Neutral Citation Number: [2023] EWHC 3207 (Admin)

Case No: AC-2022-LON-000867
CO/1965/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday 15 December 2023

Before :

Mr Justice Calver

- -

Between :

The King on the application of	**Claimants**
(1) PRESTON PARIS INGOLD	
(2)-(4) AA, CA & DA (through AA as their litigation friend)	
(5)-(6) BB & LL (through BB as their litigation friend)	
(7)-(8) CC & XO (through CC as their litigation friend)	
- and -	
SECRETARY OF STATE FOR WORK AND PENSIONS	**Defendant**
-and-	
GINGERBREAD	**Intervener**

- -

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Zoe Leventhal KC, Emma Dring and Emma Foubister (instructed by **Deighton Pierce Glynn**) for the **Claimants**

Sir James Eadie KC, Cecilia Ivimy, Jackie McArthur and Oliver Jackson (instructed by **Government Legal Department**) for the **Defendants**

Darryl Hutcheon (instructed by **Reed Smith LLP**) for the **Intervener**

Hearing dates: 3 and 4 October 2023

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 15th December 2023.

Mr Justice Calver:

1. This is a claim for judicial review brought by three single parent families and the adult child of a single mother (together, the "Claimants") who challenge the alleged failures by the Child Maintenance Service ("CMS"), acting on behalf of the Secretary of State for Work and Pensions ("the Defendant") to collect and enforce child maintenance payments due to them under the Child Support Act 1991 ("the 1991 Act" or "the Act"). Permission to apply for judicial review was refused by Mrs. Justice Heather Williams DBE on the papers, but was granted (save in certain limited respects) at a renewed application heard by Mr. Justice Julian Knowles on 28 February 2023, with the Court reserving to the substantive hearing before me the issue of whether there has been undue delay insofar as it relates to the substantive application for judicial review. The Judge's reasons for granting permission are unknown, as the parties did not obtain a transcript of the hearing at which permission was granted.

2. The Claimants comprise Preston Ingold, the child of a single mother, who became an adult during these proceedings (C1) and who is not the subject of domestic abuse; three single mothers, AA, BB and CC, who are victims of domestic abuse from their former partners and fathers of their children; and their respective children (C2-C8). Each Claimant family is owed several thousands of pounds in child maintenance but the Claimants allege that the CMS has repeatedly and persistently failed to take proper and effective steps to recover that money from the fathers who are guilty, they say, of perpetrating economic abuse.

The Legislative Framework

3. The common law position prior to the passing of the 1991 Act is described by Ward LJ in *R (Kehoe) v Secretary of State for Work and Pensions* [2004] EWCA Civ 225 at [7]-[16]. He explains that a father was under a duty to maintain his legitimate children (by providing them with food, lodging, clothing and the like) but there was no common law right to child maintenance payments, in the sense of a right to periodical payments of a certain sum of money. Before the passing of the 1991 Act various maintenance statues were enacted; parents who disputed child maintenance had to apply for maintenance orders and enforce them through the courts.

4. By a 1990 White Paper, the Government recognised that the court-operated system of maintenance as then existed was unnecessarily fragmented, slow and ineffective. It proposed to create a Child Support Agency ("CSA")[1] which would have responsibilities for assessment, review, collection and enforcement of maintenance payments, with powers to collect information on incomes, make a legally binding assessment as to what was payable, determine methods of payment, monitor and where necessary collect and enforce maintenance payments. Once the CSA was established, all claims for maintenance and reviews of maintenance would be handled by the CSA and not by the courts.

5. The 1991 Act gave effect to this scheme and the courts could no longer make, vary or revive any maintenance order in relation to the child and Non Resident Parent ("NRP") concerned[2].

6. The 1991 Act provided for a duty upon the parents to maintain the child and a duty upon the NRP to make periodical payments in line with the CSA's maintenance assessment:

> "**1 The duty to maintain**.
>
> (1) For the purposes of this Act, each parent of a qualifying child is responsible for maintaining him.
>
> (2) For the purposes of this Act, a non-resident parent shall be taken to have met his responsibility to maintain any qualifying child of his by making periodical payments of maintenance with respect to the child of such amount, and at such intervals, as may be determined in accordance with the provisions of this Act.
>
> (3) Where a maintenance calculation made under this Act requires the making of periodical payments, it shall be the duty of the non-resident parent with respect to whom the calculation was made to make those payments."

7. The welfare of the parents' children is relevant to every exercise of the discretion:

> **2 Welfare of children: the general principle**
>
> Where, in any case which falls to be dealt with under this Act, the Secretary of State is considering the exercise of any discretionary power conferred by

[1] Now the CMS.
[2] 1991 Act, section 8.

this Act, the Secretary of State shall have regard to the welfare of any child likely to be affected by the decision."

8. Under the 1991 Act, upon the application of the Parent With Care ("PWC") or indeed the NRP, a maintenance calculation may be made by the Defendant, as well as the collection and enforcement of the maintenance (known as "Collect & Pay" rather than "Direct Pay" – see below). However, the CMS may only collect the maintenance payments if the NRP agrees or where it is satisfied that without the arrangements child support maintenance is unlikely to be paid in accordance with the calculation**:**

4 Child support maintenance

(1) A person who is, in relation to any qualifying child or any qualifying children, either the person with care or the non-resident parent may apply to the Secretary of State for a maintenance calculation to be made under this Act with respect to that child, or any of those children.

(2) Where a maintenance calculation has been made in response to an application under this section the Secretary of State may, if the person with care applies to the Secretary of State under this subsection, arrange for—

(a) the collection of the child support maintenance payable in accordance with the calculation;

(b) the enforcement of the obligation to pay child support maintenance in accordance with the calculation.

(2A) The Secretary of State may only make arrangements under subsection (2)(a) if—

(a) the non-resident parent agrees to the arrangements, or

(b) the Secretary of State is satisfied that without the arrangements child support maintenance is unlikely to be paid in accordance with the calculation.

(3) Where an application under subsection (2) for the enforcement of the obligation mentioned in subsection (2)(b) authorises the Secretary of State to take steps to enforce that obligation whenever the Secretary of State considers it necessary to do so, the Secretary of State may act accordingly.

(4) A person who applies to the Secretary of State under this section shall, so far as that person reasonably can, comply with such regulations as may be

made by the Secretary of State with a view to the Secretary of State being provided with the information which is required to enable—

(a) the non-resident parent to be identified or traced (where that is necessary);

(b) the amount of child support maintenance payable by the non-resident parent to be assessed; and

(c) that amount to be recovered from the non-resident parent.

(5) Any person who has applied to the Secretary of State under this section may at any time request the Secretary of State to cease acting under this section.

(6) It shall be the duty of the Secretary of State to comply with any request made under subsection (5) (but subject to any regulations made under subsection (8)).

(7) The obligation to provide information which is imposed by subsection (4)—

(a) shall not apply in such circumstances as may be prescribed; and

(b) may, in such circumstances as may be prescribed, be waived by the Secretary of State.

(8) The Secretary of State may by regulations make such incidental, supplemental or transitional provision as he thinks appropriate with respect to cases in which he is requested to cease to act under this section.

…"

9. The decision maker (referred to from time to time as the "DM") has a duty to deal with a maintenance calculation application in accordance with the 1991 Act:

11 Maintenance calculations

(1) An application for a maintenance calculation made to the Secretary of State shall be dealt with by the Secretary of State in accordance with the provision made by or under this Act.
(2) The Secretary of State shall (unless the Secretary of State decides not to make a maintenance calculation in response to the application, or makes a decision under section 12) determine the application by making a decision under this section about whether any child support maintenance is payable and, if so, how much.
…

(6) The amount of child support maintenance to be fixed by a maintenance calculation shall be determined in accordance with Part I of Schedule 1 unless an application for a variation has been made and agreed.
(7) If the Secretary of State has agreed to a variation, the amount of child support maintenance to be fixed shall be determined on the basis determined under section 28F(4).
(8) Part II of Schedule 1 makes further provision with respect to maintenance calculations."

10. The Defendant has power to revise his decision under section 11 in particular:

16 Revision of Decisions

(1) Any decision to which subsection (1A) applies may be revised by the Secretary of State—
(a) either within the prescribed period or in prescribed cases or circumstances; and
(b) either on an application made for the purpose or on the Secretary of State's own initiative;
and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised.
(1A) This subsection applies to—
(a) a decision of the Secretary of State under section 11[3], 12 or 17;
…
(c) a decision of the First-tier Tribunal on a referral under section 28D(1)(b).
(1B) Where the Secretary of State revises a decision under section 12(1)—
(a) the Secretary of State may (if appropriate) do so as if ... revising a decision under section 11; and
(b) if the Secretary of State does that, the decision as revised is to be treated as one under section 11 instead of section 12(1) (and, in particular, is to be so treated for the purposes of an appeal against it under section 20).
(2) In making a decision under subsection (1), the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause the Secretary of State to act on the Secretary of State's own initiative.
(3) Subject to subsections (4) and (5) and section 28ZC, a revision under this section shall take effect as from the date on which the original decision took (or was to take) effect.
(4) Regulations may provide that, in prescribed cases or circumstances, a revision under this section shall take effect as from such other date as may be prescribed.

[3] The maintenance calculation

(5) Where a decision is revised under this section, for the purpose of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.
(6) Except in prescribed circumstances, an appeal against a decision of the Secretary of State shall lapse if the decision is revised under this section before the appeal is determined."

11. The Act affords the Secretary of State power to make a superseding decision on application or of his own initiative in respect of maintenance calculations, decisions of Child Support Commissioners and appeal tribunals/the First Tier Tribunal:

"**17 Decisions superseding earlier decisions**
(1) Subject to subsection (2), the following, namely—
(a) any decision of the Secretary of State under section 11[4] or 12 or this section, whether as originally made or as revised under section 16;
(b) any decision of an appeal tribunal or the First-tier Tribunal under section 20;
…
(d) any decision of an appeal tribunal or the First-tier Tribunal on a referral under section 28D(1)(b);
(e) any decision of a Child Support Commissioner or the Upper Tribunal on an appeal from such a decision as is mentioned in paragraph (b) or (d),
may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on the Secretary of State's own initiative.
(2) The Secretary of State may by regulations make provision with respect to the exercise of the power under subsection (1).
(3) Regulations under subsection (2) may, in particular—
(a) make provision about the cases and circumstances in which the power under subsection (1) is exercisable, including provision restricting the exercise of that power by virtue of change of circumstance;
(b) make provision with respect to the consideration by the Secretary of State, when acting under subsection (1), of any issue which has not led to the Secretary of State's so acting;
(c) make provision with respect to procedure in relation to the exercise of the power under subsection (1).
(4) Subject to subsection (5) and section 28ZC, a decision under this section shall take effect as from the beginning of the maintenance period in which it is made or, where applicable, the beginning of the maintenance period in which the application was made.

[4] The maintenance calculation

(4A) In subsection (4), a "maintenance period" is (except where a different meaning is prescribed for prescribed cases) a period of seven days, the first one beginning on the effective date of the first decision made by the Secretary of State under section 11 or (if earlier) the Secretary of State's first default or interim maintenance decision (under section 12) in relation to the non-resident parent in question, and each subsequent one beginning on the day after the last day of the previous one.
(5) Regulations may provide that, in prescribed cases or circumstances, a decision under this section shall take effect as from such other date as may be prescribed."

"**20 Appeals to First-tier Tribunal**
(1) A qualifying person has a right of appeal to the First-tier Tribunal against—
(a) a decision of the Secretary of State under section 11, 12 or 17 (whether as originally made or as revised under section 16);
(b) a decision of the Secretary of State not to make a maintenance calculation under section 11 or not to supersede a decision under section 17;
. . .
(d) the imposition (by virtue of section 41A) of a requirement to make penalty payments, or their amount;

(2) In subsection (1), "*qualifying person*" means—
(a) in relation to paragraphs (a) and (b)—
(i) the person with care, or non-resident parent, with respect to whom the Secretary of State made the decision, or
(ii) in a case relating to a maintenance calculation which was applied for under section 7, either of those persons or the child concerned;
…
(c) in relation to paragraph (d), the parent who has been required to make penalty payments; and
(d) in relation to paragraph (e), the person required to pay fees.

(2A) Regulations may provide that, in such cases or circumstances as may be prescribed, there is a right of appeal against a decision mentioned in subsection (1)(a) or (b) only if the Secretary of State has considered whether to revise the decision under section 16.

(2B) The regulations may in particular provide that that condition is met only where—
(a) the consideration by the Secretary of State was on an application,
(b) the Secretary of State considered issues of a specified description, or

(c) the consideration by the Secretary of State satisfied any other condition specified in the regulations.
(3) A person with a right of appeal under this section shall be given such notice as may be prescribed of—
(a) that right; and
(b) the relevant decision, or the imposition of the requirement.

(4) Regulations may make—
(a) provision as to the manner in which, and the time within which, appeals are to be brought; ...
…
(c) provision that, where in accordance with regulations under subsection (2A) there is no right of appeal against a decision, any purported appeal may be treated as an application for revision under section 16.

(5) The regulations may in particular make any provision of a kind mentioned in Schedule 5 to the Social Security Act 1998.
. . .
(7) In deciding an appeal under this section, the First-tier Tribunal—
(a) need not consider any issue that is not raised by the appeal; and
(b) shall not take into account any circumstances not obtaining at the time when the Secretary of State made the decision or imposed the requirement.

(8) If an appeal under this section is allowed, the First-tier Tribunal may—
(a) itself make such decision as it considers appropriate; or
(b) remit the case to the Secretary of State, together with such directions (if any) as it considers appropriate."

12. The Defendant also has power to make a range of administrative orders against a defaulting parent such as deduction from earnings orders ("DEO"), deduction orders and deductions from benefits[5]. Under the 1991 Act, it is only if those administrative orders have proved ineffective or are not relevant as a means of ensuring that payments are made in accordance with the maintenance calculation in question that the Defendant may then apply for a liability order ("LO") against a defaulting parent:

[5] Sections 31, 32A, 32E-F.

“33 Liability orders.

(1) This section applies where—

(a) a person who is liable to make payments of child support maintenance (“the liable person”) fails to make one or more of those payments; and

(b) it appears to the Secretary of State that—

(i) it is inappropriate to make a deduction from earnings order against him (because, for example, he is not employed); or

(ii) although such an order has been made against him, it has proved ineffective as a means of securing that payments are made in accordance with the maintenance calculation in question.

(2) The Secretary of State may apply to a magistrates’ court or, in Scotland, to the sheriff for an order (“a liability order”) against the liable person.

(3) Where the Secretary of State applies for a liability order, the magistrates’ court or (as the case may be) sheriff shall make the order if satisfied that the payments in question have become payable by the liable person and have not been paid.

(4) On an application under subsection (2), the court or (as the case may be) the sheriff shall not question the maintenance calculation under which the payments of child support maintenance fell to be made.

(5) If the Secretary of State designates a liability order for the purposes of this subsection it shall be treated as a judgment entered in a county court for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc)

(6) Where regulations have been made under section 29(3)(a)—

(a) the liable person fails to make a payment (for the purposes of subsection (1)(a) of this section); and

(b) a payment is not paid (for the purposes of subsection (3)), unless the payment is made to, or through, the person specified in or by virtue of those regulations for the case of the liable person in question.”

13. Furthermore, enforcement through the county court (section 36) and by the use of bailiffs (section 35) must be ineffective before sanctions can be applied for against the defaulting parent by the Defendant: sections 39A and 39B. Sanctions include

committal to prison, disqualification from driving and disqualification for holding or obtaining a United Kingdom passport.

14. Finally, by section 51 the Secretary of State may by regulations make such incidental, supplemental and transitional provision as he considers appropriate in connection with any provision made by or under the 1991 Act, which include making provision as to the procedure to be followed with respect to the making, cancellation or refusal to make maintenance calculations, as well as the evidence which is to be required in connection therewith.

15. Lord Bingham succinctly summarised the effect of the 1991 Act in *R (Kehoe) v Secretary of State for Work and Pensions* [2005] UKHL 48 at [4]:

> *"[The 1991 Act] imposed a responsibility for maintaining a qualifying child on each parent (section 1(1)). It imposed a duty on the absent or non-resident parent to make payment of child maintenance in any periodical sums assessed (section 1(3)). It obliged the Secretary of State, on the application of either parent, to assess the child maintenance payable according to a statutory formula (sections 4, 11). It empowered the Secretary of State to take enforcement action if authorised to do so (sections 4, 6). It gave the Secretary of State significant powers (sections 14, 15, 30, 31, 33, 35, 36, 39A). While the role of the courts was preserved in relation to consensual settlements reached by parents not in receipt of state benefit (section 8), and there can be no doubt of the Secretary of State's duty to account to the caring parent for sums which he has received from the paying parent, subject to any appropriate deduction of benefit, the Act conferred no right of recovery or enforcement on a caring parent ... against an absent or non-resident parent..."* (emphasis added)

16. In *Department of Social Security v Butler* [1995] 1 WLR 1528 Evans LJ explained as follows at 1531-1532:

> *"The following observations may be made on these statutory provisions.*
> *(1) The Act of 1991 together with regulations made under it provide a detailed and apparently comprehensive code for the collection of payments due under maintenance assessments and the enforcement of liability orders made on the application of the Secretary of State…*
> *(3) Although section 1(3) provides for a duty which arises when the maintenance assessment is made, this duty is not expressed as a civil debt. Mr Crampin accepts that the duty could not be directly enforced by action in any civil court, or by any means other than as provided in the Act."*

In agreeing with this, Morritt LJ added at 1540-1541:

> *"As I have indicated the Secretary of State claims in respect of the statutory right correlative with the obligation expressed in section 1(3) of the Act of 1991. But that obligation and right is not a civil debt in any ordinary sense. First, the obligation may only be enforced by the Secretary of State and not by any other person who may be stated to be the payee in the maintenance assessment. Secondly, the Secretary of State's powers of enforcement do not enable him to sue for the arrears in the ordinary way. In the first instance his choice lies between a deduction of earnings order directed to the employer or an application to justices for a liability order*." (emphasis added)

17. It follows that, and importantly for the purposes of the instant case:

(1) The Act creates a legal obligation on the NRP to pay maintenance sums calculated to be due (section 1(3)).

(2) The Act does not confer any right on the PWC to receive such payments, whether from the NRP or the Defendant; nor may a PWC enforce directly against the NRP.

(3) The Defendant cannot sue for any arrears of maintenance sums.

(4) The Act confers a discretion (subject to various pre-conditions) on the Defendant whether to collect or enforce, and confers a range of *discretionary* powers for that purpose (section 4(2)). The Defendant does not guarantee payment, and is under no duty to secure that payment is made from the paying parent.

18. There are two different ways in which maintenance payments are secured:

(1) **Direct pay**, where the NRP pays the PWC directly, following a maintenance calculation. This involves no collection and enforcement action on the part of the CMS.

(2) **Collect & Pay,** where the CMS collects and enforces the payment of money from the NRP on the PWC's behalf (section 4(2)). This power only arises if the NRP agrees or if the Defendant is satisfied that the NRP is "*unlikely to pay*": section 4(2A).

19. I agree with Sir James Eadie KC (leading Cecilia Ivimy, Jackie McArthur and Oliver Jackson) for the Defendant, that the fact that the Act does not impose any duty on the Defendant to secure payment from the NRP reflects the fact that this may not be appropriate or possible:

    (1) First, the Act requires the Defendant to have regard, when exercising his discretionary powers, to the welfare of any affected child (section 2). Children who may be affected include qualifying children but also other children who may be supported by the NRP[6]. The Defendant may need to take into account the fact that securing payment for qualifying children may be to the detriment of other children of the NRP.

