarial relations between parents, for proceedings relating to children (custody, guardianship etc) (which must be brought in the place where the child has his or her regular domicile) parents are required to take part in mediation at the **Family** Protection Office before they are entitled to bring the case before the courts (§56, 2nd section, Act relating to Children and Parents). The judge is required to facilitate the parties in reaching a settlement (§59, 2nd section, Act relating to Children and Parents). The judge may hold three preparatory meetings if there is a possibility of reaching a settlement (§61, Act relating to Children and Parents). In addition, § 49 of the Act relating to Children and Parents instructs the solicitors of both parties to be prepared to reach a settlement.⁵⁸

⁵⁷ Reuters Thomson

⁵⁸ Reuters Thomson , Family Law in Norway

According to §48 of the Children Act, decisions regarding custody and visitation rights for the parent with whom the child does not live **are to be made with consideration to what is in the child's best interest**. The Children Act gives guidelines on how the court should exercise this discretionary assessment, and the central guideline is what is best for the child.

This is in accordance with Article 3 of the UN Convention on the Rights of the Child, which states that "in all actions concerning children ... the best interests of the child shall be a primary consideration". The child's best interest will always depend on a complete consideration of all the relevant factors. This also applies in relation to the custody of the child.

Jurisprudence has assumed that when there is a breakdown in cohabitation, the rule is to award joint custody to the parents, unless specific grounds are present that indicate that one parent should have sole custody. Where parents have never lived together, or have not lived together for the duration of the child's life, an overall assessment must be made regarding what is in the child's best interest (and disregarding the rule regarding joint custody). The assessment will be the same in cases where the partners have never been married or never cohabited, even if they have periodically spent a lot of time together.

4.2.3 United Kingdom – Child maintenance and the CMS⁵⁹

The Child Support Act of 1991 established a primarily agency-based system of child maintenance. The main purpose of the Act was to help combat the problem of non-maintenance paying parents who were refusing to help their partners look after their children by financial means. It introduced statutory maintenance payments for the first time and created a Child Maintenance Agency (under the auspices of the Department of Work and Pensions) to manage the payments. This agency – the CSA – was 'beset by operational, legal and policy problems'⁶⁰ and in 2006 a review ordered by the Government recommended its disbandment. The **Child Maintenance System – CMS** - was established in 2012 to run a reformed maintenance system.

As well as a right to child support (maintenance)⁶¹ formally married/civil partnership parents and never-married parents can apply for financial claims to provide for children against property and other assets which could result in orders for property transfers or lump sum payments with a view to maintaining a child(ren).

The Department of Work and Pensions is responsible for child maintenance system. It operates this through the:

- Child maintenance scheme which is operated by Child Maintenance Service
- Child maintenance options which is also operated by CMS

The decision maker in the system is the Child Maintenance System although the courts retain jurisdiction to make or vary orders for child maintenance in some circumstances. For example, if the parents' income is above a certain threshold it is outside of the scope of the agency. An underlying goal of the new system was to encourage parents to come to a collaborative family-

⁵⁹ Information is from Child Support Service Evaluation reports – referenced below) and from Reuters Thompson (referenced below) and HoC Work and Pensions Committee Report (2017)

⁶⁰ House of Commons UK Work and Pensions Committee (2017) cited below

⁶¹ [https://uk.practicallaw.thomsonreuters.com/1-590-4465?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1#co_anchor_a269702](https://uk.practicallaw.thomsonreuters.com/1-590-4465?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1#co_anchor_a269702)

based arrangement where possible and to have a statutory maintenance agency which acts as a safety net, calculating and where necessary administering payments and taking enforcement action *when required*.⁶²

Process

There are two core options for parents seeking to agree a maintenance arrangement:

(a) parents may come to private, voluntary arrangements (family-based arrangement) with or without help from the Child Maintenance Options service (see below);

(b) Parents may instead opt for an arrangement through the statutory scheme in which case maintenance amounts are decided on by CMS with the parents. If parents wish to take the statutory route, there is a gateway process in place:

Gateway process

- Before a parent(s) make a formal application, they must have a mandatory 'gateway' conversation with Child Maintenance Options. This is a free service which provides information and can signpost clients to specialist support. It is supposed to give parents an opportunity to discuss the different types of maintenance arrangements available and to ensure that they consider a family-based arrangement before opting for the statutory service;
- If parents decide after this meeting to apply to CMS for a statutory scheme, statutory formulae for calculating maintenance payments are applied by the CMS using Revenue and Customs (rather than net income as in the old scheme). A charge was introduced to this aspect of the Child Maintenance Service, the application fee intended to encourage parents to consider making a private family based arrangement. The application fee is waived for applicants under 19 and victims of domestic abuse.

