



Rights of Women's Response to the Department for Work and Pensions public consultation "Strengthening families, promoting parental responsibility: the future of child maintenance"

April 2011

About Rights of Women

1. Rights of Women has been working for more than 35 years to secure justice, equality and respect for all women. Our mission is to advise, educate and empower women by:
 - Providing women with free, confidential legal advice by specialist women solicitors and barristers.
 - Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
 - Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.
2. Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives. We received the Mayor of London's Award for Distinction for outstanding and innovative work in relation to domestic violence (November 2007) and the Lilith Project's Best Voluntary Sector Violence against Women Campaign (November 2005).
3. Rights of Women is an Industrial and Provident Society and an exempt charity. Our Rules set out our charitable purposes. Pursuant to the Charity Act 2006 we are in the process of registering as a charity. Our response documented here reflects the concerns we have about the potential impact of the proposed reforms, if implemented, on the women that we work with.

Overview: Rights of Women response

4. Rights of Women welcomes the opportunity to give views on the current proposals concerning the statutory child maintenance system. Child maintenance is an issue that is frequently raised by callers to our family law

telephone advice line. We agree that there is room for improvement in the current statutory system for the calculation, collection and enforcement of child maintenance arrangements. However, we have a number of concerns about the current proposals and do not consider that in the main, they will result in a more efficient or fairer system.

5. We recognise that the aim of the proposals is to support parents to fulfil their responsibilities as parents and make family based arrangements wherever possible. We would welcome the provision of increased support for separating parents, to enable those for whom a private arrangement is possible and appropriate to do so. However, we are concerned that rather than support and encourage parents to enter into fair and enduring private maintenance arrangements, the proposals will deter parents with care (PWCs) applying to the statutory child maintenance scheme.
6. Importantly, the proposals are not gender-neutral and focus heavily on placing a financial and procedural burden on the PWC,¹ who in the overwhelming majority of cases (95-7%) will be a woman. We are concerned that the introduction of a gateway, application charge and collection charges on PWCs will result in perverse and unintended negative consequences for women and their children, whose receipt of maintenance payments will be reduced, delayed and in some cases denied.
7. The onus of securing a private child maintenance agreement in the proposed scheme falls almost exclusively and unfairly on the PWC, who will be required to demonstrate to advisors on the gateway service why she needs to make an application to the statutory scheme, and then pay an application charge. It is not until this stage that the proposals address the responsibilities of the NRP. Maintenance calculated as owed to the PWC will be reduced by 7-12% if the NRP chooses to payments through the statutory collection service, or defaults on payments through maintenance direct and is transferred to the collection service. This appears entirely illogical and can not in the best interests of the child/ren, who will be affected by a reduction in the household income.
8. Owing to the concerns that we set out in detail below, we consider that these proposals 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 child/ren. The proposals, if implemented, are likely to:
 - Unfairly tip the balance of power in maintenance arrangements further in favour of the NRP, pushing the PWC into agreeing less favourable maintenance arrangements;
 - Deter women from applying for child maintenance, thereby exacerbating women's economic inequality and impacting hardest on single mothers and children living in single parent families who are most in need of support;
 - Place the onus on women to reach private arrangements and penalise them if a private agreement is not possible, whether or not this is the result of non-cooperation by the NRP; and,

¹ In this response, we refer to the parent with care as 'she', because the overwhelming majority of parents with care are women and the non-resident parent as 'he' because the overwhelming majority of non-resident parents are men. We do however recognise that a minority of parents with care will be men, non-resident parents will be women.

- Result in an increase in the number of eligible families not in receipt of any maintenance or agreeing less favourable arrangements than would have been calculated through the statutory scheme.
9. Whilst Rights of Women recognises and welcomes that the proposals set out to ensure the protection of those who are at risk or who have experienced domestic violence, and makes recommendations in that regard, we set out below why we do not think that a domestic violence exemption scheme will work in practice. In particular, we are concerned that many women at risk of violence will not disclose to advisors on the gateway and will be pressured into making entirely inappropriate private arrangements with perpetrators.

Question One: Do you agree that maintenance should be more effectively integrated with other types of advice and support provided to families experiencing relationship breakdown to enable them to make arrangements?

10. Rights of Women agrees with the Government that it makes sense for information on available advice services to be presented in an accessible way for separating parents who are seeking support. We are concerned however, that when discussing the integration of advice and support services for separating parents, the green paper appears to reopen the debate on linking child maintenance with child contact. The Government sets out in the green paper that:

“one of the most significant issues for non-resident parents is when contact with their children is denied or withheld. This can lead to tension and hostility between the parents, especially where maintenance is still being collected through the statutory system. We are keen to explore approaches that allow maintenance arrangements to be considered in the round when determining appropriate contact enforcement measures”² (emphasis added).

