





The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

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3. Enforcing a financial penalty

Collection order

If the client is an existing defaulter

If the client is not an existing defaulter

Attachment of earnings orders

Deductions from benefits

Varying the terms of a collection order

If the attachment of earnings order or deductions from benefits fails

If the client defaults on the collection order

Registration of the financial penalty

Appeals and referrals

Warrant of control

The use of enforcement agents (bailiffs)

Clamping order

Money payments supervision order

Imprisonment

Short local detention

Attendance centre order

High Court and county court orders

Collection order

If the client is an existing defaulter

If the client is not an existing defaulter

Attachment of earnings orders

Deductions from benefits

Varying the terms of a collection order

If the attachment of earnings order or deductions from benefits fails

If the client defaults on the collection order

Registration of the financial penalty

Appeals and referrals

A magistrates' court that is either imposing a new financial penalty or enforcing payment of an unpaid financial penalty must make a collection order. The collection order sets out:

- a breakdown of the sum due – ie, the amount of the fine and/or compensation order and/or costs;
- whether the client is an 'existing defaulter' – ie, whether they have already defaulted on payment of another financial penalty and, if so, whether that default can be disregarded;
- whether an attachment of earnings order or an application for deductions from benefits has been made and, if so, the repayment terms that apply if the order or application fails (known as 'reserve terms'). If not, the payment terms;
- which fines office will deal with the case;
- the consequences of default.

If the client is an existing defaulter

If the client has defaulted on a previous penalty and they have failed to show the court there was an adequate reason for the default, the court must:

- make an attachment of earnings order (see here) if the client is in employment, provided it is not impracticable or inappropriate to do so (see below); *or*
- apply to the DWP to make deductions from benefits (see here) if the client is in receipt of universal credit (UC), income support (IS), income-based jobseeker's allowance (JSA), income-related employment and support allowance (ESA) or pension credit (PC), provided it is not impracticable or inappropriate to do so.

If a fixed penalty has been registered in the magistrates' court for enforcement, the client can be treated as an existing defaulter.

Impracticable or inappropriate

There is no guidance on the meaning of '**impracticable or inappropriate**'. It could include a situation in which the court has no information about the client's financial circumstances or in which, for example, there is an existing council tax attachment of earnings order and the client would be left with insufficient income to meet essential expenses if another order were made. It could also include a situation in which deductions are already being made from the client's benefit for debts with a higher priority.

If the court is satisfied that the client has shown an adequate reason for their default, an attachment of earnings order or an application for deductions from benefits can still be made, but only if the client consents. Consent is not needed if the financial penalty consists solely of, or includes, a compensation order. In this case, the court must make an attachment of earnings order or apply for deductions from benefits, unless it is impracticable or inappropriate to do so.

If a client does not want an attachment of earnings order or deductions made from their benefit, check before the court hearing whether they have any outstanding 'financial penalties'. If so, the client should be advised either to bring their payments up to date or to provide the court with an explanation of the default and of the possible adverse financial consequences of any attachment of earnings order or deductions from benefits.

If the client is not an existing defaulter

If the client is not an existing defaulter, the collection order sets out the terms of payment of the financial penalty. ¹ An attachment of earnings order or a request for deductions from benefits can only be made if the client consents, unless the financial penalty consists solely of, or includes,

a compensation order. If it does, the court must either make an attachment of earnings order or apply for deductions to be made from the client's benefits, provided it is not impracticable or inappropriate to do so (see here). 2 If appropriate, advise clients to resist any pressure to agree to such a course of action in favour of voluntary payments.

