



How do I apply for an order?

Order to obtain information from a person who owes you money

Before reading this leaflet you should have read the leaflet **EX321 - I have a judgment but the defendant hasn't paid - what do I do?** It explains:

- what is available to help get your money for you (called 'enforcing your judgment'); and
- which of the methods of enforcement available is likely to be most successful in different circumstances.

Remember, the aim of this leaflet is to give you a general idea of the process it deals with. It cannot explain everything about court rules and procedures. If you are unsure about anything, either in the leaflet, or about things that happen that the leaflet does not deal with, ask a member of staff at any county court, or an advice agency.

What is an order to obtain information?

It is not a form of enforcement which will get you your money. But it is a way of getting information from the defendant (called the 'debtor' when you use this procedure: you become the 'creditor'). The information which will help you decide:

- whether it is worthwhile taking an enforcement step; and if so,
- which of the methods available is most likely to get you your money.

If you use this procedure, the debtor will be ordered to come to the court to be questioned, on oath, by a court officer. The sort of information you will receive from the questioning includes:

- employment status;
- if appropriate, details of employer and wages or salary;
- details of dependants and outgoings paid from income;
- details of any additional income;
- details of any property owned (house, car, caravan, etc.), which may have a saleable value;
- details of any bank or building society accounts and the balances in them.

The questions the court officer will ask the debtor are set out in form **EX140 Record of examination**, a copy of which you can obtain from the court.

When can I apply for an order to obtain information?

You can make an application for an order at any time after you have obtained judgment. The debtor does not have to be behind with payments.

What do I have to do to apply for an order?

What you have to do depends on whether the debtor you sued is:

- an individual; or
- a company or corporation.

If the debtor is an individual, you must complete Form N316 (Application for an order that the judgment debtor attends court for questioning). You can get the form from hmctsformfinder.justice.gov.uk You must make the application to the County Court hearing centre where the debtor resides. You can find this at courtribunalfinder.service.gov.uk

The County Court hearing centre for the debtor's home address will arrange for the claim to be transferred to it so that it can process your application.

If the debtor is a company, you can ask that one of the officers of that company is questioned about the company's affairs, for example, a Director. You can find out who the officers of a company are, and their addresses, by searching the Companies Register at Companies House. You can get an application form for a search and details of the fee payable by ringing 0303 1234 500.

Once you have the information you should complete form N316A.

Where this leaflet refers to the 'debtor' this also covers any officer questioned on behalf of their company.

What information will I need to complete form N316 (or form N316A)?

You will need to know:

- the name and address of the debtor;
- details of the judgment you have against the debtor;
- whether there are any particular questions you want put to the debtor; and
- whether there are any particular documents you want the debtor to bring to court to provide information, or support the information being sought.

In the case of form N316A a description of the company officer (Director, Company Secretary, etc.) and that person's address.

How will I know whether to ask additional questions or to ask for certain documents?

First, read the notes on form N316 (Application that the debtor attends court for questioning) or form N316A. These tell you the documents a debtor will normally be asked to bring to the examination. You must decide whether there are any other matters that could be verified by a document that is not already listed. Similarly, you will be able to see the questions that the court officer will normally ask. These are set out in form EX140 (or EX141) (Record of examination). Decide whether you would like the court officer to ask any others. But remember, questions and documents, must be directly related to the debtor's or the relevant company's ability to pay.

Will I have to pay a fee to make the application?

Yes you will. You can download a copy of the leaflet **EX50 Civil and family court fees** from hmctsformfinder.justice.gov.uk

Remember that the court cannot guarantee to get your money back. Although the fee you pay may be added to the amount owing, whether or not it is paid depends on the success of any enforcement method you use. You cannot ask for the fee to be refunded.

What if I cannot afford the fee?

You might not have to pay a court fee because of your financial situation or if paying a fee would cause you hardship. The combined booklet and form **EX160A Court and Tribunal fees – Do I have to pay them?** tells you more about the fee remission system and includes the remission form. The booklet is available online at hmctsformfinder.justice.gov.uk

You will have to make a separate application for each fee that is payable.

