

Child Maintenance: Improving our enforcement powers through the commencement of curfew orders

Submission to consultation from
the Department of Works and
Pensions

12th August 2022



**One Parent
Families Scotland**
changing lives, challenging poverty

About One Parent Families Scotland

One Parent Families Scotland (OPFS) is the leading charity working with single parent families in Scotland. Building on over seventy years of advocacy and service-delivery expertise, OPFS provides expert information, advice, and family support for one parent families, along with training activities, employability programmes and flexible childcare. OPFS campaigns with parents to make their voices heard to change the systems, policies and attitudes that disadvantage single parent families.

Our vision is of a Scotland in which single parents and their children are valued and treated equally and fairly. Our mission is to work with and for single parent families, providing support services that enable them to achieve their potential and help create lasting solutions to the poverty and barriers they face.

Background

The National Audit Office found that, as of 2021, only 1 in 2 separated families with children have an arrangement where at least some child maintenance is received (be that through a family-based arrangement or through the Child Maintenance Service)¹. Just 1 in 3 separated families have a child maintenance arrangement that is satisfied in full.

Fewer than one in five (18%) of separated families have a statutory arrangement through the Child Maintenance Service (CMS), either through Direct Pay where the CMS calculates the payments owed and parents transfer the money between themselves, or through Collect-and-Pay, where the CMS collects and transfers the money and charges parents for a portion of the amount collected.

As of October 2021, £440 million in arrears was owed on Collect & Pay which the DWP is responsible for collecting. Less than half (49%) of paying parents with Collect & Pay arrangements had paid more than 90% of ongoing maintenance due in September 2021. There is also a further £40 million in known arrears on Direct Pay arrangements.

Through OPFS's five local services, national Lone Parent Helpline, and a consultation conducted with parents in 2021 on the CMS², we know that many single parents want to see better enforcement to ensure their children receive the child maintenance payments they are owed.

Single parents have also highlighted a range of other systemic issues with the CMS, such as the length of time receiving parents wait for responses and decisions from the CMS, the general quality of customer service, a lack of understanding of personal circumstances including domestic abuse, and the charges to use Collect-and-Pay.

1 National Audit Office, March 2022. '[Child Maintenance. The Department of Work and Pensions](#)'.

2 OPFS, 2022. [Does the UK Child Maintenance Service deliver value for money for children?](#)

1. Do you agree that curfew orders would be an effective method of enforcement to collect arrears and regain compliance?

We do not agree that curfew orders would be an effective method of enforcement to collect arrears and regain compliance. While we agree that more needs to be done to ensure compliance and collection of arrears, we do not think this punitive approach is likely to be effective in achieving in this aim. We also believe that the use of curfew orders could have other unintended consequences which could adversely impact on the parents, children, and partners in the families affected by such a measure.

In this response we will set out the reasons for this, and the steps we think should be taken instead to improve the collection of child maintenance.

Potential problems with using curfew orders for this purpose

1. Implications for family relationships

1.1 In our experience, separated families, by their nature, arise from challenging circumstances, such as bereavement, illness, poverty, breakdown in communication, to name a few.

1.2 Where families have sought support from the CMS, these will be instances where the breakdown in communication is such that arriving at a purely family-based arrangement was not possible. This would include instances where the paying parent has refused to agree to a family-based arrangement or to sustain it once it is in progress, or where the receiving parent does not feel able to negotiate such an arrangement with the paying parent. Given these circumstances, the family relationships involved in cases dealt with through the CMS are often complex and sensitive.

1.3 It is our view that the use of curfew orders and electronic tags (measures typically associated with criminal behaviour) could exacerbate relationships which are already fraught, making matters more difficult for all involved.

1.4 Given the negative response that a paying parent would likely have to being subject to such a punitive measure as a curfew, our concern is that this could lead to greater animosity towards the receiving parent which, in turn, would have an adverse impact on the child or children involved.

1.5 In many cases, the paying parent will be living with another partner and will perhaps have other children in their home. We would be concerned about the impact on these 'second families' of imposing a curfew order. Even in the best of circumstances, our concern would be that being restricted to the home, and the stigma associated with being electronically tagged, could instigate acrimony within these second families and create unnecessary problems for any children in these homes.

