

## Court Proceedings and Presentation: Contents

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### Court Presentation: Overview

[1991/48](#) *Section 48 of the Child Support Act 1991*

[1990/41](#) *Section 27 (2) (d) of the Courts and Legal Services Act 1990*

[1992/5](#) *Section 116(1) of the Social Security Administration Act 1992*

[2007/29](#) *Section 188 of the Legal Services Act 2007*

[1980/43](#) *Magistrates' Court Act 1980*

[1998/3132](#) *Civil Procedure Rules 1998*

### Introduction

In England and Wales, Court Presenting Officers (CPOs):

- represent the CMG during court proceedings; and
- inform caseworkers of hearing outcomes;
- make court applications;
- serve legal documents;
- assist with the negotiation of debt recovery and collection activities.

Proceedings can be brought by either:

- CMG (for example: civil enforcement action to collect arrears); or

- a client / third party (For example: through judicial review or as an appeal against enforcement / collection action).

Note: There are some exceptions where Court Presenting Officers do not represent the CMG during court proceedings. These are where DWP Solicitors appoint Counsel to represent the CMG at judicial review hearings. Additionally, Agent Solicitors may be appointed to represent the CMG, for example when the non-resident parent/other party is legally represented. However, the Court Presenting Officer will still normally attend these hearings to support the Agent Solicitor.

#### Authority to Act

Court Presenting Officers have a right of audience and a right to conduct litigation in relation to any proceedings under the Child Support Act 1991 in a magistrates' court and under the Courts and Legal Services Act in a county court. Court Presenting Officers are therefore duly authorised by the CMG to present its cases in legal proceedings.

Court Presenting Officers must have in their possession an Authority to Act certificate, which should be appropriate to the type of court that the hearing is to be held. For example: Authority to conduct Proceedings in the County / Magistrates' Court.

#### What is the role of a Court Presenting Officer?

Court Presenting Officers represent the CMG during legal proceedings, which might include proceedings in relation to any of the following:

- Liability orders (magistrates court);
- Charging orders (county court);
- Order for sale (county court and High Court);
- Third party debt orders - including hardship orders (county court);
- Commitment to prison / disqualification from holding or obtaining a driving licence (magistrates court);
- Show cause hearings (magistrates' court);
- Appeals against deduction from earnings / deduction orders (magistrates court);
- Section 20 parentage appeals (magistrates court);
- Section 55A Applications re: Parentage (magistrates court).

When proceedings of this type are being taken by / brought against the CMG, Court Presenting Officers will:

- review the case;
- prepare the papers needed for the case to be presented at the appropriate court;
- present the case and give evidence on the CMG's behalf;
- identify when CMG solicitors need to be instructed / involved in a case;
- provide any briefings legal colleagues may need;
- provide appropriate updates to caseworkers about progress on their cases, including updating appropriate systems;
- provide the outcome of any court hearing to the caseworker;
- advise caseworkers where the non-resident parent has indicated that they will appeal the court decision;
- negotiate payment of arrears either by lump sum or payment agreement/arrangement;
- liaise with processing team caseworkers in relation to any case irregularities; and
- liaise with the courts i.e. attending liaison meetings on a regular basis.

The Decision Making Guidance provides further advice on the role and functions on Court Presenting Officers.

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### [Court Presentation: Magistrates' Court and Court Proceedings](#)

This section provides background information about the magistrates' court and the standards of behaviour that are expected from Court Presenting Officers.

#### **Hearings conducted in the magistrate's court**

Child Support hearings are undertaken in the family court and as such should be heard in private.

Types of hearings heard in a magistrate's court are:

- liability order applications
- commitment / disqualification from holding or obtaining a driving licence applications

- show cause (default hearings)
- parentage disputes
- deduction from earnings order appeals
- deduction from earnings order "good reason" appeals

### **Magistrate's court personnel**

Each magistrate court is managed through a magistrates' court committee, which will be responsible for the efficient and effective administration of the magistrates' court(s) for their area. This committee will be made up of magistrates for the area the committee relates to.

