CIVIL JUSTICE COUNCIL

Enforcement

Final Report

Contents

1. Executive Summary

1.0 The aim of this Civil Justice Council (CJC) report is to consider ways in which the enforcement of judgments can be made more effective and efficient, in both time and costs, while ensuring the essential protections for vulnerable defendants, particularly with the growing problem of household debt. This report includes both recommendations for practical changes, which can assist in making enforcement more effective and fairer, and recommendations for further consideration for fundamental reform.

1.1 The report does not consider enforcement relating to property and its recovery, nor does it consider the ability to carry out enforcement of judgments in other jurisdictions. Both of these are areas that go far beyond the scope of an initial report. Further consideration of enforcement within the context of the recovery of property and enforcement in other jurisdictions is recommended.

1.2 Evidence was obtained from a Call for Evidence (CfE), webinars and a 'break-out' session at the CJC's 2024 National Forum.

1.3 Effective and fair enforcement is essential so as not to inhibit economic growth or undermine the rule of law. At the same time, the difficulties in domestic finances and the increased number of people (even in secure employment) struggling with debts highlights the need for protection – particularly for the vulnerable.

1.4 There is considerable concern, expressed by those who provided evidence, about the complexities of enforcement and how the underfunding and under-resourcing of the County Court, in particular, leads to very significant delays in hearings, delays in orders being produced, delays in enforcement through the bailiffs and delays in resolution. The failure of the court to provide resolution creates an economic drag. In order for the County Court to effectively enable judgments to be obtained and then enforced within a reasonable period of time, the County Court needs to be adequately funded. Alternatively, enforcement could be removed entirely from the County Court and be exclusively dealt with by the High Court, but that would require the further regulation of enforcement.

1.5 There is extremely positive feedback about the work of the County Court bailiffs themselves. While it was recognised that the County Court was not sufficiently funded to enable enforcement to be efficient, it was reported that the bailiffs were very effective in

encouraging engagement of debtors with the court process and that difficult and sensitive work is carried out by the bailiffs in a pressurised and tense environment where they can be subjected to unacceptable abuse, threats and violence. It is of great importance, as recognised by His Majesty's Courts & Tribunals Service (HMCTS), that bailiffs, along with all enforcement officers, require protection, including personal protective equipment (PPE), to carry out their enforcement work.

1.6 The current two-tier court-centred approach does not work. It adds unnecessary complexities. The use of the court in enforcement recognises that the process of obtaining a resolution is two staged: obtaining judgment and then obtaining remedy. The court is best placed to deal with applications to stay or suspend orders, but enforcement is not operating efficiently in the County Court and there are persisting concerns about aggressive or insensitive behaviour in enforcement (but not with County Court bailiffs). The reforms of 2014 and the setting up of the Enforcement Conduct Board (ECB) in 2022 are introducing better control of enforcement outside the County Court.

1.7 Despite a general view that the current status quo cannot continue, there was no particular appetite for the replacement of the court-centred approach to enforcement for an administrative or judicial officer model.

1.8 Rather than trying to fix enforcement within the County Court by the provision of adequate funding or transferring County Court enforcement to the High Court, the principal recommendation of this report is to move away from the two-tier system through the creation of a single unified digital court for enforcement of judgments, regardless of a judgment was obtained in the High Court or the County Court, with the benefit of a portal retaining information about the defendant's financial position and dealing with all the debts relating to one individual or party – including those outside the court process.

1.9 Before any fundamental reform, various smaller reforms can be undertaken to improve the sharing of information and the provision of advice in order to ensure a more efficient and fair system.

1.10 Bringing Part 4 of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) into force will enable information to be obtained from government departments so that any creditor can have a better idea of the financial situation of a defendant. Information from defendants should be obtained at an earlier stage of the proceedings and promotion of the availability of debt advice should be made frequently throughout the court process. All communications

from the court and from the creditor need to be clear, straightforward, and designed to encourage engagement.

1.11 With respect to future work of the CJC relating to enforcement, in addition to considering enforcement within the property sphere and enforcement of judgments in other jurisdictions, there should be further consideration of what steps must be taken to create a single digital court for enforcement. This further work could also include consideration of entirely different systems of enforcement, such as an administrative or judicial officer model.

> True freedom requires the rule of law and justice, and a judicial system in which the rights of some are not secured by the denial of rights to others.[1]

[1] Rabbi, Lord Jonathan Sacks.

2. Introduction

About the Civil Justice Council

2.0 The CJC is an advisory public body, established under the Civil Procedure Act 1997. Its statutory duties include keeping the civil justice system under review; considering how to make the civil justice system more accessible, fair, and efficient; and making proposals for research. In carrying out its statutory functions, the CJC makes recommendations to the Lord Chancellor, the judiciary, and the Civil Procedure Rule Committee (CPRC) on the development of the civil justice system.

Process of drafting this report

2.1 In May 2024, the CJC determined that civil enforcement and its weaknesses should be reconsidered in furtherance of its statutory function to keep the civil justice system under review and to consider how to make civil justice system more accessible, fair, and efficient.

2.2 The aim of this report is to consider ways in which the enforcement of judgments can be made more effective and efficient, in both time and costs, while retaining the essential protections for vulnerable defendants, particularly with the growing problem of household debt. This report includes both recommendations for practical changes, which can assist in making enforcement more effective and fairer, and recommendations for further consideration for fundamental reform.

2.3 The first step in drafting this report was the forming of a Working Group (WG) in order to understand the policy landscape for enforcement, to make proposals for the creation of a more efficient system of enforcement, and to identify and recommend further areas of inquiry.

2.4 The CJC decided that the WG should not consider enforcement in the context of property and its recovery, recognising that this is a time of legislative change in the property sphere, particularly with respect to the private rental sector. The WG was keen not to make any proposals that might cut across current legislative changes. The WG was also aware of considerable concerns about the ability to carry out enforcement of judgments in other

jurisdictions.[2] Consideration of enforcement in the context of property and extra-jurisdictional enforcement goes beyond the scope of this initial report. **It is recommended that the CJC should undertake further work on enforcement in the future.** This should include consideration of enforcement within the context of the recovery of property and enforcement in other jurisdictions. The CJC discussed possible future work on enforcement at its January 2025 Strategy meeting.

2.5 In order to collect the broadest range of views on enforcement and how enforcement in the civil justice system can best be made effective, efficient and fair, the WG included members of the judiciary, a solicitor, members from both debt advice providers (StepChange) and from the enforcement industry (the High Court Enforcement Officers Association [HCEOA]). The ECB is also represented as its work is important for ensuring appropriate conduct for enforcement agents. The Ministry of Justice (MOJ) is represented by Tessa Wearing as an observer to the work of the WG. We are very grateful for the assistance of both Faye Whates from HMCTS. for providing information and figures when requested, and Emily Wickens, with respect to HMCTS Civil Reform.

2.6 The membership of the WG is:

- Her Honour Judge Karen Walden-Smith (Chair of the WG) – Circuit Judge member of the CJC.
- Senior Master David Cook – Judiciary.
- Nicola Critchley – Insurance member of the CJC.
- David Parkin – ECB.
- His Honour Judge David Robinson – former District Judge member of the CJC.
- Charles Roe – UK Finance.
- Alan J Smith – HCEOA.
- Tessa Wearing – MOJ (observing).

[2] Significant concerns have been raised in the Call for Evidence.

- Emily Whitford – StepChange.

2.7 Consultation was undertaken both through webinars, which were held on 22 July 2024, 5 August 2024, and 5 September 2024 and through a CfE which was open to all between 11 July 2024 and 16 September 2024 and is available publicly on the CJC's website.[3] A full list of the CfE questions can be found at **Appendix 1.** Further evidence was gathered at the Enforcement 'break-out' session at the CJC National Forum on 29 November 2024.

2.8 The questions raised in the CfE invited participants to consider what steps can be taken to assist in creating a more efficient, effective, and fairer enforcement system based upon the current court-based model of enforcement. Those questions covered, generally, information about which methods of enforcement were used, which were most effective and where there were barriers to enforcement. The questions also sought information about protection for vulnerable defendants and the provision of information to defendants to encourage greater engagement.

2.9 The CfE also sought evidence about current failings in the enforcement system where a defendant could be faced with a multiplicity of enforcement actions at the same time, both within and outside the court, and creditors are left without necessary information to enable effective enforcement.

2.10 Two questions raised in the CfE invite consideration of what reforms might be necessary if a court-based system of enforcement is retained and raise the issue of whether there should be a separate enforcement court, online or through the auspices of either the High Court or County Court:

> "33) Do you consider there should be any changes to the system of enforcing judgments, or should the status quo be maintained?
>
> 34) If you consider there should be changes, what changes do you feel should be made to make enforcement more accessible, fair and efficient?"

2.11 The questions also underpin the wider work of the WG as they question whether enforcement should remain an inherently court-based process or whether there is merit in

[3] Civil Justice Council Enforcement Working Group - call for evidence

adopting an administrative or other model and, if so, on what basis. These wider issues are touched upon at the end of the report.

The Call for Evidence and Webinars

2.12 The CfE, open between 11 July 2024 and 16 September 2024, and the webinars held on 22 July 2024, 5 August 2024, and 5 September 2024, elicited a large number of responses from those who are involved from the enforcement 'side', including creditor associations, enforcement firms, and solicitors; and from those who act on behalf of those facing judgments, including debt advice organisations. A number of the 46 responses to the CfE were from collectives – both those concerned with debt advice, including the 'Taking Control Coalition'[4] and Citizens Advice, who grouped together geographically; and those acting for those involved in enforcement, such as HCEOA and the Civil Enforcement Association (CIVEA); and other groups representing the interests of many, such as the Civil Courts Users Association and the Federation of Small Businesses.

2.13 The CfE also elicited responses from those who were concerned about the process of enforcement from a more neutral perspective – for example, the judiciary and independent legal practitioners who act for both creditors and defendants. Respondents made a number of criticisms about the current state of enforcement in England and Wales and suggested a large number of improvements to the court processes for enforcing judgments, ranging from major reforms of the law and services that HMCTS provide, to smaller changes to existing processes.

2.14 The evidence provided is extremely well-informed and gives authoritative guidance for recommendations to be made for better procedures and mechanisms for a more effective enforcement process while providing effective legal protection. Thanks are recorded to all those who took the time to respond formally to the CfE and to those who joined one or more of the webinars or engaged at the CJC National Forum. The level of interest in this work and the responses to the CfE indicates the importance of this work and the current challenges. The responses to the CfE will be published by the CJC in due course, dependent upon permission being given that particular responses can be shared more widely.

[4] Comprising Advice UK, Citizens Advice, Christians against Poverty, Community Money Advice, Debt Justice, Institute of Money Advisers, Money Advice Trust, PayPlan, and StepChange Debt Charity.

The National Forum

2.15 Enforcement was the subject of a 'break-out' session at the CJC National Forum on 29 November 2024. Approximately 100 delegates signed up to attend that session. The Forum session covered the wide range of issues that had been raised through the CfE and made clear the breadth and importance of enforcement issues.

2.16 One delegate referred to the procedure undertaken in Singapore. Consideration of the methods used in Singapore is something that could properly be reflected on further with the consideration of whether England and Wales should move away from a court-centric system of enforcement.

2.17 Many of the comments of the delegates echoed the issues raised in the CfE, including the bringing into force of Part 4 of the TCEA 2007 and the concerns about Part 71 of the Civil Procedure Rules (CPR) and its operation. Generally, the discussion added to the understanding of the difficulties with enforcement and assisted WG discussions, culminating in the various recommendations made by the CJC in this Report.

3. The issue of Enforcement

3.0 Enforcement in the civil context is the execution of an obligation using the machinery available for the recovery of debts. It is a two-stage process in the court, where a party seeking recovery will first obtain a judgment either by reason of the defendant failing to acknowledge service or filing a defence or by establishing that the debt is due and payable, or damages are owed. Once that judgment has been obtained, either there is voluntary compliance by the defendant or the creditor (or other party with the benefit of the judgment) will need to extract payment of the judgment sum through a method of enforcement.

3.1 The importance of an effective and efficient system for the enforcement of judgments should not be underestimated. As Professor Wendy Kennett[5] has set out:

> 'Effective institutions for the recovery of debt are necessary to protect contract and property rights, and good protection of those rights promotes commercial investment and thus underpins economic growth'

3.2 The Lady Chief Justice (LCJ) in her Mayflower 400 Lecture delivered on 28 November 2024, recognised that the right to effective and timely enforcement is essential to the provision of a fair trial in civil justice:

> 'without a mechanism to ensure that judgments were implemented, as the European Court of Human Rights put it in Hornsby v Greece, the right of access to a fair trial would be illusory, rather than effective.'[6]

3.3 In order to uphold the rule of law, it is essential that when individuals and businesses need to turn to the courts to resolve disputes that they can do so in a way that is efficient in terms of both cost and time. The right to a fair trial recognises the need for practical and effective access to justice, which includes the need for an independent and impartial judiciary, a level

[5] Professor Wendy Kennett, from the University of Cardiff School of Law and Politics (referred to in further detail below)

[6] Lady Carr, Lady Chief Justice: 'Enacting Just and Equal Laws – Enforcement and Fair Trial,' Mayflower 400 Lecture (28 November 2024)

playing field between litigants, and open justice subject to scrutiny. However, securing judgment in court is often not the end of the process.

3.4 If the judgment obtained from the court requires payment of a debt or damages then, unless the defendant[7] complies with the order voluntarily, the enforcement process will need to be engaged. The aim of the enforcement process should be to obtain compliance with the judgment, or as near compliance with the judgment as is practically possible.

3.5 CIVEA report that, among other successes for enforcement, enforcement firms had recovered, pursuant to orders from the Magistrates Court, £2 billion of unpaid council tax since the pandemic, 21% of council tax which would have been otherwise unrecovered. Despite that success, enforcement of judgments in general is currently performing poorly, with judgment creditors frustrated by delays and ineffectiveness of a disjointed approach, and judgment debtors concerned about the costs incurred in the process of enforcement and the inability to pay – particularly in the continuing cost of living crisis.

