

Evidence submitted to the Social Security Committee

Child Support Reform

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In a private capacity

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1 A Fair Shared-Care Formula for Child Support

1.1 *The principles of child support*

It costs a lot of money for a parent to care for a child while the child is staying with that parent. It is justice for the other parent to contribute financially towards that care.

Where one parent cares all the time, and the other never cares directly for the child, the latter must be encouraged or constrained to pay a fair share. The White Paper states that this should be 15/20/25% of net income depending on the number of children. I don't intend to discuss that amount here.

The White Paper, like the Green Paper before it, totally forgets to apply the same principles and logic to the case where at different times both parents directly care for the child for significant amounts of time. It tried to handle shared-care as an adjustment (a "fudge") to the non-shared case. This inevitably fails.

1.2 *The key to a fair shared-care formula*

The most important need for a shared-care formula is not to think that there is a person who is a "parent with care" and a person who is a "non-resident parent". These concepts were intended to cater for the case where one parent really is separated from his/her children, and they lead to a range of anomalies when parents share care.

Instead, each parent in turn takes on the role of parent with care, while for that time the other parent is an absent parent. Each parent with care incurs the direct costs of the child for that period, while each absent parent has a continuing financial responsibility during that time.

The second key need is to accept that: ***it is impossible to have a fair shared-care formula that doesn't look at both parents' income. Impossible!***

The key is "at any time, the parent who **isn't** caring for the child needs to be paying the parent who **is** incurring this cost". And the White Paper already defines how much that should be: 15/20/25% of net income for the period concerned.

1.3 The fair shared-care formula itself

Start with the chosen formula for the non-shared case (eg. 15/20/25%, or any other chosen formula), then:

- For the period of time that the mother is absent, assess her liability according to this formula. (Eg. 15% of her net income over 3/7 of a year, if she cares for 4 days & nights per week).
- For the period of time that the father is absent, assess his liability according to this formula. (Eg. 15% of his net income over 4/7 of a year, if he cares for 3 days & nights per week).
- The difference between these amounts determines who pays whom, and how much.

The money “follows the child”. There is no need to invent a modification to the basic formula – simply apply the basic formula consistently to both parents.

This is not novel – this principle is used in many other nations and states (see later).

1.4 The consequences of applying this fair shared-care formula

(Although they are inappropriate, this section uses the term “PWC” for the parent who cares for most time, and the term “NRP” for the parent who cares for least time).

- If the parents don’t share care, this formula works exactly like the White Paper’s non-sharing formula.
- If the PWC earns a lot less than the NRP, for example is on benefits, the liability falls by about **one-seventh** per night, as in the White Paper – so the benefit saving is the same. With a PWC on benefits this is financially reasonable from the children’s point of view.
- If the PWC and the NRP earn about the same amount, then the effect is to reduce the maintenance liability by about **two-sevenths** per night. This has no impact on the benefit saving, because *neither parent is on benefits*. The distinction between being PWC and NRP where there are more-or-less equal amounts of caring becomes insignificant and not worth behaving badly over.
- If the NRP earns a lot less than the PWC, for example is on benefits, then in fact the net effect is likely to be that the PWC will pay the NRP. This will often provide a benefit saving that is unique to this proposal. This is probably necessary if the NRP gets no benefit assistance for caring for the children for (say) a couple of nights per week.

It is clear that this formula tends to favour the poorer parent, whether that is the PWC or the NRP. It provides the maximum amount of benefit saving, and “smoothes” the money available for the parents to care for the child. The latter reduces the impact on the child of transferring between the richer and the poorer household – it will help prevent the children being alienated as they move from better-off PWC to poor NRP.

1.5 How much does it cost to administer?

Fairness and justice ought to be higher priority than administration costs, but the question will inevitably be asked, and needs a reasoned answer.

In the cases where there is no shared care, or the PWC is on benefits, the administration cost is the same as the White Paper proposal. These are probably the majority of cases. It is easy to check from the Department of Social Security’s Departmental Central Index (DCI) computer system whether the PWC is on benefits.

So any extra cost only applies where the PWC earns and shares care. These are *private cases*, of course, and eventually the CSA will charge a service fee. It may even make a profit! (The White Paper attempts to duck the unfairness in private cases on the grounds that there is no need for the parents to apply for maintenance. But why expect a parent who can benefit from an unfair formula to forego the chance?)

But the extra administration cost will anyway be small. It requires that the PWC’s net income & number of other children in the household be identified. Since these are private cases, the claimant, typically the PWC, will not be reluctant to provide this information, and indeed will normally be eager to hurry the claim. This cost does not resemble the administrative costs of the current scheme. They are more like the costs of administering Income Support or Family Credit, which have vastly lower overheads and vastly faster response times than the CSA.