During a magistrates' court hearing, the following personnel will be in attendance:

- **magistrates:** there will normally be three lay magistrates in attendance. Lay magistrates are appointed by the Lord Chancellor and work on a voluntary basis. They are not legally qualified
- **stipendiary magistrates:** also referred to as district judges. These are full time, paid magistrates, who must be either a qualified barrister or solicitor of seven years standing. Magistrates should be initially addressed as "Your Worship", then as Sir / Madam
- **clerk to the justices:** a magistrates' court may employ a clerk to the justices, who is legally qualified and will help the magistrates on points of law / procedures. During the hearing, clerks to the justices are normally referred to as "the learned clerk". The clerk is responsible for managing the hearing, ensuring the court's time is used efficiently and economically. They will expect Court Presenting Officers to bear this in mind when presenting their case
- **legal advisor:** A legal advisor may attend if a magistrates' court has not employed a clerk to the justices. They will sit in the Clerk's seat, but this is solely an honorary title. Legal advisors are responsible for covering the family court and usually have lead responsibility for CMG issues. Legal advisors are legally qualified usher: Ushers are responsible for calling the parties to the court room and for passing any papers to the magistrates

### **Magistrates' court terminology**

Most magistrates are familiar with CMG's terminology (non-resident parent, parent with care, qualifying child etc.). However, other terms may also be used within the court:

- defendant / respondent - non-resident parent
- applicant / complainant - the CMG

- prosecutor / CMG representative - Court Presenting Officer
- learned friend (this title should only be used by one legally qualified person to another) - solicitor

### **Magistrates' court dress code and etiquette**

Courts do not have specific rules in relation to dress. But it is expected that Court Presenting Officers, as professionals, will show the same respect for the court as other legal colleagues and dress accordingly. The following guidelines should be adhered to:

- men - smart, dark coloured suit with collar and tie
- women - dark coloured suit (skirt or trousers) for women
- minimum jewellery

Clothing that is specifically appropriate to ethnic / religious traditions is also acceptable.

All Court Presenting Officers should follow court etiquette by:

- addressing the magistrate as "Your Worship"
- standing as magistrates enter the court room
- when being questioned, or giving evidence, always speaking directly to the magistrate
- ensuring they speak in a clear and concise manner, taking care they do not present too much information
- ensuring they have all the necessary facts about the case to hand and have a sound understanding of CMG procedures and legislation
- never arguing with a magistrate: if a point needs to be made, this should be addressed "with respect"

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### **[Court Presentation: County Court and Court Proceedings](#)**

#### **County Court Information**

This section provides background information about the County Court and the standards of behaviour that are expected from Court Presenting Officers.

England and Wales is divided into circuits, in which there are approximately 270 County Courts. These are administered by the Court Service and deal with the following hearings.

### **Hearings that are conducted in the County Court**

- order for recovery
- third party debt order applications including hardship orders
- charging order applications
- order for sale applications, where the debt and costs exceed £30,000 the hearing will be heard in the High Court
- appeal against a deduction order
- where the non-resident parent or the CMG are seeking to have a liability order set aside, the hearing will be heard in the County Court

### **County Court personnel**

The following personnel attend county court hearings:

- **circuit judges:** each circuit has one or more judges, who are called circuit judges and travel around the county courts within the circuit, hearing more complex cases, dealing with points of law. Circuit judges should be addressed as "Your Honour".
- **district judges:** Each court has a district judge who is responsible for the administration and day to day running of the court and its office. They will hear 80% of the cases brought before the court and always deal with CMG cases. They are addressed as "Sir" or "Madam".
- **chief clerk:** the chief clerk is not legally qualified, but holds an administrative role in the courts.

### **County Court terminology**

County courts may use the following terms to describe the parties involved in a child maintenance hearing:

- a defendant or respondent - non-resident parent
- applicant or complainant - the CMG
- prosecutor or CMG representative - Court Presenting Officer
- learned friend (this title should only be used by one legally qualified person to another) - solicitor

## **County Court proceedings and hearing arrangements**

The Civil Procedure Rules 1998 govern the practice and procedure to be followed in the county courts.

Much of the work carried out by a County Court is administrative and bound by time limits in relation to the service of documents, which must be supported by affidavits. Cases tend to have more stringent timescales than within the magistrates' court.

NOTE: an affidavit is a written statement which someone makes after they have sworn officially to tell the truth and which might be used as proof in a court of law.

Court Presenting Officers should establish individual court procedures for making an application for a court hearing and the hearing procedures.

County Court hearings are held in private with normally just the district judge, Court Presenting Officer, non-resident parent and their representative (if applicable) in attendance.

Certain cases can be held "in chambers". This means they are heard before a judge in their chambers and not in a courtroom, so the public cannot have access.

