Department for Work & Pensions Procedures ▸ Default (E, W And NI)

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Default (E, W And NI)

When enforcement action is required to recover child maintenance arrears, the Child Maintenance Group (CMG) will apply for a liability order (LO) which will enable a range of enforcement actions to be carried out. For more information refer to Enforcement Action - Consider (E and W) and Enforcement Action - Consider (NI).

The purpose of this activity is for a case manager to refer a case back to the court presentation team when a paying parent has failed to comply with an order to pay. This guidance covers lines to take for CMS default cases, and for cases that have migrated from the CSA.

When every possible means of recovery has been exhausted and where there is evidence of wilful refusal or culpable neglect , the case manager will consider applying for sanctions to be imposed. For more information on Sanctions refer to the Law and Policy Handbook

Sanctions are powers available to the CMG to encourage a paying parent to pay. The magistrate's court is responsible for imposing sanctions. The aim of this process is to secure payment of the arrears. For more information refer to Sanctions (E, W and NI).

When a decision is made in favour of the CMG, the court may issue a Warrant of Commitment or Order of Disqualification from driving. The court may postpone the warrant or suspend the disqualification and grant an order to pay, which is an order to pay the arrears.

If the paying parent fails to comply with the order to pay this means that they have defaulted on the terms of the postponement or suspension. When this happens the CMG may apply for the postponement or suspension to be activated. The paying parent must then show cause which means they must explain to the court why they did not pay.

When completing this process, please note that the terms 'show cause' and 'default' used on the CMS system have the same meaning.

The case manager starts this process by preparing a default court file and requesting team leader authorisation.

Once the court file has been authorised the case manager sends it to the court preparation team to forward to the court presenting officer (CPO). The CPO makes the application and presents the case to the court. For more information refer to Court Presentation - Magistrates Court. The case manager monitors progress of legal proceedings until the court makes a decision.

ℹ️ Enforcement Service Requests (SR) and Activity Plans (AP) are supported by an underlying data form, in which the enforcement case manager can record specific details as the action progresses. The complete data form for this process may be found here: Default E, W & NI

For more information refer to the Policy, Law and Decision Making Guidance.
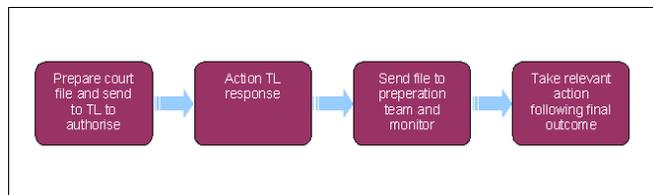
ℹ️ When speaking to clients always use the new terminology - for more information refer to Terminology Changes.

ℹ️ This procedure uses the terms receiving parent and paying parent.

The receiving parent is the parent who receives or who is expected to receive child maintenance, known as the parent with care (PWC) or person with care (PeWC) on the system and in legislation. The paying parent is the parent who pays or who is expected to pay child maintenance, known as the non resident parent (NRP) on the system and in legislation.

Prepare court file

ℹ️ Some actions may require an up front payment to the service provider (eg Courts). This payment will be made using the government procurement card (GPC), for more information refer to Admin Account - Add To.

For cases that have migrated from CSA go to Step 1. For cases that started on CMS go to Step 2.

Cases migrated from CSA

1. A paying parent may fail to comy with an order to pay that was granted prior to migration from the CSA. Prior to continuing with Default action you should give consideration to the following:

   ■ Is there any arguable dispute as to the liability?

   ■ Are there any actions outstanding regarding the assessment?

   ■ Has Bailiff action been attempted for every liability order period?

- Were there any procedural errors that may endanger the validity of the original action?

- Does the paying parent currently have the ability to pay? This criteria is considered as part of Sanctions action, based on the paying parent's Money In / Money Out form. However some migrated default cases may pre-date the advent of this process. For further guidance refer to Sanctions (E, W & NI).

For further guidance refer to the Policy, Law and Decision Making Guidance.

Where a suspended sentence has expired and some or all of the debt remains outstanding a fresh commitment action should be considered. There will be no need to set aside the existing order in this scenario as would have no reliance upon the original sentence.

All cases

2. Create the following service request (SR):

   - **Process = Enforcement**

   - **Area = Take Enforcement Action**

   - **Sub Area = Default Eng & NI**

3. Check the paying parent's address. Ensure that the paying parent lives within the jurisdiction of England or Wales. For more information refer to Jurisdiction Overview in the Law and Policy Handbook.

