Department for Work & Pensions   Procedures ▸ Enforcement Action - Consider (Scotland)

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Enforcement Action - Consider (Scotland)

When considering a case for civil or criminal legal action, a case manager makes their decision based on information gathered from a number of sources and by reviewing the unique history of the case/s concerned.

This action will be taken by enforcement case managers in Scotland.

This procedure describes the process taken when considering the next step of enforcement action and allows the case manager to initiate the gathering of information from online resources and third parties. Prior to deciding the next enforcement action case managers will be able to assess the risk of a paying parent disposing of asset/s, based on information gathered in previous stages of the case.
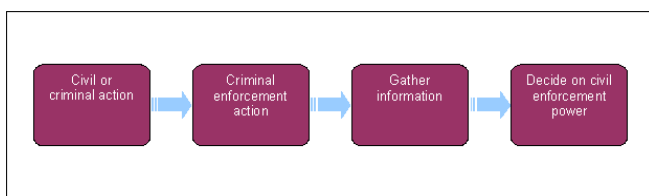
When speaking to the paying parent at any point during enforcement, take the opportunity to tell them why we are considering or taking this action. Explain that enforcement is not the Child Maintenance Group's preferred course of action and tell the paying parent what they can do to get their child maintenance payments back on track (i.e. making a lump sum payment and adhering to an arrears agreement).

It is important that data protection laws are adhered to and that a record is kept of how this information is used or that it has been destroyed or disregarded.

This process is allows the initiation of criminal enforcement action against an paying parent, receiving parent, third party or employer. Criminal action can be taken in parallel with civil action, although the case manager should use discretion as in some situations undertaking civil proceedings concurrently with criminal action may jeopardise the success of one or other of these sets of actions.

For more information on and a full list of measures available to enforce paying parent arrears 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.

Civil or criminal action

Consider issuing an SMS to advise the paying parent that we are taking legal action against them. Refer to SMS Text for further information.

1. Create a service request (SR) using the following options:

    - **Process = Enforcement**

    - **Area = Decide On Enforcement Action**

    - **Sub Area = Gather Information**

    Update the SR **Status** to **In Progress**. The CMS system will generate an activity plan at this point.

2. Select **No** in the **Any Evidence Of Criminal Activity** field if you are considering civil enforcement action only, and go to **step 7**.

3. Select **Yes** in the **Any Evidence Of Criminal Activity** field if you consider criminal proceedings would be appropriate and go to **step 4**.

Criminal enforcement action

4. Update the **Initiate Criminal Action** field with one of the following options:

- Failure to notify Child Maintenance Group (CMG) of a change of circumstances
- Failure to comply with request
- Employment change failure
- Provision of false information
- Failure to comply with deduction from earnings order (DEO)

The CMS system will create a child SR for criminal action at this point. For more information refer to Criminal Action - Decide.

5. Select **Yes** in the **Continue Data Gathering** field if you wish to also take parallel civil action, and go to **step 7**.

6. Select **No** in the **Continue Data Gathering** field if you do not wish to take civil enforcement action, and manually close the work item by updating the SR as follows:

- **Status = Closed**
- **Sub Status = Completed**

Gather information

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.

7. Check online search facilities for any new information regarding the paying parent circumstances:

- Credit Reference Agency (CRA)
- Companies House
- Registers Direct
- Driver and Vehicle Licensing Agency (DVLA)
- Her Majesty's Revenue and Customs (HMRC)
- Customer Information System (CIS)

Update the **Assess Online Information** field to **Done**.

8. Add a note in the **Notes** field if no relevant information is gathered from the online search facilities.

9. Issue the following letter to any third party that you may wish to ask for further information. Third parties include:

- Employers - CMEL9251
- Accountants - CMEL9251
- Banks - CMEL9251
- Receiving parent - CMEL9236 - a detailed questionnaire
- Receiving parent - CMEL7183 - when the receiving parent is subject to a criminal referral
- DVLA or Driver and Vehicle Agency (DVA) - Complete form CMEL9235 to raise a query with the regional CSA SPOC, who will complete form VQ615 and submit it to the DVLA. The CSA SPOC will advise you once a response has been received
- Council or local authority - CMEL9253
- Update the Letter Outbound (Request Third Party) field to Done. Set a Wait period at your discretion to allow a reply to be received.

