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24<sup>th</sup> February 2023

Dear Mr Horn

### **Freedom of Information Act (FOIA) Request – 230130024**

Thank you for your request dated 30<sup>th</sup> January 2023 in which you asked for the following information from the Ministry of Justice (MoJ):

**In your response to FOI request 90890 of June 2014 you confirm:**

**Each summons is required to be listed in the court register, and Liability orders must be recorded in the court register, and Following the hearing, a register containing the results of the hearing is retained by HMCTS. The Court Register is held in permanent preservation and may be held at the Local Record Office on microfilm if over 30 years from creation.**

**In your response to FOI request 910531 dated 16/12/2022 you have confirmed: "...the written document [Notice of Liability Order] is not the definitive record of the order, it is a notification..." "...**

**The definitive record is the court register, which is now held purely digitally, and the only document which is a definitive record of the content of the register is a copy of that register, certified by a court officer..." "...**

**If genuine doubt remains, they could contact the court and ask for confirmation..." "...The gold standard would be a certified extract, a copy of the court register signed by the court officer. This is the same for civil and criminal proceedings in magistrates' courts."**

**This is inline with the Magistrates Court Rules where at 16(1) for legal purposes, and 66(1)(a) a court record must be held, which at 66(2) details the requirement to show the complainant details, the respondents details, a summary of the complaint and a summary of the adjudication.**

**Many Courts are not providing a Memorandum of Entry when requested which is meant to be a public record as well as proof of adjudication, and if none exist failing to provide confirmation of the same. Can you hence please provide your recorded information of the current situation for the following questions:**

- 1 - Does the Court record each summons it authorises?**
- 2 - Does the court record the name of the person authorising each summons?**
- 3 - Does the court record each adjudication against each summons authorised? Rule 115(6) does not apply to service of liability orders. This means only those methods of service are not obligatory, but does not remove the requirement of service of the order.**
- 4 - What are the alternative requirements of service of liability orders?**

**5 - How is proof of service of liability orders recorded in the court record?**

**6 - Beyond the rules what other procedures are in place for forcing the court to fulfil its legal obligations to provide a Memorandum of Entry?**

Your request has been handled under the FOIA.

The MoJ does not hold any information in the scope of your request. That is because you are not asking for information held by MOJ but answers to a series of questions asking for legal advice and information about what courts do in practice. The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty is to only provide the recorded information held.

Section 16 of the FOIA requires us to provide reasonable advice and assistance to requesters, therefore outside of the Act from my knowledge I will answer your questions. Please note that HMCTS is not a legal advice service and I will not enter into a dialogue about this response. If you want legal advice on a specific subject you should seek it from a lawyer or advice service such as Citizen's Advice.

1. Yes
2. Yes
3. No.
4. N/A. There are no requirements for liability orders to be served.
5. N/A. There are no requirements for liability orders to be served.
6. Without knowing what you've already tried, or indeed whether this is a practical or theoretical request, it's difficult to advise. Firstly you should ask the court which made the order for the information and pay the fee (or obtain a fee remission). It would help to give the location and date of the hearing to enable staff to find the register. If that fails, you should use HMCTS's complaints procedure: <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/complaints-procedure>. Theoretically you could bring a judicial review in the High Court asking for a mandatory order requiring HMCTS to produce the certificate but that is an extreme measure and the High Court would probably not give relief if you had not tried more proportionate measures such as a simple request or use of the complaints procedure.

## **Appeal Rights**

If you are not satisfied with this response you have the right to request an internal review by responding in writing to one of the addresses below within two months of the date of this response.

data.access@justice.gov.uk

Disclosure and Library Team, Ministry of Justice, 102 Petty France, Post point 5.22, London, SW1H 9AJ

You do have the right to ask the Information Commissioner's Office (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely

to expect internal complaints procedures to have been exhausted before beginning their investigation.

Yours sincerely

Siân E. Jones LL.B.  
Legal Operations