



**GUIDE TO ENFORCING  
A DEBT**



**PAST DUE**

## Enforcement

You have a judgment either in the County Court or the High Court however this is really just a piece of paper requiring the debtor to pay you money. If the debtor is not willing to pay that money voluntarily you need to consider *enforcement proceedings*.

Before embarking on enforcement proceedings you need to ask yourself the most important question. Does the debtor have the means to pay? If not then it really is not worth spending more money on trying to recover the debt, it might be more sensible to wait until the Debtor does have the funds and then seek to enforce.

If you believe that the Debtor can pay but won't then you need to consider what the best method of enforcement is for a particular case. Sometimes it is just a case of bringing your debt "to the top of the pile". There are several ways to enforce a judgment:

### Orders for Debtor Questioning



This is not actually a direct enforcement method, however it can sometimes achieve results.

The court will order the Debtor or an officer of a debtor company to attend at court to answer questions about their financial circumstances. The order can also require them to produce documents confirming the financial position. Normally the questioning is conducted by a court officer however in certain circumstances the court might give

permission for your solicitors to put the questions in front of a judge.

Sometimes debtors are reluctant to undergo this process and so will pay their debts. If they do not it is an opportunity to learn more about the debtors financial arrangements, this may give an indication of the best method of enforcement to take.

### Charging Orders

If the debtor owns property (either solely or jointly) the court can make a charging order in respect of that property. The advantage of this is that, once the charge is registered, the property cannot be sold or transferred without the judgment being paid off so you have some security. The disadvantage is that unless the debtor sells you won't get your money.

It is possible to follow a charging order with an application for an order for sale - where the property is sold to pay you - however these can be difficult to secure and even if an order is made any earlier charge holders, such as banks and mortgage lenders, are entitled to be paid out of the proceeds of sale first.

We recommend charging orders in those situations where there are no other charges, there is substantial equity in the property or you are prepared to "wait it out" until the debtor sells.

## Warrants

This is perhaps the most simple form of enforcement, by requesting a warrant the debtor will be contacted by either County Court Bailiffs or High Court Enforcement Officers (depending on the size of the debt).

In our experience debtors who have the means to pay will usually do so to avoid visits from bailiffs, however if they do not have the means to the bailiffs can remove goods from the debtors premises to be auctioned to repay the debt. In a commercial situation this may be successful however the rules governing what bailiffs can and cannot take mean that in a domestic situation there is very little that can actually be removed.

## Third Party Debt Orders



These orders are used in situations where somebody owes money to or holds money for a debtor. The court can make an order requiring this person or organisation to hand the money over directly to you.

The most common use of these order is where you believe that a bank or building society is holding money belonging to the debtor. Although it will not work if the money is held in a joint account and you have a judgment against only one of the account holders.

Whilst this can be an effective method of enforcement; if you apply for a third party debt order and the other party does not hold monies for or on behalf of the debtor the court are likely to make an order that you pay any costs incurred by the other party.

## Attachment of Earnings Orders

If an individual debtor is employed then it may be possible to obtain a court order requiring the employer to make deductions from the debtors salary.

This method will only work for people who are employed and so will not work for businesses nor for the self-employed.

Whilst this can be an effective debt recovery method it will usually result in you receiving small amounts every week or month (depending how the debtor is paid) . Unless the debtor is very well paid and the debt is relatively small it is likely to take some time to collect a debt this way which, obviously, is not good for cash flow.

## Insolvency

This is not strictly a method of enforcement as in reality an insolvent debtor cannot pay its debts. However many debtors who are able to pay but won't can be made to pay on the threat of insolvency. This is because insolvency often prevents debtors from carrying on with their normal business activities.

Whilst the threat of insolvency can be used if it makes a debtor pay actually instigating insolvency proceedings can be a protracted and expensive way of recovering a debt. You need to be aware that in an insolvency situation other creditors, such as HM Revenue & Customs, banks or building societies may be entitled to receive payment before you even if they have done nothing about the debts to them.

Insolvency is therefore a method that needs careful consideration and should probably be regarded as the last resort.

## Our Tips for Effective Debt Recovery

**Know your debtor** - you wouldn't lend money to somebody you don't know, so do your homework about anybody you are dealing with. If they are a company find out who controls it, if they are a partnership or individual find out more about them such as where they live, where they work and who they bank with.

**Act quickly** - the financial landscape can change very quickly, one day a healthy business the next it could be gone. A debtor who can afford to pay today may not be in a position to pay in 6 months time.

**Be persistent** - everybody has pressure to pay bills, so you need to get your debt to the top of the pile. Send letters, e-mails, texts and telephone and fax frequently. The Debtor might get fed up and pay and if nothing else you might learn more about your debtor.

**Be Consistent** - don't make threats that you don't intend to carry out. If you give a debtor until a certain date to pay and they don't - take action that day.



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**Enforcement of debts is a complex area - we hope this short guide has helped however if you wish to discuss enforcement in more detail contact us.**

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