

Third Party Debt Orders

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[Third Party Debt Orders: Overview](#)

[1991/48](#) Section 36 of the Child Support Act 1991

Part 72 and Practice Direction 72 of the [Civil Procedure Rules 1998](#)

What is a Third Party Debt Order (formerly known as Garnishee)?

Once a liability order has been granted and registered in a county court, a third party debt order (TPDO) is a way to freeze money belonging to or owed to the non-resident parent, that is held by a third party. For example:

- money held in the non-resident parent's solely owned bank / building society account;
- money owed to a non-resident parent who is self employed;
- an outstanding invoice or money held with a solicitor, however the money must be held on behalf of the non-resident parent and in their name i.e. not the solicitor's general account.

Once the money is frozen it can be sent to the CMG to satisfy the outstanding debt.

Note: a TPDO application should be made in the same court which granted the order for recovery (registration of the liability order in a county court) unless the non-resident parent has moved to a different court jurisdiction.

What is the effect of a Third Party Debt Order?

A TPDO freezes the relevant account by the amount of debt and any costs awarded by the court due at the interim order stage. If funds are successfully frozen, the court can release them to the CMG at the final order hearing stage.

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[Third Party Debt Orders: Decision Making Guidance](#)

Who can a Third Party Debt Order (TPDO) be made against?

TPDOs can be made against:

- banks/building society accounts
- third parties

The following links explain these in more detail:

Bank of Building Society accounts

Please note that a lump sum or regular deduction order would usually be attempted before considering a TPDO. An example of when a TPDO may be more appropriate is where lump sum deduction order cannot be taken due to the type of account. For example: where the non-resident parent is a sole trader. Regular deduction order action can be taken against sole trader accounts, however this would only be based on 40% of the non-resident parent's income whereas the TPDO may secure a lump sum.

Before considering a TPDO, there needs to be evidence that the non-resident parent holds an account with a particular bank/building society (although the non-resident parent's account details are not required).

The CMG cannot just 'guess' which financial institution the non-resident parent banks with. The name of the financial institution and the approximate area of the branch where the non-resident parent account is held are required. See 'Information Gathering' for guidance on how this information may be obtained.

Third party action can only be taken against money held in the sole name of the non-resident parent. Action cannot be taken against joint accounts.

Banks and building societies served with an interim TPDO must carry out a search to identify all accounts held by the non-resident parent and provide the information to the court within 7 days of the interim order being served.

Is there evidence that an account is held?

The judge can reject a TPDO application unless he / she is provided with details of why the CMG considers that an account is held at the bank. If only the name of the bank is known, without details of the branch or account, the case worker must provide evidence to support that an account is held. For example: if the parent with care has provided the name of the bank, Caseworker On Line should be accessed and confirmation obtained that account(s) are held as this can be used as evidence to support application.

Money held by a third party

An application for a TPDO can be made if money owed to the non-resident parent is held by a third party. While money held in a bank or building society is more common, action can be taken if the money is held by other third parties. For example, if a solicitor was holding money owed to the non-resident parent, or when a Pension Provider is likely to pay out a lump sum pension to the non-resident parent, then a TPDO could be used to recover this.

When is Third Party Debt Order action appropriate?

When you are considering whether a TPDO is appropriate you will need to consider the following:

- welfare of the child
- compliance
- evidence
- whether a lump sum deduction order may be more appropriate, as this action is quicker and less expensive for both the CMG and the non-resident parent

Recording the decision: third party debt order is appropriate

If you decide that third party debt order action is appropriate, you must record full reasons for your decision, including:

- welfare of the child consideration;
- reference to evidence obtained i.e. bank details provided by non-resident parent on the maintenance enquiry form or provided by a third party;
- non-resident parent has still failed to comply with the CMG and the amount / part of the amount on the order for recovery awarded is still due.

It is essential that the reasons for your decision are adequately recorded, so that if the decision is subsequently disputed or queried, it can be shown to have been made reasonably, with regard to Welfare of the child consideration and the circumstances of the case.

Recording the decision: third party debt order is not appropriate

If you decide that third party debt order action is not appropriate, your reasons should be fully documented, so that if the decision is subsequently disputed or queried, it can be seen to have been made reasonably, with due regard to Welfare of the child consideration and the circumstances of the case

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[Third Party Debt Orders: Process](#)

If you decide to apply for a TPDO, the following process applies:

- apply for an interim TPDO;
- interim TPDO granted/refused;
- service of an interim TPDO;
- final TPDO hearing.

