

## **Child Maintenance: History, Behaviour and Child Poverty**

Centre for Separated Families

### **Child maintenance in recent history**

1. Prior to the introduction of the Child Support Act (1991), maintenance orders could be made with consent and privately between couples, without recourse to a court. Alternatively orders could be obtained through magistrates' and county courts. The Department for Social Security (DSS) could also pursue a 'liable relative' for maintenance.
2. The Finer Report, published in 1974, argued that it had 'established beyond a doubt that most one-parent families could not subsist on the proceeds of the maintenance orders, or on any amount to which it would be possible to increase them while permitting the liable relative himself to subsist without assistance'.<sup>1</sup>
3. It has been argued that 'the Committee recognised and supported the obligation on men to maintain their families but insisted that the difficulties of lone mothers would be better met if the state rather than fathers were expected to maintain them and their children'.<sup>2</sup> In effect, the responsibility for the maintenance of children in divorced or separated families was transferred into the hands of the state.
4. By the end of the 1980s, 'lone parenthood' accounted for one of the fastest growing areas of public expenditure. In 1980, there were 330,000 lone parents in receipt of Income Support (IS) and by 1989, the number totalled 770,000. Public expenditure was inevitably significant, given the heavy reliance of most lone parents on benefit. In 1989, 70 per cent of lone parents were in receipt of IS, and the cost of benefit had risen from £1.3 billion in 1981-2 to £4.3 billion in 1990-1.<sup>3</sup>
5. The 1990 White Paper, *Children Come First*, concluded that 'the present system of maintenance is unnecessarily fragmented, uncertain in its results, slow and ineffective. It is based largely on discretion. The system is operated through the ... courts ... and the ... Department of Social Security. The cumulative effect is uncertainty and inconsistent decisions about how much maintenance should be paid'.

### **Child Support Act 1991**

6. As a response to the increasing financial burden that family separation was placing on the state through the payment of benefits to 'lone parents', the government introduced the Child Support Act 1991. One of the explicit aims of the new system of child maintenance was to shift more of the cost of children from the general taxpayer to the families of children whose parents lived apart.<sup>4</sup>
7. The basic principle of the Act was 'the duty to maintain' which, in the words of the Act

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1 Finer Report on One Parent Families 1974

2 Is it futile to try to get non-resident fathers to maintain their children? Tanya Evans see <http://www.historyandpolicy.org/papers/policy-paper-48.html#finer>

3 The Child Support Agency and the Old Poor Law, Thomas Nutt see <http://www.historyandpolicy.org/papers/policy-paper-47.html>

4 Child Support Research Paper 94/20 in respect of Draft Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994.

meant that 'an absent parent shall be taken to have met his responsibility to maintain any qualifying child of his by making periodical payments of maintenance with respect to the child of such amount, and at such intervals, as may be determined in accordance with the provisions of this Act.'<sup>5</sup>

8. In theory, this duty could be met through a private arrangement. However, where a parent was in receipt of 'income support, family credit or any other benefit of a prescribed kind', the Secretary of State was authorised 'to take action under this Act to recover child support maintenance from the absent parent'<sup>6</sup>. In effect, this meant that parents in receipt of those qualifying benefits were compelled to use the statutory scheme (Child Support Agency) regardless of whether a private arrangement was possible or not.
9. In addition, income related benefits were reduced, pound for pound, against maintenance collected. This meant that, in many households, the level of income remained the same and child maintenance payments were, effectively, made to the Treasury rather than to the other parent.
10. The Act was reformed several times, most notably in 2003.

### **The Henshaw Report**

11. In February 2006, Sir David Henshaw was asked to consider proposals for the fundamental redesign of the child maintenance system. His report 'Recovering child support: routes to responsibility' was published in July 2006 and set out recommendations to improve both child maintenance policy and its delivery.
12. His key recommendations were that:

*'The state should only get involved when parents cannot come to agreement themselves, or when one party tries to evade their responsibilities. Removing the barriers that currently prevent some parents from making their own arrangements would allow the state to focus on the more difficult cases and where effective enforcement is needed.'*

and

*'Parents who are able to should be encouraged and supported to make their own arrangements. Such arrangements tend to result in higher satisfaction and compliance and allow individual circumstances to be reflected. We should end the policy of forcing all parents with care claiming certain benefits to use the Child Support Agency.'*

13. As a result, the most significant change that stemmed from Henshaw, other than transferring responsibility for managing the child maintenance system to a new body - the Child Maintenance and Enforcement Commission - was the repeal of section 6 of the Child Support Act 1991<sup>7</sup>, under which 'the claim of benefit by or in respect of a parent with care,

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5 s.1 Child Support Act 1991

6 s.6 Child Support Act 1991

7 s.15 Child Maintenance and Other Payments Act 2008

or the payment of benefit to or in respect of such a person, triggers an application by her or him for child support maintenance'. This meant that all parents, whether they were in receipt of qualifying benefits or not, were free to make their own private arrangements for child maintenance.