There is no requirement for a clerk to be present, as the case is heard by a Judge who is aware of the legal requirements and timescales that must be met for an application to be granted. There is no requirement to give evidence under oath.

## **County Court dress code and etiquette**

Courts do not have specific rules in relation to dress. But it is expected that Court Presenting Officers, as professionals, will show the same respect for the court as other legal colleagues and dress accordingly. The following guidelines should be adhered to:

- men - smart, dark coloured suit with collar and tie
- women - dark coloured suit (skirt or trousers)
- minimum jewellery

Clothing that is specifically appropriate to ethnic / religious traditions is also acceptable.

All Court Presenting Officers should follow court etiquette by:

- addressing the judge as "Sir" or "Madam"
- standing as the judge enters the court room
- when being questioned, or giving evidence, always speaking directly to the judge

- ensuring they speak in a clear and concise manner, taking care they do not present too much information
- ensuring they have all the necessary facts about the case to hand and have a sound understanding of CMG procedures and legislation
- never arguing with a judge: if a point needs to be made, this should be addressed "with respect"

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### Court Presenting Officer: Role and Duties

When a referral for court proceedings is received, Court Presenting Officers will need to:

- consider whether it is appropriate for the CMG to have legal representation (and if so, arrange this); and
- make arrangements for the hearing, including serving appropriate paperwork to the courts, the non-resident parent and any other relevant parties i.e. in relation to charging order proceedings, any joint owner of the property

At the hearing, Court Presenting Officers are expected to:

- negotiate payment in full or negotiate an agreement or arrangement;
- discuss any queries the non-resident parent may have about their case before the hearing starts;
- if the non-resident parent is not legally represented, explain the court process and in commitment cases may advise the non-resident parent to complete a statement of means;
- present the CMG's case (unless legal representation has been arranged);
- where the magistrates seek clarification of a point, liaise with the appropriate business area (if necessary) and return to court with the answer;
- seek award of costs;
- where the court have refused to grant the order, request the court's reasons in writing why the order was refused and advise that it is the CMG's intention to appeal the decision.

Following the hearing, Court Presenting Officers should:

- report the outcome to enforcement colleagues;

- immediately advise you where the non-resident parent has indicated that they will appeal the decision;
- immediately advise you where it is considered that it may be appropriate for the CMG to appeal the decision;
- serve any documents as instructed by the court.

The following sections provide general guidance on these duties. However, you should also check the guidance on specific proceedings, to ensure you are aware of any additional actions / information.

### Before the Hearing

#### Serving the Summons (and other documents)

On receipt of the signed and dated Summons from the court, the Court Presenting Officer must serve the Summons on the non-resident parent. This can be done by:

- First class post: if this option is used, a certificate of service is required; or
- Process service (see below)

#### **When should legal representation be arranged?**

Legal representation should be considered if any of the following apply:

- the non-resident parent is to be legally represented
- the non-resident parent, their new partner or their representative is a solicitor or legally qualified person
- it is a high profile, complex or contentious case
- it is a Human Rights case

Presenting Officers should obtain confirmation from their Line Manager before making arrangements for legal representation.

#### **Making hearing arrangements**

Most CMG cases are heard in the less formal family courts. However, enforcement proceedings may be held in the more formal Adult Court, depending on local court preference. Whether they are held in a family or an adult court, all enforcement hearings should be closed to the public, as there are reporting restrictions for the CMG.

When making an application to the court and arrangements for the hearing, Court Presenting Officers must be aware that each court may have different practises as to how hearing dates are arranged. For example: some courts may wish to arrange

hearing dates by phone, while others will do so in writing. Court Presenting Officers are responsible for checking local practices and making arrangements accordingly.

When arranging hearing dates, Court Presenting Officers should also consider whether the CMG has any other cases ongoing in the same court. It will be more cost effective for the CMG to arrange for several of our cases to be heard in one session where this is possible.

Most courts will not formally list a case for hearing until the summons and court fee have been received by them. However, most will allow a provisional time / date for the hearing to be arranged by telephone. Where this is the case, the Court Presenting Officer should contact the court administration office to arrange a provisional time and date.

REMEMBER: any provisional date must allow sufficient time for:

- the summons to arrive at court
- be signed and returned to the Court Presenting Officer, and
- be served on the non-resident parent at least 14 days before the hearing

The date of service is treated as the date that the summons is posted (first class) + 2 business days.

