

AN INTRODUCTION TO THE ENFORCEMENT OF CIVIL JUDGMENTS

PRACTICE NOTE

Ian Cain of Goldsmith Chambers presents a briefing note on the options for litigators and their clients when they wish to enforce a civil judgment.

This note will focus on the merits of the different mechanisms for enforcing a civil judgment for money, goods and property within the current Covid-19 restrictions and when restrictions are lifted.



THE NEED FOR ENFORCEMENT

1. The aim of a party bringing proceedings in the civil Courts is usually to obtain a remedy to their particular problem or dispute, often to recover his or her money, property or possessions. However, the Court entering a judgment in their favour does not automatically provide a litigant with the remedy that would have been sought in the proceedings.
2. The Courts have a range of enforcement powers to ensure that the parties comply with orders that are made, with each power designed to deal with a specific situation. A judgment creditor can choose whichever enforcement method appears to be the most effective in the given situation, and more than one method of enforcement can be used at the same time or one after another.
3. However, a Court will not automatically enforce any judgment or order and the onus is on the party with the benefit of the judgment or order to take enforcement action. Before enforcement can be attempted, the judgment debtor is usually given the opportunity to provide the appropriate remedy, often by paying off a judgment debt. When the time set by the Court for providing the remedy has passed, or an instalment due has been missed, the judgment creditor will then be able to enforce the order. It is therefore important to check whether any payment is overdue under the judgement before you start to consider enforcement options.
4. The Court has the power to determine how a money judgment should be paid, including when the sum is due and whether instalments can be made. A judgment takes effect from the date when it is given or made by the Court, and if the order does not specify a time for payment of a money judgment, the

judgment debtor will have 14 days from the date of the judgment in which to make the payment.

5. Regarding orders for costs specifically, the time for paying such costs orders is outlined within CPR 45. The standard rule is that the costs should be paid within 14 days of the date of the judgment or order if it states the amount of those costs or, if the amount of costs (or part of them) is decided later on assessment, the date of the certificate which states the amount. Otherwise, the Court has the power to specify any other date for payment of those costs under CPR 40.11, including allowing payment by instalments.
6. Under CPR 40.4, a party with the benefit of a judgment should ensure that their opponent is served with a copy of the judgment (either by themselves or through the Court). However, it is generally not necessary to show that the judgment debtor has been served with a copy of the judgment to enforce a money judgment.
7. Under Section 24(1) of the Limitation Act 1980, an action cannot be brought on any judgment after the expiration of six years from the date that the judgment became enforceable. In *Lowsley v Forbes* [1998] 3 WLR 501, the House of Lords held that an 'action' refers to a fresh action and does not include proceedings by way of execution. Therefore, enforcement proceedings are not subject to any limitation period (but the House of Lords determined in *Lowsley* that interest on the judgment debt could not be claimed after six years).

COUNTY COURT OR HIGH COURT

8. A case may need to be transferred from the County Court to the High Court or vice versa before enforcement is started.
9. A County Court claim will have to be transferred to the High Court if enforcement by taking control of goods is sought for a judgement exceeding £5,000 or enforcement of a charging order for sale is sought where the amount owed is above £350,000.
10. A High Court claim will have to be transferred to the County Court if enforcement by taking control of goods is sought of a judgment for under £600, a charging order is sought for a judgment of less than £5,000 or an attachment of earnings order is sought.
11. Therefore, the procedures in the High Court and County Court for enforcement are largely similar, but attachment of earnings orders are generally only obtainable in the County Court. County Court enforcements must be made at the County Court hearing centre serving the address where the judgment debtor resides or carried on business if the judgment creditor wishes to apply for information from a debtor, a third-party debt order or a judgment summons. County Court charging order applications and attachment of earnings applications are made to the County Court Money Claims Centre (CPR 73.3(2) & 89.3).

12. In the High Court, enforcement will be conducted by High Court Enforcement Officers (also known as sheriffs) under the Courts Act 2003. In the County Court, enforcement is conducted by Bailiffs under the Tribunals, Courts and Enforcement Act 2007 and Certification of Enforcement Agents Regulations 2014 (2014/421).

