

It is essential to assess enforcement prospects before commencing proceedings, as litigation can be both costly and time-consuming, and a judgment with no realistic route to recovery offers little commercial value.

An officeholder should consider whether and to what extent they can use their powers under sections 234, 235 and 236 of the Insolvency Act 1986 to investigate and help assess the merits of a claim, including the prospects of a future recovery (officeholder powers will be covered in a future guide).

Due diligence should therefore be carried out at the outset to understand the proposed defendant's financial position, asset profile and any jurisdictional challenges.

The defendant's position should also be monitored throughout the dispute, as their circumstances can change. Assets may be dissipated, liabilities may increase or the defendant's solvency status may deteriorate. These developments can materially influence strategic decisions during litigation, as well as the choice of enforcement options once judgment is obtained.

It is not always the case that insolvency litigation will result in a monetary judgment. In some instances, the court may order the return of company property (for example, where the court finds that a transaction at an undervalue has occurred (see our [overview of insolvency claims](#))), but in the majority of cases, a successful claim will result in a judgment that requires payment. This guide focuses specifically on money judgments and the practical steps available to recover payment.



Prospects of Recovery

It is important to recognise that securing a judgment does not automatically mean funds will be recovered. Some debtors pay promptly, others delay, some actively take steps to avoid payment, and some simply lack the means to pay.

Before initiating proceedings, it is therefore essential to consider whether there is a realistic prospect of recovery. Litigation can be both costly and time consuming and as such, insolvency practitioners (IPs) will need to assess whether the cost of pursuing a claim will ultimately benefit the insolvent estate.

Early due diligence plays a crucial role. Understanding the defendant's financial position, asset profile and any potential enforcement challenges will help determine whether the claim is worth pursuing.

In situations where the defendant is a corporate, similar considerations will apply. Does the company have assets against which a judgment can be enforced? Where is it situated?

Application for Information as to Assets (CPR Part 71)

Although not a method of enforcement itself, an application for Information as to Assets is a helpful starting point following judgment, particularly when little is known about the defendant's asset profile and financial position. This allows the court to require the defendant to attend court and disclose details of their bank accounts, property and other assets.

Although this order does not produce payment, it could provide valuable insight into the most effective next step.

An application is only available where the defendant is an individual. To make an application, an IP must ideally know the defendant's current address, as the order must be personally served at least 14 days before the hearing.

In practice, defendants sometimes attempt to delay matters by offering excuses for nonattendance or providing only partial information, which can lead to further applications, delay and additional cost.

Recovery Options

Settlement, Voluntary Payments and Insurance

If the defendant pays the judgment debt voluntarily or negotiates a structured repayment plan, this will often be the quickest route to recovery and therefore the cheapest.

If the claim is against directors, they may have taken out directors' and officers' (D&O) insurance. These insurance policies are designed to protect directors and officers from liability arising out of wrongful acts (e.g. misfeasance or wrongful trading). If cover is available, an IP may be able to recover all of the claim, which is obviously ideal, but the policy limit could be capped, leaving a shortfall that will need to be recovered directly from the defendant.

Understanding what the policy will cover, and whether and in what circumstances it might be void (fraud being an obvious example), is therefore important when considering whether the D&O policy will pay out if the claim is successful.

When considering a structured repayment plan, an IP will need to factor in the time period over which payments will be made, and the impact of this time period on the ongoing insolvency. There will be an element of ongoing cost as an IP will need to monitor and make sure payment terms are complied with, and take steps to enforce if they are not. A settlement agreement could be coupled with additional security (such as a charge over property) or a third-party guarantee, to provide additional routes to recovery if payments are delayed or missed.

Writs of Control/Attachment of Assets

Where the defendant owns valuable physical or financial assets, this method of enforcement is a powerful option available to IPs. With the court's permission, enforcement officers may enter premises and take control of the defendant's assets, which can then be sold to satisfy the claim, in whole or in part.

An IP should be aware that strict procedural rules apply. Once the writ is granted, the debtor must receive at least seven days' notice before enforcement officers attend, and a further seven days must pass after seizure before any sale of assets can take place.

As this method is quite intrusive, the notice alone can often prompt payment. If not, it can still lead to a relatively quick recovery if the IP has a clear understanding of what the defendant owns. Enforcement officers cannot seize assets that are jointly owned, leased, subject to finance or essential for an individual's trade.

Recovery Options

Third-party Debt Orders

If the defendant holds funds with a third party, most commonly a bank, an IP could intercept those funds through a third-party debt order. This is a two-stage process that requires an IP firstly to apply without notice for an interim order, which, if successful, means the third party must freeze the account up to the debt amount from the day it is served with the notice until the final hearing. The first part of the process is usually dealt with on paper, meaning there is no court hearing. There is then a court hearing, on notice to the defendant and third party, when the court will consider any reasons why they say the interim order should not be made final and determine whether the funds should be paid to the IP.

When considering this option, an IP needs to know that the third party holds funds and have confidence that they will still have them on the day the interim order is served. An interim order will only attach to monies that are in the account on the day it was served, not any funds received after that date. The IP will also need the defendant's account details. Care must be taken not to alert the defendant prematurely, as they may move the funds before the account is frozen, rendering this option pointless.

