SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2026] SC EDIN 121

EDI-B899-20

JUDGMENT OF SHERIFF GILLIAN SHARP

in the cause

THE SECRETARY OF STATE FOR WORK AND PENSIONS,
THE CHILD MAINTENANCE SERVICE

Applicant

against

SEAN LETTS

Respondent

Applicant: Bedford; Harper Macleod LLP
Respondent: Party

EDINBURGH, 2 November 2026

Introduction

[1] This is a summary application at the instance of the Child Maintenance Service brought in terms of section 39A of the Child Support Act 1991. It seeks a warrant committing the defender to prison under section 39A(2)(a) of the 1991 Act or alternatively, an order disqualifying him from holding or obtaining a driving licence under section 39A(2)(b), together with the expenses of the action.

Background

[2] The defender is liable to make payments of child support maintenance in terms of section 33 of the 1991 Act. On 23 March 2020, a liability order was made against him at Edinburgh Sheriff Court in respect of child support maintenance arrears for the period

17 July 2015 to 31 August 2019. The pursuer sought to recover the amount due under that liability order by diligence in terms of section 38 of the Act. When these proceedings were raised on 16 October 2020, the unpaid balance due in terms of the order was £22,483.73. Although further arrears have accrued in respect of subsequent maintenance periods, only the amount recoverable under the liability order granted on 23 March 2020 is relevant for present purposes. Following protracted incidental procedure, the application proceeded to a hearing before me on 8 September 2026.

Summary of the evidence

[3] The defender was placed on oath for inquiry into his employment circumstances, financial means and the reasons for non-payment. He is 61 years of age and has resided alone since separating from his wife in October 2021. He is a freelance health and safety consultant operating principally in the energy industry. His gross daily rate is between £430 and £450, although he receives no income during periods between contracts. His average monthly income is in the region of £4,000 to £5,000, against fixed monthly outlays of approximately £2,000 to £3,000. He enjoys a happy and comfortable life in Edinburgh and has no dependents other than the child in respect of whom the maintenance calculation was made.

[4] He was not ready to be a father, reacted angrily upon being informed of the pregnancy and has had no contact with the child's mother since. He subsequently received correspondence from the pursuer concerning child maintenance and made telephone contact with a solicitor to resolve the matter. He has made no financial contribution whatsoever towards the child's upbringing or maintenance.

[5] The defender stated that he had no knowledge of these proceedings, no recollection of the case being continued on multiple occasions for DNA testing and no awareness that sheriff officers had attempted to locate him, attended his former matrimonial home or spoken to his then wife. He accepted that he had answered a telephone call from sheriff officers, explaining that he ended the call, citing a poor connection, and did not take further calls because he panicked. He conceded that he was the male who answered the door to sheriff officers on 16 May 2026.

[6] The defender called into question the accuracy of the maintenance calculations. As to his failure to make payment, he explained that he had told the child's mother not to expect financial support from him, that she had accepted sole responsibility for the child, and that he had provided financial support to his stepchildren, including purchasing a car for his stepson.

[7] The defender acknowledged that he had allowed matters to get out of control. He stated that he has sufficient means to satisfy the balance outstanding under the liability order granted on 23 March 2020 immediately. His ability to drive is integral to his employment, as he requires to travel regularly to and from work sites. This hearing has been a sobering experience and he realises that the pursuer is likely to take enforcement action in respect of the additional arrears which have accrued since 1 September 2019, currently amounting to approximately £35,000. He intends to engage with the pursuer to address those arrears.

Findings in fact

[8] I found the following facts to be admitted or proved:

1. The defender is 61 years old and is a self-employed health and safety consultant. His average monthly income is between £4,000 and £5,000 per month and his monthly outlays are between £2,000 and £3,000. He has no dependents other than the child to whom the maintenance assessment relates. He has made no financial contribution to his child at any time.
2. After service of these proceedings, the defender instructed a solicitor to enter appearance on his behalf and seek a continuation for DNA testing. He no longer contests paternity.
3. Pursuant to the withdrawal from acting of his solicitor on 29 June 2021, the respondent deliberately and persistently evaded officers of court for more than 5 years. He deliberately frustrated attempts to serve notice of court hearing or execute warrants to for his apprehension and misled sheriff officers. He was ultimately apprehended by officers of law on 7 September 2026 and remanded in custody pending appearance before the court on the following day.
4. The defender had the means to make payment of the balance outstanding in terms of the liability order.

