

Enforcement – taking control of goods using writs and warrants of control

Even if you have obtained a County Court or High Court judgment against an individual or company, there is unfortunately no guarantee that they will pay any sums due under that judgment to you by the date provided in the order.

If this happens, then you may need to consider the various forms of enforcement that are open to creditors to seek to recover the sums that they are owed

One of the most popular forms of enforcement is where a court official is appointed to take control of the debtor's goods and to then sell them to raise funds to pay the person who is owed money under the judgment.

This method is popular as it is relatively quick and inexpensive (when compared to other methods of enforcement), and the procedures are fairly straightforward.

A writ or warrant of control instructs an enforcement agent (usually a High Court Enforcement Officer (HCEO) or County Court Bailiff) to seize and sell at auction enough of the debtor's goods in order to obtain funds to satisfy the money judgment. The goods seized will also need to cover the enforcement officer's costs of enforcement.

MATTERS TO CONSIDER BEFORE APPLYING FOR A WRIT OR WARRANT OF CONTROL

- Is the judgment debt due and enforceable? Judgments often provide a timeframe for payment of the monetary sum to be made. Such a deadline needs to have passed (without payment being made) before the judgment can be enforced. If payment is due to be made by way of instalments, the debtor has to have missed at least one instalment before it can be enforced.
- Does the debtor have sufficient goods/assets that can be sold to pay the debt? This can be difficult to establish unless you have a list of the debtor's assets. Corporate debtors may have assets, such as plant and machinery, which could be used. Only certain goods can be seized (see further below), and the goods must belong to the debtor and not a third party. For example, vehicles subject to hire purchase cannot be seized as the debtor does not own them. Creditors should also consider that the value of goods sold at auction may not be as high as the value put on them by the debtor.

- Check if the debtor is subject to any restrictions on enforcement. For example, the debtor may be entitled to breathing space under the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Moratorium) (England and Wales) Regulations 2020, or may be subject to some other insolvency restrictions, such as an Individual Voluntary Arrangement. It is worth carrying out checks to see if the debtor is subject to bankruptcy proceedings or winding up proceedings, as in this instance, you may want to join in those proceedings.

WHAT GOODS CAN BE TAKEN CONTROL OF?

Most goods can be taken by the enforcement officers for the purposes of enforcement, unless they are 'exempt goods'. The goods however have to be owned by the debtor, so if they are subject to hire purchase or some other finance agreement, then such goods cannot be taken.

Exempt goods include the following:

- Items or equipment necessary for use personally by the debtor in their employment, business, trade, profession or education, the aggregate value of which does not exceed £1,350.
- Items of clothing, bedding, furniture, household items and provisions needed to satisfy the basic domestic needs of the debtor and anyone in the debtor's household, including, but not limited to, a cooker/microwave, a fridge, a washing machine, bedding for the debtor and their family, dining table and equipment for the debtor and their family, one landline or mobile telephone, medical equipment, and any items required for the care of a person under 18, or an older or disabled person.
- Assistance dogs, guard dogs or domestic pets.

It is up to the debtor to show that the goods are either exempt or are not owned by them, and they

will need to provide proof to the enforcement officer of the same, such as a copy of any hire purchase or finance agreement. Goods that are jointly owned by the debtor and another person can be seized and sold. However, the enforcement officer will normally obtain an order from the court to determine how any sale proceeds are divided.

PROCEDURE

Once it has been established that the judgment is enforceable, the procedure is relatively straightforward, but it does depend on the level of the debt you are seeking to enforce.

- If the debt is less than £600, then the enforcement has to remain with the County Court bailiff.
- Any debts of over £600 may be transferred to the High Court for enforcement by the High Court Enforcement Officers, who are often seen as more effective (and less busy) than the County Court bailiffs.
- If the judgment is over £5,000, then it must be transferred to the High Court for enforcement.

Applications to the High Court are for a Writ of Control.

Applications to the County Court are for a Warrant of Control.

