

Enforcement of judgment debts

A money Judgment is an order requiring a debtor to pay to a creditor a sum of money by a certain date. However, although a creditor may obtain a Judgment against a debtor, that may not be the end of the matter as the debtor may be unwilling to discharge the Judgment (or indeed, he may be unable to do so due to his poor financial circumstances). It will then be for the creditor to decide how best to enforce the Judgment – and this decision will largely depend upon the creditor's knowledge of the debtor's financial status.

We summarise below some of the enforcement options available to Judgment creditors.

Orders to obtain information from a debtor

This is not a method of enforcement in itself but rather, enables a creditor to assess the debtor's financial status with a view to ascertaining how best to enforce a Judgment against a debtor's assets or income.

An application is issued and the court will issue an Order requiring the debtor to attend at court for questioning on a specified date (the Order contains a warning that unless he does attend, a committal order may be issued for arrest). The standard form of Order requires the debtor to take to the hearing any documents he may have to evidence his income/assets/liabilities.

It is necessary to serve the Order personally (as a guideline, personal service can cost between £100-£200 plus VAT) and the debtor can require payment from the creditor of his expenses to travel to the hearing.

A court officer usually conducts the hearing (there is a standard questionnaire to complete) and we do not arrange an attendance on your behalf (unless requested by you). If the debtor fails to attend at the hearing (this often happens), a Suspended Committal order is issued, suspended as long as the debtor attends at a further hearing (failing which he could be committed to prison for contempt of court). Further costs will be incurred in relation to the adjourned hearing as again, it is necessary to arrange for personal service of the Suspended Committal order.

The service of an Order can often prompt the discharge of the sum due (or an offer of instalment payments).

As a guideline, this firm's costs of the procedure are likely to be between £200-£400 plus VAT depending upon whether the debtor attends the first hearing. Unfortunately, save for the court issue fee, any additional costs incurred by you will be irrecoverable from the debtor.

Warrant of Execution

1 The County Court Bailiff

It is possible to issue a Warrant of Execution in the County Court for debts below £5,000. At the request of the Judgment creditor, the County Court will send a letter to the debtor warning that unless payment is received, a Warrant of Execution will be issued and that the Bailiff will attend at the debtor's premises to seize assets to satisfy the debt.

In the event that payment is not received, the Bailiff will attend at the debtor's address and will either seize goods belonging to the debtor or take 'walking possession' of

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

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goods. Walking possession means that the Bailiff will agree that if he does not remove the goods then the debtor will not remove or otherwise deal with them. This then gives the debtor a short period of time within which to discharge the debt or reach an instalment arrangement with the Judgment creditor.

As a guideline, this firm's costs of the procedure are likely to be between £100-£150 plus VAT and in addition, the court fee payable is £50.00 (for Judgments in excess of £125). Unfortunately, save for the court issue fee, any additional costs incurred by you will be irrecoverable from the debtor.

2 The Sheriff's Office

The High Court Sheriff is able to levy execution against Judgments in excess of £600 by the issue of a Writ of Fieri Facias (a High Court Warrant of Execution). The procedure for the issue of a Warrant of Execution can be dealt with either by this firm in person or by the Sheriffs Lodgement Centre who act as our agents in arranging for the transfer of the county court proceedings to the High Court (the latter can take longer but is more cost effective).

The Sheriff will take a percentage of the sums recovered from the debtor but otherwise, the procedure is similar to the instruction of the County Court Bailiff.

The difficulty with Warrants of Execution is that often a debtor is able to demonstrate that none of the goods located at the premises belong to him (eg because they are subject to a Lease or HP Agreement). In those circumstances, the Bailiff/Sheriff would be unable to take possession of the goods. Further, certain goods are exempt from seizure (such as tools, books and

other items of equipment required in connection with the debtor's business). A further difficulty is that the Bailiff/Sheriff is unable to force entry to a residential address.

As a guideline, this firm's costs of the procedure are likely to be between £200-£300 plus VAT and in addition, there will be fees payable to the Sheriffs Lodgement Centre (if that option is pursued). Again, save for the court issue fees, any additional costs will be irrecoverable from the debtor.