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- 1 In *Rai v Guildford Magistrates' Court* [2024 EWHC 2801 (Admin)] the High Court held that the magistrates' court's practice of delegating the decision as to the rate of payment to the HMCTS Fines Collection Team was unlawful. The monthly instalment and payment period should have been specified in the order: see Sch 5, para 14(2)(b) Courts Act 2003
- 2 Art 11 Collection of Fines (Final Scheme) Order 2006 No.1737

Attachment of earnings orders

Attachment of earnings orders made in the magistrates' courts are not made in the same way as those made in the county court (see here). Instead, fixed deductions are made from the client's net earnings using the percentage deductions in the table below.

| Net earnings | | | |
|-----------------|-----------------|---------------|----------------|
| Monthly | Weekly | Daily | Deduction rate |
| Up to £220 | Up to £55 | Up to £8 | 0% |
| £220.01 to £400 | £55.01 to £100 | £8.01 to £15 | 3% |
| £400.01 to £540 | £100.01 to £135 | £15.01 to £20 | 5% |
| £540.01 to £660 | £135.01 to £165 | £20.01 to £24 | 7% |

| | | | |
|---------------------|------------------|-----------------|--|
| £660.01 to £1,040 | £165.01 to £260 | £24.01 to £38 | 12% |
| £1,040.01 to £1,480 | £260.01 to £370 | £38.01 to £53 | 17% |
| £1,480.01 and over | £370.01 and over | £53.01 and over | 17% of this threshold and 50% of the remainder |

Attachment of earnings orders for fines take priority over existing attachment of earnings orders for payment of judgment debts, administration orders and attachment of earnings orders made by the DWP (except those to recover child support) and have equal priority with other attachment of earnings orders – eg, for council tax arrears.

Employers must deal with such orders in date order. The client's net earnings are calculated after making the deductions due under previous orders.

Deductions from benefits

The court can apply to the DWP to deduct payments towards a financial penalty from the client's UC, IS, income-based JSA, income-related ESA or PC.

The maximum amount that can be deducted is £5 a week or, if the deductions are being made from UC, 5 per cent of the client's standard allowance for the relevant assessment period. If the client receives new-style JSA or ESA, the maximum deduction is 40 per cent of the amount of JSA or ESA for a person their age.

In the past, the DWP could make deductions at a higher rate. However, from October 2021, a flat rate of 5 per cent of the client's standard allowance has been set. ¹

Fines have low priority and deductions can only be made in respect of one application at a time.

If the client is likely to experience hardship due to deductions being made, write to the DWP explaining this and ask it not to enforce the court's application.

For more information on deductions from benefits, see [here](#).

1 Reg 4(1B) Fines (Deductions from Income Support) Regs 1992 No.2182

Varying the terms of a collection order

The client is sent a copy of the collection order. If there has been a change in their circumstances since the order was made (or last varied), they can ask the fines officer to vary the order (or the reserve terms - see below). The application must be made in writing. They need not have defaulted. However, if the client has defaulted on the payment terms, any enforcement action can continue while their application to vary the order is being dealt with. They can also ask for the order to be varied if they are making further information available about their circumstances – eg, if their circumstances have not changed, but they did not provide full information about them on a previous occasion. The fines officer can require them to provide a statement of their financial circumstances and it is an offence not to comply. There is no limit to the number of times a client can ask for a variation, but they need to be aware that the fines officer can vary the payment terms in a way which is less favourable to the client than the current terms. A client can appeal against the fines officer's decision to the magistrates' court within 10 working days (see [here](#)).

If the attachment of earnings order or deductions from benefits fails

If the attachment of earnings order or an application for deductions from benefits fails (eg, if the client leaves their employment or the DWP is unable to comply with the request because of other, higher priority deductions), the fines officer must send the client a 'payment notice' informing them:

- the order (or request) has failed;
- the reserve terms in the collection order now apply – ie, the terms of payment of the financial penalty set by the court that take effect if an attachment of earnings order or application for deductions from benefits fails;
- what they must do to comply with the reserve terms;
- of their right to apply to vary the reserve terms.

The client can ask the fines officer to vary the order on the grounds that there has been a change in their circumstances since the reserve terms were set (or last varied).

