Secondary Legislation Scrutiny Committee,
House of Lords,
London, SW1A 0PW.

To the Chairman,

19th July, 2018

Government proposal to write-off child support arrears

Policy Aims
The stated policy objective of the parent Act (the Child Support Act 1991) is to ensure that Non-Resident Parents (NRPs) fulfil their obligations to provide financial support to their children.

Writing off their arrears categorically fails to do this. In fact, the government’s proposals to write off any child support arrears (that isn’t even owed to them) is an open invitation to future recalcitrant fathers (predominantly) to play the system until they are absolved of all financial responsibility for their children.

Inadequate Explanatory Material
Far from being ‘historical’, these arrears are accruing at this moment. The transfer of ‘legacy’ systems is ‘due to end in 2018’. Many assessments made under the 2003 scheme are current. The CSA does not have a process for explaining to debtees how the outstanding arrears can be transferred to the CMS.

Inadequate Consultation.
Using the government’s own figures, an estimated 970,000 women (predominantly) will be affected by these proposals and yet only 24 individuals who responded to the public consultation identified themselves as ‘receiving’ parents – also known as Parents With Care (PWCs).

The consultation ended on 7th February, 2018. Yet the government chose the very day after a NEW minister was appointed, to publish their response. And that same day, they laid their plans before this committee who will consider them on Tuesday – the last day of the present Parliament.

Despite meeting on 20th June, 2018 the Social Security Advisory Committee has not had the opportunity to consider these proposals.

Under these conditions, the best I can do by way of a submission to this committee, is to offer my original submission to the public consultation. All of the points that I made then are relevant, now.
Political/legal importance
During all the time that the CSA has had legal jurisdiction over the courts, debtors have been unable to either assign the arrears to a third party or pursue the debt themselves.

Only now is the government proposing to commence enforcement powers that Parliament gave them a decade ago. So they cannot claim that they have already done all in their power to obtain said ‘historical’ arrears.

Finally, the ability of self-employed NRPs to hide their wealth was raised by the Work and Pensions Committee Inquiry into the CMS last May (https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/587/58702.htm) and the government’s response to their findings was considered ‘disappointing’ by the Chairman, Heidi Allen MP (https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2017/child-maintenance-government-response-17-19/).

Far from addressing this problem, the government’s proposals relate only to sole traders and unlimited companies. And even then, the notice they are required to give joint account-holders is quite enough time for the funds to be relocated.

On the contrary, the government’s priority seems to be to delete all evidence of the inability of the Child Support System to do the job for which it was set up. This has profound implications for a future Public Inquiry or, indeed, any private legal action brought against them.

I wish you had the time to hear my story – twice my son’s father has been found by the Tribunal to be ‘diverting’ his income and each time he owed tens of thousands of pounds, when his assessment was recalculated after the Tribunal’s findings. And yet, his current assessment allows him to run up further arrears at a rate of £200 per week while he repays, interest-free, his existing arrears at a rate of £1200 per month. A third appeal is in train but originally, the CMS allowed him to ‘volunteer’ to pay just £50 per month – which would have taken 60 yrs to clear!

Re-establishing the ability to appeal on ‘lifestyle’ grounds will make no difference at all when the CSA/CMS does not use their discretion properly. Upon furnishing them with a copy of the actual receipt for the purchase of a luxury yacht, for which my son’s father paid £254,000 cash, their response was to reduce our income yet further as it was not considered an asset for the purposes of the assessment rubric! Clearly, this was never intended by Parliament.
The government’s proposals are disingenuous. If you allow them to go any further, the Secretary of State will be able to claim that she has responded to public concerns about her department while doing nothing to improve it.

Sincerely,

Joanna Archer
Enc.
The writer has personal experience of 12 yrs of Child Maintenance regimes; the CSA, CMEC, CMO/CMS, ICE, FTT (Social Entitlement Chamber) and Administrative Court.

