

## Briefing Note: Enforcement of a Judgement

### An Introduction to the Briefing Note

Obtaining an award of damages and/or costs may only be the first step in getting what you are entitled to. Where the party ordered to pay damages and/or costs (the “judgment debtor”) fails to make payment by the date determined by the court, the party awarded the damages and/or costs (the “judgment creditor”) will have to apply to the court to enforce the judgment. A court will not automatically enforce any judgment or order: the burden is on the judgment creditor to take enforcement steps.

#### Briefing Note

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### What are the judgment debtor’s assets?

One question you should consider before taking any enforcement steps is whether the judgment debt is worth enforcing, i.e. does the judgment debtor have any assets against which the judgment can be enforced? If the judgment debtor does not have any assets, it may not be worth proceeding; money on enforcement proceedings might simply be thrown away to no purpose.

As much information as possible should be obtained regarding a judgment debtor and his assets. This should, where possible, include information regarding the following:

- Is he employed? If so, by whom? When and how does his salary get paid?
- Does he own any land? If so, where is it? What is its likely value? Is it charged? Are there any amounts outstanding?
- What goods of significant value does he own? How much are they likely to be worth and where are they situated? Are they subject to any financial arrangements?
- Does he own or have a stake in a business? If so, where is it based and what is its financial position?
- Does he have a bank account? If so, with whom? What are the details?
- Is he owed money by third parties? If so, who are they and what is the likelihood of them paying him back or having assets?
- What debts does he have? To whom? What are the amounts? Are they secured?
- Are there any court judgments against him? What are the amounts?
- Does an Attachment of Earnings Order exist against him? What are the details?
- Has a writ of fieri facias been issued allowing execution against his goods, known as sending in the bailiffs? What are the details?
- Has anyone issued a bankruptcy petition against him?
- Has a debt management order been made?
- Does he have insurance covering liability to you?

If you lack information about the judgement debtor’s assets then there are ways of obtaining this. These include:

- Asking the judgment debtor, who may respond voluntarily. Otherwise you can apply for an order to obtain information from the judgment debtor which requires him to give answers orally on oath to a court officer. This can be effective as it is a criminal offence to fail to attend.
- Instructing an enquiry agent. However, you must ensure that their enquiries are conducted legally.
- Checking the Insolvency Register to see if an individual judgment debtor is bankrupt or subject to an IVA, debt relief or any bankruptcy restriction order and undertaking.
- Conducting a land registry search to establish ownership of any address you have for the judgment debtor.
- Consulting the Attachment of Earnings Index.
- Checking the Register of Judgments, orders and fines – all County Court and High Court judgments from 6 April 2006 for the payment of money are contained in this public register, and remain on it for six years from the date of judgment unless the judgment is set aside.

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- Conducting a search regarding a company or limited liability partnership at Companies House and obtaining copies of the basic information about the company and their latest filed accounts.
- Checking for any insolvency procedures against companies by searches of the Bankruptcy and Companies Court, Companies House and the London Gazette. The WebCheck service on the Companies House website will indicate whether the company is in administration, administrative receivership or liquidation.
- Asking third parties for information about the judgment debtor. However they may be unwilling to give you information and may raise data protection issues.

If the judgment debtor has assets, then you must consider what they are and where they are, as this will affect your decision regarding which enforcement method to choose. There are various methods by which you can enforce a judgment debt, and not all methods enforce against the same type of assets.

### **Do you need to move quickly to ensure that assets are not dissipated?**

If you have any basis for concern that the judgment debtor will attempt to dissipate assets which could be used to satisfy the judgment debt, then you should act quickly. It is possible to prevent such dissipation by applying for a court order, known as a freezing injunction.

### **Effect of insolvency on enforcement**

If preliminary enquiries show that a judgment debtor is (or is likely to become) insolvent, it may not be worth taking steps to enforce in any event.