STAY OF EXECUTION

13. A judgment debtor who is unable to pay a money judgment or order may apply to the Court for a stay of execution under CPR 83.7. A stay can be for any period, and on any terms, as the Court determines to be appropriate in the circumstances. Under CPR 40.8, there is a similar power to stay an execution on non-money judgments on the basis that events have occurred since the date of judgment. In *Hall and another v Elia and another* [2016] EWHC 1023 (Ch), the Court considered it was necessary for the applicants to show a material change of circumstance when making repeated applications for a stay of execution.
14. Under CPR 40.9, it is also possible for either side to apply to vary the date of payment, or to convert a judgment into an order to pay by instalments. Such applications must be supported by written evidence outlining the grounds relied upon and include a full statement of the debtor's means. If an application is successful, it will usually result in a stay of execution pending the payment of the judgment by instalments.
15. Under CPR 70.6, if a judgment or order is set-aside, any enforcement of the judgment or order shall cease to have effect unless the Court orders otherwise.
16. Filing an application for permission to appeal against a judgment will not operate as a stay of any order or decision of the lower Court unless the appeal Court orders otherwise. Therefore, the judgment debtor will need to consider whether they should apply for a stay to prevent the enforcement of the lower Court's order before an appeal is heard. In most cases, the Court must be satisfied that the appellant has a real prospect of success before it will be willing to consider staying the order of the lower Court. The Court is more likely to grant a stay if the appellant can show that the enforcement of the Lower Court's decision would defeat the benefit of a successful appeal.

MECHANISMS FOR ENFORCING A MONEY JUDGMENT

17. The first question when deciding whether to enforce a money judgment will be whether the judgment debtor has any assets against which the judgment can be enforced.
18. Where little is known about a judgment debtor's finances, an application can be made to obtain information from the judgment debtor. This requires the debtor to attend Court to be questioned to establish their financial status, including amounts, names, addresses, account numbers and policy numbers. The form N316 is used for such applications and it must state whether the application needs to be heard before a judge or if there are specific documents that the

creditor requires the debtor to bring to Court with them. The application is usually heard by a Court officer without a hearing under CPR 71.2. If the debtor fails to attend the hearing with the Court officer, a Judge can make a suspended committal order or a full committal order under CPR 81 to ensure compliance.

19. If information about the debtor's assets is not known the creditor, the following steps could also be taken:

- a) **Ask the judgement debtor** – this information may be given voluntarily to avoid additional costs.
- b) **Instruct an enquiry agent** – also known as private investigators, ensure that such agents are correctly registered and operate legally.
- c) **Check the insolvency register** – if the debtor is bankrupt you are unlikely to be able to enforce the order.
- d) **Check the land register** – this will confirm the ownership of any addresses you have for the debtor.
- e) **Check the attachment of earning index** – this will highlight any attachment of earnings orders already made against the debtor.
- f) **Check the register of judgments, order and fines for England and Wales** – all County Court and High Court judgments from 6th April 2006 for the payment of money are on this register.
- g) **Check Companies House** – if the debtor is a business, obtain basic information about them and their accounts. These will also flag up any insolvency procedures involving the company.
- h) **Ask third parties** – be aware that they may be unwilling to provide this information under data protection.
- i) **Apply for an order for disclosure by a third party** - In *North Shore Ventures Ltd v Anstead Holdings Ltd and others* [2011] EWHC 178 (Ch), the High Court confirmed that the Court has jurisdiction to make an order for non-party disclosure after judgment has been given. However, parties should note that the high threshold requirements of CPR 31.17(3) will apply.
- j) **Check the internet, media or other research sources** – if the debtor is a large company, there is likely to be significant media interest if they are facing financial difficulties.

20. If the creditor has concerns that the debtor will attempt to dissipate assets that could have been used to satisfy the judgment debt, then the creditor should act quickly. Under CPR 25, the creditor may wish to apply for an order for the detention, custody or preservation of relevant property, a freezing injunction or an order requiring a party to provide information about the location of relevant property or assets which may be the subject of a freezing injunction. If the creditor has fears that the debtor may try to leave the country to avoid paying a debt, they can apply for a passport order to require the debtor to surrender their passport under CPR 37.

21. If a debtor becomes insolvent before the judgment is enforced and the creditor is not a secured creditor, the creditor's debt will rank alongside other unsecured creditors in an insolvency, behind preferential payments, winding up expenses and secured creditors. Therefore, if there are signs that the debtor is going to become insolvent, it may not be worth attempting to enforce the judgment.

Where the judgment debtor is in a formal insolvency procedure, the best course of action is likely to be to contact the relevant officeholder (that is, the trustee in bankruptcy, administrator or liquidator as the case may be).