There is no excuse to make bad law on the grounds of administration cost, especially since the benefit saving described earlier will probably more than compensate for it!

1.6 Who are the winners and losers?

The obvious question is – who loses? The answer is – PWCs who share care and earn a significant amount of money currently get an unfair bonus from achieving the title “PWC”, and with this formula lose that unfair advantage.

According to the White Paper, they should not only get Child Benefit (which the NRP doesn’t), but also a substantial proportion of the NRP’s income even where care is shared. This fair shared-care formula requires them for the first time to be financially responsible for the child while the NRP is caring. They will typically still receive child support, of course, but it will reflect the true savings to them from the caring performed by the NRP, and they will themselves have to recognise their own financial responsibility while they are not directly caring for the children.

Apart from them:

- the children win, because with the fair shared-care formula money tends to be transferred from the better-off to the poorer-off household specifically for the children;
- NRPs who commit themselves emotionally as well as financially to their children win, because their assessment fairly recognises their increased direct cost of providing for the children, as well as the PWC's reduced costs while the children are not there;
- taxpayers probably win, because this proposal transfers money from the richer to the poorer household under more circumstances, and so even an NRP on benefits will sometimes receive payments which reduce the benefits spend;
- and family life probably wins, because there is less financial incentive to separate when both parents want to share the care of their children.

1.7 What do other countries do?

A number of enlightened nations and states have approaches similar to this proposal. It is not a radically new approach, but one for which there is practical experience. These other countries include:

- Australia;
- New Zealand;
- United States of America – at least in the following states:
 - Alaska;
 - Indiana;
 - Kansas;
 - Montana;
 - Nebraska;
 - New Mexico;
 - South Carolina;
 - Wisconsin.

All of these territories cater for shared-care by examining the liability that each parent has towards to the other, then taking the difference between them.

The UK is in danger of becoming one of the less enlightened nations as far as supporting the assertion “children are entitled to the emotional and financial support of both parents” is concerned.

2 Commentary on Chapter Seven of the CSA White Paper

2.1 *Justification for criticising the White Paper*

The objectives of the White Paper are accepted. Both parents must satisfy their financial responsibilities to their children, and must not leave the children to be brought up in poverty or hand the whole task to the taxpayer. The system that administers this must be efficient and effective,

Criticism here of the White Paper is not criticism of these objectives. It is criticism of the White Paper's failure to address these objectives fairly, or at all.

The purpose of this section is to show by commentary that the White Paper fails to identify a sensible, rational, fair shared-care formula. (All the criticisms here are catered for by the fair shared-care formula described earlier).

This section deals first with the general formula for shared-care, for example where the caring proportions are perhaps 2 nights to 5 nights per week. In some cases, the White Paper's own statements contradict its proposals.

Then it deals with the special case of exactly equal shared-care. Here the White Paper defies rational analysis, but an attempt is made.

All of the quotes from the White Paper are from **Chapter Seven: "Contact and shared care"**. Quotes and section numbers are shown thus:

"Quote" [nn]

(Examples are sometimes given in which a parent has £233 net income per week. This is simply a convenient quantity where the assessment for one child is £35 per week, or £5 per day).

2.2 *Summary of the issues*

1. With a sensible formula, in all cases it ought to be possible to match the behaviour of the formula with the need to pay for the children.

Instead, one issue is that while the White Paper makes some sensible statements about what it is trying to do, it often follows these with non-sequiturs. If those sensible statements were followed to their logical conclusion they would actually lead to policies which were different, even opposite, to those proposed.

One example *out of many*: the White Paper says “the cost of keeping a child is not necessarily greatly reduced if the child spends several nights away from home”. In other words the greatest part of the cost is caring at all, then the cost varies by a smaller amount. So how can it justify reducing the NRP’s assessment by just one-seventh for the first night of care? Or if the NRP is on benefits, by restoring the NRP to benefit level, without any thought of how an NRP on benefits can afford to care for children even for one night per week without extra help?

2. When a parent cares directly for a child, there are two separate consequences: that parent has extra costs; and the other parent has fewer costs. Both must be taken into account, but this proposal doesn’t do that. All it is really doing is recognising the reduced cost to the PWC because someone else has the child for a time. It doesn’t recognise the increased cost to the NRP, which neither the PWC nor the taxpayer help with. (The NRP is truly abandoned while caring for the children).

Obviously, the White Paper only reached the above conclusions by considering just the cost to the PWC and not to the NRP.

3. Another issue is that the White Paper is rightly keen to reduce benefit spend, but then doesn’t follow through by identifying who, if anyone, is actually on benefits. It assumes that the PWC is on benefits and the NRP is earning, and tries to reduce benefit spend for that case.

