

# ENFORCEMENT OF EMPLOYMENT TRIBUNAL AWARDS AND ACAS SETTLEMENTS



**HIGH COURT  
ENFORCEMENT  
GROUP®**

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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.

# Enforcement of employment tribunal awards and ACAS settlements

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## Introduction

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Thank you for reading this guide to the process of employment tribunal award and ACAS settlement enforcement through High Court Enforcement Officers (HCEOs).

This guide has been written to support anyone with an employment tribunal judgment or ACAS settlement who hasn't received the payment due to them. We cover the steps you take to obtain a writ of control, and then what we will do to obtain payment on your behalf.

### Legislation covered

This guide incorporates the changes to the enforcement of judgments, orders and awards 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 award.

## Obtaining an employment tribunal award or ACAS settlement

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Once you have received an employment tribunal award in your favour awarding you compensation a date will be set that it must be paid by. It is then up to the respondent to make this payment to you by the specified date.

What happens if payment is not made to you by the date stated in the award:

- As a first step you should always try to contact the respondent to find out why they have not yet made payment to you
- If they are appealing the tribunal decision, they have 42 days from the date of the award in which to do so.

### Interest

On top of the amount outlined in your award, you can also claim interest at a rate of 8% per annum. The interest will be applied at either 14 days or 42 days after the judgement award date depending on the type of claim.

- If your award relates to a discrimination complaint, then interest, which is calculated daily on the award starts 14 days after the date on which the award was sent to parties
- Interest in all other types of Employment Tribunal awards begins to accrue 42 days after the date on which the award was sent to parties

### You still haven't been paid

If you've been through the process outlined, and still not received payment you should begin the process to recover your money via the High Court enforcement route.

## High Court Enforcement Officers (HCEO) Fast Track

HCEOs can enforce employment tribunal awards, ACAS settlements and in 2010 the fast track scheme was introduced to make the process faster and simpler for claimants.

In April 2004, the law was changed to remove geographical boundaries, so that HCEOs can enforce a judgment anywhere in England and Wales. For standard money judgments the minimum value for enforcement by an HCEO is £600, but for employment tribunal awards and ACAS settlements there is no minimum value.



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 an employment tribunal/ACAS settlement award is transferred to the High Court for enforcement.

Unlike the County Court Bailiffs, HCEOs are permitted to force entry into commercial premises to enforce, this is an advantage as most places of work will be commercial premises. County Court Bailiffs are required to seek permission from the court to enter commercial premises by force.

You can transfer your claim up to the High Court you will need to use the following forms:

- N471 for employment tribunal awards
- N471A for ACAS settlements

There is a fixed court fee to obtain the writ. If successful, the HCEO will recover your tribunal award debt, any associated fees you have been awarded, the court fee and any interest at 8%, as well as the enforcement fees.

The enforcement process is set into four stages, this clarifies the process for all parties, especially for respondents. HCEO fees are recovered in full from the respondent when enforcement is successful. If enforcement is unsuccessful, as judgment creditor you will have only paid the court fee.

The notice of enforcement must be sent to the respondent, 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 respondent usually lives or works.

If the respondent is a company or partnership, the notice must be sent to the place, or one of the places, where the respondent carries out a trade or business or the registered office.

Delivery can be by post, fax or other electronic means such as email. If the respondent pays in full – the judgment amount, interest, and court fees after receiving the notice, the enforcement process is concluded. The compliance fee is not payable, so all you pay is the court fee.

If the HCEO recovers part of the money owed, then you will receive part payment with the HCEO also receiving part payment.

## What happens if payment isn't made?

If payment has not been made, we will visit the property stated on the writ and take control of goods to the value of the award and associated fees, these assets will then be sold to cover the payment due to you and all the money owed to us as HCEO to cover the enforcement fees, auction costs and other associated fees and charges.

The payment will be held for 14 days (this is a regulatory requirement) and then transferred to you

If the HCEO is unable to recover the award debt or goods to the value of it, there is nothing more for you to pay, the only payment you will have made is the court fee for the writ of control.

It is in the interests of a HCEO to recover your debt for you as if they do not recover they are unable to collect any payment to cover their expenses, so it is in their financial interest to recover payment on your behalf.

## Different methods of recovery

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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 an award against the individual, you are entitled to apply for an order to obtain information to bring the respondent 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 respondent 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 respondent 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.

This allows you to apply to the court for an order so that, should the business's or guarantor's 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 respondent 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).

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 respondent, for example their bank or a customer owing the respondent 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.

## Enforcement of an employment tribunal award or ACAS settlement

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

- Employment tribunal awards and ACAS settlements of £5,000 and over can only be enforced by a HCEO.
- Employment tribunals and ACAS settlements of any monetary value may be enforced by an HCEO, as there is no minimum.
- These are transferred up using forms N293A, N471 and N471A respectively. There is a fixed court fee to obtain the writ. At HCE Group the transfer process normally takes between 1 and 2 working days.

