



DEBTS IN THE HIGH COURT

What is the High Court

Civil cases involving money claims or property commence either in the county court or the High Court.

Most creditors will commence actions in the county court. From **21 April 1999** High Court procedures from the issue of the claim up to judgment are the same as in the county court.

After a county court judgment (CCJ) or High Court Judgment has been entered, if there has been no payment order made or a debtor is in default of the CCJ, it is open to the claimant to choose how best to enforce the judgment, including:

- Attachment of Earnings Order - if employed **not** if self-employed;
- Charging Order - over property or assets;
- Third Party Debt Orders - normally against bank accounts;
- Bankruptcy - against an individual, sole trader, partnership or winding up against a limited company;
- Order to Obtain Information - to assess the best means to recover the debt;
- Instructing bailiffs or High Court Enforcement Offers (HCEO) via a warrant.

If there are any questions about county court procedures or any of the above options, **phone us for advice** or see our fact sheets.

Information

The High Court forms part of the Supreme Court, which is based at the Royal Courts of Justice in central London and in District Registries of the High Court based in larger towns. These may be in the same building as your local county court.

Which debts are dealt with in the High Court?

Most credit agreements are regulated by the **Consumer Credit Act 1974**. This means that the creditor has to sue you in the county court and **cannot** enforce the debt via the High Court.

The High Court is most likely to be used by creditors for debts over **£25,000** that are not regulated by the **Consumer Credit Act 1974**.

Transferring a County Court Judgment to the High Court

If a creditor has a CCJ against you they may be able to transfer the matter to the High Court for enforcement if they want to use 'execution against goods' to enforce the debt. This may typically be for business and trade debts, but sometimes for unpaid nursery fees, funeral charges or even water charges as these types of debt are not covered by the **Consumer Credit Act 1974**. This means they use enforcement officers to try to take your goods and sell them to pay some or all of the debt.

Remember

Your creditors cannot transfer your judgment if your agreement is covered by the **Consumer Credit Act 1974**.

If the CCJ is for a debt that is not regulated by the **Consumer Credit Act 1974** then the following applies:

- If the debt is for more than £600 and less than £5,000 the creditor can **choose** to transfer the judgment to the High Court for enforcement;
- If the debt is for more than £5,000 then the creditor **must** transfer the judgment to the High Court for enforcement.

A creditor would apply for transfer of the CCJ to the High Court for enforcement by use of a court form **N293A**, with a fee of £50.

Enforcement officers are High Court bailiffs and they can act more quickly than county court bailiffs. They do not need to send a warning letter first.

If a creditor obtains a High Court Judgment for an unregulated debt, then this could result in interest being added on to the debt at the statutory rate which is currently 8% a year.

If the debt is transferred to the High Court from the county court then interest could be added as well.

Enforcement officers can add fees and charges to the debt in line with a set fee scale, this means your debt can grow quickly.

Therefore, if you want to challenge a judgment, or apply to set it aside for some reason, this must be done in the county court where the judgment was made in the first place. You will need to pay a fee of **£75** to set aside the judgment. See the section on 'High Court fees or **phone us for advice**.

If the creditor has already issued a writ to use High Court enforcement officers to enforce the judgment, you may also need to make a separate application for a 'stay of execution'. See the section on 'How to apply for a stay of execution'. This application will need to be made in the High Court.



Warning

If you don't do this, enforcement officers may come out to your home or business. They can call wherever they believe assets belonging to the debtor to be. If they do so, show them copies of your application to either set aside the judgment or your application to suspend the writ.

How does the creditor apply for a Writ of Fi-Fa?

If you cannot pay the judgment then the creditor can apply to the High Court for a writ of fieri facias (fi-fa). This is an order which allows enforcement officers to try to seize your goods. The creditor can request that a writ of fi-fa be issued:

- when a judgment has been entered by the creditor, if you have not requested stay of execution. See the section on 'How to apply for a stay of execution': **or**
- as soon as you miss a payment under the terms of a stay of execution.

