

THE MAGISTRATES' ASSOCIATION

FAMILY COURTS COMMITTEE

Welfare Reform Bill – briefing note

The Magistrates' Association Family Courts Committee opposes the government's proposal in its Welfare Reform Bill to give administrative powers to impose withdrawal of passports and disqualification from driving as part of the enforcement process for child maintenance payments.

We accept that sanctions may be necessary to ensure appropriate payments are made in the interests of children, but we are firmly of the view that these sanctions represent a serious deprivation of liberty and should only be imposed after an application is made to a court. The opportunity for representations will then be able to be made regarding any evidence for the alleged failure and the need for the sanctions applied for.

We do not accept the argument that the time taken to complete such a process is necessarily too long. Due process is essential to ensure that such serious sanctions are appropriate in all the circumstances. By-passing the court process for administrative convenience is not justified and carries risks of wrongful and inappropriate imposition. Providing for a right of appeal against an administrative decision is not sufficient in respect of such major penalties.

It also carries risks of parties inadvertently committing serious offences such as driving while disqualified if due process has not been properly followed.

We therefore urge members to oppose this proposal.

At present, disqualification from driving orders or withdrawal of passports are made on application to a magistrates' court, at a hearing at which the liable person must be given notice and is entitled to attend and make representations. The court is required to inquire in the presence of the liable person as to whether the licence or passport is needed to earn his living and whether there has been wilful refusal or culpable neglect on his part.

Such serious sanctions should only be exercised by a court at which the liable person is present, has had the opportunity to make representations and where there has been judicial consideration of the issues.

There are perfectly suitable rules for applying to courts where there are Football Banning Orders and under the Sexual Offences Acts, courts are therefore used to handling these applications. And, as this decision goes beyond the realm of administrative action and requires an officer to take a quasi judicial decision, unless all are treated the same, then such a decision should be taken by a magistrates' court acting in a civil court role. If the decision is taken to allow officers to impose the ban there must be a clear route to appeal and this must not be subject to full cost recovery but be affordable to all defendants, even those on a low income: to do otherwise would be discriminatory.

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