

women's aid

until women & children are safe

[www.womensaid.org.uk](http://www.womensaid.org.uk)



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Dear colleagues,

Please find below the joint response to the *Supporting Separated Families; Securing Children's Futures* from the Women's Aid Federation of England (Women's Aid) and Rights of Women.

Women's Aid and Rights of Women welcome the opportunity to provide written evidence to the Department for Work and Pensions on behalf of ourselves, the organisations and women and children we represent and our response is endorsed by Women's Aid's sister Federation in Wales, Welsh Women's Aid.

For any further information or points of clarification, please do not hesitate to contact either:

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Yours sincerely,

Fiona Dwyer (Women's Aid) and Ruth Tweedale (Rights of Women)

## Introduction

### Women's Aid Federation of England (Women's Aid)

Women's Aid is the national violence against women and girls (VAWG) charity that co-ordinates and supports an England-wide network of over 340 local domestic and sexual violence organisations running over 900 refuge, advocacy and outreach services. Keeping the voices of survivors at the heart of its work, Women's Aid campaigns for effective legal **protection** and services, works to **prevent** abuse through public awareness, education and training and **provides** vital 24 hour lifeline services through the 24 Hour National Domestic Violence Helpline (in partnership with Refuge), and through Women's Aid's online information and support services for adults [www.womensaid.org.uk](http://www.womensaid.org.uk), and for children and young people, [www.thehideout.org.uk](http://www.thehideout.org.uk).

Women's Aid welcomes this review and the opportunity to provide a written response to the Review Panel on behalf of our national and local services, which themselves provided local refuge and outreach support to over 125,000 women, nearly 55,000 children and over 2,000 men seeking safety from domestic violence in 2010 - 11. (2011-2012 figures have not yet been published)

### Rights of Women

Established in 1975 to promote the legal rights of women throughout England and Wales, Rights of Women aims to increase women's understanding of their legal rights and improve their access to justice so that they can live free from violence, oppression and discrimination and are able to make their own safe choices about the lives they and their families lead. Working from a rights-based approach to increase women's legal literacy, we offer a range of services including legal advice telephone helplines, legal guides and handbooks and training courses and other events, equipping individuals and organisations with the knowledge and skills to assert women's legal and human rights.

Since 1975 Rights of Women has been providing a critical analysis of the law and its impact on women, identifying gaps and omissions in the protection available to women and highlighting areas of discrimination in legislation and the application of the law. Rights of Women has lobbied and campaigned to improve women's equality in the law and their ability to attain safety and justice.

As a grassroots organisation providing a range of legal advice and information services to women throughout England and Wales, we hear women's experience of the law and legal systems on a daily basis. Through our training courses, conferences and other events we have regular contact with other professionals from the statutory, community and voluntary sectors providing services to women. This also gives us a broad picture of women's access to justice and equality. It is this experience, alongside our experience as lawyers which we use in our policy work.

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**Question 1: *Is our 'self declared' approach, guarantee of no contact with ex-partners and exemption from the upfront charge sufficiently inclusive to ensure that there are no barriers to victims of domestic violence?***

Yes, we welcome that the new child maintenance scheme will grant exemption from the upfront charge to victims of domestic violence. We also welcome that the exemption is not restrictive, recognising that victims report to a wide range of services. However, we are concerned that victims of domestic violence may not have disclosed to anyone prior to entering the system and so we also recommend that victims can disclose on point of entry to the system. It is extremely important that victims are assured of confidentiality and are given support to enable them to disclose.

It is important that advisers are provided with domestic violence awareness training and clear guidelines on how to ask appropriate and sensitive questions to establish whether a woman has experienced domestic violence.

**Question 2: *Is seven per cent an appropriate level of charge for this personalised service?***

We consider that the proposal to charge parents with care (PWC) 7% to use the statutory system raise serious concerns under gender equality provisions of the Equality Act 2010 and will result in outcomes that are not in the best interests of the children. It is important to note that charging of PWC to use the child maintenance system will impact disproportionately on PWC, 95-97% of whom are women.

