

JUSTICES' CLERKS' SOCIETY

Procedure in Liability Order Applications

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Revised 2023



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1. Background

Council has been contacted by Peter Downton of HMCS Enforcement Team concerning the way HMCS records the making of liability orders in Council Tax cases, due to challenges to the process in various quarters, including questions from MPs.

The concerns raised are:

- a) that the procedure is not transparent ;
- b) HMCS can not demonstrate that it is accurately recording the orders made
- c) whether the orders are in correct form since they are not wet-ink signed.

Council has considered the issues, and in light of the procedures operating in their courts is of the view that the following process is lawful and transparent.

The key objective of any procedure is that an accurate record is made of every decision of the court and retained. It is not possible for each individual complaint to be case entered, recorded, and resulted, (save by a massive expansion in the number of legal advisers and court assistants). However the objective is achieved within existing resources by recording results against the council's printout and retaining that as an annexe to the register.

For legal guidance in dealing with council tax enforcement, see JCS's Council Tax Guide on the civil page of the JCS pages in the Intranet.

2. Procedure: issuing summons

1. The council delivers one or two complaint lists to the court with their fee (or an undertaking to pay it later)
2. The list is reviewed by a legal adviser or other member of staff with delegated powers who issues or refuses to issue the summonses.
3. Where the complaint list was sent by email (which will be normal), the legal adviser forwards the email back to the court office (forwarding ensures the complaint list is attached to the email) stating their decision. The court office then emails with council with the result and files the legal adviser's email with the attached complaint list.
4. Where the complaint list is sent in hard copy, either one copy of the list is returned endorsed to the council and the court retains the other endorsed list, or the court retains a single endorsed list and the council is informed of the result.

5. Whether the process is digital or by hard copy, the decision must be recorded and retained for three years under the Retention and Destruction Policy.
6. The council then prints and serves the summonses.
7. The Magistrates' Courts Rules do not require a signature on summonses, however a council's software may affix one. If the name is wrong (e.g. it refers to a justices' clerk), that is a defect of form, and is not fatal to the summons or the subsequent proceedings (Magistrates' Courts Act s. 123).

3. Procedure: Liability Order application

1. Since 2021, this procedure may be carried out by audio or video link. Parties should always be permitted to appear in person if they wish however.
2. The legal adviser is given an up to date printout of the Council's applications by a Council representative. This will set out the name and details of each defendant and against that the order the Council wishes the court to make.
3. The court hears a bulk application for all non-attenders: the Council representative proves the technical requirements on oath and gives evidence that the sums levied have not been paid.
4. Any defendant attending or writing to the court is dealt with individually and orders made (or not made) in their case. Their attendance or otherwise is also recorded.
5. The legal adviser records the overall number of liability orders made, withdrawn, dismissed and adjourned. This may be recorded on a file cover or on the copy printout, or both.
6. In addition for each case where the court does not make the order set out in the Council's printout, the legal adviser notes the actual order made against the defendant's name in the printout.
7. This means that there is a definitive record on the Council's printout of all orders made.
8. The numbers of orders granted, withdrawn etc. recorded by the legal adviser, are input after court and appear in the Libra register.
9. Any adjourned cases are individually case-entered and resulted (to generate a door list and appearance in the Libra diary).
10. The council's printout, marked up by the legal adviser, is kept permanently, as an annexe to the court register. The results are disclosable under Rules 66ff MCR 1981 (there is a certified extract template onto which the result should be copied).

4. Orders

The order is made when the presiding justice pronounces it, and is recorded in the court register, see section 3. Since repeal of the prescribed order, there has been no court-produced order. The Council's software should generate a notice that the order has been made, which is sent to the defendant. They should not be signed or endorsed with the name of a JP or court officer (still less a justices' clerk!)

Some councils are still sending out their notification in the form of a liability order, but even so it is not a court-generated document, it is notification of the order made by the justices.

5. Procedures prior to the hearing

The Court and its staff should not give the impression that the Council is in charge of the process.

If a respondent writes asking for an adjournment the court should ask the Council for its views, but the decision on an adjournment should be made by a bench, or by a member of staff with powers to adjourn. Under no circumstances should the correspondence simply be sent to the Council, or respondents told to deal directly with the council in relation to adjournments.

If respondents wish to enter into negotiations with the council about payment they should be directed to the Council, but advised that the court hearing will remain fixed until further notice.

6. Appearance

It is normal and good practice for respondents to be referred to the Council's staff when they attend court. Many cases are settled effectively at that stage, saving court and Council time, and reducing the strain on the respondent. Ushers and receptionists should therefore advise respondents of this service.

Nonetheless this is not a legal requirement, and court staff should not insist that respondents must see a Council representative, or refuse to call their case on until they have. If respondents want their 10 minutes in court, they have a right to them. A defendant who has to be pressurised into speaking to the Council is not likely to make an effective arrangement in any event.