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### Sanctions: Overview

[1991/48](#) Section 39A, 40 and 40B of the Child Support Act 1991

[1992/1989](#) Regulations 33 to 35 of the Child Support (Collection and Enforcement) Regulations 1992

Disqualification from driving or commitment to prison

When we are applying for Sanctions, the CMG can make a recommendation which action we consider is most appropriate (e.g. Disqualification or Commitment). However, it is the court's discretion which (if any) order they grant.

What is disqualification from holding or obtaining a driving licence?

Disqualification means that the non-resident parent will:

- be unable to obtain a new driving licence (if they do not already have one); or
- will be required to surrender any licence they already hold

for a period decided by the court, up to a maximum of two years.

If we decide to pursue this action, an application must be made to the magistrates' court. Where the court orders that the non-resident parent is to be disqualified from holding or obtaining a driving licence, the non-resident parent will be required to surrender any current driving licence to the court, who will then send it to the DVLA. If the non-resident parent does not bring their licence to the hearing, the DVLA may instruct the Police to remove the non-resident parent's licence and send it back to them. However, if the licence is not returned to DVLA, it will still be invalidated on the DVLA computer system, so that where e.g. the police check a driver's licence it will be identified that the driver is subject to a disqualification order.

If, following the granting of the disqualification order, the non-resident parent still fails to pay their arrears, they will remain disqualified for the full sentence imposed. Once the order has expired the CMG can apply to the court to consider either: a further period of disqualification (each disqualification order may be granted for a period of up to the maximum of two years) or Commitment to prison. Refer to the guidance on Full/Partial Payment for advice on cases where payments are made after the order has been imposed.

What is commitment to prison?

If we decide to pursue this action, an application must be made to the court.

Where the court orders that the non-resident parent is to be committed, the Prison Service will take the non-resident parent to prison. The maximum term of imprisonment is six weeks (42 days).

Once a commitment sentence has expired, no further commitment / disqualification action can be taken on the same debt. Refer to the guidance on Full/Partial Payment for advice on cases where payments are made after the sentence has been imposed.

When can an application for a warrant of commitment or an order for disqualification from holding or obtaining a driving licence be considered?

An application for disqualification or commitment can be considered where a liability order(s) have been granted and there are still arrears outstanding against it and we have already attempted to:

- Levy distress through bailiff action; and/or
- consider county court action (e.g. a third party debt order and / or charging order / order for sale).

For example: if third party debt order / charging order action is not appropriate, because there are no suitable assets for this type of action, then bailiff action must have been taken and a Nulla Bona obtained for each liability order that commitment / disqualification is being attempted for.

If a disqualification order has expired and there is remaining debt outstanding, a further commitment / disqualification application may be made.

Where commitment action has been taken / expired and there is remaining debt outstanding a further commitment / disqualification application **cannot** be made. In these circumstances, other enforcement actions should be considered and, if appropriate, taken.

REMEMBER:

- these sanctions should only be considered where the non-resident parent will not, rather than cannot pay their arrears. The court will only consider granting a disqualification order or committing the non-resident parent to prison if they are found guilty of wilful refusal / culpable neglect; and
- if commitment / disqualification action fails to recover the debt, other enforcement actions can be considered if the non-resident parent has a change of circumstances. For example: if they purchase property that would

allow a charging order to be considered or receive a lump sum (for example: through the inheritance) meaning a deduction order may be possible.

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## [Sanctions: Commitment to Prison / Disqualification from holding or obtaining a Driving Licence \(England and Wales\) Decision Making Guidance](#)

Deciding whether to take commitment to prison or disqualification from holding or obtaining a driving licence action

If there is still debt outstanding on a liability order(s), without an acceptable agreement in place and when it can be demonstrated that enforcement actions up to this point have been attempted and deemed as either inappropriate or ineffective, commitment / disqualification action can be considered. The following points all need to be taken into account in deciding whether action of this type is appropriate.

### **Does the non-resident parent have the means to pay?**

The commitment / disqualification powers are intended as sanctions against those who will not, rather than cannot, pay their child maintenance arrears and the legal provisions contained in section 39A of the Child Support Act 1991 require the court to inquire into the non-resident parent's means. This has a dual purpose. It allows the court to:

- determine the financial position of the non-resident parent, to establish at the time that the debt had accrued and currently whether wilful refusal / culpable neglect had been demonstrated (see the guidance below for further advice on these terms)
- where a suspended sentence is to be given, set conditions for payment of the child maintenance arrears as considered appropriate

Before proceeding with commitment / disqualification action, you must therefore consider whether the non-resident parent has / had the means to pay their arrears at the time that they accrued and currently. If so, this information must be included within the application as evidence to be placed before the court. If not, the application is unlikely to be successful and you should not proceed. The case should be monitored and where there is a relevant financial change of circumstances, commitment / disqualification should be re-considered.

