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## A brief summary of the methods of enforcement of a Family Court Judgment or Family Order

### Enforcement of Court Judgment or Orders

The law stated here is specifically for family orders. The general law of enforcement of judgments differs in various respects.

#### 1. Execution against Goods

This is initiated by filing a Warrant of Execution which requires the County Court Bailiff to attend the debtor's premises to levy execution on his goods. The court fee is charged on a proportionate basis to the amount to be recovered with the maximum charge being £45.00 as at September 2000. This is of course exclusive of any further costs for the time incurred by the solicitors whom are instructed to deal with the matter.

#### 2. Third Party Debt Order

These proceedings enable the Judgment creditor to compel the garnishee (a debtor to the Judgment debtor ie. a Bank or trade debtor) to pay the debt directly to the Judgment creditor. An application is required to be made to the Court by Affidavit. The Court will make an initial Order, referred to as a Third Party Debt Order, which is then to be served personally on the Judgment debtor. There is then a further hearing when an Order absolute should be made and this then forces the garnishee to forward the Judgment debt to the Judgment creditor. Again, the fees will be dependent upon the amount of time spent by the Judgment creditor's solicitor in preparing the application and attending on the hearing to make the Order absolute, which coupled with fees of effecting personal service can lead to substantial costs for the Judgment creditor.

#### 3. Charging Order

A Charging Order is a charge made by the Court over a Judgment debtor's land or security. Any charge will take second place to a mortgage and therefore its success is dependent upon equity remaining in the property on satisfaction of the mortgage. The application is supported by an Affidavit. The Court will then make a Charging Order nisi which is served together with the Affidavit on the Judgment debtor at least seven days before the hearing date. There is then a second hearing where the Court

considers whether to make the Order absolute. Once this Order has been made it becomes secured to the property in question and can then be enforced by obtaining a further Order for sale. Again, the fees will be dependent upon the amount of time spent by the solicitor in preparing the application and attending on the hearing. Generally, this method of enforcement will be cheaper than that of the garnishee enforcement procedure as the Order nisi need not be served personally on the Judgment debtor and therefore the fees of effecting personal service are avoided.

#### 4. Insolvency

N.B. this does not apply to an order for financial provision for spouse or child or to costs orders made in such cases. Where the debt exceeds £750.00 a Statutory Demand can be served upon the Judgment debtor and, if not satisfied within 21 days, a Bankruptcy Petition in the case of an individual can be presented. The Court will then consider whether to order the insolvency of the individual. The Statutory Demand should be served personally on the individual which will lead to further costs. There is also a fee payable on the presentation of the Bankruptcy Petition in the sum of £370.00. The fees are again dependent upon the amount of time spent by the solicitor involved. This is an expensive method of enforcement and the Judgment creditor is unlikely to receive the full amount of the debt outstanding by virtue of the subsequent insolvency. For family cases it is usually inappropriate as the family order will not be included in the debts to be settled from the assets realised and survives the bankruptcy.

#### 5. Equitable Execution

This method of enforcement is available in respect of self employed individuals and involves the appointment of a Receiver by way of equitable execution. The property which can be the subject of such an Order includes rents accruing, income from a trust fund, shares in property which cannot be realised and profits in a business with few assets. The procedure is by Summons supported by Affidavit and the

Court must consider the merits of the application at a further hearing. This is a useful method of enforcement against self employed individuals and again fees will be dependent upon the amount of time spent by the solicitors in preparing and attending on the application.

6. **Attachment of earnings**

This Order directs the Judgment debtor's employer to deduct a set sum of money from the Judgment debtor's earnings and remit the deductions to the Court at specified intervals. The debt must not be less than £50.00 and the Judgment creditor can only apply once there has been a default in payment of the Judgment debt. A request is filed at the Court and the Court will fix the amount to be deducted. This amount can be reconsidered on a subsequent hearing by the request of either party. Again, the fees will be dependent upon the amount of time spent by the solicitor in dealing with the application.

7. **Order for Questions to be Put**

Once the application to the Court has been made a date is fixed at which the debtor should attend. The solicitor acting for the Judgment creditor is given the opportunity to ask detailed questions of the Judgment debtor in order to ascertain what assets exist and to then use this information in further enforcement proceedings. The pitfall with this method of enforcement is that in the County Court the debtor may not attend on the initial application and a further attendance on behalf of the Judgment creditor will be required for a penal notice to be issued which will subsequently lead to an Order for committal in the event that the debtor continues to avoid attendance at Court. Again, solicitors' fees will be dependant upon the amount of time spent in dealing with the matter.

8. **Judgment Summons**

As a result of recent case law, it has become significantly more difficult to be successful in an application for a Judgment Summons. Human Rights Legislation also impacts upon this possible method of enforcement. This has particular reference to maintenance orders. If the payer of maintenance fails to do so and the recipient knows that he has the means to do so and is refusing as a point of principle, then the recipient of the maintenance order may apply to the court for a Judgment Summons to be issued. This is, in effect, a "Contempt of Court" procedure. The maintenance payer is required to attend before a Circuit Judge to explain why he should not be committed to prison for failure to comply with the court order. Unfortunately it is rare to persuade the Legal Services Commission to make public funding available for this type of procedure so it is usual for the recipient of maintenance to also seek an order for

payment of his/her costs from the person who is in default. There are limits upon the type of order which can be enforced in this way.

9. **Registration of Maintenance Order in the Magistrates' Court**

This, again, applies only to maintenance orders. If a maintenance order is made in the County Court or High Court, the recipient of maintenance may apply for it to be registered in the Magistrates' Court so that the enforcement role is then given to specialist Justices rather than to a County Court or High Court procedure. A relatively simple statement is made to the Justices' Clerk on a prescribed form and is lodged with a certified copy of the order (obtained from the County Court or High Court office) and the fee which is prevailing at the time. This statement includes details of when the next payment is due and the amount of arrears, if any. If there are no arrears, the order will be absorbed into the normal Magistrates' Court maintenance order system where the payer is required to pay the Magistrates' Court Office who then forward the monies to the recipient, thus creating an independent record of payments. If there are arrears, the payer of maintenance is required by the Justices' Clerk to give information about why they have failed to do so and if necessary are brought before the Justices to explain the lapse. The Justices do have the power to write-off arrears.

The above is a brief outline of the enforcement procedures available. The underlying uncertainty area is the rate of fees which will be charged by the solicitor acting on behalf of the Judgment creditor, the reason being that fees are dependent upon the rate charged per hour and consequently the amount of time required to be spent. The important point to bear in mind is that no method of enforcement is certain to succeed and it may involve the Judgment creditor in extensive further costs without recovering any monies under the Judgment and consequently enforcement proceedings should only take place in respect of debts the size of which justify the costs.

This information sheet has been prepared to highlight some key issues relating to enforcement of Court Judgment or Orders. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at May 2004 and may be affected by subsequent changes in the law.

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