### High Court Enforcement Officers

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 all tribunal awards ACAS settlements, there is no minimum or maximum value.

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

Disadvantage – if the respondent 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.

### County Court Bailiffs

CCBs are salaried civil servants employed directly by the court service. They can enforce judgments up to £5,000. They work under the authority of a warrant of control, which can be requested from the County Court.

County Court Bailiffs will collect your award, your court costs, your warrant fee and interest (if prescribed) from the respondent.

## The fast track transfer up

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When an employment tribunal award or ACAS settlement is issued, we would recommend that you transfer it up to the High Court for enforcement by an HCEO.

When the award is transferred up to the High Court, a writ is issued. Most judgments are for a monetary sum and 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 respondent for sale to raise sufficient funds to recover the debt. Judgments over £5,000 can only be enforced by an HCEO.

The transfer process is started with the completion of N471 for employment tribunals and N471A for ACAS settlements. During this process, you will need to provide the award details and a copy of the award or settlement. The form should be signed by the creditor or their solicitor.

At HCE Group, we work with a firm of solicitors who manage the transfer up process on your behalf, ensuring the process is completed correctly and will sign the form on your behalf where required. All you need to do is complete our instruction form [here](#) and we will do the rest at no extra charge.

Providing everything is in order and the award still stands, then the court will seal Part 2 of the Form N471, authorising the transfer to the High Court for the purposes of enforcement.

Once the Form N471 or N471A 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 respondent.

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 respondent.

## High Court enforcement associated fees

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

HCEO fees are recovered in full from the respondent when enforcement is successful.

### Compliance stage

Upon receipt of the sealed writ of control, the HCEO will send a 'Notice of Enforcement' to the respondent.

The notice of enforcement must be sent to the respondent 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 respondent usually lives or works.

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

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

If enforcement is unsuccessful, the compliance fee is NOT payable by claimants for the enforcement of employment tribunal awards and ACAS settlements.

### Enforcement stage 1

If the respondent fails to make contact with the HCEO or requests to pay by instalments during the compliance stage, an enforcement agent 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 + VAT plus 7.5% of the sums to be recovered over £1,000, plus VAT.

For example, if the outstanding sum owed was £3,000, the 7.5% would only be charged on £2,000. The sums to be recovered are the award, court costs and execution costs.

All costs mentioned are recoverable from the respondent.



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

## Enforcement stage 2

If the respondent refuses either to make any payment or wants 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, this is again recoverable from the respondent.

## 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 + VAT 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 they can apply to the court to have these added to the amount payable by the respondent.

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

All fees mentioned are recoverable from the respondent.

## 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 recoverable from the respondent.

## Other fees

Occasionally there may be the need for HCEOs to charge fees to the claimant. It is therefore the claimants responsibility to inform the HCEOs of the following.

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

Current [court fees and enforcement fees](#) are shown on our website.

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

## Enforcement of writs by an HCEO

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### 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 respondent 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.

Once inside, they may also break down the inner doors of the property to seek the goods of the respondent. 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 respondent 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 respondent 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.

### Registered offices

Given the requirement to serve a notice of enforcement for each address where enforcement is to take place, we suggest that the respondent either checks this

themselves before the notice is served, or that they instruct their HCEO to run a trace on the respondent.

This is because registered offices, particularly for smaller businesses, are often the premises of their accountant and it is unlikely that goods of the respondent 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 respondent is an individual, they reside or carry on a trade of business. Where the respondent 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 respondent 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 places 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 respondent 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 respondent 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 respondent'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
- 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 respondent 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 respondent 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 respondent 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 respondents 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 respondent 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 respondent gives the enforcement agent the keys. At the time of immobilising the vehicle, the EA will give the respondent 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.

## Controlled goods agreement

When executing a writ, the enforcement agent will take into control goods for later sale to recover the debt if the respondent 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 respondent 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 respondent. The respondent 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.

It is a criminal offence for the respondent 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 respondent 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 respondent 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 respondent but if the respondent is unavailable, it may be signed by any responsible adult at the premises.

### When the respondent refuses to sign

If the respondent 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 claimant and respondent 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 respondent. If, however, the respondent falls behind with the instalments, the claimant 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 respondent 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 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 respondent 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 respondent 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.

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.

## 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 award 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.

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’ 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.

### Respondent deceased

If a judgment has been obtained and a writ of control issued against a respondent 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.

If the creditor wishes to issue proceedings against a respondent 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 and insolvency will stop enforcement action provided the process has been completed. Monies recovered by the HCEO are held for 14 days under the insolvency Act in case the respondent becomes insolvent or bankrupt during this period.

If this does happen, the HCEO is required to return the sums recovered by the administrator, liquidator or receiver.

In either case, the HCEO will retain the money recovered "in suspense", i.e. neither belonging to the creditor nor respondent, 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 respondent, the compliance fee is first deducted from the payment, then the payment is divided between the claimant and the HCEO. 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 or 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 of £100 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 respondent.