If the debtor goes into some form of insolvency procedure and you are not a secured creditor, your debt will rank alongside other unsecured creditors in the insolvency, behind preferential payments, the expenses of winding up and secured creditors. You are very unlikely to get back the full amount of the judgment debt. In addition, there are statutory restrictions on pursuing claims against insolvent debtors which may prevent you enforcing your judgment.

### **Methods of enforcing a money judgment:**

#### **1. Writ of fieri facias and warrant of execution**

Execution against goods is a very popular method of enforcing a judgment debt. It is often the quickest method of enforcement, is a fairly simple and straightforward procedure and can be used against both individual and corporate debtors. It is the only method of enforcement that does not require a decision by a court and can be taken alongside other methods of enforcement. It should be noted that where more than one method of enforcement is used the judgment creditor should ensure that they notify the court and enforcement agent of any payment received.

Execution requires the issue of a court document (in the High Court a writ of fieri facias and in the County Court a warrant of execution), which commands an enforcement officer to seize and sell a judgment debtor's goods to raise funds to satisfy the judgment debt. This is an administrative procedure and does not involve a court hearing. Notice to the debtor is not required; however the threat of this step may be enough to secure payment of the judgment debt. Unless the judgment debtor makes payment, his goods must be sold; they cannot be kept by the judgment creditor. Sale is normally by public auction and should be within a reasonable time after seizure. The specified sum should be paid over to the judgment creditor out of the proceeds of sale after a holding period of 14 days.

Execution can be enforced against most forms of personal property owned by the judgment debtor that are capable of seizure and sale, with the exception of certain 'exempt goods' (such as tools required by the debtor for use in his employment, business or vocation). Obviously this method depends on the judgment debtor having goods of sufficient value to meet the judgment debt (and enforcement officer's charges).

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### 2. Third Party Debt Order

A third party debt order freezes sums owed to a judgment debtor that are in the hands of a third party, such as a bank. The judgment debtor is prevented from having access to the money until the court makes a decision about whether or not the money should be paid to the judgment creditor. Third party debt orders can be used alongside other methods of enforcement. Although there is a two-stage process (an application for an interim third party debt order and an application for a final third party debt order), third party debt orders can take effect relatively quickly. Following a final third party debt order the third party is obliged to make payment to the judgment creditor and not the judgment debtor. The debt owed by the third party to the judgment debtor is extinguished on the payment to the judgment creditor.

Such an order can be useful where the judgment creditor knows that the judgment debtor has a bank account into which his salary is paid. However, third party debt orders are not the most popular method of enforcement, as they depend on there being a third party debt, evidence to support the application can be hard to find (that the debtor is owed money by a third party or has a bank account).

You cannot apply for a third party debt order against a joint bank account unless the judgment debt is a joint debt of all the account holders. The debt order cannot attach to future debts: when an order is sent to a bank, it will only freeze money held in the account on the day the order is received. It is therefore important to consider carefully when to apply for a third party debt order. If, for example, the order is received before the debtor's salary is paid into a bank account, you may be likely to receive little or nothing since the freeze will not be applied to any money paid into the account after the court order was received.

### 3. Charging Orders and Orders for Sale

A charging order is a way of securing a judgment debt by imposing 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 paying what is owed to the judgment creditor, provided that there is enough equity after payment of prior creditors. The charging order or order for sale method of enforcement can be used in addition to other methods of enforcement, either simultaneously or consecutively.

The process for obtaining a charging order can be slow, and a charging order of itself does not realise funds to satisfy a judgment debt. That requires a sale of the property, which does not automatically flow from the obtaining of a charging order. There are, in reality, three stages: (1) an interim charging order, (2) a final charging order and (3) an order for sale. The judgment creditor therefore has to progress to an application for an order for sale of the property, or simply await its sale in due course by the owners, or following an order by other creditors. After a sale, there may not be sufficient funds to satisfy the judgment debt in full, or at all, if there are several prior charges.

Benefits of a charging order include that interest continues to run on the sum secured from the date of judgment through to the receipt of final monies. However, significant delay in applying for a charging order may result in loss of interest.