If a creditor wants to use a writ of fi-fa to enforce a CCJ it will automatically be issued by the High Court unless **six or more years** have passed since the date of judgment, in which case

Advice

A creditor enforcing a judgment

If you are wishing to enforce a judgment e.g. you are the creditor - please see website www.hceo.org.uk for further information.

Challenging a debt in the High Court

Even if a county court case is transferred to the High Court for enforcement, the case remains in the county court for most other purposes.

the permission of the court will be needed before the writ can be issued.

Information

A writ of fi-fa is valid for **12 months** and can be renewed by the creditor.

Information

You will have no notice that a writ has been requested by the creditor.

The creditor will send a stamped copy of the writ to the High Court enforcement officer of their choice (generally a private bailiff).

The enforcement officer's fees are primarily the responsibility of the creditor but they may be added to the debt and recovered from you if there are goods to seize or you pay some or all the entire amount due. The enforcement officer is unlikely to send you a warning letter but may do so.

Advice

If the enforcement officer is unable to levy on goods, the client will not have to pay the fee. The enforcement officer cannot charge fees for the cost of previous unsuccessful attempts to levy on goods. This is a complex area, **phone us for advice.**

Remember

You are not entitled to any prior notice of the issue of writ of fi-fa.

The enforcement officer will generally attempt to seize goods fairly shortly after the issue of the writ. If you do get prior notice, you may be able to pay the money due to the enforcement officer or directly to the creditor before your goods are seized.

Many of your everyday goods and those belonging to a member of the family or a third party cannot be seized by enforcement officers.

Regulations state that the following items are exempt and cannot be taken:

- 'such items as clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of that person and his family; **and**
- such tools, books, vehicles and other items of equipment as are necessary to that person for use personally by him in his employment, business or vocation'

If you have a query about what goods can be taken, **phone us for advice.**

Information

Enforcement officers cannot break into your home (or any residential property) to seize goods. If you do not allow them to enter your home at any time they cannot seize goods.

Warning

If you have already allowed an enforcement officer into your home or business premises they may be able to return and take goods. **Phone us for advice.**

If the money judgment is owed by a limited company (Ltd) or limited liability partnership (LLP), only assets belonging to that business may be seized.

Enforcement officers can force entry into a commercial property (where there is no living accommodation attached) in order to seize goods.

Informal agreements

Most defendants who cannot pay the enforcement officer in full at once enter into negotiations with the officer to pay by instalments. This process is informal but cheaper and quicker than an application to the court. Payment by this method relies on the

cooperation of the creditor and the enforcement officer. It is therefore important not to offer more than you can afford or to fall behind with the payments you agree. If you do fall behind with the payments and the enforcement officer has seized goods, they may remove them to the sale room for auction.

How to apply for a stay of execution

If the enforcement officer issues a warning letter and you cannot afford to pay the money you should try to make an arrangement to pay. See the section on 'Informal agreements' or **phone us for advice**.

If you cannot come to an agreement with the enforcement officer you should make an application for a 'stay of execution' on a court form called an **N244**. You will need to pay a court fee to apply for a stay of execution. You should say that you are requesting a stay of execution with an offer of payment - to pay by instalments or a lump sum payment of the whole amount by a certain date.

Advice

If the High Court does make an order for payment by instalments you can apply to reduce or 'vary' the payments if you have a change of circumstances. You can use the court form **N244**. **Phone us for advice**.

The application for a stay of execution must be accompanied by an 'Affidavit of Means'. This is a financial statement, written in a specific form. See the example at the end of this fact sheet.

The Affidavit must be 'sworn' for example, before a court officer, a solicitor unconnected with the case, a commissioner for oaths or a justice of the peace (JP). You will usually have to pay a fee of £8.

Instead of the Affidavit, you could use a 'witness statement'. This is the same as an Affidavit but instead of swearing it you sign a 'statement of truth' which is on the back of the form **N244**.

You need to make three copies of the **N244** and send (by first class recorded delivery) or take them to the court along with your affidavit of means or witness statement and the fee.

