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To
Child Maintenance Review Group
One Parent and Child Income Policy
Floor 1, Department of Social Protection
Aras Mhic Dhiarmada, Store Street
Dublin 1, D01 WY03

Email to: maintenancereview@welfare.ie

25 March 2021

Ref: Child Maintenance Review Group

Dear Madam/ Sir

We represent a voluntary organisation with the following mission:-

To work for a society where irrespective of the breakdown in the parents' relationship, the children's relationship to both parents is protected and the family finances are ring-fenced.

1. Proposal

- a. The composition of this panel should be reconstituted to reflect gender equality and social diversity. One person from the legal profession should be sufficient. The rest should be people who can show empathy and willingness to help families.
- b. Given the large number of stakeholders in this Family Law industry, we believe the Dept. of Social Protection should not become another stakeholder in this industry, and contribute to the acrimony and become a blunt force instrument going after fathers.
- c. The Dept. Of Social Protection setup an Interdisciplinary group to resolve most family law matters on **maintenance, custody and shared parenting** using successful methods in other jurisdictions. E.g. COCHEM Model established in 1992 in Germany has a high success rate.
- d. In Germany, the lawyers calculate the maintenance using an online financial platform using the **Dusseldorf's table** and submit to the Court for approval. Exceptions do happen.

Our justification is listed below.

2. Introduction

Irish Independent has reported on 15 October 2017 that the Irish legal industry is worth €2.3 billion annually. Anecdotal evidence indicates that that Family Law Industry is worth more than €400 million and lacks transparency. We will outline key research data to substantiate our proposal to the Child Maintenance Review Group.

3. Applicable legislations and Legal Precedents

Legislations in the context of Family Law proceedings related to maintenance and enforcement from the liable relative.

- a. Maintenance of Spouses and Children’s Act, 1976
- b. Civil Law (Miscellaneous Provisions) Act 2011, Section 31 - Amendment of Section 9 of the Maintenance of Spouses and Children Act 1976
- c. Civil Law (Miscellaneous Provisions) Act 2011 – Section 63- Amendment of Section 8 of Enforcement of Court Orders Act 1940

Many other legislations in the Family Law matters, including the amendments to the 1964 Guardianship of Infants Act 1964 by the new Child and Family Relations Act 2015 and the Domestic Violence Acts.

The Department of Social Protection has a liable relative unit to determine and enforce payment contributions by the liable relative. The applicable legislations are.

- a. Part 12 of the Social Welfare (Consolidation) Act 2005 as amended in Statutory Instrument 571 of 2006 and Statutory Instrument 142 of 2007

All these Statutory Instruments and the Court Rules have not provided clear guidelines on the calculation of the maintenance from the liable relative. Judges do not publish details on how the maintenance is calculated.

The Supreme Court Case **R.H.v.N.H [1986] ILRM 352** provides criteria to be considered in making maintenance orders. Judges and lawyers are not finance professionals and should leave these calculations to financial professionals. Department of Social Protection’s plan to enter this messy fray with additional legislation will be counterproductive.

4. Research findings

- a. Allegations of domestic violence or abuse that arise as part of divorce and separation proceedings are all too common. **Figure 1** below shows the DV applications trend, since 2001.