Example

Summons is posted on Friday (day of posting) + 2 business days = Date of Service is Tuesday.

### **Payment of court fees**

Court Present Officers must pay any hearing fees by GPC credit card, unless:

- they do not have a GPC card, or
- the fee exceeds £1500 per transaction or £9000 per month, or
- the County Court is unable to accept payment by GPC card

It is important to ensure that the payment is accurate and is forwarded to the court promptly, as they will not progress the application until payment is received.

### **Process service**

Note: process service can only be undertaken by the contracted bailiff providers, due to the risk of breaching confidentiality.

In some situations it may be necessary to arrange for a summons or other documents to be served on the client personally by the bailiff contractors. This will apply if:

- documents have been returned DLO, but there is sufficient information / evidence held to indicate they had been sent to a confident address
- the court requests that documents are served by process service because they have been returned to the court and the non-resident parent has failed to attend

Where documents are served by process service, the date of service will be the actual date that the papers are served on the client. This will be confirmed by the bailiff.

**REMEMBER:** documents must be served within any timescales specified (generally this is within fourteen days of the hearing date). If this cannot be done, the court must be contacted to arrange a new hearing date.

Bailiff contractors will always attempt to effect personal service within the required timescales. The current service level is for 3 visits to be attempted:

- first visit within 5 days - if service is not concluded at first visit
- second visit after the 7th day
- third visit after the 10th day.

Bailiffs will usually inform the Court Presenting Officer by telephone when:

- service has been achieved, or
- when service is unlikely to be achieved within the required timescales, or
- if service has been achieved, bailiffs will forward an affidavit confirming this to the Court Presenting Officer

### **Substituted service**

Substituted service means that the documents needing to be served have been left with:

- an adult resident of the home of the person to be served, or
- an employee with management duties at the individual's office, or
- an employee with management duties at the individual's corporate headquarters, or

- with a designated "agent for acceptance of service" (often with name and address filed with the Secretary of State), or
- by posting in a prominent place, followed by mailing copies by certified mail to the person to be served

When the summons has been served, the Court Presenting Officer must send the court administration office:

- a certificate of service, or
- the affidavit returned by the bailiff contractor (if the summons has been served by process service)

NOTE: if substitute service is used by the bailiff, then the affidavit will be supported by a witness statement. Some courts may also require a certificate of posting.

Whether any additional action is required will depend on the outcome of serving the summons.

### **Summons must be served at least 14 days before the hearing**

Generally non-resident parents must be served with the summons at least 14 days before the court hearing date. If there have been delays in the court returning the signed summons, or if it has not been served at least 14 days before the hearing date for any other reason, the Court Presenting Officer must liaise with the court to rearrange the hearing date. It will also be necessary to obtain another signed summons with the revised hearing date.

### **Non-resident parent objects to the summons**

When they receive the summons, the non-resident parent may contact the Court Presenting Officer or caseworker to object to the action being taken. In these circumstances, it is necessary for the court presenting officer and caseworker to decide if the case should be withdrawn. Providing all processes for the relevant proceedings have been completed correctly, this will not normally be required. However, it will be appropriate to withdraw the case if:

- the debt has reduced to nil (due to a payment being made or a recalculation of the non-resident parent's liability)
- the parent with care has stated they do not want us to enforce arrears owed to them and there are no arrears owed to the Secretary of State, or
- information is received which indicates that welfare of the child considerations mean proceeding with the action would not be appropriate
- non-resident parent special welfare considerations. There is no absolute rule regarding this, as the circumstances of each individual case must be carefully

considered. If there is any doubt, the case should be escalated to you HEO for guidance

### **Summons returned DLO**

If a summons is returned DLO, the Court Presenting Officer must attempt to confirm the non-resident parent's address details. The summons may have been returned for any of the following reasons:

- the non-resident parent has moved and has a new address
- the summons was issued to an incorrect address
- the non-resident parent has returned it themselves to make it seem as though they are not at that address

Court Presenting Officers should review all the information held regarding the non-resident parent's address details. If they are satisfied that the address is confident, then process service should be requested via the bailiff contractors.

Court Presenting Officers should consider withdrawing the application if:

- the summons is returned DLO, and
- it is not possible to confirm the address details, and / or
- use of process service has been considered / used and is either inappropriate or ineffective

Attending the Hearing

### **Arriving at court / payment agreements**

On arriving at court, Court Presenting Officers should report to the usher, who will have a list of all those expected to attend for each case due to be heard that day. The usher will be able to confirm whether or not the non-resident parent (defendant) has arrived / expected to attend.

