



Enforcing a Court judgment, or how to actually get your money back

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A briefing from our Dispute Management team

Obtaining a Judgment for a debt is sometimes the easy part. The real difficulty can lie in actually recovering the money from the debtor, so the question of enforcement is one which should be considered from the outset before you commence Court proceedings.

However, it is worth bearing in mind that a Judgment remains registered against your debtor and can be enforced for up to 6 years following the date of the Judgment. During that time the debtor may win the lottery or e.g. want credit and need to pay you off. So, even if the prospect of immediate enforcement is slim, obtaining Judgment can still be a valuable exercise.

[This note is a brief guide to the various formal enforcement options available if you are holding a JUDGMENT.](#)

If you do not know enough about your debtor's financial circumstances to decide which enforcement option to choose, you could firstly instruct Agents to obtain a Pre-Sue Report on your Debtor at a cost of £120.00 + VAT. This will provide you with information such as: - Voters Roll Check, Equinox Search, Bankruptcy Search and Land Registry Search. They would attend the property and take photos of the property and give an approximate value and also take photos of any vehicles and carry out HP check and give an approximate value.

If the above proves to be inconclusive, then an Order to Attend Court for Questioning is a good starting point before moving on to enforcement.

Order to Attend Court for Questioning

As a Judgment Creditor you can apply to the Court for an Order requiring the debtor to attend before a Court

Officer and be questioned on oath about his means of satisfying the Judgment.

Steps to take:

- Apply to the Court on a prescribed form and pay a Court fee of £50.00;
- If the application is successful, the Information Order will specify the date, time and venue of the hearing;
- Personally serve the Order on the debtor at least 14 days before the date fixed for the hearing (a process server can do this at a cost of approximately £75.00 + VAT);
- If the debtor applies for this, you may be required to offer to pay the debtor's reasonable travelling expenses of attending the hearing (at least 7 days before the date of the hearing).

At the hearing the debtor will be questioned on oath and must give evidence as to his (or the Company's) assets, property or means of satisfying the Judgment debt. It is not necessary for you to be represented as the Court Officer will complete a comprehensive form of enquiry and return this to you (although you can write to the Court in advance setting out any specific questions you would like answered). At the hearing the debtor will also be invited to make a proposal to pay off the debt and this can often result in an offer to pay by instalments.

High Court Enforcement

In our experience, the use of a High Court Enforcement Officer ("HCEO") is often the most effective way of recovering at least some of your debt. The HCEO attends at the debtor's premises to seize goods to the value of the Judgment debt and, unlike the County Court bailiff (see below), does not need to give advance notice of a visit. This gives the element of surprise and stops the debtor from hiding assets.

Steps to take:

- Apply to the Court for a Writ of Fi Fa (can only be used where the Judgment debt exceeds £600) and transfer the Judgment to the High Court;
- Pay the Court fee of £60.00;
- If the Judgment debt exceeds £5,000.00, interest can also be claimed from the date the Judgment is transferred to the High Court.

When the HCEO attends the debtor's premises, he will identify goods of value for seizure but there are certain goods which cannot be seized (e.g. goods on hire or hire purchase, equipment used in the debtor's employment, business or vocation, clothing, bedding, furniture or household equipment needed for basic domestic needs).

The HCEO's fees will be added to the debt and become payable by the debtor. However, if no recovery is made the HCEO will charge an abortive fee note of £60.00 + VAT.

Warrant of Execution

If the Judgment debt is less than £5,000.00, a Warrant of Execution can be obtained by lodging a Request at the County Court and paying a Court fee of £100.00. This provides a County Court bailiff with authority to seize and sell goods in much the same way as the HCEO above.

For Judgment debts below £600.00, you can only use a County Court bailiff. For Judgment debts of between £600.00 and £5,000.00, you can elect to use either the County Court bailiff or a HCEO. For Judgment debts in excess of £5,000.00, you can only use a HCEO.

