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Child Support Enforcement Bill: follow-up questions

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Introduction

The Committee received a briefing from RalSe on the [Child Support Enforcement RalSe Bill Paper](#) on 7 November 2024. The Committee requested clarification and/or additional information on a number of related issues which are outlined below:

1 Some further information on the breakdown of respondents to the Department for Work and Pension's consultation 'Child Maintenance: Accelerating Enforcement'.

During my presentation to the Committee I highlighted that the Department for Work and Pensions (DWP) had published a [consultation outcome](#) report in February 2024 in response to its consultation entitled 'Child Maintenance: Accelerating Enforcement'. The consultation sought views on proposed regulations to support the introduction of administrative liability orders and the procedure for dealing with the appeals process. The consultation was similar to the Department for Communities' (DfC) '[Consultation on Child Maintenance: Accelerating Enforcement \(Administrative Liability Orders\)](#)' which was published on 8 July 2024.

Department officials informed the Committee, during the 7 November Committee [evidence session](#), that the DfC had received a total of 12 responses to its consultation and held one online engagement session (attended by two organisations). During my briefing to the Committee, I highlighted that there were 87 responses to the DWP consultation, which is a relatively low response rate considering the DWP consultation covered England, Scotland and Wales. The Chair asked if I could provide a breakdown of the DWP responses, that is, whether they came from organisations or individuals.

According to the DWP consultation [outcome report](#), the breakdown of respondents was as follows:

- There were 14 responses from paying parents.
- There were 14 responses from receiving parents.

- There were 49 response from members of the public who that not specify if they were a Child Maintenance customer.

In addition to making the consultation available on the GOV.UK website, the UK Government also specifically invited feedback from voluntary and community organisations with a known interest in child maintenance. The following ten organisations responded (via email) to the consultation:

- Families Need Fathers
- Fife Gingerbread
- Women's Aid
- Welsh Women's Aid
- Money Advice Scotland
- East Midlands Money Advice
- Poverty Alliance
- Surviving Economic Abuse
- Domestic Abuse Commissioner
- Brodies LLP Family Law

2 Human rights issues around the right of appeal in Great Britain

The DWP consultation [outcome report](#) did not explicitly mention any “human rights” issues around the right of appeal. The outcome report highlighted that the right of appeal against the making of an administrative liability order would be as follows:

- a paying parent will have a right of appeal to a court within 21 days from the date that an administrative liability order is made.
- appeals will be able to be made directly to the court without a paying parent needing the agreement of the CMS.
- the jurisdiction of the appeal court will not include consideration of the CMS calculation on which the debt is based as there are already appeals processes in place for this.

The [Explanatory and Financial Memorandum](#) of the Northern Ireland Assembly Child Support Enforcement Bill (as introduced) states, under the heading

‘Human Rights Issues’, that the “provisions of the Bill are compatible with the provisions of the Human Rights Act 1998”. It is not within the remit of RaISe to provide professional legal advice on human rights compatibility. The Committee may wish to consider seeking legal advice if it has any concerns regarding human rights compliance.

3 Is the robustness of Administrative Liability Orders as strong as Liability Orders?

According to the Northern Ireland Assembly Child Support Enforcement Bill’s [Explanatory and Financial Memorandum](#) (as introduced), Administrative Liability Orders (which would be made by the Department for Communities should the Bill be enacted) would:

“have similar effect to liability orders currently issued by the courts under Article 33 of the 1991 Order that certifies the debt is owed by the NRP [Non-Resident Parent] and allows the CMS to take further enforcement action”.

During its [evidence session](#) with the Committee on 7 November 2024, Department Officials stated that Administrative Liability Orders “*will have exactly the same powers as the court-based orders*” and that “*the administrative liability order will make the debt legally recognised in the same way as the court-based order does. It opens up that doorway to take further action through the Enforcement of Judgments Office. The new order has exactly the same legal standing as the court-based order*”.

