

## Child support reform in the UK

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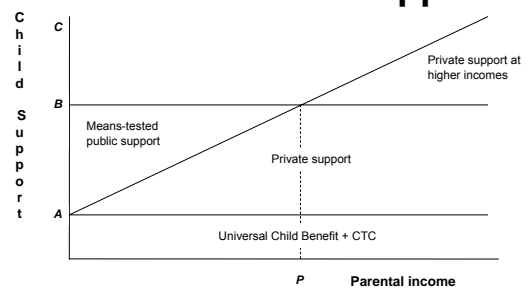
## My CS background

- qualitative research (*Child Support in Action*, Hart Publishing, 1998)
- quantitative research (DWP Research Report No 152, 2001)
- legal research (*Child Support Law and Policy*, Hart Publishing, 2006)
- judicial experience (deputy Child Support Commissioner since 2001)

## In defence of child support

- children have basic, developmental and autonomy interests (John Eekelaar)
- children have a fundamental human right to support (owed by society)
- children also have a correlative-claim right to support (owed by parents)
- child support should be seen as above all the child's right, and only then a parental duty

## A model of child support



## The child's right to child support

The existence of this right reflects both:

- ethical considerations
- public opinion e.g. ONS Omnibus Survey 2004: 81% agreed that NRPs should always be liable for child support

## Defining the child support pie (1)

“Suggesting a child support award involves more than an allocation; it requires an initial qualitative decision about what is to be allocated and a decision about how its amount should be set.”

N C Schaeffer, “Principles of Justice in Judgments About Child Support” (1990) 69 *Social Forces* 157 at 171

## Defining the child support pie (2)

- the total amount a child needs should be allocated between the parents
- or
- the child is entitled to a specific share of each parent's income

## Why should the State be involved?

- child's right to child support
- establishing norms for support
- International obligations (UNCRC)
- pledge to eradicate child poverty
- other social policy objectives

## International obligations

Contracting states must "take all appropriate measures to secure the recovery of maintenance for the child from the parents"

UN Convention on the Rights of the Child  
Article 27(4)

## The child poverty agenda

"Tackling poverty and promoting equality of opportunity lie at the heart of our approach to government; they define our policy agenda and drive our vision of the future."

DWP, *Making a difference: tackling poverty – a progress report* (March 2006)

## Other social policy goals

- welfare to work agenda
- impact on children's outcomes
- encouraging post-separation contact
- reducing incidence of separation
- discouraging teenage pregnancy

## Child support good, CSA bad?

So how do we deliver the goal of improved child support?

- Private ordering
- Court-based adjudication
- Government bureaucracy

## Why private ordering?

- dominant theme in family law and practice today
- parties' ownership of outcomes encourages compliance
- reduces party and State costs

## The problems with private ordering

- shortage of independent, expert advice
- existing power imbalances reinforced
- long-term viability of private CS agreements

## Private agreements – or settlements?

“They did not feel in control of the process or the outcome. No one felt empowered. Perhaps a better term for describing the outcome is a settlement. This better captures the sense of reluctance, duress perceived absence of reasonable alternatives, and a best possible and often grudging solution in the circumstances.”

Fran Wasoff [2006] *Journal of Social Welfare and Family Law* 237 at 247

## The CSA and the courts

### Model One

- CSA deals with benefit cases
- Courts deal with private cases

### Model Two

- Courts deal with assessment
- CSA deals with collection and enforcement

## Model One: some problems

- if child support is the child's right, the PWC's status is irrelevant
- the (relatively) successful overseas child support schemes are **universal** schemes
- boundary problems as PWCs' status changes: see Finer Report

## Model Two: some problems

- will private ordering deliver?
- capacity of the courts to cope with the case load?
- what happens to reviews for changes of circumstances and up-rating?

## Government bureaucracy

Managing the caseload: perhaps simplification in the 2000 Act did not go far enough

- abandon the DSS week-by-week mentality
- rethink the CSA merry-go-round of revisions and supersessions

## Dealing with disputes

- the fragmentation of appeal rights in child support disputes
- the salami system of specialist child support adjudication: “tribunals are not in the business of dispute resolution. Instead they offer a further stage in dispute processing.”

*Child Support in Action* (1998) at 154

## The Commissioners' view

The CSA decision making and appeals regime has produced “institutionalised delay and uncertainty” and provides “plenty of scope for parents to find themselves going round in circles”.

Decisions *CCS/1535/1997* and *R(CS) 3/01* per Mr Commissioner Jacobs

## An American perspective

“A strong child support program may change the way society thinks about child support. As in the cases of civil rights and smoking, a persistent effort over a period of years may convince millions of Americans... that making payments is a moral and civic duty.”

US Congress: House of Representatives, Ways and Means Committee, *Green Book 2004* at 8-68

## An Australian perspective

“Where tax collection authorities are viewed as oppressors, tax cheating will not be shamed.”

John Braithwaite, *Crime, Shame and Reintegration* (1990)

## Compliance strategies

- deterrence-based approach
  - tougher sanctions?
- compliance-based approach
  - DEO as collection tool not sanction
- consensus-based approach
  - reinforcing social norms (new formula)
  - child support as the child's right