

## **Government consultation on Child Maintenance: Accelerating Enforcement**

### **Role of the Domestic Abuse Commissioner**

The Domestic Abuse Act establishes in law the Office of the Domestic Abuse Commissioner for the purpose of providing public leadership on domestic abuse issues and to play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales. The role of the Commissioner is to encourage good practice in preventing domestic abuse; identifying adult and child victims and survivors, as well as perpetrators of domestic abuse; and improving the protection and provision of support to people affected by domestic abuse from agencies and government. As the Domestic Abuse Commissioner for England and Wales, I welcome the opportunity to feedback on the Government consultation on accelerating the enforcement of Child Maintenance payments and would be pleased to discuss the contents of this response further, if requested to do so.

### ***Recommendations***

**Recommendation:** DWP should improve compliance by monitoring and reporting against the effectiveness of enforcement actions, and coordinating with family courts to access financial information where non-resident parents are actively seeking to avoid paying maintenance. There must be better joined up cross departmental work to ensure that information sharing processes are strengthened and that IT improvements are made to enable this level of join up in enforcement activity.

**Recommendation:** Government should improve the effectiveness and speed of enforcement measures.

**Recommendation:** Government should put in place minimum payments when payments are missed, which can be recovered through enforcement.

**Recommendation:** Where there are routine arrears, payments should be transferred to Collect and Pay more swiftly.

**Recommendation:** The 4% fee on receiving parents for using Collect and Pay should be removed for customers who have been subject to domestic abuse.

**Recommendation:** DWP should ensure that CMS staff have domestic abuse sector informed training, to ensure that staff can spot signs of post separation abuse through the service, intervene early and implement stronger enforcement powers.

**Recommendation:** CMS should explore additional legislation in order to support the prosecution of cases of financial coercion and control committed in the context of child maintenance.

**Recommendation:** Government should remove the reporting requirement to qualify for the domestic abuse waiver

**Recommendation:** Government should do more to address issues of affordability of liabilities for low-income paying parents

**Recommendation:** Government should remove the nil rate for child maintenance for prisoners

**Recommendation:** Government should co-ordinate effective early intervention services, which are integrated with specialist domestic abuse services and the CMS.

**Recommendation:** Government should pilot single named caseworkers for complex domestic abuse cases

### ***Response***

I am pleased that the Child Maintenance (Enforcement) Act has made changes which will make enforcing the payment of Child Maintenance an easier and quicker process. Rightly, the Act will make provisions for the Child Maintenance Service (CMS) to make an Administrative Liability Order against a person in arrears, which will replace the current system of having to apply to the court for a Liability Order, which can take a lot of time. The intention behind this legislative change is to ensure that where deductions from earnings, benefits or bank accounts have proved unsuccessful in recovering the arrears owed to the receiving parent, the CMS can take quicker action to take further enforcement measures, such as the removal of a passport or a driving license.

Whilst this is a positive step, it is vital that the CMS continues to make improvements to enforcement, in order to ensure that perpetrators of domestic abuse who use the service cannot continue their abuse post separation. This consultation response speaks to the experience of survivors of domestic abuse who use the service, setting out key points of concern about the changes to CMS enforcement and makes recommendations for further improvement.

### ***A tool to continue post separation abuse***

Domestic abuse can often continue, and in some cases worsen, after separation. To reflect this, the Domestic Abuse Act 2021 formally recognised post-separation coercive control as a type of domestic abuse.<sup>1</sup> Post separation abuse can take many forms, but there is increasing recognition that financial and economic abuse can be key levers in a perpetrator's arsenal to continue their abuse once the relationship has ended – which can materialise through the CMS. As acknowledged in Samantha Callan's independent review, 'it is not uncommon for domestic abuse survivors to report that the CMS is used by ex-partners as a weapon in post-separation control and economic abuse.'<sup>2</sup> The Work and Pensions Committee has also received

---

<sup>1</sup> [Domestic Abuse Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>2</sup> [Independent review of the Child Maintenance Service \(CMS\) response to domestic abuse - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

evidence which demonstrates that paying parents can ‘weaponize the CMS systems to maintain levels of coercion and control.’<sup>3</sup>

Perpetrators can use the CMS to further perpetrate abuse in many ways. This can include, but is not limited to; using the appeals process to delay progress against enforcement action, appealing payment calculations, hiding their true earnings and under-declaring income, misrepresenting the number of children they are responsible for and by making payments inconsistently. Moreover, due to the nature of CMS enforcement action, it is the view of many survivors that post separation abuse can be facilitated by the CMS, due to the inconsistencies with enforcement and payment loopholes for paying parents who are self-employed.

