



C/Howel/Heigh

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

19 October 1990

Dear Debbie,

WHITE PAPER ON NEW PROPOSALS FOR CHILD MAINTENANCE

The Prime Minister was grateful for your Secretary of State's minute of 15 October. She has also seen the Lord Chancellor's letter to the Secretary of State of 18 October. We have also received Mr. Howard's letter of 17 October which arrived this morning.

The Prime Minister is in general impressed by the proposals set out within the draft White Paper and would like to congratulate Mr. Newton and the officials concerned for what they have achieved in a relatively short timescale. She agrees that the White Paper should be published before the end of the month but she has a number of detailed points on the proposals.

The Lord Chancellor raised in his letter the question of how the cost of caring for step-children should be handled in assessing the payments an absent parent should make to maintain his natural children. The Prime Minister recognises that, although the responsibility of maintaining step-children should normally fall to the natural father, there may be instances where this is not possible. Her concern is that there will be other circumstances apart from cases where the natural father is dead or untraceable where the natural parent may not be in a position to maintain step-children. For the purposes of applying the formula, she agrees with the the Lord Chancellor's proposal that it should always be assumed in calculating exempt income that the step-parent has no liability to maintain step-children. Exceptionally, where a father does have to incur legitimate costs for maintaining step-children, these can be taken into account in the formula through the concept of an absent parent's protected level of income which makes sure that his income does not fall near to or below income support level.

The Prime Minister is content with the proposal for the rates of deduction of up to 50 per cent of qualifying income and beyond this for higher earnings parents up to 15 per cent more. She does not share the Lord Chancellor's wish to see differential rates depending on the ages and numbers of children concerned. The Lord Chancellor proposes in addition that there should be an upper limit for the levels of maintenance to prevent absurdly

high settlements where the absent parent is a very high earner. The Prime Minister endorses this proposal.

The Prime Minister welcomes the proposal to make a minimum deduction from the benefit of absent parents for the maintenance of their natural children. She recognises the need for an exemption from this rule where the absent parent is sick or disabled. But she does not accept that absent fathers raising a second family should be exempt. She sees this is an important point of moral principle. Any deduction would be made from the parent's own allowance rather than from the separate allowances within income support for the children and so an absent parent's second family should not suffer financial penalty.

The Prime Minister was concerned that the chapter in the draft White Paper dealing with variations in the formula for assessing maintenance is insufficiently clear. She is concerned that the formula should be simple enough that it only needs to be referred to the courts in very limited circumstances. She would like chapter 4 to be redrafted to bring out more clearly the circumstances in which the variation to the formula might be required and how the formula will be applied in these circumstances. She questions whether the formula will need to be varied to take account of the transfer of the family home to the caring parent, given that the formula already includes housing costs in an absent parent's exempt income.

The Lord Chancellor suggested that the White Paper should be redrafted to propose that the courts rather than a new independent Appeals Tribunal should be used to hear appeals. The Prime Minister takes the view that the draft should continue to canvass both alternatives.

There are two minor drafting amendments, details of which I enclose.

I am copying this letter to Tim Sutton (Lord President's Office), Jenny Rowe (Lord Chancellors Office), Alan Maxwell (Lord Advocate's Office), Peter Storr (Home Office), Anne-Marie Lawlor (Department of Employment), Jim Gallagher (Scottish Office), Robert Canniff (Chancellor of the Duchy of Lancaster's Office), Jeremy Heywood (Chief Secretary's Office), Tony Pawson (Northern Ireland Office), Judith Simpson (Welsh Office), Murdo Maclean (Chief Whip's Office), Douglas Slater (Government Whips' Office, Lords) and Sonia Phippard (Cabinet Office).

*Yours sincerely,
Caroline*

(CAROLINE SLOCOCK)

Mrs. Debbie Heigh,
Department of Social Security.

DETAILED AMENDMENTS

Para 3.34 refers to what the level of average maintenance awards would be under the new system. This does not appear to follow on from the preceding paragraph which deals with attempts to evade maintenance payments. A new heading might make it clearer that para 3.34 refers to the total effect of the formula. It also needs to be made clear that the reason for the apparent fall in the average payments under the new system is because the total number of payments will go up.

Para 4.8 This paragraph should be ended after the sentence finishing "...calculated by a formula" (sixth line). The rest of the paragraph is difficult to follow and arguably superfluous to the argument.



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

24 October 1990

Dear Debbie,

WHITE PAPER ON NEW PROPOSALS FOR CHILD BENEFIT

Thank you for your letter of 23 October setting out how your Secretary of State proposes to respond to the comments made by the Prime Minister and Lord Mackay on the draft White Paper circulated last week.

The Prime Minister has noted this and is in particular content with the draft passage which you quoted covering the handling of deductions for maintenance from the income support of absent parents.

I am copying this letter to Jenny Rowe (Lord Chancellor's Office) and Sonia Phippard (Cabinet Office).

Yours sincerely,

Caroline

Caroline Slocock

Mrs. Debbie Heigh,
Department of Social Security.

