



**Executive
summary**

**Children
deserve
more**

**Challenging child
maintenance
avoidance**

About Gingerbread

Gingerbread is the national charity for single parent families.

Since 1918, we've been providing single parent families with expert advice, practical support and tailored services, as well as campaigning to make sure single parents' voices are heard.

It has been a longstanding goal of the organisation to help achieve an effective child maintenance system in this country so that children growing up in separated households are not financially disadvantaged as a result, and that both parents contribute their fair share to children's upkeep on a regular and sustained basis.

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Most importantly, Gingerbread would like to thank the parents who have shared their stories.

Executive summary

“If I was flush and having an easy time it wouldn't bother me, but I am not. I know I am not alone in what I am experiencing and just don't want to let my children down.”

“The way the system works, he is still controlling me and I am still a victim six years after leaving him. I just want to be a mum, just to live.”

This report follows the journey of five single parents and their fight to get their ex-partner's true financial resources taken into account for child maintenance. It shows how the rules, and the way they are administered by the Child Maintenance Service (CMS), make it far too easy for wealthier paying parents and those who are self-employed to minimise the financial support they pay for their children. In contrast, the system makes it as difficult as possible for receiving parents to challenge the CMS calculation they are given.

The parents featured in this report not only had to take on their ex-partner, but the CMS itself in their struggle to get proper levels of maintenance for their children. In the face of official discouragement and rejection, the process left them stressed, exhausted and broke.

The reforms to the new child maintenance system have prioritised cost savings and administrative convenience above ensuring that support for children reflects parents' ability to pay. Gingerbread argues that far more weight needs to be given to the interests of children, to ensure that our statutory maintenance scheme works for all those who need it.

The new standard CMS calculation falls short in dealing with the self-employed and those with assets

“I questioned how...[the CMS amount] could differ so wildly. I was told, ‘We are not the CSA’...I asked what could be done and was told ‘nothing’.”

A new way to calculate child maintenance was introduced in 2012. Unlike under the former Child Support Agency (CSA), which used information about net current earnings supplied by the paying parent, the standard CMS calculation is now based largely on a paying parent's gross taxable earnings or profits in the latest year as reported to HM Revenue and Customs (HMRC). With estimated administrative savings of £93 million per year as a result, the new standard calculation is cheap, fast and simple to administer. It works for the majority of child maintenance cases, where the paying parent is supporting themselves simply through earnings. However, it still falls short when it comes to paying parents who are self-employed or those who support themselves from assets rather than income. Where a paying parent has some flexibility in how they choose to take (or not take) their income, arrange their financial affairs and report their money to HMRC for tax purposes, the standard calculation can result in only a fraction of their money being taken into account when deciding how much child maintenance they should pay.

The routes to challenge a standard calculation are hidden and hard to navigate

“Every person I spoke to...believed my claim that the calculation wasn't accurate, but their hands seemed to be tied by red tape...even after some [CMS staff] have responded enthusiastically, their efforts seem to fade away.”

Rules do exist that allow the CMS, if asked, to take account of a paying parent's 'unearned' taxable income such as dividend and rental income, as well as income unreasonably 'diverted' to reduce the amount counted for child maintenance. It is also possible to get the CMS to calculate child maintenance on the basis of current income (if higher) rather than on a previous year's tax data from HMRC. However, considerable obstacles lie in the way.

The first is simply finding out how what can be done. Receiving parents are often left in the dark on ways to challenge a calculation, with little help from the CMS. Second is the heavy burden placed on receiving parents to investigate and identify the additional income they believe the paying parent has. This can take time, persistence and much effort – not always easy when struggling on a low income, raising children. It is perhaps unsurprising that many applications to review a calculation are turned down because of the difficulties in finding the evidence.

It is often only if the receiving parent persists, ignores repeated CMS rejection and goes through the long drawn-out appeals process, that they stand any chance of success. With an often hostile paying parent and no guarantee of a positive outcome, the mental and physical strain on receiving parents can be immense. “I have been fighting so much for so long that I wasn’t taking sufficient care of my own health...I lost the energy to fight my CMS case so well – and the CMS don’t do much for those who are not chasing them every other week.” Many give up.

HMRC’s new role in determining child maintenance is inadequate

“I then discovered that [the] CMS do not pursue investigation where HMRC do not have records and the single parent has to be the one to report this to HMRC.”

HMRC’s new role in helping to determine child maintenance is achieving considerable savings for the Department for Work and Pensions (DWP). But, while the involvement of HMRC may keep costs down, it does not ensure children in separated families get the maintenance they deserve. Under the present rules for calculating standard child maintenance, HMRC does not, as a matter of course, provide the CMS with data it holds on a paying parent’s unearned income. It becomes a matter of hit or miss, as to whether a receiving parent knows (or can find out) enough about the receiving parent’s financial circumstances to convince the CMS to go back to HMRC to ask for it.

