Call for evidence on social security and separated parents

I have been alerted to the research project currently ongoing with the Social Security Advisory Committee, and the call for evidence, by Professor Christine Davies.

I have historically provided case histories to Professor Davies, who submitted these to the Department for Work & Pensions earlier this year to support her work on Child Maintenance which has, thankfully, led the DWP to acknowledge that there is an "issue "with the Child Maintenance Calculation Regulations and where she has taken steps to demonstrate that the interaction between the Universal Credit taper and Child Maintenance means that work " does not pay "for the Non-Resident Parent (NRP) in these cases.

My background is an unusual one and I will be completely candid here as I feel that I my experience within the last two decades on "both" sides of the Child Support system makes me possibly uniquely qualified to put forward evidence such as that invited by the SSAC at this point.

In 2000 I accepted a role within what was then the Child Support Agency (CSA) and I worked in many areas within the Agency including maintenance assessment, accounts, complaints and legal enforcement.

This gives me broad base of knowledge and experience of how the Child Support system and CSA formulas worked both for the individual and the separated families thus affected.

In 2007, I resigned from the CSA, having been placed in a position that was, to my mind, entirely untenable. I was profoundly concerned with the impact of CSA practice and procedures and with the reality of life "on the ground" for many of my Agency case clients, particularly regarding disputes regarding Shared Care of the Qualifying Children and the affect that this care had on the roles attributed to the separated parents.

I accepted a role as Child Support Consultant at a Birmingham law practice and, following redundancy from that position, I opened a Child support Lay Advice service myself; I felt compelled to continue this work having been followed from the legal practice by most of my clients who were at utterly desperate stages in their Child Support disputes and wanted me to continue supporting and advising them.

Disputes regarding the NRP and PWC roles and shared care issues STILL represent at least half of my day to day case load.

Whilst the roles of the Non-Resident Parent or NRP (Paying Parent) and the Parent with Care or PWC (Receiving Parent) are subject to similar definition under both CSA and Child Maintenance Service (CMS) pertaining legislation, **the criteria for defining whether or not a parent is a Non-Resident Parent under the relevant Child Support law changed slightly, but significantly in 2012**.

In brief- under CSA legislation (predating the 2012 scheme) the law prescribed that :-

The Maintenance Calculations and Special Cases Regulations 2000 define those persons treated as Non-resident Parents in "special cases :-

8-(2) (b) "For the purposes of this special case a parent who provides day to day care for a child of his is to be treated as a non-resident parent for the purposes of the (Child Support) Act in the following circumstances-

(b) Where the persons mentioned in Para (1) (a) include both parents and the circumstances are such that care is provided to the same extent by both but each provides care to a greater extent than or equal to any other person who provides such care for that child –

(i) The parent who is not in receipt of child benefit for the child in question.

Day to day care is considered under *Maintenance Calculations and Special Cases Regulations 2000*

(This legislation expands on the basic meaning of "Parent with Care and "Non-resident Parent" as defined in *section 3* to the *Child Support Act 1991*)

Further "shared care" calculation for the Qualifying Child(ren) is considered under**-** *Schedule 1 paras 7 and 8* to the *Child Support Act 1991* and *Regulation 7* to the *Maintenance Calculations and Special Cases Regulations 2000***- in which the criteria is set out that there must be 175 nights or more spent with the Non-resident Parent in order for a shared care decision of 50/50 or one half care to be made**

These rules were replaced by *The Child Support Maintenance Calculation Regulations 2012* which underpin the current scheme as administered by CMS as follows:-

Parent treated as a non-resident parent in shared care cases

50.—(1) Where the circumstances of a case are that—

(a)an application is made by a person with care under section 4 of the 1991 Act(1); and

(b)the person named in that application as the non-resident parent of the qualifying child also provides a home for that child (in a different household from the applicant) and shares the day to day care of that child with the applicant,

the case is to be treated as a special case for the purposes of the 1991 Act.

(2) For the purposes of this special case, ***the person mentioned in paragraph (1)(b) is to be treated as the non-resident parent if, and only if, that person provides day to day care to a lesser extent than the applicant.***

(3) ***Where the applicant is receiving child benefit in respect of the qualifying child the applicant is assumed, in the absence of evidence to the contrary, to be providing day to day care to a greater extent than any other person****.*

Again I will try and precis the legal position her:-

1) Under historic CSA rules, the receipt of Child Benefit defined and underlined the PWC role as far as CSA and most Child Support Tribunal Judges were concerned.
2) Under current CMS rules, the recipient of Child Benefit is assumed to be the PWC, unless evidence is provided to the contrary.

I will not go into the fine detail of these regulations, that I am frequently obliged to analyse and argue when presenting one of my Client's case before a Child Support Tribunal Judge, but let it suffice to say that the receipt of Child Benefit (ChB) does, despite the difference between the two sets of legislation, underpin CMS decisions on who actually holds the PWC role and therefore, who will pay maintenance as the NRP to the other party.