    (2) Secondly, and importantly, whilst by section 11(1) the Defendant is under a general duty to deal with any application for a maintenance calculation in accordance with the Act, there are legal constraints on the exercise of collection and enforcement powers:

        i. On application by a PWC, the Defendant may only make arrangements for collecting payments (i.e. Collect & Pay) if one of two conditions are met, namely either (a) the NRP agrees; or (b) the Defendant "*is satisfied that without the arrangements child support maintenance is unlikely to be paid in accordance with the calculation*" (sections 4(2A)(a) and (b)).

        ii. Administrative orders (DEOs, deduction orders, deductions from benefits[7]) may only be made in specific circumstances (e.g. the NRP is employed). There are deduction limits to protect minimum earnings/benefit amounts.[8]

        iii. Administrative orders must be ineffective before enforcement by means of a LO may be sought through the courts (section 33). Enforcement through the courts and bailiffs (sections 35 and 36)

[6] See *R (Brookes) v Secretary of State for Work and Pensions* [2010] EWCA Civ 420 at [14] per Hughes LJ.
[7] Sections 31, 32A, 32E-F and 43.
[8] See (for earnings) Child Support (Collection and Enforcement) Regulations 1992, rr. 11(2), 12(2) and (for benefits) Sch 9, para 9 of The Social Security Claims and Payments Regulations 1987 and Reg 60, Sch 6, Sch 7 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.

must be ineffective before subsequent sanctions can be applied. Those sanctions (committal to prison, disqualification from holding a driving licence/passport) are at the discretion of the magistrates' court, which is required to inquire into means and "*wilful refusal or culpable neglect*": sections 39A and 39B.

20. It has accordingly been recognised by the courts in a number of cases that the exercise of the discretionary enforcement powers vested in the defendant may not be appropriate on the facts of a specific case. The exercise of the discretion calls for a nuanced judgment in some cases which, indeed, may change over the course of time. In *Rowley v Secretary of State for Work and Pensions* [2007] EWCA Civ 598, the Court was considering whether or not the CSA owed the PWC a duty of care in respect of the collection or enforcement of maintenance which sounded in damages (it did not). The following observations of Dyson LJ at [82] are apposite in the present case:

> *"As Mr Giffin points out, it will not always be the right course to take the most aggressive approach to enforcement. For example, there may be a risk that enforcement action will cause the breakdown of the relationship between the absent parent who owes the arrears and the CSA. A more consensual approach may be more effective in the longer term. The interests of the children need to be carefully considered. For example, there may be cases where taking enforcement action may harm the relationship between the absent parent and the qualifying children. The duty on the Secretary of State under section 2 of the 1991 Act when exercising any discretion is to have regard to the welfare of any child likely to be affected by his decision. It is a matter for judgment whether, for example, the remedy of commitment to prison should be sought in circumstances where that will deprive the absent parent of his livelihood and may make the payment of arrears of maintenance less likely…"*

21. A similar point was made in *Treharne v Secretary of State for Work and Pensions* [2008] EWHC 3222 at [10] per Sir Ross Cranston, where the Judge stated as follows:

> *"The Act confers a discretionary power, not a duty, on the CSA to institute enforcement action. There is no timetable set out within which any such enforcement action must be taken. It goes without saying that the speed and effectiveness of enforcement action depends, in part, on the extent to which resources are available to the agency and to whether those resources are allocated within the agency for the enforcement function. Moreover, enforcement activity in respect of one case may mean less activity in respect of another. No doubt the task of the CSA in dealing with parents who evade*

payment or who are determined to avoid paying is a difficult one. Aggressive enforcement may not always be the right course of action, given the variety of different family circumstances in which arrears may arise. In many cases there will not necessarily be a simple answer to an enforcement problem. The duty under s.2 of the Act, to take into account the welfare of any child, may also act as a brake on enforcement action."

22. It is also important, in my judgment, to keep in mind that as Ward LJ stated in R (Kehoe) v Secretary of State for Work and Pensions [2004] EWCA Civ 225 at [17], despite the best efforts of the CSA, *"It always had been and doubtless will always remain a sad fact that the enforcement of maintenance orders is frequently less than successful."*

The Guidance published by the Defendant

23. The Secretary of State has published non-statutory guidance to decision-makers on the operation of the statutory scheme, which is known as the "Child Maintenance Decision Makers Guide" ("DMG"). The Claimants' complaints in this case relate to Chapter 49 of the DMG which sets out guidance on the application of the "unlikely to pay" test under section 4(2A) of the 1991 Act.

24. The Claimants suggest that the only express reference to domestic violence or abuse in the DMG appears in Chapter 16 at paragraph 16006[9]. That section of the guide provides that the application fee of £20 is waived if the applicant has declared that they are a victim of domestic violence or abuse and reported it to an appropriate person (i.e. self-certification). Paragraph 16007 provides that in order to qualify for the fee waiver, the applicant must:

"1. Be considered a victim of domestic violence or abuse and
2. Have reported the domestic violence or abuse to an appropriate person and
3. Have informed the CMS of it at the time of making their application and
4. State the appropriate person to whom this has been reported at the time of making the application."[10]

[9] This is not in fact correct. There are other important references, see for example paragraphs 15057-9 of the DMG, which are discussed further below.
[10] The Guidance issued on Regulation 4(3) of the Child Support Fees Regulations 2014 states that an appropriate person is a court, the police, a medical professional, social services, a multi-agency risk assessment conference, a specialist domestic violence organisation, educational services, an employer, a local authority, a legal professional, a specialist support organisation.

25. The Defendant expressly recognises that domestic abuse can consist of *economic* abuse. That is apparent from paragraph 16011 of the DMG, where it is provided that:

> "*The definition of domestic violence and abuse and the list of bodies to which this must have been reported is not laid down in regulations, but is set out in two sets of guidance to which the regulations refer:*
>
> *1. Guidance on how DMs will determine if a person is a victim of domestic violence or abuse is available at this gov.uk link.*"

That link takes the reader to Guidance on Domestic Abuse which states in particular that: "*Domestic abuse is not always physical violence. It can also include … economic abuse*." Moreover, the Guidance issued on Regulation 4(3) of the Child Support Fees Regulations 2014 also provides that domestic abuse can encompass financial abuse. Indeed, Sir James Eadie KC made clear that the Defendant does not take issue with the fact that domestic abuse may consist of economic abuse.

26. Chapter 49 of the DMG is the focus of the Claimants' policy complaint and it is necessary at this juncture to set out in full the key provisions of this part of the guidance:

> *"**Chapter 49 - Unlikely to pay***
> ***Introduction***
> ***49001** Where a maintenance calculation has been made, the PWC or CiS may apply to the CMS for*
>
> *1. the collection of child maintenance payable under the calculation, and*
>
> *2. the enforcement of the obligation to pay in accordance with the calculation.*
>
> ***49002** A DM [Decision Maker] may only make arrangements for the collection of payments if*
>
> *1. the NRP agrees to the arrangements, or*
>
> *2. the DM is satisfied that without the arrangement child support maintenance is unlikely to be paid in accordance with the calculation (referring to s. 4(2A) of the 1991 Act).*
>
> ***49003** Where the PWC or CiS has requested that their case be administered as collect and pay and the NRP does not agree to the arrangements, the DM should carry out an 'unlikely to pay' check.*

Format of the check

49004 *The unlikely to pay check decision is made by the DM using their judgement and based on the merits of the individual case. When considering the case DMs need to decide if the NRP is unlikely to make regular payments voluntarily.*

Basic criteria for carrying out the check

49005 *When making a decision as to whether a NRP is deemed unlikely to pay, DMs should consider the following factors*

1. The NRP pays via an enforced method – for the majority of cases where a NRP pays via an enforced deduction from earnings order or deduction from earnings request they will be determined as unlikely to pay.

2. The NRP is undergoing legal enforcement action – where a case is undergoing legal action to establish compliance it will usually be appropriate to determine them as unlikely to pay.

3. The NRP has undergone legal enforcement action or paid via an enforced method in the six months prior to requesting direct pay – the NRP will be determined as unlikely to pay unless the DM considers there is a good reason to believe the NRP is not to be deemed as unlikely to pay, e.g. the full clearance of arrears via a voluntary lump sum.

4. The NRP has missed one or more payments in the past six months –DMs must use their discretion to determine whether this constitutes an unlikelihood to pay. Where a payment has been missed DMs must evaluate any available evidence to determine whether or not there was a reasonable explanation for the missed payment.

5. The NRP has demonstrated a pattern of behaviour over the past six months which indicates a potential to be considered unlikely to pay[11]*. Where a NRP has made all the required payments over the past six months they will generally be considered not unlikely to pay. However if from a behaviour pattern there is an indication that they may be unlikely to pay privately, DMs may decide that the NRP is nonetheless unlikely to pay, e.g. when payments are only being made following CMS action being taken."*

Note: this list is not definitive, nor does it mean that the NRP will automatically be deemed to be unlikely to pay in these circumstances, as consideration must be given to all other relevant factors[12]*.*

…

[11] Emphasis added.
[12] Emphasis added.

49008 *All NRPs must be presumed to be not unlikely to pay unless there is evidence to the contrary*.

Informing clients

49009 *DMs must contact both parties and explain the decision that has been made, why they have come to this decision and any other relevant information.*

49010 *This should be supplied to both parties via telephone. Only where the parties cannot be reached by telephone should a notification by post confirming the decision and inviting representations be considered.*

NRP not found unlikely to pay

49011 *Where the NRP is not found unlikely to pay, both parties must be informed that*

1. the available evidence has been considered and it does not suggest that the NRP would be unlikely to pay maintenance privately. As such a direct pay arrangement will now be set up. The PWC should supply a reasonable method by which the NRP can make direct payments. The CMS may (with permission) transfer details such as bank account information from one party to another if the two parties do not have contact, and

2. they will continue to receive annual schedules informing them of the dates and amounts of maintenance that must be paid and that these must be met.

NRP found unlikely to pay

49012 *Both parties must be informed of the decision.*

1. The NRP must be informed on what basis CMS have determined them to be unlikely to pay and the approximate date they will become eligible for direct pay or a compliance opportunity.

2. The PWC must be informed that the case will continue to be managed under collect and pay provisions however this will not necessarily be permanent. The NRP will have the opportunity to demonstrate their compliance within the collection service and will, if they remain compliant, become eligible for direct pay in the future. The PWC must be informed that if this does happen they will be fully informed of this prior to any change to direct pay.

Appealing the decision

49013 *The unlikely to pay check is not a decision that can be appealed and both parties will be informed of this fact when they are told of the decision.*

49014 *If either client is unhappy with the decision they may ask for it to be looked at again.*

49015 *If, following this, the client remains unhappy they have the option to raise a formal complaint. They may also take their case to the Independent Case Examiner or, if they allege maladministration, the Ombudsman.*
Clients also have the right to seek an independent Judicial Review.

The compliance opportunity

49016 *It is possible that a NRP who was once deemed unlikely to pay may now be willing to comply with a voluntary arrangement and the CMS will offer a compliance opportunity.*

49017 *The compliance opportunity is a reactive process and therefore is only offered at the request of a NRP. The format of the compliance opportunity will depend on the circumstances of the case.*

NRP paying by a non-enforced method of payment

49018 *The NRP must make 6 months of payments in full and on time (unless there is good reason for a delay in payments being made). If the case is less than 6 months old, then the NRP must have made all payments due to date.*

49019 *The compliance opportunity is about demonstrating a consistent pattern of behaviour. Therefore, if the NRP offers to pay off any arrears in a lump sum payment the CMS should encourage this, but it will not shorten the compliance period. When the time comes to review the unlikely to pay decision, any positive behaviour by the NRP can be considered as supporting evidence.*

49020 *If the NRP has made 6 months of payments as required, they will be eligible to switch to direct pay <u>unless there is any evidence that suggests this would not be appropriate.</u> The PWC must be contacted and informed that the case is moving to direct pay due to the NRP displaying acceptable compliant behaviours*[13].

[13] Emphasis added.

49021 *If the NRP has not made 6 months of payments as required, the missed payments must be investigated. If there is no good reason for the missed payments, or the DM believes that there is another reason why the NRP is unlikely to pay, the DM must notify them that they will not qualify for direct pay until they have made 6 months of payments on time and in full inclusive of payments already made."*

The Callan Report

27. The Defendant commissioned an independent review into the treatment by the CMS of victims of domestic abuse, which led to a report dated January 2023. The reviewer, Dr Callan, concluded that improvements were needed to enable domestic abuse survivors to set up safe maintenance arrangements. In particular, by her first recommendation, she recommended that the primary legislation should be amended to enable Direct Pay cases to be moved onto the Collect & Pay service where there is evidence of domestic abuse.

28. The Defendant accepted 8 of her 10 recommendations in its response to the review, observing that *"60% of new applications to the CMS [were] now claiming the domestic abuse waiver of the £20 application fee"*. Consistently with Dr Callan's first recommendation, the government supported in particular a Private Members Bill to "*amend primary legislation to refuse access to direct pay where one parent objects to it on the grounds of domestic abuse and where evidence can be provided. The details of what constitutes appropriate evidence of domestic abuse will be set out in secondary legislation once the Bill has passed through Parliament*."

The 2023 Act

29. This led to the enactment in June 2023 of the Child Support Collection (Domestic Abuse) Act 2023 - although it is not yet in force, as the relevant secondary legislation (relating to what constitutes evidence of domestic abuse) has not yet been passed. This Act inserts a new sub-section (3A) after section 4 of the 1991 Act, such that it will read as follows:

"**4 Child support maintenance**

(1) A person who is, in relation to any qualifying child or any qualifying children, either the person with care or the non-resident parent may apply to the

Secretary of State for a maintenance calculation to be made under this Act with respect to that child, or any of those children.

(2) Where a maintenance calculation has been made in response to an application under this section the Secretary of State may, if the person with care applies to the Secretary of State under this subsection, arrange for—

(a) the collection of the child support maintenance payable in accordance with the calculation;

(b) the enforcement of the obligation to pay child support maintenance in accordance with the calculation.

(2A) The Secretary of State may only make arrangements under subsection

(2)(a) if—

(a) the non-resident parent agrees to the arrangements, or

(b) the Secretary of State is satisfied that without the arrangements child support maintenance is unlikely to be paid in accordance with the calculation.

(3) Where an application under subsection (2) for the enforcement of the obligation mentioned in subsection (2)(b) authorises the Secretary of State to take steps to enforce that obligation whenever the Secretary of State considers it necessary to do so, the Secretary of State may act accordingly.

(3A) Where a maintenance calculation has been made in response to an application under this section, the Secretary of State may, if the person with care or the non-resident parent applies to the Secretary of State under this subsection, arrange for the collection of the child support maintenance payable in accordance with the calculation if satisfied on the basis of evidence of a prescribed kind relating to relevant domestic abuse that it is appropriate for such arrangements to be made."[14]

30. In other words, under the 2023 Act, upon the request of the PWC (or the NRP) the Defendant has a discretion to have the CMS collect the child support maintenance if satisfied on the basis of evidence relating to domestic abuse that it is appropriate for such arrangements to be made[15], and in such a case it is not necessary for the Commission to be satisfied that without the collection arrangements child support

[14] Emphasis added.
[15] To be prescribed by the secondary legislation.

maintenance is unlikely to be paid in accordance with the calculation. By section 3(6) of the 2023 Act, the relevant domestic abuse includes economic abuse, which means "*any behaviour that has a substantial adverse effect on the victim's ability to acquire, use or maintain money*": see section 1(3) and (4) of the Domestic Abuse Act 2021 (to which section 3(6) of the 2023 Act refers). There is, however, no automatic entitlement to the transfer in such a case onto Collect & Pay; whether to move the PWC onto Collect & Pay remains within the Defendant's discretion having assessed all the evidence.

31. Ms Zoe Leventhal KC (leading Emma Dring and Emma Foubister) for the Claimants contends that this change in the law is evidentially relevant to the issue which the court has to determine. Sir James denied that this was so. I return to this below.

The Claimants' case

32. Against this legislative and policy background, I turn next to the Claimants' case. It has fluctuated over time and it has in consequence been difficult to ascertain the precise nature of the challenge in each case.

33. By the Amended Statement of Facts and Grounds ("ASOFG") (dated 30 May 2022 and subsequently amended on 4 April 2023), the Claimants articulate four grounds of challenge (see paragraph 5). The Claimants state that they "*challenge both the ongoing failures and omissions by the Defendant to collect and enforce the arrears in their cases, and the lawfulness of the underlying various policies and practices by which the system is operated by the Defendant, on the following four grounds*":

Ground 1: the ongoing failures of collection and enforcement in the Claimants' cases and the policies and practices giving rise to the same constitute a disproportionate interference with the rights of both the children and their mothers to the payment of the monies due to them as protected by Article 1 of the First Protocol ("A1P1") of the European Convention on Human Rights ("ECHR").

Ground 2: the ongoing failures to collect and enforce the maintenance payments in the Second to Eighth Claimants' cases (including investigatory steps preparatory

thereto) and the policies and practices giving rise to the same breach of the Defendant's positive obligation under Article 8 ECHR ("Article 8") to protect the Claimants, as known victims of domestic violence, from ongoing economic abuse.

Ground 3: the failures to collect and enforce the maintenance payments in the Claimants' cases (including investigatory steps preparatory thereto) and the policies and practices giving rise to the same, constitute discriminatory treatment on the part of the Claimant mothers under Article 14 ECHR ("Art 14") read with A1P1 and/or Article 8 on grounds of sex. The scheme has a particular disparate impact on the Second to Eighth Claimants, as victims of domestic violence, both because the data shows that they are more likely to be affected by the enforcement failures; and because these failings enable and perpetuate economic (and psychological) abuse, a form of gender based violence against women (and their children).

Ground 4: the failures to collect and enforce the maintenance payments in the Claimants' cases, and the policies and practices giving rise to the same, breach the Defendant's *Padfield* obligation to promote the legislative purpose of the 1991 Act.

34. It can be seen that in each case the complaint is levelled against both "*the failures to collect and enforce the maintenance payments in the Claimants' cases, and the policies and practices giving rise to the same*."

35. Paragraph 7 of the ASOFG suggested that this was a systemic challenge to the scheme and the guidance under it as a whole:

"The key CMS failures evident from the Claimants' cases, and the wider evidence including from Gingerbread (the leading single parent charity) & the Child Poverty Action Group ("CPAG"), can be summarised as follows:

a. ***Systemic failings in the Collect & Pay scheme****, including significant delays in setting up cases and unlawful refusals to put cases on the scheme despite obvious and lengthy failures to pay (e.g. unlawfully deferring to NRP's choice and/or failure to exercise discretion altogether), obvious omissions in the 'Unlikely to Pay' policy including a lack of effective criteria, and procedural unfairness for the PWC in determining whether the NRP is 'unlikely to pay';*

b. ***Absence of appropriate policy*** *regarding the treatment of victims of domestic violence in order to avoid or mitigate furtherance of abuse in collection and*

enforcement, thereby perpetuating further economic, psychological abuse and controlling & coercive behaviour for the women and their children;

c. ***Failures to take, or significant and lengthy delays in taking, action to enforce payment of arrears*** *(including investigatory steps preparatory thereto), with consequences for recoverability (earlier arrears written off, NRP no longer earning by time of enforcement); systemic breach of CMS's own policies and statements on enforcement action;*

d. ***Underuse of Deduction From Earnings Orders*** *("DEOs") (omissions and failures to deploy sooner or more frequently and failures to investigate non-compliance);*

e. ***Underuse of other Enforcement Measures*** *(including suspending or disqualifying from driving or holding a passport);*

f. ***Inadequate monitoring*** *and/or complaints system."*

36. The judge at the paper permission stage (Mrs. Justice Heather Williams) summarised her understanding of the claim in her Reasons (dated 21 October 2022) and stated as follows at [5]:

> *"5. For the avoidance of doubt, I do not interpret these proceedings as entailing challenges to individual decisions made in individual cases (contrary to the suggestion in the Acknowledgment of Service ("AOS")); these are relied upon as illustrative of the alleged failings in policies and practice."* (emphasis added)

37. The Claimants' renewal skeleton argument (of 20 February 2023) consistently averred at [6] that: *"The ... judge ... recognised that (i) the claim should not be treated as a challenge to individual specific decisions in the Claimants' cases, but one which indicated wider systemic and ongoing failures"* (emphasis added).