PRIME MINISTER (1)

WHITE PAPER ON NEW PROPOSALS FOR CHILD MAINTENANCE

You saw the draft White Paper on the proposals for child maintenance last week and had a number of comments. DSS have been looking at how to redraft the White Paper to take on board your points. There are two points of which you may like to be aware:

- deduction of maintenance payments from the income support of absent parents. Mr Newton had proposed that a nominal deduction of 5% should not be made where the parent is sick, disabled or has a second family. You said that you thought that fathers with a second family should still make a maintenance payment for their abandoned children. Income support includes separate elements for the adult and for the dependent children; and Andrew Dunlop suggested that the deduction should be made from the father's income support so that his second family should not suffer. Mr Newton has returned to argue that in practice the children of the second family would suffer if a nominal deduction is made. The proposed redrafted passage of the White Paper (see flag) side-steps the issue by leaving open the option of making fathers of second families exempt from the deduction without specifically mentioning this as a possibility;

- the responsibility of the step-fathers towards their step-children. The White Paper raised the question of how to deal with the responsibilities of step fathers toward step children. The underlying principle is that children are the financial responsibility of their natural fathers, not step parents. But where the natural father is dead or otherwise genuinely unable to support his children there is a question of whether a step parents financial responsibilities for his step children should be taken into account before assessing his liability for maintenance payments for his natural children. This is largely a technical question but there is

an underlying issue of whether a step-parent's responsibility towards a step family with whom he is living should ever take priority over his responsibility for his natural children. A further consideration is whether step-children can subsequently claim for maintenance against a step parent. These questions are glossed over in the White Paper; and Mr Newton has taken them up separately with Lord Mackay. You do not need to get involved at this stage.

Content with the wording of the White Paper now proposed on deductions from an absent parent's income support?

Yes no

CS

Caroline Slocock

23 October 1990



DEPARTMENT OF SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS

Telephone 071-210 3000

From the Secretary of State for Social Security

POLICY IN CONFIDENCE

Caroline Slocock
Private Secretary
10 Downing Street
London
SW1A 2AA

23 October 1990

Dear Caroline,

WHITE PAPER ON NEW PROPOSALS FOR CHILD MAINTENANCE

Thank you for your letter of 19 October which the Secretary of State has now considered. *will CAS?*

I will take each of the points in turn.

On stepchildren, he has replied to the Lord Chancellor expressing the view that we should consider the position of children who have no one other than a step-parent to accept parental responsibility and has agreed to the Lord Chancellor's alternative suggestion that this passage should be expressed in much more provisional terms.

On deduction rates, the 15 per cent after the maintenance bill is met is now described as illustrative. There will be no discussion of variable rates in the White Paper.

A passage has been inserted on an upper earnings level beyond which the formula would not apply.

The Secretary of State understands why the Prime Minister does not wish to exempt absent fathers on Income Support and raising a second family. While this principle would be reflected in a deduction from the absent parent's own allowances, the effect would be a reduction in the family's income which would be likely to affect the children. Therefore my Secretary of State proposes to leave open this issue by substituting the following in place of paragraph 3.30:

E.R.

"In principle, all liable parents should make some contribution to their children's maintenance. Where the liable person is fit and able to work and either single or a partner in a childless couple then he should be expected to contribute a nominal 5 per cent of the personal allowance for a person aged 25 or over, towards the maintenance of the children. This is £1.83 per week. The personal responsibility towards children is too important a principle to be ignored in such circumstances. Deductions are already made from Income Support for a variety of purposes, and maintaining children is at least as important. However, where the liable person is sick or disabled there should be no requirement to pay maintenance from Income Support. The Government is considering whether there should be any further exceptions to this."

Chapter 4 has been redrafted in line with your comments. A copy of the revised version has been sent to Andrew Dunlop.

The question of which forum should hear appeals has been left open in the White Paper.

I hope you now agree that a text which incorporates all these amendments is satisfactory.

Yours sincerely,
Debbie Heigh

DEBBIE HEIGH
Private Secretary





SCOTTISH OFFICE
WHITEHALL LONDON SW1A 2AU

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POLICY - IN CONFIDENCE

Rt Hon Tony Newton MP
Secretary of State for Social
Services
Richmond House
79 Whitehall
LONDON
SW1A 2MS

23 October 1990

WHITE PAPER ON NEW PROPOSALS FOR CHILD MAINTENANCE

Thank you for copying to me your submission of 15 October to the Prime Minister covering a draft of the above White Paper. I have also seen James Mackay's letter of 18 October.

My officials have issued some minor comments on the draft to your officials covering various Scottish aspects of the White Paper but of course, I am generally content with the draft.

James Mackay has commented on stepchildren. I too had identified this as an area of difficulty to be addressed in Scotland. On the whole, I would prefer to leave the question open whether stepchildren should be taken into account.

I also agree with James that it would be preferable to canvas an upper income limit in the White Paper.

I note James' views that the court would be a preferable venue for appeals than a special tribunal and Commissioner. While I can see that there are advantages in the courts being able to determine appeals, I do foresee some practical difficulties. There is likely to be an increased volume in court business with attendant legal aid consequences. I should prefer, therefore, for the White Paper to leave this matter open for further consideration.

Subject to these observations and those intimated by my officials, I am content that the White Paper should be published.

I am copying this letter to the Prime Minister, Geoffrey Howe, James Mackay, Peter Fraser, David Waddington, Michael Howard, Kenneth Baker, Norman Lamont, Peter Brooke, David Hunt, Tim Renton, Bertie Denham and Sir Robin Butler.

MALCOLM RIFKIND





DEPARTMENT OF SOCIAL SECURITY
Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 071-210 3000

From the Secretary of State for Social Security

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POLICY IN CONFIDENCE

The Rt Hon the Lord Mackay of Clashfern
Lord Chancellor
House of Lords
London
SW1A 0PW

19 October 1990

Jim Jones,

WHITE PAPER ON NEW PROPOSALS FOR CHILD MAINTENANCE

- at Page B.6 attached.