Note that letters CMEL9235, 9251 and 9253 will need to be manually generated. **In relation to deposit takers i.e. Banks or Building Society, it is only the Deduction Order Teams (DOT) of Financial Investigation Unit (FIU) who are authorised to make requests.**

10. Record any evidence you decide to retain on the system by updating the **Asset** view. In addition to this, update the **Record Data** and **Source** field of the activity plan with the information received and source of information e.g. third party, Inland Revenue, Companies House etc.

Use the **Asset** view to record assets on the system. If you decide to take any enforcement action, you will use the **Contact Asset** view to associate the asset/s to your enforcement SR. When recording assets, only use the data fields under the applet name. Don't use the menu next to **Asset Type**.

11. Record if the information you gathered was relevant in the **Notes** field. If not, ensure that it is deleted or disregarded. Retain a record of the search for audit purposes and for more information refer to Case Routing - Enforcement.

12. Go to **step 13** for a summary of possible civil enforcement actions.

     When considering potential enforcement actions, also investigate if there has been any previous enforcement action taken against the paying parent under the CSA. If required, please refer to the procedure for Enforcement actions (CSA) - Input.

     Where arrears are identified as being on the CSA, you will need to ask for the arrears to be fast tracked onto the CMS system. For more information on fast track arrears refer to Fast Track Legacy Arrears to CMS. Although this speeds up the receiving parent arrears decision process, any further deferral rules will still apply. Due to this there is no set time frame for arrears to be sent to the CMS scheme and the time taken will depend on each individual case.

Decide on civil enforcement power

13. Based on your investigation of the case, select the appropriate enforcement power.

     - **Lump sum deduction order** - Consider this action if the paying parent has a bank account with suitable funds to allow a lump sum to be deducted in respect of arrears

     - **Regular deduction order** - Consider this action if you wish to make deductions for regular maintenance and arrears from an paying parent's bank account on a regular basis

     - **Arrestment on dependence -** Consider taking this action at the same time as applying for a liability order (LO) if you feel the paying parent is at risk of disposing of funds owed to them by a third party

     - **Inhibition on dependence** - Consider taking this action at the same time as applying for a LO if you feel the paying parent is at risk of disposing of heritable property or land. This action is granted against the paying parent rather than acting against specific asset/s

     - **Interim attachment** - Consider this action prior to a LO being granted if you feel the paying parent is likely to dispose of any moveable asset/s to avoid paying their child maintenance debt

     - **LO Sheriff Court** - Consider this action when you want a specific period and amount of debt to be legally recognised. This will enable further civil enforcement action to follow.

     - **Order for interdicting** - Consider this action if you consider there is a risk of the paying parent disposing of any asset/s or removing them from the CMG's jurisdiction

     - **Action for reduction** - Consider this action when an paying parent has disposed of an asset to a known third party (e.g. their partner or a family member)

     - **Charge for payment** - Consider this action to issue a demand for payment once a LO has been granted by the sheriffs court

     - **Attachment** - Consider this action if you wish to seize any asset (e.g. vehicles that the paying parent may own.) Before taking this action the LO must be granted by the sheriff court in the area in which the paying parent resides

     - **Exceptional attachment** - Consider this action if you wish to seize any asset/s from an paying parent's home/primary residence. Before taking this action the LO must be granted by the sheriff court in the area in which the paying parent resides

     - **Arrestment** - Consider this action to freeze an paying parent's bank or building society account, or assets held by a third party. Before taking this action the LO must be granted by the sheriff court in the area in which the paying parent resides

     - **Inhibition** - Consider this process to prevent an paying parent from disposing of any heritable asset such as land or property they own. This diligence may also prevent the paying parent from being able to obtain credit such as loans, mortgages or hire purchase. Before taking this action the LO must be granted by the sheriff court in the area in which the paying parent resides

     - **Action of furthcoming** - Consider this action once a LO has been granted and an arrestment has been executed. It will allow paying parent assets to be released earlier than the usual 14 weeks for an arrestment

     The decision to apply for any of the above enforcement powers is a discretionary decision and must be recorded as a **Notes** entry in **Update Child Welfare Details – Reason**. For more information on discretionary decisions including a verbatim statement to record, refer to Policy, Law and Decision Making Guidance .