2. Implications where domestic abuse is a factor

2.1 3 in 5 parent's new applicants to the CMS are recognised as being survivors of domestic abuse.³ It is important that the policy and practices of the CMS reflect the fact that the majority of cases it handles involve domestic abuse.

2.2 In these circumstances, the issues outlined above are particularly concerning. Single parents affected by domestic abuse have already raised concerns with us about the risk to their safety and wellbeing through the current CMS process. For example, the CMS requires them to provide evidence of the paying parent's income where they believe this has been underestimated and alerts the paying parent that an income variation or mandatory reconsideration has been requested by the receiving parent.

2.3 One single parent told us about her experience after informing the CMS that her ex-husband, who had been abusive towards her in the relationship, was providing inaccurate information on his income:

"They didn't tell me that the next steps would be that they were going to write to him and tell him that I, specifically, had raised a mandatory reconsideration. My ex was obviously really annoyed when he found out and tried to contact me, but because I've blocked him because the abuse is constant, he then reached out to me through our daughter who's only 10. She was then getting distressed and saying he was going to get angry if I didn't respond.

"I still don't know what the repercussions are going to be because if he does end up having to pay me more, he's going to be really angry. At no point did they [the CMS] ask me whether I'd been subject to domestic abuse or anything like that. If they're going to use my data in that way, it should be for them to say "are you okay for us to do this? And is it safe for us to do this?", and at least give me the option. If this is their process, I'm certainly not going to challenge his income again, so he could be saying anything to them."

2.4 From our work with single parents, we know that experiences like this are all too common. Caring parents (usually mums) are frequently subject to ongoing abuse around child maintenance, including payments being stopped and re-started as a means of controlling their behaviour. In these situations, victims/survivors understandably want to avoid further conflict, for their own safety and their children's. As such, it is vital that CMS processes do not escalate conflict or lead to unwanted communication between the receiving and paying parent.

2.5 Using a punitive measure like curfew orders has the potential to generate even more hostile responses from non-resident parents who have been/are perpetrators of domestic abuse. In turn, the threat of such a power being used (and the publicity around this, highlighted in the background information of this consultation) may well have the unintended consequence of deterring receiving parents from informing the CMS of underpayments or non-payment, or from using the service at all. This risks more children being left without the financial support they are owed.

2.6 In addition to this, we are concerned about the risks where domestic abuse is involved in second families. A report from the Inspectorate of Probation for England and Wales found that home curfew orders had resulted in incidences where domestic abuse perpetrators were electronically tagged and ordered to reside with their victims - a situation which the Inspectorate recognised as posing a serious risk to victims.⁴

2.7 Given the high incidence of domestic abuse in cases handled by the CMS, due consideration must be given to the possibility that paying parents involved in such cases may also pose a risk to second families. It is important to note that simply asking for the consent of those residing with the paying parent in advance of an order being imposed for the residence in question is unlikely to address this issue given the nature of coercive control.

3. Implications for paying parents' ability to earn an income

3.1 Although the consultation states that the "intention behind the introduction of this power is to disrupt the paying parent's lifestyle rather than their earnings", we are concerned that such a measure would pose a high risk of impacting on earnings.

3.2 Although the hours of curfew order may be arranged outside of working hours, the use of an electronic tag and the associated stigma linked to criminal activity could impact on the paying parent's employment and opportunities.

3.3 Similarly, if the paying parent has to explain to an employer (or if this information is passed on by others) that they are only available within specific hours or have to be home by a specific time due to a curfew order, this could also impact on their employment and opportunities. There is evidence from previous studies into electronic tagging that this may be the case.⁵⁶

3.4 The DWP's role regarding child maintenance should be to ensure that the financial support owed to children is retrieved. Taking actions which may interfere with the paying parent's ability to provide this support in the longer term is counter to this aim.