22. PD 70.1.1 to 70.1.2 lists the enforcement mechanisms that can be used to enforce a money judgment and any method can be used except where statute or an order from the Court prohibits it. The main methods for enforcing a money judgment are outlined below:

Taking control of goods

23. Taking control of goods is a very popular method of enforcing a judgment as it can be done quite quickly. It requires the issue of a writ of control or warrant of control which commands an enforcement agent to take control of and sell a judgment debtor's goods to raise funds to satisfy a judgment debt. Taking control of the goods involves securing the goods on the premises, securing them on the highway, removing the goods and securing them elsewhere or entering into a controlled goods agreement (where the debtor keeps the goods as long as instalments are made towards the debt).
24. Before taking control of the debtor's goods the enforcement agent must give the debtor notice of enforcement in the prescribed form at least 7 days before enforcement. Enforcement writs and warrants are valid for 12 months and taking control of goods can be done on any day but only between 6am and 9pm. Unless the goods are good on the highway (cars or vans), the enforcement agent may not take control of goods whose aggregate value is more than the debt.
25. The goods that are seized must not be exempt goods, those that do not belong to the judgment debtor (third party goods) or those that are not in the place where the debtor lives or carries out a business. The exempt goods are those that are used personally by the debtor in his employment (up to a value of £1,350), those provisions that are reasonably required to satisfy the basic domestic needs of the debtor and their household (bedding, furniture, clothing etc), assistance dogs and vehicles displaying a disabled persons badge and goods which constitute a person's home (such as a houseboat).

Third party debt orders

26. By third party debt orders, sums owed to a judgment debtor that are in the hands of a third party (such as a bank) are frozen and seized for the benefit of the judgment creditor. Such orders are useful where the judgment creditor knows that the judgment debtor has a bank account into which their salary is paid.
27. Such applications have two parts. First, the creditor makes a without notice application for an interim third-party debt order in form N349 (which freezes the debt to the debtor). Secondly, there is a hearing on notice for a final order. A third-party debt order may be refused if it would be inequitable to grant it, such as if the third party may have to pay the debt twice or the debtor is insolvent.

Charging orders

28. 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 usually 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. A charging order is most effective when there is substantial equity in a property and the judgment debtor is the sole owner.
29. 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 as that requires a sale of the property, which does not automatically flow from obtaining a charging order. The judgment creditor has to subsequently apply for an order for sale of the property, or simply await its sale in due course by the owners, or following an order obtained by other creditors. The Court may not choose to secure a small judgment via a charging order when this could be enforced by another method.

Attachment of earnings

30. An attachment of earnings order provides that a proportion of a judgment debtor's earnings is deducted by his or her employer and paid to the judgment creditor until the judgment debt is paid. The basis of deduction is guided by set rates applied to the judgment debtor's resources. This method of enforcement of a judgment debt is only available against individuals and in the County Court, although a judgment can be transferred from the High Court to the County Court for the purposes of obtaining an order.
31. An attachment of earnings order cannot be made in respect of self-employed income, state pensions, benefits or allowances. Provided the debtor is employed, the Judge will consider the debtors income and expenditure and will fix the debtors protected earnings rate (the sum needed for maintain them and their family from which no deductions can be made) and the deduction rate.
32. Attachment of earnings is a popular method of enforcement, as it is inexpensive and fairly easy to do. 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.

Insolvency

33. If the amount you are owed by an individual judgment debtor is £5,000 or more, you can apply to make him or her bankrupt. You can also apply for a company to be wound up if it owes more than £750. After a bankruptcy or winding-up order is made, the judgment debtor's assets will be collected by either a trustee in bankruptcy or liquidator and distributed among all the creditors in accordance with insolvency law.

34. However, this can be expensive and time consuming, and may not ultimately lead to any recovery. The threat of insolvency can sometimes lead to judgment debtors making payment, but the Courts discourage the use of insolvency procedures as a debt collection exercise.

Judgment summonses/Order of committal

35. A judgment summons is a procedure for punishing a defaulting debtor who could pay, but has chosen not to, with a period of imprisonment. Since the administration of Justice Act 1970 came into force, judgment summonses have been available only for enforcing matrimonial maintenance orders and arrears of some taxes.
36. The Court can make an order committing the judgment debtor to prison for contempt of Court if he or she does not comply with certain orders. Committal is governed by CPR 81 and PD 81 and the type of order punishable by contempt is very restricted. It is usually an order that the judgment debtor cannot choose whether or not to comply with and cannot avoid simply by disengaging from proceedings (for example, search orders or asset freezing orders). Orders requiring the judgment debtor to provide information under CPR 71 are also often accompanied by committal orders providing for if the order is not obeyed. Therefore, committal is not really an enforcement method, but rather a sanction for failure to comply with a judgment or order.