3.6 While there has been some improvement in family finances since January 2023, the cost of living crisis continues to have an impact on the financial lives of a significant proportion of adults in the UK. In January 2024, 7.4m (14%) felt heavily burdened by their domestic bills and credit commitments; 5.5m (11%) had missed any of these bills in the previous 6 months; 14.6m (28%) were not coping financially or finding it difficult to cope; and 5.9m (11%) had no disposable income. A higher proportion of adults in certain groups were struggling financially in January 2024, compared with the UK average. Those particularly affected included adults from low-income households, unemployed adults, others not in work such as the long-term sick and full-time carers, renters, single adults with financially dependent children, those living in the North of England, and in the most deprived areas of the UK.[8]

3.7 Debt advice providers and enforcement agents both recognise that there is now a new group of defendants who are in regular employment, and who have never previously been in debt, who are struggling with their finances. While dealing with their priority bills, they are unable to satisfy other debts and incurred fines and penalties.

3.8 Lord Justice Briggs (as he then was) noted in 2015 in his interim report for the Civil Justice Structure Review[9] that the enforcement of judgments and orders was a seriously weak

[7] 'Defendant' is used for ease of reference but includes any party (such as a part 20 defendant) who is subject to judgment.

[8] Financial Lives cost of living (Jan 2024) recontact survey - Summary | Financial Conduct Authority

[9] Civil Courts Structure Review (CCSR): Interim Report published

aspect of the service provided by the civil courts, and in need of close attention. Enforcement is still a seriously weak aspect of the service provided by the civil courts, and in need of close attention, although that statement does not seek to undermine the hard work undertaken by organisations working in this field – both on behalf of creditors and defendants.

3.9 Much time has been spent since the 1980s, through the Woolf reforms, Jackson on costs, the Briggs Civil Courts Structure Review in 2016,[10] and the recent HMCTS Reform programme, to ensure that litigation can be carried out in the most time and cost-efficient manner possible.

3.10 During the same period, despite the 2014 reforms under the Taking Control of Goods Act 2014, the regulations[11] and national standards for enforcement,[12] comparatively little time has been spent on considering reform of the enforcement processes,[13] although it was covered in Chapter 10 of the Briggs Final Report. Since the 2014 reforms, the number of doorstep enforcements visits have decreased, with more debts collected at the early compliance stage. Also, in 2022, the ECB was created to bring about improvements to oversight and transparency, and to improve the resolution of complaints with respect to debts covered by High Court enforcement officers (HCEOs) and by civil certified enforcement officers (which includes the enforcement of council tax indebtedness, utilities, parking fines, Employment Tribunal awards and other debts). The ECB does not have any involvement with County Court bailiffs.

The Work of Wendy Kennett

3.11 Professor Wendy Kennett, from the University of Cardiff School of Law and Politics, is the leading English and Welsh academic authority on enforcement and has written extensively on enforcement methods in her analysis of jurisdictions across Europe. *Civil Enforcement in a Comparative Perspective* (2021)[14] is a detailed academic study on the process of civil enforcement. Professor Kennett kindly spoke to the CJC, at the October 2024 Council

[10] civil-courts-structure-review-final-report-jul-16-final-1.pdf
[11] The Taking Control of Goods (Fees) Regulations 2014
[12] Taking Control of Goods: National Standards
[13] See the comment in the Mayflower 400 Lecture.
[14] *Wendy Kennett, Civil Enforcement in a Comparative Perspective: A Public Management Challenge* (Cambridge, Antwerp and Chicago; Intersentia, 2021).

meeting held in Cardiff, about the different ways in which civil enforcement has developed in different European states. The development of systems in Eastern European states from the 1990s, after the fall of the Berlin Wall, is very different to the historical development of enforcement methods in countries such as France and Sweden, which also have very different systems to each other. As she notes in *Civil Enforcement in a Comparative Perspective*, each legal system has a distinctly different approach to enforcement, but she identifies three institutional 'models' and that some jurisdictions employ an approach that mixes distinct elements of the different models.

3.12 The three different models identified are: the administrative model; the judicial officer model; and the court-centred model. In the administrative model, used by Sweden and Finland within the European Union, the enforcement of both public and private law financial obligations is undertaken by an executive agency which forms part of the administration of the state where enforcement agents have the status of public officers. In the judicial officer model, enforcement is undertaken by a member of the regulated legal profession specialising in civil enforcement and earning a fee income. This model is used in France and the Benelux states, but has also been used in Portugal, Scotland and also states in Eastern Europe, whose systems of enforcement have developed since the fall of the Berlin Wall in 1989. The final model identified by Professor Kennett is the court-centred model, where the courts are responsible for the enforcement of their judgments, taking action on the basis of an application made by a creditor to initiate a specific enforcement procedure. England and Wales operate a hybrid court-centred model, with enforcement overseen by the court under provisions contained in the CPR but with the use of enforcement agents.

3.13 Professor Kennett sets out that the court-centred model used in this jurisdiction is capable of providing high standards through the regulation of bailiffs and enforcement officers, and that by including enforcement as part of the court process it acknowledges that obtaining a judgment is only one part of the process of obtaining resolution.

3.14 This view of high standards of regulation is countered by the concerns raised by debt and consumer advisor groups that existing regulation currently concentrates on the prevention of egregious behaviour by some enforcement officers, which is not the same as promoting 'high standards.'

3.15 Since the regulations introduced in 2014, steps have been taken to provide better regulation, but progress since 2014 has been sketchy. The view of the Government expressed in the 2022 MOJ review of the 2014 reforms was,

> "the reforms have been successful in many areas. These include greater transparency and consistency in the enforcement process due to clearer rules and procedures; increased transparency on fees due to the introduction of the fixed fee structure; and better understanding of debtor rights and where to seek advice…the overall effectiveness of enforcement had improved, with a greater proportion of debts being enforced successfully than predicted when the reforms were designed"[15]

3.16 The MOJ review noted that "the evidence suggested that there were still instances of aggressive, inappropriate or insensitive behaviour from enforcement agents," a view shared by debt and consumer advice groups. Concern over this led to the creation of the ECB in 2022, with its important work to raise standards and bring fairness to enforcement. The ECB has now developed new standards, and the oversight work of the ECB is referred to in greater detail in the following section of this report.

3.17 A major drawback for the court-centred model is the limited resources available, particularly in the County Court. Reliance on the court adds significantly to the time it can take to enforce, which causes a great deal of irritation and, particularly for individuals and small and medium-sized enterprises (SMEs), can cause real economic distress. A SME that cannot efficiently enforce will likely face its own cash flow issues, be unable to pay its own debts and be unable to take up further opportunities for growth, thereby stunting its own business growth.

3.18 The administrative model referred to by Wendy Kennett puts the responsibility for enforcement in the hands of state bodies outside the justice system, which has the benefit of removing responsibility from the court and the demand on the court's limited resources. Similarly, the judicial officer model takes the responsibility from the courts and encourages competition for the provision of effective enforcement.

[15] https://assets.publishing.service.gov.uk/media/639724d8e90e077c2a4c7e97/government-response-call-evidence-enforcement-agents.pdf

'The Enforcers'

3.19 As set out above, the courts in England and Wales currently operate a hybrid system of enforcement through the County Courts and the High Court.[16] The High Court tends to deal with higher value claims than the County Court. The Magistrates Court also deals with a vast amount of civil enforcement, with enforcement agents enforcing approximately four million order per year (as compared with the County Court bailiffs who deal with around 300,000 warrants of control each year). The CJC plans to establish a workstream to consider civil work taking place in the Magistrates' Court in the near future.

3.20 The language still used, with references to sheriffs (now HCEOs) and bailiffs in the County Court, is indicative of how enforcement in England and Wales has developed over time. With such a system comes stability but also the dangers that can come with adaptation rather than a total re-write. Again, from the LCJ's Mayflower Lecture:

> 'Evolutionary models have much to commend them. They provide stability, matched with the flexibility to change to meet modern circumstances. They can minimise the prospect of reform producing unintended adverse consequences. But, they can also inhibit innovative reform when it is necessary or result in it not going as far or as fast as it needs to go. They can also produce incoherence, overlapping responsibilities or unnecessary multiplication, which benefits no one and, to the contrary, will tend to increase the cost and time taken to secure effective enforcement.'[17]

3.21 In the High Court, enforcement is carried out by HCEOs, who are authorised by the Lord Chancellor to carry out the enforcement of specific judgments. In the County Court, enforcement is carried out through enforcement officers (commonly known as bailiffs) who are either directly employed by HMCTS or are employed by private enforcement companies employed by the County Court.

3.22 HCEOs are private sector enforcement officers appointed to enforce High Court orders and any County Court judgments (CCJ) that have been transferred to the High Court for

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[16] See Louise Conway, Enforcement Agents & High Court Enforcement Officers (formerly known as bailiffs), (House of Commons, Research Briefing, 2024) for details of enforcement https://researchbriefings.files.parliament.uk/documents/SN04103/SN04103.pdf.

[17] Lady Carr, Lady Chief Justice: 'Enacting Just and Equal Laws – Enforcement and Fair Trial,' Mayflower 400 Lecture (28 November 2024)

enforcement. HCEOs cannot enforce court judgments in respect of debts that are regulated by the Consumer Credit Act 1974 (also known as 'regulated debts'), which include credit card debts, personal loans, or overdrafts. They are unable to enforce judgments under £600. They undertake Enforcement Tribunal and Advisory, Conciliation and Arbitration Service (ACAS) awards of any value. While the debt advice sector is keen to maintain the prohibition on HCEOs enforcing judgments under £600, many acting for creditors are keen to see the removal of that limit as they wish to make use of the more efficient HCEOs.

3.23 County Court bailiffs are used to enforce CCJs, and those orders made at tribunals that have been transferred to the County Court for enforcement. Since they are directly employed by the court, and are Crown employees, bailiffs do not need to be certificated. When recovering payment of a judgment debt (and associated costs), a County Court bailiff's authority to act comes from a 'warrant of control.' The warrant enables them to take control of the debtor's goods to sell them at public auction. The concerns raised by creditors in the CfE about the County Court and bailiffs were focussed on the time it takes for enforcement to take place. The complaints were not against the bailiffs themselves, who are recognised for their sensitive and hard work in difficult circumstances, but about the lack of resource in the County Court, which has resulted in a significant disparity between the volume of work that needs to be carried out in the County Court and the lack of funding. For the reasons referred to above, the delays in both obtaining and enforcing judgments, is creating economic drag.

3.24 Certificated enforcement agents (formerly known as 'certified bailiffs') are used to take control of goods and act on a warrant or liability order issued by a Magistrates' Court for debts such as rent arrears, council tax arrears, non-domestic rates arrears, parking fines, and child support agency arrears. Most certificated enforcement agents work for private enforcement companies, but each agent must have a certificate for which they must satisfy the court they are a 'fit and proper' person. They are not officers of the court, but being certified enables the County Court to exercise a degree of control over the standards of competence and conduct of these agents.

3.25 Civilian enforcement officers are employed by the Magistrates' Court under section 92 of the Access to Justice Act 1999, the Magistrates' Courts (Civilian Fine Enforcement Officers) Rules 1990 and the Courts Act 2003. Civilian enforcement officers execute a range of warrants including distress warrants, warrants for non-payment of fines and other sums a court has

ordered to be paid. In addition, they can enforce warrants of arrest for breaches of community sentences.

3.26 Over recent years, steps have been taken by government through the implementation of legislation and the making of various regulations, to provide greater control of 'rogue bailiffs' (these are not County Court bailiffs), and to prevent them from using aggressive methods of collection. This has been through the implementation of Part 3 and Schedule 12 of the TCEA 2007 and the implementation on 6 April 2014 of The Taking Control of Goods Regulations 2013, The Taking Control of Goods (Fees) Regulations 2014, and The Certification of Enforcement Agents Regulations 2014. This framework of legislation and regulations is supported by the 'Taking Control of Goods: National Standards' (6 April 2014)[18].

3.27 Calls for reform of debt collection have been made by various charities and third party organisations over a number of years, including from Citizens Advice and StepChange, who, together with Advice UK, Children's Society, Christians Against Poverty, Money Advice Trust, and Z2K, co-authored a report in March 2017, *Taking Control: the need for fundamental bailiff reform*, [19] calling for the independent regulation of bailiffs, a single complaints mechanism, and the restructuring of bailiff fees to incentivise good practice.

3.28 In the course of taking evidence for this report, the debt advice sector has expressed few problems with county court bailiffs while reporting that concerns are expressed about the behaviour of some enforcement officers. The debt advice sector believe that this may be because of differences in incentives embedded in the fee structure and remuneration, or because county court enforcement (compared to high court and enforcement officers) sits into a more accessible and effective framework of consumer protection that is better at recognising financial hardship and other vulnerabilities.

The Enforcement Conduct Board

3.29 In November 2022, the ECB was set up following the Centre for Social Justice's 2021 report, 'Taking Control for Good'[20] and after a collaboration between the civil enforcement industry and leading debt advice charities. Until the creation of the ECB, there had been no

[18] https://assets.publishing.service.gov.uk/media/5a7d635aed915d269ba8a5a7/taking-control-of-goods-national-standards.pdf

[19] Taking-Control-report-March-2017.pdf

[20] https://www.centreforsocialjustice.org.uk/wp-content/uploads/2021/07/CSJJ9052-Taking-Control-For-Good-INT-210720-WEB.pdf

independent body responsible for supervising behaviour in accordance with the 2014 regulations.

3.30 The ECB is funded through a voluntary industry levy and is independent of both government and industry, acting as an independent oversight body for debt enforcement work in England and Wales, with the stated aim to "ensure that all those who experience enforcement are treated fairly."

3.31 The ECB has established an oversight accreditation scheme which covers over 96% of the market for civil certificated and High Court enforcement work in England and Wales. It has also published new standards for enforcement which are a condition of accreditation, and which are expected to replace the current National Standards. The ECB standards are effective for enforcement agents from 1 January 2025 and for enforcement firms from 1 April 2025.