In enforcement cases, the non-resident parent may wish to speak to the Court Presenting Officer, to make a payment offer. It is considered good practice to discuss this, and any other questions the non-resident parent may have about their case, in advance of the hearing. Many courts expect this, to ensure court time is not wasted explaining and resolving issues that do not need to be dealt with during the actual hearing.

Any discussion about payments should be conducted in accordance with the Debt Steer, and Court Presenting Officers should ensure they are familiar with this.

### **Non-resident parent not in attendance**

The court has a duty to give the defendant a fair hearing. Except for commitment/disqualification hearings, if the non-resident parent fails to attend, the court must be satisfied that they have been given the opportunity before proceeding.

Note: for commitment/disqualification hearings the Court Presenting Officer cannot proceed in the non-resident parent's absence. Refer to the [specific guidance on this type of hearing for further advice](#).

If the non-resident parent fails to attend any other hearing, the Court Presenting Officer may therefore be required to:

- refer to the service of summons / certificate of service filed with the court
- assure the court that the summons has not been returned, and
- that no new address has been notified, and
- ask the court to proceed and hear the case in the non-resident parent's absence

If the court is satisfied that the non-resident parent is aware of the court date, and that the summons was issued in reasonable time and to a confident address, they will normally be able to proceed in the non-resident parent's absence.

### **Presenting the case**

Court Presenting Officers will be required to give verbal evidence to the court, giving reasons for the application. Information should be presented as clearly and concisely as possible and Court Presenting Officers should be prepared for any questions the Bench may ask about our legislation, procedures and the specific case.

Before presenting the case, Court Presenting Officers may be required to swear on oath. If the Court Presenting Officer agrees to do this, they will be provided with the text that should be read while holding the bible. If they do not follow the Christian faith, they should inform the court of this, so that they can be supplied with the relevant Holy Book. If they do not wish to swear on oath, they can ask to affirm: this is similar to swearing on oath, but without a Holy Book.

Court Presenting Officers should present the case using their prepared summary. The format for this is not rigid, but must be sufficient to prove the application.

Magistrates will listen to the Court Presenting Officer and the non-resident parent (if they have attended) before making their decision.

Hearing Outcomes

### **Granted**

If the CMG's application is granted, the Court Presenting Officer should always ask the court to award costs, which will include the application fee, agent solicitor costs (if used), costs of arrest warrant execution, postage/process service costs. The Court Presenting Officer's time and travel expenses cannot be claimed, but all other costs are at the court's discretion.

Court Presenting Officers should:

- inform enforcement colleagues of the outcome of the hearing
- provide enforcement colleagues with a report of the proceedings outcomes
- send a copy of any necessary documents to the non-resident parent (for example: a copy of the order granted)

### **Not granted / dismissed**

The Court Presenting Officer should advise the court at the hearing that the CMG intends appealing the decision not to grant the order and must ask the magistrates to provide written reasons for their decision.

If this is not done at the hearing, it must be done as soon as possible afterwards. Some courts may specify that requests of this type have to be made in writing. If so, this should be done immediately. The CMG is entitled to written reasons for court decisions, in accordance with the Practice Direction supplementing Rules 8.A1 and 8.2 - 8.2H of the Family Proceedings Rules 1991.

Immediately after the hearing, Court Presenting Officers should inform enforcement colleagues of the outcome. The case should then be reviewed at a senior level to determine if it was presented correctly and whether an appeal against the decision is appropriate.

Refer to the guidance on [CMG appeals against court decisions](#) for further advice.

### **Non-resident parent intends to appeal outcome**

If the non-resident parent states that they intend to appeal against the court's decision, Court Presenting Officers should ensure this is communicated to appropriate colleagues so that decisions can be made on the most appropriate next action.

### **Hearing adjourned**

Hearings may be adjourned for a number of reasons. For example:

- the court may direct the non-resident parent to supply information needed for an IMA / DMD to be converted

- if the non-resident parent has failed to attend, they may adjourn the hearing to give them an opportunity to attend at a later date
- the non-resident parent may request an adjournment to seek legal advice
- a concurrent application may have been made by the non-resident parent for a Declaration of Parentage

Court Presenting Officers can also request an adjournment for various reasons. For example:

- service of the summons could not be achieved within the required timescales
- CMG errors have been identified and need to be rectified
- the Court Presenting Officer wants to arrange legal representation. For example: if they discover at the hearing that the non-resident parent is legally represented

If the non-resident parent requests an adjournment, the Court Presenting Officer will need to use their discretion to decide whether it is appropriate to object the adjournment.

