Volume 6 - Collection and Enforcement (Chapters 49-95)

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Chapter 49 - Unlikely to pay

Introduction

49001 Where a maintenance calculation has been made, the PWC or CiS may apply to the CMS for

1. the collection of child maintenance payable under the calculation, and

2. the enforcement of the obligation to pay in accordance with the calculation.

49002 A DM may only make arrangements for the collection of payments if

1. the NRP agrees to the arrangements, or

2. the DM is satisfied that without the arrangement child support maintenance is unlikely to be paid in accordance with the calculation[1].

49003 Where the PWC or CiS has requested that their case be administered as collect and pay and the NRP does not agree to the arrangements, the DM should carry out an 'unlikely to pay' check.

1 CS Act 1991 s 4(2A) and 7(3A)

This guidance explains

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Format of the check

49004 The unlikely to pay check decision is made by the DM using their judgement and based on the merits of the individual case. When considering the case DMs need to decide if the NRP is unlikely to make regular payments voluntarily.

Note: where a DM is unsure whether a NRP should be found unlikely to pay, they should consult their Team Leader.

Basic criteria for carrying out the check

49005 When making a decision as to whether a NRP is deemed unlikely to pay, DMs should consider the following factors

1. The NRP pays via an enforced method – for the majority of cases where a NRP pays via an enforced deduction from earnings order or deduction from earnings request they will be determined as unlikely to pay.

2. The NRP is undergoing legal enforcement action – where a case is undergoing legal action to establish compliance it will usually be appropriate to determine them as unlikely to pay.

3. The NRP has undergone legal enforcement action or paid via an enforced method in the six months prior to requesting direct pay – the NRP will be determined as unlikely to pay unless the DM considers there is a good reason to believe the NRP is not to be deemed as unlikely to pay, e.g. the full clearance of arrears via a voluntary lump sum.

4. The NRP has missed one or more payments in the past six months –DMs must use their discretion to determine whether this constitutes an unlikelihood to pay. Where a payment has been missed DMs must evaluate any available evidence to determine whether or not there was a reasonable explanation for the missed payment.

5. The NRP has demonstrated a pattern of behaviour over the past six months which indicates a potential to be considered unlikely to pay. Where a NRP has made all the required payments over the past six months they will generally be considered not unlikely to pay. However if from a behaviour pattern there is an indication that they may be unlikely to pay privately, DMs may decide that the NRP is nonetheless unlikely to pay, e.g. when payments are only being made following CMS action being taken.

Note: this list is not definitive, nor does it mean that the NRP will automatically be deemed to be unlikely to pay in these circumstances, as consideration must be given to all other relevant factors.

Carrying out the check on multiple cases

49006 Where a NRP has multiple PWCs, each case should be judged on its own merits. An unlikely to pay check should be carried out independently on each case for which the NRP has elected for direct pay. Where there is evidence that a NRP is likely to make payments to one PWC and not another, the NRP must be found unlikely to pay in one case but not the other.

Unlikely to pay check outcomes

49007 There are only two outcomes of an unlikely to pay check

1. the NRP is unlikely to pay, or

2. the NRP is not unlikely to pay.

49008 All NRPs must be presumed to be not unlikely to pay unless there is evidence to the contrary.

Informing clients

49009 DMs must contact both parties and explain the decision that has been made, why they have come to this decision and any other relevant information.

49010 This should be supplied to both parties via telephone. Only where the parties cannot be reached by telephone should a notification by post confirming the decision and inviting representations be considered.

NRP not found unlikely to pay

49011 Where the NRP is not found unlikely to pay, both parties must be informed that

1. the available evidence has been considered and it does not suggest that the NRP would be unlikely to pay maintenance privately. As such a direct pay arrangement will now be set up. The PWC should supply a reasonable method by which the NRP can make direct payments. The CMS may (with permission) transfer details such as bank account information from one party to another if the two parties do not have contact, and

2. they will continue to receive annual schedules informing them of the dates and amounts of maintenance that must be paid and that these must be met.

NRP found unlikely to pay

49012 Both parties must be informed of the decision.

1. The NRP must be informed on what basis CMS have determined them to be unlikely to pay and the approximate date they will become eligible for direct pay or a compliance opportunity.

2. The PWC must be informed that the case will continue to be managed under collect and pay provisions however this will not necessarily be permanent. The NRP will have the opportunity to demonstrate their compliance within the collection service and will, if they remain compliant, become eligible for direct pay in the future. The PWC must be informed that if this does happen they will be fully informed of this prior to any change to direct pay.

Appealing the decision

49013 The unlikely to pay check is not a decision that can be appealed and both parties will be informed of this fact when they are told of the decision.

49014 If either client is unhappy with the decision they may ask for it to be looked at again.

49015 If, following this, the client remains unhappy they have the option to raise a formal complaint. They may also take their case to the Independent Case Examiner or, if they allege maladministration, the Ombudsman. Clients also have the right to seek an independent Judicial Review.

The compliance opportunity

49016 It is possible that a NRP who was once deemed unlikely to pay may now be willing to comply with a voluntary arrangement and the CMS will offer a compliance opportunity.

49017 The compliance opportunity is a reactive process and therefore is only offered at the request of a NRP. The format of the compliance opportunity will depend on the circumstances of the case.

NRP paying by a non-enforced method of payment

49018 The NRP must make 6 months of payments in full and on time (unless there is good reason for a delay in payments being made). If the case is less than 6 months old, then the NRP must have made all payments due to date.

49019 The compliance opportunity is about demonstrating a consistent pattern of behaviour. Therefore, if the NRP offers to pay off any arrears in a lump sum payment the CMS should encourage this, but it will not shorten the compliance period. When the time comes to review the unlikely to pay decision, any positive behaviour by the NRP can be considered as supporting evidence.

49020 If the NRP has made 6 months of payments as required, they will be eligible to switch to direct pay unless there is any evidence that suggests this would not be appropriate. The PWC must be contacted and informed that the case is moving to direct pay due to the NRP displaying acceptable compliant behaviours.

49021 If the NRP has not made 6 months of payments as required, the missed payments must be investigated. If there is no good reason for the missed payments, or the DM believes that there is another reason why the NRP is unlikely to pay, the DM must notify them that they will not qualify for direct pay until they have made 6 months of payments on time and in full inclusive of payments already made.

Example 1

NRP David requests direct pay and the DM reviews the promise to pay schedule for the past six months. This shows two payments were missed. On investigation these payments were missed due to a lapsed standing order that was not updated due to David having an extended period in hospital. As these payments were subsequently paid in full and the standing order re-established the DM determines that the payments were missed for a valid reason and, as no other payments have been missed in the previous six months, declares that David is not unlikely to pay.

Example 2

NRP Janice requests direct pay but the promise to pay schedule shows that a payment was missed two months previously. On investigation this payment was missed due to a maintenance dispute with PWC Simon. The DM determines that this was not a valid reason for having missed the payment and Janice is declared unlikely to pay. The DM is satisfied that there is no case to be made for moving the case to direct pay on welfare of the child grounds. Janice is informed that she will have to make the missed payment in full. Therefore, if Janice continues to make payments for the next four months, she will be likely to be allowed to move to direct pay.

Example 3

NRP Jack requests direct pay and the promise to pay schedule for the past six months shows that all payments were made, however for the past three months payments have been made late and only after Jack has been contacted to pay. The DM determines this as a pattern of behaviour indicating an unlikelihood to pay and Jack is informed that his request for direct pay is rejected.

The DM is satisfied that there is no case to be made for moving the case to direct pay on welfare of the child grounds. Jack is advised that he must start making payments on time. If Jack makes payments on time for the next six months, he will likely be allowed to move to direct pay at that point.

NRP paying by enforced method of payment

49022 The NRP must first have successfully made 6 months of payments by their current enforced method. This is to ensure that the PWC experiences a period of stability after the NRP is found unlikely to pay.

49023 If the NRP has made 6 months of payments by their current enforced method, they are eligible for a compliance opportunity. They must then make 6 months of payments by a non-enforced method of payment. If they do this successfully then they will be eligible to move to direct pay. The PWC must be contacted and informed that the case is moving to direct pay due to the NRP displaying acceptable compliant behaviours.

49024 If the NRP does not make the required payments, they should be informed of the earliest date on which they can ask for a compliance opportunity again.

Note: any decision to discharge a DEO or DER for reasons of a compliance opportunity must take into account all relevant considerations including welfare of the child. If the DM believes that there is good reason not to discharge a DEO or DER after six months has been served they must discuss this with their TL.

Example 1

NRP Lorraine has requested direct pay but on investigation it is determined that she makes her payments via an enforced DEO. Lorraine is informed that she is considered unlikely to pay.

However, as the DEO was imposed over six months previously and all payments for the past six months have been received the DM considers it appropriate to discharge the DEO to allow Lorraine to demonstrate her ability to comply. The DM advises Lorraine that she has a six-month compliance opportunity in order to demonstrate ability to comply. If Lorraine completes this opportunity, she will be eligible to move to direct pay.

Example 2

NRP Jack requests to pay via direct pay but as he makes his payments through an enforced DEO he is determined as unlikely to pay. The DM determines that the DEO has been in force for two months and both payments have been made. Jack is informed that he only has two months of compliance with his enforced method. Therefore, he should get back in contact in four months' time at which point, if he has complied, consideration will be given to allowing him to take up a compliance opportunity and demonstrate his ability to comply with an un-enforced collection method.

NRP is undergoing legal enforcement action (including RDOs)

49025 If being managed by legal enforcement, an NRP must be informed that they must make an acceptable arrangement with them, before being eligible for the compliance opportunity.

49026 Once an effective agreement is in place the NRP must make 9 months of payments on time and in full by a voluntary method of payment. Once this is completed then the NRP will be eligible to switch to direct pay. The PWC must be contacted and informed that the case is moving to direct pay due to the NRP displaying acceptable compliant behaviours.

49027 Where an acceptable arrangement is already in place, any time which has already been spent under this agreement may be offset against the nine-month period.

Deduction from benefit

49028 Where the NRP makes their payments via DFB, this is classed as neither an enforced nor a non-enforced method; it is a mandatory method. Therefore, any periods in which a NRP has been paying via DFB are to be disregarded for the purposes of the unlikely to pay check and classed as a pass regardless of any

missed payments in this period.

Example 1

NRP Bill currently pays via DFB and requests direct pay. On investigation Bill has paid via DFB for the past six months in their entirety. Regardless of any missed payments in this period Bill is determined not unlikely to pay and allowed to move to direct pay.

Example 2

NRP Janet currently pays via Direct Debit and requests direct pay. On investigation two payments were missed in the past six months whilst Janet was subject to a previous DFB due to sanctions on her benefit being imposed. These missed payments are disregarded as they occurred during a period of DFB and as no other payments have been missed Janet is determined not unlikely to pay and allowed to move to direct pay.

Chapter 50 - Direct non scheme payments

Introduction

50001 Where a NRP makes payments in lieu of child maintenance directly to a PWC the CMS may decide to accept these payments as child maintenance.

This guidance explains

What is a direct non scheme payment 50002 – 50004

What is not a direct non scheme payment 50005

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What is a direct non scheme payment

50002 A direct non scheme payment is a payment made by the NRP

1. in lieu of child maintenance
2. directly to the PWC instead of by their set method of collection and
3. after the maintenance calculation has been completed and notified to both parties.

50003 The CMS refer to these payments as 'in lieu' of child maintenance because although the clients intend for them to be treated in this way they have not been made according to the set method of collection.

50004 Direct non scheme payments can be taken into account by treating them as overpayments and using them to reduce arrears or ongoing child maintenance. An overpayment has not actually been made in the usual sense but the CMS treat them like this for adjustment purposes. This is a discretionary decision and depends on the circumstances of the case. For more information, see paragraph **50008 – 50009**.

What is not a direct non scheme payment

50005 Direct non scheme payments do not include

1. payments made before the maintenance calculation is completed and which are not covered by voluntary payments provisions. For more information on voluntary payments see Chapter 60.
2. payments to a third party, either directly or via the PWC which can be taken into account under offsetting provisions, see Chapter 58.
3. payments made directly to the QCs
4. a NRP providing or paying for goods in relation to the child (e.g. holidays, clothes, birthday presents)
5. a payment by the NRP to the PWC in addition to the regular periodic payment of child maintenance

6. the transfer of property or assets by the NRP to the PWC

7. any payments or goods for which the NRP is ordered by a court to pay to the PWC (e.g. as part of a divorce settlement)

8. payments of child maintenance arrears due to the SoS paid directly to the PWC by the NRP with their regular child maintenance payment.

Evidence

50006 If a PWC or NRP reports receiving or making a direct non scheme payment, DMs should request evidence to decide whether a payment has been made.

50007 Whether a payment should be accepted or rejected is a discretionary decision. This means that clients cannot appeal against the decision but they can challenge it through Judicial Review. It is essential that the DM records the reasons for the decision and the evidence taken into account. The DM must also demonstrate that they have considered the welfare of any child that the decision is likely to affect. For more information on obtaining evidence of direct non scheme payments, see Chapter 100: Evidence related to collection and enforcement.

Payment allocation

50008 If the DM accepts that a direct non scheme payment has been made, they will need to decide how to take it into account. There are two ways of doing this.

Using a direct non scheme payment to reduce arrears

50009 DMs can reduce outstanding arrears to reflect a direct non scheme payment if

1. arrears have accrued on an ongoing case because the NRP has been making direct non scheme payments, or

2. where a case is closed but the NRP has been making direct non scheme payments to the PWC.

Allocating a direct non scheme payment against ongoing payments

50010 DMs can allocate a direct non scheme payment against ongoing child maintenance payments by treating them in the same way as overpayments.

50011 Where there has been an overpayment of child support maintenance (for any reason, including the retrospective effect of a maintenance calculation), the DM may apply the amount overpaid to reduce any arrears of child support maintenance due in respect of the same relevant persons[1].

1 CS (MPA) Regs 2009, reg. 8(1)

50012 Where an amount of the overpayment remains after clearing the arrears, or where there is no previous maintenance calculation, the DM may adjust the amount payable for the current

maintenance calculation.

50013 The adjustment should be that which is considered appropriate in all the circumstances of the case. Particular regard should be given to

1. the circumstances of the relevant persons

2. the amount of the overpayment, and

3. the period for which it would be reasonable to adjust the amount (until the overpayment is rectified).

Note: an adjustment may reduce the amount payable to nil[1].

1 CS (MPA) Regs 2009, reg. 8(2) and 8(3)

50014 Before doing this, a family based arrangement should be discussed with both parties. The CMS supports and encourages family based arrangements. Clients making direct non scheme payments should be reminded of this option and encouraged to make a family based arrangement. Clients should also be reminded that direct non scheme payments are not an alternative method of payment and may not always be taken into account.

Chapter 51 - Payment allocation

Introduction

51001 Payment allocation is the term used for the way CMS decide to attribute payments where a NRP has ongoing maintenance and, or arrears.

This guidance explains

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The payment allocation hierarchy 51004 – 51005

Manual allocation 51006 – 51008

Split rules 51009

Rounding payments 51010

What is payment allocation

51002 Where a maintenance calculation is or has been in force and there are arrears of child maintenance, the DM may attribute any payment of child maintenance made as the DM sees fit[1]. To ensure that this is done consistently and in accordance with CMS's wider strategy, a payment hierarchy has been developed which sets out the priority in which payments should normally be allocated.

1 CS (MPA) Regs 2009, reg 4

51003 The CMS computer system has been configured to automatically allocate payments according to the hierarchy however, there will be situations where payment allocation on this basis is not appropriate and manual allocation will be necessary.

The payment allocation hierarchy

51004 The payment allocation hierarchy sets out the priority order that payments will be allocated to arrears and ongoing maintenance. This will apply unless

1. there are exceptional reasons why a different payment allocation is appropriate, or
2. the NRP or a third party is making a specific payment towards a specific type of arrears.

51005 In all other cases, the following payment hierarchy will apply

1. money owed to the CMS administration account
2. CMS ongoing maintenance
3. CMS liability order and lump sum deduction order arrears
4. any other CMS arrears (excluding those in the higher category above)
5. CSA liability order and lump sum deduction order arrears

6. Any other CSA arrears

7. Costs (court costs or DNA fees)

8. Suspended and, or deferred debt

Manual allocation

51006 There are very few circumstances in which the standard hierarchy (set out in para **51005** above) will not be appropriate. However, sometimes it is appropriate to deviate from the hierarchy.

51007 Examples of situations requiring manual allocation include

1. clerical cases

2. order for sale cases where a single payment is often made to clear the debt across several liability orders. There is no way to reference a payment to allow this allocation to happen automatically

3. court or tribunal orders that direct a payment is allocated in a certain way which CMS must follow

4. a previous error has been made regarding the allocation of payments on a case, requiring manual allocation to correct the error

Note: Where a dividend payment is received from an NRP trustee or AiB in relation to a period for sequestration or a protected trust deed, the payment must be allocated to the arrears due from before the relevant date of sequestration or the relevant date the trust deed became protected. Refer to Chapter 94 – Sequestration and Chapter 95 – Trust Deeds for further information.

51008 When payments are being manually allocated it is important for the DM to adhere as closely as possible to the standard hierarchy.

Example 1

NRP Mick has two PWCs. PWC Kayleigh is owed arrears of £342.35 and PWC Helen is owed £100 in ongoing maintenance. Kayleigh's debt is covered by a liability order. Mick makes a payment referenced to the casegroup not the liability order however, the payment is for £342.35. Mick had previously phoned to inform CMS that he had intended to make a payment to clear the liability order. The DM should use discretion to decide how to allocate the payment. In this scenario it would be reasonable to accept that Mick intended to pay the liability order and not for the payment to be allocated according to the normal hierarchy.

Example 2

NRP Jamie owes money under several due types. He makes a large payment which he had previously phoned to say is intended to clear a liability order. The case is set to manual allocation to ensure the payment is allocated correctly. The payment is received and is greater than the amount outstanding on the liability order. It would be reasonable for the DM to first allocate to the liability order and then to the other due types in the order of the standard hierarchy.

Split rules

51009 Where more than one PWC is owed money within the same due type the CMS computer system will apply the split rules. This means the system will automatically apportion the payment according to the amount that each parent is owed, giving priority to child maintenance which became due first.

Example 1

PWC Hayley is owed £100 and PWC Louise is owed £200. Both debts became due on the same date and are the same due type. NRP Jonny makes a payment of £150. The debt is apportioned based on the amount Hayley and Louise are owed as both debts have the same priority within the payment hierarchy outlined in para 51005. Hayley receives £50 and Louise receives £100.

Example 2

PWC Clare is owed £100 and PWC Sophie is owed £200. These debts are the same due type but Clare's debt became due before Sophie's debt. NRP Tom pays £150. The payment is apportioned to Clare first because her debt is older and therefore higher in the payment hierarchy, as outlined in para 51005. Clare receives £100 and Sophie receives £50.

Rounding payments

51010 Where a NRP has one or more PWCs, money is apportioned between recipients and there may be a floating penny leftover.

Example

NRP Phillip has three PWCs who all have the same debt due type which is due on the same date. Phillip makes a payment of £10 which is apportioned equally between the PWCs so that each PWC receives £3.33.

The extra penny will be retained and not paid out until enough floating pennies have accumulated for them to split equally between the recipients.

Chapter 52 - Arrears

Introduction

52001 Where a maintenance calculation requires periodical payments to be made, it is the duty of the NRP to make those payments. Where the NRP makes the periodical payments in the correct amount, and at the correct intervals, they are taken to have met their responsibility to maintain the QC[1]. Child maintenance arrears are created when a payment is not made on the date it is due.

1 CS Act 1991, s1

This guidance explains

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What action can be taken to recover child maintenance arrears 52007 – 52009

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Arrears of child support maintenance

52002 Where an NRP has failed to make one or more payments, CMS may make arrangements to collect and enforce the arrears of child maintenance[1].

Note: arrears may also arise in ways other than missed payments but are nonetheless collected and enforced in the same way. Such situations may include

1. back dated change of circumstances, or
2. CMS delay in putting a payment schedule in place.

1 CS Act 1991, s 4, 7, and 29

Notification

52003 The DM may only start making arrangements for collection and or enforcement of arrears where the NRP has been given a notice that such arrangements will be considered where there is a failure to make one or more payments of child maintenance. This notification must have been provided within the preceding 12 months[1].

1 CS (MPA) Regs 2009, reg 3A

52004 At every application and at each annual review, a decision notice is issued informing the NRP of the consequences of failure to pay child maintenance. As long as the CMS have issued such a decision notice in the last 12 months no further notification is required before enforcement action is considered, but an arrears notice must be served before enforcement action is taken.

Arrears notices

52005 The DM must serve an arrears notice on the NRP before taking action to enforce the

payment of arrears. The arrears notice must[1]

1. include the amount of all outstanding arrears of child support maintenance due and not paid

2. set out in general terms the provisions as to arrears contained in regulations, and

3. request the NRP to pay all outstanding arrears.

1 CS (MPA) Regs 2009, reg 3(1)-(3)

52006 If, following the service of an arrears notice, the NRP makes all payments of child maintenance on time continuously for 12 weeks or more, then a further arrears notice must be served in respect of further arrears which arise thereafter[1].

1 CS (MPA) Regs 2009, reg 3(4)

What action can be taken to recover child maintenance arrears

52007 A number of methods may be used to try to recover child maintenance arrears. The most appropriate method will depend on the circumstances of the case.

Administrative action

52008 Administrative actions available to collect arrears of child maintenance include

1. negotiating an acceptable agreement or arrangement, using the Debt Steer principles – see Chapter 53: The Debt Steer.

2. making a deduction directly from the NRP's earnings through a deduction from earnings order or request – see Chapter 55: DEOs and DERs.

3. making regular deductions or a lump sum collection directly from the NRP's bank account through a deduction order – see Chapter 56: Deduction Orders.

4. offsetting maintenance due to the debtor against their arrears – see Chapter 59: Overpayments.

5. if an NRP has died, we can also try to collect any outstanding arrears from their estate – see Chapter 61: Recovery from deceased estates.

Legal action

52009 In some cases, court action may be necessary. The range of court actions available is referred to as Legal Enforcement action and separate guidance is available on this subject. Refer to Chapter 71: Legal enforcement – England and Wales or Chapter 81: Legal enforcement – Scotland, for further advice. However, before considering any type of court action, we should always try to recover the arrears through administrative action.

Arrears agreement - basic principles

52010 The DM has broad discretionary powers in relation to arrears agreements. However, those powers do not provide any guidance on specific factors that should or should not be

considered when arrears agreements are being negotiated.

52011 A notice must be issued to NRPs, explaining the terms of any arrears agreement made[1]. See Annex C: Notifications for what information must be included in the payment schedule notice.

1 CS (CE) Regs 1992, reg 7(1)

52012 The notice should be sent to the NRP as soon as possible after any change in the requirements referred to in any previous notice.

52013 DMs can renegotiate an agreement with the NRP at any time.

52014 The terms of any agreement must also include on-going maintenance payments, where applicable.

Note: the debt steer provides a policy-based framework for arrears negotiation. Its purpose is to ensure that arrears are collected as promptly as possible, taking into account all relevant circumstances, such as the NRP's ability to pay. For more information, see Chapter 53: The debt steer.

Chapter 53 - The Debt Steer

Introduction

53001 The Debt Steer provides a policy based framework for arrears negotiation. Its purpose is to ensure arrears are collected as promptly and reliably as possible taking into account all relevant circumstances.

This guidance explains

Background to the debt steer 53002 – 53003

Using the debt steer 53004 – 53006

Taking parallel action 53007

Background to the debt steer

53002 The Debt Steer helps DMs ensure that PWCs receive the ongoing child maintenance and arrears they are due and prevents NRPs getting into more debt.

53003 When DMs enter into negotiations with an NRP over the payment of child maintenance arrears, it is important to understand the difference between an arrears agreement and an arrears arrangement.

1. an arrears agreement is where a payment pattern is established that will recover the arrears within two years and ensure any regular maintenance due is also paid, whereas

2. an arrears arrangement is where a discretionary decision is made to accept a payment pattern that takes more than two years to recover arrears.

Note: when negotiating payment with self-employed NRPs, DMs must take into consideration any award made to the NRP by HMRC under the SEISS. See Chapter 38 - Information gathering.

Using the debt steer
53004 When negotiating arrears agreements and arrangements, DMs must consider all the circumstances of the case. The main aim is to get on-going maintenance payments flowing and to recover arrears as quickly and reliably as possible, however the DM should consider the NRP's circumstances such as

1. the NRP and PWC may have reconciled

2. the parents may have reversed roles

3. the NRP may not be in a financial position to commit to an arrears agreement.

Debt steer trigger points
53005 DMs must take into consideration all circumstances in the case, but must be aware of the different trigger points for using the debt steer

1. full arrears payment by one lump sum

2. partial lump sum payment and a schedule of on-going payments to recover the full arrears within a maximum of two years

3. a schedule of on-going payments to recover the full arrears within two years

4. an acceptable arrangement to secure full collection extending beyond two years. For more information, see paragraph 53006 Accepting an arrears arrangement that extends beyond two years

5. where none of the above can be achieved DMs must consider alternative enforced collection methods such as deductions from earnings and deduction orders.

Accepting an arrears arrangement that extends beyond two years

53006 After investigating the NRP's circumstances and financial situation the DM may use their discretion to negotiate an arrangement that extends beyond a two-year period, providing it is a reliable and consistent plan for the recovery of arrears. When negotiating such an arrangement the DM must take into account factors such as whether

1. all the debt is owed to the Secretary of State

2. the PWC and the NRP have reconciled

3. the PWC and NRP's roles have reversed

4. each parent is both a PWC and a NRP, or

5. the NRP has ceased claiming benefit and has begun new employment or self-employment. In these circumstances it may be appropriate to allow an extended payment arrangement to ensure the NRP is not disadvantaged by starting employment.

Note: the above list is not exhaustive and the DM should take all information available into consideration including the welfare of any children that will be affected by the decision. See Chapter 04: Welfare of the child for more information.

Taking parallel action
53007 In some cases it may be appropriate to take enforcement action in parallel to a negotiated arrangement. Where a repayment arrangement has been entered into it is important that NRPs are made aware of the potential for parallel action.
Example 1
NRP Marc has agreed to pay a scheduled amount towards his arrears. After discussing with their team leader, the DM decides that Marc's offer of repayment is not acceptable. After considering the details of the case and Marc's circumstances the DM decides that imposing a DEO in parallel would be reasonable

and affordable and would enable the arrears to be recovered more quickly.

Example 2

An acceptable arrangement has been reached with NRP Susan, to allow payments to extend beyond two years. However, on considering Susan's payment history, the DM decides that it would be reasonable to take parallel action to secure the debt in case Susan defaults on the arrangement.

Chapter 54 - Enforcement and collection of CSA debt on CMS

Introduction

54001 When the CMS was launched in 2012, the debt and ongoing cases from the CSA were transferred over to CMS. There was a sum of £3.5 billion legacy debt on the CSA system. It was understood that writing off this debt would enable resources to be focused on improving collection in the 2012 scheme; focusing more on children of today. This guidance refers to cases selected for write off but where write off is **not** appropriate.

Note: for more information on the amendments to legislation which extend powers of write off to non-paying debt built up on CSA cases in certain specific circumstances[1] see Chapter 64: CSA arrears write off.

1 CS (MA) Regs 2018, reg 4

This guidance explains

When enforcement and collection of CSA debt on CMS should be considered 54002

Principles for collection of CSA debt on CMS 54003 – 54004

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Enhanced debt steer 54020 – 54025

When enforcement and collection of CSA debt on CMS should be considered

54002 This guidance refers to cases selected for write off where

1. arrears of child maintenance accrued under a 1993 or 2003 scheme case
2. representations have been made by the PWC
3. the NRP has not provided evidence that the debt should no longer exist, and
4. the arrears have transferred from CSA to the CMS.

Principles for collection of CSA debt on CMS

54003 Overarching principles have been agreed for dealing with cases where CSA debt has transitioned to CMS and where acceptable written representations have been made.

54004 The agreed principles are:

1. in-flight enforcement cases will not be excluded from the write off process
2. clients must be treated equally from the same date, regardless of the system on which their arrears accrued

3. liability order and enforcement agent action, or the Scottish or Northern Ireland equivalent, should only be taken if initial collectability screening is passed

4. enforcement will only progress beyond bailiff by exception if

    1. there is a high level complaint

    2. the case is under Judicial Review

    3. the case is high profile

    4. there is operational justification, and

    5. the de minimis threshold is met and suitable assets such as property are identified.

Note: sanctions will only be taken on blended debt cases where there is an ability to pay and the case passes the collectability check. See paragraph **54011** below. Blended debt refers to a case which has both CSA and CMS debt. This occurs when a case was made on a historic CSA scheme but transferred to CMS and there is a QC.

Key terms

54005 The DM should be aware of the following terminology and apply this as appropriate.

Administrative powers

54006 The DM should apply administrative powers to attempt to obtain payment of arrears before a decision to move to legal enforcement powers is considered. This includes

1. card payment

2. deduction from benefit

3. repayment agreement or arrangement

4. DEO

5. disclosure for

    1. RDO, or

2. LSDO.

Collectability decision

54007 Moving from one administrative or legal enforcement power to the next is a discretionary decision. For more information on discretionary decisions see Chapter 96: Evidence & decision making.

54008 Non-compliance at any stage should result in escalation to the next administrative power or legal enforcement power if appropriate, unless good cause is given. Good cause for non-compliance can only be accepted a reasonable number of times.

Example: NRP Paul's DEO has failed for the second month in a row. The DM has investigated it and the employer had deducted the money from the NRP's salary but had failed to send the payments to CMS. This was not the NRP's fault and the DM has explained to the employer what they need to do to ensure compliance. At this stage it would not be reasonable for the DM to consider further enforcement action unless further payments are missed in future.

Note: it is important to remember that write off of the transitioned CSA arrears can only be considered after all feasible administrative options have been exhausted unless the NRP cannot be traced.

Collection cycle

54009 The intention of the collection cycle is to collect wherever possible. If all options are exhausted, including taking parallel actions, then the DM may consider write off.

Note: where part payment is secured at any point in the journey, all other collection activities should be attempted to collect the outstanding debt.

54010 The DM should attempt collection in the following order

1. ask the NRP to make a card payment for the full amount

2. consider whether the NRP is in receipt of benefit and whether deductions from that benefit can be made

3. try to establish an acceptable repayment arrangement in line with the enhanced debt steer

4. if information is available which confirms that the NRP is in employment, a DEO or DER may be

issued

5. consider whether a disclosure request should be issued to the NRP's bank to allow an RDO or LSDO to be attempted.

Collectability check

54011 Where all other administrative powers have been considered the case will go through a collectability check. This will determine whether legal enforcement powers should be used to pursue the outstanding arrears.

54012 The DM should consider collectability checks in all cases when considering moving from administrative to legal enforcement powers, or beyond enforcement agent action in legal enforcement.

Initial collectability check

54013 The initial collectability check should be carried out after all administrative powers have been exhausted and before deciding whether there is a realistic expectation of collection if legal enforcement measures are deployed.

54014 There are 2 criteria that must be considered before a case can pass initial collectability check

1. the Arrears Strategy Enforcement Referral Checklist should be completed.

2. the CSA arrears balance must be above the de minimis levels of £1000 for Liability Order action.

Note: the de minimis is subject to discretion and may be overridden in exceptional circumstances.

54015 DMs should assess each case on its own merits to make a decision to either pause recovery actions, proceed with enforcement or proceed with write off. The following exceptional circumstances should be considered

1. high level complaints (ICE or PHSO)

2. judicial review

3. high profile cases (including media interest)

4. cases of blended CSA and CMS debt where there is still an active qualifying child on CMS.

54016 The CMS is unable to obtain a liability order for debt accrued before 12 July 2000. For debt relevant to this period, only administrative powers can be used to attempt collection.

Final collectability check

54017 A final collectability check will only be appropriate where a liability order for the CSA arrears has been obtained and enforcement agent action has been exhausted and the DM is deciding either to write off or to move to the next enforcement action.

Note: In Scotland this will be Attachment – see chapters 91 & 92 for further information.

54018 The DM should consider each case on its individual merits to pass the final collectability check in the following exceptional circumstances

1. high level complaint - ICE or PHSO
2. judicial review in relation to collection or enforcement action under the Compliance & Arrears Programme
3. high profile case including media interest
4. information available suggesting a realistic chance of quick collection

54019 The DM might consult the following sources of information

1. PSG
2. CRA
3. financial analysis of council tax returns and bank statements
4. HM Land Registry
5. information provided by the PWC.

Enhanced debt steer

54020 The enhanced debt steer must be applied to all cases with CSA arrears to ensure the financial ability to collect exists.

54021 Even where there is evidence of a historic liability order on a case, the principles of the enhanced debt steer must be applied. The existence of a historic liability order on a case should not mean that the case automatically progresses to the next action. A new collectability decision will be required to establish if further legal action is appropriate.

54022 The following principles in paragraphs **54023 – 54025** make up the enhanced debt steer for

1. CSA Recovery Teams
2. CSA Collections – non compliant

3. Enforcement Teams

CSA Recovery and Collections – Non Compliant

54023 If a voluntary arrangement is not made at the initial collectability decision, the case must go through each of the administrative powers at least once until

1. full lump sum payment is obtained

2. full payments are obtained at scheduling or through debt negotiation

3. financial evidence via HMRC employment income or financial intelligence (PSG, CRA, RTI) implies full debt recovery within 2 years. (HMRC provide up to date financial records which allows CMS to calculate if and how much maintenance can be taken)

4. the debt exceeds the 40% protected earnings recovery within 2 years, but is considered to be affordable or collectable over a greater period. (The protected earnings recovery ensures that the NRP is left with enough money to live on. It is set at 60% of net earnings and is the most that can be collected), or

5. partial payment for final settlement is agreed between the PWC and the NRP.

CSA Collections – Non Compliant

54024 If administrative powers in the collection cycle are unsuccessful, an initial collectability check must be conducted to assess if further pursuit is economically viable. Cases will pass if the CSA arrears balance is above the de minimis levels of £1000 for Liability Order action (a discretionary threshold).

Enforcement Teams

54025 If enforcement powers in the collection cycle are unsuccessful up to and including bailiff action, or the Scottish equivalent (Attachment), a final collectability check must be conducted to assess if further pursuit is economically viable. Cases will pass if

1. there is a high level complaint (ICE or PHSO) or Judicial Review in relation to collection or enforcement action under the Compliance & Arrears Programme, or a High Profile case (including media interest)

2. Information is already available suggesting a realistic chance of quick collection. See para **54019** above for further information.

3. It is a blended debt case with CSA and CMS debt and an active QC. See para 54015 above for further information.

Note: when considering the collectability of a self-employed NRP's debt, DMs must take into consideration any award made to the NRP by HMRC under the SEISS. See Chapter 38 - Information gathering.

Chapter 55 - DEOs and DERs

Introduction

55001 A DEO operates as an instruction to an employer to make deductions from the NRP's earnings[1] and pay the amounts deducted to the CMS[2].

Note 1: in addition to an enforced DEO, NRPs can choose a DEO as their MOP, this is referred to as a voluntary DEO.

Note 2: in general, the DEO guidance also relates to DERs for serving members of the armed forces, but DMs should be aware of important differences; DER specific guidance can be found in paragraphs **55039** to **55044**.

1 CS Act 1991, s 31(5)(a); 2, s 31(5)(b)

This guidance explains

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Arrears notices

55002 Before taking any action to enforce the collection of child maintenance arrears, including imposing a DEO or DER, an arrears notice must have been issued to the NRP.[1] See Chapter 52: Arrears method of collection, for an explanation of the requirements of an arrears notice.

1 CS (MPA) Regs 2009, regs 3 and 3A

Arrears notice has not been issued

55003 DMs must issue an arrears notice and allow the NRP 7 days to respond before imposing a DEO (or taking any other enforcement action). If the NRP contacts the CMS within this period and pays their arrears, the DM would not proceed with the DEO. If the NRP does not respond or pay their arrears within this period, the DM must make a decision whether to impose a DEO.

When a DEO may be appropriate

55004 A DEO may be imposed to collect child maintenance payments where

1. the NRP has actively refused to pay by any MOPF (wilful non-compliance) see paragraph 55013, and
2. the NRP is employed, and
3. the CMS has contact details for the NRP's employer.

Note: if the NRP has multiple employers, more than one DEO can be implemented.

Earnings

55005 Earnings[1] for DEO purposes are defined as

1. wages or salary (including any fees, bonus, commission, overtime pay or other reward or profit payable in addition to wages or salary or payable under a contract for service)
2. pension (including an annuity in respect of past service, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment)
3. statutory sick pay.

1 CS (CE) Regs 1992, reg 8(3)

55006 Earnings for DEO purposes do not include[1]

1. sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom
2. pay or allowances payable to the liable person as a member of Her Majesty's forces other than pay or allowances payable by the employer as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)
3. pension, allowances or benefit payable under any enactment relating to social security
4. pension or allowances payable in respect of disablement or disability
5. guaranteed minimum pension within the meaning of the Social Security Pensions Act 1975
6. working tax credit payable under section 10 of the Tax Credits Act 2002

1 CS (CE) Regs 1992, reg 8(4)

Note: an Armed Forces Pension is the same as any other occupational pension, and can be

subject to a DEO. However, as with all occupational pensions, if the reason it is being paid is due to disablement or disability then a DEO would not be possible.

NRP refuses to agree a preferred MOP

55007 When considering imposing a DEO to collect regular maintenance because the NRP will not agree a preferred MOP, DMs must tell them that a DEO is being considered. The NRP may provide a 'good reason' why this would be inappropriate.

Note: if the NRP will not agree a preferred MOP a default standing order should be imposed as a temporary MOP. This will ensure payments can be scheduled. If the NRP fails to make payments when they are due, the case will be in arrears and a DEO can be imposed.

Good reason not to impose a DEO

55008 DMs cannot use a DEO where there is good reason[1] not to.

1 CS (CE) Regs 1992, reg 3(3)

Factors that must be taken into account

55009 When deciding if there is good reason not to impose a DEO, DMs must consider[1] whether imposing a DEO is likely to disclose the parentage of a child and the impact of that disclosure on

1. the NRP's employment
2. any relationship between the NRP and a third party.

1 CS (CE) Regs 1992, reg 3(4)

55010 The circumstances in which good reason not to use a DEO is regarded as existing are[1]

1. a member of the NRP or PWC's family is employed by the same relevant employer as the NRP
2. that family member's employment requires knowledge of the relevant employer's functions in giving effect to the deduction from earnings order, and
3. as a consequence of these circumstances the liable person's employment status or family relationships may be adversely affected by the use of a deduction from earnings order as a method of payment.

1 CS (CE) Regs 1992, reg 3(5)

Factors that should not be taken into account

55011 When DMs are deciding whether there is a good reason not to impose a DEO they should not take into account the following factors, unless they are relevant to the matters addressed in paragraphs **55009** or **55010** above[1],

1. the NRP's preference for a different method of payment
2. the NRP does not want their employer to know they have
    2.1 a maintenance liability

2.2 collection charges

2.3 an enforcement charge

3. that a third party would become aware of the liable person's maintenance liability, a fee or the amount of a fee.

1 CS (CE) Regs 1992, reg 3(6)

No good reason: appeal rights

55012 NRPs can appeal against the decision that there is no good reason not to impose a DEO. DMs must not impose a DEO in this situation until the appeal period has lapsed. The appeal period is 30 days from the date the decision is notified. If the NRP appeals within this period the DEO cannot be imposed until the appeal has been dealt with[1].

1 CS (CE) Regs 1992, reg 3(7)

NRP demonstrates wilful non-compliance

55013 Following discussion with a NRP, if it is clear that they are wilfully refusing to pay child maintenance by any MOPF, a DEO can be imposed as an enforcement method where the DM is satisfied that this is necessary to secure payments. This is likely to be where there is sufficient evidence that other MOPFs are likely to fail. This is called wilful non-compliance.

55014 In addition to situations where the NRP actively states that they will not pay, wilful non-compliance can be assumed where a written warning has been given to the NRP that they need to contact the CMS to set up a MOPF, and they have not responded within the required time limit (14 days).

55015 If wilful non-compliance is assumed under these circumstances, and the NRP contacts us after the 14 day period has elapsed, provides a reasonable explanation for why they were not able to contact us within the required period, and offers to pay by a preferred MOPF, then the DEO should be removed, and an alternative MOPF set up.

55016 Some NRPs may refuse to provide details to set up a MOPF until they have final confirmation of their calculation amount. In this case wilful non-compliance cannot be assumed, as they are not refusing to pay altogether. In this scenario a default standing order should be set up, and the case revisited as soon as the calculation notice is issued so that a preferred MOPF can be set up. If the NRP then refuses to set up a MOPF, then this can be considered as wilful non-compliance.

55017 Where there are outstanding arrears, the normal requirements for an arrears notice apply; see Chapter 52: Arrears method of collection, for further information on arrears notices.

Normal deduction rate (NDR)

55018 The NDR is the amount of wages that will be deducted each payday, provided it does not bring net earnings below a certain amount (the protected earnings proportion, PEP, see para **55024**).

Setting the NDR: key principles

55019 It is important when DMs are setting the NDR that it is at an appropriate rate taking all the circumstances into account, including the welfare of any children. The period by reference to which the NDR is set must be the period by reference to which the NRP is normally paid; for example, if the NRP is paid weekly, then the NDR must be calculated per week. The employer

must select which period applies. Where the NDR is not paid every 1, 2, or 4 weeks, or every month, the DM must discharge the DEO[1].

Note: DMs should ensure they record the reasons for setting the NDR at a particular rate.

1 CS (CE) Regs 1992, regs 10(1)-(3); reg 20

55020 When setting up multiple DEOs the following principles should be applied when DMs are deciding the appropriate NDR for each order. The DM may need to contact the NRP or their employer(s) to clarify how much income they receive from each employment.

DEO for current liability only

55021 If the DEO is being used to collect ongoing liability only, DMs should set the NDR at the same amount as the NRP's liability, unless there is information or evidence available to indicate this will exceed the protected earnings proportion (PEP), see paragraph **55024**.

DEO current liability and, or agreed arrears amount

55022 If the DEO is being used to collect ongoing liability and / or arrears and the NRP has agreed to pay an amount towards their arrears that meets the Debt Steer

1. set the NDR at the agreed amount
2. plus ongoing liability if applicable; unless there is information to indicate that a deduction at this rate will exceed the PEP, or
3. if the NRP wishes to pay an additional amount above this rate they must do so using an alternative method of payment.

DEO current liability and, or no agreed arrears amount

55023 If the DEO is being used to collect ongoing liability and, or arrears and the NRP has not agreed to pay an amount towards their arrears that meets the Debt Steer, DMs need to determine a suitable NDR, taking into account all the circumstances of the case, and particularly

1. the Debt Steer (refer to Chapter 53: The Debt Steer for further guidance), and
2. the protected earnings proportion.

What is the protected earnings proportion (PEP)

55024 A NRP must be left with 60% of their net earnings after any deduction for child maintenance under a DEO. This is the PEP. The PEP is calculated by reference to the period by which the NRP is paid; for example, if they are paid weekly, the PEP is 60% of the net weekly earnings. Where the deduction of the NDR would reduce the NRP's net earnings below the PEP, the employer should only deduct 40% of the net earnings[1].

1 CS (CE) Regs 1992, regs 11(2) –(3)

Example

NRP John's net weekly income is normally £200. The CMS impose a DEO for £60, this will normally leave John with more than 60% of his net weekly income. However, due to unpaid leave John's net income in one week reduces to £120. Making a deduction at the NDR would leave John with less than 60% of his net income. The employer would therefore make a lower

deduction of £48 in this week.

Relevance of the PEP when setting an NDR

55025 Although responsibility for ensuring that the PEP is not breached rests with the NRP's employer, the CMS will take into account the maximum amount that can be collected when setting an NDR.

55026 The PEP means the maximum amount that the CMS can collect under a DEO is 40% of the NRP's net income. Identifying what this maximum amount is likely to be will provide DMs with a framework to determine an appropriate NDR.

Note: historic and current income figures are both based on the NRP's gross income. The PEP is based on net income.

55027 When DMs are calculating a maximum deduction rate using historic or current income details, they will need to convert the figure to reflect a percentage of net rather than gross income. This would be completed using the Employed Earners Automated Tax or National Insurance Calculators (Employed Earners ATNIC).

Issuing a DEO

55028 The DEO must be issued to both the employer and the NRP and must specify[1]

1. the name and address of the NRP
2. the name of the employer who the DEO is directed towards
3. if known, the NRP`s place of work and the nature of their work
4. where known, the NRP's work or pay number
5. where known, the NRP's National Insurance Number
6. the normal deduction rate or rates, and the date upon which each is to take effect
7. the PEP; that the employer must protect 60% of actual net earnings in each pay period
8. when deductions should be made
9. who deductions must be paid to, and
10. the address to which the amounts are to be sent.

1 CS (CE) Regs 1992, reg 9

Changing the DEO

Reviewing the DEO

55029 The DM must review the DEO where

1. there is a change in the maintenance calculation, or
2. any arrears subject to the DEO are paid in full.

Note: a maintenance calculation will only be altered if the NRP's income changes by 25% or

more. There may therefore be situations where the maintenance calculation has not been altered, however DMs should still review the arrears proportion of the NDR due to the NRP's income changing.

55030 There is no obligation to review the DEO when these changes were already known about and taken into account when the NDR was set[1].

1 CS (CE) Regs 1992, regs 17(1) – (2)

Varying the DEO

55031 A DEO may be varied following a review, or in other circumstances. It may be appropriate to vary the DEO so as to

1. increase or decrease the amount of the deduction, or
2. substitute a new employer.

