

SSAC Consultation: The financial situation of separated parents and the social security system

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Introduction

I welcome this opportunity to provide evidence. I was made aware of the financial difficulties faced by some non-resident parents¹ in 2011 through the case of a particular individual, a loving and fully committed father, who was faced with a child maintenance demand he could not possibly meet.

After paying the costs of his housing, travel to work and child maintenance he would be left with just £30 a month to live on.

It became apparent that this parent's difficulties were a consequence of the regulations that governed the calculation of child maintenance. It also became clear that such difficulties were widespread. The affected parents had no way out because "that is what the law says, so that is what you must pay". A tribunal judge said that I must work with the legislators to bring about change and I have sought to do so. My understanding has grown over the years, enabling me to explain the problems more clearly.

There has been an important recent development. My evidence published in the Work and Pensions Select Committee (WPC) 2017 Report into the Child Maintenance Service² prompted investigations by the Department on Work and Pensions (DWP). Their own analysis confirms that there is 'an issue' with the way in which Child Maintenance payments interact with Universal Credit. The DWP acknowledges this and has been investigating the scale of the problem and possible ways forward.

That same WPC evidence was the prompt for the recent Centre for Social Justice (CSJ) report *THE HIDDEN PARENT POVERTY TRAP: Child Maintenance and Universal Credit*³ (the CSJ Report).

Both the DWP investigations and the CSJ Report focus on the problems caused by the interaction between payments on the Child Maintenance Service (CMS) 2012 Scheme and the taper rate for Universal Credit. This interaction means that a paying parent⁴ may gain little, in anything, from being in work. This can be demonstrated graphically by showing that the residual net income after paying child maintenance barely grows as earnings increase or by showing that the 'effective marginal tax rate'⁵ (EMTR) for a paying parent is close to or exceeding 100%.

¹ 'Non-resident parent' is the term used in legislation to describe the parent who does not have the majority care of the child. The CMS 2012 Scheme uses the term 'paying parent'.

² <https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/587/58702.htm> CHM0079 and CHM0098

³ <https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2019/03/CM-UC-Publication.pdf>

⁴ See footnote 1

⁵ The 'marginal tax rate' gives the percentage of each extra £1 of earnings that is deducted in the way of National Insurance Contributions and Income Tax. The reduction in welfare benefits as a result of the extra earnings is not a tax but has the same effect. So, the withdrawal rate of benefits (taper rate) can be included to give an 'effective marginal tax rate' (EMTR). The same can be done with child maintenance payments. An EMTR of more than 100% means that the parent becomes worse off for every extra £1 earned.

The simple structure of Universal Credit, combining six different benefits of the legacy welfare system into one single payment and taper rate, makes it easy to demonstrate unambiguously and undeniably that there is a problem. Whilst this issue needs addressing, this should be treated only as a starting point for a wider investigation of problems with the child maintenance system and with the treatment of separated parents within the social security system. Two points should be noted at this stage:

1. The problem caused by the interaction of child maintenance and welfare support is not new. It dates back to the introduction of the Child Support Agency (CSA) 2003 Scheme.
2. The 2003 and 2012 Schemes⁶ for Child Maintenance are inherently flawed.

These two points have consequences:

1. Non-resident parents have been asked to pay child maintenance payments that are unaffordable since at least 2003⁷. 'Non-compliance'⁸ and build-up of arrears need to be considered in this context.
2. A solution to the current problems cannot be built on the existing child maintenance scheme.

A full resolution of the issues will require a redesign of the child maintenance system and a change in the way in which separated parents are dealt with in the social security system. Since this will take time, steps should be taken to introduce some immediate interim measures to alleviate the problems.

Appropriate treatment of and support for separated families is an important issue of social justice and the well-being of society. A third of children no longer live with both birth parents by the age of fifteen and it is widely acknowledged that "*children do best when they have two positive and committed parents*"⁹.

