



Rights of Women Consultation Response: A New System for Child Maintenance

About Rights of Women

Rights of Women is a well established and expanding not-for-profit feminist women's organisation committed to informing, educating and empowering women on the law and their legal rights. We are a membership organisation, with almost 200 members, both individual women and other women's organisations. Our activities include producing publications, organising conferences and training courses and undertaking policy and research work. We run two national confidential legal advice lines for women provided by women, one general advice line specialising in family law issues and another on criminal law and procedures in relation to sexual violence.¹

General Overview

Rights of Women provides legal advice to women on a range of issues, including relationship breakdown and child maintenance. We therefore welcome the opportunity to respond to the White Paper, 'The new system for child maintenance'. Rights of Women welcomes reform in this area as our service users consistently report problems with the existing Child Support Agency (CSA). To summarise, several of the key areas of concern our service users report are:

- problems with assessments: namely, delays in getting an assessment or incorrect assessments in general, but this is a particularly significant issue where a father is self-employed;
- ineffective enforcement of assessments;
- significant bureaucracy, a lack of consistency in caseworkers and inadequate service provision on the CSA helpline.

The following sections will outline Rights of Women's position on the various issues presented in the consultation paper, identifying specific consultation questions where appropriate.

Domestic Violence

Domestic violence is widespread; one in four women experience domestic violence. We know from research and our service users that domestic violence often continues post-separation, and separation is itself a significant risk factor for further violence. For example a Women's Aid study of outreach

¹ Sexual Violence and Criminal Law Legal Advice Line: 020 7251 8887 (open Mondays 11am-1pm and Tuesdays 10am-12pm). Legal Advice Line: 020 7251 6577 (open Tuesdays, Wednesdays and Thursday 2-4pm and 7-9pm and Friday 12-2pm).

services showed that 76% of 161 separated women experienced initial further abuse and harassment from ex-partners and 36% suffered chronic and persistent post separation violence. Many of Rights of Women's service users report that the issue of maintenance is a flashpoint for domestic violence. Rights of Women therefore believe it is imperative that reform in the area of child maintenance takes into account domestic violence and the impact this will have on various principles and procedures. We note with concern the lack of recognition of this issue in the White Paper.

The issue of domestic violence, safety and family proceedings was subject to a highly critical report by HM Inspectorate of Court Administration in December 2005. Whilst the report focussed on contact, much of its analysis applies to the issue of child maintenance. Both issues are about dealing with children within the context of relationship breakdown, and domestic violence and safety have important impacts in both. Thus as report notes there is an 'inherent danger highlighted by Inspectors is the current policy emphasis on seeking mediated agreements between parents in ever larger numbers of disputed family proceedings. Arrangements for assessing the risks associated with allegations of domestic violence need markedly strengthening. At present, we conclude that ensuring the safety of both children and adults receives insufficient consideration - this is a strong and consistent message from Services Users we consulted.' (Chief Inspector's forward). Further, the report notes that the 'focus on agreement-seeking is judged by women as out of balance because it does not pay proportionate attention to safety issues in domestic violence cases (p. 8).' Although the report focuses on CAF/CASS, its critique of providing appropriate and effective services following family breakdown and understanding the impact of domestic violence applies also the child maintenance.

One of the new principles for the reform of the child maintenance system is to 'promote parental responsibility by encouraging and empowering parents to make their own maintenance arrangements wherever possible.' Much of the White Paper emphasises the making of voluntary private child maintenance arrangements. The idea of empowering parents to exercise choice will require a clear understanding of the new system and an individual's rights. However, where domestic violence has occurred, this emphasis on reaching voluntary agreements could result in women being pressured into reaching agreements which they are not sure about, for fear of being labelled 'unreasonable'. Rights of Women is concerned that the use of incentives may, in practice, amount to pressure to agree to voluntary arrangements, and this is particularly open to abuse in domestic violence situations. Rights of Women is therefore concerned about how the reforms will ensure that women who have been abused by their partners do not end up being pressured into to opting out of the new child maintenance body (C-MEC – Child Maintenance and Enforcement Commission) or agreeing to a lower amount of child maintenance than they would get on assessment. This is particularly critical where a woman's safety (and that of her child) is put at risk. Indeed, at paragraph 2.23 the consultation paper states that research has shown that 'parents with care are very likely to experience a number of legal problems,

especially contact and residence, child maintenance, and domestic violence.’ Recognition of such research needs to form part of the reform process, to ensure that the new system does not perpetuate domestic violence by pushing women into make voluntary arrangements which are not in the best interests of them or their children.