Findings in fact and law

[9] I found that:

1. The defender is a liable person in terms of the Child Support Act 1991 ("the Act") for payment of child support maintenance from 17 July 2015 to 31 August 2019.

2. On 23 March 2020 a liability order was made against him at Edinburgh Sheriff Court for payment of £17,924.77 of child support maintenance arrears together with collection fees of £3,727.30, enforcement fees of £450 and expenses of £300.50.

3. The applicant sought to recover the amount in respect of which the liability order was made in terms of section 38 of the 1991 Act and in so doing incurred further expenses of £81.16. The total sum of £22,483.73 was unpaid when these proceedings were raised on 16 October 2020.

4. The defender requires a driving licence to earn his living.

5. The defender either wilfully refused or culpably neglected to make payment of the amount due in terms of the liability order.

6. The defender is over 18 years old.

7. The issue of a warrant committing the defender to prison is appropriate in all the circumstances.

Decision

The statutory framework

[10] The following provisions of the Child Support Act 1991 are of relevance for present purposes:

> **"33.– Liability Orders**
>
> (1) This section applies where–
> (a) a person who is liable to make payments of child support maintenance ('the liable person') fails to make one or more of those payments; and
> (b) it appears to the Secretary of State that–
> (i) it is inappropriate to make a deduction from earnings order against him (because, for example, he is not employed); or

(ii) although such an order has been made against him, it has proved ineffective as a means of securing that payments are made in accordance with the maintenance calculation in question.

(2) The Secretary of State may apply to a magistrates' court or, in Scotland, to the sheriff for an order ('a liability order') against the liable person.

(3) Where the Secretary of State applies for a liability order, the magistrates' court or (as the case may be) sheriff shall make the order if satisfied that the payments in question have become payable by the liable person and have not been paid.

(4) On an application under subsection (2), the court or (as the case may be) the sheriff shall not question the maintenance calculation under which the payments of child support maintenance fell to be made.

…

39A.– Commitment to prison and disqualification from driving.

(1) Where the Secretary of State has sought–

…

(b) to recover an amount by virtue of section 36 or 38, and that amount, or any portion of it, remains unpaid the Secretary of State may apply to the court under this section.

(2) An application under this section is for whichever the court considers appropriate in all the circumstances of–

(a) the issue of a warrant committing the liable person to prison; or

(b) an order for him to be disqualified from holding or obtaining a driving licence.

(3) On any such application the court shall (in the presence of the liable person) inquire as to–

(a) whether he needs a driving licence to earn his living;

(b) his means; and

(c) whether there has been wilful refusal or culpable neglect on his part.

(4) The Secretary of State may make representations to the court as to whether the Secretary of State thinks it more appropriate to commit the liable person to prison or to disqualify him from holding or obtaining a driving licence; and the liable person may reply to those representations.

(5) In this section and section 40B, 'driving licence' means a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.

(6) In this section 'the court' means–
(a) in England and Wales, a magistrates' court;
(b) in Scotland, the sheriff.

40A.— Commitment to prison: Scotland.

(1) If, but only if, the sheriff is satisfied that there has been wilful refusal or culpable neglect on the part of the liable person he may–
(a) issue a warrant for his committal to prison; or
(b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as he thinks just.

(2) A warrant under this section–
(a) shall be made in respect of an amount equal to the aggregate of–
(i) the appropriate amount under section 38; and
(ii) an amount (determined in accordance with regulations made by the Secretary of State) in respect of the expenses of commitment; and
(b) shall state that amount.

(3) No warrant may be issued under this section against a person who is under the age of 18.

(4) A warrant issued under this section shall order the liable person–
(a) to be imprisoned for a specified period; but
(b) to be released (unless he is in custody for some other reason) on payment of the amount stated in the warrant.

(5) The maximum period of imprisonment which may be imposed by virtue of subsection (4) is six weeks."