The way in which the state deals with separated families should be one "*which reinforces the principles we believe in; which promotes the best interests of children, supports parenting and protects children's right to the support of both their parents*"¹⁰.

⁶ The CSA 2003 Scheme and the CMS 2012 Scheme have the same basic structure and are intended, overall, to give the same results.

⁷ The structure of the 1993 Scheme was very different.

⁸ 'Non-compliant' parents are, and have been, subject to a range of 'enforcement measures', ranging from direct deduction from wages and bank accounts to imprisonment. These measures are expensive to employ and have limited success when 'the money simply isn't there' (DWP quote).

⁹ See Box 1

¹⁰ See Box 1

Treatment of separated parents within the social security system

Some of the difficulties experienced by non-resident parents, in particular, arise from the treatment of separated parents within the social security system. Essentially, the state welfare system does not recognise the concept of a 'separated parent'¹¹. It uses, instead, a 'sole parent' model.

After the parents separate, one parent (the parent with care¹²) is treated as if they are a 'single parent' who cares for the children 100% of the time, entirely by themselves and without any support (financial or otherwise) from the other parent. The state support of this parent is blind to the **receipt** of child maintenance **and** to the sharing of care of the children.

The second parent (the non-resident parent¹³) is treated as a 'single adult'¹⁴. The state support of this parent is blind to the **payment** of child maintenance **and** to the sharing of care of the children.

This remains the situation, even when the two parents share the care of the children equally. The parent with care receives the child benefit, child tax credits, housing benefit and working tax credit (or the Universal Credit) appropriate for a 'single parent' with 'sole care' of the children. The non-resident parent receives only the housing benefit and working tax credit (or Universal Credit) for a 'single adult'.

Being treated as a 'single adult' has additional consequences for the non-resident parent:

1. Work allowance¹⁵:
 - a. A person 'with responsibility for a child' has a monthly work allowance¹⁶ under Universal Credit of £287 if their UC includes housing support and £503 if it does not include housing support.
 - b. A non-resident parent is treated as 'with no responsibility for a child', notwithstanding the care that they provide and the child maintenance that they pay. As such they have zero work allowance¹⁷. Their Universal Credit is reduced by 63p¹⁸ in the pound as soon as they start to earn.
2. Housing Support:
 - a. A person under 35 not living with a partner is entitled only to support for a single room in shared house, the 'shared accommodation rate'.
 - b. A person over 35 not living with a partner is entitled only to support for single bedroom accommodation.

Both of these can cause financial difficulties for a non-resident as regards their own living costs, let alone the requirement to pay child maintenance. Endeavouring to maintain accommodation suitable for the children to stay can be a struggle and lack of such suitable accommodation can make it difficult for non-resident parents to have their children to visit.

¹¹This in contrast to the practice in Australia, for example.

¹²'Parent with care' is the term used in legislation to describe the parent who has the majority care of the child. The CMS 2012 Scheme uses the term 'receiving parent'. 'Resident parent' is also sometimes used.

¹³See footnote 1

¹⁴For simplicity, I consider the parent without a new partner and children from that relationship.

¹⁵The amount of money that a claimant can earn before their Universal Credit is reduced

¹⁶Values from April 2019

¹⁷Prior to April 2016, their monthly work allowance was £111.

¹⁸The taper rate was reduced from 65p in £1 in 2017. There had been a proposal to **increase** it to 75p in £1.

Child Maintenance in the UK

Some background on child maintenance in the UK may give a better understanding of the current situation.

The provision of a statutory system for child maintenance in the UK began because of concerns in the 1980's over the increasing costs to the state of supporting the growing number of single mothers. It was thought that some of this cost could be provided instead by the father. This, indeed, was how the statutory system first operated. The child maintenance went to off-set the state provision - the parent with care was no better off as a result of the non-resident parent's contribution¹⁹.

The **1993 Scheme** was complicated, taking into account a range of factors, including the earnings of both parents. It was soon found to be unworkable. Within weeks or months, work started on looking for a replacement.