The following links explain each of these steps in more detail.

Interim TPDO application

The application for an interim TPDO must be made by a Court Presenting Officer to the county court and will be considered by a judge without a hearing.

If the judge is satisfied with the information in the application, they will make an interim third party debt order (formerly known as 'order nisi'). This will freeze any money held to the amount in the interim order or to a lesser amount if there is not enough money to cover the whole debt covered by the liability order plus any costs.

The third party debt order will therefore only be successful if there is enough money in the account to cover all / part of the debt. The TPDO would be unsuccessful if – for example - the non-resident parent is overdrawn as there would be no funds available for release to the CMG.

If an interim TPDO is granted you must arrange for it to be served on that third party

Information gathering may have identified that the non-resident parent is e.g. paid on a certain day each month. Therefore if the account has a variable balance the date that the interim TPDO is served on the third party is important as the money will only be frozen on the day the order is served. It is therefore very important that the order is served at the most effective time e.g. on a date when it is known that cleared funds have been deposited into the account.

To ensure that the TPDO is served on the correct date, the case manager should ensure the order is served personally (by hand) on the non-resident parent's branch, using a process server to effect service. However, if the details of the bank/building society are unknown then the order would need to be served on the regional head office of the relevant financial institution.

Service of the interim TPDO and any supporting application / documents must be served upon the third party no less than 21 days before the date of the final hearing. The non-resident parent will be served the copy TPDO at least seven days after the

third party has been served and no less than seven days before the final hearing date. The creditor (CMG) must be able to file a certificate of service with the court at least two days before the final hearing or produce it at the hearing.

The third party must disclose to both the court and the CMG the sums frozen on each account held by the non-resident parent within seven days of being served with the interim order.

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

The non-resident parent can apply for a hardship payment order if their family is suffering hardship in meeting ordinary living expenses because their money has been frozen. This must be supported by written evidence.

If the non-resident parent makes a hardship application, the CMG ordinarily objects 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 TPDO at the same time as hearing the hardship application.

The CMG will be informed and given no less than two days notice of the hearing. The notification will be addressed to the Child Support Commission and should be referred to the Legal Enforcement Team immediately. You must then immediately inform the Court Presenting Officer (CPO) so that they can attend the hearing. As a high priority you should also provide any information to the CPO that the objection to the hardship payment order is based on, which may include details about:

- the non-resident parent's income if the system shows that it is relatively high;
- the welfare of the qualifying child(ren) and any other children potentially affected by the decision;
- the non-resident parent's history of non-compliance.

In some cases the hardship application is heard separately from the final TPDO hearing. In these circumstances, the CPO may not be required to attend. A judge will decide whether to grant or refuse the application for a hardship payment order and the court will advise the CMG of the outcome.

If the judge grants the hardship payment order, this allows the third party to release some of the frozen funds to the non-resident parent. The balance will then be paid to the CMG once the final order is granted.

If all the funds are released to the non-resident parent, the CPO must arrange for the TPDO application to be withdrawn from the county court.

Once the interim order has been served, a hearing date will be set for a final order to be made

Note: a final hearing cannot take place less than 28 days after the interim TPDO is made

If the third party debt order action is to continue, the next stage is a hearing with a judge who will decide whether to make the interim order a final order (formerly known as 'order absolute').

The CPO will attend the final hearing. The non-resident parent may attend the court hearing to object to the TPDO application. Although it is unusual, the third party can also attend the hearing if they wish to make representation.

A final order is where the money that has been 'frozen' is released and sent to the CMG. After the final order has been granted the non-resident parent has a period of 28 days in which to lodge an appeal.

Refer to the guidance on client appeals against enforcement action for further advice.

Further third party debt order applications

A TPDO can be attempted on the same account more than once, but if it was not successful the first time you will have to consider if it will be worthwhile to attempt this action again.

For example it may not be appropriate to attempt a subsequent TPDO:

- if a previous TPDO was unsuccessful as no funds were available due to the account being overdrawn, you must consider if the non-resident is regularly overdrawn;
- if the account is inactive e.g. an account with very limited funds, and there are no regular deposits being made

This list is not exhaustive.

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