Attachment of Earnings Order

This Order instructs the debtor's employer to make periodical deductions from the debtor's earnings and to send those payments to the Court and can be sought where the Judgment debt exceeds £50.00.

It can be made in respect of wages or salary (including fees, bonus, commission, overtime payments, pension payments or statutory sick pay). However, there are certain circumstances in which this Order is not available (e.g. if the debtor is unemployed or self-employed, a firm or limited company, in the Armed Forces or a merchant seaman).

Steps to take:

- Make an application to the Court where the Judgment was obtained and pay the Court fee of £100.00 (include the name and address of the debtor's employer);
- Serve the application and reply form on the debtor.

The debtor then has 8 days after service to file a reply or fully discharge the Judgment debt. This gives the debtor an opportunity to make an offer of payment by instalments (and many debtors will do this to avoid the matter being drawn to the attention of their employer). If the debtor does offer to pay by instalments, the Court will make a suspended Attachment of Earnings Order. Either party may apply to the Court for the Order to be reconsidered within 14 days of service and that application will be dealt with at a hearing.

Third Party Debt Order

This Order is made against a third party that holds money of or owes money to your debtor. In essence, the third party pays that money to you. Certain debts cannot be attached in this way: e.g. unliquidated damages, debts owed jointly to a debtor and another or money held on trust.

Steps to take:

- Make an application to the Court (without giving notice to the debtor) giving details of the Judgment, the third party, the third party debt and the basis of the information verified by a statement of truth;
- Pay the Court fee of £100.00.

It is essential that all information is accurate and up to date as the timing of the application is critical. In the case of a bank account, for example, the funds in the account must be in credit at the date when the Interim Order is served on the bank.

The Court will initially make an Interim Third Party Debt Order fixing a hearing date. A copy of the Order must be served on the third party first not less than 21 days before the hearing (in order that the monies held are retained by them) and then on the debtor not less than 7 days after service on the third party. There are obligations on the third party, once served with the Interim Order, to provide information to the Court.

The Interim Order requires the debtor and third party to attend Court on the stated date when the Court will decide whether or not to make a Final Order. In the meantime the Interim Order is binding on the third party and directs that he must not make any payment which reduces the amount owed or in credit. This is enforceable as an order to pay.

Charging Orders

It is possible to apply for a Charging Order where the debtor owns property or stocks and shares.

Steps to take:

- Make an application to the County Court without giving notice to the debtor. That application must contain certain required information (i.e. the name and address of the debtor, the amount due under

the Judgment, the property to be charged, verification of the debtor's ownership (in the case of land usually by attaching office copies of a registered property) and details of any other known creditors and proprietors);

- Pay the Court fee of £100.00.

If the application is successful, the Court will usually make an Interim Charging Order. A copy must be sent to the debtor and all interested parties with a date for a hearing when the Court will decide whether or not to make the Final Charging Order.

There are particular considerations where the property to be charged is jointly owned but only one party is the debtor. The other party has the right to make representations to the Court when it is deciding whether or not to make a Final Order.

In some cases, it may also be possible to obtain an Order for Sale, but note that this is likely to be more difficult where the property concerned is co-owned and if there are children living at the property.

Enforcement where the debtor is abroad

There is no easy explanation to this. The method of enforcing an English or Welsh Judgment abroad (or enforcing a foreign Judgment in England or Wales) depends on the arrangements which have been made contractually with the foreign country in question either by EC Council Regulations, Treaty or Convention.

In essence, enforcement abroad is a matter for the law and Courts of the country where the creditor is seeking to enforce a Judgment obtained in England and Wales.

In many cases it will be necessary to employ a lawyer/agent in the country of the debtor in order to ensure a successful enforcement.

If the debtor resides in Scotland or Ireland the enforcement is treated as an enforcement abroad as these countries have separate legal jurisdictions to England & Wales.

Insolvency action

Whilst taking insolvency action is not strictly a method of debt recovery it may be relevant in the context of choosing formal action against your debtor.

