



FACT SHEET NO. 31

DEALING WITH DEBTS IN THE HIGH COURT

WHAT IS THE HIGH COURT?

Most creditors will take action against you in the county court. You may be familiar with procedures in the county court, possibly from reading our pack, or because creditors have already taken court action

From **21 April 1999** High Court procedures from the issue of the claim up to judgment are the same as in the county court. However there are important differences between enforcement procedures in the two courts.

If you have any questions about county court procedure, **phone us for advice**.

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 in larger towns. These are usually in the same building as your local county court.

WHICH DEBTS ARE DEALT WITH IN THE HIGH COURT?

Most credit agreements up to £25,000 are **regulated** by the **Consumer Credit Act 1974**. This means that your creditor **has** to sue you in the county court and cannot transfer the debt to the High Court for enforcement.

The High Court is most likely to be used by creditors for debts over £15,000 that are **not regulated** by the **Consumer Credit Act 1974**.

The creditor has to show why the case should be heard in the High Court e.g. because it is for:

- a large amount,
- the case is complex,
- the result could be of public importance.

If a creditor has a county court judgment 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 means they use sheriff's officers to try to take your goods and sell them to pay some or all of the debt. From **April 2004** sheriff's officers are known as enforcement officers.

If the county court judgment is for an unregulated debt 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.



ADVICE

Contact us if you are not sure whether or not your debt is a regulated or unregulated agreement under the **Consumer Credit Act**.

WHY USE THE HIGH COURT?

- 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.

- For unregulated debts over £5,000 – if a creditor obtains a High Court judgement then this could result in interest being added on to the debt at the statutory rate which is currently 8% a year.

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. Therefore, if you want to challenge a judgment, this must be done in the county court. **Phone us for advice.**

If you need to ask for a ‘stay of execution’, (see page 3), this application will need to be made in the High Court.

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.

CAN MY GOODS BE TAKEN?

Many of your everyday goods and those belonging to a member of the family cannot be seized by enforcement officers. Regulations state that the following items are exempt and cannot be taken:

“such 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 they may be able to return and take goods. **Phone us for advice.**

If the money judgment is owed by a firm, only assets belonging to the firm may be seized. Enforcement officers **can** force entry into a commercial property (where there is no living accommodation attached) in order to seize goods. However, goods needed to run the business cannot be seized.

ADVICE

If you run your own business as a sole trader you can also contact Business Debtline on Freephone: **0800 197 6026.**

HOW DOES THE CREDITOR APPLY FOR A WRIT OF FI-FA?

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 a stay of execution (see 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 county court judgment it will automatically be issued by the High Court unless six or more years have passed since the date of

judgment, in which case the permission of the court will be needed before the writ can be issued.

INFORMATION

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

INFORMATION

You will have no notice that a writ has been requested by your 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 the entire amount due.

The enforcement officer is unlikely to send you a warning letter but may do so.

REMEMBER

You are not entitled to any prior notice of the issue of a 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.

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' and **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**. A court fee of £50 is payable: see the section on 'High Court and county court fees'. The **N244** should state 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.

High Court orders allowing you to pay in instalments are unusual but these may become more common since **26 April 1999** when the rules changed.

ADVICE

If the High Court does make an order for payment by instalment, you can apply to reduce or 'vary' the payments if you have a change in 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 has to be '**sworn**', for example, before a solicitor unconnected with the case or a justice of the peace (JP). A fee is payable of between £5 - £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 **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?

The hearing will be heard by the 'master' (in the High Court in London) or by a district judge in chambers (i.e. in her/his private room) in the court where the writ of fi-fa was issued. You must attend the hearing. 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.

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 an enforcement officer by writing to:

The Secretary
The High Court Enforcement Officers Association Ltd
PO Box 180
Winsford
Cheshire
CW7 2WP
www.hceoa.org.uk

Complaints will only be considered once the enforcement process has been concluded. In other words, the association will not intervene if the writ is still being enforced against you.

YOUR CREDIT RATING

If you have a judgment in the High Court this will be recorded in the new public register called the 'Register of Judgments, Orders and Fines' from **April 2006**. 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. Contact the Registry Trust for information. See their website www.registry-trust.org.uk

This may affect your ability to get credit as the information may be passed on to the three credit reference agencies. If this happens your High Court judgment will show up on your credit file.