14. The government also introduced changes to the 'benefits disregard' (also known as the Child Maintenance Premium) which was the amount of child maintenance received by 'Parents With Care' that they were entitled to keep without a corresponding fall in their benefit entitlements. These changes were, initially, staged but from April 2010, a full maintenance disregard was introduced, which means that, for parents with the main day-to-day care of the child(ren), any maintenance received is no longer taken in account when calculating their benefit entitlement.<sup>8</sup>

## **Current initiatives**

15. Building on Henshaw, the Coalition included a number of child maintenance provisions within the Welfare Reform Act 2012 and published two consultation papers, 'Strengthening families, promoting parental responsibility: the future of child maintenance' in 2011 and 'Supporting separated families; securing children's futures' in 2012.
16. The government identified that too many parents still see the statutory scheme (CSA) as the default option for arranging child maintenance and wishes to support parents to reach their own family based arrangements wherever possible. This collaborative approach sets child maintenance in context of broader Government family policy of promoting the involvement of both parents.
17. The government is also concerned about the cost to the taxpayer of operating the statutory scheme with a typical case in the CSA costing the taxpayer around £25,000 rising to around £40,000 if enforcement action is needed<sup>9</sup> and costing 40 pence for every £1 that is transferred between parents.<sup>10</sup>
18. A new statutory scheme will be introduced for parents who are not able to reach an arrangement. The role of the new statutory scheme will be solely to provide effective maintenance arrangements rather than having a dual role that includes benefit recovery.
19. In order to support potential applicants to consider alternatives before proceeding with their application, the government is introducing a 'Gateway conversation' although it will ultimately be up to the applicant whether they wish to proceed. In order to encourage parents to consider whether they really need to use the statutory service, there will be a one-off, upfront fee of £20 to make an application to the new statutory Child Maintenance Service<sup>11</sup>. This will not apply if the applicant has declared they are a victim of domestic violence or if they are aged 18 or under.
20. The new service will use HM Revenue & Customs information on taxable income, alongside other data, to calculate the amount of maintenance payable and the calculation will be updated each year for the life of the case at no charge. In the majority of cases,

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<sup>8</sup> Raising expectations and increasing support; reforming welfare for the future, White Paper 2008.

<sup>9</sup> Family Law Week, January 2012

<sup>10</sup> Strengthening families, promoting parental responsibility: the future of child maintenance DWP, 2011

<sup>11</sup> This provision was made under s.6 of Child Maintenance and Other Payments Act 2008

payment will be made directly at no cost to either parent but where payment is not made directly, the statutory service will collect and a charge will be levied on both parents. There will be a gradual ending of liability on all existing CSA cases over a three year period.

21. A particular drive behind the reforms is to recast the child maintenance landscape so that it is centred on supporting families. The voluntary and community sector is considered to be key to this and the government has made £20 million available to support it. This is set within a wider context, especially in the Ministry of Justice where there will be significant changes following the Family Justice Review and the reform of legal aid in private family law cases.
22. As well as referring to Henshaw's conclusion that private arrangements 'tend to result in higher satisfaction and compliance'<sup>12</sup> the government published a number of reports to support its child maintenance reforms. Statistics from the Department for Work and Pension show that almost 90% of paying parents complied with their own arrangements, compared with just under two thirds of those who had payments assessed and enforced by the CSA.<sup>13</sup> Figures also revealed that more than two thirds of parents with a family-based arrangement said they were happy with their situation with only a third of CSA clients saying that they felt the same.<sup>14</sup> Of those with a private arrangement, 95% say that it is paid, with nine in ten of those saying it is paid regularly.<sup>15</sup>

