



The Law Society

**Law Society Consultation response to the Child  
Maintenance Enforcement Commission, *Supporting  
Separating Families; Securing Children's Futures***

November 2012



## Consultation questions

**Question 1** Is our 'self declared' approach, guarantee of no contact with ex-partners and exemption from the upfront charge sufficiently inclusive to ensure that there are no barriers to victims of domestic violence?

The Law Society welcomes the self-declared approach to domestic violence, and the fact that domestic violence victims will not be expected to pay an application fee. It also welcomes the guarantee of no contact between victims and aggressor when arranging payment.

It is worth noting that the self-certification approach will only allow a victim to avoid paying the application fee. The victim will then be referred to *'either an appropriate voluntary sector support service for advice or to the appropriate police service so that the incident can be properly investigated'*.

Questions remain as the outcome of the referral to support services or the police. Will payment of child maintenance be suspended pending the investigation of the claims? If so, will this lead to delay in the victim receiving payment? If not, is there a danger that self-certification will be used as a way to bypass the application fee?

**Question 2** Is seven per cent an appropriate level of charge for this personalised service?

The Law Society is still not convinced by the rationale for introducing charges on the applicant parent. The consultation states that *'we believe that it is necessary in order to provide an incentive for people who can, to come to their own arrangements, with the wider benefits that these types of arrangements can provide for children'*. Charging is therefore being proposed both as an incentive for parents to use family-based arrangements, and as a disincentive to use the statutory scheme.

This creates a difficult situation. Parents who wish to access the statutory scheme are usually experiencing a difficult and tortuous relationship breakdown. For the incentive to be effective, the percentage must be substantial, as separating parents will not suddenly resolve entrenched and often bitter disputes because of a few percentage points. A high percentage, however, would be detrimental to the resident parent and would severely impact on the welfare of the child.

There is no simple way to resolve this tension. The proposed 7% charge is both too low to create a real incentive, and too high a cost on the resident parent.

It would be easier to understand if the rationale for the charge was to fund the smooth running of the statutory service, rather than as an incentive.

**Question 3** In focusing on the severity of the enforcement action, rather than the actual cost, have we adopted the right approach to enforcement charging?

The Law Society supports the focus on the severity of the enforcement action. Deterrents for non-residents parents who fail to maintain their child maintenance should be effective and proportionate, something which the proposals seem to achieve.

**Question 4** Have we taken the right approach to enforcement charges within the payment hierarchy?

The Law Society supports the approach taken by the CMEC to enforcement charges within the payment hierarchy.

**Question 5** In proposing a 30-day notice period in reactive case closure, have we reached a reasonable balance between the interests of new applicants in having a short notice period and the interests of existing clients in having an extended period?

The Law Society is concerned that the transition of cases from the old CSA regime to the new CMEC one will not be automatic. While the Law Society appreciates that some parents may decide to switch to family-based arrangements, it seems as though these will be a minority.

The default option should be for transfers to be automatic, with the required level of charging being applied, and for parents to be allowed to 'opt-out' should they be able to agree on a family-based arrangement.

**Question 6** How can we best harness the expertise of the voluntary and community sector and other partners to ensure that the right help is provided to clients during the period of case closure?

N/A

**Question 7** Is six months a reasonable period for both parents to consider their options for child maintenance in proactive case closure cases, where we end liability in the existing CSA case as part of the process?

The Law Society believes that 6 months is a reasonable period, but would prefer a system of transferring cases as the default option.

**Question 8** How can we ensure that voluntary and community sector and other partners are aware of the closure process to enable them to provide support for parents to reach their own collaborative, family-based arrangements?

N/A

**Question 9** Once cases being managed manually have been closed, we are proposing to closing the remaining 'on system' cases on the basis of 'oldest first'. Is closing on system cases on the basis of age of case the right approach?

N/A

**Question 10** What evidence should the Government consider as part of the 30-month review? Which variables and criteria would you consider to show success of the new scheme?

The following criteria would be useful in determining the success of the scheme:

- Proportion of parents who enter into family-based arrangements.
- Proportion of parents who switch from the old CSA system to family-based arrangements
- Proportion of parents who pay the maintenance on time
- Clearance of backlog cases
- Proportion of non-resident parents who own money, or those with maintenance debt

- Percentage of non-compliant non-resident parents.
- Reduction in child maintenance arrears.