

Money judgments in mortgage possession actions

By **Adam Fox** of specialist debt litigation law firm Drydens

We have recently seen several conflicting views in the Courts relating to money judgments in mortgage possession actions. It is the policy of some lenders to automatically apply for a money judgment as part of possession proceedings with others preferring to pursue any subsequent shortfall as a separate action.



Adam Fox

The purpose of this article is to highlight the current mood of the Courts surrounding money judgments secured during possession proceedings and the subsequent enforcement of these.

We are experiencing a growing reluctance by District Judges in certain Courts to grant a money judgment unless provided with a complete and up-to-date breakdown to prove how the balance in respect of which Judgment is being sought has been calculated. There have been a number of challenges to this approach however the decision as to whether to award a money judgment is down to the individual judge who is legally entitled to ask for a breakdown as evidence to prove the lender's claim.

A historic practice that is worthy of mention is the Court granting a money judgment with a condition that it cannot be enforced without permission of the Court. Such a decision involves additional costs, which the Defendant may ultimately have to pay, and causes delay because an application

has to be made prior to enforcement commencing. We believe that this practice is capable of challenge and we have made such a challenge successfully in a recent case. It is our view that there needs to be a valid reason to stay judgment/enforcement and for firm evidence to be provided by the Defendant to support a stay.

In summary, whilst there are benefits to bringing a money judgment application as part of possession proceedings lenders will need to monitor the change in approach by the Courts moving forward and also ensure internal procedures are in place to manage cases where money judgments have been secured.

It is our view that there needs to be a valid reason to stay judgment/enforcement and for firm evidence to be provided by the Defendant to support a stay.