Rights of Women would like to question what role is envisaged for mediation and/or alternative dispute resolution (ADR). Rights of Women, along with many other women’s organisations, have long-held concerns about the use of mediation/ADR in domestic violence cases. In the context of domestic violence, mediation/ADR has the very real potential to lead to a situation where there is a power imbalance for women. Women may feel they are not on a “level playing field” whilst sitting opposite their abuser trying to negotiate an agreement. Many women will not even want to enter the same room as their ex partner, for good reason, let alone enter into discussion with him. We would like to make the link here to child contact proceedings, where the Government has recognised that mediation/ADR is not appropriate where domestic violence has occurred. Rights of Women argues that this same recognition should extend to child maintenance and enforcement. However, this recognition needs to filter into practice, as we know from our service users that the current policies on mediation and domestic violence are often not followed in relation to contact. Rights of Women are therefore opposed to the use of any mediation/ADR schemes either as a method for making voluntary arrangements or for use by the C-MEC itself.

Encouraging parents to make their own arrangements

Rights of Women believes that the Government should be cautious in its assumptions about the extent to which parents will be willing or able to make fair voluntarily private agreements about child maintenance. Rights of Women accepts that such arrangements may work for some parents. Indeed one complaint some of our service users have reported is that the CSA has terminated good agreements between parents, although this is a small percentage of the calls we receive on this issue and tends to be the exception not the norm. Once again we raise our concerns as to how voluntary arrangements would be conducted safely in the context of an abusive relationship (see also our comments on mediation, above). In addition, there is a need to recognise that women in general, irrespective of domestic violence, may have difficulty accessing advice, information and support. For example, women are more likely be involved in full-time care of children, elderly or disabled relatives and be in an economically weaker position than men. In addition women may encounter difficulties if they have language or literacy issues, mental health problems, a disability, or are housebound. Rights of Women is very concerned that little detail is provided in the White Paper about the arrangements for advice and information on options for child maintenance, ensuring that women have access to good advice and issues of safety and vulnerability are taken into account.

Rights of Women is concerned that parents with care should not be pressured into making voluntary private arrangements which are unfair. Further, Rights

of Women believes that additional information is required on what constitutes a 'fair' maintenance amount in voluntary agreements. Rights of Women acknowledges that 'fairness' is to an extent dependent on the circumstances of a particular case. However, we believe that there must be safeguards which protect parents with care from entering into unfair agreements. Rights of Women therefore believes that parents with care must be able to access the new C-MEC should they chose.

Helping parents to make their own arrangements

As noted above Rights of Women is concerned at the lack of information about what advice will be available to women when making decisions in relation to maintenance. Making choices, as advocated in the White Paper, such as deciding whether you want to pursue a voluntary arrangement or use the C-MEC, requires access to information and advice. In the current context of legal aid reform, will we would like to know what provision will there be for access to public funding for such cases. What advice is going to be available to women trying to reach agreement? Will family legal aid be extended to include such advice?

Rights of Women believes that the idea of advice and information services as set out in the consultation paper is very narrow, focusing on assistance to make voluntary arrangements. Mothers must be able to access independent advice on all the options for seeking maintenance. In addition, service providers must have an awareness of domestic violence in order to screen effectively to ensure a safe environment for any voluntary agreements. Therefore information and advice needs to be available to each party separately prior to any joint meeting, should the parties chose to meet.

It is simply not enough for the consultation to assert that 'there will be a major role for the third sector who have much to offer based on their current excellent work.' As an organisation operating in the third sector, with experience of providing such advice, Rights of Women certainly acknowledges the depth of experience and expertise in the sector. However, the sector is, as a whole, under-funded and over-stretched. This is particularly acute in the women's sector for funding for services for those who have experienced domestic and/or sexual violence and who need advice on relationship breakdown and child maintenance. The consultation paper does not indicate any funding for the third sector to provide these services. However, without increased funding, it is difficult to see how the sector can effectively and appropriately fulfil the 'major role' the Government envisages.