Note: the DM must issue the varied DEO to the NRP and the NRP's employer[1].

1 CS (CE) Regs 1992, regs 18(1) – (2)

NRP appeals the DEO

55032 A NRP can appeal a DEO if[1]

1. the DEO is defective, **and/or**

2. the money being deducted is not classed as 'earnings' for DEO purposes.

1 CS (CE) Regs 1992, regs 22(3) and (3A)

Note: an appeal may also be made against a decision that there is no 'good reason' not to use a DEO

Defective DEO

55033 A DEO will be defective if[1]

1. the DEO does not meet the legal requirements as set out at paragraph 55028 and the requirements as to NDRs and PEPs, and
2. failure to meet the legal requirements makes it impracticable for the employer to comply with their obligation.

1 CS (CE) Regs 1992, reg 8(1)

DEOs and charging fees

55034 A DEO can be used for the payment of collection fees and enforcement fees. The figure for collection and / or enforcement fees is added to the amount of child maintenance to be collected through the DEO[1].

1 CS (CE) Regs 1992, reg 3(1)

Employer fails to comply with a DEO

55035 If an employer fails to comply with the requirements of a DEO they are guilty of an offence and can be prosecuted and fined. The employer will have a valid defence to a charge if it proves that it took all reasonable steps to comply with the requirements in question[1].

1 CS Act 1991, s 32(8) – (10)

55036 If a payment is not received from an employer when it is due, DMs should contact the employer to remind them

1. of their duties under the law, and
2. that prosecution can be considered.

55037 If further payments are not received DMs should consider enforcement action.

Note: If an employer fails to pass on deductions the NRP is still liable to pay the maintenance due. The CMS has no right to recover the deductions made from the NRP's employer. However, the NRP may have that right.

DEO inappropriate or fails before or shortly after implementation

55038 Where a DEO has been attempted on more than one occasion in a short period of time (for example 6 months) it may be appropriate to move to the next appropriate action. DMs must be able to demonstrate the reasons for such a decision (by showing that DEOs have been attempted on a number of occasions previously) in the event of a challenge by the NRP. The action to be taken will depend upon the circumstances of the case.

DERs

55039 DERs are the equivalent to DEOs made in relation to serving members of the armed forces[1]. The Ministry of Defence has no legal obligation to make deductions through a DER, but there is a memorandum of understanding in place that it will do so. The MOD may not make the deduction when the NRP is on active service.

1 AF Act 2006 & AF (FD) Regs 2009

Setting the deduction rate

55040 DERs are not limited by the PEP in the same way as DEOs are. Any decision on whether or how much to deduct under a DER is made by HM Paymaster, and the CMS has no right to challenge this decision.

55041 Despite this the DER should still indicate how much the CMS wants to collect.

In determining an appropriate rate DMs should have regard to the Debt Steer principles of

1. aiming to collect all arrears within two years
2. not exceeding 40% of the NRP's net income.

Issuing a DER

55042 Before implementing a DER DMs should contact the Armed Forces Liaison Officer to check whether the NRP is on active service

1. where the NRP is on active service but is NOT in a war zone the DER can be issued.
2. where the NRP is on active service IN a war zone the DER must not be issued. The CMS policy is to suspend the collection of debt, and review the case every 3 months to ensure

the NRP’s circumstances have not changed.

Increasing a DER

55043 Before increasing the amount to be collected via a DER DMs will need to contact the Armed Forces Liaison Officer to check whether the NRP is on active service.

1. Where the NRP is on active service but is NOT in a war zone the DER can be increased.

2. Where the NRP is on active service IN a war zone -

2.1 where a DER is already operating and collecting monies, this should remain in place

2.2. where an increase is required to an existing DER the NRP`s Commanding Officer may defer an increase until the Operational Tour of Duty is complete.

55044 When DMs have decided to issue and or increase a DER, it should be sent to the centralised MoD address:

JPAC Process Team MP335

SPVA

Kentigern House

65 Brown Street

Glasgow

G2 8EX

Chapter 56 - Deduction Orders

Introduction

56001 Deduction orders allow the CMS to instruct a bank or building society to deduct payments from an NRP's bank account[1].

1 CS Act 1991 s32A – 32K; CS (CE) Regs 1992, Part 3A

This guidance explains

Types of deduction orders 56002 – 56004

Types of accounts to apply a deduction order against 56005 – 56009

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Types of deduction orders

56002 Deduction orders are an administrative method of collecting child maintenance arrears, which means they can be imposed without court authorisation. There is no requirement for a liability order to be in place before a deduction order is imposed.

56003 There are two types of deduction order – Regular Deduction Order (RDO) and Lump Sum Deduction Order (LSDO).

56004 The bank can make an administrative charge against the NRP for an RDO and LSDO. See paragraphs **56070-56071** for more information about charges and minimum amounts.

Types of accounts to apply a deduction order against

56005 Deduction orders can be applied to most bank or building society accounts in the UK. The only exclusions are[1]

1. accounts where the NRP does not have a beneficial interest in the funds (for example, where the NRP is holding the money in the account on trust for someone else), and

2. accounts which are used wholly or in part for business purposes, unless the NRP is a sole trader

or a partner (according to the Partnership Act 1890).

1 CS (CE) Regs 1992, reg 25X

Note: deduction orders cannot be applied to offshore account that are held with UK banks.

Example

NRP Stephen holds an account in Jersey with Halifax. Although this is a UK based bank, we are unable to apply a deduction order because Jersey is not part of the UK and therefore the account is offshore.

56006 Deduction orders can be used as a method of collecting from joint accounts, unlimited partnership bank accounts and sole trader accounts.

56007 The CMS is unable to make deductions from Limited Liability (Ltd) accounts, only partnership business accounts (where the NRP is a partner according to the Partnership Act 1890) without Limited Liability.

56008 Partnership business accounts can be difficult to proactively identify through existing trace tools used to identify banks and building society with which the NRP has a financial relationship.

56009 DMs should use the full range of tools and sources of information available to identify any potential accounts so that a referral can be considered. This includes, but is not limited to

1. CRA
2. PSG
3. PWC information
4. Companies House
5. Third Party Information Datamart

Note: Where a self-employed NRP has become non-compliant, DMs can access information about payments made by HMRC under the SEISS. DMs should use this information to inform discussions with the NRP with a view to taking DO action. For more information on the SEISS, see Chapter 38 - Information gathering.

Referral Criteria

56010 Cases should only be referred to the Deduction Order Team if the following criteria is satisfied

1. the CMS has a confident address for the NRP

2. the NRP has missed a payment of child maintenance

3. the DM is aware that the NRP has an account with a specific bank or building society

4. the NRP has refused to make or comply with a payment agreement that meets the debt steer, see chapter 53 for further information on the debt steer.

5. a DEO at a rate allowing an acceptable amount to be collected towards the arrears is

5. 1 not available, or

5.2 not able to be implemented

6. there are no outstanding MRs or appeals

7. there are no issues concerning welfare of any children involved

8. an arrears warning notice has been issued and the NRP has not since been compliant for a continuous period of 12 weeks

9. the PWC has been contacted to ensure they want the debt collected

10. there are no outstanding changes of circumstance on the case

11. the case has not been referred in the last 12 months and

11.1 rejected or deselected unless new information has become available or

11.2 a reasonable period of time has elapsed and there is reason to believe a new referral may be successful.

Parallel action

56011 As long as the above criteria in paragraph **56010** has been met, an RDO may be considered for recovery of the arrears at the same time as a DEO is in force for deduction of ongoing maintenance and arrears.

Debt under £500

56012 Consideration should be given to the reasonableness and proportionality of recovering child maintenance arrears when making a referral for deduction order. It may not be reasonable to pursue a LSDO which attracts an enforcement fee of £200 if the outstanding arrears are low, unless there are compelling reasons to do so and the specific case circumstances warrant it.

Fast track referrals

56013 A fast track referral should be submitted if information is received indicating that the NRP has had a significant increase in their financial status or that they are preparing to leave the country.

Disclosure

56014 Disclosure is the process used by the Deduction Order Team to ask the NRP's bank or building society for information about any accounts that are held.

56015 Before issuing a disclosure request to an organisation it is important to be sure that they can be treated as a deposit taker. This is because deduction orders can only be made against organisations classified as deposit takers.

56016 Where it is identified that the NRP has a financial relationship with more than one bank or building society, disclosure requests should be sent to all. This will ensure as much

information is obtained as possible about the NRP's financial circumstances and the DM can properly identify the most appropriate action.

Note: if disclosure requests are issued to more than one organisation, the DM should normally wait for all responses to be returned before deciding what action is appropriate. However, this will not be necessary if the first response received identifies an account with sufficient funds for the full arrears to be collected.

Bank and building society obligations

56017 When the CMS asks a bank or building society for information they must provide any information which is necessary to support the enforcement of child maintenance. This can reasonably include:

1. full details of all accounts held where the NRP is an account holder, and

2. details of any accounts closed in the last 12 months

Note: when the above information is in relation to an account solely in the NRP's name, this information should be provided within a reasonable timescale, usually within 21 days. However, before making a RDO or LSDO in respect of a joint account, the bank or building society must provide the required information within 14 days.

Disclosure response received

56018 When the disclosure response is received, the DM must check whether the NRP has made any payments or a payment agreement since the disclosure request was issued. The NRP may have

1. paid their arrears in full, or

2. made a payment agreement that complies with the debt steer

56019 If either of the above outcomes have occurred, it will not be appropriate to continue with deduction order action. If neither of these outcomes has been reached the DM must review the information provided to decide whether deduction order action can be taken.

What information will the bank or building society provide?

56020 The type of information a bank or building society may include is

1. whether the NRP holds any accounts with them

2. confirmation if any accounts are trust accounts or charity accounts, as deduction order action cannot be taken against them.

56021 If the NRP is an account holder with the bank or building society, the deposit taker should also confirm

1. the NRP's most recent postal address (if this is different to the address included in the disclosure request)

2. any telephone numbers held for the NRP, and

3. any other names or pseudonyms that the NRP uses.

56022 For each sole account that the NRP holds, the deposit taker should also confirm

1. the name in which the account is held
2. the type of account
3. the account number and sort code
4. details of any withdrawal restrictions on the account
5. the account balance and confirmation of the date the balance check was taken
6. an account transaction history for the last three months (starting back from the date the disclosure request is actioned).

56023 For joint accounts, unlimited partnership accounts and sole trader accounts where the NRP is one of the account holders, the deposit taker should confirm:

1. the name of each account holder
2. the residential address or correspondence address for each account holder
3. the type of account
4. the account number and sort code
5. the account balance
6. details of any transactions on the account in the previous six months.

56024 Bank statements for the previous three months should help the DM to establish ownership of the funds although CMS may request statements for up to six months where necessary[1].

Note: Where it is not possible to establish how much of the funds within an account belong to the NRP, an assumption can be made that the NRP and other account holders have an equal share of the funds.

Note: Where the NRP is an account holder in an unlimited partnership or sole trader account, deductions cannot be made if the account balance is less than £2,000 before it is shared among the account holders.

1 CS (CE) Regs 1992, reg 25XC

Deciding on a suitable deduction order

56025 When all the information requested from the bank or building society has been received, the DM will need to decide

1. whether it is possible and appropriate to implement a deduction order
2. if so, what type of deduction order should be imposed and for what amount.

56026 When deciding what type of deduction order to impose the DM should consider the disclosure information and the arrears owed.

56027 A LSDO will always be the preferred method of collection if the NRP has a balance available that will allow a one off payment to be collected towards their arrears.

56028 The DM should consider an RDO if

1. there are insufficient funds for a LSDO to be attempted (on either a savings or a current account)

2. there are insufficient funds available to secure the full debt by LSDO but there are funds available in other accounts

3. the NRP is self-employed but the arrears are below the £500 de minimis for a LSDO to be considered

Note: DMs should remember that making a referral for RDO or LSDO is a discretionary decision and all decisions should be fully documented. For more information on discretionary decisions see Chapter 96: Evidence & decision making.

NRP has more than one account

56029 Where disclosures show that the NRP has access to more than one account the DM will need to decide which of those accounts is more appropriate to make deductions from. Available accounts should be considered in the following order

1. accounts held solely in the NRP's name

2. where there are insufficient funds available to satisfy the full debt balance within any solely held accounts, consider whether there are sufficient funds available in any jointly held private accounts

3. where there are insufficient funds available within solely held accounts and jointly held private accounts, consider any jointly held business accounts without Limited Liability if the NRP is a sole trader or partner (according to the Partnership Act 1890).

56030 Where funds are available in more than one account, the DM should consider whether a combination of deduction order types could be used to secure the outstanding child maintenance

Example

NRP Ted has a sole personal account and a shared business account as a partner in that business (according to the Partnership Act 1890). The DM could consider a LSDO from the shared business account that would satisfy half of the outstanding liability and a RDO on the solely held account to secure the balance.

LSDOs

56031 An LSDO instructs the NRP's bank or building society to freeze and then deduct a lump sum from the NRP's account. If the full deduction cannot be deducted in one amount, the order can be left in place to collect the remainder if or when further money is credited to the account.

56032 A bank or building society cannot allow an NRP to become overdrawn as a result of a LSDO.

56033 Banks and building societies can charge the NRP up to £55 for every deduction made under a LSDO[1]. If the bank or building society is going to make a deduction of this type, they will do so at the point the deduction is made from the account on the behalf of CMS, not at the point that the funds are frozen.

1 CS (CE) Regs 1992, Reg 25Z(b)

56034 A LSDO can only be made if the account has a credit balance above a prescribed minimum amount plus the bank's administrative charge on the date the deduction is due to be made. This means there must be a minimum balance of £110 (the prescribed minimum amount of £55 + the amount of the bank's administrative charge - also £55)[1].

1 CS (CE) Regs 1992, Reg 25Q(2)

Interim LSDO

56035 Before a LSDO can be made, an interim order must be issued first. This instructs the bank or building society to freeze funds in the specified account up to the value specified in the order[1]. The account holders are given an opportunity to make representations about the proposal to make a final order.

1 CS Act 1991, s 32E – 32G

56036 The bank or building society must comply with an interim LSDO as soon as possible after it is served but will only freeze an amount that is in credit.

56037 Before issuing a LSDO, the DM must decide how much the order should be for:

1. if making a LSDO against a savings account, the DM should make the order for the full amount of the child maintenance arrears;

2. if making a LSDO against a current account, the DM must consider what will be an appropriate amount to avoid the NRP or any other account holders suffering hardship in meeting their ordinary living expenses.

56038 In deciding whether there is a risk of hardship, DMs should consider the account balance in the previous 3 months:

1. If, during that period, the NRP’s proportion of the balance in the account has never fallen below an amount equivalent to the CMS debt, then an LSDO can be considered for the full debt.

2. If the balance in the account is lower than the full debt, but has never fallen below an identifiable amount, then an LSDO can be considered for that identified amount.

Note: It is particularly important that up to date balance details are used when deciding an appropriate amount to pursue in current account cases. Up to date statements should be requested to ensure the amount pursued reflects the NRP’s current financial position.

Example

NRP Mark has child maintenance arrears of £4,500 and the current balance of his bank account is £4,852.26. Throughout the previous 3 months there is evidence of money coming in and out of the account, but the balance has never fallen below £2,312.00. This suggests that Mark is

meeting his ordinary living expenses without drawing on £2,312. In this case it would be reasonable for the DM to apply for a LSDO for £2,312.

Exceptional lump sums paid in: balance exceeds exceptional amount

56039 LSDO action can also be taken on a current account where the balance is in credit and there is evidence to suggest an amount has been paid in which is not part of the NRP's usual income.

56040 In these circumstances, an LSDO can normally be made for either the amount paid into the account or the amount of the child maintenance arrears if this is lower. The balance on the account throughout the previous 3 months will not be relevant, unless the account was overdrawn before the money was paid in, as an LSDO can only be made for an amount up to the balance on the account.

56041 It is reasonable to assume that targeting an exceptional payment will not cause financial hardship, as it will not be intended for ordinary living expenses. NRPs have the opportunity to apply for funds to be released if the exceptional payment is intended to cover essential expenditure.

Note: this approach can be applied in cases where the balance in the account at the date of disclosure exceeds the amount of the exceptional payment.

Example

NRP Mark has child maintenance arrears of £7,000. His current account is overdrawn by £3,000. Mark inherits £5,000 which is paid into his current account and moves the balance into credit of £2,000. It would be reasonable for the DM to apply a LSDO for £2,000.

Exceptional payment in: balance below exceptional amount

56042 Where the balance is below the exceptional amount, the DM should consider making an order for an amount equivalent to the remaining balance of the exceptional payment, to reduce the risk of financial hardship.

56043 The DM should consider

1. any 'usual income' amounts paid in between the date of the exceptional payment and the date of disclosure to deduct these from the total balance into the account, ensuring the CMS will not be targeting any of the NRP's usual income

2. the NRP's usual monthly expenditure to ensure that deducting usual income payments in from the account balance will leave the NRP with a sufficient amount to cover their usual monthly expenditure.

Example

NRP Mark receives an exceptional payment of £10,000. Between the date of the exceptional payment being received and the date of the disclosure, his usual income of £1,500 was also paid into the account. Mark has usual monthly outgoings of £1,000. Between the date of the payment and the date of disclosure, these usual outgoings leave his account, but a further £3,000 in outgoings is also paid out. The balance at the date of disclosure is therefore £7,500.

Mark's arrears are £8,000 at the date of disclosure. Following the principles outlined above, the DM applies for deduction of £7,000, leaving Mark with £500 of his usual monthly income after his usual expenses of £1,000 have been paid.

Serving an interim LSDO

56044 Where an interim LSDO has been made, a copy of the order must be served on the

1. deposit-taker (bank or building society)
2. the NRP, and
3. any other account holders[1].

1 CS Act 1991, s 32E(6)

56045 In the case of a joint account or an unlimited partnership account, the order must be accompanied by a notice containing the following information

1. the name of the liable person
2. that an interim order has been made and that a final order is proposed
3. that the interim order or final order shall act as an instruction to the deposit-taker not to do anything to reduce the credit of the account to below the amount specified in the order
4. that the order is to secure child maintenance payable by the liable person
5. the date proposed for paying the amount secured by the order
6. that the account holders may make representations about the proposal specified in the order
7. that a final order is likely to be made in the terms set out, if representations are not made
8. the period for making representations[1].

1 CS (CE) Regs 1992, reg 25MA

Response from the bank or building society

56046 Banks or building societies must comply with a LSDO as soon as practically possible. Within 7 days of the order being served, the bank or building society must inform the CMS[1]

1. whether the account specified in the order does not exist, cannot be traced or has closed
2. whether the amount standing to the credit of the account specified in the order is at least the same or less than the amount specified in the order, and where it is less, that amount
3. where the name of the liable person specified in the order is different to the name in which the account specified in the order is held, whether the account was previously held in that name and if so, the new name in which the account is held
4. whether the liable person holds another account and, if so, the details of that account, including the type of account, the account number and sort code, and whether the credit in the account is the same or less than the amount specified in the order, and where it is less, the amount.

Interim LSDO not implemented

56047 If the bank or building society cannot set up the order they must inform the CMS

1. if the account specified in the order does not exist, cannot be traced or has been closed
2. if there are insufficient funds in the account (balance below the £110 minimum)
3. if there is a different name on the account to that specified in the order, and additional information, if appropriate.

Interim LSDO implemented

56048 Where the bank or building society is able to implement the LSDO they must tell the CMS whether the amount in the account is the same or less than the amount in the order.

56049 No action should then be taken for 14 days from the date that the order was served on sole accounts or 28 days on joint accounts, as the NRP can dispute the order within this period by making representations.

Note: If the NRP does not dispute the order within 14 or 28 days respectively, a final order should be served. Refer to paragraphs **56059-56066** on Final LSDO for further advice.

Interim LSDO: disputes

If a NRP or their bank or building society, or another account holder of a joint account, want to challenge an interim lump sum deduction order they can

1. make representations against the interim order, or
2. make an application for all or part of the funds that have been frozen to be released.

Representations
56050 NRPs and their bank or building society can make representations against an interim order if they do not think the action proposed is correct[1].

1 CS Act 1991 s 32F(1)

Note: there is no right of appeal against the decision DMs make on a representation. Any appeal would need to be made against the subsequent final order.

Representation: outcomes
56051 When DMs have considered the representations they will need to decide either

1. that the representations should be accepted. This would mean it is not appropriate to proceed with the LSDO. In this situation, the interim order should be discharged, or
2. that the representations should be accepted in part. This would mean that it is appropriate to proceed, but that the final order should be for a lower amount, or
3. that the representations should be rejected. This would mean the DM should proceed to make the final order for the same amount as was specified in the interim order.

Application to release funds

56052 NRPs and their bank or building society can apply to the CMS for all or part of the funds frozen under an interim order to be released[1]. This type of application is required where the NRP or their bank or building society does not dispute the CMS's right to collect the amount claimed by a deduction order, but states they need all or part of the funds to be released so they can be used for other purposes, for instance in cases of hardship.

1 CS (CE) Regs 1992, Reg 25N

56053 Applications for funds to be released can be made at any time from the date an interim order is served until the date the funds have been released and paid to the CMS.

56054 The permitted grounds for an application to release funds are[1]

1. that the NRP, their partner or any ROC is suffering hardship in meeting ordinary living expenses

2. for joint and business accounts, another account holder, their partner or a ROC is suffering hardship in meeting ordinary living expenses

3. that the NRP or another account holder is under a written contractual obligation to make a payment, which was agreed before the interim order was served

4. the bank or building society is able to show that within the 30 days prior to the interim order being made, it intended to use funds in the account to settle outstanding debts

5. the bank or building society has a contractual obligation with the NRP or another account holder requiring a specified amount of credit to be available in the targeted account. For example: the bank gave the NRP a loan or mortgage on condition that they maintain a credit balance in their account as security

6. any other circumstances that the CMS considers appropriate.

1 CS (CE) Regs 1992, Reg 25N

Note: DMs can only consider releasing all or part of the funds secured under the interim order, if the NRP or their bank or building society provides sufficient information to confirm that one of the above grounds applies.

56055 If additional information is needed, the DM should allow reasonable time to provide it. What is reasonable will depend on the circumstances and the type of information or evidence required.

56056 If the NRP, other account holder, bank or building society fails to provide the required information within the time allowed, the DM can either allow additional time or make a decision using the evidence held.

56057 The DM must ensure that the reasons for their decision are recorded in full. See Chapter 96: Evidence and decision making, for further information on discretionary decisions.

Note: NRPs and banks or building societies can appeal against any decision made on an application to release funds.

56058 The outcome of an interim LSDO application to release funds will be one of the following

1. application allowed in full - all funds can be released

2. application allowed in part - some funds can released

3. application rejected - no funds are released

Final LSDO

56059 A final LSDO notifies the NRP and the bank or building society of the final figure being requested. The amount in the final lump sum deduction order will therefore reflect any adjustments that have been made since the interim order was issued.

It is essential that the DM does not issue a final lump sum deduction order until

1. 14 days (sole accounts) or 28 days (joint accounts) have elapsed since the interim order was served

2. any representations against the interim order have been dealt with and responded to.

Serving the LSDO

56060 As the funds in the NRP's account are already frozen, the final order should be served on the bank or building society and the NRP at the same time.

56061 Once the final order is served no further action should be taken for a period of 21 days as the NRP can appeal against the final order in this period.

56062 If the NRP does not make an appeal within this period the DM should request the funds from the bank or building society

Note: NRPs or their bank or building society can appeal against the making of a final LSDO. They can also appeal against any decision made on an application to release funds, and still apply for funds to be released after the final order has been served- until the funds have been paid to the CMS.

Appeals against a final LSDO

56063 Appeals must be lodged within 21 days of the order being served with

1. the Family Court in England and Wales
2. the Sheriff Court in Scotland
3. the Magistrates' Court in Northern Ireland[1]

Note: Appeals should be made directly to the court and not CMS.

1 CS (CE) Regs 1992, reg 25A

Appeal made
56064 When the CMS receives confirmation that an appeal has been made against the making of a final LSDO (either from the NRP, bank, building society or directly from the court) the DM should not take any further action on the case until the appeal has been dealt with. Funds cannot be requested from the bank or building society until the outcome of the appeal is known.

56065 If the party making the appeal fails to inform the CMS that they have done so, and CMS receives confirmation of the appeal from another source, the DM must inform the court of this

and advise them

1. how CMS heard about the appeal
2. the date that CMS heard about the appeal
3. that CMS are responding to the notification of appeal

Note: a copy of the notification CMS received about the appeal should also be included to confirm how CMS received this information.

56066 Whenever CMS receives notification of an appeal, it is essential that the details of the case and the order are checked to ensure that everything is accurate and that there are no grounds on which the DM should vary, lapse or discharge the order. If the DM is in any doubt at this stage they should consult policy colleagues.

Note: if it is appropriate for the order to be changed in any way, the court must be informed of this immediately.

RDOs

56067 An RDO instructs the NRP's bank or building society to make periodic deductions from their account and pay them to the CMS[1]. Deductions can be made weekly, fortnightly, four weekly or monthly.

1 CS Act 1991, s 32A

56068 RDOs are not intended to be an on-going method of collection. Where possible, they should be used as a negotiation tool to help arrange a preferred method of collection with the NRP.

56069 The amount requested under an RDO should not exceed 40% of the NRP's gross weekly income[1]. Where maintenance is paid monthly, the 40% limit should be calculated using the equivalent monthly amount based on the NRP's gross weekly income.

1 CS (CE) Regs 1992, Reg 25C

Bank charges and minimum balances

56070 For RDOs, the bank can make a £10 charge for every deduction made[1].

1 CS (CE) Regs 1992, reg 25Z

56071 A deduction must not be made where the credit of the account is below the minimum amount on the date the deduction is due to me made. The prescribed minimum amount[1] (plus the amount of any administrative costs) is

1. £40 where the deduction period is monthly
2. £10 where the deduction period is weekly
3. £10 for each whole week in the period and £1 for each additional day.

1 CS (CE) Regs 1992, reg 25D

Maximum deduction rate

56072 If a decision is made to impose a regular deduction order, an appropriate deduction rate muse be decided. The amount deducted by a regular deduction order must not exceed

1. 40% of the NRP's gross weekly income or
2. £80 per week if a default maintenance decision is in place[1].

1 CS (CE) Regs 1992, Reg 25C

Deduction frequency

56073 RDOs should normally be based on a monthly frequency. An alternative frequency should only be applied if the disclosure information indicates this is more appropriate. If, for example, there is evidence that the NRP is paid weekly.

Selecting the first deduction date

56074 When an RDO is issued, the DM must indicate the date that they want the first deduction to be made on. This date must be at least 7 days after the date that the order will be treated as served (to ensure the bank or building society has sufficient time to implement the order before the first payment is due) but no more than 12 days after the order is treated as served (to reduce the risk of the NRP moving their funds).

56075 When the DM is deciding the most appropriate date for the first deduction, they should use the disclosure information to identify a date that will provide the highest chance of a full deduction.

Serving an RDO

56076 When the DM has decided an appropriate deduction rate, frequency and date of first deduction, the RDO can be served. The order should be sent to the NRP and their bank or building society at the same time.

56077 If the chosen account is a joint account, before the RDO can be made, a pre-representation letter must be sent to the NRP and any other account holder. The letter advises that the RDO will be made unless an agreement is reached.

56078 If no agreement is reached or there is no response to the pre-representation letter, the DM must serve notice providing the following information

1. that the CMS is proposing to make an order in respect of the account
2. the name of the liable person
3. the account number and sort code
4. that the order is to secure payment of child maintenance payable by the liable person
5. the proposed dates on which the deductions will be made
6. that each account holder may make representations to the CMS against the proposed order
7. that they may make representations against the proposed amounts
8. the period for making representations and

9. that if representations are not made, it is likely that the order to make deductions will be made at the proposed amounts[1].

1 CS (CE) Regs 1992, reg 25A1

Representations

56079 Representations must be made to the CMS within 14 days and do not need to be made in writing.

56080 Where representations are made and accepted, the RDO may need to be varied or lapsed and alternative actions will need to be considered. See Chapter 71: Legal enforcement (England & Wales) or Chapter 81: Legal enforcement (Scotland), for more information on alternative enforcement options.

56081 Where representations are not made or are made and rejected, the RDO can be set up.

RDO not implemented

56082 If the bank or building society are not able to set up the RDO they must inform the CMS of this and confirm if the account specified in the order does not exist, cannot be traced or has been closed.

56083 If there is a different name on the account to that specified in the order, the bank or building society must inform the CMS if the account was previously held in the name on the order. If so, they must also confirm the name in which the account is now held.

RDO implemented

56084 The NRP's bank or building society must comply with the RDO immediately. The first deduction should be made on the date specified in the order.

56085 The bank or building society should ensure this payment is received by the CMS 10 calendar days from the date the deduction is due.

56086 Once the first payment resulting from a RDO on a joint or business account is received, the payment will be held for 14 days before being released to the PWC. This means that if there is a dispute the payment can be returned to the account holders without the PWC being overpaid.

RDO disputes

56087 If a NRP or their bank or building society wants to challenge a RDO they can

1. apply to the CMS for the order to be reviewed, or

2. make an appeal to the Family Court or Sheriff Court in Scotland[1].

1 CS (CE) Regs 1992, Reg 25G, 25AB

56088 Appeals to the Family Court or Sheriff Court can either be

1. against the RDO being made or

2. against the CMS's decision on an application for review.

Review of a RDO

56089 A request to review[1] a RDO can be made on the grounds that

1. the NRP does not have a beneficial interest in some or all of the amount held in the specified account

2. there has been a change in the maintenance calculation

3. any amounts payable under the order have already been paid

4. a maximum deduction rate has been calculated but there has been a change to the NRP's current income

5. an incorrect amount has been specified in the order

6. the order does not specify the amount and, or date of the regular deduction

7. the order does not specify the account in respect of which it is made, and, or

    7.1 does not address the deposit-taker with whom the account is held and, or

    7.2 does not specify a date upon which it shall have effect, or

8. the maximum deduction rate requirements have not been correctly applied

1 CS (CE) Regs 1992, Reg 25G

56090 All joint and business account holders have the right to apply for a review of the order on the additional grounds that

1. the amount being contributed to the account by the liable person has decreased

2. the amount being contributed to the account by the liable person is expected to decrease within the next three months

3. representations against the proposed order were not made and the DM is satisfied that the account holder had a sound reason for not doing so

56091 Evidence may be required in support of the grounds upon which the request to review the order is made.

Variation of a RDO

56092 Where a request has been made to review the order, or following a successful appeal against the maintenance calculation or the RDO, the DM may decide to vary the amount or dates of the order[1].

56093 Before making the variation, the account holders (including the liable person) must be notified of the proposal to vary the order, explaining the reason why and allowing further representation to be made within 14 days.

1 CS (CE) Regs 1992, Reg 25I; 25IA

Lapsing of a RDO

56094 An order to make regular deductions from an account may lapse under certain circumstances[1]. This means that although deductions may cease, the order itself remains in force. A RDO may lapse if the DM is satisfied that it is reasonable in all the circumstances, and

1. the NRP has agreed to pay the child maintenance due by an alternative method, or
2. there are insufficient funds in the account for a deduction to be made, on two consecutive deduction dates, unless the DM has decided that the order is to continue for a greater number of deduction dates.

1 CS (CE) Regs 1992, Reg 25J

56095 Where an order to make deductions from a joint account has been made, the order may lapse if

1. there is evidence that the NRP has ceased making contributions to the account, or
2. the NRP is expected to cease making contributions to the account, within the next deduction period

Revival of a RDO

56096 Where an order to make regular deductions has lapsed because the DM is satisfied that one of the relevant criteria has been met, although deductions will have ceased, the underlying order will remain in force and can be revived, including in respect of a joint account[1].

1 CS (CE) Regs 1992, Reg 25K, 25KA

56097 A lapsed RDO may be revived if the DM is satisfied that

1. a payment agreement which led to the order being lapsed, has broken down
2. there are now sufficient funds in the account for deductions to be made
3. where the NRP had previously ceased making contributions to a joint account, they have started making contributions again

56098 The account holders must be notified of the proposal to revive the order, explaining the reason why and allowing further representation to be made within 14 days[1].

1 CS (CE) Regs 1992, reg 25KA

Appeals against a regular deduction order or refusal to review

56099 Appeals must be lodged (within 21 days of the order being served) at[1]

1. the Family Court in England and Wales
2. the Sheriff’s Court in Scotland, or
3. the Magistrates' Court in Northern Ireland.

1 CS (CE) Regs 1992, reg 25AB

England and Wales

56100 Form N161 which is available from the court or on the internet at www.hmcourts-service.gov.uk. Guidance on completing the appeal form is also available from either of these sources.

Scotland

56101 An NRP or deposit taker who is based in Scotland can lodge an appeal in the sheriff court by completing Form 5AB. This form can be accessed at the Scottish Court Service webpage. The NRP and, or the court should then provide a copy of this form to CMS.

56102 Once the copy of Form 5AB is received by the Deduction Order Team, contact should be made with the contracted solicitors, Harper Macleod, to advise of the appeal hearing date and instruct that they will be required to represent the CMS at the appeal hearing. An appeal pack should then be prepared and submitted to the solicitors within 14 days following the receipt of the Form 5AB.

Appeal made

56103 When an appeal is made against a regular deduction order or refusal to review, it is not necessary for deductions to be suspended under the order unless the court orders a stay of proceedings or directs that regular deductions must cease pending the court hearing outcome being decided. If this happens, any action on the case must be suspended until further notice from the court.

56104 There are no prescribed grounds for an appeal against the making of a regular deduction order. CMS Solicitors will guide the Deduction Order Team as to the court procedure and action required.

56105 The party making the appeal is supposed to inform the CMS at the same time as the appeal is lodged with the court. Where this happens, an appeal pack must be completed and submitted to the court within 14 days of the date that form N161 is received.

56106 If the party making the appeal fails to inform the CMS that they have done this and the DM receives confirmation of the appeal from another source, they must inform the court of this and advise them

1. how CMS heard about the appeal
2. the date that CMS heard about the appeal
3. that the DM is responding to the notification of appeal

Note: A copy of the notification CMS received about the appeal should also be included, to confirm how this information was received.

56107 Whenever CMS receives notification of an appeal, it is essential that the details of the case and the order are checked to ensure that everything is accurate and that there are no grounds on which the DM should vary, lapse or discharge the order. If the DM is in any doubt at this stage, they can consult policy colleagues.

Note: If it is appropriate for the order to be changed in any way, the court must be informed of this immediately. The party that made the appeal should also be informed of the action CMS have taken and asked if they now wish to withdraw their appeal. If the appeal is not withdrawn the DM should await notification of the hearing date.

Appeal outcomes

56108 For both LSDO and RDOs the court will decide the outcome of the appeal, which could

be any of the following

1. affirm the order or decision, meaning the appeal is not allowed as the court considers the original order or decision correct

2. set aside the order or decision, meaning the appeal is allowed and the order or decision appealed against no longer exists

3. send the order or decision back to the CMS to reconsider with directions, for example that the order should be varied or that funds should be released

4. refer any application or issue back to the CMS for determination, for example where we have previously refused to review a decision, the court can ask us to look at the decision again

5. costs order (where the court orders CMS or the appellant to pay the other party's costs)

56109 Depending on the court's decision, the DM will need to either:

1. review the original review decision (as directed by the court)

2. vary, lapse or discharge the order, or

3. leave the order as it stands.

Chapter 57 - Suspending or pausing collection of Child Maintenance arrears

Introduction

57001 The CMS may suspend or pause the collection of child maintenance arrears. If there is a permanent inability to collect the arrears, DMs must consider suspending the arrears. If the inability to collect arrears is only temporary, DMs must consider pausing the arrears.

57002 Unlike cases where a lawful and correct decision to write off debt has been made and clearly communicated to the individual, if arrears of child maintenance are suspended or paused, the suspended or paused debt still exists and remains collectable.

Note: the terms “arrears” and “debt” are used interchangeably in this guidance and are generally used in the same context unless specifically stated otherwise.

This guidance explains

Completing a case check 57003 – 57005

Suspending or pausing collection of arrears 57006 - 57007

Suspending collection of arrears 57008 - 57016

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Completing a case check

57003 Before a decision can be made to suspend or pause collection of child maintenance arrears, DMs must complete a thorough check of the case. This will assist in establishing whether it is appropriate to suspend or pause collection and ensure accuracy of the debt amount. The check must be a full check and include

1. completing any outstanding change of circumstances
2. confirming the debt amount is correct, **and**
3. considering both clients’ circumstances.

57004 The DM should use their judgement and knowledge of the case to make a decision as to whether it is appropriate to suspend or pause collection of the arrears.

57005 The length of time for which arrears are suspended or paused is at the discretion of the CMS and set as necessary. A review date cannot be set for a period of longer than 12 months.

Note: when considering suspending or pausing arrears, DMs must determine whether enforcement action is feasible and can still be taken.

Suspending or pausing collection of arrears

57006 A decision made in respect of suspending or pausing arrears is a discretionary decision and must be fully documented.

57007 The types of debt that may be considered for suspension or pausing are

1. child maintenance arrears owed by the NRP

2. other liability debt including

    2.1 any debt that may be owed by a PWC, **or**

    2.2 other debts owed by the NRP, such as DNA test fees and court costs.

Suspending collection of arrears

57008 Suspending the collection of arrears may be appropriate where it will never be possible to recover the debt and where write off is not appropriate.

57009 The following paragraphs provide some examples of scenarios where it may be appropriate to suspend debt collection and the points DMs must consider.

Death of the NRP: other liabilities

57010 Other liabilities such as DNA fees, court costs and or fees and overpayment of a refund or reimbursement cannot be recovered by making a claim against the NRP's estate. Other liabilities debt does not meet the criteria for write off, therefore, the other liabilities debt must be suspended.

Note: DMs will have to be satisfied that the notification of the NRP`s death is factual. Refer to Chapter 41: Verification of death, for further information.

NRP in residential care

57011 Where the NRP is in a residential care home or nursing home, and in receipt of a benefit, pension or allowance that would otherwise result in a flat rate liability, or who has the whole or part of the cost of their accommodation met by a local authority, consider suspending or pausing the debt.

57012 If there is evidence to indicate that the NRP is unlikely to be discharged from the residential care or nursing home, it would be appropriate to suspend the debt.

57013 If there is any indication that the NRP may be discharged from a residential care or nursing home, see paragraph **57017** when pausing arrears may be appropriate.

NRP abroad

57014 Where a NRP is resident abroad and no longer habitually resident in the UK, DMs must consider suspending or pausing collection of the arrears, unless the NRP is paid by a UK employer (in which case a DEO may be appropriate – see Chapter 55), or they have assets in the UK (in which case other enforcement actions may be appropriate). Refer to Chapter 37: Applications, for further information on habitual residence.

Death of PWC: overpayment

57015 Where a PWC dies and they have an overpayment of child maintenance, if there are no arrears to allow the overpayment to be offset against, the debt cannot be pursued. The CMS do not have the legislation to write off debt which is due by a PWC.

57016 DMs must be satisfied that the notification of the PWC`s death is factual. Refer to Chapter 41: Verification of death, for further information.

Pausing collection of arrears

57017 Pausing collection of arrears may be appropriate in sensitive circumstances or when enforcing recovery would be unusually difficult. A review date can be set to monitor a change of circumstances where it would be appropriate to collect the arrears. A review date can be set as required, provided it does not exceed 12 months and a further review date set as necessary.

57018 The following paragraphs provide some examples of sensitive circumstances where it may be appropriate to pause collection of arrears and the points DMs must consider.

Death of NRP (see also Chapter 61: Recovery from Deceased Estates)

57019 When a NRP has died, the CMS can make a claim for any child maintenance arrears against the estate of the deceased NRP[1]. Recovery from a deceased's estate action may take considerable time, it is not uncommon for recovery to take up to two years from the date of the NRP's death. Until the outcome (payment and, or write off action) of the claim from the recovery from the deceased's estate action is known, DMs will have to consider pausing the arrears.

Note: DMs will have to be satisfied that the notification of the NRP's death is factual. Refer to Chapter 41: Verification of death, for further information.

1 CS(MPA) Regs 2009, reg 11

Death of PWC

57020 Where a PWC has died, only an executor of the PWC`s estate or a person with a `grant of representation' can request collection of child support arrears.

57021 When a PWC dies, any outstanding child maintenance arrears will be suitable for write off. However, before doing so the CMS must try and trace an executor (or a person with a grant of representation) to give them the chance to make representations asking for collection of the arrears. Even if they do make representations, the CMS will not necessarily decide to collect and may make the decision to write off.

57022 DMs will have to consider pausing the arrears in the period when it is being determined if there is an executor (or a person with a grant of representation) and to allow them to make representations.

Note: DMs will have to be satisfied that the notification of the PWC's death is factual. Refer to Chapter 41: Verification of death, for further information.

Sequestrated debt (only refers to Scotland)

57023 A NRP is discharged of any debt up to and including the day before the date of sequestration (date of the sequestration order). Therefore, the CMS cannot collect sequestrated debt.

57024 As dividends (payments made from the NRP`s ingathered estate by the trustee dealing with the sequestration) may be received from the sequestration, initially the arrears should be paused and the review date set as 12 months from the date of sequestration. The review date may be reset if for example the trustee has advised that the NRP`s property is for sale and once sold may release a dividend.

57025 On discharge, the NRP's debt is legally extinguished (usually one year) and if it has been confirmed with the trustee that there will be no further dividends received, the remaining balance of the sequestrated arrears can be considered for write off. Refer to Chapter 94: Sequestration, for further guidance.

NRP in prison

57026 Where the NRP is in prison and if enforcement action is not appropriate, DMs must consider pausing the arrears.

57027 If pausing the arrears, a review date should be set for the expected date of the NRP's release from prison.

Note: a review date can be set as necessary, provided it does not exceed 12 months.

57028 When notification is received that the NRP has been released, and evidence of a regular or irregular income is received, the debt may be pursued.

NRP in hospital and, or long term sick

57029 Where a NRP is long-term sick and their income reduces as a result, DMs should consider if it is appropriate to pause the arrears.

57030 If the NRP is a patient in hospital and the stay is long-term or the NRP is critically ill, the arrears may be paused.

57031 Where appropriate, debt may also be suspended, refer to paragraph **57008** for further guidance.

Note: DMs will also have to consider if a change of circumstances is appropriate, where there is a change in the NRP`s income by 25%.

57032 A review date should be set for the date of the expected recovery of the NRP, for example the NRP has had an operation and the expected recovery period is three months, the DM will set a review date of three months.

NRP abroad

57033 Where a NRP is resident abroad and no longer habitually resident in the UK, DMs must consider pausing or suspending collection of the arrears, unless the NRP is paid by a UK employer (in which case a DEO may be appropriate) or they have assets in the UK (in which case other enforcement actions may be appropriate). See paragraph **57008** for further information on suspending collection. Refer to Chapter 37: Applications, for further information on habitual residence.

57034 If there is an indication that the NRP will only be resident abroad temporarily, DMs will consider pausing the arrears.

57035 A review date should be set for the date of the expected return of the NRP to the UK, for example if all evidence indicates that the NRP has moved abroad for example a period of one year, DMs will set a review date for 12 months.

Note: a review date can be set as necessary, provided it does not exceed 12 months.

NRP cannot be traced

57036 Where every effort has been taken to trace a NRP without success, DMs will consider pausing the arrears.

57037 A 12 monthly review must be completed to attempt further trace.

Active duty

57038 If a member of Her Majesty`s Forces is on active duty in a recognised war zone and where a DER (see Chapter 55) is already in place collecting monies, this should remain in place.

57039 Where arrears have accrued and it is deemed that a DER would be appropriate, if the NRP is on active duty they will not be available to negotiate payment of arrears. In these circumstances the arrears

should be paused.

57040 A review date should be set for the expected date of the NRP`s return from active duty.

Note: a review date can be set as necessary provided it does not exceed 12 months.

57041 Refer to Chapter 55: DEOs and DERs, for further guidance re NRPs being on active duty.

Suicide threats

57042 Client distress can be caused by a number of reasons and the DM will be required to make a judgement on the severity of the distress being experienced by the client. Where appropriate the case should be referred to the Special Client Records team.

57043 Threats of suicide are a clear indication that a case should be considered by the Special Client Records team. However other behaviours may also require to be dealt with by the Special Clients Record team such as

1. threat of harm to themselves or others, **or**

2. extreme stress allegedly induced by the CMG involvement.

57044 When pursuing arrears is likely to have a detrimental effect on the NRP, the Special Client Records team will consider pausing the arrears.

57045 If action carried out by the Special Client Records team on the case has relieved the client`s distress and there are no longer reasons to believe that the client's threat of suicide or distress is still valid; the case status will be reviewed to consider the next action.

PWC overpayment

57046 Where it is not possible or not appropriate to recover an overpayment from ongoing maintenance[1] and a lump sum reimbursement has been made to the NRP, the PWC refuses or is not in a position to repay the overpayment, consider pausing the arrears. Refer to Chapter 59: Overpayments, for further guidance.

1 CS (MPA) Regs 2009, reg 8

57047 The review date should be periodic (generally three monthly) to review the PWC's circumstances, to determine if they are in a position to pay.

Previous suspended debt decisions

57048 When considering any case where a decision has previously been made to suspend or pause arrears, DMs must always have regard to the accuracy and validity of those previous decisions and not merely accept the decision at face-value.

Contacting the client

57049 When contacting the client, any suspended or paused arrears should be included in the overall arrears balance. However, it must be explained to the client that the suspended or paused arrears will not be collected at this time and the CMS may re-visit these arrears at a later date.