14. each enforcement action is subject to a *de minimis* amount; the amount below which the action should not be considered.

     - Liability Order £500.00

     - LSDO £500.00

     - Charging Order £500.00 - £750.00 depending on the court

     - Order for Sale £3,000.00

     - Commitment £1,000

       Enforcement Case Managers must also consider whether parallel or concurrent action is appropriate. For more information about parallel and concurrent actions see **Enforcement Overview** and **Enforcement Overview (Scotland)**.

15. When every possible means of debt recovery listed at **step 13** has been exhausted and where there is evidence of wilful refusal or culpable neglect and ability to pay, you may consider the following sanctions as a last resort to encourage an paying parent to comply.

- **Removal of driving licence** - Consider applying for an order of disqualification in cases where all other sanctions have been exhausted and the paying parent does not depend upon driving for their livelihood

- **Committal to jail** - Consider applying to court for a warrant of commitment if all other sanctions are exhausted and the paying parent does not hold a passport or driving licence

The decision whether to grant a warrant for commitment to prison or disqualification from holding or obtaining a driving licence is a discretionary decision made by the court. Once you have decided on the civil enforcement power you wish to employ complete the actions at **step 15**.

16. Once you have confirmed which enforcement power is appropriate, manually close the work item by updating the SR as follows:

- **Status = Closed**

- **Sub Status = Completed**

CMEL7183 Urgent – We need some information from you

Criminal Compliance - Request for information from receiving parent with IO visit

In the paragraph **TM_25340_E** 'The information we need is…' enter the information required in the freetext field.

Under the sub heading 'What you need to do', in the paragraph **TM_25341_E** enter the reason we need the information in the 'enter reason' freetext field and the date the information needs to be returned to us in the 'date information to be returned by' freetext field.

CMEL9235 We need your help to trace someone

Request for information about an paying parent (to DVLA, DVA)

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

CMEL9236 Child maintenance arrears - we need some information

Receiving parent information gathering letter.

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

CMEL9251 Information request with investigating officer warning

Information request with investigating officer warning (for contacting third parties e.g. gathering pension information)

Under the sub heading 'We need some information' enter the name of the person and what the information relates to in the free text fields and select one of the following:

- If this person has been approached for this information but has failed to supply it, use paragraph 'If this person has been approached for this information but has failed to supply it'

- If we have been unable to trace this person and need to establish an address, use paragraph 'If we have been unable to trace this person and need to establish an address'

CMEL9253 Urgent - we need some information

Ask council/rates collection agency for further information about an paying parent.

You will need to locally print this letter, and add a tick next to box of the required information.

VQ615 We need your help to trace someone

Request for information about a paying parent (to DVLA, DVA).

Complete the request form with the following details:

- Your contact details

- Data protection registration number and expiry date

- Case reference number

- NRP's full name

- Vehicle details and registration number

- The reason for the request

- The legislation under which the information is requested

For an example of a completed form, refer to VQ615 We need your help to trace someone

If you do not know the make and model of the car, please please input **Not Known**. Failure to do so may lead to the referral being rejected.

Action For Reduction

Action Of Furthcoming

Admin Account - Add To

Arrestment

Arrestment On Dependence

Attachment

Case Routing - Enforcement

Charge For Payment

Criminal Action - Decide
Enforcement Action - Consider (NI)

Enforcement Action - Consider (E and W)

Enforcement Actions (CSA) - Input

Enforcement Overview Scotland

Exceptional Attachment

Fast Track Legacy Arrears to CMS System

Inhibition

Inhibition On Dependence

Interim Attachment

Liability Order - Sheriffs Court
LSDO - Set Up/Amend

Order For Interdicting

RDO - Set Up, Vary, Lapse/Discharge

Sanctions (Scotland)

Terminology Changes