### **Can we prove wilful refusal / culpable neglect?**

The powers for Commitment to prison and disqualification from holding or obtaining a driving licence are intended to be sanctions against those who will not pay rather than those who cannot pay child maintenance arrears.

Sections 40 and 40B of the Child Support Act 1991 state 'If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the person it may...', which makes it clear that parliament intended commitment / disqualification as civil sanctions to be of absolutely the last resort. Additionally, case law has determined that imprisonment for non payment of civil debt is to be exercised sparingly.

Note: the onus is on the CMG to prove to the court that the non-resident parent has demonstrated wilful refusal / culpable neglect.

Where you are unable to provide any evidence that the non-resident parent has shown wilful refusal / culpable neglect, commitment / disqualification action is likely to be unsuccessful and your decision should be that the case is not appropriate (at this time) for commitment / disqualification.

#### **Wilful refusal:**

Wilful Refusal is the legal term used when a person deliberately fails to meet a known obligation, for example when a non-resident parent 'states' that they are never going to pay their child support arrears.

#### **Culpable neglect:**

Culpable Neglect is the legal term used when a person deliberately fails to meet a known obligation, for example when a non-resident parent organises their affairs in such a way that it is impossible to collect the unpaid child support maintenance by other lawful means.

#### **Is the minimum threshold satisfied or is it an exceptional case?**

Commitment / disqualification action should normally only be taken on cases with more than £1,000 of debt outstanding. If you think action of this type should be considered in a case where the debt is below this threshold: For example High Profile or Complaint cases where there is:

- a prolonged or repeated pattern of non-compliance, or
- media interest, meaning that sanctions may be in the interest of promoting financial responsibility to the public, or
- the Independent Case Examiner (ICE) or the Parliamentary and Health Service Ombudsman (PHSO) has recommended this action is considered, or
- the child support maintenance liability has ended and no further arrears will accrue and the outstanding arrears fall just short of the de minimus limit of £1000

you should consider all the circumstances of the case and discuss with your Line Manager whether the case is suitable for action of this type. If further advice is needed, your Line Manager should consider consulting the Advice and Guidance Team.

### **Additional relevant considerations**

There are an additional number of issues that should be taken into account when you are deciding whether commitment / disqualification action is appropriate. These points should all be considered before you decide whether or not to proceed:

- will the action have a positive / negative impact on the welfare of any child that it potentially affects? Refer to the Discretionary Decision Making Guidance for further advice on this point
- is the debt accurate
- have all other enforcement options been considered / exhausted? For example: has bailiff action been taken / considered and a null bona obtained
- is there any information / evidence held to suggest that taking action of this type could have an unduly negative impact on the health or welfare of the non-resident parent and / or their family? For example: is the non-resident parent or a member of their family known to be suffering from any serious medical condition / terminal illness
- is there on going section 14A of the Child Support Act 1991 proceedings or is conversion action being taken?
- is it appropriate to await the outcome of any subsequent liability order applications? This would allow one disqualification / commitment application to be made in relation to multiple liability orders and where necessary, may enable the minimum threshold to be met
- is the non-resident parent under 18 years old and classed as a child (Child Support Act 1991 section 55 [1]). If so, commitment to prison would not be appropriate, but a driving licence sanction may still be considered

### **Contacting the parent with care**

Where the above points have all been considered and you consider that commitment / disqualification action is appropriate, you must contact the parent with care before proceeding, to ask if they agree to this action being taken.

If the parent with care does not want action to proceed e.g. because they may consider that the proceedings may affect the welfare of the child, you should not continue with the application, unless exceptional circumstances apply. For example: the debt is all due to the Secretary of State and the parent with care is unable to

provide any information / evidence to indicate that the action would have the negative impact on the welfare of a child that it potentially affects.

Action is not appropriate

If you decide that commitment / disqualification is not appropriate, the reasons for your decision must be fully documented, with reference to any relevant evidence. Refer to the guidance on Discretionary Decision Making for further advice.

Action is appropriate

If you decide it is appropriate to proceed with commitment / disqualification action, an application will need to be made to the magistrates' court in the area in which the non-resident parent resides.

The application can include representations to the court as to whether the CMG thinks that commitment or disqualification is the most appropriate sanction. However it is as the court's discretion as to:

- which option they choose; and
- whether to postpone the issue of the warrant or disqualification order, such as payment of the child maintenance arrears.

