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How to enforce a court decision

Gibraltar

1 What does enforcement mean in civil and commercial matters?

Enforcement is court-sanctioned action taken to compel judgment debtors to comply with the orders of the court. The choice of enforcement method lies entirely with the judgment creditor.

When choosing which method to use a creditor must consider whether:

he/she is likely to get their money and court fee from the defendant;

the defendant owes other people money or has other court judgments;

the defendant owns any goods or assets which can be taken and sold at auction;

the defendant is working;

the defendant has other earnings, such as income from investments;

the defendant has a bank, building society or other account;

the defendant owns property (a house); or

anyone else owes the defendant money.

Information on the different types of enforcement measures follows. A judgment creditor should choose the one which is most likely to get him/her the money owed.

A court cannot guarantee that the judgment creditor will get his/her money back, and a court fee is payable for any action taken. Although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant.

The different types of enforcement methods are:

Seizure of goods

Execution is the enforcement of civil court judgments by seizure of goods. To obtain enforcement by execution it is necessary to apply to the court for a warrant of execution. A warrant will only help if the defendant has:

enough goods at the address given by the judgment creditor which could be sold at auction to raise money; or

all the money claimed for on the warrant (to stop goods being sold).

Before the court can issue a warrant, the defendant must have:

failed to pay the amount he or she has been ordered to pay; or

fallen behind with at least one of his or her payments.

Bailiffs cannot always remove and sell the defendant’s goods. For example, they cannot remove essential household items and tradesman’s tools or goods subject to hire purchase or rental agreements. The bailiff will not take the defendant’s goods if they are not worth enough to pay the warrant after the costs of taking and selling the goods. Goods sold at auction often raise only a fraction of their original value. In addition the defendant’s goods may also already have been seized by bailiffs acting under another warrant.

Third party debt orders

A judgment creditor may make an application to the Supreme Court that a debt owed by a third party to the defendant be paid to the judgment creditor instead. In practice this method is used to seize funds which the defendant may have in bank accounts. If there are insufficient funds in the bank accounts to cover the debt then such funds as are available are used to repay at least some of the amount owed.

Insolvency proceedings

If the amount owed is more than £750 a judgment creditor can also apply to make the defendant insolvent. These proceedings are brought in the Supreme Court. This can be expensive however.

Judgment Summons

In the Small Claims Jurisdiction of the Supreme Court (claims up to £10000), a judgment creditor can apply for a judgment summons. The court can then impose payment of the debt due by installments which can, in certain limited circumstances, lead to imprisonment on default of payment.

Orders to obtain information

Although not in itself an enforcement method, this procedure allows for judgment debtors to be questioned for information regarding their assets, to enable the judgment creditor to make a more informed choice as to the enforcement method they would wish to use.

2 Which authority or authorities are competent for enforcement?

The Supreme Court is competent for enforcement in Gibraltar.

3 What are the conditions under which an enforceable title or decision may be issued?

3.1 The procedure

The Supreme Court (including its Small Claims Jurisdiction) can order enforcement in cases where they have granted judgment.

In Gibraltar, Bailiffs are employees of the Court Service and therefore civil servants. They deal with enforcement of judgments and/or orders made and registered in the courts. They enforce warrants of execution, repossess land with warrants of possession and recover goods under warrants for return of goods. In addition, bailiffs carry out other duties, including personal service of documents and warrants of committal.

Use of lawyers or other legal professionals

There is no obligation upon the creditor to make their application for enforcement through a lawyer or any other legal professional.

Except in the Small Claims Jurisdiction of the Supreme Court enforcement procedures can be complicated. Creditors may want to get advice, therefore, from a solicitor or the Citizens Advice Bureau before commencing an enforcement procedure.

Scale of costs for enforcement

There are different court fees for each of the methods of enforcement. As mentioned above, although the court will add the fee to the money the defendant already owes, the court cannot return what the creditor has paid if he/she does not get the money from the defendant. For further information on applicable fees you can contact the Supreme Court Registry, 277 Main Street, Gibraltar, telephone number (+350) 200 75608.

3.2 The main conditions

As mentioned above, in Gibraltar, the choice of enforcement method to be used is wholly within the hands of the judgment creditor. Responsible creditors who have obtained a valid judgment through the courts and have still not been paid are entitled to enforce that judgment by the most appropriate means available to them. Therefore, as long as a valid judgment is in place and a proper application is made, the court is obliged to follow the creditor's choosing.