38. But by paragraph 25 of the Claimants' Reply to the Detailed Grounds of Defence dated 24 July 2023, the Claimants changed their case again, now stating:

> *"25. As explained at the outset, contrary to the Defendant's suggestion,* ***the Claimants do not bring a systems challenge in respect of A1P1****. The Defendant's arguments at [DGD/45-7, 49-50] therefore fall away. As explained above, the individual Claimants are challenging* ***the breaches of their own rights under A1P1 in their individual cases.*** *The Defendant*

has not taken reasonable steps to protect their A1P1 rights." (emphasis added)

39. But in paragraph 49 of their skeleton for this substantive judicial review hearing, the Claimants' position has shifted yet again. They now state as follows under the heading "*Breach of A1P1 on the facts of the Claimants' cases*":

> *"49. The Claimants and their children have been subject to a catalogue of errors, delays and failures on the part of the Defendant.* ***While they are not challenging any one decision or omission specifically, they are challenging the accretion of those individual decisions and the key patterns of failings which have perpetuated their individual cases*** *and which are broadly consistent across all the Claimants. They are challenging a continuing state of affairs, based on a persistent pattern of unlawful actions and omissions."* (emphasis added)

The nature of the challenge

40. It follows that the Claimants' case so far as **A1P1** is concerned was finally formulated as follows:

    (1) They do not advance a systemic challenge;

    (2) They do not challenge any one decision or omission in their individual cases;

    (3) They only challenge in their individual cases what they term *"the accretion of those individual decisions and the key patterns of failings which have perpetuated their individual cases"*, being what they term a *"continuing state of affairs*" based on a persistent pattern of unlawful actions and omissions in 5 particular respects (paragraphs 49 and 52 of their skeleton). They rely in this regard upon *R(G) v Secretary of State for Justice* [2010] EWHC 3407 (Admin).

41. Ms Leventhal KC confirmed in opening her case that this was indeed the Claimants' position.

42. The case which the Claimants advance under **Article 8** (paragraph 80 of their skeleton argument) is focussed both on:

    (1) The lawfulness of the DMG guidance (i.e. a systemic challenge) and

    (2) Individual breaches of the protective duty under Article 8, again relying on the five continuing, specific aspects of alleged unlawfulness relied upon under A1P1 (paragraph 110 of their skeleton). It is said that the court must ask itself whether in the Claimants' individual cases reasonable steps are taken to protect them from economic abuse (ibid, paragraph 86).

43. Whilst the Claimants' case on A1P1 and Article 8 has not been consistent, I heard full argument from all parties on the basis of the case as described in paragraphs 40-42 above and accordingly I consider that I should allow the Claimants to advance their case in this way. That stated, the fact that the Claimants have had such difficulty in articulating a consistent case under A1P1 and Article 8 is not an encouraging starting point from their perspective.

44. The Claimants' case under **Article 14** (read with A1P1 and/or Article 8) is that the Defendant's failures to take effective or timely collection or enforcement action are discriminatory because they have a disparate impact on AA, BB and CC and their children, as victims of domestic violence. They maintain that there is no objective justification for the difference in treatment: it is unreasonable and disproportionate. Ms Leventhal KC explained that this is a complaint that (i) the policy itself is not compliant with Article 8; and (ii) the way that the scheme is operated in practice is unlawful as being indirectly discriminatory and constituting *Thlimmenos* discrimination. She relies upon *R (DMA) v Secretary of State for the Home Department* [2021] EWHC 327 (Admin) for this second point.

45. Finally, the Claimants contend that by failing to exercise enforcement powers delegated to it by statute which are not available to them, the **Defendant is failing to fulfil the statutory purpose of the 1991 Act** and is in breach of its *Padfield*

obligation to promote, rather than frustrate, the legislative purpose of the 1991 Act (*Padfield v Minister of Agriculture, Fisheries & Food* [1968] AC 997).

The Evidence

The Claimants

46. So far as the facts of the individual Claimants' cases are concerned, the Claimants rely upon the following witness statements:

(1) A witness statement of Preston Paris Ingold and three witness statements of Angela Ingold;

(2) Three witness statements of AA (C2);

(3) Three witness statements of BB (C5);

(4) Three witness statements of CC (C7).

47. The court was also provided with witness statements from several organisations with considerable experience in relation to the subject matter of this claim and which provided the court with helpful general background material, namely a witness statement of Alison Garnham of the Child Poverty Action Group; three witness statements of Victoria Benson of Gingerbread (on whose behalf Mr. Darryl Hutcheon provided the court with an admirably succinct skeleton argument as well as short oral submissions as intervener); a witness statement of Dr Nicola Sharp-Jeffs OBE on behalf of Surviving Economic Abuse and a witness statement of Farah Nazeer of Women's Aid. Ms Benson in particular set out a large quantity of statistical evidence, some of which the Claimants relied upon in submissions before me.

48. Needless to say, whilst there is no doubting the genuine feelings of frustration of the Claimants (and Angela Ingold) as a result of the underpayments of maintenance and the delays in payment of maintenance by the NRP, in blaming the Defendant and the Defendant's system for these failings the Claimants' witness statements understandably set out only their perception of the reasons for those failings. The

alleged failings are said to consist of the following in particular: failing to move the Claimants on to Collect & Pay in an adequate and timely manner; taking inadequate enforcement action (failing to use at all or in a timely manner Deduction Orders, LOs, confiscation of driving licence or passport); miscalculation of arrears/assessing an NRP's income at too low a level; and failing adequately to investigate the NRP's financial situation, by failing to take adequate or timely steps to trace the NRP's address or whether their stated income was accurate.

49. The Defendant takes issue with the Claimants' and Angela Ingold's evidence and perception, and through the witness statements served on his behalf he explains both the particular difficulties that the Claimants' cases have thrown up in terms of collection of maintenance as well as the lengths to which the Defendant has gone to recover the arrears of maintenance in each case. He accepts that there have, in certain isolated respects, been missteps or omissions of the CMS from time to time, but he argues that is not evidence of any systemic problem in general.

50. The Defendant relies upon witness evidence as follows:

(1) The witness statement of Duncan Gilchrist, Deputy Director for Child Maintenance Policy at the Department of Work and Pensions ("DWP").

(2) Four witness statements of Johanne Wilkie (each one addressing the specific circumstances of each of AA, BB, CC and Ms Ingold), who is the Judicial Review and Litigation Manager for the CMS within the DWP.

51. Mr. Gilchrist gives evidence (in paragraphs 11-16 of his statement) of the very challenging nature of the service provided by the CMS. He explains as follows:

> *"11… the relationship between separated parents can be emotionally fraught and characterised by anger and mistrust. The CMS frequently has to deal with allegations and counter-allegations about circumstances relevant to child maintenance obligations, as well as parents who deliberately seek to avoid collection and enforcement.*
>
> *12. … decisions on collection and enforcement are discretionary. This reflects the fact that the CMS often has to balance the competing interests*

of the NRP and the PWC, and it must always consider the welfare of any affected child. The CMS often deals with child maintenance arrangements in the context of family arrangements where one or both parents have children from relationships with different partners. Collection and enforcement of child maintenance may therefore affect more than one family. The welfare of the child for whose benefit maintenance is being paid must always be taken into account, but so must that of other affected children.

13. … in practice, many of the cases the CMS deals with involve situations where both parents and their families are facing financial hardship. This means that decisions on collection and enforcement may have significant effects on the well-being of families of both PWCs and NRPs. Very low incomes can also result in missed payments, and when arrears build up it can be particularly challenging to recover them, or to do so in a short timescale. Of course, there are some cases where an NRP may have significant financial means and employ complex accounting and financial techniques to attempt to hide the true scale of their wealth from the CMS. But these are a very, very small minority of cases. The parents that make up the CMS's overall caseload overwhelmingly fall towards the bottom end of the income scale. As I explain further below, 43 percent of NRPs on Collect & Pay arrangements are on universal credit. 46 percent do not pay tax because they earn less than the personal allowance, currently £12,570 per annum, and these parents represent 62 percent of those in arrears. A fundamental problem facing the CMS when it comes to collecting or enforcing against such NRPs is that there is often very little, if any, money to be had.

14. … the CMS has to respond to changing family and financial circumstances. Relationships, childcare arrangements and family make-up can change over time. Many of the parents with whom the CMS deals move regularly in and out of work and between different forms of employment and between work and benefits. Income is often erratic. Compliance with obligations can also be highly variable, depending on the NRP's own circumstances.

15. … the CMS has to deal fairly with both parents. This may involve, for example, giving parents the opportunity to make representations, to provide evidence, or to comply with arrangements before being subject to enforcement action. Together with the complexity of underlying circumstances, this can mean that decisions take time. It can take time to verify information, parents can refuse to cooperate, or they can delay providing necessary information. Collection and enforcement can also

take time because the CMS has to deal with third parties such as employers, banks and the courts, which can all be sources of delay.

16. … the CMS deals with these problems on a large scale. As I explain below, (see §§55-57) in September 2022 around 886,000 children were covered by CMS arrangements. In the financial year 2021/2022 the service cost £365 million to operate. The CMS must ensure not only that the welfare of children, and relevant interests of PWCs and NRPs are properly taken into account, but that taxpayers' money is spent efficiently and fairly allocated between cases."

52. I accept this evidence which is consistent with judicial observations, including those set out above, concerning the frequently difficult task facing the CMS in exercising its collection and enforcement powers under the scheme.

53. Mr. Gilchrist goes on to provide, in paragraphs 54-75 of his statement, headline statistics in respect of the 2012 scheme (as currently in force). In particular, he explains that whilst arrears have built up in the case of some of the Claimants, a better measure of the CMS's overall effectiveness in collecting child maintenance is arrears as a proportion of the total amount of child maintenance that was cumulatively due to be paid during the entire period. In the quarter ending December 2022 the proportion of the total maintenance payable under the scheme that was unpaid and thus needed to be collected through Collect & Pay was only 8 percent. This proportion has remained the same since the quarter ending December 2021. The distribution of arrears amongst NRPs is also important. 46 percent of NRPs using the CMS did not earn enough to pay income tax (i.e. they earned below the personal allowance which was £12,570 in 2021-22), but these parents represented 62 percent of those in arrears as at March 2021.

54. So far as the "*unlikely to pay*" test is concerned, Mr. Gilchrist deals with this in paragraphs 89-104 of his witness statement. He refers in particular to the reference in the DMG to the fact that the list of factors set out therein as relevant to the issue of "*unlikely to pay*" is not definitive, nor does it mean that the NRP will automatically be deemed to be unlikely to pay in those specified circumstances, as consideration must be given to all other relevant factors. When considering whether an NRP who is unlikely to pay should be moved to Collect & Pay, or should remain on Direct Pay, he says that the decision-maker ("DM") takes into account not only

the interests of the PWC, but also the NRP and any children who are affected by the decision. Use of Collect & Pay has financial implications for both parents, in particular for the NRP who is obliged to pay a fee of 20 percent of the calculated amount of child maintenance.

55. On the issue of what constitutes a "*pattern of behaviour*" under the DMG at paragraph 49005, paragraph 5, he points out that the DMG does not attempt exclusively to define what constitutes a pattern of behaviour. Given all the possible ways in which payments may or may not be arranged and made between parents, he suggests that there is no way that a fully exhaustive list could be set out. The CMS relies on the DM to exercise their good judgment on the facts of each individual case. If a NRP "*has made all the required payments over the past six months*" then this will generally not constitute a pattern of behaviour indicating a potential to be considered "*unlikely to pay*".

56. He also addresses (in paragraphs 96-103 of his statement) the allegation that the "*unlikely to pay*" test is procedurally unfair and does not properly allow for consideration of any domestic abuse context. In that regard he states in particular as follows:

> *"96. First, the allegation that the PWC is not given an opportunity to make representations before a case is moved to Collect & Pay ignores the fact that in the large majority of cases, the only reason why the decision maker is considering the "unlikely to pay" test in the first place is because the PWC will have specifically requested that the case be moved from Direct Pay to Collect & Pay. In practice, PWCs can and do provide information about the NRP's behaviour at the time of making that request.*[16]
>
> *97. Indeed, the CMS decision maker usually has repeated contact with both the PWC and the NRP throughout the process. The application of the "unlikely to pay" test is not a check-box exercise. What typically occurs is that the PWC contacts the CMS to say that payments have been missed and provides some material to evidence this, such as bank statements from one of their bank accounts; the CMS decision-maker then contacts the NRP to seek their views; the*

[16] Emphasis added.

NRP then tells the CMS that payments are being made and provides their own evidence, such as bank statements showing payments to a bank account that is said to belong to the PWC. The CMS decision-maker will then contact the PWC again, to check e.g. whether the bank account in question is theirs, or whether the payments were for something other than child maintenance. Throughout this process of engagement, PWCs provide information about the NRP's behaviour.[17] *The CMS decision maker then weighs all the information and evidence presented to reach a determination.*

98. Second, I am aware that the Claimants allege that withholding of payments can be a form of economic abuse by NRPs. The fact that payments have been withheld is picked up by the CMS and forms a key factor in the determination of whether the NRP should be moved to Collect & Pay. Decision makers can also factor in any domestic abuse background when taking decisions, if it is relevant to the question whether the NRP is unlikely to pay in the future. As set out above, DMG 49005 expressly notes that the list of factors in that paragraph "is not definitive" and that "consideration must be given to all other relevant factors" and the decision as to whether an NRP is unlikely to pay must be "made by the DM using their judgement and based on the merits of the individual case" [DG12/A841]. The CMS has no power under the current legislation, however, to move a case to Collect & Pay solely on the ground that there is a history of domestic abuse[18].

…

100. Fourth, DMG 49008 provides that an NRP must be presumed to be not unlikely to pay unless there is evidence to the contrary. This reflects the fact that moving an NRP onto Collect & Pay can have a detrimental impact on the NRP, because it results in a 20 percent fee in addition the maintenance calculation and it can result in more intrusive collection methods (such as deductions from earnings orders). In these circumstances, it is important that decisions taken to move an NRP onto Collect & Pay without their consent are properly supported by evidence.

101. Fifth, decision-makers are required to inform both parents when a decision has been taken and the reasons for that decision together with any other relevant information: see DMG 49009-49012 [DG12/A841]. There is no formal right of appeal for either party against a decision that a NRP is or is not unlikely to pay but a dissatisfied parent may ask for the decision to be reconsidered and

[17] Emphasis added.
[18] Emphasis added

the DMG makes express provision for this: see DMG 49014. If a parent remains dissatisfied, they may raise a complaint, ask for the case to be referred to the independent case examiner or, if the complaint is of maladministration, the Parliamentary and Health Service Ombudsman, or seek judicial review: see DMG 49015."[19]

57. Finally, so far as enforcement in domestic abuse cases is concerned, Mr. Gilchrist gives the following evidence at paragraphs 167-173:

> *"167. <u>It is important to emphasise that, where a case is on Direct Pay, the CMS takes precautions to ensure that PWCs who are victims of domestic abuse are protected. For instance, CMS caseworkers act as intermediaries for the PWC and NRP to facilitate the exchange of bank details and ensure personal information is not shared. There is no need for any direct contact between them</u>:*[20] *see DMG 15057 to 15060 …*
>
> *168. <u>CMS caseworkers will also help PWCs set up bank accounts with non-geographic sort codes. These are sort codes that cannot be traced, so that the PWC can still receive payments directly from the NRP while keeping their location hidden.</u>*[21]
>
> *169. I have described above how the DMG directs CMS decision makers to take account of all the circumstances of the case and use their judgment when determining whether the NRP is unlikely to pay. This means that they can and do take any domestic violence context into account when applying the statutory test*[22].
>
> *170. I am asked to comment on the suggestion at paragraph 105 of the SFGs that the CMS should prioritise the investigation of NRP's finances, and any ensuing enforcement measures, in domestic violence cases. This suggestion, with respect, fails to appreciate the scale of the task facing the CMS. As outlined in the background section above, the current scheme is the product of many years of experience and reforms that have sought to strike a balance between the competing interests of fairness and accuracy in every case on the one hand and the effective and efficient administration of the scheme as a whole on the other. With that balance in mind, all cases in the 2012 scheme are treated equally. Not only is this fair to all cases, it also simplifies the administration required. It would be particularly challenging to seek to identify within the scheme all victims of domestic abuse. That is so*

[19] Emphasis added.
[20] Emphasis added.
[21] Emphasis added.
[22] Emphasis added.

in particular given the existence of allegations and counter allegations between parents that is unfortunately quite common in the scheme.

171. Further, the Claimants' suggestion, even if it was administratively workable, would necessarily involve deprioritising other cases that could reasonably be seen as more deserving when assessed by another metric. Other PWCs are often vulnerable. In the caseload of the CMS there are many parents who are in particular need of assistance, for example because of homelessness, mental or physical disability or poverty. Other metrics could also be devised for prioritisation: e.g. the amount of arrears being incurred every month, or the duration over which arrears have been incurred. The only fair and efficient way to administer the scheme is to treat all cases equally and by reference to the facts of the individual case. Prioritisation for PWCs who were victims of domestic abuse could also risk exacerbating the existing problem of parents 'fighting each other' through the scheme. It could, unfortunately, increase the likelihood of false allegations of domestic abuse.

172. I am also asked to comment on the allegation at paragraph 121(b) of the SFGs that victims of domestic abuse are less likely to receive maintenance payments. The CMS and the DWP do not keep figures on the relative proportion of maintenance payments received by victims of domestic abuse as compared to other PWCs, but I understand that the statistics cited in this paragraph of the SFGs have been obtained from a survey by Gingerbread…

173. The first point I would make is that such surveys are necessarily less reliable than the DWP's internal data on its case load. In particular, it is not clear how this survey was conducted. For instance, it is not clear whether the people conducting the survey were able to correct for self-selection bias: single parents who have experienced problems with collection of child maintenance may have been more likely to respond to the survey than those who have not experienced such problems. It is also not clear what category of single parents was being sampled, but it seems to be a survey of single parents generally rather than an analysis of parents with cases on Collect & Pay. The figures can say very little, if anything, about the functioning of the Collect & Pay system. I would be cautious about drawing any definitive conclusion from these figures that victims of domestic abuse are less likely to receive child maintenance payments through the scheme."

58. Again, I accept this evidence. I was also provided with agreed chronologies of key dates for each of the Claimants' claims to maintenance, as well as an account statement for each of them. Those documents are, in my judgment, the best evidence which the court has of the steps taken concerning maintenance payments in each of the Claimants' cases. I append those helpful documents to this judgment.

Discussion

59. At the outset of her oral submissions, Ms Leventhal KC asserted that the claim as a whole raised one clear legal issue, namely whether the fact that the DMG does not contain *specific* guidance to the DM as to how to deal with the cases of domestic abuse survivors is unlawful. The main focus of her submissions concerned whether, contrary to Article 8, the DMG fails to protect the Claimants, as known victims of domestic violence, from ongoing economic abuse.

Ground 2: Article 8

60. Since most of the time at the hearing was taken up with the Article 8 issue, I shall start with Ground 2, by which the Claimants contend that:

> "*the ongoing failures to collect and enforce the maintenance payments in the Second to Eighth Claimants' cases (including investigatory steps preparatory thereto) and the policies and practices giving rise to the same breach the Defendant's positive obligation under Article 8 ECHR ("Art 8") to protect the Claimants, as known victims of domestic violence, from ongoing economic abuse*".

