Changes to the charging order and attachment of earnings process

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On 6 April 2016, a new court procedure came into effect in relation to two of the most popular methods of enforcement, namely charging orders and attachment of earnings applications.

Going forward, the court has centralised the way these applications are processed, so that they should now be sent to the County Court Money Claims Centre (CCMCC) for issue. Fees can be paid via a fee account and applications can also be made online. The aim is to streamline the process to make it more efficient and reduce judicial input spent on the applications. The process for each type of application is set out in further detail below. Most importantly, there will no longer have to be a court hearing on *all* charging order applications (although *some* applications will still need to be dealt with at a hearing).

Charging orders

A charging order enables a creditor to obtain a charge over a property to secure a debt. When the property is sold or re-mortgaged, the proceeds (depending on the level of equity) are used to settle the amount owed to the creditor.

Forms

The forms used for these applications (N379 for a charging order over land or property and N380 for a charging order over securities) changed on 6 April 2016. The new forms are now available here.

Procedure

The application notice is initially considered by a Court Officer without a hearing. If the application meets the relevant criteria, the officer grants the interim order, which is then sent to the creditor for service. If it does not meet the criteria, it is referred to a District Judge, who decides whether to approve the interim charging order or refer the matter to the Defendant's local court for a hearing to be listed.

Once the interim charging order is granted, it must be served by the creditor within 21 days from the date of the order. The certificate of service must also be filed at court within 28 days of the date of the interim order. It is vital that these deadlines are complied with, as failure to do so could result in the application being dismissed,

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unless an application is made to the court to extend the deadline (which would increase costs and may result in other creditors also seeking charging orders obtaining priority).

If any person wishes to object to the court making a final charging order, that person is required to file and serve on the judgment creditor written evidence confirming the grounds for their objection no less than 28 days after they have been served with the application notice and interim order. If this happens, the matter is transferred for a hearing.

If there are no objections and the time limits have been complied with by the creditor, the application is considered by a judge, who decides whether to make the order final.

Attachment of earnings

An attachment of earnings order instructs an employer of a judgment debtor to pay their wages directly to the court, who then sends the payments to the creditor.

Forms

The form that was being used to issue this application (N337) remains the same.

Procedure

If the proceedings are in the home court of the Claimant or Defendant, the case is automatically transferred to the CCMCC for them to process the application. The court sends form N56 to the Defendant and requires him or her to respond to the application with details of their income and expenses. If the Defendant does not respond, the court sends form N338 to the defendant's employer (if the Claimant has supplied details of the employer) to complete.

If the Defendant responds to confirm that they are unemployed, the application is dismissed. If the Defendant/employer confirms employment, a court officer calculates the "Protected Earnings Rate" (PER) and "Normal Deduction Rate" (NDR) and makes a full or suspended attachment of earnings order. This again avoids the need for judicial time to be spent considering applications. If the Defendant provides insufficient details of their income, a hearing is listed in the Defendant's home court to determine the application.

Comment

It remains to be seen how the process will work in practice as it is still at a very early stage. The CCMCC has a very heavy workload and these procedural changes will put it under further strain. However, we would estimate that previously 80% of charging order applications proceeded to a final hearing, the majority of which were unopposed and not attended by the Defendant. The new procedure should mean that many more of these routine applications can be dealt with without the need to use up valuable court listing time and should also

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mean a reduction in costs being incurred, due to there no longer being a requirement for a hearing. There is no reason why these non-complex and unopposed applications should not be capable of being dealt with on paper.

As there are also changes to the deadlines that must be complied with, the practitioner will need to be as vigilant as ever, given the consequences of missing a deadline.

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