How calculated

Child maintenance is calculated using a fixed statutory formula which works on the basis of the **paying parent's yearly gross income** using information supplied by HM Revenue & Customs. From what L&RS can deduce, the receiving parent's income is not used. See here for [explanatory memo](#) for the regulations which brought in these formulae.

Department of Works and Pensions has a Financial Investigations Unit which uses tax return information to ensure that liable parents are disclosing full income.

Payments – Direct pay and Collect and Pay services⁶³

There are two options outside of a pure private arrangement between parents.

Direct pay service: Parents may register a family-based agreement with CMS. CMS is party to (and can check) that payments are being made directly as agreed from the liable parent to the primary carer. However, the payments are direct from one parent to the other;

The CMS operates a CMC Collect and pay scheme (whereby CMS manages the process and the payment and there is no direct contact between parents). This used to be compulsory where a

⁶² See House of Commons Work and Pensions Committee *Child Maintenance Service* Fourteenth Report of 2016-2017 (April 2017) pp.7-8 and p.3

⁶³ See Child Maintenance Service Statistics (June 2019), Data for August 2013 to March 2019.

receiving parent was in receipt of benefits but this is no longer the case. The Collect and Pay Service charges a fee to the parents: paying parents are charged 20% of their child maintenance and receiving parents are charged 4%.

In the event of non-compliance with a family-based agreement (direct pay), the receiving parent can ask CMS to step in and switch the case to Collect and Pay (and the fee will apply – see above).

Enforcement⁶⁴

CMS has enforcement powers which have recently (by way of Child Support (Miscellaneous Amendments Regulations 2019) been enhanced. In the instance of non-compliance (for those using Direct Pay and Collect and Pay Services):

- CMS contacts the paying parent asking them to pay what they owe;
- If there is no response by paying parent, where they are using Collect and Pay Service the CMS will automatically take action to get the maintenance owed. If using Direct Pay, the receiving parent asks CMS to intervene by first moving them onto the Collect and Pay Service and taking further action (sanctions) if required;
- CMS has the following sanctions at its disposal:
 - o Deduction from earnings order will be applied;⁶⁵
 - o Deduction order from bank or building society account;
 - o Take the paying parent to court to seek a liability order. Liability orders allow the parent to be referred to enforcement agents who could sell property to pay the unpaid maintenance or could apply a charging order to force the parent to sell property and use the money to pay off child maintenance.
 - o If these methods fail, the CMS can apply to court to disqualify the parent from driving, holding a passport or imprisonment.

Evaluation of the Service

A debate in the House of Commons raised a number of issues with Child Maintenance system (July 2019) which were largely also raised in 2017 by the Work and Pensions Committee. These include:

- the disincentives that fees applied by CMS are having which can lead to poverty (by creating a disincentive to come to an agreement so there is no child support or by the mere fee itself making things financially difficult for parents) (2019, 2017);
- Lack of enforcement and for example non-compliance with deduction of earnings orders and time taken to enforce agreements (2017 2019);
- Lack of right of parents to go to the courts to enforce child maintenance payments – they rely on CMS to act on their behalf but, the Committee argued (2017, 4) that CMS is tentative in deploying its extensive enforcement powers' which allows non-resident parents to get away with not paying and sends a message about weak enforcement to others:

⁶⁴ See Child Maintenance Service Statistics (June 2019), Data for August 2013 to March 2019. P.8.

⁶⁵ Employer must pay this or they can be taken to court

- Regarding how amounts are calculated, recurring themes including that calculations are made on gross incomes and out-of-date information, that there is inconsistent information and standards of service and that a resident parent can no longer apply for a variation order if a non-resident parent seems to have a life-style inconsistent with their income or assets. The 2017 Committee Report called for this right to be re-introduced;

4.2.4 Australia⁶⁶

Context of family law in which the child support system sits

The legislative context in which child maintenance system sits is an important consideration when examining how to reform a system and whether other models are transferable. *In Australia this is of particular significance as the underlying principles of family law are quite different to Ireland's (L&RS comment).*

Until any court orders to the contrary, both parents have joint parental responsibility for their children and the paramount consideration in any decision concerning children is their welfare or their best interests. Further, the main object of the Family Law Act 1975 (FLA) is to ensure the children receive help to achieve their full potential and to ensure parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of the children.