Note: arrears subject to sequestration must not be included in the overall arrears balance. If the NRP remains non-compliant post sequestration, then it will only be those later arrears that may be sought.

57050 Under no circumstances must PWCs, NRPs or any third party be told that a debt (all or part) is being written off or that their debt is nil.

Chapter 58 - Offsetting

Introduction

58001 The CMS has the power to treat liability to make child maintenance payments as satisfied[1]. Regulations provide that "offsetting" is a process that allows the CMS to adjust child maintenance payments and arrears in specific scenarios between the NRP and the PWC. Those scenarios include

1. where two clients both owe each other arrears[2]

2. where two clients are liable to pay each other ongoing child maintenance[2]

3. where a NRP has made certain payments to a third party, either directly or via the PWC[3], **or**

4. where one client is liable to make ongoing payments to a client that owes them arrears[4] .

1 CS Act 1991, s41C; 2 CS(MPA) Regs 2009, reg 5; 3, reg 6; 4, reg 7

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Offsetting – points to remember 58002 - 58004

Offsetting debt against debt (two clients both owe each other arrears) 58005 - 58006

Split care offsetting 58007 - 58009

Role reversal offsetting 58010 - 58012

Offsetting charges 58013 - 58015

Offsetting third party payments 58016 - 58019

Offsetting – points to remember

58002 Whether to offset in any scenario is a discretionary decision. There is no right of appeal, but any decision to allow or refuse offsetting can be challenged through Judicial Review. It is therefore essential that DMs fully record the reasons for their decision. Refer to Chapter 96: Evidence and decision making.

58003 Offsetting only applies to PWC arrears or ongoing payments. The CMS cannot offset against arrears due to the CMS in any circumstance.

58004 The CMS do not need to obtain consent from clients in order for offsetting action to be taken. However, the CMS must inform both clients that offsetting is being considered and invite them to comment. Any comments provided by the parties must be taken into account and the welfare of any child fully considered.

Offsetting debt against debt (two clients both owe each other arrears)

58005 A debt against debt offset can be considered

1. at the request of either client, **or**

2. at the CMS's instigation if it is identified that this action may be appropriate.

58006 Where there is an arrears balance outstanding after any debt against debt adjustment, the party who owes the arrears is liable to make ongoing payments. DMs must consider whether a further offset of ongoing payments against the remaining arrears owed are appropriate.

Note: in these circumstances a parent will be without maintenance for a period of time, because the payments they are due to receive will be stopped or reduced in comparison with the arrears that they owe. It is essential that DMs carefully consider the effect that this may have on the welfare of all children potentially affected.

Split care offsetting

58007 This occurs where the same two clients have more than one child, and each client is

1. a PWC in relation to at least one child

2. a NRP in relation to the other child(ren).

58008 In these circumstances there will be two child maintenance cases. The PWC and NRP will be the same two individuals in both cases, but their role in each case will be different, in other words they will be the NRP in one case, but the PWC in the other case. This means they will be liable to pay and receive child maintenance concurrently.

58009 Split care offsetting can be applied in 2 distinct ways

1. to adjust arrears that the parties owe to each other, **and**

2. to adjust the payments due where each party has ongoing liability to the other, so that the party liable to pay the higher amount pays the balance between that, and the amount that the other party is due to pay them.

Example

John and Amy have 2 children Jack and Dawn. John is the PWC for Jack and Amy is the PWC for Dawn. John is due to receive £50 per week as the PWC for Jack and to pay £75 per week as the NRP for Dawn. Amy is due to receive £75 per week as the PWC for Dawn and to pay £50 per week as the NRP for Jack.

As these payments can be offset, John will pay £25 per week, as this is the balance between the amount he is due to pay and the amount he is due to receive. Amy will make no payments.

Role reversal offsetting

58010 Role reversal occurs when a QC changes the parent they live with. This means that the PWC and the NRP reverse their roles in relation to the QC, so that the PWC becomes the NRP and vice versa.

58011 The potential for a debt against debt offset arises where the

1. former NRP (now the PWC) owed arrears to the former PWC (now the NRP) at the point their roles were reversed, **and**

2. new NRP fails to pay their current liability, so that they now owe arrears to the new PWC.

58012 When deciding whether it is appropriate to offset ongoing payments against arrears, DMs must consider the length of time that the parent who owes the arrears will be without their ongoing maintenance payments.

Note: if a full offset is not appropriate due to the circumstances of the case, a partial offset can be considered. This means that offsetting may be agreed for a shorter period than would be needed for the debt owed to be fully cleared.

Offsetting charges

58013 Where the CMS offset arrears against arrears, and NRP collection charges apply to those arrears, the charges remain due (because the CMS arranged for collection), although these can be written off if they are £65.00 or less.

58014 Where the CMS offset arrears against ongoing maintenance, and NRP collect charges apply to those arrears, the charges remain due (because the CMS arranged for collection), but as the CMS won't be collecting any ongoing maintenance from the other case until the arrears have been cleared there will be no further NRP collection charges accruing on that case.

58015 Where the CMS offset ongoing maintenance against ongoing maintenance, the person who has the higher MC will be liable to pay NRP collection charges on the amount they pay. The person receiving the maintenance will be liable to pay PWC collection charges based on the amount actually collected. However, the person who isn't paying anything will not be required to pay any NRP collection charges.

Offsetting third party payments

58016 Third party payments are prescribed payments made by a NRP to a third party, either directly, or via the PWC. Prescribed payments[1] include

1. payments on a mortgage or loan taken out on the security of property which is the QC's home, where that mortgage or loan was taken for the purchase of, or to pay for essential repairs or improvements to that property

2. rent on the QC's home

3. mains supplied gas, water or electricity charges on the QC's home

4. council tax payable by the PWC in respect of the QC's home.

5. essential repairs to heating systems in the QC's home

6. essential repairs to maintain the fabric of the QC's home.

1 CS(MPA) Regs 2009, reg 6(3)

58017 Offsetting a third party payment will only be applicable where

1. the NRP has outstanding arrears that can be reduced to reflect the third party payment(s), or (if not)

2. the NRP is liable to pay ongoing maintenance payments, which the third party payment can be offset against

3. both clients owe each other arrears.

58018 The CMS can only consider certain types of payments see paragraph 58016. NRPs will need to provide evidence confirming that the payment was made, and the PWC had agreed to the making of the payment.[1]

1 CS(MPA) Regs 2009, reg 6(2)(b)

58019 Offsetting for third party payments will only be considered if requested by either the NRP or the PWC.

Chapter 59 - Overpayments

Introduction

59001 An overpayment of child maintenance occurs when a NRP pays, or has paid, an amount exceeding their child maintenance liability.

59002 It is important to understand the difference between an overpayment and an over-collection or mis-allocation.

1. a misallocation occurs where the NRP has paid the correct amount, but the payments have not been correctly allocated by the CMS. For example, payments due to the CMS have been allocated to a PWC, or payments have been incorrectly allocated between multiple PWCs.

2. an over-collection occurs where a deduction from earnings order is in place, and an amount has been collected which exceeds the protected earnings proportion.

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Overpayments 59003 – 59014

Refunds and reimbursements 59015 – 59028

Recovery of overpayments from PWCs 59029 – 59036

Overpayments

59003 Overpayments arise when the NRP has paid more than they are required to.

59004 Overpayments can occur when a change of circumstances leads to a backdated reduction in the NRP's child maintenance liability. If the NRP has made payments at a previously higher rate, any amounts exceeding the new, lower liability will result in an overpayment.

59005 When an overpayment of child maintenance occurs, there is a range of options available to resolve the difference between the amount that the NRP has paid, and the amount that they are actually due to pay.

59006 These options should be considered in the following order

1. Allocate the overpayment against any arrears due to the same relevant person (the same case) – see paras **59007 – 59011**

2. Allocate the overpayment to ongoing maintenance to the relevant person (the same case), including reducing the amount payable to nil – see paras **59012 to 59013**

3. Allocate the overpayment against arrears due on any other case – see para **59014**

Note: whether to allocate an overpayment is a discretionary decision. When DMs are making a decision they will need to consider all of the circumstances of the case including the welfare of any children likely to be affected.

Allocate the overpayment against any arrears due to the same relevant person (the same case)

59007 For these purposes, the 'same case' means the case that the overpayment occurred on (with the same PWC). 'Any other case' means any other case that the NRP who has made the overpayment is liable to pay child maintenance for (with a different PWC).

59008 Overpayments of child maintenance can be allocated against any child maintenance arrears that are due on the case that the overpayment occurred on[1].

59009 Where the amount of arrears exceed the overpayment DMs should reduce the arrears by the amount overpaid, and continue to collect the balance.

59010 Where the overpayment exceeds the arrears DMs will need to consider whether the overpayment (or the balance that is left after any arrears have been taken into account) can be allocated against

1. OGM to the same PWC, **or**
2. against arrears owed to a different PWC.

59011 Where the balance cannot be allocated in this way it may be appropriate to issue a refund to the NRP.

Note: DMs will need to consider whether any suspended debt should be reinstated when deciding whether the overpayment can be allocated against arrears on the same case.

1 CS (MPA) Regs 2009, reg 8(1)

Allocate the overpayment to ongoing maintenance to the relevant person (the same case), including reducing the amount payable to nil

59012 Overpayments of child maintenance can be allocated against any on-going child maintenance payments that are due on the case that the overpayment occurred on[1], if

1. there is no previous maintenance calculation on the same case, **or**
2. there are no arrears due on the same case, **or**
3. there is a balance remaining after any arrears on the same case have been cleared.

1 CS (MPA) Regs 2009, regs 8(2) and (3)

59013 When deciding whether this action is appropriate, DMs do not need the permission of either customer, but must consider all the circumstances of the case, including the welfare of any children affected. In particular, the DM should have regard to[1]

1. the circumstances of the NRP and the PWC
2. the amount of the overpayment and the period of recovery

1 CS (MPA) Regs 2009, regs 8(2)(a) and (b)

Allocate the overpayment against arrears due on any other case

59014 Overpayments of child maintenance can also be allocated against any child maintenance arrears that are due on a different case, as the DM thinks fit[1]. This may be appropriate where

1. the overpayment cannot be allocated in full to arrears on the same case, **or**
2. the overpayment cannot be allocated to OGM on the same case, **and**
3. a refund or reimbursement would otherwise need to be issued to the NRP.

Note: CMS cannot allocate an overpayment against OGM on a different case.

1 CS (MPA) Regs 2009, reg 4

Refunds and reimbursement

59015 If the options in paragraph **59006** are neither appropriate or possible, DMs need to consider whether the NRP should receive a refund or reimbursement.

Note: if a refund or reimbursement is made, DMs will need to consider whether to attempt recovery of the overpayment from the PWCs see paragraphs **59029**.

Refunds

59016 A refund is a repayment of money that the NRP has paid in, which is returned without having been paid out to the PWC. These payments do not involve money being drawn from the department central budget. Before a decision to refund is made the DM must consider whether there is an opportunity to reduce outstanding debt by not making the refund.

Reimbursements

59017 A reimbursement is repayment of money to the NRP for overpaid maintenance, which has already paid out to the PWC.

Note: it is not an automatic right for a NRP to receive a reimbursement. This should be on an exceptional basis as the CMS no longer holds the funds. CMS can make such reimbursement as they consider appropriate[1].

1 CS Act 1991, s 41B(2)

59018 Reimbursements are a discretionary decision based, on the merits of the case, see Chapter 96: Evidence and decision making, for guidance. Therefore, the CMS has the discretion to decide

1. whether to make any reimbursement to the NRP, and

2. if the decision is taken to make a reimbursement, whether it is for the full, or a proportion of the amount of maintenance paid by the alleged NRP.

59019 In general, when deciding whether to consider a reimbursement, DMs should ensure that

1. the NRP has asked for a reimbursement

2. the overpayment was caused by a CMS error (for example the CMS failed to act on information given to them)

3. any reimbursement is only from the date they were told about the change (the notified date).

If the overpayment is due to the case being closed

59020 Where the overpayment has occurred following case closure as a result of death of the NRP, if the NRPs executor is known and has requested a reimbursement, reimbursement action should be considered. Where details of the executor are not known and no request to consider a reimbursement has been made, the DM should proceed with action to close the case.

Direct Pay cases only

59021 Where appropriate, DMs should ask the NRP to contact the PWC to request the reimbursement payment. The CMS should only consider reimbursement when the PWC will not make the payment.

Reimbursement decision

59022 As a reimbursement decision is a discretionary decision see Chapter 96: Evidence and decision making, for further for guidance on discretionary decisions.

Example 1

On 24 August NRP Alan informs the CMS that QC Ben commenced full time work on 25 April 2019 having left education.

It is identified that PWC Jackie had informed the CMS on 25 July 2019 that the last QC Ben started full

time work. However, the CMS failed to close the case.

The case is then closed from 25 April 2019, and an overpayment is identified of £500 due to Alan, as he was up to date with his payments and continued to pay Jackie after 25 April 2019.

Alan requested a reimbursement and the amount of the overpayment is verified following a full review of the case. As Alan has no other CMS cases and does not owe any other CMS debt, a decision is made to reimburse Alan.

Example 2

NRP David and PWC Sarah fail to inform the CMS that the only QC Jack has moved to live with Sarah's sister Kate from 12 April 2019. Kate was the primary day to day carer of Jack from this date. David continues to make payments which Sarah forwards to Kate for the benefit of Jack.

On 15 July 2019 David informs the CMS that Jack has been living with Kate. This is verified with Sarah and the case is closed from 12 April 2019. Kate makes an application to the CMS for child maintenance for Jack. Sarah and Kate verify that payments were forwarded to Kate for the benefit Jack. A decision is made not to reimburse David as the payments have benefited Jack.

Reimbursement following a negative paternity result

59023 The CMS does not automatically reimburse all child maintenance overpaid by the alleged NRP following a parentage dispute and upon them successfully disproving paternity, either by a negative DNA test result or court declaration of non-parentage.

59024 Additionally, it is not the CMS policy to reimburse overpaid child maintenance, where a child has been removed from a post-maintenance calculation case due to the CMS being unable to determine parentage of a child, due to a refusal by a PWC to allow the QC to take a DNA test.

Note: DMs must ensure that both the decision to remove the child and the decision not to make the reimbursement are clearly and correctly documented.

Prompt action was not taken

59025 Where the NRP communicated doubts of paternity to the CMS, but did not take prompt action to disprove this and it is decided that a reimbursement should be made, the alleged NRP should only be reimbursed the money paid in relation to maintenance due from the first day in which the alleged NRP provided evidence to disprove paternity i.e. negative DNA test results or a court declaration of non-parentage. This may apply in cases where

1. the alleged NRP originally accepted paternity, but disputed it at a later date and there was a delay in providing evidence, **or**
2. the CMS assumed paternity in one of the scenarios permitted under child support legislation and the alleged NRP disputed paternity soon after receiving the maintenance

calculation but there was a delay in providing evidence.

Note: delays caused by the PWC, such as failing to, or delaying responding to DNA testing letters or failures to attend a DNA sampling appointment, should not be taken into account when determining if the NRP acted promptly.

Example 1

CMS application was received14 August 2018 and alleged NRP Chris accepts paternity during initial gather stage.

A maintenance calculation of £20 per week calculated on 14 September 2018 with an effective date of 21 August 2018.

Chris contacts the CMS on 25 October 2018 with doubts about paternity and is provided with the information to enable him to pursue the dispute and disprove paternity.

Chris continues to make maintenance payments and does not contact the CMS again until 16 June 2019 to raise the issue of disputed paternity.

Chris provides results of DNA from a test conducted by Cellmark on 4 July 2019.

Chris should receive a reimbursement from 16 June 2019 (the first day of Chris' most recent contact to dispute paternity).

Chris would not be reimbursed for any maintenance payments in relation to the period between 21 August 2018 and 15 June 2019 as despite being provided with the information to enable him to disprove paternity, he failed to take prompt action to do so.

Example 2

On 15 April 2018 PWC Denise contacts the CMS to make a maintenance application for QC Zoe. During the initial gather stage the alleged NRP Mark disputes paternity during a telephone conversation and does not provide further information to complete the call. However, the CMS assumes paternity and makes an initial maintenance calculation because Mark is registered as the father of the child on the child's birth certificate. As the case falls within a scenario where parentage can be assumed[1] then Mark is assumed to be the parent.

On 26 May 2018 the case is set up and the initial maintenance calculation is made using historic income. Denise and Mark are notified of the calculation.

After three months of non-payment, the CMS seeks and secures a DEO against Mark's wages. Mark's wage slip for September 2018 shows a deduction for child maintenance, so Mark contacts the CMS to dispute paternity on 3 October 2018.

The DM explains the assumption of paternity provisions and the processes to disprove paternity to Mark.

Mark must also be advised that the level of any reimbursement he may receive will depend on how quickly he now takes action to have the paternity disproved.

On 31 October 2018, Mark provides the CMS with DNA test results which show that he is not the father.

As Mark failed to take prompt action to dispute and disprove paternity of Zoe after having been notified of the initial maintenance calculation until 3 October, a reimbursement of any monies paid could only be considered for the period from 3 October 2018 to the last payment made.

1 CS Act 1991, s26

Valid reasons for not taking prompt action

59026 There may be specific reasons why an alleged NRP cannot act on the information provided to them, therefore DMs must consider whether the alleged NRP has acted on the information given in a reasonable time.

59027 As a general guideline, the alleged NRP should take initial action to have paternity disproved within one month of being provided with sufficient information (such as arranging a DNA test, or initiating court proceedings to obtain a declaration of non-parentage) even if that test, or court hearing, may take place at a later date.

59028 The one-month timescale is not defined in legislation; it is a guide only. There may also be other factors which prevented the alleged NRP from taking prompt action that need to be taken into account. These may include

1. long-term illness and, or hospitalisation of alleged NRP
2. alleged NRP is a member of the Armed Forces who is serving abroad (or is due to serve abroad very shortly after being informed of the steps they need to take)
3. disability of the alleged NRP (including mental health condition, learning impairment, sensory impairment impacting upon communication for example deafness or blindness)
4. alleged NRP has language needs.

This list is not exhaustive and each case should be considered on its own merits.

Recovery of overpayments from PWCs

59029 The CMS may require a PWC to repay the whole or part of a payment made to a NRP where the overpayment arose in specified circumstances. DMs should consider recovering an overpayment of child maintenance from the PWC who received it (so long as the PWC was not in receipt of certain state benefits at the relevant time) if[1]

1. a reimbursement has been issued to the NRP, **or**

2. the overpayment has been allocated against arrears due on another case.

1 CS Act 1991, s 41B(3) and CS (AIAMA) Regs 1992, reg 10A

Note: the CMS can only recover the amount that has been reimbursed or allocated to other arrears. Any overpaid amount exceeding this amount cannot be recovered from the PWC.

59030 Allocations to arrears on a different case are treated as refunds in principle because they reduce the amount owed. The NRP therefore still receives the benefit of the reimbursement. Any amounts that have been allocated to a different case can therefore be included in any sum the CMS try to collect from the PWC.

59031 When DMs are making a decision whether to recover an overpayment from a PWC, they should consider

1. the welfare of any child affected by this action, and
2. whether recovery will cause the PWC financial hardship.

Note: recovering an overpayment from a PWC will always have a financial impact on the household, but this is not the same as financial hardship. DMs must consider the effect that recovering the overpayment will have on the household and balance this against the importance of protecting public funds.

Recovery not appropriate

59032 If DMs decide it is not appropriate to seek recovery of an overpayment from the PWC, the reason for their decision must be fully recorded for audit purposes.

59033 A PWC may indicate that recovery of the overpayment is not appropriate at the present time but may be in the future. In these circumstances DMs must decide when and whether it is appropriate to contact the PWC in the future.

Recovery is appropriate

59034 DMs must always attempt to gain the PWC's agreement to repayment first.

A PWC can repay the overpayment by the following methods of collection

1. a lump sum payment by credit or debit card
2. by regular instalments using a preferred method of collection
3. by taking payments from their ongoing maintenance.

Recover from ongoing payments

59035 DMs cannot consider repayment from a PWC where the PWC was in receipt of a prescribed

benefit (Income Support, income-based Jobseekers Allowance, and State Pension Credit) at any point in the period when the overpayment occurred or when the reimbursement was made to the NRP[1].

Note: DMs must consider recovery from the PWC's ongoing maintenance payments where it is not possible to recover the overpayment by reducing the NRP's on-going payments, because the CMS have already issued them with a refund or reimbursement.

1 CS (AIAMA) Regs 1992, reg 10A

59036 The NRP will be liable to pay their OGM at the full amount due, however recovery of the overpayment can be taken by reducing the amount of these payments that the CMS pass onto the PWC.

Note: DMs must have the PWC's agreement before recovering the overpayment by this method.

Chapter 60 - Voluntary Payments

60001 Voluntary payments are payments made when an application for child maintenance has been made but the maintenance calculation has not yet been completed[1]. They are payments that the NRP has made to the PWC, CMS or a third party on or after the effective date.

1 CS Act 1991, s28J and CS (VP) Regs 2000

This guidance explains

Why and how voluntary payments should be made 60002 – 60005

What can be considered as a voluntary payment 60006 - 60010

Whether to accept a voluntary payment 60011 - 60014

Why and how voluntary payments should be made

60002 NRPs should be encouraged to make voluntary payments from their first contact with CMS to

1. Help prevent or minimise arrears building up
2. Establish compliance from an early stage and
3. Keep payments of child maintenance flowing if a case cannot be progressed promptly for any reason

60003 If an NRP is going to make voluntary payments directly to the PWC, they should be encouraged to keep a record of the following

1. Date of payment
2. Amount of payment
3. Method of payment
4. Any receipts or relevant bank statements showing that the payment was made for child maintenance purposes

60004 Keeping records will help avoid difficulties if the NRP and PWC dispute whether a voluntary payment has been made or for how much. See para **60012** for more information on whether to accept a voluntary payment.

Acceptable methods of payment

60005 Voluntary payments should be made by the following methods[1]

1. Cash

2. Standing order
3. Direct Debit
4. Cheque or postal order
5. Debit card
6. Transfer between accounts

1 CS (VP) Regs 2000, reg 3(a)

What can be considered as a voluntary payment

60006 The DM may consider the payments outlined below when considering whether a voluntary payment has been made[1].

1 CS (VP) Regs 2000, reg 3(b)

Payments to the PWC or CMS

60007 The NRP may make a voluntary payment to CMS, or may make payments directly to the PWC. In order for a payment to the PWC to be considered to be a voluntary payment, it should be for the purpose of child maintenance for the QC in the CMS case.

Note: Spousal maintenance payments or payments made directly to the QC cannot be taken into account as a voluntary payment.

Payments to a third party

60008 A payment by the NRP to a third party will qualify as a voluntary payment if it is made in respect of

1. A mortgage or loan taken out on the property which is the QC's home which was taken out to facilitate its purchase or pay for essential repairs or improvements
2. Rent on the property which is the QC's home
3. Mains supplied gas, water or electricity charges at the QC's home
4. Council tax (rates in Northern Ireland) payable by the PWC in relation to the QC's home
5. Essential repairs to the heating system in the QC's home
6. Repairs which are essential to maintain the fabric of the QC's home.

Note: payments to mortgage lenders can only be considered if they have been made in respect of a PWC's mortgage liability and not any payment that the NRP is liable to pay himself. If it is a joint mortgage, we can consider any portion of the payment which is related to the PWC's liability.

Example

NRP Colin and PWC Josie have a joint mortgage but Colin is making the full mortgage payment himself. It would be reasonable to consider allowing half of the payment as this would reflect Josie's mortgage liability.

60009 The NRP may apply for a variation for one or more of the above payments on the grounds of prior debts or certain loans, mortgages or insurance policies. If the variation application is made before the child maintenance calculation is completed, the DM may treat these payments as voluntary payments. The date the variation takes effect is the date the NRP is notified of their liability. See Chapter 14 for more information on effective dates.

Payments made under a court order

60010 Payments made under a court order in respect of the QCs on the case and after the initial effective date cannot be taken into account as voluntary payments as they are not considered voluntary when enforced by a court.

Note: whilst these payments cannot be considered as voluntary payments, they can be treated as payments of child maintenance. See Chapter 12 for more information on court orders and child maintenance.

Whether to accept a voluntary payment

60011 Whether we allow a voluntary payment is a discretionary decision. For more information on discretionary decisions see Chapter 96: Evidence and decision making. For more information on the type of evidence needed to verify voluntary payments, see Chapter 100: Evidence – Enforcement and collection.

PWC states that voluntary payments have been received and NRP confirms this

60012 If a PWC informs CMS that a voluntary payment has been made by the NRP, this can be accepted without any further enquiries. The DM can contact the NRP and advise that this amount will be deducted from the arrears once the maintenance calculation has been completed and the arrears balance calculated.

PWC states that voluntary payments have been received but NRP disputes this

60013 If the PWC informs CMS that voluntary payments have been made, the NRP may dispute the amount or purpose of the payments. The NRP should be asked to provide evidence of the voluntary payments and the DM should use this to make a decision whether to accept the voluntary payments and for how much. For more information on making discretionary decisions, see Chapter 96: Evidence and decision making.

NRP states that voluntary payments have been made and PWC confirms this

60014 If the NRP informs CMS that they have made voluntary payments directly to the PWC, the PWC must be contacted to confirm this before a decision can be made whether to accept them. If the PWC confirms that payments were made for the amount and reasons stated, the DM can advise the NRP that the voluntary payment has been accepted the arrears will be adjusted once the maintenance calculation has been completed and the arrears balance calculated.

NRP states that voluntary payments have been made but PWC disputes this

60015 If the NRP notifies CMS of a voluntary payment but the PWC disputes the amount or purpose of the payment, the NRP should be asked to provide evidence of the payment. The DM should consider all available evidence before deciding whether or not to accept the voluntary payment and how much should be accepted. For more information on making discretionary decisions, see Chapter 96: Evidence and decision making.

Example

NRP Steven claims that he made payments of £10 a week voluntary payments to PWC Clare for child maintenance. Clare disputes this and claims that he had paid her some money but it was money Steven owed her for something she had purchased. Steven is unable to provide any supporting evidence to show the frequency or purpose of the payments so it would be reasonable for the DM not to accept any voluntary payments.

Example

PWC Lydia informs CMS that she has received £200 voluntary payment of child maintenance from NRP Jack. Jack claims that he had paid Lydia £200 one week and £100 the next. Jack provides a copy of his bank statement showing two transfers to Lydia, both referenced as child maintenance. Lydia is unable to provide any evidence. It would be reasonable for the DM to accept that Jack had made £300 voluntary payments.

Chapter 61 - Recovery from deceased estates

Introduction

61001 When the CMG is notified that a NRP has died, if there are arrears outstanding, DMs will need to consider whether a claim against the late NRP's estate is appropriate in order to recover PWC and CM debt.

This guidance explains

Deciding if action is appropriate 61002

The role of RDE and what can be included in a claim against the estate 61003 – 61009

Cases where collection and enforcement action is ongoing 61010 – 61025

Deciding if action is appropriate 61026 – 61038

Disclosing information to personal representatives or executors 61039 – 61042

Representative or executor appeals 61043 – 61044

RDE referral outcomes 61045

Deciding if action is appropriate

61002 If there are arrears outstanding, then it is necessary to consider whether a claim against the estate is appropriate. This will involve taking into account

1. the amount and age of the debt
2. the views of the PWC
3. the welfare of any child likely to be affected by the DM's decision
4. any other relevant circumstances.

The role of RDE team

61003 If the DM decides that a claim for CM arrears should be made against the late NRP's

estate, the case should be referred to the Recovery from Deceased Estates team.

The Recovery from Deceased Estates team will

1. attempt to identify who is the NRP's executor or personal representative
2. notify them that the CMG has a claim against the NRP's estate
3. manage the case until an outcome has been reached.

61004 The CMG will then notify the PWC of the outcome and make any payment due to them if appropriate.

What can be included in a claim against the estate

61005 If the DM decides it is appropriate to make a claim against the NRP's estate, any of the following can be included:

1. arrears owed to the Secretary of State or the PWC.

   Note: the six-year rule that applies to enforcement action does not apply to recovery from deceased estates legislation. For more information on six-year rule and enforcement see Chapter 73: Liability Orders – England and Wales or Chapter 83: Liability Orders – Scotland.

2. court costs and or interest awarded as part of a court decision.

61006 The following cannot be included

1. Collection and enforcement charges
2. DNA testing fees.

61007 Arrears based on an interim maintenance assessment or default maintenance decision can be included. But if there is information or evidence available that would allow the decision to be replaced or converted, then this action must be completed.

Deferred debt

61008 If the PWC was paid arrears out of Treasury funds because of deferred debt, then this amount cannot be included in a claim against the NRP's estate. This is because the NRP

is no longer liable to pay arrears for the interim payment period.

61009 However, if the DM is considering making a claim against the NRP's estate, the DM can consider reinstating previously deferred debt if

1. the DM has identified that the deferred debt criteria were not met, or
2. it is clear that the NRP had failed to comply with the regular payment agreement.

Cases where collection and enforcement action is ongoing

61010 The following section provides advice on what action to take if there is enforcement or other collection activity ongoing when a NRP dies.

DEO

61011 If ongoing maintenance and or arrears are being collected by a deduction from earnings order, this must be stopped if it is confirmed that the NRP has died. See Chapter 55: DEOs and DERs, for more information.

Deduction orders

61012 Any lump sum or regular deduction order that is in place must be discharged immediately if the NRP's death is confirmed.

Bailiff referrals

61013 Any bailiff action must be stopped as a matter of urgency, to ensure a bailiff does not visit the NRP's home.

Third party debt orders

61014 A third party debt order is applied against the third party. If third party debt order action is incomplete when the DM is notified that a NRP has died, the DM should not continue. However, if the third party debt order is already in place, then it is still valid and the third party deposit taker will still be required to comply with it.

61015 The DM should complete the third party debt order action and collect the funds due before considering making a claim against the NRP's estate, to ensure the final debt balance is accurate.

Note: if the third party is also the NRP's executor they must release funds under the third party debt order before administering the estate.

Liability orders

61016 If a NRP dies before LO action has been completed, the DM should not continue with this action. A LO is not necessary for a claim to be made against the NRP's estate.

61017 If a LO has been obtained, this may be useful in helping confirm the debt to the NRP's personal representative or executor.

61018 If a LO has been obtained in Scotland, but a charge for payment has not yet been obtained, this action should not be pursued following the NRP's death.

Inhibition orders (Scotland)

61019 A Bill of Inhibition is attached to the individual it is made against. If the individual dies, the Bill of Inhibition will cease to have effect.

Interim charging orders

61020 Any action to apply for and obtain an interim charging order should be stopped immediately if the NRP dies.

61021 If the interim charging order has already been obtained, it may be worth obtaining a final charging order to secure the debt. In these circumstances, advice should be sought from Policy colleagues.

Charging orders & Orders for sale

61022 If a final charging order has been obtained, the CM debt is secured. This means it will be a priority debt when the estate is distributed.

61023 If a NRP dies after a final charging order has been obtained but before order for sale action has been completed, order for sale action should be withdrawn.

61024 If a NRP dies after an order for sale has been obtained no further action should be taken initially in respect of the order. The executor will have a number of options on how to settle the claim and the RDE team will negotiate with them. These options include

1. selling the property to clear the CM debt

2. passing the property with the order for sale attached to the NRP's beneficiaries, who then take on responsibility for clearing the debt by selling the property or using other funds (if they fail to do so the CMG can enforce the order for sale)

3. clearing the debt from other estate funds without selling the property.

61025 If the RDE team do not think the estate is being properly administered they will inform the CMG. In this situation Policy colleagues should be consulted to decide whether to proceed with the order for sale.

Deciding if action is appropriate

61026 When a DM is deciding whether recovery from deceased estates action is appropriate a number of points need to be considered including

1. the amount and age of the debt

2. the views of the PWC

3. the welfare of any child likely to be affected by the DMs decision

4. any other relevant circumstances.

61027 The first point to consider is whether the total arrears owed exceed £65. Making a claim for amounts below this threshold is not considered cost effective and it will therefore only be appropriate to consider making a claim in these circumstances if

1. some or all of the arrears are owed to the PWC

2. the PWC contacts the CMG to specifically ask for this action to be taken.

61028 If the arrears owed exceed £65, the DM must contact the PWC so that their views can be taken into account when a DM is deciding whether it is appropriate to make a claim against the estate.

Contacting the PWC

61029 When a DM is contacting the PWC, they must

1. ensure at least seven days have elapsed since the NRP's date of death

2. remember that this will often be the CMG's first contact with the PWC since the NRP's death and that the conversation must be handled sensitively

3. be aware that the PWC may not yet know that the NRP has died.

61030 When the DM contacts the PWC, they must explain that if a claim is made, it may be necessary for information about them to be disclosed to the NRP's personal representative or executor if this is requested. The DM should make it clear that only information that the personal representative or executor is legally entitled to receive will be provided and that this will never include their address or any information that could lead to their location being identified.

61031 If the PWC does not want ANY information about them or the QC to be disclosed, the DM should ask them to provide reasons for this and take this into account.

PWC wants a claim to be made

61032 If the PWC wants a claim to be made, the DM should take this into account when deciding whether to proceed.

Note: this does not necessarily mean that a claim will always be made. However, if the DM decides it is not appropriate to make a claim for arrears owed to the PWC because of errors or maladministration by the CMG it may be necessary to consider whether the PWC is entitled to financial redress. Refer to Financial Redress for Maladministration Guidance.

61033 If a PWC states that they want a claim to be made but subsequently changes their mind the claim should be withdrawn if it relates to arrears owed to the PWC.

PWC does not want a claim to be made

61034 If the PWC does not want a claim to be made, the DM's next action will depend on whether the arrears are owed to the PWC or the CMG.

61035 If the full arrears are owed to the PWC, the DM should record their request that a claim is not made. No further action to make a claim against the estate should be taken and the arrears can be written off, see Chapter 63 for write off guidance.

61036 If some or all of the arrears are owed to the Secretary of State, the DM should take the PWC's views into account. However, this will not necessarily mean the DM decides that

it is not appropriate for a claim to be made.

61037 In these circumstances, the DM should ensure they obtain full details from the PWC regarding why they do not want a claim to be made, so that all the relevant information is considered when the DM makes their decision. It is particularly important that the DM records full details of any negative impact that the PWC making a claim might have on any child this action would be likely to affect.

Note: DMs must remember that if they deemed action against deceased's estate is appropriate when the PWC doesn't want a claim to be made then only arrears are owed to both the Secretary of State and Department should be recovered.

61038 A claim should never be made for arrears owed to a PWC if they have specifically stated that they do not want this action to be taken.

Note: this is a discretionary decision and it is essential that the DM takes all the circumstances of the case into account and fully record the reasons for their decision. It is particularly important that the DM considers the following

1. the age / amount of the arrears

2. the welfare of any child(ren) likely to be affected by the DM's decision, remembering that welfare of child consideration does not apply solely to any QC(s)

3. any information / opinion provided by the PWC, or any relevant third party, such as the NRP's surviving spouse / partner.

Refer to Chapter 96: Evidence and decision making, for further advice about making and recording discretionary decisions.

Note: Particular care must be taken in cases where the NRP has died by suicide, and it is alleged that the CMG was a contributory factor in the NRP`s suicide. The DM should contact Policy colleagues for advice if they are dealing with a case where this applies.

Disclosing information to personal representatives or executors

61039 When a claim is made against an estate the personal representative or executor will always be told the amount of the debt and the fact it is due to the CMG.

61040 If a personal representative or executor requests any additional information, this

can be provided if the DM is satisfied it is needed for them to properly administer the estate[1]. For example

1. to prove that the claim for CM arrears is valid, or
2. to appeal the maintenance calculation or dispute parentage.

61041 If a personal representative or executor wants any additional information it should be requested in writing including full reasons why the information is required. Refer to para **61029** for information about obtaining the PWC's consent.

61042 Unless there is written permission from the relevant party the DM should never disclose

1. the address of the PWC and or any QC,
2. any information which could be used to identify their location, or
3. any other information which could be used to identify any person who is not a party to the maintenance calculation.

Note: additional information should never be disclosed by telephone.

1 CS (MPA) Regs 2009, reg 13

Representative or executor appeals

61043 When a claim is made against a NRP's estate, their personal representative or executor takes over any appeal rights the NRP had before they died. This means they can

1. dispute parentage
2. continue with or withdraw an appeal made by the NRP
3. make a new appeal against a maintenance calculation made before the NRP died.

Time scales

61044 The NRP's personal representative or executor has the remainder of any existing time limits to progress or withdraw any appeal that had been made by the NRP.

RDE referral outcomes

61045 The RDE team will retain any cases referred to them until one of the following outcomes has been reached:

1. the arrears are paid in full or in part from the NRP's estate

2. it has been confirmed that the NRP did not leave any estate from which the arrears could be paid

3. 2 years have passed since the NRP`s death and there has been no grant of probate or executor identified that would allow a claim to be made

4. the NRP`s executor or representative has refused to pay the arrears.

Chapter 62 - Part payments

Introduction

62001 CMS may accept part payment of child maintenance arrears in full and final satisfaction of the full arrears balance, if certain conditions are met[1]. After completion of the payment process, the remaining arrears balance will be written off[2].

Note: in this section, any reference to the PWC also refers to the child in Scotland,

1 CS Act 1991, s 41D; 2 CS MPA Regs 2009 Part 4A, reg 13E (2)

This guidance explains

When and how a part payment offer can be made 62002 - 62007

Offer made by PWC or NRP 62008 – 62026

Consent form or agreement document 62027 – 62030

How should part payments be made 62032 - 62034

Completion of the part payment 62035 – 62036

Hierarchy 62037

Apportionment 62038 – 62039

Apportionment and reasonableness examples 62040

When and how a part payment offer can be made

62002 A part payment should only be considered when a client approaches CMS with an offer.

62003 Part payment offers can be made verbally or in writing, but the power to accept part payment cannot be exercised without the written consent of the PWC (unless in certain circumstances where the S of S would be entitled retain some or all of the arrears; see paragraph **62027 - 62030**)[1], and a written agreement must be made with the NRP (see paragraph **62031** below)[2].

1 CS Act 1991, s 41D(3)-(7); CS (MPA) Regs 2009 Part 4A, reg 13C; 2 reg 13D

62004 A part payment offer can be accepted in lieu of arrears that are owed to the PWC, or the S of S, but not in lieu of other costs such as

1. DNA fees, or
2. Enforcement charges.

62005 Offers can be accepted in both arrears only and ongoing maintenance cases, but must relate to a static arrears balance and must not include any future ongoing maintenance.

62006 DMs should consider including any suspended arrears in the total debt balance unless

1. they are undergoing legacy write off action, or

2. the arrears have been suspended due to sequestration or a protected trust deed. See Chapter 94: Sequestration & Chapter 95: Trust deeds.

62007 The client making the part payment offer may stipulate that the offer is in lieu of arrears accrued within a specific time frame or may advise the offer is in relation to a single PWC.

Offer made by NRP or PWC

62008 NRPs can make an offer regardless of their current compliance status and the DM must consider the offer in these 3 stages

1. determine if the offer is unreasonable or derogatory

2. consider the current financial status of the case

3. consider the offer amount in relation to apportionment.

62009 The process for handling part payment offers made by PWCs varies slightly from NRP offers as they usually only relate to the element of the arrears owed to them.

62010 It is sensible to allow an offer made by a PWC to progress where possible as this is an amount that the PWC is content with. However, the requirements regarding consent must still be applied; see paragraphs **62027**.

Offer unreasonable or derogatory

62011 An offer may be deemed to be unreasonable or derogatory if

1. it is not in the form of a monetary payment or

2. it is a fraction of the total debt balance, such as £100 offered on a debt of £5000 or

3. an APM has been made and the offer does not exceed the APM amount or

4. an APM has been made and the offer covers the APM, but the amount remaining to pay the RP is negligible or

5. financial consideration of case deems it so.

Note: An Advance Payment of Maintenance (APM) was a discretionary lump sum payment of arrears made to a PWC by the CSA. APMs are not offered by the CMS.

62012 Where a part payment offer is made by the PWC and there are CMS arrears owing, the DM must first consider if the offer is reasonable in respect of the whole debt, in line with this guidance.

62013 Where the DM deems the offer to be reasonable in respect of the whole arrears balance (because, for example, the element of CMS debt is negligible) They will pass the offer directly to the NRP. Where the NRP is content, see para **62031**.

62014 Where the DM does not deem the offer to be reasonable in respect of the whole debt, dependent on the NRP's response, the DM will either

1. progress the part payment offer solely in respect of the PWC debt, or
2. look to obtain a higher payment from the NRP that is reasonable in respect of the whole debt.

62015 The DM must inform the NRP that the PWC has made an offer in full and final satisfaction of their arrears, but CMS deemed it unreasonable due to outstanding debt owed to CMS. The DM must ask the NRP to increase the offer made by the PWC to satisfy the CMS arrears amount. The DM should inform the NRP how the part payment allocation applies, see para **62037**.

62016 Where the NRP agrees to increase the offer and the DM decides that the offer is reasonable in respect of the total arrears, the PWC will only receive the amount that they were originally willing to accept. This is on the grounds they have already put forward and accepted what they consider to be a reasonable offer. The DM must attribute any increase on the amount offered by the PWC to the CMS debt.

62017 If the NRP does not increase the offer, the part payment process can proceed solely in respect of the PWC arrears. However, the DM must make the NRP aware of this and that the outstanding CMS arrears will still be pursued.

62018 If the DM deems the offer to be reasonable and acceptable see para **62027**.

Consider the current case or financial status

62019 The DM must consider the following

1. any ongoing enforcement action and its current status
2. the NRP's financial situation, both current and historic
3. the probability of arrears being recovered in full. If it is apparent that the arrears can be collected in full, the DM must consider the offer unreasonable.

62020 The DM must make feasibility checks which will include the following

1. Credit reference agency checks

2. Land Registry

3. Enforceable or unenforceable debt – where there is unenforceable debt (debt which became due on or before 12th July 2000), a calculation must be completed to determine the amount of enforceable or unenforceable debt.

62021 After investigation, should the DM deem the offer to be unreasonable or derogatory, see para **62026**.

62022 Should the DM deem the offer not to be unreasonable or derogatory as a result of case or financial circumstances, see para **62027**.

Consider Offer Amount in Relation to Case or Payees

62023 The DM must determine how much of the part payment would be attributed to the different payees on the case, see para **62038**.

Note: Arrears owed to the S of S are as valid as those owed to the PWC, as they represent income related benefit payments already received by the PWC. Although their collection is a lesser priority, there is still an impact when these arrears are written off.

Note: The DM can accept a part payment in respect of S of S arrears but, as with PWC arrears, the DM should always try to obtain the best possible agreement.

62024 In a case with debt due to both the PWC and the S of S the DM must consider if apportionment is acceptable in completing the calculation. See para **62038**.

62025 If the DM deems the offer reasonable then this decision must be documented, including a breakdown of the offer.

62026 If the offer is deemed to be unreasonable then the offer should be rejected, and the NRP should be informed that the offer is not going to be put to the PWC.

Note: The DM must be careful not to make any comments which could be taken as financial advice and not to make any comments which may influence the PWC or NRP's decision.

Consent form or agreement document

The consent form

62027 Where PWC debt will not be satisfied in full by the part payment, consent is required in writing from the PWC[1].

Note: in the case where the child maintenance application was made by a CiS, consent must

be sought from the CiS and any other relevant person with care[2].

1 CS Act 1991, s 41D(3)-(7); CS(MPA) Regs 2009 Part 4A, reg 13C; 2 CS Act 1991, s7(2); 41D(6) & 41D(7)

62028 To assist the PWC (or CiS) in reaching a decision whether or not to give consent, the DM must ensure that all relevant information and guidance about the offer is made available[1].

1 CS (MPA) Regs 2009 Part 4A, reg 13C(2)

62029 Where the offer is made by the PWC, the DM must still provide all relevant information to the PWC and obtain a signed consent form prior to putting this to the NRP.

62030 Once a PWC has signed the consent form they cannot change their mind. The DM should explain to the PWC that the part payment agreement would only fail at this stage if the NRP changes their mind or does not pay the agreed amount when required[1].

1 CS (MPA) Regs 2009 Part 4A, reg 13E (3)

The agreement document

62031 Where the PWC consent form has been received and the DM deems the offer to be reasonable, the part payment offer may proceed. The DM must then send an agreement document to the NRP for them to sign and return in order to make the part payment offer legally binding. The agreement document must contain[1]

1. the name of the NRP
2. the name of any person from whom consent was required
3. the amount of arrears to which the agreement relates
4. the period of liability to which the agreement relates
5. the amount that is agreed will be paid in satisfaction of those arrears
6. the method of payment
7. to whom payment will be made, and
8. the day by which payment is to be made.

1 CS (MPA) Regs 2009 Part 4A, reg 13D (2)

How should part payments be made

62032 Part payments should always be made through the CMS this allows monitoring and accountability. The DM should discourage parents from making and completing private part payment arrangements, as the CMS may then not be able to carry out the part payment procedure.

62033 NRPs should make payments via debit or credit card, or in exceptional circumstances

and if authorised, by cheque.

62034 Part payments must be made as a lump sum and cannot be paid in instalments. However, the NRP can spread the payments over multiple cards at the same time on a single phone call.

Completion of the part payment

62035 Where the NRP makes the payment as set out in the agreement document, The DM must write off the remaining debt immediately[1] and send confirmation to both clients.

1 CS (MPA) Regs 2009 Part 4A, reg 13E (2)

62036 Where the NRP does not comply with the agreement i.e. does not make payment at all, does not pay enough or does not pay on the agreed date, the part payment agreement is void therefore arrears will not be written off[1]. DM must advise both clients that this is the case.