For both the High Court and the County Court, the judgment creditor should file a copy of the relevant request form and a draft order, together with a copy of the original judgment to the correct Court.

As mentioned above, for County Court judgments above £600, many judgment creditors will first apply to transfer the claim to the High Court for the purposes of enforcement, as HCEO are often less busy and seen as more effective than County Court bailiffs. Although this requires an additional step, the procedure to transfer from the County Court to the High Court for enforcement is usually straightforward.

TAKING CONTROL OF GOODS

There is a set procedure that enforcement officers are required to follow when taking control of goods. The enforcement officer may take control of goods on any day of the week but is prohibited from taking control of goods before 6:00am and after 9:00pm on any particular day.

There are three stages to the taking control of goods:

1. Notice must be provided to the debtor.
2. Taking control of the goods by entry into premises and securing the goods.
3. Notice must be provided after entry, and an inventory of goods seized must be given.

NOTICE TO THE DEBTOR

The enforcement officer must give the debtor at least seven clear days' notice of their intention to

attend the debtor's address for the purposes of taking control of goods. Note that Sundays and bank holidays are not included within this notice period. If a creditor believes that a debtor may seek to dispose of their goods during the notice period, they can request to the Court that this period is shortened. The notice needs to contain certain prescribed information about the debt, the court judgment, the amount due and how and where it can be paid, contact details of the enforcement officer and a deadline of when the debt must be paid by. There is no requirement for the enforcement officer to say on which date they will attend the debtor's address to take control of goods.

The notice can be delivered by hand, or by post, fax or other electronic communication to the address where the debtor lives or usually carried on a trade or business. It may be fixed to the outside of the property, so that it comes to the attention of the debtor. In the case of a company, it should be delivered or posted to the company's registered office or usual place of business.

The enforcement officer has a period of 12 months from the date of the notice to take control of goods. If they need to extend this timeframe, they must apply to the Court.

ENTRY INTO PREMISES AND SECURING THE GOODS

Again, there are set rules about enforcement officers entering premises and securing goods. The enforcement officer can either secure the goods at the premises where they find them, or remove the goods and secure them elsewhere. This must however be within a reasonable distance from the place taken. Alternatively, the enforcement officer may enter into a controlled goods agreement with the debtor, whereby the goods remain with the debtor, but the debtor acknowledges they belong to the enforcement officer and agrees not to remove or dispose of them before the debt is paid.

There are also rules about how the enforcement officers can effect entry into a premises. They can only enter or re-enter by any door, or any other means by which entry is normally gained to a premises. For residential premises, the enforcement officer cannot use force to gain entry and can only gain entry if they are allowed in by the person. If no one is present, they can only enter if a door is left unlocked. However, for business premises, they may use reasonable force to enter the premises, if no one is living there.

NOTICE FOLLOWING ENTRY AND INVENTORY OF GOODS

Once the enforcement officer has taken control of the goods, they must provide the debtor with a notice setting out certain prescribed information, including details of what they have done, a list of any goods that have been taken, and the amount due as at the date of the notice. They must also confirm when payment has to be made by to prevent the goods from being sold.

SALE OF THE GOODS BY THE ENFORCEMENT OFFICER

If the debtor fails to make payment of the outstanding debt, or fails to set aside or suspend the

enforcement, then the enforcement officer is required to sell the goods. The judgment creditor or the enforcement officer cannot keep the goods.

The enforcement officer must take reasonable care of the goods they have taken prior to any sale. They must then obtain the best price reasonably obtainable for the goods.

As such, enforcement officers will often sell goods at public auction to comply with the above requirement.

There must be a minimum of seven days between the goods being taken by the enforcement officer and any subsequent sale.

If the sale of the goods equates to more than the outstanding debt (and the agent's cost), any surplus must be paid to the debtor.

GET IN TOUCH



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The lawyers have incomparable client service skills. They are very clear and always make sure they understand the picture, even if it is a complicated one.

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