Thank you for your letter and accompanying annex of 18 October commenting on the draft White Paper.

All the points you make in the annex are helpful, and I am entirely happy to take them on board. My officials will make the necessary changes and let yours have sight of an amended draft early next week.

Turning to the points you make in your letter, I understand that you consider that stepchildren should not be able to claim against a step-parent. I am sure that colleagues will wish to consider this. Meanwhile, I agree that the references in paragraphs 11 and 12 to the formula being based on current legal provision should be deleted.

You commented on the proposal that a stepchild should be included in an absent parent's exempt income only when the natural parent is dead or untraceable. The draft White Paper is seeking here to reflect the clear principle that the liability to support children rests with their natural parents, while recognising that there will be some definable circumstances in which a modified approach would be appropriate. It seems to me right that we should make some provision for stepchildren where there is nobody else to accept parental responsibility for them. This is a point I should be happy to discuss further and colleagues will doubtless have views. Meanwhile, I am happy to adopt your alternative suggestion and will ensure that the references are drafted in a more provisional way.

E.R.

I fully agree there must be an upper limit beyond which the formula would not require further payment of maintenance, and, as you suggest, this will be put into the White Paper without being precise about its level. I am also happy to describe the 15 per cent deduction rate once the maintenance bill is met as illustrative. I have thought carefully about differential rates but, given that we are adopting a single rate up till then, I believe they would invite criticism that we were being inconsistent and lead to pressure to reduce the 50 per cent deduction or replace it by multiple rates. An alternative way to recognise different numbers and ages of children may be through the upper limit, and my officials are working on both areas and will be consulting yours and colleagues'. As to the suggestion of 15 per cent, I think it important that once the bill has been met, the deduction rate should be substantially reduced while still securing a reasonable contribution from the absent parent. Fifteen per cent is illustrative but it does aim to achieve that balance. I suggest we consider further once our officials have developed proposals.

On appeals, we have certainly come to a clearer appreciation of the arguments in favour of a unified family law jurisdiction; but I am still inclined to think that, where no related family law matters are already before a court, there are advantages of simplicity, accessibility and economy in those appeals going to dedicated tribunals. My officials are in touch with yours on this and plan an early meeting, next week, to resolve this issue. This is an issue we must resolve for the Bill. I hope I may take it that you are content for the White Paper to keep options open. We are content with your proposed amendment to para 3.41.

I am glad that you welcome the CSA's power to raise an assessment based on the maintenance bill where an absent parent is uncooperative. We do not in fact propose that such an assessment should be raised immediately, and we do envisage the CSA having power to make assessments on best available evidence. My officials will be redrafting paragraphs 5.13.

I note that it will be necessary to clarify resource implications for the courts and legal aid when our detailed policy is absolutely firm, and that you will be writing again on that shortly. As you imply, the resolution of these resource issues does not affect the White Paper. I hope you can now agree that the content of the White Paper is satisfactory.

I am grateful for your agreement to making a separate statement in the Lords on the day of the White Paper is issued. I have asked my officials to be in touch with yours about other aspects of publicity.

E.R.

I am copying this letter to the Prime Minister, Geoffrey Howe, Malcolm Rifkind, Kenneth Clarke, Kenneth Baker, Norman Lamont, Peter Brooke, David Hunt, Tim Renton, Bertie Denham and Sir Robin Butler.

h. v. ew. Tony

TONY NEWTON

WHITE PAPER ON CHILD MAINTENANCE

DSS have done a good job in a short space of time. Much of the detail has now been resolved, although the White paper contains some "green edges" (most notably on the appeals procedure). In general the presentation is reasonably clear.

The main points of substance on which to focus are:

1. The Formula

There are two key issues:

(a) Exceptions to the rule. Every absent parent will be allowed an exempt income on which he will not be liable to pay maintenance. This will give him enough to meet his own essential living expenses. His maintenance bill will be met from non-exempt income.

There are exceptions to this rule. He may have a second family in which there are step-children. Ordinarily these children would be provided for by their natural parents. But under Tony Newton's proposals the step-children can be included in their step-father's exempt income where the natural parent is dead or untraceable.

The Lord Chancellor is rightly concerned that this is somewhat arbitrary. There will be other step-children who are not being adequately maintained for different reasons eg the natural parent is a paraplegic or without means. He argues that all step-children should be treated in a similar way: they should not be taken into account in calculating exempt income. This simplifies

the system. And it is not unduly harsh as there is the safety net of a liable parent's "protected income" (see Paras 3.22 - 3.25). This allows the formula to be varied exceptionally, where a liable parent has inescapable financial obligations (which could include his step-children). This ensures that he does not fall near to or below the Income Support level.

Recommendation

Support the Lord Chancellor's proposal not to take into account step-children when calculating a liable parent's exempt income.

(b) Rates of deduction

Under the original proposals maintenance payments were to be deducted from a liable parent's non-exempt income at differential rates according to the number of children concerned. The rates canvassed were 30 per cent for one child, 40 per cent for two and 50 per cent for three. This differential was intended to reflect real life where the larger the family, the larger the proportion of income used to maintain it. These rates were to apply until the minimum maintenance bill had been met in full. Thereafter a lower rate of 25 per cent was to be applied to allow the children to share in their parents' rising living standards.