Article 8 Engagement?

61. It is first necessary to ascertain what positive duty on the State is alleged by the Claimant and whether such a duty exists in law.

62. The Claimants' case as to the nature of the positive duty is articulated in paragraph 88 of their skeleton argument as follows: "*The Defendant has a positive obligation to protect victims of domestic violence from continued economic and psychological abuse <u>through the CMS scheme</u>*" (emphasis added). Furthermore, in the Amended

Statement of Facts and Grounds at [95], the Claimants contend that "*the failures to collect and enforce the maintenance payments*" in their cases breached a positive obligation on the part of the Secretary of State *"to protect those Claimants, as known victims of domestic violence, from ongoing economic and psychological abuse"* (emphasis added). The Claimants also assert that this claim is "*about protecting the Claimants from the furtherance of economic and psychological abuse, in the form of withholding income"* (Reply to the Acknowledgement of Service, paragraph 32), namely the non-payment of child maintenance by the NRP.

63. It is undoubtedly the case that in certain circumstances, Article 8 imposes on the state an obligation to take positive measures as regards the relations between private individuals: see *Barbulescu v Romania* [2017] IRLR 1032 at [108]-[111] (failure of the state to secure to the applicant the enjoyment of his article 8 right to respect for his private life and correspondence).

64. However, Article 8 does not extend to requiring the state to provide financial or pecuniary benefits. In *Kay v Lambeth London BC* [2006] UKHL 10, Baroness Hale emphasised this point:

> *"There is no doubt that article 8 entails both negative obligations - not to interfere - and positive obligations - to secure the right to respect for a person's private and family life, his home and his correspondence. But it does not confer any right to health or welfare benefits or to housing. The extent to which any member state assumes responsibility for supplying these is very much a matter for that member state. In this country, housing law defines the extent of the obligation and the power to provide housing at public expense. Social services law defines the extent of the obligation to provide services (which sometimes includes assistance with housing) for vulnerable people, such as children, the elderly, the sick and the disabled. If social services law does not provide assistance to an occupier whose personal circumstances are said to make eviction from this particular accommodation disproportionate, then I question whether housing law should be made to do so. In an appropriate case, it is incumbent upon the housing authority to liaise with the social services and education authorities before deciding to take action. There is nothing in the jurisprudence to indicate that article 8 requires more of them than is already required."*

See also *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26 at [25] per Lord Reed ("*Article 8 has never been held to impose an obligation on the state to have in place a programme of financial support for private or family life*"); and *R*

(JS) v Secretary of State for Work and Pensions [2015] UKSC 16 at [139] per Lord Hughes ("*Article 8 … does not extend to requiring the state to provide benefits*").

65. Nor does a failure to secure child support maintenance payments engage Article 8.

66. In *Logan v United Kingdom* [1996] 22 EHRR CD 178[23], the applicant (a NRP) contended before the European Commission of Human Rights (First Chamber) that the amount of maintenance which it was assessed that he was required to pay under the 1991 Act left him with insufficient money to enable him to maintain reasonable contact with his children in violation of Article 8. He claimed that the maintenance as assessed impeded the development of his relationship with his children contrary to their best interests and disclosed a failure to respect that relationship. Thus, whilst this case concerned the burden upon the NRP to make payment of child support maintenance, the Commission's consideration of the 1991 Act in the context of Article 8 is instructive.

67. The Government denied that there had been any interference in the applicant's family life and emphasised that the CSA was intended to protect family life, maintenance payments being intended to provide for children's basic living costs, which are the responsibility of both parents and should come before the provision of less essential items of expenditure. Even assuming an interference with the applicant's rights under Article 8, the Government argued that such interference would be justified and proportionate: there was a pressing social need to ensure that parents fulfil their responsibilities to their children and the CSA struck a fair and reasonable balance between the absent parent's responsibilities for his or her children and the need for a system that produced fair and consistent results, preserved the parents' incentive to work and reduced the dependency of parents with care on income support, providing consequent savings to tax-payers.

68. The Commission went on to consider the applicant's complaints in the context of the financial obligations that were acknowledged to exist between the applicant and his children. The Commission noted that the relevant legislation, insofar as it sought to regulate the assessment of maintenance payments from absent parents, did not by its

[23] See also *Burrows v United Kingdom* Application No. 27558/95.

very nature affect family life. Nor, in the light of the factual information supplied by the applicant regarding his income and expenses, including the cost of visiting his children every fortnight, did the Commission consider that the applicant had shown that the effect of the operation of the legislation in his case was of such a nature and degree as to disclose any lack of respect for his rights under Article 8. In the circumstances, the Commission did not therefore find it necessary to go on to consider whether, had there been an interference, it would have been justified within the meaning of Article 8 paragraph 2 of the Convention.

69. The NRP's position was considered further in ***R (M) v Secretary of State for Work and Pensions*** [2006] 2 AC 91. Ms M was the mother of two children who spent the greater part of each week with their father, her former husband from whom she was divorced. Under the 1991 Act she, as the NRP, was required to contribute to the costs of maintaining the children incurred by the father as the PWC. The amount of her contribution was calculated according to rules laid down in regulations made under the 1991 Act. According to those rules, in assessing a person's entitlement to benefit, some account was taken of the income and outgoings of a heterosexual partner with whom an applicant is living, but not of those of a partner of the same sex. This often worked to the benefit of an applicant, but could work to the applicant's disadvantage, as it did in the case of Ms M who lived with her female partner. As applied to her, on the facts of her case, the rules resulted in her being required to pay more towards the maintenance of her children than she would have to pay if she were living with a man. Ms M did not complain that her rights under Article 8 were violated, but rather that her situation fell within the *ambit or scope* of Article 8 and that she was accordingly entitled to complain that her enjoyment of her Article 8 rights was the subject of adverse discrimination on the ground of sex, in violation of Article 14.

70. The Court held that Ms M's situation was not, however, even within the ambit of Article 8.

71. At [5] Lord Bingham stated as follows:

> *"Like Kennedy LJ in the Court of Appeal, I do not think the enhanced contribution required of Ms M. impairs in any material way her family life with her children and former husband, or her family life with her children and her current partner, or her private life. No doubt Ms M. has*

less money to spend than if she were required to contribute less… But this does not impair the love, trust, confidence, mutual dependence and unconstrained social intercourse which are the essence of family life, nor does it invade the sphere of personal and sexual autonomy which are the essence of private life. I regard the application of a rule governing a non-resident parent's liability to contribute to the costs incurred by the parent with care, even if it results in the non-resident parent paying more than she would under a different rule, as altogether remote from the sort of abuse at which IFP is directed." (emphasis added)

72. Lord Walker likewise stated at [87]:

"I am content to assume that the unit consisting of Ms M, her new partner and (especially when living with them) their children by their former marriages should be regarded as a family for article 8 purposes. I would also accept that the complicated formulae employed by the 1991 Act and the Regulations are intended to strike a fair balance between the competing demands (on often limited financial resources) of the children (when living away from the new home) and the new household. To that extent the legislation is intended, in a general sort of way, to be a positive measure promoting family life (or, it might be more accurate to say, limiting the damage inevitably caused by the breakdown of relationships between couples who have had children). But I do not regard this as having more than a tenuous link with respect for family life. I do not consider that this way of putting Ms M's case brings it within the ambit of respect for family life under article 8." (emphasis added)

73. And Lord Mance at [124]-[125] stated as follows:

"124. Mrs M's case under article 8 read with article 14 of the Convention is that the regime fell "within the ambit" or "scope", or was "one of the modalities of the exercise", of her right to respect for (a) her family life with her children and former partner, (b) her family life with her new same sex partner and (c) her private life. She does not have to show an actual breach of the United Kingdom's obligation to afford such respect under article 8, taken by itself… But the circumstances must fall within the ambit of article 8, in order for article 14 to be relevant. In this connection, I have had the benefit of reading in draft the opinion of my noble and learned friend, Lord Walker of Gestingthorpe, and I am in agreement with his analysis of the authorities and the reasoning leading him to the conclusion that a tenuous link between the child support regime and her family or private life is insufficient.

…

> *125. In the present case, Mrs M was entitled to respect for such continuing family life as she had with her children as well as, possibly, with her former partner. But the regime as a whole was directed at supporting her children in the new family in which her children lived; while the particular aspects of the regime about which she complains were directed at any new relationship she formed. If these aspects (or indeed the whole regime) had any bearing at all on her continuing family life with her children or former partner, the link could only be of the most indirect and tenuous nature. I agree with the Court of Appeal's unanimous rejection of the case based on her family life with her children and former partner."* (emphasis added)

74. Turning to the position of the PWC, in *Smith v Smith* [2006] UKHL 35 at [77], Baroness Hale stated:

> *"I see considerable force in the argument that a state which prevents a parent with care from claiming child support through the ordinary court system has a positive obligation to provide an effective alternative system. The state has a positive obligation under article 8 of the European Convention to take steps which permit the child's integration in his own family: see Marckx v Belgium (1979) 2 EHRR 330. The child can scarcely benefit from family life if there is not enough to live on. But I accept that it is a considerable feat of interpretation to spell the "right to receive regular, reasonable maintenance" (for which Mr Mostyn QC so persuasively contends) out of the right to respect for family life in article 8."* (emphasis added)

75. Two years later, in *Treharne v Secretary of State for Work and Pensions* [2008] EWHC 322, the Court considered the impact of the 1991 Act on the PWC more directly.

76. *Treharne* was concerned with an attempt by each of the claimants to obtain a remedy in relation to an alleged failure of the CSA properly to enforce a maintenance assessment in their favour as a PWC. The claimants sought to rely upon Article 8 to seek damages in relation to the CSA's failure to collect and enforce the payment of maintenance by the NRP over the course of several years. Cranston J referred to all of *Logan*, *Burrows*, *Smith*, *Kay* and *R (M)* and, bringing the caselaw together, held (at [29]-[32]) as follows on the question of whether Article 8 was engaged at all:

"Is Article 8 engaged?

29. Although one has considerable sympathy for the Claimants on their pleaded case, the issue is whether the failure of the Child Support Agency to function effectively and to enforce the maintenance assessments in their favour against their father gives rise to an Article 8 claim. I see no chance at all that Article 8 can assist these Claimants. First, there is the statutory framework itself, which is a discreet and comprehensive scheme attempting to reconcile the various competing interests. It grants the CSA a discretion and does not impose a duty to proceed in any particular way. The actions of the CSA are subject to judicial review. It is a scheme which, Mr Emello conceded, was Article 8 compliant. That, of course, is a concession which had to be made given the decisions of not only the European Court of Human Rights but also the highest court in this country. The result is, as Lord Hope put it in Marcic, that the malfunctioning of the statutory scheme in particular cases does not cast doubt on its overall fairness so as to ground a claim under Article 8. Just as in that case the statutory scheme fell short over a number of years, so on the pleaded case there was a significant failure over a substantial period to ensure that the father paid the Claimants the maintenance assessments which had been made. Of itself, however, that on the authorities cannot ground an Article 8 claim.

30. The second basis on which the Claimants have advanced their case takes the matter no further in as much as it is an argument that as a result of Article 8 there is a right of the Claimants to reasonably regular maintenance from the State. That must fail, because it is quite clear from the cases to which I have referred that Article 8 confers no such right to welfare payments on individuals. The jurisprudence has not built on the right to respect for family and private life economic rights, which might include a right to reasonable maintenance for which the Claimants seem to be contending. ...

31. The pleaded case sets out the hardship which the Claimants suffered -- moving to a smaller house, giving up certain activities, having to cut down on expenditure and having to take free school meals. That, of course, is a standard of living which many people who live in modest circumstances in this country experience. Yet children who have to live modestly as a result of the fact that, for example, their parents are dependent on Social Security benefits, or are unemployed, do not have an Article 8 claim. That being the case I fail to see how the Claimants in this case can boost their standard of living by latching on to Article 8 and claiming that somehow it is engaged as a result of what the CSA has or has not done. Were they to succeed, children like them would be in a better

position than other children living in modest circumstances. That to me would produce a result which the Convention could not contemplate.

32. Finally, I see no hope of the Claimants succeeding as a result of the third strand of jurisprudence, in other words, those cases involving an Article 8 claim involving the Child Support Agency. Indeed, on my reading those cases are supportive of the Defendant's not the Claimant's case. I accept that the facts of those cases are different in that they are concerned with the impact of the legislation on the non-resident parent. In this case we are concerned with what is said to be the failure of the State to collect maintenance for the beneficiaries of the scheme. The Claimants contend that they were denied basic living costs to which they were entitled through the assessed maintenance payments. But the answer is provided in M, albeit that it was concerned with a non-resident parent. In that case M had less money to spend as a result of the CSA calculation, but for the House of Lords that did not impact on her family life with her non-resident children or her private life with her partner. As a matter of principle family life in Article 8 [is] constituted by the love, trust confidence, mutual dependence and unconstrained social intercourse which exists within the family and private life by the sphere of personal and sexual autonomy. The same conclusion must surely apply in the converse situation where persons have less money as a result of the CSA failing to collect arrears of maintenance. That may make family life and private life tougher and perhaps more stressful than it would be, but it cannot be said to affect the core values attached to these concepts."

77. I agree. In my judgment, it is clear that a claimant does not have an Article 8 remedy simply by virtue of an alleged failure of the CMS properly to collect and enforce a maintenance assessment in favour of him/her as the PWC, where an NRP fails to pay maintenance.

78. However, Ms Leventhal KC argued that this case is different in that a positive duty arises under Article 8 where the failure to pay child support maintenance is being used *as a form of domestic economic abuse*.

79. For that submission she relies upon *Levchuk v Ukraine* App. No. 17496/19, 3 September 2020, in which the ECHR referred to the fact that "*the Court has established that the national authorities have a positive obligation under the Convention to put in place and apply an adequate legal framework affording effective protection against acts of domestic violence*" (para 79). The court also

recognised that domestic violence can take many forms, including economic abuse (para 78)[24].

80. The facts of *Levchuk* are, however, far removed from the present case. In *Levchuk* the abuser was still living under the same roof as the victim-applicant and the Court held that, whilst there was no challenge to the quality of the legislative and administrative framework in general in that case, the domestic judicial authorities had failed on the facts of that case to comply with the state's positive obligation to ensure the applicant's effective protection from continued domestic physical and psychological violence. The victim had been systematically targeted and future physical and psychological abuse for her and her children was likely to follow. The State accordingly had a duty to take steps in her case to prevent future ill treatment. Whilst the applicant in that case did not complain about the applicable legislative and administrative framework providing for eviction, she did allege that the application of that framework to her case resulted in a breach of Article 8. The Court agreed and held that, by failing to evict the abuser in that case the State had failed to comply with its positive obligation to ensure effective protection for the applicant from domestic violence.

81. I accordingly consider that if it could be shown on the facts of a particular case that the State knew or ought to have known that a NRP was using the CMS Scheme in order to inflict domestic economic abuse upon his victim which the State could prevent, then the State might indeed have a positive duty to take reasonable steps to ensure the victim's effective protection from that economic abuse.

82. Whether a positive obligation under Article 8 to take reasonable steps to protect a victim of domestic abuse exists in any case, and the scope of that duty, will crucially depend upon the facts of the case, which will include whether there is a real and immediate risk of economic abuse to the claimant[25] and the severity of the harm that the claimant is suffering or likely to suffer[26]. In *Levchuk* it was immediate and serious physical violence.

[24] See also *Noveski v Macedonia*, 25163/08, 13 September 2016 at [61].
[25] See *Kurt v Austria* (2022) 74 EHRR 6.
[26] In this respect, contrary to the submissions of Gingerbread (paragraphs 9-19), I consider that there is a need to be cautious about extending the law too far by means of international law instruments. As Lord Reed

Application of Article 8

83. Since there may be a positive (Article 8) duty upon the state to take reasonable steps in a particular case to ensure effective protection from domestic economic abuse, it is next necessary to consider whether that duty has been infringed in the present case. There are two aspects to the challenge, namely (i) a policy challenge and (ii) a challenge in the case of these individual Claimants.

(i) The Policy challenge

84. The starting point is that Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals.

85. In *C v Romania*, Application No. 47358/20 at [61]-[65], the ECHR set out the general principles concerning the protection of the right to respect for private life. The positive duty resting upon the State in a case where the victim's psychological integrity is impaired is to put in place an adequate legal framework which could consist of civil-law remedies capable of affording sufficient protection:

> "*61… In particular, while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in effective respect for private life, which may involve the adoption of measures in the sphere of the relations of individuals between themselves.*
>
> *62. The Court has previously held that the concept of private life includes a person's physical and psychological integrity. Under Article 8, States have a duty to protect the physical and psychological integrity of an individual from other persons. To that end, they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals, including in the context of harassment at work.*

stated in *R (AB) v Secretary of State for Justice* [2021] UKSC 28 at [54]-[64], domestic courts should not take the protection of Convention rights further than they can be fully confident that the European Court would go. It is for the European Court to decide which international instruments and reports it considers relevant and how much weight to attach to them.

63. In the context of attacks on the physical integrity of a person, such protection should be ensured through efficient criminal-law mechanisms… Where attacks on physical integrity come from a private individual, the Convention does not necessarily require State-assisted prosecution of the attacker in order to secure the applicant's Convention rights.

64. As regards less serious acts between individuals which may violate psychological integrity, an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection…

65. Moreover, as far as positive obligations under Article 8 are concerned, this is an area in which Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals. The Court's task is not to substitute itself for the competent domestic authorities in determining the most appropriate methods of protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation…"

86. In this case, the Defendant has put in place a comprehensive legal framework with civil remedies (including judicial review) affording protection from the withholding of income, and in doing so the Defendant enjoys a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals.

87. As the Supreme Court held in *R (A) v Secretary of State for the Home Department* [2021] UKSC 37 at [46], there are three types of case where a policy may be found to be unlawful by reason of what it says or omits to say about the law when giving guidance for others. The Claimants argue (see paragraph 88 of their skeleton argument) that this is a type (iii) case as identified by the Supreme Court, namely one where the authority "*purports in the policy to provide a full account of the legal position but fails to achieve that, either because of a specific misstatement of the law*

or because of an omission which has the effect that, read as a whole, the policy presents a misleading picture of the true legal position".

88. I agree that this is the way in which the Claimants must put their argument, as a category (iii) case. There is no allegation that the law has been misstated by the Defendant in the DMG (so as to make this a type (i) or (ii) case) and so the Claimants' argument must be that read as a whole, the policy presents a misleading picture of the true legal position.

89. But what is meant by a "*misleading picture of the true legal position*"? Category (iii) cases are grounded in the decision of *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 ("*Gillick*"): see *R(A)* at [38]. The question for the Court is whether "*the policy can be operated in a lawful way or whether it imposes requirements which mean that it can be seen at the outset that a material and identifiable number of cases will be dealt with in an unlawful way*" (*R(A)* at [63]). To the same effect and in the context of Convention rights, the Supreme Court endorsed (at [78]) Lord Mance's formulation in *Northern Ireland HRC Application for Judicial Review* [2018] UKSC 27: "*It [is] sufficient that [the policy] will inevitably operate [incompatibly with Convention rights] in a legally significant number of cases*".[27]

90. In *R (Timson) v Secretary of State for Work and Pensions* [2022] EWHC 2392 (Admin) at [144] Cavanagh J set out a succinct summary of the combined effect of *Gillick*, *R(A)* and *R (BF (Eritrea)) v Secretary of State for the Home Department* [2019] EWCA Civ 872[28] as to when written guidance to decision makers may render unlawful the exercise of a statutory discretion, with which I respectfully agree:

> *"(1) The obligation is an obligation not to give policy direction to recipients to do something which conflicts with the legal duty of the addressee. The test is: does the policy in question authorise or approve unlawful conduct by those to whom it is directed?*
>
> *(2) The court must look at whether the policy can be operated in a lawful way or whether it imposes requirements which mean that it can be seen at*

[27] See to like effect [68].
[28] The obligation is "*not to give a direction which conflicts with the legal duty of the addressee*": at [51].

the outset that a material and identifiable number of cases will be dealt with in an unlawful way.

