

1 April 2021

Dear members of the Review Group,

I am writing to you with regard to the Public Consultation on Child Maintenance Review. FLAC appreciates the opportunity to engage with the Department on this matter.

Between 2019 and Q1 2021, the FLAC telephone and information referral line received 1,311 calls relating to child maintenance matters; 66.3% of these calls regarding maintenance were solely about maintenance; 10.8% were about maintenance and custody/access/guardianship combined; and the remaining 23% were various combinations of maintenance queries along with custody/access/guardianship, divorce/separation, family home, domestic violence and other matters.

The numbers of queries that FLAC receives on child maintenance are a small portion of those that eventually end up in the courts system. In 2019, 8,383 maintenance applications were heard in the District Courts. In addition, hearings for maintenance applications can take anything up to two years. Given the lengthy delays for individuals in accessing Legal Aid Board law centre services, this means that people can wait literally years to have their maintenance issues resolved via the courts. There is a real need to adequately resource the Courts Services and the Legal Aid Board. The creation of a new body tasked with resolving maintenance matters should not be seen as an alternative to resourcing both the Court Services and the Legal Aid Board.

FLAC has some concerns at the timing of this Consultation. FLAC understands that there are a range of voices in Ireland seeking the establishment of an independent body responsible for the administration of child maintenance matters in order to remove it from the responsibility of an overburdened courts system. While there may be clear arguments in favour of an independent body, based on the need of reducing the need to participate in an adversarial process, we are also aware that the Family Justice Oversight Group has been tasked by the Minister for Justice in driving progress on the development of a national family justice service. The Family Justice Oversight Group includes representation from the Judiciary, the Courts Service, the Legal Aid Board and the Department of Children, Equality, Disability, Integration and Youth.

While we are keen to see and participate in conversations regarding child maintenance matters, we are concerned that the outcome of this review may pre-empt some of the findings of the Family Justice Oversight Group, or indeed be at odds with them. At the very least, FLAC requests that the Review Group examining child maintenance engage directly with the Family Justice Oversight Group on the matter. Indeed, it is not clear whether a newly established child maintenance body would have access to all the

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ancillary services that are likely to be introduced in a new family justice system following the work of the Family Justice Oversight Group. While there is merit to reducing the need to engage in an adversarial process in the Courts in some matters where there is little conflict, there will also be times where the work undertaken as well as the needs of service-users will overlap between the Courts and a new child maintenance structure.

FLAC is also concerned that the Consultation did not set out a range of questions pertaining to an appeals process for any new child maintenance administration system. It is essential that any initiative that removes child maintenance applications from the remit of the courts has a high standard of consistent and transparent first tier decision-making, but also has an appeals mechanism that is accessible, fair and an independent means of reviewing decisions. Once the Review of Child Maintenance is concluded, if proposals are to come from the Department that would introduce a new structure responsible for child maintenance administration, that comprehensive detail is provided on the decision-making processes that will be included, and the level of training that will be given to staff attached to it. Is it envisaged that the new body will be able to obtain details of the financial means of a potential respondent?

It is not clear whether any statutory child maintenance deciding body would have an appeal system incorporated into the Social Welfare Appeals Office or appeals would be heard back in the District Court. The current social welfare appeals system is failing those whom it is intended to serve and the basic rights of access to social welfare, to fair procedures and to an effective remedy are not available as needed.

Civil legal aid is not available for representation before the Social Welfare Appeals Office or other quasi-judicial tribunals. Social welfare claimants trying to assert their rights and entitlements, often without the necessary knowledge or expertise, are likely facing an uphill struggle in navigating an increasingly complex social welfare system without the safeguards they need to ensure fair treatment.

While child maintenance applications may not have quite the same level of complexity that social welfare applications do, there is potential for similar problems to arise. While individuals can seek assistance from advocacy organisations on social welfare matters, very few will have legal representation. A new child maintenance body has the potential to introduce more efficiency into a system, if there are proper resources and high quality first tier decision making. However, it would be unfortunate if any new body simply replicated the existing problems facing maintenance applications in the Courts while removing the option of Legal Aid from a cohort of vulnerable individuals who may need it in a new appeal setting simply because it is outside of the purview of the Civil Legal Aid Act 1995. Indeed, applicants seeking specific child maintenance arrangements may still have to access the Courts for other family law related issues which have the potential to lead to significant difficulties and high costs, with two bodies making decisions on related facts. While we are keen to not pre-empt the outcome of the review of child maintenance, we think it is worth the Review Group examining the implications of losing attachment and committal options that are currently available in the Courts as a mechanism to ensure compliance with child maintenance orders.

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Radical reforms present opportunities for significant progression and improvements. However these opportunities will be lost if legislative changes are not accompanied by the significant funding.

Access to justice should not be preserved solely for those who can afford it and it is essential that this is remembered in the development of any new structures concerning child maintenance.

Regards,

A handwritten signature in black ink that reads "Eilis Barry". The signature is written in a cursive, slightly slanted style.

Eilis Barry

Chief Executive

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