What will the court do with my application?

The court will draw up an order in Form N39 (Order to attend for questioning), using the information you have given in your application. The order will:

- give a time, date and place for the debtor to attend to be questioned;
- give an explanation that the debtor must attend and must answer, on oath, the questions asked by the court officer;
- tell the judgment debtor to ask you to provide sufficient money to cover any travel expenses to and from the court if it is needed, and that this request must be made to you within seven days of receipt of the order to attend; and
- tell the debtor, who wishes to pay the amount due, that payment should be made direct to you.

The order also contains a warning to the debtor that failure to do what the order says may result in imprisonment.

If you receive payment in full before the questioning takes place, you must let the court know immediately. Make sure you tell the court where the questioning is taking place. You should not worry if you are not approached for travelling expenses (but see over the page).

Where will the questioning take place?

The questioning will take place at the County Court hearing centre for the area where the debtor resides or carries on business. It is important that you note the correct County Court hearing centre when making your application. Any documents you need to file relating to the questioning (see over the page) **must be filed at that court.**

Will I have to attend the questioning?

There is no need for you to attend unless you particularly wish to. A court officer will put the questions in form EX140 Record of examination (or form EX141 where an officer of a company is being questioned), together with any additional questions you requested. The court officer will record the answers on whichever form is appropriate. After the questioning has taken place, you will be sent a copy of the completed form. The form will also tell you what documents the debtor produced to support the information given.

How does the debtor get the order to attend for questioning?

A copy of the order must be handed to the debtor personally. This is called 'personal service'. That is, you, or someone on your behalf, must hand the order to attend for questioning to the debtor personally. However, a enforcement agent may serve the order on the debtor on your behalf. There is an additional fee for this service. For further information please refer to leaflet **EX50 - Civil and Family Court Fees** which is available online.

The order **must not** be left with someone else at the debtor's address, or posted through the letterbox.

The order to attend for questioning must be served **no less than 14 days before** the questioning is due to take place.

What if I am unable to serve the order within that time?

If you are responsible for serving the order to attend, the court will have sent you two copies of the order (form N39) - one to hand to the debtor and one to use later to confirm service (see below). You should return both copies of the order to the court where the questioning is due to take place. You should explain that you have not been able to serve the order in time, and ask for another date to be set. You must do this no later than seven days before the date set for the questioning. The court will set a new date and return the two copies of the order to you for further attempts at service.

If the enforcement agent is responsible for service of the order, but is unable to serve it on the debtor in time, the court will let you know. A new date will be given and the papers will be returned to the enforcement agent. The court will tell you what the new date for the questioning is.

Why must the order to attend be served personally?

Because if the debtor does not attend to be questioned, or comes, but refuses to take an oath or answer questions, a judge can decide to commit the debtor to prison. However, a judge may not commit them to prison unless:

- there is proof that you, or someone on your behalf, has served a copy of the order on the debtor personally;
- there is evidence about whether or not the debtor has asked you for sufficient travelling expenses for the journey to and from the court; and
- there is confirmation that the money you are owed, or any part of it, has not been paid.

How will the judge know these things?

Because you, and anyone who serves the order to attend on your behalf, must provide information to confirm them.

How must confirmation be provided?

You must provide a sworn statement (an affidavit) saying how and when the debtor was served. If someone served the order on your behalf, that person must swear the affidavit. A copy of the order served must be attached (exhibited) to the affidavit.

If the enforcement agent served the order, the enforcement agent will complete a certificate of service for the court where the questioning is to take place. You need do nothing more with regard to service.

You must also swear an affidavit saying whether or not the debtor has approached you to ask for travelling expenses, and if so, how much money was given. Do not worry if the debtor does not ask for travelling expenses - simply say in your affidavit that you have not been asked for any. Your case will not suffer as a result since the opportunity has been given and it is not your fault if the debtor has chosen to ignore it. The debtor must ask for travelling expenses within seven days of being served with the order to attend for questioning. Remember therefore that you cannot swear your affidavit until after that time.

