

ENFORCEMENT OF JUDGMENTS

1. Oral Examination

Strictly speaking this is not a method of enforcement as it does not produce any money. It is designed to obtain as much information as possible about the debtor's financial circumstances by questioning him/her under oath at court. Once that information has been obtained an informed decision can be made as to which of the various methods of enforcement (see below) is the most appropriate. A difficulty with oral examination is the length of time it takes to obtain the information. The court fixes an appointment several weeks ahead and more often than not the debtor does not attend on the first occasion. A fresh appointment has to be arranged and the debtor is warned that if he/she does not attend on that occasion they risk being committed to prison. Usually this threat will secure the debtor's attendance. Although some costs are awarded against the debtor for this exercise that amount is often significantly less than the costs actually incurred.

2. Attachment of Earnings

If the debtor is employed it is possible to apply to the court for an order directed to their employer requiring that employer to make deductions from the debtor's salary and apply those to the gradual discharge of the debt. The court calculates what is known as a "protected earnings rate" and the employer must ensure that no deductions are made which would result in the debtor/employee receiving less than this. A "normal deduction rate" is also fixed. This method can be quite effective provided the creditor is prepared to wait while the debt is repaid gradually in circumstances where interest is not always obtainable. The success of this method also depends upon the employee not changing or losing their job.

3. Garnishee Proceedings

This is an order directed to a third party who owes the debtor money requiring that person to pay the money instead to the debtor's creditor. The debt (e.g. the credit balance in a bank account) must actually be due at the date when the application is made for the garnishee order. It is often difficult to obtain the information required for a garnishee order although this information may be extracted at an oral examination.

4. Charging Order

If the debtor owns or has an interest in freehold or leasehold property it is possible to apply to the court for an order "charging" the debtor's interest in that property to secure the debt. The fact that there is a charging order in existence may encourage the debtor to either:-

- make instalment payments to reduce the debt gradually;
- sell the property and pay the debt from the sale proceeds; it will not itself produce any money.

However, an application can be made to the court after the expiry of six months from the date of the final charging order for an order for sale of the property and the payment of the debt from the sale proceeds. Sales are not often ordered by the courts where the amount owed is small in relation to the value of the property.

NB If the debtor is one of two or more owners of the property the joint owners can sell or mortgage the property without necessarily discharging the debt.

5. Warrant of Execution/Writ of Fi Fa

In the County Court the bailiff and in the High Court the sheriff can be asked to visit the debtor's premises to seize and sell moveable assets belonging to him. The bailiff charges a fixed fee. The sheriff charges a percentage of the amount seized, together with the costs of execution. The sheriff's officers can be quite effective if the debtor actually owns goods worth seizing and selling.

Certain types of property are exempt from seizure: specifically any assets in which any third party such as a hire purchase company has an investment.

6. Insolvency

This method can only be used where the amount owed is more than £750.

Where the debtor is self-employed or a limited company this is the usual route. It can be very effective if the company is worth preserving or if an individual has some means of raising funds. However, if insolvency does not result in the debt being discharged (at which stage the costs of the insolvency proceedings would normally also be paid) this route can be quite expensive even if undefended. It is possible to pursue this method of enforcement without first obtaining a judgment. However this should only be done where you have reasonable confidence that the debtor will not dispute his liability for the debt.

NB *The above notes are intended as general guidance only. Do not act on them alone. For more detailed advice on how these matters affect you please contact the person dealing with your case.*