11. Rights of Women is very concerned that this statement indicates that the Government hopes to explore whether a PWC’s adherence to child contact arrangements could be taken into account when deciding upon the calculation, collection and enforcement of maintenance. We welcome the acknowledgement in the green paper that “there are challenges to linking maintenance and contact in this way, most importantly how such decisions might impact on the best interests of the child”.³ In this regard, the Family Justice Review Interim Report has recently set out that the Family Justice Review panel “firmly believe, in the interests of the child, that there should be no automatic link between contact and maintenance.” However, we are concerned that the position on linking contact and maintenance remains unclear, as the interim report continues to set out that “when contact is continually frustrated and it is in the child’s best interests, we think that there is a case for providing an additional enforcement mechanism for the courts to alter or suspend the payment of maintenance via the Child Maintenance Enforcement Commission”.⁴

² Department for Work and Pensions, *Strengthening families, promoting parental responsibility: the future of child maintenance*, January 2011, online: <http://www.dwp.gov.uk/consultations/2011/strengthening-families.shtml>, para 12, page 12.

³ *Strengthening families*, above note 2, para 12, p12.

⁴ Ministry of Justice, *Family Justice Review Interim Report*, March 2011, para 127, p24, online: <http://www.justice.gov.uk/publications/docs/family-justice-review-interim-rep.pdf>.

12. It is our firm position that it would be entirely inappropriate to link contact and maintenance and in no circumstances would it be in the best interests of the child. Any financial impact imposed on the PWC for non-compliance with contact arrangements would impact directly on the welfare of the child and would be likely to increase, rather than reduce conflict between parents. The emphasis in such a scenario must be on investigating the motivation behind non-compliance with contact arrangements and where necessary, the enforcement of compliance in a manner that does not result in harm to the child. An extension of the logic of linking contact and maintenance arrangements would suggest that non-compliance of the NRP with maintenance arrangements should impact on contact arrangements. Again, this could not be in the best interests of the child.
13. Experience speaking to callers on our family law advice line also leads us to believe that dealing with child contact and maintenance completely separately serves to reduce the potential for acrimony between separating parents. If the parents cannot come to an agreement over child maintenance they can defer the decision to the Child Support Agency (CSA) for independent assessment. In our experience, the unrestricted ability of the PWC to refer matters to the CSA where a fair agreement cannot be reached serves to encourage the NRP to agree to private maintenance arrangements similar to those that would be calculated by the Child Support Agency.

Question Four: What support around child maintenance is needed for the most vulnerable families to make family-based arrangements?

14. See answers to Questions Five (in relation to the impact on low-income families) and Seven (in relation to domestic violence).

Question Five: Is the burden of the proposed charges fair between the non-resident parent and the parent with care?

15. Contrary to the Government's assessment of the potential impact of the proposals on gender equality, Rights of Women is concerned that the proposals, if implemented, would have a disproportionately negative impact on women. It is clear from the proposals that a key element of the new system will be to deter applications and use of the statutory service at different stages of the process, through the introduction of a mandatory gateway, application charges and collection charges.
16. Rights of Women considers that the proposals – and 'deterrent' mechanisms – would have an unfair focus on the applicants to the statutory scheme, who in the vast majority (if not all) of cases will be PWCs – a group overwhelmingly represented by women. Rather than encouraging NRPs to enter into fair and enduring maintenance arrangements, they focus on deterring PWCs from applying to the statutory child maintenance system.
17. As is highlighted in the equality impact assessment that accompanies the green paper, women make up 95% of PWCs within the current statutory service caseload, with a similar proportion of NRPs being male (although

research has suggested that for the overall eligible population, the proportion of PWCs who are female is closer to 97%).⁵

18. Our overarching concern is that rather than making the system fairer and more efficient, the proposals explicitly set out to deter applications and use of the statutory child maintenance system. Our concerns about the methods proposed to deter applications and use of the statutory system are set out in detail below. The problem with this “deterrent” effect is that we are concerned it will result in an increased number of eligible families not in receipt of any maintenance, and/or push PWCs into agreeing less favourable maintenance agreements than those that would be secured through the statutory system. Because of the disproportionate representation of women amongst PWC, this raises both gender equality issues and concerns about whether or not the proposals are in the best interests of the child. Below we set out our concerns in relation to the gender equality impact of the proposals, in relation to each stage of the application and collection process.

The Gateway

19. In the equality impact assessment, it is stated that the Government does not anticipate any negative equality impacts from the introduction of the proposed gateway through which all applicants to the statutory system must pass. It is stated that the “purpose of the gateway is to ensure all parents wishing to access the statutory child maintenance system have considered the range of their child maintenance options and can be directed into support to enable them to make their own arrangements where appropriate.”⁶
20. Rights of Women considers that delays in securing child maintenance arrangements will be inherent to the introduction of a mandatory gateway. For how long will an applicant (most likely the PWC) be required to pursue the support options that she is signposted to through the gateway, before she is permitted to apply to the statutory scheme? It appears from the proposals that a PWC who is aware that the NRP is unlikely to come to a fair private arrangement must nonetheless pursue this option, prior to being permitted to apply to the statutory scheme. Any delay in the process will impact on the financial stability of the PWC’s household is not in the best interests of the child/ren.
21. The onus of securing a private child maintenance agreement in the proposed scheme falls exclusively on the PWC, who will be required to demonstrate to advisors on the gateway service why she needs to make an application to the statutory scheme. It appears that an applicant would be permitted to apply to the statutory scheme in very limited situations, for example where “the other partner is refusing to engage at all, or has failed to keep a previous arrangement between them”.⁷ This in turn also adds to our concerns regarding the delays inherent in such a system; the resulting impact on the financial stability of the PWC’s household and the welfare of the child. As set out above, it is not clear from the proposals what evidence will be required to demonstrate that the applicant has done all within her power to reach a