We are concerned at the lack of understanding that in attempting to reach an agreement regarding maintenance it is almost always the non-resident parent (NRP), who tends to be the father, who refuses to agree to pay the amount of maintenance that they are required to pay by law. It is important that this is understood and accepted by the DWP when designing and implementing a new system for child maintenance.

Research has shown that NRPs already have a disproportionate amount of power concerning financial arrangements following separation. In a quantitative study published in 2007 on behalf of the DWP, just 33% of PWC using the collection service surveyed said that both parents had roughly equal say in child maintenance arrangements prior to using the CSA. 54% of PWC using the collection service said that the NRP mainly made decisions regarding child maintenance prior to contact with the CSA.<sup>1</sup> Another qualitative study conducted on behalf of the DWP published in 2006 concluded that "[o]verall, non-resident parents appear to wield a disproportionate amount of power over establishing financial arrangements following a separation, regardless of the type of

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<sup>1</sup> Bell, A., Bryson, C., Southwood, H., & Butt, S. (2007) *An investigation of CSA Maintenance Direct Payments: Quantitative study*, Department for Work and Pensions, Research Report No. 404, p38, available online at: [http://research.dwp.gov.uk/asd/asd5/report\\_abstracts/rr\\_abstracts/rra\\_404.asp](http://research.dwp.gov.uk/asd/asd5/report_abstracts/rr_abstracts/rra_404.asp) (last accessed 25.10.12)

arrangements adopted”.<sup>2</sup> It is our contention that it should be recognised in principle that the bargaining position of PWC and NRP are not equal. Consequently, we submit that the PWC should not be charged for using the system, particularly, where she has experienced domestic violence. If the PWC is charged 7% to use the system she is essentially incurring a financial charge for a decision over which she has no control. In situations where the NRP has opted to pay by maintenance direct, but then defaults on payment (resulting in a loss of at least one month’s maintenance for the PWC), the PWC will be penalised through collection charges, again arising from a situation over which she has no control.

A financial charge on the PWC will impact negatively on the financial welfare of the household, and have a direct impact on the welfare of the child/ren. In addition to the serious gender equality concerns that this raises, it is readily apparent that any reduction in the amount of maintenance that has been calculated as owed to the child/ren cannot be in the best interests of the child/ren.

In particular, we do not agree that victims of domestic violence should pay the 7 per cent collection fee. It is well established that perpetrators of domestic violence use the withholding of payment of child maintenance as a method to further financially abuse their ex-partners and feel that victims of domestic violence should not have to pay.<sup>3</sup> Research published by Refuge in 2008 has set out how financial abuse is a common feature of domestic violence situations. 89% of the respondents surveyed by Refuge reported “economic abuse”<sup>4</sup> as part of their experience of domestic violence.<sup>5</sup> Direct payment is neither feasible nor safe where there has been or is a risk of domestic violence as it could be used by the perpetrator to continue abuse, for example through the irregular payment of maintenance. The statutory collection service must be the default option in domestic violence cases. The imposition of a collection charge in these cases would be inappropriate and serve only to further marginalise the economic status of the applicant who is more likely to be on a low income or be in an unstable financial position due to having child care commitments.

The accompanying documents, in particular ‘*Estimating the impacts of CSA case closure and charging*’<sup>6</sup> outline that in a survey of 986 parents with care (PWC), 50% reported domestic violence from the non-resident parent (NRP). The fact that only 77% of those who reported domestic violence would be prepared to report the abuse in order to claim exemption places vulnerable parents with care at risk. They will therefore be expected to make their own private maintenance arrangements or accept a ‘Direct Pay’ arrangement, however exposed this leaves them and their child. The test seems designed to cut down the numbers who are exempt from the application fee rather than take the applicants’ true circumstances into account.

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<sup>2</sup> Bell, A., Kazimirski, A., & La Valle, I. (2006) *An investigation of CSA Maintenance Direct Payments: Qualitative Study*, London: Department for Work and Pensions, Research Report No. 327, p41. This conclusion was met with the caveat that “all the parents in this study had eventually involved the CSA in their negotiations (or become involved through the parent with care going onto benefits)”.