4 Object and nature of enforcement measures

4.1 What types of assets can be subject to enforcement?

Enforcement action may be taken against the following assets:

Bank accounts by use of the third party debt order procedure.

Tangible movable property by use of execution.

Immovable property by use of the charging order procedure.

There is no hard and fast lists of goods that are exempt from distraint action. However, there are guidelines. The bailiff can only take goods which belong to the defendant or are jointly owned.

Any goods which the bailiff takes must be likely to fetch money at auction. Bailiffs will not remove goods if they think that they will not fetch enough to pay something towards the warrant after the cost of removing and selling them at auction have been paid.

Bailiffs cannot take:

items which the defendant needs for his job or business, such as tradesman's tools or books;

essential household items which the defendant and his family need such as clothing or bedding;

items which are leased, rented or are on hire purchase agreements (including cars);

goods which may have already been seized by bailiffs acting under another warrant; or

equipment which does not belong to a business (e.g. office furniture, machinery and vehicles which are leased).

For third party debt orders a judgment debtor who is prevented from withdrawing money from his or her account with a bank or building society and claims that he or she or his or her family is suffering hardship in meeting ordinary living expenses as a result, may apply to a court for a hardship payment order which allows one or more payments to be made to specific individuals.

4.2 What are the effects of enforcement measures?

For both debtors and third parties, the failure to comply with the requirements of court orders leads them open to sanctions for contempt. The penalties that can be imposed for contempt include "purging contempt" (that is an apology to the judge in open court), fines, and in the most serious cases imprisonment for up to 14 days.

Banks have certain obligations regarding disclosing information and attaching bank accounts. When a bank receives a third party debt order imposed upon one of its customers, the bank does not have to reveal how much money is held in the account. It can state that there is no money in the account, that there are insufficient funds to meet the whole amount but can pay some of it, or that there are sufficient funds to meet the whole amount requested. There are very strict data protection issues that govern what information other than this the bank can provide.

4.3 What is the validity of such measures?

All orders state the length of time that is being given to provide relevant information or to comply with the court order, and also state the maximum penalties that may be imposed for failing to comply with a court order.

5 Is there a possibility of appeal against the decision granting such a measure?

The court based enforcement methods (charging orders, and third party debt orders) all involve a two-stage process. The interim stage of the process is purely a paper based judicial function, and the judgment debtor has no input to the process at this stage. However, for each method to progress to the final stage, there has to be a hearing to which the judgment debtor will be invited to attend where he will be able to give any reasons as to why the planned method of enforcement should not proceed. The date of the hearing will be notified to all parties well in advance, and in all cases there is a fixed minimum amount of time that must elapse between the 'interim' stage, notification of the 'final' hearing, and the 'final' hearing itself, to enable the debtor (and any relevant, directly involved third party e.g. the bank in a third party debt order case) time to prepare their case. If the date of the 'final' hearing is inconvenient for the parties, they may be able to get it postponed to a more mutually convenient date. Should this happen, the interim order will remain in place, but the order cannot be made 'final' until that hearing has been held.

There is no appeal against the decision once the court has made its order. In appropriate circumstances appeals or requests to set aside can only be made on the original judgment that gave the creditor the authority to request enforcement in the first place. Only if the judgment is successfully challenged by appeal or is set aside can the enforcement process be revoked by a court. If a challenge to the judgment is lodged after a court has authorised a creditor's request for enforcement a warrant may be suspended on application to the court. Bailiffs may not take away goods but they must continue to levy on them (that is list those that could later be seized and taken away for sale).

Provided that a creditor has made a correct application for enforcement to a court, that court cannot refuse to authorise the method of enforcement chosen by the creditor. There is, therefore, no need for the creditor to have a means of appeal against the decision granting a measure.

6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

A warrant or writ of execution is time limited. The warrant and writ are valid for 12 months and can be extended for a further 12 months by an order of the court.

In the taking control of goods procedure a debtor must be given a notice explaining that his goods have been seized and that he has 5 days in which to enter into a 'walking possession' agreement with the Bailiffs. This agreement allows the debtor to retain the goods. If the debtor does not sign the agreement within 5 days the Bailiffs can remove the goods and proceed to their auction.

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