When the application has been submitted, the Court Presenting Officer will arrange for the necessary documents to be served, make the hearing arrangements and keep you informed of progress on the case.

Court summons

The non-resident parent will be served with a summons to attend the court at least 14 days before the court hearing date.

The next action will depend on whether the non-resident parent objects to the application.

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

Once the non-resident parent receives the summons to attend court, they may contact the legal enforcement team to object to the application.

If this occurs, you will need to consider whether it is appropriate for the application to be withdrawn / adjourned.

Whether it is appropriate to withdraw will depend on the circumstances of the case and the information received. It will be appropriate for the application to be withdrawn if, for example:

- the debt has been reduced to nil (because a payment has been received or there has been a reassessment)

- the parent with care has informed us that they do not want the arrears to be collected and there is no debt due to the Secretary of State
- information is received indicating that this action would have an unduly negative impact on the welfare of a child that it potentially affects
- information is received indicating that the action would have an unduly negative impact on the health or welfare of the non-resident parent and / or a member of their family

The Court Presenting Officer must be advised if you decide it is appropriate for the application to be withdrawn. The Court Presenting Officer will withdraw the case from the Court.

Where the grounds for objection are temporary and an adjournment may be necessary rather than a withdrawal e.g. where the non-resident parent has only just submitted information to allow conversion action to be taken and it is unclear at this stage whether debt will remain or not, the Court Presenting Officer should be advised to seek an adjournment to allow time for the conversion to be completed and the debt position established.

**If the non-resident parent does not object to the summons, or if they do object but the application is not withdrawn, the next stage will be the court hearing.**

Commitment / disqualification: court hearing

Court Presenting Officers are normally responsible for presenting committal / disqualification cases to the court, unless the case is considered exceptional, in which case, the CMG may arrange legal representation.

Where possible, the Court Presenting Officer should try to negotiate with the non-resident parent before the hearing starts, to get full payment or at least negotiate a payment / agreement. The Court Presenting Officer would then proceed to the hearing and ask the court to endorse any agreement reached by making any order to pay for the agreed amount.

### **What are exceptional cases?**

Exceptional cases for these purposes means cases where any of the following applies. You must inform the Court Presenting Officer immediately if you become aware the case falls within one of these categories:

- the non-resident parent is to be legally represented or is a solicitor / legally qualified and has notified the CMG of this;
- the case is high profile, including HEO specialist cases and those involving celebrities or likely to attract media attention;

- there are Human Rights issues, including HEO specialist cases and cases where the circumstances suggest the CMG could be exposed to Human Rights challenges;
- the case is unusually complex. Such unusual complexity will often be apparent in the history of enforcing the debt if the CMG has had to make multiple applications or defend appeals in order to obtain particular court orders;
- there is a systematic and / or pre-planned scheme by the non-resident parent to disrupt the proper progress of the case, either individually or with the assistance of groups which seek to support the non-resident parent in such tactics.

The next action will depend on whether or not the non-resident parent attends the hearing.

Non-resident parent fails to attend the hearing.

If the non-resident parent fails to attend, the court cannot deal with the matter in the non-resident parent's absence and a warrant will therefore be issued for their arrest. This warrant will be executed (as instructed by the court) by either: the police / the Court Enforcement Officer / or a bailiff. Further guidance about Warrants of Arrest is provided below. NOTE: this guidance will change with effect from January 2013, when the courts will no longer be responsible for the execution of arrest warrants.

### **Warrant of arrest**

The court will deal with the warrant of arrest by issuing it to either the police / Court Enforcement Warrant Officer / Bailiff for enforcement. The Warrant may be issued with or without bail. In initial applications, a Warrant with bail is usual. If it is a return to court (because the terms of a suspended sentence have been breached) a warrant without bail is more likely.

### **Warrant with bail**

If the Warrant is granted with bail, the Police / Court Enforcement Warrant Officer / Bailiff will arrest the non-resident parent, but will bail them to appear in court on the date provided by the court.

The non-resident parent will be asked to sign a Form of Recognizance agreeing to attend the hearing on the required date.

If the non-resident parent fails to attend on that occasion then the court will usually issue a warrant without bail.

### **Warrant without bail**

If a warrant without bail is issued, this means that the non-resident parent will be arrested and held in custody until the next sitting of the court.

Generally, the non-resident parent will be arrested in the morning and taken to court the same day.