(3) In particular, a procedure will be unlawful if the effect of the procedural rules set out in the guidance is that a significant number of cases introduced into the system would be decided unfairly and hence unlawfully. However, the test is not a statistical test.

...

(6) Category (iii) is where the authority, even though not under a duty to issue a policy, decides to promulgate one and in doing so purports in the policy to provide a full account of the legal position but fails to achieve that, either because of a specific misstatement of the law or because of an omission which has the effect that, read as a whole, the policy presents a misleading picture of the true legal position. A case is more likely to fall into category (iii) if a Secretary of State has issued guidance to his or her own staff explaining the legal framework in which they perform their functions.

(7) However, in a category (iii) case, it will not usually be incumbent on the person promulgating the policy to go into full detail about how exactly a discretion should be exercised in every case. A policy may be sufficiently congruent with the law if it identifies broad categories of case which potentially call for more detailed consideration, without particularising precisely how that should be done.

(8) The authorities set out above show that the circumstances in which a written policy or guidance may render unlawful decisions that are taken pursuant to a statutory discretion are narrower than was sometimes believed. The test is not simply whether the guidance is inherently unfair, or [whether] the guidance, if followed, would (i) lead to unlawful acts, (ii) permit unlawful acts or (iii) encourage such unlawful acts, or would lead to a real or unjustified risk of unfairness or unfairness.

(9) Also, it was not the role of policy guidance to eliminate all uncertainty regarding its application and all risk of legal errors by decision-makers, and the drafter of a policy statement is not required to imagine whether anyone might misread the policy and then to draft it to eliminate that risk; and

(10) it is not necessary, in order to be lawful, that the guidance must invariably produce conduct on the part of decision-makers that would be lawful."

91. In my judgment the Claimants cannot satisfy the relevant test. They cannot show that the DMG imposes requirements (or contains an omission) which mean that it can be seen at the outset that a material and identifiable number of cases will be dealt with in an unlawful way. The positive duty under Article 8 which is asserted by the Claimants requires the Defendant to take reasonable steps to protect victims of abuse from ongoing economic abuse in the form of non-payment of child support maintenance. But the operation of the DMG does not inevitably involve breaches of that duty in a legally significant number of cases because:

(1) First, the very purpose of the CMS (and the DMG) is to facilitate and secure payment of child support maintenance to the PWC. It is, as Lord Walker put it in ***R (M)***, intended to be a positive measure promoting family life. This case is therefore different to statutory schemes whose purpose is to enable decisions which restrict a claimant's convention rights, such as for example, the imposition of administrative burdens such as a pre-entry language requirement for spouses of British nationals as in ***R (Bibi) v Secretary of State for the Home Department*** [2015] UKSC 68, where it is important for exceptions and safeguards properly to be applied. Here, the CMS and the DMG are not in tension with the Claimants' Article 8 rights; rather, they are pulling in the same direction as Article 8, namely the securing payment of child support maintenance. Thus, as the Defendant rightly observes in paragraph 62 of his skeleton argument, "*if collection and enforcement powers are properly exercised in accordance with the legislation and the DMG as a whole, there is no reason why that will inevitably lead decision makers to infringe a PWC's Article 8 rights.*" On the contrary, it is more likely to protect a PWC's Article 8 rights by preventing a NRP from inflicting economic abuse on a PWC (by intervening in a case where the NRP is unlikely to pay). It is accordingly inherently unlikely that the DMG will lead to infringements of Article 8 in a legally significant number of cases.

(2) Second, the DMG does not in any event prevent the decision-maker taking account of the fact that the PWC is a victim of domestic economic abuse, including in determining whether or not to move onto Collect & Pay. Indeed, if the PWC is subject to domestic economic abuse, it is more likely that the

NRP will be assessed as unlikely to pay (although that is not necessarily so) and moved onto Collect & Pay. As Mr. Gilchrist states in paragraph 98 of his witness statement to which I refer above:

> "*Second, I am aware that the Claimants allege that withholding of payments can be a form of economic abuse by NRPs. The fact that payments have been withheld is picked up by the CMS and forms a key factor in the determination of whether the NRP should be moved to Collect & Pay. Decision makers can also factor in any domestic abuse background when taking decisions, if it is relevant to the question whether the NRP is unlikely to pay in the future. As set out above, DMG 49005 expressly notes that the list of factors in that paragraph "is not definitive" and that "consideration must be given to all other relevant factors" and the decision as to whether an NRP is unlikely to pay must be "made by the DM using their judgement and based on the merits of the individual case.""*

(3) Third, even in the case of Direct Pay, the DMs are told to consider taking other steps to protect a victim of domestic abuse. As the Defendant states in paragraph 63 of his skeleton argument:

> *"Where there are specific concerns about domestic violence which require action other than timely and efficient use of collection and enforcement powers, specific guidance is given. Guidance is given on how to facilitate Direct Pay so that there is no direct contact between the PWC and NRP. Moreover, the Defendant gives separate training and has specific guidance to decision makers on how to spot signs of domestic abuse and how to respond: see DG §§175-178."*
>
> Mr. Gilchrist explains this in his witness statement – see paragraph 56 above.

Thus, the DMG provides as follows:

> ***"Direct Pay MOPs for PWC who have experienced domestic abuse***
> *15057 Where a request to move to direct pay is made and there is no evidence to suggest that the NRP will be unlikely to pay, if the PWC does not wish to provide bank details because they have either experienced or fear domestic abuse (including financial abuse), there are alternative direct payment options available, which the PWC may not be aware of and which must be brought to their attention.*

> *15058 For example, payment to an alternative bank account, such as one with a non-geographic sort code (a non-geographic account is one that cannot be traced and will help protect a person's identity and location.). Most banks are able to offer accounts where the customer's branch location cannot be identified through the sort-code.*
>
> *15059 Where a PWC considers such alternatives to be unsuitable, DM's may agree to arrange payment to another party's bank account, such as a grandparent, if the PWC and the other party are in agreement.*
> *…*
>
> *15060 Where a conditional bail order or similar court order is in place that prevents direct contact between the PWC and NRP a PWC may have concerns that entering into a direct pay arrangement with the NRP may constitute direct contact. DMs should reassure the customer that HMCTS would generally not see a direct pay, child maintenance arrangement as direct contact unless it was specifically stipulated in the order or a court subsequently rules that such an arrangement would in fact violate the terms of the order. For further information on dealing with this type of situation see CMS instructions: Change service type to collect and pay and the CMS DA plan*."

92. In response to this, the Claimants rely upon ***Timson*** (*supra*) at [225]-[226] to contend that the DMG is unlawful. But ***Timson*** is distinguishable from the present case.

93. In ***Timson***, Cavanagh J held at [215] (i) that there was a *legal duty* to seek representations from the claimants in every case and (ii) the guidance, properly construed, directed decision makers that there was no need to seek representations (because it purported to be a comprehensive guidance and was silent on seeking representations). Accordingly, it can readily be understood why the Guidance was unlawful: indeed, it is the very situation canvassed in ***R(A)*** at [43]:

> *"43. There will be cases where the application of the Gillick test for lawfulness of a policy may be less clear than it is here. The first claim brought by the appellant to challenge the Guidance is an example. In its original form, the Guidance did not tell decision-makers to consider seeking representations from a subject before a disclosure to the public, but nor did it tell them not to. However, reading the Guidance as a whole, it was clearly intended to set out for decision-makers a reasonably complete decision-making procedure to be followed, so in our view the Divisional Court was right to hold that, read objectively, it misdirected decision-makers as to how they should proceed, by implicitly indicating*

that they did not have to invite representations whereas in many cases they had a legal obligation to do so."

94. By contrast, here and on the Claimants' own case, there is no hard-edged duty on the Defendant under Article 8 to secure a particular result for victims of abuse (such as the recovery of maintenance). It cannot be said that anything in the DMG makes breach of the Article 8 duty *inevitable* in a legally significant number of cases.

95. It is necessary in this context to consider the specific allegations of unlawfulness levied against the DMG by the Claimants. They advance three respects in which they submit that the DMG is unlawful:

    (1) "*the absence of… provisions… regarding the treatment of victims of domestic violence… including a failure to go straight to Collect and Pay and initiate investigation and enforcement action in a timely and targeted manner*" (skeleton, [93]);

    (2) "*omissions in the 'unlikely to pay' policy, including lack of effective criteria*" (skeleton, [94]); and

    (3) "*procedural unfairness for the PWC in determining whether the NRP is unlikely to pay*" (skeleton, [96]).

96. The question is whether these alleged defects, individually or cumulatively, render the system inadequate in that they will inevitably lead to a breach of the Article 8 duty in a legally significant number of cases. I do not consider that they do:

    (1) The alleged failure to go straight to Collect & Pay is inconsistent with the statute, which the Claimants do not challenge as being incompatible with the Convention. The Defendant only has power to make collection arrangements under section 4(2A)(b) of the 1991 Act where he is satisfied that without such arrangements maintenance is "*unlikely to be paid in accordance with the calculation"*. In particular, there is no proper basis under the Act whereby, simply because a PWC informs the CMS that she is a victim of domestic abuse, the CMS could properly find without more that maintenance

is unlikely to be paid (indeed, if the NRP is keeping up with his payments, it is unlikely that he will be guilty of economic abuse). For example, the NRP may dispute that there has been any abuse, may provide evidence to show that he has consistently paid when on Direct Pay, or give good reasons for past non-payment. Each case requires to be treated on its own facts. Moreover, as Mr. Gilchrist explains by reference to the DMG, where there are specific concerns about domestic violence which require action *other than* timely and efficient use of collection and enforcement powers, specific guidance *is* given. Guidance is given on how to facilitate Direct Pay so that there is no direct contact between the PWC and NRP (DMG 15057 to 15060), and the Defendant gives separate training and has specific guidance to decision makers on how to spot signs of domestic abuse and how to respond: see DMG 175-178.

(2) The guidance on the "*unlikely to pay*" statutory test does not *specifically* direct decision makers to consider domestic abuse, but I do not consider that it is necessary for it to do so. There is nothing in the DMG which suggests, by implication or omission, that the personal circumstances of a claimant (including whether they are a victim of domestic violence) are irrelevant. On the contrary, as the Defendant points out, the DMG expressly provides that decision-makers must take decisions "*using their judgement and based on the merits of the individual case. When considering the case DMs need to decide if the NRP is unlikely to make regular payments voluntarily*" (49004), that they should have regard to any "*pattern of behaviour*", and that the list of examples is not definitive and *"consideration must be given to all other relevant factors"* (49005). This point is analogous to ***Timson***, ground 3 (see [231]-[232]).

(3) There is no basis for finding that there is any procedural unfairness in determining whether the NRP is unlikely to pay. As the DMG makes clear, DMs should have regard to any pattern of behaviour and consideration must be given to all relevant factors. As Mr. Gilchrist states in paragraph 53 of his witness statement, the list of factors set out as relevant to the issue of "*unlikely to pay*" is not definitive, nor does it mean that the NRP will

automatically be deemed to be unlikely to pay in these circumstances, as consideration must be given to all other relevant factors. When considering whether an NRP is unlikely to pay and should be moved to Collect & Pay, or should remain on Direct Pay, the decision-maker takes into account not only the interests of the PWC, but also the NRP and any children who are affected by the decision.

(4) I do not accept the Claimants' submission that there is no evidence to support the Defendant's suggestion that representations may be made by the PWC in the "*unlikely to pay*" process. In those paragraphs of his witness statement set out in paragraph 56 above, Mr. Gilchrist explains the way in which the PWC is able to make representations throughout the assessment process; to ask for the decision to be reconsidered (when they can again make representations); and if they remain dissatisfied, they may raise a complaint, ask for the case to be referred to the independent case examiner or, if the complaint is of maladministration, the Parliamentary and Health Service Ombudsman, or seek judicial review. This certainly does not reveal an unfair procedure which would inevitably result in an infringement of Article 8 rights in a significant number of cases.

97. Ms Leventhal KC also argued that the change in the law contained in the 2023 Act is evidentially relevant to the issue which the court has to determine, see ***Burnip v Birmingham CC*** [2012] EWCA Civ 629 at paragraphs 5 and 64; and ***TP v AR*** [2020] EWCA Civ 37 at paragraph 128. Sir James Eadie KC denied that this was so.

98. I do not consider that this change in the law affects my conclusions set out above. Under the 2023 Act, upon the request of the PWC (or the NRP) the Defendant has a discretion to have the CMS collect the child support maintenance if satisfied on the basis of (as yet unspecified) evidence relating to domestic abuse that it is appropriate for such arrangements to be made. In such a case it is not necessary for the CMS to be satisfied that without the collection arrangements, child support maintenance is unlikely to be paid in accordance with the calculation. I do not consider that any evidential inferences can be drawn from this change; rather, the Government has simply decided, as a matter of policy, to implement the Callan

recommendations in order to give victims of domestic abuse greater protection. That is a policy choice. It does not mean that the current scheme is in breach of Article 8.

99. Finally on this topic, I consider that the policy challenge is in any event out of time and I consider that there is no good reason to extend time. Where a judicial review challenge is directed at a policy or practice, the grounds to make a claim arise "*when the claimant first became affected by the measure and so acquired standing to make the claim*": *R (Badmus) v Secretary of State for the Home Department* [2020] EWCA Civ 657 at[77]-[78] and [82]. In *Badmus*, the claimants challenged a policy on rates of payment for activities carried out by immigration detainees, on grounds that the policy infringed ECHR rights. Notwithstanding that the policy continued to be applied to them in the three months before the issue of the claim, the Court of Appeal held that their claim was out of time. In the present case, the policies complained of (in particular guidance on the Collect & Pay test) were first applied to these Claimants when they joined the CMS in 2015 or 2017, depending on the particular Claimant. The fact that a policy may still be in existence at the date of the claim does not bring the claim in time: a policy is not a "*continuing act*": *R (All the Citizens) v Secretary of State for Digital, Culture, Media and Sport* [2022] EWHC 960 at [153]-[157].

(ii) Individual operational challenges

100. The individual cases which the Claimants advance under Article 8 is that the *ongoing or continuing failures to collect and enforce the maintenance payments* in the Second to Eighth Claimants' cases (including investigatory steps preparatory thereto) breach the Defendant's positive obligation under Article 8 to protect them, as known victims of domestic violence, from ongoing economic abuse (Ground 2 and see also paragraph 103 of their skeleton).

101. Ms Leventhal KC made clear that the Claimants do not challenge any one decision or omission in their individual cases. They challenge what they term "*the accretion of those individual decisions and the key patterns of failings which have perpetuated their individual cases*", being (they contend) a "*continuing state of*

affairs". They maintain that there is support for their argument in *R (G) v Secretary of State for Justice* [2010] EWHC 3407 (Admin).

102. The Claimants rely in this respect upon what they allege to be the five breaches under A1P1, namely:

(1) Failure to move to Collect & Pay;

(2) Inadequate enforcement;

(3) Miscalculation of arrears;

(4) Lack of investigation/verification from the NRP;

(5) The DMG on "*unlikely to pay*" gives rise to unfairness in the Claimants' cases and is itself unlawful.

103. The difficulty with the Claimants' argument is threefold.

104. First, since (i) the Claimants' systemic challenge fails and (ii) they do not allege that any one decision or omission in their individual cases was unlawful[29], it is difficult to see how they can then successfully contend that the accretion or aggregation of those (lawful) decisions in their particular cases thereby become unlawful.

105. Second, the Claimants contend in paragraphs 51-52 of the Reply to the Defendant's Grounds of Defence that:

> *"…there is a continuing breach and therefore the claims are not out of time. The Claimants are all due outstanding sums which the CMS continues to fail to collect and enforce*[30]*. Thus, as per Burton J in R (G) v SSJ [2010] EWHC 3407 (Admin), this is "a continuing state of affairs, which continues not to be put right by the Defendant" such that "time*

[29] Despite there being, for example, a series of individual decisions of the Defendant, refusing to move the Claimant onto Collect & Pay at different points in time.
[30] Emphasis added.

does not run against a claimant at least until that state of affairs has come to an end" (§11).

52. It is therefore wrong to treat these claims as arising 'once and for all' the first time the Claimants were negatively affected by certain policies (on a Badmus basis): firstly, the claim is primarily based on operational failings as well as certain policies per se. The correct analysis is that, in fact, they would be entitled to bring a claim each time there is a failure to enforce (R (Kehoe) v SSWP [2006] 1 AC 42). Here, the Claimants' claims of a persistent failure to enforce and/or systemic failings are ones which, by definition, have arisen over time once the state of affairs has become apparent. As above, a claim based on one breach or individual failure to enforce was likely to have been defended on the basis that it related to an isolated error and/or that it was premature. The Claimants have raised complaints and escalated these issues over time. This claim permits the Court to consider the lawfulness of the overall pattern of failures, which continue to arise based on current policies and practices; otherwise, it is very difficult to see how these failings can be brought before the Court."[31]

106. There are several difficulties with this argument. The continuing breach alleged is said to be a failure on the part of the State in its duty to *collect and enforce the payment of maintenance*, but there is no such absolute duty upon the State under Article 8, nor a duty to take enforcement action of a particular kind as explained above. Neither the existence of arrears, nor a failure to collect them amounts to a breach of the Article 8 duty, even less a breach of a continuing duty under Article 8.

107. The Claimants are accordingly also wrong to assert that "*The correct analysis is that, in fact, [the Claimants] would be entitled to bring a claim each time there is a failure to enforce [payment]*", and indeed of the five complaints, all of them bar the failure to move to Collect & Pay concern the Defendant's alleged failure to calculate properly, collect and enforce maintenance payments.

108. Third, I do not consider in any event that the Claimants' cases can be viewed as one continuing act of collection and enforcement over a lengthy period of time –

[31] This is further illustrated by the terms of the pre-action protocol letter sent on behalf of C1. Under "***details of the Matter Being Challenged***" it is said: "*The challenge relates to the persistent failure by the Defendant to collect child maintenance payments from the Claimant's absent parent … leaving her family … in financial difficulty*…"

and I accept the Defendant's submission in this respect. Discrete and different decisions require to be taken from time to time in response to changing circumstances, such as whether a particular method of enforcement should be adopted in light of the circumstances which obtain at that time concerning non-payment by the NRP.

109. Fourth and in any event, even if a particular decision can be said to have a continuing effect, time runs from the date of the relevant decision, act or omission. Thus, in respect of a complaint about a refusal to move a Claimant onto Collect & Pay at a particular point in time, time begins to run from the date of that refusal. This is consistent with the approach adopted by Burton J in ***R (G) v Secretary of State for Justice*** [2010] EWHC 3407 (Admin) at [12]-[13].

110. Fifth, even were a positive duty under Article 8 to arise, the Claimants' unspecific pleading in the ASOFG as to the individual facts relied upon in the Claimants' cases are insufficient to establish a breach. The application of Article 8 is addressed at paragraphs 102-109 of the ASOFG, but almost all of that is addressed to complaints about the DMG. The only pleading on the individual facts is at paragraphs 107 and 108, where it is alleged that "*The Defendant has omitted to take any steps to protect the Second to Eighth Claimants from ongoing abuse"*, and at paragraph 109 where it is alleged that *"a litany of errors has meant that [C2 to C8] have each been exposed to ongoing suffering*". That is much too vague.