⁵ Department for Work and Pensions, *Equality Impact Assessment*, Strengthening families, promoting parental responsibility: the future of child maintenance, January 2011, online: <http://www.dwp.gov.uk/docs/eia-strengthening-families.pdf>, p9.

⁶ *Equality Impact Assessment*, above, note 5, p9.

⁷ *Strengthening families*, above, note 2, para 10, p18.

private agreement and how long she will be expected to pursue unworkable private arrangements prior to accessing the statutory scheme.

22. Rights of Women is concerned that this places an unfair and disproportionate burden and stress on the PWC to come to a private arrangement with the NRP. Only after the PWC has engaged with the gateway, failed to reach a private arrangement with the NRP, and paid the application charge, do the proposals attempt to ensure that NRP complies with his duty to maintain his children.
23. The proposals indicate that the gateway 'service' will be free of charge for the first call, but "there may be a small cost to an individual for making an additional phone call".⁸ This would appear to suggest that additional costs will be incurred by applicants who need to call back the gateway in order to enter the statutory scheme, if private arrangements have not been possible. We would like to seek clarity on the fee that will be incurred and the rationale for such a fee, in light of the proposed application fees. It appears that fees at this stage simply add to the deterrent effect of the system and could push PWCs (particularly those on low incomes) who have been unable to reach private arrangements out of the statutory system, potentially with no alternative arrangements in place.

Calculation fee

24. Rights of Women welcomes the proposed introduction of a calculation service based on HMRC data concerning the NRP's income, which we consider should be based on gross income. Such a calculation should ensure a more accurate calculation, and avoid the need to seek a financial disclosure from NRPs. However, the use of HMRC data will still not sufficiently address problems encountered in calculating the correct maintenance owed when the NRP is self-employed or works illegally.
25. We consider that a calculation service would contribute to and support agreement on child maintenance between separating parents when a private arrangement is possible and appropriate. However, as with the gateway users, the applicants to this service are most likely to be PWCs, and whilst the calculation fee appears to be a small sum (£20), it could serve as a deterrent amongst low-income applicants, who may also need to pay on multiple occasions if the NRP changes employment regularly. One large-scale study published in 2008 on behalf of the Department for Work and Pensions (DWP) found that charging a flat rate fee for the initial maintenance calculation would be likely to deter parents from using C-MEC, particularly amongst PWCs on benefits (of the NRPs already using the CSA, only 24% on benefits and 43% not on benefits said they would be very likely or likely to use the CSA to calculate maintenance if the charge was £50).⁹ We therefore urge

⁸ Department for Work and Pensions, *Impact Assessment*, Strengthening families, promoting parental responsibility: the future of child maintenance, January 2011, online: <http://www.dwp.gov.uk/docs/ia-strengthening-families.pdf>, para 23, p10.

⁹ Wikely, N., Ireland, E., Bryson C., and Smith, R., *Relationship separation and child support study*, A report of research carried out by National Centre for Social Research on behalf of the Department for Work and Pensions, Department for Work and Pensions Research report No. 503, 2008, p5 & 192, online: <http://research.dwp.gov.uk/asd/asd5/rports2007-2008/rrep503.pdf>.

Government to consider offering this service free of charge; if a calculation fee is to be introduced, those on low-incomes should be exempt.

26. Under the proposals, the calculation made will not incur any liability on the part of the NRP. We consider that in order to be of use, the Government should consider methods to enforce the calculation made, for example by coupling calculations with the introduction of a register of agreements. This would enable separating parents to reach their own private arrangements and register them in a manner that can be scrutinised by third parties if the arrangement breaks down.

Application charges

27. Rights of Women has serious concerns about the proposal to introduce a one-off application charge and we consider that this raises serious concerns under gender equality provisions of the Equality Act 2010. The financial burden of the application fee will fall exclusively on the PWC, who will apply to the statutory system owing to a failure to reach a private arrangement with the NRP. This proposal, if implemented, could constitute unlawful indirect discrimination against women because:

- The application fee will fall almost exclusively¹⁰ on PWCs;
- An overwhelming majority of PWCs are women; and,
- The fees proposed will have an adverse impact on the financial well-being of the PWC, particularly those in low-income families.

