

## The bailiffs have come

As insolvency practitioners, dealing with those in financial difficulty, we often come across those who have had a judgement made against them and, while consulting us or following our appointment, enforcement action may be taken.

Over the years it seems that the costs of litigation, combined with a move towards mediation, has driven down demand for judgements. However, where a judgement has been secured, action may be taken to satisfy the judgement through execution and we can sometimes find ourselves in conversation with the bailiffs, sheriffs or enforcement officers.

The term “Enforcement Agent” is now used instead of bailiff. When working to collect under a county court judgement (up to £5,000) they are “Enforcement Officers”; when under a high court judgement they are “High Court Enforcement Officers” (HCEOs, formerly known as sheriffs).

Judgments issued in the county court can be transferred to the high court for enforcement purposes and they often will be when the sum being chased is greater than £600 as they have a better success rate.

## Compulsory liquidation

Where a company is being wound up by the court any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void (subject to the court determining otherwise).

## All liquidations

Where a creditor, other than HMRC, has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, the creditor is not entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment *before* the commencement of the winding up.

- An execution is completed by seizure and sale or the making of a charging order.
- An attachment of debt is completed by receipt of the debt.
- An execution against land is completed by seizure, appointment of a receiver or the making of a charging order.

If that creditor has had notice of a meeting/deemed consent process for voluntary winding up, the date on which he had notice is substituted for the date of commencement of the winding up.

Where a notice is served on the Enforcement Agent that the company in question is either in liquidation or in the hands of a provisional liquidator, the benefit of the execution must be surrendered to the liquidator, subject to payment of the Enforcement Agents costs.

Where an Agent is enforcing a judgement debt of more than £500, he has to retain the net proceeds of sale for 14 days. If, within that time, he receives notice that a winding-up petition has been presented or the process started to consider a resolution for voluntary winding up, he must continue to hold the money until he learns whether a liquidation has in fact resulted and, if so, hand it to the liquidator (or as otherwise directed by the court).

Enforcement actions taken by HMRC are not subject to the same provisions as above and are not covered within this briefing. One of the main differences is that HMRC are not required to take legal action to recover their debt and, without warning, could attend premises to seize assets. If this should happen, please feel free to contact us – from our experience of dealing with HMRC, they have acted very reasonably following commencement of insolvency proceedings.

## **Wrinkles along the road**

We do not come across Enforcements Agents all that often and, for the most part, when we do they bow down gracefully, resigned to the fact that they are unlikely to be able to secure funds for either their client or towards their fees once the formal process is under way.

Recently we had a faintly ridiculous encounter where we had been appointed under the relatively new “deemed consent” procedure at midnight immediately prior to the Agents’ arrival the following afternoon. The certificate of appointment was exactly as prescribed by the legislation and signed by the director who oversaw our appointment. The Agent’s response was that “anyone could have produced a document like that” and that they wanted “something official”. As we were on the phone with the, by now disgruntled and somewhat intimidated company director, we were cut off as the Agents had unplugged, and were beginning to remove, the sister company’s server on the basis that the company could not evidence that this equipment did not belong to the company now entering liquidation and which had traded from the same premises.

We dropped everything and attended the company premises with evidence of all of the notices sent out to creditors, proof of postage, original copies of other creditors’ proofs of debt and proxies showing that they had engaged in the appointment process. After some dialogue and an “official” letter (e-mail) sent from our smartphone to the Agent’s Manchester headquarters and copied to the Agent present on site we are pleased to report that the Agents, dressed in full SWAT–team style clothing (but always very calm, polite and dignified) left empty handed.

If you have a client in a financial pickle and can see that the vultures will soon be circling call any one of the BRI team for a helping hand sooner rather than later. Early action means more available options. BRI are independent insolvency practitioners dedicated to giving clients the right advice first time every time.

Important note: This briefing has been prepared as background information for the general professional adviser and is not a comprehensive statement of the law – we recommend that expert advice be taken on specific issues arising in practice.

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