Procedural history

[11] A striking feature of these proceedings has been the defender's sustained and deliberate attempts to frustrate progress. The application was lodged on 16 October 2020 and first called on 1 December 2020, at which time the defender was legally represented. The case was continued on the defender's unopposed motions for investigations and DNA testing on three occasions, culminating in the withdrawal from acting of his solicitor when the case called on 29 June 2021. Thereafter, the defender remained beyond the reach of the court for more than 5 years through a combination of evading officers of law and repeatedly

failing to attend hearings of which he had been served notice under certification that should he fail to appear a warrant for his apprehension may be granted. He was ultimately apprehended and held in custody to appear at court to answer the warrant on 8 September 2026.

Analysis of the defender's evidence

[12] I formed the view that in a number of material respects the defender's evidence lacked candour and was both disingenuous and implausible. He denied all knowledge of these proceedings and it was only when challenged as to why solicitors had appeared on his behalf in the initial stages that he recalled having received correspondence from the pursuer and made phone calls in an attempt to resolve the matter. Notwithstanding that concession, he maintained he did not realise the matter had got as far as court proceedings. He professed no recollection whatsoever when asked about the continuations for DNA testing on 12 January 2021 and 6 April 2021. He was adamant that he had never been served with notice of any subsequent hearings and insisted that his former wife had not informed him of sheriff officers attending at the matrimonial home. His account became unsustainable when he was referred to the sheriff officers' report dated 21 May 2026. The defender confirmed his phone number, then the following passage was read:

> "Our Sheriff Officer called the number which was answered by a male with a South African accent, however when our Sheriff Officer identified himself the responder claimed a bad line and hung up. Further calls to the number were not answered."

Having observed that the defender spoke with a South African accent and that the telephone number he had provided in court corresponded exactly with that recorded in the report, I inquired whether he had in fact answered that call. He conceded that he had. I thereafter put the following passage of the report to him:

> "a weekend call was made to the address on 16th May 2026….access was gained by the neighbour [] who confirmed the defender's residence and the vehicle detailed above which was present at the address. A further neighbour [] confirmed Sean Letts resides at the address however keeps irregular hours. Our Sheriff Officer called to number [the defender's address] where he spoke with a male who initially claimed the defender did not reside at the address. He then claimed the defender, who was a friend, is currently in South Africa and would not return until October. The interviewee, who refused to identify himself, was a male in his 50s with scruffy dark brown hair and a strong South African accent. A contact letter was left at the address to be passed on, our Sheriff Officer made it clear of the requirement for the defender to make contact. When we left the address the male loitered at the window until our departure".

I observed to the defender that he fitted the description of the male referred to in the report and reminded him that, under oath, he had stated that he had resided alone at that address since October 2021. I then asked him to confirm whether he was the individual who had answered the door and spoken with sheriff officers on 16 May 2026. He admitted that he was. In these circumstances, the defender's assertion that he was unaware of the proceedings was plainly untenable. The sheriff officers' report demonstrates not only that he was aware of the proceedings, but also that he took active steps to avoid engagement with them. The defender sought to justify his longstanding failure to make child maintenance payments by reference to a deeply unpleasant conversation with the child's mother many years ago, during which she allegedly told him that she neither wanted nor needed his assistance or support. He also referred to having purchased a motor vehicle for his stepson. Neither explanation provides any justification for his failure to discharge his legal obligations to his biological child. His evidence revealed a profound unwillingness to accept responsibility for either his child or his own conduct.

Reasons for decision

[13] Under the statutory scheme for the enforcement of child maintenance, the pursuer is responsible for making a maintenance calculation setting the amount payable by the non-resident parent to the parent with care of the child. The extent of the non-resident parent's liability is determined administratively by the pursuer, and any challenge to that determination must be pursued through the statutory appeal process before the First-tier Tribunal.

[14] A liability order proceeds upon the basis of the underlying maintenance calculations, which are not open to challenge before the court. The court therefore has no jurisdiction to revisit a maintenance calculation or set aside a liability order founded upon it. It is the pursuer, rather than the parent with care, who is empowered to enforce a maintenance calculation. Accordingly, it is of no moment whether the child's mother historically stated that she did not want help or support from the defender, nor can I take account of the defender's challenge to the maintenance calculation in determining this application.

