



**Submission to the
Child Maintenance Review Group**

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1. BACKGROUND TO TREOIR

Founded in 1976, Treoir is the national federation of services for parents who are not married to each other. Treoir, in partnership with its member agencies, promotes the rights and best interests of unmarried parents.

Treoir works to achieve this aim by:

- providing a National Specialist Information Service to parents who are not married to each other, their extended families and those working with them through answering queries, our information website, publications, and outreach workshops;
- co-ordinating the National Teen Parents Support Programme;
- promoting change at every level to achieve constitutional and legal equality for unmarried parents, and to improve services and attitudes to unmarried parents;
- hosting Kinship Care Ireland;
- promoting and supporting shared parenting;
- promoting/undertaking research to better understand the situation of parents who are not married to each other in Ireland;
- collaborating with other agencies to promote our aims through the federation of Treoir and agencies outside of it.

Treoir recognises the diversity of family life in Ireland and believes that all families, especially those where parents not married to each other have equal rights to respect, care, support, and protection. In addition, Treoir supports and promotes the rights of all children as outlined in the Irish Constitution and in the United Nations Convention on the Rights of the Child.

Treoir welcomes the opportunity to make a written submission to the Department of Social Protection's Child Maintenance Review Group. Every year Treoir's National Specialist Information Service responds to thousands of calls, a significant number of which are from female lone parents, unmarried fathers, extended family, and professionals. The recommendations in this submission are based on the experiences of those contacting Treoir's National Specialist Information Service and on input from our member organisations throughout the country.

2. ESTABLISHING A CHILD MAINTENANCE SYSTEM

Child maintenance can be defined as ‘a regular contribution from a non-resident parent towards the financial cost of raising a child, usually paid to the parent with whom the child lives.’¹ According to CSO data there were 218,817 one parent families in Ireland in 2016 of which 189,112 were headed by mothers and 29,705 by fathers. Single women made up 44.5 per cent of one parent mothers, while a further 58,127 women were either separated or divorced, accounting for 30.7 per cent of the group. Conversely, among one parent fathers widowhood dominated, accounting for 39.4 per cent of the total while just 1 in 5 one parent mothers were widowed.

Of course, not all parents in receipt of or entitled to child maintenance are lone parents. Lone parents often marry or remarry, they may form new relationships and cohabit with a partner and have additional children with this person, who themselves might have children from a previous relationship. Nonetheless the gendered profile of the lone parent with an entitlement to maintenance is striking and shows that while child maintenance may in theory at least be an issue for both parents, it is most certainly an issue for women.

A survey of calls to Treoir’s National Information Service shows the non-payment of maintenance and the accumulation of arrears is a huge area of concern for people. Under the current welfare regime non-payment can result in a person’s income dropping below supplementary welfare rates and exacerbate child poverty. Child poverty is a significant issue in families headed by female lone parents.² The entrenched and intergenerational nature of this poverty makes it imperative the state seeks to ensure that women who are parenting alone have access to sufficient income and appropriate services especially in relation childcare and housing.³

Reform of Ireland’s child maintenance system should be seen as an opportunity and as part of a broader project by the state to support parents and children. This includes reform of the family law system, reform of the social welfare regime and child maintenance system, and efforts to assist the meaningful involvement of non-resident fathers in their child’s life. In Ireland, reform of child maintenance is long overdue as is the related need for the development of a modern family law system.⁴ In the context of the ongoing work by the Minister for Justice to reform the latter, the establishment of a working group to explore the possibility of a statutory child maintenance system is a timely intervention. Going forward, the proper functioning of both systems, which are closely inter-linked, will be of critical importance to the state in dealing with ongoing changes in family formation. These trends

¹ HAKOVIRTA, M., ‘Child Maintenance and Child Poverty : A Comparative Analysis’, *Journal of Poverty and Social Justice*, Vol 19 (3), October 2011.

² REGAN, M., MAITRE, B., ‘Child Poverty in Ireland and the Pandemic Recession’, *Economic and Social Research Institute*, Paper 4, July 2020.

³ Society of St Vincent de Paul, *Working, Parenting and Struggling? An analysis of the employment and living conditions of one parent families in Ireland*, March 2019.

