



**Submission to the
Joint Committee on Justice
on
“The Enforcement of Court Orders
relating to Child Maintenance”**

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1. BACKGROUND TO TROIR

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

Troir 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 and their children in Ireland;
- collaborating with other agencies to promote our aims through the federation of Troir and agencies outside of it.

Troir recognises the diversity of family life in Ireland and believes that all families, especially those where the parents of children are not married to each other should have equal rights to respect, care, support, and protection. In addition, Troir 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.

Troir welcomes the opportunity to make a written submission to the Department Justice on this important issue. Every year Troir'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 Troir's National Specialist Information Service and on input from our member organisations throughout the country.

2. Context:

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, once a lone parent has been approved the One Parent Family Payment (OPF) there is an obligation on the claimant 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 in order to make such an application to the court. 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. In many cases in Treoir's experience a lone parents weekly income can be adversely impacted where maintenance goes unpaid, with very little pathways out of that situation given the Departments governing guidelines and difficulties with maintenance hearings.

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, where child maintenance has gone unpaid the parent may apply to the family court to pursue arrears and an enforcement order. In Treoir's experience, arrears are paid at a very low rate (e.g., €70 per week maintenance with an additional €5 per week arrears). These low rates of repayment have little impact where a household has been living in poverty due to low income over an extended period. In addition, if the respondent fails to appear in court due to non-payment of maintenance a Judge can issue a bench warrant, but since Family Law Courts are in essence civil courts, there is no prosecuting Guard to execute these warrants. Where a bench warrant exists, the applicant cannot pursue unpaid maintenance until such warrants are executed leaving enforcement orders ineffective in these cases.

In another example, Treoir recently had a call from a lone parent 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 also had a safety order against the father of her child.

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 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.¹ Child maintenance is not the solution to child poverty. However, decoupled from

¹ 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.

social welfare and not counted as means, it has the potential to improve life for struggling parents.

3. What is the impact of unpaid maintenance?

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.’² 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.³ 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.⁴

Child maintenance policy has been developed to secure the living standards of children after parental relationship dissolution, with the aspiration that child maintenance will reduce the poverty of children whose parents do not live together (Maclean and Warman, 2003; Bradshaw, 2006; quoted in Hakovirta, 2011: 249).

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. As demonstrated through international research, non-custodial parents who financially contribute to their children’s upbringing are

² HAKOVIRTA, M., ‘Child Maintenance and Child Poverty : A Comparative Analysis’, Journal of Poverty and Social Justice, Vol 19 (3), October 2011.

³ REGAN, M., MAITRE, B., ‘Child Poverty in Ireland and the Pandemic Recession’, Economic and Social Research Institute, Paper 4, July 2020.

⁴ 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.

more likely to have a positive and active role in their children's lives. However, the removal of obligation upon custodial parents to seek maintenance has a huge part to play in parents relationships in terms of positive shared parenting⁵.

In Ireland, reform of child maintenance is long overdue as is the related need for the development of a modern family law system.⁶ 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 which are evident across the EU⁷ 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.⁸

Recommendations

- The Maintenance Review Group be put on a statutory footing.
- 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.

4. What are the complexities involved in court orders

In the first six months of 2022 Treoir's National Information Service has dealt with 1,435 queries in relation to Access and Custody alone. Many of the queries are to

⁵ Dunne, S., 'Child Maintenance Position Paper', October, 2017.

⁶ Houses of the Oireachtas Joint Committee on Justice and Equality, *Report on Reform of the Family Law System*, October 2019.

⁷ IAKOVOU, M., SKEW, A., 'Household structure in the EU', Iser Working Paper Series, No 2010-10, April 2010, Institute for Economic and Social Research.

⁸ OECD, 'Families are Changing: Doing Better for Families', June 2011.

do with the implementation of a court order, enquiring about breaches of such orders or how to vary an order. Parents often end up in the family courts when mediation hasn't helped reach agreement or the agreement, whether court ordered or a private agreement, breaks down.

It can be as result of difficulties parents have in resolving disputes or disagreements and seek the intervention of the Court. In our experience many parents are relieved to have a court order in place initially as they feel it will help resolve the conflicts. It is in the implementation of those agreements that problems arise.

When communication between parents is difficult, implementing a court order can be very challenging. Parents often try to implement the order verbatim and leave no room for flexibility.

The lack of interaction between the criminal courts and the family courts means that parents who have safety orders in place are often asked to confront and deal with their abuser in the implementation of the court order. Treoir has dealt with several cases where the mother, who has a safety order to protect her from the father of the child, is then left to arrange and sometimes supervise visits with the father.

The lack of available and appropriate child centred contact centres means that complying with a court order for supervised access can be difficult for both parents. It does not foster relationship building and bonding for the non-resident parent when, shopping centres, parks or fast-food chains are the locations for supervised access. The complete lack of impartial reporting on these interactions to the court, means the court cannot appropriately assess the intentions and outcomes of the order.

5. How effective are these orders?

Court orders can be very effective in providing parents with a framework to parent their children.

However, court orders are only as effective as the parents who are willing to work together and communicate effectively on their implementation. This requires a level of flexibility and communication and putting the child's best interests at the centre of their parenting. This is difficult to do when there is conflict in the adult relationships.

Referrals to Treoir's '**Let's Work it Out**' parenting support programme, from the National Family Mediation Service are parents who have legally binding access/custody and child maintenance orders in place through the family mediation service but who need ongoing support in the implementation of such arrangements. The Family Mediation Service have stated that they could continue to refer hundreds of cases to this programme if it had the capacity to manage such a caseload. Let's Work it Out has acted as a complimentary service toe the FMS as this service seeks to fill a recognised gap in family support services where parents try to share parenting in difficult relationships following the breakdown of former relationships.

Court orders that do not recognise the serious issues of domestic violence can continue to put victims of domestic violence in harms way. Court orders have instructed parents to make supervised visits available to a parent even when a safety order is in place. Without proper access and availability to properly resourced and funded supervised access services, the parent with the safety order is often left to organise and engage with the supervision.

6. What steps could be taken to remedy these issues

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 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 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.

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

- Investment in supervised access centres is critical to ensure parents can avail of safe, child appropriate places to engage children and meet the terms of court orders.
- Investment in parenting support programmes and mediation services
- 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.
- Review custodial sentencing for liable relatives upon non-payment of court ordered maintenance with a focus on removing barriers to custodial parents seeking maintenance in the Courts.
- Ongoing data collection and reporting on agency tasked with collecting attachment of earnings orders.