Financial burden on PWC will deter applications and is unfair

28. A one-off application fee of £100 represents a heavy financial burden on single parent families that have little disposable income. The charity Gingerbread has set out clearly how the application charges are not insignificant to the majority of single-parent families: “a fee of £100 represents over two weeks’ worth of food and drink for the average single parent household, or just over five weeks’ worth of expenditure on clothing and footwear”.¹¹ These, combined with the ongoing collection charges that will be incurred by the PWC where the NRP does not agree to payment by maintenance direct (see below), are likely to serve as a significant deterrent.

29. The introduction of charges will impact the hardest on women and their children in low income families, who are most in need of child maintenance. If it is not possible to reach an agreement with the NRP, and the potential child maintenance likely to be owed involves very small sums, Rights of Women is concerned that PWCs on a low income are likely to be deterred from applying to the statutory system. The 2008 research published by the DWP cited in paragraph 25 above is also relevant here. Whilst that study looked specifically at the potential impact of charging for a calculation service, the results should

¹⁰ The equality impact assessment states that “the application charge will fall more heavily on parents with care”. This is disingenuous; the application charges will apply **almost exclusively** on the PWC.

¹¹ Gingerbread, “*Strengthening families, promoting parental responsibility*” – Government plans for child maintenance, Gingerbread briefing, February 2011, p13, online: www.gingerbread.org.uk/file_download.aspx?id=7155, Citing Office for National Statistics, *Family Spending: A report on the 2009 Living Costs and Food Survey*, 2010.

inform decision making concerning the introduction of charges more generally. For parents not on benefits, the Government proposes that an application fee of £100 is charged. In the 2008 study, just 19% of PWCs not on benefits thought that they would be likely or very likely to use the statutory calculation service if a fee of £100 were to be introduced.¹²

30. The Government proposes to introduce reduced and staged fees for applicants on benefits, in the range of £50, with £20 of this paid upfront and the remainder paid in instalments. As has been highlighted by Gingerbread, “a fee of £50 represents almost the whole amount that single parents in the poorest households spend on average in a week on housing (£49.70) or food (£43).”¹³ The 2008 DWP study found that when asked about the likelihood of using the statutory calculation service if a fee of £100 were to be introduced, just 4% of PWCs on benefits said that they would be likely or very likely to use the service.¹⁴
31. In this light, Rights of Women is concerned that the application charges will present a significant obstacle to low-income families seeking to apply to the statutory service, with a greater impact on PWCs on benefits, despite the reduction in charges. Furthermore, we are concerned that PWCs who are on low incomes but not in receipt of benefits will be particularly affected by the proposals. In order to shelter the poorest families from the introduction of fees Rights of Women suggests that household income, rather than whether or not the applicant is in receipt of benefits, should be the determining factor.
32. The imposition of a fee on the PWC and resulting financial impact is also not in the best interests of the child/ren who will be impacted by the reduced household income in their main home.

Balance of power and negotiating potential

33. Rather than supporting separating parents to reach fair and sustainable private maintenance arrangements, there is a risk that the proposed charges will undermine the negotiating capacity of the PWC who may be pressured into agreeing less favourable maintenance arrangements, or may secure no arrangement at all. 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 PWCs using the collection service surveyed said that both parents had roughly equal say in child maintenance arrangements prior to contact with the CSA. 54% PWCs using the collection service said that the NRP mainly made decisions regarding child maintenance prior to contact with the CSA.¹⁵ 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 arrangements

¹² Department for Work and Pensions Research report No. 503, above, note 9, p5 & 192.

¹³ Gingerbread, “*Strengthening families, promoting parental responsibility*”, above, note 11, p13.

¹⁴ Department for Work and Pensions Research report No. 503, above, note 9, p5 & 192.

¹⁵ Bell, A., Bryson, C., Southwood, H., & Butt, S., *An investigation of CSA Maintenance Direct Payments: Quantitative study*, Department for Work and Pensions, Research Report No. 404, p38, January 2007, online: http://research.dwp.gov.uk/asd/asd5/report_abstracts/rr_abstracts/rra_404.asp.

adopted".¹⁶ It is our contention that the current proposals would exacerbate this situation. NRPs will be aware that the PWC needs to pay to apply to the statutory system and this is likely to tip the balance of power further in favour of the NRP, who may use the application fee as a bargaining chip when agreeing maintenance.

34. As has been set out above, there is a real risk that the application fee could operate as a deterrent to applicants seeking to access the statutory system, particularly for those on low incomes. NRPs will be aware of this, and may seek to negotiate private maintenance agreements that are less favourable than those that would be secured through the statutory system. This would certainly not be in the best interests of the child/ren, which must guide policy in this area.

