





## 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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This content was last updated:  
2025-06-26

Print publication date  
Feb, 2024

Print ISBN  
978 1 915324 11 5

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## Varying and setting aside a financial penalty

A fine is the most common penalty imposed by magistrates' courts in criminal cases. Magistrates can also impose 'victim surcharges', and make costs orders and compensation orders (see here). These are all known as 'financial penalties'.

When setting financial penalties, the court must consider the seriousness of the offence and the offender's financial circumstances. <sup>1</sup> The penalty is reduced if the client pleads guilty.

For offences committed on or after 13 April 2015, the client may have been ordered to pay a charge in respect of the court's costs (known as the 'criminal courts charge'). This is enforceable in the same way as a financial penalty. The criminal courts charge was abolished from 24 December 2015, but clients on whom the charge was imposed before that date remain liable to pay it. For details of the different treatment of the criminal courts charge in bankruptcy and debt relief orders, see here and here. Magistrates' court fines are not 'qualifying debts' for breathing space purposes (see here).

The client may be required to complete a means enquiry form (available from the court office), although many clients who plead guilty and ask the court to deal with the matter in their absence do not provide information about their means. HM Courts and Tribunals Service (HMCTS) has its own statement of means form (Form MC100). <sup>2</sup>

Costs are at the court's discretion, but are usually ordered and fixed at the time.

If a client cannot afford to pay both a fine and compensation, the magistrates should order the client to pay compensation rather than impose a fine as well.

If the offence was committed after 1 April 2007 and the client is ordered to pay a fine, or a fine and compensation (in either case with or without costs), they may also be ordered to pay a victim surcharge. For an offence committed on or after 16 June 2022, the surcharge is 40 per cent of the fine subject to a maximum of £2,000 (previously set within a range of £34 to £190). This is used to fund services for victims and witnesses. If the client does not have the means to pay both the compensation and the surcharge, priority is given to compensation and the surcharge can be reduced to nil, if necessary. If the client does not have the means to pay both a fine and the surcharge, the fine should be reduced to enable the surcharge to be paid.

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<sup>1</sup> If no information is available, the court is entitled to assume a weekly income of £440. The court can remit all, or part, of the fine if the client subsequently provides evidence of their means: s127 SA 2020. If the client is on a low income (including benefits), they are currently deemed to have a weekly income of £120.

**2** Available at [gov.uk/government/publications/form-mc100-make-sure-you-can-pay-your-fine-english](https://gov.uk/government/publications/form-mc100-make-sure-you-can-pay-your-fine-english)

## Compensation orders

A magistrates' court can impose a compensation order alongside a fine or other sentence and must give reasons for not making an order in cases in which it is empowered to do so. **1** A compensation order is intended to be a simple way for the injured party in a criminal case to get compensation without having to sue in the county court. Compensation orders are often made in cases involving criminal damage or petty theft. They are collected by the court and paid to the victim, unlike the victim surcharge.

The powers to remit a fine (see [here](#)) do not apply to compensation orders. The only circumstances in which a compensation order could be changed are if: **2**

- a client appeals against either the conviction or the compensation order. A solicitor is needed for this and there are strict time limits; *or*
- subsequent civil proceedings demonstrate that the loss in respect of which the order was made was less than that stated in the order; *or*
- a compensation order is made for stolen goods which are later recovered; *or*
- the client has experienced a substantial reduction in their means, which was unexpected at the time the order was made, and they seem unlikely to increase for a considerable period.

Compensation orders are difficult to change. If a client is appearing in a criminal court on a charge that may result in a compensation order, you should advise them to take a clear statement of means with them. A representative should also be prepared to argue that, in view of the client's other debts, they should not have a compensation order awarded against them. The court must consider a client's financial statement and debts when making a decision. **3**

Costs awarded with a fine or compensation order are treated in exactly the same way as the compensation order – ie, they cannot be remitted by the court.