Parental responsibility can be altered by the court. It can be altered both wholly, so that one party has the sole responsibility to make long term decisions for the children, or partially so that some aspects of parental responsibility are shared and other aspects, for example education, might be given to one parent and not the other. In sum, there is a presumption that it is in the best interests of the children for parents to have equal shared parental responsibility. This does not apply if there is abuse or domestic violence or it is not in the best interests of the child.

As such, the Family Law Act does not provide for any "rights" of parents, whether married or unmarried, in relation to the care of children following a relationship breakdown and instead it focuses on the rights of the child and provides that a child has a right to maintain personal relations and direct contact with both parents, and a child has a right to enjoy his or her Aboriginal or Torres Strait Islander culture (where applicable). The FLA focuses on the responsibilities of parents.

In order to grant a divorce, in circumstances where there are children under 18 years of age, the court must be satisfied that appropriate arrangements are in place for the care, welfare and development of the children before making the order for divorce. If the court is not satisfied that appropriate arrangements have been made, it may decide to grant the order for divorce regardless. This is usually a procedural step in a divorce application, and typically, little evidence is required to satisfy the court that proper arrangements have been made. Nevertheless, the court does have the power to adjourn divorce proceedings until a report has been obtained from a family consultant in circumstances where the court may have doubts about the arrangements made for the children of the marriage.

If there is shared parental responsibility or that question is in dispute, the court must consider whether the children spending equal time with each parent is in their best interests and reasonably practicable. If it is not, the court must then consider whether a child spending substantial and

⁶⁶ What appears below is fully extracted from Family law in Australia: overview by Max Meyer and Louise Carter, Pearson Emerson Meyer Family Lawyers, Reuters Thomson

significant time with each parent is in the child's best interests and reasonably practicable.

"Substantial and significant time" is referred to in the FLA to include:

- Weekends, holidays, weekdays.
- Time that allows each parent to be involved in the child's daily routine.
- Occasions and events of particular significance both to the children and to the parents.⁶⁷

The court looks at the distance between the parents' homes, the parents' actual and future capacity to do what they say they want, their communications, the impact of the proposed arrangement on the children and other matters. In all of this there are primary considerations:

- The benefit to the children of having a meaningful relationship with both parents.
- The need to protect the children from harm. Greater emphasis is now placed on the need to protect children from harm and domestic violence. It is an issue of increased significance and expanded meaning.

Additional considerations include:

- The wishes of the children.
- The relationship of the children with each parent and others.
- The attitudes of parents to the children and their parental responsibilities.
- The need to make an order least likely to lead to further litigation.

Unless there are exceptional circumstances, the parties cannot start parenting proceedings without first attempting to resolve their parenting disagreement with a counsellor called a **family dispute resolution practitioner**. The court can make parenting orders on an interim or final basis. The duration of the parenting orders depends upon the particular order made. In cases involving very young children, a comprehensive set of orders may provide for a graduated increase in time over a course of months or even years.

Parenting orders made by the court are never entirely "final". A party can ask the court to revisit parenting orders previously made on a "final basis" in circumstances where there has been a substantial or significant change in circumstances affecting the welfare of the children, and it would be in the children's best interests for the orders to be amended (*Rice & Asplund (1979) FLC 90-725*).

In some cases, the court will appoint an Independent Children's Lawyer (ICL) to represent the child. The ICL is a lawyer who helps the court decide what arrangements are in the best interests of the child. The ICL may sometimes meet with the child, depending on the child's age, and is responsible for ensuring that the court is aware of the thoughts or feelings of the child in relation to the case. An ICL is usually appointed in the following cases:

- Where the parties apply to the Court for an ICL.
- Where there are allegations of abuse or neglect.
- Where there is a high level of conflict.

⁶⁷ The Full Court discussed the meaning of "substantial and significant time" in the case of *Ulster & Viney (2016) FLC 93-722* and in the more recent decision of *Tibb & Sheean [2018] FamCAFC 142*.

- Where there are allegations of family violence.
- Where there are serious mental health issues in relation to either of the parents or the child.
- Where there are difficult and complex issues involved in the matter.

The ICL is obliged to consider the views of the child, but ultimately, the ICL must provide its own independent view about what arrangements are in the child's best interests.