Firstly, the claimant of CHB is still generally the mother. The father may have a number of reasons for not claiming CHB even if he may be deemed "responsible" by HMRC , who operate the CHB scheme . The NRP may not realise that they are entitled to claim CHB if they have 50/50 care, or close to half care, of the child or children, or he may have agreed, in the Family Court, to allow the mother to continue receiving the CHB; quite unaware that this will profoundly affect any dispute he may make to CMS regarding his role as NRP. Another scenario that I frequently see is that the NRP does, in fact care for the children for the same or even to a greater degree than the parent receiving Child Support, but the CMS stubbornly refuse to consider the actuality of care on the ground whilst the PWC continues to receive CHB.

This leads to a situation where the individual deemed to be the PWC by the CMS will dispute the actual amount of shared care that the NRP claims, even if that shared care pattern is underlined by Court Order. Sadly, CMS continue, just as the CSA did before them, to accept the PWC'S word over that of the NRP. Further, former CSA officers who now work under the CMS scheme frequently make shared care decisions without regard to CMS legislation, but refer wrongly to the now defunct CSA rules instead.

The number of nights where shared care is with the NRP is frequently cited by CMS in their decision making and a day or two under a 50/50 split ,bearing in mind that is impossible, unless it is a leap year, is invariably used to award the NRP role to one party unfairly.

In my experience, many Family Law practitioners to do not consider the impact of Child Support Legislation on their clients when a care arrangements Order is agreed. The failure by Family Law practitioners to consider the impact of care agreements on CMS cases has a long term effect on the subsequent attribution of NRP and PWC roles.

I also have some experience of dealing with CHB and child tax credit cases , and I see exactly the same issues where shared care is close or equal but HMRC fail to recognise the NRP'S position.

I have no doubt that many UC benefit awards are erroneously made due to gross misrepresentation by one of the parents also. That the systems in place permit and support this misrepresentation is truly appalling. Further, although the Children and Families Act of 2014 was supposed to support each parent's care arrangements and reduce or prevent the instances of one parent -generally the mother- reducing the other parent's access to the children for shared care, it fails.
The intention was sound, see The Rt Hon Sir Andrew McFarlane's speech attached.

In fact the Family Courts still fail to enforce these care arrangement Orders. In practice, the Courts still generally award the majority care to the mother and this marginalise the father's role in the children's lives. The mother is, again , actively enabled by the current system to claim benefits, support and allowances and father is handed the NRP role and the obligation for financial support if he dares to work. For this to still be happening in the 21s century is appalling.

The sum total of the above inherent issues apparent within the Family Court, Child Benefit and Child Support systems encourages the PWC to minimise care by the NRP , either by withholding care or misrepresenting the actual care wherever they can in order to maintain their formal status and keep their benefits, support payments and allowances.; i.e. by presenting themselves as the day to day carer, even when the reality of care on the ground does not support that role in practice.

It is simply reprehensible that CMS and HMRC support this practice by making it near impossible for an NRP with equal or roughly equal shared care to challenge either via CMS /CHB or the Tribunal Appeal Service.

I feel that my everyday experience of advising individuals with Child Support cases means that I am on "the coal face" here, and I am dealing every day with telephone calls from profoundly distressed "Paying Parents" who simply cannot meet what are sometimes inappropriate Child Support obligations, as calculated using the Government's statuary Child Support scheme, and also meet their other financial commitments.

The implementing under the CMS 2012 rules of a minimum of 25 percent drop in an NRP's income before the assessment will be reduced is both punitive and grossly unfair. The sole reason for this was to reduce the CMS workload to the detriment of the NRP's financial position.

The implementing of the 2012 rule of one single annual review only for the NRP, with an assessment for the next 12 months based frequently on historical and patently unreflective HMRC historic income figures, is equally unfair.

My caseload contains the following shared care issue cases; in each case it appears that the PWC has misrepresented the NRP'S position re care arrangements.

Mr C.H. – Who has 188 days care per year of the children and a Court Order to prove it. CMS reject his position.

Mr R,R.- Whose Family Lawyer persuaded him to agree to his ex-wife retaining the Child Benefit entitlement herself under a Court Order, despite care being set at 50/50 by the Judge.

Mr D.D.- Who has only very recently had his role as NRP quashed after successfully claiming CHB.

Mr H.S.- Whose ex-wife has finally been told by a judge she must reinstigate and facilitate their shared care Court Order which she was consistently breaching in an attempt to increase Mr. H.S's Child Support payments and her own benefits.

Mr D.S.- Whose ex-partner claimed Child Support, CHB and Social Security benefits as a single parent living alone, whilst Mr D.S was actually still living in the family home and entirely unaware of this.

Ms.L.N.-Female former NRP, who has only just had her CMS case closed, and still awaits appropriate benefits and allowances , despite now being the main carer of the children. She barely survives.

Mr M.W.- Who held both NRP and PWC roles in a closed CSA CASE; his ex-wife has claimed arrears from her PWC role case, actively upheld and supported by CSA/CMS, but arrears owed to Mr M.W from when he had the PWC role have been written off without any proper explanation.

EVIDENCE ATTACHED

1. Speech by The Rt Hon Sir Andrew McFarlane
   Lord Justice of Appeal
   Association of Lawyers for Children- referencing CAFA Act 2014

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   Independent Child Support Advice Service
   16th April 2019