A 1998 Green Paper²⁰ *CHILDREN FIRST: a new approach to child support* set out the details of what became the **2003 Scheme**. The keynote of this 'percentage of income' scheme was simplicity. Essentially, child maintenance was simply a percentage of the net weekly income of the non-resident parent, the percentage depending on the number of children. This could be amended to take account of any shared care or other dependent children.

The Green Paper recognised that that a simple percentage cannot work at very low incomes - the non-resident parent would not "*be left with sufficient money to live on*"²¹. It was proposed that those taking home less than £100 a week should pay a fixed minimum amount (the **flat** rate) and that the full amount (the **basic** rate) should not be paid until their weekly net income exceeded £200.

Between the two thresholds the child maintenance (**reduced rate**) payment had to increase from a nominal sum to the full amount. This meant that a large percentage (up to 45% if paying for three children) of each extra £1 of net income was due in child maintenance.

The **2012 Scheme** has the same structure and Appendix A gives the details of both Schemes.

The (somewhat arbitrary sounding) threshold values of £100 and £200 net weekly income were deemed appropriate measures of low income in 1998. It is worth noting that in that year the threshold for paying income tax was £4,195 per annum, £80 a week. The intention of the child maintenance thresholds was to ensure that non-resident parents kept "*enough of their income to maintain an adequate standard of living*"²².

One problem with the 2003 Scheme was the failure to update the measures of low income. The thresholds of £100 and £200 weekly income were never changed and, moreover, have been taken over into the 2012 Scheme. They remain in place today, whilst the income tax threshold is now £12,500 per annum, £240 a week.

¹⁹ Subsequently, the 2003 Scheme allowed the parent with care to keep the first £10 of child maintenance. Parents with care now keep it all their child maintenance without any impact on their welfare payments.

²⁰ <https://voiceofthechild.org.uk/wp-content/uploads/2017/09/Appendix-A.pdf>

²¹ See Box 1

²² See Box 1

However, this is not the only problem. The structure of the 2003 Scheme itself causes problems; upgrading the threshold values will not resolve the issues.

Yes, it makes sense to have a 'low income measure' below which a non-resident parent pays a fixed minimum amount of child maintenance. However, the usual way of dealing with this is to assign a 'self-support allowance' and to calculate the child maintenance according to the income **above** that allowance rather than according to the **whole** income.

The requirement of the 2003 Scheme that the 'basic rate' is a percentage of the **whole** income (with consequent need for a 'flat rate' and catch-up 'reduced rate') is a root cause of many of the problems of unaffordability. Similar problems would occur with Income Tax and with National Insurance Contributions if these were charged in a similar way.

Box 1: Quotes from the 1998 Green Paper

"No child support scheme can work unless it recognises how hard it is to be a successful separated parent. And that is true of non-resident parents as well as parents with care. Being a good non-resident parent is demanding and difficult."

"But fathers are vital to their children's well-being: children do best when they have two positive and committed parents."

"A new scheme will need to strike a fair balance between the need of the children and the reasonable expectation that parents will be left with sufficient money to live on."

"We accept that it would not be right to set maintenance levels at a level that non-resident parents could not afford. There are significant additional costs faced by parents who are living apart from their children (including the additional cost of maintaining contact with the children)."

"We accept that a simple percentage calculation of child maintenance does not adequately reflect the particular difficulties faced by non-resident parents on very low earnings. We therefore propose to modify the formula for those taking home less than £200 a week."

"We recognise that non-resident parents who earn very little would find it difficult to pay child support based on a percentage of earnings. So we will ask the lowest paid to pay a fixed minimum amount of child support. For those who are slightly better off, earning between £100 and £200 per week, the proportion of their income required for child support will be reduced. This will ensure that they keep enough of their income to maintain an adequate standard of living."

"We want to create a child maintenance service ... which reinforces the principles we believe in; which promotes the best interests of children, supports successful parenting and protects children's right to the support of both their parents."