3.32 The ECB are now providing independent handling of complaints about enforcement. The ECB believes that it is necessary for the Government to legislate to give it statutory powers to enable it to fulfil fully its mission to make sure that all those facing enforcement action are treated fairly. Such statutory underpinning of the work of the ECB is supported by the HCEOA. The Government has said that it is considering whether legislation is necessary in this area. At a Westminster Hall Debate on 11 February 2025, the Parliamentary Under-Secretary of State for Justice, Alex Davies-Jones, said that the Government recognises that legislation could ensure a level-playing field – meaning that everybody facing enforcement action would be guaranteed to be dealing with an enforcement agent and firm subject to the same standards, overseen by an independent body. It could also mean that everyone facing enforcement action would be able to complain to an independent body, using the same procedure. Subject to the Government's consideration of this matter, the CJC supports the ECB being given the statutory powers it needs for effective regulation of the enforcement industry. Given the ECB's existing scheme for accrediting enforcement firms, and new standards for firms and agents, those statutory powers should extend to the ECB taking on the court's current role in the certification of enforcement agents.

3.33 The intention of the ECB to consult in 2025 on new enforcement standards on vulnerability and the ability to pay is also strongly welcomed by the CJC.

3.34 The CJC considers there is a powerful argument for the oversight of conduct of HCEOs and civil certificated enforcement officers to be taken away from the court and for that oversight to be undertaken by a specialist oversight body. The ECB seems the most likely candidate.

3.35 When she spoke to the CJC at its October 2024 Council meeting, Professor Kennett highlighted to the CJC that the court-centred model of enforcement used in England and Wales seeks to ensure protection of the vulnerable and gives this greater importance and focus than in some other jurisdictions. While this report seeks to make recommendations to improve the efficiency and effectiveness of enforcement, the CJC is very mindful of the need to ensure that the proposals provide a fair system for all. Effective oversight is an important part of ensuring a fair and effective system.

General Discussion

3.36 It hardly needs to be said that, while there are common threads, each individual has had different experiences of enforcement. Neither a party against whom a judgment has been entered, nor the party with the benefit of a court judgment is part of a homogeneous group. A creditor can be a large loan company or company who purchases a "book" of debts, knowing that some debts will remain unpaid; or an individual or small business desperate for the payment of an unpaid debt in order to remain solvent. There are some individual accounts provided through the CfE of how individuals and small businesses have been kept out of their desperately needed money by a party, either an individual or business, with money to pay but who has decided to avoid payment for their own benefit.

3.37 There is an obvious tension in enforcement. The creditor needing to enforce efficiently and effectively in order not to be kept out of monies to which the creditor is entitled; the party in debt needing to be protected from overly aggressive enforcement and collection, and their vulnerabilities to be recognised to ensure that payment plans are realistic: what one response referred to as 'equitable and just' enforcement.

3.38 There needs to be a greater understanding on both sides of the situation of the other party. The extremes – namely those who have the money to pay a debt or judgment, but choose not to for their own benefit, and those who use the delays and other failings in the enforcement system to avoid payment – require resolution. The failure to pay monies owed can cause enormous distress and anxiety and a sense that the civil justice system is working against the aggrieved creditor. One contributor to the CfE referred to the 'incorrect position

of the relative rights and responsibilities of the parties.' The failure to pay outstanding debts can cause a devastating impact, particularly upon SMEs, upon individuals, and upon their families.

3.39 Similarly, overly aggressive creditors, including those raising bulk issue claims, for example parking fines, need to be controlled with proper protections in place for the defendant. Creditors who are not overtly aggressive in their enforcement can still inadvertently cause harm as a consequence of being unaware of a defendant's vulnerability.

3.40 While there is not the data collected which supports the position one way or the other, anecdotally it seems that most defendants are not wilfully seeking to avoid paying that which they owe. While there is a proportion who could pay, but won't pay, many defendants are endeavouring to balance between a number of financial commitments, potentially including other debts, in situations where they do not have the ability to pay all, at least in the immediate or short-term.

3.41 It is sensible to view the difficulties and failings with the civil enforcement system not in the context of the extremes (of aggressive creditors or deliberately recalcitrant debtors), as most creditors and those in debt do not fall within the extremes. It is important that there is more of a dialogue between organisations acting for or supporting creditors and organisations advising those in debt. There is some common ground, such as in the better signposting to advice provision and encouragement of communication between claimants and defendants at an early stage, which have the potential of making immediate, and significant, improvements to the system of enforcement. The CJC proposes that HMCTS undertake work under the auspices of the HMCTS Vulnerability Action Plan,[21] in order to be more alert to the potential vulnerabilities of the defendant in the context of enforcement action being taken.

3.42 Those in debt may be financially vulnerable with low income, insecure employment, or reliance on benefits, with low financial resilience. They may also face other vulnerabilities which can include mental and physical health issues; mental and physical disabilities; being subjected to domestic violence, including coercive control; language barriers; significant caring responsibilities; geographical or other isolation; or digital disadvantage. It has been essential, when considering improved engagement with the civil justice process, that these vulnerabilities are taken into account, as engagement will only be achieved if there is confidence that the system is fair. In seeking to make proposals which may assist in

[21] HMCTS Vulnerability Action Plan April 2022 update - GOV.UK

providing remedies to the inefficiencies in the enforcement system, the need to protect the vulnerable – the “can’t pay” – is not lost.

4. Call for Evidence

Methods of enforcement

4.0 There are a limited number of ways in which judgments can be enforced. The main ones are identified as follows:

- The seizure and sale of tangible movable property.
- The seizure of outstanding debts against third parties; for example, monies held in bank accounts or owed in wages or other sums.
- The charging of immovable property by registration of a charge, so that a property cannot be sold without the payment of the monies secured.

4.1 A list of the potential methods of enforcement in England and Wales, together with an explanation of each, was provided with the CfE and is attached at **Appendix 2**:

- Third party debt order.
- Warrant of control.
- Writ of control.
- Insolvency proceedings.
- Contempt of court proceedings.
- Freezing orders.

4.2 The CfE sought evidence of which enforcement methods were most frequently used and which were found to be the most and least effective.

Overview of responses

4.3 There was general consensus amongst those who responded to the CfE, and those who engaged with the webinars and the National Forum session on enforcement, that the

current civil justice enforcement system is poorly performing and needs to become less complex and more efficient, while ensuring appropriate protection for the party in debt. The CJC appreciates that those who are working hard in the enforcement sector for it to be an efficient and fair system may feel aggrieved that such comments are made. There has been considerable work since 2014 in controlling methods of enforcement of warrants from the High Court and the work of the County Court bailiffs is recognised as being carefully undertaken in difficult circumstances.

4.4 The problems most mentioned were as follows:

- Court delays.
- Lack of sufficient resources at court to provide an efficient service, particularly with respect to the bailiffs in the County Court.
- Lack of communication from court about progress of the enforcement proceedings.
- Lack of up-to-date data for creditors.
- Lack of detail with respect to the debtor's financial circumstances.
- Lack of engagement from debtors.

Early Communication

4.5 Diversion away from court proceedings into mediation and other forms of alternative dispute resolution (ADR) is encouraged in the first stage of obtaining a resolution, both before proceedings are issued and when they are issued. In low value and less complex cases, mediation is imposed. The pilot scheme (running from 22 May 2024 to 22 May 2026) for the automatic referral of small claims to mediation, Practice Direction 51ZE, is an important step towards taking cases out of the court process for realistic resolution.[22] The need for the parties to enter into dialogue should encourage meaningful discussion about the merits (or otherwise) of the claim and defence should be carried through to the second

[22] CPR PD51ZE

stage of obtaining a resolution, namely enforcement, through discussions about the prospects of recovery of any outstanding monies.

4.6 One of the significant issues faced by those seeking to enforce a judgment is lack of information. Time and money are wasted by creditors seeking to determine the best enforcement method to use in order to recover that to which they are entitled. Particular concern was expressed with respect to the ineffectiveness of Part 71 of the CPR, particularly in the County Court where creditors can be given false hope that raising questions under CPR Part 71 will result in a successful outcome, when it rarely does in practice. The majority of warrants of control are issued by bulk users in areas such as consumer credit and fines. The needs of the bulk user are very distinct to that of the individual creditor seeking enforcement of a hard-earned judgment.

4.7 Better communication between the parties is acknowledged to be key in creating a more efficient enforcement system by those engaged on either side of enforcement. That communication needs to start at an early stage, before the issue of proceedings, through the use of the pre-action protocol (PAP) for debt claims.[23] The CJC proposes that data should be collected by HMCTS to monitor the usage of the PAP for debt claims. A better understanding of the use of the PAP will allow for future steps to be taken to ensure proper engagement.

4.8 Early engagement between creditors and those in debt is likely to result in the best outcomes. The provision of information and signposting needs to continue through the court process. Concern was expressed from the debt advice sector that the manner of debt collection and recovery processes, including the language used in any communications, can discourage engagement and that it is important that steps are taken to ensure that communications from all creditors encourage those in debt to seek help.[24] StepChange found that people in financial difficulty were reluctant to talk to their creditors because they did not think it would help them and could adversely impact their credit score.

4.9 On the other side of enforcement, any delays can be severely detrimental to the creditor and so it is in the best interests of the creditor to encourage engagement. Early engagement is much more likely if the tone, presentation, and messaging in all creditors' communications with defendants is designed to encourage engagement. A fact recognised by many creditors who are keen to encouragement engagement.

[23] https://www.justice.gov.uk/documents/debt-pap.pdf
[24] https://www.stepchange.org/Portals/0/assets/pdf/2022/policy/mixed-messages-report-2022.pdf

4.10 It is for defendants and those engaged in providing debt advice to engage with those offers to communicate and concern was expressed by some on the creditors' side of the debate that there was a reluctance to engage. That reluctance may arise from fear and vulnerability (although some will not engage because of a conscious desire not to engage).

Methods of enforcement

4.11 In response to the questions as to which were the most and least effective methods of enforcement, one party responding said that the question missed the point because it depended upon the type of debt. That was not lost on the WG. The WG was endeavouring to ascertain which methods of enforcement were the "go to" remedies (if any) and which had been given up on (if any). Another party responding had significant criticisms of all the current methods of enforcement.

4.12 While the possibility of fundamental change is being considered as a longer-term aim of this work, it is important in the interim to identify the stronger and weaker methods for enforcement in order to improve the current system with "easy fixes" before considering the bigger reforms.

General Concerns

4.13 A major concern for those seeking to enforce a judgment is the lack of engagement by defendants and the lack of accurate and up-to-date information. As mentioned above, a number of CfE respondents referred to the ineffectiveness of Part 71. CPR 71 will be dealt with further below.

4.14 Unfortunately, there is a degree of misunderstanding, and consequential distrust, between the two sides of the enforcement process – those who enforce on one side and those in debt on the other. It is not surprising given the different perspectives. It is important that the twin needs for enforcement are efficient and effective while protecting the vulnerable are born in mind throughout in order that one does not overbear the other. Despite the different perspectives, there is some common ground about which methods are most effective and the steps that can be taken to improve outcomes for all.

4.15 Responses from debt advice organisations and from enforcement agents and commercial litigants, alongside the few individual CfE respondents, raise concerns about the complexities of enforcement. A common theme was that the court system for enforcement

was slow, ineffective, underfunded, and hard to use and 'near impossible' for someone navigating the system without assistance. The responses talked about 'arcane' and 'antiquated' systems and processes and 'prehistoric' forms, that the process is 'labyrinthine' and 'unnavigable' and highlighted the non-user-friendly nature of the system, including the lack of plain language. Advice agencies raised court fees as a barrier for defendants. This was expressed to be of particular concern with respect to default judgments. Approximately 60% of all judgments entered are default judgments. On the other side of the enforcement process, the cost of enforcement for individuals and small businesses can be particularly onerous. Those representing themselves often erroneously, but understandably, believe that once a judgment is obtained, the enforcement of that judgment will be entirely straightforward. The fact that the burden falls upon the creditor to obtain the information about the party in debt through further slow court processes places further financial burden on the creditor which can be difficult for a small business or individual to bare.

4.16 Commercial litigants, enforcement agents, trade associations and interest groups were understandably advocating for speedier processes. The most popular methods of enforcement were identified as being the charging order, writs of control and warrants of control. Many users on the enforcement side commented upon shortcomings with the County Court bailiff system - the lack of capacity with limited numbers of court bailiffs and the volume of work creating delays and frustrations. Some were keen for greater use of the writ of control with greater use of HCEOs. Some reported that they were no longer using warrants of control due to poor court performance. Those on the debt advice side consider the use of HCEOs as being more intrusive with less concern for the vulnerable party in debt. The different views on enforcement between the creditor and the debt advice perspective were most polarised over this issue of using HCEOs and County Court Bailiffs. The work of the ECB to introduce new standards for enforcement working together with an oversight model was generally welcomed.

4.17 Small businesses and individual litigants seeking recovery were critical of the complexity and difficulty of using the enforcement system. The concern expressed is that delays in the enforcement of judgments can be extremely detrimental to the creditor and the complexity of the enforcement process enables the "won't pay" defendant (rather than the "can't pay" defendant) to avoid paying that which they are obliged to pay, to the severe detriment of the creditor. The aim of the court process should be to ensure that the remedy secured by

judgment can be obtained with the least amount of cost and time as possible, so as to be as close as possible to the situation of a party voluntarily complying with the judgment, while ensuring that the vulnerable are still protected. The current enforcement system is not operating as it should.

4.18 Debt advice agencies are understandably concerned with considering the entire picture for the individual who is in debt, recognising that the individual may well be vulnerable and have other issues to deal with, such as caring responsibilities and mental health issues. The enforcement process can itself be harmful. The work of the Money and Mental Health Policy Institute highlights the potential of the contribution to psychological damage caused by debt collection practices[25], including local and national government debt collection practices.[26] The reasons for being in debt often directly results from having low income, with either insecure employment, or reliance on benefits, with low financial resilience. Additional surrounding difficulties can be much more complex. A party in debt is likely to be struggling to pay a range of creditors, including payments for the basics of housing, food, and energy costs. It was highlighted by debt advisors that it is important that the court process of enforcement does not inadvertently make worse the situation of a party in debt, by forcing them to prioritise a debt which should be being dealt with after the priorities such as rent, housing costs, heating, and food.

4.19 As a counter to that view, those seeking to enforce judgment debts expressed concern that insufficient encouragement was given to those in debt to engage with the creditor and that the seriousness of the situation for a person with a judgment debt was not being emphasised. Creditors made it clear that the failure of a party to meet their debts is detrimental to the creditor, particularly where it is an individual or a SME, and that it is misguided to consider that all of those in debt are vulnerable. That point was made very clear by an individual litigant responding to the CfE who was able to give details of her own very unsatisfactory experience of endeavouring to obtain enforcement of a judgment. It is equally misguided to consider that all in debt are deliberately avoiding their responsibilities. The debt situation is far more nuanced.