4. Set the SR **Status** to **In Progress** and complete the steps in the activity plan.

5. Complete the following activity plan validation steps. When you've completed each step, record relevant **Notes** in the **Reasons** field and select **Done** in the **Outcome** field.

   The system won't allow you to update the outcome until you've recorded some notes in the Reasons field. If notes aren't applicable to the step, type **Done** so that you can update the outcome.

   While you're completing the validation steps, don't select **Not Applicable** in the **Outcome** fields as this will close the SR. This only applies to the validation steps.

   - Check the arrears balance

   - Consider the welfare of the child or children

   - Record evidence of wilful refusal / culpable neglect

   - Add/Validate LO

   For more information refer to Enforcement Action - Consider (E and W) or Enforcement Action - Consider (NI).

   For more information on the welfare of the child or sanctions overview refer to the Policy, Law and Decision Making Guidance

6. Confirm the paying parent's arrears balance by taking the following steps:

   - Navigate to the **NRP Contact level** view

   - Select the **Financial accounts** tab

   - Pick the relevant **account number**

   - Select the **Payment Schedule** tab to view the arrears balance

7. Consider the welfare of the child/ren and record your decision in the **Reasons** field, detailing whether default sanctions action is appropriate. Include any relevant information to support your decision.

   The decision to apply for default sanctions is a discretionary decision, this includes making a Welfare of the Child Decision, for more information on discretionary decisions including a verbatim statement to record in **Notes in Update Child Welfare Details - Reason** refer to Policy, Law and Decision Making Guidance .
   If your decision is not to apply for default action, select **Exit** and close the SR after you have recorded your decision.

8. Select the **More Tabs** drop down followed by **Instances** to check for any evidence of wilful refusal / culpable neglect. For more information see Wilful Refusal/Culpable Neglect.

9. Associate the relevant liability order (LO) to the **Default Eng & NI** SR. Go to **Enforcement Actions** on the system and select **Enforcement Orders** to see any LO's granted against the paying parent. Select **Add** and the LO with the debt that needs to be collected.

10. Associate the **Sanctions Eng** SR with the **Default Eng & NI** SR. Please refer to the procedure for CMS System Overview for futher guidance on linking SR's

11. Select **Continue** to proceed with the application for default sanctions. If any step in the validations show that it would be inappropriate to continue, record your decision in the Reason field and go to **Step 44** to manually close the SR.

12. Update **Enforce Forms** once you've completed the validation steps. Select **Update Form/Document** to view the form. Then update the following data fields:

- **Current Arr. Bal On LO** – the remaining balance on the LO

- **Arrears Bal Against LO** – the same figure as Current Arr. Bal on LO

- **Sum Applied For** – the total amount of debt including costs if you decide to collect these

13. Send CMEL7341 to the paying parent to warn them that you are applying to the court for the sentence to be imposed. Update **Letters** to **NRP Date** in **Enforce Forms**. Set a **Wait** period in the SR for 14 days and change the **Sub status** to **Warning letter issued**.

14. On the due date, change the SR **Status** to **In Progress**. Check if the paying parent has responded and take the relevant action:

- Arrears paid in full or payments on the court ordered schedule brought up to date – go to **step 14**

- No response from the paying parent – change the SR **Status** to **In Progress** and go to **step 15**

15. If the paying parent pays the arrears in full or brings their payments on the court ordered schedule up to date, close the **Default Eng & NI** SR after recording your reason in the **Notes** field. Then decide if enforcement action is still required. For more information refer to Enforcement Action - Consider (E and W) or Enforcement Action - Consider (NI).

16. Create the defaults court file if the paying parent doesn't respond to the warning letter. Complete the off system formCMEL7356. Please refer to the procedure for Letters outbound - Off system for further guidance.

17. Print a copy of the CMEL7356 and ask your team leader to authorise it. Update the **Notes** to show that your team leader has authorised the CMEL7356. Then continue assembling the court file.

    Although the form is prepared and authorised at this point it is not sent yet. It will be issued to the CPO later in the process along with the rest of the enforcement file.

    Line manager note: for more information regarding the checking process refer to BCS Overview.