But neither of these assumption is generally true, and this misses other opportunities for benefit saving while introducing a distortion which proves massively unfair where one or both of these assumptions are untrue.

4. Finally, the White Paper tends to look backwards at the nature of post-separation families up to now, instead of looking forward to the nature in (say) the 10 years after the new scheme is implemented. It also puts too much emphasis on the condition immediately after separation, and not enough on how that family changes months or years later.

The target should be “two parents earning and sharing care”, with a CSA formula to match, not “mother on benefits, absent father”. The latter will still occur, but is catered for satisfactorily anyway with a fair shared-care formula.

2.3 Flaws in the basic modification for shared care

“We suggested reducing child support liability by one-seventh for every night that children spend with their non-resident parent.” [13]

This one-seventh reduction, perhaps superficially plausible, leads to very strange and unfair results.

Imagine a separated mother and father, each earning about £233 per week. At first, the mother cares for their child for 5 nights per week. She receives £25 per week from the father who cares for the other 2 nights per week. (He would pay £35 if he didn’t care at all).

Now they change the caring arrangement, and she cares for 4 nights per week. She now receives £20 per week. The White Paper believes that this one night change is worth a swing of £5 in assessment.

Now they change the caring arrangement once again. She cares for 3 nights per week instead of 4. Does this mean that her payment reduces to £15 per week, a swing of £5 for that extra night? No!

Now she is the NRP, and required *to pay* £20 per week! The White Paper says that her costs haven't changed much, yet that one night costs her £40 per week! So some nights are worth £5 per week in child support, others are worth £40 per week!

What is the difference? Clearly it is nothing to do with the costs of children for one night, hence nothing to do with child support at all. It is to do with being lucky enough to have the title "PWC" rather than the title "NRP". This is worth about £35 per week to this couple.

Groups who fight for the one-seventh formula aren't fighting to maintain adequate support for the children. They are fighting to maintain this massive financial privilege associated with the title "PWC". This title is so often associated with being the person who receives Child Benefit.

"Some organisations representing non-resident parents did press for a more substantial reduction in the child support rates – so that if care is split equally (that is, if the child spends on average three and a half nights a week with each parent) no maintenance is due." [14]

If parents earning the same amount share care equally, *obviously* there should be no maintenance due! What could it possibly be for? It would not be for paying for the children – both are already paying the same amount anyway. It would not be to reduce benefit spend – neither is on benefits.

It could only be for some totally different purpose, such as *spousal* maintenance of whoever receives Child Benefit.

If, instead of earning the same amount, one earns a lot less and is perhaps on benefits, then it would be reasonable for the earning parent to make a net payment. That would obviously require the formula to *recognise* that one is earning and the other is on benefits – but the White Paper makes no attempt to do this. It simply assumes that the parent getting Child Benefit is also probably on means-tested benefits – this is a cynical insult to both mothers and fathers.

The fair shared-care formula doesn't attempt to reduce the assessment to zero at the equal-sharing point, unless both parents earn the same. If one earns significantly more than the other, that person will have a net liability at the equal-sharing point.

"On the other hand, parents with care pointed out that the cost of keeping a child is not necessarily greatly reduced if the child spends several nights away from home." [14]

This same statement is also an argument to have a fairer scheme! It just needs exactly the same argument to be used from the point of view of the other parent. After all, part of the time, *each* parent is a parent with care!

The argument appears to be that caring at all has a high cost, and that caring a little more or less doesn't make that much difference. ***So why doesn't the formula recognise this for both parents?*** Why is it that if an initially non-caring parent starts to care, perhaps for one or two nights per week, the assessment is only reduced by one-seventh per night?

The White Paper's statement would be an argument for the first night of care by the NRP to cause a significant reduction because that one night makes all the difference. But as seen earlier, the big change in assessment occurs between three nights and four nights (with the difference between PWC and NRP), when according to the White Paper the costs are not actually very different! The White Paper's formula doesn't conform to its own statements.

This is why a fair shared-care formula must be symmetrical – to ensure that arguments such as those in the White Paper are applied fairly to *both* parents.

“A one-seventh reduction in the child support rates acknowledges the additional cost faced by the non-resident parent, without being so severe as to make the parent with care resistant to shared care arrangements.” [15]

This reveals that the formula isn't just being designed to cater for the cost of children. It is also being designed to achieve social ends that ought to be handled in other ways.

The formula *should* ensure that the PWC is neither in-pocket nor out-of-pocket whatever the shared-care amounts. (Otherwise, what is the money actually for?) But here, it is clearly being intended to encourage shared-care – a task which family courts and other means should handle. This penalises cases where arranging shared-care is not an issue, and doesn't cater for cases where the CSA is not involved.

