



## **Magistrates' court fines and DROs**

This month's Spotlight will discuss the treatment of Magistrates' court fines (MCF) when clients' are considering the option of a Debt Relief Order (DRO).

### **Definition**

In accordance with [Rule 9.2\(2\)](#) of the Insolvency (England and Wales) Rules 2016 (IR 2016), a fine has the meaning given by [s281\(8\) of the Insolvency Act 1986](#) (IA 1986). The IA 1986 provides that "*fine*" means the same as in the Magistrates' Courts Act 1980 (MCA 1980).

The definition of a fine is detailed within [s150 of the MCA 1980](#) –

*"fine", except for the purposes of any enactment imposing a limit on the amount of any fine, includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction"*

### **Collection orders**

The [Courts Act 2003, sch.5, para. 12](#) states that where a fine is imposed by the Magistrates' court, the court must make a collection order unless it would be inappropriate to do so. The collection order will provide a breakdown of the balances owed for each of the following:

- The fine
- Any compensation
- Any victim surcharge
- The court costs

The collection order will also state the terms of payment if these had been agreed in court.

## Qualifying or excluded debt?

Rule 9.2(1)(a) IR 2016 confirms that any fine for an offence is an excluded debt.

Until recently, the DRO Team had advised that all elements of the collection order, except court costs, fall under the definition of a fine and would be excluded for the purpose of a DRO. This meant that advisers would need to schedule the court costs as a qualifying debt.

We can confirm that the position detailed in the DRO A-Z guidance (February 2019 version) stating that court costs associated with court fines are a qualifying DRO debt is **incorrect**.

By virtue of [s41 of the Administration of Justice Act 1970](#), where the Magistrates' court makes an order for the payment of costs, for the purpose of collection and enforcement, these are to be treated as payable under a conviction.

Therefore, in line with the above legislation, where costs are to be treated as payable under a conviction, these would also fall under the MCA 1980 s150 definition of '*any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction*' and must be excluded debts.

We raised the issue with the DRO Team and received a response confirming that court costs associated with Magistrate Court fines **are excluded debts**:

*"In rule 9.2 (excluded debt) the definition of a 'fine' is that given at section 150 of the Magistrates' Courts Act 1980 which "includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction" so it would include orders for costs and compensation.*

*It does not include a fine or costs imposed as a civil penalty under other statutes or imposed in a county court."*

The DRO team state that they will update the DRO A – Z guidance document. Citizens Advice Expert Advice team have also confirmed that the DRO Toolkit will be updated as soon as possible.

## Enforcement agent fees

Pursuant to s76 of the MCA 1980, the Magistrates' court has the power to issue a warrant of control to take control of goods. The Tribunals, Courts and Enforcement Act 2007 states at [s62\(2\)](#) the power to take control of goods is only exercisable using the taking control of goods procedure detailed in [Schedule 12](#).

Within Schedule 12, paragraph 62(1) confirms that regulations may make the provision for the recovery of costs in relation to enforcement. The relevant regulations are [The Taking Control of Goods \(Fees\) Regulations 2014](#).

As the fees are payable to the enforcement agents and are not sums adjudged to be paid by the court under a conviction, the fees do not fall under definition of a fine and should be scheduled as a qualifying debt.

Advisers will need to establish the amount of fees owing and list the enforcement agents as a creditor.

## **Making payments**

### Before the DRO

Any payment made towards a MCF before the client proceeds with a DRO, will not be viewed as a preference. The definition of a preference is contained within Schedule 4ZA of the IA 1986 and states –

*“(2)For this purpose a debtor gives a preference to a person if—*

- (a) **that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt.**”*

As a MCF is an excluded debt, it is not possible for payments to be viewed as a preference.

### During the moratorium period

As confirmed in the DRO A-Z at page 16, monthly payments towards fines are an allowable expense.

## **Remission**

Under [s.85 of the MCA 1980](#), the court has the power to remit a fine where there has been a change in circumstances since the fine was imposed. Where a client is on benefit income or has substantial debt, they should always argue full remission of the fine. The decision to reduce/fully remit the fine is discretionary and there is no guarantee that the application will be successful.

Please note, the court can only remit the fine itself and cannot remit the victim surcharge or any costs associated with the fine.

The client will need to request a means hearing before the court can consider remitting the fine. They can request a hearing by writing to the Magistrates' court clerk at the court that issued the fine. It is essential that the client prepares a full financial statement and explains their change in circumstance. They will need to demonstrate that they are not able to meet their essential expenditure and that the situation is unlikely to improve in the foreseeable future.

Where the client has pursued a DRO, this would justify a change in circumstance and would be strong evidence of financial hardship. This option will be particularly beneficial where the fine is subject to warrant of control as enforcement action should be withdrawn.

Our [October 2018 spotlight](#) discusses dealing with unpaid MCF and details other options you may wish to explore with the client.