You should ask for a hearing date as part of your application. The court will then set a hearing date and give you notice of this when they send the application form back to you.

You must then post (again by recorded first class post) or take the form **N244**, notice of hearing and Affidavit of means or witness statement to the creditor or their solicitor.

Warning

The paperwork must be received by the creditor at least four working days before the hearing.

A letter explaining the documents could also be enclosed. See the sample letter at the end of this fact sheet.

What happens once I have applied for a stay of execution?

A hearing date will be set. This can be some weeks away. It may mean that enforcement officers will call out in the meantime. If your application is urgent, ask your court if they will agree to hold an immediate hearing and agree to an interim order suspending the writ.

Warning

Not all courts will agree to do this. Check with your local court.

The hearing will be heard by the 'master' (in the High Court in London) or by a district judge in chambers (in his/her private room) in the court where the writ of fi-fa was issued. It is up to the master or district judge to decide if a stay of execution will be granted.

It is more likely:

- if: there is no advantage in enforcing the judgment, for example, you have no assets;
or
- there is a good reason why you are unable to pay the money.

Remember

You **must** attend the hearing

Can I apply to transfer the hearing to my local court?

There is no automatic transfer to your local court when you apply for a stay of execution. It appears that practice is different in each court and the fee you have to pay may vary too.

- You may be able to ask your local court to deal with the transfer from the original court.
- You may have to ask the original court to transfer the case to your local court.
- You may have to go to the original court to make the application in person. Transferring the hearing is complicated. **Phone us for advice.**

What should you do if the stay of execution is granted?

If the court agrees to a stay of execution, you must draw up the order yourself, send or take it to the court for stamping and then serve it on the creditor. You must then start making the agreed payments to the creditor.

Warning

If you do not keep to the agreed instalment plan, the writ of fi-fa will start up again and the enforcement officer can start the process of trying to take your goods again.

Complaints

You can complain about the conduct of the enforcement officer. You must first complain in writing to the enforcement officer who should deal with your complaint under their own complaints procedure. If you are not happy with their reply you can complain to the High Court Enforcement Officers Association who will look at the complaint if it falls within their rules. They will not deal with complaints about fees.

You have to apply to the court for an assessment of the fees if you are not happy. This is very complicated. **Phone us for advice.**

The Secretary High Court Enforcement Officers Association Ltd

50 Broadway
London

SW1H 0RG

Tel: 020 7152 4017

Fax: 020 7152 4001

Email: complaints@hceoa.org.uk

Website: www.hceoa.org.uk

Fees in High Court Judgments

High Court Enforcement Officers charge fees which are prescribed by the '**High Court Officers Regulations Reg13 and Sch.3**', a full copy of which can be obtained from www.hmcourts-service.gov.uk or phone us for advice.

In High Court judgments, the enforcement officer can charge a fee which is a percentage of the value of the goods recovered (this is known as poundage). This will be 5% of the first £100 recovered and 2.5% of the remainder.

i Information

If the enforcement officer is unable to levy on goods, the client will not have to pay the fee. The enforcement officer cannot charge fees for the cost of previous unsuccessful attempts to levy on goods.

Charges in High Court Judgments

The charges listed below are the most pertinent fees debtors will encounter. See the above website for a full breakdown of the fees.

Charges for enforcement of High Court writs are as follows:

Mileage	29.2p per mile, up to a maximum of £50 in total, from the enforcement officer's business address to the place where goods are seized and return, in respect of one journey to seize goods and, if appropriate, one journey to remove goods.
Seizure of goods	£2 for each building or place at which goods are seized.
Walking possession	25p per day.
Transport and storage of removed goods.	Reasonable costs. Where no goods are removed, the law is not clear whether charges can be made for attendance with a van. However, it would seem that a reasonable charge could be made, provided that the goods have already been levied (see previous paragraph).
Sale	If a sale is held on auctioneer's premises, charges which include all out of pocket expenses, except removal costs are 15% of the first £100 of proceeds of sale, 12.5% of the next £900 and 10% of any additional amount over £1000. If the sale is held at the client's home, the cost will be 7.5% of the proceeds of the sale plus any out of pocket expenses actually and reasonably incurred.

