

Introduction

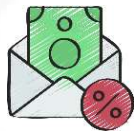
Obtaining a Judgment for damages and/or costs might only be the first step in the legal process to getting your money back. Following entry of a money Judgment either payable forthwith or following a defaulted instalment on the Judgment order, where the Judgment order remains unsatisfied, there are various enforcement steps that can be taken.

Choosing the right step or steps to take depends on the Judgment debtor's circumstances and what information is available on the Judgment debtor. It is therefore important to obtain as much information on the Judgment debtor as possible. Sometimes, this might be available to you prior to taking action against the debtor, or it might be necessary to start a particular enforcement step to try to obtain information from the Judgment debtor where it has not previously been disclosed or found.

In this week's edition of the Monday Morning Dispatch, we take a look at some of the enforcement options available once a Judgment order has been obtained.



Warrant/Writ of Control



Attachment of Earnings



Orders to attend Court for questioning



Charging Order



Order for Sale



Third Party Debt Order

Taking control of goods by warrant or writ of control

Taking control of goods by either a warrant or writ of control is the most frequently used enforcement option.

As soon as a Judgment order is obtained, either the County Court Bailiff ["CCB"] or High Court Enforcement Officers ["HCEO"] can be instructed. Generally speaking, the HCEO is instructed on debts over the threshold limit of £600.00.

Once a warrant or writ of control is issued both the CCB and HCEO will look to enforce payment of the outstanding debt by levying upon goods/chattels that belong to the Judgment debtor, that have a value sufficient enough to clear the debt and or make sufficient in roads into the debt. The officers will take control of the goods and sell at public auction.

When the officers levy upon goods, they take an inventory of the goods and obtain Walking Possession. However, items that are levied upon and taken away and sold at auction may have a far less value at auction than they would have if they were sold in the open market. Therefore, goods may sometimes be in effect worthless as the value that they may obtain at auction may not even cover the costs of the removal and sale. Items such as computers and televisions can date quickly so their second-hand value drops dramatically. Any items that are located must be owned solely by the Judgment debtor and free of finance, in particular motor vehicles. Both the CCB and HCEO will look at all types of property, from motor vehicles to livestock and antiques.



CREDIT MANAGEMENT & RECOVERY

Both the officers hands are tied when any goods located with a value less than £1,350 which are claimed to be tools of the trade, this is where goods are claimed to be needed to be a part of the debtor's living, i.e. a builder would need his tools and van to enable him to carry out his job, in this case these would be exempt from being levied upon, if however the value of the goods are valued over £1,350 then the officer can remove surplus goods after the exemption value. It is worth noting that tools of the trade cannot be claimed by partnerships or limited companies. It is up to the officer to use their knowledge to determine what value they may fetch at an auction.

The main obstacle that officers will face is that they are not able to force entry into a residential property to levy upon goods, though they are into a commercial property, but if the business operates from a residential address, they are not able to force entry into this property.

The officers will in the first instance attempt to obtain payment in one go by either levying upon goods where possible and or through negotiation with the Judgment debtor. The officer will then, if the situation deems it, look to obtain payment via a series of instalment payments.

Attachment of Earnings Order

An Attachment of Earnings Order ("AEO") can be obtained following the entry of a money Judgment against an individual(s) who is in paid employment. We are unable to make an Attachment application against anyone who is self-employed.

The level of repayment is decided by the court, though it is worth noting that this will not necessarily be a large value. An AEO order provides that a proportion of the Judgment debtor's earnings is deducted by their employer and paid to the Judgment creditor in instalments, until the Judgment debt is satisfied. Any payments ordered by the court to be paid under the AEO are to be made direct from the Judgment debtor's wages which are collected by the court.

Automatic deduction from wages means that you do not have to rely on the debtor making payment.

If you aren't sure if the Judgment debtor is employed, we can instruct an enquiry agent to find out for you. We can also make enquiries via the Attachment of Earnings Index. [Each business centre of the County Court is obliged to keep an index of the names of Judgment debtors within their district who have an AEO order registered against them.] So, if the Judgment debtor has or had another AEO against them, this information may be held on the Index.

