

Briefing Note

Enforcing Judgment Debts in England and Wales



Enforcing a Judgment

Once judgment has been obtained in proceedings in England and Wales various enforcement options become available to the judgment creditor.

If a judgment debt under a County Court action is not paid immediately it will be entered on the Judgment Register and this will affect the judgment debtor's credit rating. This may not be sufficient to persuade the judgment debtor to pay. In this event the most common enforcement options are:

- (i) Charging Orders;
- (ii) Third Party Debt Orders;
- (iii) Warrant of Execution or Writ of Fieri Facias (known as writ of Fi-Fa);
- (iv) Attachment of Earnings;
- (v) Bankruptcy

Charging Order

A charging order is a Court order securing the judgment debt on property owned by the judgment debtor. It works in a similar manner to a mortgage, so that the judgment debt is paid out of the proceeds of the sale of the property before any remaining balance is paid to the judgment debtor. The judgment debtor can pay the judgment debt without selling the property to remove the charging order.

In many cases, the charging order will be secured on property that is already subject to an existing mortgage. In this case, the charging order will rank behind the existing mortgage and will secure payment out of the proceeds of sale only if there is sufficient equity in the property after the first ranked charge-holder is paid. In many cases where there is an existing mortgage secured on the property it will not be possible to determine if there is sufficient equity to ensure that the charging order will be satisfied on a sale.

Furthermore, a charging order merely secures the judgment debt against the property. It does not mean that the property will be sold. It is possible to apply to the Court for an order for the sale of the property once a charging order has been secured on it. However it is important to understand that the Court's discretion as to the grant of an order for sale is coloured by a number of factors.

One of the most important factors is whether the property is the family home with children in residence. If that is the case, the Court may try to avoid making an order the sale of the property. Another factor is the size of the judgment debt compared to the value of the property. The Court is less likely to order the sale of a property where the judgment debt is only a small fraction of the value of the property.

Notwithstanding these limitations, the charging order is a useful tool for enforcing judgment debts. It does provide some peace of mind that the judgment debt will be paid eventually. It does put pressure on judgment debtors to pay, particularly where they wish to re-mortgage, because most lenders will not provide a loan facility where their security is ranked after a pre-existing charging order.

Charging orders can be obtained by applying to the Court without giving notice to the judgment debtor. The Court will grant an interim charging order and will at the same time fix a hearing at which the judgment debtor can oppose the charging order being made permanent. Normally there will be no reason why the charging order should not be made permanent.

Both interim and final charging orders have to be noted on the title for the property at H.M. Land Registry in order to make them effective.

Third Party Debt Orders

A third party debt order is a Court order requiring a third party to pay a debt due to the judgment debtor to the judgment creditor instead. Typically, the order will be directed against a bank account in the name of the judgment debtor. Any credit amount in the account is, in effect, a debt owed by the bank to the judgment debtor.

Like a charging order, a third party debt order is normally made following an application by the judgment creditor without notice to the judgment debtor (to prevent the judgment debtor moving funds to avoid enforcement).

Once an interim third party debt order is made, any bank served with the order must provide information to the judgment creditor about the accounts and the debts owed by the bank to the judgment debtor. Once a final third party debt order is made, the bank must pay any credit amount in the judgment debtor's accounts to the judgment creditor in order to discharge the order.

Warrant of Execution or Writ of Fieri Facias

A warrant of execution can be issued in the County Court which enables a bailiff to recover a debt between £50 and £5,000. If the amount sought is more than £600 it can be enforced in the High Court by an enforcement officer using a writ of fieri facias (or writ of fi fa).

The bailiff / enforcement officer will usually send the judgment debtor a letter saying that a warrant or writ has been issued and the judgment debtor must pay the debt within 7 days. If the judgment debtor pays then the bailiff / enforcement officer will send the money to the judgment creditor minus his or her fees. If after 7 days, the judgment debt is still unpaid, the bailiff / enforcement officer will visit the debtor's address and will identify goods which can be sold at auction equivalent in value to the judgment debt.

Under the Tribunals, Courts and Enforcement Act 2007 (the relevant section is not yet in force), warrants of execution and writs of fieri facias will be renamed writs of control.

Attachment of Earnings Order

An attachment of earnings order may be obtained to enforce a County Court judgment debt. The order works by requiring a person or organisation that employs the judgment debtor to make periodical payments (as determined by the Court) to the judgment creditor from the judgment debtor's salary.

The amount the Court orders the employer to pay to the judgment creditor will depend on the judgment debtor's salary and certain deductions the Court must take into account to reflect what the Court believes the judgment debtor must be able to retain for living purposes.

Bankruptcy

A judgment creditor may decide to initiate a bankruptcy process to enforce satisfaction of an unpaid judgment debt which exceeds £750. This procedure involves firstly serving the judgment debtor with a formal demand for payment called a Statutory Demand. If the judgment debt remains unpaid for 21 days following service of the Statutory Demand, then a Bankruptcy Petition can be issued against the judgment debtor. Often the threat of bankruptcy is enough to persuade the judgment debtor to make payment. If it is not, the Court will make an order bankrupting the judgment debtor and appointing a trustee in bankruptcy who will gather in the bankrupt's assets for distribution amongst creditors.

Top Tip

Court proceedings always involve certain irrecoverable costs for the claiming party. If the debt or damages claimed is less than £5,000 the claiming party will only be able to recover limited legal costs of the proceedings amounting to around £300.

It can therefore often be advisable to wait until an outstanding debt or damages claim exceeds £5,000 in order to avoid the limitation on the recovery of legal fees.



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This note does not constitute legal advice but is intended as general guidance only. It is based on the law in force on 31 July 2010.

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