ENFORCEMENT OF JUDGMENTS FOR THE DELIVERY OF GOODS

37. Enforcement of judgments for the delivery of goods is by means of warrants of delivery. A warrant of specific delivery requires an enforcement officer to seize the goods specified in the judgment with no alternative of recovering their value. A warrant of delivery requires the enforcement officer to seize either the goods specified in the judgment or their value.
38. The procedure to be followed is the same as enforcement of a money judgment by taking control of goods.

ENFORCEMENT OF JUDGMENTS FOR THE DELIVERY OF LAND

39. Permission from the Court is required to issue a warrant of possession unless the claim is against trespassers. Permission will not be granted unless every person in possession of the property is given notice of the possession and given the opportunity to apply for relief. Entry to a property can be obtained by the police if necessary and the Claimant is advised to attend to secure the premises once possession is obtained.
40. In the High Court, goods in the premises must be removed by the enforcement officer, but in the County Court this is not necessary.
41. If the occupier returns to the property after possession has been obtained, such persons can be removed under a warrant or writ of restitution. The application

is made without notice giving details of the wrongful re-entry and the Court only needs to be satisfied of a plain nexus between the original recovery of land and the need to effect further recorder of the same land.

ENFORCEMENT OF FOREIGN JUDGMENTS

42. At common law, a foreign judgment can be enforced in England and Wales by bringing an English action claiming the amount of the judgment as a debt. The foreign judgment gives rise to an implied contract to pay, which can then be enforced under English law if the Courts have jurisdiction.
43. The UK is party to a number of international conventions providing for the direct enforcement of foreign judgments, which have been incorporated into English law by:
 - a) The Administration of Justice Act 1920
 - b) The Foreign Judgments (Reciprocal Enforcement) Act 1933
 - c) The Judgment Regulation (The Lugano Convention and the Hague Convention 2005)
 - d) European Enforcement Orders (Council Regulation No 805/2004)
44. The above is subject to change depending on the outcome of Brexit negotiations. The enforcement of English judgments in other parts of the UK is governed by the Civil Jurisdiction and Judgments Act 1982, section 18, and Schedules 6 and 7.

COVID-19 AND THE FUTURE OF ENFORCEMENT

45. The Coronavirus Act 2020 ['CVA 2020'] received Royal Assent on 25 March 2020 and came into force on 26 March 2020. The CVA 2020 was passed as an emergency measure in response to the spread of the 2019 novel coronavirus disease (COVID-19) to protect the public by keeping people in their homes.
46. Additionally, CPR PD 51Z(2) caused all proceedings seeking to enforce an order for possession by a warrant or a writ of possession to be stayed for 90 days from 27th March 2020. CPR PD 51Z(2A) has clarified that the restrictions imposed by CPR PD 51Z(2) do not apply to claims against trespassers, applications for interim possession or applications for agreed case management directions.
47. The Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020 (SI 2020/451) (2020 Regulations), in effect from 25 April 2020, impose temporary restrictions on enforcement by creditors including the prevention of enforcement agents taking control of goods at residential premises and on highways while the restrictions preventing people from leaving the place in which they live, without a reasonable excuse, are in place. Therefore, neither the enforcement of money judgments through taking control of goods, or the enforcement of possession of land or goods, can currently take place as enforcement agents cannot work.

48. There do not appear to be any restrictions on applications being made to the Court for the other civil enforcement methods. However, such applications, especially those requiring a hearing, will be delayed by the reduced number of judges and judicial hours available. The additional demand on the reduced Court service will also lead to delays in orders for debtors to provide information and Court Officers will have reduced availability. As the Court will be giving preference to priority cases, an enforcement application has a greater chance of success if the enforcement method does not require an oral hearing.

49. The government have not confirmed when the restrictions on the use of enforcement agents will be eased, but they are likely to have significant delays when they are able to restart enforcement. Litigators can prepare for the easing of restrictions by considering enforcement which does not require an enforcement agent and making investigations into the assets of debtors.

This note is for general information only and is not and is not intended to constitute legal advice on any general or specific legal matter. For legal advice on particular cases please contact Ben Cressley, Senior Civil Team Clerk, on 0207 427 6810 to discuss instructing Counsel.

IAN CAIN
GOLDSMITH CHAMBERS
22nd June 2020