Child Maintenance

Parents or non-parent carers (such as grandparents or legal guardians) can bring a claim for child support in relation to children born within or outside of a marriage. These claims are not brought on behalf of children, but rather are brought on behalf of the parent or non-parent carer to cover (or partly cover) the child's expenses.

Most commonly, child support is determined by an administrative assessment, whereby one parent makes an application to the Child Support Agency. However, a child support assessment is only one of the ways in which child support can be dealt with in Australia, for example:

- A parent or non-parent carer can also make an application in a court for an order for child support as part of the determination of other financial issues between the parties. To bring an application in relation to child support, the applicant parent must first have an administrative assessment of child support from which the applicant parent wishes to depart.
- A further avenue available for a parent or non-parent carers to obtain child support of behalf of the child is to enter into a formal agreement in relation to financial support of the child. Such agreements can include child support to be paid by a lump sum, ongoing payments, by the transfer of assets, or payments to schools, health insurers or the like.
- A court may make orders for the payment of lump sum child support in circumstances where there may be difficulties in enforcing periodic child support payment, and where parties are asset rich but "cash poor".

On what basis is child maintenance calculated?

In most instances, provision of financial support for children is determined by a child support assessment instead of an order of a court for child maintenance. **The Child Support Agency (CSA) was formed to assist separated parents to take responsibility for the financial support of their children.** It administers the Child Support Scheme (CSS).

A Child Support Registrar uses a formula to calculate the amount of child support required on a case by case basis. The Child Support (Assessment) Act 1989 (Cth) introduced a formula for the administrative assessment of child support. There are **six formulae** to calculate child support. Different formulae are applied in the following circumstances:

- Where it is a single child support case (the most basic formula, and the most common).
- Where is it a single child support case with a "non-parent" carer (for instance, a grandparent, or step-parent).
- Where one or both parents have multiple child support cases.
- Where there are multiple child support cases and a "non-parent" carer.

- Where there is a non-parent carer and one parent is not assessed because they are a non-resident of Australia.
- Where there is a non-parent carer where one parent is deceased.

All six formulae are calculated by looking at the parents' incomes, the percentage of time the child is in their respective care, and the individual costs of the child.

The CSA has an online estimator on its website to assist parties to calculate the support payable. Parents can object to particular decisions made under the Child Support (Assessment) Act. Avenues of review are both administrative and judicial.

Payment

The Child Support Agency uses direct payment and collect and pay methods.

Enforcement

Skinner and Davidson (2009) note that in cases of non-compliance the Child Support Agency follows up initially requesting payment and if necessary applying an attachment of earnings order, deductions from bank accounts/savings/pension, seizing asset, revoking drivers license, passport confiscation. The enforcing of child maintenance payments in the event of non-compliance is set out here. <https://www.humanservices.gov.au/individuals/topics/recovering-child-support-payments/29946>

5. Policy Options

5.1 Summary of issues to be addressed and introduction to policy options

The evidence reviewed in Sections 2 and 3 above suggests that there is certainly a policy issue to be addressed concerning the low incidence of child maintenance payments and its likely contribution to poor socio-economic outcomes for one-parent households. It also suggests that the child maintenance process, and indeed the family law system in general, can present barriers to the involvement of non-resident parents - whether via a financial contribution or other involvement in raising their children. It is also clear from sections 1-3 above that the issues with child maintenance are unlikely to be resolved by one solution, rather by a range of legislative and policy actions. The issues identified, and which the legislative proposal may be expected to address, are summarised in Table 2 below.

Table 2: Issues with child maintenance system identified

	Issue identified
1.	It is argued that the process deters people from seeking maintenance : the process through which people must go to seek child maintenance (outside of private arrangements) is cumbersome, difficult to access ⁶⁸ and, by requiring people to go through the courts, it is unavoidably adversarial. This can deter people from seeking child maintenance. Further, there is no exception made for victims of domestic abuse who may fear contact with a former partner;
2.	The delays – from making applications to the court, to getting a date for court, to applying for an attachment of earnings order if required – can exacerbate already-difficult financial situations and can push people into debt thereby increasing the at-risk of poverty rates among one parent households
3.	The adversarial nature of the system which, by necessity pitches one person against the other, can exacerbate what are frequently already-fragile relationships; and, as reported above, adversarial relationships between parents have been shown to have poor socio-economic outcomes for children . This combines with other factors (see points 5 and 6 below) to create barriers to good relations between parents;
4.	It is argued that the court system does not have the capacity to adequately deal with applications for child maintenance (as well as other matters relating to family law), and that this can result not only in long delays but in poor outcomes to child maintenance decisions ;
5.	The outcomes to child maintenance and other family law cases are in part determined by a system whose roots of which originate in a different society or era .
6.	A further and related cause of the adversarial nature of child maintenance negotiations raised by stakeholders in Ireland is the different (and unequal) rights to parenthood depending on whether a parent is a mother or a father which is provided for in the

