

Q: Can I pay my judgment by instalments?

A: Probably not.

On the court's approach to requests to pay judgments by instalments

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Introduction

Reading through a number of different provisions of the CPR, one might form the impression that the courts could be persuaded, with relative ease, to permit judgment debtors to pay by instalments where they do not have the means to pay in full within the usual 14 days. An analysis of the relevant case law shows that this is not in fact the position. Judgment debtors are usually required to pay within 14 days and it is for judgment creditors to decide what means of enforcement to use, including the insolvency/bankruptcy regime. However, the courts may consider a repayment plan where such a plan leads to repayment in a “reasonable period of time”. Such a request is most likely to succeed where the debtor is a private individual.

The relevant provisions of the CPR

CPR 40.11(a) provides as follows:

“A party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless—

- (a) the judgment or order specifies a different date for compliance (including specifying payment by instalments);”

Where a defendant admits a claim in whole or in part they can make a request for time to pay under CPR 14.9. CPR 14.9(2) provides that “A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.”

CPR 14.10 deals with the situation where a claimant does not accept the proposed payment plan. CPR 14.10(4) provides that “*When the court receives the claimant’s notice, it will enter judgment for the amount admitted (less any payments made) to be paid at the time and rate of payment determined by the court.*”

CPR 40.9A only applies to County Court judgments. For present purposes, the following are the material provisions of this rule:

“(2) Where a judgment or order has been given or made in the County Court for the payment of money, the creditor or, as the case may be, the debtor may apply in accordance with this rule for a variation in the date or rate of payment.

[...]

(8) The debtor may apply for an order that the money—

(a) if payable in one sum, be paid at a later date than that by which it is due or by instalments; or

(b) if already payable by instalments, be paid by smaller instalments.

(9) Any application under paragraph (8) must—

(a) be in the appropriate form;

(b) state the proposed terms;

(c) state the grounds on which it is made; and

(d) include a signed statement of the debtor’s means.”

CPR 40.11, 14.9/14.10 and 40.9A all expressly consider that the court may make an instalment order instead of requiring the judgment debt to be paid within the usual 14 days.

The case law

Akenhead J considered CPR 40.11 on two separate occasions in 2008. *Gipping Construction Limited v Eaves Limited* [2008] EWHC 3134 (TCC) concerned the enforcement of an adjudication award. Eaves Limited, against which the award was being enforced, requested time to pay the judgment. Akenhead observed as follows on the correct approach to such a request at [11]:

“It is unlikely that mere inability to pay will suffice to justify the extension of the normal fourteen day period; usually, inability to pay is no defence and an insolvent debtor must take the usual consequences of its insolvency.”

He returned to CPR 40.11 in *Yoram Amsalem v Raivid* [2008] EWHC 3226 (TCC). In that case the defendants “[could] not even really offer to pay anything more than what I suspect would be a wholly nominal sum per month over the next few months” ([4]). Akenhead J set out the approach to be followed from [6] onwards:

“6. [...] there is a wide variety of recourses open to the successful party to enforce any given judgment. In addition, there is a statutory option available to a judgment creditor to initiate proceedings for bankruptcy or, in the case of a company, liquidation of the debtor.

7. Parliament has given a successful judgment creditor those rights and it should be an exceptional case, it seems to me, where the court interferes with those rights given by Parliament.

8. It is clear, however, that when those provisions for alternatives to enforcement are considered, the court, which may be dealing with the different methods of enforcement, is given a discretion. I have considered, for instance, RSC Ord.46, which deals with writs of execution, and those provisions relating to *fiery facias* writs. In certain circumstances, where there is a realistic prospect of payment being achieved by interim payments, then the court is sometimes prepared to consider making such an order.

9. I consider that the court, at this stage - that is the court which has given the judgment - can take into account similar factors to those which a court handling enforcement can take into account. [...]”

[...]

13. [...] I would have been prepared seriously to consider extending the 14 day period if there was a realistic prospect that substantial sums could be paid, and could be offered, within the next few weeks and months. [...]”

CPR 14.9 and 14.10 were considered by Field J in *Gulf International Bank v Al Ittefaq Steel Products Co* [2010] EWHC 2601 (QB). In that case the defendants had admitted claims exceeding \$100m. The defendants owed around \$1.5bn to various lenders and were in restructuring talks with various parties. The defendants sought around four months to pay the admitted sums to support the restructuring talks. In this context, Field J explained the approach to be taken by the court as follows:

“21. When exercising the discretion under CPR 14.10, this court is bound to have regard to the interests of the relevant parties. These will inevitably include the interests of the judgment creditor whose claim will be vindicated by a judgment and

the interests of the judgment debtor who invariably will be a business entity, usually a corporation. The court will also bear in mind that where enforcement of the judgment can take place within the jurisdiction, the judgment creditor will be free to choose from the available methods of enforcement, including a petition to secure the bankruptcy or the winding up of the debtor, as the case may be, as to which there is a statutory right providing that the preconditions of the making of such an order are met.

