



## FACT SHEET

### MAINTENANCE IS IN THE BEST INTERESTS OF THE CHILD

Every child has the right to basic necessities such as:

1. food
2. shelter
3. clothing
4. medical care
5. schooling

Children should get these basic needs from their parents or relatives. This support given by **parents or relatives**. This support given by parents or relatives is called **maintenance**.

Parents or relatives **maintain** children directly, when the child lives with them.

Parents or relatives **maintain** children indirectly, when the child lives with someone else, by **paying maintenance**, or **money** to support the child and provide his or her basic needs.

#### Who has a duty to maintain?

**The law requires a child to be supported or maintained by:**

1. his or her **parents**, whether married, living together, separated or divorced, including parents who have **adopted** the child; and
2. his or her **grandparents**, if the child's parents were married to each other.
3. This **legal duty** is called "**the duty to maintain**" or "**the duty to support**".

#### What is the maintenance system?

Where parents separate, many parents voluntarily pay maintenance to the parent living with the child.

Other parents fail to honour their **legal duty to maintain their child**.

The **maintenance system** is the system of courts which ensures that parents honour their duty to maintain their children.

A **maintenance court** can order a parent who does not live with his or her child to **pay maintenance** for the support of his or her child.

The maintenance system therefore ensures that parents not living with their children **make a fair financial contribution** towards the support of their children.

## Why pay maintenance?

If you do not live with your children, you are not there day to day to provide their basic needs such as shelter, food, clothing, medical care and schooling.

So, you must pay **money as maintenance** to help the parent living with the children to provide the children with these basic needs.

If you do **not** pay **maintenance, your children:**

1. may not have enough food;
2. may not be able to see a doctor if they are sick;
3. if school fees cannot be paid, may not be able to go to school

Maintenance ensures that your children keep, as much as possible, the **same standard of living** as before the parents separated.

## How is maintenance paid?

Most parents decide themselves how the parent living away from the children should support his or her children and contribute his or her share towards their upbringing.

However, the maintenance system is there if the parents cannot decide themselves how maintenance should be paid, or how much.

The parent living with the children can go to a maintenance court in order to obtain maintenance from the other parent.

The maintenance court can order the parent living away from the children to pay maintenance to the other parent, for the benefit of the children.

The maintenance court will tell the parent how much is to be paid, when it is to be paid, and where it should be paid.

## Must I still pay maintenance if the other parent:

- remarries?
- is involved in another relationship?
- does not let me see the children?

Your children's **right** to their basic needs has nothing **to do** with your view of the other parent's behaviour.

Your children still **need maintenance**, and you must **still pay maintenance**, even if the other parent remarries or gets involved in another relationship.

Again, your children are still **entitled** to maintenance even if you cannot see them. Your duty to maintain them is totally separate from their right to see you. Your duty to pay does not depend on whether or not you can see them.

### **What if the parents have other children**

A parent's duty to maintain his or her children continues even if the parent living with the children has other children.

If the parent, living away from the children, is concerned about the welfare of the children, he or she is still required to pay maintenance, though he or she could make a complaint to the welfare authorities or apply to a court to have the children come and live with him or her.

If the parent living away from the children has other children himself or herself, he or she is still obliged to pay maintenance.

He or she must still pay maintenance if her or she now lives with a new partner and that partner's children.

However, there might be a change in how much maintenance a parent must pay if he or she has further children of his or her own.

### **How is the amount of maintenance calculated?**

The **maintenance court** or the **maintenance officer** at court will help in working out how much money should be paid as maintenance.

Usually, the court first works out how much the children need for their maintenance (ie., to provide them with food, shelter, clothes, and so on).

The court will then see that each parent makes a fair contribution to those needs, usually by requiring them to contribute in proportion to their respective incomes.

### **What happens if maintenance is not paid?**

If maintenance is not paid, **children suffer, and they:**

- may not have enough food;
- may not be able to see a doctor if they are sick;
- if school fees cannot be paid, may not be able to go to school.

Sometimes the parent living with the children may have to go out to work to get money and may not always be able to provide child care or supervision for the children.

### **What can I do to protect the best interests of children when it comes to maintenance?**

**If you are a parent, make sure you contribute a fair amount** towards upbringing of your children, whether you live with them or not.

**If you are a relative of someone who cannot afford to contribute**, such as grandparents, try your best to help the children: after all, they still need support.

You can also help the children by **persuading** parents who are not paying or who are not paying enough, to pay a fair amount of maintenance: **their children need it.**