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### [Court Presentation: Liability Order Hearings](#)

*[2007/1979 Regulation 2 of the Child Support \(Miscellaneous Amendments\) Regulations 2007](#)*

#### Court Centralisation Process

Most court applications are made to individual courts, which are local to the non-resident parent's address. However, Liability Order hearing applications can be made to a centralised court.

The court centralisation process only applies to:

- non-resident parents who are resident in England or Wales; and
- applications to magistrate's (not the county) court.

Under the centralisation process, applications for liability orders can be made to a nominated central magistrates' court, in the same Government Office Region (GOR) as the non-resident parent's address. This allows liability order hearings to be booked for multiple cases, on the same date and in the same court.

NOTE: non-resident parent can request a local hearing at any point during the court centralisation process. Whether the case is removed from the centralisation process will depend on:

- whether the case has progressed beyond the issue of a summons or not; and
- where the new hearing would take place.

All cases require an "intention to apply for a liability order" letter to be issued and will be dealt with according to the Court Centralisation Process, which determines if the case falls into the Centralisation Process. The Government Office Regional tool is used to identify cases that feed into the central courts.

To support the centralisation of liability order applications, it is necessary to book hearing dates in advance and ensure dates are always available. The demand for dates may vary, depending on the number of applications being made, the numbers that need to be rescheduled, court capacity and Court Presenting Officer availability.

The calendar of hearing dates is maintained by the Court Preparation Teams, who are responsible for matching applications to available dates, preparing the applications schedule for the courts and submitting it to them in good time.

As there is a minimum of 28 days factored into the allocation of a court hearing date, there should always be dates available until at least 6 weeks into the future. E.g. as soon as the last published dates is equal to or less than 6 weeks away, a further request for court dates should be made. Requests for dates should be in blocks covering periods 2 - 3 months in advance of the last date already held.

### **Local hearings**

Where the summons has not been issued and the non-resident parent requests a local hearing, the liability order application will be made to a local magistrate's court, in the same Government Office Region (GOR) as the non-resident parent's address.

Where the Summons has not been issued but the case has been referred to court:

- contact the court and remove the case from the schedule being submitted for summons
- ensure the summons is removed and is not issued in error

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[Court Presentation: Commitment to Prison / Disqualification from Driving](#)

**Commitment to prison / disqualification from driving: non attendanace**

If the CMG is making an application for commitment / disqualification from driving and the non-resident parent fails to attend court, the CMG must ask for a warrant to be issued for their arrest. It is at the court's decision whether the warrant is with or without bail.

The Court Presenting Officer / Agent Solicitor will need to satisfy the court that the Summons was served to a confident address.

Exceptionally, if the non-resident parent has provided information explaining why they cannot attend the hearing, the court may decide to grant and adjournment and will notify both parties of the revised hearing date.

### **Commitment to prison /disqualification from driving: show cause**

If the non-resident parent fails to keep to the conditions of a suspended warrant of commitment or order of disqualification, caseworkers will ask Court Presenting Officers to request "show cause". This means that the court will be asked to carry out the suspended sentence.

Prior to the show cause hearing, the Court Presenting Officer should discuss payments and any change of circumstances with the non-resident parent.

Any discussion about payments should be conducted in accordance with the Debt Steer, and Court Presenting Officers should ensure they are familiar with this.

At the hearing the magistrates will ask the non-resident parent why they have not kept to the terms of the suspended sentence. If the non-resident parent's reasons for non payment are not acceptable, then the court can activate the suspended sentence. If the court accepts the non-resident parent's reasons, they will normally leave the suspended sentence in place.

If the non-resident parent fails to attend the show cause hearing, or if the court decides to arrest the non-resident parent, rather than issuing a summons, a warrant of arrest will be issued to a Court Warrant Officer, Civil Enforcement Agents or the police.

The court will decide if the arrest warrant is made with or without bail. If the arrest warrant is made without bail, the non-resident parent will be arrested and detained until their court appearance. If the arrest warrant is made with bail, the non-resident parent will be arrested, but will be bailed to appear in court on a given date.

