

European approaches to child maintenance payments

The UK Government is committed to major reform of the current child maintenance regime administered by the Child Support Agency (CSA). The Child Support Act 1991 was influenced by experience of child maintenance regimes in Australia and the USA, but there was little public discussion about possible alternative schemes. There may now be much to learn from other European countries. Anne Corden at the Social Policy Research Unit, University of York, compared child maintenance regimes in Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden and the UK. She found:

- f** Outside the UK, there has been a trend towards helping and encouraging parents as far as possible to decide child maintenance themselves. Current CSA procedures which exclude parental discussions and may cut across preferred private arrangements appear to be heading in the opposite direction.
- f** In most other countries, during divorce or separation, child maintenance due is generally considered alongside other arrangements, such as custody or residence of the child and division of property.
- f** In the UK, child maintenance is withdrawn at a comparatively early age.
- f** In formal determinations of maintenance, the general trend has been towards the development of rules and guidelines. These range from a simple broad-brush approach, as in Denmark and Norway, to more complex 'fine-tuning' to individual circumstances, as in the Netherlands, Germany and the UK.
- f** Links perceived by parents between payment of child maintenance and the ways in which relationships are maintained, including contact and residence arrangements, attract increasing attention. It is not only in the UK that conflicts arise in this area.
- f** The principle of equal rights of biological children to parental support, espoused in the UK Green Paper 1998, is in line with principles in other European countries.
- f** There are several European models of schemes which 'advance' or 'guarantee' maintenance due. There is strong support for the contribution such schemes can make to the maintenance of children's living standards and their protection from poverty.

Introduction

Until the 1990s, the child maintenance system in the UK operated through different tiers of courts and the offices of the Department of Social Security (DSS). Decisions about child maintenance were based largely on discretion. The previous government argued that this regime was fragmented, uncertain and ineffective; levels of non-payment were high. The aim of the Child Support Act 1991 was to establish the principle that non-resident parents must meet their financial responsibilities and maintain their children whenever they could afford to do so. A further aim was to reduce the cost to the public purse of the support of lone-parent families through social security benefits, both by recouping money paid out in benefits and by enabling more lone parents to work, through more reliable child maintenance arrangements.

The Child Support Agency (CSA) became operational in 1993, taking over the main responsibility for determining maintenance due, using a complex formula, and for collection and enforcement of payments. The CSA has been unsuccessful and the Government is committed to major reform of the scheme.

The 1991 Act drew on the experience of child maintenance regimes in the USA, Australia and New Zealand. There may now be much to learn from child maintenance regimes in Europe. This study aimed to contribute to the UK policy debate by providing perspectives from selected European countries.

A variety of regimes

The countries studied were Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden and the UK. Each regime developed from a different legal and historical background, but the general pattern has been towards equal treatment for all children in respect of child maintenance, irrespective of the marital status of their parents. There has also been increasing emphasis on the rights of the child, with the Nordic countries in the forefront of this approach.

In several countries, child maintenance is due to the child, rather than to the resident parent as in the UK. The more child-centred approaches are those in which there has been furthest development of schemes to 'advance' and thus guarantee at least part of the maintenance due. In comparison with other European countries, maintenance is withdrawn at an early age in the UK. By contrast, child maintenance remains due through university education in Austria, Finland, Germany and the Netherlands.

Each country has different structural and administrative arrangements. Decisions about whether and how much child maintenance is payable

are made variously by parents themselves (with or without help), by court judges or officials, or by administrative staff in social security or welfare offices. The courts have a greater role in maintenance determination in cases of divorce or separation in Germany, the Netherlands, France, Belgium and Austria, although procedures may build upon preliminary voluntary arrangements made between parents. In Norway and Sweden, it is local social security staff who assess liability of non-resident parents to repay the state for advanced maintenance, and in Finland, determinations of maintenance are handled by the municipal social welfare boards.

In the case of children of unmarried parents, arrangements for determining maintenance are generally similar to those for children of divorced parents. At the time of the study, in Germany, there was automatic state guardianship for children of unmarried parents and the youth authority took responsibility for the legal affairs of the child, including ensuring the right to maintenance.

Whether third party determinations are dealt with by the courts or by specialist agencies, a key finding is that across Europe, at least in the case of divorce and separation of married parents, maintenance determinations often incorporate or build upon agreements worked out by the parents themselves. Where parents are required to try to reach agreement, advice and help is generally available free of charge. Recent policy developments in the UK, including restrictions on legal aid and CSA procedures which exclude parental discussions or indeed cut across preferred private arrangements, appear to be heading in the opposite direction.

Deciding the amount of child maintenance due

The introduction of the UK CSA marked a shift from discretionary decision-making to a rigid rules-based scheme. Denmark has had a simple rules-based scheme for many years, and there the transparency and simplicity of this approach was perceived as an advantage for understanding and acceptance among parents, encouragement of compliance, and ease and speed of operation. Norway and Sweden share with the UK the experience of having recently moved from a more discretionary system to one more firmly grounded in rules. The Norwegian and Swedish governments believe that the new systems are easier to administer, and, in Sweden, harder to deceive. In both countries, non-resident parents argue for more discretion.

At the other end of the balance between rules and discretion are Belgium and France, where the courts do not use formal guidelines. Advantages are perceived here in that all relevant circumstances can be taken

into account. Inconsistencies and inequalities arise, however, and in cases of conflict between parents, courts may make decisions based more on the demands and representations of parents than on the needs or real costs of the child.