Increase in the number of families not in receipt of child maintenance

35. It is our concern that this 'deterrent effect' will result in more eligible families not in receipt of any child maintenance. A large-scale survey concerning the views of separated parents conducted in 2007 on behalf of the DWP found that just three in ten PWCs surveyed who were eligible for child support but not using the statutory scheme run by the CSA had private arrangements in place. Around six in ten non-CSA PWCs had no maintenance at all; and one in ten were subject to a court order or consent order.¹⁷ Rights of Women is concerned that if PWCs eligible for child maintenance are deterred from applying to the statutory scheme, there will be a significant rise in the number of eligible PWCs not in receipt of any child maintenance. As is set out below (paragraphs 38-9), more research is needed into the potential effects of the introduction of a charging scheme, particularly whether or not it will indeed deter applications to the statutory system, prior to the introduction of any changes.
36. We know from experience on our telephone advice lines that separating parents find it very difficult to come to private arrangements. Invariably, the balance of power post-separation is already tipped in favour of the NRP who can choose whether or not to cooperate or make arrangements difficult.
37. The Government proposes to support separating parents to come to their own private arrangements by signposting parents to other support services through the proposed gateway. Rights of Women agrees that families experiencing separation often need information and support on a range of issues and would very much welcome an improvement in the availability and accessibility of such support. However, it seems clear from the impact assessment that accompanies the green paper that the proposed gateway will "focus on how existing information and support, including that provided by third sector organisations could be joined up to make it easier for family members to navigate the range of information and support they need".¹⁸ It does not seem that any further provision is envisaged, despite the

¹⁶ Bell, A., Kazimirski, A., & La Valle, I., *An investigation of CSA Maintenance Direct Payments: Qualitative Study*, Department for Work and Pensions, Research Report No. 327, p41, 2006. 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)".

¹⁷ Department for Work and Pensions Research report No. 503, above, note 9.

¹⁸ *Impact Assessment*, above, note 8, para 13, p8.

considerable pressure that such services (particularly but not exclusively third-sector services) are facing in the current economic climate and Government expenditure cuts. It appears that the support available through the gateway therefore will simply be to make parents aware of pre-existing services that they might otherwise be unaware of and we do not consider that this will have a significant impact on the ability of separating parents to reach private arrangements.

More research needed into the effects of introducing charges

38. The impact assessment which accompanies the green paper concedes that the proposals have been made against a backdrop of “[l]imited knowledge of [the] behavioural effect of parents with respect to the proposed services and responses to charging”.¹⁹ The policy proposals have been based upon the assumption that “the policy will result in increased enduring relationships with better co-parenting and greater involvement of both parents in the child’s life, improving child and the whole family outcomes”.²⁰ The overarching presumption here, and throughout the proposals,²¹ is that private arrangements are workable, are featured by less acrimony, are less stressful, and lead to greater collaboration between parents. Whilst this may well be the case in respect of those separated parents where there is no acrimony, it cannot be assumed that this will be the case in respect of the many families for whom reaching an agreement will be marred with conflict and disagreement. In such situations, the availability of an independent calculation and collection of maintenance owed free of charge will not only speed up the process of agreement, but is also highly likely to reduce the potential for further conflict and acrimony. As set out in paragraph 13 above, experience speaking to callers on our family law advice line suggests to us that the unrestricted ability of the PWC to refer matters to the CSA encourages NRPs to reach fair private maintenance arrangements.
39. Given the concerns we have raised about the potential perverse and unintended outcomes of the proposals, Rights of Women considers that robust research is needed into the potential impact of the introduction of the gateway and charges for use of the statutory system prior to the introduction of any changes.

Unfair and illogical

40. Finally, Rights of Women considers that the introduction of application fees that will fall almost exclusively on PWCs is unfair and illogical. Firstly, the financial burden is placed almost exclusively on the PWC who, under the proposals, will have already gone through the gateway and been admitted onto the statutory scheme, having demonstrated that a private arrangement is not appropriate and/or not possible to secure. It is not clear why the applicant must pay in such circumstances, whilst the other parent does not. Second, it is our concern that despite the stated intentions of these proposals, the introduction of an application fee will actually undermine the capacity of separating parents to come to fair private arrangements.

Collection charges

¹⁹ *Impact Assessment*, above, note 8, p3.

²⁰ *Impact Assessment*, above, note 8, p3.

²¹ E.g. *Impact Assessment*, above, note 8, p3 & 10.

41. Most of the concerns raised above in relation to the application charge are relevant to the introduction of collection charges on PWCs and will not be repeated here. It seems very strange to us that collection charges will be imposed at all on the PWCs. In particular, it appears illogical and unfair to impose collection charges on a PWC for the use of the statutory collection service when she has no say as to whether or not that service is used. The equality impact assessment that accompanies the green paper states that “both parents can avoid paying collection charges altogether if they use maintenance direct”.²² This is simply not the case. Under the proposed scheme, PWCs will have no say in whether or not payment is made by maintenance direct or through the statutory collection service.
42. The statutory collection service will only be needed where the NRP fails to agree to use payment direct, or defaults on payment. Under the current proposals, the PWC will incur a financial penalty 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.
43. Where the statutory collection service is used, the PWC stands to lose 7-12% of the maintenance owed to her child/ren. This 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.

Who decides?

44. Under the current statutory child maintenance scheme, both parents must agree to use maintenance direct and Rights of Women considers this to be the correct position. Under the proposed scheme, the NRP could choose to pay by maintenance direct when the PWC does not want this to happen. This raises the potential for the NRP to opt to use maintenance direct as a means of financial control and abuse (through erratic or delayed payments / non-payment), whether or not there was abuse in the past (see below for our specific concerns where domestic violence has been disclosed). The concerns raised above (paragraph 33) in relation to the power balance between separated parents are also relevant here.

