The liability order

The court may make a liability order for one person for one amount. It can also make one liability order for more than one person and more than one amount in the form of a schedule.[68]

Note: the form (Form A) originally provided to draw up liability orders was removed from law from 10 July 2003 in Wales and 1 October 2003 in England and no form has been substituted in its place.[69] Without any written record of its order or judgment being issued by the court, an order from a magistrates' court may be invalid.[70] This point has been raised in proceedings at various magistrates' courts since August 2015 and has yet to be resolved. The failure by parliament to create the necessary form is a serious flaw in the legislation which potentially compromises the making of all orders and enforcement activity. It is clear that parliament envisaged magistrates making a physical liability order as the basis for taking of any further enforcement action, including any further steps in the court which have to be based upon a judgment or order – eg, bankruptcy.

A liability order is meant to identify the aggregate amount that can be recovered, including the costs, but it is unclear how this can be achieved if a magistrates' court does not make a liability order in writing and only purports to issue the liability order orally. If the full sum claimed has been reduced (eg, because CTR has been awarded), the liability order will be for a greater sum than the amount payable. In such cases, the order remains in force and the excess amount should be treated as paid. If, following the issue of an order, you owe more than the amount specified, the local authority can only enforce up to the limit stated in the order. It must seek a new order to enforce the outstanding balance. However, if no proper stamped and sealed order is drawn up and issued by the court, then effectively the local authority may not be able to establish that any such order exists or existed at any stage, nor show that the magistrates were ever satisfied that the local authority had proved all the matters it is required to prove.

In practice, the courts seldom issue individual liability orders; the judge or chair of the magistrates normally just signs a certificate attached to the list of non-payers, but in a form that does not comply with the regulations – without the stamp or seal of the court or any form laid down in regulations since 2003 (see above).

This is a serious flaw in proceedings identified by the Court of Appeal.[71] Until 2012, many courts did not keep any proper record of liability order hearings or the orders issued, leaving local authorities to maintain records which could be wrong and incapable of independent verification. This has also been identified as a serious omission in enforcement by the High Court.[72]

The lack of an adequate and independent record may be a breach of human rights under Article 6 of the European Convention on Human Rights, regarding the process of determining the civil rights and obligations of a citizen.[73]

Setting aside a liability order

It is possible for a liability order to be 'set aside' – ie, the court quashes or cancels the order and the local authority cannot take enforcement action. A local authority can apply to a magistrates' court to have a liability order quashed, on the basis that it should not have been made.[74] If the court decides that it would have granted an order for a lesser sum, it may make a liability order for a lesser sum together with the costs reasonably incurred in obtaining the order. The local authority must issue a summons for a new amount within six years.

One potential drawback for the council taxpayer is that the right to quash the order is wholly reliant on the local authority's being willing to make the application. Unreasonable refusals to quash liability orders could be challenged by judicial review. A complaint of maladministration may also be made (see p294). In the meantime, you remain subject to the order.

If the magistrates' court has acted 'in excess of jurisdiction' (ie, if it has made an order that it had no power to make), you can ask it to set aside the order.[75] For example, the High Court ruled that magistrates were wrong not to have quashed three liability orders made between 1996 and 1998 against an applicant who was unaware of the proceedings until January 2004.[76]

The High Court ruled that the following apply when deciding to set aside a liability order.[77]

- There must be a genuine and arguable dispute about the liability to pay.
- There must have been substantial procedural error, defect or mishap for the liability order to have been made.
- The application to set aside was made promptly after the defendant had notice of its existence.

'Promptly' is usually interpreted as within three weeks of you learning about the liability order (some leeway exists if you have a disability). Cases in which liability orders have been made years earlier and in which the debtor, after learning of them, fails to apply for months or years to apply to set aside will be unsuccessful because of lack of promptness.[78]

There is no prescribed form for making an application to set aside a liability order but a letter can be sent to the court's clerk identifying the liability order and requesting a hearing to consider setting it aside.[79] This is crucial if a local authority is seeking to enforce a liability order through bankruptcy proceedings unless the matter is also being challenged through the valuation tribunal (see p236). Therefore, it may also be necessary in order to lodge an appeal with the VTE/VTW. See Chapter 11 for more information on appeals. Costs may be awarded to the successful party if a set-aside application is contested.[80]

In terms of the procedure with a set aside, a High Court judge has stated:[81] '...in my view, and what should happen in future cases where liability orders are obtained which should not have been because summonses were not properly