[25] https://www.moneyandmentalhealth.org/publications/debts-and-despair/
[26] https://www.moneyandmentalhealth.org/publications/in-the-public-interest/

Writ/warrant of control

4.20 Generally, parties seeking to enforce judgments preferred the writ of control, with HCEOs being seen to be more efficient and incentivised to recover, over the warrant of control. Bailiffs and the County Court were generally seen to be underfunded and under-resourced for the volume of work. The experience of users with the process of enforcement through the County Court is that it is extremely slow and ineffective. Comments included that the "warrant of control appeared to be the least effective" with "lack of progress updates and recoveries"; and that the warrant of control was least effective "due to poor bailiff service of papers and poor court performance for warrants, the return on investments is too low based on the fees charged and the service levels we are seeing"; "the County Court Bailiff is clearly underfunded and under-resourced and anecdotally we hear many stories concerning their ineffectiveness"; "warrant of control, from our experience the impetus doesn't appear to be there for County Court bailiffs to go out and make a recovery. Updates are hard to obtain and poor when received." There was additional concern from some creditors that judgment debtors were being given far too many opportunities to pay that which they had been ordered by the court to pay.

4.21 Instruction of HCEOs to effect writs of control were referred to by many on the enforcement side as the most effective mechanism for obtaining enforcement of a debt, as they require interaction from the defendant, thereby increasing engagement and the likelihood of a speedy resolution. Often the attendance of HCEOs is the first time a defendant has engaged in the process.

4.22 More neutral bodies such as the Bar Council also considered attendance of HCEOs as most effective, as it ensures engagement and enables for a speedier consideration of potential effective methods of enforcement.

4.23 Debt advice providers and organisations expressed concerns about both writs and warrants of control being used as the first step in enforcement, given the potential that enforcing a writ or warrant could be very detrimental. Proposals were made that certain goods should not be included in enforcement, such as the family car if it is needed for work or caring responsibilities – e.g. getting to school or hospital or visiting elderly relative.

4.24 **The CJC recommends that MOJ take notice of the degree of widespread and significant concerns expressed by court users about the current failings in the County Court, created by resource restrictions**, which are leading to delays in obtaining hearings, delays in the

provision of orders, delays in being able to take steps to enforce, delays in any reports with respect to progress, and delay in resolution. The inability to enforce effectively through the County Court has destroyed confidence amongst creditors.

4.25 The bailiffs do perform a very important role, not only in recovering debts, albeit not efficiently due to the court recourse constraints, but in ensuring engagement by debtors who may not have previously engaged. In order for the County Court bailiffs to be able to recover in numbers, both in recruitment and retention, further funds would need to be made available. It is only with an increase in the number of County Court bailiffs that the delay in enforcement in the County Court will be reduced. However, economic realities would indicate that no further funds will be made available, so the delays will continue and extend.

4.26 If the enforcement process is to become more efficient and effective, as well as being fair, there therefore needs to be consideration of other ways to deal with enforcement. An alternative suggestion would be to transfer all enforcement from the County Court to the High Court. This would require the removal of the £600 minimum for High Court enforcement. This removal is supported by many creditors; however, it would require the same level of protection afforded to debtors in the County Court.

4.27 Creditors were dismissive of the 'Warrant of Control Support Centres' set up to manage the in excess of 600,000 enforcement applications per year: 89% of the applications for warrants of control being processed in bulk. Creditors see it as an unnecessary delay to the process of enforcement. Meanwhile the debt advice sector has not been supportive of the process and the 'Taking Control' coalition proposed that Warrant of Control centres could be re-purposed to Judgment Support Centres to find out more information and take a more holistic approach to assessing a defendant's financial status to determine whether taking control of goods is appropriate.

4.28 **The CJC recommends that Warrant of Control or Judgment Support Centres should be repurposed to debt support centres, that actively support early intervention and resolution.** The establishment of debt support centres in place of Warrant of Control or Judgment Support Centres would create a point of intervention long before judgment is entered and enforcement sought. By creating such centres, HMCTS could be actively helping to reduce the burden on the courts by seeking to resolve the case before it reaches the court.

Charging orders

4.29 Charging orders are seen by creditors to be effective for large debts, if there is sufficient equity in the property. On their own, these methods of enforcement were not seen as being entirely effective and it was necessary to combine such orders with a writ of control to provide security that the defendant would eventually pay.

4.30 His Majesty's Revenue & Customs (HMRC) expressed a concern that charging orders are sometimes overlooked on the sale of the property, even when registered, and the Chancery Masters queried whether orders for sale should be diverted from the High Court to the County Court. The difficulty with that proposal is that it is clear from other parts of the evidence provided in the CfE that there is already a concern that the County Court has far too much work for its limited resources. Any additional work will only increase the strain.

4.31 Debt advice agencies made a number of proposals for reform including that the charging order only be granted if it secured a minimum level of debt and that debt purchasing companies not be permitted to use enforcement procedures to effectively convert old unsecured debt into a secured debt. Furthermore, it was suggested that statutory interest not be charged, given that the defendant had already paid significant amounts of interest.

Insolvency Proceedings

4.32 HMRC use insolvency proceedings for debts to the Crown, as those proceedings act as a deterrent as well as a means of enforcement. From the evidence obtained in the CfE, it did not otherwise seem that insolvency proceedings were regularly used by creditors, albeit it can be an effective method of enforcement for some in particular circumstances.

Freezing Orders

4.33 Freezing orders were seen to be disproportionately expensive to obtain and maintain for most judgments. Defendants expressed concerns that the impact of a freezing order can be extremely draconian given the restrictions imposed on a defendant's financial activities.

Third Party Orders

4.34 Third party orders were used by some creditors very effectively, dependent upon the circumstances. An advantage was that they are often very affordable options for creditors

and were good for small debts. The disadvantage is that information from the debtor is needed and obtaining that information (as set out elsewhere in this report) can itself be very problematic.

Attachment of Earnings/Benefits

4.35 Again, these orders were used by some creditors effectively, dependent upon the circumstances. Some involved in the debt advice sector noted that these orders can be of assistance to the defendant but that limits need to be placed upon the amounts recovered in order not to make the defendant's situation perilous.

Data Collection

4.36 **The CJC recommends that data should be collected by HMCTS with respect to the use of the different methods of enforcement; for example, the number of applications issued for each method, the time taken between application and orders being made under each method, the sums involved, and whether the order is fulfilled.**

4.37 Through such a data collection exercise, it will be possible to have closer analysis of which are the more effective methods of enforcement so that there can be better information for creditors. This will save time and money, in that creditors can make use of the enforcement method most likely to be effective for their needs. It will also be possible to consider what may need to be done to make other methods of enforcement more effective.

Summary

4.38 In brief, the responses from both 'sides' of the enforcement debate complain that the current system is arcane and difficult to understand. It is slow and inefficient, and not as effective as it should be. Bailiffs, while greatly appreciated by those who are facing debt collection, are in a difficult situation. They are on the front line for enforcing judgments and therefore upholding the rule of law. HMCTS have been working to ensure that they have appropriate PPE. Generally, the County Court is viewed as under resourced and overburdened and therefore unable to provide an effective, efficient, and fair system. Unless it is funded and numbers of bailiffs significantly increased, creditors express a preference that all debts (including those under £600) be dealt with by HCEOs. If that were to happen,

the defendant would require the same protections as are currently provided in the County Court.

4.39 The various methods of enforcement each have their own merits, although none are seen as perfect. More information could be obtained by effective data collection with respect to the effectiveness of each of the methods of enforcement, rather than the anecdotal evidence provided by the CfE, the webinars and at the National Forum.

4.40 The key problem identified by respondents to the CfE is poor communication between the parties, and lack of comprehensible and "user friendly" advice for all defendants. Improved communications at early stages of proceedings and subsequent enforcement are agreed by all parties to be a way of significantly improving outcomes.

5. Recommendations

5.0 The recommendations being made in this report aim to improve the ability of a party to enforce in a timely and cost-efficient manner, whilst retaining the necessary protections for the vulnerable defendant. The following sets out a narrative of the evidence obtained and the reasoning behind the recommendations that are being made.

5.1 The CJC is proposing measures to provide further information about the defendant at an earlier stage but also providing additional advice and signposting advice. Lack of correct information about a person in debt was highlighted as a reason for delays in enforcement of judgments, as additional time is required to identify the correct information.

5.2 HCEOA observe that incorrect information, such as an address, requires further investigation in order to enable enforcement to take place. An immediate concern that arises from this is that if the HCEO is the first person to note the incorrect details, then the defendant is unlikely to have ever known about the claim or judgment being entered. This is particularly concerning given the high number of default judgments entered. It is essential that any failings in the court process for obtaining judgment do not facilitate judgments being entered against parties who have not had any opportunity to engage as they have not been aware of a claim being made against them. It is for this reason that this report makes recommendations to ensure that accurate information about information about the defendant is identified before enforcement is undertaken and that various steps are taken to ensure better and earlier communication between parties.

5.3 The current system of enforcement, divided between the High Court and the County Court, is not working as it should. It is for this reason that the CJC is recommending the consolidation of enforcement through a single court. As discussed in the previous section, this could be through the transfer of all County Court enforcement to the High Court, provided that the £600 minimum was removed. This would require the provision of the same level of protection afforded to debtors in the County Court and the use of properly regulated HCEO.

5.4 However, this report favours a more ambitious proposal. **The CJC recommends that a single unified digital court should be created for enforcement of judgments, regardless of a**

judgment was obtained in the High Court or the County Court, where all debts are recorded, including those falling outside the courts (the digital enforcement court).

5.5 The digital enforcement court should have a portal that retains information about the defendant's financial position and dealing with all the debts relating to one individual or party – including those outside the court process. This proposal aims to remove delays and inefficiencies, whilst ensuring that the party in debt retains the protection of the court.

5.6 Consolidating the system into a single court will require decisions to be made as to the appropriate enforcement measures available under a single service. In particular, this will require careful consideration between the different measures that are currently available, including fee structures. A move towards the High Court model for enforcement has the potential of shifting costs onto defendants: for the vulnerable "can't pay" defendants that would exacerbate the harm. It would be necessary for careful consideration to be given to the costs and fees of enforcement and whether there needs to be central funding.

Issues raised in the Call for Evidence

Use of the word 'debtor'

5.7 Some debt advice agencies commented that the use of the word 'debtor' should be avoided as it is pejorative and has negative connotations. That concern is recognised, and throughout this report, 'defendant' is used to describe any party subject to a judgment, including a part-20 defendant, in preference to 'debtor' wherever possible. However, the word 'debtor' is a word that can be used as a neutrally descriptive word while entirely respecting those who are in debt. The CJC does not have any recommendation to remove the word from use.

Court Communication

5.8 Amending communication from the court to encourage early engagement between creditor and defendant is key to improving the enforcement process. Recommendations are made by the CJC in various parts of the report to facilitate earlier and more effective communication between parties. Research has shown, it might seem unsurprisingly, that the clarity and tone of those communications from the court, as well as communications from creditors, is

crucial in the encouragement of engagement by defendants. badly worded communications inadvertently can add to the confusion of a defendant and their feelings of vulnerability.[27]

5.9 **The CJC recommends that court communications should be amended by HMCTS, following consultation with debt advice agencies, to use clear and un-intimidating language.**

Default Judgments

5.10 Claims are not allocated to track until after a defence has been filed, and, in the case of low value claims, until mediation has taken place. Consequently, it is not known which track a claim might belong to at the time that an application is made for a default judgment. There is no data to establish the proportion of claims resulting in a default judgment that fall into the small, fast, intermediate, or multi-track. The CJC is however grateful to HMCTS for providing data with respect to the number of money claims issued that resulted in a default judgment prior to allocation to small, fast, intermediate, or multi-track. In 2022, out of 1,364,343 claims issued, 814,958 resulted in a default judgment (59.7%); in 2023, out of 1,528,294 claims issued, 972,533 resulted in default judgments (63.6%); and for part of 2024, out of 1,322,866 cases issued, 846,439 resulted in default judgments (64%).[28] Of the cases that are allocated to a track between 2022 and 2024, 70-77% of the cases are allocated to the small claims. It is a logical conclusion that the number of default judgments that are entered will be in a similar, if not greater, proportion of small claims. A check of other figures on small claims supports that conclusion being reached. The WG therefore worked on the basis that approximately 75% of cases where judgment in default is entered, if defended, would be small claims.

5.11 While a proportion of those with a judgment which is been entered in default will be those who are ignoring the court process (either wilfully, or those defendants who, out of fear and anxiety, 'bury their heads in the sand'), it has been noted in discussion with HMCTS that the vast number of default judgments are driven by bulk users who issue and progress their claim through digital legacy services.

[27] Research by StepChange has found that the communications can themselves act as a barrier. https://www.stepchange.org/policy-and-research/mixed-messages.aspx

[28] The figures given for cases that result in a default judgment in a money claim added to the money claims then allocated to the small, fast, intermediate (after the introduction of that additional track) and multi-tracks does not equal the total number of money claims. It is assumed that the difference is accounted for by cases which are not proceeded with because of resolution or withdrawal of the claim before a default judgment or allocation.

5.12 There was a common concern raised in the responses to the CfE regarding parking fines and service of proceedings. It is said that many defendants are not aware of the proceedings and are therefore not able to defend the claim until judgment in default is entered and appears in a credit rating check.

5.13 The time, costs, and effort incurred in seeking to set aside a judgment in default is extremely detrimental to the parties involved. The cost of applying to set aside a CCJ is £303.[29] For anyone who has financial difficulties but does not fall below the threshold for fee remission, that is a very large sum; however, for many, the alternative of allowing the CCJ to stand is not possible. This report is not dealing with court fees generally,[30] but there is a strong argument that £303 is too high for someone who is simply endeavouring to put forward a defence to a claim that they were not aware of because of a failure in service.