An application for a charging order calls for the court to exercise discretion and it will be looking to see that enforcement by this method is proportionate. A charging order is most effective where there is substantial equity in a property and the judgment debtor is the sole owner. The method is less satisfactory where there is limited equity in the property or it is jointly owned or used as a family home.

### 4. Attachment of Earnings

An Attachment of Earnings Order ("AEO") provides that a proportion of a judgment debtor's earnings is deducted by his employer and paid to the judgment creditor until the judgment debt is paid. It is only available against individuals who are in paid employment and who owe £50 or more. You cannot obtain an AEO if the judgment debtor is unemployed, self-employed, a corporate or partnership judgment debtor, in the armed forces or a merchant seaman. 'Earnings' include any sums payable to a person by way of wages or

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salary (including bonuses and overtime), pension (including annuities), statutory sick pay and earnings of a company director (provided that the judgment debt is the directors' personal liability). Where a judgment debtor does not wish his employer to know he has a judgment debt, an application for an AEO can be a useful tool to persuade him to pay the judgment debt.

Upon receipt of an application for an AEO, the court will serve a notice form and a reply form, or statement of means, on the judgment debtor. The judgment debtor must then, within 8 days of service, either pay the money due or complete and return the statement of means with details of his employment, income and outgoings. If the debtor does not reply and the forms are returned as undelivered, the judgment creditor is advised to attempt service himself. If the debtor simply doesn't reply, the court can order the debtor to either respond or pay the debt in full.

Once a statement of means is received by the court, a court officer or district judge will look at the information and decide in the absence of the parties how much the debtor can afford to pay. The court officer will then go on to decide if he can order an AEO in the absence of the parties or, alternatively, he can order a hearing to decide in the presence of the parties whether an AEO should be made. If an AEO is made, it is sent to both the parties and the debtor's employer. The order requires the employer to make periodic deductions from the debtor's earnings and pay these amounts to the collecting officer of the court.

AEO's are a popular method of enforcement, as they are inexpensive and fairly easy to obtain. Automatic deduction from wages means that you do not have to rely on the debtor making payment. However, it depends on the judgment debtor being in employment and it can take a long time to pay off a large judgment debt by this method as often only low payments are ordered. Interest does not accrue to the debt and it can take many years to recover in full. The use of an AEO may also preclude use of other methods of enforcement – the leave of the court is required to levy execution whilst an AEO is in force.

Where the judgment debtor has other creditors and his total indebtedness does not exceed £5,000, the court has a duty to consider whether the debtor's liabilities should be dealt with together under a county court administration order and can refuse an application for an individual AEO. Under a county court administration order, the judgment debtor makes one payment to the court each week or each month. The money might be taken from his earnings. No interest is payable. While the judgment debtor is paying, his creditors cannot take any further action against him.

### **5. Insolvency Proceedings: bankruptcy and company liquidation**

If the amount you are owed by an individual judgment debtor is more than £750, you can apply to make him bankrupt. You can also apply for a company to be wound up. A normal prior step is the service of a statutory demand identifying the exact sum owed and providing the judgment creditor with 21 days in which to make payment. If such payment is not made, the judgment creditor will be able to present a petition for bankruptcy/winding up to the court.

After a bankruptcy or winding-up order is made, the judgment debtor's assets will be collected in by a trustee in bankruptcy or liquidator and distributed among all the creditors in accordance with insolvency law, provided there are any assets. However, this can be expensive and time-consuming and may not ultimately lead to any recovery – secured or preferred creditors take priority and at the end of the process the judgment creditor may only receive a small proportion of his debt, or nothing at all. The threat or commencement of insolvency proceedings can sometimes lead to judgment debtors making payment, but the courts discourage the use of such procedures as a debt collection exercise. The courts may not only dismiss petitions, but also penalise judgment creditors in costs, if the debt is genuinely disputed or if the judgment debtor has a genuine cross-claim or right of set-off.

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If you would like to know more about this topic or our other legal services, please contact Jeremy Laws on 01323 435900 or by email [jpl@gabyhardwicke.co.uk](mailto:jpl@gabyhardwicke.co.uk) :

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