<sup>3</sup> See for example: Pearson, J., Thoennes, N. and Griswold, E. (1999) ‘Child Support and Domestic Violence: The Victims speak out’, *Violence against Women*, 5(4) and Sharp, N. (2008) *What’s Yours is Mine: the different forms of economic abuse and its impact on women and children experiencing domestic violence*, London: Refuge

<sup>4</sup> This included interfering with education and employment, controlling access to economic resources, refusing to contribute towards economic costs such as household bills and generating economic costs such as through destroying clothes or property.

<sup>5</sup> Sharp, N., (2008) ‘*What’s yours is mine: The different forms of economic abuse and its impact on women and children experiencing domestic violence*, Executive Summary, Refuge, available online at: <http://refuge.org.uk/policy-and-research/research-and-publications/economic-abuse/>. (last accessed 25.10.12)

<sup>6</sup> DWP, (2012) *Estimating the impacts of CSA case closure and charging: Estimating the impacts of Child Support Agency (CSA) case closure and charging for the new Child Maintenance Service*, 6 August 2012

There would appear to be little understanding throughout the consultation documents of what financial abuse is and how non-resident parents, who are domestic violence perpetrators, can manipulate the victim using withholding of child maintenance as a form of control. Financial abuse is one of the most underreported forms of abuse and is often not reported as it is not recognised by victims of domestic violence as abuse.

The new system, by allowing non-compliant non-resident parents ‘a fresh start’<sup>7</sup> and actively encouraging Direct Pay arrangements, will expose parents with care who have experienced abuse to further manipulation and financial control – for example by repeatedly asking for another chance at direct pay, paying late or paying only in part. Allowing the victim to be placed under pressure to allow the NRP another chance at direct pay perpetuates the abuse. In fact, the Equality Impact Assessment even states ‘*Whereas the non-resident parent will normally have the option to choose direct pay and thereby avoid charges if the non-resident parent is not willing or able to use direct pay; whether the parent with care (usually a women) is negatively affected by charging is largely dependent on the conduct of the non-resident parent (usually a man).*’<sup>8</sup> It is further concerning that the majority of PWC are in favour of using the collection service whereas 90% of NRPs indicated a preference for using direct pay meaning that many PWC may try to make unsafe arrangements for child maintenance rather than using the statutory scheme.<sup>9</sup> We strongly recommend that domestic violence victims should be allowed to automatically access the collection service without charge as in all cases where there has been domestic violence, the Child Maintenance System should be acting as a protective intermediary rather than promoting direct pay or ‘collaborative family-based arrangements’.<sup>10</sup>

**We recommend that:**

- PWC are not required to pay the 7% collection fee, recognising that it is almost always the non-resident parent (NRP) who refuses to agree to pay the amount of maintenance that they are required to pay by law.
- If a collection fee is to be imposed on PWC we propose that it is at a reduced rate of 3.5% of maintenance.
- If a collection fee is to be imposed, victims of domestic violence should be exempt from the requirement to pay a collection fee in recognition that direct payment is not a safe option where there is a risk of domestic violence.

**Question 3: *Is focusing on the severity of the enforcement action, rather than the actual cost, have we adopted the right approach to enforcement charging?***

Yes, as outlined above, in our experience domestic violence perpetrators will often use withholding of child maintenance as a mechanism to revictimise their ex partner. Therefore it is important to focus on those who are using the system to abuse their ex-partners.

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<sup>7</sup> DWP, (2012) *Impact Assessment: Child maintenance reforms: case closure, charging, supporting family-based arrangements*, Impact Assessment: DWP0031, paragraph 67, page 14.

<sup>8</sup> DWP, (2012) *Child Support Fees Regulations 2013: Equality Impact Assessment*, paragraph 51, page 10

<sup>9</sup> *Op. cit.* DWP, (2012) *Estimating the Impacts of CSA case closure and charging*, paragraph 108, page 23

<sup>10</sup> *Ibid*, paragraph 48, page 10

**Question 4: Have we taken the right approach to enforcement charges within the payment hierarchy?**

Yes, it would never be in the best interests of the child to take any approach whereby the enforcement charges were imposed before full maintenance had been received.