[15] The sole issue for determination in these proceedings is whether, in all the circumstances, it is appropriate either to issue a warrant committing the defender to prison or to make an order disqualifying him from holding or obtaining a driving licence.

[16] Each of the statutory preconditions contained in sections 39A(1) have been met:

(i) a liability order was made against the defender on 23 March 2020;

(ii) the pursuer subsequently sought, without success, to recover the sums due by diligence in terms of section 38; and

(iii) the sum of £22,483.73 remains outstanding.

[17] The evidence disclosed a persistent refusal on the part of the defender to recognise either his legal obligation to provide financial support for his child or his obligation to

comply with the statutory child maintenance regime. The procedural history, when considered alongside the sheriff officers' reports and the defender's own evidence, demonstrated a sustained and deliberate course of evasion which ultimately made it necessary for him to be apprehended and brought before the court in custody. He knowingly misled sheriff officers and the court and made concessions only when presented with material that rendered his position untenable.

[18] The pursuer submitted that, because the defender requires a driving licence for the purposes of his employment, the appropriate disposal was the issue of a warrant of imprisonment. The defender contended that he had sufficient funds to discharge the outstanding liability immediately and would do so upon his release. He explained that access to his mobile phone was necessary to arrange payment and that imprisonment would prevent him from doing so.

[19] The court has power to postpone the execution of a warrant of imprisonment, or suspend the operation of a disqualification order, for such period and on such conditions as it considers just. Given the defender's conduct throughout these proceedings and that it had taken approximately 6 years to secure his appearance before the court, I had no confidence that he would either make payment or attend any future hearing were imprisonment postponed. On the information available, arrangements could be made for the defender to attend the governor's office to make the telephone calls required to facilitate payment.

[20] Having conducted an inquiry in the presence of the defender and heard parties' submissions in accordance with sections 39A(3) and (4), I was satisfied that:

(a) the defender required a driving licence to earn his living;

(b) he had the means to pay the sum due; and

(c) his failure to satisfy the liability order was attributable to wilful refusal or, at the very least, culpable neglect.

[21] In light of the substantial sum outstanding, the defender's complete failure to make any financial contribution towards his child's upbringing or maintenance, his sustained attempts to frustrate these proceedings, and his deliberate misleading of sheriff officers and the court, I concluded that this was a case in which it was appropriate to impose the maximum period of imprisonment of 6 weeks.

Interlocutor (order of the court)

[22] Accordingly, I pronounced the following interlocutor:

"The sheriff, having heard the solicitor for the applicant and the respondent personally, being satisfied;

(i) that the Child Maintenance service has sought to recover an amount of child support under section 38 of the child support Act 1991 being the sum of £22,483.73

(ii) that £22,483.73 remains unpaid;

(iii) having inquired in the respondent's presence as to his means, that there has been wilful refusal or culpable neglect on his part,
Grants Warrant to Officers of Law to convey the Accused Sean Letts to the prison of H M PRISON EDINBURGH
orders the liable person–
(a) to be imprisoned for a period of six weeks; but
(b) to be released (unless he is in custody for some other reason) on payment of the amount stated in the warrant; and

(iv) finds the respondent liable to the applicant in expenses as taxed; allows an account thereof to be given, and remits same, when lodged with auditor of court to tax and report."

Postcript

[23] The following day, 9 September 2026, the court was notified that whilst in custody the defender had paid the sum of £22,483.73 specified in the warrant. I therefore pronounced the following interlocutor:

> "The sheriff, having resumed consideration of the cause, in respect that the liable person Mr Sean Letts has made payment to the court of the amount stated in the warrant, in the sum of TWENTY-TWO THOUSAND, FOUR HUNDRED AND EIGHTY-THREE POUNDS AND SEVENTY-THREE PENCE (£22,483.73) STERLING, orders his release from HMP Edinburgh in terms of section 40A(4)(b) of the Child Support Act 1991, unless he is in custody for some other reason."

[24] The defender is on notice that, unless he makes arrangements to co-operate with the pursuer in relation to the significant arrears that have accrued since 1 September 2019, the enforcement process is likely to commence anew.