⁶⁸ For example, without a solicitor (who frequently would have to be sought from FLAC), an applicant for a court order may represent himself or herself. Where he or she elects to do so the maintenance order must sought by way of a 'court summons.'

	Guardianship of Infants Act 1964 (as amended most recently by the Children and Family Relationships Act 2015) (see Box 3 below). Under the Act, a father does not have automatic guardianship rights to a child if he is not married to (or in a civil partnership with) the mother. This issue, which has been raised for many years, has recently been raised by Treoir and Roisin O'Shea in hearings with the Joint Committee on Justice (March 2019) and in a report commissioned by Treoir and the Community Foundation of Ireland on unmarried fathers in Ireland (Kiely and Bolton, 2018) as a deterrent to child maintenance payments.
7.	Arrangements around the administration of the OPFP have created a disincentive to non-resident parents (the 'liable' parent under the Social Welfare legislation) to pay maintenance after the child reaches the age of 7
8.	Child Maintenance is means tested for purposes of state supports and this may (a) be a disincentive to seek child maintenance as it can push an income above certain thresholds with the result that a non-resident parent is not contributing financially to the upbringing of her or her child and is less likely to be involved in parenthood or (b) leave a solo parent worse off financially for having received maintenance.

Regardless of the policy option/mechanism used to address the problems identified with the child maintenance process, **the key aims of any policy proposal would appear to include (Table 3):**

Table 3: Proposed goals of any legislative proposal to reform child maintenance

	Goal/Objective
1	To keep parents seeking child maintenance arrangements out of the adversarial court system in order to (a) remove a deterrent to seeking child maintenance and (b) to encourage less adversarial relations between parents;
2	To reduce the waiting times for parents who wish to come to a child maintenance arrangement through a third party (at present this third party is the district court);
3	To have more reflective decisions on child maintenance orders; decisions which are based on guidelines and principles as to what should be taken into account when deciding on amounts and which do take into account any shared parenting arrangements (see for example Australia or New Zealand or Norway);
4	To remove the pressure of enforcement from the carer parent in cases where a liable parent fails to meet the conditions of a maintenance order to a third party;
5	To ensure that maintenance continues to be paid by the non-resident parent after a resident parent comes off the One Parent Family payment onto the Transitional Job Seekers Assistance i.e. remove the barriers to maintenance payment implicit (but not intended by) in the Social Welfare Act;
6	Consider the impact of de-coupling the One Parent Family Payment from child maintenance
7	Remove barriers to shared parenting where this is the wish of parents. This is a broader issue and concerns all aspects of family law including the legislation around guardianship

and custody. In many states this is the default position (e.g. New Zealand, Australia, Norway).

Bearing in mind these key goals (Table 3) and the core variables which make up a child maintenance system (Table 1 p.20 – Locus of responsibility; method of calculating amounts; core principles; how maintenance is paid; how it is enforced), we consider two reform options given the current legislative and policy context in Ireland. Different approaches and choices lie within each and it would be possible to adopt aspects of both.

The first is to establish a specific authority or child maintenance service the purpose of which is to facilitate agreements between parents (thereby keeping parents out of the courts) and enforcing payments where required (as suggested by the Senator). The second option is to address issues with child maintenance through the broader reform of the family law courts and through use of the Mediation Act. A further option is to combine features from Option 1 and 2 (as discussed below).

Option 1: establish a Child Maintenance Authority (or give an existing body statutory functions to run a child maintenance service)

Option 2: ensure that reforms to the child maintenance system form part of the overall reform of the family law system being driven by the Department of Justice and Equality.