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**1** ss133-134 and 55 SA 2020

**2** s143 SA 2020

**3** s143 SA 2020

## Payments

### Transfer of fines

When imposing a financial penalty, the court can order:

- immediate payment; *or*
- payment within a fixed time; *or*
- payment by instalments.

Magistrates' courts are discouraged from inviting applications for time to pay and usually ask the client how much can be paid immediately. The court can search the client for any money that could be used to meet the financial penalty, but this power is rarely used.

Guidance to magistrates' courts from the Sentencing Council is that financial penalties should normally be capable of being paid within 12 months. That also applies to payment of compensation orders, although in exceptional cases it may be appropriate to allow payment over a period of up to three years. <sup>1</sup> If the client is unable to pay, this may be because there has been a change of circumstances since the penalty was imposed or that it was fixed without adequate financial information. In either case, consider asking for all or part of the financial penalty to be remitted – ie, totally or partially written off – at a means enquiry (see here).

However, when applying for further time to pay or a remission, bear in mind that financial penalties are a priority debt and that they were imposed as a punishment, and this affects the court's attitude to their recovery. Non-payment of a fine can be viewed as an attempt to avoid punishment.

Payments are applied by the court in the following order:

- compensation orders;
- victim surcharge;
- costs;
- fines.

If the client defaults on payment, this affects any term of imprisonment they are also ordered to serve. However, if the magistrates' court is collecting a Crown Court fine, the Crown Court will already have fixed the term of imprisonment the client must serve for defaulting on the payment of the fine, but not of any costs or compensation. The magistrates have no power to vary the sentence, although it can be reduced proportionately by remission or by part payment.

Problems can arise if a client has more than one fine or compensation order. Courts do not always make it clear to clients how their payments will be applied, which can lead to enforcement

action being taken on one matter, even though regular payments are being made in respect of another. Financial penalties can be paid:

- consecutively, with the client allowed to clear the oldest first with no enforcement action taken on later ones; *or*
- concurrently, with payments credited to each outstanding financial penalty (also known as 'consolidation').

The client should be advised to request whichever method is in their best interests.

Debt advisers are likely to be concerned with the client's difficulty in paying financial penalties after they have been imposed, rather than with the conditions attached on the day of sentence. You may have to negotiate with HMCTS staff or enforcement agents (bailiffs) about unpaid financial penalties.

Fines (except parking or other fixed penalty offences) can be paid online using a debit or credit card. The client must have the letter giving notice of the fine to pay in this way, as it contains the relevant references.

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**1** *R v Olliver and Olliver* [1989] 11 Cr App R (Sentencing) 10. See also the section on payment in the Sentencing Council's guidance at [sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/12-payment](https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/12-payment).

## Transfer of fines

If a client moves to a different magistrates' court's area but still has a financial penalty to pay at the magistrates' court in the area where they used to live, it may be advisable to apply to the original court for a fine transfer order to the new local court. **1** This should make payments easier to arrange.

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**1** s89 MCA 1980

## Remitting fines

Lodging fines

If the client's circumstances have changed since the fine was imposed, the court can remit (ie, cancel) all or part of the fine. <sup>1</sup> There must be a means enquiry (see below). The court can also remit a fine that was imposed in the absence of information about the client's means and, as a result, was set too high.

You should always argue for full remission of a fine if a person is on benefit or in serious debt (although the court may take into account the client's financial position at the time the financial penalty was imposed and any other resources available to them). The magistrates should be urged to consider full or partial remission if the guidelines on the time for payment of a financial penalty have not been observed (see here).

The magistrates do not have the power to remit costs or a victim's surcharge (see here) and can only remit compensation orders or the criminal courts charge in limited circumstances. Although the magistrates have no power as such to remit a victim's surcharge, where a victim's surcharge has been fixed by reference to the amount of any fine (as is usually the case) and the fine itself is wholly or partially remitted, the amount of any victim's surcharge is adjusted accordingly and the amount by which it is reduced is written off. <sup>2</sup> The route to getting a victim's surcharge reduced or remitted would, therefore, seem to be dependent on persuading the magistrates to remit the client's fine in whole or in part.