However, if your judgment 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.



FACT SHEET

We have a fact sheet on 'Credit reference agencies', which may be of assistance to you. **Phone us for a copy.**



WARNING

Although credit reference agencies may not be adding High Court judgment information to your file from **April 2006**, they may choose to do so in the near future. **Phone us for advice.**


OTHER METHODS OF ENFORCEMENT FOR HIGH COURT JUDGMENTS

ATTACHMENT OF EARNINGS ORDER

Where a money judgment has 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%. 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.

FACT SHEET

 We have a fact sheet on 'Attachment of earnings orders in the county court', which may be of assistance to you. **Phone us for a copy.**

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 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.

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.**

CHARGING ORDERS

This is a way in which the creditor can ask the court to put a 'charge' on your home, which basically 'secures' the debt like a mortgage so it must be paid off when the house is sold.

A creditor can apply to the High Court for a charging order at any time, **not** just when you are in arrears with your instalments. This can happen even if you have been given a stay of execution on a writ. This is **not** the same as a county court judgment where a charging order

cannot be applied for by the creditor if you are up to date with instalments ordered by the court.

ADVICE

The High Court still has to look at all the circumstances of the case when deciding whether to make a charging order. If you have a stay of execution and are up to date with your instalments you should use this as an argument at the hearing against a charging order being made.

If a charging order is made in the High Court, the court does not have the power to agree to terms common in the county court such as agreeing the creditor cannot apply for an order for sale as long as you pay set instalments.

WARNING

If your creditor applies for a charging order, **phone us for advice** immediately.

INFORMATION

It is still a good idea to make an arrangement to pay the debt back in instalments as your creditor is less likely to enforce the charging order if you make regular payments.

The High Court cannot be used to apply for a charging order if your judgment is for less than £5,000. The creditor must apply for the case to be transferred to the county court nearest to you before they can make the application.

If the debt is over £5,000 then the application can be made in the High Court or the county court unless the judgment is for a debt regulated by the **Consumer Credit Act 1974**, in which case the charging order must be applied for in the county court.

A charging order application is a two-stage process and there must be a hearing in front of a district judge before it is made final. Having a final charging order does **not** mean you will lose your home. A further application has to be made asking the court to order a sale of your home.



FACT SHEET

We have a fact sheet on 'Charging orders in the county court', which may be of assistance to you. **Phone us for a copy.**

THIRD PARTY DEBT ORDER

This is the way in which your creditor can instruct someone who owes you money to pay the creditor instead. The most likely way a third party debt order would be used is where your creditor finds out you have savings in the bank and wants your bank to pay your savings to the creditor. This process is the same as the county court.



ADVICE

It is a fairly unusual procedure and involves a court order freezing the account and a hearing in front of the district judge. If your creditor is threatening to apply for a third party debt order, **phone us for advice.**

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

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

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HIGH COURT AND COUNTY COURT FEES

Do I have to pay a fee for an application 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 exemption or 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 been exempt or would have qualified for a remission then you have six months to apply to the court for a refund.

Exemptions

If you are on Income Support or income-based Jobseeker's Allowance (JSA) you can ask the court for exemption from the fee. You need to give the court proof that you are getting the benefit. You will be exempt if you or your partner are on the guarantee credit element of Pension Credit.

If you are on Working Tax Credit you will be exempt from the court fee in these circumstances:

if you are also on Child Tax Credit;

or

you receive the disability or severe disability element in your Working Tax Credit;

and in either case

your gross annual income taken into account for Working Tax Credit is £16,017 or less (from 6 April 2007).

You will need to show the court your Tax Credit award notice to qualify.

If you do not qualify under these rules for an exemption then you can ask for the fee to be remitted or waived by the court. See below.

Remissions

Ask the court for the fee to be remitted (or waived) if it will cause you what the court calls '**undue financial hardship**'. You can use the same **EX160** application form. You may be on a low income or a benefit that does not automatically exempt you from paying the fee. Give as much information about your circumstances as you can. Explain your financial situation on the application form and any exceptional circumstances that apply in your case. The court can remit all or part of the fee depending on what they decide you can afford.

SAMPLE LETTER

REQUEST FOR A STAY OF EXECUTION

(Court or creditor's address)

(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)

Enc.

REMEMBER



To keep a copy 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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