### **Not simply a matter of assessing and transferring**

23. The majority of parents believe that they have an ongoing financial responsibility for their children after divorce or separation. A survey for the government's Child Maintenance Options service suggested that 94% of separated mothers and fathers believed that parents should continue to share financial responsibility for their children, even if they live apart from them.<sup>16</sup>
24. In 2011, the Child Maintenance and Enforcement Commission commissioned research into parental behaviour in child maintenance decisions.<sup>17</sup> Evidence from interviews suggested six core behaviours, found across both receiving parents and paying parents. Some were common to both parents, whilst others were only exhibited only by one or other parent. Within these six behaviours, four were considered to be negative:
  - Abdicating: parents believe child maintenance is someone else's responsibility;
  - Controlling: paying parents make most of the child maintenance decisions without necessarily gaining consent from the receiving parent;
  - Accepting: receiving parents are unhappy with child maintenance arrangements but accept them in order not to worsen co-parent relationships;
  - Challenging: parents are not happy with existing arrangements and challenge the other parent to change these.

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12 Recovering child support: routes to responsibility. Henshaw, 2006.

13 DWP Research report No. 4 - Survey of Child Maintenance Options outcomes 2009/10.

14 Ibid.

15 Relationship separation and child support study, DWP Research Report No 503. Wikeley, Ireland et al 2008.

16 Janet Wojtkow, Director, Child Maintenance Options 2010 see <http://news.bbc.co.uk/1/hi/business/8504152.stm>

17 Promotion of Child Maintenance: Research on Instigating Behaviour Change, Sharon Andrews, David Armstrong, Lorna McLernon, Sharon Megaw and Christine Skinner; CMEC 2011.

(Note: experience at the Centre for Separated Families suggests that paying parents are just as likely to be unhappy with child maintenance arrangements but accept them in order not to worsen co-parent relationships.)

and two were considered to be positive:

- Providing: paying parents are keen to contribute towards child maintenance;
- Receiving: receiving parents are happy with the child maintenance arrangements.

25. The research also suggested that there are five common drivers of child maintenance behaviour, these are:

- the quality of the relationship between parents as well as the paying parent's involvement in their child's life;
- the emotional response of parents to the separation;
- the attitudes, beliefs and values of parents;
- the affordability of maintenance payments and the prioritising of expenditure;
- parental intentions.

26. Whilst the link between what is commonly referred to as 'contact' and child maintenance was removed with the introduction of the Child Maintenance Act 1991, it is still very present in the minds of parents. Dr Christine Skinner of the University of York Social Policy Research Unit highlights the importance of reciprocity for parents who are making or enacting maintenance arrangements.<sup>18</sup>

27. Dr Skinner also highlights research by Finch and Mason<sup>19</sup> which suggests that whilst people may hold a sense of obligation or duty to pay, commitments to pay are not based on fixed rules or position in the family but are created within a negotiation process.

28. The discourse around increasing the numbers of children who benefit from an effective arrangement is almost exclusively focussed on non payment and 'Parents With Care fighting to secure maintenance'.<sup>20</sup> However, the picture is more complex, with Department for Work and Pensions' statistics suggesting that in only 17% of cases does a parent refuse to make maintenance payments<sup>21</sup> and that in almost twice as many cases, 33%, the reason that there is no maintenance arrangement in place is because the 'Parent With Care did not want any contact with the Non Resident Parent'.<sup>22</sup>

## **The Lone Parent Model**

29. It could be argued that, particularly since the publication of Finer Report on One Parent Families in 1974, public policy around family separation has been centred on child poverty almost to the exclusion of all other issues. This can, perhaps, be attributed to both the drive by campaign groups to have all family formations recognised as being equal,<sup>23</sup> in which

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18 Understanding willingness to pay Child Maintenance, Christine Skinner, The University of York Social Policy Research Unit, 2008

19 Finch and Mason 1993

20 See, for example, Welfare Reform Bill Lords Amendments Feb 2012

21 Relationship separation and child support study, DWP Research Report No 503. Wikeley, Ireland et al 2008.

22 Family Resources Survey. National Centre for Social Research on behalf of the DWP, 2008.

23 See, for example, Gingerbread's Single parents, equal families campaign, 2009

examining the emotional and psychological impact on children or the social impact of divorce and separation was seen as stigmatising 'lone parenthood', and the strong tradition within British charity work of focussing on the alleviation of child poverty. Not surprisingly, the debate around child maintenance has, until recently, fallen within these parameters.