111. I should add that I do not consider that the generalised statistical evidence relied upon by the Claimants (see paragraph 121(b) of their ASOFG and paragraphs 34 and 35 of their skeleton argument, which refers in particular to the witness evidence of Victoria Benson) undermines this conclusion. There is a need to be cautious with generalised statistical evidence of this nature, particularly where it is relied upon to draw conclusions about individual cases. By way of illustration, the Claimants assert in paragraph 35(b) of their skeleton argument, relying upon paragraph 11 of Farah Nazeer's statement, that *"[i]t is estimated that economic abuse occurs in 95% of domestic abuse cases*."[32] But the survey relied upon in that respect was carried out via a very small pool of respondents (who may have been self-

[32] Gingerbread also rely upon this statistic in their skeleton argument, paragraph 7(a).

selecting[33]), and "*economic abuse*" can, of course, mean different things to different people. Moreover, it was a survey of single parents generally rather than an analysis of parents with cases on Collect & Pay. The figures accordingly say very little, if anything, about the functioning of the Collect & Pay system.

112. In the present case, as I have stated in paragraph 58 above, the parties submitted agreed chronologies for each of the Claimants containing an agreed summary of the steps taken in respect of each of their claims for child support maintenance, together with a summary of the outstanding arrears. I was helpfully taken through those chronologies by Cecilia Ivimy, junior counsel for the Defendant. I accept her submission that these agreed chronologies do not support the Claimants' cases that the Defendant is guilty of key patterns of, or a continuing state of failings which have perpetuated the economic abuse in the Claimants' individual cases. Whilst there are occasional mistakes or missteps on the part of the Defendant in handling a particular case, which is inevitable from time to time, there is no evidence of systemic error or any pattern of failings, but rather the evidence suggests, by and large, a conscientious pursuit of NRPs by way of collection and enforcement of maintenance on the part of the CMS. The Claimants' allegation (ASOFG, paragraph 2) that "*the CMS has repeatedly and persistently over many years failed to take any proper or effective steps*" is an unjustified generalisation and belied both by the chronologies and by the four witness statements of Johanne Wilkie.

113. In particular, with certain qualifications set out below, I accept the Defendant's summary of the steps taken in each of the Claimants' individual cases which is contained in (i) the evidence of Johanne Wilkie and (ii) the agreed chronologies as follows.

114. <u>In C1's case (Ms Ingold)</u>, the CMS was faced with an exceptionally difficult case. The NRP was self-employed and on benefits, hid his income and deliberately avoided enforcement which ultimately led to a sentence of imprisonment. This behaviour led to substantial arrears of some £28,000. The Defendant has taken numerous investigatory and enforcement measures against him. Moreover, C1's

[33] See paragraph 173 of Mr. Gilchrist's statement at paragraph 57 above.

mother has been on Collect & Pay from the outset of her CMS claim. The CMS conducted three Financial Investigations Unit ("FIU") investigations; identified income by tracing bank accounts and a suspected employer; located addresses; referred the NRP for benefit fraud; put in place a lump sum deduction order and deducted sums from benefits; sought and obtained two LOs; repeatedly instructed bailiffs; and applied to the magistrates' court for sanctions (for committal to prison and withdrawal of the NRP's driving licence, which were refused by the court). It made a second application for committal of the NRP to prison in May 2022, which resulted in a suspended prison sentence. Since the start of the CMS claim in 2017 and as at September 2023, of £20,015.10 due in on-going maintenance and £11,160 due in CSA arrears (under the previous scheme), £7,282.40 had been paid. In all the circumstances, I consider that reasonable steps to collect and enforce the maintenance were taken by the Defendant.

115. In C2-C4's case (AA and children CA and DA), the NRP moved between employment, self-employment and benefits. C2 joined the CMS in 2015 and has been on Collect & Pay continuously since 2019; prior to that, the claim was moved to Collect & Pay, then back to Direct Pay at her request. Compliance has been variable. The CMS deducted payments when the NRP was on benefits; obtained three DEOs; considered a lump sum deduction order; and twice agreed payment schedules which were effective in securing regular payments. AA alleged that the NRP was under-declaring income and wrongly claiming benefits. The CMS cross-checked the NRP's income against HMRC records and the benefits interface with DWP. Since the start of the CMS claim in 2015 and as at September 2023, of £7,039.77 total maintenance owed, £4,999.94 had been paid. In all the circumstances, I consider that reasonable steps to collect and enforce the maintenance were taken by the Defendant.

116. In C5-C6's case (BB and child LL), the NRP was on benefits and a very low income. The NRP had paid sums due for maintenance and arrears regularly on Direct Pay since joining the CMS in 2017, save for a period between August 2019 and February 2020 when he lost his job. The case was moved to Collect & Pay in February 2020. The Defendant accepts that the case should have been moved to

Collect & Pay earlier (in August 2019)[34]. Despite this, no judicial review claim was brought at this time by C5-C6. The CMS made deductions from benefits and agreed payment schedules for on-going maintenance and arrears with which the NRP complied. On 17 January 2022, the claim was returned to Direct Pay at the request of the NRP. A letter was sent to BB on the same day, notifying her and requesting that she provide her bank details. BB's (unchanged) bank details were then confirmed to the NRP on 17 March 2022, but no payments had been made for February or March while this was being established (BB asserted that the NRP was lying about not having these details but this was not something that the CMS could determine). On 31 March 2022 BB's request that her claim be returned to Collect & Pay was refused on the basis that there had been no missed payments since the NRP had been given her bank details on 17 March. BB alleged that the NRP was fraudulently claiming benefits; the CMS referred the matter to the DWP benefits fraud team but no evidence of fraud was found to exist. As at September 2023, of £12,169.11 total maintenance owed, £11,231.87 had been paid. In all the circumstances, I consider that (save in respect of the period August 2019 to 13 February 2020) reasonable steps to collect and enforce the maintenance were taken by the Defendant.

117. In C7-C8's case (CC and child XO), the NRP was on low pay, moved repeatedly between different employers, had variable income, and moved between employment and benefits. Compliance has been variable. CC was put on Collect & Pay in 2018 and has remained there since. The CMS deducted sums from benefits and imposed seven DEOs under which money was recovered. The CMS considered but rejected other enforcement methods: lump sum deduction orders were inappropriate due to low bank balances; a charging order was judged unlikely to be effective. CC alleged the NRP was not declaring employment and rental income and/or was wrongly claiming benefits. The CMS checked benefit entitlements with DWP, cross-checked employment income with HMRC records, and instructed the FIU. The CMS view that there was insufficient evidence that the NRP had any significant rental income was upheld by a Tribunal in May 2022. As at September 2023, and since the case was moved to the CMS in 2017, of

[34] I address this further below.

£16,492.49 due in on-going maintenance and £2,805 due in CSA arrears, £10,498.22 had been recovered. In all the circumstances, I consider that reasonable steps to collect and enforce the maintenance were taken by the Defendant.

118. It follows that even if one is to assume in this case that there is a positive duty upon the Defendant to take reasonable steps to prevent economic abuse, on the evidence the Defendant has done so.

119. This is subject to one exception. I consider that only in the case of BB it can be said that the Defendant failed to take reasonable steps to collect and enforce maintenance by failing to move her onto Collect & Pay between August 2019 and February 2020. There is no doubt that the Defendant's handling of BB's case during that period in particular was extremely poor. However (i) there is no duty resting upon the Defendant to collect and enforce maintenance and (ii) the evidence before the court is that during that period the NRP lost his job and so could not pay.[35] There is no evidence that his non-payment was the infliction by him upon the PWC of some form of economic abuse.

(iii) *Claim is brought out of time*

120. Furthermore, even in the case of those complaints concerning the decision not to move the Claimants onto Collect & Pay from time to time, the failings on the part of the CMS alleged by the Claimants concern decisions, the last of which in each case was taken more than 3 months before the claims were brought, and so even if viewed as a continuing decision, the claim in each case (save for BB – see below) is accordingly time-barred.[36]

121. C1 (Ingold): In December 2020 C1 made a complaint to the Defendant about non-payment of maintenance and the Defendant's alleged failure to enforce payment. She makes no complaint about Collect & Pay. She issued a pre-action protocol letter on 22 January 2022 but only issued the claim on 31 May 2022.

[35] See Wilkie (2), paragraph 25.
[36] This may be why no individual decisions or omissions in each case are challenged.

122. C2-4 (AA and children CA and DA): There are several complaints about a failure to move C2 onto Collect & Pay: see the Claimants' skeleton argument at paragraph 54. In fact, C2 was moved on to Collect & Pay on 25 October 2017. C2 was moved back on to Direct Pay with her agreement on 25 April 2018 and then moved back onto Collect & Pay on 15 November 2019 and has remained there since that date. C2-4's pre-action protocol letter was sent on 23 June 2020. A second pre-action protocol letter was sent on 27 July 2021. The claim was only issued on 31 May 2022.

123. C5-6 (BB and child LL): There are also complaints about a failure to move C5 onto Collect & Pay: see the Claimants' skeleton at paragraph 55. C5-6's pre-action protocol letter was sent on 23 June 2020. A second pre-action protocol letter was sent on 27 July 2021. However, no claim was issued at the time. On 17 January 2022, the claim was returned to Direct Pay at the request of the NRP. On 31 March 2022 BB's request that her claim be returned to Collect & Pay was refused on the basis that there had been no missed payments since the NRP had been given her bank details (so as to be able to pay) on 17 March. The claim was finally issued on 31 May 2022. I accept that BB's claim solely in relation to the refusal to move her onto Collect & Pay on 31 March 2022 was, in principle, issued in time.

124. C7-8 (CC and child XO): The Defendant refused a request to move onto Collect & Pay on 5 December 2017 and a further request was refused on 1 February 2018. The claim was moved onto Collect & Pay in October 2018 where it has remained. The claim, however, was only issued on 31 May 2022.

125. In respect of a complaint about a failure to move a Claimant onto Collect & Pay in order to prevent economic abuse, time began to run from the date when that failure occurred, which in each case (save for BB's case – see paragraph 123 above) was considerably more than three months prior to the making of the claim. Each of the claims, save for BB's claim (to the extent described in paragraph 123), are accordingly out of time.

126. The Claimants apply for an extension of time to bring the claim.

127. When a claim for judicial review is not filed promptly and in any event within three months after the grounds for making the claim first arose[37], the court may refuse leave to bring the claim on the ground of delay unless it considers that there is good reason for extending the period; but, even if it considers that there is such good reason, it may still refuse leave (or, where leave has been granted, substantive relief) if in its opinion the granting of the relief sought would be likely to cause hardship or prejudice or would be detrimental to good administration.

128. Accordingly, in *Maharaj v National Energy Corporation of Trinidad and Tobago* [2019] UKPC 5 (Judicial Committee of the Privy Council), Lord Lloyd-Jones explained as follows:

> "*Here it is important to emphasise that the statutory test is not one of good reason for delay but the broader test of good reason for extending time. This will be likely to bring in many considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest*."

129. The Claimants said very little about this in submissions, and they have not given a good reason to justify my granting an extension of time. There has been undue delay on the part of the Claimants and I see no good reason to extend it. In Reply, Ms Leventhal KC suggested that the claim raises issues of public interest which should be considered by the court (see also the Reply to the DGD at [53]-[54]). However, I consider that upon proper analysis, the claim really amounts to challenges to decision-making in the Claimants' individual cases and I agree with the Defendant that these raise no issues of general public interest. Moreover, I consider that to grant now the wide ranging and imprecise declarations sought by the Claimants[38] would be highly detrimental to the good administration of the scheme.

[37] CPR 54.5(1).
[38] Set out in their belated "summary of relief sought" dated Friday 29 September 2023, shortly before the start of the hearing on 3 October.

Conclusion on Article 8 challenge

130. In all the circumstances I consider that (i) the Article 8 challenge fails and (ii) an extension of time for bringing the claim should not be granted (in those cases other than BB's case, where the issue does not arise in the limited respect referred to in paragraph 123).

131. I can deal with the remaining arguments (which received considerably less attention from the parties at the hearing) more shortly.

Ground 1: Article 1 Protocol 1

132. I turn next to the challenge under Ground 1, based upon A1P1, which is said to be that:

> "*the ongoing failures of collection and enforcement in the Claimants' cases and the policies and practices giving rise to the same constitute a disproportionate interference with the rights of both the children and their mothers to the payment of the monies due to them as protected by Article 1 of the First Protocol ("A1P1") of the European Convention on Human Rights ("ECHR")".*

133. This ground is put as follows in paragraph 37 of the Claimants' skeleton argument:

> "*The Defendant's failures <u>to collect and enforce the payments owed to the Claimants</u> and carry out ancillary investigative steps amount to a clear interference with their A1P1 rights*." (emphasis added)

134. As stated above, Ms Leventhal KC made clear that the Claimants' case so far as A1P1 is concerned is as follows:

(1) They do not advance a systemic challenge;

(2) They do not challenge any one decision or omission in their individual cases;

(3) They only challenge what they term "*the accretion of those individual decisions and the key patterns of failings which have perpetuated their individual cases*", being what they term a "*continuing state of affairs*". They rely in this regard upon *R (G) v Secretary of State for Justice* [2010] EWHC 3407 (Admin).

135. Where the complaint is, as here, that a private individual has interfered with a property right by not paying sums due, the positive obligation of the state is "*to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights*": see *Kotov v Russia* App. No. 54522/00, 3 April 2012 (GC) at [144].

136. However, it is apparent from paragraph 134(1) above that the Claimants do not allege that there has been any breach of duty at a systemic level. It must follow that, as the Defendant points out[39], the Claimants accept that the legislative scheme itself complies with the requirements of A1P1; and there are adequate remedies in place to address any failure to implement the scheme lawfully. The remedies consist of judicial review (for allegations that a discretionary act or omission is unlawful, such as a failure to place the Claimant onto Collect & Pay); a complaint to the Independent Case Examiner and from there to the Ombudsman (for maladministration); and a complaint to the First-tier Tribunal (to correct calculation decisions).[40]

137. This conclusion is supported by:

(1) *Kehoe v UK*, 2010/06, 17 June 2008 at [48], where the ECtHR expressly found that judicial review was an effective remedy under Article 13 for a receiving parent seeking to enforce maintenance;

(2) *Rowley* (*supra*), at [68], [72], [74] per Dyson LJ:

[39] Defendant's skeleton argument at [45].
[40] See DGD [8.15].

> *"74… the 1991 Act (taken in conjunction with the right to seek judicial review the CSA fails to collect or enforce arrears of maintenance) provides a sufficiently comprehensive remedy to lead me to conclude that a [common law] duty of care would be inconsistent with the statutory scheme*"; and

(3) Treharne (*supra*) at [15]:

> "*That respect in Kehoe for the comprehensive legislative solution which Parliament has enshrined in the 1991 Act suggests that, since the legislation is Convention compliant and affords a comprehensive scheme with its own discreet remedies, including judicial review, Article 8 should have no purchase. In other words, the jurisprudence suggests that the establishment of the statutory scheme of the 1991 Act involving its discretions and checks and balances, supplemented by the statutory appeal mechanism and judicial review, should satisfy the State's obligations in respect of Article 8 so that there is no scope for review on a case by case basis."*

138. It is further apparent from paragraph 134(2) above that the Claimants are not challenging any one decision or omission as being unlawful in any of their cases.

139. Yet the Claimants go on to state[41] that "*They are challenging a continuing state of affairs based on a persistent pattern of unlawful actions and omissions*."

140. I do not consider it is open to them to do so. As with the Article 8 challenge, if they are not challenging any one decision or omission as being unlawful, it is impossible to see how a combination of those decisions or omissions can thereby become unlawful.

141. The claim additionally fails for like reasons to those set out in paragraphs 105-109 above in the context of Article 8.

142. It is accordingly unnecessary (even if it were possible) to assess the diffuse and generalised complaints of the Claimants, set out at length in paragraphs 54-76 of

[41] See their skeleton argument at [49].

their skeleton argument (although not in their Amended Statement of Facts and Grounds), with which the Defendant takes issue on the facts.

143. Even if the Defendant were under a positive duty to take effective measures to enforce against the NRP, those enforcement measures could only be those which it is proportionate for the State to take, because positive obligations must be interpreted in way which strikes a fair balance between the general interest and the interests of the individual, and the state has a margin of appreciation in this respect: *Broniowski v Poland* (2006) 43 EHRR 1 (GC), at [143]-[144].

144. I agree with the submission of Sir James Eadie KC that given the difficult balancing exercises in play, the need to evaluate disputed facts, and the expert judgment required as to the likely effectiveness of enforcement measures, the Court should be very slow indeed to substitute its view for that of the CMS as to whether a particular enforcement action should have been taken in a particular case, and even slower to do so in respect of a variety of enforcement measures taken over a long period of time.

145. It follows in my judgment that there has been no breach of the Defendant's positive obligation under A1P1 in the Claimants' individual cases.

146. I should add that in any event, following *R (M)* (*supra*) I am also persuaded that child maintenance payments payable under the 1991 Act by the NRP, but not yet paid, do not amount to the Claimants' possessions for the purposes of A1P1 so as to engage that article at all.

147. The 1991 Act conferred no right of recovery or enforcement on a caring parent against an absent or NRP: see paragraph 15 above (*Kehoe* at [4] per Lord Bingham). *R (M)* further establishes that the legal obligation of the paying parent to pay maintenance does not fall within the *ambit* of A1P1: [5], [33], [89]-[90] [159]. Lord Walker explained the reason for that in *R (M)* at [89]-[90], which is that the state is not appropriating property in seeking to enforce the personal obligation of the NRP so as to trigger the application of A1P1:

"The first issue: article 1FP

89. I can deal with this issue briefly as I am in full agreement with the majority of the Court of Appeal (Sedley LJ at paras 52-53 and Kennedy LJ at paras 169-172). Sedley LJ quoted from the Commission in Burrows v United Kingdom App No 27558/95 that article 1FP was

"primarily concerned with the formal expropriation of assets for a public purpose, and not with the regulation of rights between persons under private law unless the State lays hands—or authorises a third party to lay hands—on a particular piece of property for a purpose which is to serve the public interest."

Sedley LJ added,

"Child support is neither a tax nor a form of expropriation: it is an allocation of private financial responsibility, and an expansive approach to [article 1FP] is in my view to be resisted."

90. Neuberger LJ fastened on the words "or authorises a third party to lay hands" as indicating that article 1FP has a wide scope. But those words are needed to cover cases such as James v United Kingdom (1986) 8 EHRR 123 (leasehold enfranchisement). In this case the CSA is concerned as an official intermediary, but it is enforcing a personal obligation of the absent parent. It is no more expropriating property than (in an analogy suggested in argument) when the civil justice system enforces a private contract by converting a contract debt into a judgment debt which can be recovered by the process of execution." (emphasis added)

148. Ms Leventhal KC pointed out that in *JM v United Kingdom* (2011) 53 EHRR 6 the ECtHR held that the obligation on the part of the paying parent to pay maintenance fell within the ambit of A1P1 for the purposes of Article 14: [46] and [48]. However, (i) the decision of the House of Lords in *R (M)* remains binding upon this court[42]; and (ii) *JM* is distinguishable in any event as the reasoning of the ECtHR only applies to ambit for the purpose of Article 14.

149. An extension of time for bringing the claim under A1P1 should not be granted for same reasons as are set out in paragraphs 120-129 of the judgment above.

[42] See *R (RJM) v Secretary of State for Work and Pensions* [2009] 1 AC 311 at [64] per Lord Neuberger.

150. Ground 1 accordingly fails.

Ground 3: Article 14 ECHR

151. The Claimants further contend that "*the Defendant's failures to take effective or timely collection or enforcement action are discriminatory*[43] *because they have a disparate impact on AA, BB and CC and their children as victims of domestic violence*"[44]. There is, they maintain, no objective justification for the difference in treatment: it is unreasonable and disproportionate.