## Claims on controlled and executed goods

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### Third party claiming ownership of seized goods

When a third party 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.

The court will decide who rightfully owns the goods (assuming that the creditor disputes the third party's claim).

From the 6<sup>th</sup> 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.

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.

## **Respondent claims that goods are exempt from seizure**

The other situation when proceedings can arise is when the respondent 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 respondent 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 respondent’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.

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 respondent 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 another health emergency badge is exempt.

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

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

During this process, the enforcement agent can continue action against the respondent 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.

## About High Court Enforcement Group

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Clients trust us to deliver and service is paramount – we are committed to meeting and exceeding their expectations. Transparency and ethical behaviour are also at the heart of our business, both with our clients and their debtors.

We achieve this by recruiting excellent people and investing in their development. All our enforcement agents are employees, allowing us to ensure quality, transparency and ethical behaviour – firm but fair enforcement.

We also believe in sharing our knowledge and expertise with our clients to help them make informed choices.

We are the largest independent and privately owned High Court enforcement company in the country, with more authorised and experienced officers than anyone else. This allows us to build and manage our business in a way that puts our clients first.

Our highly skilled enforcement agents are recognised for their impressive local knowledge and their steadfast commitment to upholding the values of responsibility and accountability with exemplary professionalism and a time-honoured dedication to firm but fair enforcement.

At High Court Enforcement Group, we are committed to educating as well as enforcing. We believe that an informed decision is a correct decision and that our clients should understand the processes associated with enforcement.

If you would like any further information, or would like us to come and run a seminar for your team, please call us on **08450 999 666**.

## Useful links

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ACAS	<a href="#">Home   Acas</a>
BT Directory Enquiries	<a href="http://www.bt.com">www.bt.com</a>
Companies House	<a href="http://www.companieshouse.org.uk">www.companieshouse.org.uk</a>
Government Gateway	<a href="http://www.gateway.gov.uk/">http://www.gateway.gov.uk/</a>
HCEOA	<a href="http://www.hceoa.org.uk">www.hceoa.org.uk</a>
HCEO Regulations	<a href="http://www.legislation.gov.uk/ukxi/2004/400/regulation/13/made">http://www.legislation.gov.uk/ukxi/2004/400/regulation/13/made</a>
Insolvency Service	<a href="http://www.insolvency.gov.uk">www.insolvency.gov.uk</a>
Instruction forms	<a href="http://www.hcegroup.co.uk/employment-tribunal-instruction-form/">www.hcegroup.co.uk/employment-tribunal-instruction-form/</a>
Land Registry	<a href="http://www.landregistry.gov.uk/">www.landregistry.gov.uk/</a>
Ministry of Justice	<a href="http://www.justice.gov.uk">www.justice.gov.uk</a>
Registry Trust	<a href="http://www.trustonline.org.uk">www.trustonline.org.uk</a>
Tracing services	<a href="https://www.hcegroup.co.uk/debtor-tracing/">https://www.hcegroup.co.uk/debtor-tracing/</a>
Unison	<a href="http://www.unison.org.uk">UNISON - the public service union</a>
Further reading	<a href="https://www.hcegroup.co.uk/articles/">https://www.hcegroup.co.uk/articles/</a>

## Legislation and regulations

Part 3 of the Tribunals, Courts & Enforcement Act 2007	<a href="http://www.legislation.gov.uk/ukpga/2007/15/part/3">http://www.legislation.gov.uk/ukpga/2007/15/part/3</a>
Taking Control of Goods Regulations 2013	<a href="http://www.legislation.gov.uk/ukxi/2013/1894/contents/made">http://www.legislation.gov.uk/ukxi/2013/1894/contents/made</a>
Taking Control of Goods (Fees) Regulations 2014	<a href="http://www.legislation.gov.uk/ukxi/2014/1/contents/made">http://www.legislation.gov.uk/ukxi/2014/1/contents/made</a>
Certification of Enforcement Agents Regulations 2014	<a href="http://www.legislation.gov.uk/ukxi/2014/421/contents/made">http://www.legislation.gov.uk/ukxi/2014/421/contents/made</a>
The Civil Procedure (Amendment) Rules 2014 No 407	<a href="http://www.legislation.gov.uk/ukxi/2014/407/pdfs/ukxiem_20140407_en.pdf">http://www.legislation.gov.uk/ukxi/2014/407/pdfs/ukxiem_20140407_en.pdf</a>
Court and enforcement fees	<a href="https://hcegroup.co.uk/services/court-fees-enforcement-fees">https://hcegroup.co.uk/services/court-fees-enforcement-fees</a>

## To find out more or instruct us

If you have any questions or wish to instruct High Court Enforcement Group then please contact us on **08450 999 666** or visit our website at **[hcegroup.co.uk](https://www.hcegroup.co.uk)**, go to the instruct us page and select the service you require from the menu.

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