The White paper proposes a flat rate 50 per cent until the minimum maintenance bill is met and 15 per cent thereafter. The 50 per cent is quite a tough deduction rate. Half of all absent parents have a liability for only one child. Under the original proposals this group would have faced a deduction rate of only 30 per cent.

The new proposal is, however, justifiable and defensible:

- it will not damage work incentives. Due to the safety

net of a "protected income" all liable parents will be better off in work. Moreover, the poverty trap has been minimised. The majority of liable parents will face marginal rates in the region of 60 - 69 per cent. This is well below the 75 per cent marginal rates which the Treasury regard as unacceptable;

- even though the rate is flat-rate, the maintenance paid will still vary according to family size. This is because an absent father's liability to pay maintenance is calculated for each child separately. The same principle applies to the 15 per cent rate. I do not, therefore, share the Lord Chancellor's concerns on this, which seem to complicate unnecessarily the formula.

Recommendation

Agree to the 50 per cent and 15 per cent rates of deduction.

2. Deductions from Benefit (Para 3.27)

At the meeting in July you asked that nominal deductions should be made from the benefits of absent fathers.

The White Paper proposes a deduction of 5 per cent (£1.83 a week) from Income Support. This is in line with the deductions made at present to pay for fines etc.

But Tony Newton proposes to exempt from this deduction the sick, disabled and those with a second family to support.

It is clearly right to exempt the sick and disabled. But it is a more open question whether those with a second family should be exempted. The case for doing so is that otherwise the children

of the second family would suffer. But:

- this is an important point of principle. Including such a wide exemption would allow the most feckless group of all to slip through the net;
- there are separate allowances within Income Support for the children and the parents. Any deduction would be made from the parent's own allowance (just as in the case of a fine or Community Charge);

There is also an inconsistency with the White Paper's proposal (Para 5.33) to reduce the benefit of a lone mother who fails to co-operate in tracing the absent father. In this case also the children could, in theory, lose out. But Tony Newton does not use this as an argument for doing nothing.

Recommendation

Apart from the sick and disabled there should be no exemptions from the principle of benefit recipients having to contribute a nominal sum for the maintenance of their children.

3. The Role of the Courts (Ch.4)

This is the least satisfactory Chapter in the White Paper. It is vague and tentative.

The purpose of this Chapter is to define what continuing role the courts would have in relation to child maintenance. As the Chapter makes clear it will have a continuing role for matters - such as spousal maintenance etc - which do not impinge on the issue of child maintenance.

But there is a grey area of overlap where the Courts may need to vary the administrative formula upwards or downwards. For example:

- it may wish to vary it upwards where it is clear parents meant to devote a higher proportion of income to the children than specified by the formula ie to pay for private schooling;
- it may wish to vary it downwards to reflect the fact that an absent parent has lost the equity in a house which has been handed over by the courts for the benefit of his children.

The Chapter needs to spell out more clearly (a) the circumstances in which a variation might be required and (b) how the formula will be applied to produce a variation. Neither is clear from the White Paper as presently drafted.

This is important because it is not clear to me that the courts will need to vary the formula to take account of the family home. As Para 4.7 of the White Paper makes clear the formula already reflects this point by including housing costs in an absent parent's exempt income.

Recommendation

- Question whether the formula will need to be varied to take account of the transfer of the family home;
- suggest Chapter 4 needs to be redrafted to bring out more clearly the circumstances in which a variation to the formula might be required, and how the formula will be applied in these circumstances .

4. The Appeals Procedure (Paras 3.37 - 3.43).

The first step would involve the new Child Support Agency reviewing its own decision. The White Paper canvasses two options for the second step:

- appeals heard in the courts;
- the establishment of a new independent Appeals Tribunal (analogous to tax commissioners).

Your concern was to minimise the costs. The Lord Chancellor's letter suggests that officials have concluded that courts would be preferable to a special tribunal. My understanding is that DSS would still prefer the Tribunals route. More work is required on this, particularly to pin down which is likely to be the more cost-effective.

Recommendation

The White Paper should canvas both the tribunal and court options for the appeals machinery.

5. Work Incentives

You agreed in July that the White Paper should contain some incentives. But you were concerned that the proposals canvassed then appeared too generous.

Since then the Treasury has toughened up the formula by raising the deduction rate and scaled down the level of the incentives.

The maintenance disregard will only apply to in-work benefits. Tony Newton originally wanted a disregard of £20 a week. The White Paper proposes a disregard of £15 per week. And whereas

DSS wanted to introduce the new measures in October 1991, they will now begin in April 1992.

This gets the balance about right. Over the long-term the number of loan parents on Income Support is expected to decline by 130,000.

Recommendation

Agree the package of incentives proposed in the White Paper.

6. Costings

The proposals have now been fully costed since the July meeting. And as a result of the PES negotiations the overall position is much improved. At the Annex is a complete breakdown of the costings. These show (a) the original proposals in July (b) the DSS opening bid in PES (c) the final outcome.

As a result mainly of toughening up the assessment formula and scaling down the incentives, the net savings from this initiative in the long-run have improved from £184 million under the original proposals to £317 million as a result of the PES settlement.

There will of course be an up-front net cost. But over the PES period this is only £79 million (compared to the estimated £135 million in July). The net improvement in the PSDR is likely to be at least £270 million in the long run.

This seems a very satisfactory outcome.

