

## Annex B - Court proceedings

There are a variety of court proceedings that require the CMS presence at court. This can be either in the form of a contracted solicitor or a presenting officer depending on the circumstances and jurisdiction.

**Note:** Some court appearances may need to take place by virtual means due to the coronavirus pandemic with specific restrictions in place. A check should be made with the relevant court to confirm if any attendances are to take place by either audio or video. This applies to proceedings taking place within magistrates' courts<sup>1</sup> or sheriff's courts<sup>2</sup>.

1 Coronavirus Act 2020, sch26; 2 Coronavirus (Scotland) Act 2020, sch4

Court proceedings can be brought about by

1. the CMS, or
2. a party to the case, which may include
  - 2.1 the NRP
  - 2.2 the PWC
  - 2.3 a CiS
  - 2.4 third party representative, or
3. an independent party, which may include
  - 3.1 PHSO
  - 3.2 MP, or
  - 3.3 ICE.

## Scottish courts

In Scotland, contracted solicitors represent the CMS at all Scottish sheriff's court proceedings. The DM will liaise directly with the contracted solicitors to progress the case.

There may be occasions where the CMS is required to provide an expert witness at the request of the sheriff's court or to attend court with the contracted solicitor. This is usually for Scottish sanctions hearings. See [Chapter 90: Sanctions](#) (Scotland).

The CMS' contracted solicitors will notify the DM if an expert witness is required.

The expert witness will be required to provide evidence on

1. the action that has been taken to try and recover the debt before the application for sanction was considered, or

2. the maintenance calculation.

## Presenting officers

In England and Wales, presenting officers represent the CMS during the court process.

Presenting officers have a right of audience and a right to conduct litigation in relation to any proceedings in a magistrates' court<sup>1</sup>.

1 CS Act 1991, s48(1)

Right of audience is the right to appear before and address a court, including the right to call and examine witnesses.

Right to conduct litigation is the right to

1. issue proceedings before any court
2. commence, prosecute and defend such proceedings, and
3. to perform any additional tasks in relation to proceedings<sup>1</sup>.

1 CS Act 1991, s48(2); CaLS Act 1990, s119(1)

Presenting officers must have in their possession an "authority to act" certificate from the CMS which should be appropriate to the type of court hearing that is to be held<sup>1</sup>.

1 LS Act 2007, s118

When the referral is received, presenting officers will consider if it is appropriate for the CMS to have legal representation and contact the CMS' contracted solicitors if required. Legal representation may be appropriate if

1. the NRP is
  1. to be legally represented, or
  2. a solicitor
2. the debt is more than £350,000 and the case is being heard in the High Court, or
3. it is considered case critical and in the CMS's interest to defend a case that could potentially lead to an adverse judgment.

Several court proceedings have specific actions that are required. For full details of each action that can be taken, refer to the relevant chapter.

[Chapter 55: DEOs and DERs](#)

[Chapter 45: Parentage disputes](#)

[Chapter 71: Legal enforcement](#) (England and Wales)

[Chapter 81: Legal enforcement](#) (Scotland)

## **Before the hearing**

CMS cases are usually heard in the family courts. Enforcement proceedings may be heard in the Adult court rather than the Youth court, depending on local court preference. All enforcement hearings should be closed to the public.

Presenting officers should consider if there are other CMS cases ongoing in the same court as it is more cost effective for the CMS to arrange for several cases to be heard in one session where this is possible.

A provisional date and time may be arranged for the hearing. This is depending on the court availability and presenting officers should ensure that sufficient time is allowed for

1. the summons to arrive at court
2. the summons to be signed and returned to the presenting officer and
3. be served on the NRP at least 14 days before the hearing.

No court application will go ahead without the appropriate fees being paid to the court and summons being issued.

## **Court appointed enforcement agents**

In some situations, it may be necessary to arrange for a summons to be served on the NRP personally by court appointed enforcement agents. This will apply if

1. documents have been returned DLO but there is sufficient evidence held to indicate the address is confident, or
2. the court requests that the documents are served because they have been returned to the court and the NRP has failed to attend.

Where documents are served by court appointed enforcement agents, the date of service will be the actual date that the papers are served on the NRP. This date is confirmed by the enforcement agent.

Court appointed enforcement agents will attempt 3 visits to serve the documents,

1. first visit within 5 days
2. second visit after 7 days
3. third visit after 10 days.

The court appointed enforcement agent will inform the presenting officer when service has been

achieved, or where service is unlikely to be achieved within the required timescales.

If service has been achieved, the court appointed enforcement agents will forward an affidavit confirming this to the presenting officer.

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

### **Substituted service**

If substituted service has been used, this means that the documents have been left with

1. an adult resident of the home of the NRP
2. an employee with management duties at the NRP's place of work
3. an employee with management duties at the NRP's corporate headquarters
4. a person or company designated to accept service of process on behalf of a limited liability company, or

by posting in a prominent place followed by mailing copies by certified mail to the NRP.