4 What were the findings of the Callan Review?

The Callan Review is an [independent review](#) commissioned by the UK Government to assess the processes and procedures used by the Child Maintenance Service (CMS) in Great Britain in response to domestic abuse. The review was recommended by a Domestic Homicide Review (DHR) in England following the death of Emma Day. Emma Day was murdered by a former partner in May 2017. She was a CMS customer who was trying to claim

child maintenance at the time of her death. The DHR's assessment, according to the independent review report was that, the Great Britain-Child Maintenance Service (which provides services in England, Scotland and Wales and **not Northern Ireland**) were "insufficient, potentially risky for parents who had been subject to domestic abuse, and indicative of wider systems failure within the CMS". The coroner also concluded that action should be taken to prevent further deaths.

Please note that this is primarily a separate issue to the Northern Ireland Assembly Child Support Enforcement Bill. I drew the Committee's attention to the Callan Review at the end of my presentation as a largely separate but important issue that the Committee may wish to familiarise itself with in relation to child maintenance. During my presentation to the Committee, I highlighted that although Child Maintenance is largely a devolved matter and Northern Ireland has its own Child Maintenance Service (CMS), the Committee may wish to consider requesting information from the Department for Communities on:

- whether it has reflected on any of the recommendations from the Callan Review and changed any of its processes as a result; and
- requesting that the Department provides an overview of what services the Northern Ireland CMS provides to victims and survivors of domestic abuse.

The issues and recommendation of the Callan Review have shaped many of the proposals contained within the DWP consultation on '[Improving the Collection and Transfer of Maintenance Payments](#)' which opened on 8 May and closed on 30 September 2024. The consultation applies to England, Scotland, Wales and to Northern Ireland and focuses on a number of issues:

- How the Child Maintenance Service can better encourage family-based arrangements.
- A proposal to remove the direct pay service and maintain small fees for the use of the new service.
- How the Child Maintenance Service can better support victims and survivors of domestic abuse.

- That the then UK Government was undertaking a “fundamental review of the child maintenance calculation”.

As the consultation has recently closed, the Committee may wish to consider requesting, at an appropriate time, an update from DfC on the findings of the consultation as they relate to Northern Ireland.

The recommendations of the Callan Review

The ‘[Independent review of the Child Maintenance Service \(CMS\) response to domestic abuse](#)’ was carried out by Dr Samantha Callan and was published on 3 February 2023. The recommendations of the review reflect **her review of the Great Britain CMS** and are provided in Table 1 overleaf. The UK Government’s response to the review is available to download [here](#). However, please note that child maintenance is devolved in relation to Northern Ireland.

The recommendations cover many areas including, for example, the effectiveness of current Direct Pay arrangements, legal powers to address financial coercion, piloting singled named caseworkers for complex domestic abuse cases, maintenance affordability and low-income parents, cross-government co-ordination of early intervention, the maintenance calculation formula, and training for CMS staff.

Table 1: Recommendations of the Callan Review

Please note the following:

- The ten recommendations of the independent review and the overview of these recommendations have been extracted directly from the independent review report and reflect Dr Callan's reviews.
- The findings of the independent review covers the Great Britain Child Maintenance Service and not the Northern Ireland CMS (as child maintenance is a devolved issue), although some issues highlighted in the report may be relevant in a Northern Ireland context.

Recommendation 1: Prevent the use of Direct Pay as a form of coercion and control by perpetrators

Among measures of legislative reform, the foremost requires preventing the Direct Pay service type – which does not involve charges and where payments pass directly between parents – being deliberately used by perpetrators as a form of coercion and control (for example, by withholding maintenance or making deliberately erratic payments.) The National Audit Office (NAO) found around half of new Direct Pay arrangements are either not sustained or are ineffective. Parents often fail to report non-payment to avoid causing an issue with the paying parent.