18. Send CMEL7211 to the paying parent to summon the paying parent to the magistrates' court. Issue CMEL7214 to the receiving parent to advise that we have a warrant for commitment/order of disqualification/suspended warrant for commitment/ suspended order of disqualification.

    Ensure CMEL7211 is saved in Rich Text Format for future issuing to court; failure to do this will result in content within the form being lost.

19. Complete CMEL7226, CMEL7215 and CMEL7295. Associate them with the CMEL7356 along with the relevant documents:

- Details of payments received in relation to the order to pay by the court

- Letters issued to the paying parent regarding the default

- Bailiff report and Nulla Bona if appropriate

- Face to face / compliance inspector interview reports

- Final charging orders if appropriate

- Final or interim third party debt orders if appropriate

- the Registry Trust Limited documents

- Land Registry notices/restrictions/charges/cautions if available

- County court order/maintenance order if obtained

- All evidence of wilful refusal/ culpable neglect

- Court presenting officer (CPO) outcome reports from legal action taken

- Copy of CMEL7356 warning letter sent to the paying parent

- Order for sale decision not to pursue if appropriate

20. Select the activity plan outcome **Initiate**. Change the SR **Status** to **Pending Approval** and **Sub Status** to **Pending Approval - TL**. The system will send an authorisation request to your team leader. When you receive a response, go to **step 22**.

    To prevent the casegroup moving segments whilst you are awaiting TL authorisation, set the **Lock Assignment Flag**. For more information on how to do this refer to BOM - Segments Summary.

Authorise court file (team leader)

21. Go to your **inbox** and open the **Default Eng & NI** SR created by the case manager. View the case details and Notes to decide whether:

- The criteria for default action has been met

- You need any more information to make a decision

For more information refer to Sanctions Overview in the Law and Policy Handbook

22. Within the **More info** view and record whether you are authorising default action. If you are not authorising it, record your reasons in the **Notes** field. Explain what information you need or if default action is not appropriate.

Action team leader response (case manager)

23. Change the SR **Status** to **In Progress** and view your team leader's response:

- Default action not authorised – go to **step 23**

- Default action authorised – go to **step 25**

24. Complete the action requested by your team leader if they have not authorised default action:

- More information required – gather the information and resubmit the case for authorisation

- Default action not appropriate – go to **step 24**

25. When your team leader has rejected default action, update **Show Cause Act Auth** in **Enforce Forms** to **Rejected**. Then close the SR to complete this process.

26. When your team leader has authorised default action, select the Updarte form/document tab to access the Enforce form and update the **Show Cause Act Auth** field to **Accepted**. The activity plan outcome will update automatically to **Approved**.

27. Call the receiving parent when your team leader has authorised default action. Explain that the receiving parent did not make the payments ordered by the court and that the CMG is now applying for the sanctions to be imposed. Manage the receiving parent's expectations regarding the outcome and timescales involved.

28. If the call is unsuccessful, send CMEL7345 to the receiving parent to tell them that the CMG is applying to the court for sanctions to be imposed.

Send court file to court presenting team (case manager)

29. Change the SR **Status** to **Wait** and Sub Status to **Monitor for Hearing**. Update the **Initiate Court Presentation** outcome to **Initiate** to generate the **Court Presentation** SR.

30. Go to the child SRs view and open the **Court Presentation** SR. Change the **Source** field to **CW** and update the **Sub Status** to **Pending Assignment** to send the SR to the court preparation team.

The system sends the SR to the appropriate court preparation team automatically, along with the court file. For more information refer to Court Presentation - Magistrates Court.

31. Monitor the case for a response from the court preparation team. Set a **Wait** period in the **Default Eng & NI** SR for three months to allow time for a court hearing to be arranged.

The court preparation team will update the system with the current status of the case, including the court hearing date once it has been arranged.

32. While you're waiting for the court hearing, notify the court preparation team if there are any changes such as:

- Payments from the paying parent

- An arrears agreement made with the paying parent

- Changes to the arrears balance due to a change of circumstances, revision or appeal

- This list is not exhaustive

Notify the court preparation team if there are any changes that affect the legal action. For more information refer to **Case Routing – Enforcement** in related items.

Final outcome (case manager)

33. Update the **Default Eng & NI** SR **Status** to **In Progress** when the court preparation team contacts you with the outcome.

34. Review the court file attached to the SR and check what action you need to take. If the case was dismissed, the CPO may ask you to provide evidence to support an appeal.