1 CS (MPA) Regs 2009 Part 4A, reg 13E (3)

Hierarchy

62037 Before a DM decides to pass on a part payment offer to the PWC, the DM must consider each individual case included and how the part payment can potentially be attributed in relation to the part payment hierarchy. It should be noted that in many circumstances, CMS arrears are given priority over CSA arrears. In the case of part payment, this is not so and a separate hierarchy must be followed.

The DM MUST strictly abide by the following part payment allocation hierarchy in all cases

1. APM balance
2. PWC arrears
3. S of S arrears
4. other administration arrears (excluding advanced payment of maintenance).

Note: APM debt needs to be fully satisfied before progressing as they are made with the authority of the Treasury, on the basis that we will always collect that amount in full from the NRP at a later date. The CMS cannot accept a part payment if the offer does not cover the APM, this would be deemed unreasonable.

Apportionment

62038 Where the NRP has multiple cases, apportionment is based on the amount of arrears owed on each case. The DM must determine and calculate clerically the potential allocation to each PWC as per the following rules

1. Largest debt balance would be calculated first

2. PWC debt on case ÷ total PWC debt in case group x 100 = % x part payment amount = amount to be allocated to PWC arrears.

1 CS (MPA) Regs 2009 Part 1, reg 4

62039 An exception to this would be if the NRP makes an explicit request such as splitting payment 50:50 between two PWCs; then this is the offer the DM should consider putting forward to the PWCs, regardless of the amount of debt on each case.

Note: standard accountancy rules dictate that the amount is rounded to 2 decimal places. To avoid any issues with rounding figures, the final case group will be allocated any residual balance, bringing the total up to 100%.

Apportionment and reasonableness examples

62040 Examples are given below to demonstrate apportionment and reasonableness.

Note: the examples provided are not exhaustive.

Example 1: Apportionment - NRP has 3 cases

NRP Jack has 3 cases and the total arrears he owes is £600.00.

PWC Jackie, is owed £300, so will receive 50% of any money paid by the NRP (£300 ÷ £600 x 100 = 50%).

PWC Jaqueline is owed £200, so will receive 33.33% of any money paid by the NRP (£200 ÷ £600 x 100 = 33.33%).

PWC Jacinta is owed £100, so will receive 16.67% of any money paid by the NRP (£100 ÷ £600 x 100 = 16.67%).

Example 2: single case - part payment amount less than PWC debt

NRP Jack has an overall debt balance of £17426.00 and has made a part payment offer of £10000.00 to fully satisfy his debt, this has been accepted.

PWC Diane is owed £12029.00 and there is S of S arrears on the case of £5397.00.

As the part payment offer is less than the amount owed to Diane, the full part payment allocation of £10000 will all go to her arrears, the remaining amount of arrears owed to Diane and balance owed to the S of Swill be written off.

Example 3: single case - part payment = more than PWC debt

NRP Jack has an overall debt balance of £4725.11 and has made a part payment offer of £3000.00 to fully satisfy his debt, this has been accepted.

PWC Diane is owed £2869.12 and there is S of S arrears on the case of £1855.99.

As the part payment offer is more than the amount owed to Diane, the part payment allocation of £2869.12 will clear her arrears, the remaining part payment amount of £130.88 will go to the S of S arrears, with the balance remaining £1725.11 written off.

Example 4: multiple cases - part payment amount = less than total PWC debt

NRP Jack has a total arrears balance of £13668.00, across 2 cases.

He has made a part payment offer of £8800.00 to fully satisfy the debt and the two PWCs have

consented.

PWC Wendy is owed £8534.00 with S of S arrears being £1669.00 on her case.

PWC Kira is owed £2000.00 with S of S arrears being £1465.00 on her case.

Wendy's allocation from the part payment will be £8534.00 ÷ £10534.00 (Total PWC arrears) x 100 = 81.01% x £8800.00 = £7128.88.

Kira's allocation from the part payment will be £2000.00 ÷ £10534.00 (Total PWC arrears) x 100 = 18.99% x £8800.00 = £1671.12.

The remaining arrears owed to Wendy, Kira and the S of S would be written off.

Example 5: multiple cases - part payment amount = more than total PWC debt

NRP Jack has a total arrears balance of £7926.00, across 2 cases.

He has made a part payment offer of £5000.00 to fully satisfy the debt and the two PWCs have consented.

PWC Wendy is owed £927.00 with S of S arrears being £4304.16 on her case.

PWC Kira is owed £71.14 with S of S arrears being £2623.70 on her case.

Wendy and Kira's total combined arrears are £998.14 will be cleared by the part payment.

This leaves a balance of £4001.86 which would go to the arrears owed to the Secretary of State as follows

Wendy's case £4304.16 ÷ £6927.86 (total S of S debt) x 100 = 62.12% x £4001.86 = £2485.96

Kira's case £2623.70 ÷ £6927.86 (total S of S debt) x 100 = 37.87% x £4001.86 = £1515.50.

Example 6: single case - part payment offer does not satisfy APM amount

NRP Jack has an overall debt balance of £23600.00 and has made a part payment offer of £15000.00 to fully satisfy his debt.

PWC Diane is owed £3001.54 and there is S of S arrears on the case of £867.65.

There is however an APM on the case of £19730.81 and as the part payment offer will not satisfy this, it should be rejected., The DM should inform the NRP of the decision.

Example 7: single case - part payment offer satisfies APM amount

NRP Bruce has an overall debt balance of £8963.00.

He has made a part payment offer of £6000.00 to fully satisfy his debt and the PWC has consented.

PWC Katrina is owed £3226.48, with no S of S arrears and an APM on the case of £5736.52.

As the part payment offer will cover the APM, this will be cleared and the part payment balance of £563.48 paid to Katrina.

Katrina's remaining arrears balance of £2963.00 would be written off.

Example 8: multiple cases - APM exists on one of the NRP`s cases and = greater than the part payment amount

NRP Jack has 2 cases and an overall debt balance of £37256.88 and has made a part payment offer of £22000.00 to fully satisfy his debt.

PWC Diane is owed £3001.54, with no S of S arrears, but an APM of £22100.00 on her case.

PWC Kira is owed £4004.44, with S of S arrears of £2062.90 on her case.

As the part payment offer of £22000.00 would not clear the APM on Diane's case, it would be deemed not reasonable and rejected., The DM should inform the NRP of the decision.

Example 9: multiple cases - APM exists on more than one of NRP`s cases and = less than the part payment amount

NRP Jack has 3 cases and an overall debt balance of £64091.29.

He has made a part payment offer of £42630.00 to fully satisfy his debt. Each of the PWCs has consented to the respective terms of the offer.

PWC Kira is owed £13330.99, with S of S arrears of £12305.53 on her case.

PWC Diane is owed £10959.61, with no S of S arrears, but an APM of £13395.08 on her case.

PWC Cheryl is owed £201.53 with S of S arrears of £8460.00 and an APM of £5438.55 on her case.

The part payment offer would clear the APMs on Diane and Cheryl's case of £18833.63, with the balance of the part payment, £23796.37 being split as follows

Kira would receive £13330.99 ÷ £24492.13 (total PWC debt) x 100 = 54.42% x £23166.37 = £12949.98

Diane would receive £10959.61 ÷ £24492.13 (total PWC debt) x 100 = 44.74% x £23166.37 = £10646.49

Cheryl would receive £201.53 ÷ £24492.13 (total PWC debt) x 100 = 0.84% x £23166.37 = £199.89.

The remaining PWC arrears for Kira, Diane and Cheryl, along with all S of S arrears would be written off.

Chapter 63 - Arrears write off

63001 In certain circumstances and where the DM is satisfied that it would be unfair or inappropriate to enforce liability, the CMS is able to write off arrears[1] owed by an NRP to a PWC or CiS. The DM is required to exercise discretion when making their decision taking into account all the circumstances in the case. In accordance with public law principles the discretion must be exercised reasonably, in good faith, for proper purposes and in accordance with the statutory power. If not, the decision can be challenged by Judicial Review.

Note: this chapter addresses the writing off of debt accrued under the CMS 2012 scheme. For detailed guidance on debt accrued under the CSA scheme, please see Chapter 64: CSA arrears write off - Manual representation.

1 CS Act 1991, s41E

This guidance explains

Considering write off 63002 – 63009

Representations 63010 – 63019

Outcomes 63020 – 63024

Considering write off

63002 For the purposes of the legislation stated in the above paragraph, arrears can be considered for write off in specified circumstances [1]

1. the PWC or CiS requests that the S of S ceases to act in respect of the arrears

2. the NRP died before 25 January 2010

3. there is no further action that can be taken to recover the arrears from the NRP's estate – see Chapter 61: Recovery from deceased estates.

4. the PWC or CiS has died.

5. the CMS has previously advised the NRP that no further action would ever be taken to recover the arrears

6. the arrears relate to liability for child support maintenance for any period in respect of which an interim maintenance assessment was in force between 5 April 1993 and 18 April 1995.

7. the arrears relate to liability accrued under a 1993 or 2003 scheme case (including those which have transferred from the CSA system to the CMS system) – See Chapter 64: CSA arrears write off – manual representation.

8. The arrears relate to sequestrated debt in Scotland for a 1993, 2003 or 2012 scheme case once the trustee administering the sequestration has confirmed that the period of sequestration has ended – see Chapter 94: Sequestration.

9. The Secretary of State may consider extinguishing a liability where

9.1. the arrears relate to a liability accrued under a 2012 scheme and the arrears are less than £7 and

9.2. the NRP has failed to make any payments within the 3-month period prior to the decision and

9.3. any person who requested a maintenance calculation requests the Secretary of State to cease acting[2] or

9.4. in Scotland, the child who has made the application, but not the PWC, requests the Secretary of State to cease action[3] or

9.5. the maintenance calculation has been terminated[4] due to

9.5.1 the death of the NRP or the PWC or

9.5.2 there no longer being any QC or

9.5.3 the NRP with respect to whom it was made ceasing to be a parent of the QC or where it was made with respect to more than one QC, all QC with respect to whom it was made or

9.6. the Secretary of State does not have jurisdiction to make a maintenance calculation due to a PWC, NRP or QC not being habitually resident in the United Kingdom[5].

Note: arrears are extinguished when an NRP has made full payment in accordance with a part payment agreement[6]. The power to reach a part payment agreement is also discretionary, but a different procedure applies - See Chapter 62: Part Payment.

1 CS (MPA) Regs 2009, regs 13G(a) – (i); 2 CS Act 1991 s 4(5) & (6); 3 CS Act 1991 s 7(6) & (7); 4 CS Act 1991 Sch 16(1); 5 CS Act 1991 S44; 6 CS Act 1991, s 41D and CS (MPA) Regs 2009, reg 13E(2)

63003 Write off can be considered when the case has closed, although a request for write off can be received at any point.

63004 Where the case has closed, the DM should discuss with the PWC or CiS to confirm if they would like to consider writing the arrears off, providing such information and guidance as may be required in order reach their decision. The PWC or CiS cannot request that arrears owed solely to the CMS are written off but any arrears owed to themselves can be considered

for write off.

Note: this process does not apply to arrears which accrued under either the 1993 or 2003 CSA schemes. For cases involving CSA arrears, see Chapter 64: CSA arrears write off - Manual representation.

63005 Other types of debt cannot be written off. This is debt that is due to be paid by the NRP to the CMS. This includes

1. DNA test fees
2. enforcement charges
3. court costs.

63006 Where the PWC or CiS has requested the arrears due to them are to be written off and the case is closed, a decision can be made by the DM to write off the collection charges associated with the written off OGM.

63007 A confident address should be held for each party in a case. Where no confident address is held, refer to para **63017**.

63008 Where an NRP has multiple cases, separate write off consideration must be given for each individual case.

63009 Before considering representations, the DM should ensure that the case is brought up to date and that the correct arrears balance is held on the case.

Representations

63010 A period of 30 days is provided to make representations[1]. This is to allow the party time to fully consider the implications of writing the debt off or to change their mind. This period cannot be waived.

1 CS (MPA) Regs 2009, reg 13H(3)(d)

63011 Where the Secretary of State receives representations within 30 days, the DM must take account of the views expressed in those representations in making their decision[1].

1 CS (MPA) Regs 2009, reg 13H(I)

Note: refer to para **63016** for scenarios where representations need not be sought.

63012 The decision to write debt off is a discretionary decision. Refer to Chapter 96: Evidence and decision making.

63013 Representations can be made by a

1. NRP
2. PWC, **or**
3. CiS

63014 Representations made either in favour or against write-off will not necessarily be determinative. All relevant factors must be considered.

63015 When considering any representations which have been made, the DM should take account of the following

1. the original reason write off is being considered
2. who has raised the representation
3. the reasons provided
4. whether what has been said has an impact on the decision to write off, **and**
5. the welfare of any children affected by the decision. See Chapter 4: Welfare of the child.

Cases where representation need not be sought

63016 Representations need not be sought where a

1. party cannot be traced
2. NRP sequestrated period has ended
3. NRP has been discharged from a protected trust deed
4. NRP died before 25 January 2010
5. part payment action has been completed
6. party in the case is deceased, **and**
    1. there is no executor **or**
    2. the executor cannot be traced.

No confident address

63017 Where no confident address is held for a party in the case, the DM should attempt to trace an address. If no address can be traced, there is no requirement to issue a notice to that party[1].

1 CS (MPA) Regs 2009, reg 13H(2)

63018 Where an address is traced, the DM can issue the notification to the party's last known or notified address and the document is treated as having been received by that person on the second day following which it is posted[1].

1 CS (MPA) Regs 2009, reg 13H(5)

A party has died

63019 Where the PWC or NRP or CiS has died, the requirement to give notice does not apply[1].

1 CS (MPA) Regs 2009, reg 13H(2)

Outcomes

63020 Where the arrears have been written off, notifications must be issued to all parties, unless an executor cannot be traced where the party has died[1].

1 CS (MPA) Regs 2009, reg 13J

63021 Where the arrears are written off, the debt is extinguished.

63022 Spare

63023 Where the decision to write off the debt is rejected and no write off action has been completed, notifications should be issued to all parties.

63024 There is no right of appeal on a write off decision.

Chapter 64 - CSA arrears write off - manual representation

Introduction

64001 In 2018, powers were extended to write off NRP debt built up under the CSA in certain specific circumstances[1]. In certain cases, the NRP and PWC must be given the opportunity to provide information by returning CMS issued representation notices. This guidance applies where DM intervention is required to manually issue such notices.

Note: any reference to the PWC in this section also refers to the child in Scotland.

1 CS (MA) Regs 2018, reg 4

This guidance explains

Cases suitable for manual representation 64002 – 64006

What can be written off 64007 – 64014

Tracing the PWC or NRP 64015 – 64020

PWC representations 64021 – 64034

NRP representations 64035 – 64045

Changes reported during representation period 64046 – 64054

Cases suitable for manual representation

64002 Under the amended regulations, the CMS may exercise the power to write off arrears where they relate to arrears for child support maintenance accrued under the CSA where the NRP has failed to make payments of child support within the relevant preceding 3-month period. This applies both where the arrears have been transferred from the CSA system and where they have not[1].

1 CS (MPA) Regs 2009, regs 13G(g) and (h)

64003 In cases where the NRP has multiple cases under multiple schemes, and CSA debt has transitioned to CMS any NRP payment made it will allocate to CMS debt before the CSA debt, see Chapter 51: Payment allocation.

64004 The relevant 3-month period is defined as the period of 90 days before

1. the date the NRP is sent the notice proposing arrears write off, where the arrears are above the relevant thresholds or

2. the date of the decision to write off the arrears where the arrears are below the relevant thresholds[1].

1 CS (MPA) Regs 2009, regs 13G(g) and (h)

64005 Where a case with CSA debt which has transitioned to CMS appears to be suitable for manual representation, DMs must check if the

1. PWC is deceased, or

2. NRP is deceased and the date of death is more than two years old – see Chapter 65: CSA arrears write off – NRP PWC deceased.

3. NRP has made payments which have allocated to the CSA debt in the last 90 days, this would make the case unsuitable

4. case is on the Direct Pay service type, making it unsuitable for manual representation or write off as these are assumed to be paying.

64006 Should the DM identify the case as not being suitable for manual representation and write off, it should be returned to BAU for collection and enforcement, see Chapter 54: Enforcement and Collection of CSA debt on CMS.

What can be written off

64007 The DM must only take manual representation, and or write off action, if voluntary compliance cannot be established and where administrative powers have been considered but deemed inappropriate or ineffective.

64008 For cases with CSA debt which has already transitioned to CMS. The DM must consider the following points in all relevant cases before each new enforcement action is taken.

CSA debt £500 and under

64009 If no payment has been allocated to a CMS case with CSA debt or mixed CSA & CMS debt in the last 90 days and where the CSA debt is £500 or under, the DM can write off the CSA debt without representation. This can be done where voluntary compliance cannot be established and where administrative powers have been considered but deemed inappropriate or ineffective.

64010 A final decision notification will automatically be issued to both parties. If either the PWC or NRP's address held is DLO or if correspondence is returned DLO, no trace action should be undertaken.

CSA debt more than £500

64011 The DM must initiate manual representation before commencing any new enforcement action on any case with CSA debt more than £500 and where the PWC has not been offered representation whilst the debt was still on CSA.

Mixed debt with CSA debt more than £500 – cases in enforcement

64012 Where the case is already in the Enforcement segment and there is a mixture of CSA debt and CMS debt, with the CSA element of the debt more than £500, the DM should consider enforcement actions against the full debt.

64013 The DM should consider offering the PWC representations against CSA debt write off where mixed debt cases are

1. pre liability order

2. post enforcement agent, or

3. post sanction.

Mixed debt with CSA debt more than £500 – cases not in enforcement

64014 The DM must complete manual representation before any new enforcement action is considered for mixed debt cases with CSA debt being more than £500 and which have not

already moved into enforcement.

Tracing the PWC or NRP

64015 When considering write off under the provisions of the amended legislation, and a DLO address is held for the PWC or NRP, the DM should perform trace action.

64016 If the PWC or NRP representation letter is returned DLO during the representation period, the representation period should be temporarily suspended while the DM carries out any trace action.

64017 The DM should check when trace action was last carried out, if it was prior to 14 December 2018 the DM should carry out another search, using all the available trace tools which may include

1. Customer Information System (CIS Searchlight)
2. Credit Reference Agency (CRA)
3. Internet based databases
4. Contact with the applicant
5. Contact with the non applicant's employer
6. Her Majesty's Revenue & Customs (HMRC).

64018 The DM should perform only one single cycle of trace action within the end to end write off process.

64019 If trace action is successful and a new address found, the DM must restart the representation process and send out the notices to the PWC or NRP. This allows the PWC the full 60 days[1] and the NRP a full 21-day representation period[2].

1 CS (MPA) Regs 2009, reg 13H(2)(da)(i); 2, reg 13H(2)(da)(ii)

64020 If a new cycle of trace action or existing trace action taken since 14 December 2018 is unsuccessful, the DM can consider making the decision to write off the arrears. If the trace action was for the NRP, the DM should send a notice of the decision to write off the arrears to the PWC (or the CiS)[1].

1 CS (MPA) Regs 2009, reg13J

PWC representations

64021 When the DM decides that a case is suitable for manual representation, a written notice of the intention to consider write off must be issued to the PWC, giving them the opportunity to make representations if they wish the CMS to collect the arrears.

64022 The notice advises the PWC that they have 60 days from the date of receiving the notice to may make representations, with a reminder letter issued 21 days before the end of the 60-day period.

64023 All representations must be made in writing and by post to the CMS. A form is included with the notice letter to allow the PWC to make representations but other written types of representations should also be considered.

64024 Representation letters do not need to be reissued where a confident address is established after the write off decision has been made, however notice of the decision to write off the arrears should be sent to the PWC at the confirmed address.

64025 If no representations are received from the PWC within the time given, the arrears on the case will be written off[1].

1 CS (MPA) Regs 2009, reg 13H(4a)

NRP has more than one case with CSA arrears
64026 Where the NRP has more than one PWC case with eligible CSA arrears, the representation period and process for each PWC must be triggered at the same time.

PWC representations letter returned
64027 If a PWC responds and asks for their arrears to be collected and no confident address is held for the NRP, the DM should ask the PWC for additional information on the NRP to help trace them and collect outstanding arrears. If an address is not held and there is insufficient information to trace the NRP, see para 64021.

64028 If the PWC reports any change in circumstance, see para 64046 – 64054.

64029 Where acceptable representations are made by the PWC, notice must be sent to the NRP. See para 64034.

64030 If the PWC contacts CMS after expiry of the representation period to make representations, or to generally query their case or arrears, and where the decision to write off has been made on the basis that representations were not made, the DM must explain that the write off process cannot be reversed.

64031 If the PWC raises a formal complaint about the decision to write off their arrears, see para 64054.

PWC reports representations letter not received

64032 A PWC may contact the CMS and state that they were not notified that write off was being considered or that a final decision to write off arrears had been actioned. _

64033 There are a number of reasons why the PWC may not have been aware of the actions taken on their case, including

1. the amount of arrears may have fallen below £500, in which case there was no requirement to notify the PWC
2. no confident address was held for the PWC and so notifications could not be issued
3. PWC notifications may have been issued but they state that they were never received.

64034 If a client reports a historic change that has been missed due to not being able to represent, the DM should ask if the PWC can provide evidence of reporting this at the time of the change. See para **64030 – 64031.**

NRP representations

64035 If the NRP's current circumstances are known and a confident address is held for the NRP, the DM must send the representation notice[1]. This allows the NRP to make representations against the balance and future collection of the arrears.

1 CS (MPA) Regs 2009, reg 13H(2)(da)(ii)

64036 The notice advises the NRP that they may make representations within 21 days of receiving it. Any representations must be made in writing and by post to the CMS. A form is included with the notice letter to allow the NRP to make representations but other written types of representations should also be considered.

NRP does not respond within 21 days

64037 If the NRP does not respond to the notice or make contact with the CMS within 21-day period, the case and the arrears will continue its enforcement journey. See Chapter 54: Enforcement and Collection of CSA debt on CMS.

NRP responds within 21 days

64038 If the NRP does respond within 21 days and believes that the arrears balance is incorrect, the NRP will be expected to provide acceptable evidence to support this including

1. payments made directly to the PWC, that have not previously been taken into account
2. payments made directly to the CSA or CMS that have not previously been taken into account
3. previous CSA or CMS correspondence informing them that a specified amount of child support maintenance arrears would not be collected
4. previously reported change of circumstances that has not been taken onto account. See para **64046 – 64054**.

NRP is unable to provide acceptable evidence

64039 Where the NRP is unable to provide any acceptable evidence, DMs should ask the NRP to make a payment, which can

1. satisfy all outstanding arrears on a CSA arrears only case, automatically beginning the case closure process
2. satisfy the CSA arrears, but where a combination of OGM and outstanding CMS arrears remain after CSA arrears are satisfied, the case will continue as normal
3. clear part of the arrears balance, the payment should be taken and the NRP advised that steps will be taken to collect the remaining debt. See Chapter 54: Enforcement and Collection of CSA debt on CMS.

64040 Where the NRP is unable to provide any acceptable evidence relating to the CSA arrears balance and is unwilling to make a payment, see Chapter 54: Enforcement and Collection of

CSA debt on CMS.

NRP provides acceptable evidence

64041 If the NRP provides acceptable evidence that some or all of the outstanding CMS liability has been paid or that the arrears balance was incorrect, BAU processes should be followed to verify any alleged payments made before adjusting the debt accordingly.

64042 If, after any debt adjustments have been carried out, there are remaining arrears, the NRP should be asked to clear the balance by making a card payment.

64043 Where a partial debt adjustment has been carried out and the NRP is not able to pay anything towards the remaining arrears balance, if the amount of arrears remaining is £500 or under, they will be written off. Notice of the decision to write off the arrears must be sent to both parties.

64044 If the amount of arrears remaining after adjustment is more than £500 and the NRP is not willing to make any payment towards those arrears, see Chapter 54: Enforcement and Collection of CSA debt on CMS.

64045 If acceptable evidence received results in the arrears balance reducing to nil on an arrears only CSA case, the case will close automatically.

Changes reported during representation period

64046 Any change relating to historic debt, which would not have affected the period during which the debt accrued or the debt balance, or new change of circumstances reported after the liability ended will not be dealt with.

Historic changes where the debt balance is above £500

64047 The DM will consider any historic changes reported during the representation period in cases with arrears balances above £500.

64048 This does not mean that all historic changes reported in these circumstances will be accepted. The DM must apply BAU decision making guidance relating to the specific type of change reported and debt adjustments will be made if necessary.

64049 Where an historic change is reported after a decision has been made to write off debt above £500. Where the debt is written off, the arrears are extinguished. In exceptional circumstances, where it appears the decision to write off the arrears was not lawful, the DM might need to reconsider the decision. The DM will need to consider whether there is evidence that the change was reported at the time and if so whether it was dealt with appropriately.

64050 If there is evidence that CMS failed historically to deal correctly with information received, the DM will need to consider whether alternative action should be taken to acknowledge the error and address any loss incurred by the client.

Historic changes where the debt balance is below £500

64051 In cases with arrears balances below £500, write off is automated and clients are not given the opportunity to make representations against the proposed write off. In such cases it is possible that clients may report historic changes of circumstances after write off has occurred.

64052 Where details of an historic change are reported after write off has occurred, the client will need to provide evidence that the change was reported at the time. Where there is evidence that the change was reported the DM will need to determine whether it was dealt with appropriately.

64053 Where the arrears are written off, the arrears are extinguished. In exceptional

circumstances, where it appears the decision to write off the arrears was not lawful, the DM might need to reconsider the decision. If there is evidence that CMS failed historically to deal with the arrears correctly, the DM will need to consider whether alternative action should be taken to acknowledge the error and address any loss incurred by the client.

64054 If a client is dissatisfied with CMS's handling of the case and ultimately the decision to write off CMS arrears, the case will go through the standard complaints process. The write off decision cannot be appealed.

Chapter 65 - CSA arrears write off - NRP or PWC deceased

Introduction

65001 In 2018, amendments to legislation extended the powers to write off NRP debt built up under the CSA in certain specific circumstances[1]. The DM may have to deal with cases which have been selected for potential write off of CSA debt which has already transferred to CMS and where

1. records indicate that the NRP or PWC is already deceased, **or**
2. notification is received during the write off process that the NRP or PWC has died.

1 CS (MPA) Regs 2009, reg 13J

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PWC deceased when case selected for write off 65002 - 65004

PWC dies during the write off process 65005 - 65008

NRP deceased when selected for write off 65009 – 65010

NRP deceased and debt is below £500 65011 - 65012

Debt above £500 and NRP's date of death is not verified 65013

Debt above £500 and NRP's date of death is verified 65014 - 65020

NRP dies during the write off process 65021 - 65022

PWC deceased when case selected for write off

65002 When a case is selected for potential write off the DM should check to see if a verified date of death is recorded.

65003 If a verified date of death is recorded the DM should

1. confirm that any further correspondence to the PWC is supressed
2. carry out write off action on the case, **and**
3. send a notice of the decision to write off the arrears to the NRP.

Note: when considering write off of arrears in these cases, there is no requirement to attempt to trace or contact the PWC's executor.

65004 Where debt is being considered for write off and the PWC's date of death has not been verified, the DM must attempt to obtain verification before considering the next course of action. If verification of the date of death cannot be obtained, see Chapter 64: CSA arrears write off – Manual Representation.

PWC dies during the write off process

65005 CMS may receive notification that a PWC has died after their case has been selected for write off under the amended legislation.

Cases eligible for representation

65006 If the notice of the proposal to write off arrears was issued to the PWC before receiving notification of the death and no representations have been returned, write off will be carried out when the representation period ends.

65007 If representations are received prior to the notification of the PWC's death, any ongoing action will be suspended and a decision should be made to write off the arrears. See para **65003.**

Cases not eligible for representation

65008 For cases not eligible for representation because the debt falls below £500, the debt is written off immediately and letters are issued to both parties. There is no opportunity to interrupt the process and supress notifications to the PWC in these cases.

NRP deceased when selected for write off

65009 When a case meeting the relevant criteria is selected for potential write off, if system records hold a date of death relating to the NRP, the DM will need to consider the following points

1. if the NRP died before 25 January 2010[1] the Department has no legal power to recover the arrears owed to CMS from the estate of a deceased NRP. The PWC may still be given the opportunity to make representations in these cases, but it must be made clear that CMS has no legal capacity to collect arrears in this scenario

2. if the NRP died after 25 January 2010, write off action is permitted in relation to arrears owed to the PWC where the recovery from deceased estates (RDE) process has been either unsuccessful or has failed to recover all of the outstanding arrears[1]. See para **65003.**

3. there is no requirement to provide the opportunity for a NRP's representative to make representations.

1 CS (MPA) Regs 2009, reg 13G(d)

65010 Where the amount of arrears owed to a PWC is above the thresholds for write off, as per the amended regulations, the DM must seek representations from the PWC before deciding if the arrears are eligible for write off[1]. See Chapter 64: CSA arrears write off – manual representation.

1 CS (MPA) Regs 2009, reg 13H(3)(da)(i)

NRP deceased and debt is below £500

65011 When a case is selected for potential write off and a verified date of death for the NRP is held, if the amount of debt being considered for write off is below £500, the debt will be written off without the need for representation.

65012 The PWC will automatically be notified of the decision to write off the arrears but any correspondence to the NRP will be suppressed[1].

1 CS (MPA) Regs 2009, reg 13J

Debt above £500 and NRP's date of death is not verified

65013 Where debt is being considered for write off and the NRP's date of death is not verified, steps must be taken in order to obtain verification before considering the next course of action. If verification cannot be obtained, see Chapter 64: CSA arrears write off – manual representation.

Debt above £500 and NRP's date of death is verified

65014 Where the NRP's death is verified and the amount of debt being considered for write off is above £500, any correspondence to the NRP will be suppressed.

65015 Before deciding the next course of action the DM will need to consider how long ago the NRP died.

NRP's date of death is more than 2 years ago

65016 If the NRP's death occurred more than two years ago, it is likely that there is no estate or that any proceeds from the NRP's estate may have been disposed of already. This means there will be very limited opportunity to collect anything towards the arrears.

65017 Where the date of death is more than two years ago, it is reasonable for the DM to assume that the PWC will have been offered the opportunity to make representations for the arrears to be collected when the NRP's death was reported.

65018 The DM would action arrears write off and issue notifications to the PWC explaining the decision[1].

1 CS (MPA) Regs 2009, reg 13J

NRP's date of death is less than 2 years ago

65019 Where the NRP's death occurred less than two years ago, the PWC has made

acceptable representations and where a referral has not already been made to RDE, the DM should refer the case to RDE. Arrears of child maintenance and collection fees for which a deceased was liable immediately before death are a debt payable by the executor or administrator out of the estate to the Secretary of State[1].

1 CS (MPA) Regs 2009, reg11

Note: where representation is received in this scenario, there is no need to wait till the end of the representation period to begin the referral to RDE**.**

65020 If a referral to RDE has been made and their actions have been completed, the arrears will be written off and a letter sent to the PWC explaining the decision[1].

1 CS (MPA) Regs 2009, reg 13J

NRP dies during the write off process

Note: where the write off process has already started, if the case follows a write off journey where representations were not appropriate, the DM may not be able to prevent final decision notifications being issued to the NRP's address.

65021 Where details of the NRP's death are received after a case been selected for potential write off, the DM will need to consider if

1. the NRP's date of death is not verified, the DM must attempt to obtain verification before considering the next course of action
2. the NRP's death is verified and the debt balance is below £500, the arrears will already have been written off without representation
3. the debt balance is above £500 and the PWC has been asked for representations. The full 60-day representation period will continue as normal
4. no representation is made by the PWC, then the arrears will be written off
5. representation letters to the NRP have not been issued, then they should not be issued
6. the NRP's death is verified and representations have been received, there is no need to wait till the end of the representation period to begin the referral to RDE**.**

65022 If verification of the date of death cannot be obtained, see Chapter 64: CSA arrears write off – manual representation.

Chapter 66 - Spare

Chapter 67 - Spare

Spare

Chapter 68 - Spare

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Chapter 69 - Spare

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Chapter 70 - Spare

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Chapter 71 - Legal enforcement

71001 Where arrears of child maintenance have accrued, the CMS can take various civil enforcement actions to attempt recovery of these arrears.

This guidance explains

When should civil enforcement be considered 71002

Pre-enforcement checks 71002A

Civil enforcement actions 71003

When should civil enforcement be considered

71002 Cases should be referred for civil enforcement proceedings to be considered as soon as

1. a payment is not received from the NRP, or

2. payments are received, but not for the full amount due, and

3. a DEO or a deduction order is not applicable or has proved unsuccessful, or

4. a deduction from earnings order is in place, but at a rate that will not allow arrears to be collected within an acceptable period and the NRP has assets that may be realised. This is referred to as parallel action.

Pre-enforcement checks

71002A Before a decision to proceed with civil enforcement action is made, the DM must consider the following points:

1. has a last attempt been made to contact the NRP and obtain compliance?

2. have all outstanding changes affecting the debt balance been completed?

3. has a last check been made to see if a DEO can be applied?

4. have any outstanding parentage issues been resolved?

5. is a prescribed benefit now in payment and can a DfB be applied?

6. have any direct payments been reported and reflected in the debt balance?

7. have Welfare of the Child and collectability decisions been recorded?

8. is the CSA arrears balance still above the de minimis of £1,000?

9. is the NRP's address up to date?

10. have any new bank accounts been found and disclosure action taken?

11. is the case fully up to date and have all queries from the NRP been dealt with?

Civil enforcement actions

71003 Where it is appropriate the CMS can take the following civil enforcement actions

1. Liability order England and Wales - refer to Chapter 73: Liability Orders – England and Wales. A liability order, granted by a magistrate's court, is a legal recognition that a debt exists.

Note: a liability order is required prior to most civil enforcement actions being taken, the exceptions are deduction orders, freezing orders and setting aside disposition orders, which can all be obtained without a liability order.

2. CRA disclosure – refer to Chapter 40: CRA Disclosure.
This may affect the NRPs ability to obtain credit in some circumstances.

3. Enforcement agent action - refer to Chapter 74: Enforcement Agents. A referral is made to a bailiff company to attempt to collect the LO amount, or to remove and sell goods to the value of the debt.

4. Register liability order on the Register of Judgments, Orders and Fines – refer to Chapter 73: Liability Orders – England and Wales. This may affect a non-resident parent's ability to obtain credit and if they are a professional, an entry on the register can be detrimental to their career.

5. Order for recovery – refer to Chapter 73: Liability Orders – England and Wales.
The liability order must be registered in a County Court and an Order for recovery obtained to allow third party debt order and charging order action to be taken.

6. Third party debt order – refer to Chapter 75: Third party debt order.
A TPDO freezes money belonging or owed to the NRP by the amount of debt and any costs awarded by the court. If funds are successfully frozen, the court can release them to the CMS.

7. Charging order – refer to Chapter 76: Charging Orders.
A charging order allows a debt to be registered against certain assets owned by the NRP, once these are sold, the debt can be recovered from the proceeds of the sale.

8. Order for sale – refer to Chapter 77: Order for sale.
Where a charging order has been registered against the NRP's property, an order for sale allows the CMS to force the sale of that property.

9. Sanctions – refer to Chapter 79: Sanctions.
The CMS can apply to the court to have the NRP disqualified from driving or holding a UK passport and committed to prison.

10. Freezing order – refer to Chapter 78: Freezing orders.

A freezing order is an interlocutory injunction that can be obtained to prevent a debtor from disposing of or dealing with their assets while other court proceedings are being taken.

11. Setting aside disposition orders - refer to Chapter 72: Setting aside of disposition order. This is an order that overturns the disposal or transfer of an asset, returning ownership to the NRP and enabling the CMS to take enforcement action against that asset.

Chapter 72 - Setting aside of disposition order (SADO)

Introduction

72001 A SADO is a court order that overturns the disposal or transfer of an asset, returning ownership to the NRP. This allows the CMS to take enforcement action against that asset. It is obtainable on the grounds that a person has failed to pay an amount of child support maintenance and is about to dispose or transfer ownership of that asset with the intention of avoiding payment[1].

1 CS Act 1991, s32L

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Suitable assets 72002

When a SADO would be appropriate 72003 - 72005

Evidence of the disposition of the asset 72006 - 72008

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Suitable assets

72002 A SADO can be requested in relation to a range of assets including

1. land and or property, registered in the UK in the NRP`s name (as per the Land Registry) and which is owned solely by the NRP and not used for business purposes. The property must have equity of at least £3000

2. capital assets that produce an income, for example the NRP rents out residential property of which they are the sole owner

3. vehicles of any type that are registered in the NRP`s name (as per the DVLA) and which are not used for business purposes

4. financial portfolio items, including stocks, shares, securities or other commodities that are owned by the NRP

5. collectable assets, such as valuable works of art or jewellery

6. boats.

Note: this is not an exhaustive list.

When a SADO would be appropriate

72003 A SADO must be considered where the NRP has transferred an asset to a friend or relative to avoid it being available for enforcement action. SADOs should only be considered if

1. the value of the asset and the NRP`s arrears both exceed £3,000

2. the NRP's arrears are enforceable

3. the NRP has been notified of the arrears

4. a confident address is held for the NRP

5. there is a liability order in place or action to apply for a liability order has commenced

6. there is information and or evidence to indicate that suitable assets were disposed of within the past three years

7. there is information and or evidence that the asset was transferred for less than its value in order to avoid payment of child maintenance arrears

8. the CMS has evidence that the NRP owned the asset, **and**

9. the CMS has evidence of who the owning third party is.

72004 SADO applications should be made in the jurisdiction where the asset is located, irrespective of whether the NRP resides in that jurisdiction.

72005 This means that if a NRP lives in Scotland, but the asset is located in England or Wales, the SADO application must be made to the court in England or Wales and vice versa.

Note: if the asset is located in Scotland refer to Chapter 82: Order for interdicting or action for reduction.

Evidence of the disposition of the asset

72006 The CMS will need to provide evidence to the court that the NRP has disposed of an asset[1]. Evidence must include the date of transfer or sale and confirm the third party now owning the asset.

1 CS Act 1991, s32L (2)

72007 If the third party who obtained the asset is known to the NRP, such as a friend, partner or relative, DMs may consider that the NRP's intent was to dispose of the asset to avoid child maintenance, unless evidence is submitted to the contrary.

Note: disposition includes a conveyance, assurance or gift of property of any description[1].

1 CS Act 1991, s32L (8)

Evidence that a SADO is not appropriate

72008 The CMS cannot make an application for a SADO if

1. a deceased NRP's assets were disposed of as part of their will or codicil (a document amending a will)[1]

2. the relevant asset or property has been repossessed by a mortgage or other lender, or

3. the asset was sold for less than the (market) value to a third party purchaser who bought the item in good faith[2]. If there is no known relationship between the NRP and the third party, the DM should assume that the purchase was made in good faith and not proceed with the application.

Application

72009 A SADO application must include

1. a list and copies of all evidence gathered in support of the application, ensuring that any photocopies are certified as true copies by including the following wording: "I certify that this is a true copy of the original (insert name of document)" and signing and dating this statement

2. where the application is in respect of a property, a request to the High Court judge to direct the third party to complete the relevant land registry form to return ownership to the NRP within 4 weeks of the order being served

3. details of the next intended enforcement action that will be taken, if the SADO is granted

4. a request to the High Court to freeze the asset (once ownership has been returned) to prevent the NRP from further dealing with it for a length of time that will allow the next enforcement action to be completed

5. the amount of time that will be required for the next enforcement action to be completed (see paragraphs **72010** to **72011**).

6. duration of an order for further information

7. confirmation that the welfare of any child potentially affected by the granting of a SADO has been considered

8. the account breakdown

9. any other supporting evidence attached as an appendix

10. a copy of the original arrears notice

11. a statement confirming that the CMS wishes to apply for any costs incurred in obtaining the order.

Application: duration of an order

72010 SADO applications include a request to the High Court to freeze the asset, once ownership has been returned to the NRP to prevent them dealing with the asset again, for a period of time that will allow the next enforcement action to be completed.

72011 DMs must state how long the CMS requires the order to last. The time required will depend on the next enforcement action to be taken. Details of the most appropriate action and the time that will be required to complete it are:

Action	When appropriate	Time required
Liability Order	If there is no liability order in force	20 weeks

Order for recovery	To register the liability order in the county court	4 weeks
Charging Order	Where the NRP has property	20 weeks
Enforcement Agent	Where the NRP has vehicles, collectable assets or capital assets	23 weeks
Third party debt order	Where the NRP has financial portfolio items	15 weeks

Court hearing

72012 Once the application has been checked and approved by Judicial Review (JR). They will then instruct the Government Litigation Department (GLD) to make the application to the Administrative Court in London. Subsequent hearings for Welsh cases may be transferred to the Administrative Court in Cardiff to facilitate PP attendance.

Hearing outcomes

72013 At the hearing the judge will normally grant, adjourn or reject the order.

Hearing adjourned

72014 The hearing may be adjourned to obtain additional information and/or evidence. If this is the case, GLD will liaise with the JR team regarding any additional requirements.

Order granted

72015 If the SADO is granted, it must be served on the NRP and the third party. This can be done at the court if both parties attend the hearing. Otherwise, the order must be served at their addresses by the contracted Enforcement Agents.

Note: the court may give directions about what is the most appropriate enforcement action, or make provisions requiring the NRP to make payments or for the disposal of property[1]. In these circumstances, any such directions must be adhered to.

1 CS Act 1991, s32L (4)

72016 Where the SADO does not include such provisions, DMs will take the appropriate enforcement action against the type of asset involved.

72017 The case will need to be monitored to ensure that ownership of the asset is returned to the NRP within any specified timescales and that the next appropriate enforcement action is then taken (in accordance with any court directions, where these apply).

Order refused

72018 If the application is refused, GLD will notify the CMS via the JR Team and will advise on whether there are grounds for an appeal to be made against this decision.

72019 If GLD advise that there are no grounds for appeal then no further action should be taken in relation to the SADO.

72020 If GLD state that there are grounds for an appeal then such an appeal must be made to the Court of Appeal within a period of time specified by the court. It is therefore important that any action required

is completed as a priority, to ensure an appeal is submitted in time. DWP litigation will liaise with the JR Team to ensure the necessary requirements are completed.

Variation of the order

72021 The NRP, the CMS or an affected third party can ask for the SADO to be varied. Reasons for requesting a variation could include

1. asking for a different asset to be considered

2. asking for a different time period for example, where the CMS has been given six months to complete its next enforcement action, the NRP might ask for this period to be reduced.

72022 Any requests for a variation will be dealt with through GLD.

Withdrawing the application

72023 In certain circumstances, it may be appropriate for a SADO application to be withdrawn. For example,

1. if the NRP pays their arrears in full

2. if the NRP dies, or

3. if the PWC states they do not want the CMS to pursue arrears due to them.

72024 In these circumstances, GLD must be informed as soon as possible so that they can send the application for withdrawal to the court.

Chapter 73 - Liability orders

Introduction

73001 A liability order (LO) provides legal recognition that a debt exists with applications being heard in a magistrates' court. The court will consider whether the debt in question has become payable and whether it has not been paid. The magistrates' court has no jurisdiction to question the calculation on which the debt is based.

Note: A LO is required before the CMS can take other legal enforcement action. See Chapter 71 Legal enforcement – England and Wales.

This guidance explains

Cases that may be suitable for a LO 73002 - 73003

Cases that may not be suitable for a LO 73004

Parallel LO 73005 - 73006

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Registering an LO on the Register of Judgments, Orders and Fines (RJOF) 73043 - 73056

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Cases that may be suitable for a LO

73002 Where the decision maker is confident that the address they hold for the NRP is correct, and an arrears warning letter has been issued, a LO may be appropriate if

1. the debt is for a low amount but still considered enforceable - refer to para **73007 - 73014**

2. the arrears became due after 12 July 2000[1]

3. the PWC requests that no enforcement proceedings be taken, but outstanding CMS arrears are still to be pursued

4. the NRPs employment status is unknown or self-employed, meaning a DEO cannot be imposed and RDO or LSDO action has been unsuccessful - refer to para **73004**

5. the NRP is in receipt of a benefit, but has substantial assets to enforce against and is unwilling to make an acceptable arrears payment, regardless of whether contributions to maintenance or

minimum payments are being made

6. a nil calculation is in place due to low income, arrears have previously accrued and the NRP is unwilling to make an acceptable arrears payment

7. a DEO or DER is not collecting an acceptable amount towards the NRP`s arrears, because their income levels need to be protected

8. the NRP`s employer has refused to implement a DEO. See Chapter 55: DEOs and DERs.

9. the NRP habitually leaves an employer before a DEO can be imposed

10. the NRP is making regular payments, but for an amount lower than their actual liability

11. a deduction order disclosure notice has not identified any suitable bank accounts.

1 CS (CE) Regs 1992, reg 28 (2A)

73003 DMs would consider a DEO to be ineffective if it is collecting money, but at a rate that does not meet the debt steer. See Chapter 53 - The debt steer. In these circumstances, a DM can consider applying for a LO while leaving the DEO in place. See para **73005**.

Note: when deciding whether to apply for a LO, the DM must consider the welfare of any child that might be affected by the decision and it is important the reasons for the decision are recorded in full. See Chapter 4 - Welfare of children.