Option 1 – child maintenance agency (including assigning responsibility for child maintenance to an existing authority)

The Joint Oireachtas Committee on Social Protection in June 2017 called for this approach, recommending that a state body, similar to that in some other countries, be put in place **to seek and pursue maintenance payments**.⁶⁹ This approach was also recommended in the 'UN's Report on the Convention on the Elimination of all forms of discrimination against Women' which suggests that Ireland should consider establishing a statutory maintenance authority and prescribing amounts for child maintenance in order *to reduce the burden on women of having to litigate to seek child maintenance orders*. Sinn Fein published a policy document in 2018⁷⁰ which recommended the establishment of a Child Maintenance Authority designed along the lines of the Child Maintenance Agency in the UK (see Box 5 below). The Minister for Employment Affairs and Social Protection indicated in September 2019 her intention to examine this proposal in detail.⁷¹

Box 5: Sinn Fein's proposal to establish a Child Maintenance Service

The Sinn Fein document proposes a newly-established Child Maintenance Service which would offer the following services to lone parents and non-resident parents.:

1. Parental arrangements – provide advice and assistance to parents who are willing to make their own private arrangements so as to help them agree on an agreed payment amount (and thereby avoid seeking a maintenance order through the courts);
2. Direct pay - where parents are trying to make their own arrangement but fail to reach agreement on the payment amount, CMS would examine the case, calculate and propose the

⁶⁹ See [Joint Committee Report \(June 2017\)](#) p.41

⁷⁰ Sinn Fein policy document

https://www.sinnfein.ie/files/2018/A_Child_Maintenance_Service_for_Ireland.pdf

⁷¹ [Dail Debate 22 October 2019 Order of Business](#), Taoiseach Leo Varadkar

amount to be paid by the non-custodial parent. Where there is agreement with this amount, the payment would be directly from one parent to the other;

3. Collect and transfer: Where CMS calculates the amount to be paid (as per option 2) and non-custodial parent refuses to pay, CMS would be empowered to collect and transfer. The document proposes that this is a last resort option and, therefore, subject to a 20% fine paid by the non-custodial parent. It also states that collect and transfer would be the automatic procedure in cases of domestic abuse;
4. Enforcing payment: CMS would have strong enforcement powers including the power to:
 - 4.1 Deduct child maintenance from earnings, social welfare payments and bank accounts (i.e. akin to an attachment of earnings order);
 - 4.2 Instruct bailiffs to collect arrears or seize payments and commit to prison (e.g. in the same way that a person may be committed to prison for failure to pay a TV license);
5. Strong links between Revenue and the proposed CMS to ensure:
 - 5.1 To provide clarity of what is expected of both parties from the outset;
 - 5.2 To advise CMS on type of information they can access in order to be of assistance;
 - 5.3 To ensure that a broader spectrum of income is examined (not just earned income).

A version of this option is also favoured by the Senator whose proposal is to establish a child maintenance service, the overall purpose of which would be *to facilitate and encourage parents in making, maintaining and enforcing maintenance agreements, and to assist parents to collect maintenance payment speedily*.⁷² The sponsor proposes to give statutory authority to an appropriate existing body (selected by the Ministers for Employment Affairs and Social Protection and for Justice and Equality) to carry out the following functions:

- *Advice and mediation*: provide (or facilitate the provision of) independent legal advice and representation to those seeking child /spousal maintenance agreements or orders, including offering a mediation service;
- *Facilitate collection and offer a maintenance collection service* (akin to maintenance collection unit currently in the Department of Social Protection);
- *Empowering the body with the authority to pursue a defaulter* i.e. a liable parent who defaults on payments required by a maintenance order.
- L&RS understands that under the sponsor's proposal, a maintenance order from the District Court would still be required to arrange a maintenance agreement (outside of private arrangements).

The Senator's proposal focuses on reforming the last two variables in Table 1 – payment method and enforcement. The locus for decision making (Var 1) would remain with the District Court (a parent would still apply to the court for a maintenance order) but an advice and support service, including mediation, would be established to help make this application process more accessible

⁷² Proposal sent by sponsor to OPLA and L&RS August 2019.

and, *perhaps*, less adversarial. The biggest difference between the status quo and the sponsor's proposed changes would be that the agency/body would:

- offer a pay and collect service (similar to that offered by agencies in the UK, New Zealand, Norway, Australia and to that operated by the Department of Employment Affairs and Social Protection for recipients of maintenance who also receive the OFP) and
- It would be empowered to follow up those who do not comply with maintenance orders (similar to the agencies in New Zealand, Australia, Norway and the UK and similar to the current powers of the Department of Employment Affairs and Social Protection to pursue defaulters under part 12 of the 2005 Act. Under the current legislation, this authority only applies if the creditor parent is in receipt of the OFP and this service is primarily aimed at recouping money for the State to cover the cost of the OFP.)