### **Summons is served**

When the summons has been served, the presenting officer must send the following to the courts

1. a certificate of service
2. the affidavit returned by the court enforcement agent if the summons has been served by process service, and
3. where substitute service has been used, the affidavit must be supported by a witness statement.

In some cases the court may require a certificate of posting.

The summons must be served on the NRP at least 14 days before the hearing. If there have been delays, regardless of the reason, the presenting officer must arrange a new hearing date with the court. Another signed summons will then be required to be issued.

The NRP may contact the presenting officer or the DM to object to the action being taken. The DM and presenting officer should consider the circumstances of the case and if it is appropriate to be withdrawn.

At any point it may be appropriate to withdraw the case if

1. the debt has been reduced to nil
2. the PWC has asked the CMS not to enforce their arrears and there are no charges due to the CMS

3. information has been received which indicates that there may be concerns regarding the welfare of a child involved in the case, if the hearing were to go ahead, refer to Chapter 4: Welfare of the child, or

4. there are concerns about the NRP's welfare.

**Note:** there is no absolute rule regarding NRP welfare considerations as each case must be considered on an individual basis.

### **Summons is not served**

If the summons is returned due to an incorrect address held for the NRP, the presenting officer should try to confirm the NRP's address using the relevant tools. See Chapter 39: Last known or notified address

If the presenting officer is satisfied that the address is correct, then service should be requested via the court enforcement agents.

Where the NRP's address cannot be confirmed, the presenting officer should consider withdrawing the case from the courts.

### **Attending the hearing**

Prior to the hearing the NRP may wish to discuss the case directly with the presenting officer. This may include a discussion over payment agreements or of the general court process and procedure.

Any discussion about payments and agreements should be conducted in line with the CMS debt steer. See Chapter 53: The debt steer.

### **NRP fails to attend**

Where the NRP fails to attend court, the presenting officer can request the court to proceed in the NRP's absence where

1. the service of summons or certificate of summons has been filed with the court
2. the summons has not been returned, and
3. no new address for the NRP has been notified.

Where the court is satisfied that the NRP was aware of the court date and that the summons was issued in a reasonable time and to a confident address, the court may decide to proceed with the CMS' application.

**Note:** this does not apply to sanctions hearings.

### **Hearing adjourned**

Hearings may be adjourned for a number of reasons. This may include where

1. the court directs the NRP to supply information needed for a DMD to be converted
2. the NRP has failed to attend (an opportunity may be given for the NRP to attend at a later date)
3. the NRP has requested an adjournment to seek legal advice, or
4. a concurrent application may have been made by the NRP for a declaration of parentage.

Presenting officers may request an adjournment of the court where

1. service of summons could not be achieved, or
2. errors have been identified with the case.

## **Hearing outcome**

Where the application is granted by the court, the presenting officer will request the court to award costs. The costs are added to the NRP's debt and may be the sum of the

1. application fee to the court
2. contracted solicitor's costs if used
3. costs of arrest warrant execution, and
4. service cost for postage and process service.

After the hearing, presenting officers should

1. inform the DM of the outcome
2. provide the DM with a report, and
3. send a copy of any necessary documents to the NRP.

Where the application is not granted, the presenting officer will advise the court that the CMS intends to appeal the decision not to grant the order. A request will be made for the court to provide written reason for the decision<sup>1</sup>.

1 Family Proceedings Rules 1991

## **Magistrates' courts**

Types of hearings heard in a magistrates' court are

1. liability order applications
2. sanctions hearings

3. parentage disputes
4. DEO appeals
5. DEO “good reason” appeals.

## County courts

Hearings that are conducted in the county court are

1. order for recovery
2. variation order
3. third party debt orders including hardship orders
4. charging orders
5. order for sale applications for an amount less than £30,000
6. appeal against a deduction order
7. set aside disposition order.

**Note:** order for sale applications for a total debt amount more than £30,000 are held in the High Court.

County court hearings are held in private. Certain cases can be held in chambers which means that they are not heard in a courtroom so the public cannot have access.

## Parentage

An NRP may appeal directly to the relevant court<sup>1</sup> or Tribunal<sup>2</sup> against

1. a presumption of parentage
2. a refusal to revise a maintenance calculation on parentage grounds.

1 Family Law Act 1986, S55A; 2 CS Act 1991, s20

The presenting officer will receive a summons either

1. directly from the court or
2. from the owning team.

Contact must be made with the PWC to inform them of the appeal and to collect any information required. If contact cannot be made with the PWC an adjournment may be required.

At the hearing, the alleged NRP will be given the opportunity to provide information as to why they are appealing the presumption of parentage or the refusal to review. The presenting officer may be

requested by the courts to explain the relevant decision that has been made by the CMS.