Cases that may not be suitable for a LO

73004 Where the minimum requirements are met, the DM may still decide it is not appropriate to apply for a LO if

1. the NRP is in receipt of benefit without assets

2. the NRP is terminally ill or has special needs

3. the NRP`s partner or children from a second family are seriously ill

4. the majority of the debt is owed to the PWC and they have requested that no enforcement proceedings be taken

5. the PWC requests case closure and does not want the CMS to collect arrears

6. the NRP, PWC or QC has died

7. there is evidence that it may result in the NRP becoming violent to the PWC and, or the QCs

8. the NRP has disputed parentage of one or more of the QCs for the first time in the case subject

to LO action

9. the period of debt is subject to sequestration (bankruptcy proceedings in Scotland)

10. the NRP is currently on active duty

11. the debt is below the minimum level and considering the cost effectiveness and use of public funds to pursue for an LO and later enforcement actions see para **73007 & 73010**

12. there is no reasonable prospect of a successful outcome due to the NRP's asset position

13. taking into consideration previous attempts to enforce child maintenance arrears through the courts the likely benefits and potential of success is negligible, for example where previous LO action has been unsuccessful

14. the NRP has an exceptional immediate major or severe financial burden on their current financial circumstances. If that is the case, then the DM may consider suspending enforcement action until the immediate financial pressure has passed.

Note: this list is not exhaustive and does not mean that it will be inappropriate to make a LO application. DMs will need to take all the relevant circumstances into account when making their decision and record their reasons in full.

Parallel LO

73005 Parallel action, where more than one method of enforcement is appropriate consecutively can be considered by the DM in cases where

1. a DEO or other MOP is in place at the maximum amount, **but**

2. the full arrears will not be collected in two years, **and**

3. the debt balance at the end of the two-year period will still exceed £1000, or

4. there is evidence the NRP has assets which can be enforced against.

Note: Parallel LO action should also be considered where the NRP is a multi-agency worker and a DEO is in place to collect against only one employer or where the NRP habitually changes employer.

73006 When a NRP is a member of the armed forces, different criteria apply, in these circumstances a DM must confirm if the NRP is a member of the armed forces

1. posted in the UK or overseas, but not in a war zone, if so parallel action can be considered immediately

2. and is on active duty, if so, parallel action must be put on hold until the NRP is no longer on active duty. See para **73004**.

Minimum levels of debt

73007 The law does not restrict the amount of child maintenance arrears for which a LO application to the magistrates' court can be made. However DMs must consider how appropriate the action is in relation to the level of debt being pursued and the circumstances of the case.

73008 The minimum amount for which a LO will usually be sought is £500 however this sum is discretionary and lower amounts may be pursued if the specific circumstances of the case warrant it.

73009 Although the views of the PWC will be taken into account, the decision to pursue the arrears rests with the DM acting on behalf of the CMS[1].

1 CS Act 1991, s 4(3)

Note: courts may view it as unreasonable for an LO application to be made for debt that is less than the £300 enforcement fee.

De minimis level

73010 DMs should not pursue a LO where the debt is less than the £500 CMS de minimis unless there are compelling reasons to do so, such as

1. all means of negotiating or securing payment have been considered or attempted
2. the case is closed and the PWC requests for arrears to be collected
3. a change in the NRP's circumstances allows LO action to start.

73011 As part of the Compliance and Arears strategy dealing with historic CSA debt, the de minimis level set for enforcement referrals of CSA arrears is £1000.

Note: for cases with CSA debt of less than £1000, where administrative powers to collect the debt have been unsuccessful or deemed inappropriate, the debt may be considered for write off. See Chapter 54 Arrears Strategy - Manual representation and write off.

73012 If a LO is appropriate for a sub de minimis amount there are some enforcement actions where it may not be appropriate to proceed for low amounts of debt for example commitment to prison or disqualification from driving. See Chapter 90 - Sanctions Scotland.

73013 Cases with less than £500 total CMS debt, where an LO is not appropriate and no other action is possible, will remain within Enforcement until the debt reaches the de minimis, or the NRPs circumstances change that may allow other action to start.

73014 The de minimis decisions are discretionary and the DM must clearly record and include any decision regarding the welfare of any child affected. See Chapter 4 - Welfare of children.

Application is appropriate

Complete any outstanding action on the case

73015 DMs should not proceed with the LO application if there is an ongoing appeal or any outstanding assessment whose outcome may impact arrears for the period of debt covered by the LO application. DMs can however proceed with an application for any safe period of debt such as any period prior to the effective date of the maintenance calculation under appeal, or if they are confident that the arrears balance is correct and will not be altered.

73016 Where the NRP is repeatedly using the appeal process to prevent or delay enforcement, the court may decide to continue the hearing pending the tribunal outcome in order to ensure it is not oppressive against the NRP. Alternatively, the court may grant the LO but require that no enforcement action is taken pending the tribunal decision being made establishing the true debt amount. DMs should consult with Policy and team leaders before deciding if continuing with the LO application is appropriate, however it is preferable to proceed for a LO for a safe period of debt rather than delay debt recovery action.

73017 Where prosecution action for failure to provide information is being considered or has commenced DMs will need to consult with the DMs seeking this action before proceeding as enforcement action may jeopardise this.

Notice of intention to apply for a LO

73018 DMs must give notice of the intention to seek a LO. Therefore, the DM should issue the NRP an arrears warning letter including with it the notice of intention to apply for a LO. Although it is not a legal requirement to issue the warning letter, it is a Policy requirement, issuing this letter assists in demonstrating that DMs have taken all reasonable steps possible to secure payment before progressing.

73019 The arrears warning letter will set out the maintenance arrears and any other costs including interest, fees and costs of service1 that will be included in the LO application, and will give the NRP the notice of the CMS's intention to apply for an LO of

1. 7 days if the NRP lives in the UK[2]

2. 28 days if the NRP lives abroad[3].

1 CS (CE) Regs 1992 reg 27(2); 2, reg 27(1); 3, reg 27(1A)

Note: no further action should be taken until the relevant warning period has elapsed.

73020 If the NRP pays all of the arrears within the notice period DMs will not proceed with the LO application.

73021 If the NRP pays part of the arrears within the notice period and the LO application is to proceed for the outstanding balance, there is no need to issue a further notice of intention[1].

73022 If the NRP makes a payment agreement after the arrears notice has been issued, the DM should make the NRP aware that if they fail to continue with the agreed instalments a LO will still be sought and used to enforce collection of the arrears balance.

Contact the PWC

73023 Before proceeding with a LO application, the DM should always contact the PWC to

1. confirm if they agree to enforcement action being taken

2. obtain any additional information about the NRP`s lifestyle or assets that might help inform the DM's decision about any additional enforcement action

3. obtain information about any welfare of the child considerations in relation to either the PWC`s children`s circumstances as well as the NRP's if the PWC is aware of the NRP circumstances.

Note: after contacting the PWC the DM may decide that the case is no longer suitable for LO action. See para **73004**.

73024 If the circumstances of the case are not appropriate for LO action at that particular time, the DM can consider pausing the case for a suitable period of time to elapse before reinstating action to commence recovery of the arrears.

Registering an LO in the County Court

73025 Where a liability order has been made, the unpaid amount is recoverable by means of a third party debt order (TPDO) or a charging order as if it were payable under a county court order[1]. A LO should only be registered in the County Court if the DM has information or evidence to indicate that an application for a charging or TPDO could be made. For more information, see Chapter 75: Third party debt orders and Chapter 76: Charging orders.

1 CS Act 1991, s 36

73026 This is because an LO has no effect in itself, but solely allows other enforcement action to be taken. There is therefore no value in obtaining the LO unless the CMS has information to indicate that it may be able to use it.

73027 Deciding whether to register an LO in the County Court is a discretionary decision and DMs must take into account all relevant factors, including

1. the welfare of any child potentially affected by your decision

2. whether the action is likely to be effective, and

3. details of any contact with the NRP or PWC.

73028 The DM should record full details of any information or evidence used to support their decision

for example information obtained from the Land Registry about property or from banks and building societies.

73029 If the DM decides not to register an LO in the County Court, they must record this decision and the reasons for it. This is because if the CMS subsequently makes an application for commitment to prison or disqualification from driving, it must demonstrate that registration in the County Court or "levying distress" was attempted, and why it was rejected. For example, because the NRP does not have any assets a charging or third party debt order could be made against.

Note: Levying distress is a remedy which enables the CMS to instruct enforcement agents to enter the NRP's property to seize goods as security for payment of a debt[1].

1 CS Act 1991, s 35

The need to register a LO in the County Court

73030 LOs must be registered before CMS can take action to enforce them in the County Court. This is because LOs are granted in the magistrates' court, but charging and third party debt order actions are dealt within the County Court.

73031 Various decisions of a court, tribunal body or person other than the High Court or County Court including a compromise may be enforced as if they were a court order. Any sum of money recoverable under that decision may be recoverable as if it were a court order[1]. When CMS registers a LO in the County Court, the court will recognise the LO and grant an order for recovery, allowing CMS to take enforcement action in the County Court.

1 CP Rules 1998 Part 70 Rule 70.5

LOs and debt periods or amounts

73032 When an application for a LO is made, the DM must confirm within the order the

1. period the debt has accrued over, and

2. the amount of debt accrued within that period.

73033 If the debt for the period specified subsequently increases, DMs can apply for the amount in the LO to be increased. This is referred to as a 'top up LO'. See para **73042**.

73034 If the NRP continues to be non-compliant, DMs can apply for further LOs for subsequent periods of debt.

What happens when the LO is registered?

73035 When the County Court receives the CMS's application, they will

1. register the LO and allocate a claim number, which CMS must use for all future applications to

the County Court regarding the LO

2. send the NRP an order for recovery which will demand full payment of the outstanding LO amount within 14 – 28 days

73036 If the NRP is unable to pay the amount in full they can apply to the County Court for a variation order to pay by instalments. See Chapter 80 - Variation order.

73037 If the NRP does not apply for a variation, and the debt has not been paid within the time specified in the order for recovery, then the CMS can continue with charging or third party debt order action.

73038 Where a LO has been granted and enforcement action has not been taken within 6 years, enforcement action cannot be taken, so any court enforcement action for arrears covered by an LO must be taken as soon as possible after the LO has been made.

Hearing outcomes

LO granted

73039 If the LO is granted, the CMS will be informed and DMs can then consider what, if any, further enforcement action is most appropriate. See Chapter 71 - Legal enforcement – England and Wales.

Note: If the NRP continues to be non-compliant, DMs can apply for further LOs for subsequent periods of debt.

LO dismissed

73040 A LO application can be dismissed by the court for any of the following reasons

1. incorrect name or address on the application

2. the NRP has been proved not to be the biological parent of the qualifying QCs.

LO not granted

73041 The CMS presenting officers will inform DMs of the reasons the order was not granted and recommend the next appropriate action. DMs, after reviewing the reasons the application was dismissed from the returned file, can decide to lodge an appeal. This can only be done on the grounds that the sheriff has erred in a point in law.

Top up LO

73042 In exceptional cases, when the amount of debt for a period for which an LO has already been granted increases, it may be possible to obtain a top up LO where

1. the amount of debt due for that specified period of debt subsequently increases, and

2. DMs could not reasonably have known about the reasons for this increase at the time the original LO application was made.

Registering an LO on the Register of Judgments, Orders and Fines (RJOF)

73043 When an LO has been granted, DMs can register it on RJOF,[1] this is not the same thing as a county court judgment (CCJ). DMs should consider this if the NRP

1. fails to make a collection arrangement, or

2. defaults on an LO collection arrangement, after issue of letter confirming agreement.

1 RJOF Regs 2005, reg 8

What is the RJOF?

73044 The RJOF is a statutory public Register run by Registry Trust Ltd RTL on behalf of the Ministry of Justice.

73045 Details which would appear on a search of this register include the

1. name and address of the NRP, and

2. date and amount of the debt, and

3. CMS office responsible for the information, and

4. CMS case reference number (this would be the LO reference number).

73046 Information held on the register about any business or individuals is available to anyone providing the necessary search details and paying the appropriate fee. The Registry Trust Ltd is also legally obliged to make information available, in bulk, to commercial organisations.

What type of cases can be considered for registration?

73047 Registration with the RJOF can affect a NRP's ability to obtain credit and can be taken in parallel with any other action. DMs can consider registration if the NRP is

1. a homeowner, or

2. self-employed, or

3. a professional such as a solicitor, lawyer, accountant or dentist.

73048 The possibility of RJOF action on an NRP can encourage payment from an NRP that is a professional, as an entry on the register can be detrimental to their career.

73049 As with any decision made, consideration must be given to the welfare of the child and whether the method of enforcement is appropriate and how effective it can be.

NRP in receipt of a benefit or unemployed

73050 There would be no gain in registering the debt if the NRP is in receipt of benefit or unemployed. The NRPs circumstances should be kept under regular review until such time as another source of

income is identified. Registration would then be considered.

County Court Judgment already registered

73051 If the DM has evidence that an NRP has a CCJ registered against them with RTL, registering a new LO would have a minimal effect. However, if an existing registration is due to be removed in the near future DMs should still consider registration.

Note: If this information is not already known, DMs must not take investigative action to confirm whether it applies.

Care of or representative address

73052 DMs should not consider registration if the NRP is using a 'care of' or a representative's address. This may indicate that the NRP is not the registered owner of the property. Registration can affect the owner of the property's ability to obtain credit.

NRP obtaining credit to pay child maintenance debt

73053 If a NRP has stated they intend to obtain credit to pay their CMS arrears, DMs must defer any action to register the debt while the NRP attempt this. As registering the debt can affect the NRPs ability to obtain a loan or credit to enable them to pay the debt.

Effect of payment on registry entry

73054 When a LO is entered on the RJOF, a record of the debt will be held on the register maintained by RTL. The CMS must notify the RTL If the NRP

1. makes full payment within 1 calendar month of registration, the entry will be cancelled and no record will remain on the register[1]

2. makes full payment outside 1 calendar month of registration, either as a lump sum or in instalments, the CMS must notify RTL so that the entry on the register is marked as satisfied[2]. However, the entry will not be removed until six years from the date.

1 RJOF Regs 2005, reg 11(2); 2, reg 11(3)

73055 The entry will automatically be removed from the register 6 years after the date of registration[1].

1 RJOF Regs 2005, reg 26

73056 If CMS has registered the debt in error and the DM recognises that an administrative error was made, CMS should ask RTL to remove the entry from the register[1].

1 RJOF Regs 2005, reg 15

Note: Once a LO has been granted, information about the NRPs debt can also be shared with CRAs. For more information, see Chapter 44: CRA Disclosure.

Cross jurisdiction cases

73057 LOs granted in Scotland or Northern Ireland can be enforced in England and Wales as if they had been made in a magistrate's court. However, only when the order has been registered in the magistrates` court within the new jurisdiction[1].

1 CS (CE) Regs 1992 Part IV, s 29(4)

Chapter 74 - Enforcement agents

Introduction

74001 The CMS can arrange for enforcement agents to take control of goods and auction them to recover outstanding CMS arrears[1] owed by an NRP resident in England or Wales.

Note: this process was referred to as bailiff action previously.

This guidance explains

Considering referral 74002 – 74006

Enforcement agent action 74007 – 74010

Taking control of goods 74011 – 74027

Controlled goods agreement 74028 – 74031

Auction 74032 – 74037

Outcomes 74038 – 74044

1 CS Act 1991, s 35(1)

Considering referral

74002 An LO must have been granted against the NRP. Refer to Chapter 73: Liability Orders (England and Wales).

74003 Where an NRP has multiple LOs, an individual referral is required for each LO.

74004 DMs will refer the case to an enforcement agency if it is deemed appropriate.

Note: this is typically a debt enforcement and debt collection company with which the CMS has a contract.

74005 This action must be taken and the outcome recorded where the CMS is considering pursuing sanctions against an NRP. Refer to Chapter 79: Sanctions (England and Wales).

74006 There must be an address held for the NRP that the DM is relatively confident is accurate and the NRP must be resident within England and Wales.

Enforcement agent action

74007 The enforcement agent will try to

1. gain full payment from the NRP or
2. obtain a payment agreement with the NRP or
3. take control of goods
    - 3.1 for the purpose of auction or
    - 3.2 to ensure the NRP keeps to any payment agreement made.

74008 The enforcement agent is only responsible for obtaining the arrears balance outstanding on the LO. Any regular or ongoing payments are the responsibility of the CMS.

74009 If an NRP contacts the CMS to make an offer to pay towards a LO that has been referred to enforcement agents, the DM should advise the NRP to contact the enforcement agent directly.

74010 The enforcement agents will visit the NRP if the NRP fails to pay or make contact with the enforcement agent. This may be at

1. the NRP's home
2. business premises or
3. place of employment.

Note: there are national standards for enforcement agents here. These may be subject to local agreements.

Taking control of goods

74011 If the NRP refuses to come to an agreement or make payment, the enforcement agent will identify and value the goods which can be taken control of to cover the outstanding LO arrears.

Note: where the NRP makes a payment agreement, refer to para **74028**.

74012 The enforcement agent may not take control of goods whose total value is more than

1. the amount outstanding and
2. the amount in respect of future costs[1].

1 TCE Act 2007, sch12, para 12(1)

74013 An enforcement agent may take control of goods only if the goods are the NRP's[1].

1 TCE Act 2007, sch12, para 10

74014 The enforcement agent can take control of any property or goods owned by the NRP, on his land or a public highway, unless they are exempt goods, with the exception of land[1].

1 TCE Act 2007, sch12, para 9, para 11 & para 3(1)

Goods jointly owned or owned outright by a third party

74015 The enforcement agent will provide the NRP with separate inventories of goods owned by the NRP and each co-owner and an inventory of the goods without a co-owner. The co-owner must also be provided with the inventory of the goods and a copy of the information about the enforcement agent process[1].

1 TCE Act 2007, sch12 para 34(2); 34(3)

74016 Where the goods are owned outright by a third party and have been taken control of, it is the responsibility of the third party to apply to the court for the goods to be released. The third party owner will be required to pay for the release of the goods[1].

1 TCE Act 2007, sch12, para 60(1)

Exempt goods

74017 An exemption applies to goods protected under a different law. Such goods cannot be

seized to cover the outstanding arrears balance on a LO. This may include

1. goods protected by statutory state or diplomatic immunity
2. personal property of a trustee, and
3. works of art from abroad loaned for temporary exhibitions.

Note: this list is not exhaustive.

Securities

74018 The following, known as “securities”, may be seized

1. bills of exchange,
2. promissory notes,
3. bonds,
4. specialties or
5. securities for money[1].

1 TCE Act 2007, sch12, para 3(1)

Power to enter premises

74019 An enforcement agent may enter any premises without a warrant to search for and take control of goods[1]. They may visit premises multiple times[2].

1 TCE Act 2007, sch12, para 14(1); 2, para 14(3)

74020 Premises are defined as places where the NRP

1. usually lives or
2. carries on
    2.1 trade, or
    2.2 business[1].

1 TCE Act 2007 sch12, para 14(6)

74021 An enforcement agent may apply to the court to issue a warrant to enter specified premises not included in the above list to search for and take control of goods provided

1. there is reason to believe that there are goods on the premises, and
2. it is reasonable in all circumstances to issue the warrant[1].

1 TCE Act 2007 sch12, para 15(2)

Notification

74022 After entering the premises, the enforcement agent must provide a written notice to the

NRP[1]. This provides information about the enforcement agent process.

1 TCE Act 2007, sch12, para 28(1)

74023 Where the NRP is not present on the premises, the enforcement agent will leave the notice in a conspicuous place, unless there are other occupiers or persons on the premises where it will be left in a sealed envelope addressed to the NRP[1].

1 TCE Act 2007, sch12, para 28 (5); 28(6)

74024 If the premises are occupied by anyone other than the NRP, the enforcement agent must leave a list at the premises of any goods removed[1].

1 TCE Act 2007, sch12, para 29

74025 The enforcement agent must provide the NRP with a written agreement confirming that any goods have been taken control of[1]. Where the written controlled goods agreement is not provided to the NRP, the goods are treated as abandoned. Refer to para **74037**.

1 TCE Act 2007, sch12, para 34

Valuation

74026 The enforcement agent must make or obtain a valuation of the goods taken control of.

74027 The NRP or any co-owner will be given the opportunity to obtain an independent valuation of the goods[1].

1 TCE Act 2007, sch12, para 36(1)(b)

Controlled goods agreement

74028 The enforcement agent may make a “controlled goods agreement” with the NRP. This is an agreement under which the enforcement agent takes control of the NRP’s goods but does not remove them from the NRP’s possession on condition that the NRP makes payment in accordance with its terms. Refer to para **74040**.

74029 If the NRP does not adhere to the terms of the controlled goods agreement, the enforcement agent can return to the premises and remove the goods for auction[1].

1 TCE Act 2007, sch12, para 13(4)

74030 Where goods have been taken control of and not removed, the enforcement agent may enter the premises to inspect the goods or to remove them for storage or auction. The enforcement agent may repeatedly enter the same premises[1].

1 TCE Act 2007, sch12, para 16

74031 While under a controlled goods agreement, the NRP must not move or dispose of the goods before the debt is paid[1]. This is an offence and the NRP may be subject to a fine or imprisonment for interfering[2].

1 TCE Act 2007, sch12, para 13(4); 2, para 68

Auction

74032 Where the NRP fails to make or keep to a payment agreement, an enforcement agent can remove controlled goods for public auction.

74033 There may be occasions where a public auction cannot be held and the enforcement

agent may apply to the court to arrange an alternative[1] venue if this is required.

1 TCE Act 2007, sch12, para 41

74034 The sale must not be before the end of an agreed period unless by the NRP and any co-owner[1] confirms the sale can take place on an earlier date. The NRP and any co-owner will be provided with a notice of the details of the sale[2].

1 TCE Act 2007, sch12, para 39; 2, para 40

74035 Unless extended, an auction can only take place within 12 months of the day on which the enforcement agent takes control of the goods. An extension must be an agreement in writing between the CMS and the NRP and an extension can be applied for more than once[1].

1 TCE Act 2007, sch12, para 40

74036 An auction or sale can take place on the premises where the goods were found provided the consent of the occupier is given[1]. The court may order the auction or sale is held elsewhere[2].

1 TCE Act 2007, sch12, para 43(2); 2, para 43(3)

Abandoned goods or securities

74037 Where the enforcement agent fails to provide the relevant notice in para **74026** the goods or securities are treated as abandoned and must be made available for collection by the NRP[1].

1 TCE Act 2007, sch12, para 54; 56

Outcomes

74038 The enforcement agent will notify the CMS in writing of the outcome of the referral.

Payments not made

74039 Where payments have not been made or there have been no suitable goods to take control of, the DM will need to consider further enforcement actions.

Payments made

74040 Where payment has been obtained from the NRP, the enforcement agents will forward the payment or payments to the CMS. When the payments are received, refer to Chapter 51: Payment allocation.

74041 Any surplus received is returned to the NRP[1].

1 TCE Act 2007, sch12, para 50(5)

74042 Where there is a co-owner of any of the goods, the enforcement agent will pay the co-owner the share of the proceeds equal to the interest held by the co-owner[1] first. If there is any dispute over the share, this is dealt with by the courts[2].

1 TCE Act 2007, sch12, para 50(6); 2, para 50(7)

74043 Where the NRP pays the full LO amount, including associated costs, and the goods have been taken control of but have not been sold, the enforcement agent is responsible for making the goods available to the NRP[1].

1 TCE Act 2007, sch12, para 58

74044 The enforcement agent will monitor the payments until the total outstanding arrears on the LO are paid in full.

Chapter 75 -Third party debt orders (TPDO)

Introduction

75001 A TPDO[1] allows the CMS to enforce payment of an amount of child maintenance by freezing and obtaining money held by a third party such as a bank or building society. This is the amount detailed in the order for recovery plus any costs awarded by the court, see paragraph **75003**. A court will not grant a speculative order, and the application must be made on the basis of evidence that, for example, the debtor has an account with the bank or building society that is the third party.

This guidance explains

TPDO 75002 - 75004

Interim TPDO application 75005 – 75010

Hardship payment order 75011 - 75017

Final TPDO hearing 75018 - 75020

Further TPDO applications 75021 - 75022

1 CS Act 1991, s36; CPR 1998, rule 72

TPDO

75002 A lump sum or regular deduction order would usually be attempted before considering a TPDO, unless

1. a LSDO is not applicable, or

2. a RDO is not applicable because the NRP is a sole trader and the RDO would only be based on 40% of the NRP's income.

Note: for more information on when an LSDO or RDO is applicable see Chapter 56: Deduction Orders.

75003 Once a LO has been granted and registered in a county court (order for recovery), a TPDO application can be made where there is

1. money owed to an NRP who is self-employed, or

2. an outstanding invoice or money held with a third party. However, the money must be held on behalf of the NRP and in their name not the third parties' general account.

75004 An application is initially made for an interim TPDO, see paragraphs **75006** - **75010** and if this is granted an application is made for a final TPDO, see paragraphs **75018** - **75020**.

Interim TPDO application

75006 The application for an interim TPDO must be made to the county court and will be considered by

a judge without a hearing.

75007 If the judge is satisfied with the information in the application, they will make an interim TPDO. This will freeze any money held to the amount in the interim order, or a lesser amount if there is not enough money to cover the whole debt covered by the LO plus any costs.

Note: a TPDO application should be made in the same court which granted the order for recovery unless the NRP has moved to a different court jurisdiction.

Service of interim TPDO

75008 The court will usually send a copy of the order direct to the NRP and the third party. However, as the money will only be frozen on the day the order is served, the CMS can request to personally serve the interim TPDO on the third party. This would be applicable where information has identified that money is due to be deposited in the NRP's account on a certain date.

75009 The third party must be served the interim TPDO no less than 21 days before the final hearing[1]. The NRP 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[2]. The CMS must file a certificate of service with the court at least two days before the final hearing or produce it at the hearing[3].

1 CPR 1998, rule 72.5(1)(a): 2, rule 72.5(1)(b); 3, 72.5(2)

75010 The third party must disclose to both the court and the CMS the sums frozen on each account held by the NRP within seven days of being served with the interim order [1].

1 CPR 1998, rule 72.6

Hardship payment order

75011 The NRP can apply for a hardship payment order if they or their family are suffering hardship in meeting ordinary living expenses because their money has been frozen[1].

1 CPR 1998, rule 72.7

75012 If the NRP makes a hardship application, the CMS 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.

75013 The CMS will be informed and given no less than two days' notice of the hearing. DMs must immediately inform the Court Presenting Officer (CPO) so that they can attend the hearing.

75014 As a high priority, the DM should also provide the CPO with any information in relation to the objection to the hardship payment order, which may include details about

1. the NRP`s income, if information is held that it is relatively high
2. the welfare of the QC and any other children potentially affected by the decision
3. the NRP's history of non-compliance.

75015 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 CMS of the outcome.

75016 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 CMS once the final order is granted.

75017 If all the funds are released to the NRP, the CPO must arrange for the TPDO application to be withdrawn from the county court.

Final TPDO hearing

75018 If the TPDO 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.

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

75019 The CPO will attend the final hearing. The NRP 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.

75020 A final order is where the money that has been frozen is released and sent to the CMS. After the final order has been granted the NRP may wish to appeal, however it may be more appropriate to apply to set aside the order, depending on the facts of the case.

Further TPDO applications

75021 A TPDO can be attempted on the same account more than once, but if it was not successful the first time DMs will have to consider if it will be worthwhile to attempt this action again.

75022 It may not be appropriate to attempt a subsequent TPDO if for example

1. a previous TPDO was unsuccessful as no funds were available due to the account being overdrawn, DMs must consider if the non-resident is regularly overdrawn

2. the account is inactive e.g. an account with very limited funds, and there are no regular deposits being made.

Note: This list is not exhaustive.

Chapter 76 - Charging orders

Introduction

76001 In England and Wales a charging order allows the CMS to legally register a debt against assets, land or property owned by the NRP[1]. The CMS can apply for a charging order if a NRP is the sole or joint owner of property. A charging order allows any outstanding debt owed to the CMS to be recovered from the proceeds of the sale of a property.

1 CS Act 1991, s 36

This guidance explains

Cases that may be suitable for a charging order 76002 - 76004

Assets suitable for a charging order 76005

Property or land suitable for a charging order 76006 - 76012

Land Registry services 76013 - 76014

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Cases that may be suitable for a charging order

76002 When deciding to apply for a charging order, DMs will need to consider how effective the charging order is likely to be, taking into account all of the aspects of the case and fully supporting any decision with documentary evidence.

76003 The DM should consider if

1. the debt is at least £1000, as normally enforcement agency action or DOs will be used for lower sums

2. the debt is below the £1000 minimum, but above £750, is an application justifiable?

3. by combining multiple orders for recovery for property or assets, will an accumulated total of more than £1000 be achieved?

4. no further debt is going to accrue because the case is closed, can alternative methods of enforcement be used?

5. any property currently up for sale has enough equity to cover the CMS charge against it

6. the NRP's property is not currently up for sale, will the equity, by the time the property is brought to market, be enough to cover the CMS charge against it?

7. there are any other charges registered against the property, if so

    7.1 these will be met in the order they are registered, with the exception of legal charges from mortgage lenders, who receive their money first

    7.2 when the allocation of proceeds from a sale come to the CMS charge against the property, the level of equity may be too low and charging order action may not be appropriate

8. the NRP is a registered owner with

    8.1 no beneficial interest in a property and a deed of trust confirms that the property is held on trust for another party, a charging order application would not be applicable.

    8.2 a Trust Deed giving the NRP a percentage interest in a property, a charging order application may be made, see Chapter 95: Trust deeds.

    Note: if DMs proceed with an application, the court would require evidence confirming details of the above.

9. the welfare of any children involved in the case will be affected.

76004 The presence of children in the NRP`s household should not deter the CMS from considering applying for a charging order. For further advice about making or recording discretionary decisions, considering the welfare of any children, see Chapter 4: Welfare of children.

Assets suitable for a charging order

76005 Assets[1] suitable for a charging order are

1. land

2. securities of any of the following kinds

    2.1 government stock

    2.2 stock of any body (other than a building society) incorporated within England and Wales

2.3 stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom and recorded in a register kept at any place within England and Wales

2.4 units of any unit trust recorded in a register of the unit holders which is kept at any place within England and Wales

2.5 funds in court[2].

3. If considered, advice should be sought from CMS solicitors in relation to

3.1 awards of the family court

3.2 compensation from the Civil Injuries Compensation Board

3.3. compensation under a Compulsory Purchase Act, in cases where either the ownership of the property is unknown or the owner refuses to accept it

3.4 legacies, where missing heirs cannot be found

3.5 money lodged for dissenting shareholders

3.6 the net proceeds of sales from mortgage foreclosures, when the NRP cannot be traced.

1 CO Act 1979, s 2(2); 2 CP Rules 1998, Part 73.1 (2)(d)

Property or land suitable for a charging order

Details of the property are known

76006 Where the DM is informed that the NRP may own property or land and the address details are known, ownership can be confirmed by requesting official copies from the Land Registry. The Land Registry holds details of property owners of all registered land in England and Wales.

76007 These official copies will form the evidence presented to the court within the charging order application. Official copies will show the property's title deed number, owner and any charges registered against the property or land.

76008 If Land Registry official copies are already held, but are over three months old, DMs should request new official copies.

Note: the Land registry has only been maintained since the 1970s and if the property is unregistered, the Land Registry will not be able to confirm ownership details.

Unregistered property or land

76009 A charging order application can still be made against unregistered land. However, DMs should obtain alternative evidence confirming ownership before making a charging order application. This can include

1. information available on an existing NRP statement confirming that they own a specific property

2. information from the PWC reporting that the NRP owns property

3. writing to the NRP asking if they own the property, including details of CMS' criminal compliance sanctions[1]

4. checking if the NRP is registered on the electoral roll at the address with the Local Authority

1 CS Act 1991, s 14(A)3

76010 If it is known that a mortgage is held in respect of a property and if all other enquiries have been exhausted, information regarding ownership can be sought from the appropriate lender[1]. See Chapter 38 - Information gathering.

1 CSI Regs 2008, Reg 4 (2) (l)

Details of potential property are not known

76011 Where the DM is informed that the NRP owns property or land, but the address details of the potential property are not known, then evidence of ownership cannot be confirmed by requesting Land Registry Official Copies. It may be appropriate to request a search of the Land Registry's index of proprietors' names, see paragraph **76015**. This is a list of property titles that are owned by, or mortgaged to, an individual or company.

Multiple properties or orders for recovery

76012 A single charging order application may be made in respect of more than one property or asset. The Presenting Officer would confirm with the court how they would want this application to be made as each county court may have different practices.

Land Registry services

76013 The following Land Registry services are requested by using the online Land Registry Portal to

1. request official copies (to determine proprietorship)

2. register an Agreed Notice

3. cancel a Notice

4. register a Restriction

5. withdraw a Restriction

6. remove a Unilateral Notice.

76014 To register a Unilateral Notice, the application must be sent by post.

Note: Land Registry practice guides and Notices, Restrictions and Protection of Third Party Interests in the Register are useful reference material for DMs and can be accessed via the Land Registry website.

Index of Proprietors' Names (IOPN) search

76015 An IOPN search provides a list of titles that are owned by, or mortgaged to, the name that has been searched against. It can be used to gather information about a NRP and may provide a basis for requesting official copies of land registry papers.

Note: an IOPN search must not be used to gather information without a valid reason to do so and DMs must discuss with their line manager the reasons that an IOPN search is justifiable. The DM must confirm

1. there is sufficient information to believe the NRP owns property

2. confirmation that all other options for gathering information have been exhausted, and

3. the decision that the case is suitable for an IOPN search has been documented and the manager is satisfied that access is appropriate, proportionate and legitimate.

76016 If an NRP with multiple forenames may have registered their property in only one or a combination of their forenames or initials, multiple search forms on each name, combination of names or initials may be required as only one name is permitted per search request.

Note: the PWC may be able to advise how the NRP would be likely to have completed his name for official documents.

76017 The DM must decide how useful and accurate a search will be based on how unusual or common the NRPs name is and assessing if information already held could be checked against any search results returned by the Land Registry.

IOPN search results

76018 As the Land Registry covers the whole country, a full search can return numerous results. The DM must only pursue a detailed search on those properties in the geographical areas defined by the information gathered by the DM. Each search attracts a separate charge

so a business decision needs to be made as to whether a search is requested or not.

76019 The DM must be certain that the IOPN search result has identified property owned by, or mortgaged to, the NRP before requesting official copies of land registry papers.

76020 If the DM finds that the information does not refer to the NRP following investigation of the IOPN and the Land Registry search results, they must immediately destroy or delete the information using CMS approved secure methods.

76021 There is no requirement to retain any of the information returned under an IOPN search. Once the names on the list have been used to search the Land Registry Portal to obtain the relevant Official Copies, then the IOPN search results must be destroyed.

Note: information should never be held for individuals who have no connection with the CMS as this is a breach of the General Data Protection Regulation (GDPR). See DWP GDPR guidance.

Recording the decision

76022 If a DM decides to apply for a charging order, the decision and reasoning must be recorded in case it is disputed or queried at a later date. It must include reference to

1. the welfare of the child

2. any evidence obtained, including Land Registry Official Copies, evidence that the NRP owns stocks or shares or has an interest in a trust fund

3. the NRPs failure to make payment or a payment agreement for the principle debt, and

4. the amount due or part of the amount on the order for recovery awarded is still due.

Charging order application

76023 All charging order applications must be submitted to the County Court Money Claims Centre in Salford, Manchester.

Imminent sale of NRP`s property

76024 If a DM determines that the NRP may be imminently selling a property or assets, the DM must take immediate action. The DM should consider whether to

1. apply for a freezing order, see Chapter 78 - Charging orders or

2. make a charging order application immediately, and

3. make the Court Presenting Officer aware of the circumstances.

76025 If the DM is informed that the NRP is likely to sell a property before an interim charging order can be secured, the CMS can, with authorisation from CMS solicitors, register a Unilateral Notice with the Land

Registry warning potential purchasers of the CMS`s interest.

76026 To establish a link between debt and the interest in the land, the DM must send a certified copy of the charging order application when issuing the Unilateral Notice to the Land Registry as failure to do so could lead to the notice being rejected.

Note: the NRP or the joint owner can ask the Land Registry to cancel the notice. The CMS would be notified of the cancellation request and given 15 working days to validate the claim and raise any objections. If the CMS does not respond in this time, the unilateral notice will be cancelled.

76027 Where a DM considers that a property is likely to be transferred, or has already been transferred to another owner with the aim of preventing the CMS securing a charging order, the DM can apply for a freezing order or a setting aside disposition order. See Chapter 78 - Freezing order, or Chapter 72 - Setting aside of a disposition order (SODA).

76028 The order is obtained in a two-stage process. An “interim charging order” is obtained without notice. If the application is made to the County Court Money Claims Centre and relates to the NRP’s interest in land, it will be dealt with by a court officer unless certain exceptions apply[1], in which event the application will be referred to a District Judge.

1 CP Rules 1998, rule 73.4(4)

76029 Applications made to the County Court Money Claims Centre other than those which may be dealt with by court officers, for example applications for a charging order over securities, will be referred to a District Judge or legal adviser.

Interim charging order application

76030 The application for a charging order is made to the County Court Money Claims Centre. If it is considered to be inaccurate or incomplete, it will be returned to the DM for amendment and resubmission.

76031 If the Court Officer is satisfied with the information provided, they will make an interim charging order, which will impose a charge over the debtor`s interest in the assets to which the application relates.

76032 If the Court Officer considers the application form has not been completed satisfactorily, the application will be passed to the District Judge who may decide to either

1. issue the interim charging order, or

2. make the interim order but transfer the case to the Home Court within the County Court Money Claims Centre for hearing, or

3. make an order transferring the case to the NRP’s local County Court to either issue

directions or make the interim order and arrange a final hearing date.

76033 Once granted, the interim charging order will be given by the court to enforcement agents who have 21 days from the date of the order to serve it on the NRP, any other creditors and joint owners. If enforcement agents fail to do this within 21 days they can request an extension from the County Court Money Claims Centre.

76034 A certificate of service, confirming the interim order successfully served for each interested party, must be filed with the County Court Money Claims Centre within 28 days of the date served.

76035 The CMS, NRP or other interested party have 14 days from the date the interim charging order is served to submit any request for reconsideration with the Court Officer and lodge the request with the County Court Money Claims Centre.

Interim order – no objections lodged with County Court Money Claims Centre

76036 If no objections are lodged, then the District Judge will make the final charging order with no need for a hearing. The final charging order will be issued to enforcement agents to be served on the NRP and any other interested parties, for example joint owners.

76037 The NRP or joint owner may however make a further application to have the final charging order varied or discharged, the matter will be transferred to the NRP's local County Court for hearing.

76038 It is the responsibility of the CMS to register the final order with Land Registry, if the interim order has not already been registered.

Interim order – objections lodged with County Court Money Claims Centre

76039 If the NRP or any other interested party wishes to object to the interim charging order, they must first file and serve a written objection on the County Court Money Claims Centre within 28 days of the interim being served.

76040 If objections are lodged, the District Judge will then transfer the case to the relevant court (NRP's local County Court) to list for a final hearing about the objections.

Note: The court will serve all notices of the hearing.

Final hearing

76041 Any party that has lodged an objection or has an interest in the case will be called to attend court.

76042 If the NRP fails to attend the hearing, the Presenting Officer will ask the judge to proceed and hear the case in the NRP`s absence, and if required, assure the judge that

1. the interim order has been successfully served on the NRP, and
2. it has not been returned and that no new address has been notified, and
3. the certificate of service filed with the court, prior to presenting the case.

Outcomes

76043 The Presenting Officer will usually notify the DM of the outcome of the hearing. If the DM has not been notified within 14 days of the final hearing date the Presenting Officer must be contacted to check if they have received it. If not, the Presenting Officer will contact the court for the outcome.

Order granted

76044 If the interim charging order has been previously registered with the Land Registry, there is no need to register the final order again when granted. See para **76050 – 76051.**

76045 On a charging order being granted the DM can consider further enforcement action. See Chapter 71: Legal enforcement – England and Wales.

Hearing adjourned or application dismissed

76046 If the hearing is adjourned or the charging order application is dismissed at the final hearing, see Annex B: Court Proceedings.

Register interim order with Land Registry

76047 When the interim order is granted, it must be registered as soon as possible. This will prevent the NRP selling, transferring or re-mortgaging the property and will ensure that the debt is secured.

NRP is a sole owner

76048 The charge can be registered as an Agreed Notice which is attached to the property. This will not prevent the NRP from selling the property, however if not satisfied the notice will transfer to any potential new owners, in effect making it very difficult for the NRP to sell.

NRP is a joint owner

76049 Where the property is under joint ownership, it should be registered as a Restriction which effects the NRP`s beneficial interest in the property. It does not prevent the NRP from selling the property, but does put a duty on the seller to notify the CMS of the transfer and send a certificate to Land Registry to confirm this, before the sale takes place.

Note: where a Unilateral Notice has been registered due to an imminent sale, it must be cancelled and replaced with an Agreed Notice or a Restriction once the interim charging order is granted.

Register final order with Land Registry

76050 If the interim charging order has been previously registered with the Land Registry, there is no need to register the final order again when granted. If not, it must be registered with Land Registry ensuring that the debt is secured and preventing the NRP selling or re-mortgaging the property.

76051 Once a final charging order has been granted and registered with HM Land Registry, the CMS may request through the county courts that the property (be it dwelling or asset) is sold to provide funds to satisfy the outstanding debt. See Chapter 77: Order for sale.

Court costs

76052 If the court awards costs against the NRP[1] these need to be added to the NRP`s debt. The court costs awarded will be shown on the final charging order.

1 CP Rules 1998, Part 44

Chapter 77 - Order for sale

Introduction

77001 An order for sale (OFS) is an enforcement action available to the CMS in England and Wales. It is made on the basis of a final charging order (see Chapter 76). Following such an order, the CMS may apply for a court order for the sale of an NRP's assets[1] or property.[2] On completion of the sale CMS arrears will be taken from the proceeds left after costs and other debts have been paid. The OFS process differs from most other enforcement processes in that there is no Presenting Officer involvement.

1 CP Rules 1998, Part 73.1 (2)(d); 2, Part 73.10C(1)

This guidance explains

Cases that may be suitable for a OFS 77002 – 77007

Cases that may not be suitable for a OFS 77008 – 77010

Assets suitable for OFS 77011 – 77016

Payments or payment agreements 77017 – 77021

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Cases that may be suitable for a OFS

77002 OFS is a two stage process. The initial OFS action is designed to encourage compliance and to give an NRP a final chance to reach an agreement. Should this fail the CMS can apply for a full OFS and possession order.

77003 A DM has discretion as to whether to apply for a OFS and must consider the welfare of any child potentially affected by their decision. See Chapter 4: Welfare of children.

77004 OFS would usually be considered after all other enforcement actions have been taken, but prior to committal proceedings. The court has a wide discretion and may reject an application if they consider that alternatives were not sufficiently explored, see Chapter 71: Legal enforcement – England and Wales.

77005 In deciding if an OFS application is appropriate DMs must consider if

1. a final charging order(s) has been granted and registered with HM Land Registry[1]. See

Chapter 76: Charging Orders.

2. every effort has been made to resolve any IMA or a DMD that is or has been in place, as the debt may change if the NRP provides the information to complete a full maintenance calculation

3. there are outstanding reviews or appeals that may affect the arrears figure

4. where the majority of debt is owed to the PWC they have confirmed they wish this collected

5. all information in relation the application has been obtained by the DM from the NRP or CMS's information gathering resources

6. enforcement agent action has been taken and if no goods are available, a Nulla Bona must be received. See Chapter 74: Enforcement agents.

7. a DEO or deduction order can be imposed, even if this has previously been considered. See Chapter 55: DEOs and DERs & Chapter 56: Deduction orders.

8. records are held confirming all possible civil enforcement actions have been taken and concluded, or

9. an enforcement action has been considered and found not to be appropriate and the decisions have been fully recorded. See Chapter 75: Third party deduction orders & Chapter 73: Liability orders England and Wales.

1 CS Act 1991, s 36 & CP Rules 1998, Part 73

77006 Any decision to proceed with an OFS application must be based on all aspects of the case and fully supported with documentary evidence. The information required for OFS cases is extensive and must include a full history of the case, proceedings taken or considered, statement of debt accrual and other information gathered.

77007 It may be appropriate to defer an application for an OFS, to enable the NRP to make alternative living arrangements and or to sell the property on the open market. The DM would make this decision on a case by case basis, but it would be unusual to defer the application for more than six months. If CMS do defer action, consideration must be given to if it would be appropriate to seek a consent order[1] to ensure the NRP is taking these actions.

1 PD 40B – JaO, s 3.5

Cases that may not be suitable for a OFS

77008 When a committal sentence has been imposed in relation to an earlier LO, OFS

proceedings may not be appropriate for subsequent LOs. However, if an earlier LO is not subject to an on-going committal sentence, or if payment of a debt is not being paid as part of the conditions of a suspended sentence, OFS action may be considered.

Note: in such cases DMs should discuss with their team leader and where appropriate seek advice from departmental solicitors.

77009 Not all cases are suitable for OFS action and must be considered on their own individual circumstances. The following points do not prevent OFS action, but provide an indication of the types of cases that may not be suitable

1. the debt secured by the LO is less than £3000

2. less than 70% of the debt has been secured with an interim or final charging order

3. there is insufficient equity

4. another creditor is taking repossession proceedings

5. the property is a ‘going concern’ commercial property

6. the PWC no longer wishes collection on cases when the majority of the debt is owed to them.

Note: typically, commercial properties can be referred for early rather than full OFS action to attempt to obtain full payment or payment agreement. However, CMS’s policy is not to take possession of a commercial property, as this may put an end to the business and put people out of work, so further advice should be sought from the CMS solicitors when a commercial valuation is required.