Question Seven: How should the proposals in Chapter Two be tailored for separating families where there has been violence or a risk to the child?

45. The green paper sets out that the proposed new system will ensure protection for “the most vulnerable”, in particular victims of domestic violence.²³ It recognises that “where there is a risk of domestic violence, collaboration will not be possible and should not be pursued.”²⁴ In this respect, we welcome the fact that it is proposed that victims of domestic violence would be fast-tracked

²² *Equality Impact Assessment*, above, note 5, p 9.

²³ Para 5, page 7.

²⁴ *Strengthening families*, above, note 2, para 29, p16.

through the gateway, and exempt from the application charge. However, the green paper is silent on the application of collection charges where the statutory collection service is required and does not set out what definition of domestic violence will be applied or the evidence of that applicants will be required to present. Our concerns in relation to these two issues are set out below. Whilst we recognise and welcome that the proposals set out to ensure the protection of those who are at risk or who have experienced domestic violence, we are concerned that the proposals are not workable in practice. Below, we set out our serious practical concerns about the potential for identification/disclosure of domestic violence on the telephone gateway and the burden of evidencing domestic violence imposed on the applicant.

Definition of domestic violence

46. The green paper does not provide a definition of domestic violence for the purposes of exemption but does commit the DWP to work “across government to ensure its approach in this area is fully consistent and builds on the Government’s strategic vision set out in “Call to End Violence Against Women and Girls”.²⁵ The strategic vision sets out that the government has agreed to work across all departments to the definition of violence against women and girls contained in the United Nations (UN) Declaration on the Elimination of Violence against Women.²⁶ Article 1 of that declaration sets out that violence against women is “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” An important aspect of this definition is that it focuses on the effects of violence, which may take the form of physical, sexual or psychological violence.²⁷

47. This definition is reflected in the current Home Office and Association of Chief Police Officers (ACPO) definition of domestic violence which, in line with international standards, defines domestic violence as:

“any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”

This definition is also used by the Crown Prosecution Service, the Ministry of Justice and the UK Border Agency.²⁸

48. Rights of Women therefore recommends that the DWP clarifies that the definition of domestic violence employed for the purposes of the child maintenance system will reflect the current Home Office and ACPO definition.

The Gateway: practical considerations

²⁵ *Strengthening families*, above, note 2, para 38, p24

²⁶ United Nations (UN) General Assembly, Resolution A/RES/48/104, 20 December 1993, online: <http://www.un.org/documents/ga/res/48/a48r104.htm>.

²⁷ UN Resolution A/RES/48/104, above, note 26, Article 2.

²⁸ See the CPS’ *Policy for Prosecuting Cases of Domestic Violence* (2010), the Ministry of Justice’s *A Guide to Civil Remedies and Criminal Sanctions* (February 2003, updated March 2007); the UKBA’s *Victims of Domestic Violence: Requirements for Settlement Applications*, and the IDI *Chapter 8, Section 4, Victims of Domestic Violence*.

Potential for disclosure of domestic violence on the telephone gateway

49. Whilst we welcome the proposal to fast-track women who are at risk or who have experienced domestic violence through the gateway, we are concerned about how this will work in practice. We are in particular concerned about the low likelihood that a caller would disclose domestic violence to an advisor on the telephone gateway. It is well established that an overwhelming majority of domestic violence survivors do not report instances of violence to statutory agencies, and many will delay disclosure (or never disclose) violence to non-statutory services such as specialist voluntary and community organisations. For example, according to Women's Aid, only a minority of incidents of domestic violence are reported to the police, varying between 23% and 35%.²⁹

50. Between 17 December 2010 and 31 January 2011, Rights of Women surveyed the views of just under a thousand people through three online surveys targeted at individual women, professionals who work on violence against women issues and legal professionals concerning proposals for the 'reform' of legal aid in England and Wales.³⁰ Of the 336 individual women who responded to the survey, 67.5% said they would not feel confident talking to a telephone operator (not a lawyer) about any legal problem that they had. Whilst this question explicitly concerned legal problems, the results are relevant here. This is because the majority of those who explained their answer were concerned about the ability of women to disclose violence to someone unknown and possibly untrained, over the phone. As one respondent said:

"Difficult to trust someone on phone with highly personal detail such as sexual abuse."

Another stated that:

"Some women do not have access to a phone and others would not consider this a safe option. For some women, being able to choose a female lawyer is imperative."

The ability of women to be able to use the helpline was also questioned by one caller who said:

"i maybe wouldn't explain my situation properly whereas a solicitor asks you specific questions in order to assess your situation".

51. In addition to seeking the views of individual women on legal aid, we surveyed the views of professionals who work on violence against women issues (such as workers in a women's refuge or social workers). Of the 347 violence against women professionals who responded to our survey, 76.8% did not think that an operator (not a lawyer) on a generic telephone helpline would be able to identify and respond appropriately to violence against women issues. The explanations that these professionals gave were also

²⁹ www.womensaid.org.uk.