   - If the paying parent is to be imprisoned, send them letter CMSL7215 warrant to imprison.

   - If the court has issued a suspended sentence to the paying parent, because they have agreed to make payments, send the paying parent letter CMEL7343 sentence suspended if you pay.

   - If the paying parent did not attend the court hearing, send CMEL7296 warrant of arrest to the paying parent and CMEL7228 to the receiving parent to tell them a warrant for the paying parent's arrest has been assigned.

   The CPO will send a warrant for Arrest referral form CMEL9196 to the bailiff at this point. In Northern Ireland the Warrant of Arrest will be issued directly by the court to the police.

   Note, only a copy of the warrant will be sent as the original will be kept by the CMG.

35. Record the outcome by updating the relevant fields in **Enforce Forms**:

   - **Sanc Hearing Outcome** or **Action Outcome** depending on system build

   - **Cnfrm Court Decision** – use if Sanc Hearing Outcome is **Granted** or **Sentence Given**

   - **Sanc Order End Dt** – use if an order is awarded for a specific time period, this field contains the end date of that period

   - **Outcome Granted Reason** – use if Hearing Outcome is **Granted Sentence Given**

   - **Case Dismissed Reason** – use if Hearing Outcome is **Dismissed** or **Withdrawn**

   - **Date of Sanction Action** or **Final Outcome Date** – record the date of the courts decision

   - **Sentence Days** – use if **Outcome Granted Reason** is **Immediate Committal** or **Sentence** or **Immediate Disqual Driving Lic** (leave Sentence Months blank)

36. Update the **Schedule Check** Activity Plan outcome to show whether the court has granted a variation on the order to pay. Then complete the relevant steps:

   - Variation of order to pay - go to **step 36**

   - Warrant of commitment or disqualification activated – go to **step 38**

   - Show cause application withdrawn – go to **step 39**

37. Set up a new payment schedule using the **Arrears Negotiation** SR:

   - **Process = Perform Calculation**

   - **Area = Schedule Only**

   - **Sub area = Arrears Negotiation**

   The schedule you set up will include the order to pay by the court and any ongoing maintenance and arrears the paying parent is liable to pay. For more information on completing this SR, refer to Arrears Negotiation and Missed Payments.

38. Once you've set up the schedule, complete CMEL9273 and send it to the paying parent. Create a new Activity Plan step and record that you've issued the letter.

   The CMEL9273 explains the order to pay element of the promise to pay schedule and the need to quote the LO reference number. The paying parent needs to set up a separate method of payment from (MOPF) for the order to pay in order to quote this number.

39. If the outcome was committal or disqualification from driving, contact the court preparation team if the paying parent subsequently makes a payment. For more information refer to Case Routing - Enforcement.

40. Apply any costs to the case. This step is optional depending on whether costs have been granted against the paying parent in this procedure. For more information refer to Apply Costs.

41. Send CMEL7205 to the receiving parent if the court has refused the application. Send CMEL7214 if the court has granted the application.

42. Call the receiving parent and explain the outcome. If the court has granted an order to pay, explain this and manage the receiving parent's expectations on when they will receive payment. If the court has refused the application explain that we will look again to see if there is any further action we can take.

43. Record details of any action you have taken in the **Notes** field and close the **Default Eng & NI** SR when default action has been completed.

44. Consider other enforcement options if the court activates the warrant of commitment or order of disqualification. For more information refer to Enforcement Action - Consider (E and W)or Enforcement Action - Consider (NI).

45. Manually close the SR by updating the **Status** to **Closed** and the **Sub status** to **Completed**

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2. Check the paying parent's (the parent who pays or who is expected to pay child maintenance, known as the non resident parent (NRP) on the system and in legislation) address. Ensure that the paying parent lives within the jurisdiction of Northern Ireland. For more information on jurisdiction refer to the Law and Policy Handbook:

18. Complete CMEL7226, CMEL7215 and CMEL7295 on the system. Associate them with the CMEL7356 along with the relevant documents:

- Warning letters sent to the paying parent
- Enforcement of Judgments Office (EJO) registration letters
- Details of actions taken by EJO
- Details of enforcement action taken
- The list is not exhaustive

CMEL7205 Your child maintenance update – action refused

Tell receiving parent that driving licence or commitment action has been refused.