77010 The decision whether or not to accept a case for OFS action will be made by the OFS DM. Where a DM identifies a case which they believe is not suitable for OFS action they will return it to the enforcement teams.

Assets suitable for OFS

77011 Assets[1] suitable for an OFS are

1. land

2. securities of any of the following kinds

    2.1 government stock

    2.2 stock of any body (other than a building society) incorporated within England and Wales

2.3 stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales

2.4 units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales

2.5 funds in court[2].

3. If considered, advice should be sought from CMS solicitors in relation to

3.1 awards of the family court

3.2 compensation from the Civil Injuries Compensation Board

3.3 compensation under Compulsory Purchase Acts, in cases where either the ownership of the property is unknown or the owner refuses to accept it

3.4 legacies, where missing heirs cannot be found

3.5 money lodged for dissenting shareholders

3.6 the net proceeds of sales from mortgage foreclosures, when the mortgagor cannot be traced

Note: an application to the Royal Courts of Justice can be made to have funds, which are held in court, released. Whilst such applications do not need to be carried out exclusively by OFS teams they should only be made by an ECM after consultation with their team leader and CMS solicitors.

1 CO Act 1979, s 2(2); 2 CP Rules 1998 Part 73.1 (2)(d)

Relevant property

77012 When considering applying for an OFS against a property, the DM should obtain the following information,

1. a drive by valuation by the CMS solicitors (except in Early OFS cases), and

2. an up to date mortgage balance from PSG, and

3. a balance for charges already registered against the property.

77013 When the NRP has not provided the DM with property or mortgage details and no information is available via PSG, the on-line Land Registry can be used to obtain information

relating to charges on the property. If unsuccessful, a DM may request information directly from the lender or creditor[1]. See Chapter 38: Information gathering.

1 CSI 2008, s 4(2)

77014 The DM will decide if OFS is appropriate by taking into consideration

1. if the charging order or orders exceed the de minimis of £3,000

2. who currently resides at the property, including

    2.1 either a joint owner or a family member, consideration should be given to the impact on them, especially if children reside at the property

    2.2 anyone elderly

    2.3 children under the age of 20, if so, consideration should be given to the welfare of any children potentially affected by the decision. For example, DMs should consider things such as access to schools or the PWC, establishing if suitable alternative accommodation is available within the vicinity (3-5 miles) of their current address or school (this list is not exhaustive)

3. is the property joint or solely owned? Official copies should be obtained from the Land registry to establish the priority of CMS charges if

    3.1 sole ownership applies, to establish the available equity by obtaining redemptions for all charges

    3.2 joint ownership applies, to establish available equity by obtaining redemption figures. The relevant apportionment will be based on the confirmed number of joint owners, any confirmed declaration of trust[1] or if no evidence presented equal apportionment to owners

4. if the property is leasehold. If so using the land registry official copies to establish the terms of the lease remaining on the property. Where a property is leasehold and less than 80 years remain on the lease, full OFS action may not be appropriate. The property may be considered to be un-mortgageable and therefore potential sale of the property could be severely restricted

    Note: an OFS does not allow the CMS to apply to extend a lease only to take possession and sell the property.

5. if, given its estimated value, sufficient equity would be available following the sale of the property

6. if there is additional debt owed which has not yet been secured, but is enforceable consideration should be given to the suitability of proceeding if the total debt would not be secured through OFS

7. where the priority of the CMS charge sits if there are other charges on the property, too low and it may not be worth pursuing the OFS

8. is the relevant property the NRP`s home, if so how long has the NRP lived there and is it beyond their reasonable needs

9. is the property tenanted, if so an order with vacant possession would be required, see para 77056 - 77059.

10. has the property been specially adapted for a person with disabilities? If so establish the reason for and nature of any adaptations to the property. On a case by case basis using online property websites establish

10.1 the potential for accommodation suitable for the NRP to rent or buy within the vicinity (based on the reasons 3-10 miles) of the current address, and

10.2 any possible eligibility for the disabled person to receive support from their local authority.

1 CO Act 1979, s 2(1)(b)

NRP circumstances

77015 If a NRP is registered as bankrupt this does not stop action, as CMS debt is not subject to bankruptcy procedures. However, the CMS is unable to take enforcement action whilst a paying parent is in the process of being made bankrupt. If notified, any ongoing enforcement action would cease until after the bankruptcy order had been made.

Note: often the NRP is discharged from bankruptcy within a short period of time; however, a decision can be made for the bankruptcy notice to remain on the property, usually for up to 3 years although sometimes longer in certain circumstances. The CMS can still proceed with OFS, if the Insolvency Practitioner agrees.

77016 If a NRP has an Individual Voluntary Agreement (IVA), these are entered on the land registry official copies as a restriction. This prevents the owner from selling the property without the consent of the administrator of the IVA and effectively creates a trust where the property is deemed to be jointly owned with the administrator. The CMS is not bound by an IVA and can continue with OFS proceedings, however it is necessary to establish the amount secured by the IVA to determine the equity position.

Note: if either of the above apply to the case, a decision based on all aspects of the case fully supported with documentary evidence is to be considered.

Payments or payment agreements

77017 If the NRP contacts the DM and offers to make a payment towards arrears DMs should accept the payment and must not negotiate with the NRP. As the case is with the CMS solicitors, they must be informed immediately if any payments are received before the court hearing that may affect the OFS application debt.

77018 If the NRP does not pay the arrears in full, but makes an acceptable payment arrangement with the CMS solicitors in line with the CMS`s payment arrangement guidance, the CMS will usually proceed with the court hearing but ask for the order to be suspended by consent order. Any payment arrangement offered out with the normal guidelines will be presented to the CMS to decide if the arrangement is to be accepted. See Chapter 53: The debt steer.

77019 Typically the payment arrangement is monitored for up to 3 months by the CMS solicitors. Should the NRP default on a case suitable for full OFS action, CMS can authorise that the case goes for full OFS proceedings.

Paid in full

77020 If the arrears are paid in full, anyone involved with the case must be informed. The application will usually be withdrawn if the payment is made prior to the initial court hearing date and CMS solicitors will remove the charges from the land registry official copies.

77021 When a payment has been made that clears the arrears but not the costs, the DM may decide to continue with the court hearing date to obtain a costs order.

Early OFS appropriate

77022 When the DM decides to proceed with an early OFS, the case will be sent to CMS solicitors, who will

1. contact the NRP to inform them that the case is now with them and give them a final opportunity to pay. This will usually happen within seven days of receipt of the case

2. retain the case for 28 days unless an extension is agreed with CMS

3. continue to negotiate with the NRP during this time to come to an acceptable arrangement for recovery of outstanding debt, where possible applying the current payment arrangement guidance.

77023 At this stage costs and interest will not be sought unless they have already been granted by the court and included in the final charging order.

77024 The CMS solicitors will provide a report to the CMS on the case submitted and will indicate if it is appropriate to proceed to full OFS action, based on the following criteria

1. the amount of secured debt (charging orders obtained and registered with Land Registry) against the total enforceable debt

2. mortgage redemption and available equity

3. an indication of the NRPs likelihood to pay (based on progress of the case during the "initial action" stage)

4. any representations made by the CMS, specifically asking for the case to be progressed

5. any exceptional circumstance, for example the NRP being declared bankrupt and the property currently being marketed

6. if an IMA or DMD is still in place which cannot be converted to a full maintenance assessment.

Full action appropriate

77025 Cases that are identified as potentially suitable for full OFS action must be discussed at a senior level, before a decision is made on which should proceed. For suitable cases CMS authorisation is required and these must be prepared and referred within a twelve-week period.

Application for full OFS

77026 When a DM decides to apply for OFS, both the NRP and PWC must be notified of this decision in writing, this allows both parties the opportunity to submit their reasons why any property should or should not be sold. Contact with the NRP in this instance will be made through departmental solicitors.

77027 Where the majority or all of debt is owed to the CMS, a decision notification is still sent to the PWC. The PWC has the opportunity to provide information relating to issues such as the welfare of any QC or a potentially violent situation.

77028 On receiving the case, the CMS solicitors will liaise with the CMS requesting any additional information and final authorisation before making the final application to the court.

NRP or PWC responds to the submission letter

77029 The NRP or PWC may request to meet with a senior manager to address any concerns raised and ensure these are accurately reflected in the case. However, a face to face meeting will not be arranged and a telephone interview can be offered as an alternative.

PWC submission statement

77030 The PWC is not required to, but may choose to submit reasons why the property should or should not be sold.

77031 If all of the debt is owed to the PWC and they do not support the CMS's decision to apply for an OFS, the case should not be authorised for full OFS action.

Note: a submission statement will only be used to consider if the DM should proceed with OFS or not. It will not be used as evidence in court.

Conditions requiring a barrister

77032 The DM occasionally find circumstances requiring the services of a barrister, including

1. High Court representation where debt is more than £350,000

2. when it is case critical and it is in the CMS's interest to defend a case that could potentially lead to an adverse judgment

3. appeals to the High Court

4. where the NRP fields counsel and CMS needs to be represented at a similar level of legal expertise.

Note: where it is decided that the services of a barrister are required authority must be sought from the DMs Grade 7.

Directions hearing

77033 The court will decide if a directions hearing will be heard before the final hearing. See Annex B: Court Proceedings.

Outcomes

77034 The outcome of an OFS application is at the judge`s discretion, with the CMS solicitors informing the CMS of the outcome and any costs or interest awarded.

OFS hearing adjourned

77035 The court can decide to adjourn the hearing. See Annex B: Court Proceedings.

OFS granted

77036 The OFS will usually direct that the NRP must pay the secured debt by a certain date set by the court, should this date pass without payment, the CMS can apply for repossession.

77037 The order will set a minimum sale price for the property. See para **77055.**

77038 The order will include costs and interest as granted by the court. The rate of interest is prescribed in legislation.[1] Where the relevant judgment makes financial provision for a spouse or a child, interest shall only be payable on an order for the payment of not less than £5,000 as a lump sum (whether or not the sum is payable by instalments)[2].

1 IoJDO 1991, art 5; 2, art 2(4)

Additional debt secured after the order is granted

77039 If additional debt is secured after an order for sale has been granted, CMS can recover the additional debt following sale of the property, as an additional creditor.

OFS suspended

77040 This type of order is usually granted with an order to pay, which will include the timescale by which the payments must be made. The order will set out the terms directed by the court, for example payment by instalments or lump sum payments. The court may allow time for the property to be voluntarily sold and set a date by which full payment should be made.

77041 Where terms are directed by the court payments should be monitored and where arrangements break down prompt action to resume payments or consider default action must be taken.

OFS suspended and NRP defaults

77042 If the terms of the suspended order are not met, the CMS solicitors will contact the NRP to pay the shortfall and resume payment. If unsuccessful the action to take will depend on if there is sufficient debt or equity to direct that action is reinstated. If it is appropriate to enforce a suspended order, the action required will depend on if the NRP defaulted on the order within six years or not.

Note: by dealing with any default promptly, for example, directing the CMS solicitors to contact the NRP, the payment arrangement can be reinstated without the need for repossession action.

NRP defaults within six years

77043 If the NRP fails to make payments in line with the terms of the suspended order, consideration can be given to enforcing the suspended order.

77044 The CMS would make a decision on enforcing the suspended order after considering taking possession of the property, see para **77052 – 77062.**

77045 An application to the court for a warrant of possession can be made, which will be served on the NRP, informing them of the date the property will be taken by the CMS.

NRP defaults after six years

77046 If 6 years or more have passed since the order was granted and the NRP fails to make payments in line with the terms of the suspended order, DMs do not have to start the OFS process again, but prompt action must be taken to make an application to court for permission to enforce the suspended order.

77047 The CMS would make a decision on enforcing the suspended order after considering taking possession of the property, see para **77052 – 77062.**

77048 If granted, the CMS solicitors can make an application for a warrant of possession. This

is served on the NRP making them aware of the date set by the court for their property to be taken by the CMS.

OFS application dismissed

77049 If the judge decides not to grant the application for an OFS, the CMS solicitors must notify the CMS, reasons why the order was not granted and the grounds for appeal with potential costs implications if appropriate.

77050 If it is not appropriate to appeal the decision, the CMS can apply for a further order once additional debt has been secured.

OFS appeals

77051 The decision to appeal a decision must be brought to the attention of the court as soon as possible. See Annex B: Court Proceedings.

Possession

77052 The CMS must ensure that any decision to take possession of a property is based on there being sufficient equity available after the costs and effects of the sale have been paid to recover the secured debt. This should be confirmed by

1. an up to date valuation (dated no older than 3 months) and taking into account if the equity available would vary if the property should sell within 90 days, and

2. an internal valuation, should the order include a clause allowing this and if there are any doubts as to the internal condition of the property

3. an estimate of the costs for selling the property provided by CMS solicitors

77053 The costs and effects of the sale of the property must be paid before the CMS arrears and granted costs, as directed by the order.

77054 DMs should consider if similar properties are being marketed in the same postcode, how long these properties have been on the market and if their asking prices reflect CMS's current valuation. DMs can then decide if this is the best time to take possession of this particular property.

Minimum sale price is more than current valuation

77055 The order will set a minimum sale price for the property. If there is evidence that this amount is no longer reflective of the current property market the CMS solicitors should apply for the minimum sale price to be reduced.

Vacant possession

77056 It is common for CMS solicitors to apply for a warrant of possession along with forced

sale applications. This notice requires any occupants to leave the property. This is to ensure that the property can be sold with vacant possession.

77057 Once a decision is made to proceed with repossession, the CMS solicitors will apply to the court for a warrant to enforce the order.

77058 The High Court will issue the writ of possession warrant enabling the eviction of any occupants. The CMS solicitors will arrange for the eviction notice to be served on the NRP's property within the required timescales (usually two weeks).

77059 On the eviction date enforcement officers will evict the tenant or NRP and change the locks.

NRP voluntarily delivers possession

77060 If the NRP offers to relinquish the keys to the property, the CMS solicitors would discuss the case with the CMS. An agreement to take possession of the property from the NRP will only be entered into after an internal valuation confirming sufficient equity is available and the NRP had not done anything to effect the value of the property.

NRP applies to set aside the warrant or eviction date to the court

77061 The challenge from the NRP must be considered, and a decision made by the DM to defend the action or let the set aside proceed. If it is decided to set the application aside consideration should be given to making it conditional that no costs will be due to either party. If it is decided to defend the action the CMS solicitors will arrange the necessary legal representation.

NRP agrees to pay in full on the day of eviction

77062 If the NRP pays in full, including all costs, the eviction will be cancelled. If the NRP pays the maintenance due but not the costs, or offers an agreement, it is the DMs decision to consider accepting or rejecting the offer and if the property should be repossessed.

Sale of property

77063 Seven days after the NRP or tenant's eviction, the CMS solicitors will provide a marketing report setting out any requirements for maintenance, clearing or cleaning of the property.

77064 The CMS solicitors should obtain 3 quotes for any work to be undertaken, with the most cost effective quote being authorised by the CMS. The property will not usually be marketed until the maintenance has been completed.

77065 The property will be marketed at the asking price laid out in the marketing report provided by the CMS solicitors, with no further reference to the CMS, unless it is below the minimum sale price set out within the order.

77066 The DMs can check rightmove to confirm the property is being marketed effectively, raising any issues with the CMS solicitors.

77067 If on taking possession the internal valuation or suggested marketing price does not allow the CMS to secure full payment of the secured debt, the CMS in discussion with the CMS solicitors can consider

1. returning the property to the NRP, with a payment agreement in place

2. approaching the primary lender to take possession of the property

3. auctioning the property to achieve a quick sale. An estimate of the cost being obtained via the CMS solicitors. The reserve price should reflect the 1st priority charge and allow the CMS to recover their costs. If this is not met, consider point 2.

77068 While the property is being marketed, a monthly report will be provided by the CMS solicitors. If not, this should be requested. This report will determine if the property is being marketed effectively and on reviewing this at 3 and later 6 months, there has been little interest, the CMS in discussion with the CMS solicitors can consider

1. reducing the marketing price

2. applying to the court for a reduced minimum sale price

3. approaching the primary lender to take the property

4. obtain costs of auctioning the property, the reserve price should reflect the 1st priority charge and allow the CMS to recover their costs. If this is not met, consider point 2.

Funds distribution

77069 The CMS solicitors will distribute funds in line with Land Registry requirements and in line with the terms of the order only the CMS debt, costs and interest (allocated in this order) can be retained. The remaining balance is returned to the NRP or joint proprietor.

Note: if the NRP cannot be traced, monies may be placed with the court.

Chapter 78 - Freezing orders

Introduction

78001 A freezing order[1] is an interlocutory injunction which prevents an NRP from disposing of or dealing with their assets. This allows the CMS to take enforcement action against that asset.

Note: Interlocutory injunction means a court remedy that is issued to prevent a party doing something.

This guidance explains

Suitable assets for freezing order applications 78002

When a freezing order would be appropriate 78003 - 78004

Application for freezing order 78005 - 78007

Court hearing outcomes 78008 - 78024

1 CS Act 1991, s32L

Suitable assets for freezing order applications

78002 Freezing orders can be requested in relation to a range of assets including

1. land and, or property, registered in the UK in the NRP`s name (as per the Land Registry) and which is owned solely by the NRP and not used for business purposes. Property must have equity of at least £3000

2. capital assets that produce an income, for example the NRP rents out residential property, which they are the sole owner of

3. vehicles of any type that are registered in the NRP`s name (as per the DVLA) and which are not used for business purposes

4. financial portfolio items, including stocks, shares, securities or other commodities

5. collectable assets, such as valuable works of art or jewellery

6. boats.

When a freezing order would be appropriate

78003 A freezing order must be considered where the NRP is disposing or intending to dispose of an asset. Freezing orders should only be considered if

1. the value of the asset and the NRP`s arrears both exceed £3,000

2. the NRP has been notified of the CMS arrears

3. there is a liability order in place or action to apply for a liability order has commenced

4. there is clear evidence that the NRP owns the asset that is to be disposed

5. there is information and or evidence to indicate that suitable assets are available for this type of action, and

6. there is information and or evidence to indicate that the asset is being or is going to be disposed of, or removed from relevant jurisdiction.

Note: for more information on evidence relating to an application for a freezing order, see Chapter 100: Evidence – collection and enforcement.

78004 Freezing order applications should be made in the jurisdiction where the asset is located, irrespective of whether the NRP resides in that jurisdiction. This means, if a NRP lives in Scotland, but the asset is located in England or Wales, the freezing order application must be made to the court in England or Wales and vice versa.

Note: freezing orders cannot be obtained where the NRP has made arrangements to dispose of an asset in a will or codicil.

Application for freezing order

78005 A freezing order application must include

1. a list and copies of all evidence gathered in support of the application, ensuring any photocopies are certified as true copies

2. details of the next intended enforcement action that will be taken, if the freezing order is granted

3. a request to the High Court to freeze the asset to prevent the NRP from dealing with it for a length of time that will allow the next enforcement action to be completed

4. the amount of time that will be required for the next enforcement action to be completed

5. confirmation that the welfare of any child potentially affected by the granting of a freezing order has been considered

6. the account breakdown

7. any other supporting evidence attached as an appendix

8. a copy of the latest issued arrears notice

9. a statement confirming the CMS wishes to apply for any costs incurred in obtaining the

order

Application: duration of an order

78006 Freezing order applications should include a request to the High Court to freeze the asset, for a period of time that will allow the next enforcement action to be completed.

78007 The DM must state how long the CMS requires the order to last. The time required will depend on the next enforcement action to be taken. Details of the most appropriate action and the time that will be required to complete it are shown in the following table.

Action	When appropriate	Time required
Liability order	If there is no liability order in force	20 weeks
Order for recovery	To register the liability order in the county court	4 weeks
Charging order	If the NRP has property	20 weeks
Enforcement Agents	If the NRP has vehicles, collectable assets or capital assets	23 weeks
Third party debt order	If the NRP has financial portfolio items	15 weeks

Court hearing outcomes

78008 Once the application has been checked and approved by Judicial Review (JR) colleagues, they will instruct the Government Litigation Department (GLD) to make an application to the Administrative Court in London. Subsequent hearings for Welsh cases may be transferred to the Administrative Court in Cardiff to facilitate attendance.

78009 Freezing order hearings are held without the NRP being given notice. The court is unlikely to order a review hearing, but will allow the NRP to apply to set aside or vary the order. GLD will inform the CMS of this. At the hearing, the judge will grant or reject the order or adjourn the hearing.

Hearing adjourned

78010 If the judge has directed that there should be a review hearing, this may be adjourned for further information and or evidence to be submitted. GLD will liaise with the CMS regarding any additional requirements.

Order granted

78011 If the freezing order is granted, GLD will notify the CMS.

78012 The DM must check the order for any specific directions from the High Court. For example, if the freezing order has been granted in relation to property, the High Court may direct that the CMS must obtain the liability and charging order by a specific date.

78013 The High Court may also give directions about what is the most appropriate enforcement action. In these circumstances, any such directions must be adhered to. Otherwise, the DM will decide on the most appropriate next enforcement action, depending on the circumstances of the case and the type of assets involved.

78014 If the freezing order is granted, it must be served on the NRP, at their address, by the contracted Enforcement Agents.

Order refused

78015 If the freezing order application is refused, GLD will notify the CMS and whether there are grounds for an appeal to be made against this decision.

Note: if the application is rejected at a hearing without notice, the CMS must inform the NRP that this action was attempted, unless the CMS has permission from the court not to. For example, where GLD inform the court that the CMS will appeal against the decision.

78016 If GLD state there are grounds for an appeal, then any appeal must be made within a period of time specified by the High Court. It is important that an appeal is submitted in time. GLD will liaise with the CMS to ensure the necessary requirements are completed.

78017 If GLD advise that there are no grounds for appeal, then no further action should be taken in relation to the freezing order.

NRP disposed of asset before freezing order hearing

78018 When GLD submit the freezing order application, they will include a request that if ownership of the asset changes before the order can be granted, the court consider an application for SADO, see Chapter 72: Setting aside disposition order. If a SADO is granted the ownership of the asset is returned to the NRP.

Variation of a freezing order

78019 The NRP, the CMS or an affected third party can ask for the freezing order to be varied at the initial review or review hearing. Reasons for requesting a variation may include

1. asking for a different asset to be frozen

2. asking for a different time period (for example, where the CMS has been given six months to complete its next enforcement action, the NRP might ask for this period to be reduced).

78020 Any requests for a variation will be dealt with by DWP Litigation.

Withdrawing a freezing order application

78021 In certain circumstances, it may be appropriate for a freezing order application to be withdrawn. For example, where

1. the NRP pays their arrears in full

2. the NRP dies, or

3. the PWC states they do not want the CMS to pursue arrears due to them.

78022 In these circumstances, GLD must be informed as soon as possible so that they can send the application for withdrawal to court.

Freezing order revoked

78023 The court`s standard order will usually permit it to be revoked in writing by the CMS once

1. the applicable enforcement order or action is in place, or

2. the timescale of the order has lapsed.

78024 Unless ordered by the High Court, the granting of the next enforcement order, for example a charging order, would not automatically revoke the freezing order.

Chapter 79 - Sanctions

Introduction

79001 In England and Wales, there are three options available for the CMS to pursue the NRP through the magistrates' court where an NRP has failed to pay the outstanding LO balance. These are known as sanctions.

This guidance explains

Considering sanctions 79002 – 79021

Driving license disqualification 79022 – 79030

Commitment to prison 79031 – 79037

Passport disqualification 79038 – 79045

Court outcomes 79046 – 79047

Defaults 79048 – 79053

Considering sanctions

79002 The three sanctions that the CMS can apply for are

1. disqualification from holding or obtaining a driving license

2. commitment to prison

3. disqualification from holding or obtaining a UK passport

79003 Only one of these sanctions can be imposed on an NRP at a time[1].

1 CS Act 1991, s39A, s39B(6); s40B(2)

79004 Sanctions can be imposed on the NRP by the magistrates' court where an LO has been granted.

79005 Where an application to impose sanctions is to be considered DMs must refer the case to the CMS presenting officers. The presenting officers will work with DMs in determining the most appropriate sanction.

79006 In exceptional cases, the CMS presenting officers may be required to refer the case to the CMS contracted solicitors. This may be where

1. the NRP is

    1.1. to be legally represented or

    1.2 a solicitor

2. the case is

    2.1 high profile or

    2.2 likely to attract media attention

3. the CMS may be challenged under the Human Rights Act 1998

4. the case is unusually complex

5. there is a systematic and, or pre-planned scheme by the NRP to disrupt the proper progress of the case.

79007 The DM can advise the presenting officer which is the preferred sanction to be applied for but the final decision will be made by the magistrates' court.

79008 All other enforcement actions for England and Wales should be considered before applying for sanctions. Refer to Chapter 71: Legal Enforcement (England and Wales).

79009 Where the NRP has multiple LOs, sanctions would not need to be considered for each LO as a single sanctions application can be made for all. Refer to Chapter 73: Liability Orders.

79010 Wilful refusal is the legal term used where an NRP states that they are never going to pay the CMS arrears.

79011 Culpable neglect is the legal term used where an NRP organises their affairs in such a way that it is impossible to collect the CMS arrears.

79012 DMs should consider all the circumstances on an individual case basis, seeking guidance when required through consulting with the CMS presenting officers.

79013 The NRP should have at least £1,000 of CMS arrears outstanding on an LO.

79014 Where the LO arrears are less than £1,000, the DM should take the following additional considerations before making a decision on whether sanctions are appropriate.

1. prolonged or repeated pattern of non-compliance

2. the case is

    2.1 high profile or

    2.2 likely to attract media attention

3. sanctions have been recommended by

    3.1 ICE or

    3.2 PHSO

4. the OGM has ended and the arrears are just short of £1,000

Ability to pay

79015 Sanctions may be considered appropriate where it can be confirmed that the NRP has the ability to pay but is unwilling to pay. They can encourage NRPs to come to a payment agreement.

79016 The circumstances of each case should be considered, taking into account

1. does the NRP require a driving license for their work

2. does the NRP require a passport for their work

3. has all alternative enforcement action been considered or failed

4. does the PWC agree with pursuing the sanction

5. what impact would sanctioning the NRP have upon the welfare of any child

6. what impact would sanctions have upon the NRP's health or welfare

7. is the case fully up to date

8. are there further LO applications pending against the NRP

9. is the NRP within the correct jurisdiction.

Note: this list is not exhaustive.

79017 If the NRP has the ability to pay but needs a passport or driving license for work, pursuing those sanctions could encourage the NRP to make payment.

79018 If the NRP does not have the ability to pay and needs a driving license or passport for work, pursuing those sanctions could affect the ability for the NRP to earn an income and pay child maintenance. DM should consider if it would be more preferable to pursue commitment to prison.

79019 If there is a lack of financial information on the circumstances of the NRP, a committal sanction would be the preferred option to recommend.

79020 The CMS must prove that the NRP had the ability to pay at the time the LO arrears accrued.

79021 Where the NRP is bankrupt, DMs can still consider applying for sanctions where it can be proven that the NRP had the ability to pay.

Note: the bankruptcy administrator would have made an allowance for the NRP to maintain ongoing payments to all creditors and this would have included payments to the CMS.

Driving license disqualification

79022 Where the magistrates' court is satisfied that there has been wilful refusal or culpable neglect on the NRP's part, the court may

1. issue an immediate disqualification from

    1.1 holding or

    1.2 obtaining a driving license.

2. issue a suspended disqualification sentence with imposed conditions on the NRP[1].

1 CS Act 1991, s40B(1)

79023 Where the disqualification is immediate, the court will order the NRP to surrender the driving license and, where appropriate, its counterpart[1] to the court and the court will send it onto the CMS.

1 CS Act 1991, s40B(4); s40B(9)

79024 Where the NRP does not bring their driving license to the hearing, the DVLA may instruct the police to remove the NRP's license. If the license is not returned to DVLA at all, it will still be invalidated on their system.

79025 The maximum period that the NRP can be disqualified from obtaining or holding a driving license is 2 years[1].

1 CS Act 1991, s40B(1)(a)

79026 Where no immediate or suspended disqualification order has been made, the CMS may make a further application on the same LO for disqualification on the ground that the NRP circumstances have changed[1].

1 CS(CE) Regs 1992, reg 35(3)

79027 The CMS is not able to make a further request for driving license disqualification and the DM must consider alternative sanctions where

1. a disqualification order has been made,

2. the LO has not been paid in full and

3. the maximum period of 2 years has been given.

Payments made

79028 Where full payment of the outstanding arrears is paid, the order for disqualification will be revoked[1].

Note: the NRP will need to apply to DVLA to have their driving license reinstated and will incur a fee for this.

1 CS Act 1991, s40B(5)(b)

79029 Where part payment of the full arrears balance under the LO is offered by the NRP, the CMS may make representations to the magistrate relating to the amount offered. The NRP will have the opportunity to respond to any representations made[1].

1 CS Act 1991, s40B(6)

79030 Where part payment is made in respect of a disqualification from holding or obtaining a driving license, an application may be made to the magistrates' court for either

1. a shorter period of disqualification or

2. that the order for disqualification may be revoked in full[1].

1 CS Act 1991, s40B(5)(a)

Commitment to prison

79031 A warrant for commitment to prison will not be issued if the NRP is under 18[1].

1 CS Act 1991, s40(5)

79032 Where the magistrate is satisfied that there has been wilful refusal or culpable neglect on the NRP's part, the magistrate may

1. commit the NRP to prison immediately or

2. issue a suspended prison sentence with imposed conditions on the NRP[1].

1 CS Act 1991, s40(3)

79033 The maximum term of imprisonment is 42 days[1].

1 CS Act 1991, s40(7)

79034 Where the NRP has been imprisoned or issued with a suspended sentence, this sanction cannot be applied for again[1] on the same LO. Alternative sanctions can be considered.

1 CS Act 1991, s40(11)(b)

79035 When a committal to prison has been granted by the magistrate, they can order a search of the NRP for money. If money is found in their possession that is proven to belong wholly to the NRP, this can be used to reduce the payment of the amount of arrears due, unless the magistrate directs otherwise[1].

1 CS Act 1991, s40(10)

Payments made

79036 Where the magistrate has ordered the NRP to be imprisoned immediately, the NRP may be released on payment of the full amount stated in the warrant[1].

Note: if the NRP is on remand, or imprisoned, for any other reason, the NRP may not be released on full payment of the CMS arrears.

1 CS Act 1991, s40(6)(b)

79037 Where the NRP makes part payment of the arrears outstanding, the prison sentence may be reduced by application to the court. The amount of reduction in the prison sentence is in proportion to the amount of arrears that have been repaid[1]. This can be reduced to a maximum of time served by the NRP plus 1 day.

1 CS Act 1991, s40(8)

Passport disqualification

79038 The magistrate will confirm direct with the NRP if travel authorisation is required for them in order to earn a living.

79039 Travel authorisation refers to either

1. a UK passport or

2. an ID card issued to the NRP to confirm that they are a British citizen[1].

1 CS Act 1991, s39B(12)

79040 The magistrate may either[1]

1. immediately disqualify the NRP from holding or obtaining travel authorisation or

2. issue a suspended disqualification with conditions imposed on the NRP.

1 CS Act 1991, s39C(2); s39C(3)

79041 The maximum period for disqualification of holding or obtaining a passport is two years.

1 CS Act 1991, s39C(1)

79042 When a passport disqualification has been granted by the magistrate, they can order a search of the NRP for money. If money is found in their possession that is proven to belong wholly to the NRP, this can be used to reduce the payment of the amount of arrears due, unless

the magistrate directs otherwise[1].

1 CS Act 1991, s39D

79043 Passport disqualification would not be considered against an NRP who has dual nationality as the sanction is only applied to the NRP's UK passport. This is because the NRP would still be legally allowed to travel under their other nationality.

Payments made

79044 Where the NRP makes full payment for the LO arrears, the NRP or the CMS may apply to the court to arrange for the disqualification to be revoked[1].

1 CS Act 1991, s39E

79045 Where part payment is made, the NRP or the CMS may apply to the court to

1. reduce the period of the suspended disqualification or

2. revoke the order for disqualification in full[1].

1 CS Act 1991, s39E(1)

Court outcomes

79046 The court will notify the CMS, via the presenting officers, of the outcome of the sanctions application[1]. Refer to Court Proceedings for the full court process.

1 CS Act 1991, s40B(8)

79047 Where a suspended sentence has been given to an NRP and there is a further change to the NRP circumstances, alternative enforcement action may be considered. Refer to Chapter 71: Legal Enforcement (England and Wales).

Note: if additional guidance is required in these cases, DMs should discuss the case with the presenting officers.

Defaults

79048 Where sanctions are granted but suspended, the magistrate may impose certain conditions on the NRP. If the NRP fails to keep to the conditions, the DM can refer back to the presenting officers for the suspension to be lifted and the sanction to be imposed.

79049 When the magistrate grants a suspended sentence they will advise of the time allowed to invoke the sentence if the NRP does not keep to the conditions. This is usually 2 years.

79050 The DM should consider if it is appropriate to refer the case back to the court to lift the suspension for the full sanction to be imposed on the NRP and the DM should make a referral to the presenting officers. This is known as applying for defaults.

79051 The DM should have regard to the amount of debt outstanding on the LO and the individual circumstances of each case.

79052 Where the time allowed for the suspended sentence has lapsed, and the NRP has failed to maintain payments or pay off the LO arrears, a referral for applying for defaults cannot be made.

79053 A new sanctions referral should be considered where the period for applying for defaults has expired and there is still a balance outstanding on the LO.

Chapter 80 - Variation Orders

Chapter 80: Variation orders

Introduction

80001 Where a court judgment or order has been given or made for the payment of money by the NRP, they can apply for a variation order. A variation order allows a separate arrangement to be made between the NRP and the judge to repay an amount stipulated in the judgment or order. This may be payment of judgment debt at a later date, by instalments or by smaller instalments where already payable by instalments.

This guidance explains

Reviewing the variation order application 80002 - 80013

Variation order granted 80014 - 80015

Appealing the variation order decision 80016

Application to have a variation order varied 80017

Reviewing the variation order application

80002 A variation order can be applied for at any time after the CMS has applied to have a liability order registered in the county court. The NRP must make a variation order application to the county court.

80003 The county court will notify the CMS when an application for a variation order is made. A DM must review the application before making a discretionary decision (see Chapter 96 - Evidence and decision making) to accept or object to the proposed offer of payment, see paragraphs **80004** to **80013**.

80004 The CMS has 14 days to object to the application. Where the CMS fails to do so, it is likely that the court will agree to the NRP`s proposals.

80005 In reviewing the application, the DM must decide whether the repayment offer meets the debt steer (see Chapter 53: The debt steer) and represents the best possible agreement, taking into consideration

1. The amount of arrears outstanding (see paragraph 80006)
2. Previous compliance (see paragraph 80007)
3. How the arrears have accrued (see paragraphs 80008 - 80009)
4. How long the arrears have been outstanding (see paragraph 80010), and
5. Any other relevant factors.

80006 If the proposed variation order agreement will take a considerable time to pay the amount due, it

may be more appropriate to object to the variation order application. However, the DM must take into account the amount of the debt and any information provided about the NRP's financial circumstances.

80007 If the case history shows that the NRP has a history of failing to keep to agreements, the DM may consider objecting to the variation order.

80008 The DM will need to consider if the arrears have accrued due to non-compliance or due to the NRP's financial circumstances.

80009 If the arrears have accrued due to the NRP's financial circumstances, it is unlikely that they will keep to the variation order therefore other methods of enforcement may be more appropriate, for example where the NRP owns property and a charging order application could be considered.

80010 The DM will need to consider how long the arrears have been outstanding. If the PWC has been without their full maintenance for a significant period of time, it may be appropriate to continue with charging order and or third party debt order action. This could result in obtaining payment in a shorter timescale, which would be more beneficial to the PWC and QC.

Decision to accept or object to the payment offer

80011 Once the DM has made a decision to accept or object to the payment offer, a response must be sent to the court.

80012 If the offer is accepted, it is likely that the court will grant a variation order without the need for a hearing. The court will inform the CMS of this.

80013 If the CMS has objected to the offer, it is likely that the court will arrange a hearing date for the application to be considered.

Variation order granted

80014 Where a variation order is granted, with the exception of a charging order application, the CMS cannot take further enforcement action against that debt. If the NRP defaults on the payments ordered by the court on that specific variation order, further enforcement can be taken.

80015 Where a variation order is granted by a county court or High Court for the NRP to pay a sum of money by instalments, a charging order application may be made, even if the NRP does not default in paying those instalments[1]. However, order for sale action would not be appropriate where the NRP is adhering to the variation order.

1 CO Act 1979, s.1(7)

Appealing the variation order decision

80016 If the CMS decides to dispute the variation order, it can apply for a hearing to be held with a district judge. The hearing will take place in the district judge's chambers and when all parties have presented their case, the district judge will

1. confirm the order as it stands, or
2. change the amount of instalments or the date of payment, or

3. cancel the variation order.

Application to have a variation order varied

80017 Where the CMS hold evidence that the NRP`s circumstances have changed, for example the NRP is in a financial position to pay higher instalments, an application can be made to the county court to have the variation order varied.

Chapter 81 - Legal enforcement

Introduction

81001 This guidance provides an overview of the different civil enforcement actions that can be taken against NRPs living in Scotland, to recover CMS arrears owed to PWCs, the S of S, or a child in Scotland.

This guidance explains

When should legal enforcement be considered 81002 - 81004

Liability orders 81005

Pre liability order actions 81006 – 81010

Post liability order actions 81011 – 81017

When should legal enforcement be considered

81002 Cases can be referred for enforcement proceedings to be considered as soon as a payment is not received from the NRP, and

1. a DEO, DER or RDO is not applicable or has proved unsuccessful

2. a DEO is not collecting the full amount of regular maintenance and or arrears, or

3. when payments of regular maintenance are being made which are not for the full amount of the maintenance calculation.

81003 Diligence is the term used to cover the various processes of enforcement in Scottish law.

81004 Where more than one diligence is appropriate these can be taken concurrently, other than commitment to prison, disqualification from obtaining or holding a driving licence or removal of passport.

Liability orders

81005 When a NRP doesn't pay the child maintenance they owe, CMS can apply for an order from a court that will allow enforcement action to be taken[1]. This is called a liability order and in Scotland is granted by the Sheriff[2] in a Sheriff Court. It is a decree for payment, which certifies that a debt is legally due. The order will

1. define the period over which the debt has accrued

2. confirm the amount of debt that has accrued within that period and that it is legally due to be paid, and

3. confirm any expenses due to CMS.

1 CS Act 1991, s33 (1); 2 CS Act 1991, s33 (2)

See chapter 83: Liability Orders - Scotland

Pre Liability order actions

Interim attachment[1]

81006 This relates to seizure and auction of moveable property owned by the NRP and prevents them from moving, selling, gifting, willfully damaging, destroying or otherwise relinquishing ownership of the moveable property, prior to a liability order being granted. See Chapter 91: Interim attachment.

1 DAA (S) Act 2002 Part 1A, s9A (2)

Inhibition on the dependence[1]

81007 This prevents the NRP from selling, transferring or disposing of inheritable assets including land and property (owned by the NRP, solely or with another person, not rented). It is the NRP and not a particular property or piece of land that is inhibited. See Chapter 88: Inhibition on the dependence.

1 BD (S) Act 2007 Part 5, s152

Arrestment on the dependence[1]

81008 If the NRP owns assets which are held by a third party (such as money held in a bank account or owed to a sub-contractor by a main contractor) and it is identified that the NRP may dispose of funds due under the obligation during the liability order application process, then arrestment on the dependence action must be considered. If granted the assets, or a proportion of them, can be frozen pending the outcome of court action. See Chapter 86: Arrestment on the dependence.

1 D(S)Act 1987, s15A – N

Order for interdicting[1]

81009 An interdict (civil court order) may be used to freeze assets (current land and property) owned by a NRP and will prevent the NRP from disposing, dealing or removing of assets from jurisdiction.

1 CS Act 1991, s32L(1)

Action for reduction

81010 An action for reduction may overturn the disposal of an asset, returning ownership to the NRP. See Chapter 82: Order for interdicting or action for reduction.

Post liability order actions

Charge for payment[1]

81011 A charge for payment is a formal written demand for payment of the sums due under the liability order within a specified time. A charge for payment must be executed before an earnings arrestment, attachment or exceptional attachment actions can be taken. See Chapter 84: Charge for payment.

1 CS Act 1991 s38 - AoS (CSR) 1993, s4

Arrestment

81012 An arrestment is a means of attaching funds or assets that are either solely owned or owned jointly with other parties that are owed to the NRP which are held by a third party. These funds then become unavailable to the NRP and are retained for future payment to the CMS. See Chapter 87: Arrestment.

Action of furthcoming[1]

81013 If an NRP fails to return the probative mandate in order for arrested funds to be released, a decree of furthcoming can be granted by the sheriff court. This orders the arrestee (party holding the funds i.e. a bank) to release the arrested funds to the CMS without the NRP`s consent. See Chapter 85: Action of furthcoming.

1 BD (S) Act 2007 Part 10

Attachment[1]

81014 An attachment allows a creditor to value an NRP's moveable property, which may be solely owned or owned in common with other parties, provided it is out with the NRP's residence and sell it at auction in order to recover money to the value of both debt and costs. See Chapter 92: Attachment.

1 DAA (S) Act 2002 Part 2, s10

Exceptional attachment[1]

81015 On granting of an exceptional attachment order by the Sheriff Court, sheriff officers attach non-essential assets, up to the value of the debt, within the NRP's dwelling house, which may be removed for sale at auction. See Chapter 93: Exceptional attachment.

1 DAA (S) Act 2002 Part 2, s24 (b)

Inhibition[1]

81016 An inhibition is a diligence which can prevent the voluntary disposal by the NRP by selling, transferring or disposing of an interest in land and buildings owned, not rented, by the NRP and can affect a NRP's ability to borrow funds. See Chapter 89: Inhibition.

Commitment to prison, disqualification from driving or removal of passport

81017 Where an NRP has demonstrated willful refusal or culpable neglect towards payment of CMS arrears and all diligence actions have been considered and undertaken where appropriate, the CMS can apply to the sheriff for the NRP

1. to be sentenced to a period of commitment to prison of up to 6 weeks [1]

2. to have their driving license removed, or be prevented from obtaining a new licence, for a period up to two years[2]

3. to be disqualified from holding or obtaining a UK passport[3].

See chapter 90: Sanctions – Scotland.

1 CS Act 1991, s40A (1)(a), 2, s40B (1), 3, s39B (1)

Chapter 82 - Order for interdict or action for reduction

Introduction

82001 An interdict can be used to freeze various assets owned by a NRP, to prevent them disposing of or moving an asset or assets[1].

1 CS Act 1991, s32L(1)

82002 A reduction order can be used to overturn the disposal and return ownership of land and buildings to the NRP should they dispose of an asset for less than its market value in order to avoid payment of child maintenance[1]. Along with the raising of the appropriate action a 'notice of litigiosity' may be sought which prevents any dealing in the property whilst the application for reduction is pending.

1 CS Act 1991, s32L(2)

This guidance explains

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What is an action for reduction 82007 - 82008

When interdict or action for reduction is appropriate 82009 - 82012

Suitable assets for interdict or action for reduction 82013 - 82016

Application for order for interdicting or action for reduction 82017 - 82019

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What is an interdict

82003 An order for interdict is a legal enforcement the CMS can apply for, if the NRP is about to dispose of an asset, with the intention of avoiding paying child maintenance[1].

1 CS Act 1991, s32L(1)

82004 An interdict is effective for such period (including an indefinite period) as the order may specify[1].

1 CS Act 1991, s32L(11)

82005 DMs must consider whether an inhibition on the dependence, along with an application for a LO, or where a LO is already held, an inhibition, may be more effective. These may be more effective in relation to jointly owned properties and are generally quicker to obtain. If an inhibition has not been registered it may be quicker to seek an interdict.

82006 An inhibition on the dependence would be appropriate where an LO is being sought. Where a LO is already held it is very likely that the most effective way of proceeding would be by inhibition in execution. Where an LO would not be sought and is not already held, the only means of preventing the transfer of land and buildings or any other significantly valuable asset would be by means of an interdict. For more information, see Chapter 88: Inhibition on the dependence and Chapter 89: Inhibition.

What is an action for reduction?

82007 Where a NRP disposes of or secures an asset, generally but not exclusively, land and buildings, for less than its market value in order to avoid payment of child maintenance, the CMS can request the sheriff to grant a reduction of the transaction and that parties are restored to the position in which they were prior to the transaction taking place The effect is to overturn the challenged disposal and return ownership to the NRP.

Note: Where reduction is to be sought it is important to act quickly and that the court action is accompanied by a notice of litigiosity which prevents further dealing on land and buildings whilst the action is pending. In some cases, including where the asset involved is not land and buildings, for example a valuable work of art, an interdict may also be sought preventing further dealing with the asset whilst the action of reduction is pending.

82008 In the case of land and buildings, appropriate inhibition action can then be taken to prevent further attempts to dispose of the asset. See Chapter 88: Inhibition on the dependence. Where the asset is not land and buildings then interdict may be an option.

When Interdict or action for reduction is appropriate

82009 Before pursuing these actions DMs must ensure that for the NRP

1. a confident address is held, or that solicitors advise that it is possible to proceed without knowing the whereabouts of the NRP, and
2. notification of liability has been issued, and
3. at least one written arrears notice has been sent to the NRP at the address held.

