

Unpaid Magistrates court fines and what you can do

This month's Spotlight piece explores the potential avenues available when clients are presenting an unpaid Magistrate Court fine focusing on cases of unknown proceedings and financial hardship.

Statutory declarations

It is often that clients approach advisers in situations where they were unaware of the proceedings against them and it is not until the enforcement stage that they become aware of the fine. It is usually the case that, all correspondence regarding the proceedings have been sent to a previous address.

Where your client was unaware that there were proceedings, then they will have the option to make a Statutory Declaration to the court that issued the fine under <u>s.14</u> of the <u>Magistrate Court Act 1980</u>, which states proceedings are invalid where the accused did not know of them. Your client should contact the enforcement centre to find out whether or not the conviction had been tried under what is called the Single Justice Procedure (SJP). If the client was tried under the SJP they should tick the box on the statutory declaration form stating they are making the declaration under <u>s.16E</u>.

Additionally, the application must be witnessed by either a solicitor, district judge or magistrate, there will usually be a small fee for this service.

The declaration must be made within 21 days of finding out about the offence **not** the date of the conviction. Where 21 days have lapsed your client will need to give reasons why, and it is then at the discretion of a court officer to accept the declaration.

The Statutory Declaration will take the case back to the plea stage where your client will be able to enter a plea of guilty or not guilty for the offence.

Fine remission

Under <u>s.85</u> of the Magistrates' Court Act 1980, the court has the power to remit a fine where there has a been a change in circumstances since the fine was imposed. If a client is on a 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.

Furthermore, it is important to remember that the court cannot remit neither a 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. It is essential that the client prepares a full financial statement and explains their change in circumstance. If your client is going to request a full remission, 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 if this is the case.

It is also worth noting that <u>page 148</u>, <u>paragraph 3 of the Magistrates Court Sentencing Guidelines</u> confirms that in normal circumstances, the fine amount should be an amount 'that is capable of being paid within 12 months'. So, it is possible for the court to remit the fine at least partially so that the client is able to clear the fine within 12 months at a lower rate (if the fine is not remitted in full).

Variation and rescinding

Another route (as long as the sentence was not made by the Crown Court), is to ask the Magistrates Court to vary, or even rescind, the original sentence under <u>section 142 of the Magistrates Court Act 1980</u>. This option may only be appropriate where a financial penalty has been wrongly imposed or has evidently been set too high.

There is no time limit for this and there does not need to have been any change in circumstance.

Please note that if your client feels a sentence has been wrongly imposed, they will need specialist legal advice from a criminal solicitor.

This article does not deal with enforcement of Magistrates Court fines. If you would like advice on enforcement, please contact the Specialist Debt Advice Service.