7. Presentation

There are a number of improvements which could be made to the

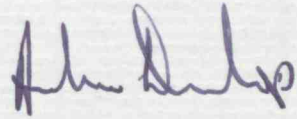
presentation:

- The flow of the White Paper text is interrupted by the examples. Tony Newton's covering minute refers to this. If examples are needed at all they would be better placed in an Annex. There are also too many of them;
- Para 3.34 refers to what the level of average maintenance awards would be under the new system. This does not follow on from the preceding paragraph which deals with attempts to evade maintenance payments. It, therefore, makes little sense. A new heading is required to make clear that Para 3.34 refers to the total effect of the formula.

The figures, themselves, are also misleading as they appear to indicate that the new system is going to do less well than the old. This is because the figures refer to averages. The new system is designed to increase the numbers receiving maintenance payments from 300,000 to over 500,000. A large number of smaller payments will therefore, be made for the first time, reducing the average. It needs to be made clear that the reason for the apparent fall in the average payments under the new system is because the total number of payments will go up.

- Para 4.8. This paragraph should be ended after the sentence finishing "... calculated by a formula" (sixth line). The rest of the paragraph is incomprehensible and is superfluous to the argument. I understand this was an attempt to reassure the legal profession who are under a misapprehension as to how the Income Support rules work. If any reference is required, it would be

better for a factual explanation to be offered as a
footnote.

A handwritten signature in dark ink, appearing to read "Andrew Dunlop". The signature is written in a cursive style with a prominent initial "A" and a long, sweeping tail.

ANDREW DUNLOP

CHILD SUPPORT AGENCY
cost projections

	£million cash		1990-91 prices	
	1991-92	1992-93	1993-94	longrun
<u>A: DSS original proposals (July)</u>				
Benefit savings (variable deduction rates)	-4	-17	-89	-295
Incentives (excluding training)	9	39	70	63
Administration	23	63	41	48
	<hr/>			
	+28	+85	+22	-184
Net effect of initiative over PES period =£135m				
<u>B: DSS proposals (11 September)</u>				
Benefit savings (30/40/50 deduction rates)	-	-10	-102	-272
Incentives				
FC hours	-	56	53	32
£20 disregard	9	35	35	42
Administration	36	51	91	70
	<hr/>			
Net effect of initiative over PES period = £254m	+45	+132	+77	-128
<u>C: Agreed settlement</u>				
Benefit savings (flat 50% deduction rate)	-	-30	-195	-401
Incentives				
FC hours	-	49	46	21
£15 disregard	-	20	28	32
Administration	21	85	55	31
	<hr/>			
Net effect of initiative over PES period: £79m	+21	+124	-66	-317



HOUSE OF LORDS,
SW1A 0PW

POLICY IN CONFIDENCE

18 October 1990

The Rt Hon Tony Newton MP
Secretary of State for Social Security
Richmond House
79 Whitehall
London SW1A 2NS

Dear Tony,

WHITE PAPER ON NEW PROPOSALS

FOR CHILD MAINTENANCE

Thank you for the copy of your submission to the Prime Minister of 15th October and the enclosed draft White Paper.

I am content to make a separate statement in the Lords on the day the White Paper is published and I hope we can make joint arrangements for dealing with the other aspects of publicity. I would be grateful if you would ask your officials to pursue the details with mine.

Before coming to specific comments on the draft White Paper I note there is nothing in it about resources though I have noted what you have said to the Prime Minister about them. My officials have made clear throughout this exercise that they think there will be immediate additional costs for the courts and legal aid from the enforcement and collection procedures which are planned. The original Consultants' report on the administrative costs of the current maintenance system acknowledged that costings could be only broad-brush and provisional and were, in the case of legal aid, "particularly frail". Until it has been possible to settle the detailed policy on how the new system will fit in with the courts' continuing responsibilities in respect of children and their parents, the resource implications for the courts and legal aid will remain unclear. I shall be writing to you about these matters in more detail shortly.

.../2

Turning to the White Paper, I welcome the foreword setting this initiative in the broader context of our review of the family justice system and explaining how it contributes to the overall policy of giving priority to the child's welfare and emphasising the personal responsibility of parents for securing it.

I have a few points on the substance of our proposals which I would want to see reflected in the text.

The White Paper makes no direct mention of whether stepchildren are to be able to claim an award under the formula against a stepparent. My understanding from what is said about the protected earnings level in paragraph 3.23 is that they are not. In that event, paragraph 13 of the Summary is misleading in saying, in effect, that the proposal will reflect current liabilities which include claims by stepchildren. That paragraph will therefore need amending.

I am concerned about the proposal in paragraph 3.18 that a stepchild should be included in the exempt income when his natural parent is dead or untraceable. I see no sustainable distinction between such stepchildren and those whose parents are indigent because, for example, they are physically or mentally disabled or simply incompetent. Accordingly, I think the last sentence of paragraph 3.18 should be replaced by a sentence which says, in effect, that stepchildren will not be taken into account in calculating the exempt income. If that appears too firm a line to colleagues at this stage, I would at least want the issue whether stepchildren should be taken into account and in what circumstances left generally open.

On the rate of deduction, there is no explanation for the proposal to set the reduced rate at 15% once the maintenance bill is met. Further, although a flat rate can be justified where that bill is not satisfied, once it is satisfied it seems to me that there is a case for differential rates depending on the number and perhaps age of the children concerned. Subject to a satisfactory explanation of these two points, I would want the 15% at most to be treated only as illustrative in the White Paper.

There is no mention in the draft of an upper income limit to the mandatory operation of the formula. Those legal interests which I have consulted were unanimous in wanting such a limit: otherwise the formula could produce absurdly high awards and operate inappropriately at levels of wealth where such things as family trusts and settlements are common features. I would therefore want an upper limit canvassed in the White Paper, although I see no need to be precise about its level at this stage.