‘Historic’ debt

The government’s proposals only relate to outstanding arrears on cases in the 1993 and 2003 schemes (see para.97), some of which dates back 24 years (see para.83). That presumably also includes all arrears on CSA cases right up until the last one has been transferred to the CMS, which hasn’t happened, yet. So, some of this debt is accruing at this moment and is not ‘historical’ at all.

Summary of the government’s proposals

Of the total £3.7bn of outstanding debt, £2.5bn is owed to parents, equating to approximately 970,000 cases (see para.31).

The government is proposing to write off all debts below £65 unilaterally – which equates to approximately 495,000 cases (see para. 113).

The government is also proposing to write off all debts less than ten years old that are below £500, and all debts that are more than ten years old and below £1000, unless the debtee makes representation within 60 days – which equates to a further 405,000 cases (see para 115). This is because, based on undisclosed ‘business assumptions’, the government expects just 90,000 cases to proceed to ‘further collection attempts’.

For comparison, student debt is not written off for between 25 and 35 years.

Of the £2.5bn currently owed to parents, the government expects only £415million (see para.115) to remain, after this exercise – just 16.6%

In brief, the government proposes to write off the debts owed to 880,000 people (that’s 970,000 minus 90,000), predominantly women, without making any ‘further’ effort to collect it.

The government proposes to assume that if a debtee does not make representations after 60 days that they are happy for the debt to be written off.

The government proposes ‘not to include the debt figure in letters where the case is more than ten years old’ (see para.106) ‘as it is likely that the figure we hold is incorrect!’ This is a most peculiar statement as the government itself cannot possibly know whether or not the debt is £1000 or more.
Implications of the government’s proposals

Disproportionate impact on women
Firstly, the government has a legal duty to consider how this policy may disproportionately affect women, the Equality Duty (see the Equality Act 2010).

These are women, predominantly, who may have fallen into debt themselves in order to provide for their families the resources that the non-resident parent has not (I don’t refer to them as the ‘paying’ parent, as clearly they are not). Moreover, they almost certainly will have paid interest on their own debts, whereas no interest has been applied to the child maintenance arrears (some of which is over a decade old) at all.

For comparison, the rate of interest on Student Loans is up to 6.1% whereas debts to the government accrue interest at the Statutory Rate of Interest which is 8%.

While the outstanding arrears may appear small, their relative worth to the debtees themselves is much greater.

It may not be efficient for the government to pursue a debt of £500, but they have removed the ability of the debtee to pursue the debt themselves, possibly more efficiently.

Indeed, while all these cases have been in the hands of the CSA (and other reincarnations), those families have been denied the right to apply to the courts for a proper financial settlement.

But quite apart from the pecuniary implications of the government’s proposals, these debts represent years of anguish to the debtees. Years of having to deal with the ineptitude, even incompetence, of the government’s successive child maintenance regimes. This proposal is no less than a kick in the teeth for 880,000 women who have shouldered the bulk of the responsibility for their children entirely on their own, and sends an unambiguous message to 880,000 recalcitrant fathers that, having strung the whole process out for years they will now be rewarded, and relieved of all financial responsibility for their children.

It is irrelevant how old those children are, now. Imagine how they have suffered and how much £2.5bn could have relieved that suffering had it been available while they were growing up. What will they make of this proposal?

Opt-in versus Opt-out
The government admits that in their experience they have ‘unreliable data’ for ‘lots’ of parents in these cases (see para.17). How, then, can they be sure that all debtees who will be offered a ‘final chance’ to request further enforcement action, will actually receive any letters that they send? They can’t. Who knows what proportion of debtees who might have the right to make representations will never know of the government’s proposal to write off the arrears?

In effect, the government will assume that if these debtees do not make representation that they are implicitly agreeing to the debt being written off. This is not a safe assumption. Even if a third of debtees in the part-payment trial wanted their debt written off (see para. 90), no reason is given and it is very likely that, on the basis of their previous dealings with the CSA, they simply do not want to go through it all again.