5.14 **It is therefore suggested that the fee to set aside a judgment entered in default as a result of non-service is reduced to the same fee that attaches to a n244 application made by consent.**

5.15 While it does not appear that data is collected with respect to how many applicants have mortgages refused as a result of the existence of a CCJ, there are many anecdotal accounts of individual defendants who have to pay a CCJ application to set aside in time for the individual's application for credit or mortgage to be considered. It is, of course, detrimental to the limited resources of the court to be dealing with a significant number of applications to set aside, particularly where the court's discretion is being exercised pursuant to CPR 13.3.

5.16 The civil justice system needs to ensure that, insofar as is possible, judgments are only entered when there is an entitlement to that judgment. The court should not be facilitating the obtainment of default judgments where it is not clear that the defendant has known about the proceedings. It is therefore proposed that the CPRC consider further CPR Part 12, specifically the conditions that need to be satisfied in order to obtain a judgment in default.

5.17 **The CJC recommends that further requirements should be introduced into CPR 12.3, so that any claimant seeking to enter a judgment in default will need to positively establish to the court that:**

i) the PAP for debt claims has been complied with;

[29] Civil Court Fees EX 50

[30] It should be noted that the CJC is a statutory consultee on court fees.

ii) there has been service upon the defendant; and

iii) the claim is not statute barred.

5.18 The CPR requires compliance with the PAP for debt claims. It is proposed that greater emphasis should be placed upon the business claimant (including sole traders and public bodies) to comply with the PAP for debt claims when seeking to recover from individuals (including sole traders). The following section elaborates further on this proposal.

5.19 Instituting a condition of service upon the defendant raises a further question of what can be considered as good service. A common concern arising from responses to the CfE, and other sources of evidence, is that many defendants were not aware of the claim being brought against them prior to learning that a default judgment had been entered against them.

5.20 This coincides with the concern from the HCEOA that too many judgment debts are difficult to enforce because the service address appears to be incorrect. If it is difficult to enforce the judgment debt because the address is incorrect, it follows that the defendant is unlikely to have known of the proceedings at all and will have missed the opportunity to defend the claim. CIVEA, on behalf of the certificated enforcement agents, set out that it can be difficult to ascertain a current address for a defendant even when credit reference agencies are used. The database of addresses held by the Driver and Vehicle Licensing Agency (DVLA) was noted by several respondents to the consultation as being particularly unreliable and lacking the sufficient quality control to ensure that the address details submitted for inclusion on driving licences is accurate.

5.21 It is not uncommon that an individual has no maintained connection with an old address and no forwarding address. While it may have previously been the situation that, in a minority of cases, a defendant failed to know about proceedings because they had left an address without leaving a forwarding address, given societal changes and the fluidity of accommodation for many, the court needs to make changes so as not to perpetuate a situation where greater numbers of people have judgments entered against them without knowledge of a claim having been brought.

5.22 **Therefore, the CJC recommends that the phrasing of CPR 6.9 should be amended: for individual defendants being served, 'last known address' should be replaced with a more secure address option, such as 'address registered for council tax or business tax purposes.'**

5.23 This issue with respect to which address can be used for service is referred to in greater detail below.

5.24 Moreover, if an individual has a judgment in default against them because they were not properly served with the proceedings, then that party should not be penalised. The figure of £303 appears to be a punitive sum to discourage applications to set aside judgment. Such a sum would discourage many, who have not had any opportunity to engage with proceedings and who do not have help from fees, from accessing justice.

5.25 **The CJC recommends that the fee for an application to set aside a county court judgment, where the defendant is seeking to set aside the judgment due to non-service, should be reduced to be equal to the fee charged for a N244 application by consent: £123 from April 2025.**[31] Only those who are seeking to set aside a judgment for a reason unrelated to service should be required to pay the full fee of £303. If it transpires that there was indeed service, then the balance of the fee can be ordered to be paid by the court at the set aside hearing.

5.26 Finally, particularly with bulk claimants, there is concern that claims are brought, and default judgments are entered, when the debt is statute barred. Consequently, it is proposed that any claimant seeking a default judgment will need to establish that the claim is being brought within time.

Pre-Action Protocol

5.27 Greater emphasis on the importance of the PAP for debt claims will encourage earlier communication between the parties, with improved prospects for resolution before court proceedings are brought, as well as ensuring that parties work constructively together. As has been set out in the CJC's first report on PAPs in August 2023, chaired by Professor Andrew Higgins,

"PAPs have come to occupy a crucial space in the civil justice system… the role of PAPs was to provide sufficient notice and information to parties to enable them to meaningfully engage in formal or informal dispute resolution processes, and where a full resolution is not agreed, to help narrow the dispute so that any subsequent litigation is limited to resolving those issues that need to be determined by the court. In this way PAPs help foster fair dispute resolution

[31] In early April 2025, and subject to parliamentary approval, the Ministry of Justice will increase 171 court and tribunal fees to account for Consumer Price Index. The fee for a general application (by consent/without notice) excluding Protection from Harassment Act 1997 & Court Fund Pay Out will rise from £119 to £123.

without the need for litigation and facilitate more proportionate litigation when litigation is necessary. For PAPs to fulfil these objectives they need to be accessible to all, set out clear, proportionate steps towards dispute resolution and effective case management, and be consistently followed by parties and consistently enforced by the court."

5.28 The aims of the PAP for debt claims are to (a) encourage early engagement and communication between the parties, including early exchange of sufficient information about the matter to help clarify whether there are any issues in dispute; (b) enable the parties to resolve the matter without the need to start court proceedings, including agreeing a reasonable repayment plan or considering using an ADR procedure; (c) encourage the parties to act in a reasonable and proportionate manner in all dealings with one another (for example, avoiding running up costs which do not bear a reasonable relationship to the sums in issue); (d) support the efficient management of proceedings that cannot be avoided. The PAP for debt claims is attached as **Appendix 3** for reference.

5.29 Importantly, the PAP sets out the initial information that is to be provided by the creditor to the debtor in a Letter of Claim before proceedings are started. That Letter of Claim is to include (i) the amount of the debt; (ii) whether interest or other charges are continuing; (iii) where the debt arises from an oral agreement, who made the agreement, what was agreed (including, as far as possible, what words were used) and when and where it was agreed; (iv) where the debt arises from a written agreement, the date of the agreement, the parties to it and the fact that a copy of the written agreement can be requested from the creditor; (v) where the debt has been assigned, the details of the original debt and creditor, when it was assigned and to whom; (vi) if regular instalments are currently being offered by or on behalf of the debtor, or are being paid, an explanation of why the offer is not acceptable and why a court claim is still being considered; (vii) details of how the debt can be paid (for example, the method of and address for payment) and details of how to proceed if the debtor wishes to discuss payment options; (viii) the address to which the completed Reply Form should be sent.

5.30 The creditor is to (i) enclose an up-to-date statement of account for the debt, which should include details of any interest and administrative or other charges added; (ii) enclose the most recent statement of account for the debt and state in the Letter of Claim the amount of interest incurred and any administrative or other charges imposed since that statement of account was issued, sufficient to bring it up to date; or (iii) where no statements have been

provided for the debt, state in the Letter of Claim the amount of interest incurred and any administrative or other charges imposed since the debt was incurred.

5.31 The creditor is also obliged to enclose a copy of an Information Sheet and the Reply Form which are annexed to the PAP, as well as enclosing a Financial Statement form which gives the defendant the opportunity to set out their financial circumstances. The Information Sheet includes very useful information about debt advice that is available. The PAP provides an example Financial Statement form, which is part of the Standard Financial Statement (SFS) used by many debt advisors in ascertaining an individual's ability to pay, as part of its annexes.[32]

5.32 If the PAP was observed by creditors, including the bulk users driving the large number of small claims which result in default judgments, then there would be a much greater prospect of engagement with defendants at an early stage.

5.33 **The CJC therefore recommends that, under the proposed further requirements to be introduced into CPR 12.3, any claimant seeking to enter a judgment in default should be required to positively prove service of the PAP Letter of Claim, the Information Sheet, the Reply Form and the Financial Statement form.**

5.34 **Furthermore, the CJC recommends that the sanctions for non-compliance with the PAP for debt claims should be strengthened to ensure that pre-action steps are taken.**

5.35 The need for a creditor claimant to notify a potential judgment debtor that proceedings are to be issued against them becomes even more important where the judgment is not registered until enforcement. Early notice, through the PAP, answers many concerns that have been raised by respondents to the CfE about lack of transparency and signposting of information about where debt advice can be obtained.

5.36 **The CJC recommends that HMCTS consider how best to collect data with respect to the degree to which the PAP for debt claims has been employed in claims being issued with the court and how often sanctions are imposed by the court for non-compliance.**

Address for Service

5.37 It is proposed that further requirements are imposed for the identification of the defendant, so that evidence of service more accurately reflects whether the defendant has actually been served with the proceedings.

[32] https://www.justice.gov.uk/documents/debt-pap.pdf

5.38 CPR 6.6(2) provides that the claimant must include in the claim form an address at which the defendant may be served. That address must include a full postcode unless the court orders otherwise. The address is the "last known residence or place of business."

5.39 As explained above, particular concern was expressed in the responses to the CfE regarding a reliance on the address retained by the DVLA as the "last known residence", as the address on a driving licence may not be changed upon moving residences, particularly as people now move much more frequently and settled accommodation is less of a norm. There is a consequential real risk that a defendant will be unaware of proceedings relating to parking fines, or other fines, as an individual would likely not be aware of the need to notify a change of address to an unknown organisation that is issuing a fine for a misdemeanour (such as parking in the wrong bay). Such bulk claims lead to a large number of default judgments, without the defendant having opportunity to dispute the claim.

5.40 CPR rule 6.9(2) provides for service, when dealing with an individual defendant, in the following way:

Nature of defendant to be served	**Place of service**
1. Individual	Usual or last known residence.
2. Individual being sued in the name of a business	Usual or last known residence of the individual; or principal or last known place of business.
3. Individual being sued in the business name of a partnership	Usual or last known residence of the individual; or principal or last known place of business of the partnership.

5.41 CPR 6.9(3) provides that "Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant's current residence or place of business ('current address')".

5.42 The lacuna in the rules exists because the claimant's obligation to ascertain the current address only arises where the claimant has reason to believe that the defendant no longer resides or carries on business in that address. The claimant, particularly the bulk litigator, is highly unlikely to have 'a reason to believe' that the last known address is an address at

which the defendant no longer resides or carries on business and there is consequently no burden of investigation on the claimant. The CJC's review of PAPs also raised concerns that the creditor is under no duty under the protocol t make reasonable efforts to ascertain the debtor's current address in a case where the debt is several years old and recommended greater prescription of debtors' obligations at the pre-action stage.[33] These concerns take on even greater significance when it comes to service of the claim form.

5.43 It is a failing in the civil justice system if large numbers of judgments are being entered against parties without them knowing of the existence of the claim. It is proposed, therefore, that a greater burden of inquiry should be placed upon the claimant to ascertain the current address of the proposed defendant in all cases; for example, by carrying out a soft trace to find an up-to-date address. This sort of trace can be affected with relative ease and little cost. In these changed times, with people moving more frequently, it is suggested, as set out above, that for the court to be satisfied that there has been effective service, a claim form must be served on the usual or principal address of the defendant or another secure address such as the address registered for council tax or business tax purposes, instead of the 'last known address'.

5.44 It is a benefit to the creditor to know that there has been actual service on the defendant, not only because it will support an application for a judgment in default, but because it will also protect any judgment in default from an application to set aside. It will also enable the claimant to enforce their judgment, as the information provided to an HCEO will be accurate with respect to the address of the defendant.

Early Engagement of the defendant

5.45 While the recommendations for a more rigorous approach to compliance with the PAP for debt claims and for a requirement that service is on the defendant's current address answer many concerns about default judgments, they also provide at least partial remedies to the many of the concerns raised that there is not sufficient engagement with defendants at an early stage. As referred to above, on many occasions, the first engagement of a defendant with the process is when there is a visit from a HCEO or County Court bailiff. From that time

[33] Civil Justice Council, Review of Pre-action Protocols - Phase II Final Report, November 2024, [8.11]-[8.12].

on, the creditor may feel happier that progress can be made. Communication with and from the defendant is essential.

5.46 That lack of engagement may partially be a result of defendants deciding not to engage with the court process, either wilfully or through fear. A greater emphasis on early information through the PAP for debt claims and a better assurance that defendants have actually been served with the claim, either at their usual or principal address or another secure address, will inevitably increase engagement.

Further information in the documentation provided by the court

5.47 Both creditors and defendants agree that early information is key to encourage defendants to engage with the court process.

5.48 Much can be done to improve the system of enforcement; through, for example,

- more rigorous enforcement of the PAP for debt claims by the court (as set out above);
- Adopting a more rigorous approach to ensuring that a party is aware of the proceedings being brought against them, with service by the creditor on their usual or principal address or secure alternative address (as set out above);
- Including the email address of the claimant (if the claimant is content to be contacted by email) and the email address of the defendant, if known by the claimant (which indicates that the defendant is willing to be contacted by email), on the claim form whenever possible.
- The provision of information by HMCTS with the first notification of the claim regarding how to seek advice for dealing with potential debts (see below);
- The provision of information by HMCTS with the first notification of the claim that a defendant can deny the claim in full, admit the claim in part, or admit the claim in full, together with encouragement to deal with the matter outside of the court process, so as to avoid any hearing;
- The provision of information to signpost to advice sources by HMCTS with every communication from the court;

- Encouragement from the court and HMCTS for the claimant and the defendant to enter into discussions at an early stage, and at every stage, to seek resolution with repeated information about advice agencies.

5.49 **The CJC recommends that MOJ should review the online advice for enforcing judgments through the court.**

5.50 As part of this review, judgment creditors should be encouraged to request the court at a contested hearing to ask the relevant questions about the defendant's financial situation at the end of the hearing.

5.51 Additionally, the online advice should make it clear that the request for information under CPR r.71 is a lengthy process. It is understood that successful creditors often have unrealistic expectations of the speed and effectiveness of CPR r.71, and the wording of the online advice is silent with respect to the difficulties.

5.52 **The CJC also recommends that the Judicial College, in the relevant judicial training courses, encourages judges to ask the relevant questions about the defendant's financial situation at the end of a contested hearing.** If that became the norm, then the need to make requests pursuant to CPR r.71 will be lessened.

Notification of proceedings

5.53 It is proposed that a more rigorous approach should be taken by the court to ensure that a party is aware of the proceedings being brought against them, should there have been some failure in the pre-action process.

