Guide to Judgment Enforcement for Businesses

The Sheriffs Office®

We recover more for you

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Disclaimer: Please note that this guide does not constitute legal advice. The author has used his best endeavours to make this guide as accurate and complete as possible, but requests that the reader be aware that the law of England and Wales frequently changes. The author strongly advises the reader to take legal advice before embarking on any enforcement action.

The Sheriffs Office
Guide to High Court Enforcement for businesses

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1. Introduction

Thank you for reading this guide to the process of debt recovery through High Court Enforcement Officers (HCEOs).

This guide has been written to support business creditors who have outstanding debts to recover.

We cover the steps you take in order to obtain a judgment, then go through the alternative methods of recovery, with the bulk of the guide then focusing on High Court enforcement in detail.

Legislation covered

This guide incorporates the changes to the enforcement of judgments under Part 3 of the Tribunals, Courts & Enforcement Act 2007. These changes are detailed in these regulations:

- The Taking Control of Goods Regulations 2013 - how Enforcement Agents (EA) seize, remove or sell goods
- The Taking Control of Goods (Fees) Regulations 2014 - what fees EAs can charge and when they can charge them
- The Certification of Enforcement Agents Regulations 2014 – the training and certification that all enforcement agents must complete
- The Civil Procedure (Amendment) Rules 2014 No 407 – the framework clarifying the implementation of some of the legal processes
- The Tribunals, Courts and Enforcement Act 2007 (Consequential, Transitional and Saving Provision) Order 2014 – the rules detailing the transition of old regulations to new

The fees detailed in this guide are correct at the time of publication. However, fees are occasionally amended, sometimes with short notice, so we recommend you check you are reading the latest version of this guide. You can download the latest version from our website.

Next steps

We hope you will find all the answers to your questions here, but please do call us on **0333 001 5100** if you would like to find out more or if you would like to instruct us to enforce your judgment.

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2. Obtaining judgment

Once you have determined that payment is not going to be forthcoming, there are a number of steps you need to undertake to obtain a judgment:

- Send a letter before action
- Participate in dispute resolution before starting litigation (a claim through the courts)
- Start your claim

In this section, we will also cover the steps that you can take when obtaining judgment to help make your case enforceable.

If you are awarded judgment but the debtor still does not pay (the court will allow a set time period for payment to be made, normally 14 days), then the next step will be to have the judgment enforced, which is covered in the rest of this guide.

Letter before action

A Letter Before Action (LBA) confirms the exact amount of monies owed by the debtor and gives them formal warning that if payment isn't received by the date requested, usually within 14 days, then court proceedings may commence.

It also makes it clear that any proceedings issued will also include a claim for Court fees and costs where applicable.

Alternative dispute resolution

The court will expect you have attempted to resolve the dispute before making a claim. The main forms of dispute resolution are:

- Mediation - where an independent third party helps the disputing parties to come to a mutually acceptable outcome
- Arbitration - where an independent third party considers the facts and takes a decision that’s often binding on one or both parties
- Early neutral evaluation – where a third party gives an informed opinion on the dispute
- Ombudsman schemes

The idea behind them is to enable a dispute to be settled without going to court, or, if that cannot be avoided, to make the proceedings more efficient.

There are specific pre-action protocols for certain types of dispute – you can view the full list here on the Ministry of Justice website. For those cases where there is not a specific protocol, you will need to comply with the overall practice direction.

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Going to court

If the creditor does decide to go to court, he will need to state on the claim form whether he has complied with the Practice Direction or the relevant protocol.

Should the case go to court, the court will expect both parties to have complied with the overall Practice Direction or the specific pre-action protocol, if one exists for that case. The court may decide that these have not been complied with if one party has:

- Not given enough information for the other party to understand the issues
- Not acted within the set time limit for the pre-action protocol, or within a reasonable time if there isn't a specific time limit
- Unreasonably refused to consider ADR
- Not disclosed requested documents without good reason

The court may apply sanctions, for example a stay until the steps that should have been taken are undertaken, that the party at fault has to pay costs, possibly on an indemnity basis, or that the interest rate payable on a judgment money is changed.

For a creditor at fault, this could mean receiving no interest or a lower rate of interest. For a debtor at fault, they may be ordered to pay more interest.

Debt pre-action protocol for business creditors and individual debtors

The debt pre-action protocol came into play in October 2017. The purpose is to encourage communication, and therefore dispute resolution, including the agreement of a suitable payment plan to avoid court proceedings.

Who it applies to

The pre-action protocol applies to all businesses, including sole traders, wanting to make a claim against an individual consumer for an outstanding debt.

The protocol outlines the procedures and conduct that the court expects the creditor to have carried out prior to the start of official court proceedings.

This protocol does not apply if the debt is covered by another type of protocol (for instance construction or engineering, or mortgage arrears, or those issued by a government organisation for example HMRC).

It also does not apply to statutory debts (for example, owed to a government department) or restitutional claims (for example, a payment made in error)

The protocol complements any regulatory regime to which the creditor is subject and if there is an inconsistency, then the regulatory obligation will take precedence.

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What do creditors need to do?

Creditors will be expected to have sent a clearly dated Letter of Claim by post, and should clearly state the following information:

- The total debt summary
- Whether interest or other charges are being added such as administration fees
- If the debt arises from an oral agreement, who made the agreement, what was agreed, and when and where it was agreed
- If the debt arises from a written agreement, the date of that agreement, the parties to the agreement and enclosing a copy or stating that a copy can be requested from the creditor
- A statement of account for the debt, including the amount of interest and any other charges imposed since the debt was incurred
- Details of how the debt can be paid and what the debtor can do if it wishes to discuss payment options
- If regular instalments are being offered, an explanation of why this isn't an acceptable arrangement and why court action is being considered.
- A reply form example [Downloadable here]

What happens next?

If the individual debtor has not responded to the Letter of Claim within 30 days of the date of the letter, the creditor may then start court proceedings.

The court will look at the documentation and adherence to this protocol and will consider the non-compliance when giving their directions for the management of proceedings going forward, so this legislation is important for anyone with a business or who is a sole trader doing business with individuals.

If an arrangement is made, but the debtor subsequently defaults, the creditor must start the entire pre-action protocol process again.

Scope for abuse?

Whilst the government is clearly bringing in new legislation to bring about positive changes, there is certainly scope for debtors to use the new pre-action protocol to push their claim right to the time limits, at the various stages, or to use any procedural error by the creditor, however minor, to create further delay.

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Starting your claim

You can either make your own claim, or use a solicitor to manage this for you. If your case is for a significant sum of money and/or is complex, we would recommend that you instruct a solicitor to ensure that key steps are not missed or done incorrectly.

If you choose to make the claim yourself, you will be what the courts refer to as a “litigant in person”.

There is a Government website for managing your own claims called Money Claim Online. The court fees for obtaining a judgment vary depending on the value of the claim. The fees are laid out in the Government form EX50 and you can find a link to these in the useful links section of this eBook.

Using Money Claim Online

Money Claim Online (MCOL) is a service provided by the Ministry of Justice for claimants to make a money claim through its bulk court centre at Northampton (CCBC). We are often asked by clients for details on how to use it, so here is a simple guide.

Both individuals and organisations can use MCOL. You and your claim must comply with all the following:

- Your claim is for a fixed amount no more than £100,000
- Your claim is against no more than two persons or organisations and all defendants are aged 18 or older
- The defendant is based in England or Wales and has a valid postcode
- You must also be based in England or Wales and be aged 18 or older
- You must have a credit or debit card to pay the court fee online
- You need a valid email address

If any of the following apply, then you will need to use your local County Court instead of MCOL:

- You are getting any help paying your court fees (e.g. you are on income support) or are receiving Legal Aid
- You are suing for personal injury or support
- You are suing the Government
- You are suing a landlord under the tenancy deposit scheme
- The defendant lacks “mental capacity”
- The court has prevented you from using the court to make claims because you harass others through court cases, i.e. you are a “vexatious litigant”

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Making a claim

These are the steps you will need to go through to make a claim:

1. Register with the Government Gateway, either as an individual or an organisation, and start your claim. If you registered before 18th May 2010, you will need to re-register.
2. Add in all the details of the defendant (title, full name and address) and details of the claim. If you need to give more information than there is room for, put a summary in, and state that you are sending the details separately
3. **IMPORTANT!** Make sure you get all the details correct – if you need to change any later, you will need to apply to the District Judge for permission to change. A fee is charged and there is no guarantee the judge will give permission
4. If you are sending more details separately, send these to the defendant within 14 days with a Certificate of Service form. Also send them to the local court, once one has been allocated
5. The exact amount including interest. This is normally at 8% per annum. You can work out the annual interest by multiplying the amount you are claiming for by 0.08 (i.e. 8%). Divide this amount by 365 (days) to get the daily interest amount, then multiply this by the number of days since the debt has been owing
6. Card details to pay the court fee and your email address. Court fees vary according to the size of the claim – please check Form EX50
7. If there is a statement of truth requested at the bottom, you can type your name here for MCOL
8. You can keep your partially completed form for 28 days. Once you submit the claim, it will be sent to the defendant in one to two days, along with the forms they need to respond
9. Your case will be automatically transferred to either your or your defendant's local county court. You don't have to attend court if you choose not to
10. If the defendant ignores the claim and the judge upholds the claim, you will be awarded "judgment by default". The defendant will be given 14 days to pay. If they don't pay, then you can start enforcement action
11. If the defendant admits the claim, you will be awarded judgment. Make sure they admit that they owe the full amount claimed. They will have 14 days to pay, otherwise you may need to start enforcement action
12. If the claim is disputed, the judge will listen to the evidence and either award a judgment or dismiss the claim

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If you need more information, the Ministry of Justice has an FAQ section on their website and you can contact the MCOL helpdesk on 0845 601 5935 or 01604 619 402 (Monday to Friday, 9.00 am to 5.00 pm), or by email - mcol@hmcts.gsi.gov.uk.