But, at the very least this data confirms that two thirds of the debtees who never receive a ‘final chance’ letter from the government DO want them to pursue the debt further.
Criteria for refusing further enforcement activity
The government proposes to ‘perform a number of checks to establish whether there is a realistic chance of collection’ (see para.19). But they do not elaborate on this anywhere in their consultation document.

If there was an interim maintenance assessment in place, will that preclude a case from further enforcement action, as implied by para.81?

If a payment has never been received, or has not been received since before 1 January 2012, will that preclude a case from further enforcement action, as implied by para.82?

If the child is older than 20 years old, will that preclude a case from further enforcement action, as implied by para.83?

Clearly, the government has not used their existing enforcement powers fully, to date (see para.71). This is demonstrated by the fact that only now are they proposing to ‘commence’ powers that they were given by Parliament a decade ago (see paras.15 and 72).

And yet, there is a huge potential for the government to unilaterally decide NOT to take ‘further’ enforcement action on many of the cases where debtors have the right to make representations. And there is NO ability to appeal this decision.

Future non-compliance
Clearly, the government’s proposal to write off £2.085bn (£2.5bn minus £415million) of outstanding child support arrears (that isn’t even owed to them) will totally remove any deterrent to current and future deadbeat dads.

Recommendations

Opt-out
The government should assume that all debtors wish to make further representation unless they explicitly opt-out.

Further action post-representation
The government should clarify what action has already been taken to enforce all debts less than ten years old that are below £500, and all debts that are more than ten years old and below £1000.

The government should list the criteria that they intend to use to determine whether or not to take further action on cases post-representation.

The government must explain what appeal process is open to a debtor post-representation, if the government decides there is no realistic chance of collection.
The debtee must be able to enforce the debt directly
If the government wishes to relinquish responsibility for collecting debt, they must confer on the debtees the ability to enforce the debt via court proceedings, as is the case in Australia, or assign the debt to a third party, either in whole or in part.

The government should pay the outstanding arrears
As the government admits that ‘policy, operational and IT issues’ have ‘contributed to the build-up of considerable arrears of unpaid maintenance’ (see para.31), it is surely incumbent on them to remedy the situation.

And whatever attempts they have made to recover these arrears, which isn’t explained in their consultation document, have been singularly ineffective. They were unable to explain to the Work and Pensions Committee Inquiry into the CMS, what proportion of the debtors has ever been prosecuted for child support evasion.

The government anticipates saving £90m between 2017 and 2023 (see para.98), which doesn’t quite accord with the previous statement that they expect to incur £30m per year for decades (see para.93). Nevertheless, they will save themselves the cost of transferring all the debt to the CMS (£230m – see para.94) and the estimated £1.5bn that it would cost to attempt to collect the whole of the £3.7bn CSA debt (see para.84), £1.2bn of which is owed to the government (see para.31) and which they intend to write off, in full.

This is £1.2bn which is actually owed to the tax-payer! So, if the government can afford to waste £1.2bn of taxpayers’ money because they deem it a further waste of tax-payers’ money to enforce the debt, then they can also afford to compensate the people who are owed the remainder of the £3.7bn of outstanding debt. It isn’t good enough, and is quite possibly illegal, for the government to propose to unilaterally cancel debt owed to anyone else.

These proposals do not contain any estimates for the cost of writing to 405,000 people (once, at least, and possibly twice) and then dealing with the unknown number of resulting representations.

And it is impossible to calculate the inevitable future cost of dealing with increased numbers of recalcitrant fathers who will interpret the government’s proposals as a licence to play the system!

So, there is an overwhelmingly good case for the government to simply send a cheque to each debtee for the full amount of the arrears owed to them, out of the savings they will make by carrying out these proposals, and out of the fines and collection fees generated by the CMS.