4 <https://www.justiceinspectors.gov.uk/hmiprobation/media/press-releases/2022/01/electronic-monitoring/>

5 https://www.researchgate.net/publication/304459273_Electronic_Monitoring_and_Probation_Practice

6 [Pre-release expectations and post-release experiences of prisoners and their \(ex-\)partners](#)

4. Implications for children's rights and wellbeing

4.1 More generally, there is a risk that using this measure would adversely impact on the rights and wellbeing of their children. The consultation states that "the court will have discretion to ensure that the order does not impact the paying parent's relationship with the qualifying child(ren) or any other children they may have".

4.2 However in our view this is likely to be the case in any instance where the paying parent lives with or has active involvement in the lives of their children. A curfew order which would restrict the parent to the home would mean that they would be unable during that time to engage in, assist with or travel to any activities outside the home with their children.

4.4 A literature review on electronic tagging by the Scottish Government found that "some research provided qualitative examples of how EM restricted offenders from fulfilling family responsibilities".⁷ For example, research found that childcare was cited as a factor that increased the likelihood of breaches in research England⁸ and New Zealand.⁹

4.5 At the same time, the stigma and stress associated with having a parent electronically tagged and subject to a home curfew order is likely to impact negatively on a child. The Scottish Government also identified that its own Working Group on Electronic Monitoring (2016), among other research, found that electronic monitoring "can negatively impact upon a monitored person's family, particularly those who reside with the person on EM".¹⁰

4.6 "Amongst co-residents of monitored people, the Scottish Government Working Group found evidence of anxiety, guilt and stress related to the perception they were responsible for ensuring the monitored person's compliance with EM conditions and inclusion in social events."

4.7 Again, as the role of the DWP regarding child maintenance is to ensure the best interests of children are protected and financial support provided, we do not feel adopting a punitive approach such as this would be appropriate or conducive to this intended outcome.

7 <https://www.gov.scot/publications/electronic-monitoring-uses-challenges-successes/pages/7/>

8 <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-6478.2009.00465.x>

9 <https://journals.sagepub.com/doi/abs/10.1375/acri.36.1.1>

10 <https://www.gov.scot/publications/electronic-monitoring-uses-challenges-successes/pages/7/>

5. Financial resources of implementing curfews

5.1 We are also concerned about the financial resource which would be required to implement and monitor such curfews, even for only a very small number of people.

5.2 The CMS is already struggling to efficiently and effectively meet the demand for the services it provides. We would argue that more resource is needed to support the CMS to fulfil its duties, as opposed to apportioning resources to punitive measures.

6. Effectiveness

6.1 Finally, while the consultation states that this measure would be used rarely and primarily act as a deterrent against non-payment, the effectiveness of such an approach would seem to be unsupported by the sparse use of other punitive measures - such as suspension of passports and driving licenses - to date.

6.2 These measures are actively available for use, and yet the figures on non-compliance indicate that this does not act as a deterrent.

6.3 In contrast, there is evidence from a previous study conducted on behalf of the DWP (2015) that self-employed paying parents felt encouraged to “fight back” against the system when they perceived it as judgemental and antagonistic towards them.¹¹ This would suggest that measures which heighten or threaten to heighten a punitive approach towards non-paying parents could increase animosity towards the CMS and reduce, rather than increase, the likelihood of overall compliance.

6.4 Our view is that other available solutions which focus on retrieving the maintenance and enabling non-paying parents to pay, rather than punishment, are more likely to be effective.

Alternative solutions

7. Enable more parents to start on Collect and Pay, and offer more support to those on Direct Pay

7.1 OPFS understands that it is the policy of the UK Government that the CMS should encourage parents to begin on a Direct Pay arrangement, and that this is further incentivised by the fees for using the Collect and Pay Service. According to analysis by the National Audit Office (2022), ninety per cent of separated families using CMS start with Direct Pay, while a 2017 review of the CMS found that half of Collect & Pay customers said that charges for Collect & Pay had prompted them to try Direct Pay first.¹²

¹¹ [Attitudes and behaviours of self-employed child maintenance clients and barriers to paying child maintenance](#)

¹² National Audit Office, March 2022. [‘Child Maintenance. The Department of Work and Pensions’](#).

7.2 However, the NAO also highlights that a DWP survey found that only 58% of parents responding 13 months after their Direct Pay calculation were on Direct Pay. 16% were on or moving to Collect and Pay, and 19% had left the CMS and had no maintenance arrangement in place. 16% of those still on Direct Pay said they do not receive the full amount and 20% said their payment is not usually on time.

