

Appraisal memorandum

Ministry of Justice

Additions to retention and disposal
schedule of Court records DA564

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1 Introduction

The Chief Archivist approved a disposal authority for a retention and disposal schedule for hard-copy records of all Courts (DA564) in February 2013. This memorandum seeks approval for the inclusion of additional classes of records into the retention and disposal schedule, namely:

- civil enforcement records managed by the District Courts
- fines enforcement records managed by the District Courts

The appraisal criteria used in the development of DA564 have been used to assess the archival value of these records. See Appendix.

The classes are described below. Class numbers have been assigned to continue the existing class numbers in the schedule.

2 Description of classes

2.1 *District Court: Civil enforcement records*

Civil enforcement records comprise classes 5.21 to 5.26 in the revised retention and disposal schedule.

Civil enforcement is the process whereby the District Court is engaged in the process of collecting a civil debt. When a person makes a claim against another person in a civil court case or a tribunal hearing (such as the Disputes Tribunal or Tenancy Tribunal) an order of payment may be made for one person (known as the debtor) to pay the other person (known as the creditor).

These judgments or orders may specify a date for payment and may specify terms if paying by instalment (but most do not). These payments are usually arranged privately between the parties and the Court has no further involvement. The Court usually does not receive the payments.

If the debtor fails to pay on time, the creditor can seek assistance from a solicitor, a private debt collection agency or the Court. This needs to be organised by the creditor as the Court does not automatically take steps to collect overdue civil debt.

Creditors may apply to the court to enforce the payment of a civil debt. This work is generally carried out by the Collections Unit in the District Court or by Civil Court staff in smaller courts.

There are several different types of enforcement orders and processes that can be used to enforce a civil debt. The most common process for civil enforcement is an order for examination. This application requires the debtor to appear at a hearing with the creditor, held in front of a Court Registrar.

The examination hearing will assess whether or not they are capable of paying the civil debt. If they are found capable of paying, but have failed to do so, the Court will generally take one of the following actions:

- Order new payment terms and conditions (e.g. weekly instalments)
- Direct that a Court enforcement action begin, for example:
 - deductions are made from the person's benefit, wages or salary (Attachment Order)
 - assets are seized and sold to meet the debt (Distress Warrant).

More rarely, there may be enforcement orders that are issued by judges rather than by Registrars. These types of orders are:

- Garnishee proceedings, which require a hearing in front of a judge, for an order for monies owed to the debtor by a third party (e.g. money held in trust or a bequest) to be paid to the creditor instead
- Contempt proceedings, which involve an application to have a debtor brought before a District Court Judge because they have breached an order of the Court – such as not keeping to a payment arrangement ordered at an examination hearing. The person can be sentenced to Community Work as a penalty for not obeying the Court order. They still have to pay the debt.

Applications for enforcement action received by the court result in the creation of a civil enforcement file. All files start with a copy of the Order to be enforced, and an application form of the chosen enforcement option. Application forms are usually in a standard format and may be accompanied by additional information relating to the original judgement or order.

Civil enforcement case files where the Registrar issues an order are usually known as ‘general’ civil enforcement files. Civil applications decided by a judge are managed in a separate file sequence.

Executed warrants (such as distress warrants) are kept in a separate sequence and may be required to prove that an action has been taken or in case there is a challenge to the validity of the warrant. Generally a challenge will occur soon after the action taken on the warrant (e.g. the seizure of assets).

Records are also created if there is a review of a Registrar’s decision about a civil enforcement action.

2.1.1 Evaluation of archival value of records

All civil enforcement records are routine operational records and are not recommended for retention as archives. A retention period of 18 months from the date of last action has been recommended.

Some parts of civil enforcement case files (whether heard by a Registrar or a judge) may be considered part of the formal court record as defined by the District Courts Rules (2009) (SR2009/257). That is:

‘any of the following kept in an office of the court:

- (a) a register or index:
- (b) any published list that gives notice of a hearing:
- (c) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its contents to the public:
- (d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge.’

Accordingly, in the schedule a distinction has been made between the part of the record that is the permanent record of the court, and that which is not the permanent record of the court. This approach aligns with the existing classes in the schedule for other District Courts records. The implementation guide for courts staff discusses in general how to separate the records for destruction from those for permanent retention in the court.

2.1.2 Records recommended for retention as public archives

None

2.1.3 Records identified as not having archival value

Record type	Disposal criteria
Civil enforcement case files	D6
Civil enforcement records – reviews of Registrars’ decisions	D6
Civil enforcement records – civil applications decided by a judge	D6
Civil enforcement records – executed warrants	D6

2.2 District Court: Fines enforcement records

These records comprise classes 5.27 to 5.35 in the revised retention and disposal schedule.]

