

An Overview of Enforcement Proceedings in England & Wales

This information leaflet gives you introductory guidance to debt collection. It does not however give you legal advice. If you need legal advice please contact our Debt Recovery department on 01942 774155.

Overview

A Claimant may wish to commence enforcement proceedings where the Defendant has failed to pay a Judgment entered against him. Enforcement proceedings can be started as soon as Judgment is obtained, although usually a Claimant will wish to wait 14 days to allow the Defendant time to pay in full. If the Defendant pays within 14 days, the Judgment will not remain on the Defendant's credit record and invariably means that in some cases a Defendant will pay.

If not, a Claimant should ask the following questions:

- **Do you know if the Defendant is still trading (business debt)**
- **Do you know if the Defendant is still living at a residential address (individual debt)**
- **Does the Defendant own property**
- **Are you aware of the Defendants employment details**

Alternatively, if the Claimant does not know many details about the Defendant, an application can be made to the Court that the Defendant attends Court for questioning. An advantage of this is that the order must be complied with once personally served on the Defendant. If the Defendant fails to attend it is contempt of Court and the Defendant can be sent to prison. There are however various disadvantages. This process is time consuming, on average it will take at least two months until the report from the Court is received and the cost is not recoverable from the Defendant.

Warrant of Execution

A Warrant of Execution is a Court form which is submitted to Court and provides the necessary information and authority once issued to the County Court Bailiff local to the Defendant. It can be granted on any size of debt however it is recommended that it is only used on debts under £600. Bailiffs will then attend the Defendant's premises and take walking possession of those goods (this is a list of the goods and the Defendant must sign the bottom of this form). The Defendant will be given a date to pay, if he fails to do so the Bailiff can seize goods and sell them at auction. However, the Bailiffs do have limited powers; they are not able to seize goods which would mean the Defendant cannot carry on trading, they are unable to force entry to a private residence and usually the Defendant is an individual, there will be little assets to satisfy the debt outstanding.

Writ of Fi Fa

A Writ of Fi Fa is a Court form which is submitted to the High Court together with a request to transfer up the matter from the County Court to the High Court. It is then sealed by the High Court and is sent to a High Court Enforcement Officer (HCEO) to enforce. A Writ of Fi Fa can be submitted on debts over £600, advantages of using HCEOs rather than Bailiffs are that they have authority to take goods which would mean that the Defendant could not carry on trading, they are more proactive generally and detailed reports are received, they have rival competitors within their field and so the service provided is on average better than that of Bailiffs.

Charging Order

A charging order can be granted to secure a charge over the Defendant's property. It is only available where the Defendant's property is registered with the Land Registry and a simple search costing £3 can be obtained to secure this information.

Once a charging order is registered over the Defendant's property, it will remain there until the property is sold and Claimants who have charges over the property will be paid in order of registration provided there is enough surplus in the sale proceeds. Claimants will receive payment before the Defendant and are entitled to the fixed costs of obtaining the charging order, together with all interest accrued to date.

An advantage of a charging order is that your debt is secured and further enforcement proceedings can be continued if required by making an application for an order for sale. It also means that in the event of Bankruptcy, a Claimant is classed as a secured Creditor and rank above those who are unsecured if a distribution of funds is available.

Third Party Debt Order

Third party debt orders are similar to charging orders in that they charge the Defendant's assets which are in the possession of a third party and order that third party to transfer those assets to the Claimant. The usual scenario for a third party debt order is where a Claimant knows of the Defendant's bank details and an application is made to charge the bank to release funds of the whole debt (if available) to the Claimant once a Court order is obtained to do so. Third party debt orders are not as common simply because Claimants cannot usually obtain these details.

Attachment of Earnings Order

An attachment of earnings order can be obtained where the Defendant's employer details are known. It is available provided the debt is £50 or more. It is not available where the Defendant is unemployed or self-employed, the Defendant is a limited company, or if the Defendant is in the armed forces or a merchant seaman. Once an application has been made, the Court will ask the Defendant to fill out a statement of means form and obtain details of the Defendant's salary from the employer. If the Defendant fails to fill out the statement of means form, a warrant for his arrest can be issued by the Judge. The Court officer will take into account all of the circumstances and decides whether the debt is below that of the protected earnings rate. Provided it isn't, a Court order will be made ordering the employer to deduct a specified amount each month direct from the employee's wages. If you do not agree with the Court officer's decision, you can object to the decision and provide reasons which will be put before a District Judge.

Once the attachment of earnings order has been made, payments will be made from the Defendant's employer to the Centralised Attachment of Earnings centre known as CAPS who will in turn, forward each payment to the Claimant.

Summary of fees and solicitors fixed costs (both recoverable from the Defendant)

| Type | Court Fee | Fixed Cost |
|-----------------------------------|-----------|------------|
| Warrant of Execution (under £125) | £35 | £2.25 |
| Warrant of Execution (over £125) | £55 | £2.25 |
| Writ of Fi Fa | £50 | £51.75 |
| Charging order | £55 | £55 |
| Third Party debt order | £55 | £55 |
| Attachment of Earnings | £65 | £8.50 |
| Order to obtain information | £45 | £- |

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