

It is important to consider how you are going to enforce any judgment or award made in your favour at the outset of a dispute. There is no point obtaining a judgment or award against an opponent only to find that your opponent's whereabouts are unknown or your opponent is unable to pay.

Once you have obtained a judgment or award in your favour, which enforcement method is the most appropriate will depend on the individual circumstances of the debtor. Set out below is a brief summary of the options available.

OBTAINING INFORMATION

If you do not have detailed knowledge of the debtor's financial position, it is open to you to apply for an order to obtain information about a judgment debtor. This requires the judgment debtor to attend court to be examined as to his means. If the debtor is a company, the order can be made against an officer of the company.

WARRANT OF EXECUTION

A warrant of execution is the most common method of enforcement. This involves the seizure and sale of the debtor's goods up to the value of the judgment debt.

A warrant can be obtained in the High Court or the County Court. A request can be issued in the High Court for High Court judgments and County Court judgments over £600. County Court judgments must first be registered with the High Court in order to be enforced by the High Court Sheriff.

A warrant of execution can be issued if an instalment remains outstanding or for the whole debt.

This procedure gives you the right to request that a High Court Sheriff or County Court Bailiff visit the judgment debtor's home (if an individual) or place of business to seize property belonging to the judgment debtor to cover the judgment debt.

Not all property can be taken. Items that are exempt include the following:

- Goods on hire/ hire purchase goods
- Jointly owned property
- Tools of trade used by the judgment debtor in the course of his business
- Essential items to satisfy the basic domestic needs of the debtor and his family

In practice the Sheriff or Bailiff will take "walking possession" of the goods. Walking possession means that in return for not taking the goods immediately, the judgment debtor agrees not to dispose of or remove the goods. This gives the judgment debtor a further opportunity to pay the debt or reach an agreement with you. If the judgment debt remains unpaid, the goods are sold at auction and the proceeds are used to pay the debt.

The Sheriff's fees are retained from the proceeds of sale of the goods.

ATTACHMENT OF EARNINGS ORDER

An attachment of earnings order is an order requiring the judgment debtor's employer to make deductions from the judgment debtor's earnings and pay this direct to you.

This method can only be used where the judgment debtor is an individual and is employed. It is only available in the County Court. If you have a High Court judgment, the judgment must be transferred to the County Court.

The amount deducted from the judgment debtor's earnings is fixed by the court and will take into account the amount needed by the judgment debtor for ordinary living expenses.

It is possible for the judgment debtor to ask for a suspended order if they feel that they will lose their job or promotion prospects if an employer finds out that they are in debt.



Clarkson Wright & Jakes Ltd
Solicitors and Notaries

CHARGING ORDER

A charging order gives you a charge over the judgment debtor's land and securities whether owned by the debtor alone or jointly with anyone else, or interest in partnership property.

Charging orders can be obtained in the High Court for judgment debts of £5,000 or more and in the County Court for any debt sum.

Once a charging order has been made, it should be registered at HM Land Registry. You will then have a charge on the debtor's property for the amount of the judgment debt, subject to any prior mortgages or charges affecting the property. The charge prevents the judgment debtor from taking certain steps including disposing of the property without paying the judgment debt.

The main disadvantage of a charge is that it only secures the judgment debt. It is not a way of obtaining immediate payment. In order to discharge the debt you must apply for an order for sale of the property so that the judgment debt can be satisfied from the proceeds of sale after payment of any prior charges or mortgages.

GARNISHEE/THIRD PARTY DEBT ORDERS

This is an order requiring a third party who owes money to the judgment debtor to pay money directly to you to satisfy your debt. Usually this relates to money held in a bank or building society accounts. You will need details of the bank or building society account.

If the third party is a bank or building society, they are obliged to identify all accounts held with it by the debtor and must disclose relevant details to the court and creditor within 7 days of being served.

WINDING UP (COMPANY)/BANKRUPTCY (INDIVIDUAL)

This method can only be used for debts of £750 or over and, in the case of bankruptcy, debts which are for a liquidated sum payable now, or at a certain future time, and are unsecured.

The threat of presenting a bankruptcy/ winding up petition can be enough to prompt payment. An individual faced with potential bankruptcy is far more willing to take the judgment debt seriously. In respect of a company, the presentation of a winding up petition is likely to have severe consequences for the business. Its bank account is likely to be frozen, negative publicity may be generated and it may affect the company's ability to obtain credit in the future.

Using an insolvency process does not guarantee payment of your debt. As a petitioning creditor, you will simply rank alongside all other creditors. You may only be able to recover part of the debt or nothing at all.

A statutory demand can be served which requires the judgment debtor within 21 days to either pay the demanded amount, offer to secure the debt against any property they own (create a voluntary charge), or to offer to pay the debt in a way that is satisfactory to you, for example, by instalments.

If the judgment debtor has failed to pay within 21 days of service of the statutory demand, a bankruptcy/winding up petition can be presented. Failure to satisfy a statutory demand is accepted as evidence that the debtor is unable to pay his/its debts in full.

Bankruptcy

The general rule is that you should present the petition to the County Court for the insolvency district in which the debtor has resided or carried on business for the longest period during the six months immediately before the presentation of the petition. The petition must be served personally on the debtor unless an order is made for substituted service.

A hearing will be listed at which the court will consider the matter. Either a bankruptcy order will be made or the court may appoint an insolvency practitioner to investigate the possibility of a voluntary arrangement.

Once granted, a bankruptcy order will be entered into the public register of bankruptcy orders.

The court appoints an official receiver until the bankrupt's estate vests in the trustee in bankruptcy. The trustee is obliged to gather in, realise and distribute the bankrupt's estate to satisfy the creditors.



Clarkson Wright & Jakes Ltd
Solicitors and Notaries

Winding Up

You must petition a winding up order in the Companies Court of the High Court. A witness statement in support should be filed. A hearing of the petition will be listed.

Unless the court otherwise directs you must arrange for the petition to be advertised in the London Gazette not less than 7 business days after it has been served on the company and not less than 7 business days before the day fixed for the hearing.

At the hearing the court has discretion to grant the order, dismiss the petition, adjourn the hearing or make an interim order.

If a winding up order is granted, the official receiver becomes the liquidator until another is appointed. The liquidator collects in and distributes the assets. He notifies the Registrar of Companies, who dissolves the company 3 months later.

THIS LEAFLET HAS BEEN PRODUCED TO PROVIDE GENERAL GUIDANCE ONLY. IF YOU REQUIRE SPECIFIC ADVICE THAT WILL BE TAILORED TO YOUR CASE, PLEASE SPEAK TO A MEMBER OF THE TEAM.