The CSA formula should be focused on providing the costs of bringing up the children, not on other problems for which better-targeted means should be provided. It must not be overloaded to achieve other ends as well – it cannot succeed well with all such objectives, and may well fail with all of them.

“Also, where the non-resident parent is on benefit, he will be exempt from the £5 minimum payment when he is caring for the child for at least one night a week.” [15]

How can an NRP on benefits afford to care for the children for (say) one or two nights per week? Removing this £5 liability simply restores the NRP to what s/he would be getting if there were no children – basic poverty-relief level. The White Paper itself has said that there is significant cost in supporting the children at all. This minor concession doesn't follow its own logic.

The PWC will be getting Child Benefit and is also entitled to other benefits which recognise the cost of children, for example the Income Support Family Premium and Child Allowances. If the PWC is getting Housing Benefit, that will be based on a house suitable in size for children. The NRP on benefits has none of this.

Clearly if both parents are on benefits, the formula can do little to help. But in the case above, if the PWC is earning while the NRP is on benefits, then the formula should have the PWC exercise some financial responsibility while s/he is absent and doesn't have the cost. After all, an earning PWC is probably being relieved of child-care costs (which are only 70% covered by WFTC) as well as other costs.

The White Paper argues that earning-PWCs are relatively rare – but they not non-existent. The number of them will increase with initiatives such as New Deal for Lone Parents and WFTC.

Furthermore, the White Paper quotes figures for PWCs at the time they make claims, but doesn't cater for the fact that many who start on benefits become more self-reliant months or years later. The only way to tell whether this is one of those cases is to check – a fair shared-care formula *must* take both parents' income into account, it *impossible to be fair* otherwise.

It is impossible to have fair shared-care formula that doesn't look at both parents' income. Impossible!

2.4 Flaws in the formula for exactly equal sharing of care

This is probably a rare case, and is not the key injustice described in this letter. But it is particularly grotesque in its implications.

“In the few cases where care is shared equally, there are clearly questions about who is the parent with care and who is the non-resident parent.” [16]

No, there cannot be such a question! The very terms *with care* and *non-resident* by definition relate to the period of stay with a parent, and here this is equal.

Clearly the White Paper's concern here is to be able to apply these labels to the parents under all circumstances, however bizarre. The White Paper gives a clue about why it tries to do this:

“Child support will only be a requirement if Income Support or income-based Jobseeker's Allowance is paid for the children. In these circumstances, the taxpayer has a right to expect that maintenance is paid, even if the parent who is not claiming benefit for the children has equally shared care.” [16]

The White Paper's logic appears to be that if one of the parents is claiming benefits, the other parent should help financially to relieve the cost to the taxpayer. **Quite right!** But it doesn't actually implement its own logic, and so fails in some circumstances to reduce benefits spending where it could do so.

The way to reduce benefit spend is to *identify if one is on means-tested benefits* and have the other parent pay an appropriate amount of money to the one on means-tested benefits. There is no intention in the White Paper to identify the one on means-tested benefits. Yet it is obviously incredibly easy to do so.

The fair shared-care formula described earlier does precisely this. Because in that case each parent is financially responsible while the absent parent, but a parent on benefits who shares care has a zero assessment, then the result is that an earning parent would pay half of the full assessment at the equal-sharing point. (Irrespective of who gets the Child Benefit. Child Benefit is irrelevant - what matters is who is claiming means-tested benefits).

The derivation of the White Paper's approach is probably: "when mother and father share care **equally**, the mother is expected to receive Child Benefit and not work, while the father is expected to work and pay money to the mother".

Why? What does this say about the contempt held by government about the ability of mothers to care and work, and the contemptuous role assigned by government towards caring fathers who must also supply more than their share of money?

The White Paper attempts to justify this by quoting historical statistics:

"As an alternative, it was suggested that if care is shared, the parent with care's income should be taken into account in establishing maintenance liability.... Table Two shows that there is only a tiny number of current cases of equal shared care where the parent with care has a substantial income." [18]

There are a number of reasons why this is a bad argument:

1. Injustice isn't excused just because it only applies to a minority of people. Those people are impacted 100%, not just a few %, by the injustice.
2. If there really are only a minority of people affected, then the administrative cost of solving those cases will be small. The fair shared-care formula doesn't cost any more to administer the majority of cases, and very little more for that minority of cases.
3. But, more important, the whole thrust of government policy is to change those proportions. The government is in favour of shared care: ministers say "children are entitled to the emotional and financial support of both parents" – "emotional" as well. The government has implemented New Deal for Lone Parents to help PWCs become earners. So "two earning parents sharing care" is clearly the government's target for separated parents, and any new scheme should focus on the results of this policy, not irrelevant historical statistics.

END