If the client defaults on the collection order

The client is in default if they do not comply with the payment terms (or, if they have taken effect, the reserve terms) of the collection order. The fines officer may refer the case back to the magistrates' court or decide to enforce payment themselves. Provided there is no outstanding request to vary the reserve terms or no outstanding appeal to the magistrates about a previous decision not to vary the reserve terms, the fines officer can send a 'further steps notice', setting out what steps they intend to take. They can:

- make an attachment of earnings order or request deductions from benefits;
- issue a warrant of control (see here);
- make a clamping order (see here);
- register the financial penalty in the Register of Judgments, Orders and Fines;
- apply to have the financial penalty enforced in the High Court or the county court (see here).

If the fines officer wants to take a step, or steps, that was not specified in the further steps notice, they can issue a replacement notice, specifying the step or steps. The client can appeal to the magistrates' court against the replacement notice within 10 working days (see here).

Note: contact the fines officer immediately if there are arrears on an order as it may be possible to agree a new payment arrangement, particularly if the financial penalty can still be paid within the original period allowed by the court.

Registration of the financial penalty

The financial penalty can be registered in the Register of Judgments, Orders and Fines at the fines officer's discretion. This means that information about the fine will be available to credit reference agencies and may affect the client's ability to obtain credit. The entry must be cancelled if:

- the financial penalty is paid within a month of its being registered;
- the client's conviction is 'set aside' or reversed;
- the financial penalty has been remitted in full;
- five years have elapsed since the date of the client's conviction.

Appeals and referrals

The client can appeal to the magistrates' court by letter within 10 working days (ie, excluding Saturdays and Sundays, Christmas Day, Good Friday and bank holidays) against a fines officer's decision:

- to vary the terms of a collection order;

- to vary reserve terms;
- to issue a further steps notice.

On an appeal, the magistrates' court may:

- confirm or vary the payment terms (or any reserve terms);
- confirm, quash or vary a further steps notice;
- 'discharge' the collection order and exercise any of its 'standard powers'.

On a referral to the magistrates' court by the fines officer, the magistrates can:

- confirm or vary the payment terms (or any reserve terms);
- discharge the collection order;
- exercise any of the powers referred to in this chapter.

If the court discharges the collection order, it retains control of the collection and enforcement process itself, rather than delegating it to the fines officer. The standard powers given to the magistrates are much wider than the powers given to fines officers, although some can be exercised by both.

If a fines officer refers the case to the magistrates' court either instead of issuing a further steps notice or after taking any of the steps listed in it, the magistrates may increase the fine (but not any other part of the financial penalty) by 50 per cent, provided they are satisfied that the client's default on the collection order is due to their 'wilful refusal or culpable neglect' (see here). The increase is enforced as if it were part of the fine.

To ensure the client attends a referral hearing, the fines officer may issue a summons directing them to attend the magistrates' court at a specified time and place. If the client fails to attend, the court issues a warrant for their arrest by a civil enforcement officer. The warrant is either with or without bail – ie, the client is either bailed to attend court or arrested and brought before the court. Before executing the warrant, the enforcement officer tries to obtain full payment. If you discover that a client is subject to a warrant without bail, advise them to surrender themselves to the court on a day when the court is sitting to deal with fine defaulters, and prepare a financial statement for them to take with them.

Warrant of control

The use of enforcement agents (bailiffs)

The court can issue a warrant of control if a client fails to pay a financial penalty as ordered by the court. ¹ This means enforcement agents (bailiffs) are instructed to take control of the client's goods and the proceeds of their sale are paid to the court. Although there is now more emphasis

on using attachments of earnings and deductions from benefits, warrants of control are frequently the first enforcement method used. This is because many financial penalties are imposed in the client's absence, with the court having no information about their means.

No hearing is required before a warrant of control is issued, although the court can postpone issuing one if it wishes. ² There does not need to be a means enquiry before issuing a warrant of control, ³ but if there is evidence that the client has sufficient assets to pay the debt, the magistrates should take control of their goods rather than commit them to prison. ⁴

The magistrates' court can only withdraw a warrant after it has been issued in limited circumstances. ⁵ If the fines officer has issued a warrant of control under a further steps notice or a replacement notice, the fines officer may withdraw the warrant if they are satisfied that it was issued by mistake – eg, if the client was believed to be in default under their instalment arrangement, but the payments were, in fact, up to date. ⁶

If the fines officer refers a case to the magistrates' court while a warrant of control remains outstanding, the magistrates may discharge it – ie, withdraw the warrant if they would have had the power to do so under section 142 of the Magistrates' Court Act. ⁷

For example, the court could withdraw a warrant if there was evidence that the client was vulnerable and enforcement would not be in the interests of justice or if there had been 'inappropriate behaviour' by the enforcement agent - eg, acting contrary to the *National Standards*.