Unlike the procedures set out above, insolvency action can be taken before or after securing a Judgment.

The first step may well be to serve a [Statutory Demand](#), provided the debt exceeds £750.00 and is undisputed. This procedure should not be used where the debt is disputed as, in order to set aside a Statutory Demand, a debtor only has to show that he has a reasonable defence to the claim.

The Statutory Demand should be served personally upon the debtor, as proof of service has to be shown to the Court (by way of a Witness Statement of Service from the Process Server who served the Statutory Demand) if insolvency proceedings follow. A Statutory Demand gives the debtor 21 days from receipt to pay the debt or, if the debtor wishes to contest the Demand, 18 days from receipt to make an application to the Court to set the Statutory Demand aside.

If the debtor fails to make that application and fails to pay the debt due within 21 days, a bankruptcy/winding up petition can be issued.

The strength of the statutory demand procedure is the threat of insolvency. It can be effective where, for example, the debtor is paying another creditor in priority to you. The debtor must have access to money and wish to avoid insolvency if the threat of a petition is to work. This enforcement method can therefore be particularly effective for some professionals who may no longer be able to trade in that profession if bankrupt, or company directors, or companies that have valuable assets they would wish to protect.

The use of Statutory Demands must be viewed carefully because the Court will not allow the threat of insolvency to be used for routine debt collection.

Winding up (if your debtor is a company)

If your debtor is a company with an undisputed debt of over £750.00 then a Winding up Petition can be issued. It is not always necessary to issue a Statutory Demand or obtain a Judgment before doing so.

Steps to take:

- Issue a Winding up Petition in the Companies Court in London or one of the designated Courts outside London that has appropriate jurisdiction;
- Pay the Court fee (including the Official Receiver's deposit) of £1,385.00;
- Serve the Petition on the Company at its registered office or by handing it to a Director of the Company or another duly authorised person on behalf of the Company;
- File a Certificate of Service at Court;
- Advertise the Petition in the London Gazette at least seven days after service and at least seven days before the hearing;
- File a Certificate of Compliance at Court prior to the hearing, confirming the date of presentation and service of the Petition, date of hearing and that the advertising rules have been complied with.

At the hearing the Court, in its discretion, can dismiss the Petition or adjourn the hearing, make a compulsory Winding up Order or any other Order it sees fit.

If a Winding up Order is made it will be officially notified to the London Gazette and recorded at Companies House. The assets of the company are then dealt with by the Official Receiver/appointed Insolvency Practitioner.

There is no guarantee that your debt will be paid out of the estate of the Company once wound up, as any secured creditors will be paid first. However, the costs of the Petition will be treated as a first charge on the assets of the Company.

Bankruptcy (if your debtor is an individual)

If your debtor is an individual with an undisputed debt of over £750.00 then a Bankruptcy Petition can be issued if it appears the debtor is unable to pay the debt.

The insolvency process for bankruptcy is similar to that for winding up a Company (as set out above). The Petition must be issued in the County Court with insolvency jurisdiction that is nearest to your debtor's place of residence or where he has carried on business. The Court fee (including the Official Receiver's deposit) is £920.00.

The Court will issue the Petition and list a hearing. Then, as with a Winding up Petition, in order to ensure compliance with the rules, personal service of the Petition has to be attempted on the debtor.

There are no advertisement requirements for a Bankruptcy Petition but the Court will send a notice for the Petition to be registered as a pending action at H. M. Land Registry and H. M. Land Charges Department.

At the hearing, the Court may make similar orders to those in the winding up process. The Official Receiver or Trustee in Bankruptcy will then assume control of the bankrupt's affairs. Again, whether or not your debt is paid is dependent upon the value in the bankrupt's estate and the claims of any secured debtors.

In all of the above procedures, compliance with the rules is critical to ensure the process is effective. Correct choice of procedure can also make the difference between recovering your money or not, so expert advice is recommended.

More information

If you would like to find out more about any of the enforcement processes outlined above, please contact Stephen Fitzgerald:



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