⁴ Houses of the Oireachtas Joint Committee on Justice and Equality, *Report on Reform of the Family Law System*, October 2019.

which are evident across the EU⁵ and not unique to Ireland can be characterised as an increase in cohabiting couples with children, a decline or delay in marriage, and an increase in one parent families.⁶

Recommendations

- The Maintenance Review Group be put on a statutory footing as in the case of the Low Pay Commission and that it works in tandem with the Department of Justice, on reform of the family law system.
- Greater involvement from civil society be prioritised and invitations extended to at least three NGOs to join the Child Maintenance Review Group.
- Consideration be given to establishing a state Maintenance Agency and the Department of Social Protection to cease its involvement in this area.
- The Agency should have statutory responsibility for determining maintenance payments, the rules for determining amounts of payments, and enforcement.
- Priority to be given to the enforcement aspect of maintenance through the establishment of a robust enforcement section that is properly resourced and has the legislative power to carry out its work.
- Consideration be given to the enactment of legislation whereby it is a requirement that the Agency be notified of all maintenance agreements, formal or informal.
- That a specialist mediation service be available to the new Agency to assist parents reach agreement over maintenance.

3. SOCIAL PROTECTION, POVERTY AND LONE PARENT FAMILIES

Every year Treoir deals with thousands of queries about child maintenance. A majority of these concern the interaction of maintenance payments with the One Parent Family Payment. Under current social welfare legislation, a lone parent applying for One Parent Family Payment (OPF) is obliged to seek maintenance from the non-resident parent. This is usually done via court order and assumes the mother has an address for the father. If harassment, coercion and/or domestic violence was a feature of the relationship having to engage again with the father can be extremely stressful. Even where a mother does get a court maintenance order the Department of Social Protection will assess this as means, irrespective of whether or not it is actually paid.

⁵ IAKOVOU, M., SKEW, A., 'Household structure in the EU', Iser Working Paper Series, No 2010-10, April 2010, Institute for Economic and Social Research.

⁶ OECD, 'Families are Changing: Doing Better for Families', June 2011.

Analysis of reform of a welfare regime or aspects of it cannot be limited to the welfare state only but must encompass other sources of non-market based socio-economic security, such as laws governing the operation of the labour market, access to universal health care, social housing, and state funded childcare.⁷ The point here is that child maintenance schemes cannot be understood in isolation, as systems in their own right. Such schemes interact with social assistance benefits and social security systems, with family law, with local institutions as well as with national governmental institutions, with policy making bodies and with public policy in general.

For example, Treoir recently had a call from a lone parent of three children under the age of ten. The woman had a Safety Order against her former partner and applied for legal aid for an upcoming maintenance hearing. The fact that she was in receipt of Housing Assistance Payment (HAP) meant she was over the income threshold and did not qualify for legal aid. Another mother in receipt of OPF, working part-time, and getting maintenance was also told she was not entitled to legal aid as her income exceeded the threshold. In this instance, maintenance was counted as means. This young woman who was struggling to pay creche fees ended up representing herself in court during a child custody hearing. She too had a safety order against the father of her child.

International comparative research in the area tells us we must be wary of making universal assumptions that child maintenance is a complement to income and that just because it is paid, it can help reduce poverty.⁸ Analysis shows this is unlikely to be the case - that the reality is much more complex and a reflection of what mass publics expect from their governments in terms of social protection.⁹ In the context of the persistence of child poverty in lone parent families, discussion about the establishment of a statutory maintenance agency has the potential to open up new possibilities about the role of public policy in addressing this important issue, particularly in relation to a minimum standard of living and adequate income.¹⁰ Child maintenance is not the solution to child poverty. However, decoupled from social welfare and not counted as means, and where the former is progressive it has the potential to improve life even marginally for struggling lone parents.

In spite of their best efforts to improve their circumstances single parent families are in a much more precarious socio-economic position than two-parent families.¹¹ This is in part due to the fact that up until the early 1990s the policy emphasis was on individual

⁷ MILLER, M., CROSSE, R., *Lone Parents and Activation, What Works and Why: A Review of the International Evidence in the Irish Context*. The UNESCO Child and Family Research Centre, National University of Ireland, Galway, 2016

⁸ HAKOVIRTA, M., *et al*, 'Child Poverty, Child Maintenance and Interactions with Social Assistance Benefits Among Lone Parent Families: A Comparative Analysis'. *International Social Policy*, No 49 (1), July 2020.

⁹ BONOLI, G., 'Public Attitudes to Social Protection and Political Economy Traditions in Western Europe', *European Societies*, Vol. 2 (4), 2000.

¹⁰ NOLAN, A., 'Article 27: The Right to a Standard of Living Adequate for the Child's Development'. in J. Tobin (ed) *The UN Convention on the Rights of the Child: A Commentary*, Oxford University Press, 2019.