If the goods are not sold because the writ is set aside or suspended, or the client pays the debt, a charge of 10% of the value of the goods (to include all out of pocket expenses except removal) will be made if the goods have been taken to the auctioneer's premises and a detailed inventory prepared.

If the goods are still at the client's home but work has been done to prepare for the auction (including the preparation for the inventory), a charge of 5% will be made, in addition to a charge for out of pocket expenses actually and reasonably incurred.

If a county court judgement is transferred from the county court for enforcement by a High Court Enforcement Officer, additional fees will be payable by the creditor.

Credit rating

If you have a judgment in the High Court this will be recorded in the public register called the 'Register of Judgments Orders and Fines'. The information will normally stay on the register for six years unless you pay the judgment off within one month. If you pay the judgment off after a month, you can ask for your entry to be marked as 'satisfied' if you provide proof of payment, but this will not remove the entry until the six years is up. See the Registry Trust website for more information:

www.trustonline.org.uk.

This may affect your ability to get credit as details about High Court judgments recorded after **April 2006** are passed on to credit reference agencies. If this happens, your High Court judgment will show up on your credit reference file. If your judgement is for a debt that you owe to a credit company it is likely that this will show up on your credit reference agency file as a 'default' even if the judgment itself does not appear.

Other methods of enforcement in the High Court

Attachment of Earnings Order

Where a money judgment had been made in the High Court and your creditor wants an 'attachment of earnings order' to make your employer take regular deductions from your wages to pay the debt, they must ask for the case to be transferred to the county court. However, interest will still be added at the High Court rate of 8% (monthly daily overall). If the attachment of earnings order fails to recover all the money owing, and another method of enforcement is used, the case may need to be transferred back to the High Court.

Warning

The creditor will have to pay a fee to the High Court for applications to enforce payment. The creditor will add the fee to your debt and in some cases there may be extra court costs which they can add as well.

Orders to obtain information

Before using enforcement action a creditor may ask you to go to court for an interview about your income, outgoings and any assets you have, such as your house. This is called an 'order to obtain information' or information order. This process is the same as in the county court. This can happen at any time and not just when you miss a payment. The interview consists of a set of standard questions and you may be asked to bring things like your pay slips, and credit agreements to the interview. This can also be with regard to trading records.

Warning

It is very important that you go to the interview or tell the court if you cannot go. The court can actually send you to prison for not cooperating with the process, so you must act if you are sent an interview date. If you want further help on information orders, **phone us for advice.**

Do I have to pay a fee in the High Court?

There will usually be a fee to pay with your application. You can ask the court not to pay the fee in some circumstances. The form you will need to fill in is called an **EX160 'Application for a fee remission'**. This form needs to go to the court with your main application. If the court agrees your application you will not have to pay the fee. If you pay a fee when you should have qualified for a remission, then you have six months to apply to the court for a refund. You can appeal to the court manager if you do not agree with a decision on fees.

Warning

The court has very strict rules about the proof you need to give them about your income and benefits. If you are in an emergency and you do not have the money to pay the fee or any proof of your income, the court may help you but you will have to send proof later.

Fee remission if you are on benefits

You will not have to pay the fee if you are on the following benefits:

- Income Support;
- income-based Jobseeker's Allowance (JSA);
- the guarantee credit element of Pension Credit; **or**
- income-related Employment and Support Allowance; **or**
- Working Tax Credit if you are **not** getting Child Tax Credit as well.

You must ask the court for exemption from the fee. You need to give the court proof that you are getting the benefit. This must be a letter or notice that is less than one month old.