30. The overarching legislative and policy framework used in the UK is often referred to as the Lone Parent Model. This can be attributed, largely, to the Finer Report and sharply divides parents into the roles of 'Primary Carer' (who is assumed to be responsible for parenting a child) and 'Non Resident Parent' (who is assumed to be responsible for making financial provision for a child). Whilst these roles are not proscribed by gender, their implementation within a gendered environment means that both legislation and policy may be described as quasi-gendered.
31. In the Lone Parent Model, all of the support - financial, practical and emotional - is provided to the 'Primary Carer' who will receive, in terms of financial and social provision, Child Benefit, tax credits and social housing points and may make a claim for Statutory Child Maintenance against the other parent. The 'Non Resident Parent' will receive no Child Benefit, no tax credits, will be subject to the new under-occupation of social housing regulations<sup>24</sup> and may be required to pay Statutory Child Maintenance to the other parent.
32. This inequality in financial and social provision exists irrespective of the amount of parenting time that each parent provides or the relative income of each parent. For example, both parents may be providing exactly the same amount of day-to-day care for their children but only the 'Primary Carer' will be supported in doing that. This remains the case even if the 'Primary Carer' is a top rate tax payer and the 'Non Resident Parent' is in low paid, part-time work. Even where parents have a Shared Parenting Order, made under the Children Act 1989, the inequality in provision remains.
33. The effect that the Lone Parent Model has on UK statutory child maintenance is that only one parent may receive it and only the paying parent has their income assessed when the statutory calculation is made. Many paying parents experience the statutory maintenance scheme as punitive and are often report feeling treated as though they were responsible for the relationship having broken down and have no interest or ongoing role in the welfare of their children.
34. By contrast, in Australia, for example, both parents' incomes are considered equally, and the percentage of care each parent provides is taken into account when a statutory maintenance calculation is being made<sup>25</sup> In Norway, the maintenance cost of a child is shared proportionately between the parents according to their incomes.<sup>26</sup>

### **Child maintenance in the alleviation of child poverty**

35. Despite the discourse around child maintenance being largely focussed on child poverty it may, in fact, be effective only at the margins. Prior to the full benefits disregard (see para. 14), research suggested that 'a child with a lone parent without employment income is very unlikely to be lifted out of poverty by child maintenance; child maintenance contributes to

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24 See The Welfare Reform Act 2012

25 Australian Department of Human Services see <http://www.humanservices.gov.au/customer/services/child-support/child-support-assessment>

26 Norwegian Labour and Welfare Administration (NAV) see <http://www.norway.no/oss/#a962>

only 7.4 per cent of the reduction in child poverty'.<sup>27</sup>

36. The contribution made by the benefits disregard should not be overlooked. Nevertheless, in many cases, child maintenance, whether arranged privately or through the statutory scheme, simply sees scarce resources being transferred from one household to another. It should be noted that the statutory minimum payment levied on paying parents whose weekly income is between £5 and £100 is £5 per week, regardless of how many children are involved, and that this sum is unlikely to make a significant impact in lifting children out of poverty.
37. In addition, the Lone Parent Model of support and the relatively minor adjustment in the statutory assessment for those paying parents who provide a proportion of the day-to-day care for their children, means that children are often likely to experience poverty when they are in the care of the paying parent. This has the attendant negative effect of making it more difficult for paying parents (mostly fathers) to maintain a meaningful relationship with their children.
38. It is also worth noting that, although paying parents on income related benefits must pay a minimum of £5 per week (this is set to double to £10 per week<sup>28</sup>), no recognition of this is made in the benefits received. In essence, the parenting responsibility is built into the statutory child maintenance system but not into the benefits system. This anomaly not only disregards the parenting commitment of the paying parent but increases the risk of children experiencing poverty when they are in their care and increases the likelihood that that commitment will become unsustainable.
39. Whilst many lone parent organisations continue to focus on poverty alleviation through child maintenance<sup>29</sup>, it seems clear that, whilst child maintenance can increase the financial resources in one household, it is often at the expense of financial resources in another and that this may simply relocate the potential for child poverty.

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27 Child support policy: an international perspective, Christine Skinner, Jonathan Bradshaw and Jacqueline Davidson. DWP Research Report No 405 2007.2.2 Page 24.

28 Child maintenance payments made by benefit claimants to double, DWP press release July 2012

29 Missing a trick? The role of child maintenance in tackling child poverty in single parent households, Gingerbread 2011