You can set up your Government Gateway account online.

Making your case enforceable

It may sound so obvious – of course you would want to make your case enforceable, otherwise why go to all the effort of getting a CCJ then High Court Writ! But so often we find that just the smallest incorrect detail can render all that work redundant, leaving you out of pocket and out of luck, even when the case was a "dead cert".

Here's a checklist worth keeping close at hand to increase your chances of making your case enforceable and collecting your money.

- Have the correct debtor
- Use the correct name for the debtor
- Name all parties if the debtor is a "trading as"
- Have the correct address or addresses for the debtor
- Check the debtor is not subject to insolvency proceedings
- Make sure you sue for the correct monetary amount owed

Have the correct debtor

If your customer is ABC Services Ltd, then issue proceedings against ABC Services Ltd, not an incorrect party such as a company director or the employee who actually placed the order, unless this person signed a personal guarantee (and thus became a guarantor).

Use the correct name for the debtor

A case can become unenforceable if you don't have the debtor's name 100% accurate: for example, putting down ABC Services Ltd when the correct name is ABC Services UK Ltd, or ABC Services when it should be ABC Services Ltd (or vice versa).

Even spelling their name incorrectly, whether for a business or an individual, can ruin your chances. However, the good news is that it is easy to check the correct business name. Companies House offers a free Webcheck service for limited companies.

If the debtor is an individual and you want to be sure you have the correct person, it is possible to run a trace on them. This is normally done for a small fixed fee.

Name all parties if the debtor is a "trading as"

Don't just sue ABC Services as it is difficult to enforce against this. Use "John Smith T/A ABC Services" and any other partners of the business to cover all bases. Don't forget that many limited companies also often trade as another name, so put both names in.

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Restaurants in particular can be difficult. For example, you may sue “Great Food Restaurant” but there is almost always a limited company that is the actual owner. You may find that you actually need to sue XYZ Restaurant Group Ltd T/A Great Food Restaurant.

You then need to ensure that when you supplied the goods or services that XYZ Restaurant Group Ltd was the owner at that time. Many restaurants change hands regularly, often to relatives or even with the same directors but with a different registered company.

If you are to sue a trading name, ensure that you put the words “A Firm” in brackets after the name. However, we would always recommend you name the individual (s) who run it as well.

Have the correct address or addresses for the debtor

This is particularly important if you are issuing proceedings. You may decide to sue Joe Bloggs, but you use the old address that he left a year ago. Even if we find him, he will have grounds to have judgment set aside and proceedings may have to be reissued at his new address, which then may be defended. This would also give the debtor time to hide/transfer any assets.

If you do subsequently find the HCEO needs to attend a different address where the debtor is now located, the HCEO will have to serve a new notice of enforcement on them, giving a further seven clear days’ notice.

If you use the registered address for a limited company, this could be their accountant’s offices. It is worth checking this and then looking for a trading address. You can check with Companies House or look at the debtor’s own website where they usually publish a phone number and sometimes the trading address, so you can call to check.

When dealing with individuals, some claimants drive by the debtor’s house or know the debtor lives at a property. You can check with BT Online Directory Enquiries, to see if the debtor is the phone account holder.

Check the debtor is not subject to insolvency proceedings

If they are, you may well decide that the time and cost of suing would be good money thrown after bad. You can check with Companies House to find out if a company is in Liquidation or Administration with an “L” or an “A” next to the name.

The Insolvency Service allows you to check individuals and “trading as” names for bankruptcy and IVA. They also have a helpful “Guide for Creditors” on their site.

There is also more information purchased by companies such as The Sheriffs Office where we can check for details such as other judgments, directors’ details and accounts, should you need more data.

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Make sure you sue for the correct monetary amount owed

We have seen cases where some claimants have added spurious figures for loss of earnings and other unrealistic amounts which cannot be substantiated. These will often be defended and judges do not look kindly on these claims. You are entitled to add judgment interest at 8% from the date of judgment if you choose

Following this simple check list will greatly increase your chances of getting a case that can be enforced – and that means a much better chance of receiving the money you are owed!

Tracing a debtor

An important part of the process may be actually locating the debtor, either an individual, a sole trader or a company director.

Before you start the trace, try to gather as much information about the person as you can, particularly their name, last known address, telephone number, vehicle registration and date of birth.

Probably the most useful of these is the date of birth, as this allows a trace with a high degree of accuracy, as 90% of the records we have access to hold a precise date of birth. A vehicle registration and telephone number (personal and business numbers) also help in tracing people.

The sources of data that can be searched are quite wide-ranging. They are all Data Protection compliant of course, and include:

- Land Registry
- Birth, death and marriage records for England & Wales from 1984-2005
- BT database (updated daily)
- UK Directory Enquiry database
- Electoral Register
- DVLA - registered vehicle keeper details are only available if the case is being enforced by an HCEO
- HPI database - giving details of any financial interest, number-plate changes and insurance write off information of a vehicle
- Companies House

You can also make some preliminary checks yourself to find out whether it is worth your while to try to enforce the case. You can check whether an individual or sole trader is insolvent by checking the Insolvency Register, or find out if a company is still trading at Companies House.

Many HCEOs provide tracing services, often offering a basic trace and a more detailed one where necessary. If you have any uncertainty about the location of your debtor, a trace can be worthwhile to improve the chances of successful enforcement.

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3. Different methods of recovery

Before we go into the detail of High Court enforcement, let's have a brief look at the alternative options also available to you.

Request for information

If you already have a judgment against the individual, you are entitled to apply for an order to obtain information to bring the debtor to court to answer your questions on what assets they have.

When requesting the order, you will need to provide their name and address, details of the judgment, the questions you want to ask and the documents they must bring to court. The debtor must attend or may be fined and/or imprisoned if they do not. Once you have the order you must arrange for it to be personally served and provide an affidavit to the court that you have done so.

Having undertaken all your research and discovered that the debtor does have assets that can be realised to repay your debt, you can apply for your judgment to be transferred up to the High Court for enforcement by an HCEO.

Attachment of Earnings Order

Once you have a County Court Judgment (CCJ) against an individual debtor, you can ask the court to order their employer to deduct money from their salary. This is paid to the court, which then pays you. If the employer refuses, they can be fined. The court reviews the debtor's income and expenditure and determines the instalment value. If the debtor changes employer, you need to make another application.

Advantage – as long as they are employed, you are guaranteed to receive the instalments.

Disadvantages – the court may order a very low value instalment, thus taking a long time to recover the debt. If they lose their job, you have to start again and may find few assets to take into control if they are unemployed. The process can take considerable time.

Charging Order

Again to be used against an individual debtor, this allows you to apply to the court for an order so that, should their property be sold, you may be paid the debt plus interest and costs if and when the property is sold. All joint owners and other secured creditors, including the mortgage lender, must be served with the application for the order. A charging order can also be made against shares.

The debtor must either fully or partly own the property. It is advisable to check this with the Land Registry, as well as checking whether there are other charging orders against the property (all charging orders are registered with them once made and stay there until the debt is cleared).

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Advantage – if this is the only asset available, you may get your money (eventually).

Disadvantages – the property may never be sold. You can apply for an Order for Sale from the court, but this can be difficult to get. There may be a large mortgage on the property and/or, as is often the case, other charges registered against the property.

Third Party Debt Order

This is made against a third party holding money on behalf of the debtor, for example their bank or a customer owing the debtor money. You need to try to make sure there actually is some money in the bank account, otherwise this method will fail.

Advantage – if granted this can be effective if there is money available.

Disadvantage – if the account is overdrawn, for example, on the day the order is enforced, then you will not receive any money and will have no further recourse. They can be time consuming and difficult to get.

Bankruptcy

This is for use against an individual debtor for undisputed debts over £5,000. You don't need to get a judgment first; you can simply send a statutory demand giving them 21 days in which to pay in full. If they don't pay, you then issue a bankruptcy petition (you have four months from the statutory demand in which to do this). If the debtor is made bankrupt, their house may be sold to pay the debts.

Advantage – the threat of bankruptcy may be enough to force payment.

Disadvantages – if they really are unable to pay, the threat will not work. The appointed receiver will pay creditors (secured creditors first), so there is the risk you will receive little or nothing. The cost of making a debtor bankrupt is high, likely to be in the region of £1500 to £2000.

Winding up

This is for use against a company for debts over £750. You don't need a judgment first, but can go straight to a statutory demand. If payment isn't received, the next step is a winding up petition, which must be advertised at least seven days before the hearing in the London Gazette. This usually leads to banks freezing bank accounts. If the petition is granted, a liquidator is appointed to realise and distribute assets amongst creditors.

Advantage – the threat may be enough to force payment

Disadvantage – having a company wound up will cause directors inconvenience, but will not affect their personal assets (unless they have given personal guarantees). If they have many creditors chasing them, they might actually turn it to their advantage and you still don't get paid. The cost is also high, likely to be in the region of £1500 to £2000.