³⁰ Rights of Women, *Women's Access to Justice: a research report*, February 2011, online: http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf.

illuminating. Many respondents drew on their own experiences to question whether or not a helpline operator could identify and respond to violence against women issues:

“Goodness, it is hard enough for skilled rape crisis workers to respond well to women in these areas!”

“Violence against women is a complex and sensitive issue which requires a nuanced understanding of the dynamics within controlling relationships (in the example of domestic abuse) and the feelings, emotions, fears and concerns of the victim/survivor (in all forms of violence against women). I would be very sceptical regarding the suitability of a generic operator to be able to provide a quality service to a woman who has experienced gender-based violence; a non-specialist could indeed make the situation worse through a lack of understanding of e.g. the power and control dynamics within abusive relationships, the difficulty of disclosing abuse to anybody, and the shame and fear which gender-based violence can instil in its victims.”

Many respondents thought that a helpline ‘gateway’ would present an additional barrier to be overcome by those experiencing violence:

“I think that helplines can be useful, however I'm concerned that 'operators' will act as 'gatekeepers' and this will deny some women access to the specialist support and advice they need... Getting the right advice is difficult for victims. Skilled practitioner and lawyers are able to 'read' people, ask the right questions, pick up on clues and dig deeper to gain a fuller understanding of someone's situation. Only then can the right advice be given. All this will be lost, leaving vulnerable people without the advice that they need when they need it.”

52. With the above in mind, it is doubtful that a survivor would disclose domestic violence to a telephone advisor on the gateway, especially on the first call and/or it is the first disclosure. The lack of reporting also raises questions around how and whether an applicant might be expected to ‘evidence’ the risk that she faces (see below, paragraphs 56-59).
53. The proposals leave open the question of whether or not a statutory or non-statutory agency would operate the gateway and the modalities for operation. Whilst Rights of Women considers that a non-statutory provider (independent of Government) would be preferable, we do not consider that this will mitigate against the barriers to disclosure that women who have experienced violence face. The proposals are also silent on whether or not specialist advisors, trained to deal with domestic violence cases, will be available to speak to callers, and whether or not the caller would be able to request to speak to an advisor of a specific gender.
54. Even if it is presumed that callers will disclose a risk of domestic violence, it remains unclear how the gateway will appropriately address, and respond, to such disclosures. We would like to seek clarification on what support services will be in place if the survivor does disclose, perhaps for the first time? Additional support needs must also be catered for, for example where the caller is a non-English speaker/has difficulty understanding English or where the caller has a disability.

55. There is a real risk that, given the focus of the gateway, callers who are at risk or who have experienced violence will feel pressured to explore private maintenance arrangements. To mitigate this risk, we would recommend that all callers are advised in the early stages of the conversation of the exemptions and alternate routes where domestic violence is an issue.

Evidencing domestic violence and time delays

56. Rights of Women considers that a system must be set up to ensure that there is no time delay in receipt of maintenance in cases where domestic violence is an issue. This means that if evidence is to be required, it should be accepted retroactively and the evidential requirements must reflect the nature of domestic violence, in particular the delayed and low rate of disclosure that is a feature of most domestic violence cases.
57. The green paper does not address the type of evidence that callers will be expected to produce in order to be fast-tracked through the gateway and onto the statutory scheme. If the Government does go ahead with charging applicants (which we do not consider appropriate, as outlined in response to Question 5), a broad range of evidence of domestic violence must be accepted, taking into consideration the fact that corroborative evidence of actual or threatened violence may not be available in some cases. In this regard, guidance could be taken from the **Homelessness Code of Guidance for Local Authorities**³¹ (the Code) which provides statutory guidance on local authority housing and social services statutory functions in respect of people who are homeless or at risk of homelessness. The Code sets out that when gathering evidence of domestic violence for the purposes of homelessness provision under s177 of the Housing Act 1996, housing authorities may:

...“wish to seek information from friends and relatives of the applicant, social services and the police, as appropriate. In some cases corroborative evidence of actual or threatened violence may not be available, for example because there were no adult witnesses and/or the applicant was too frightened or ashamed to report incidents to the family, friends or the police”³²(emphasis added).

58. In all instances, evidence should only be sought with the explicit permission of the applicant. For example, The Code sets out explicitly that “it is not advisable for the housing authority to approach the alleged perpetrator, since this could generate further violence”, as would be the case in relation to other relatives where the domestic violence involves other family members or where relatives may be hostile to the allegations. Rights of Women considers that the Code provides a useful basis for developing evidential requirements for exemptions on grounds of domestic violence if application fees are to be implemented.
59. Rights of Women is also keen to stress that any evidential requirements must not result in a delay in processing applications where domestic violence is an issue or place undue stress on the applicant. We recommend that the

³¹ *Homelessness Code of Guidance for Local Authorities*, July 2006, online: <http://www.communities.gov.uk/publications/housing/homelessnesscode>.