¹ s76 MCA 1980

² s77(1) MCA 1980

³ *R v Hereford Magistrates ex parte MacRae*, *The Times*, 31 December 1998

⁴ *R v Birmingham Justices ex parte Bennett* [1983] 1 WLR 114

⁵ *Crossland v Crossland* [1992] 2 FLR 45, confirmed in *R v Hereford Magistrates' Court ex parte MacRae*, *The Times*, 31 December 1998

⁶ s88(8) Legal Aid, Sentencing and Punishment of Offenders Act 2012 adds new para 40B to Sch 5 Courts Act 2003

⁷ s88(8) Legal Aid, Sentencing and Punishment of Offenders Act 2012 adds new para 40A to Sch 5 Courts Act 2003

The use of enforcement agents (bailiffs)

HM Courts and Tribunals Service (HMCTS) has national contracts with private enforcement agent (bailiff) firms to execute warrants of control. If there is a conflict between the terms of the contract and the legislation that governs enforcement agents' powers, ¹ the legislation prevails.

Enforcement agents collecting financial penalties (but not most other debts) can use reasonable force, if necessary, to enter and search any premises if it is reasonably required. ² This power, however, is rarely used and should only be exercised in accordance with the enforcement agent's own procedures, HMCTS instructions and as a last resort.

¹ Part 3 and Sch 12 TCEA 2007

² Sch 12 para 18 TCEA 2007

Clamping order

A clamping order is an order made by the fines officer or the magistrates' court for a motor vehicle registered in the client's name to be fitted with an immobilisation device ('clamped'). A clamping order is made to obtain payment of the financial penalty and includes the costs of carrying out the actual clamping of the vehicle.

Before the magistrates' court or the fines officer can make a clamping order, it must be satisfied that:

- the client has the means to pay the financial penalty; *and*
- the value of the vehicle(s) is likely to exceed the amount of the financial penalty plus the likely charges due and estimated costs of sale.

Once a vehicle has been clamped and the fine has not been paid in full after 10 clear working days have elapsed since the date the vehicle was clamped, the fines officer must apply in writing to the court for an order to sell the vehicle. **Note:** although either the magistrates' court or the fines officer can make a clamping order, only the magistrates can order the sale of the vehicle. There must first of all be a hearing of which the client must be given notice.

The clamping order procedure is rarely used. Since April 2014, it has been lawful for enforcement agents to take control of, remove and sell vehicles while executing warrants of control without the need for a clamping order.

Money payments supervision order

The court can make a money payments supervision order, appointing someone to 'advise and befriend the defendant with a view to inducing him to pay the sum adjudged to be paid' – ie, supervise the client during the payment of the financial penalty. ¹ This is usually a probation officer or a fines officer. **Note:** the court is not required to hold a means enquiry before making an order and the client's consent is not legally required, but since the client's co-operation is essential to the working of the order, it is usually needed in practice. As a matter of good practice, the money payments supervision order should specify the payment terms.

¹ ss56(2) and 88 MCA 1980

Imprisonment

If a client falls into arrears with payment of a financial penalty, the court may order their imprisonment. ¹ There is a similar power to detain under-21-year-olds in a young offenders' institution, but there are additional restrictions. ² The minimum term of imprisonment is five days and the maximum term that can be imposed by a magistrates' court is 12 months.

Note: once a warrant of control has been issued, imprisonment cannot be considered unless the warrant is returned stating that there were no goods. ³ You should consider asking solicitors to argue that, if a warrant has been returned because the enforcement agents were unable to gain access to the client's property, imprisonment is not an option open to the court, but this argument has not been tested in the higher courts.