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Enforcement of a County or High Court judgment

This can be done either by a County Court Bailiff (CCB) or HCEO. HCEOs have more powers and do tend to recover more debt, principally because they are paid on collection. CCBs can only enforce judgments up to £5,000, whereas HCEOs can enforce judgments above £600, with no upper limit.

Advantages – a fast and effective method of recovering the debt, interest and fees. Where enforcement is successful, there is no cost to the creditor.

Disadvantage – if the debtor has no assets or is bankrupt/insolvent/in liquidation, there is nothing to seize to then sell to recover the debt.

It is widely regarded that, for the majority of cases, High Court enforcement is the most effective method of recovering the money you are owed.

High Court Enforcement Officer or County Court Bailiff?

If you have chosen to have your judgment enforced, you then have the choice of using either County Court Bailiffs (CCB) or HCEOs. The judgment debt, interest, court fees and enforcement costs are recoverable from the debtor through either route.

HCEOs can enforce judgments of £600 (including court costs) and above against debtors with assets anywhere in England and Wales.

- Judgments below £600 can only be enforced by CCBs
- Judgments between £600 and £5,000 can be enforced by a CCB or an HCEO
- Judgments of £5,000 and over can only be enforced by an HCEO

Employment tribunals and ACAS settlements of any monetary value may be enforced by an HCEO, as there is no minimum.

High Court Enforcement Officers (HCEO)

HCEOs are authorised by the Lord Chancellor and work privately or in private companies.

HCEOs work under the authority of a writ of control. This is issued when a County Court Judgment, Order or Employment Tribunal/ACAS Settlement Award is transferred to the High Court for enforcement.

These are transferred up using forms N293A, N471 and N471A respectively. There is a fixed court fee to obtain the writ. The transfer process normally takes between 5 and 21 days.

If successful, the HCEO will recover your judgment debt, your court costs, the court transfer up fee, interest at 8% (calculated on a daily basis) and the enforcement fees from the debtor.

If the HCEO is unable to recover the judgment debt, the Compliance Fee is paid by the creditor. A notice of enforcement must be served on the address where enforcement is to take place.

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The compliance fee is not normally applied to Employment Awards and ACAS Settlements. Other than the compliance fee, the HCEO receives no income for an unsuccessful enforcement.

As a result, HCEOs tend to have significantly higher collection rates than those of the County Court Bailiffs, who are salaried without any financial incentive to collect.

Unlike the County Court Bailiff, HCEOs are permitted to force entry into commercial premises to enforce. County Court Bailiffs are required to seek permission from the court to enter commercial premises by force.

County Court Bailiffs

CCBs are salaried civil servants employed directly by the court service. They can enforce judgments up to £5000. They work under the authority of a warrant of control, which can be requested from the County Court for a fee.

County Court Bailiffs will collect your judgment debt, your court costs, your warrant cost and interest (if prescribed) from the debtor.

In summary

Success rates:

- HCEOs normally have far higher collection rates due to the financial incentive of fees only being paid on success
- Only HCEOs can force entry to commercial premises and buildings detached from residential living quarters
- Only County Court Bailiffs can enforce on judgments below £600 (at present)

Time scales:

- The process of gaining a warrant of control (CCB) is normally a little faster than that of transferring up and gaining a writ of control (HCEO)
- Given the work load of CCBs, it can take much longer to start enforcement with a warrant

Enforcement costs:

- The judgment debt, interest, court fees and enforcement costs are collected from the debtor through either route
- A writ of control (HCEO) court fee
- Compliance Fee if enforcement is unsuccessful

Court fees are subject to change by HMCTS. The current court and enforcement fees are on our website.

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4. The transfer up process

County Court judgments

When a CCJ is issued, we would recommend that the creditor transfer it up to the High Court for enforcement by an HCEO.

When the judgment is transferred up to the High Court, a writ is issued. Most judgments are for a monetary sum and if that figure is over £600 (including court costs) a writ of control can be sought. This writ is comparable to a warrant of control and commands the HCEO to take control of goods from the debtor for sale to raise sufficient funds to recover the debt. Judgments over £5,000 can only be enforced by an HCEO.

Alternatively, the judgment may be for possession of property or land, or for the recovery of specific goods, in which case a writ of possession or writ of delivery may be sought. You can read more about the different types of writs in Section 5.

This applies to the vast majority of judgments, with the exception of a judgment arising from a regulated agreement under the Consumer Credit Act. Currently, these may not be transferred to the High Court for enforcement by an HCEO.

The transfer process is started with the completion of Part 1 and Part 3 of Form N293A. During this process, you will need to provide the judgment details and a copy of the sealed judgment or order. The form should be signed by the creditor or their solicitor. At The Sheriffs Office, we work with a firm of solicitors who manage the transfer up process on your behalf, ensuring the process is completed correctly and they will sign the form on your behalf where required.

Providing everything is in order and the judgment still stands, then the court will seal Part 2 of the Form N293A, authorising the transfer to the High Court for the purposes of enforcement. However, it remains a County Court judgment.

Once the Form N293A has been sealed, it is returned and can then be submitted to the High Court or a local District Registry (a High Court section within many County Courts) with a completed form no.53 writ of control.

There is a court fee which must be paid at the same time the forms are submitted. The fee is paid to HMCTS (Her Majesty's Courts and Tribunals Services) and is non-refundable. However, the fee is added to the costs to be recovered from the debtor.

The High Court or District Registry will check the details of the forms and, providing everything is in order, will seal the writ of control accordingly. Once this is received by an HCEO he can immediately start the enforcement process against the debtor.

Please be aware that this entire process can take up to 28 days, although we will normally manage this within less than a week.

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Some creditors often expedite matters by attending the court personally and having the Form N293A sealed while they wait. This could cut the entire process to just a matter of days.

Whilst some HCEOs charge for this service, The Sheriffs Office offers this entire process free of charge.

High Court judgments

These do not need to be transferred up for enforcement; however you still need to request a writ by completing a PF86A form. Simply complete a PF86A form and send, along with a copy of the judgment and your letter of instruction to an HCEO and they will obtain the writ of control on your behalf and complete execution.

However, there is still a court fee for the issue of the writ of control, which is recoverable from the debtor, should enforcement be successful, and a compliance fee if unsuccessful. Fees are shown on our website.

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5. Fees associated with High Court enforcement

The Taking Control of Goods (Fees) Regulations 2014 have completely changed the way HCEOs work and the associated fees.

The enforcement process is set into four stages, with fees assigned to each stage. This certainly clarifies the process for all parties, especially for debtors.

HCEO fees are recovered in full from the judgment debtor when enforcement is successful. If enforcement is unsuccessful, as judgment creditor you only have to pay a compliance fee. You do not pay any other costs associated with the enforcement of your writ. Please see below for further details.

Compliance stage

Once the HCEO receives your instruction they will apply the fee for this stage. Upon receipt of the sealed writ of control, the HCEO will send a 'Notice of Enforcement' to the judgment debtor.

The notice of enforcement must be sent to the debtor personally, giving them 7 clear days (excluding Sundays and bank holidays) to pay the sums due in full, at the place, or one of the places, where the debtor usually lives or carries on a trade or business.

If the debtor is a company or partnership the notice must be sent to the place, or one of the places, where the debtor carries on a trade or business or the registered office. Delivery can be by post, fax or other electronic means such as email.

If the debtor pays in full – the judgment amount, interest, court fees and the enforcement fee for the compliance stage - after receiving the notice, the enforcement process is concluded.

Enforcement stage 1

If the debtor fails to make contact with the HCEO or requests to pay by instalments during the compliance stage, an EA will attend their premises to take control of goods.

This stage is known as Enforcement Stage 1 and the fixed charge at this point is £190 plus 7.5% of the sums to be recovered over £1,000, plus VAT. For example, if the outstanding debt was £3,000, the 7.5% would only be charged on £2,000. The sums to be recovered are the judgment debt, court costs and execution costs.

If, when the EA attends, the debtor pays in full immediately or agrees to an acceptable instalment arrangement, then the matter ends there.

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Enforcement stage 2

If the debtor refuses either to make any payment or to enter into an acceptable instalment arrangement covered by a controlled goods agreement, then the matter moves to Enforcement Stage 2.

If a payment arrangement, with a signed controlled goods agreement, is subsequently broken, the EA will re-attend the property either under Enforcement Stage 2 or the Sale or Disposal Stage dependent upon the circumstances so far.

The fee for Enforcement Stage 2 is a flat £495 plus VAT.

Sale or disposal stage

Should enforcement get to the point where goods actually need to be removed, the enforcement progresses to the Sale or Disposal Stage.

The fee for this stage is £525 plus 7.5% of the sums to be recovered over £1,000, plus VAT. The costs of removal are normally included in this sale stage fee.

However, if the HCEO anticipates exceptionally high removal costs far greater than the sale stage fee, for example specialist equipment and personnel to remove an aircraft, he can apply to the court to have these added to the amount payable by the debtor.

The only other fees chargeable (without application to court) are for disbursements such as locksmiths, storage and auctioneers fees.

Court fees

There is a court fee for transferring a CCJ to the High Court for enforcement, which results in the award of the writ of control. If successful, this fee is recovered in full from the judgment debtor.

The only other court fee is the renewal fee, should you need to renew your writ of control beyond its initial 12 months' validity. A renewal fee may also be recovered from the debtor if enforcement is successful.