Fee remission if you have a low income

You will not have to pay the fee if your income (**before** tax and national insurance is taken off) falls below a set limit. This figure changes each year. Your income includes pensions, Child Benefit, Child Tax Credits and child maintenance. Your partner's income is also taken into account as well as the number of children you have. You will need to give the court proof of your income. You need to give the court your child benefit notice to prove how many dependant children you have. If you have more than 4 children then you need to add £2,930 for each additional child.

This table shows the figures from **July 2009**

Number of children	Single	Couple
No children	£13,000	£18,000
1 child	£15,930	£20,930
2 children	£18,860	£23,860
3 children	£21,790	£26,790
4 children	£24,720	£29,720

If there any other reduction I can ask for or do I have to pay the fee in full?

You can also qualify for a reduction in the fee called a 'part-remission' by telling the court how much money you have left after paying essential bills such as rent or mortgage, childcare, maintenance and court orders. There is a set amount allowed for living costs. The court only takes set items into account. They then work out what they call your 'disposable monthly income'. If your disposable monthly income is below a set amount then you will not have to pay the fee. (This is from October 2007). You may only have to pay part of the fee depending on how the court has worked out your disposable monthly income. The calculation is complicated and you will to give the court proof of your income and bills at the time you apply. Ask the court for help or phone us for advice.



Help

There is a fees section on the HM Court Service website that may be helpful. <http://www.hmcourts-service.gov.uk/infoabout/fees/index.htm>.



Remember

You can always phone us for advice about any difficulty you have in dealing with your debts.



Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0808 808 4000 Website www.businessdebtline.co.uk

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Request for a stay of execution in the High Court- sample letter

Use this letter when making a request for a stay of execution when you are unable to pay immediately.

(Your home address)

Date _____

To: _____

Dear Sir/Madam

Case no: _____

I am/we are unable to pay the sum claimed immediately and wish to apply for a stay of execution.

I/we therefore enclose an application and **affidavit/witness statement** in support of my/our application for a stay.

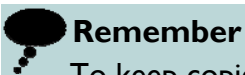
You will note that I am/we are able to make a repayment proposal of £_____ per month and that my/our first monthly instalment could be made on (**insert the date**).

I/we have examined my/our full financial circumstances and believe that this sum represents a realistic amount.

I/we hope therefore that you will be able to accept the repayment schedule.

Yours faithfully

(Your signature)



Remember

To keep copies of all letters you send to your creditors.

Affidavit of means in support of stay of execution

IN THE HIGH COURT OF JUSTICE 1998.B.23

QUEEN'S BENCH DIVISION

BETWEEN

Walter Sichort and Sons Limited (Claimant)

And

Alberto Rossi (Defendant)

AFFIDAVIT IN SUPPORT OF STAY OF EXECUTION

I, Alberto Rossi, of 26 Long Road, Anytown, Blankshire, salesman, the above-named Defendant, make oath and say as follows:

- 1. On the 9th day of June 1998, the Claimant entered judgment in this action against me for £1,500 and £350 costs.*
- 2. I am a salesman employed by Green and Sons. I earn £250 a week net. I am a married man and have two children whose ages are 4 and 2. I own the house where I live with my family. The property has a value of £70,000 and is subject to a mortgage of £40,000 with the Halifax Building Society.*
- 3. I have no other income. I have savings of £200 with the Blankshire Building Society. My household contents are worth £2,000. I own an Austin Allegro car RST 425M worth £250. I have no other capital. My wife works as a childminder and earns £40 per week net. She draws £20.75 per week child benefit.*

My weekly outgoings are as follows:

£

- 90.00 mortgage*
- 7.00 water charges*
- 20.00 gas and electricity*
- 70.00 food and household*
- 9.00 telephone*
- 5.00 house and life insurance*
- 10.00 car repairs and petrol*
- 15.00 council tax*
- 20.00 miscellaneous expenses*

- 4. in all circumstances, the best offer I can make to satisfy the judgment in this action is by payment of instalments of £50.00 per month, and I ask that the Court will stay execution upon such judgment so long as I pay that amount each month on the 31st day of each month, commencing on the 1st day of December 1998.*

SWORN *this...day of20*

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