All of these tactics mean that the survivor has no certainty as to child maintenance income, and ultimately, children suffer as they are not receiving the maintenance they deserve. One study has found that if child maintenance was to be paid in full to all children in separated families living in poverty, who do not receive financial support from the non-resident parent, it could lift 60% of them out of poverty.<sup>4</sup>

As such, it is vital that the CMS is strengthened to better enforce payments and stop the perpetration of post-separation abuse.

### ***Lack of enforcement***

Evidence from Gingerbread, Surviving Economic Abuse and from survivor correspondence received by the DAC Office has indicated that the CMS does not always use the enforcement actions available, that the thresholds for using the enforcement actions are unclear and that the CMS has routinely failed to follow up on the enforcement actions taken. For example, this can include delays in using a deductions from earnings order, or failing to follow up with employers who are not complying with this order.

Evidence shows that child maintenance payment arrears currently sit at around £500 million, since the CMS was established in 2012 and there was £20 million unpaid Child Maintenance in the last quarter of 2022.<sup>5</sup> Moreover, in the financial quarter to March 2023, 140,000 of the 910,000 children covered by the CMS received no maintenance at all.<sup>6</sup> In this period, the CMS was successful in recovering just £300 thousand in owed maintenance with a sanctions action in process, but £22.9 million had been accrued in arrears via collect and pay.<sup>7</sup> This demonstrates that the CMS does not currently enforce payments effectively, and more must be done to hold parents accountable for child maintenance payments.

A lack of enforcement is particularly prevalent for those using the Direct Pay system. The National Audit Office found that around half of new Direct Pay arrangements are either not sustained or are not effective, with £40 million in known arrears.<sup>8</sup> This is

---

<sup>3</sup> [Children in poverty: Child Maintenance Service \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/child-maintenance-service/)

<sup>4</sup> [committees.parliament.uk/writtenevidence/109865/pdf/](https://committees.parliament.uk/writtenevidence/109865/pdf/)

<sup>5</sup> [Lords Committee Stage Briefing-Child Support Enforcement Bill-GingerbreadSEA June 2023.pdf \(survivingeconomicabuse.org\)](https://www.survivingeconomicabuse.org/wp-content/uploads/2023/06/Lords-Committee-Stage-Briefing-Child-Support-Enforcement-Bill-GingerbreadSEA-June-2023.pdf)

<sup>6</sup> [Child Support Enforcement Bill gains Royal Assent, but will much change for single parents? | Gingerbread](https://www.gingerbread.org.uk/news/child-support-enforcement-bill-gains-royal-assent-but-will-much-change-for-single-parents/)

<sup>7</sup> [Child Support Enforcement Bill gains Royal Assent, but will much change for single parents? | Gingerbread](https://www.gingerbread.org.uk/news/child-support-enforcement-bill-gains-royal-assent-but-will-much-change-for-single-parents/)

<sup>8</sup> [Child maintenance \(nao.org.uk\)](https://www.nao.org.uk/news/child-maintenance/)

likely to be an underestimate, as parents regularly choose not to report non-payment to avoid causing issue with the paying parent.

Gingerbread has highlighted to the Work and Pensions Committee that for those using Direct Pay, there are 'unclear thresholds for enforcement' and that the 'hands off system compounded by poor administration, places the burden of responsibility for pushing for Direct Pay enforcement onto receiving parents.'<sup>9</sup> In giving evidence to the Work and Pensions Committee, CMS representatives explained that of cases taken to financial investigation, 80% come from the receiving parents, with only 20% coming from CMS staff.<sup>10</sup> This is due to the fact that the CMS does not monitor the effectiveness of Direct Pay arrangements and can only comment on the amount due in the system, not the amount actually paid.

