

SALE OR RETURN

Why do Enforcement Agents sell the goods they take into control?

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THE answer to this question is simple. If debtors know their goods could be seized and sold, they're likely to be more prompt in paying their debt in full. The power to take control of goods and, if need be, to sell them, is a lever to encourage debtors to pay what they owe. The majority of successful paid in full cases are payments to avoid goods being taken into control and sold.

Instalments are only taken where there are no goods to cover the amount due. Goods should only be removed and sold if, by doing so, at least 20 percent of the proceeds goes to reduce the amount due. Removal to solely cover costs and enforcement fees could be seen as disproportionate.

Enforcement Agents, under a High Court Writ, must attend a debtor's premises, even when an offer to pay by instalments is made. This is to check whether there are, in fact, goods to cover the amount of debt. If this proves to be the case, the enforcement continues and the instalment offer is refused.

THE WORST OPTION

Sale of goods is the worst option for a debtor. A forced sale produces, on average, less than half of second-hand value. Sale incurs the maximum scale fees and auctioneers' commission. Sale of a car without keys halves its value. Yes, Enforcement Agents can remove cars without keys, but I wouldn't suggest you put yourself in a position to test that!

Scale fees are all set out clearly in the Notice of Enforcement. This is why, increasingly with B2B debt, payment is made (30 percent or so) at the early compliance stage where the cost is limited to £90 plus a small amount of interest. For a finance director, with the necessary money to pay the debt, it would not make financial sense to delay the payment.

SETTING AN EXAMPLE

For a lever to be effective, it must actually be used from time to time 'pour encourager les autres'. (Those of you who recall Voltaire and poor Admiral Byng will remember!)

If the lever is not used regularly (but only in a tiny proportion of cases, 2.5 to five percent), debtors might think that the threat is toothless and that instalments are the order of the day.

This is where High Court and County Court practice has become rather different. Enforcement Agents, acting under a High Court Writ and County Court Bailiffs, acting under a Warrant, have identical powers under the Taking Control of Goods procedure. But the County Court Bailiffs have a tendency not to use them.

In the days of Sheriffs (pre-2004), I started with seven Sheriff's Officers which reduced to four over my 30 years as an Under Sheriff. I didn't keep three of those staff members because they tended to take instalments rather than payment in full and rarely chose to take goods into control and sale. This was the easier option for them but not the best way to get the debt paid immediately. Once a more active officer took over, she went to sale regularly in the first six months, establishing a more robust approach and thus being more effective in recovering debt.

So, what have we sold lately? A half restored classic cabin cruiser, woodworking machinery, a HGV, the contents of an art gallery and a vaping shop, equipment from a dental surgery and many cars (including a Maserati where the debtor will get some money back from the surplus on the sale).

Sale is generally at the eleventh hour of the enforcement process (it can still be stopped up to the morning of the auction but at a cost) and is sometimes the only option. It is a blunt instrument which can, nevertheless, be very effective.

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