There are two types of renewal:

- Ex parte – where the application is dealt with without a hearing and notice of the application does not need to be served on the parties beforehand
- On notice – where it is heard at a hearing in a court and notice is served on all parties involved

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The compliance fee

Once the HCEO receives your instruction they will apply the fee for this stage. Upon receipt of the sealed writ of control, the HCEO will send a 'Notice of Enforcement' to the judgment debtor as part of the Compliance Stage.

The compliance fee is added to the sum recoverable from the debtor. In the event that it is not possible to enforce the writ, the compliance fee is then payable by the creditor to the HCEO to go some way to covering the costs the HCEO has incurred. Enforcement may not be possible for a variety of reasons, including debtors in insolvency or those that have moved address.
This fee is triggered by the sending of the notice of enforcement and is payable by the creditor in the case of unsuccessful enforcement.

The compliance fee is, like the court fees, something to be weighed up by the creditor when determining how likely it is their debtor will be able to pay and so assess what investment they will make in recovering the debt. There are also steps that creditors and their solicitors can take to increase the chances of a successful enforcement – please see Section 2 above.

Other fees

Occasionally there may be the need for HCEOs to charge fees to the creditor. It is therefore the creditor's responsibility to inform the HCEOs of the following.

- Creditors should notify the appointed HCEO's office of all payments received and other contact with the debtor.
- Creditors must not request the suspension of a writ or make direct payment arrangements with debtors without appropriate notification and payment of fees due to the HCEO.

See *High Court Enforcement Officers Regulations 2004, SI 2004/400, reg 13(3)*

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6. Enforcement of writs by an HCEO

HCEO rights of entry

There are many claims regarding the rights of entry of the HCEO acting under a writ of control, many of which are under-exaggerated, over-exaggerated or just plain untrue.

However, the HCEO does have advantages compared to the powers afforded to the Certificated Bailiff, the County Court Bailiff and the debt collector when trying to collect the monies due to a creditor.

Dates and times of enforcement

Enforcement agents are permitted to enforce 7 days a week, except for Bank Holidays and Christmas Day. The time of visit will take place between 06:00 and 21:00, unless the debtor is a commercial entity trading outside those hours, for example a night club.

Residential premises

The EA may only use normal routes of entry to access the premises to which the writ directs him. They can then enter where a door is open, opening further to aid entry if required. They may also use the door handle to gain access when the door is unlocked. Under the new regulations, they may no longer gain access via a window.

Once inside, they may also break down the inner doors of the property to seek the goods of the debtor. The EA may not be forcibly ejected; however, if they are, they can now force re-entry back into the property.

Furthermore, they may force entry to a garage, outhouse, stables or barn providing it is not physically attached to, and form any part of, the residence.

Commercial premises

The EA can force entry to commercial premises to levy on a first visit or any subsequent visit to remove goods, providing the property is not physically attached to, and form any part of, a residential dwelling, although an application to the court for permission may be advisable.

Prior to forcing entry, the enforcement agent should have a genuine reason to believe that goods of the debtor are contained within. They should make reasonable enquiries as to whether the property is rented, contacting the landlord if necessary.

Controlled goods agreement

If the debtor has signed a controlled goods agreement, then entry may be forced by the EA to remove the controlled goods should payment not be made within the timescales specified under Enforcement Stage 2. See below for further details.

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Registered offices

Given the requirement to serve a notice of enforcement for each address where enforcement is to take place, we suggest that the creditor either checks this themselves before the notice is served, or that they instruct their HCEO to run a trace on the debtor.

This is because registered offices, particularly for smaller businesses, are often the premises of their accountant and it is unlikely that goods of the debtor will be found here.

If the registered office is the home of a director then the EA is bound by the rights of entry as per residential premises above.

Director's home addresses

The enforcement agent may visit the home of a director of a limited liability company if it is either the registered address or the business trades from that address. However, they are bound by the rights of entry as per residential premises above.

Third party premises

The writ of control allows the enforcement agent to enforce at an address where if the debtor is an individual, they reside or carry on a trade of business. Where the debtor is a business the EA may attend their registered office or any trading addresses. The EA cannot enter the premises of a third party (where the debtor does not reside or trade) without the permission of the court.

Exempt addresses

The enforcement agent may not levy execution at royal residences and diplomatic premises. However, it is worth checking the property details thoroughly. For example; many palaces are not deemed "royal residences".

Which goods may be taken into control?

The writ of control commands the HCEO to take into control the goods of the debtor in order to sell (normally at auction) and raise the money to clear the debt. This however is a "means to an end" and in reality goods are rarely removed, as this very action prompts the debtor to make the payment that is due: less than 1% of our cases in the last 12 months have resulted in removal of goods.

The enforcement agent can take into control a wide range of goods within the debtor's premises on the highway, including but not limited to:

- Vehicles, boats and aeroplanes
- Stock and machinery
- Household furniture
- Jewellery and art
- Money, bank notes and promissory notes (cheques)
- Bonds, shares, securities and deeds
- Livestock and animals
- Firearms

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- Jointly owned property (i.e. goods owned by a married couple)
- Items held by the police
- Goods on finance (providing sale is agreed by the finance company)

The main areas where items cannot be taken into control are:

- Bedding, clothing, furniture and provisions that the debtor and their family need for a basic level of domestic life
- Items reasonably required for the care of a person under 18, a disabled person or an older person (over 65)
- Perishable goods: refrigerated foodstuffs, fresh flowers etc.
- Vehicles with a valid disabled person's badge, vehicles used for police, fire or ambulance purposes or a vehicle with a valid British Medical Association badge or other health emergency badge because it is being used for health emergency purposes
- Assistance dogs, sheep dogs, guard dogs and domestic pets
- Tools of the trade: those needed by the debtor to do their job or run their business, for example tools, books, vehicles etc., but only to a value of £1,350

However, these goods must be used solely by the debtor for the purposes of his or her work to fall under "tools of the trade". For example, a commercial van that is also used by the debtor's work colleague or spouse is available for seizure.

"Tools of the trade" cannot be claimed by partnerships or limited companies.

However, the enforcement agent may take luxury or items of value that are needed for basic domestic life and replace them with similar goods of a lower value. This form of enforcement whereby removal *and* replacement takes place is extremely unusual.

Having taken goods into control, the EA will provide the debtor with a written valuation of the goods. The EA may take control of goods to the value of the sum outstanding and an amount in respect of future costs. He may take goods of a higher value if there are insufficient goods of a lower value. The EA may then either

- Secure the goods on the premises
- Secure the goods on the highway
- Remove and secure them elsewhere
- Enter into a controlled goods agreement

Goods may be secured on the premises by locking them in a cupboard, room, garage or outbuilding, fitting an immobilisation device or, in the case of commercial premises, either remaining on site or securing the entire premises.

Vehicles must be immobilised to secure them, unless the debtor gives the enforcement agent the keys. At the time of immobilising the vehicle, the EA will give the debtor a Notice of Immobilisation. Unless the debt is paid in full or a part payment is agreed, after two hours the EA can remove the vehicle and put it into storage.

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If goods are not removed, the debtor is asked to sign a statement known as a controlled goods agreement, confirming that neither they nor anyone else will remove or damage the goods and that they will let the enforcement agent re-enter the premises at any time to inspect or remove the goods. Again, in reality, it is payment that is sought.

If it is claimed that some of the items belong to a third party then they must make a written claim to the HCEO. Interpleader proceedings may be needed, resulting in costly legal fees that can often run into many thousands, negating any value of the goods. See Section 6 below for more details.

If the debt is not paid in an agreed timescale, the enforcement agent will remove and sell the goods, taking their lawful fees, costs and charges from the money raised and the balance is given to the creditor. If there is any money left over from the sale after this, this is returned to the debtor.

If the goods sold do not cover the total sums now due, the enforcement agent may return to the debtor's property (and any others that may contain their assets) to seek further goods to seize and sell accordingly. Normally two clear days' notice of a return visit is required, although this can be shortened with the court's permission if there is a reasonable concern that the goods may be disposed of or removed.

An example in one case is when the enforcement agent returned 9 months after the sale of a debtor's vehicle to find he had replaced it with another. Again, the debtor refused payment so this vehicle was also seized, removed and sold, clearing the debt in full.

There is one other area where goods cannot be taken into control, but we don't come across it too often – works of art on loan from other countries to UK galleries and museums are immune from seizure.

Controlled goods agreement

When executing a writ, the enforcement agent will take into control goods for later sale to recover the debt if the debtor is unwilling or unable to pay. However, the EA does not need to physically remove the goods there and then.

When leaving the goods at the premises, the EA provides a controlled goods agreement. This document states that he has taken control of the goods and that the goods will remain in his custody until the debt and all costs have been paid. The debtor may not sell or remove the goods, nor may he let anyone else do so, including other enforcement agents.

The signed controlled goods agreement permits the enforcement agent to re-enter at any time and as often as they need to inspect and/or remove the goods. The agreement allows the EA to re-enter by force if necessary.

Once the controlled goods agreement is signed, the EA will leave a copy with the debtor. The debtor cannot now sell or dispose of the goods, and if he does, the enforcement agent can recover them from the purchaser, even if the purchaser did not know the goods had been taken into control.

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It is a criminal offence for the debtor to intentionally interfere with goods taken into control under Paragraph 68(2) of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007. If found guilty, the debtor will be liable for a prison sentence of up to 51 weeks, and or a Level 4 fine (currently £2,500).