5.54 **The CJC recommends that the initial claim form (Form N1) should be amended to include, in addition to the physical address of the defendant, the email address of the defendant.** That email address can then be used by the court in the process of service. The CJC makes further recommendations for court forms to be amended to allow for the provision of email addresses in the later section on court forms.

5.55 The CJC is acutely conscious that there is a gap in digital ability, accessibility, availability, and reliability for some system users; however, using widely available technology to improve communication between parties is extremely important, as facilitating dialogue between a claimant and defendant will assist in the resolution of disputes, including enforcement.

5.56 With the difficulties already discussed about a more transient population, with the potential for accommodation being less fixed and stable, it is sensible for the court and the parties to

make greater use of electronic addresses in the form of emails, as messages and documents are more likely to reach individuals if they can be served electronically. The HMCTS Reform programme has already implemented services to engage the defendant by email: when the claim is issued vie the implemented digital portal, the claimant is asked to provide the defendant's email address. The defendant is notified by email and so can order respond immediately. Notification by email, in place of by paper, is much more effective, as users can be much less likely to change their email address than their postal address.

5.57 **The CJC recommends that, if a case is issued outside the digital portal, the defendant should also be served with the papers electronically by the court or, if it is not possible to do so, should be notified via e-mail that a claim has been issued, and in which court it has been issued.** The defendant would then be able to check with the court if they have not received the physical papers. Whilst it is acknowledged that this is an additional step for the court to take, it is a positive step to ensure accessibility to the court process and will save the time, effort, and expense of applications to set judgments aside.

Information with respect to debt advice

5.58 There needs to be better provision of information to a defendant about where advice for dealing with debt can be sought. The PAP for debt claims contains an Information Sheet and, if compliance with the PAP for debt claims becomes more stringently enforced by the court as this report recommends, then that advice will be available at an early stage.

5.59 Telling individuals that they need to seek debt advice is not necessarily effective: there needs to be further work on explaining exactly what that means and how it can assist them, as it can otherwise be yet another frightening aspect of being in debt.

5.60 It is recognised by both those who are engaged in enforcement, and those who are advising those parties who are in debt, that there is more likely to be a satisfactory resolution if there is early engagement between the parties. A defendant is more likely to engage constructively if there is access to debt advice.

5.61 **The CJC recommends that HMCTS should provide a debt advice information sheet to defendants as soon as the claim form is served and with every communication from the court going forward.**

5.62 This information sheet should provide contact details for debt advice providers, including those that are not currently mentioned on the Information Sheet that is annexed to the PAP for debt claims.

5.63 A suggested (but not exhaustive) list of debt advice providers is provided below:

- Citizens Advice
- Community Money Advice
- Debt Advice Foundation
- Money Advice Trust
- Money Helper
- Money Plus Advice
- Money Saving Expert
- Money Wellness
- National Debtline
- PayPlan
- Royal British Legion
- Step Change Debt Charity
- The Lighthouse Project
- The Money and Pensions Service
- Toynbee Hall Debt Advice

5.64 Some debt advice agencies are directed towards assisting particular groups (for example, the Royal British Legion, which supports serving and ex-service personnel, as well as their dependants) or are focussed on particular areas (for example, Toynbee Hall in London). Some concern was expressed that there are many debt advice bodies seeking funding and

that, in order for debt advice to be most effectively delivered to those in need across all sectors (including for telecoms, utilities and local council debts), consideration should be given to agencies working more closely with each other and the introduction of standard performance measures to ensure most effective use of funding. The 'Taking Control Coalition' is a powerful example of how agencies working together are extremely effective.

5.65 The MOJ raised a number of proposals regarding better information for and improved early engagement from those in debt in its October 2023 consultation on changes to the Taking Control of Goods Regulations.[34] These recommendations included extending the minimum period for the compliance stage and amended statutory requirements for information to be sent to defendants to signpost advice and encourage engagement. **The CJC recommends that MOJ implement their October 2023 proposed amendments to the Taking Control of Goods Regulations at the earliest opportunity.**

5.66 In order for additional support to be given to defendants through debt advice, and to ensure increased communication between creditors and defendants, debt advice agencies will require sufficient funding both from MOJ and from other sectors. The banking sector provides over £100m of funding to the debt advice sector annually.[35] Such properly funded resource of debt advice will undoubtedly assist in increasing resolution of issues between the parties at each stage. It will increase resolution before proceedings are issued, settlement of claims if issued, and payment of judgments if obtained. This will save the courts resources and will have the economic benefits that are generated from businesses and individuals being paid that which they are due. The ultimate way to reduce the time and costs of enforcement is to have resolution before needing enforcement. If enforcement steps are needed, there needs to be rapid resolution of enforcement.

5.67 **The CJC therefore recommends that funding should be increased for debt advice organisations, to allow for more advice at an early stage, increased engagement of defendants, and increased resolution at an earlier stage, thereby removing economic drag and adding to growth.**

5.68 **The CJC additionally recommends that MOJ should facilitate the sharing of best practice guidance between debt advice agencies.** This should include the introduction of standard

[34] https://www.gov.uk/government/consultations/taking-control-of-goods-regulations-consultation
[35] Information from UK Finance.

performance measures, devised by debt advice agencies, to ensure high standards throughout the sector.

5.69 **The CJC recommends that funding should be provided for the provision of a telephone or webchat advice service with debt advice agencies, both at the commencement of proceedings and as an advice service at court.**

5.70 **The CJC recommends that information about debt advice, including telephone and electronic contact details, should be publicised through the display of a standard poster (or electronic equivalent where there are digital information boards) in each civil court building and in other public buildings that provide contact information (e.g. GP surgeries, hospital waiting rooms, employment centres, libraries, etc.)**

5.71 Both creditors and debt advisors agree that the more information and advice that is available from the earliest stage, the more likely it is that a successful, and earlier, resolution is achieved, which is the best interests of all. Both creditors and debt advisors are also agreed that defendants would benefit from signposting to advice by the court, and that advice is provided by debt advisors rather than creditors, however much the creditor is trying to assist. There was general consensus in responses to the CfE that information about what advice is available, and where from, cannot be repeated too early or too often. By ensuring that the information is widely disseminated, and in a variety of places, the likelihood of ensuring that everyone, even the most vulnerable, are aware of the services available is much increased.

5.72 In addition to the defendant being provided with a list of all the potential debt advisors, the early provision of accurate information about the defendant at an earlier stage of the proceedings will assist a creditor to determine whether it is worth pursuing proceedings against the defendant, and to ensure that a proportionate amount of time and effort is expended in seeking to enforce.

5.73 A concern was raised in the responses to the CfE that the court seems to be too willing to accept the word of the individual with respect to their financial circumstances. The court can test the evidence provided by a defendant, but only if there are obvious inconsistencies or anomalies, or if there is evidence to undermine the defendant's position. The court does not operate as an independent investigatory body, and it does not have the resources to do so. It is of course open to the creditor to challenge any financial information provided and to provide evidence to undermine the defendant's own claims of being impecunious. In order

to enable a defendant to provide information about their financial situation and for the claimant to have an initial understanding of this, early opportunity should be given to the defendant to provide detailed financial information and to set out any vulnerabilities or change of situation (for example, temporary loss of employment).

5.74 **The CJC therefore recommends that HMCTS should provide a Financial Statement form, requesting the financial information contained on the SFS, with the first communication from the court to the defendant.**

5.75 Completion of the Financial Statement form will encourage openness from the outset and better provision of accurate information about the defendant at an earlier part of the proceedings, which will result in more efficient and effective enforcement. A dialogue can be entered and creditors will be able to make informed decisions. A creditor will be able to undertake their own investigations if they deem it appropriate.

Other sources of information before proceedings are issued

5.76 The below sources are currently available to any potential litigant before taking proceedings:

- The Bankruptcy and Insolvency Register.
- The Land Register.
- Companies House.
- Attachment of Earnings Index.
- Insolvency and Companies List of the Business and Property Courts of England and Wales.

5.77 A potential claimant (if financially able and if the outstanding monies justify the expenditure) is able to instruct enquiry agents to undertake an additional assets check before proceedings are commenced. Any such instruction to an enquiry agent also ensures that any address for service will be accurate.

Vulnerability

5.78 The issue of vulnerability of those facing monetary claims in the civil courts has been highlighted by a wide range of debt advisors and is referred to above. That vulnerability includes mental impairment (not amounting to lack of capacity), language barriers, neurodiversity, being housebound, having considerable caring responsibilities with young children or elderly relatives, and those who are digitally excluded. There is a separate, but equally important, issue with respect to those who are subjected to economic abuse. Work has been undertaken, particularly in the field of mortgage debt, by Surviving Economic Abuse.[36] Identifying and supporting vulnerable people is increasingly part of the enforcement process, with debt advice organisations working closely with enforcement agencies to provide training on how to identify and support vulnerable people. The CJC's report on vulnerable witnesses and parties, published in February 2020, provided insight and recommendations for the protection of the vulnerable in the civil court system.[37] The civil justice system is obliged to take special care when a party lacks capacity and the complexity of those issues is set out in the CJC report on the procedure for determining mental capacity in civil proceedings that was published in November 2024.[38]

5.79 People can find themselves in a vicious circle. Those who may find the greatest difficulty in managing their finances as a consequence of being on a low income, having low financial resilience as a result of not working and/or being on benefits, or being in low-paid employment or in multiple low-paid jobs, are more likely to be vulnerable in other ways for example, struggling with mental health issues, the language not being their first language, or having learning difficulties. These are the individuals who will struggle most with the systems for debt recovery.

5.80 The CJC report on vulnerable witnesses and parties recommended that the Directions Questionnaire include a question on vulnerability. The Directions Questionnaire now includes the following:

> "Vulnerability.

[36] https://survivingeconomicabuse.org/wp-content/uploads/2024/09/SEA-Joint-Mortgages-Report-2024.pdf
[37] judiciary.uk/wp-content/uploads/2022/07/VulnerableWitnessesandPartiesFINALFeb2020-1-1.pdf
[38] https://www.judiciary.uk/wp-content/uploads/2024/11/CJC-Procedure-for-Determining-Mental-Capacity-in-Civil-Proceedings-Nov-2024.pdf

> Do you believe you, or a witness who will give evidence on your behalf, are vulnerable in any way which the court needs to consider? Please explain in what way you or the witness are vulnerable and what steps, support or adjustments you wish the court and the judge to consider."

5.81 It is important that the issue of vulnerability is brought to the forefront when dealing with enforcement of debts.

5.82 **The CJC recommends that an additional question should be added to the various response forms provided to a defendant when a claim is issued, in line with the question included in the Directions Questionnaire, inviting defendants to declare if they consider themself vulnerable.** A suggested wording would be 'Do you believe that you are vulnerable in any way that you wish the court and the claimant to know about?' The below section on court forms elaborates on this recommendation.

5.83 **The CJC also recommends that response forms N9A, N9B and N9C should be redrafted following the precedent of the SFS, to enable defendants to include information about the reasons for the debt, including circumstances and temporary situations.** A defendant could include details of vulnerabilities or other matters which may have had an adverse impact.

5.84 The CJC suggests that this work is carried out under the auspices of the HMCTS Vulnerability Action Plan,[39] to consider the best ways of highlighting vulnerabilities before enforcement is commenced.

5.85 There is, of course, no suggestion that the ability to provide information about vulnerabilities, or a compromised financial situation, will result in the defendant being entitled to avoid a debt. The recommendation would have two major benefits though: it would encourage defendants to engage with the court process, as it would give confidence that the court wants to know about the defendant's individual situation. It also would also give the creditor the information required to make decisions as to how they wish to enforce.

Court Forms

5.86 **The CJC recommends that court forms should be reviewed to ensure that the language used is clear and understandable for all court users.**

[39] https://www.gov.uk/government/publications/hmcts-vulnerability-action-plan/hmcts-vulnerability-action-plan-april-2022-update

5.87 There was agreement between some of those responding to the CfE from the perspective of those seeking judgment, and the subsequent enforcement of that judgment, and those advising those with a judgment against them, that the initial claim form (Form N1) and the various forms in response (forms N9A, N9B and N9C) do not encourage dialogue between the parties for the purpose of seeking resolution outside of court proceedings. The forms are clearly worded for a lawyer. There were proposals from those responding to the CfE that the forms should be redrafted in order for them to be more "user friendly", including for a litigant without representation.

Form N1/Explanatory Notes N1A

5.88 **The CJC recommends that Form N1 should be amended to include the email address of the claimant.** It has already been recommended that Form N1 should be amended to include, in addition to the physical address of the defendant, the email address of the defendant.

5.89 Additionally, **the CJC recommends that the explanatory notes for Form N1 (Explanatory Notes N1A) should be amended to account for the provision of email addresses by the claimant and the defendant.**

5.90 In the section "Providing information about yourself and the defendant", under the words "You should provide the address including postcode for yourself and the defendant or its equivalent in any European Economic Area (EEA) state (if applicable)...unless you have permission from the judge." and before the words "When suing or being sued as:-", it is suggested that the following sentences are added: "The Claimant is encouraged to include an email address for the Claimant and the Defendant, if one is known, to facilitate communication between the parties, as well as between the parties and the court. It is not obligatory to provide an email address for either the Claimant or the Defendant."

5.91 This recommendation is made to give the claimant and defendant an opportunity to communicate with each other with ease, in order to seek resolution outside the court process. It is not proposed that it is obligatory for the claimant to provide an email address. There may be a legitimate reason not to provide such information – such as the claimant being an individual litigant or a small business who does not want to give out an email address, or if there have been earlier issues with the defendant. If the claimant is able and willing to provide their email address, then that will assist in opening a dialogue with the defendant.

5.92 In the section "Defendant's name and address", under the words "Enter in this box the title, full names, address and postcode of the defendant receiving the claim form...you may need to obtain the court's permission", it is suggested that the following sentence should be added: "The Claimant is encouraged to include an email address for the Defendant, if one is known, to facilitate communication between the parties and between the parties and the court." As already discussed, if the defendant's email is provided, then the court has more chance of communicating with the defendant.

Form N1C

5.93 Form N1C provides guidance to a defendant upon receipt of a claim depending upon whether the defendant intends to pay the total amount, admit all or part of the claim and ask for time to pay; or dispute the claim.

