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**FAMILY LAW CLINIC**

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**Family Law Case Study November 2022**

**Maintenance claim for child in loco parentis**

The client acted in loco parentis for the period of time C lived with her and her now estranged husband. . Since the breakdown she is not in loco parentis to C anymore. Loco parentis means that the person is not a parent but acts in a parental role towards the child and acts in good faith. The person “assumes parental rights, duties, and obligations without going through the formal process of, for example, adoption of the child.”[[1]](#footnote-1) The client does not live with C anymore and has no contact with him. C is even harassing her. She does not fulfil parental duties nor obligations towards C and does not act as a parent for him. As a conclusion, her status as being in loco parentis is historical in nature.

Section 3 of the **Family Law (Maintenance of Spouses and Children) Act 1976** obliges people in loco parentis to pay maintenance for the dependent child. The obligation is stated in the present tense; therefore, it could be reasonably argued that when the period of acting in loco parentis ends, the obligation to pay maintenance also ends.

Unfortunately, not a lot of reported cases are available to interpret the wording of Section 3.

It appears that C’s father has not make any attempts to seek maintenance from C’s biological mother in Poland. That she is in Poland does not make any difference, because maintenance orders from Ireland are enforceable in every other EU-member-state.

In **J.C. v C.C. [1995]** Judge Kinlen in the High Court stated that when looking for financial support in respect of children, a parent should not in the first instance seek it from their stepparent but rather should seek it from their biological parent(s). Thus arguably, the father’s primary obligation to pursue C’s mother for maintenance should be considered.

When cohabiting, according to Section 5B and 5C of the **Children and Family Relationships Act 2015**, the person in loco parentis has an obligation to pay maintenance, when he or she is a guardian of the child (and a need and capacity is proven ot the court). The court takes the income and the obligation to pay maintenance for other children into account, when making a decision.[[2]](#footnote-2) Thus the client’s obligation ot support her won biological child, as well as her own income (I note she has a maintenance order) will inform any decision made by the court.

Whilst the decision will be determined based on the exercise of judicial discretion, and in the best interests of the children, the key arguments that could be made are:

* Her obligation to support her biological child and her limited means
* The historical nature of her loco parentis status in respect of C
* In the first instance the husband should seek maintenance from C’s biological mother.

1. Law Reform Commission, 2010. “Legal Aspects of Family Relationships”, LRC 101-2010, page 35; Hollywood v Cork Harbour Commissioners [1992] 1 IR 457, 465. [↑](#footnote-ref-1)
2. Treoir 2019. “Maintenance of Children — Whose parents are not married to each other” at 2. (Paper appended). [↑](#footnote-ref-2)