The **2012 Scheme** has the same structure as the 2003 Scheme but is based on weekly earnings before tax rather than after tax. It is intended, overall, to give the same results so smaller percentages are used. At low income levels the 2012 Scheme will give smaller payments because the parent pays little in the way of tax.

However, this reduction can be more than negated by the addition of a 20% collection fee for parents using the Child Maintenance Service (CMS) collection service.

The 2003 and 2012 Schemes can be criticised on many grounds. But, most importantly, they produce amounts that are unaffordable. They do not satisfy the *“reasonable expectation that parents will be left with sufficient money to live on”*²³.

Interaction of child maintenance and welfare benefits

DWP investigations since July 2017 have confirmed that there is ‘an issue’ caused by the interaction between payments on the Child Maintenance Service (CMS) 2012 Scheme and the taper rate for Universal Credit. This interaction means that a paying parent may gain little, in anything, from being in work. Work does NOT pay; earning more can lead to a drop in the income left after paying child maintenance.

A recent CSJ Report²⁴ has drawn attention to the same issue.

Problems arise because the design of the child maintenance scheme and the welfare benefit system are considered in isolation²⁵.

The DWP and CSJ investigations were both prompted by the evidence I submitted to the Work and Pensions Select Committee Inquiry²⁶ into the Child Maintenance Service. The DWP were also provided with my presentation at the 2015 ESRC International Research Seminar on Child Maintenance²⁷ (the ESRC presentation) and a subsequent briefing paper²⁸ that I prepared for the Joseph Rowntree Foundation (the JRF briefing paper).

All of this has been made available to the WPI Economics team leading this research so I do not repeat it here. However, I draw attention to the following points:

- 1. The problem caused by the interaction of child maintenance and welfare support is not new. It dates back to the introduction of the Child Support Agency (CSA) 2003 Scheme.**

The ESRC presentation showed that in 2003 a parent on National Minimum Wage paying for three children gained nothing from increasing the hours worked from 30 to 50. For every extra £1 earned, 11p was deducted in National Insurance and 22p in Income Tax, Working

²³See Box 1

²⁴See footnote 3

²⁵Similarly, for the repayment of student loans which can be regarded as an additional tax. A deduction of 9% may seem reasonable but the addition of this to child maintenance payments can be problematic.

²⁶See footnote 2

²⁷Dr Christine Davies, *Assessing capacity to pay child maintenance: the UK formulae, paying parents and poverty*, July 2015, accessed at <http://www.york.ac.uk/spsw/research/child-maintenance-esrc-seminars/seminars/poverty-and-child-maintenance/>

²⁸*Separated families – poverty and child maintenance* Available on request from c.m.davies@rhul.ac.uk

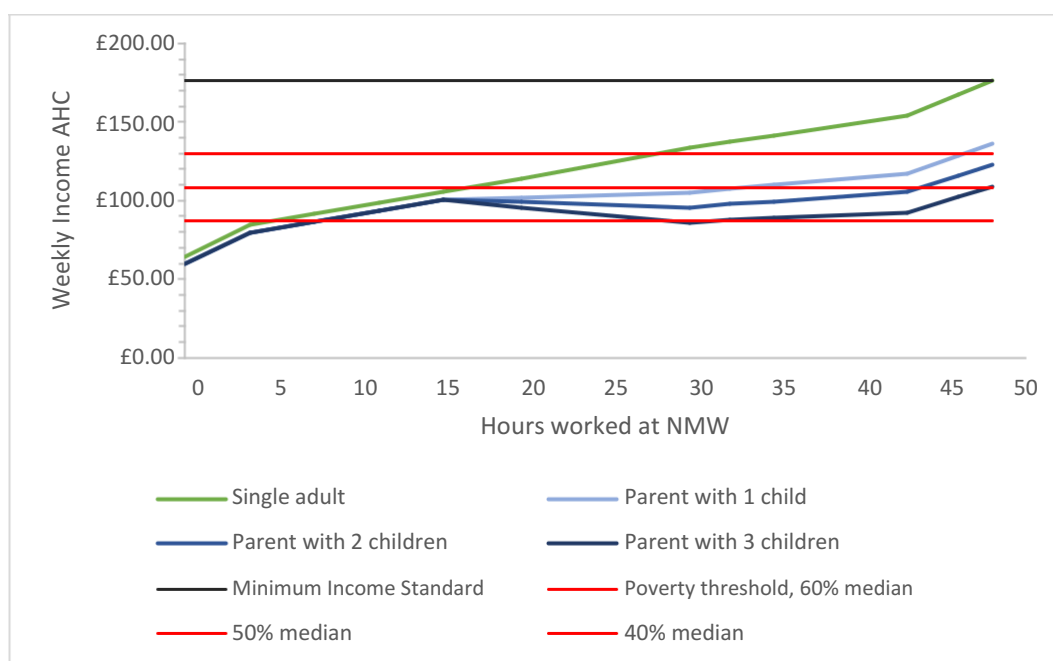
Tax Credits were reduced by 37p and Child Maintenance was increased by 30p. The total deductions amounted to £1. The extra 30p Child Maintenance went to the state not the parent with care.

