

## Defaults (Scotland)

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 \(Scotland\)](#).

The purpose of this activity is for a case manager to refer the case back to the court when a paying parent fails to comply with payment conditions previously set by the court. This guidance covers lines to take for CMS default cases, and for cases that have migrated from the CMS.

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.

Sanctions are powers available to CMG to encourage a paying parent to pay. The Sheriff court is responsible for imposing sanctions.

The aim of this process is to secure full payment of the arrears on the application and expenses awarded by the court. For more information refer to [Sanctions \(Scotland\)](#).

When a decision is made in favour of CMG, the Sheriff may issue a Warrant of Commitment or Order for Disqualification. The Sheriff may sist the case and set conditions for payment of the arrears.

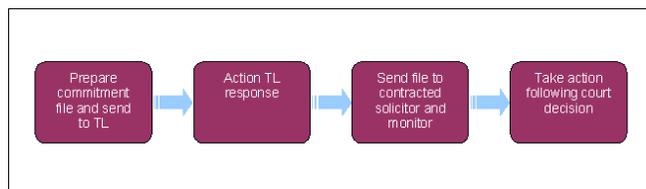
If the paying parent fails to make the payments this means that they have defaulted on the conditions for payment. When this happens the CMG may apply to the court for the sist to be recalled and the matter brought back to court. The paying parent must then explain to the Sheriff why they did not adhere to the payment conditions.

The case manager will start this process by preparing a default commitment file and requesting team leader authorisation.

Once the team leader has authorised the file, the case manager will send it to the contracted solicitor who will make the application and present the case to the court. The case manager will monitor progress of legal proceedings until the court makes a decision.

 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 - Scotland](#)

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



 When speaking to clients always use the new terminology - for more information refer to [Terminology Changes](#).

 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 default commitment court file (case manager)

 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 comply 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 Sheriff 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 \(Scotland\)](#)

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

- If you haven't recently checked the paying parent's address, check this now to ensure that you're applying for the default within the appropriate jurisdiction:
  - If the paying parent has moved to a different Sheriff Court district, notify the contracted solicitors of the new Sheriff Court
  - If the paying parent has moved out of Scotland but within the United Kingdom (UK) jurisdiction will change. For more information refer to [Default \(E, W and NI\)](#)
  - If the paying parent has moved out of the UK jurisdiction will change. For more information refer to Case routing – enforcement
- Create the following service request (SR):
  - **Process = Enforcement**
  - **Area = Take enforcement action**
  - **Sub Area = Default Scot**
- Set the SR **Status** to **In Progress** and complete the steps in the activity plan.
- Update the activity plan to confirm that you have completed the following validation steps when deciding if default action is appropriate:
  - Check the arrears balance
  - Consider the welfare of the child or children.
  - Record evidence of wilful refusal / culpable neglect
  - Add/Validate liability order (LO)



For more information refer to [Enforcement Action - Consider \(Scotland\)](#).

- Check the **Financial Accounts** view to confirm the arrears balance.
- Consider the welfare of the child/ren and record your decision in the **Reasons** field, detailing whether sanctions action is appropriate. This 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 refer to Policy, Law and Decision Making Guidance .



The decision to apply sanctions is a discretionary decision and must be recorded in the Reason field of the activity plan.

- Check the **Instances** view for any evidence of wilful refusal/culpable neglect. For more information refer to [Wilful Refusal/Culpable Neglect](#).
- Associate the relevant liability order/s (LO/s) to the Default Scot SR. Go to **Enforcement Actions** on the system and select **Enforcement Orders** to see all LO/s granted against the paying parent. Select **Add** and the LO with the debt that needs to be collected.



If you're collecting arrears on more than one LO, you can associate multiple LOs to the SR.

