

LAW SOCIETY SUBMISSION



**ENFORCEMENT OF COURT ORDERS RELATING TO CHILD
MAINTENANCE, ACCESS AND CUSTODY**

JOINT COMMITTEE ON JUSTICE

SEPTEMBER 2022

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

Contents

- 1. Introduction4
- 2. “What is the impact of unpaid maintenance?”5
- 3. “What are the complexities involved in court orders?”6
- 4. “How effective are these orders?”7
- 5. “What steps could be taken to remedy these issues?”7
- 6. “What are your views on a child maintenance agency to deal with these issues separate from the court system?”8

1. Introduction

- 1.1. The Law Society of Ireland (“the **Society**”) welcomes the invitation from the Joint Committee on Justice (“the **Committee**”) to provide a submission on the topic of “enforcement of court orders relating to child maintenance, access and custody”. The Society is cognisant of current issues surrounding child maintenance in Ireland and commends the Committee for its consultation process allowing input from representative bodies and civil society organisations in relation to same.
- 1.2. The Society provided a submission to the Child Maintenance Review Group in March 2021 (“the **2021 submission**”) which noted the importance of child maintenance, both from a financial and social policy perspective, for the support and wellbeing of the child. The submission welcomed the proposal for the establishment of a State Maintenance Agency and outlined in detail the services and supports that could be provided by same. The comparison contained in the 2021 submission of enforcement provisions across different jurisdictions may be of interest to the Committee in its assessment of the enforcement of court orders related to child maintenance in Ireland.
- 1.3. The following submission contains responses to the five questions set out in the letter from the Committee to the Director General of the Law Society on 18 July 2022, and provides a list of recommendations in relation to same.

Summary of Recommendations:

- Increase the use of the award of costs provision to alleviate the financial burden on lone parents when seeking payment of maintenance owed and to act as a penalty for the respondent party.
- Maximise the reliefs available under the Children and Family Relationship Act 2015 where there have been consistent breaches of access orders.
- Introduce guidelines to assist in determining appropriate maintenance contributions.
- Establish set penalties for breaching court orders relating to child maintenance, access and custody.
- Establish a State Child Maintenance Agency to assist in issues relating to child maintenance.

2. What is the impact of unpaid maintenance?

- 2.1. Unpaid maintenance can cause significant hardship to all separated families. Families availing of legal support from private practitioners in particular face additional costs of enforcing proceedings when seeking repayment of child maintenance, with no guarantee that these costs will be recovered. Clients who qualify for legal aid can usually seek a new legal aid certificate to enforce proceedings.
- 2.2. It is generally not advised to seek enforcement proceedings in the Circuit Court, unless significant levels of maintenance arrears have accumulated, due to the prohibitive costs related to such proceedings. The significant costs involved can leave vulnerable citizens in abeyance for long periods of time with no maintenance being paid. In addition, the defaulting party is often not penalised for failing to comply with court orders even where there is no available evidence to justify the default. In some cases, the defaulting party will be required to discharge monies owed, but there is no additional penalty of disincentive orders by the court.
- 2.3. When applying for certain public funds, such as social welfare payments or grants for third level education, State authorities often take into account monies payable under a maintenance order when calculating whether the primary care parent to whom maintenance would be paid (“the **PCP**”) qualifies for same. This is despite maintenance payments having not actually been received in certain cases.
- 2.4. Unpaid maintenance can cause particular hardship for lone parents in receipt of social welfare payments. The level of social welfare payments received will be reduced depending on the amount of maintenance obtained. The 2021 submission outlined how, if maintenance payments go unpaid, the PCP will suffer a loss of income and will require a reassessment of their social welfare payments until such time as payment of maintenance re-commences. If repayments do not occur, the PCP may be required to apply to Court to seek an enforcement order which may take a considerable amount of time. This in turn has a direct impact on the ability of the PCP to provide for the basic needs of his/her child.
- 2.5. The Society previously recommended that the basic level of social welfare to which a lone parent is entitled to should be maintained at all times and should not be reduced due to the refusal or failure of the non-resident parent (“the **NRP**”) to pay the requisite maintenance in order to ensure that the rights of the child to be free from poverty is maintained by the State.