7.3 This indicates that for many, Direct Pay is not working and that Collect & Pay may be the more suitable option for parents in these circumstances. Where parents begin on Direct Pay arrangements which prove unsuccessful, this prolongs the process for all involved and allows a situation where more arrears can build up, thereby making enforcement more difficult.

7.4 We would argue that the effectiveness and efficiency of ensuring that child maintenance payments are made would be improved by enabling more parents to start on Collect-and-Pay. However, it is also vital that those on Direct Pay are offered more consistent support and advice from the CMS, to reduce the currently high drop off figures.

OPFS recommends that the CMS:

- Remove charges for using Collect-and-Pay
- Offering Collect-and-Pay as an option to more parents from the outset where it seems that Direct Pay will be particularly challenging - driven by the needs of families on a case-by-case basis, as opposed to adopting a general policy if dissuading people from using Collect-and-Pay.
- Provide more active and earlier support to parents using Direct Pay where payments are not being made.

8. Close loopholes and reduce the onus on receiving parents

8.1 Under-estimation of earnings by self-employed paying parents is an issue which has been frequently raised by single parents accessing our services and in our recent consultation. This can be a particular issue where parents are self-employed as they can choose to declare a lower income and pay themselves on top of this from dividends. While self-employed paying parents make up just 10% of CMS cases, this group represents 80% of those referred to the Child Maintenance Group's Financial Investigations Unit.¹³

¹³ <https://www.nao.org.uk/wp-content/uploads/2022/03/Child-Maintenance.pdf>

8.2 Receiving parents can raise this with CMS and request an income variation but, as with many aspects of the system, this places the onus on the receiving parent to investigate and report discrepancies themselves. Many receiving parents will not put themselves through this process either because they are unaware of it, because they are unable to devote the time to following it up, or because they have a lack of belief that this process will work based on past experiences with the service. Additionally, as highlighted earlier in this response, parents have raised concerns with us about the risk to their safety of identifying and supplying evidence where domestic abuse is involved.

8.3 One parent who took part in our consultation said: “Process doesn’t work when the paying parent owns their own company or is self-employed. There are too many loopholes and most people in these circumstances end up paying based upon min wage. It seems that no matter how strong the evidence is given in variation forms, diversion of income requests is just automatically rejected. In addition, CMS response times are very long, messages and letters get entirely ignored and staff refuse to provide information about how annual review calculations have been calculated.”

8.4 OPFS recommends that the CMS:

- Require a higher standard of evidence from the paying parent, particularly those who are self-employed, both at the initial point of assessment and at any point where the paying parent declares a change in income.
- Take dividends into account in their assessment wherever possible.
- Review CMS policies on information provided to the paying parent when contacting them regarding any form of re-assessment to ensure that the safety of receiving parents and their children is protected.
- At the very least, ensure that receiving parents are enabled to give informed consent before paying parents are told that they have raised concerns, which would include asking if this might impact on their safety.

9. Improve efficiency of service

9.1 As noted by the National Audit Office, it is difficult to assess questions around the quality of the service objectively because the DWP has not “identified suite of performance measures, management information and benchmarks that it needs to assess whether it is providing a reasonable level of service”.¹⁴

9.2 OPFS’s 2021 report highlighted that 78% of single parent respondents were dissatisfied or highly dissatisfied by the quality and speed of service provided by CMS.¹⁵ The speed of customer service within the CMS was one of the key problems raised in written comments, even by those who were otherwise satisfied with the service. This reflects what we regularly hear through our local support services and national helpline.

¹⁴ National Audit Office, March 2022. ‘Child Maintenance. The Department of Work and Pensions’.

¹⁵ <https://opfs.org.uk/policy-and-campaigns/policy-research/cms-research-2022/>

9.3 One parent told us: “I’ve had to wait more than a year for a response on more than one occasion (despite chasing) which is completely unacceptable. Upon phoning, any random person becomes your case worker and as my case is complex this is soul destroying... The actual running total has had technical issues twice, so I don’t know how much is owed etc and it’s taken MONTHS to sort out. If you don’t chase nothing is actioned. The portal can be like a black hole - you message and get zero response.”