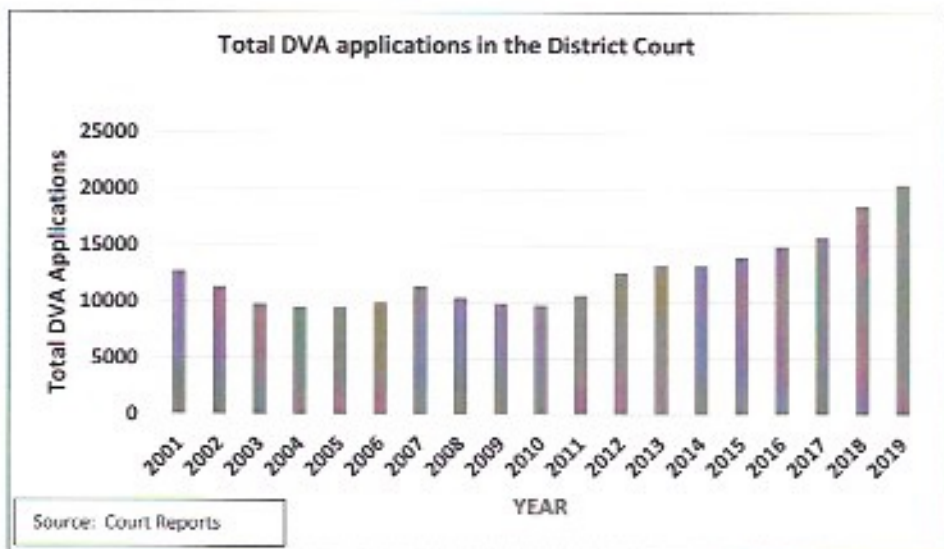


Figure 1 Domestic Violence Applications Trend at District Courts

- b. In some cases, these allegations are backed by facts or evidence. In many cases, one party (usually the one who is feeling most vindictive or who has tried to turn the children against the other parent), makes false and unsubstantiated claims of abuse as a way to game the system. The goal is to better their chances of getting the desired outcome, which is typically to get primary care and control of dependent children, and favourable financial settlements such as the family home and maintenance. This situation is aggravated by many stakeholders in this industry.
- c. Key stakeholders in this industry are shown in Figure 2.

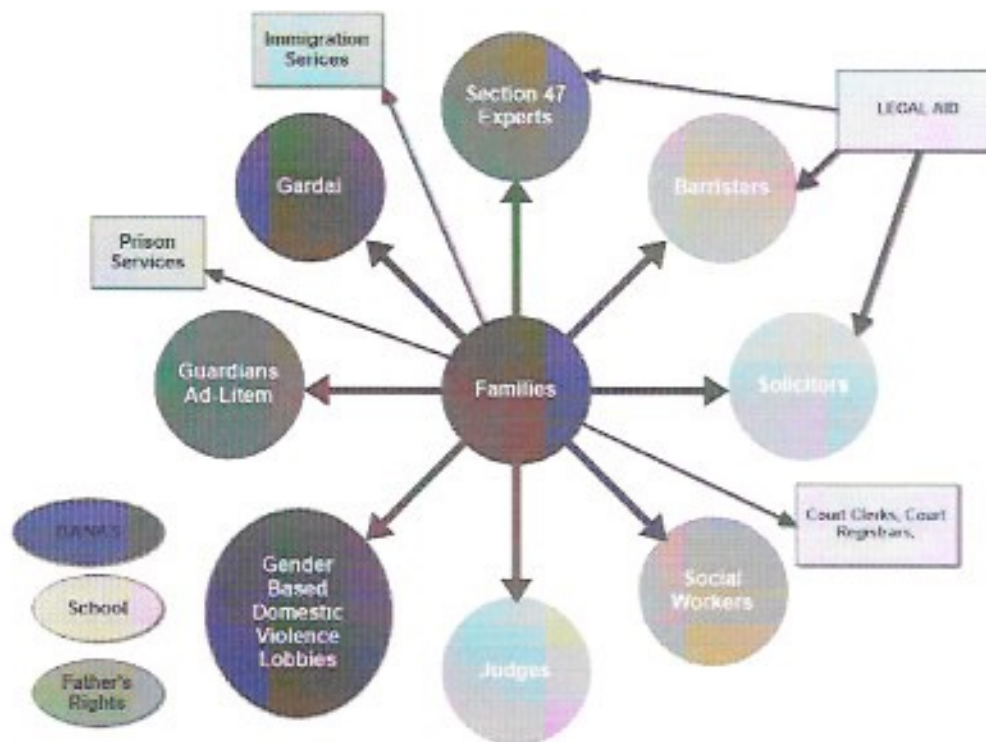


Figure 2. Key stakeholders in this industry at this moment

- d. Data obtained from Charities Regulator indicate that the income for 2018 for 60% of the "Gender Base Violence" lobby groups is estimated at €60 million. Their asset portfolio is unknown. Income growth of upto 83% from 2016 to 2018 is seen in some groups. Most of their income come from TUSLA followed by other state institutions.
- e. Legal Aid fees for solicitors and barristers involved in Family Law is estimated at about €28 million in 2018.
- f. Most domestic violence orders are against fathers, usually based on Ex-Parte adjudications without regard to the "Presumption of Innocence" and Natural Justice.
- g. Ms. Roisin O'Shea's report of 2014, states that
- i. In 95% of the cases the primary carer is the mother, following tender years principle.
 - ii. In 100 % of the cases, the mother unilaterally withdrew access.
 - iii. In no case was the primary carer sanctioned for contempt of access orders.
 - iv. 100% of maintenance orders were made in favour of wife.
 - v. Although national insolvency guidelines was €237/= a week, maintenance orders were issued against the father, not taking into account his own cost for access to their children.