Further, any party guilty of removing, hiding or selling goods taken into control could also have Contempt of Court proceedings brought against them. In an unreported case in 2012, a judgment debtor who sold goods ordered to be returned to a creditor received a sentence of 28 days in prison. This would be a separate civil action (by the HCEO or judgment creditor) and would not involve the Police until after conviction.

Who can sign a controlled goods agreement?

In most cases the controlled goods agreement will be signed by the judgment debtor but if the judgment debtor is unavailable, it may be signed by any responsible adult at the premises.

When the debtor refuses to sign

If the debtor refuses to sign the controlled goods agreement, then the enforcement agent will most likely escalate the enforcement stages to remove the goods there and then to safeguard them and ultimately sell them if payment is not made.

Payment by instalments

If the creditor and debtor reach an agreement on an instalment payment plan, then the goods remain under control under the controlled goods agreement until the debt and costs are paid in full. Once paid in full, the ownership of the goods returns to the debtor. If, however, the debtor falls behind in the instalments, the creditor can decide to have the goods covered by the controlled goods agreement removed and sold by moving enforcement to Enforcement Stage 2.

Third party ownership

If the enforcement agent takes into control goods that do not belong to the debtor or are under a hire purchase agreement, then the third party needs to provide evidence of this to reclaim them. This should be made in accordance with CPR Part 85 and may result in interpleader proceedings at the High Court where a Master will determine the claim to the goods.

Selling goods taken into control

Normally the threat of losing their goods is enough to encourage a debtor to pay and we rarely have to take the next step of removing, then selling the goods to raise enough to clear the debts and fees. But, when we do need to sell goods, HCEOs can arrange for this to be done by public auction, by private treaty, by sealed bids or by advertisement.

The debtor must be given 7 clear days' notice of the intended sale. However, permission can be sought from the court to hold the sale the day after removal if the goods would become unsaleable or lose most/all of their value by waiting for the notice period, but this is rare.

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If the goods are sold at public auction, they must be sold by a qualified auctioneer. If they are sold through an online auction, it must be by an independent auction company, for example eBay.

The auctioneer will always try to get the best price for the goods, selling to the highest bidder on the day. However, as you may well have experienced first-hand, the sums realised at auction are often much lower than their purchase price, as few items hold the value they had as new.

In the case of vehicles, if the enforcement agent is unable to get the keys and documents (V5 and service history), the sale price really plummets. You can, of course, get new keys cut sometimes, but this adds significantly to the cost charged by the auctioneer, usually around £250, depending on the vehicle.

There has also been a significant decline in the value of household goods, especially electrical items. Televisions and computers bought several years ago fetch very little these days, as brand new products can be bought at relatively low cost.

The court may also allow for the goods taken into control to be sold privately rather than at public auction if it can be demonstrated that a higher price is likely to be obtained. This is called private contract. This is usually the best option for goods that are quite specialist or where there is already an interested party.

The HCEO fees for the Sale or Disposal stage are £525 plus 7.5% of the sums to be recovered over £1,000, plus VAT. The costs of removal are normally included in this sale stage fee.

However, if the HCEO anticipates exceptionally high removal costs far greater than the sale stage fee, for example specialist equipment and personnel to remove an aircraft, he can apply to the court to have these added to the amount payable by the debtor.

The only other fees chargeable (without application to court) are for disbursements such as locksmiths, storage and auctioneer's fees. Auctioneer's fees are set at 15% for an auction at their premises, 7.5% for an online auction, plus out of pocket expenses such as listing and advertising fees.

Enforcement in specific circumstances

Suing a "trading as" business

Where you are dealing with a sole trader or a partnership, ensure that you name not just the entity they are trading as, but each and every individual running the business. This will enable you to enforce against the assets of either the trading entity or, if it has no assets or has ceased trading, you can then still enforce against the individuals.

With limited companies, it is also important to put both the limited company name and the trading as named in the judgment and subsequent writ, so that you have covered all bases. This is particularly true of restaurants which are almost always owned by a limited company with a different name to the restaurant.

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Check who was the owner of the “trading as” entity at the time you supplied the goods or services. If the business has changed hands, but still using the same trading name, you must ensure you sue the correct entity. We would always advise that you check their terms and conditions before you agree to supply the goods, so you know who you are supplying. It is, of course, also good business practice to run a credit reference at that time, possibly asking for trade references as well.

There are also instances where the limited company has gone out of business, but the directors have started a new company and are still using the same “trading as” name. Unfortunately, there is little you can do in this instance to enforce against the original company you supplied, but by checking their status at Companies House before embarking on legal action; you can save yourself the cost involved.

Finally, if you are suing a “trading as” name, ensure that you put the words “A Firm” in brackets after the name.

Partnerships

Partnerships, apart from limited liability partnerships, are not a legal entity, rather a collection of individuals trading together. As such, the partners are liable for the debt of the business and this liability is not limited.

When enforcing against a partnership, the creditor is best advised to obtain a judgment against the partnership, so that the partnership’s assets may be seized. Then, when applying for the writ of control, the creditor needs to include the name/s of the individual partner/s within the command portion of the writ. This then gives the creditor, via the HCEO, the option of enforcing against the partnership, the partners individually or both.

If the creditor wishes to enforce the writ at the private residence of a partner, it is important that the partner is identified personally in the writ, so as to avoid potential interpleader claims after enforcement.

As a word of warning, if the writ is solely against a partner, and not the business or other partners, then taking control of the assets of the partnership may also give rise to an interpleader claim by the other partners, looking to recover the business’s assets.

The creditor is not permitted to seize the partnership’s assets if the debt is a personal debt owed by one partner (rather than a debt owed by the business). However, the creditor may seek a charging order over the partner’s share of the partnership assets.

Judgment debtor deceased

If a judgment has been obtained and a writ of control issued against a debtor before their death, then the judgment and writ are valid and execution may take place. This is normally achieved through taking control of the goods held by the executor on behalf of the estate. These are then sold at auction. If more money is raised than is required to satisfy the judgment debt, interest, court fees and execution costs, then the balance is returned to the deceased’s estate.

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If the creditor wishes to issue proceedings against a debtor who is already deceased, the court's prior permission is required before a warrant of execution or writ of control can be issued.

The enforcement agent may not take into control the executor's personal assets when enforcing. Similarly, if the writ is issued against the executor themselves, then the EA may not take into control the assets of the deceased's estate, only those of the executor. However, if the executor has been using goods from the deceased's estate as if they were their own, then these goods are not exempt from seizure.

During bankruptcy

Bankruptcy may be initiated by either the individual or sole trader debtor, or by a creditor owed £5000 or more. It may also be petitioned for by the supervisor of a voluntary arrangement if the person wasn't complying with the terms of the arrangement.

If you do decide to petition for your debtor's bankruptcy, should the threat not be effective, as an unsecured creditor you will only be paid after the bankruptcy costs and preferential creditors have been paid. If there is any money left, you may only receive a dividend payment as a proportion of what you are owed. It may also take months to sell the assets.

The Official Receiver or Insolvency Practitioner may also reject some or all of your claim, meaning that you would have to apply to the court to change this.

In terms of an option to a creditor for recovering their debt, bankruptcy is a route to be carefully considered before taking action. You can check if a person has already been declared bankrupt though The Insolvency Service. You can also check whether they also have other unpaid judgments by searching Registry Trust Ltd.

If you already have a judgment against the individual, you are entitled to apply for an order to obtain information to bring the debtor to court to answer your questions on what assets they have.

If you are concerned the debtor may petition for their own bankruptcy, you need to act fast, because once the bankruptcy order is made by the court, unsecured creditors cannot take any further action against the bankrupt debtor without the court's consent.

However, you can still apply for an order for periodic payments during a bankruptcy and existing orders may continue to be enforced (although the bankrupt may apply to have the terms changed).

Once an individual has been declared bankrupt, creditors have no right to pursue their claims any further. However, if the debt is a new event and was not a debt placed in the bankruptcy, then it may be possible to sue for and obtain a judgment for that new debt.

When your debtor is declared bankrupt, there are a number of steps you can take to ensure that you are in with a chance:

- If the official receiver (OR) or insolvency practitioner (IP) hasn't contacted you, write to them to advise them you are a creditor

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- If you change address during the proceedings, let the OR or IP know
- If you are aware of any specific assets of value or any conduct by the bankrupt that should be investigated, let the OR or IP know
- If the OR or IP decides to hold a creditors' meeting they will send you a proof of debt form – complete it, sign it and return it by the date shown
- If a creditors' meeting is not planned, 25% in value of the creditors can insist on one being held
- You have the right to vote at the creditors' meeting, but only if you returned your proof of debt form in time. If you cannot attend you can submit a proxy form – this must be signed by the same person who signed the proof of debt form
- You can get a full list of creditors from the OR or IP (although they are allowed to charge for this service). You can also normally inspect the court file

Receipt of payment by the creditor

When the execution of a writ of control is successful, the HCEO will have either been paid the outstanding money owed by the judgment debtor, or they will have taken control of goods and sold them to raise the necessary amount.

In either case, the HCEO will retain the money recovered "in suspense", i.e. neither belonging to the creditor nor debtor, for 14 days before payment is made to the creditor.

Many HCEOs retain this money in a separate client account. This is not a legal requirement, but is good practice. Wherever the money is held, it must be instantly accessible.