I understand that our officials have had further discussions about the venue for appeals and, subject to some matters of detail, have now concluded that the courts would be preferable to a special tribunal and Commissioner. That reflects my own views and, if possible, I would want that conclusion reflected in the White Paper. However, if for some reason it cannot be, then as a matter of detail, paragraph 3.41 will need amending as it could be taken as a firm proposal that appeals on points of law should go to a Commissioner irrespective of where other appeals might lie.

I welcome the proposed power in the new Agency to raise an assessment where an absent parent is uncooperative. In other cases, however, where there is simply a lapse of time while the final assessment is carried through, I am concerned that using a fixed proportion of the "maintenance bill" as the basis of an interim award is likely to be unnecessarily unfair. I see no reason why the Agency should not make the award on the best available evidence about the parties' resources, as well as the bill, perhaps by giving the absent parent a tightly timetabled opportunity to make a statement of means. I would at least want to see that alternative canvassed in paragraph 5.13.

In addition to those major points of policy there are a number of amendments to the text which I would want to see included in the White Paper largely for the sake of detailed accuracy or to remove the risk of readers gaining the impression that we had misunderstood the present law or practice, which would undermine our credibility in proposing changes. The amendments are set out in the annex to this letter.

I regret making so many points on the draft at this stage. Nearly all of them have, however, been raised by officials on previous occasions but have as yet to find their way into the White Paper.

I am sending copies of this letter to the Prime Minister and to Geoffrey Howe, Peter Fraser, David Waddington, Michael Howard, Malcolm Rifkind, Kenneth Clarke, Kenneth Baker, Norman Lamont, Peter Brooke, David Hunt, Tim Renton, Bertie Denham and Robin Butler.

James

James

ANNEX

VOLUME I

1. Paragraph 2 of the Summary. The "inconsistency" is as much, if not more, likely to be the result of the discretionary nature of the law as the fragmentation of the jurisdiction. The first three sentences should therefore be replaced by -

"The present maintenance system is unnecessarily fragmented, uncertain in its result, slow and ineffective. It is based largely on discretion. It is also operated through the High Court and county and magistrates' courts, the Court of Session and sheriff courts in Scotland and Department of Social Security offices. The cumulative effect produces uncertainty and arguably inconsistent awards."
2. Paragraph 4 of the Summary. It would be clearer if the word "net" were inserted after "total" in the first line on the second page.
3. Paragraph 8 of the Summary. The second sentence would be better expressed as - "The courts will retain jurisdiction for related matters such as residence of and contact with the child, spousal support, property issues and paternity disputes."
4. Paragraphs 10, 11 and 12 of the Summary read inconsistently. The last sentence of paragraph 10 speaks of the rule applying whether the parents are married or not, whereas the rule in the previous sentence to which it refers itself refers to the man being the woman's husband in cases of artificial insemination and test-tube baby cases. Paragraph 11 in dealing with AID also speaks of the woman's husband and then paragraph 12 speaks of the liability described in paragraph 11 as existing "regardless of whether the parents are or ever have been married". It would be better to drop the references to in vitro fertilisation and AID and AIH cases altogether. The rules are complicated and in transition in the Human Fertilisation and Embryology Bill and the cases very rare.
5. Paragraph 14 of the Summary might be better and more accurately expressed for England and Wales by adding the words "or finish their full-time education or training" after "leave school". The second sentence could then be amended simply to state the maximum age of 25 in Scotland.
6. Paragraph 1.2 is misleading in its first sentence in saying "magistrates' courts which deal with most other cases". Many of the "other cases" are also dealt with in the superior courts. The words "which deal with most other cases" should therefore be omitted.

The reference to the Matrimonial Causes Act in the third sentence will have to be omitted as the Act does not extend

to Scotland or Northern Ireland.

7. Paragraph 1.5, like paragraph 2 of the Summary, suggests that inconsistency arises from the large number of "actors". As suggested above, it is as much the discretionary nature of existing powers which leads to uncertainty and inconsistency.

As to the example of the £150 cases, it could appear simplistic and suggest that we are drawing conclusions based on a misunderstanding of the existing law. At present people with the same incomes may be liable for very different levels of maintenance because of other relevant circumstances. That will remain the case under our proposals as well. Accordingly, the examples can only stand if we can say that the relevant circumstances (e.g. obligations, resources and needs of the parties and the children) concerned in each case were the same. If not, the example should be omitted.

The "going rate" of £18 needs to be qualified by the recognition that in divorce cases and those involving spousal maintenance in magistrates' courts the award to the spouse often includes maintenance for the child. Not to mention that fact may again lead our readers to the conclusion that we do not understand the present system and have based our thinking on a misconception of the true level of awards for the child's benefit.

8. Paragraph 1.6. Again the discretionary nature of existing powers should be mentioned as a reason for the lack of consistency - perhaps by adding "and a wide discretion" after "involved" in the third sentence.
9. Paragraph 3.23. It would help to add the words "and any of his natural children living with him" at the end.
10. Paragraph 3.28 is wrong in law. Liability under existing family law in England and Wales generally lasts until the child reaches 17 and can extend beyond if he is in full-time education or training or there are special circumstances.
11. Paragraph 3.33 is misleading in suggesting that the courts take into account an "earlier, higher level income". What in law they are required to take into account is the man's earning capacity as opposed to his actual earnings.
12. Paragraph 3.34. The purpose or meaning of the ante-penultimate and penultimate sentences is not clear.
13. Paragraph 3.36 is perhaps too absolute in suggesting that the assessment will be purely arithmetical. The Agency may have to exercise some judgment or discretion, for example, in relation to what are reasonable housing costs or inescapable expenses in relation to exempt incomes or protected earnings levels respectively. They will also need to decide who to believe when there is a disagreement

between the parties about, say, earnings. The paragraph needs perhaps to be softened to speak of there generally being no need to exercise discretion in making an assessment.