- Associate the **Sanctions Scot** SR to the **Default Scot** SR. Please refer to the procedure for **CMS System Overview** for further information on linking SR's
- Update **Enforce Forms** once you've completed the validation steps. Select Update Form/Document to view the **Default** form. Then update the following fields:
  - **Default Date** – The date of the first missed payment set by the court
  - **Current Arr. Bal Against LO** – The current balance on the LO/s pursued in the original sanctions hearings - this doesn't include expenses or fees
  - **Arrears Balance Against LO** - The same figure as **Current Arr. Bal Against LO** – both fields must be completed
  - **Sum Applied For** – the total amount of debt including costs if you decide to collect these

12.  Send CMEL7341 to the paying parent to warn them that you're applying to the court for the sist to be recalled. Record the date of issue in **Letters to NRP Date**. Set a **Wait** period in the SR for 14 days and change the status to pending.
13. On the due date, check if the paying parent has responded and take the relevant action:
- Arrears on the LO, and expenses awarded by the court paid in full, or arrears agreement made – go to **step 13**
  - No response from the paying parent – change the SR status to in progress and go to **step 14**



If the paying parent contacts you at this stage, stress to them the importance of honouring the payment conditions set by the court. Explain that failure to pay could result in commitment to prison or disqualification from driving. Ensure that the paying parent understands that this is not the Child Maintenance Groups (CMG) preferred course of action.

14. If the paying parent reinstates the payments or pays the arrears on the LO in full, close the **Default Scot** SR after recording your reason in the **Notes**. Then decide if enforcement action is still required. For more information refer to [Enforcement Action - Consider \(Scotland\)](#).



15. If the paying parent hasn't responded, create a memo to send to the contracted solicitor, detailing what has happened since the original sanctions hearing. If you're posting a memo, complete CMEL9271. If you're using email, create CMSL5508 or CMSL5513 instead. Don't send the memo until you've gained team leader approval. For further information on CMSL5508 and CMSL5513 refer to [Letters \(Outbound\) - Third Parties/Forward](#).



At this point you only need to detail what has happened since the sanctions hearing, as the contracted solicitor will already have the original sanctions file, including the CMEL9120.

16. Select **Initiate** when prompted in the activity plan, to send an authorisation request to your team leader. When you receive a response, go to **step 18**.

## Authorise default commitment file

### Team leader action

17. Go to your Inbox and open the **Default Scot** SR created by the case manager. View the case details and Notes and decide whether:
- The criteria for default action have been met
  - You need any more information to make a decision
18. Update the activity plan to confirm whether you are authorising default action. If you're not authorising default action, record your reasons in the **Notes**. Explain what information you need or whether default action is not appropriate.

## Action team leader response

### Case manager action

19. Check the Default Scot SR for your team leader's response.
- Default action not authorised – go to **step 19**
  - Default action authorised – update **File Approved?** and go to **step 21**
20. 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 20**
21. When your team leader decides that default action isn't appropriate, update **Enforce Forms** and then close the SR to complete your action:
- **File Approved?**
  - **Not Approved Reason** - the reason your team leader rejected default action
  - **Solicitor Rej. Reason** - the reason your team leader rejected default action



22. Call the receiving parent when your team leader has authorised default action. Explain that the paying parent did not make the payments set out 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.



23. If the call is unsuccessful, send CMEL9136 to the receiving parent to tell them that the CMG is applying to the court for the sanctions to be imposed.

## Send default commitment file

### Case manager action



24. Send the memo to the contracted solicitor once your team leader has approved default action. Record the date of issue in **Sanct File Send Date**. The solicitor will then decide whether prosecution is suitable.

25. Monitor the case for a decision by setting a **Wait** period in the SR for 14 days and changing the SR **Status** to **Pending**.
26. On the due date, change the SR **Status** to **In Progress**. Check inbound correspondence on the case to see the solicitor's decision. If you have not received a response, call the solicitor to confirm their decision:
  - Case rejected by solicitor – go to **step 26**
  - Case accepted by solicitor – go to **step 29**
27. If the solicitor has rejected the case, record this in **Case Appr By Solicitor?** and **Solicitor Rej Reason**. The solicitor will tell you if you can re-refer the case to them. For example, when they need you to take some corrective action.
28. Take the relevant action depending on the solicitor's response:
  - **Re-refer the case** – restart this process from **step 14** and complete the corrective action required
  - **Don't re-refer the case** – **Close** the **Sanctions Scot** SR now to complete this process
29. Consider other enforcement action if the case is not suitable for prosecution. For more information refer to [Enforcement Action - Consider \(Scotland\)](#).
30. If the solicitor has accepted the case, record this in **Case Appr By Solicitor**. Set a **Wait** period in the **Default Scot** SR for three months to allow time for the solicitor to arrange the court hearing. Change the SR Status to **Pending**.