¹¹ Houses of the Oireachtas Joint Committee on Social Protection. *Report on the Position of Lone Parents in Ireland*, June 2017

responsibility and the marital family¹² headed by a male breadwinner with responsibility for caring firmly in the female domain.¹³ Thus while lone parents are now recognised as a cohort with legitimate welfare needs, the state and its welfare regime continue to lag behind society in service provision for all families.

Going forward there must be an all of government approach to supporting families and a recognition of the importance that universal access to public childcare and the provision of social and affordable housing i.e., housing security play in determining quality of life for families. Reform of the state's maintenance and family law systems must be seen within this broader context. Research is telling in that the countries that have strict and rigid child maintenance systems, a high social wage, regulated labour markets and good workers' rights, have the lowest levels of child poverty. In Scandinavian countries, child maintenance is guaranteed by the welfare state as a matter of social policy. In terms of social provision, the state takes a lead role and there is limited reliance on the voluntary sector.¹⁴

Recommendations

- Treoir believes child support payments should be complementary to benefits and that they should never be used by government as a substitute either in full or part, for them.
- The social protection function of child maintenance is acknowledged and that in the event of a non-resident parent being unable or unwilling to pay, the state pays an agreed amount to the other parent to ensure a minimum essential standard of living, and that it also collects arrears where possible.
- That child maintenance is no longer counted as means for social welfare payments, for housing subsidies such as HAP or for legal aid applications.

4. MAINTENANCE AND THE FAMILY LAW SYSTEM

The modernisation of Ireland's child maintenance system to bring it into line with European norms will require significant involvement by government in terms of investment of resources and commitment to ongoing reform. It requires among other things a complete overhaul of the state's family law system, the legal aid system and national mediation

¹² The Constitution is important as it provides the foundations for social citizenship in Ireland. Article 41.1.2 reads: 'The State guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State'.

Article 41.3.1 reads: 'The State pledges itself to guard with special care the institution of Marriage, on which the whole Family is founded, and to protect it against attack.'

¹³ Department of Employment Affairs and Social Protection, *Technical Paper on Social Inclusion and Access to Care Services in Ireland*. February 2019.

¹⁴ Svendsen, G., *Trust, Social Capital and the Scandinavian Welfare State*. Edward Elgar, Cheltenham, 2016.

service so that they are fit for purpose. Changes to existing legislation to ensure the names of both parents are recorded on a child's birth certificate can no longer be delayed. All of the above require a cultural shift from everyone involved (politicians, policy makers, the legal profession etc.), and buy-in from the public and the ongoing dissemination of information via public information campaigns.

Recommendations

- That the Family Justice Oversight Group in conjunction with the Maintenance Working Group address the issue of whether or not people should retain the right to deal with child maintenance issues through the courts.
- That the names of all father's irrespective of marital status be recorded on a child's birth certificate at registration. Currently legislation is in place, but it has not been implemented. The legislation is cumbersome and places an unacceptable burden on the mother and should be redrafted as a matter of urgency so that it is fit for purpose.
- A national information campaign be carried out informing people of their obligations to provide financially for their children. This could be part of a general information campaign about other aspects of family law such as access, custody, guardianship, etc.

5. RESEARCH – MAINTENANCE AND CHILD POVERTY

In the coming years Ireland's Family Policy will be forced to change due to pressure from unprecedented social and demographic change. As a nation state we may be satisfied to adapt in a piecemeal way to changes in family formation or we can plan-ahead and put in place institutional and legislative structures that are flexible and fit for purpose. These should be child centred, grounded in an ethos of social justice and universal access, and ensure the rights of those who are less well off or vulnerable, are vindicated and protected. The family is not what we thought it was and social policy must reflect this going forward.

Recommendations

- The Central Statistics Office (CSO) be charged with collecting data on fathers who do not live with their children. This should include questions about the numbers of children they have, if its more than one if they live with different mothers, and if there are informal/ formal maintenance arrangements in place. Question 13 on the 2016 Census form asks, 'how many children have you given birth to'. This question is clearly aimed at women. We need a corresponding question for men.
- Research be commissioned to explore which maintenance model would best suit Ireland's current welfare, taxation, and family law regimes.

- Research be commissioned to establish what if any are the poverty reduction outcomes produced by child support when taking account of policy principles and programme interactions.
- Research be commissioned to look at the impact of child maintenance payments on different categories of liable relative, paying particular attention to recent shifts in family formation.