152. As Lord Reed PSC explained in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 223 at [37] and [39], the general approach adopted to Article 14 by the European Court may be broken down into five propositions:

(1) *Ambit*: The alleged discrimination must relate to a matter which falls within the "ambit" of one of the other, substantive articles of the Convention.

(2) *Status*: Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14.

(3) *Relevant difference in treatment*: In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations.

(4) *Justification:* Such a difference in treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

[43] Under Article 14 ECHR read with A1P1 and/or Article 8 on grounds of sex.
[44] See paragraph 116 of their skeleton argument.

(5) *Margin of appreciation*: States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and the background.

153. Whilst the various different elements of an Article 14 claim are legally distinct, on the facts of any particular case there may be no need for the court to give discrete consideration to each of them: see Swift J in ***R (T) v Secretary of State for Work and Pensions*** [2022] EWHC 351 (Admin) at [20]. The key elements to be considered in this case are ambit, (indirect) discrimination and margin of appreciation.

(i) Ambit

154. The starting point in addressing this ground of the claim is ambit. Whilst the ambit of an article of the Convention is a wider concept than that of interference with the rights guaranteed by that article, I accept the Defendant's submission that, following ***R (M)***, the obligation to pay maintenance under the 1991 Act is not within the ambit of A1P1:

(1) Lord Nicholls held at [33]: "*A non-resident parent is responsible for contributing to the maintenance of his children. The Child Support Act 1991 and its attendant regulations quantified the amount of that contribution and provided machinery for its collection. That is far outside the scope of article 1 of the first protocol. That is very distant from the type of interference at which article 1 is aimed.*".

I accept the Defendant's submission that there is still less reason to treat collection and enforcement of maintenance against a paying parent as falling within *the ambit* of a receiving parent's rights for the purposes of A1P1.

(2) "*Child support is neither a tax nor a form of expropriation: it is an allocation of private financial responsibility, and an expansive approach to [article 1FP] is in my view to be resisted*"

per Lord Walker at [89], citing Sedley LJ in the Court of Appeal; and

> "*In this case the CSA is concerned as an official intermediary, but it is enforcing a personal obligation of the absent parent. It is no more expropriating property than (in an analogy suggested in argument) when the civil justice system enforces a private contract by converting a contract debt into a judgment debt which can be recovered by the process of execution*"
>
> per Lord Walker at [90].
>
> I accept the Defendant's submission that but for the condition of entitlement about which the PWC complains, she would have had no right, enforceable under domestic law, to receive the child maintenance support in question. It follows that any alleged discrimination does not deprive the Claimants of a property right which they would otherwise have had[45], and the claim does not fall even within the ambit of A1P1.

155. As explained in paragraph 77 above, a Claimant does not have an Article 8 remedy simply by virtue of an alleged failure of the CSA properly to collect and enforce a maintenance assessment in favour of the PWC, where an NRP fails to pay maintenance, and such a claim does not even fall within the ambit of Article 8.

156. However, I accept that, in principle, an obligation to take reasonable steps to ensure a PWC's effective protection from domestic economic abuse would fall within the ambit of Article 8.

(ii) Indirect discrimination

157. However, there is neither indirect discrimination nor *Thlimmenos* discrimination in this case, which are the two types of discrimination alleged by the Claimants.

158. Taking indirect discrimination first, in *R (SC) v Secretary of State for Work and Pensions and others* (*supra*) Lord Reed PSC summarised the approach to indirect discrimination under Article 14 as follows at [53]:

> *"it has to be shown by the claimant that a neutrally formulated measure affects a disproportionate number of members of a group of persons*

[45] See *R (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63 at [30].

sharing a characteristic which is alleged to be the ground of discrimination, so as to give rise to a presumption of indirect discrimination."

159. The "measure" which the Claimants rely upon is said to consist of *"the Defendant's failures to take effective or timely collection or enforcement action"*. Those failures are said to be discriminatory because, it is said, they have a disparate impact on AA, BB and CC and their children, as victims of domestic violence. They also rely upon the three alleged failings in the DMG itself which they rely upon in the context of their Article 8 challenge[46], namely (i) the absence of an appropriate policy regarding the treatment of victims of domestic violence to avoid or mitigate the furtherance of abuse, including the failure to go straight to Collect & Pay; (ii) omissions in the unlikely to pay policy; (iii) procedural unfairness in determining whether the NRP is unlikely to pay[47]. They contend that there is no objective justification for the difference in treatment: it is unreasonable and disproportionate[48].

160. There are a number of insuperable difficulties with the Claimants' argument that they have suffered unlawful indirect discrimination.

161. First, I accept the Defenant's submission that there is no neutrally formulated measure of the kind with which Article 14 is concerned. There is no uniform failure to take collection or enforcement action which disproportionately affects domestic abuse victims. Any alleged failures are particular to the facts of an individual case and do not significantly disadvantage PWCs who are victims of domestic abuse as compared to other PWCs. The extent to which a PWC is affected by an administrative failure to collect or enforce maintenance and the nature of that disadvantage will vary depending on the facts of the individual case.

162. Moreover, I do not accept the Claimants' submission[49] that victims of domestic violence, including the Claimants, are more likely to be affected by the Defendant's failings in the CMS scheme based upon Ms Benson's statistics. As I have stated in

[46] See paragraph 95 above.
[47] Claimants' skeleton argument at paragraph 128.
[48] Claimants' skeleton argument at paragraph 116.
[49] See paragraph 119 of their skeleton argument.

paragraph 111 above, the court should be cautious about drawing any definitive conclusion from the generalised statistics relied upon by the Claimants that victims of domestic violence are disproportionately affected by the operation of the scheme. There is an insufficient evidential base for the court to make the findings sought by the Claimants from these statistics which are based upon a small pool of respondents and are dependent upon the persons and the questions asked; nor do the statistics tell one anything reliable about the functioning of the Collect & Pay system.

163. So far as the three alleged omissions in the DMG itself are concerned, these also do not amount to a neutrally formulated measure. Furthermore, I do not accept the contention that failure of the DMG expressly to make special provision in the scheme for PWCs who are victims of domestic violence amounts to indirect discrimination: see in particular paragraphs 96(1)-(4) of the judgment above.

164. The Claimants' indirect discrimination argument accordingly fails.

165. The Claimants' claim that they are subject to ***Thlimmenos*** discrimination fares no better. This form of discrimination arises where "*States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different*": *R (SC)* (*supra*) at [48] per Lord Reed.

166. I do not accept the argument that the operation of the scheme constitutes *Thlimmenos* discrimination in that its policies and operation fail to treat victims of domestic violence differently despite their needs being significantly different to the general cohort of PWCs. Each of the PWCs have precisely the same need, which is to be paid the maintenance which is assessed as due to them.

167. Victims of domestic violence are not in a significantly different position to other PWCs who use the CMS with respect to collection and enforcement, such as to require different treatment. A PWC who has been or is a victim of domestic violence may, in practice, be in a better or worse position in relation to collection and enforcement of maintenance compared with another PWC, depending on the conduct of the NRP and their own circumstances. NRPs who have been violent or

abusive may in fact pay regular maintenance, whereas other (non-abusive) NRPs may not. Differences between receiving parents accordingly arise on a case-by-case basis.

(iii) Margin of appreciation

168. In any event, as I have explained in paragraphs 91(2) and 91(3) above, the policy of the CMS properly allows for collection and enforcement decisions to be taken by reference to the facts of the individual case. If relevant to collection and enforcement against a PWC, domestic abuse may be taken into account, so that appropriate action may be taken on the facts of an individual case. But treating cases differently as a matter of principle purely where the PWC has been a victim of domestic abuse in fact risks arbitrary and unfair treatment between cases. Moving every PWC who is a victim of domestic violence straight onto Collect & Pay as a matter of principle (but not other PWCs), despite the fact that the NRP is regularly paying the maintenance (thereby saddling the NRP with a 20% additional charge)[50] cannot be justified. It risks arbitrary treatment and the inefficient allocation of resources.

169. I accept the Defendant's submission that the policy of the CMS, which is contained in the DMG, to treat cases by reference to their individual facts and not treat them differently by reference to the particular status of the PWC, reflects the legitimate aims of securing fairness between parents with different vulnerabilities; having regard to the welfare of all affected children; securing fairness between the PWC and the NRP; and having an efficient, practical and workable system which takes account of facts of the individual case. I accordingly find that even had there been shown to be differing treatment in this case, there is an objective and reasonable justification for it and the DMG as formulated and the manner of its operation is well within the Defendant's margin of appreciation.

170. An extension of time for bringing the unlawful discrimination claim should not in any event be granted for same reasons as are set out in paragraphs 120-129 of the judgment above.

[50] Which is presumably the different treatment which it is said should be afforded the victim of domestic violence.

171. In the circumstances this ground of the claim also fails.

Ground 4: *Padfield*

172. Finally, the Claimants argue (although very little time was spent on this argument at the hearing) that by failing to exercise enforcement powers delegated to it by statute, the Defendant is failing to fulfil the statutory purpose of the 1991 Act and is in breach of its *Padfield* obligation to promote, rather than frustrate, the legislative purpose of the 1991 Act (*Padfield v Minister of Agriculture, Fisheries & Food* [1968] AC 997).

173. The short answer to this ground is that the Defendant has not acted so as to frustrate the purpose of the 1991 Act. The scheme is administered through the CMS and the evidence before this court demonstrates that the powers conferred by the Act, which are discretionary, are in fact exercised by the Defendant. As I have already explained, the evidence suggests, by and large, a conscientious pursuit of NRPs by way of collection and enforcement of maintenance on the part of the CMS. The Claimant's description of the Defendant's collection and enforcement measures, as being "*limited, sporadic and ineffective*" is unjustified.

174. The very purpose of the CMS (and the DMG) is to facilitate the purpose of the 1991 Act by seeking to secure payment of child support maintenance to the PWC. The fact that in certain individual cases the Defendant's attempts to collect and enforce payment might be frustrated by the NRP or even criticised from time to time does not undermine this essential fact.

175. There is accordingly no basis for the allegation that the Defendant has failed to exercise his enforcement powers delegated to him by statute, and in so doing has frustrated the purpose of the Act.

176. An extension of time for bringing the *Padfield* claim should not in any event be granted for same reasons as are set out in paragraphs 120-129 of the judgment above.

Conclusion

177. In all the circumstances the claim for judicial review must fail.

UPDATED CHRONOLOGY

OF KEY DATES

Claimant 1 (Preston Paris Ingold)

Current arrears are set out in the attached statement of account generated by CMS.

TRIAL BUNDLE REFERENCES: References to [CB/XX] are to the Core Bundle, [SA/XX] are to Supplementary Bundle A, and [SB/XX] are to Supplementary Bundle B.

References to [Exhibit JWXX] refer to the exhibit bundle to the third witness statement of Johanne Wilkie

References to [AI1/XX, AI2/XX, AI3/XX] refer to the exhibit bundles to the witness statements of Angela Ingold.

References to [PB/XX] refers to the permission bundle.

KEY DATE	EVENT	WHERE IN EVIDENCE	BUNDLE REF
May 2005	Initial application for child maintenance to the CSA, claim put on to Direct Pay.	AI 1 §5 JW 3 §3	[CB/208] [CB/378]
Apr 2006	Liability Order 1 - £840 for period June-Dec 2005.	JW 3 §5	[CB/379]
2010 (?)	Liability Order 2 - £6,000 for period Jan 2006 – Nov 2009.	JW 3 §5	[CB/379]
2014 (?)	Liability Order 3: £7,079.68 for period Nov 2009 – Sept 2014.	JW 3 §5	[CB/379]
May 2017	New maintenance claim made to CMS.	JW 3 §9	[CB/379]
15 Jul 2017	CSA claim closed with £11,160.70 in arrears.	JW 3 §8	[CB/379]
1 Aug 2017	New CMS claim. Claim put on Collect & Pay.	JW 3 §15 [Exhibit JW134]	[CB/381] [SB/2461]
Aug 2017	AI asserts that NRP is falsely declaring his income. AI invited to submit evidence; does not do so. Case referred to FIU.	JW 3 §19-20 AI 3 §9	[CB/382] [CB/441]
Sep 2017	AI submits appeal to FTT against maintenance calculation, following refusal of mandatory reconsideration.	JW 3 §21, 26	[CB/382, 383]

Oct 2017	CSA arrears transferred to CMS.	JW 3 §27	[CB/383]

Dec 2017-Feb 2018	FIU investigation put on hold due to outstanding FTT appeal. FTT subsequently directed NRP to provide evidence of his finances and directed FIU to carry out a full analysis – this "*effectively restarted*" FIU investigation.	JW 3 §31, 34	[CB/384]
27 Jun 2018	Liability Order: £10,964 in respect of the outstanding CSA arrears. Referred to bailiffs.	JW 3 §36	[CB/385]
Dec 2018	Bailiffs return *nulla bona* certificate: "*agents were unable to gain legal access to the property*".	JW 3 §40 [Exhibit JW170]	[CB/385] [SB/2573]
Jan- Mar 2019	CMS instructed bailiffs to visit "*the updated residential address held*" for NRP. Further *nulla bona* certificate received March 2019.	JW 3 §41-45	[CB/385-386]
24 Apr 2019	Appeal upheld by FTT (based in part on evidence from FIU). Decision by CMS on maintenance calculation set aside and ordered to be recalculated in accordance with NRP's income of £631.19 per week.	JW 3 §44 [Exhibit JW174]	[CB/386] [SB/2580]
Jun 2019	Further *nulla bona* certificate from bailiffs.	JW 3 § 46-47 [Exhibit JW176]	[CB/386] [SB/2583]
12 Jun 2019	Decision taken to seek sanctions against NRP. Hearing listed 18 December 2019, then repeatedly adjourned by magistrates' court	JW 3 §51, 52, 57-58 [Exhibits JW183, JW184, JW191, JW192]	[CB/387, 388] [SB/2606-2608, 2610-2612, 2638-2640, 2642-2645]
May 2020	Enforcement action ceases due to Covid pandemic.	JW 3 §54	[CB/387]
27 Oct 2020	Sanctions hearing takes place – court finds no wilful refusal/culpable neglect, so no sanctions imposed.	JW 3 §59	[CB/388]

30 Oct 2020	FIU investigation opened.	JW 3 §60	[CB/389]
Nov 2020	AI complains no 3rd party debt order has been made. CMS explains that "*we now look to* [regular deduction orders] / [lump sum deduction orders] *to recover monies*" and that	JW 3 §61 [Exhibit JW199]	[CB/389] [SB/2659]

	"*we would have considered* [a regular deduction order] / [lump sum deduction order] *prior to the sanctions*".		
Nov 2020	FIU investigation obtained bank statements for use in sanctions application, and thereafter FIU investigation closed on the basis that it has achieved its purpose.	JW 3 §63	[CB/389]
Nov 2020 – Feb 2021	CMS impose Lump Sum Deduction Order on NRP's bank account to secure £500, later revised to £108 to align with sums available to be secured. This was paid to AI in Feb 2021.	JW 3 §66, 69,74	[CB/390, 391]
Dec 2020	AI makes complaint about non-payment and failure to enforce.		[SB/3598-3599]
Jan 2021	AI's complaint referred to ICE.		[SB/3600]
Feb 2021	Further FIU investigation opened due to evidence NRP was working whilst claiming benefits.	JW 3 §73	[CB/391]
26 Mar 2021	Liability Order: £13,332.77 for period 16 July 2017 - 15 Nov 2020. Referred to bailiffs and registered with credit reference agency.	JW 3 §76	[CB/391]
Jul 2021	Maintenance calculation on annual review based on HMRC data for 2016 tax year. File note records this was: *"the only information available to CMS"*, although *"potentially incomplete"*	JW 3 §78 AI 1 §17	[CB/391] [CB/210]
Aug 2021	Case accepted for sanctions due to *nulla bona* certificates issued by bailiffs. Repeated contact and complaints made by AI.	JW 3 §79	[CB/392] [SB/3610-3615]

Jul – Oct 2021	AI issues appeal to FTT against maintenance calculation made on 19 July 2021 (mandatory reconsideration refused).	JW 3 §78, 84, 86	[CB/391, 392, 393]
20 Dec 2021	AI makes complaint to CMS.	AI full chron	[SB/3619]
22 Jan 2022	PAP letter.	[PB/1023]	[SA/781]
Feb 2022	Report from FIU investigation - NRP had received £17,754 in undeclared income for tax year 2020/21. Case referred back to enforcement.	JW 3 §89-90 [Exhibit JW238]	[CB/393] [SB/2898-2901]

14 Feb 2022	CMS advised AI that the FIU's recommendation could not be implemented whist an appeal to FTT was pending.	JW 3 §90 AI 3 §19-20	[CB/393] [CB/444]
24 Feb 2022	PAP response	[PB/1045]	[SA/811]
6 May 2022	AI withdraws appeal to FTT.	JW 3 §92	[CB/394]
12 May 2022	Further application for sanctions.	JW 3 §93	[CB/394]
31 May 2022	JR issued.	[PB/17]	[CB/3]
24 Feb 2023	Sanctions hearing finding of culpable neglect made against NRP, sentenced to 40 days imprisonment suspended for 2 years on condition NRP pays £200 per month towards arrears. CMS exercised discretion to allocate payments to outstanding CSA debt first.	JW 3 §106-107	[CB/395]

Claimants 2, 3 and 4 (AA and children CA and DA)

Current arrears are set out in the attached statement of account generated by CMS.

TRIAL BUNDLE REFERENCES: References to [CB/XX] are to the Core Bundle, [SA/XX] are to Supplementary Bundle A, and [SB/XX] are to Supplementary Bundle B.

References to [Exhibit JWXX] refer to the exhibit bundle to the first witness statement of Johanne Wilkie.

References to [AA1/XX, AA2/XX, AA3/XX] refer to the exhibit bundles to the witness statements of AA.

References to [PB/XX] refers to the permission bundle.