## Monitor case

31. Monitor the case for an update from the solicitor. When the solicitor confirms that the pre-proof hearing has been arranged, record the hearing details in **Hearing Records** and set a **Wait** period in the SR for seven days after the hearing. If the hearing is in a court in England or Wales, update **Summons Issued Date** with the date the summons was issued to the paying parent.
32. If the solicitor tells you that an expert witness is needed, record this in **Hearing Records** and complete **steps 39-43**.
33. You can cancel or pause the enforcement action at any stage during this process if changes to the case require this. For more information refer to [Case routing – enforcement](#). Consider doing this following:
  - 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
  - Other exceptional circumstances such as death of a client, change to benefit status, reconciliation – the list is not exhaustive
34. If you're cancelling or pausing enforcement action, record the reason in the **Enforcement Amendments** view.
35. Notify the contracted solicitor if there are any changes that affect the legal proceedings.
36. If you haven't received a response from the solicitor, call them for an update. If an outcome hasn't been reached, discuss the timescales of any ongoing action and set the appropriate wait period in the SR.
37. When the solicitor confirms that the proof hearing has been arranged, record the hearing details in **Hearing Records** and set a **Wait** period in the SR for seven days after the hearing.
38. Monitor the case for the proof hearing outcome. If you haven't received a response from the solicitor, call them for an update. If an outcome hasn't been reached, discuss the timescales of any ongoing action and set the appropriate wait period in the SR.
39. Repeat **steps 31-37** if any further hearings are arranged. When you receive the final outcome, go to **step 44**.

## Prepare contact witness for proof hearing

40. The Child Maintenance Group (CMG) may have to provide an expert witness from enforcement to attend the proof hearing along with the contracted or agent Solicitor.
41. The expert witness will speak about what actions have been taken to recover the debt, prior to the raising of the Commitment to Prison or Order of Disqualification action. For more information refer to the Law and Policy Handbook . When the solicitor tells you that an expert witness is needed for the proof hearing, find a suitable case manager who can attend.
42. Contact the person you need to attend the hearing. Explain the current action on the case and the date of the next hearing. Ask the person if they're able to attend and arrange for the relevant case papers to be sent to them prior to the hearing.
43. Record the name of the expert witness in the **Notes** and update **Hearing Records** to show that an expert witness is attending.
44. Once you've prepared the witness for the hearing, go back to **step 32** and monitor the case for an outcome.

## Take action following final outcome

### Case manager action

45. Set the SR **Status** to **In Progress** when the solicitor contacts you with the final outcome.
46. Review the case file and check what action you need to take next.
47. Record the final outcome in the **Default** form by updating the relevant fields where applicable:

- **Final Outcome**
- **Final Outcome Date**
- **Type Of Warrant**
- **Case Dism Reason** - use when **Final Outcome** is **Dismissed-CMEC/CMED Instigated**
- **Warrant Issued Date**
- **Warrant Exec Date**
- **Suspended Sentence** - free text box to record the length of a suspended sentence
- **Sentence** - use when **Final Outcome** is **Granted** or **Payment Conditions Set**
- **Length of Sentence** - the length of sentence in days

Record any additional information in the **Notes**.

48. If there are any appeals, create a new record in the **Appeals** view.
49. Update the activity plan to confirm whether the court set payment conditions:
- Payment conditions set – go to **step 49**
  - No payment conditions set – go to **step 52**



For any outcome that doesn't involve payment conditions, go to **step 52**.

50. Set up the schedule using the **Arrears Negotiation** SR. In the activity plan, select **Yes** for **Letter Outbound** to generate the SR:
- **Process** = Perform Calculation
  - **Area** = Schedule Only
  - **Sub Area** = Arrears Negotiation



The schedule you set up will include the payment conditions set by the court, plus 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](#).



If the Sheriff sets payment conditions it will list the case on the condition that the paying parent makes the payments. This is the equivalent of a suspended sentence.