The 14 day retention of the money recovered is stipulated in the Insolvency Act 1986. If a winding up order is issued against a limited company or a bankruptcy petition against an individual or partnership during this 14 day period, then the money recovered is returned to the Liquidator or Official Receiver for the payment of all creditors, not just the judgment creditor. However, the judgment creditor can apply to the court to have the liquidator's rights set aside in the creditor's favour. This ruling does not apply to an Interim Administration Order.

If the goods have been sold, the official receiver or trustee of the bankrupt's estate has no right to reclaim them from the purchaser who acquired them in good faith from the sale organised by the HCEO.

Once the 14 day period is complete, and no winding up order or bankruptcy petition has been issued, the money is no longer "in suspense" and is paid to the judgment creditor.

Part payment

When part payment is made by the debtor, the compliance fee is first deducted from the payment, then the payment is divided between the creditor and the HCEO.

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7. Writs of control and writs of execution

Different types of writ

There are several different types of writs that may be used by an HCEO to execute a judgment. The one most commonly used is the writ of control, but there are several writs of execution for different scenarios:

- Writ of delivery
- Writ of possession
- Writ of restitution

There are other writs including a writ of sequestration and a writ of assistance, but these are rarely used today.

Writ of control

The writ of control is the High Court version of a warrant of control in the County Court. It empowers an HCEO to take control of goods belonging to a judgment debtor in order that the judgment debt is settled, either by way of payment or sale of the controlled goods.

Writ of delivery

The writ of delivery is most commonly used by companies to recover specific goods that have not been fully paid for and the debtor is in arrears, for example finance companies. The writ of delivery is appropriate where the claimant wants to recover the goods, rather than receive payment for them. There are two types of the writ of delivery – Form 64, for goods, damages and costs, and Form 65 for goods or value (of the goods), damages and costs.

The writ can also be used in matters of intellectual property (IP) to seize counterfeits.

A writ of delivery, despite its name, is used to recover (repossess) specific goods from a named party. This is often when the purchaser has failed to make payment for the goods, as title to the goods does not pass to the purchaser until they have been paid for in full. This might be where trade credit has been extended or where a finance company has provided a loan or hire purchase agreement.

If the claimant wants the actual goods back, rather than an equivalent monetary payment, then the HCEO will ask for a writ of specific delivery. This type of writ is also used when the claimant is looking to recover documents.

If the claimant is happy to accept money instead, then a standard writ of delivery is used.

A writ of delivery may also be used to seize counterfeit goods. Because counterfeits are a copy of intellectual property rights, the court deems the owner of the IP to also be the owner of the counterfeits, hence the choice of a writ of delivery. The police and Trading Standards may be a first point of call for addressing counterfeiters, but if you want to get counterfeits out of the retail environment quickly, then a writ of delivery might be a good alternative.

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Writ of possession

This is a writ of possession issued by the High Court after a judgment or order for possession of either property or land has been awarded. The CCJ or order can only be passed to the High Court for enforcement if the occupiers are deemed trespassers or a special provision is granted by the issuing County Court using Section 42 of the County Court Act 1984. This special provision may be due the considerable delays incurred when using a County Court Bailiff.

An example of trespassers would be the eviction of squatters from land or commercial property. If the judgment or order is issued in the High Court, then it must be enforced by an HCEO and may be against persons known or unknown.

These are often combined with monetary orders allowing enforcement and the seizure of goods in the same manner as with a writ of control. A common example would be for the recovery of rent. Applying for a combined writ will save time as well as allowing the HCEO to enforce both simultaneously.

Writ of restitution

This writ is used if, after the successful eviction of trespassers from commercial property or land under a writ of possession, the same trespassers re-enter that property or land again. This writ will allow the HCEO to again enforce and remove the trespassers accordingly.

Writ of sequestration

If the debtor fails to comply to an order within the specified time, the judgment creditor may be entitled to a writ of sequestration to obtain payment. The original order requiring payment of the judgment debt must warn the debtor that failure to pay the sum set out in the order may be enforced by writs of sequestration.

Priority of writs

It is very possible that more than one creditor may be suing a debtor at the same time. When writs of control are issued to the HCEO, the HCEO will put the date and time of receipt on the writ, a process known as ‘endorsement’.

If two separate HCEO's have writs with the same date, the priority will then be decided by the time it is endorsed by the HCEO.

Renewing a writ of execution

The life of a writ of execution (including writs of control, possession and delivery) is generally twelve months from the date of issue. However, the writ may be extended if it is not completed in that time.

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Where a controlled goods agreement is breached

If a controlled goods agreement (CGA) has been signed and payments were being made according to an agreed schedule, but have now stopped, this breach of the CGA means that the writ of control will automatically become valid for a further 12 months from the breach, meaning that you do not need to renew the writ under these circumstances.

Extending before date of expiry

An application to extend a writ can be made by a creditor of by the High Court Enforcement Officer (HCEO) to extend the life of the writ for a further 12 months. Within the application the HCEO must explain the reasons why the writ was not executed and that the enforcement agent did not take control within the preceding 12 months. A court application fee is payable where the application is made without notice.

The advantage of extending before expiry is that the priority of the writ is maintained. The disadvantages are that there can be a delay before the application can be seen by a judge and there is no guarantee that the judge will agree to an extension.

New writ after expiry

This means starting the process again. The claimant will need to complete and submit either court form N293a (combined certificate of judgment and request for writ of control or writ of possession) for a judgment or order that was made in the County Court, or court form PF86a (combined request for writ of control and writ of possession or writ of delivery) if the judgment or order was made in the High Court. There is a court fee for the issue of a writ.

The advantages are speed because the N293a/PF86a can be sealed in the issuing court very quickly, as can the issue of the writ. The disadvantage is that priority is lost although this will not be important if there are no other writs for judgments or orders for that debtor.

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8. Claims on controlled and executed goods

Prior to April 2014, claims by third parties to ownership of seized goods, as well as claims from debtors that goods were exempt from seizure, were known as interpleader claims.

While the principles of an interpleader claim are broadly the same, the process is now covered by Civil Procedure Rule 85.

Third party claiming ownership of seized goods

At The Sheriffs Office we do frequently have cases where we enforce a writ find that a third party enters the picture and claims the goods are theirs and that they want them returned, or, in the event they have already been sold, the money raised given to them.

This can be very frustrating for the creditor and generally causes a delay in them receiving their money, whilst the Court decides who rightfully owns the goods (assuming that the creditor disputes the third party's claim).

From the 6th April 2014 if a third party intends to make a claim, they must inform the HCEO who is enforcing the writ. The claim made by the third party (the claimant to controlled goods), must give notice of the claim in writing to the High Court Enforcement Officer within seven days of the enforcement agent attending and taking control of goods.

The written notice must provide the name and address of the third party (the address must be the address where court documents will be served), a list of the goods claimed and grounds for the claim for each item.

The HCEO must then forward the notice of claim to the creditor within three days. The creditor has seven days to let the HCEO know whether they agree with the third party's claim, or whether they dispute it. If they do agree that the third party owns the goods, then they are only liable to pay for the fees and expenses incurred by the HCEO before the notice was received.

If the creditor fails to respond within seven days, then the HCEO can apply to the High Court to issue an application. All parties come to court so that rightful ownership can be determined.

Where the creditor gives notice to the HCEO that they dispute the third party claim the HCEO must within three days of that notice inform the claimant to controlled goods that their claim is disputed.

The third party/claimant to controlled goods must then make an application to court which must be supported by a witness statement setting out the basis for their claim and describing the goods claimed and exhibiting any evidence to support their claim in respect of each item claimed.

This application must be made to the court that issued the writ. This will usually be the Central Office of the Royal Courts of Justice or a District Registry of that court.

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When making the application the claimant to controlled goods/third party must make a payment into court to the value of the goods that are claimed.

The third party is permitted to seek further directions at court for leave to pay only a proportion of the value of the goods. If this scenario occurs the third party must seek direction immediately after the issue of the application.

Upon receipt of an application a District Judge or Master will list the case for a hearing when directions for the progression of the case will be given. Costs may be awarded against the losing party in such a matter.

Debtor claims that goods are exempt from seizure

The other situation when proceedings can arise is when the judgment debtor claims that the goods subject to control are actually exempt pursuant to paragraph 4 of the Taking Control of Goods Regulations 2013.

There are two primary types of goods that the HCEO may not take control of – tools of the trade and items essential for basic domestic needs.

“Tools of the trade” only relates to sole traders, not to partnerships or limited companies, and the tools must be exclusively for the use of the debtor to be exempt. For example, if a farmer allows a labourer to use his tractor, then the tractor is not exempt.

Where a claim is made that the goods subject to control are tools of a debtor’s trade, that claim is limited to goods of a value up to £1,350. That means that where the enforcement agent finds goods valued at £2,000, for example, then goods to the value of £650 can be subject to enforcement.

With goods essential for basic domestic needs, this includes clothing, bedding, furniture and other basic items. It then becomes a judgment call for the EA as to which household items are essential or luxury.

While enforcing a writ, one of The Sheriffs Office’s enforcement agents was told by the debtor that a smoothie maker was exempt from seizure, as it was essential for basic domestic needs!

In some instances, very expensive or luxury items, including tools of the trade, may be taken by the HCEO and replaced with similar goods that still service the needs of the debtor and his family.

Items clearly belonging to children may not subject to a controlled goods agreement.

