

Family Law

## Enforcement of Family Financial Orders



### Authors



**Alison Green**

Consultant Solicitor

E: [alison.green@mackrell.com](mailto:alison.green@mackrell.com)



**Melissa Doherty**

Associate - Family & Relationship Team

E: [melissa.doherty@mackrell.com](mailto:melissa.doherty@mackrell.com)

## **In England and Wales, once the parties to divorce or have a civil partnership dissolved have obtained a final Financial Order recording the terms of settlement and division of the assets, the parties' minds then turn to implementing the order.**

Whilst the courts may order for the transfer of property for the benefit of former spouses, civil partners and any dependent children or for payment of money, the orders made are not always complied with.

Non-compliance with Financial Orders made in divorce or dissolution proceedings can have a devastating impact on families. Enforcing Financial Orders can often be a minefield for those who are forced to represent themselves and the impact of ineffective enforcement was investigated by the Law Commission in a report published in December 2016.

The law of enforcement can be essential for ensuring that people receive what they are due. Where a party to an order has not complied with a mandatory order on an application, the court may direct that the act is to be done by another person, either the applicant or someone else appointed by the court, and the costs of this will be borne by the disobedient party.

***“When such an application is made to enforce an order for the payment of money, a request can be made for a specific method of enforcement or a request that the court decides the method of enforcement.”***

The most common judgment debts in family proceedings are lump sums, arrears of maintenance and costs. The following are the most common enforcement methods asked for in family proceedings when an application is made to the court:

### **Attachment of Earnings**

This is a means of enforcing maintenance obligations by the deduction of money directly from the debtor's earnings. The Attachment of Earnings Order is directed to the debtor's employer rather than to the debtor. The key consideration before proceeding with an application is to ensure that the debtor is in employment and in receipt of earnings.

### **Charging Orders**

This is an order enabling payment of a judgment debt to be secured by imposing a charge against certain types of the debtor's capital assets, such as a property. The effect is to provide security for the debt initially, rather than to enforce it.

### **Order for Sale**

This is an order for the sale of property against which a lump sum is secured. Such an order may be made in relation to a property in which either or both parties has an interests. If you have a Charging Order in your favour against a property then you can apply to the court for an Order for Sale which forces the sale of the property to pay the creditor their lump sum from the proceeds of sale. From 6 April 2013, a creditor can only obtain an Order for Sale if the debt is more than £1,000.

### **Third Party Debt Order**

This is a method of enforcement by which a creditor may enforce a debt against money owed to the debtor by a third party who is within the same jurisdiction. Most often, this will be money held in the debtor's name in a bank or building society, or money owed to a self-employed debtor in the course of their trade. A third party debt order can be used to enforce arrears under any family financial order, but cannot recover ongoing periodical payments.

No interest is payable in the Family Court on an outstanding lump sum if it is less than £5,000. Any claim for interest above this sum must be calculated and a statement of that calculation filed at court with the claim. Interest may only run from the date a lump sum order becomes effective, i.e. on Decree Absolute, or a specified date, whichever is the later.

The Law Commission published a report in 2016 setting out their recommendations for reforms aimed at creating an effective system for the enforcement of family financial orders. The Government agreed to explore amendments to the Family Procedure Rules 2010 to ensure that, amongst other recommendations,

the general enforcement application which allows a creditor owed money to ask the court to enforce the order in the way it thinks best is fit for purpose. Further recommendations were to issue new guidance for litigants, amend the court forms so that the parties understand what is required of them, the financial information necessary for enforcement is provided by debtors and to let debtors know the consequences of lying to the court, as well as streamlining the system to save money and to cut down on unnecessary hearings where all are in agreement. The Law Commission also recommended that the court should be able to make orders both disqualifying the debtor from driving and prohibiting the debtor from travelling out of the United Kingdom simultaneously for the purposes of enforcing the same debt.

In August 2018 the Government responded to the Law Commission recommendations and confirmed its commitment to introduce a free standing comprehensive procedure for enforcement within the Family Procedure Rules 2010 and to create new guidance for litigants in person. No indication has been given as to how long it will take to implement reforms to the existing process.

If you have obtained a judgment or court order outside England and Wales you may wish to enforce it in England or Wales if any of the assets are located there. Countries can be divided into one or more of four categories which, in descending order of ease and convenience, are:

- Countries to which the European Enforcement Order (EEO) Regulation applies;
- Countries which have signed the Brussels Regulation (all EU countries) or the Lugano Convention (Iceland, Switzerland, Norway, all pre 2004 EU states, Poland), however it is important to note that following the end of the Brexit transition period on 31 December 2020, the UK is no longer bound by the rules for choice of jurisdiction set out in the Brussels Regulation;
- Countries with which the UK has bilateral enforcement conventions in place with the main laws being the Administration of Justice Act and Foreign Judgments (Reciprocal Enforcement) Act (former and current Commonwealth countries, Isle of Man and Jersey);
- Countries for which none of the above apply are governed by the common law (USA, Japan, China and UAE).

**Where there is an international element to a case it is always advisable to seek expert advice before taking any steps to try and enforce a Financial Order.**

[enquiries@mackrell.com](mailto:enquiries@mackrell.com) • [mackrell.com](http://mackrell.com)