

Various methods of enforcement compared

<p>PROS</p> <ul style="list-style-type: none"> • Often the quickest way of getting payment of a judgment debt. • Simple and straightforward procedure. • Popular method of enforcement • Works for both individual and corporate debtors. 	<p>METHOD Writ of control or warrant of control</p> <p>ASSETS WHICH CAN BE ENFORCED AGAINST Most forms of personal property owned by the judgment debtor, capable of seizure and sale.</p>	<p>CONS</p> <ul style="list-style-type: none"> • Will only work if debtor has enough goods which can be sold at auction to meet the judgment debt and enforcement officer's charges or, alternatively, enough money to pay judgment debt.
<p>PROS</p> <ul style="list-style-type: none"> • Can take effect relatively quickly • Ensures that a debt is paid in cash. 	<p>METHOD Third party debt order</p> <p>ASSETS WHICH CAN BE ENFORCED AGAINST Money debt(s) owed by third party(ies) to judgment debt or (for more on which assets are attachable.</p>	<p>CONS</p> <ul style="list-style-type: none"> • One of the least used methods of enforcement. • The evidence to support an application (that the debtor is owed money by a third party/has a bank account and details) can be hard to find. • You cannot apply for a third party debt order against a joint bank account unless the judgment debt is a joint debt of all the account holders • Third party debt orders cannot attach future debts . • A third party debt order cannot be used to enforce against foreign debts.
<p>PROS</p> <ul style="list-style-type: none"> • Judgment creditor can wait before enforcing a charging order by seeking an order for sale. If property prices are dropping, it may be sensible to wait for them to rise again. • Interest continues to run on sum secured from date of judgment to receipt of final monies, although delay in seeking charging order of over six years may result in interest being limited to six years • No limitation problems in seeking charging orders and orders for sale because these are not viewed as fresh action on a judgment and therefore are not subject to the six year limitation period. 	<p>METHOD Charging order and order for sale</p> <p>ASSETS WHICH CAN BE ENFORCED AGAINST Land, Securities, Funds in court, Dividends and interest, Interest in a trust.</p>	<p>CONS</p> <ul style="list-style-type: none"> • A slow method of enforcement- three stages – application for interim charging order, application for final charging order and order for sale. • Not likely to be effective if there is not substantial equity in a property or if the property is jointly owned or occupied by others than judgment debtor. • Other creditors may take priority.
<p>PROS</p> <ul style="list-style-type: none"> • Inexpensive and fairly easy method of enforcement. • Automatic deduction from wages so does not rely on debtor making payment. 	<p>METHOD Attachment of earnings</p> <p>ASSETS WHICH CAN BE ENFORCED AGAINST Cash (part of debtor's wages will be paid into court and released to judgment creditor).</p>	<p>CONS</p> <ul style="list-style-type: none"> • Often not very satisfactory method of enforcement. Low payments often ordered. • Debtor needs to be in paid employment. • Interest does not accrue to the debt and it can take many years to recover in full. • Use of attachment of earnings order may preclude use of other methods of enforcement – leave of the court to issue execution is needed whilst an attachment of earnings order is in force.
<p>PROS</p> <p>The threat of bankruptcy may be useful for obtaining payment from judgment debtors who do not wish to become bankrupt (eg professionals, company directors).</p>	<p>METHOD Bankruptcy</p> <p>ASSETS WHICH CAN BE ENFORCED AGAINST Assets of the judgment debt or that get divided amongst his creditors by the trustee in bankruptcy following an order for bankruptcy.</p>	<p>CONS</p> <ul style="list-style-type: none"> • The courts have discouraged the use of insolvency procedures as a debt collection exercise. • Bankruptcy petitions can only be issued in the case of debts over £5000 (increased from £750 from 1 October 2015) • Secured or preferred creditors take priority to the judgment creditor. At the end of the process, the judgment creditor may only receive a small proportion of his debt, or nothing at all.

PROS

- The threat or commencement of winding-up proceedings can result in the debt being recovered quickly.
- If court grants a winding-up order, the liquidator will take control of all the company's assets from the directors. The liquidator has wide-ranging powers and may bring legal proceedings to maximise the assets available for distribution amongst the company's creditors.

METHOD Company liquidation

ASSETS WHICH CAN BE ENFORCED AGAINST
Assets of the company judgment debtor that get divided amongst its creditors by the liquidator following a winding up order.

CONS

- The courts have discouraged the use of insolvency procedures as a debt collection exercise. Not appropriate if the debt is genuinely disputed or if the company has a genuine cross-claim or right of set-off. If the court is satisfied of this, petition will be dismissed and the creditor will be required to pay the company's costs, often on the indemnity basis.
- Only a modest proportion of the debt may be recovered if there are other creditors.
- Substantial delay possible between company entering into liquidation and payment of a dividend (whether interim or final) to the creditors by the liquidator.

METHOD Writ of specific delivery

ASSETS WHICH CAN BE ENFORCED AGAINST
Specific goods of judgment debtor.

CONS

Only used where defendant does not have option of retaining goods by paying their assessed value. Where he has that option, use writ of delivery

METHOD Committal

CONS

- Not really an enforcement method, more a sanction for failure to comply with a judgment or order. A person in contempt of court may try to purge his contempt by putting right the fault that led him to be in contempt. This could result in enforcement of a judgment.
- Committal orders are very serious and rarely made.
- Will not necessarily lead to a quick result. Defendant must be given notice of an application for committal and a hearing may be necessary.

METHOD Writ of delivery

ASSETS WHICH CAN BE ENFORCED AGAINST
Specific goods of judgment debtor.

CONS

Only used where defendant has the option to retain goods by paying their assessed value. If not, use writ of specific delivery.

METHOD Writ of sequestration

ASSETS WHICH CAN BE ENFORCED AGAINST
All real and personal property belonging to judgment debtor.

CONS

- Only available in respect of orders in the nature of an injunction.
- Debtor has to have been in contempt for disobeying previous order of court.

METHOD Writ of possession

ASSETS WHICH CAN BE ENFORCED AGAINST
Land.

CONS

Only a means of enforcing a judgment or order giving possession of land.