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[Court Presentation: Parentage Disputes](#)

Disputed Parentage: Appeals to the Court Under Section 20

Under Section 20 of the Child Support Act 1991, an alleged non-resident parent can appeal to the court against:

- a presumption of parentage; or
- a refusal to revise a Maintenance Calculation on Parentage grounds;

and can apply to court for a declaration of parentage at any time under Section 55A of the Family Law Act 1986.

The following sections provide specific advice on proceedings relating to Parentage appeals.

### **Disputed parentage: appeals and hearings**

If a Section 20 appeal is made, the Court Presenting Officer will receive a summons or notice of hearing:

- directly from the court, or
- via the owning team

The Court Presenting Officer must contact the parent with care as soon as possible to inform them of the appeal and collect any information required. If they are unable to do this before the initial hearing, they should apply to the court for an adjournment.

At the hearing, the alleged non-resident parent will be invited to say why they are appealing the presumption / refusal to review. The court may ask the Court Presenting Officer to explain the relevant decision.

After hearing from both parties, the court may dismiss the appeal, but will usually direct that further evidence is required to resolve this matter. This will normally mean a direction for the non-resident parent, parent with care and child in question to provide samples for DNA testing (refer to the section below for further advice about DNA testing).

### **Disputed parentage appeals: court makes a direction for DNA testing**

If the court directs that DNA samples should be obtained, they will set a date for a final hearing. This will allow sufficient time for the tests to be conducted and the results to be available. They will direct that the results should be filed with the court prior to the hearing and (if the DNA test has been arranged by the non-resident parent) served on the CMG via the Court Presenting Officer.

It is the non-resident parent's responsibility to arrange DNA testing. However, the Court Presenting Officer can offer to register the case with the contracted DNA testing supplier. If the contracted DNA testing supplier is used, the non-resident parent will be required to pay the full fee rate direct to the supplier in advance. The CMG cannot offer to pay the fee in advance in these circumstances. Refer to the

guidance on [Parentage disputes](#) for further advice about arranging DNA tests if the non-resident parent wants to use the contracted DNA testing supplier.

If the non-resident parent wishes to arrange DNA testing themselves, the Court Presenting Officer should provide details of the DNA testers approved by the Ministry of Justice.

If the non-resident parent states they cannot afford to pay for DNA testing, the court will need to decide how to proceed.

### **DNA test outcomes**

If the CMG have arranged the DNA tests through the contracted DNA testing supplier then the Court Presenting Officer will need to file a copy of the results with the court, once they are received.

If the result of the DNA test is negative, the Court Presenting Officer's copy of the result should have a photograph of the person who took the test attached. The Court Presenting Officer should try and arrange an interview with the parent with care in advance of the second court hearing to:

- confirm the identity of the person in the photograph is the non-resident parent
- reassure the parent with care that the right person attended the blood sampling appointment

If the result of the DNA is positive, the Court Presenting Officer should contact the non-resident parent to check if they wish to withdraw their appeal. If so, there will be no requirement for a final hearing.

### **Disputed Parentage: Final Hearing**

The outcome of the final hearing will depend on whether all the parties co-operated with the DNA test process and if so, on the results of the tests.

### **Non-resident parent failed to supply sample**

If the non-resident parent fails to comply with the DNA test, the court will normally dismiss the appeal, or make a declaration of parentage confirming they are a parent.

### **Parent with care failed to supply sample**

If the parent with care failed to supply a sample for DNA testing or refused to allow the child to be tested, the DNA testing company will inform the Court Presenting Officer of this.

The Court Presenting Officer should attempt to speak to the parent with care in advance of the final hearing, to establish their reasons for not co-operating, and should update the court accordingly.

If the court considers there is no good reason, they will normally infer that the non-resident parent is not a parent of the child and make a declaration to this effect. The court will order the Child Support calculation to be revised and cancelled and the non-resident parent may be entitled to a refund / reimbursement :

- of any child maintenance payments made
- costs

### **DNA test positive**

If the DNA test is positive, the non-resident parent is the parent of the child in question. The court will issue a declaration of parentage and the appeal will be dismissed.

The Court Presenting Officer should obtain a copy of this for the CMG's records.

### **DNA test negative**

If the DNA test is negative, the Court Presenting Officer must inform the court whether the parent with care has agreed the person who took the test is the non-resident parent.