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<sup>1</sup> s85 MCA 1980

<sup>2</sup> s85(3A) MCA 1980 as inserted by Anti-social Behaviour, Crime & Policing Act 2014

## Lodging fines

If a client is serving a prison sentence, they can apply to the magistrates' court to 'lodge' (link) any outstanding fines to the prison sentence (including if the client is serving a sentence for non-payment of a magistrates' court fine). This has the effect of writing off the fine so that the client is no longer required to pay it following their release. Prison staff can provide clients with the necessary forms.

If the client has not dealt with the fine while serving their sentence, following their release they can attend a 'fines clinic' at the magistrates' court and apply for the fine to be remitted (they will need to provide details of the fine and their release papers).

## Means enquiry

Before the court can remit a fine or take certain types of enforcement action (see here), there

must be a hearing (a means enquiry) at which the client is present and which looks at the client's ability to pay the financial penalty and reason for their default. The client can be questioned by the magistrates' clerk or magistrates. <sup>1</sup>

Magistrates may have little knowledge of the benefits system and of many items of ordinary expenditure, and you should ensure that a full financial statement is prepared and given to the magistrates, even if this means adding considerably to the court's own form. This should include an explanation of any essential expenditure that you believe may be questioned by the court. In addition, magistrates may not take into account items of expenditure that the client has prioritised over payment of the financial penalty, but which the magistrates regard as non-essential. Magistrates usually take account of expenditure on housing (including fuel), clothing and food for the client and their dependants, water charges and council tax. However, there is no consistent approach and you should establish local practice.

Information should also be made available about the reason for any non-payment, the client's financial position at the time of the previous order and their future prospects, as appropriate.

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<sup>1</sup> *R v Corby Metropolitan Council ex parte Mort*, *The Times*, 12 March 1998

## Fixing a return date

Following a means enquiry, magistrates may order payment of the amount due by a certain date or fix an amount to be paid periodically and give a date when the client must return if they have not paid either the amount due or all the instalments. If the client fails to appear, a warrant of arrest can be issued. You should try to ensure that the order is one with which the client can realistically comply with or, if they default, that they can show this was not due to their 'wilful refusal or culpable neglect' (see here).

## Varying and setting aside a financial penalty

A magistrates' court may vary, or even rescind, a sentence or other order it has made (but not a sentence or order made by the Crown Court) if it appears to be in the interests of justice to do so. <sup>1</sup> Although this is a discretionary power, it could be a quick and effective way of cancelling or reducing a financial penalty that has been wrongly imposed or is demonstrably too high. There is no time limit on making the application and the client does not have to show any change of circumstances since the financial penalty was imposed. **Note:** see further here.

In addition, if the case was dealt with in the client's absence and they had no knowledge of the



summons or the proceedings, they can make a statutory declaration to this effect. Since 7 October 2019, a declaration can be made before an assistant justices' clerk or other nominated officer. This results in the conviction being rendered void and the financial penalty being 'set aside'. There is a new hearing and so this option needs to be carefully considered. <sup>2</sup> The statutory declaration must be delivered to the magistrates' court within 21 days of the proceedings first coming to the client's knowledge. There is discretion to extend the time limit if the court decides it was not reasonable to expect the client to comply with it. <sup>3</sup>

If either of these options is being considered, the client should be referred to a solicitor. If neither of the above applies and the client maintains their innocence of the offence(s), they should be referred to a solicitor for a possible appeal or application for judicial review. There are short time limits.

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- 1** s142 MCA 1980, as amended by CAA 1995
  - 2** s14 MCA 1980
  - 3** See G Skipwith, 'Consultancy corner', *Adviser* 148

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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.