**Question 5: In proposing a 30-day notice period in reactive case closure, have we reached a reasonable balance between the interests of new applicants in having a short notice period and the interests of existing clients in having an extended period?**

We cannot comment until the system has been in operation and has been evaluated.

**Question 6: How can we best harness the expertise of the voluntary and community sector and other partners to ensure that the right help is provided to clients during the period of case closure?**

It is vitally important for the Department to work with the voluntary and community sector to ensure that domestic violence victims are protected when moving over to the new system or having their cases closed. Domestic violence often continues long after separation – up to 77% of women in one study experienced violence post separation<sup>11</sup>, and child maintenance is often a flashpoint for further abuse.<sup>12</sup>

**We are concerned**, and will make separate representation to the DWP on the quality mark referred to on page 5 of the consultation document. This has been developed by a range of parenting organisations without the input of the violence against women sector despite the acknowledgement from the DWP of the difficulties faced by PWC who have been victims of domestic violence.

**Question 7: Is six months a reasonable period for both parents to consider their options for child maintenance in proactive case closure cases, where we end liability in existing CSA case as part of the process?**

We remain cautious about agreeing that six months is a reasonable period as it implies that both parents can approach child maintenance arrangements in a rational and non-abusing manner.

**Question 8: How can we ensure that voluntary and community sector and other partners are aware of the closure process to enable them to provide support for parents to reach their own collaborative family-based arrangements?**

As we have outlined earlier, it is vitally important that the voluntary and community sector are given support to provide information and support to parents whose cases are being closed. We have previously outlined our concerns about parents having capacity to collaborate when one parent, who is a perpetrator of domestic abuse behaviours, continues to exert power over, or abuse, the other parent.

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<sup>11</sup> Humphrey, C. and Thiara, R. (2002), *Routes to Safety*, Bristol: Women's Aid

<sup>12</sup> See for example: Humphreys, C. and Thiara, R. (2003) 'Neither justice nor protection: Women's experiences of post-separation violence', *Journal of Social Welfare and Family Law*, 25(3)

**Question 9: *Once cases being managed manually have been closed, we are proposing to closing the remaining 'on system' cases on the basis of 'oldest first'. Is closing on system cases on the basis of age of case the right approach?***

We are concerned that cases which are more complex and/or which involve the highest levels of abuse will be closed based on the 'oldest first' criterion. We reserve our comments until we have seen how this will work in practice and recommend that the Department review and evaluate this on a continuing basis. We have concerns about women who have experienced domestic violence being pushed out of the system and in any consequent delay in vital child maintenance payments. **We recommend** that victims of domestic violence currently using the system should have the option of being fast-tracked into the new collection system.

**Question 10: *What evidence should the Government consider as part of the 30-month review? Which variables and criteria would you consider to show success of the new scheme?***

We recommend that there are a number of steps that the Government, at a minimum should consider:

- We propose the Government should monitor how many PWC are in receipt of child maintenance and consider any reduction in PWC receiving child maintenance.
- The Government should review how many children are in receipt of full maintenance as a measure of whether their reforms have been successful.
- The Government should monitor the impact of not having a free statutory maintenance system on NRPs agreeing to pay child maintenance outside of the scheme rather than simply considering any reduction in usage of the system.
- The Government should conduct research into the impact on PWC who have been victims of domestic violence to ensure that they are making safe arrangements for them and their children.
- If there is a reduction in PWC receiving child maintenance the Government should conduct research into why this has occurred.
- The Government should monitor the impact on and reports from the voluntary and community sector organisations who provide support to separating parents and families
- The Government should monitor positive outcomes for the children of separating parents – emotional wellbeing, physical and mental health, education etc.
- The Government should also monitor socio-demographic data to ensure a wide range of families are benefiting from the scheme and that specific groups are not being left out because of unforeseen barriers