At present, the only factor that can be considered in denying a Direct Pay arrangement is when a paying parent is deemed 'unlikely to pay' based on their history within CMS. A legislative lever – requiring the amendment of primary legislation via an express provision – should enable the denial of a Direct Pay arrangement where there is evidence of abuse. However, defining what is 'proof' or evidence of domestic abuse can be difficult to ascertain. My recommendation is that CMS consider accepting the same standards of evidence as would be accepted for the purposes of legal aid for private family law disputes when someone has been subject to abuse or violence from another party.

In cases where Direct Pay has been denied as a result of abuse then a consequence will be their transfer into the chargeable Collect & Pay service. In my view this is defensible as both customers will be receiving the full Collect & Pay service.

Recommendation 2: Ensure the CMS has adequate legal powers to address financial coercion

The Domestic Abuse Act 2021 extends the controlling or coercive behaviour offence to cover post-separation abuse and that behaviour may be directed at another person including the child of a receiving parent. Therefore, I also recommend that CMS should explore how best to use the new powers within the legislation, and whether any additional legislation is necessary, to support the prosecution of cases of financial coercion and control (abuse) committed in the context of a child maintenance arrangement.

This would not replace existing CMS remedies (including appeals and tribunals) but come after all CMS processes have been exhausted if an evidenced pattern of financial abuse and vindictive withholding of liabilities is still being perpetrated by paying parents.

Financial abuse can also be bi-directional and paying parents can suffer emotional/psychological abuse as a result of:

- (i) false allegations of non-payment; or
- (ii) a receiving parent deliberately restricting access to gain more in maintenance payments

Therefore, the Government should look closely at the extent to which domestic abuse legislation provides adequate legal protection for paying parents against a receiving parent unilaterally imposing non-contact/limiting contact with children as a lever to get maintenance increased. Non-legislative means are also needed, as I outline in Recommendation 6.

Recommendation 3: Remove the reporting requirement to qualify for the domestic abuse waiver and give the legal warning against providing false information earlier

The use of the waiver for the £20 fee to access the CMS is underpinned by secondary legislation, but it does not operate according to the accompanying statutory guidance in practice as the requirement to report is not always enforced. Fewer than one-fifth of those who have experienced domestic abuse report it due to safety or other concerns (and there is no evidence that the requirement to report acts as a spur to people accessing services).

Although its value to the Government has reduced significantly since it was first introduced, waiving the fee is still likely to send a significant signal to those who need access to the statutory system due to domestic abuse, that barriers will be lowered to facilitate this. Hence, I am recommending removal of the requirement to have reported domestic abuse to qualify for the application fee waiver.

To mitigate removing the need to report, there should be a more superficial change, whereby the legal ‘warning’ statement in the application stage call script is moved so it comes before customers are asked about domestic abuse to provide a ‘nudge’ which could strip out some false allegations that may be made simply to avoid paying the £20 application fee. Both statement and questions need to be delivered sensitively and with safety in mind, so disclosures are not inadvertently discouraged.

Recommendation 4: Pilot single named caseworkers for complex domestic abuse cases

The requirement to keep recounting their history of domestic abuse to different call handlers can re-traumatise parents who have been subject to it, not least because they may still be living with a sense of a very real threat to safety. Whilst it would be operationally very challenging for each CMS customer to have a single named caseworker, the CMS should pilot an approach where complex domestic abuse cases are served by a named caseworker within a dedicated team.

If this team had access to a broad range of frontline services, including those with experience in working with ethnic minority, male and LGBT+ victims/survivors, this would build considerable expertise within the organisation. It also has the potential to create a significant uplift in the quality of service that customers can expect in these circumstances, further justifying collection fees.

The effectiveness of this approach should be assessed in terms of whether it increases actual and perceived safety, reduces anxiety, and increases payments to the receiving parent and therefore the children.

Recommendation 5: Address issues of affordability of liabilities for low income parents

Further legislative reform is also required to address issues raised by the Social Security Advisory Committee (SSAC) and others about the affordability of child maintenance liabilities in low-income cases, which could leave paying parents without the means to support themselves or their children whilst in their care. A system perceived to be unfair could exacerbate abuse or escalate conflict to increasingly harmful levels.