14. Paragraph 4.2. Property settlement and spousal maintenance disputes do not relate to the care of children. Further, it has not been agreed that stepchildren will be able to continue to claim through the courts. Therefore the second and third sentences need amending, perhaps as follows -

"The courts will continue to have jurisdiction over related matters such as disputed paternity, residence of and contact with children, property settlements and spousal maintenance."

15. Paragraph 4.3. The last two sentences seem provocative and unnecessary and it would be better to omit them.
16. Paragraph 4.7. As the White Paper leaves the treatment of the family home open (see paragraph 4.8), paragraph 4.7 might better begin with the words "The Government's current view is that...".

The second sentence is inaccurate in law. What the courts are currently required to do is to give first consideration to the welfare of any child. The sentence should be re-drafted as follows -

"The courts will still be required to give first consideration to the welfare of the child, which includes his need for a home, when settling property issues on divorce."

17. Paragraph 4.8 at the end of the fourth sentence it would help to add -

"without denying the children a home to live in".

18. Paragraphs 4.9 to 4.11. The use of the terms "variation" and "vary" here, which have a specific meaning in relation to the alteration of existing orders by a court, may lead to some confusion. It would be better to replace those terms with "adjustment" and "adjust".

19. Paragraph 4.10. As drafted, the second sentence reads as a firm proposal to allow courts a general discretion to add to awards to cover school fees. As adjustment is to be left generally open the treatment of school fees should also be left open, though used as an example of a possible case for allowing adjustment upwards.

20. Paragraph 4.11 is misleading. If there were a power to "vary" downwards the child would be worse off. What seems to be meant here is that if the value of some other benefit to the child is substituted for part or all of the formula award then it should not leave the child worse off.

VOLUME II

21. Paragraph 1.2.2. The statement in the final sentence, that the procedures in the magistrates' courts are more straightforward than those in the county courts and High Court, is not acceptable. It should therefore to be deleted.

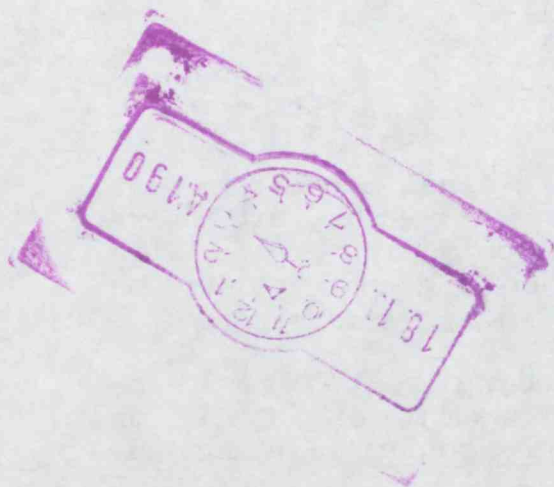
22. Paragraph 1.2.3. "Maintenance pending suit" should be deleted from the list of possible results, as it is an interim measure in the context of inter-spousal maintenance.

It is possible for the courts to order the creation of a settlement, as well as the alteration of one. The reference to 'trust' is otiose and confusing.

The reference to a clean break agreement should be taken out because the concept of a clean break only exists as between the spouses and has never applied as between parents and their children.

23. Paragraph 2.3.5 - Figure 7. Not all of the figures are from the Family Expenditure Survey - this should be made clear.

24. Paragraph 4.5.1. The reason for low enforcement in the county courts is not because they are primarily used for divorce proceedings. Generally, people register awards in the magistrates' courts to take advantage of the collection facilities there, and also of their enforcement powers.



SOCIAL SVCS: UPRATINGA Pt 6.

PRIME MINISTER

WHITE PAPER ON NEW PROPOSALS FOR CHILD MAINTENANCE

At Flag A is a minute from Mr Newton covering the draft White Paper on Child Maintenance which he hopes to publish before the end of the month. It reflects the outcome of recent PES negotiations. At Flag B are comments from the Lord Chancellor. Andrew Dunlop's comments are at Flag C.

Mr Newton's proposals match very closely the broad lines agreed by colleagues in July. There is a great deal of paper attached and the detail is complex. You may find a brief summary of the proposals helpful as follows:

- a new Child Support Agency to be established as a Next Steps Agency in DSS by the first half of 1993. This will handle all maintenance cases where the caring parent is claiming income support and other cases (for a fee) if one of the parents request it. The Agency will have powers to collect information and to enforce payment, if necessary through attachment of earnings. It will also trace absent fathers;

- a new formula for assessing maintenance (to be implemented by 1992, subject to legislation). This will be used to calculate the great majority of maintenance payments and is designed to be simple and usable. The standard maintenance payment for each child would be equivalent to the amount allowed under income support to support a child and its carer. The absent parent must pay this if they can but the formula takes into account that they must first maintain themselves. They will be allowed to retain enough income to maintain themselves at basic income support levels and a further 50% of their remaining income. The standard rate of maintenance is then deducted from what is left over. If the parents are able to meet the standard payment in full and have some qualifying income left over, they will be asked to contribute a premium to the child's maintenance. This means

the child shares in the standard of living of its absent parent. Where the absent parent is claiming income support, they will have 5% of benefit deducted for child maintenance;