A vehicle displaying a disabled badge, or where there are reasonable grounds to believe that the vehicle is used for the carriage of a disabled person is also exempt as well as a vehicle being used for police, fire or ambulance purposes. In addition a vehicle displaying a medical association badge or other health emergency badge is exempt.

However, should an enforcement agent seize goods and the judgment debtor believe they were exempt, then the debtor needs to make a formal claim to the HCEO in writing and within seven days.

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Where a claim that goods are exempt are made then the debtor making the claim must follow the process provided in Civil Procedure Rule 85.

During this process, the enforcement agent can continue action against the debtor and take control of other goods that are not subject to the claim.

For full details of all goods that are exempt please refer to paragraph 4 of The Taking Control of Goods Regulations 2013.

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9. About The Sheriffs Office

We are a leading firm of authorised High Court Enforcement Officers (HCEO) and Certificated Enforcement Agents covering all of England and Wales.

It all started in the late 1970s as The Sheriffs Office in Northampton, dealing only with High Court writs within the county of Northamptonshire. With the Courts Act in 2004, Sheriff Officers were renamed High Court Enforcement Officers and the restrictive geographical boundaries were dropped.

Since then The Sheriffs Office has gone from strength to strength, growing year on year to become one of the top four HCEO firms with significant market share.

Underpinning our success is our focus on client service and a comprehensive “end to end” range of specialist services for the recovery of debt, property and land.

A range of services for everyone

The Sheriffs Office provides the full range of High Court Enforcement and related services for solicitors acting on behalf of clients, as well as business of all sizes, landlords, commercial agents, local authorities, individuals and sole traders.

Money judgments

- High Court enforcement
- Employment tribunal award
- Debtor tracing
- European judgment
- Debt collection

Property and land

- Eviction
- Security
- Repossession
- Rent collection
- Equine impoundment

Awards for The Sheriffs Office

We have won and been shortlisted for numerous industry awards, including:

- Winner 2015 - Chartered Institute of Credit Management “Enforcement Team of the Year”
- Winner 2014 - CCR Credit Excellence Awards “Legal and Enforcement Profession”
- Winner 2013 – Credit Today “Enforcement Team of the Year”

We are also the HCEO firm featured in the hit BBC programme “The Sheriffs Are Coming”, which has been watched by 30 million people and won the Broadcast Awards 2014 Best Daytime Programme.

Supporting the environment

We participate in a Carbon Offsetting project run by Carbon Footprint Ltd which is planting trees in Kenya to support local communities in the Great Rift Valley, so as to reduce poverty and provide habitats for wildlife, including lions!

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10. Useful links

BT Directory Enquiries	www.bt.com
Companies House	www.companieshouse.org.uk
Government Gateway	http://www.gateway.gov.uk/
HCEOA	www.hceoa.org.uk
HCEO Regulations	http://www.legislation.gov.uk/uksi/2004/400/regulation/13/made
Insolvency Service	www.insolvency.gov.uk
Instruction forms	http://thesheriffsoffice.com/instruct-us
Land Registry	www.landregistry.gov.uk/
Ministry of Justice	www.justice.gov.uk
Money Claim Online	https://www.moneyclaim.gov.uk/web/mcol/welcome
Registry Trust	www.trustonline.org.uk
Tracing services	http://thesheriffsoffice.com/services/debtor-tracing
Further reading	www.thesheriffsoffice.com/articles/

Legislation and regulations

Part 3 of the Tribunals, Courts & Enforcement Act 2007	http://www.legislation.gov.uk/ukpga/2007/15/part/3
Taking Control of Goods Regulations 2013	http://www.legislation.gov.uk/uksi/2013/1894/contents/made
Taking Control of Goods (Fees) Regulations 2014	http://www.legislation.gov.uk/uksi/2014/1/contents/made
Certification of Enforcement Agents Regulations 2014	http://www.legislation.gov.uk/uksi/2014/421/contents/made
The Civil Procedure (Amendment) Rules 2014 No 407	http://www.legislation.gov.uk/uksi/2014/407/pdfs/uksiem_20140407_en.pdf
Court and enforcement fees	https://www.thesheriffsoffice.com/services/court-fees-enforcement-fees

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11. Glossary of Terms

Address for enforcement

This is the address where the enforcement agent will attend to enforce the writ. The debtor must be served a notice of enforcement, giving seven clear days' notice prior to enforcement at that address.

Abortive fee

The abortive fee was the charge made to the creditor if enforcement proved unsuccessful. It has now been replaced by the compliance fee.

Arbitration

Where an independent third party considers the facts and takes a decision that's often binding on one or both parties.

Attachment of Earnings Order

Once you have a County Court Judgment (CCJ) against an individual debtor, you can ask the court to order their employer to deduct money from their salary. This is paid to the court, which then pays you. If the employer refuses, they can be fined. The court reviews the debtor's income and expenditure and determines the instalment value. If the debtor changes employer, you need to make another application.

Bankruptcy

This is for use against an individual debtor for undisputed debts over £5000. You don't need to get a judgment first; you can simply send a statutory demand giving them 21 days in which to pay in full. If they don't pay, you then issue a bankruptcy petition (you have four months from the statutory demand in which to do this). If the debtor is made bankrupt, their house may be sold to pay the debts.

Certificated bailiffs

This is a bailiff who has been granted a certificate by a judge to levy distraint. They now come under the umbrella term 'Enforcement Agent'. The certificate lasts for two years and cannot be granted to anyone employed in a business that buys debt or any officer of a county court.

Charging order

Again to be used against an individual debtor, this allows you to apply to the court for an order so that, should their property be sold, you will be paid the debt plus interests and costs if and when the property is sold. All joint owners and other secured creditors, including the mortgage lender, must be served with the application for the order. A charging order can also be made against shares.

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Compliance fee (when a case is abortive)

The compliance fee is only charged to creditors if enforcement proves unsuccessful. Once the HCEO receives your instruction they will apply the fee for the compliance stage. Upon receipt of the sealed writ of control, the HCEO will send a 'Notice of Enforcement' to the judgment debtor.

Control – writ of

The writ of control is the High Court version of a warrant of control in the County Court. It empowers an HCEO to take control of (seize) goods belonging to a judgment debtor in order that the judgment debt is settled, either by way of payment or sale.

Controlled goods agreement

When leaving seized goods at the debtor's premises, the HCEO provides a controlled goods agreement. This states that he has taken control of the goods and that the goods will remain in his custody until the debt and all costs have been paid. The debtor may not sell or remove the goods, nor may he let anyone else do so. The controlled goods agreement also obtains the debtor's permission to re-enter at any time and as often as they need to inspect the goods and remove them. The agreement allows the HCEO to re-enter by force if necessary.

County Court Bailiffs

County Court bailiffs are civil servants employed by the court. They use a warrant of control, for which there is a court fee, to enforce CCJs valued up to £5,000.

County Court Judgment (CCJ)

If you have an outstanding sum owed to you and have chased the debt unsuccessfully, you should write a Letter Before Action to the debtor, advising them that, unless you receive full payment within 14 days, you will commence court action to recover the debt.

You may either use a solicitor to obtain your CCJ or you can use the Government's self-service called Money Claim Online. If the debtor still does not pay, you may proceed to enforcement. CCJs can be enforced for six years from the date they are awarded.

Debtors in liquidation or administration

You can check with Companies House to find out if a company is in Liquidation or Administration with an "L" or and "A" next to the name.

Delivery – writ of

The writ of delivery is most commonly used by companies to recover specific goods that have not been fully paid for and the debtor is in arrears, for example finance companies. The writ of delivery is appropriate where the claimant wants to recover the goods, rather than receive payment for them. However, it can be combined with a money order under a writ of control if necessary.

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Dispute resolution

Where both parties attempt to reach a mutually agreeable solution without the need to go to court. If a case does go to court, the judge will expect that some form of dispute resolution, such as mediation or arbitration, will have been attempted first.

Employment tribunal award enforcement

With the Fast Track scheme, employment tribunal awards can be easily transferred to the High Court for enforcement. You need to download and complete the Form N471 and send it with the award and court fee (recoverable from the former employer) to your HCEO, who will then obtain the writ on your behalf and commence enforcement. There is no minimal value to the award for High Court enforcement and there is no compliance fee. However, there is a fee for bringing a case to the employment tribunal.

Enforcement agent

An enforcement agent (EA) is the person who will attend the debtor's premises to enforce the writ of control. They must undergo a process of training and certification. In the case of High Court enforcement, the EA will act under the direction and authority of the authorised HCEO.

Exempt addresses

The HCEO may not levy execution at royal residences and diplomatic premises. However, it is worth checking the property details thoroughly. For example; many palaces are not deemed "royal residences". Some other premises may be of such a nature that care and attention will be necessary when the officer attends to fulfil their duties; for example, funeral directors, care homes or hospitals.

Fieri facias/fi fa – writ of

This is the previous name for a writ of control.

Gaining entry by force

Commercial premises: the HCEO can force entry to commercial premises to levy on a first visit or any subsequent visit to remove goods providing the property is not physically attached to, and form any part of, a residential dwelling, although an application to the court for permission may be advisable.

Residential premises: the HCEO may enter the premises through an unlocked door or normal means of access (but not a window). Once inside, they may break down inner doors to seek the debtor's goods. The enforcement agent may not be forcibly ejected, but if they are, they can then force re-entry. They may force entry to a garage, out house, stables or barn providing it is not physically attached to, and form any part of, the residence.