Fines enforcement is generally carried out by Collections Units in the District Courts. Where a court does not have a Collections Unit, enforcement activities are carried out from the nearest Collections Unit. A lot of fines enforcement work is centralised at either the Collections Contact Centre, or in the Collections Centralised Processing Unit.

Fines enforcement includes enforcement actions for fines issued by both the High Court and the District Courts. Because the enforcement action is taken by the District Court and the records are created in that court, these records appear under the District Court class in the schedule.

A fine can be an unpaid infringement fee (such as a parking infringement) that has been filed in court for collection (an infringement fine) or an amount of money a person has to pay as penalty for a criminal offence (a court imposed fine). Enforcement of collection of reparations ordered by a judge is managed in the same way as fines enforcement and there is no distinction in the records, all being known as ‘fines enforcement’ records. .

If the fine is not paid by the due date, the court can take enforcement action to collect the outstanding amount. Several enforcement actions can be taken. The most common actions are:

- Attachment order for compulsory deductions from wages or benefit
- Deduction notice for compulsory deductions from bank account
- Warrant to seize property.

Fines defaulters can also be arrested or prevented from travelling overseas, by the Court issuing a Warrant for their arrest.

Presently no paper records are created regarding the first two enforcement actions listed above. Attachment orders and deduction notices are generated from COLLECT (the fines enforcement database) to be sent out, but paper copies are not retained by the Court. Paper fines enforcement case files that contain similar information from before the introduction of COLLECT may still held in some courts.

As with civil enforcement records, executed warrants are kept in paper format.

Several other types of records can also be created concerning fines enforcement.

Applications may be made under section 78B of the Summary Proceedings Act to correct irregularities in proceedings for infringement notices (application to dispute a fine). Irregularities include non-receipt of a reminder notice, wrong name on the infringement notice, or the person not receiving notices of hearing. Following receipt of an application a judge or a Registrar can order reminder notices, hearings or re-hearings, or make other orders.

Under s. 88 of the Summary Proceedings Act, if the enforcement action has not resulted in payment of the fine, a Registrar can either order the defendant to appear before the Registrar or refer the matter to District Court judge or Community Magistrate. If the matter is referred, the Registrar must make a report on the matter to the judge or magistrate, from which the judge or magistrate will make a decision. That decision will usually result in a court order, which could be a charging order, an order for community work, deferral of fines, or a jail sentence.

From August 2012, the court has been able to undertake 're-sentencing for reparation'. Previously if a reparation payment was unenforceable, only the actions prescribed in s88 SPA as described above could be taken in response. An amendment to the Sentencing Act that came into force on 1 August 2012 allows the court to cancel the sentence of reparation and substitute any other sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the original sentence of reparation was imposed (Sentencing Amendment Act 2011 s.38A).

Records are also created if there is a review of a Registrar's decision about a fines enforcement action.

2.2.1 Evaluation of archival value of records

All fines enforcement records are routine operational records and are not recommended for retention as archives. A retention period of 18 months from the date of last action has been recommended.

DA53 recommended the destruction of fines enforcement case files 'after all legal, financial and administrative requirements have been met'.

Some parts of fines enforcement case files, decisions under s78B SPA and reports under s88 SPA may be considered part of the formal court record as defined by the District Courts Rules (2009) (SR2009/257). That is:

'any of the following kept in an office of the court:

- (a) a register or index:
- (b) any published list that gives notice of a hearing:
- (c) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its contents to the public:
- (d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge.'

Accordingly, in the schedule a distinction has been made between the part of the record that is the permanent record of the court, and that which is not the permanent record of the court. This approach aligns with the existing classes in the schedule for other District Courts records. The implementation guide for courts staff discusses in general how to separate the records for destruction from those for permanent retention in the court.

2.2.2 Records recommended for retention as public archives

None

2.2.3 Records identified as not having archival value

Record type	Disposal criteria
Fines enforcement case files	D6
Fines enforcement resentencing for reparation	D6
Fines enforcement - reports to judge under s. 88 Summary Proceedings Act	D6
Fines enforcement - Section 78B applications and decisions	D6
Fines enforcement - review of registrar's decisions	D6
Fines enforcement - executed warrants	D6

3 Appendix: Disposal criteria from Appraisal report for DA564***Criteria for recommending that the records are not of permanent archival value***

D1	Records contain information about cases where the more substantive record is held by another agency
D2	Records concern routine civil cases brought before a court of the first instance and/or are of low long-term informational value
D3	Records concern less serious criminal cases before a court of the first instance that are of low long-term informational value
D4	Records are of a quantity and format that preclude a selection process and contain such quantities of low-level information that their retention as archives as a complete set is not warranted
D5	Records concern routine licensing or approval applications that are summarised in other records recommended for retention
D6	Routine operational records