82010 Where DMs receive information that a NRP is intending or threatening to dispose or has disposed of or secured an asset at undervalue that may be suitable for interdict or action for reduction, DMs must obtain as much information about the asset or sale as possible. See para **82013 – 82016.**

82011 Where the application is for an action for reduction, the DM must serve notice of the application to the NRP and the third party purchaser, to allow them to make any representations to the court.

Note: if the application is for an interdict against disposal of an asset, the NRP will not generally be informed of the first court hearing, to prevent them disposing of the asset.

82012 If DMs decide it is appropriate to proceed, they will need to complete the relevant application, see para **82017** - **82019**.

Suitable assets for interdict or action for reduction

82013 An interdict or a reduction order will usually only be requested in relation to land or buildings, due to the difficulty in obtaining evidence regarding other assets, but can be requested in relation to a range of assets, including

1. land
2. property
3. cars
4. jewellery

5. works of art, **or**

6. boats.

82014 If DMs receive information or evidence from the PWC, NRP or third party, indicating that the NRP owns an asset, and where there is concern that they may dispose of it or that the asset has been disposed or secured in return for a loan or other benefit, DMs should obtain as many details as possible before deciding whether to proceed. However, this **must not** unnecessarily delay action being taken since speed is essential in such cases. The information needed will depend on the type of asset concerned and the imminence of the apprehended transaction.

82015 DMs should usually only consider this type of action if

1. a NRP has had land and buildings, not subject to repossession by a mortgage lender and or where the amount due to the mortgage lender and any other secured lender(s) is significantly less than the value of the land and buildings.

Note: it is very often the case that the need for actions such as these arises where secured land and buildings are being sold and there are prospects of there being a residual amount which could be made available to the CMS but which the NRP resists

2. the estimated value of the asset exceeds £3000

3. the NRP`s arrears exceed £3000, **and**

4. the asset is or was solely owned by the NRP or, in the case of joint ownership, the value of the NRP's interest is of sufficient materiality, or the asset was owned in whole or in part by the NRP prior to its disposal or it being secured.

Note: in some cases, the challenged transaction may not be an anticipated or completed sale but may instead involve the NRP seeking to secure (charge) land and buildings owned by him in circumstances where a loan on penal or non-commercial terms is made; there are various means by which value may be 'extracted' from an asset to the detriment of the NRP making payment of sums to CMS.

Note: it may still be appropriate for DMs to consider action where these thresholds are not met if particular circumstances exist. DMs should seek advice from your Team Leader. For information on the types of evidence required to support an application for such enforcement measures, see Chapter 100: Evidence - collection and enforcement.

82016 When DMs have obtained as much information as possible, but subject to the need for prompt action, DMs will need to decide whether it is appropriate to make an application. DMs must consider the welfare of any QCs that might be affected by their decision and record the reasons for the decision in full. See Chapter 4: Welfare of children.

Application for order for interdicting or action for reduction

82017 The application form must include

1. a list and copies of all evidence gathered to support the application, ensuring any photocopies are certified true copies. If the asset has already been disposed of this should include, wherever possible, information regarding the transaction and the identity of the person(s) believed to be the purchaser(s)

2. details of the next intended enforcement action that will be taken, if the order for interdict or order for reduction is granted

3. a record of the outcome of the DMs welfare of QC consideration

4. the account breakdown and a copy of the latest arrears notice

5. requesting the Court of Session or sheriff court 'freeze' the asset preventing the NRP from disposing of it for a period of time, to allow the completion of the next enforcement action, see Chapter 78: Freezing orders.

6. in the case of land and buildings, an instruction that an application for a notice of litigiosity be made or, where not land and buildings, an interdict to prevent further disposal of the item, and

7. a request to the sheriff or judge to direct the third party to complete the relevant Registers of Scotland form to return ownership to the NRP within four weeks of the order being served. If for an action of reduction in respect of property.

Note: in these types of cases prompt action is generally essential so on occasion instructions may need to be issued without full information having been gathered.

82018 DMs must also state that the CMS wants to apply for any costs incurred in obtaining the order.

Order duration

82019 When completing an action for interdict or reduction DMs need to know how long an order will last. The duration of the effectiveness of such orders is fixed by law. See the table below.

Type of Action	When Appropriate	Order Duration
Liability order	If no liability order has been obtained yet	20 years
Inhibition	If there are heritable assets (for example land or property)	5 years after registration
Arrestment	Any assets which are held by a third party including boats or ships	3 years

Attachment	Moveable assets that are not kept in a dwelling for example	6 months from the date of the attachment except where an item is removed in which case 28 days after such removal
Exceptional attachment	Any asset which may be held in a dwelling house	Such period as the court may specify on the making of the exceptional attachment order.

Hearing outcomes

82020 If the NRP has been given the opportunity to attend the full hearing, but fails to attend, the sheriff may grant an interim interdict.

82021 If an interim interdict is granted and the hearing was without notice to the NRP, then a review hearing date will be set.

82022 At the review hearing, the sheriff or judge will make the decision to either continue the interim interdict if granted at the first hearing, grant the order, continue the hearing or reject the application.

82023 Where the court grants the order, they may make consequential provision or direction as it considers just. See Chapter 76: Charging order.

82024 If the interim interdict is granted, DMs must take the most appropriate enforcement action for the asset or circumstances of the case.

82025 In action for reduction cases DMs will need to ensure that ownership of the asset has been transferred in accordance with the court order, this will include relatively complex property procedures, and it may complete further enforcement action.

82026 Where ownership of the asset has not been transferred back to the NRP in accordance with the court order DMs will need to liaise with a senior manager and solicitors over the next steps for the case to be returned to court.

Order disputes appeals or variations

82027 Where an interdict or reduction order has been granted the NRP, third party purchaser or the CMS have the right to appeal. The same right of appeal exists for the PWC and the CMS if the interdict or reduction is refused.

82028 Generally, an appeal would have to be made within 21 days, however dependent on the hearing this may be reduced to 14 days.

82029 Any appeal or variation request must be sent to CMS`s solicitors who will decide in discussion with CMS whether and on what basis the appeal should be resisted.

Chapter 83 - Liability Orders

Introduction

83001 A liability order provides legal recognition that a debt exists. Applications for Liability Orders (LOs) in Scotland are heard in the sheriff court. The sheriff will consider whether the debt in question has become payable and whether it has not been paid.

Note: A LO is required before the CMS can take other legal enforcement action. See Chapter 81 - Legal enforcement.

This guidance explains

Cases that may be suitable for a LO 83002 - 83003

Cases that may not be suitable for a LO 83004

Parallel LO 83005 - 83006

Minimum levels of debt 83007 - 83014

Sequestration 83015 - 83018

Application is appropriate 83019 - 83028

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Top up LO 83045

Cases that may be suitable for a LO

83002 Where a confident address is held for the NRP and an arrears warning letter has been issued a LO may be appropriate if

1. the debt is for a low amount but still considered enforceable See para 83007.

2. the arrears became due after 12 July 2000[1]

3. the PWC requests that no enforcement proceedings be taken, but there are arrears due to the CMS that are to be pursued

4. the NRP's employment status is unknown or self-employed, meaning a DEO cannot be imposed and RDO or LSDO action has been unsuccessful

5. the NRP is in receipt of a benefit, but has substantial assets to enforce against and is unwilling to make an acceptable arrears payment, regardless of whether contributions to

maintenance or minimum payments are being made

6. a nil calculation is in place due to low income, arrears have previously accrued and the NRP is unwilling to make an acceptable arrears payment

7. a DEO or DER is not collecting an acceptable amount towards the NRP`s arrears, because their income levels need to be protected See para 83005.

8. the NRP`s employer has refused to implement a DEO

9. the NRP habitually leaves an employer before a DEO can be imposed

10. the NRP is making regular payments, but for an amount lower than their actual liability

11. a deduction order disclosure notice has not identified any suitable bank accounts.

1 CS (CE) Regs 1992, reg 28 (2A)

83003 DMs would consider a DEO order to be ineffective if it is collecting money, but at a rate that does not meet the debt steer. See Chapter 53: DMG debt steer. In these circumstances, DMs can consider applying for a LO, while leaving the DEO in place. See para **83005.**

Note: when deciding whether to apply for a LO, DMs must consider the welfare of any child that might be affected by the decision and it is important the reasons for the decision are recorded in full. See Chapter 4: Welfare of children.

Cases that may not be suitable for a LO

83004 Where the minimum requirements are met, DMs may decide it is not appropriate to apply for a LO if

1. the NRP is in receipt of benefit without assets

2. the NRP is terminally ill or has special needs

3. the NRP`s partner or children from a second family are seriously ill

4. the PWC has requested that no enforcement proceedings are taken and there are no CMS arrears on case

5. the PWC requests case closure and does not want the CMS to collect arrears

6. the NRP, PWC or QC has died

7. there is evidence that it may result in the NRP becoming violent to the PWC and, or the QCs

8. the NRP has disputed parentage of one or more of the QCs for the first time in the case subject to LO action
9. the period of debt is subject to sequestration

10. the NRP is currently on active duty

11. the debt is below the minimum level and considering the cost effectiveness and use of public funds to pursue for an LO and later enforcement actions see para 83007.

12. there is no reasonable prospect of a successful outcome due to the NRP's asset position

13. previous attempts to enforce child maintenance arrears through the courts suggest that the likely benefits and potential of success is negligible

14. the NRP has an exceptional, immediate, major or severe financial burden on their current financial circumstances. If that is the case, then the DM may consider suspending enforcement action until the immediate financial pressure has passed.

Note: this list is not exhaustive and does not mean that it will be inappropriate to make a LO application. DMs will need to take all the relevant circumstances into account and record their reasons in full.

Parallel LO

83005 Parallel action, where more than one method of enforcement is appropriate consecutively can be considered by the DM if the following criteria are met in cases where

1. a DEO or other MOP is in place at the maximum amount, **but**

2. the full arrears will not be collected in two years, and

3. the debt balance at the end of the two-year period will still exceed £1000

4. the NRP is stated to have assets which can be enforced against.

83006 When a NRP is a member of the armed forces, different criteria apply, in these circumstances a DM must confirm if the NRP is a member of the armed forces

1. posted in the UK or overseas, but not in a war zone, if so parallel action can be

considered immediately

2. and is on active duty, if so, parallel action must be put on hold until the NRP is no longer on active duty. See para 83004.

Minimum levels of debt

83007 The law does not restrict the amount of child maintenance arrears for which a LO application to the sheriff court can be made, but DMs must consider how appropriate the action is in relation to the level of debt being pursued and the circumstances of the case**.**

83008 The minimum amount for which a LO will usually be sought is £500 however this sum is discretionary and lower amounts may be pursued if the specific circumstances of the case warrant it.

83009 Although the views of the PWC will be taken into account, the decision to pursue the arrears rests with the DM acting on behalf of the CMS[1].

1 CS Act 1991, s4(3)

De minimis level

83010 DMs should not pursue a LO where the debt is less than the £500 CMS de minimis unless there are compelling reasons to do so, such as

1. all means of negotiating or securing payment have been considered or attempted
2. the case is closed and the PWC requests for arrears to be collected
3. a change in the NRP's circumstances allows action to start.

83011 As part of the Compliance and Arears strategy dealing with historic CSA debt, the de minimis level set for enforcement referrals of CSA arrears is £1000.

Note: for cases with CSA debt of less than £1000, where administrative powers to collect the debt have been unsuccessful or deemed inappropriate, the debt may be considered for write off. See Chapter 54 Arrears Strategy - Manual representation and write off.

83012 If a LO is appropriate for a sub de minimis amount there are some enforcement actions where it may not be appropriate to proceed for low amounts of debt for example commitment to prison or disqualification from driving. See Chapter 90 - Sanctions Scotland

83013 Cases with less than £500 total CMS debt, where an LO is not appropriate and no other action is possible, will remain within Enforcement until the debt reaches the de minimis, or the NRPs circumstances change that may allow other action to start.

83014 The de minimis decisions are discretionary and the DM must clearly record and include any decision regarding the welfare of any child affected. See Chapter 4 - Welfare of children.

Sequestration

83015 Where an NRP is subject to sequestration the NRP`s CMS debt is normally included within a sequestration order[1]. See Chapter 94 - Sequestration.

1 B (S) Act 2016, s145

83016 Up to the date that the petition for sequestration is granted CMS can take enforcement action to collect debts incurred.

83017 After a LO has been granted DMs cannot

1. apply for a LO in respect of debt that accrued up to and including the day before sequestration was granted, or

2. take other enforcement action based on a LO that was granted before the date sequestration was granted.

83018 LOs can however be applied and enforced for any arrears that accrue on and after the date of sequestration.

Application is appropriate

Complete any outstanding action on the case

83019 DMs should not proceed with the LO application if there is an ongoing appeal or any outstanding assessment whose outcome may impact arrears for the period of debt covered by the LO application. DMs can however proceed with an application for any safe period of debt such as any period prior to the effective date of the maintenance calculation, or if they are confident that the arrears balance is correct and will not be altered.

83020 Where the NRP is repeatedly using the appeal process to prevent or delay enforcement, the court may decide to continue the hearing pending the tribunal outcome in order to ensure it is not oppressive against the NRP. Alternatively, the court may grant the LO but require that no enforcement action is taken pending the tribunal decision being made establishing the true debt amount. DMs should consult with Policy and team leaders before deciding if continuing with the LO application is appropriate, however it is preferable to proceed for a LO for a safe period of debt rather than delay debt recovery action.

83021 Where prosecution action for failure to provide information is being considered or has commenced DMs will need to consult with the DMs seeking this action before proceeding as enforcement action may jeopardise this.

Notice of intention to apply for a LO

83022 DMs must issue the NRP an arrears warning letter including a notice of intention to apply for a LO. Although it is not a legal requirement to issue this notice it is a Policy requirement,

issuing this notice demonstrates that DMs have taken all reasonable steps possible to secure payment before progressing.

83023 The arrears warning letter will set out the maintenance arrears and any other costs including interest, fees and costs of service[1] that will be included in the LO application, and will give the NRP the notice of the CMS's intention to apply for an LO of

1. 7 days if the NRP lives in the UK[2]

2. 28 days if the NRP lives abroad[3].

1 CS (CE) Regs 1992 Part IV, reg 27(2); 2 Part IV, reg 27(1) ; 3 Part IV, reg 27(1A)

Note: No further action should be taken until the relevant warning period has elapsed.

83024 If the NRP pays all of the arrears within the notice period DMs will not proceed with the LO application.

83025 If the NRP pays part of the arrears within the notice period and the LO application is to proceed for the outstanding balance, there is no need to issue a further notice of intention[1].

1 CS (CE) Regs 1992 Part IV, reg 27(3)

83026 If the NRP makes a payment agreement after the arrears notice has been issued, DMs will make the NRP aware that if they fail to continue with the agreed instalments a LO will still be sought and used to enforce collection of the arrears balance.

Contact the PWC

83027 Before proceeding with a LO application, DMs should always contact the PWC to

1. confirm if they agree to enforcement action being taken

2. obtain any additional information about the NRP`s lifestyle or assets that might help inform DM's decisions about any additional enforcement action

3. obtain information about any welfare of the child considerations in relation to either the PWC`s children`s circumstances as well as the NRP's if the PWC is aware of the NRP circumstances.

Note: after contact DMs may decide that the case is no longer suitable for LO action. See para **83004.**

83028 If the circumstances of the case are not appropriate for LO action at that particular time, the DM can consider pausing the case for a suitable period of time to elapse before reinstating

action to commence recovery of the arrears.

Making the application

83029 To apply for the LO, DMs must complete summary application form 1[1] which will be sent with form E200 by the CMS solicitors to the sheriff court for warranting. The submitted application will ensure the fees cost is recorded on the Scottish Court Service Quick Book system.

1 AoS (CSR) 1993, art 2(1)

83030 The sheriff does not have jurisdiction to question the calculation on which the debt is based[1], but will consider if

1. the debt in question has become payable
2. it has been paid
3. the NRP has been resident, or has operated a business in the sheriffdom for at least 3 months previously.

1 CS Act 1991, art 33(4)

Note: normally, the appropriate court to apply to will be based on the NRP`s home address. However, it can be based on their business address if DMs have been unable to identify a confident residential address.

83031 It may take the court up to 14 days to issue the warrant of citation and CMS's solicitors to arrange for it to be served on the NRP, with the Form 2-B[1] (Notice to Liable person in an application for a LO).

1 AoS (CSR) 1993, art 2(2)

83032 Once served, the NRP has 21 days to lodge objection to the application in the sheriff court[1].

1 AoS (CSR) 1993, art 2(3)

83033 If 21 days have lapsed without the NRP lodging objection, the CMS's solicitors will need to complete, then submit the following to the sheriff court

1. the LO Form 2C[1] and extract LO in Form 2D, which detail the arrears being sought and any allowable expenses that are also being claimed, and

2. the minute seeking order paragraph on the reverse of Form 2.

1 AoS (CSR) 1993 art 2(7) and (9)

Cross jurisdiction cases

83034 LOs granted in England and Wales or Northern Ireland can be enforced in Scotland as if they had been made by a sheriff[1].

1 CS (CE) Regs 1992, Part IV, reg 29(3)

NRP objects to the LO application

83035 Should the NRP lodge an objection, there will be an objection hearing assigned. DMs will need to prepare an objection file which should be sent to the solicitors at least 5 days before the hearing date and should include

1. a letter of instruction to the solicitor to prepare the objection response
2. confirmation from the court of the objection hearing date
3. the written or typed objections
4. the CMS response to the objections
5. copies of Form 2-A and Form 2-B
6. copies of the sheriff officer report and certificate of citation
7. any other supporting documents or printouts.

Note: if there is insufficient time for the DM to prepare and send the CMS`s response to the NRP`s objection before the hearing date, CMS's solicitors will contact the court to request a continuation.

Hearing outcomes

LO granted

83036 If the LO is granted, the extract LO will be sent to the CMS. DMs can then consider what, if any, further enforcement action is most appropriate. See Chapter 81 - Legal enforcement.

83037 If an award of expenses has been made in favour of the CMS, then CMS's solicitors will arrange for their file to be updated accordingly. Thereafter an updated LO Form 2D will be issued to the CMS, confirming the total sum due including the expenses figure.

83038 If the NRP continues to be non-compliant, DMs can apply for further LOs for subsequent periods of debt.

LO dismissed

83039 A LO application may be dismissed by the court for a number of reasons including

1. the NRP has been proved not to be the biological parent of the QCs
2. the sum has been paid
3. the court does not have jurisdiction.

LO not granted

83040 The sheriff may grant a decree of absolvitor, which means that the CMS cannot make a new LO application to the court for the same period of debt.

83041 The CMS's solicitors will inform DMs of the reasons the LO was not granted and recommend the next appropriate action. DMs, after reviewing the reasons the application was dismissed from the returned file can decide to lodge an appeal. This can only be done on the grounds that the sheriff has erred on a point in law.

83042 If DMs decide it is appropriate to appeal a decision, it must be done within 14 days of the final interlocutor (order of the sheriff), DMs will instruct solicitors to do this on our behalf. See Chapter 48 - Appeals.

83043 A minute seeking Dismissal application may be made by the CMS if

1. the NRP has paid the debt in full
2. changes to the assessment mean the debt for the relevant period no longer applies
3. the NRP has been proved not to be the biological parent of the QCs.

Continued or sisted

83044 The sheriff may request more information from the NRP or the CMS to proceed with the application. If so, the case could be paused or “sisted” until the information is provided.

Top up LO

83045 In exceptional cases, it may be possible to obtain a top up LO where

1. the amount of debt due for that specified period of debt subsequently increases, **and**
2. DMs could not reasonably have known about the reasons for this increase at the time the original

LO application was made.

Chapter 84 - Charge for payment

Introduction

84001 A charge for payment is a formal written demand[1] for the payment of arrears due under a liability order for NRPs who are habitually resident in Scotland.

1 AoS (CSR) 1993, rule4

This guidance explains

Notifying the NRP 84002 – 84004

Serving a Charge for Payment 84005 – 84010

Exceptional Circumstances 84011

Concurrent Actions 84012 – 84014

Outcomes 84015 – 84016

Notifying the NRP

84002 A charge for payment officially notifies the NRP in writing that a liability order has been granted[1]. It is served by sheriff officers and intimates that further enforcement action will be considered unless the full debt is paid.

1 AoS (CSR) 1993, rule4(1)

84003 The NRP is allowed the following notice periods to pay the debt in full before certain enforcement actions can be taken

1. 14 days if the NRP is resident in the United Kingdom, or
2. 28 days if the NRP is outside the United Kingdom or if their whereabouts are unknown[1].

1 D(S) Act 1987 s90(3); AoS (CSR) 1993, rule4

84004 A charge for payment remains effective for 2 years from the date it is served[1].

1 D(S) Act 1987 s90(5)

Note: each individual liability order requires a separate charge for payment.

Serving a Charge for Payment

84005 A charge for payment is served by sheriff officers. For exceptional circumstances, see para **84011**.

84006 The information provided to the NRP must contain[1] all of the following

1. A copy of the liability order and
2. Debt information and advice pack, and
3. Letter of instruction for additional enforcement actions, if applicable

1 D (S) Act 1987, s90

84007 The sheriff officers will serve the charge for payment to the NRP PP by

1. handing it personally to the NRP, or
2. leaving it in the hands of another resident at the NRPs address, or
3. leaving it in the hands of an employee at the NRP place of business[1].

1 AoS (SCOCR) 1993, rule5.4(1)

84008 Where the sheriff officer cannot serve to the NRP or another person, they may

1. post it through the letter box at the NRP address or place of business, or
2. fix it to the door of the NRP address or place of business if they have information to confirm the NRP's residence or occupation[1].

1 AoS (RCS) 1994, chapter 16.1 (1)

84009 Failure to provide an information pack to the NRP within 12 weeks can affect CMS proceeding with the enforcement actions for Attachments and Inhibitions.

84010 If there are CMS arrears outstanding on a liability order and the previous charge for payment has expired, a further charge for payment must be re-served[1].

1 D(S) Act 1987, s90(5) and (6)

Exceptional Circumstances

84011 In exceptional circumstances where the NRP whereabouts are unknown, CMS may instruct the contracted solicitor to serve the charge for payment by

1. notice on the walls of the court in the area where the NRP last known address is located[1], or
2. through a newspaper advert in the area in which the NRP PP is thought to reside with authorisation of the court[2].

Note: This action will incur further costs and authorisation must be obtained.

1 AoS (SCOCR) 1993, chapter 30 Rule 30.9; 2 AoS (RCS) 1994, chapter 16.1 (1)

Concurrent Actions

84012 The relevant notice period – see para **84003** – of the charge for payment must have expired before the sheriff officers can carry out additional instructions on behalf of CMS such as

1. Attachment[1] see Chapter 92: Attachment[1]

2. Earnings arrestment see Chapter 87: Arrestment (if applicable).

1 DAaA(S) Act 2002, s10(3)

84013 The following additional instructions can be carried out without waiting for the relevant

notice period for the charge for payment to expire

1. Arrestment on the dependence – see Chapter 86
2. Inhibition – see Chapter 89.

84014 The decision to serve a charge for payment and take additional action concurrently is a discretionary decision. For further information, see Chapter 96 - Evidence and decision making.

Outcomes

Successful

84015 The sheriff officers will advise CMS's solicitors if the charge for payment was successfully served. The outcome received should be reviewed to confirm if any new information has become available before a decision is made on the next enforcement action.

Not Served

84016 Where the sheriff officers are unable to serve the charge for payment on the NRP due to no confident address and unsuccessful trace action, further enforcement action cannot be taken.

Note: when a confident address for the NRP has been located, DMs can instruct sheriff officers to serve the charge for payment.

Chapter 85 - Action of furthcoming

Introduction

85001 Action of furthcoming is the legal process required to obtain a decree of furthcoming[1]. This decree orders an arrestee (i.e. a bank or third party that is holding arrested funds or assets) to release those funds to the CMS, without the NRP`s consent.

1 D(S) Act 1987 Part 3A, s73A

This guidance explains

When is an action of furthcoming appropriate 85002

Process 85003 - 85005

Deciding whether to make a furthcoming application 85006 - 85008

Furthcoming application: instructing solicitors 85009 – 85011

Next Steps 85012 – 85013

Outcomes 85014

Decree of furthcoming granted 85015 - 85016

Decree of furthcoming not granted 85017 - 85018

When is an action of furthcoming appropriate

85002 An action of furthcoming will be necessary if

1. an NRP fails to return the probative mandate allowing arrested funds to be released1, and

2. the funds need to be released before the 14-week automatic release period expires (successful action of furthcoming may release funds in 6 - 7 weeks, court workload dependent), or

3. a movable asset has been arrested.

1 D(S) Act 1987 Part 3A, s73A (2)

Note: although they can be taken in respect of physical assets, the majority of furthcoming actions will be in respect of arrested funds.

Process

85003 Any action of furthcoming must be raised by solicitors, acting on behalf of CMS, by them preparing a writ, which is then lodged by the solicitor in the sheriff court[1].

85004 The NRP and any person holding goods or funds for the NRP (arrestee) will then be served with a citation or summons, by recorded delivery or in person (solicitors serve by recorded delivery, sheriff officers personally serve)[2].

85005 A court hearing will then determine whether the decree should be granted[3]. Both the NRP and the arrestee will have the opportunity to make representations to the court. Representations can also be made by the other account holder, or owner in cases where funds have been arrested in a joint account or the asset is jointly owned.

1 D(S) Act 1987 Part 3A, s73A (4)(a); 2 Part 3A, s73C (2) ; 3 Part 3A, s73N (1)

Deciding whether to make a furthcoming application

85006 If funds are arrested, they are automatically released to CMS 14 weeks after service of the schedule of arrestment[1] unless

1. the NRP gives consent for them to be released sooner, or
2. they successfully challenge the arrestment.

85007 It is therefore only appropriate to apply for furthcoming if

1. there are robust reasons not to wait for this 14-week period to elapse, and
2. the amount that will be collected means that it will be cost effective to proceed with this action, or
3. a moveable asset has been arrested. These assets are not automatically released.

1 D(S) Act 1987 Part 3A, s73J (2)

Note: the legal expense for furthcoming actions are high and it is therefore essential that DM's only pursue this action where it is both cost effective and appropriate to do so.

85008 When the DM is deciding whether to pursue an action for furthcoming, a discretionary decision should be made.

Furthcoming application: instructing solicitors

85009 If DM's decide to apply for furthcoming, a completed letter of instruction with relevant information and documents file must be sent to CMS solicitors.

85010 Different rules and forms apply to the process for making a furthcoming application, CMS Solicitors will action this dependent on the amount arrested

1. a value up to and including £5000 will be dealt with under Ordinary Cause rules[1]
2. a value exceeding £5000 will be dealt with under Summary Cause rules[2].

1 AoS (SP) 2016; 2 AoS (SCR) 2002 No. 132

85011 In all cases, an action of furthcoming can only proceed if it is demonstrated to the court that they have jurisdiction over the individual in question. It is therefore necessary in all cases

1. to include a statement confirming the defender has been resident in the relevant sheriffdom for more than 3 months prior to the action being raised

2. to be confident that there is no agreement assigning jurisdiction over the application to another court, and

3. to be confident that there are no proceedings pending before another court, which involve the same course of action.

Next Steps

85012 Solicitors will inform DMs when the first hearing date is due to take place[1].

85013 At this hearing, the arrestee, NRP and any joint account holder (if applicable) will have the opportunity to make representations in court as to why a decree of furthcoming should not be granted. If the NRP or arrestee objects to the decree, the CMS solicitors will contact the DM to inform of the objection grounds and to request any additional information needed for them to respond.

1 D(S) Act 1987 Part 3A, s73N (1)

Outcomes

85014 The DM will be informed by solicitors when an outcome has been reached and DMs next action will depend on whether or not the decree of furthcoming has been granted.

Decree of furthcoming granted

85015 If the decree of furthcoming is granted, it will be retained by the court for 14 days, to allow the NRP or arrestee, the opportunity to appeal against it[1]. If an appeal is not made, the decree will be issued to the CMS solicitors, who will send their report and the extract decree to CMS.

1 D(S) Act 1987 Part 3A, s73N (8)

85016 When the extract decree is received, the DM should check whether the NRP has paid their arrears. If not, a copy should be sent to the NRP with a covering letter informing them how to make payment[1].

1 D(S) Act 1987 Part 3A, s73S

Decree of furthcoming not granted

85017 If the decree of furthcoming is not granted, the DM will need to consider whether the decision should be appealed[1]. If so, the CMS solicitors must be instructed within 7 days of the

sheriff`s decision, to ensure they have sufficient time for the appeal to be made.

1 D(S) Act 1987 Part 3A, s73R (7)

85018 If DM decides an appeal is not appropriate, a letter should be issued to the arrestee[1], informing them the attached funds must be released to the NRP, in accordance with the sheriff`s decision.

1 D(S) Act 1987 Part 3A, s73R (6)

Chapter 86 - Arrestment on the dependance

Introduction

86001 Arrestment on the dependence allows the sheriff to grant a warrant to arrest all or part of a NRP`s funds or assets held by a third party, preventing the disposal of them pending the outcome of court action[1], such as a liability order being granted.

1 D (S) Act 1987 Part 1A, s 15A

This guidance explains

Application process 86002 - 86005

Evidence the funds or assets may be disposed of 86006 – 86007

Conditions effecting the arrestment in the dependence 86008

Application process

86002 An application for arrestment on the dependence can be considered if

1. a liability order has not been granted, but it is believed there is a good case for recovery and there is a real and substantial risk that enforcement of the liability order would be defeated

2. there is evidence that the NRP is owed or is due to receive arrestable funds or assets currently held by a third party, or

3. there is a risk that the NRP will dispose of or otherwise to try to transfer the relevant funds or assets before a liability order has been obtained[1], or

4. the NRP is verging on insolvency.

5. It is reasonable in all the circumstances including the effect on any person having an interest.

1 D (S) Act 1987 Part 1A, s 15E (2)(b)

86003 If the above criteria are met then the application for arrestment on the dependence should be included can be made with the liability order application.

86004 For the type of funds and assets that can be arrested see Chapter 87 - Arrestment.

86005 The court may decide to grant an arrestment on the dependence without a hearing[1]. This will only be considered in exceptional circumstances, where the court is satisfied that without it,

any order made under the associated action could be defeated by the NRP

1. becoming insolvent, or

2. selling or otherwise transferring the relevant assets.

1 D (S) Act 1987 Part 1A, s 15E

Evidence the funds or assets may be disposed of

86006 It is the responsibility of the DM to ensure that CMS provide sufficient robust evidence to satisfy the sheriff of the need to grant the warrant to arrest on the dependence.

86007 The DM should only apply for an arrestment on the dependence if recent, reliable information is held indicating that

1. the NRP is about to remove, dispose of, or otherwise transfer the relevant funds or asset, or

2. there is a real and substantial risk that the NRP will be unable to satisfy the debt due on the liability order unless the arrestment on dependence is granted, or

3. information is held indicating the NRP will shortly be moving to an area outside the CMS`s jurisdiction.

Note: in the event that a liability order is refused, any diligence on the dependence will also fail.

Conditions effecting the arrestment in the dependence

86008 The arrestment on the dependence can be effected by the following

1. the NRP can apply to the sheriff to have the warrant to arrest on the dependence recalled or restricted[1]

2. the NRP can apply to the sheriff to have the warrant to arrest on the dependence varied or any condition attached to it varied or removed[2]

3. boats, ships and cargo are subject to Admiralty legislation[3].

1 D (S) Act 1987 Part 1A, s 15K (2)(a); 2 Part 1A, s 15L; 3 Part 1A, s 15N

Chapter 87 - Arrestment

Introduction

87001 In Scotland the CMS can instruct sheriff officers to seize control of, or “arrest” certain types of funds or assets that belong to the NRP, but are held by, or owed to the NRP by a third party[1] after a liability order has been granted.

1 CS Act 1991 s 38(1)(b)

This guidance explains

When an application should be considered 87002

Types of funds that can be arrested 87003 - 87013

Timeline 87014 - 87018

Arrestment outcomes 87019 – 87022

Funds arrested: debtor mandate 87023 - 87026

When an application should be considered

87002 A DM should consider an application for arrestment if

1. a liability order has been granted **and**
2. there is evidence that the NRP is owed funds or assets from a third party **or**
3. there is evidence that the NRP is due to receive, funds or assets from a third party.

Types of funds and assets that can be arrested

Funds held in bank or building society accounts

87003 When considering arrestment of funds held in a bank or building society account full account details are not necessary, as the arrestment can be served to the relevant organisation’s head office. However, it is crucial that the DM includes all available relevant information regarding the account holder’s identity, to allow for effective arrestment and increase the prospect of success.

87004 Arrestment can be executed on joint accounts.

87005 In exceptional circumstances "blanket " arrestments can be considered, which instruct sheriff officers to lodge arrestment at the head offices of the four major Scottish banks

1. Royal Bank of Scotland
2. Bank of Scotland

3. Lloyds TSB

4. Clydesdale

87006 If the NRP`s funds are held in an account in England, the liability order must be registered in the magistrates' court in England and enforced through a third party debt order in the county court.

87007 Arrestment is not effective for future or contingent debts. A contingent debt is something which might or might not happen. It is not a definitive liability because it is based on the outcome of an event, such as a court decision.

Protected minimum balance

87008 The protected sum only applies to funds held in bank accounts1, or other financial institutions and from 22 April 2009, debtors must be left with a minimum amount in their accounts if an arrestment is executed.

87009 The minimum balance is calculated by the CMS and is equivalent to the net monthly earnings from which no deduction would be made under an earnings arrestment. This is currently set at £529.90 as of April 2019 but is subject to periodic change.

87010 Where the NRP has multiple accounts with one bank, the minimum protected sum will only be applied once. If, however, the NRP has separate accounts in more than one clearing bank the protected minimum sum will be applied by each bank.

87011 The minimum balance does not apply to accounts that are operated by the debtor (NRP) as a trading account or that are held in the name of a company, a limited liability partnership or an unincorporated association[1].

1 D (S) Act 1987 Part 3A, s 73F (1) & (2)

Boats and cargo

87012 The criteria for arrestment of boats and cargo is

1. a boat in dry dock within a harbour or docks

2. a boat on a trailer outside the harbour, and

3. cargo held on a boat[1].

Note: if the DM has evidence that the NRP holds an asset of this type, they should seek advice from solicitors and sheriff officers whether the vessel is suitable for arrestment.

1 AoJ Act 1956 Part V s 47C (2)

Other funds and assets

87013 Other arrestable funds and assets include

1. payments that are owed or due to be paid to the NRP as a debt or obligation to them

2. fees and commissions

3. rents

4. proceeds of insurance policies

5. investment bonds

6. shares in a Limited Company

7. trust funds

8. pension funds due to be paid to the NRP from a matured policy

9. periodical or regular payments that we know the NRP is due to receive

10. annuities

11. corporeal movables, meaning articles belonging to the debtor, but held by a third party, for example a painting on loan to an art gallery or livestock that is held by an auctioneer.

Timeline

87014 Sheriff officers will serve the schedule of arrestment on whoever is holding the funds or assets[1], (the arrestee), instructing them to "arrest" all or part of them. This means that the funds or assets are frozen and cannot be accessed by the CMS, NRP or any joint account holder.

1 D (S) Act 1987 s 73 B

87015 The arrestee must send a form of disclosure to the CMS, the NRP and any joint account holders within 21 days, informing them of any amount that has been successfully arrested[1].

1 D (S) Act 1987 Part 3A, s 73G

87016 The CMS issue a "Form of Debtor Mandate" to the NRP[1], seeking their authorisation for the arrested funds to be released to the CMS. A mandate not in the prescribed form is invalid.

1 D (S) Act 1987 Part 3A. s 73S (1)

87017 DMs will then consider next action dependant on whether the NRP agrees to the funds being released and on the type of funds or assets that have been frozen. See para **87020**.

87018 In deciding the next course of action to take the DM should take into consideration that

1. more than one arrestment can be instructed at the same time if the NRP has multiple accounts

or assets

2. it is only useful to instruct an arrestment where there are funds in excess of the protected minimum see para **87008**.

3. an arrestment can be instructed on joint accounts.

Note: the arrestee is not legally required to notify the creditor if nothing has been arrested.

Arrestment outcomes

87019 Outcome of request to arrestee are where

1. no response has been received within 4 weeks, the DM should proceed on the assumption that no funds have been arrested and consider alternative enforcement action(s)

2. the arrestee advises that no funds have been arrested because the NRP does not hold an account with them, or

3. the arrestee advises that no funds have been arrested because there are insufficient or no funds available.

Note: It may be appropriate for the DM to consider further arrestment`s at a later date.

NRP dispute

87020 If funds have been arrested, no funds may be automatically released if

1. the NRP applies by notice of objection to the sheriff

2. an action of multiple poinding is raised in relation to the funds attached by the arrestment

3. the NRP applies to the sheriff under S73 (Q)(2) – arrestment unduly harsh, or

4. if the arrestment is recalled or restricted or ceases to have effect

1 D (S) Act 1987 Part 3A, s 73L (1)

87021 At a hearing on an objection lodged by the NRP, the sheriff may

1. allow the arrestment to stand, this means that none of the arrested funds will be released to the NRP[1], or

2. release a portion of the arrested funds[2]. In these circumstances, a notification must be sent to the arrestee, informing them of the amount that should be released, or

3. make an order recalling or restricting the arrestment

1 D (S) Act 1987 Part 3A, s 73N (4); 2 Part 3A, s 73N (3)

Example: NRP Jack and PWC Jill have a joint account which has been arrested. Jill's wages may be released, where there is supporting evidence that these belong only to Jill and that she has expenses that must be met.

87022 The NRP, arrestee or any other interested party has the right to lodge a notice of objection with the sheriff, if they consider the arrestment to be unduly harsh[1], this will result in a hearing being held to discuss the order. If the objection is upheld the

1. arrestment can be restricted and only part of the funds given to creditor, or
2. arrestment can be recalled and funds restored to their original position.

If the objection is rejected, the arrestment will continue.

1 D (S) Act 1987 Part 3A, s 73M

Funds arrested: debtor mandate

87023 When the DM receives confirmation that money has been arrested (through a Form of Disclosure or contact with the NRP), a Form of Debtor Mandate[1] must be issued to the NRP. This form requests authorisation for the funds to be released to CMS.

1 D (S) Act 1987 Part 3A, s 73S

87024 Where the NRP authorises release of funds, if the NRP signs and returns the Mandate, it must be forwarded to the arrestee, to release the funds to CMS.

87025 If the NRP fails to return a signed form of debtor mandate and funds arrested are held in the NRP`s bank or building society account, the funds will be automatically released to CMS after 14 weeks[1] from the date that the Schedule of Arrestment was served. See Chapter 51.

1 D (S) Act 1987 Part 3A. s 73J (3)

87026 where no signed mandate has been provided and moveable goods are arrested in the hands of a third party, or where the automatic release of funds will not take place, the DM should consider whether an action of furthcoming is appropriate. See Chapter 85.

Chapter 88 - Inhibition on the dependance

Introduction

88001 An inhibition on the dependence is a diligence in Scotland, which prohibits the debtor from disposing of or otherwise dealing with either a specific or all of their heritable property for example land or buildings or an interest in land or buildings while waiting on the outcome of a LO application.

This guidance explains

When to consider inhibition on the dependence 88002 - 88006

Inhibition on the dependence granted 88005

LO granted 88006

When to consider inhibition on the dependence

88002 DMs should consider an inhibition on the dependence if they have not yet obtained a LO and recent reliable evidence is held indicating that the NRP

1. is about to dispose of heritable property or land or an interest in heritable property or land
2. may relocate to an area outside the jurisdiction of the CMS
3. may become insolvent, or
4. may remove, dispose of, burden, conceal or otherwise deal with some or all of their heritable assets, for example land or buildings.

88003 A DMs request for a warrant to inhibit on the dependence must be prepared and lodged in the sheriff court by solicitors.

88004 The court may, if it grants a warrant for diligence on inhibition on the dependence, limit the property inhibited to such property as the court may specify[1].

1 D (S) Act 1987 Part 1A, s 15J

Inhibition on the dependence granted

88005 When the inhibition on the dependence is granted, the schedule of inhibition will be served on the NRP[1] but the LO process still needs to be completed. See Chapter 83.

1 BD (S) Act 2007 Part 5, s 149

LO granted

88006 Inhibition on the dependence automatically continues as an inhibition in execution[1] once a LO is granted. In the event that the original action is dismissed, the inhibition on the dependence will also fail.

1 BD (S) Act 2007Part 5, s 152

Chapter 89 - Inhibition

Introduction

89001 An inhibition is a diligence which prohibits a NRP from dealing with their heritable property or an interest in heritable property after successful LO action.

This guidance explains

What is an inhibition 89002 - 89004

When to instruct an inhibition in execution 89006

Sheriff officer action 89007

Effective date of inhibition 89008 – 89008

Property transferred before inhibition registered 89010

Renew an inhibition 89011

Discharge inhibition 89012

What is an inhibition

89002 Inhibition is a personal diligence against the NRP not against the property.

89003 It prohibits an NRP from

1. dealing with any heritable property, land and other immoveable property (houses, commercial premises) they own

2. selling, transferring or otherwise disposing of their heritable property or an interest in heritable property

89004 An inhibition may prevent the NRP from securing any new loans, credit or mortgages against the property.

89005 Inhibition affects all heritable property owned by the NRP, at the date inhibition is registered, unless it is limited by the court on the dependence. See Chapter 88.

Note: if the NRP acquires any heritable asset after the date that the inhibition is registered, an additional inhibition will be required to prevent the NRP from disposing of it.

When to instruct an inhibition in execution

89006 The DM must issue an instruction to inhibit in execution to sheriff officers via the contracted solicitors if

1. it is identified that the NRP has heritable property which could be disposed of by the NRP

2. a liability order has been granted, and

3. it is considered that the effect of an inhibition may limit the NRP`s access to credit or loans and encourage compliance.

Note: a liability order automatically carries warrant to inhibit in execution. Actions can therefore be taken by sheriff officers on instruction from DMs[1] via contracted solicitors. Inhibition in execution is competent to enforce payment of a debt constituted by a decree or document of debt. This includes a liability order.

1 BD (S) Act 2007 Part 5, s 146(6)

Sheriff officer action

89007 When sheriff officers receive instructions via contracted solicitors to execute an Inhibition from the DM they will

1. serve the schedule of inhibition and Debt Advice Information Pack on the NRP[1]

2. complete a Certification of execution and send this and the Notice of Inhibition, if required, to the Registers of Scotland to be registered on the Register of Inhibitions and Adjudications[2], on the day of receipt

3. await confirmation of registration, then

4. return the certificate of service and registration documents to CMS.

1 BD (S) Act 2007 Part 5, 147; 2 Part 5, s 148(1)(b)

Note: a charge for payment is not required before an inhibition is executed. An inhibition can be executed concurrently with any other appropriate diligence actions.

Effective date of inhibition

89008 Generally, the inhibition takes effect from the beginning of the day it is registered in the Register of Inhibitions and Adjudications[1] following service of the schedule of inhibition[2].

1 BD (S) Act 2007 Part 5, s 149; 2 TLC (S) Act 1868 s155(1)

89009 The exception to this is where a prior notice of inhibition has been registered. In these cases, the effect of the inhibition is backdated to the date the schedule of inhibition was served

as long as the following circumstances apply[1]

1. a notice of inhibition is registered in the Register of Inhibitions

2. the schedule of inhibition is served on the NRP after that notice is registered and

3. the inhibition is registered in the Register of Inhibitions and Adjudications before the expiry of the period of 21 days beginning with the day the notice is registered.

1 BD (S) Act 2007 Part 5, s149; TLC (S) Act 1868 s155(2)

Property transferred before inhibition registered

89010 When there is a risk that the NRP may be able to transfer heritable property between the execution date of the Notice of inhibition, and the date that Registers of Scotland receive the documents to confirm execution, it may be appropriate to consider an action for reduction and register as soon as is reasonably practicable a notice that after the summons has been signed and register a copy of the notice in the Land Register (a notice of litigiosity)[1] . See Chapter 82.

1 BD (S) Act 2007 Part 5, s 162; TLC(S) Act 1868 s159A

Renew an inhibition

89011 After five years, an inhibition ceases to have effect[1]. If an existing inhibition has been put in place on behalf of the CMS and the NRP has not paid the liability order arrears, the inhibition should be renewed before the date of expiry by instructing sheriff officers via the contracted solicitors.

1 BD (S) Act 2007 Part 5, s 156(b)

Note: the inhibition can continually be renewed as necessary[1]. Where more than one inhibition is executed, the expenses of only one further inhibition in relation to the debt to which the first inhibition relates are chargeable against the NRP as inhibition expenses.

1 BD (S) Act 2007 Part 5, s 165(3)

Discharge inhibition

89012 The inhibition may be discharged[1] after payment of

1. the principal debt

2. the expenses incurred in executing the inhibition, and

3. the expenses incurred for discharging the inhibition.

Chapter 90 - Sanctions

Introduction

90001 In Scotland, there are three options available for the CMS to pursue the NRP through the sheriff court where an NRP has failed to pay the outstanding LO balance. These are known as sanctions.

This guidance explains

Considering sanctions 90002 – 90019

Driving license disqualification 90020 – 90028

Commitment to prison 90029 – 90035

Passport disqualification 90036 – 90043

Court outcomes 90044 – 90045

Defaults 90046 – 90050

Considering sanctions

90002 The three sanctions that the CMS can apply for are

1. disqualification from holding or obtaining a driving license **or**,
2. commitment to prison **or**,
3. disqualification from holding or obtaining a UK passport

90003 Only one sanction can be imposed on an NRP at a time[1].

1 CS Act 1991, s39B(6); s40B(2)

90004 Sanctions can be imposed on the NRP by the sheriff court where an LO has been granted.

90005 Where an application to impose sanctions is to be considered, DMs must refer the case to the CMS' contracted solicitors. The contracted solicitors will work with DMs in determining the sanction that would be most appropriate.