9.4 Excessive delays in the process allow child maintenance arrears to build up, and increase the likelihood of parents dropping out of the system with no arrangement in place. By improving the efficiency of the core functions of the CMS, the need for enforcement action could be minimised.

9.5 OPFS recommends the DWP:

- Provide more resource to the CMS to enable it to deliver services more efficiently.
- Develop transparent performance frameworks for the CMS and gather information to better understand the experiences and circumstances of the families it serves.
- Include within this data on the average time taken between initial contact from parents and full payments being made to the satisfaction of both parties, including the cumulative time in which a case may move from Direct Pay to Collect-and-Pay, where an income variation is requested, or an appeal to a decision put forward.
- Ensure transparency around the CMS’ performance
- Ensure transparency with parents throughout the process.

10. Utilise other collection and enforcement powers

10.1 There are a range of powers available to the CMS which are under-utilised. OPFS would recommend focusing on those powers which serve the specific function of collecting the payments owed.

10.2 For example, we support Gingerbread’s recommendation that the CMS coordinate more with family courts to retrieve payments from parents who are unwilling but able to pay.¹⁶ The Child Maintenance and Other Payments Act 2008 includes a provision which would allow a parent to disclose relevant information relating to family proceedings to the CMS, which would include full disclosure of a parent’s financial circumstances. This provision has never been put into effect, meaning that the present situation requires permission from the court before doing this, which creates an unnecessary barrier. We would argue that this provision should be implemented to enable the CMS to have the most accurate information possible on parents’ incomes.

10.3 We would also view the use of deductions from earnings orders as a more suitable and effective means of enforcement than the proposed curfew orders. This power, already available to the CMS without the need for a court order, requires an employer to take maintenance directly from the earnings of a non-resident parent, and can be used to cover arrears as well as current payments. As of June 2021, 29% of paying parents on Collect and Pay had a Deduction from Earnings Order or Request in place. We would argue that this power could be better utilised in cases where the paying parent is avoiding payment. For parents who are employed (and not self-employed), the use of this measure could avoid any need for the use of more punitive enforcement measures.

11. Supporting behavioural change

11.1 Research for the DWP (2015) into attitudes and behaviours of self-employed child maintenance clients and barriers to paying child maintenance found that there are a number of factors which make non-resident parents less likely to pay child maintenance. This included an inability to afford payments; prioritisation of other bills; a perception that calculations or payment schedules were unfair; a perception that payments were not being spent on the child; resentment towards government interference; negative experiences with the system; and a perception that they were “treated as criminals” by the CMS.

11.2 It is important to take into consideration how actions taken by the CMS are likely to impact on the behaviour of non-paying parents and adopt an approach which is most likely to improve compliance. From our experience and what is known from the above findings, we would suggest that it may be beneficial to provide or signpost to targeted support around debt and money management for separating parents. Ideally, we would like to see resource allocated to this by the CMS, with the intention of preventing non-payment and encouraging a more positive and normalised attitude towards making child maintenance payments.

11.3 If Collect-and-Pay payments for paying parents are to remain in place, we would also suggest using these to incentivise a positive approach to making child maintenance payments, for example by reducing or eliminating charges where payments are made in full and on time.

11.4 Overall, we would encourage using approaches which de-escalate rather than heighten the perception of conflict or punishment associated with the requirement to make child maintenance payments.

Conclusion

It is OPFS's view, informed by single parents, that addressing each of these issues would improve the rate of collection of child maintenance payments for the benefit of children, and would be considerably more effective than the use (or threat of) home curfew orders.

Question 2. Is an accumulated time period of 2 hours a reasonable amount of time before further action is taken?

We have chosen not to respond to question 2 because we oppose the use of curfew orders for the purposes of collecting child maintenance in principle.

Question 3. If the curfew order is breached by 5 minutes or more, a warning letter or call will be made to the paying parent. Is this a sufficient amount of time to allow before contacting the paying parent?

We have chosen not to respond to question 3 because we oppose the use of curfew orders for the purposes of collecting child maintenance in principle.



If you have any questions about anything in this report,
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