This is extremely problematic. Receiving parents may not know enough about their ex-partners financial circumstance to bring a claim when fraud is suspected. They are also unlikely to be able to obtain the level of evidence required to prove fraud and that the paying parent is misrepresenting their income. In cases where there is domestic abuse, which is 60% of CMS cases, this is even more concerning.<sup>11</sup> A survivor bringing a claim for a financial investigation could be a dangerous trigger for a perpetrator to further abuse their ex-partner, and could be extremely re-traumatising and unsafe. The burden should not be on the receiving parent to build a case and chase progress of enforcement proceedings, this responsibility should sit with the CMS.

Whilst changes made through the Child Support Collection (Domestic Abuse) Act will mean that arrangements where there has been domestic abuse will move straight to the Collect and Pay system, there are still chronic issues with enforcement which the Administrative Liability Order will not resolve. The National Audit Office has found that whilst enforcement of the Collect and Pay system has improved, at least half of paying parents using Collect and Pay still do not pay, pay less than they should, or pay late.<sup>12</sup> For the quarter ending March 2022, of the 164,500 paying parents who were due to pay via the Collect and Pay service, 60,700 (37%) paid no maintenance.<sup>13</sup>

Therefore, more must be done to strengthen enforcement action and promote use of different enforcement tools, such as the deduction from earning order or direct contact with employers. Whilst the Administrative Liability Order will remove a hurdle by removing the need to apply to the court for stronger enforcement powers, it will not do anything to close some of the loopholes described above that we know perpetrators take advantage of, improve enforcement for Direct Pay users or make enforcement thresholds clearer. All of these are vital to have a better functioning CMS, which puts the needs of the child first.

### ***Long delays in enforcement proceedings***

---

<sup>9</sup> [committees.parliament.uk/writtenevidence/109836/pdf/](https://committees.parliament.uk/writtenevidence/109836/pdf/)

<sup>10</sup> [committees.parliament.uk/oralevidence/12548/pdf/](https://committees.parliament.uk/oralevidence/12548/pdf/)

<sup>11</sup> [Child Maintenance Service statistics: data to December 2021 \(experimental\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-december-2021-experimental)

<sup>12</sup> [Child maintenance \(nao.org.uk\)](https://www.nao.org.uk/publications/2022/child-maintenance)

<sup>13</sup> [Child Maintenance Service statistics: data to March 2022 \(experimental\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/child-maintenance-service-statistics-data-to-march-2022-experimental)

In addition to the above enforcement issues, the most reported concern with enforcement is the delay in proceedings. Gingerbread have reported from their helpline that receiving parents are waiting months, and in some cases years, for complaints to be resolved or effective enforcement action to be taken. Moreover, The National Audit Office reported to the Work and Pensions Committee that enforcement action is so slow, that even when a parent has eventually paid what was owed for a period, there are still arrears at the end of the process for the Child Maintenance that has steadily built up whilst enforcement action was being taken, so receiving parents are back to square one and have to go through the whole process again.<sup>14</sup>

Whilst the introduction of the Administrative Liability Order will improve some of the delay when further enforcement actions, such as the removal of a passport or driving license will need to be taken, it will not improve delays to other enforcement actions such as a deduction from earnings order, or resolve arrears built up whilst enforcement proceedings take place. As a result, receiving parents and survivors of domestic abuse will continue to wait for potentially months for enforcement action to take place, as the legislation does not put in place wholesale reform of the enforcement system, and only amends one singular part.

Further, as part of the new legislation, Government has set out the proposed notice period and appeal rights that parents subject to an Administrative Liability Order will have. At present, Government has proposed that there will be a 7 day notice for parents based in the UK or 28 day notice for parents based overseas, in line with other enforcement measures. Government has also indicated that paying parents will have a right of appeal to the court against the decision to make the order, the proposal is that the appeal period will be 21 days, to reflect the appeals process of other appeals measures.

Whilst it is important that paying parents have a right to raise a dispute and appeal, as set out above, perpetrators often use the lengthy appeals process and notice periods to further perpetrate abuse and purposefully create delays in ill-faith. If at each point of enforcement there is a 21 day appeal period, this will continue to create months of delays for survivors and children will continue to not receive the child maintenance which they deserve. As such, there must be mitigations put in place where perpetrators are abusing the appeals process to further their abuse, and CMS staff should routinely monitor cases where there has been domestic abuse to ensure that enforcement action is taken swiftly and perpetrators are held to account.

---

<sup>14</sup> [Child maintenance \(nao.org.uk\)](https://www.nao.org.uk)