90006 DMs can advise the CMS contracted solicitors of the preferred sanction to be applied for, however, the final decision will be made by the sheriff.

90007 All other Scottish enforcement actions must be considered before applying for sanctions on all cases for each LO period. Refer to Chapter 81: Legal Enforcement.

90008 Where the NRP has multiple LOs, a single sanctions application can be made for all LOs. Refer to Chapter 83: Liability Orders.

90009 Wilful refusal is the legal term used where an NRP states that they are not going to pay the CMS arrears.

90010 Culpable neglect is the legal term used where an NRP organises their affairs in such a way that they deliberately avoid payment of CMS arrears.

90011 DMs should consider all the circumstances on an individual case basis, seeking guidance when required through consulting with the CMS contracted solicitors.

90012 The NRP should have at least £1,000 of CMS arrears.

90013 Where the LO arrears are less than £1,000, the DM should make the following additional considerations before making a decision on whether sanctions are appropriate

1. there has been a prolonged or repeated pattern of non-compliance
2. the case is
    1. high profile **or**
    2. likely to attract media attention
3. sanctions have been recommended by
    1. ICE **or**
    2. PHSO
4. The OGM has ended and the arrears are just short of £1,000

Ability to pay

90014 Sanctions would be considered appropriate where it can be confirmed that the NRP has the ability to pay but is unwilling to pay. They can encourage NRPs to come to a payment agreement.

90015 The circumstances of each case should be considered, taking the following into account:

1. does the NRP require a driving license for their work?
2. does the NRP require a passport for their work or to visit family or connections in another country?
3. has all alternative enforcement action been considered or failed?
4. does the PWC agree with pursuing the sanction?
5. what impact would sanctioning the NRP have upon the welfare of any child?
6. what impact would sanctions have upon the NRP’s health or welfare?
7. is the case fully up to date?
8. are there further LO applications pending against the NRP?

9. is the NRP within the correct jurisdiction?

Note: this list is not exhaustive.

90016 If the NRP has a high ability to pay but needs a passport or driving license for work or other reasons, for example to visit family, pursuing those sanctions could encourage the NRP to make payment.

90017 If the NRP has a low ability to pay and needs a driving license or passport for work or other reasons, pursuing those sanctions could affect the ability for the NRP to earn an income and pay child maintenance. DMs should consider if it would be more preferable to pursue commitment to prison.

90018 The CMS must prove that the NRP had the ability to pay at the time the LO arrears accrued. A sheriff in Scotland will consider the entire period covered by the LO in determining if the NRP had the ability to pay and not just the ability of the NRP to pay at the time of any application calling in court for sanctions.

90019 Where the NRP has been sequestrated or has entered into a protected trust deed, sanctions may not be appropriate. Refer to Chapter 94: Sequestration or Chapter 95: Trust Deeds as appropriate.

Note: the trustee would have made an allowance for the NRP to maintain ongoing payments to all creditors and this would have included payments to the CMS.

Driving license disqualification

90020 Where the sheriff is satisfied that there has been wilful refusal or culpable neglect on the NRP's part, the sheriff may

1. issue an order for disqualification from
    1. holding **or**
    2. obtaining a driving license.
2. make a disqualification order but suspend its operation until such time and on such conditions (if any) as it thinks just.

1 CS Act 1991, s40B(1)(b)

90021 Where an order for disqualification is made, the court will order the NRP to surrender their driving license [1] to the court who may send it to the CMS.

1 CS Act 1991, s40B(4); s40B(9)

90022 Where the NRP does not bring their driving license to the hearing, the DVLA may instruct the police to remove the NRP's license. If the license is not returned to DVLA, it will still be invalidated on their system.

90023 The maximum period that the NRP can be disqualified from obtaining or holding a driving license is 2 years.

1 CS Act 1991, s40B(1)(a)

90024 Where no order for disqualification or suspended disqualification order has been made, the CMS may make a further application on the same LO for the disqualification on the ground that the NRP circumstances have changed[1].

1 CS(CE) Regs 1992, reg35(3)

90025 The CMS is not able to make a further application for a disqualification order and the DM must consider alternate sanctions where

1. a disqualification order has been made,
2. the LO has not been paid in full **and**
3. the maximum period of 2 years has been imposed.

Payments made

90026 Where full payment of the outstanding arrears is paid, the order for disqualification can be revoked[1] on the application of CMS or the NRP to the sheriff court

Note: the NRP will need to apply to DVLA to have their driving license reinstated and will incur a fee for this.

1 CS Act 1991, s40B(5)(b)

90027 Where part payment of the full arrears balance under the LO is offered by the NRP, the CMS may make representations to the amount that may be accepted to the sheriff. The NRP will have the opportunity to respond[1].

1 CS Act 1991, s40B(6)

90028 An application can be made to the sheriff court by the CMS or the NRP where part payment is made in respect of a disqualification from holding or obtaining a driving license. This may result in the court ordering either

1. a shorter period of disqualification **or**
2. that the order for disqualification may be revoked in full[1].

1 CS Act 1991, s40B(5)(a)

Commitment to prison

90029 A warrant for commitment to prison will not be issued if the NRP is under 18.

1 CS Act 1991, s40A(3)

90030 Where the sheriff is satisfied that there has been wilful refusal or culpable neglect on the NRP's part, the sheriff may

1. commit the NRP to prison, **or**

2. fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as he thinks just

1 CS Act 1991, s40A(1)

90031 The maximum term of imprisonment is six weeks[1].

1 CS Act 1991, s40A(5)

90032 Where the NRP has been committed to prison or where a suspended order has been made, this sanction cannot be applied for again[1] on the same LO. Alternate sanctions can be considered.

1 CS Act 1991, s40A(8)(b)

90033 The NRP must have been resident in the area of the sheriff court for at least 3 months before this sanction can be considered.

Payments made

90034 Where the sheriff has ordered the NRP to be committed to prison, the NRP may be released on payment of the amount stated on the warrant[1]

Note: if the NRP is on remand, or imprisoned, for any other reason, the NRP may not be released on full payment of the CMS arrears.

1 CS Act 1991, s40A(4)(b)

90035 Where the NRP makes part payment of the arrears outstanding, the prison sentence may be reduced[1] by application to the court. The amount of reduction in the prison sentence is in proportion to the amount of arrears that have been repaid. This can be reduced to a maximum of time served by the NRP plus 1 day.

1 CS Act 1991, s40A(6)

Passport disqualification

90036 The sheriff will make enquiry of the NRP, in his or her presence if the NRP requires travel authorisation to earn a living, their means and whether there has been wilful refusal or culpable neglect to pay.

90037 Travel authorisation refers to either

1. a UK passport, **or**

2. an ID card issued to the NRP to confirm that they are a British citizen[1]

1 CS Act 1991, s39B(12)

90038 The sheriff may either[1]

1. disqualify the NRP from holding or obtaining travel authorisation, **or**

2. issue a suspended order for disqualification of holding or obtaining a passport with conditions imposed on the NRP.

1 CS Act 1991, s39C(2); s39C(3)

90039 The maximum period for disqualification of holding or obtaining a passport is two years.

1 CS Act 1991, s39C(1)

90040 When an order for disqualification from holding or obtaining a passport has been granted by the sheriff, they can order a search of the NRP for money. If money is found in their possession that is proven to belong wholly to the NRP, this can be used to reduce the payment of the amount of arrears due, unless the sheriff directs otherwise[1].

1 CS Act 1991, s39D

90041 Passport disqualification would not be considered against an NRP who has dual nationality as the sanction is only applied to the NRP's UK passport. This is because the NRP would still be legally allowed to travel under their other nationality.

Payments made

90042 Where the NRP makes full payment for the LO arrears, the NRP or the CMS may apply to the court to arrange for the disqualification to be revoked[1].

1 CS Act 1991, s39E

90043 Where part payment is made, the NRP or the CMS may apply to the court to

1. reduce the period of the order for disqualification from holding or obtaining a passport **or**

2. revoke the order for disqualification from holding or obtaining a passport in full[1].

1 CS Act 1991, s39E(1)

Court outcomes

90044 The court will notify the CMS, via the CMS contracted solicitors, of the outcome of the sanctions application[1]. Refer to Annex B - Court Proceedings for the full court process.

1 CS Act 1991, s40B(8) & 39B(11)

90045 Where a suspended order has been made and there is a further change to the NRP circumstances, this does not stop alternative enforcement action from being considered. Refer to Chapter 81: Legal Enforcement.

Note: if additional guidance is required in these cases. DMs should discuss the case with CMS contracted solicitors.

Defaults

90046 Where sanctions are granted but suspended, the sheriff may impose certain conditions on the NRP. If the NRP fails to keep to these conditions, the DM can refer back to the CMS contracted solicitors for the suspension to be lifted and the sanction imposed. When the sheriff makes an order but suspends its operation this will usually be on certain conditions as to the period of time of the suspension and any requirement as to payment by the NRP.

90047 The DM should consider if it is appropriate to refer the case back to the court to lift the suspension for the full sanction to be imposed on the NRP and the DM should make a referral to the CMS contracted solicitors.

90048 DMs should have regard to the amount of debt outstanding on the LO and the individual circumstances of each case.

90049 Where the time allowed for the suspended order has lapsed, and the NRP has failed to maintain payments or pay off the LO arrears, a referral to lift the suspension cannot be made.

90050 A new sanctions referral should be considered where the period to lift the suspension has expired and there is still a balance outstanding on the LO.

Chapter 91 - Interim attachment

Introduction

91001 An interim attachment[1] is an enforcement action in Scotland that can be used before a liability order is granted to prevent the NRP from selling or otherwise disposing of, corporeal moveable property owned by the NRP (whether alone or jointly) that could be sold via auction to pay towards CMS arrears.

1 DAA(S) Act 2002 s9A

This guidance explains

General information 91002 - 91007

Granting warrant 91008 - 91012

Execution of interim attachment 91013 - 91019

General information

91002 A warrant for interim attachment is only considered where the application for a liability order is seeking payment of money, other than expenses, for example an application seeking payment of CMS arrears.

1 DAA(S) Act 2002, s9A(2)

91003 The court may grant a warrant for interim attachment with or without a hearing on an application, if satisfied that there is a real and substantial risk enforcement of any liability order would be defeated or prejudiced by the NRP, for example if there is a risk of the NRP

1. becoming insolvent
2. removing, disposing of burdening, concealing or otherwise dealing with all or any of the NRP's assets, or
3. damaging moveable assets (owned by the NRP).

1 DAA(S) Act 2002, s9D(2); s9E(3)

91004 DMs can instruct the CMS solicitors to apply for this action before a liability order is granted. Refer to Chapter 83: Liability Order (Scotland) and Chapter 92: Attachment.

91005 Certain items cannot be attached under an interim attachment[1]. These include

1. any item inside the NRP home or
2. any items exempt from an attachment – see Chapter 92: Attachment, para 92018 or
3. a mobile home which is the only or main residence of a person other than the NRP or
4. any perishable items likely to deteriorate substantially and rapidly in condition or value or
5. any item acquired by an NRP engaged in a trade,

1. to be sold by the NRP, or

2. as a material for a process of manufacturing for sale by the NRP.

1 DAA(S) Act 2002, s9B

91006 Where the NRP enters into sequestration and the attachment has been executed within 60 days before the date of sequestration[1], CMS are entitled to recover the expenses incurred out of the proceeds of sale. Refer to Chapter 94: Sequestration.

1B(S) Act 2016 s24(8)

91007 Where the NRP enters into a protected trust deed, CMS is not entitled to instruct enforcement actions, including arrestment, attachment and inhibition against assets of the NRP transferred to the Trustee[1]. For more information refer to Chapter 95: Trust Deeds.

1 B(S) Act 2016 s172(3)

Granting warrant for interim attachment

91008 The warrant for interim attachment can be granted with or without a court hearing by the sheriff.

91009 If the interim attachment is granted without an initial hearing, the court will fix a date for a subsequent hearing which must be notified to the NRP[1] and any other person having an interest, by CMS solicitors. The summary application must be served within 21 days beginning on the day interim attachment is served, or it will have no effect.

1 DAA(S) Act 2002, s9D(4); 2, s9G

91010 An interim attachment may be granted if the court[1] is satisfied

1. that the CMS has a strong case on the merits of taking such action and

2. that the NRP will take action as per 91003 if the interim attachment is not granted and

3. that it is reasonable in all circumstances including those of any parties other than the NRP who may be affected.

1 DAA(S) Act 2002, s9D(2); s9E(3)

91011 If the court is satisfied, then an order granting warrant for the interim attachment will be made and the outcome will be notified[1] to

1. the NRP, and

2. any other person appearing to have an interest

1 DAA(S) Act 2002, s9E

Interim attachment not granted

91012 In the event an interim attachment is not granted[1], the court may impose conditions as it thinks fit. This can include

1. requiring the NRP

    1. to transfer an amount of money into court, or

2. provide some other form of security.

1 DAA(S) 2002, s9E(6)

Execution of interim attachment

91013 The sheriff officer shall complete a schedule of interim attachment, listing the items attached and the value[1] so far as it is possible to do so.

1 DAA(S) Act 2002, s9F(2); s9F(3)

91014 The schedule will be provided[1] directly to the NRP and this is the action that sets the date the interim attachment is executed[2]. Where it is not practicable to provide the schedule direct to the NRP

1. a copy will be given to the person present where the interim attachment was executed or
2. where no person is present, a copy of the schedule will be left at the location.

1 DAA(S) Act 2002, s9F(4); 2, s9F(5)

Articles owned or jointly owned by a third party

91015 Where a third party claims to own an item that has been subject to an interim attachment[1] and applies to the court. The court, if satisfied the claim is valid, may make an order that the interim attachment will cease to have effect.

1 DAA(S) Act 2002, s9K(1)

91016 Where the item subject to interim attachment is owned by the NRP and a third party, and the third party applies to the court to release the item. The court may order the interim attachment of the item to cease to have effect if satisfied, provided that the third party's claim is valid that and continued attachment would be unduly harsh to the third party[1].

1 DAA(S) Act 2002, s9K(3)

91017 Where the interim attachment ceases due to the circumstance of either para **91015** or **91016**, the officer may attach other articles owned by the NRP and kept at the place the original interim attachment was executed.

1 DAA(S) Act 2002, s9K(4)

91018 An interim attachment is valid until

1. six months from the date the action is disposed of, or
2. it is recalled, or
3. the creditor consents in writing to the interim attachment ceasing to have effect.

1 DAA(S) Act 2002, s9L(1), (3), (4)

Note: this can be extended upon application to the sheriff provided the application is made before the expiry of the period and the court is satisfied that exceptional circumstances make it reasonable to grant the application.

91019 An interim attachment can be recalled, restricted, or varied on application from the NRP

or the CMS to the court[1].

1 DAA(S) Act 2002, s9M; s9N

Chapter 92 - Attachment

Introduction

92001 An attachment[1] is a Scottish enforcement action to secure payment for outstanding CMS arrears by seizing and auctioning corporeal moveable items owned by the NRP (whether alone or jointly) and held outside the NRP's home.

This guidance explains

Considering an attachment 92002 – 92008

Executing attachment 92009 – 92016

Items or goods 92017 – 92025

Removing goods 92026 – 92030

Unlawful acts 92031 – 92036

Auction outcomes 92037 – 92042

1 DAA(S) Act 2002, s10

Considering an attachment

92002 An attachment can only be considered[1] when

1. a liability order has been obtained against the NRP
2. the charge for payment has been served on the NRP
3. the relevant notice period for the charge for payment has expired, and
4. the NRP has been provided a copy of a debt advice and information pack in the 12 weeks before.

Note: refer to Chapter 84: Charge for Payment and Chapter 83: Liability Orders (Scotland).

1 DAA(S) Act 2002, s10(3)

92003 An attachment refers only to items or goods stored outside the NRP's home. For goods stored inside the NRP's home see Chapter 93: Exceptional Attachment.

92004 Where an interim attachment has been granted, an attachment should be pursued within 6 months of the liability order being granted to prevent the interim attachment expiring. Refer to Chapter 91: Interim Attachment.

92005 A second attachment cannot take place for the same arrears unless there are goods which have since been brought to the premises after the date the original attachment was executed[1].

1 DAA(S) Act 2002, s25

92006 Where the NRP enters into sequestration, only the costs incurred by the CMS in taking the action of attachment against the NRP can be recovered by an attachment, provided the original attachment was executed within 60 days of the date of sequestration[1]. Refer to Chapter 94: Sequestration.

Note: the NRP entering into sequestration affects any attachment in the same way.

1 DAA(S) Act 2002, s9Q; s40; B(S) Act 2016, sch7

92007 Where the NRP has entered into a protected trust deed, the costs incurred by the CMS in pursuing an attachment cannot be recovered from the NRP. Refer to Chapter 96: Trust Deeds.

92008 An attachment may expire on the earlier of one of two dates[1],

1. 6 months after the date on which the item is attached, or
2. 28 days after the date on which the attached item is removed by the sheriff officer from the place it was attached.

1 DAA(S) Act 2002, s24

Note: the CMS can apply to the court for an extension if more time is required to execute the attachment.

Executing an attachment

92009 The attachment will be carried out by sheriff officers under instruction from the CMS solicitors.

92010 An attachment will not be carried out on [1]

1. a Sunday
2. a day which is a public holiday in the local area or
3. such other day as prescribed by Act of Sederunt.

1 DAA(S) Act 2002, s12

92011 Where an attachment is to be carried out it must not

1. beginning before 8am or after 8pm or
2. be continued after 8pm.

Note: if the sheriff officer has obtained prior authority from the sheriff for a commencement earlier or later than the times above then the execution of the attachment can proceed.

92012 For the purposes of attachment, the term dwelling house does not include

1. a garage even if it forms part of the structure or building which consists of or includes the NRP's home
2. other structures or buildings used in connection with the NRP's home, but does include a mobile home or other place used as a dwelling house.

Note: a mobile home, for these purposes means a caravan, houseboat or other moveable structure that is used as a residence.

1 DAA(S) Act 2002, s45

92013 A mobile home that is the only or main home of a person other than the NRP can be attached if owned by the NRP. On application from the NRP or the residing person within 14 days of the execution of the attachment, the sheriff may order that the attachment may cease to have effect[1]

1 DAA(S) Act 2002, s16

92014 The sheriff officers may proceed on the assumption that the NRP owns, either solely or jointly with a third party, any item in the NRP's possession. The sheriff officers may enquire with anyone present at the place which the item is as to who owns it and whether a third party own any goods in common with the NRP[1].

1 DAA(S) Act 2002, s13

92015 The sheriff officers will list all the suitable goods and place an open market value against each of the goods listed[1]. The total values of the items will cover the value of the debt outstanding. There may be occasions where the sheriff officers will deem that an evaluation is required by a specialist to confirm the value of an item[2].

Note: this process is the same for an exceptional attachment. Refer to Chapter 93: Exceptional Attachment.

1 DAA(S) Act 2002, s15(2), s51; 2, s15(3) & s54

92016 A copy of the sheriff officers report is provided to the NRP in the form of a schedule[1]. When this is provided to the NRP the attachment is treated as being executed[2].

1 DAA(S) Act 2002, s13A(3); 2, s13A(4)

Items or goods

92017 Items that cannot be included in an attachment[1] include

1. any implements, tools of trade, books or other equipment reasonably required for the use of the NRP in the practice of the NRP's profession, trade or business and not exceeding in aggregate value £1,000

2. any vehicle, the use of which is so reasonably required by the NRP, not exceeding in value £1,000

3. a mobile home which is the NRP's only or main home

4. any tools or other equipment reasonably required for the purpose of keeping in good order and condition any garden or yard adjacent to, or associated with, a home in which the NRP resides

5. any money

6. cargo which can be arrested – refer to Chapter 87: Arrestment or

7. any goods that are subject to a hire purchase agreement.

1 DAA(S) Act 2002, s11

Jointly owned items

92018 Where the goods are jointly owned by the NRP and a third party, the third party may apply to the sheriff for the goods subject to the attachment to be released.

Note: if any jointly owned goods are not reclaimed by the other party, the full value of the item is used to reduce the NRP arrears.

92019 Where the attachment ceases to have effect, the officer may attach other articles owned by the NRP at the place the original attachment was executed[1].

1 DAA(S) Act 2002, s34

Vehicles

92020 The NRP may apply to the sheriff for a release of the vehicle and the sheriff being satisfied that the auction or any vehicle would be unduly harsh may make an order that the attachment is to cease to have effect. The sheriff may not make such an order if the value of the vehicle exceeds £1000.

92021 Where the value of the vehicle as set out in the schedule is less than £1,000, the sheriff may remove the attachment from the vehicle and the sheriff officers will return the vehicle to the NRP.

92022 If the vehicle is valued at over £1,000, the sheriff may

1. arrange for the immediate sale of the vehicle
2. pay to the NRP from the proceeds of sale the sum of
    1. £1,000 or
    2. such lesser amount as specified and
3. assign any remaining amount in court[1].

1 DAA(S) Act 2002, s22

NRP makes or offers payment

92023 Once an attachment has been executed, the NRP has 14 days to pay the outstanding arrears and any associated costs to reclaim ownership of the items attached[1]. The value required to redeem the item is the value as set out by the schedule.

1 DAA(S) Act 2002, s18(1)

92024 This payment should be made to the sheriff officers who will provide the NRP with a receipt confirming payment and release the goods from the attachment[1].

1 DAA(S) Act 2002, s18(4)

92025 The NRP may contact the CMS to arrange an agreement to repay the arrears outstanding. Where an agreement is made, DMs should instruct the contracted solicitor that the attachment is no longer required and DM should inform the sheriff officers to release the attached items and to cancel the auction.

Removing goods

92026 Where payment is not received in full or an agreement is not made to repay the debt, the

sheriff officers will return to the location of the attached goods and remove the items to a secure location for a place of auction.

92027 There must be a period of seven days between the removal of the items from the NRP possession and the date of the auction[1].

1 DAA(S) Act 2002, s19

92028 In exceptional circumstances the sheriff officer may remove an attached article without notice if the officer considers it necessary[1] for

1. the security or
2. preservation of the value and
3. there is insufficient time to obtain an order for security or perishable items.

1 DAA(S) Act 2002, s19A

92029 An order for security of articles or sale of perishable items can be requested[1] by the CMS or the sheriff officer. Where this occurs the amount recovered by auction would be held in court until the attachment ceases to have effect.

1 DAA(S) Act 2002, s20

92030 Some goods cannot be removed for various reasons, if this is the case then the items are still classed as attached however the auction of these items will be held at any place other than the NRP home.

Unlawful acts

92031 If the sheriff officer has been unable to locate the attached goods to be removed for auction, they will make three visits to attempt to secure the attached goods.

92032 If the NRP requires the attached goods to be moved, the NRP should seek approval from the sheriff. If the NRP moves the attached goods without approval from the sheriff this is a breach of an attachment[1].

1 DAA(S) Act 2002, s21(2); s50(1)

92033 Where the NRP has gifted, sold or otherwise relinquished ownership of an attached article the NRP is in breach of the attachment. If the NRP or a third party has wilfully damaged or destroyed any asset, the NRP will be in breach of the attachment.

1 DAA(S) Act 2002, s21(4), s50(5)

92034 Where the attached items have been stolen, the NRP should report this to the sheriff, the creditor (CMS) and the sheriff officers alongside details of any claim that the NRP intends to make under insurance[1].

1 DAA(S) Act 2002, s21(7); s50(3)

92035 If the attached articles have been damaged or destroyed or stolen, on request from the CMS, the sheriff may order

1. the attachment of other items owned by the NRP and kept at the same place the original attachment was executed and, or
2. the revaluation of any damaged item.

1 DAA(S) Act 2002, s21(10)

92036 Where the damage has been caused by a third party who is aware of the attachment, the sheriff may order the third party or the NRP to pay into court

1. a sum equal to the value to the difference of the value of the item before it was damaged and the current value of the item or

2. where the damaged item is worthless, a sum equal to the value of the item before it was damaged.

1 DAA(S) Act 2002, s50(6)

Auction outcome

92037 The attached articles will be sold by public auction held in an auction room[1] unless the articles are not able to be located to an auction room. The NRP and any other person in possession of the attached items will be given notice[2] of

1. the date of the auction

2. the location of the auction, and

3. the date arranged for the removal of the attached articles where applicable.

Note: there may be circumstances that the original auction is not held and a new auction date is arranged.

Note: the auction process applies to exceptional attachment as well as attachment. Refer to Chapter 93: Exceptional Attachment.

1 DAA(S) Act 2002, s27(1); 2 s27(4)

92038 An officer may not cancel the arrangements for auction on more than two occasions.

92039 An auction will be attempted at least once but no more than three times[1] to recover the value of the outstanding arrears.

92040 Where the attached items are successfully sold, the amount gained is reduced by the fees of the auctioneer and the remaining amount is transferred to the CMS[1]. Refer to Chapter 53 - The debt steer for further information.

Note: where the amount gained through auction is more than the CMS arrears amount outstanding, the excess will be paid to the NRP.

1 DAA(S) Act 2002, s31(1)

92041 If goods fail to sell, ownership will revert to the CMS. The CMS has three working days to collect the items from the place of auction or ownership reverts to the NRP. The value of the item as stated in the schedule the sheriff officers provided to the NRP while executing the attachment is credited to the CMS.

92042 The expenses of executing an attachment, removing items for auction and auction shall be chargeable against the NRP[1].

1 DAA(S) Act 2002 sch 1, para 1

Chapter 93 - Exceptional attachment

Introduction

93001 An exceptional attachment order is an order authorising the attachment, the removal and auction of non-essential assets owned by the NRP from inside the NRP's home[1] in Scotland, to recover CMS arrears.

This guidance explains

Considering an exceptional attachment 93002 – 93009

Executing an exceptional attachment 93010 – 93019

Outcome 93020

1 DAA(S) 2002, s47(1), (2)

Considering an exceptional attachment

93002 The following actions must be taken against the NRP before a referral for exceptional attachment can be made

1. liability order obtained and
2. charge for payment served and
3. debt advice and information pack provided to the NRP.

Note: refer to Chapter 83: Liability Orders (Scotland) and Chapter 84: Charge for Payment.

93003 Before granting an exceptional attachment order, the sheriff must be satisfied there are exceptional circumstances and that the CMS have executed or attempted to execute[1]

1. arrestment and action of forthcoming, or
2. an earnings arrestment to obtain payment.

93004 The CMS must have taken reasonable steps to negotiate or to seek to negotiate a settlement of the debt. In addition, there must be a reasonable prospect that the sum recovered from an auction of the NRP's non-essential assets would be at least equal to the aggregate of

1.a reasonable estimate of the chargeable expenses, **and**

2.£100.

1 DAA(S) Act 2002, s48(1)

93005 Where it is reasonable in the circumstances to grant the order giving consideration to

1. the nature of the debt
2. whether the NRP resides in the house
3. whether the NRP carries on a trade or business in that house
4. whether the NRP has been given money advice

5. any agreement to pay the debt

6. the nature and value of any non-essential asset of the NRP.

Note: refer to Chapter 87: Arrestment, Chapter 85: Action of furthcoming.

93006 Where the DM determines that an exceptional attachment would be appropriate, a referral must be made to apply to the Sheriff Court via the CMS solicitors.

93007 The final decision on whether to grant an exceptional attachment or not is made by the sheriff[1].

1 DAA(S) Act 2002, s47(1)

93008 Where the NRP enters into sequestration and the attachment has been executed within 60 days before the date of sequestration[1], CMS are entitled to recover the expenses incurred out of the proceeds of sale. Refer to Chapter 94: Sequestration.

1 B(S) Act 2016 s24(8)

93009 Where the NRP enters into a protected trust deed the CMS is not entitled to due diligence against the assets of the NRP conveyed to the Trustee. Refer to Chapter 95: Trust Deeds.

1 B(S) Act 2016 sec 172(3)

Executing an exceptional attachment

93010 The exceptional attachment is executed by the sheriff officers who may gain entry to the NRP home[1] even if it is secured.

1 DAA(S) Act 2002, s47(2)

93011 The sheriff officer will serve notice on the NRP at least 4 days before the intended date of entry[1] unless the officer applies to the sheriff to be excused from giving notice on the basis that serving notification will put the execution of the exceptional attachment at risk of unsuccessful[2].

1 DAA(S) Act 2002, s49(1); 2, s49(3)

93012 The sheriff officer will not enter the house to execute the exceptional attachment if there is a person present at the location who is

1. under 16 years old and

2. not able to understand the consequences of the process being carried out because of

    1. the person's age or

    2. knowledge of English or

    3. mental illness or

    4. mental or physical disability or otherwise.

1 DAA(S) Act 2002, s49(2)

93013 An exceptional attachment is treated as being executed when a value is placed on the goods by the sheriff officer. Refer to Chapter 92: Attachment.

93014 Where possible, the sheriff officer will remove the items that have been attached by exceptional attachment immediately from the NRP possession unless the sheriff officer considers it impractical to do so. Where it is considered impractical, the sheriff officer will give notice to the NRP and to any person in possession of the item of the date arranged for the removal of the item from the residence[1].

1 DAA(S) Act 2002, s53(1),(2)

93015 The sheriff officer will only remove items that will cover the value of the outstanding CMS arrears[1].

1 DAA(S) Act 2002, s53(3)

93016 The sheriff officer may not attach any items which the officer considers likely to be of sentimental value to the NRP. This applies only where the total value of the items does not exceed £150[1].

1 DAA(S) Act 2002, s52

93017 Items which are reasonably required within the NRP household that are exempt from exceptional attachment include

1. any items that are exempt from an attachment, see Chapter 92: Attachment,
2. clothing reasonably required for the use of the NRP or any member of the household,
3. medical aids or medical equipment,
4. books or other articles for the education or training of the NRP or any member of the household,
5. items for the care or upbringing of a child and
6. child's toys.

93018 The following items cannot be attached by exceptional attachment[1]

1. beds or bedding,
2. household linen,
3. chairs or settees,
4. tables,
5. food,
6. lights or light fittings,
7. heating appliances,
8. curtains,

9. floor coverings,
10. furniture, equipment or utensils used for storing, cooking or eating food,
11. refrigerators,
12. items for cleaning, drying, mending or pressing clothes,
13. items for cleaning the residence,
14. furniture used for storing
    1. clothing, bedding or household line,
    2. items for cleaning the residence,
    3. utensils used for cooking or eating food,
15. items used for safety in the residence,
16. tools used for maintenance or repair of the residence or household items,
17. computers and accessory equipment,
18. microwave ovens,
19. radios,
20. telephones and
21. televisions

Note: this list is subject to modification on a case by case basis if required and the exceptions apply to the items insofar as they are required for the NRP's or a member of the NRP's households daily life.

1 DAA(S) Act 2002, sch2

93019 Once the exceptional attachment has been executed, there are a number of things that the NRP must not do with the attached items[1]. Refer to Chapter 92: Attachment for unlawful acts after the execution of an exceptional attachment.

1 DAA(S) Act 2002, s50

Outcome

93020 The process of auctioning for an exceptional attachment is the same as for an attachment. Refer to Chapter 92: Attachment.

Chapter 94 - Sequestration

Introduction

94001 Sequestration is the legal term for a bankruptcy for NRPs resident or habitually resident in Scotland[1]. Where it is known that an NRP is in sequestration this has an effect on the ability to collect CMS arrears.

1 B(S) Act 2016, s15

This guidance explains

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Notification of sequestration 94011 - 94016

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Accounting period and dividends 94021 – 94022

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General information

94002 The sequestration process may be administered by a trustee on behalf of an NRP[1] or an NRP may apply direct to the AiB[2] and administration may be taken by the AiB. As a result, CMS may receive notification from a variety of sources. Refer to para **94011.**

1 B(S) Act 2016, s50(1) ; 2 s51(12)

94003 An NRP may apply for sequestration despite having little or no CMS arrears outstanding. This is because the sequestration process is for the total amount of debt that the NRP owes which may or may not include arrears due to the CMS or the PWC.

94004 A trust deed may result in an application for sequestration if the trust deed does not succeed in becoming protected, refer to Chapter 95: Trust deeds.

94005 Information on a sequestrated NRP is available in the public domain[1] on the register of insolvencies.

1 B(S) Act 2016, s200(2)(b) & (7)

94006 An award for sequestration is not always successful and may be refused by the AiB depending on the NRP circumstances[1].

1 B(S) Act 2016, s21

94007 Sequestration can be recalled by the sheriff in a number of circumstances[1]. Where the sequestration is recalled, this will place the NRP back in the situation that they were in before the sequestration was awarded[2]. The CMS is able to pursue the arrears.

1 B(S) Act 2016, s30; 2, s38

Moratorium

94008 An NRP may apply to the AiB for a period of moratorium before submitting a sequestration request. This is a period of 6 weeks[1] during which a charge for payment cannot be instigated or enforced. However, a DEO can be enforced if set up before the date of

moratorium[2].

1 B(S) Act 2016, s198; 2, s197(5)(d)(i)

Deceased NRP

94009 The executor of the estate of a deceased NRP may also make an application for sequestration of the NRP estate[1].

1 B(S) Act 2016, s5

94010 If the NRP applies for sequestration and dies before the sequestration is awarded, the application will not be successful. If a creditor applies for sequestration of the NRP and the NRP dies before the sequestration is awarded, the application for sequestration may still be granted[1].

1 B(S) Act 2016, s10

Notification of sequestration

94011 Notification that an NRP has applied for or has been sequestrated can be received from any of the following sources

1. NRP
2. an executor, where the NRP is deceased
3. PWC or CiS
4. NRP trustee
5. AiB.
6. Contracted solicitors who may receive notification

94012 The correct CMS arrears value should be notified in writing to the trustee[1]. CMS will not be entitled to any dividend that might become payable if no claim is lodged.

1 B(S) Act 2016, s122

94013 The CMS cannot pursue the NRP to collect any outstanding arrears due up to the date of sequestration once an award of sequestration has been granted. Refer to para **94021**.

94014 The effective date of sequestration for an NRP application is the date the sequestration is awarded[1].

1 B(S) Act 2016, s22(7)(a)

94015 Where the sequestration is being instigated by a creditor or a trustee acting under a trust deed, the effective date of sequestration is the date on which the sheriff grants[1] the warrant citing the NRP to appear before the sheriff[2].

1 B(S) Act 2016, s22(7)(b); 2, s22(3)

Note: if multiple warrants have been issued, the date of sequestration is the date of the first warrant of citation.

94016 When the NRP has become sequestrated, they may be ordered to pay an amount to the trustee under a debtor contribution order. This could be fixed at zero depending on the NRP's

circumstances[1]. The period for this is usually 4 years[2] but can be altered as required.

1 B(S) Act 2016, s90; 2, s91

Effect on a DEO

94017 When an NRP pays by DEO and becomes sequestrated, the existing DEO must be cancelled[1] and a new DEO applied. Any arrears or regular maintenance that have accrued from and including the relevant sequestration date can be collected on the new DEO.

1 D(S) Act 1987, s72(2)

94018 Any deductions made by the employer before the date of sequestration can be retained by the CMS and paid to the PWC and, or S of S as appropriate[1] regardless of when the payment is received into the CMS. See Chapter 51: Payment Allocation.

1 D(S) Act 1987, 72(3A)

94019 If the employer has made deductions on the existing DEO on or after the sequestration date, any amounts deducted for arrears must be refunded or reimbursed to the NRP.

94020 Where the employer has made deductions on the existing DEO for any regular maintenance amounts due from the date of sequestration, the NRP should be contacted and asked whether they agree to those amounts being paid to the PWC. Where the NRP does not agree to this, the regular maintenance should be refunded or reimbursed to the NRP.

Note: where the arrears or regular maintenance payment is reimbursed to the NRP, the PWC should not be asked to repay this money back to the CMS. See Chapter 59: Overpayments and Reimbursement and recovery of PWC overpayments.

Note: a deduction from earnings order shall not be competent after the date of sequestration to secure the payment of any amount due by the NRP under a maintenance assessment or maintenance calculation in respect of which a claim could be made in the sequestration.

1 D(S) Act 1987, 72(4A)

Example

NRP Mandeep's trustee sends in documentation to the CMS on 15 February 2018 confirming that an application for sequestration has been received. The CMS inform the trustee that Mandeep has £6,000 total arrears, of which £4,000 is due to PWC Sal and £2,000 is due to the CMS.

The sequestration date is 10 February 2018 and Mandeep pays by a DEO. Mandeep's employer has deducted monies on 31 January 2018 and paid this to the CMS on 18 February 2018. This payment can be kept by the CMS. The existing DEO is cancelled and a new DEO issued on 2 March 2018. The £6,000 arrears due from the start of the case up to 10 February 2018 are suspended. A claim should be submitted to the trustee in relation to the £6000 arrears.

A further deduction has been taken by Mandeep's employer on the existing DEO on 28 February 2018 and paid to CMS on 18 March 2018. As this deduction was taken after the date of sequestration but on the existing DEO, confirmation is sought from Mandeep if the regular maintenance can be kept.

Mandeep agrees to CMS keeping the regular maintenance amount which is paid to Sal. The arrears amount deducted by Mandeep's employer is refunded to Mandeep.

The new DEO issued 2 March 2018 is due to start from Mandeep's next payday on 31 March 2018 for regular maintenance only due from and including 10 February 2018.

Accounting periods and dividends

94021 From the date of sequestration the NRP must make regular payments to the trustee. This is reviewed at the end of each accounting period[1], usually 12 months after the initial date of sequestration. At this point a new accounting period may start.

1 B(S) Act 2016, s130

94022 At the end of each accounting period a dividend may be received by CMS from the trustee or AiB. This should be allocated to CMS arrears accrued prior to the date of sequestration.

Note: there may not always be a dividend payable depending upon the NRP circumstances.

Discharge from sequestration

94023 An NRP can be discharged from the sequestration 12 months after the relevant sequestration date, and in some cases, as early as 6 months after the relevant sequestration date,[1] however this can vary depending on the NRP circumstances. Once discharged, the NRP is not liable for any debts from before the date of sequestration[2].

1 B(S) Act 2016, s137(2), s138(2) & s140; 2, s145

94024 Once discharged, confirmation should be received from the trustee or AiB if any further dividends are due to be received. Where there are no further dividends to be received, any remaining CMS arrears are not collectable[1] and can be written off[2]. See Chapter 63: Arrears Write Off.

1 B(S) Act 2016, s145; 2 CS(MPA) Regs 2009, reg 13G(i)

94025 The NRP discharge date is published in the register of insolvencies, as is the trustee discharge date[1].

1 B(S) Act, s149(8)

Example

NRP Olivia calls on 15 February 2019 and advises that she has applied to become sequestrated. The trustee sends in the relevant documentation. The CMS respond to the trustee confirming that Olivia has a total arrears balance of £4,900. Of which £3,600 is due to PWC Graeme and £1,300 is due to the CMS.

The sequestration date is 24 April 2019.

Olivia's trustee collects payments from her and after 2 years, on 24 April 2021, they pay out the dividend. The CMS receives £1,000 which is allocated to the arrears from before the sequestration date.

After a further 2 years, on 24 April 2023 Olivia is discharged and the trustee confirms there is no further dividend to be paid. The remaining total arrears of £3,900 are written off.

Chapter 95 - Trust Deeds

Introduction

95001 A trust deed is a formal, voluntary agreement between a debtor and their creditors to repay part, or all of what they owe including CMS arrears[1].

1 B(S) Act 2016, s164 & s228

This guidance explains

General information 95002 – 95006

Protected trust deed 95007 – 95014

The impact of trust deeds on DEO payments 95015 – 95017

Discharge and dividends 95018 – 95021

General information

95002 An NRP can apply for a trust deed if their total debt balance including interest and CMS arrears is more than £5000[1].

1 B(S) Act 2016, s164(3)

95003 A trust deed is administered for the NRP by a trustee. The NRP should inform the trustee of all of their creditors including the CMS. The trustee will then notify the CMS[1]. If the CMS have not been included in the list of creditors and there are CMS arrears outstanding, this should be notified to the trustee.

1 B(S) Act 2016, s170

95004 The trustee may vary[1] or withdraw from[2] the terms of the trust deed if the NRP does not keep to the terms of the trust deed.

1 B(S) Act 2016, s168 (2) & (3); 2, s175(4)

95005 When a trust deed is granted for an NRP, the information is available in the public domain[1] on the register of insolvencies[2]. The register of insolvencies contains the current status of the trust deed.

1 B(S) Act 2016, s167(3)(a)(vii); 2, s169

95006 Trust deeds and protected trust deeds do not have any effect on the collection of regular maintenance.

Protected trust deed

95007 Under certain criteria a trust deed that has been granted may become protected[1]. A protected

trust deed is legally binding on all secured creditors[2].

1 B(S) Act 2016, s171; 2, s172(3)

95008 The CMS can object to the trust deed becoming protected. Any objection must be raised within five weeks from the date the trust deed advert was placed in public domain. The trust deed will become protected if less than one third of the total notified creditors object in writing[1].

1 B (S) Act 2016, 170(2)

Note: the CMS would object where there is evidence the NRP has a high income and significant assets.

95009 Once a trust deed is protected and the CMS has been included as a creditor, the CMS arrears up to and including the day before the trust deed was granted are not collectable.

Note: the date that a trust deed is granted is not the same as the date the trust deed became protected.

95010 If the CMS has not been included as a creditor during the trust deed application and submitted a claim, the CMS will not be entitled to a dividend payment. See para **95020**.

95011 Under a protected trust deed, enforcement actions cannot be taken against an NRP's assets[1] which have been exempted from the protected trust deed.

1 B (S) Act 2016, s172(3) & s166 (2)

95012 Any ongoing enforcement action must be cancelled. Any associated enforcement costs are not collectable when the trust deed becomes a protected.

95013 If a trust deed does not succeed in becoming protected an application for sequestration could be made instead – see Chapter 94: Sequestration.

95014 If a protected trust deed is cancelled the full debt becomes collectible and the CMS can pursue the full amount of arrears.

The impact of trust deeds on DEO payments

95015 Where a trust deed becomes protected and the NRP pays by DEO, the DEO must be cancelled[1] and a new DEO applied. Any arrears that have accrued after the date the protected trust deed was granted can be collected on the new DEO[2].

1 B(S) Act 2016, s173; 2, s184(6)(a)(i)

95016 Where a DEO is in place for regular maintenance and arrears when the trust deed became protected, deductions made by the employer before the trust deed became protected can be retained and paid as appropriate. Refer to Chapter 51: Payment Allocation.

95017 If the employer has made deductions on the existing DEO on or after the date the trust deed became protected

1. the arrears must be refunded or reimbursed to the NRP, and

2. any regular maintenance retained and paid to the PWC.

Note: after the date on which a trust deed becomes protected, a DEO which is already in place, can no longer be used to secure payment of child maintenance for a period for which a claim could be made under the trust deed[1].

1 B(S) Act 2016, s173(4)

Discharge and dividends

95018 A protected trust deed normally lasts for 4 years from the date it is signed by the NRP although this can vary as discharge is not automatic[1].

1 B(S) Act 2016, s168

95019 A protected trust deed may remain open in the register of insolvencies after the 4 years[1].

1 B(S) Act 2016, s168

95020 Money collected by the trustee is paid to creditors and is called a dividend. The dividend is usually paid when the trust deed is discharged. Some trustees may pay a partial dividend after 2 years[1]. If a payment is received it must be allocated to the debt outstanding from the period covered by the protected trust deed.

1 B(S) Act 2016, s176

95021 Once the protected trust deed is discharged and any dividends have been received by the CMS, the remaining arrears included within the protected trust deed can be written off[1].

1 CS(MPA) Regs 2009, reg 13G(j); B(S) Act 2016, s184(1)

Example

NRP Joseph is currently paying a total of £300 per calendar month through a DEO made up of £200 on-going maintenance and £100 towards arrears. Joseph calls on 15 June 2018 to advise that they are in the process of applying for a trust deed. The CMS notifies the trustee on 1 July 2018 of the account balance which is £3600 total arrears, £3000 due to PWC Niamh and £600 due for collection charges.

The CMS receives confirmation from the trustee that the trust deed was granted on 10 July 2018. The CMS does not raise an objection to the trust deed becoming protected.

Joseph's trustee notifies the CMS that the trust deed has become protected from 7 August 2018. This is verified as the information is available in the public domain.

The deductions made by Joseph's employer between 10 July 2018 and 7 August 2018 are received on 20 August 2018 for an amount of £300. As these deductions were taken before the trust deed became protected they can be retained by the CMS and paid out as normal.

Under the existing DEO, Joseph's employer took a deduction of £300 on 25 August 2018 and paid this to the CMS on 20 September 2018. The regular maintenance amount of £200 can be retained and paid to Niamh. The arrears amount of £100 must be refunded to Joseph as this payment was taken after the trust deed became protected.

The existing DEO is cancelled on 1 September 2018 and a new DEO is issued for regular maintenance only of £200 per calendar month. The total arrears amount of £3600 up to 10 July 2018 are now included in the trust deed and cannot be pursued by the CMS. Any arrears accrued after 10 July 2018 can be scheduled and collected on the new DEO.

After 2 years, on 7 August 2020, the trustee pays a partial dividend of £500 to the CMS. This must be allocated to the arrears due from before 10 July 2018 reducing the total arrears balance to £3100.

After a further 2 years, on 7 August 2022 – four years after the trust deed became protected – the trustee confirms that there are no further dividends. At this point the remaining arrears due from before 10 July 2018 for £3100 in total can no longer be collected and are written off.