There must first be a means enquiry, at which the court must be satisfied: ⁴

- if the original offence was punishable by imprisonment, that the client appears to have sufficient means to pay the sum immediately; *or*
- that the default is due to the client's 'wilful refusal or culpable neglect' (see here) and that all other methods of obtaining payment have been considered or tried, but have been either inappropriate or unsuccessful, including a money payments supervision order (see above), if available.

In practice, the court often assumes that, if a person has paid nothing, this is deliberate. You should encourage solicitors and other representatives to argue strongly that it is impossible to find money from a client's low income, even for priorities like financial penalties. However, even if the court is satisfied that the client had the means to pay, it must still demonstrate that it has

considered all the non-custodial alternatives. Over the past few years there has been considerable publicity about the number of wrongful committals. These have generally been due to inadequate means enquiries and/or failure to follow the above rules.

Any term of imprisonment must be proportional to the size of the financial penalty. The period is determined by a statutory scale and depends on the amount of the financial penalty outstanding. A stay in prison can be avoided by immediately paying the outstanding balance. Any costs of unsuccessful enforcement agent action can be added to the amount the client must pay to obtain their release. The length of any period of detention (whether actual or suspended) can be reduced by paying a proportion of the outstanding balance. ⁵ For information about 'lodging' (ie, linking) outstanding financial penalties to a prison sentence, see here.

If the court decides to impose a period of imprisonment, it can be postponed in certain situations – eg, if the client keeps to a payment arrangement. ⁶ This is known as a 'suspended committal'. The conditions can be varied if, for example, the client's circumstances change and they can no longer comply with its terms.

A suspended committal order cannot be combined with any other enforcement order.

If the client fails to comply with the postponement conditions, another hearing must be held before they can be sent to prison. They must be given the opportunity to attend the hearing in order to make representations on why the committal warrant should not be issued. This involves persuading the magistrates that circumstances have changed since the previous hearing (including new facts). The court can still consider remission at this stage.

Although the rules state that notice of the hearing is deemed to be served if it is sent by 'special' or 'recorded signed for' delivery to the client's last known address, the High Court quashed a sentence of imprisonment in a case in which a notice had been returned to the court as undelivered. ⁷ The High Court said that the magistrates should have adjourned the hearing until the client had been served with notice of the hearing.

¹ s76 MCA 1980, restricted by s82

² s88(5) MCA 1980 and ss1(5) and 5A CJA 1982

³ s76(2) MCA 1980

⁴ s82 MCA 1980

⁵ s79 MCA 1980

⁶ s77 MCA 1980

⁷ *R v Doncaster Justices ex parte Harrison* [1998] 163 JP 182

Short local detention

After a means enquiry, instead of imposing imprisonment, the magistrates can order the client to be detained for the remainder of the day, either in the court building or at a police station up until 8pm. They must be released in time for them to get home on the same day. The magistrates can also order the client to be detained overnight at a police station until 8am the next morning. ¹ This is not imprisonment and so the restrictions on imprisoning clients do not apply, but (as with imprisonment) the financial penalty is wiped out.

It may be appropriate to ask the magistrates to consider this option if they have ordered the financial penalty to be paid immediately, the client is unable to do so and the magistrates are not prepared to allow them time to pay.

¹ ss135 and 136 MCA 1980

Attendance centre order

Following a means enquiry, if the court has an attendance centre available to it and the client is under 25 years old, the magistrates can order them to attend the centre for between 12 and 36 hours. ¹ Attendance can be required for two to three hours at a time, usually on Saturday afternoons.

¹ s60 Powers of Criminal Courts (Sentencing) Act 2000

High Court and county court orders

The fines officer may apply to the High Court or a county court for an order that is only available in these courts – eg, a third-party debt order or charging order. ¹ An application is unlikely to be made unless the fines officer believes that none of the other available collection methods is likely to be successful, but a High Court or county court remedy is.

For more information on these enforcement methods, see Chapter 11.

¹ s87(1) MCA 1980

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Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.