The details of the interaction have changed over the years but the resultant problems have always been there.

2. **Problems of affordability are not confined to those receiving benefit.** This is because the child maintenance is a percentage of the whole income.

Figure 1 shows how the income of the non-resident parent after paying housing costs and child maintenance on the 2003 Scheme lay well below the poverty line even after UC entitlement ran out.

Figure 1²⁹ Weekly income after housing costs and child maintenance: Universal Credit and 2003 Scheme



The CSJ paper gives an income graph for a parent paying for three children on the 2012 Scheme through the CMS collection service. A non-resident parent earning £281 a week had no entitlement to Universal Credit but effectively the same income after child maintenance as when earning £100.

The DWP have produced their own graphs for Universal Credit and the 2012 Scheme and for a wider range of modelling.

²⁹ Figure 3b in the JRF briefing paper. Figure 3a showed the situation on the legacy welfare system. Please see that paper for details of the model used.

3. **All graphs show the significance of the £100 threshold** and the problems created by the structure of the 2003 and 2012 Schemes. Parents gain little financially from any weekly earnings above £100 for as long as they are in receipt of Universal Credit.

The Way Forward

The current SSAC research seeks to get a better understanding of the living standards of parents who have separated, paying particular attention to those of non-resident parents. There is considerable evidence³⁰ that paying child maintenance can leave such parents unable to adequately support themselves, let alone afford to spend time with their children. They may find that they cannot afford to work. Second families also suffer.

My evidence has commented on three aspects:

1. The treatment of separated parents within the social security system
2. The child maintenance system
3. The interaction between child maintenance payments and welfare support

Each of these is significant. The first because the social security system does not recognise the concept of a 'separated parent' but uses instead a 'sole parent' model; one separated parent gets 100% of the welfare benefits, the other 0%. The second because the system is inherently flawed; the structure produces unaffordable payments. The third because the interaction between child maintenance and welfare support gives effective marginal tax rates of close to, or exceeding 100%. Work does NOT pay for paying parents on welfare support.

The DWP has acknowledged the third aspect, that there is an "issue" caused by the interaction between payments on the Child Maintenance Service (CMS) 2012 Scheme and the taper rate for Universal Credit. The interaction is particularly serious for non-resident parents with a second family since these will be entitled to Universal Credit for much higher income. The DWP is seeking to resolve the issue "within current legislation".

A CSJ Report has also drawn attention to this issue and made recommendations.

The 'interaction issue' arises because the child maintenance scheme and state welfare system have been designed independently³¹. Solutions can be sought by consideration of the hierarchy of the different components of a parent's income – earnings, taxes, welfare benefits, child maintenance.