Further, Rights of Women would like to ask what is meant by parents being "actively supported" and using a "comprehensive communication programme"? Again, these must not put women at risk, nor pressure them into accepting options or arrangements which they do not feel is best for them.

The role of the courts

The consultation paper discusses the use of Consent Orders in relation to child maintenance. Rights of Women believes that Consent Orders which clarify arrangements and ensure the enforcement of agreements can be a beneficial tool for parents. However, such orders are currently only available to married parents through ancillary relief proceedings. This leaves unmarried women who separate from their child's father without this remedy. Rights of Women believe that this is inconsistent and unacceptable given that 41% of births occur outside marriage in England and Wales (Office for National Statistics, 2004). We would like to take the opportunity to reiterate Rights of Women's position that remedies available to married parents upon the breakdown of their relationship, including in relation to children, should also be available to cohabitants.² Rights of Women is concerned that reforms to the law on cohabitation and relationship breakdown should be connected with proposed reforms of child maintenance; this is an opportunity for the Government to try and demonstrate "joined up" thinking.

Register of agreements (Question 1)

Rights of Women believes that it is vital that a register of agreements is in place, so that in the event of break down the specifics of the arrangement can be examined. However, Rights of Women would like more information on whether any enforcement mechanism will be attached to the register, for example, will a registered agreement be enforceable in the same way as an assessment. If there is no such enforcement, Rights of Women is concerned that this could add to the poverty experienced by many women parents with care. The White Paper states that one of the key principles for C-MEC is to 'help tackle child poverty'. Research has shown that there are clear links between mothers' and children's poverty, which indicate the need for common policy priorities (Women's Budget Group, 2005).

Additional Concerns

In relation to the marketing campaign and raising public awareness around the new options, Right of Women recommends that this needs to be carefully done so as not to place pressure on women to agree to unfair maintenance arrangements.

A fresh start – delivering child maintenance in a new way (Question 2)

In principle, Rights of Women agrees to the principle of a fresh start and the need for a new child maintenance system. We agree with the stated aims of the C-MEC, namely that it:

- is focused on helping parents meet their financial responsibility to their children, thereby helping to reduce child poverty and improve the welfare of children;
- encourages and empowers parents in their role and, where necessary, requires them to meet their obligations; and

² Please see Rights of Women Response to Law Commission Consultation Paper No. 179 'Cohabitation: The Financial Consequences of Relationship Breakdown' available at www.rightsofwomen.org.uk

- ensures the delivery of a high-quality and efficient service through its commissioning

However, our concerns in relation to women being pressured into voluntary agreements, particularly in relation to child maintenance and domestic violence, must be recognised in the operation of the C-MEC. Rights of Women knows from our service users that women already feel pressure to agree to contact arrangements which they do not feel are appropriate. The C-MEC should not operate in the same manner. Whilst the White Paper sets out the principles of the C-MEC, more information on the details of how the system will operate are needed for Rights of Women to provide an informed consultation response.

(Question 3)

Rights of Women agrees, in principle, to the principles guiding the approach to transition, which are set out as:

- ensure that the transition to the new regime is driven by child poverty considerations focusing on support for the poorest families first;
- meet parents' needs by empowering them to make informed choices and fulfil their responsibilities;
- minimise disruption for parents through clear and effective communication and provide a seamless service for the move to the new regime; and
- ensure that the approach is practical and achievable – learning from past experience by reducing the complexity that stalled the implementation of previous reforms.

Again, our caveats and observations as set out in the above paragraph stand. In addition, Rights of Women would like to raise our concerns as to how the system of transition will work. The failure of the transition between systems was one of the main criticism of the CSA. Rights of Women would like more information on how the transition will work in practice. We are concerned that the transition process and individual cases do not get lost between the two systems.

Simplifying and improving the child maintenance assessment process

(Question 4)

Rights of Women would welcome a simplification of the formula, as it will enable women to understand how maintenance is calculated, compared to the current situation which is extremely complicated. This would also assist those who chose to seek a voluntary agreement. However, before giving an informed answer, Rights of Women needs more information about the 'combining of a simpler assessment formula with an exception regime', particularly about what exceptions are envisaged and how they would operate.