Night arrests should only be considered in very exceptional circumstance, as they require the non-resident parent to be held in custody overnight and brought before the court the following morning. Authorisation by a senior manager (minimum of SEO) must be sought before an evening arrest can take place, due to the cost involved

Once the warrant has been issued by the court, the Court Presenting Officer should leave their contact details and those of any Agent solicitor with the court.

Once the court receives confirmation that the non-resident parent has been arrested, they will contact the Court Presenting Officer to request their attendance at the hearing. As this may be at short notice, Court Presenting Officers may wish to leave details of other officers in the area, who may be able to attend in their absence.

The Court Presenting Office must check with the court to establish their procedures. Where the court has issued a warrant without bail, the Court Presenting Officer will check with the court administration office if they have heard nothing after 28 days.

If the court is satisfied that the non-resident parent was served with the summons or notice of hearing and proceeds in the non-resident parent's absence, they will issue the warrant of commitment or disqualification order.

Note: if the non-resident parent is arrested and brought to court and there is no Court Presenting Officer present, the non-resident parent will be released by the magistrates and cannot be re-arrested again for commitment / disqualification proceedings for the same debt. It is therefore essential that we have Court Presenting Officers available for any no bail arrest.

Commitment / disqualification: hearing outcome

If the court is satisfied that the non-resident parent has shown either wilful refusal or culpable neglect it has the option to:

- send the non-resident parent to prison immediately for a maximum of 42 days (6 weeks) for non-payment of child maintenance, or
- fix a term of imprisonment and suspend the issue of the warrant until such time and on such conditions (if any) as it thinks just, or
- disqualify (disqualification order) the non-resident parent from holding or obtaining a driving licence for up to a maximum of two years, or

- make a disqualification order, but suspend its operation until such time and on such conditions (if any) as it thinks fit, or
- adjourn / stay the hearing

The period of the prison sentence or the disqualification order can be amended by the court to reflect any partial payment made by the non-resident parent for the liable period.

Further information on these outcomes is provided below.

### **Commitment to prison**

The court can either:

- commit the non-resident parent to prison immediately, or
- issue a suspended warrant of commitment

If the non-resident parent is committed to prison immediately, the court will issue the Form of Warrant of Commitment to them in court and arrange for them to be taken to prison for a term up to a maximum of 42 days.

If the court issues a suspended warrant, this means they sentence the non-resident parent to a term of imprisonment, but postpone issuing the warrant (i.e. actually sending the non-resident parent to prison) providing they meet certain conditions.

Note: case law provides that the upper limit of the period of suspension should rarely exceed two years.

These conditions are usually that the non-resident parent pays a set amount to their arrears to the CMG. The terms will be set out in an order to pay. NOTE: a suspended warrant can only involve financial conditions regarding the payment of arrears. For example: it cannot involve a condition that the non-resident parent supplies information for a DMD conversion.

IMPORTANT NOTE: the fact that a suspended sentence with an order to pay is in force does not prevent the CMG taking other enforcement action if new information is received or the non-resident parent's circumstances change. For example: if the non-resident parent inherits a property, a charging order application can be made, even if the non-resident parent is complying with the order to pay. DN: additional information is to be included re: the circumstances in which concurrent enforcement action the Advice and Guidance Team. Information is also to be included re: relevance of end dates on a suspended sentence and reviewing the order to pay.

### **Disqualification from holding or obtaining a driving licence**

The court can either:

- suspend the non-resident parent from holding / obtaining a driving licence immediately, or
- issue a suspended order of disqualification.

If the court disqualifies the non-resident parent immediately, they endorse the "form of order of disqualification from holding or obtaining a driving licence". The non-resident parent will be required to surrender any current driving licence to the court, who will then send it to the DVLA.

If the non-resident parent does not bring their licence to the hearing, DVLA will cancel the non-resident parent's licence electronically, which will be noted as such on the DVLA systems. The maximum period of disqualification is two years.

If the court issues a suspended order, this means they set a term of disqualification, but postpone issuing the (i.e. actually disqualifying the non-resident parent) providing they meet certain conditions. Note: case law provides that the upper limit of the period of suspension should rarely exceed two years.

These conditions are usually that the non-resident parent pays a set amount to their arrears via the CMG or the court. The terms will be set out in an order to pay. NOTE: a suspended order of disqualification can only involve financial conditions regarding the payment of arrears. For example: it cannot involve a condition that the non-resident parent supplies information for a DMD conversion.

If the debt is not fully paid then a further period of disqualification or alternatively commitment may be sought.