³² *Homelessness Code of Guidance*, above, note 31, pp60-61.

exemption scheme operates on the basis of self-reporting, whereby an applicant is fast-tracked onto the statutory scheme upon first disclosure. Referral to services that support family-based arrangements are entirely inappropriate where domestic violence is an issue and this must be avoided. Any evidence required must reflect the low rate and delayed disclosure of domestic violence to statutory agencies and non-statutory agencies alike and be accepted after the applicant has been fast-tracked the statutory scheme to ensure there are no delays. In addition to information from friends and relatives of the applicant, social services and the police, we consider that other permissible evidence might include:

- evidence that a case had been referred to a MARAC (Multi-Agency Risk Assessment Conference);
- evidence from a specialist domestic violence organisation (such as Women's Aid or Refuge);
- evidence from health professionals such as GPs, counsellors, midwives and health visitors;
- domestic violence injunctions; and,
- undertakings given to the court (as many applications for injunctions are resolved in this way).

Application charge

60. Rights of Women welcomes the proposal to exempt applicants who have experienced or are at risk of domestic violence from the application charge, and suggest that this exemption should be extended to other vulnerable groups, in particular low-income applicants (not solely those on benefits). Our concerns in relation to the potential outcomes for women on low incomes and their families are set out above, in response to question 5, and are not repeated here. Similarly, our concerns set out above related to disclosure and evidence of domestic violence are equally relevant here.

Collection charges

61. We do not consider that maintenance direct is a feasible or safe option where there has been or is a risk of domestic violence and would call on the Government to clarify that the statutory collection service would be the default option in these cases, with no collection charges imposed on the PWC. In such cases, payment by maintenance direct could be used by the perpetrator to continue abuse, for example through the irregular payment of maintenance. Although the proposals set out that the NRP must be prepared to pay "on time and in full otherwise CMEC will swiftly bring the case back to the collection service and take necessary enforcement action",³³ the impact assessment suggests that "this might lead to a small cost to the PWC for the period in which the maintenance direct payment was attempted which may be around a months worth of liability".³⁴ It is our contention that one-month's worth of maintenance is not all insignificant in financial terms (see discussion in response to question 5 concerning the impact on single parent households of losses of even small sums of money), or in terms of the opportunity that it presents for a perpetrator to continue or initiate financial abuse through the statutory system. Furthermore, if the NRP defaults on payment (highly likely

³³ *Impact Assessment*, above, note 8, para 44, p 12.

³⁴ *Impact Assessment*, above, note 8, para 51, p 13.

in domestic violence situations) and statutory collection commences, why should the PWC be penalised through collection charges?

62. 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”³⁵ as part of their experience of domestic violence.³⁶ The research found that in many cases economic abuse existed alongside verbal, emotional, sexual and physical abuse, reinforcing and overlapping with other types of control. Furthermore, the effects of economic abuse often extend beyond the end of an abusive relationship, for example ongoing debt and problems with credit ratings related to domestic violence. Of the respondents to the Refuge study who reported they had rent arrears whilst in a relationship with the abuser, 63% reported that the rent arrears were related to the abuse they experienced.³⁷
63. It is entirely inappropriate to apply collection charges that will reduce the amount of maintenance received by the PWC where there has been domestic violence, in particular in light the clear links between all forms of violence against women and women’s poverty. The imposition of a collection charge will 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. Amnesty International has highlighted the links between poverty and violence: “poverty and marginalisation are both causes and consequences of violence against women. It is extremely difficult for women living in poverty to escape abusive situations, to obtain protection and access the criminal justice system to seek redress”.³⁸

Closure of existing CSA cases

64. We are also keen to stress that any existing CSA cases that are to be closed be dealt with appropriately, safeguarding clients in receipt of child maintenance who may have experienced domestic violence in the past. There is a real potential for the gateway requirement to re-traumatise domestic violence survivors in this situation, who it seems under the current proposals will be required to disclose and evidence violence that may have occurred some time ago. Rights of Women would suggest that where a PWC has experienced domestic violence and is currently receiving maintenance through the CSA collection service, that she is given the option of transferring straight onto the new statutory collection scheme.
65. Finally, despite the proposed safeguards, and the additional steps that Rights of Women recommends be taken, we remain concerned that an exemption scheme will not work as many women at risk of violence will not disclose to

³⁵ 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.

³⁶ Sharp, N., *‘What’s yours is mine’: The different forms of economic abuse and its impact on women and children experiencing domestic violence*, Executive Summary, Refuge, 2008, online: <http://refuge.org.uk/policy-and-research/research-and-publications/economic-abuse/>.

³⁷ *‘What’s yours is mine’: The different forms of economic abuse and its impact on women and children experiencing domestic violence*, above, note 36.

³⁸ Amnesty International, *Stop Violence Against Women: ‘It’s in our hands’*, 2004, p15, online: <http://www.amnesty.org/en/library/info/ACT77/001/2004>.

advisors on the gateway and will be pressured into making entirely inappropriate private arrangements with perpetrators.

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