Treatment of income

Rights of Women have some concerns about calculating maintenance solely on the basis of latest tax return, particularly in relation to self-employed non-resident parents as tax returns do not always reflect the reality of the father's income. Many of our service users have complaints about the inadequacies of the current system in properly assessing income. However, we do acknowledge, that basing the calculation on taxed income for employed non-resident parents will include bonuses, which are often not included under current assessments.

Tougher enforcement

Rights of Women believes that enforcement of child maintenance is an important issue. We are interested to see the White Paper's suggestions for pilot studies for deductions at earnings and look forward to examining the methodology and any outcomes. However, Rights of Women is cautious about suggested reforms over Liability Orders and Charge Orders. We do recognise that there can be delays in seeking these orders from the courts; however, we are not convinced that the solution to this is to make such orders an administrative process within the power of the C-MEC. The courts provide a fundamental scrutiny role, and such continue to do so over the new C-MEC. Rights of Women suggests that the more cogent approach would be to ensure that the C-MEC is more strategic and stringent in using its powers to seek court orders than the CSA has previously been. As the White Paper notes, and we know from our service users, many of the remedies available to the CSA have not been implemented to their fullest. Indeed, many of the enforcement measures that the White Paper sets out are similar to those currently available to the CSA. For example, questions remain about the effectiveness of the surrender of passport because as with the current surrender of driver's licences, how will the system deal with those who do not have them?

Historic debt

Rights of Women has concerns about how historic debt will be dealt with by the C-MEC. In this regard our concerns about transition, set out above, apply also. We understand from the White Paper the Government will not be seeking a power to write off debt that appears unrecoverable (para 5.36). We also welcome the Government's acknowledgment that more work needs to be done to understand existing historic debt and to what extent it can be recovered (para 5.36). However, Rights of Women is concerned that the many women who are owed significant arrears receive what they are due. Rights of Women believes that there need to be assurances both by the Department for Work and Pensions during the consultation process and the C-MEC once it is established that such women will not end up receiving nothing. Right of Women believes that there should be an operational presumption in work of the C-MEC against writing-off of historic child maintenance debts. In relation to settling child maintenance debts, Rights of Women has concerns about what will constitute a "reasonable offer to settle". Again our concerns raised above apply, with regard to domestic violence, mediation, and pressure on women to agree to that which they do not

consider reasonable. For the same reasons, Rights of Women is also concerned about “factoring” (selling) debt where parents with care agree.

Rights of Women would also like further information about how C-MEC intends to address those non-resident parents who do not pay or otherwise try and limit the amount of maintenance they may be liable to pay. This is an important issue raised by our service users, and if the C-MEC is to bring about a new culture of child maintenance, this must include sanctions for those who do not pay or who manipulate their financial affairs to avoid payment.

Charging for the C-MEC service

Rights of Women understands from the White Paper that the Government is considering charging for the services of C-MEC. Rights of Women is very concerned at the impact this would have on vulnerable and marginalised groups, as for example those on low incomes.

Joint birth registration

Rights of Women has strong concerns about the White Paper’s stated intention to introduce legislation requiring both parents to be registered on a child’s birth certificate, unless it would be unreasonable to do so. Registration carries with it significant legal consequences, so that unmarried fathers who are named on birth certificates have parental responsibility. Rights of Women knows from our service users that there is much confusion about the legal meaning of parental responsibility and what it entails. We would therefore welcome a public campaign which raises awareness of parental responsibility, how to obtain it, and the consequences of having it. However, Rights of Women is against compulsory registration of both parents. As the consultation paper notes, there may be good reasons why parental responsibility will not be appropriate, for example where a woman has been raped or experienced violence by the father. However, we do not think that the White Paper’s assertions that such situations would fall into the exception to the rule of registration on the grounds of ‘unreasonableness’. Forcing women to justify why they do not want to name a father on a birth certificate is not acceptable. Such an approach, rather than encouraging responsible fatherhood, would in fact penalise and potentially humiliate women. Again, our concerns relating to domestic violence and pressure apply, as joint birth registration may provide an additional opportunity for further domestic violence. Again, there is no information in the White Paper on how this will be dealt with.

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52-54 Featherstone Street, London, EC1Y 8RT

Tel: 020 7251 6575/6576

Textphone: 020 7490 2562

Fax: 020 7490 5377.

Website: www.rightsofwomen.org.uk

Email: info@row.org.uk