Orders To Attend For Questioning

It is worth noting that this is not an enforcement method, more of a fact-finding mission, though offers of repayment can be made on the back of this action.

The application for an Order for the debtor to Attend Court for Questioning ["ODACQ"] is made to the County Court without notice to the judgment debtor. The case is then transferred to the local court for the Judgment debtor. The matter will be allocated a date and time for which the Judgment debtor is to attend court for questioning. Generally speaking, 8 to 10 weeks after the application is made a date will be given, though this will vary from court to court.

An order is made and must be personally served upon the Judgment debtor. We partner with several process servers who can arrange service upon the debtor within 72 hours.

At court the Judgment debtor is required to give answers orally on oath to a court officer. Failure to comply with the order will result in the matter being referred to a judge, who may commit the judgment debtor for contempt of court, so if the Judgment debtor fails to attend court on the allotted day (and service has been effected), this may lead to a committal order being issued and a warrant for the Judgment debtor's arrest to be applied for (though this is withdrawn should the Judgment debtor subsequently comply).

As referred to already, this is a good fact-finding exercise as the Judgment debtor (should they attend the appointment) will complete an in depth income and expenditure form which will gather information from their employment status to whether they are a home owner, this will allow you to consider alternative enforcement if necessary, such as an Attachment of Earnings (referred to above) or obtaining a charging order over the Judgment debtor's property (referred to below).

This process isn't just aimed at a Judgment debtor who is an individual (including sole traders), it can also be used to order an officer of a company to court for questioning as to the debtor companies means and assets, and the same procedure as above applies in respect to service and their requirement for attendance and consequences of failure to attend.

Charging Order

A Charging Order is an order securing a charge over a Judgment debtor's beneficial interest in land, securities or certain other assets. This prevents the Judgment debtor from selling the land without settling the debt first, provided that there is enough equity left for the Judgment creditor after payment of prior creditors.

For a court to use its discretion to grant a charging order, it will examine whether enforcement by this method is proportionate. Therefore, the court may choose not to secure a low value Judgment where it could be enforced by another method.

A charging order is most effective when there is substantial equity in a property and the Judgment debtor is the sole owner.

The process for obtaining a charging order can be timely, and a charging order of itself does not realize funds to satisfy a Judgment debt. To satisfy the debt, the Judgment creditor then has to apply separately for an order for sale of the property. Or alternatively, wait for its sale in due course by the owners, or following an order obtained by other creditors.

Once a Charging Order has been made, we will make enquiries with the additional creditors, i.e. the mortgage company, to establish the value of the monies that are owed to them. A valuation of the property is also obtained to enable a calculation of any equity that may be in the property to establish the merits of proceeding with an order for sale application.

On the basis that there is sufficient equity to discharge the Judgment debt and any prior charges in full, then an application for an order for sale can be made.

Third Party Debt Order

This entitles payment to be made either direct from the Judgment debtor's bank account if in credit and or from a third party who owes money to the Judgment debtor.

The Judgment debtor's bank account must be in the Judgment debtor's sole name, you are not able to make an application against an account in joint names, unless the Judgment order is in joint names.

If the application is against a third party, then once the application is filed at court the Judge if satisfied will give an Interim Third-Party Debt Order. The order is served upon the third party after which they are to freeze the money that is owed.

If the third party is not a bank or building society, they have an opportunity to state if they do not owe the Judgment debtor any monies or if the value is less than the monies being claimed.

If the third party is a bank or building society, they must identify all accounts that are in the sole name of the Judgment debtor, whether the account(s) are in credit and there are sufficient funds to cover the order and whether they are entitled to retain some of the credit balance to offset debit balance or other accounts.

At the hearing, the Judge will consider whether to make the order final and arrange for the monies that are frozen to be transferred to the claimant. If insufficient monies are held to cover the Judgment debt & costs, then the monies will be allocated to the costs aspect firstly, the balance of the monies that are unpaid will still be payable and owing by the Judgment debtor, this does not stop you from taking further legal action.