



Child Support Scheme: problems in Australia

On 16 April representatives of the Law Society's Family Law Committee attended before the House of Commons Social Security Committee to give evidence of the profession's concerns about the Government's plan to implement a child support scheme. The delegation, which included Derek Sands, Chairman of the Law Society Family Law Committee, offered some insight into practical difficulties associated with the Australian Child Support Scheme, and suggested ways these problems might be avoided. DAVID TRUEX, who acted as a consultant to the Australian government on the drafting of the child support scheme, believes we can learn from the Australian model.

The Government's proposals are, to some extent, inspired by the perceived success of the Australian scheme, which was introduced in 1988 and 1989. Central to both models is the formulaic assessment of child maintenance. However, the Australian scheme differs significantly in several respects from the proposals foreshadowed in the White Paper and in the Bill currently being considered by Parliament. Furthermore, the different legal and social context in Australia means that caution must be exercised in drawing conclusions about the anticipated benefits of such a scheme in England.

AUSTRALIAN SCHEME

The scheme was introduced in two stages. Stage 1, which commenced on 1 June 1988, established the Child Support Agency within the Australian Tax Office (not, significantly, within the Social Security Department) and provided for the registration of maintenance orders with, and their enforcement by, this central body. Stage 2, which enacted formulaic maintenance assessment, was implemented on 1 October 1989. This phased introduction of the scheme was essential. It allowed the agency time to establish its systems and to fine tune administrative procedures. Delays and confusion continued (and continue!) for many months after the commencement of each stage, however.

NO RETROSPECTION

The legislation is not retrospective, that is, it covers only couples who

separated after 1 October 1989 or children born after that date. Wisely, the Government chose not to overwhelm the system with 'old' cases, although they may be incorporated in the scheme in the future.

OVERWHELMED

Despite this cautious, graduated approach the Child Support Agency was stretched beyond capacity from the outset. Very early it became apparent that insufficient staff and other resources had been allocated. Even in straightforward cases the delay between lodging an application for assessment and receiving the first maintenance cheque was 16 weeks as late as October 1990, a year after stage 2 commenced. Anxious claimants enquiring about their child support payments are often not able to find out how their applications are progressing: the agency cites staff shortages and legislative confidentiality provisions in its defence.

FORMULA

The Australian formula has some controversial features. If the custodial parent is living with a wealthy benefactor this is not taken into account. The age of the child is not relevant, even though it is well accepted that teenagers are more expensive than toddlers. Most irksome to payers is the fact that a custodial parent can earn a significant income (up to average weekly earnings: currently about \$550, or £220) and yet still be entitled to full child support. The rate of child support ranges from 18 per cent of

the payer's net taxable income (one child) to 36 per cent (five or more children), so that a payer with a taxable income of \$1,275.60 per week (the cap level) will pay \$439.46 per week for five children.

Either party can apply to the Family Court for a 'departure order' if there are 'special circumstances' in which the strict application of the formula would be unjust. To date there have been six reported decisions, all but one being applications by payer husbands wanting to reduce child support. Special circumstances have been held to include:

- a significant increase or decrease in ability to pay since the last tax year;
- a responsibility on the part of the payer for pre-separation debts;
- a responsibility on the part of the payer to support other children.

Policy in the Family Court is for one judge in each state to hear all applications for departure orders. This ensures an authoritative and consistent approach, which is particularly important while the parameters of the Child Support Scheme are still being defined.

AVOIDING THE PROBLEMS

The following suggestions, based on the Australian experience, are offered as a means of avoiding (or minimising) the difficulties which may be associated with the introduction of the Child Support Scheme:

- Most importantly, the Child Support Agency must be adequately staffed and resourced from the outset. So, too should other services which can expect increased workloads, including courts, legal aid and welfare agencies.
- A phased introduction of the Child Support Scheme, in two or more stages, would ameliorate the impact on all relevant services, and facilitate education of the public.
- The legislation should not have retrospective effect: 'old' cases should not be brought into the scheme, at least not immediately.
- Applications for departure orders, based on special circumstances, should be heard by selected judicial officers of at least district judge level.
- An 'evaluation and advisory' committee, chaired by a senior judge of the Family Division, ought to be established to monitor the scheme and recommend legislative and administrative adjustments as the need becomes apparent. ■