- a right of appeal. It is left open whether this would be through the courts or a separate tribunal system. The draft also suggests that the standard formula may have to be varied in certain circumstance by the courts;

- lone parents claiming income support must identify the father or experience a reduction in their benefit;

- incentives to work will be created by disregarding from in-work benefits the first £15 of maintenance payments from April 1992. The qualifying hours for Family Credit will also be changed from 24 hours a week to 16 hours from April 1992 to make it easier for parents to care for children and work part-time;

Andrew Dunlop welcomes the broad thrust of these proposals which I think represents rather an impressive package. The main points of dispute are:

- how to deal with the cost of caring for step-children; the rule proposed is that maintenance of step-children should fall to the natural father except where he is dead or untraceable. In the latter circumstances only, the formula will take into account that the step-father will have to meet the costs of his step-children first before maintaining his own natural children. The Lord Chancellor and Andrew Dunlop have an essentially technical point on this (see Andrew Dunlop's note). They think the formula should always assume that the step-parent has no liability to maintain his step-children. If there are exceptional circumstances which mean that he must, they suggest that this should be taken into account in another way;

- rates of deduction from qualifying income; it is proposed that up to 50% of qualifying income should be deducted for standard maintenance and up to 15% more where there is income left over. The Lord Chancellor wants to see differential

rates depending on the ages and numbers of children concerned and an upper limit for very high income earners to avoid absurdly high maintenance awards. Andrew Dunlop suggests you agree to the 50% and 15% rates. Two reasons for doing so not mentioned by Andrew are that these rates already form part of the total Social Security PES package just agreed; and more complex rates might make the formula more difficult to administer. Andrew does not deal with the need for an upper ceiling for very high earners;

- deductions from benefit for maintenance; Mr Newton proposes to exempt absent fathers claiming income support from a deduction for maintenance where they are sick, disabled or have a second family to support. Andrew Dunlop suggests that there should be no exemptions where there is a second family;

- variations in the formula. The draft recognises that this may be necessary - eg where it is clear that parents have made provision for private education - but is rather vague on the details. This goes to the heart of the matter: it is important that the formula is simple and only needs to be referred to the courts in very limited circumstances. Andrew I think rightly suggests that the White Paper should be less vague on when variation will be necessary and how the formula itself might be adapted to deal with it;

- the appeals procedure; the Lord Chancellor's letter suggests that officials have decided that the courts would be the best route and wants the draft to make this clear. Andrew suggests that agreement between officials has not been reached and that options should be left open in the draft;

- some drafting amendments. Andrew sets out some changes in the draft which he would like to see. On the whole these seem reasonable. I would only argue with his suggestion that all examples should be removed from the main text. I think the shorter ones are very helpful. Mr Newton has already said he will annex the longer ones.

Content:

✓ - to congratulate Mr Newton and officials on the package and agree to the White Paper being published on 29 or 30 October;

✓ - to the recommendations put forward by Andrew Dunlop and to his drafting amendments (except to the removal of all examples in the main text)?

✓ - to agree to the Lord Chancellor's idea of an upper limit on the rate of deduction to stop absurdly high settlements where there are very rich parents?

CAS

Caroline Slocock
18 October 1990

Yes not

CONFIDENTIAL



CCPU
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Secretary of State

The Rt Hon Tony Newton OBE MP
Secretary of State for Social Security
Department of Social Security
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17th October 1990

Dear Tony

WHITE PAPER ON NEW PROPOSALS FOR CHILD MAINTENANCE

WITH BP?

Thank you for sending me a copy of your letter of 15 October to the Prime Minister with a copy of your draft White Paper on new proposals for child maintenance.

As you know, I very much support your proposals to improve the child maintenance system and I welcome, in particular, your proposal to include within the overall package a number of measures to further improve incentives for lone parents to work.

I am pleased that the paper stresses that dependence on Income Support is not intended to be a normal way of life for a period of many years for people of working age. I also welcome the importance it attaches to helping those lone parents who wish to work and are ready to do so. I believe that your proposals for a disregard of maintenance in family credit and the reduction in the hours-of-work threshold for receiving family credit should be attractive to lone parents and fit well with my own interest in improving the operation of the labour market.

My Department will continue to do what it can, within limited resources and in the light of our main priorities, to help those lone parents who want to work to do so. The text where it refers to action already being undertaken by my Department is factually accurate but I would like to suggest that paragraph 6.8 should refer to "jobcentre services" rather than "counselling and advice services". I would also ask that your officials look again at the drafting of the final sentence of that paragraph.



Employment Department · Training Agency
Health and Safety Executive · ACAS



Secretary of State
for Employment

As it stands, it could be construed as meaning that my Department will provide places on its programmes for all of the 50,000-75,000 lone parents estimated as likely to leave income support. As you know, the resources I can devote to helping this group are strictly limited and I am not in a position to give such an undertaking.

A copy of this letter goes to the Prime Minister, Geoffrey Howe, James Mackay, Peter Fraser, David Waddington, Malcolm Rifkind, Kenneth Baker, Norman Lamont, Peter Brooke, David Hunt, Tim Renton, Bertie Denham and Sir Robin Butler.

Yours

Michael

MICHAEL HOWARD