These concerns relate partly to thresholds determined at the end of the 20th century, which have been underpinned in statute, and to the interaction of liabilities with Universal Credit at certain points on the earnings curve that impact work incentives. The detail of rates and thresholds needs to be lifted out of primary legislation, so they can be more easily adjusted in response to wider social changes.

Recommendation 6: Cross-government coordination of early intervention outside the CMS

An early intervention system is needed outside the CMS, but integrated with it, where parents are helped to avoid or resolve entrenched conflict at an early stage. A likely site for such support would be in the network of Family Hubs several government departments are committed to building. These would also help address the many issues faced by separated families in this country, in which a third of all children live, which include debt, substance misuse and mental health. The private family law Family Hub Pathfinder in Bournemouth could ensure this area was prioritised and evaluated from the outset.

The CMS should also be able to refer parents who are struggling to make stable, mutually acceptable child maintenance arrangements work, to Separated Parents Information Programmes (SPIPs). These help parents (who attend separate sessions) understand how to put their children first while they are separating and learn principles of how to manage conflict and difficulties and how to put these into practice. This would better integrate the CMS with out-of-court family law remedies.

Recommendation 7: Removal of nil rate for child maintenance for prisoners

Requiring remanded and sentenced prisoners to pay some child maintenance, accords with the Ministry of Justice's two Farmer Reviews in 2017 and 2019 (on male prisoners and women in the criminal justice system respectively). Research shows that strengthening ties between prisoners and their families can help prevent re-offending and reduce intergenerational crime. The reports also emphasise the need to avoid effectively stripping away parental responsibility when men and women are held in custody, regardless of whether the relationship with the other parent of their child(ren) is ongoing.

Although prisoners' low earnings may mean the £7 flat rate is unfeasible, even small amounts per week would add up and make a difference to children. The principle of requiring prisoners on 'enhanced' earnings to pay child maintenance already applies in legislation and should be extended. As part of the wider review of prisoner pay, the CMS should work with the Ministry of Justice to develop a workable system for enabling parents with care of prisoners' children to claim child maintenance if they choose to do so.

Recommendation 8: Update on the maintenance calculation formula to include both parents' income

Fundamental reform is also required to acknowledge the very different world the CMS is now operating in, ten years after the 2012 reforms, where both parents often have primary caring responsibilities towards the child as well as employment outside the home. This reality makes it hard to justify the current situation where only the non-resident parent's income is included in child maintenance liability calculations.

This would require a far more complicated formula which takes account of the incomes of both parents and other outgoings including debt repayments and would contradict the 2012 system's drive for greater simplicity. However, the inclusion of only one income in the calculation is

becoming increasingly untenable and, again, the greater the perceived unfairness of a system, the more it is likely to drive conflict and even abuse.

Recommendation 9: Include a broader range of agencies in CMS training

Whilst it is undeniably the case that women are disproportionately more likely to be subject to and severely harmed by domestic abuse, its complexity was particularly apparent when reviewing the CMS. As well as the broader statutory definition bringing more behaviours into scope, it became clear that abuse can be mutual or bi-directional.

Men's needs and experiences are often discounted and only specialist women's organisations appear to have been involved in the design of CMS domestic abuse training. In recognition that men (and paying parents) can also be subject to domestic abuse, a broader range of agencies, including those which specialise in men's perspectives, should be included in CMS training.

Recommendation 10: Design an Implementation Plan with a specifically tasked civil service team

The DWP should produce an Implementation Plan and a specifically tasked civil service team to take forward the recommendations made in this Report. The team should meet regularly (for example, six-monthly) with the Reviewer to ensure progress. The Implementation Plan should be aligned with the Domestic Abuse Plan – published by the Home Office in March 2022– and statutory guidance (published July 2022) that outlines ways in which key provisions in the Domestic Abuse Act 2021 should be interpreted by local agencies.

This Plan should include research (designed with the input of key stakeholders) to measure the success of the reforms proposed by this Report. This would require systematic recording of disclosures of domestic abuse and how the CMS responded.