3. What are the complexities involved in court orders?

Court orders for payment of maintenance

- 3.1. The recovery through court orders of maintenance for educational, medical, dental and extracurricular expenses is often met with additional levels of complexities. As the Committee may be aware, it is standard practice for judges to order the payment of a set amount of maintenance plus half of educational, medical, extracurricular and dental expenses of the child. These half payments cannot be paid through the District Court Clerk, and often require a return to court to recover outstanding expenses which may act as a deterrent to the PCP seeking to recover outstanding expenses. This procedure often causes major difficulty for both parties and can be a source of significant hostility.
- 3.2. Although such orders appear fair in theory, in reality it often involves one parent pleading with the other for reimbursement of expenses which can be significantly demeaning. Members of the Society have often cited examples of the NRP complaining about frequent requests for additional monies. This can cause additional frustration, particularly in cases where cash payments of expenses may occur, such as for educational grinds or childcare.
- 3.3. Solicitors have also cited a reluctance and refusal by certain judges to allow the payment of maintenance through the District Court office. This results in removing an enforcement option through the District Court.
- 3.4. Orders requiring the attachment of earnings can be useful. However, the courts generally require documentation indicating the party's default of previous maintenance payments prior to making such an order. Again, this results in additional enforcement costs, particularly for private family law clients. Private family law clients often question the value of pursuing enforcement orders where the outstanding arrears are less than legal costs related to seeking an order.
- 3.5. In the general absence of meaningful penalties for non-compliance, there is no incentive to comply with additional court orders. The Society recommends that this be reviewed and provision be made for imposing a financial penalty across all jurisdictions for non-compliance with court orders.

Court orders related to access and custody

- 3.6. There are numerous complexities in relation to custody and access orders. The [Children and Family Relationship Act 2015](#) ("the **2015 Act**") contains a provision to allow the courts to order expenses incurred as part of the reliefs available under enforcement applications. However, in practice, the courts appear reluctant to enforce same, and rarely award costs under the enforcement of access or custody provisions contained in the 2015 Act. The Society recommends that the courts should be encouraged to more frequently utilise the innovative reliefs available under the 2015 Act, particularly where there has been continued and consistent breaches of access orders.

- 3.7. The former enforcement procedure involving summons for attachment and committal can be viewed as a double-edged sword. If parent alienation was already present, the summons could cause further damage to the non-resident parent and child relationship.
- 3.8. The penalties set out in the 2015 Act appear to be under-utilised and fail to place any meaningful sanctions on parents who willingly breach access orders that do not involve imprisonment. As such, the Society submits that the award of costs provision should be used more frequently by the courts to alleviate the financial burden placed on lone parents seeking payment of maintenance and to act as a penalty for the respondent party.

4. How effective are these orders?

- 4.1. The majority of maintenance orders made in the District Court are made without the benefit of a full Affidavit of Means. Normally a statement of means is exchanged on the court date which sets out the income and expenses of both parties, but excludes monies held in bank accounts, as the statement does not require the declaration of all assets.
- 4.2. The Society submits that costs should be awarded more frequently, and relevant legislation should be amended, to specifically provide for a mandatory award of costs if there has been a breach of court orders.

5. What steps could be taken to remedy these issues?

- 5.1. There are currently no specific guidelines on the payment of child maintenance resulting in the following issues frequently arising:
 1. **Maintenance payable when the child is not at home:** NRPs voice frustration with the requirement to pay maintenance while the child is away, when for example, they are travelling abroad on a student holiday visa or on holidays with the NRP.
 2. **Maintenance payable when the child is in full-time education or living away from home:** usually the PCP will argue that they should continue to receive maintenance given that the child may return home on weekends and require, for example, food or laundry.
 3. **Maintenance payable where parties are to equally share educational expenses, but one parent qualifies for additional financial supports such as the back-to-school allowance or the SUSI grant:** the parent qualifying for such payments may argue that their allowance covers their share of the expenses and the other parent should pay the balance in its entirety. However, the paying parent may argue that any allowances should be deducted from the overall costs and the net cost shared equally between the parties.

5.2. Judges often differ in their approach to the above-mentioned cases in determining the level of maintenance contributions that must be paid. In its [2021 submission](#), the Society noted that, where certain jurisdictions have child maintenance agencies, they usually have established guidelines and rules to assist judges in determining appropriate maintenance levels.

5.3. As the Irish family law system adopts a discretionary approach to family law matters, the Society suggests that guidelines rather than rules be established for determining appropriate maintenance contributions. The Society further submits that set penalties for breaching court orders are also introduced.

6. What are your views on a child maintenance agency to deal with these issues separate from the court system?

6.1 The Society welcomes the establishment of a State Child Maintenance Agency (“the **CMA**”), similar to the UK Child Maintenance Service, and considers that it would be of significant benefit to families and society generally. The 2021 submission sets out, in detail, the specific benefits of the proposed CMA in assisting in issues relating to child maintenance, and provides useful comparisons with similar agencies established in other jurisdiction. The Society believes, that in particular, the CMA could:

1. Provide guidance in relation to the calculation of appropriate levels of maintenance;
2. Assist parents in reaching agreed arrangements in relation to maintenance;
3. Assist in (or, where appropriate, bring) Court applications to determine maintenance when in dispute;
4. Act as the collecting agent for maintenance payments in appropriate cases; and
5. Engage in the enforcement of maintenance and the collection of arrears (whether directly or in concert with other State agencies).

6.2 The ultimate effect of the implementation of this proposal would be to reduce legal fees and minimise arguments and acrimony between parties which would ultimately benefit the children of the parties and society as a whole. Therefore, the Society recommends the establishment of a State Child Maintenance Agency to assist in issues relating to child maintenance.