Where the appeal is not dismissed, the court will direct that further evidence is required. This is usually a direction for the alleged NRP, PWC and relevant QC to provide a sample for DNA testing.

Where DNA testing has been directed by the court, a final hearing date will be set. This will allow time for the tests to be conducted and the results to be made available. The results should be filed with the court prior to the hearing and served to the presenting officer who will advise the DM.

It is the alleged NRP's responsibility to arrange for the DNA test. The presenting officer can consider registering the case with the contracted DNA testing supplier. If the contracted supplier is used, the NRP will be required to pay the fee up front. The CMS cannot offer to pay the fee in these circumstances.

Where the alleged NRP wishes to arrange the DNA test themselves, the presenting officer should provide the details of the approved DNA test providers.

Where the alleged NRP states that they cannot afford to pay for DNA testing, a decision will be made by the court.

Where the CMS has arranged the DNA test, the presenting officer will need to provide a copy of the results to the court once they are received.

Where the outcome of the DNA test is negative, the presenting officer should arrange an interview with the PWC in advance of the second court hearing. This will be to confirm the identity of the person who attended the DNA test was the NRP.

If the DNA result is positive, the presenting officer should confirm with the NRP if they wish to withdraw their appeal.

Where the NRP failed to supply a sample, the court will either

1. dismiss the appeal, or
2. make a declaration of parentage confirming the NRP is the parent of the QC.

Where the PWC failed to supply a sample or refused to allow the QC to be tested, the DNA testing company will inform the presenting officer. The presenting officer will confirm the PWC's reasons for this before the final hearing and will update the court accordingly.

If the court considers there is no good reason, the court will order

1. a declaration of non parentage
2. that the MC is revised to remove the relevant QC, and
3. may order that the NRP be entitled to a refund or reimbursement. Refer to [Chapter 59: Overpayments](#).

Where the DNA test is positive and the NRP is confirmed to be the parent of the QC in question, the court will issue a declaration of parentage and the appeal will be dismissed. The presenting officer should



obtain a copy of the declaration.

Where the DNA test is negative, the presenting officer will advise the court if the PWC agrees that the person who took the test was the alleged NRP.

Where the PWC agrees that the alleged NRP provided the DNA sample and is the person named as the NRP, the court will determine that the alleged NRP is not the parent of the QC.

Where the PWC believes that the sample was provided by someone other than the alleged NRP the court will decide whether to order a second DNA test or to uphold the appeal.

For further guidance on dealing with parentage issues see [Chapter 45: Parentage disputes](#).

## **Liability order (England and Wales)**

Most LO applications in England and Wales are made to a centralised court but can be made to a court local to the NRP's address.

In all LO application cases, a notification must be issued to the NRP and will initially be dealt with using the centralised court process.

The NRP may request a local hearing at any point during the application process. Whether the case is removed from the centralised process will depend on

1. whether the application has progressed beyond the issue of a summons, and
2. where the new hearing would take place.

Where the summons has not been issued and the NRP requests a local hearing, the LO application will be made to a magistrate's court in the same region as the NRP's address.

Where an error has occurred and the summons has not been issued but the case has been referred to court. Presenting officers should contact the court and ensure that the case is removed from the schedule being submitted for summons.

For more information on Liability orders, see [Chapter 73: Liability orders](#) (England and Wales) and [Chapter 83: Liability orders](#) (Scotland).

## **Sanctions**

It is a legal requirement that the NRP appears before the court in a sanctions hearing. Action cannot proceed in the absence of the NRP.

If the NRP does not attend, the court may issue a warrant for the arrest of the NRP<sup>1</sup>. This warrant will be executed by either

1. court enforcement agents
2. warrant officers

3. the police, or

4. sheriff officers in Scotland.

1 CS Act 1991, s40; s40A(8)(d)

The court may issue the warrant for arrest with or without bail<sup>1</sup>.

**Note:** see [Chapter 90: Sanctions](#) - Scotland and [Chapter 79: Sanctions](#).

1 CS Act 1991, s40(3)

## Appeals against court outcomes

Where the CMS is considering an appeal against a decision of the court, the DM and presenting officer will need to discuss the case further.

The NRP may also appeal the court decision. Where the NRP does appeal, the presenting officer should ensure that the DM is made aware so that a decision can be made on the appropriate next action. See [Chapter 48: Appeals](#).

Where an NRP wishes to appeal against a sanctions decision made by a magistrate or, in Scotland, a sheriff, the appeal must be made directly to the court that issued the sanction within 28 days. The appeal cannot be made against the CMS applying for sanctions. The appeal is raised against the court's decision over which sanction to grant against an NRP.

Where the court finds against the CMS following an appeal, the sanction would not be imposed on the NRP. Consideration should be given to whether the CMS should raise a counter appeal against the court's decision.

Any appeal made by the CMS must be made within 14 days of the court's decision and can only be made where there was an error in law when the original decision was made.