5.94 **The CJC recommends that Form N1C should be amended.**

5.95 It is recommended that, for clarity for court users, the bullet points on the form should not continue beyond "dispute the claim" and that the ensuing bullet points should be in separate paragraphs. It is recommended that there should be a further bullet point under "pay the total amount" which should say "admit that you owe part of the claim and offer to pay that amount."

5.96 Form N1C should include guidance about what information the defendant should include with regards to any vulnerabilities, so as to provide the creditor with further information so that informed choices can be made with respect to how it wishes to enforce.

5.97 Form N1C should also encourage out of court discussions between the claimant and the defendant.

5.98 On page 1 of the N1C the final words in the penultimate paragraph are "… you should contact a solicitor or a Citizens Advice immediately." It is recommended that the following sentence should be added: "If you are in need of debt advice you should immediately contact one of the agencies included on the information sheet included in this pack, or another debt advice agency you have identified."

5.99 An additional paragraph should be added (before the section on Registration of judgments) which says something to the effect: "The fact that proceedings have been issued in court does not mean that the parties cannot discuss a resolution of the claim outside court and the defendant is encouraged to make contact with the claimant to ascertain whether it is possible to bring the court claim to a mutually acceptable prompt conclusion."

Form N9A

5.100 **The CJC recommends that Form N9A should be completed by all defendants, save for those defendants who admit the entire claim and agree to pay the claim together with the court fee, interest, and any costs.** Form N9A is currently completed in a specified money claim only if the defendant admits all or part of the claim. Consequent to the adoption of the above recommendation, any defendant who denies the claim for a specified amount, admits part of the claim, or admits the claim but not the additional costs, fees, and interests, would complete Form N9A.

5.101 **The CJC also recommends that Form N9A should be amended to include the email address of the defendant.** It should be clearly marked that the provision of the email address is not obligatory. If the claimant is already aware of the defendant's email address and has included that on the claim form, then there is no issue. If the claimant does not have the defendant's email address, then that may be because the defendant has a legitimate concern about the claimant having that email address.

5.102 The explanatory notes for Form N9A (Explanatory Notes N1A) should explain that anyone completing Form N9A is encouraged to include an email address for themselves. A suggested wording is: "The Defendant is encouraged to include an email address to facilitate communication between the parties and between the parties and the court." The purpose of the provision of the email address is to improve communication between the parties, and between the parties and the court, to assist with engagement with the defendant and resolution outside of the court process. The defendant should be encouraged to enter communication with the claimant.

5.103 It has already been recommended in the above section on vulnerability that Form N9A[40] should be redrafted following the precedent of the SFS, to enable defendants to include information about the reasons for the debt, including circumstances and temporary situations. Not only does this provide a much more detailed account of the defendant's financial situation and the debts that may be being serviced by the defendant already, but it also provides consistency from the time of the PAP, and it will show any change of circumstances since pre-action.

[40] N9A - Form of admission (specified amount) (04.14)

Form N9B/Form N9C

5.104 Form N9B is completed by the defendant who denies the entirety or part of the claim and who may have a counterclaim where it is a specified amount claimed.[41] Form N9C is completed by the defendant who denies the entirety of part of the claim and who may have a counterclaim when it is an unspecified amount, non-money and return of goods claim.[42]

5.105 **The CJC recommends that both Forms N9B and N9C should be amended to include the email address of the defendant.** It should be clearly marked that the provision of the email address is not obligatory.

5.106 The explanatory notes for Form N9B and N9C (Explanatory Notes N1A) should explain that anyone completing Form N9B or N9C is encouraged to include an email address for themselves. A suggested wording is: "The Defendant is encouraged to include an email address to facilitate communication between the parties and between the parties and the court."

5.107 Again, it has already been recommended in the above section on vulnerability that both Form N9B and Form N9C should be redrafted following the precedent of the SFS. Some creditors consider that there should be a review of the SFS, but the CJC has not been presented with any alternative.

Form N323/Form N293A

5.108 **The CJC recommends that Form N323 (an application for a warrant of control in the County Court) and Form N293A an application for a writ of control in the High Court) should be amended to require the creditor to provide a copy of the claim form and/or Particulars of Claim, together with the judgment order, in order to obtain the warrant or writ.** The claim form/Particulars of Claim, together with the judgment order, would be served on the defendant together with the writ or warrant.

5.109 Responses to the CfE revealed that some defendants, upon receipt of a warrant or writ, fear that they are being "scammed." Provision of the original claim together with the judgment would allay those fears and may encourage engagement, albeit at a late stage.

[41] N9B Defence and Counterclaim (specified amount)
[42] N9C Admission (unspecified amount and non-money claims) (04.06)

Provision of Information Immediately Upon Judgment Being Entered

5.110 **The CJC recommends that the court should provide parties with a judgment entered against them with the Financial Statement form for completion if that information has not already been provided.**

5.111 Once a judgment has been entered by the court, it is advantageous for creditors to have as much information about the defendant's financial condition as possible, as early as possible, so that they can make an informed decision as to how to proceed; for example, whether a Part 71 application is needed.

5.112 If the claim is a defended one, then the defendant should be ordered to provide financial information immediately upon judgment being entered. The CJC suggests that small claims and fast track cases should listed so as to allow time for the judge to obtain financial information from the defendant.

5.113 Regardless of whether the judgment has been defended or has been entered in default, the Financial Statement form should be sent to the defendant by the court upon judgment being entered, with a request for completion and return within 14 days, if judgment is not going to be satisfied within that time. That would commence the process of obtaining information if that has not already taken place.

CPR Part 71

5.114 CPR Part 71 contains rules which require a judgment debtor to attend court to provide information for the purpose of enabling the judgment creditor to enforce a judgment or order against them. It appears to be a straightforward procedure, which will give the creditor an opportunity to find out precisely what assets the defendant possesses and how best to enforce. Unfortunately, it does not work efficiently or effectively. It is for this reason that a number of respondents to the CfE have talked about the 'false hope' given to creditors.

5.115 Difficulties with CPR Part 71 include that it is slow, unwieldy, and rarely elicits useful information for the creditor. The creditor is given false hope that, by seeking an order under Part 71 for the judgment debtor to attend court to provide information about their means, the judgment debtor will provide the information necessary to obtain the result sought. Unfortunately, that rarely happens, despite the sanctions for the failure to comply with an order, as set out in CPR 71.8. CPR Part 71 uses scarce resources from the court while,

anecdotally, judges say there is little evidence that any progress is made. There is also a perception from creditors that courts are not keen to push the process along, possibly because the ultimate sanction for the non-answering of questions posed by the court is a finding of contempt, with the sanction of imprisonment. One respondent to the CfE stated that it feels fundamentally wrong to be sending someone to prison because they have failed to pay a debt. While the sanction is imposed because of a failure to comply with a court order, not because of the debt, the fact of there being limited sanctions currently available for contempt (mainly prison or a fine), creates a situation where a large sledgehammer is being used while the nut is still not being cracked.[43]

5.116 The Law Commission launched a consultation in July 2024 to seek views on a wide range of issues regarding contempt, with the aim of clarifying and improving the fairness, consistency, coherence, and effectiveness of contempt laws. The initial proposal of the Law Commission is to remove 'centuries-old distinctions between "criminal contempt" and "civil contempt" in favour of a modern, streamlined set of contempt laws.'

5.117 In response to the question in the CfE specifically about CPR Part 71, there was a general level of frustration, particularly in the County Court. There are comments about 'significant delays;' and the process being 'long winded;' 'time consuming and expensive;' and that it 'seems very easy for the defendant to provide inaccurate information.' If a judgment is obtained and the defendant is unwilling or unable to pay the judgment voluntarily, so that enforcement proceedings need to be taken, it is unlikely that the court ordering a party to answer questions about their financial situation is going to elicit any useful information. One response observed that 'a non-co-operating judgment debtor is likely to remain uncooperative both during service and questioning.' Furthermore, if the court does make an order for a judgment debtor to attend court for questioning, then, if an individual continues to fail or refuses to attend court, there is little that a bailiff can do to bring the individual to court, unless the individual comes willingly with the bailiff.

5.118 Frustration with the County Court process has also been expressed by those seeking to enforce, with respect to the manner in which the questioning takes place, with uncooperative defendants avoiding questions or providing responses without providing evidence to support those answers.

[43] To mess with the well-known 19th century analogy

5.119 Debt advice providers make it clear that the lack of engagement from defendants is much more likely to be as a result of unidentified vulnerabilities. The imposition of sanctions against those who are not responding to court orders to provide financial information will only make the situation even more difficult for defendants who may be suffering mental health problems which make it difficult to engage effectively with either creditors or the court. Debt advisors suggest that no sanction should be applied unless there is evidence to show that non-compliance is deliberate. The 'Taking Control Coalition' observed in their response to the CfE that there was no sanction for claimants, including debt purchase agencies, to ensure that they have obtained judgment fairly and have used the correct address in the first place.

5.120 In more complex cases in the High Court, the process appears to have greater impact. In the King's Bench Division (KBD), specific members of staff are trained and allocated to carry out questioning, with the more complex cases being referred to judges. One respondent said, 'the process often ceases to be the simple summary process it was intended to be' and that the two-stage process of certifying non-compliance, with a subsequent contempt of court application, adds to disproportionate costs, time, and use of court resources.

5.121 The King's Bench Masters support the view that the two-stage process for certifying non-compliance is frustrating and adds to delay. The Chancery Masters view is that '… Part 71 can be effective. It can also be cumbersome, lengthy, and expensive.'

5.122 Some responded saying that the process was 'somewhat effective,' but not at all effective against the individual deliberately evading service.

5.123 The difficulties with Part 71 are multi-layered. Although there are some calls for it to be removed from the CPR entirely, it is clear from the CfE responses that it does have some real benefits. The CJC hope that if the other recommendations made in this report are adopted, then CPR Part 71 will not be needed to the same extent, as the information needed will have already been provided in other ways. **The CJC therefore recommends that the CPRC consider the use of CPR Part 71 and whether it should be removed from the CPR.**

5.124 The CJC feels that the questioning undertaken under Part 71 should not remain entirely with court officers, as this appears to have particularly weakened the effectiveness of the process in the County Court. **The CJC recommends that the County Court should adopt the KBD system of training Court Officers to carry out Part 71 questioning, based upon the standard form as a template for questions, with more complex or valuable cases being referred to a**

judge for questioning. HMCTS should engage with the judiciary with respect to the training of the Court Officers, to ensure that it, and the subsequent questioning of defendants, is robust and effective.

5.125 The CJC suggest that the judge who has dealt with the claim should allocate additional time to question the defendant at the end of the hearing. If the questioning is undertaken at the end of a hearing when judgment has been entered, then it will be undertaken by the judge who heard the claim and will save the costs and time of undertaking the Part 71 procedure. In those circumstances, no application should need to be made under Part 71.

5.126 If it is necessary for the creditor to make use of Part 71 in the County Court, then the questioning should be undertaken by a properly trained Court Officer or a judge. The advantage of the questioning being undertaken by a judge is that the questioning is likely to be much more thorough, but there is such limited judicial time that it is not realistic that the judiciary could undertake all this work. Better training of identified Court Officers together with a clearer understanding of the importance of the work, should improve the effectiveness of the questioning. It would also be important that any Court Officer identified to carry out this work is also trained in identifying vulnerabilities in the defendant and to be alert to them. A judge is likely to appreciate the vulnerabilities that are being shown by individuals but would also need to be alert to those vulnerabilities.

5.127 **The CJC recommends that the sanction of imprisonment for contempt for non-compliance with the requirement to answer questions should be reserved for those cases where the sums involved are significant and where it can be established that there is serious contumelious failure to engage, rather than it being a standard sanction.** At the moment, there are very limited sanctions for contempt but, with the work currently being carried out by the Law Commission, it is hoped that it will be possible to propose some guidelines for sentencing. The CJC agrees with the strongly expressed sentiment that it is not appropriate to be sending people into custody because of an inability to pay.

The Tribunals, Courts and Enforcement Act 2007

5.128 Sections 95 to 105 of Part 4 of the TCEA 2007 establish a system of applications for information, whereby a creditor can apply to the court for an information order (Section 95) in order to obtain information about what kind of action would be appropriate to take to enforce the debt. Upon such an application, the court has a discretionary power (Section 96)

to make a departmental information request (under Section 97) or an information order (under Section 98). The debtor must be notified before a departmental information request, or an information order is made. A request or order will not be made unless the court deems that it will assist the creditor. There are safeguards for the debtor against the misuse of the information. The text of Part 4 is included at **Appendix 3** to the report for reference.

5.129 Sections 95 to 105 in of the TCEA 2007 have been enacted, and amended, but not brought into force. **The CJC recommends that Part 4 of the TCEA 2007 should be brought into force as soon as is possible.**

5.130 If brought into force, Part 4 of the TCEA 2007 would enable a creditor to seek information from various government departments such as the Department of Work and Pensions and from banks and credit agencies. It would change the focus of information gathering, which would become less reliant on the defendant's engagement and would enable a creditor, if there was a defendant unwilling to engage, to seek that information from government departments and third parties by way of a court order. The CJC strongly supports steps being taken to bring these provisions into force.

Work of the HMCTS Reform Programme

5.131 The Civil Project has designed service to engage with defendants in different ways, which includes engaging by email as well as post. Upon issuing a claim, the claimant is requested to provide the defendant's email address. The defendant is then notified by email and can log on in order to respond immediately. This system has been found to be extremely useful, as the email address is likely to remain the same even if there is a change of address. It ensures service and improves significantly the speed with which a defendant is able to respond to any claim.

5.132 In addition, a dashboard is provided within the Reform system, where urgent or upcoming deadline notifications appear at the top for the purpose of compliance, while old and past notifications are removed. The dashboard also includes hyperlinks to supporting guidance on Gov.uk webpages, along with signposting with respect to next steps in a claim, for example, the deadlines for responses. Tools, such as proforma settlement agreements, are also provided via the dashboard, to enable parties to agree terms without proceeding with the claim.

5.133 The early notification by email is backed up by postal service of the claim where there are litigants in person, thereby acknowledging the difficulties with digital exclusion.

5.134 The service of documentation by email and the dashboard are examples of how steps can be taken to streamline and improve the process.