Your affidavit must either confirm that all the money that was owing when you issued your application remains unpaid, or give details of the balance owing if you have received any payments from the debtor in the meantime.

Where can I get a form of affidavit?

You can get a form of affidavit (form EX550) from any County Court hearing centre or online. You will need to contact the County Court hearing centre before you arrive there as you may be required to book appointment. The affidavit deals with service, travelling expenses and the outstanding balance of the debt. Complete those parts of the affidavit which are relevant to you, neatly crossing out any that are not. A copy of the form N39 (Order to attend for questioning) must be exhibited to the affidavit if you served it. A copy of the affidavit must be filed at the County Court hearing centre where the questioning is to take place. It must be filed **not less than two days before the date of the questioning**. Send your affidavit with an accompanying letter that states clearly the date and time of the questioning.

Remember, only you can swear an affidavit about travelling expenses and the outstanding balance. If someone else served the order to attend on your behalf then they must swear their own affidavit relating to this, neatly crossing out the parts of the affidavit relating to travel expenses and the outstanding balance.

Where can I have my affidavit sworn?

At any County Court hearing centre, a court officer will do this free of charge. You should contact the County Court hearing centre before you arrive as you may be required to book an appointment. The court officer will ask you to sign your affidavit and will then ask you to swear that the affidavit contents are true. You can also go to a solicitor or commissioner for oaths, but they will make a charge for swearing your affidavit.

What will happen at the questioning?

The debtor will be asked to swear an oath, or affirm, before the questioning begins. A court officer will explain the purpose of the oath and the questioning, and will then ask the debtor all the questions that are relevant in the form EX140 (or EX141), and any additional questions you suggested. The court officer will write the answers to the questions on the appropriate form. At the end of the questioning the debtor will be asked to sign it to say that it reflects the answers given. The court officer will also note what documents the debtor brought to confirm the information given. After the questioning, you will be sent a copy of the Record of examination.

What will happen if the debtor does not attend, or attends, but refuses to take an oath or answer questions?

The court officer will note these things on a certificate. The certificate will be passed to a judge together with the affidavit(s) dealing with service, travelling expenses and the outstanding balance. If the judge is satisfied, from the documentation, that the debtor has not complied with the order to attend for questioning, the judge will order the issue of a suspended committal order. The order will be in form N79A (suspended committal order).

What is a suspended committal order?

A suspended committal order is an order for the debtor's committal to prison. However, it will not take effect immediately. The order for the debtor's committal to prison is suspended, that is will not take place, if the debtor attends a new date to be questioned, takes the oath and answers questions.

Does this order have to be served personally?

Yes it does. This is because it can lead to imprisonment and the court has to be certain that the debtor received the order. If you are responsible for service, the court will send you two copies of form N79A. It must be served within the same time limits as the original order, that is, not less than 14 days before the questioning is due to take place. You must file your affidavit of service not less than two days before the date of the questioning. You do not, however, on this occasion have to be concerned about travelling expenses. The debtor, has already been given the opportunity to ask for these, and may have already asked for them or failed to do so.

If a County Court enforcement agent served the form N39 on your behalf, then a enforcement agent will also serve the form N79A for you.

As with the form N39, if you, or the enforcement agent, are unable to serve the form on the debtor, then the court will have to set a new date for the questions. You will be told of the new date if the enforcement agent is serving. You must let the court know no less than seven days before the date of the questioning if you have not been able to serve the suspended committal order.

What will happen if the debtor fails to attend on the date in the suspended committal order?

A warrant of arrest will be issued and passed to a County Court enforcement agent. The warrant gives the enforcement agent the authority to arrest the debtor. Once the debtor has been arrested, the enforcement agent will take the debtor before a judge at court. If the debtor agrees to be questioned by an officer of the court there and then, the judge will normally discharge the suspended committal order. If the debtor refuses to be questioned, or fails to comply with the order to attend for questioning in any other way, a warrant of committal will normally be issued immediately. A warrant of committal authorises the enforcement agent to take the debtor to prison for the time specified in the suspended committal order.