**IMPORTANT NOTE:** the fact that a suspended order with an order to pay is in force does not prevent the CMG taking other enforcement action if new information is received or the non-resident parent's circumstances change. For example: if the non-resident parent inherits a property, a charging order application can be made, even if the non-resident parent is complying with the order to pay.

DN: additional information is to be included re: the circumstances in which concurrent enforcement action would be appropriate. Any cases in the interim where this is being considered should be referred to policy colleagues for advice. Information is also to be included re: the relevance of end dates on a suspended sentence and reviewing the order to pay.

### **Adjournment**

The hearing may be adjourned for various reasons. For example: to obtain additional evidence about the non-resident parent's means if they have stated they cannot afford to pay the arrears.

If the hearing is adjourned, the court will:

- set a new date for the hearing, which the non-resident parent must attend, and
- provide a date for the return of any information required

If the non-resident parent pays the debt in full before the first (or next) hearing date, the Court Presenting Officer should ask for an adjournment in order to allow time for the payment to clear. If payment is made in cash or by Banker's Draft, the application should be withdrawn.

### **Dismissed**

If the application is dismissed, the Court presenting Officer must ask the magistrates to give written reasons for dismissing the application. If this is not done at the hearing, it must be done as soon as possible afterwards.

Immediate consideration will need to be given to whether an appeal could be made on a point of law as there are strict timescales for this action to be taken. The Court Presenting Officer should indicate at the hearing that the CMG attends to appeal (if appropriate) so that this is immediately noted in the court records. NOTE: any appeal must be made within 21 days of the court's decision. Therefore action must be taken as a priority. Refer to the guidance on CMG Appeals against Court decisions for further advice.

If it is decided that an appeal is not appropriate, the court should be notified that no appeal will be lodged. Subsequently no further action should be taken in relation to the application for sanctions.

### **Appeal against sentence / dismissal**

Any appeal against a point of law must be lodged by solicitors within 21 days of the outcome of the Commitment / Disqualification hearing.

If the CMG is lodging an appeal, the CMG must liaise directly with solicitors in the Child Maintenance Litigation Advice Team (CMLAT), which is part of DWP Legal Services.

If the non-resident parent is lodging an appeal, the owning team must contact the Judicial review Litigation Team who will liaise with CMLAT on behalf of the owning team.

### **Payments received in sanction cases**

It is ESSENTIAL in all sanctions cases that you actively monitor any payments received and notify the court immediately if this occurs. Any payments received may require the non-resident parent to be released with immediate effect.

### **Full payment**

Full payment would ensure that the non-resident parent is released from prison, or if the driving licence has been removed, would ensure that a hearing date is arranged as soon as possible.

Note: the non-resident parent will have to apply to the DVLA to have their licence reinstated and will incur a fee for this.

Either the non-resident parent or the CMG can apply to the court to arrange for the commitment sentence / disqualification order to be revoked.

A cash payment would need to be made at the prison for immediate release of the non-resident parent. The prison would notify the court of any such payment and the court would subsequently notify the CMG.

### **Partial payment**

Partial payment would reduce the sentence / disqualification order in direct proportion to the amount paid.

The Child Support (Collection and Enforcement) Regulations 1992, provide that where part-payment is of such an amount as would have already been served, the period of imprisonment shall be reduced to the period already served plus one day.

Suspended orders: show cause (default hearing)

If the non-resident parent fails to keep to the conditions (i.e. fails to make the payment instalment) of a suspended warrant of commitment or suspended order of disqualification, the CMG must ask for show cause. This means the non-resident parent will be required to "show cause" (provide an acceptable reason why they have failed to pay the arrears in accordance with the payment order set by the court) or the court is asked to carry out the sentence.

The court may summon the non-resident parent to court to establish why they have failed to keep to the terms of the suspended order. If the non-resident parent fails to attend the hearing the court will be asked to issue a warrant for the non-resident parent's arrest, which may be without bail.

If the non-resident parent's reasons for non-payment are not acceptable, the court can activate the suspended commitment sentence or consider a commitment sentence where the default is on a disqualification order.

Where the court accepts the non-resident parent's reasons, it may decide to continue with the suspended sentence or amend the "payment order" in relation to the non-resident parent's means.

A default hearing will be treated as part of the original commitment action and therefore there will be no additional fee charged for returning for a default (show cause) hearing. The current legislation providing for the fees is Para 17.2 of

Schedule 1 of the Magistrates Court Fees (Amendment No.2) Order 2010 [SI No. 2010/1917] which came into effect on 1st September 2010 (this will be updated periodically). Note that this fee includes the costs for issue of the arrest warrant but not the cost of execution of the arrest warrant.

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PLDMG @ 09.03.2017