

## CLIENT GUIDE: ENFORCEMENT AND STATUTORY DEMANDS

If a debtor refuses to pay an amount owed to you, you may either issue court proceedings to obtain a court judgment, or you can start insolvency proceedings against your debtor. If you obtain a court judgment, then your debtor normally has 14 days to pay it and if it does not, and then you have a wider range of enforcement options available to you including insolvency proceedings, and the onus is on you to decide which option(s) to use. This note provides some information on the enforcement options available in England and Wales, namely:

- Execution against goods ("Writ of Control")
- Attachment of earnings order
- Third party debt order
- Charging order over property
- Insolvency proceedings

If, having considered this guide, you would like to know more or to discuss your own circumstances in greater detail, please speak to your usual contact at Stevens & Bolton or a contact listed at the end of this guide.

### **First know your debtor**

The more you know about your debtor and its income, assets and liabilities, the better placed you are to choose the best enforcement method(s). If you have already obtained a court judgment against your debtor, you should have already sought this information before issuing proceedings, but you may need to get up-to-date information.

The following are ways to find out more information about your debtor:

- Enquiry agent – can investigate the debtor's financial position.
- Land registry search – you can check if property is owned by the debtor and, if so, whether there are any charges on it.
- Insolvency search – you can check if your debtor has been made insolvent or whether any insolvency proceedings have been started against it.
- Register of judgments, orders and fines – you can see if any other judgments have been made against your debtor in the last six years.
- Attachment of earnings index – for debtors who are individuals, you can see if the

courts have granted any orders requiring his or her employer to pay part of his or her salary to another creditor.

- Information order – the court can require the debtor to provide information about its finances with an ultimate sanction of a committal order if the debtor does not comply. Whilst this sounds useful it is not often used because of the delay involved in getting the information and the costs which are not recoverable e.g. court fees and the payment of the debtor's reasonable expenses in attending court.
- Companies House search – for basic company information and last filed accounts on company or limited liability partnership debtors.

If you are concerned that the debtor will move or deal with its assets in order to avoid paying your judgment, then it is possible to obtain injunctive relief to freeze those assets. This is normally only worthwhile however in those cases where the judgment sum involved is significant.

### **Execution against goods**

The most commonly used method of enforcement, a High Court Enforcement Officer ("HCEO"), will seize and sell the debtor's goods if it does not pay the judgment debt.

Although it is only used for High Court judgments, it is very straightforward to transfer a County Court judgment to the High Court (as long as the debt is for £600 or more), and the HCEO can do this for you. There is an equivalent system in the county court where a County Court Bailiff is instructed to seize and sell the goods, but it is a less effective system.

You can use any HCEO and a list of them is available on the High Court Enforcement Officers Association website: <http://www.hceoa.org.uk/>. You will need to give them a copy of your judgment, and your chances of a successful enforcement are increased if you also give them any information you have regarding the debtor such as their whereabouts, the means you have of contacting them and details of any assets you know they have.

The HCEO will then apply to the court for a Writ for

execution against goods (called a Writ of Control) and there is a court of £66 fee for this. When the HCEO gets the Writ, he or she will attend the premises of the debtor and if the debtor still refuses to pay, he or she will seize goods and then sell them by public auction. The HCEO's fees and the court fees are payable by the debtor as well, and enforced through the same process.

If the Writ is unsuccessful it is normally because the debtor is not at the address given, or the debtor's goods are not worth enough to pay anything towards the debt and the cost of taking and selling them will be greater than the likely sale proceeds, or the debtor is insolvent. If the HCEO is unsuccessful in the Writ then you will have to pay an abortive fee of around £75 plus VAT. Note that if you accept any money direct from the debtor after the Writ has been issued you should inform the HCEO immediately, and you will also then become liable for the HCEO's fees if they cannot recover them from the debtor.

### **Attachment of earnings order**

If the debtor is an individual and is employed, you can apply to the court for an order that a proportion of his or her salary is paid by the employer directly to you until the judgment debt is paid. There are set rates for the deductions allowed. This is a useful method of enforcement as it is not expensive to apply for but it can take some time for the debt to be paid off.

### **Third party debt order**

If you know that a third party owes money to your debtor then you can apply to the court for a third party debt order which directs that third party to pay the amount of your judgment debt to you. This can be used against a bank or building society if you think the debtor has a credit balance in his account (it cannot be an account he holds jointly).

These are not used very often because you will want to know first that the debtor has a credit balance in his account, which will not be the case for many debtors, or have evidence that a third party owes money to the debtor.

### **Charging over property**

If the debtor has an interest in land, it is possible to apply to the court for a charging order on that land. This

means that the debtor cannot sell the land without paying you the judgment debt, although your debt is paid after all prior registered charges against the land have been paid. This can be a slow method to obtaining payment as the process to obtain a charging order can take some time, and then once you have the order you then have to wait for a sale of the land or apply to the court for an order for sale.

### Insolvency proceedings

If your debtor owes more than £750 (in the case of a company) or £5,000 (in the case of an individual) then you can consider starting insolvency proceedings.

You will normally need to first serve a statutory demand on the debtor. This is a formal demand for the money in a specified form (which will vary depending on the type of debtor and amount owed – all insolvency forms are available on the government Insolvency Service webpage:

<https://www.gov.uk/government/collections/insolvency-service-forms-england-and-wales>

The statutory demand should be served personally on the debtor in the case of an individual or at the registered office in the case of a company, ideally by an enquiry agent. If the debtor does not deal with a statutory demand within 21 days of service on it then the creditor can take this as proof that the debtor is unable to pay the debt and can then take steps to make the individual debtor bankrupt or wind up a company.

Unlike the other enforcement methods discussed here, you can use this one to enforce payment of a debt without first obtaining a court judgment. However, if you do so and the debtor then provides information which shows that there is a genuine dispute to the debt, even if they did not provide that information before, you are at risk of paying their costs if you decided to pursue the demand as this would amount to an abuse of process. The insolvency courts will only deal with undisputed debts.

Guidance on statutory demands and insolvency procedures is available from this Insolvency Service webpage:

<https://www.gov.uk/government/collections/insolvency-service-guidance-publications>

### Enforcement abroad

If your debtor is located outside England and Wales, or it has assets that are outside the jurisdiction, then there may be other options available to you to enforce your judgment debt abroad, although local law advice and assistance may be required. If so, we can help to arrange for a local lawyer to get involved.

## FIND OUT MORE

For further information about any of the issues raised in this guide, please contact:



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