Meanwhile, too little is being done to tackle paying parents who do not declare their full earnings to HMRC and who, as a result, end up paying less child maintenance than they should. It might have seemed an easy and cheap solution for the CMS to simply tell receiving parents to report the problem to HMRC. But in practice, HMRC has other priorities than investigating paying parents who are cheating their children as well as the tax authorities. Receiving parents can end up stuck between the CMS and HMRC with neither prepared to take action.

More fundamentally, tax relief rules – which determine what amount of the gross profits of a business are taxable, and therefore count for child maintenance purposes – are neither designed nor intended to produce an indicative figure for the amount of income a paying parent has to support a child. This can lead to a paying parent’s primary responsibility for their child’s day to day needs being treated as secondary to decisions taken for their own long-term business advantage. In one case, child maintenance was drastically cut back, because it later turned out that the paying parent had bought a truck.

Key ‘anti-evasion’ safeguards have been dropped

“I am constrained to mention an extraordinary state of affairs arising from recent amendments to the child support legislation...it is possible, as in this case, for a father to live on his capital, which may be very substantial indeed, and to pay no child maintenance at all.” **Mr Justice Mostyn, 2017**

Under the CSA, decision-makers could attribute an income to a paying parent where there was a glaring gap between actual lifestyle and their declared income, or where they were found to possess assets over £65,000. These provisions were scrapped on the basis that they were too hard for parents and caseworkers to understand, and difficult to administer. This has made it easier for those determined to avoid child maintenance to do so, in a perfectly lawful manner. In one case in the report, a paying parent with very considerable assets and no taxable income was required to pay no maintenance at all by the CMS. As the judge commented in related proceedings involving the same parent, this cannot be right.

The stories in this report are typical of many – and numbers are increasing

The standard calculation may result in reasonable levels of maintenance in straightforward cases, but the children of self-employed parents and parents with more complex finances make up a significant minority of the CMS caseload – and one that is growing.

Just how many parents and children are affected? Official figures suggest self-employed paying parents make up around 8 per cent (nearly 26,000) of current CMS cases. This is almost certainly an underestimate. The figure excludes 20 per cent of cases where the DWP cannot verify employment records. Also excluded are parents recorded as employed (rather than self-employed) by the CMS, but who actually own the company paying their wages and take most of their profit in other forms. With self-employment on the rise, and higher-skilled, higher-paid sectors making up nearly 60 per cent of growth since 2009, this group of parents is only likely to increase. There are also a further unknown number of paying parents who hold resources outside HMRC's taxable income records (eg assets or income from ISAs), which are not counted for child maintenance.

And even while children whose parents are self-employed or who have substantial assets remain a minority, the statutory maintenance service still matters in protecting their interests. Gingerbread challenges the DWP's view that their need for financial support should be sacrificed as long as the system works for the many. The model itself is wrong if paying parents with ample means to support their children are allowed to escape contributing their fair share.

Some improvements are being made but a comprehensive strategy is needed

In a belated but welcome move, in late 2016 the DWP announced it was introducing a specialist Financial Investigations Unit (FIU) into the CMS on a pilot basis, to be rolled out to all CMS teams by June 2017. If given sufficient resources and expertise, and prepared to use the considerable investigative powers available to it under the Child Support Act 1991, the FIU has the potential to make a difference. However, more significant change is needed.

Sadly some paying parents will always try hard to avoid or evade their child maintenance obligations, but Gingerbread argues the **DWP should have a comprehensive anti-avoidance and evasion strategy in place to ensure that their efforts do not succeed.**

As part of that strategy, Gingerbread recommends :

- 1. Routinely count all income held by HMRC:** include a paying parent's unearned as well as earned income in HMRC data passed to the CMS for a standard calculation.
- 2. Reintroduce anti-evasion safeguards:** assume a notional income where a paying parent has substantial assets or a lifestyle inconsistent with their declared income.
- 3. Address the information deficit:** ensure that receiving parents are fully informed and supported in their options to challenge a paying parent's declared income, including getting the FIU involved.

In the longer term:

- 4. Carry out a joint DWP/HMRC review:** review with the help of external stakeholders, the full implications of relying on HMRC to determine levels of child maintenance.
- 5. Better coordination with the family courts:** improve information sharing between family proceedings and the CMS and amend the Child Support Act 1991 to strengthen the use of the family courts to determine child maintenance, where appropriate.

Gingerbread

Single parents, equal families

Gingerbread

520 Highgate Studios
53-79 Highgate Road
London, NW5 1TL
Tel: 020 7428 5420

www.gingerbread.org.uk

Single Parent Helpline

0808 802 0925

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