This proposal would not address an identified need for guidelines on how to best calculate the maintenance due and statutory principles on which to base these guidelines (and for example parenting principles) on which judges would base their decisions ((variables 2 and 3, Table 1) (see Option 2 below). Nor does it fully address the deterrent to seeking maintenance presented by the adversarial nature of the court system; parents would still be required to apply to the district court for a maintenance order. Nor does it address the deterrent to maintenance payments when a receiving parent comes off the OFP. However, **it would be possible to address this latter issue through an amendment to the Social Welfare Act. And it may be possible to address the former issue by using some of the mechanisms in Option 2 below.**

Option 2 – Reform child maintenance as part of overall reform of family law system and using the Mediation Act 2017

The Government intends to bring the General Scheme of a Family Court Bill to cabinet in 2019. The Bill is to create a dedicated Family Court within the existing court structures which will have **new procedures aimed at less adversarial resolution of disputes and will have appropriate facilities and case management arrangements**. It is envisaged that all court proceedings related to family law, including those related to child maintenance, would be taken under this Family Law Court.⁷³ This proposed Bill is related to a Law Reform Commission Report (published in 1996) which recommended the creation of a family court to deal with matters related to family law including child maintenance. While this Bill will not make any changes to the current child maintenance system, there **may be an opportunity to influence it – during pre-legislative scrutiny - to achieve some of the aims of this policy proposal (Table 3 - 1-7) identified above.**

A proposal by expert in family law Dr Roisin O'Shea⁷⁴ is of relevance to this legislative proposal and forms the basis of a Option 2. Based on a three-year empirical study of 1,200 family-law cases in the Circuit Court, and empirical observation of 375 District Court cases, O'Shea outlines a vision of reform which may help to address issues with the child maintenance system. The dual aims of the reform are (a) to take family cases out of the court room and, (b) where family cases must go

⁷³ L&RS conversation with officials responsible for working on this legislation [13 October 2019].

⁷⁴ Ark Mediation and Waterford IT. O'Shea is an expert in family law and employment law and was key investigator in the Family Mediation Project in Waterford IT. She presented her ideas to the Joint Committee on Justice and Equality in 2019 (March 6 2019).

to the court room, to ensure a faster and less adversarial process. We explain how this is relevant to the child maintenance system.

Take cases out of the court room

For all family law cases O'Shea suggests there should be two path ways both of which would aim to divert parties away from the court room.

The **first - Path A** – would be court-linked but would divert people away from the court room. Community-based mediation would be provided specifically for family-related issues (issues that can be mediated would be guardianship, custody, access and maintenance. Mediation would be provided from [Family Resource Centres \(which are already in place across the country\)](#). O'Shea explains how this is working in practice at present in four Family Resource Centres in Dublin. The second path - **Path B** – would be for cases of divorce and separation and the State Mediation Service would be freed up to mediate these cases.

Under this proposal when seeking to arrange child maintenance a parent(s) would approach the Family Resource Centre mediation Service with a view to coming to an agreed arrangement. This would end the situation whereby parents have to go through the adversarial court system and, as the mediation is court-linked, any agreement on child maintenance could be enforceable by the courts (under s11 of the Mediation Act).⁷⁵ As part of this overall reform, O'Shea also calls for formulas that quantify maintenance and guidelines for all other matters (these exist in Canada, NZ and Australia, UK and Norway – as detailed above).

O'Shea states that the regulation of mediation must remain a priority and notes a working group convened by the legal aid board to work towards forming a mediation council (which is set out in the Act). She predicts that 'the uptake of mediation will increase once this is up and running and people know, understand the benefits and become confident of the training standards and competency of mediators. O'Shea argues that mediation (parallel mediation which does not require parties to be in the same room) should be available in maintenance cases where domestic violence has occurred and she says that this is the approach taken in Canada, NZ and Australia. Not all stakeholders would agree with mediation in these cases (Committee hearings 6 March 2019 referenced below).

Where a case does have to go to court (e.g. where the parties cannot reach agreement or in the case of non-compliance) under O'Shea's proposals the court room would be less adversarial (and a less adversarial court system is also what the government is proposing to introduce for family law – see above).