The court may not order payment if the third party, defendant or other party is able to show good reason why it should not be ordered; for example, where the third party has a right of set-off or counterclaim, or another party asserts a competing claim to the funds. In addition, an individual defendant may apply for a hardship payment order to release limited funds for essential living expenses.

Further, if the defendant becomes bankrupt or enters a corporate insolvency process before the order is made final, this is also likely to prevent the order from being made final.



Recovery Options

Charging Orders

Where the defendant owns real estate or other assets over which security can be taken, such as shares, an IP may seek a charging order. By placing a charge over the property, this effectively converts the debt into a secured claim and provides long-term protection.

An IP needs evidence of ownership, and sufficient details about the property and who owns it – whether the property is jointly owned or held in or on trust – as these factors can complicate the process, affect service requirements and may influence the court's discretion to grant a charging order.

As with third-party debt orders, obtaining a charging order involves a two-stage process. Firstly, an IP must apply, normally without notice, for an interim charging order, which is usually determined on paper. If granted, notice of the interim charging order must be served on the defendant and other relevant individuals, including co-owners, spouses or partners and creditors. The court will then decide whether to make a final charging order, either at a hearing following the filing of an objection, or on paper, once 28 days have passed after service of notice without any objections.

There is no guarantee of obtaining a final charging order. The court will consider whether a charging order would cause undue prejudice to other creditors. This is particularly relevant if the defendant is or is likely to become, bankrupt or insolvent. If the defendant is an individual, the court may also consider any of the defendant's relevant personal circumstances.

If an IP ultimately wishes to enforce the charging order, a separate application for an order for sale is needed, adding additional cost and time to the process. An IP will need to take this into account when determining whether this is the best option for the insolvent estate.

Statutory Demands, Bankruptcy and Winding-up Petitions

If the defendant is unwilling to pay, the threat of a formal insolvency process might be sufficient to encourage payment. However, if the defendant is unable to pay, making the defendant bankrupt or winding it up provides an opportunity to take control of the defendant's assets and potentially recover assets that might have been dissipated since the litigation commenced.

The primary disadvantage of this option is that once the defendant has been made bankrupt/wound up, any recoveries in the insolvency process will be for the benefit of all creditors, which will likely significantly dilute what an IP can recover. The claim is likely to be unsecured.

Cross-border Enforcement

When it comes to enforcing judgments abroad, the approach varies depending on the jurisdiction in which the enforcement action is to be taken. Much will depend on the country where the defendant's assets are situated or enforcement is to take place; the date of the judgment; and whether there is a reciprocal arrangement in place between the UK and that country.

A detailed analysis is outside the scope of this quick guide, but there are some key points that an IP will need to consider if enforcement action needs to take place outside of England, including:

- What reciprocal agreements are in place with the country where enforcement action will be taken?
- What steps (if any) will need to be taken to obtain recognition of the English judgment? How long might that take, and at what cost?
- Are there any local rules that need to be considered that might hinder or delay the process? Do not assume that a straightforward enforcement action in England is equally straightforward in another country.
- What external assistance will the IP require and at what cost?
- Are there additional defences available to the defendant in the foreign country that could prevent enforcement against assets?

Successful cross-border enforcement hinges on understanding what assets the defendant has, where those assets are located and what rules are in place to enable an IP to recover those assets.

Each jurisdiction has its own rules about what assets can be seized, how creditors are prioritised and how foreign judgments are treated. Differences between jurisdictions can significantly influence strategy and often require an IP to engage both UK lawyers and local counsel, which naturally increases costs.

Cross-border enforcement also tends to take longer. Foreign courts will likely have different procedural steps, evidential requirements and/or administrative timelines, all of which can slow progress and, again, add cost.



Enforcing a judgment, whether domestically in England or cross-border, can be a lengthy and costly exercise. Even with a strong claim, there is always a risk that the defendant has insufficient assets or that delays allow assets to be dissipated. For that reason, asset visibility and a cost-benefit analysis at the outset should inform decisions about the merits of bringing an insolvency (indeed, any) claim.

Some of the risks associated with enforcement can be reduced or managed by sale, or assignment of the insolvency claim. This allows the insolvent estate to realise funds quickly, although usually at a discounted value, but it can be a practical solution. Our future quick guide will look more closely at the options and considerations for IPs when deciding whether to assign a claim.



Contacts



John Alderton

Partner, Leeds
M +44 788 505 8896
E john.alderton@squirepb.com



Deborah Brown

Partner, Birmingham
M +44 754 511 0790
E deborah.brown@squirepb.com



Monika Lorenzo-Perez

Partner, London
M +44 778 572 0439
E monika.lorenzo-perez@squirepb.com



Charlotte Møller

Partner, London
M +44 788 180 4970
E charlotte.moller@squirepb.com



Chris Roberts

Partner, Manchester
T+44 773 647 9569
E chris.roberts@squirepb.com



Devinder Singh

Partner, Birmingham
M +44 772 139 9625
E devinder.singh@squirepb.com



Rachael Markham

Senior Professional Development Lawyer, Leeds
M +44 754 511 0781
E rachael.markham@squirepb.com