Judges in the German and Dutch courts are usually strongly influenced by formal guidelines which have been developed by legal associations in each country. The German guidelines are based on legislative minima for children of unmarried parents. Guidelines developed by the courts of appeal inform decisions made by judicial officers in Austria, and these are also applied by the youth welfare offices which advise parents and record agreements reached by unmarried parents.

In all countries where there are guidelines or rules, some issues have proved hard to deal with without the use of some discretion. Such issues include costs of sickness or disability of the non-resident parent; low incomes of non-resident parents; large imbalances of resources between parents; parents or children living abroad; and missing or suspicious information.

The study cannot identify the 'best mix' of rules and discretion, because this differs according to the underlying principles and aims of the regime and the cultural context. Concepts of equity and fair treatment also differ. In Denmark, a regime which results in most parents paying similar relatively low amounts of maintenance is perceived as fair, and this can be achieved with a few, simple rules. The original assumption of the UK CSA regime was that equitable treatment for parents meant different levels of liability, according to differences across a range of circumstances. The fine-tuning required to achieve this in a rules-based scheme inevitably implied a complex scheme.

Outcomes of determinations

It is hard to compare directly the outcomes of maintenance determinations across countries. Some exploration of entitlements and liabilities in different countries is possible by using material provided by informants in response to vignettes which presented the circumstances of three sets of hypothetical parents and their children. The full report explains the use of the vignettes in this way, and presents detailed findings which offer insights into how parents and children fare under the different European regimes.

Payment and receipt

None of the countries has gone down the path chosen in Australia and the USA of automatic withholding of child maintenance from income, for all liable parents. The usual way of paying is through private arrangements, except in Norway and Sweden where

most payments go via a collecting agency.

There are problems of non-payment in all countries. The policy emphasis is generally on recovering arrears and reestablishing regular payments rather than imposing punishments, although there can be severe penalties for persistent non-payment. When payment patterns cannot be restored by the enforcement agency through negotiation, the preferred option is an attachment of earnings. In some countries, such as France, there are wide powers to deduct maintenance owed from banks and savings accounts, through deductions from pensions and benefits, and distraint of assets.

It is hard to make direct comparisons between different countries in levels of compliance with payments. Data are not collected in comparable ways. The general pattern appears to be that the Scandinavian countries achieve higher levels of compliance with payment. There are considerable problems in Finland, France, Germany and the UK. The low income of many non-resident parents is believed to be a contributory factor, and non-compliance also reflects problems in relationships between parents.

Advanced maintenance schemes

The UK and the Netherlands are the only countries which have no specific scheme to advance child maintenance, apart from general social assistance. In Norway and Sweden, all resident parents may apply to the social security authorities to forward a standard fixed amount of child maintenance and take over responsibility for collecting the payments due. In other countries, this is usually available only after formal arrangements have broken down. The amounts forwarded are usually standard rates, except in Austria and Belgium, where advances are based on the original determinations. The Belgian scheme is limited, however, and is unpopular.

Advance maintenance schemes ensure the regularity of at least a portion of entitlement. The direction of developments in advance schemes has been towards improvements and increasing their efficiency. There are some problems associated with advance schemes, including non-take-up and high costs, but there is strong support for the contribution made to the maintenance of children's living standards and their protection from poverty.

Conclusion: what works

The approach adopted, in making a summary comparison of the overall performance of the various regimes, was to identify key criteria likely to influence whether the regime 'works well' for each of the participant groups: children; parents in general (and

their advisers) and, within this group, resident parents and non-resident parents separately; and taxpayers, who pay for administration and make up shortfalls in financial support for children. The judgements made on the criteria were based on the qualitative data available, previous research, and the commentaries, observations and judgements of the informants.

In terms of the criteria used, the regime in Denmark stands out as one without major problems or negative outcomes for any participant groups. The level of entitlement in Denmark is relatively low, but in the Danish universalist welfare state, where the emphasis in support for lone parents is on labour market participation and state support, levels of child maintenance are not controversial.

The regimes in the other Nordic countries also 'work well' in terms of: delivering support to all children with a formal entitlement; the transparency of determinations and responsiveness to change in circumstances; the speed at which determinations are made; and the absence of constraint on resident parents' decisions to take work. However, these countries share with most others the problem that liability for child maintenance may introduce work disincentives for non-resident parents.

The comparatively poor performance of the current UK CSA regime is not unique, on the criteria chosen. Other countries with longer established regimes, France and Germany, both experience major problems and disadvantages, including complexity and non-transparency of formal decision-making and costly effects of non-compliance. In all countries except Denmark, affordability of the maintenance obligation is perceived as a problem for some non-resident parents, especially in periods of unemployment and among parents who must try to stretch resources between two households.

Increasingly, in all countries, concern about relationships between parents, and between parents and children, is entering the debate about child maintenance. In all countries, there is much to learn about links perceived by parents between the maintenance due, their contacts with children and the way parents who live apart may share the care of their children.

About the study

Data were collected, relating to October 1997, from a network of national informants, who each provided material about the child maintenance regime in their own country, in response to a standard questionnaire. At the same time, respondents each responded to three vignettes, describing the

characteristics and circumstances of three sets of parents and children. For each vignette, informants 'completed the story', suggesting how families would be dealt with and amounts of child maintenance that would be decided. In addition, informants reported the relevant findings from literature and research on child maintenance in their country, and the main directions of recent policy directives and debate.

How to get further information

The full report, *Making child maintenance regimes work* by Anne Corden, is published for the Foundation by the Family Policy Studies Centre (price £13.95, ISBN 1 901455 35 1).