Different hierarchies have been proposed³²:

Hierarchy A would (i) take earnings, (ii) deduct taxes, (iii) add welfare benefits appropriate to the situation of the parent, then (iv) calculate the child maintenance appropriate to (i), (ii) and (iii).

Hierarchy B would (i) take earnings, (ii) deduct taxes, (iii) calculate child maintenance according to that situation then (iv) calculate the welfare benefits according to the results of (i), (ii) and (iii).

³⁰See, for example, that submitted to the WPC Inquiry, footnote 2. An annotated list of the evidence has been supplied to the WPI Economics research team.

³¹Similarly, for the repayment of student loans. Undergraduate loans are repaid at 9% of gross income above £25,000. An additional postgraduate loan would add **another** deduction of 6%. No account of such payments is taken into account when assessing child maintenance. They could be treated in the same way as pension.

³²Private communication. More details on request.

However, this is only the beginning.

The phrase 'welfare benefits appropriate to the situation of the parent' draws attention to the fact that, at present, welfare benefits do not reflect the situation of separated parent (Aspect 1). Moreover, the phrase 'child maintenance appropriate' draws attention to the inappropriateness of the current child maintenance calculation scheme.

The SSAC asks what lessons can be learned from other countries. The Australian system is one that is usually held in high regard and makes a good starting point.

It is becoming increasingly apparent that the treatment of separated parents in the UK leaves a lot to be desired and does not contribute to the well-being of themselves, the children or society. In particular the 2003 and 2012 Child Maintenance Schemes have, and are, causing serious problems. Putting this right will take time. However, the damage being caused is so serious that cannot be ignored. Steps should be taken to introduce some immediate interim measures to alleviate the problems.

There are some obvious candidates:

1. Remove the 20% fee for child maintenance paid through the CMS collection service.
2. Reduce the threshold for review of payments from 25% to 10%, say.
3. Change the dialogue for conversations with parents who cannot afford payments.
4. Cancel 'enforcement measures' against those whose situation indicates 'inability to pay'.
5. Do not initiate enforcement measures against those with 'inability to pay'.

Final Comments

I am conscious that the issues raised here are complicated. There is much more that could have been said and I am happy to contribute further. I conclude with a quote for the 1998 Green Paper which set up the 2003 Scheme

'The way in which the state deals with separated families should be one "which reinforces the principles we believe in; which promotes the best interests of children, supports parenting and protects children's right to the support of both their parents"³³.'

³³See Box 1

Appendix A: The 2003 and 2012 Schemes for Child Maintenance

The 2003 and 2012 Schemes have the same essential structure. The 2003 Scheme uses net income whereas the 2012 Scheme uses gross income. Different percentages of income are used for the various rates in the two Schemes with the intention that, overall, the same results are obtained.

The different percentages in each rate refer to 1, 2 or 3 (or more) qualifying children.

In both schemes the child maintenance payments are adjusted to take account of overnight stays with the non-resident parent and of any other children in that parent's new household.

Maintenance Rates for the 2003 Scheme

	Net weekly income	Child Maintenance
Nil rate	< £5	£0
Flat rate	£5 - £100	£5
Reduced rate	£100 - £200	£5 + 25, 35 or 45% of income above £100
Basic Rate	> £200	15, 20 or 25% of income

Note that the net income in the 2003 Scheme may include working tax credits and also includes child tax credits where these are relevant.

Maintenance Rates for the 2012 Scheme

	Gross weekly income	Child Maintenance
Nil rate	< £7	£0
Flat rate	£7 - £100	£7
Reduced rate	£100 - £200	£7 + 17, 25 or 31% of income above £100
Basic Rate	> £200	12, 16 or 19% of income
Basic rate plus	> £800	As basic rate then 9, 12 or 15% of income above £800

Note that the gross income in the 2012 Scheme does not include tax credits.

Note also that child maintenance payments are increased by 20% for parents using the CMS calculation and collection service

The thresholds for flat rate and reduced rate payments still have the values of £100 and £200 assigned to the 2003 Scheme in 1998.