KEY DATE	EVENT	WHERE IN EVIDENCE	BUNDLE REF
Oct 2015	AA applies for child maintenance for CA – claim put on Direct Pay. Fee waiver granted on basis of DV.	AA 1 §11 JW 1 §5, 8, 11 [AA3/21]	[CB/217] [CB/342, 343, 344] [SB/3587]
17 Dec 2015	Restraining order imposed on NRP (CMS has no record that this was reported).	AA 3 §10 AA Full Chron JW 1 §10	[CB/430] [SB/3568] [CB/343-344]
16 Feb 2016	AA reports missed payment for February, tells CMS she "*does not want change to service type until her account is up to date with both children*".	JW1 §16, 28 [Exhibit JW2]	[CB/345, 349] [SB/1962]
Feb 2016	AA applies for child maintenance for DA – claim put on Direct Pay.	JW 1 §5, 11	[CB/342, 344]
1 Apr 2016	AA reports no payments received for February or March *"she doesn't want to pursue C&P at the moment"*.	JW1 §17, 28 [Exhibit JW3]	[CB/345, 349] [SB/1963]
Jun 2016	AA reports that she had received no payments since January. File note records "*RP has said that she has rcvd no C/M since beginning of Jan, will give PP a couple of months to see if pays. advised RP of charges, and to give until August 6th to call if PP not paid*."	AA 3 §14 JW 1 §18 [Exhibit JW4]	[CB/431] [CB/345] [SB/1964]

29 Sep 2016	AA tells CMS "*proper last payment was 01/01/2016 she has received no payments other than a £20 received last week*", discusses move to Collect & Pay.	JW 1 §19 [Exhibits JW5, JW6]	[CB/346] [SB/1965, 1966]

		AA 3 §14-15	[CB/431]
Oct – Nov 2016	CMS contact NRP for evidence of payment. CMS ask AA for bank details for Collect & Pay.	JW 1 §20 [Exhibit JW8] AA 3 §18	[CB/346] [SB/1971] [CB/432]
2 Dec 2016	Decision to refuse to move the claims to Collect & Pay, due to failure by AA to provide information to CMS. CMS accepts conflicting letters sent out with incorrect information about decision and reasons for it.	JW 1 §20-21 [Exhibit JW10]	[CB/346-347] [SB/1976]
Jul-Aug 2017	AA reports missed payments May, June, July, requests that her claim be moved to Collect & Pay.	AA 1 §14 JW 1 §22 [ExhibitJW11]	[CB/218] [CB/347] [SB/1978-1982]
Aug to Oct 2017	NRP disputes non-payment but does not provide evidence of payment. Annual review.	JW 1 §22	[CB/347]
23 Oct 2017	AA makes complaint to CMS regarding lack of progress. Not treated as a formal complaint by CMS. Letter details history of domestic violence, and all payments received since start of CMS claim.	AA 1 §16 JW 1 §48 [Exhibit JW51]	[CB/218] [CB/356] [SB/2163]
25 Oct 2017	Decision made to move claim to Collect & Pay. File note states *"decision based on verbal evidence provided by RP and used as best evidence"*	JW 1 §22 AA 1 §18 [Exhibit JW11]	[CB/347] [CB/219] [SB/1982]
Nov 2017	Deduction from Earnings Order 1 made.	AA 1 §19 JW 1 §30 [Exhibits JW20, JW21]	[CB/219] [CB/349] [SB/20122016, 2018-2023]

20 Apr 2018	Employer reports that DEO 1 not received. By this time NRP had left the employment.	JW 1 §30 [Exhibit JW22]	[CB/349] [SB/2024]
25 Apr 2018	Claim moved back to Direct Pay, with agreement of AA.	JW 1 §23 AA 3 §21	[CB/347-348] [CB/433]

		[Exhibits JW13, JW14, JW15]	[SB/19871989, 19911995, 1996]
6 Mar 2019	AA informs CMS that NRP working while on benefits. CMS advise her to report to benefit fraud.	AA 3 §22 [AA3/23-24]	[CB/433] [SB/3588]
13 Sep 2019	Letter from CMS notifying that NRP not in receipt of benefits since October 2018, new calculation made with retrospective effect (increasing arrears).	AA 3 §22 JW 1 §45 [Exhibit JW47]	[CB/433] [CB/354] [SB/2144]
25 Oct 2019	AA notifies CMS not paid since Feb 2019. AA requests move to Collect & Pay.	JW 1 §24 [Exhibits JW16, JW17]	[CB/348] [SB/1997, 1998-2000]
15 Nov 2019	Claim moved to Collect & Pay.	JW 1 §24 [Exhibits JW16, JW17]	[CB/348] [SB/1997, 1998-2000]
22 Nov 2019	Deduction from Earnings Order 2 made.	JW1 §31 AA 1 §22, 24 [Exhibit JW24]	[CB/350] [CB/219, 220] [SB/2033-2037]
26 Nov 2019	Non-molestation order made against NRP (CMS records show this was reported to CMS a year later, on 23 November 2020).	AA 3 §7 JW 1 §10	[CB/428] [CB/344]
Feb-Mar 2020	NRP reported to the CMS inability to work due to mental health issues. Deduction from Earnings Order 2 cancelled, as it was ineffective.	JW 1 §31 [Exhibit JW25, JW26]	[CB/350] [SB/2038, 2039]

13-28 Mar 2020	CMS decide to pursue Lump Sum Deduction Order, request disclosure from banks. Process put on hold because of drop in NRP income, verified with employer. Payment plan agreed with NRP instead.	[PB/214] JW 1 §32-33 [Exhibits JW27, JW28, JW31]	[SB/78] [CB/350] [SB/20402041, 20422043, 2062]
Mar 2020	CMS enforcement measures suspended due to effects of the COVID-19 pandemic and the government response.	JW 1 §34	[CB/351]
Apr 2020 to June 2021	NRP makes payments weekly by standing order.	[JW58]	[SB/2193-2194]
23 Jun 2020	PAP letter.	[PB/929]	[SA/683]
24 Jul 2020	PAP response.	[PB/955]	[SA/709]
19-20 Oct 2020	Follow up PAP correspondence.	[PB/975]	[SA/727]
23 Nov 2020	AA querying annual review letter which stated that payment method is via DP; "*concerned as I have had COLLECT AND PAY SERVICE in place due to a non-molestation order given to my children's father from the courts*". CMS confirm that case remains on Collect & Pay.	[AA3/26]	[SB/3591]
27 Jul 2021	2nd PAP letter.	[PB/981]	[SA/729]
Aug 2021	Deduction from Earnings Order 3 imposed. Cancelled and replaced with payment plan agreed between NRP and CMS.	JW 1 §36 AA 3 §28 [Exhibits JW35, JW37, JW38]	[CB/351] [CB/435] [SB/20732074, 20772079, 2080]
Sept 2021 to May 2022	NRP makes payments monthly by direct debit or standing order.		[SB/2194]
11 Aug 2021	2nd PAP response	[PB/995]	[SA/743]
14 Oct 2021	AA's solicitor makes formal complaint to CMS.	[AA1/72]	[SB/79]
14 Feb 2022	CMS formal response to complaint.	[Exhibit JW53]	[SB/2170]
24 May 2022	AA complains to ICE (case subsequently closed due to JR).	[AA1/80]	[SB/87]
31 May 2022	JR claim issued.	[PB/17]	[CB/3]

Claimants 5 and 6 (BB and child LL)

Current arrears are set out in the attached statement of account generated by CMS.

TRIAL BUNDLE REFERENCES:

References to [CB/XX] are to the Core Bundle, [SA/XX] are to Supplementary Bundle A, and [SB/XX] are to Supplementary Bundle B.

References to [JW2/XX] refer to the exhibit bundle to the second witness statement of Johanne Wilkie

References to [BB1/XX, BB2/XX, BB3/XX] refer to the exhibit bundles to the witness statements of BB.

KEY DATE	EVENT	WHERE IN EVIDENCE	BUNDLE REF
2011	BB applies for child maintenance from CSA. Explained background of NRP's gambling / debt / likely to withhold money.	BB 1 §8 JW 2 §5, 7	[CB/227] [CB/360, 361]
28 Oct 2016	New claim opened with CMS. Fee waiver granted based on domestic abuse. Claim put on to Direct Pay.	JW 2 §7, 10 BB3/15	[CB/361-362] [CB/457]
Apr 2017	CSA arrears transferred to CMS.	JW 2 §45	[CB/372]
25 Apr 2017	CMS accept NRP's proposal to pay £20 per month towards arrears.	BB 1 §13 BB 3 §41 JW 2 §45 [JW2/186, 191]	[CB/228-229] [CB/464] [CB/372] [SB/2382, 2387]
2 Jan 2018	BB reports missed payment due on 1 Jan.	BB 1 §15 BB 3 §19 JW 2 §17, 19 [JW2/24, 30, 53]	[CB/229] [CB/458] [CB/363, 364] [SB/2220, 2226, 2249]

Jan-Feb 2018	BB requests that her claim be moved to Collect & Pay due to missed January payment. CMS agree payment schedule with NRP. CMS caseworker accepted NRP's explanation that underpayment had been an error, and claim was not moved to Collect & Pay.	BB 1 §18-19 JW 2 §18-20 [JW2/34]	[CB/230-231] [CB/363-364] [SB/2230]

Feb 2018	Complaint from BB's MP regarding her case (responded to on 29 March).	BB 1 §20 BB 3 §20 JW 2 §21 [JW2/57-59]	[CB/231] [CB/458] [CB/364-365] [SB/2253-2255]
7 Aug 2019	BB reports missing payment due in Aug 2019. Requests to move claim on to Collect & Pay.	JW 2 §25	[CB/366]
21 Aug, 26 Sep, 25 Oct 2019	BB makes further requests to move her claim to Collect & Pay.	JW 2 §25 [JW2/87]	[CB/366] [SB/2283]
Aug to Oct 2019	CMS consider and reject NRP request for reduction in maintenance calculation. Computer glitch in maintenance calculation.	JW 2 §25-26	[CB/366-367]
Oct 2019 to July 2021	NRP in receipt of Universal Credit.	JW 2 §39	[CB/370]
25 Oct 2019	BB requests to move her claim to Collect & Pay.	JW 2 §25	[CB/366]
Nov 2019	BB's requests to move her claim to Collect & Pay, rejected "*due to errors on the case*".	JW 2 §27 [JW2/131]	[CB/367] [SB/2327]
Jan 2020	BB reports suspicion NRP fraudulently claiming benefits. CMS refers to DWP Counter-Fraud Compliance and Debt Department. DWP not privy to findings but has been notified of no action from Counter-Fraud Department that would indicate a finding of fraud.	BB 1 §32 JW 2 §37	[CB/233-234] [SB/ 2294, 2299] [CB/369-370]

13 Feb 2020	BB's claim moved to Collect & Pay. But for IT issues, would likely have happened "*much more quickly*".	BB 1 §33 JW 2 §27	[CB/234] [CB/367]
23 Jun 2020	First PAP letter.		[SA/683-696]
24 Jul 2020	First PAP response (substantive).		[SA/709-725]
19 Oct 2020	Follow-up PAP correspondence.		[SA/727]
7 Jul 2021	Deduction from Earnings Order made. Cancelled in favour of direct debit in same amount.	JW 2 §52 BB 3 §30	[CB/373] [CB/461-462]
		[JW2/211]	[SB/2407]
July 2021 to Jan 2022	NRP pays all sums due monthly by direct debit.		[SB/2446]
27 Jul 2021	Second PAP letter.		[SA/729-740]
11 Aug 2021	Second PAP response.		[SA/743-744]
14 Oct 2021	Formal complaint by BB's solicitor.	BB1 §45 [JW2/222]	[CB/236] [SB/2418-2420]
17 Jan 2022	Claim moved back to Direct Pay at NRP request. BB not consulted. CMS ask BB For bank details.	JW 2 §29-30 BB 3 §23 [JW2/149] [BB/3]	[CB/367-368] [CB/459] [SB/2345] SB/3686]
14 Feb 2022	CMS response to formal complaint.	JW 2 §56 [JW2/228-232]	[CB/374] [SB/2424-2428]
17 March 2022	File note records that BB suggested NRP was lying about not having her bank details. "*We can't assume that PP is not telling the truth … I advised I would ring him today and advise that they haven't changed but we need to allow him 14 days to receive the details*"	[JW2/156]	[SB/2352]

17 Mar 2022	BB's (unchanged) bank details confirmed to NRP – no payments had been made for Feb or March while this was being established. Letter to BB re missed payments. No move back to C&P unless further missed payments.	JW 2 §31 BB 1 §41-42 [JW2/157]	[CB/368] [CB/235-236] [SB/2353]
31 Mar 2022	BB's request that her claim be returned to C&P refused on the basis that there had been no missed payments since NRP was given bank details on 17 March.	JW 2 §34	[CB/369]
25 May 2022	BB complains to ICE (case later closed due to JR).	BB1/89	[SB/166]
31 May 2022	JR claim issued.		[CB/3]

Claimants 7 and 8 (CC and child XO)

Current arrears are set out in the attached statement of account generated by CMS.

TRIAL BUNDLE REFERENCES: References to [CB/XX] are to the Core Bundle, [SA/XX] are to Supplementary Bundle A, and [SB/XX] are to Supplementary Bundle B.

References to [JW4/XX] refer to the exhibit bundle to the fourth witness statement of Johanne Wilkie

References to [CC1/XX, CC2/XX, CC3/XX] refer to the exhibit bundles to the witness statements of CC.

KEY DATE	EVENT	WHERE IN EVIDENCE	BUNDLE REF
2011	CC separates from NRP after a period of domestic abuse. Restraining and nonmolestation orders made (notified to CMS on 18 May 2017).	CC 1 §5-6 JW4 §8	CB/240 CB/403
11 Jul 2011	Maintenance claim made to CSA. Payments by the NRP under the CSA claim were irregular, including significant periods of non-payment.	JW 4 §6 JW4/5-29	CB/402 SB/3112-3136
23 Nov 2016	DEO made in respect of CSA arrears.	JW 4 §21 JW4/107-113	CB/407 SB/3214-3220
18 May 2017	CC makes new claim with CMS, accepted on 15 August 2017. CMS letter records, and CC recalls, that CC requested her claim be put on Collect & Pay. Claim put on Direct Pay. Fee waiver granted on basis of domestic violence.	CC 1 §9 CC 3 §11 JW 4 §6, 8, 12	CB/241 CB/470-471 CB/402, 403, 404
14 Aug 2017	CSA claim closes with outstanding arrears of £2,806	JW 4 §6-7	CB/402-403
15 Aug 2017	NRP becomes liable for maintenance under CMS claim.	JW 4 §6	CB/402

Oct 2017	Letter informs CC that her claim is on Direct Pay, and incorrectly states that CC had agreed to this. Further letter said the claim was on both Direct Pay and Collect & Pay. This letter was caused by a 'glitch'.	CC 1 §11 JW 4 §13-14 JW4/42	CB/241-242 CB/405 SB/3149

1 Nov 2017	CC requests that her claim be moved to Collect & Pay due to missed payment.	CC 1 §13 JW 4 §15	CB/242 CB/405
5 Dec 2017	Request to move to Collect & Pay refused, on the basis that the NRP had not underpaid maintenance, as his maintenance liability had been recalculated and backdated to the beginning of his change of circumstance. Letter informing CC incorrectly states this is because NRP does not agree and no reason to believe it would be in best interest so child.	JW 4 §15-17 CC1 §13 JW4/62, 63	CB/405-406 CB/242 SB/3169-3170
Jan 2018	Arrears of £2,806 owed under previous CSA claim transferred to CMS.	JW 4 §7 CC 1 §15 JW4/30	CB/403 CB/243 SB/3137
31 Jan 2018	CC makes further request that her claim be moved to Collect & Pay on the basis that NRP had underpaid maintenance for November and December 2017 and January 2018. CMS note records that CC said that "[NRP] *DID SAY HE WAS ON BENEFITS IN NOV BUT* [CC] *KNOWS HE DIDNT HAVE A LIVE BENEFIT CLAIM*".	CC 1 §16 JW 4 §18 JW4/74	CB/243 CB/406 SB/3181

1 Feb 2018	Request for claim to be moved to Collect & Pay rejected. CMS records show the correct amount had been paid. CMS file note records that caseworker has "*looked through the benefit system and have the information that the* [NRP] *was on a benefit from 7th October 2017*" and "*the* [change to Collect & Pay] *will be rejected due to* [NRP] *being on a benefit*". Letter gave incorrect reasons for decision, although on telephone calls CMS informed CC "*of the decision in notes re* [NRP] *on benefits*".	CC 1 §16 CC 3 §16 JW 4 §18 JW4/75, 79, 81, 83	CB/243 CB/472 CB/406-407 SB/3182, 3186, 3188, 3190
31 Aug 2018	CC provided adverts from spareroom.com, which she considered showed that NRP was subletting his house. Requests move to Collect & Pay.	JW 4 §45 CC 2 §16 JW4/84, 85	CB/416 CB/276 SB/3191, 3192

Oct 2018	Claim moved to Collect & Pay.	CC 1 §20 CC 2 §17 JW 4 §19 JW4/97, 103	CB/244 CB/277 CB/407 SB/3204, 3210
7 Nov 2018	CC's complaints about undeclared income referred to FIU – referral rejected, caseworkers to consider whether to vary NRP's liability on basis of CC's evidence.	JW 4 §45 JW4/264,265	CB/416 SB/3371, 3372
14 Dec 2018	Caseworkers checked with HMRC and found no rental income declared, so no variation made.	JW 4 §45 JW4/267	CB/416 SB/3374
18 Dec 2018	Case referred back to FIU	CC 1 §21 JW4/268	CB/244 SB/3375
21 Mar 2019	Deduction from Earnings Order 1 made.	JW 4 §22 JW4/120, 124	CB/408 SB/3227, 3231
Apr 2019	FIU investigation closed in error.	JW 4 §46	CB/416

21 May 2019	Deduction from Earnings Order 2 made in respect of different employer.	JW 4 §24 JW4/128	CB/409 SB/3233
31 May 2019	Deduction from Earnings Order 3 served on first employer due to NRP's pay increasing.	JW 4 §25 JW4/132, 136	CB/409 SB/3239, 3243
21 Aug 2019	Deduction from Earnings Order 4 issued for new employer.	JW 4 §26 JW4/143	CB/409 SB/3250
11 Nov 2019	CMS records in file note recording the decision to pursue a deduction order that NRP leaves employer each time a DEO is set up, by the time CMS catch up DEO is out of date "*already had 7 other employers this year*". Disclosure sought from banks, in order to consider RDO/LSDO. Inquiries revealed insufficient funds in bank to be suitable. File note records that CMS could build a case for additional enforcement action as: "*PP seems to leave the employer as soon as CMS catch up to him which in turn allows him to get away with paying*." CC had said that "d*ue to DV the reason she left the PP we are allowing him all the control over her again*"	JW 4 §28 JW4/32, , 162, 164	CB/410 SB/3140, 3269, 3271
Nov 2019	CC makes complaint, to which CMS responded. Deduction from Earnings Order 5 made in respect of different employer. Level of deductions reduced when NRP phoned to say he was struggling with the amount and considering leaving the job.	CC 1 §36JW 4 §29-30 JW4/175, 180, 181	CB/247 CB/410-411 SB/3282, 3287, 3288
27 Jan 2020	Deduction from Earnings Order 7 served on another employer.	JW 4 §32 JW4/187	CB/411 SB/3294

Mar 2020	Enforcement activities cease due to Covid pandemic.	CC 1 §43 JW 4 §33	CB/248 CB/412
Aug-Sep 2020	CC raising issue of NRP's rental income again. CMS 'raised a variation' to consider, but rejected it "*Without further evidence, CC's evidence was determined to be insufficient*". System note records that spareroom.com advert provided by CC "*does not mention PP details or address but RP recognises the property from the photos as the property she once lived in*." CC's request for mandatory reconsideration refused "f*or lack of evidence*"	JW 4 §47 CC 3 §21 JW4/273, 274, 275, 281	CB/416 CB/473 SB/3380, 3381, 3382, 3388
Nov 2020	CMS contacts banks to investigate imposing a deduction order. No accounts revealed, and payment was made by NRP, so CMS decided not to pursue a deduction order.	JW 4 §35 JW4/213	CB/412 SB/3320
17 Sep 2020	System note acknowledging CC is a victim of DV	JW 4 §8 JW4/34	CB/403 SB/3141
Nov 2020 to Jul 2021	NRP makes payments monthly by direct debit	JW4 §34 JW4/430	CB/412 SB/3537
Aug 2021	Further requests for disclosure from banks - failed to locate an appropriate target account for a deduction order.	JW 4 §36 JW4/214, 218	CB/413 SB/3321, 3325
14 Oct 2021	CC's solicitor makes formal complaint		SA/761
22 Feb 2022	Deduction from Earnings Order 7 imposed. Subsequent orders to the same employer were made in Aug and Oct 2022 and Feb 2023 to reflect changes in the NRP's liability.	JW 4 §38 JW4/225, 233, 238, 245	CB/413 SB/3332, 3340, 3345, 3352
3 Mar 2022	CMS response to formal complaint CC referred to in system note as a "*high risk DV victim*"	JW 4 §8 JW4/36, 436	CB/403 SB/3143, 3543

10 May 2022	Tribunal considers question of rental income from property. Judge accepted that income unlikely to exceed value threshold of £2,500 per annum so no variation could be made.	CC 1 §48-49 CC 2 §19-20 CC 3 §21 JW 4 §48 JW4/287	CB/250 CB/277-278 CB/473 CB/417 SB/3394
25 May 2022	CC complains to ICE (case later closed due to JR)	CC 2 §25	CB/279
31 May 2022	JR claim issued.		CB/3