If the parent with care agreed the person who provided the sample is the person named as the non-resident parent, this means the alleged non-resident parent is not a parent of the child.

If not, the photograph provided by the DNA testing company should be submitted as evidence and it will be for the court to decide whether to uphold the appeal or to order a second DNA test.

Where the court have deemed that the alleged non-resident parent is not the father of the child, the court will order the Child Support calculation to be revised and cancelled and the non-resident parent may be entitled to a refund / reimbursement:

- of any child maintenance payments made
- costs

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### [Court Presentation: Third Party Debt Order / Charging Orders](#)

Prior to applying for a third party debt order / charging order, Court Presenting Officers lodge an order for recovery application and pay by GPC. Refer to the guidance on Orders for Recovery for further information about this.

Once the order for recovery is obtained and the time to pay (usually 14 days) has elapsed, the Court Presenting Officer will make the third party debt order / charging order application.

Court Presenting Officers are responsible for submitting applications for third party debt orders and charging orders to the county court.

When an application is made for a third party debt order / charging order, there is no hearing at the interim stage. The decision whether to grant an interim order is made by a judge and the CMG is informed of the outcome. This will normally be within 6 weeks of the date the application is submitted. If no notification has been received after 8 weeks, the court should be contacted to check the position.

The court may direct the CMG to serve copies of the interim order on the non-resident parent and any third parties. If this is the case, the Court Presenting Officer should make arrangements to ensure the documents are served.

Where the service of an interim third party debt order is required on a specific date, the contracted bailiff is used to process serve the documents on the third party.

### **Third party debt order / charging order hearings**

Court Presenting Officers should aim to prepare for hearing as close to the hearing date as possible, to ensure they are aware of the latest position on the case.

The Court Presenting Officer will be required to attend court on the day of the hearing and give verbal evidence to the court, giving reasons for the application. REMEMBER: if the non-resident parent is in attendance, then any repayment offer they may wish to make should be discussed with them and brought to the attention of the court.

It is unlikely the district judge will enter into discussions about the debt, as this has already been examined at the magistrates' court, but the Court Presenting Officer should be prepared for any questions the judge may ask and should ensure they have up to date information about the case.

If the non-resident parent fails to attend the hearing, the Court Presenting Officer may be required to confirm service of the order.

### **Hearing Outcomes**

Once the application has been decided, the Court Presenting Officer must notify enforcement colleagues of the outcome and ensure any directions made by the court are complied with. The Court Presenting Officer will issue a written report of the hearing outcome to the case manager.

### **Order granted**

If the order is granted, the Court Presenting Officer should ask for costs to be included in the final amount of any order made.

#### Third Party Debt Orders:

If the district judge makes an interim third party debt order final, this will be announced at the hearing. The third party will have informed the court how much money is available, and the final order will be for the amount requested, if funds are available, or for a lower amount if there are insufficient funds or a hardship payment order has been made.

The court will serve all parties with the final third party debt order or may instruct the CPO to serve the final order to all parties.

#### **Order not granted**

If the order is not granted, Court Presenting Officers must consider stating the CMG's intention to appeal and should always request a copy of the judge's written reasons why the order was not granted.

#### **Hearing adjourned**

Hearings may be adjourned for a number of reasons. For example:

- the non-resident parent or third party wants to attend, but cannot do so on the original hearing date
- the non-resident parent or third party has raised an objection, which may take some time to resolve
- the court needs the CMG to provide some additional information, such as an account breakdown

The list is not exhaustive. Any party to the proceedings can request an adjournment and it is at the court's discretion whether to do so.

#### **Interim third party debt order: hardship payment orders**

Once an interim third party order has been granted, and the non-resident parent has been informed of this, they can apply to the court for a hardship payment order.

Note: urgent action is required if the CMG is notified that the non-resident parent has made a hardship application, due to the short notice given for the hearing date.

The grounds for an application of this type are that the debtor's family is suffering hardship in meeting ordinary living expenses, because the source of money has been frozen. Any application of this type must be supported by written evidence.

Where the non-resident parent has made a hardship application, the CMG should always object to this. In most cases, the court will bring forward the date of the final

hearing so they can make a decision on whether to grant the final order at the same time as hearing the hardship application.

Any objection to the hardship application should include details of:

- the non-resident parent's income
- welfare of the qualifying children
- the non-resident parent's history of non-compliance

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PLDMG @ 09.03.2017