3 Third Party Debt Orders

Where a Judgment creditor is aware that the debtor is owed money by a third party (ie for instance, where the debtor's bank account is in credit), then he may issue an application for a Third Party Debt Order requiring a third party to pay that sum to the creditor by way of full or partial payment of the Judgment debt. Banks and Building Societies or other types of deposit taking institutions are ideal targets for this method of enforcement, as they are obliged to comply with the Order if the debtor's account is in credit. However, the Judgment creditor will first need to have knowledge of the debtor's bank or building society account(s).

An application is made to the court and generally speaking, an Interim Order will be granted on an ex-parte basis (ie without notice being given to the debtor) provided that sufficient evidence has been produced to demonstrate that the debt is due from the third party and it is properly attachable. The Interim Order will be served on the Third Party giving notice of a hearing when a Third Party Debt Order may be made seeking payment of the debt by the Third Party to the creditor. At the hearing, the

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Third Party and the debtor may make representations opposing the grant of a final Order.

The Third Party is able to deduct his costs from the debt before payment. Only fixed costs are allowable to the Judgment creditor on the application which means that any legal costs incurred over and above those fixed costs will be payable by the Judgment creditor himself.

This procedure can be rather more costly than 1 or 2 above as usually a hearing will be listed and we would therefore be required to attend at court on your behalf. As a guideline, the firm's costs of the procedure are likely to be between £400-£500 plus VAT plus the court issue fee of £50.

4 Attachment of Earnings

This procedure is suitable only where the debtor is employed. An application is made for an order compelling the debtor's employer to make regular deductions from the debtor's earnings and to pay them into court. The application will be served on the debtor together with a questionnaire which the debtor must complete providing a statement of his means. At any stage of the proceedings, the court may also require information as to earnings from the debtor's employer.

If the debtor completes and returns the statement of means, the court staff may assess the debtor's finances and make an attachment of earnings order. Copies of the Order are then served on the debtor's employers. No hearing will be convened unless the court staff consider they lack sufficient information to make an order or the debtor objects to an order being made.

Should the debtor fail to complete the statement of means, the court staff will automatically issue an order compelling him to do so. The order will be endorsed with a warning that a Committal Order may be issued in the event of his failure to do so and it will be served on the debtor personally.

The court may order a hearing to seek further information from the debtor.

The final attachment of earnings order may specify an amount which the court decides the debtor may keep from his earnings - thus, if the debtor indicates a high outgoings figure, there may be little left to 'attach' and the net result may be for example, that the employer is only ordered to pay as little as £10/£20 per month from the debtor's net earnings.

Again, this procedure can be rather more costly than 1 or 2 above as a hearing may be listed and we would therefore be required to attend at court on your behalf. As a guideline, the firm's costs of the procedure are likely to be between £200-£500 plus VAT plus the court issue fee of £50. Unfortunately, save for the court issue fee and a certain amount of fixed costs, any legal costs incurred by you will be irrecoverable from the debtor.

5 Charging Orders

Where a debtor has an interest in property (whether land or securities), it is possible to obtain a Charging Order against that interest. However, whilst the Charging Order may provide some security for the Judgment debt, it will not discharge the Judgment debt by itself (as to do so will require an Order for Sale of the Property). We would be happy to advise in relation to

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the procedure and costs involved in an application for a Charging Order.

6 Bankruptcy/Liquidation

For an outstanding Judgment in excess of £750 the Judgment Creditor may serve a Statutory Demand and subsequently issue a Bankruptcy Petition (against an individual) or a Winding-Up Petition (against a company). There is a risk in embarking upon this procedure as the debtor may be insolvent and the Judgment creditor may therefore see no recovery against the costs of the Petition.

Again, we would be happy to advise in relation to the procedure and costs involved in the issue of Bankruptcy and Winding Up Petitions.

7 Costs : Generally

Unfortunately, it is always difficult to estimate with any certainty the level of fees to be incurred in a litigation matter at the outset. Although we have provided some

'guideline' figures for those costs that are likely to be incurred in relation to each enforcement method, as our fees will depend upon the amount of time spent by us, the level of our fees will vary in every case.

This information sheet has been prepared to highlight some key issues relating to Enforcement Options. 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 June 2004 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Julie Gabay by email at julie.gabay@ts-p.co.uk or call on 01892 510000.