Insolvent debtors

The Insolvency Service allows you to check individuals and "trading as" names for bankruptcy and IVA.

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Interpleader – claims by third parties

This can occur if, after the creditor obtained a judgment and the appropriate writ, a third party then claims ownership of the money or goods that have been or will be seized. If the creditor disputes the third party's claim, an interpleader summons will be issued for all the parties to attend the High Court so that rightful ownership can be determined by a Master.

Judgment debtor deceased

If a judgment and writ of control were awarded before the debtor's death, then they are valid and execution may take place, normally through the seizure and sale of goods held by the executor on behalf of the estate. If more money is raised than is required to satisfy the judgment debt, interest, court fees and execution costs, then the balance is returned to the deceased's estate. If the creditor wishes to issue proceedings against a debtor who is already deceased, the court's prior permission is required before a warrant of execution or writ of control can be issued.

Letter before action

A Letter Before Action (LBA) confirms the exact amount of monies owed by the debtor and gives them formal warning that if payment isn't received by the date requested, usually within 14 days, then court proceedings may commence.

Litigant in person

A claimant who manages their own claim through the court without the services of a solicitor. Where the case is complex and/or concerns a significant sum of money, we would always recommend seeking legal advice before proceeding with a claim.

Mediation

Where an independent third party helps the disputing parties to come to a mutually acceptable outcome.

Money Claim Online/MCOL

The Government's online service where litigants in person can start their claim without the need for a solicitor.

Money held by HCEO after enforcement

When the execution of a writ of control is successful and paid by the debtor, the HCEO will have either been paid or will have seized and sold goods. The HCEO retains the money recovered "in suspense", i.e. neither belonging to the creditor or debtor, for 14 days before payment is made to the creditor in case a winding up order or bankruptcy petition is issued against the creditor during those 14 days. If this happens, the money is returned, minus the HCEO enforcement fees, to the liquidator/official receiver to pay all creditors. After the 14 day period with no winding up order or bankruptcy petition, the money is paid to the judgment creditor.

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Notice of enforcement

Enforcement agents are required to give the judgment debtor seven clear days' notice of enforcement before they visit. This does not include Sundays or bank holidays. This is called the Compliance Stage, the first stage of enforcement. There is a fee per Notice sent, which will be recovered from the debtor if enforcement is successful.

Older people and the vulnerable

Enforcement agencies must ensure that the genuinely vulnerable and socially excluded are protected. The potentially vulnerable include: elderly, people with a disability, the seriously ill, the recently bereaved, single parent families, pregnant women, unemployed people, those who have obvious difficulty with English and children. Enforcement agents must withdraw from domestic premises if the **only** person present is, or appears to be, under the age of 18 or a person who is vulnerable, although they can ask when the debtor will be home. If the child appears to be less than 12, the enforcement agent must withdraw without making any enquiries.

Partnerships

Partnerships (apart from limited liability partnerships) are not a legal entity, rather a collection of individuals trading together. As such, the partners are liable for the debt of the business and this liability is not limited. When enforcing against a partnership, the creditor is best advised to obtain a judgment against the partnership and include the name/s of the individual partner/s within the command portion of the writ of control. This then gives the creditor, via the HCEO, the option of enforcing against the partnership, the partners individually or both.

Payment by instalments

If the creditor and debtor reach an agreement on an instalment payment plan, then the goods remain seized under the controlled goods agreement until the debt and costs are paid in full. Once that happens, the ownership of the goods returns to the debtor. If, however, the debtor falls behind in the instalments, the creditor can decide to have the goods covered by the controlled goods agreement removed under Enforcement Stage 2 and potentially sold under the Sale or Disposal Stage.

Possession – writ of

Commercial landlords may apply for a writ of possession to repossess land and property on that land. The landlord, or their solicitor, must attend the repossession to show the actual property or land that is being repossessed. The HCEO enforcing the writ is not obliged to warn the building's occupants that they are about to be evicted, but it is good practice to do so to avoid problems and prepare any special measures or support that think they might need in order to execute the writ. The enforcement agent is entitled to use force to enter commercial premises and may also use reasonable force to eject the occupants and other people found on the premises at the time.

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Priority of writs

It is very possible that more than one creditor may be suing a debtor at the same time. When writs of control are issued, the HCEO will time them in, i.e. mark each writ with the date and time of receipt. If two separate HCEOs have writs with the same date, the priority will then be decided by the time it is signed by the HCEO.

Questions to get answers to before obtaining a judgment

Is the debtor is still in business, or in the case of a sole trader, not bankrupt? Check with Companies House or the Insolvency Register.

Do they have assets? You can ask the debtor to provide details of their business at court.

How old is the debt/judgment? You may enforce a judgment up to six years old. If you don't have a judgment, you may still obtain one if the debt is no more than six years old.

Have you got all the details correct? Check the company/individual name. If it's a "trading as", put those details in too. Get the right address. Get the right amount - you can legitimately add interest at 8%, court fees and enforcement costs.

Sale of controlled goods

It is the duty of the HCEO or certificated enforcement agent to take control of (seize) the goods of the debtor in order to sell (normally at auction) and raise the money to clear the debt. If sold at auction, the auctioneer will always try to get the best price for the goods, selling to the highest bidder on the day. Although not common, the court may also allow for the goods seized to be sold privately rather than at public auction if it can be demonstrated that a higher price is likely to be obtained. This is called private treaty.

Sequestration – writ of

If the debtor fails to comply with an order, the judgment creditor may be entitled to a writ of sequestration to obtain payment. The original order requiring payment of the judgment debt must warn the debtor that failure to pay the sum set out in the order may be enforced by writs of sequestration. The original order must be served personally and contain the penal notice.

Setting aside judgment

When the debtor applies to set aside judgment (sometimes used as a delaying tactic), the court will fix a date for the hearing, which both parties will attend. The debtor will have to explain why they want the judgment set aside. If the court does set aside judgment, then the debtor is allowed to put forward their defence, having provided the creditor with documents they intend to use and witnesses to support their defence. If they are successful, enforcement cannot proceed. If their application is denied, the creditor may proceed with enforcement. Enforcement can continue whilst the application is awaiting a hearing.

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Tools of the trade

Tools of the trade, i.e. tools and equipment essential to work or trade, are exempt from seizure to a maximum value of £1,350. However, these goods must be used solely by the debtor for the purposes of his or her work. For example, a commercial van that is also used by the debtor's spouse is available for seizure. This exemption is only available to sole traders and cannot be claimed by partnerships or limited companies.

Third party debt order

This is made against a third party holding money on behalf of the debtor, for example their bank or a customer owing the debtor money. You need to try to make sure there actually is some money in the bank account, otherwise this method will fail.

Third party ownership

If the HCEO seizes goods that do not belong to the debtor or are under a hire purchase agreement, then the third party needs to provide evidence of this to reclaim them. This may end in interpleader proceedings at court where a master will decide ownership.

Third party premises

The HCEO cannot enter the premises of a third party, where the debtor does not reside or carry on a trade or business, without permission from the court.

Tracing individuals and companies

It's important to have all the correct details about the debtor so that the judgment can be enforced. This may include actually locating the debtor, either an individual, a sole trader or a company director. Good information to gather includes: name, last known address, telephone number, vehicle registration, date of birth. Date of birth is the most useful, as 90% of the records hold a precise date of birth.

Trading as

Don't just sue ABC Services as it is difficult to enforce against this. Sue "John Smith T/A ABC Services" to cover all bases. Don't forget that many limited companies also often trade as another name, so put both names in. If you are to sue a trading name, ensure that you put the words "A Firm" in brackets after the name. However, we would always recommend you name the individual (s) who run it as well.

Transfer of judgment to High Court

When a County Court Judgment (CCJ) is issued for £600 and above (including court costs), the creditor can transfer it up to the High Court for enforcement by an HCEO. The transfer form is the N293A and there is a court fee, which can be added to the debt. Once completed, a writ of control (formerly called a writ of fieri facias, or fi fa for short) is issued, which give the HCEO the authority to enforce.

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“Unless” order

These are court orders specifying that a party to the proceedings must do a specific thing by a set date. If they do not, then the order stipulates what will happen next. If the party does not comply, then the next stage will happen automatically, without any further orders from the court. For example, the court may order the judgment debtor to pay in installments; if they miss an installment, then the HCEO is authorised to enter and seize goods to cover the outstanding balance owed.

Validity of the writ

The writ of control will be valid for 12 months from the date of notice of enforcement, or, if the debtor breaches a payment arrangement for 12 months from the date of the breach.

Voluntary arrangements – how they impact on enforcement

A company voluntary agreement is put in place to allow a company to continue trading while making an arrangement with its creditors. The arrangement is proposed by the company to its creditors and, once accepted by the appropriate majority, is binding on all creditors. Normally, the creditors will agree to accept a delay in payment, a smaller payment, or a combination of the two. Enforcement of writs of execution is normally suspended during a company voluntary arrangement.

Walking possession agreement

The previous name for a controlled goods agreement.

Winding up

This is for use against a company for debts over £750. You don’t need a judgment first, but can go straight to a statutory demand. If payment isn’t received, the next step is a winding up petition, which must be advertised at least seven days before the hearing in the London Gazette. This usually leads to banks freezing bank accounts. If the petition is granted, a liquidator is appointed to realise and distribute assets amongst creditors.

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If you would like to find out more about our services, please call us today on

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