22. In my opinion, Akenhead J's observation [in *Gipping*] that inability to pay will usually not justify a pre-execution extension of time, with an insolvent debtor having to take the usual consequences of his or its insolvency, applies a fortiori where the parties are business entities.

23. Where the debtor is in a parlous financial situation, the interests of other creditors of the debtor and possibly those of the debtor's workforce and suppliers will be engaged. But since this country's bankruptcy and winding-up regimes are designed to take account of these interests and are supervised by specialist courts, these third party interests will, in my opinion, only very rarely, if at all, be a justification for an extension of time under CPR 14.10 or 40.11 where the debtor is liable to be wound up or made bankrupt within the jurisdiction. This approach will also likely be adopted when a debtor is liable to be wound up or made insolvent under a foreign insolvency regime, the protection of third party interests being a matter for that regime rather than this court.

24. It follows that, in the ordinary way, this court will only exceptionally extend time under CPR 14.10 and 40.11 and then only where the judgment debtor is solvent and for relatively short periods of time and after which the whole judgment debt will become payable. Further, in reaching its decision, the court will give careful consideration as to whether some provision in respect of interest ought to be made in light of the fact that the judgment debtor will be being kept out of his money for the period of the extension."

The Court of Appeal considered CPR 40.9A in *Loson v Stack* [2018] EWCA Civ 803. That case concerned Ms Loson's request for a variation of two costs orders made against her arising out of her husband's attempts not to pay a parking fine. The costs orders came to a total of £8,000 and Ms Loson said she could not pay more than £50 per month. Patten LJ set out the court's approach at [23]:

"23. The first instance decisions in relation to CPR 40.11 are not, of course, directly applicable to a variation application under CPR 40.9A. But the approach which the

judges there took to a postponement of the usual date for payment has an obvious relevance to the issue which we have to consider. In a case such as this where the debtor cannot really pay anything, the correct course in my view is for the Court not to interfere with the judgment creditors' right to seek enforcement of the judgment by whatever means are available to them and which they choose to adopt. Although the power conferred on the Court by CPR 40.9A is not limited in terms or by authority to a material change of circumstances and CPR 40.9A(14) refers to the Court making such order as it thinks fit, the power does have to be exercised in a way which properly respects the rights of the judgment creditors which have been vindicated by the orders which the Court has made in their favour. I would not myself describe the circumstances in which the debtor can successfully apply for an instalment order as exceptional. Nor would I, in terms, endorse the view that the jurisdiction can only be exercised where the debtor is solvent. Any case in which the debtor seeks time to pay is, in one sense, an instance of insolvency at least insofar as the debtor is unable to pay his or her debts as they fall due. But I do accept that for the debtor to obtain the benefit of an instalment order, whether originally under CPR 40.11 or by way of variation under CPR 40.9A, the Court must be presented with a realistic repayment schedule backed up by evidence that the creditor can be expected to receive the amount of principal and any interest within a reasonable period of time. To that extent, the interests of the creditor will be paramount. Quite where the balance should be struck in terms of reasonable time will depend on the facts of each case. I accept that in a purely commercial context (such as the situation in *Gulf International Bank*) there may be less room for allowing time for payment particularly where the creditor has its own cash-flow requirements to consider. Equally there will be other cases where a limited period of time will enable the debt to be paid in full without any significant prejudice to the creditor particularly where interest is payable in the meantime."

In rejecting Ms Loson's request to pay by instalments of £50 per month, the court noted that doing so would not even keep pace with the judgment interest that would continue to accrue.

Analysis

While the judgments discussed above differ in emphasis and concern different provisions of the CPR, they paint a relatively clear picture of the court's restrictive approach to requests to pay judgments by instalments.

Both Akenhead J and Field J said that it would require “*exceptional*” circumstances for such a request to succeed. Nevertheless Field J said that he would have been willing to consider a proposal where there was “*a realistic prospect that substantial sums could be paid, and could be offered, within the next few weeks and months*”. The most generous decision, from a debtor perspective, is the decision in *Loson v Stack* which suggests that a “*realistic repayment schedule*” that leads to repayment “*within a reasonable period of time*” might be acceptable to the court. Patten LJ also noted that he did not think that exceptional circumstances would be required for making an instalment order. The decision may have of course have been influenced by the sympathy the court had for Ms Loson, a private individual, being faced with bankruptcy because her husband had not paid a parking fine. Patten LJ said that he accepted that in a “*purely commercial*” context there would be less room for giving time to pay. *Loson v Stack* is also a useful reminder to consider whether a proposed repayment plan keeps pace with the interest that accrues under the Judgments Act 1838, which is currently at 8% and applies to all High Court judgments and (subject to some exceptions) to County Court judgments of £5,000 or more.

An important factor in explaining the court’s restrictive attitude is likely the availability of the bankruptcy/insolvency regime which is designed to take into account the various relevant interests and, as Field J notes, is supervised by specialist courts.

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