51.  Once you've set up the schedule, complete CMEL9122 and send it to the paying parent. Create a new activity plan step and record that you've issued the letter.



The CMEL9122 will explain the payment conditions element of the promise to pay schedule and the need to quote the LO reference number. The paying parent will need to set up a separate method of payment from (MOPF) for the order to pay in order to quote this number.

52. Record the date of the final payment due in **Sanc Order End Dt**.
53. If the Sheriff hasn't set payment conditions, take the relevant action if the paying parent subsequently makes a payment. For more information refer to [Case routing – enforcement](#).
54. Apply any expenses to the case that have been awarded by the court. If there are no expenses to apply, select **Not Applied** next to **Cost Applied** in the activity plan. For more information refer to [Apply Costs](#).



The system refers to expenses as costs.



Don't close the SR before completing this action as this will prevent you from sending the receiving parent outcome letter.

55. If expenses are awarded at a later date, apply them to the case once they are awarded. You may need to take this action if the solicitor requests taxed expenses.



56.  Send CMEL9133 to the receiving parent to notify them the outcome of the default action.

57. Record details of the action you have taken in the **Notes** and **Close** the SR.

58. Consider other enforcement options when payment of the arrears has not been secured. For more information refer to [Enforcement Action - Consider \(Scotland\)](#).

#### CMEL5508 Memo free text memo to send by email

Record details of the default in the free text box before sending to the contracted solicitor.

Once completed review the letter to ensure the correct information is provided.

[CMEL5513 Memo free text memo to send by email](#)

Record details of the default in the free text box before sending to the contracted solicitor.

Once completed review the letter to ensure the correct information is provided.

[CMEL7341 Action update - Pay immediately or face major sanction action](#)

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

In the second paragraph record the court's name in the free text box.

In the third paragraph record the payment amount and frequency of the order to pay in the free text boxes.

Under the sub heading "What you need to do now" select the following:

- If you wish to enter the amount they must pay, use paragraph 'If case worker wishes to enter amount' and record the amount outstanding from the order to pay in the free text box.

Once completed review the letter to ensure the correct information is provided.

[CMEL9120 Submission for committal or disqualification from...licence \(Scotland\)](#)

Submit file to solicitor for committal/disqualification

Under the paying parent's address, record the court's name in the free text box.

Under the sub heading 'Summons' record today's date and the court's name.

When a warrant of commitment has been postponed complete the following free text areas:

Under the paying parent's address, record the date or the final outcome of the original sanctions hearing.

Record the conditions of the postponement in the free text box.

Record the amount that the paying parent needs to pay to prevent further action in the free text box.

Record the name of the court in the free text box.

When an order of disqualification has been suspended complete the following free text areas:

Record the date the order was suspended, the conditions and the period of disqualification that was suspended in the corresponding free text boxes.

Record the name of the court, the date and time of the next hearing.

Once completed review the letter to ensure the correct information is provided.

[CMEL9133 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 'Your child maintenance update' select one of the following:

- If the court decided to grant a warrant of commitment, use paragraph 'IF the court decided to grant a warrant of commitment'
- If the court decided to grant an order of disqualification, use paragraph 'IF The court decided to grant an order of disqualification'
- If the court decided to grant a suspended warrant of commitment because they agreed a new payment plan with the paying parent, use paragraph 'IF The court decided to grant a suspended warrant of commitment because they agreed a new payment plan with the paying parent'
- If the court decided to grant a suspended order of disqualification because made a new order for payment for the paying parent, use paragraph 'The court decided to grant a suspended order of disqualification because made a new order for payment for the paying parent'

[CMEL9136 Child maintenance update - we are going back to court](#)

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

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

[CMEL9271 Memo free text memo to send by courier](#)

Record details of the default in the free text box before sending to the contracted solicitor.

Once completed review the letter to ensure the correct information is provided.

[CMS system overview](#)[Apply costs](#)[Arrears Negotiation and Missed Payments](#)

Case routing - enforcement

Default (E, W and NI)

Enforcement action - consider (Scotland)

Investigative action

Sanctions (Scotland)

Terminology Changes

Wilful Refusal/Culpable Neglect