Under the sub heading 'What this means for you' select one of the following:

- If we can ask the court to consider action again or can take another action, use paragraph **TM_09439_E** 'We might be able to ask the court to consider this action again, or we might be able to take different action if we think it will make [NRP's name] pay'
- If we have no more chances to ask the court to consider sanctions but could take another action, use paragraph **TM_09440_E** 'We have asked the court to consider this action as many times as we can. However we may be able to take a different action'
- If we have no more chances to ask the court to consider sanctions and have no other options left, use paragraph **TM_09441_E** 'We have asked the court to consider this action as many times as we can. We might not be able to take any more action at the moment because we have tried everything we can'

Enter any additional information specific to the case in the any additional information specific to the case freetext field.

CMEL7211 Summons (off system)

(Off system)

Summons

CMEL7214 Your child maintenance update - court decision

Inform receiving parent that we have a warrant for commitment/order of disqualification/ suspended warrant for commitment/suspended order of disqualification.

Under the sub heading 'What this means for you' either enter the number of days the paying parent will be held in prison in the enter number free text field, or how long they will be suspended from driving in the enter time free text field.

CMEL7215 Warrant to imprison (off system letter)

(Off system letter)

Advise paying parent of intent to imprison them

CMEL7226 You have failed to comply with a suspended warrant

CPO sends paying parent notice of consequences following paying parent's failure to comply with a suspended warrant.

All fields in this letter are system generated, no manual intervention is required.

CMEL7227 Action update – disqualification or commitment

Notification to paying parent of intent for impending escalation to court for removal of driving licence/commitment to prison.

All fields in this letter are system generated, no manual intervention is required.

CMEL7228 Your child maintenance update - We have a warrant to arrest

Tell receiving parent that we have a warrant to arrest paying parent because they didn't attend a hearing.

All fields in this letter are system generated, no manual intervention is required.

CMEL7295 Please execute a warrant of commitment...disqualification immediately

Defaulted suspended sentence / Order of disqualification: action for court.

Enter the name of the court in the Name of court free text field.

CMEL7296 Warrant of Arrest

Warrant of arrest - to bailiff

Enter name of court in freetext field

Enter arrears balance in freetext field

CMEL7341 Action update - Pay immediately or face major sanction action

Giving paying parent final opportunity to pay before CMG/CMED return to court to ask for suspended committal sentence to be imposed.

Under the sub-heading 'Pay what you owe immediately or you will be' enter the name of the court in the court name free text field.

Enter the amount ordered to pay in the amount ordered to pay free text field and the frequency they're ordered to pay in the frequency ordered to pay free text field.

Under the sub heading 'What you need to do now' if the caseworker wishes to enter the amount, use paragraph 'If case worker wishes to enter amount' and enter the amount in the free text field.

CMEL7343 Action update – sentence suspended if you pay

Confirm to paying parent that court has suspended (commitment/disqualification) and ordered to pay £X per (frequency) If payments not made we will go back to court.

Under the sub heading 'The court has suspended your sentence on the condition that you pay what you owe' enter the name of the court in the court name free text field and the amount and frequency in the amount and frequency free text field.

CMEL7345 Your child maintenance update – we're going back to court

Tell receiving parent paying parent has defaulted so we're going back to court.

Under the sub heading 'Your child maintenance update' enter the LO amount due to the receiving parent in the 'enter LO amount due to PWC' free text field.

Enter the court name in the court name free text field.

CMEL7356 Committal referral form – additional information

(Off system letter)

Committal referral form – additional information (England and Wales)

2012 System Overview

Admin Account - Add To

Apply Costs

Arrears Negotiation and Missed Payments

Bailiff

BCS Overview

BOM - Segments Summary

Case Routing - Enforcement

Court Presentation - Magistrates Court

Enforcement Action - Consider (E and W)

Enforcement Action - Consider (NI)

Investigative Action

Letters outbound - Off system

Sanctions (E, W and NI)

Terminology Changes

Wilful Refusal/Culpable Neglect

What are sanctions, what do they mean?

Sanctions are powers available to the child maintenance group (CMG) to encourage a paying parent to pay.

Who can impose sanctions?

The magistrate's court will be responsible for imposing sanctions.

What sanctions can the court impose?

The court may issue a Warrant of Commitment or Order of Disqualification from driving.

What if the paying parent fails to comply with the order?

The paying parent must then show cause which means they must explain to the court why they did not pay.