- h. We have seen tragic deaths due to these family law adjudications.
- i. Fathers are often committed to prison for inability to pay maintenance.
- j. Media reports in Ireland and in other common law jurisdictions indicate family breakdown is a major cause of homelessness for fathers and their deaths on the streets have been reported.
- k. Its our observation that acrimonious cases tend to involve lobby groups and legal aid.
- l. Parents who cannot afford a legal team are forced to be lay litigants. Courts are now issuing legal costs against lay litigants and Isaac Wunder Orders without written judgements.
- m. The parent(usually the father) may be forced to pay the other side's legal fees, Section 47 fees etc. He can be pursued in the Courts for these payments by the other stakeholders.
- n. Some fathers have refused pay maintenance, where its seems to be unfair or when Judges have refused to enforce access orders.
- o. Equality and the welfare of the child provisions would require **shared parenting**. However, the consequences to the state are :
 - i. *The state losing Tax Credit worth €1440/=per year from the working parent.*
 - ii. *Higher burden for the Social Protection Department in terms of rent allowance, OFT and JST schemes.*
- p. Maintenance payments do not offer *the liable relative* any tax credits for children. But Orders to remove the dependent spouse's tax liabilities have been observed.
- q. Family law conflict often bankrupts the families. Fathers who had no previous convictions can easily transition to the Criminal Justice System.
- r. Many women hold successful positions as Ministers, pilots, astraunauts, teachers, judges, solicitors, CEOs etc. Many state and NGOs have been established to support women in education, career, setting up businesses and accomodation.
- s. Fathers with limited skills and living in poverty do not have the same support. This is depicted in **Figure 3** below, and The Economist provides a comprehensive report.

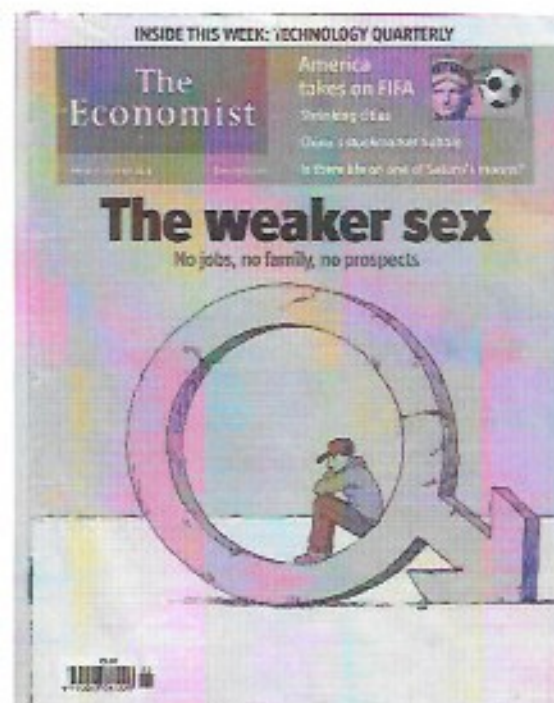


Figure 3 The Economist May 20th-June 5th, 2015

5. Summary

Figure 1 shows a disturbing rise of applications under the DVA. The rise in applications is statistically unnatural and inconsistent from the perspective that.

- With a more educated and mature society, people will be less inclined to violence.
- Fall in criminal cases reflected in Garda Statistics.

Court Reports indicate an average success rate of 85% for Protection Orders. We believe that false and unsubstantiated claims of domestic violence are made to game the system and obtain favourable outcomes in the family courts. The disadvantaged spouse may end up losing his job.

We expect that our proposals will adversely affect the income of many stakeholders, who we believe will stridently oppose mediated settlements. We propose that these organisations be defunded, and their funds repurposed to assist families.

Social Protection department should develop policies to show solidarity with humanity. Constructive efforts to organise career development programmes to help mothers and fathers enter the workforce should be developed. Sometimes, the non-working custodial parent, will uproot the children to another part of the state solely to frustrate access to the non-custodial parent, since OFP, JST, Legal Aid and lobby group support is available everywhere. This strategic advantage will be lost if the custodial parent enters the workforce. Shared Parenting will remove this impediment.

If the Social Protection department does setup a Maintenance Enforcement Unit, we expect further tragic deaths, homelessness, non-custodial parents and children transitioning into the Criminal Justice System.

Yours faithfully,
Secretary, Nemo Forum
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