In the Court room

Once a case does come before a Court, O'Shea highlights as best practice specialist volunteer family law judges be within the District Court (80/20 model like in Canada i.e. the judges spend 80% of time on family law cases) and that all matters for all families relating to children and maintenance be heard in the District Court with Circuit Court (more expensive) freed up for divorce and separation) and this would reduce the waiting times. She highlights how little time is available for consideration of issues under the present system - of the 375 family related cases she heard in

⁷⁵ Under s11 of the 2017 Act the parties can determine if a mediated agreement is legally binding and capable of enforcement. Under s16 of the Act a party to any proceedings can ask the judge to ask the parties to consider and try mediation.

the DC fewer than ten minutes is the full hearing time per case – and that for this reason judges tend to rely on defaults (have little time to consider different outcomes). She highlighted the example of custody/access decisions noting that the default access orders of the District Court and C Court for NRP (usually for fathers) is every second weekend and one night during the week – the origins of this, she says, was that these orders came from expert reforms when a welfare issue was raised about a child and the orders were intended to set out the minimum amount of time a non-resident parent should spend with a child' (not the maximum as is now being ordered as a general rule).

O'Shea argues that instead of this poorly-thought out norm, there should be statutory parenting guidelines for courts to provide principles on which to base maintenance decisions.

Looking at the variables in Table 1, Option 2 does shift the locus of decision making to a court-linked mediation service (with recourse to the courts where this does not work) which aims to increase accessibility and reduce adversity; it does propose statutory guidelines and principles on which to base child maintenance decisions and amounts (variables 2 and 3). This latter proposal is in line with the Minister for Employment Affairs and Social Protection's intention to determine best international practice in maintenance, guidelines and regulations, which she would hope to put on a statutory footing.⁷⁶

The drawback with Option 2 is that it does not envisage any enforcement of child maintenance arrangements outside of the courts and it does not include a pay and collect child maintenance service. On the latter, it would be necessary to give authority to an agency (perhaps the unit in the Department currently responsible for collecting maintenance) to collect and pay child maintenance arrangements where requested.

On the former - enforcement mechanisms - mediation may be court-linked under the Mediation Act; the child maintenance agreements reached could be automatically ratified by courts (as is the case in many states such as Spain and France). Such agreements are therefore automatically enforceable by the courts (effectively serving as a maintenance order). It would be possible to devise a mechanism which removes responsibility from the receiving parent to follow up enforcement. E.g. rather than the receiving parent having to approach the court for an attachment of earnings order this would be automatic as part of the original agreement. Alternatively, the time saved by not requiring courts to hear cases on maintenance orders would mean it is freed up to hear cases on attachment of earnings order.

As per Option 1, Option 2 does not address the incentive for liable parents to stop maintenance payments when the receiving parent stops receiving the OFP.

Conclusion – combine option 1 and option 2?

It appears that aspects from Option 1 and 2 could together address many of the problem issues identified with the child maintenance system (summarised in Table 2).

Option 2 is stronger where taking the adversity out of the process of seeking a child maintenance order is concerned, may be successful in freeing up court time to consider enforcement cases only, and could be successful in the context of the government's proposal to establish a new family court.

⁷⁶ Cited above. Minister's budget speech Dail Debates. She suggests establishing a judge-led group to examine this.

Option 1 – the agency-based option – has the advantage of offering a pay and collect service and, if it were given the resources, could empower the authority to chase up cases of non-compliance. Any endeavour to establish an agency/give authority to an existing agency should pay close attention to the outcomes of the agency-led system in the UK which have been mixed. It may be sensible to confine the role of such an authority to the pay and collect and enforcement service, leaving the reaching of an agreement to court-based mediation.

Regardless of whether it is a court or an agency taking decisions, there is a need for statutory parenting guidelines (on which judges and/or other body responsible can base decisions on family law relating to children and statutory formula for calculating child maintenance (which preferably allow for a broad range of scenarios). In terms of enforcement, the evidence from some other states suggests that information sharing between the enforcer and the equivalent of Revenue and Social Protection – information about the means of the liable parent and receiving parent – may be necessary.

In order to further develop this initiative, it is advisable to:

- Consider how the Senator's legislative proposal addresses the issues raised in Table 2 and achieve aims in Table 3,
- Whether the proposals might be amended/refined in order to address the other issues in Table 2 and aims in Table 3;
- Consider how the Senator's legislative proposals change the maintenance system (using variables in Table 1);
- Conclude on final proposal.

It will then be possible to identify the legislative changes required and progress a PMB.



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