

enforcement of debts

Timely collection of debts is always a cause for concern for nursery operators but with concerns about recession, good cash flow becomes an even higher priority. Even though many operators are reporting increase in business due to the economic downturn, there is little point in providing services if you are not paid for them.

It's all very well getting a judgment that someone owes you money. However you still have to collect the cash. Although the judgment may prompt payment there is no guarantee that it will and you may have to take further steps to get your money.

The courts provide various methods of enforcing the judgment, although the suitability of them depends on the debtor's financial position. These include:

- instructing the High Court Enforcement Officer (formerly known as the Sheriff) or the Bailiff, depending on the size of the debt, to attend the debtor's premises, seize the debtor's goods and sell them to try and raise funds to pay the debt. The appearance of the HCEO or Bailiff often triggers payment if the debtor has the funds to pay
- applying for a charging order if the debtor owns a house. That operates similar to a mortgage over the debtor's property and can prevent the debtor from selling the property until the debt is paid. This is only of use if the house is worth more than the existing mortgages and very often you will not have a right to be paid until the debtor decides to sell his house, which could be a long time into the future
- applying for a bankruptcy order. However, a bankruptcy order means all of the debtor's creditors have a right to be paid, not just you, and consequently there may not be enough money to go round

- applying for an attachment of earnings order which, if successful, requires the debtor's employer to deduct instalment payments direct from the debtor's wages. Generally the instalment payments are small so it can take a long time before any substantial payment is made towards the debt

If you have very little knowledge of the debtor's assets and income it can be difficult to know which route to adopt. In those circumstances you can apply for an order to obtain information from the debtor. The debtor will be ordered to attend court where a court officer will ask him a series of questions to find out about his financial position.

You will find detailed leaflets about the various methods on the Court Service website at:

<http://www.hmcourts-service.gov.uk/infoabout/enforcement/index.htm>

points to note:

- Prevention is often better than cure. Consider asking for payment in advance for a period.
- Damage limitation. Do your terms and conditions give you appropriate rights not to continue the relationship with a parent if they are not paying your fees? Rights to end contracts with parents have to be worded and introduced very carefully but can assist in cash flow maintenance.



CONTACT

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