5.135 In the Damages Claims portal, where the parties are legally represented, there is no longer a need to physically serve on a defendant's legal representative: service is carried out by digital notification from the portal. The claimant's legal representative digitally notifies the defendant's legal representative both of the claim and the particulars. The defendant's legal representative is mandated to respond online. The consequence of this is that service is immediate and a response can be made immediately. Orders are also notified by email.

5.136 As a consequence of service, response, and orders being provided online, there is much greater efficiency, and issues relating to service and delivery of documents have been much reduced.

5.137 Illustrative figures indicate that settlement has significantly increased, more admissions are lodged, and there are a greater number of defences filed, which has thereby reduced the number of default judgments sought. These are all positive indications of better access to justice.

6. Future Work

6.25 This report aims to improve the system of enforcement as it currently exists in England and Wales, to secure justice for both creditors and debtors, which includes aiming to minimise cost and delay. It has dealt with various recommendation to improve the effectiveness of enforcement within the confines of the current framework.

6.26 The bigger issue is whether it would be appropriate for there to be a complete reform of how enforcement is carried out, namely whether it should remain as a court-centred model or should be reformed to a judicial officer model or an administrative model, as those three models are explained in the work of Professor Wendy Kennett.

6.27 Evidence with respect to whether the CJC should look to recommend reform to the existing system, or undertake a fundamental reform, was sought in the following question in the CfE:

> "Do you consider there should be any changes to the system of enforcing judgments, or should the status quo be maintained?"

6.28 There was nothing within the responses to the CfE, the webinars or the National Forum break-out session that indicates any strong appetite for a fundamental change of system to either a judicial officer model or an administrative model. Those working within enforcement indicated deep seated concerns about how the current system is working and the improvements that can be made to the current court-centred model. The CJC agrees that, at least in the immediate future, steps should be taken to reform the current model rather than for a complete system change.

6.29 The LCJ in the Mayflower lecture urged this WG to consider the work of UNIDROIT, and the WG has done so. UNIDROIT – the International Institute for the Unification of Private Law – is currently finalising a long-term project to articulate best practices for effective enforcement.[44] The history of the project is that in December 2018, the Secretariat received a proposal for the 2020-2022 Work Programme by the World Bank regarding a project on the "Development of a Working Paper to Outline Best Practices on Debt Enforcement". Since 2020, the UNIDROIT WG have met on a number of occasions and have used their resources to carry out a "deep dive" on enforcement across the jurisdictions.

[44] https://www.unidroit.org/work-in-progress/enforcement-best-practices/

6.30 All participants in the consultation process undertaken by UNIDROIT recognised the fundamental importance of procedures and mechanisms for effective enforcement of creditors' claims, both in transnational situations and domestic civil proceedings, taking the need to ensure an effective legal protection of contractual rights into account. They also agreed on the existence of numerous challenges for enforcement in most jurisdictions, and on the lack of a comprehensive and sufficiently detailed international instrument providing for guidance for national legislators to overcome such challenges.

6.31 The CJC will be very interested to further consider the work of UNIDROIT on best practices for effective enforcement and how that work may influence and guide any reforms of the systems of Enforcement in England and Wales in due course.

6.32 Any amendment to enforcement, including any fundamental reform, should retain that which is best while removing the worst aspects of enforcement. Evidence with respect to what should be retained or jettisoned in order to improve the current system of enforcement was sought in the following question:

> "If you consider there should be changes, what changes do you feel should be made to make enforcement more accessible, fair and efficient?"

6.33 Respondents to these two questions (33 and 34) revealed very different views depending upon whether they were acting on behalf of creditors or whether they were giving debt advice. They were unified in the view that the status quo could not continue.

6.34 Those who act for creditors were very keen to see all debts, including those under £600, be dealt with by a HCEO, given the inefficiencies in the County Court and the lack of bailiffs. The concern expressed by many creditors is that defendants can avoid enforcement too easily and that the delays with County Court bailiffs were unacceptable. In 2016, the Briggs Report referred to the "serious blight upon the quality of that service [County Court Bailiffs] appears to be caused by under-investment and it calls for urgent attention."[45] Nothing appears to have been done to improve the bailiff service in the years subsequent to that report. Those advising people in debt expressed the view that substantial changes were needed to make the system fairer to people in debt, and that there is little deliberate avoidance by defendants, who are often genuinely struggling with many debts both within and outside the court process. The CJC recommendations for the provision of the collection and

[45] civil-courts-structure-review-final-report-jul-16-final-1.pdf

dissemination of information are for the purpose of assisting with the protection of the defendants.

6.35 The CJC has concluded that the current system split between the High Court and the County Court cannot continue. The view about enforcement in the County Court was overwhelming negative, with the system being seen as both slow and ineffective. The view about enforcement by HCEOs was much more positive, but with concerns about the need for greater control to protect debtors.

6.36 The CJC has recommended the creation of a digital enforcement court. It is clear from the evidence that a defendant who is in financial difficulties is likely to have more than one debt and it is important that a creditor is provided with as much information as possible at an early stage. The CJC has recommended the use of a Financial Statement to gather financial information from the defendant at an early stage, together with the bringing into force the provisions of Part 4 of the TCEA 2007 so that financial information from government departments can be obtained.

6.37 A portal with recorded information about the defendant's declared financial situation, together with information obtained pursuant to Part 4 of the 2007 Act and any further information with respect to any court orders or other outstanding debts, would enable a creditor to have sufficient information recorded in one place in order to obtain a better understanding of the financial situation of the defendant. It would also provide protection to the vulnerable defendant by it making it clear where there is a defendant who is unable to pay.

6.38 Further work needs to be undertaken with respect to precisely how the unified process for the enforcement of judgments and orders should be carried out. The fees to be charged for the enforcement of a relatively small debt must be proportionate to the amount outstanding. **The CJC recommends that the fees recovered from enforcement should be limited to a certain proportion of the amount recovered,** to avoid issues where a creditor finds that enforcement steps do not proceed beyond recovery of the fee.

6.39 A digital enforcement court, where the procedures and processes for enforcement are unified and there is a portal to hold financial information, seems an obvious resolution to the issues that have been raised. The digital enforcement court will hold the amounts outstanding together with details of the defendant, including assets and resources, other indebtedness and matters such as vulnerability. It will keep enforcement as a court process

but would remove enforcement from the other work of the County and High Court which, in determining the issues in the dispute, should not need to concern itself with the assets or other indebtedness of a defendant or that defendant's vulnerabilities.

6.40 Such a digital enforcement court will require more work in considering how it is going to work effectively, what CPR rules might need to be altered or drafted by the CPRC, whether any legislative changes will be needed (in addition to bringing Part 4 of the 2007 Act into force) and what steps will need to be taken to set up the portal.

7. List of Recommendations

7.25 The following sets out the various recommendations made in this report. Some are "big picture" issues, whilst others are recommendations for change which could readily be made if there is agreement and a desire to improve the enforcement system in the short term.

Immediate Gains & Smaller Wins

Recommendations for consideration by HMCTS & MOJ:

(1) Warrant of Control or Judgment Support Centres should be repurposed to debt support centres, that actively support early intervention and resolution.

Recommendations for consideration by HMCTS:

(2) Data should be collected by HMCTS with respect to the use of the different methods of enforcement; for example, the number of applications issued for each method, the time taken between application and orders being made under each method, the sums involved, and whether the order is fulfilled.

(3) Court communications should be amended by HMCTS, following consultation with debt advice agencies, to use clear and un-intimidating language.

(4) HMCTS should consider how best to collect data with respect to the degree to which the PAP for debt claims has been employed in claims being issued with the court and how often sanctions are imposed by the court for non-compliance.

(5) If a case is issued outside the digital portal, the defendant should also be served with the papers electronically by the court or, if it is not possible to do so, should be notified via e-mail that a claim has been issued, and in which court it has been issued.

(6) HMCTS should provide a debt advice information sheet to defendants as soon as the claim form is served and with every communication from the court going forward.

(7) HMCTS should provide a Financial Statement form, requesting the financial information contained on the SFS, with the first communication from the court to the defendant.

(8) The court should provide parties with a judgment entered against them with the Financial Statement form for completion if that information has not already been provided.

Recommendations for consideration by CPRC:

(9) Further requirements should be introduced into CPR 12.3, so that any claimant seeking to enter a judgment in default will need to positively establish to the court that:

a. The debt PAP has been complied with;

b. There has been service upon the defendant; and

c. The claim is not statute barred.

(10) The phrasing of CPR 6.9 should be amended: for individual defendants being served, 'last known address' should be replaced with a more secure address option, such as 'address registered for council tax or business tax purposes.'

(11) Under the proposed further requirements to be introduced into CPR 12.3, any claimant seeking to enter a judgment in default should be required to positively prove service of the PAP Letter of Claim, the Information Sheet, the Reply Form and the SFS.

(12) The sanctions for non-compliance with the PAP for debt claims should be strengthened to ensure that pre-action steps are taken.

(13) The initial claim form (Form N1) should be amended to include, in addition to the physical address of the defendant, the email address of the defendant.

(14) An additional question should be added to the various response forms provided to a defendant when a claim is issued, in line with the question included in the Directions Questionnaire, inviting defendants to declare if they consider themself vulnerable.

(15) Response forms N9A, N9B and N9C should be redrafted following the precedent of the SFS, to enable defendants to include information about the reasons for the debt, including circumstances and temporary situations.

(16) Court forms should be reviewed to ensure that the language used is clear and understandable for all court users.

(17) Form N1 should be amended to include the email address of the claimant.

(18) The explanatory notes for Form N1 (Explanatory Notes N1A) should be amended to account for the provision of email addresses by the claimant and the defendant.

(19) Form N1C should be amended.

(20) Form N9A should be completed by all defendants, save for those defendants who admit the entire claim and agree to pay the claim together with the court fee, interest and any costs.

(21) Form N9A should be amended to include the email address of the defendant.

(22) Both Forms N9B and N9C should be amended to include the email address of the defendant.

(23) Form N323 (an application for a warrant of control in the County Court) and Form N293A an application for a writ of control in the High Court) should be amended to require the creditor to provide a copy of the claim form and/or Particulars of Claim, together with the judgment order, in order to obtain the warrant or writ.

(24) The CPRC should consider the use of CPR Part 71 and whether it should be removed from the CPR.

(25) The sanction of imprisonment for contempt for non-compliance with the requirement to answer questions should be reserved for those cases where the sums involved are significant and where it can be established that there is serious contumelious failure to engage, rather than it being a standard sanction.

Recommendations for consideration by MOJ:

(26) The fee for an application to set aside a county court judgment, where the defendant is seeking to set aside the judgment due to non-service, should be reduced to be equal to the fee charged for a N244 application by consent: £123 from April 2025.

(27) MOJ should review the online advice for enforcing judgments through the court.

(28) MOJ should implement their October 2023 proposed amendments to the Taking Control of Goods Regulations at the earliest opportunity.

(29) Part 4 of the TCEA 2007 should be brought into force as soon as is possible.

(30) The fees recovered from enforcement should be limited to a certain proportion of the amount recovered.

Recommendations for consideration by the Judicial College:

(31) The Judicial College, in the relevant judicial training courses, should encourage judges to ask the relevant questions about the defendant's financial situation at the end of a contested hearing.

Bigger Picture/Further Work

Recommendations for consideration by MOJ:

(32) MOJ should take notice of the degree of widespread and significant concerns expressed by court users about the current failings in the County Court, created by resource restrictions.

(33) A single unified digital court should be created for enforcement of judgments, regardless of a judgment was obtained in the High Court or the County Court, where all debts are recorded, including those falling outside the courts (the digital enforcement court).

Recommendations for consideration by HMCTS:

(34) The County Court should adopt the KBD system of training Court Officers to carry out Part 71 questioning, based upon the standard form as a template for questions, with more complex or valuable cases being referred to a judge for questioning. HMCTS should engage with the judiciary with respect to the training of the Court Officers.

Recommendations for further work by CJC, MOJ, HMCTS, CPRC and others:

(35) In making these recommendations, the CJC recognises that significant further work is needed, including:

a. Ascertaining how the digital enforcement court would operate, including any legislative or regulatory changes and changes to the CPR.
b. Considering enforcement in the property sphere and extra-jurisdictional enforcement.
c. Investigating further whether there should be a system change from the current court-centric model to an administrative or judicial officer model.

Recommendations for consideration by MOJ, HMCTS, and other relevant Government departments:

(36) Funding should be increased for debt advice organisations, to allow for more advice at an early stage, increased engagement of defendants, and increased resolution at an earlier stage, thereby removing economic drag and adding to growth.

(37) MOJ should facilitate the sharing of best practice guidance between debt advice agencies.

(38) Funding should be provided for the provision of a telephone or webchat advice service with debt advice agencies, both at the commencement of proceedings and as an advice service at court.

(39) Information about debt advice, including telephone and electronic contact details, should be publicised through the display of a standard poster (or electronic equivalent where there are digital information boards) in each civil court building and in other public buildings that provide contact information (e.g. GP surgeries, hospital waiting rooms, employment centres, libraries, etc.)

Table of abbreviations and acronyms

Abbreviation or acronym	Meaning
ACAS	Advisory, Conciliation and Arbitration Service
ADR	Alternative dispute resolution
CCJ	County Court judgment
CIVEA	The Civil Enforcement Association
CJC	Civil Justice Council
CPR	Civil Procedure Rules
CPRC	Civil Procedure Rule Committee
DVLA	Driver and Vehicle Licensing Agency
ECB	Enforcement Conduct Board
EEA	European Economic Area
HCEO	High Court Enforcement Officer
HCEOA	High Court Enforcement Officers Association
HMCTS	His Majesty's Courts & Tribunals Service
HMRC	His Majesty's Revenue & Customs
KBD	King's Bench Division
LCJ	Lady Chief Justice
MOJ	Ministry of Justice
PAP	Pre-action protocol
PPE	Personal protective equipment
SFS	Standard Financial Statement
SME	Small and Medium-sized Enterprises

Abbreviation or acronym	Meaning
TCEA 2007	The Tribunals, Courts and Enforcement Act 2007
UNIDROIT	The International Institute for the Unification of Private Law
WG	Working Group

Appendix 1: Enforcement Working Group Call for Evidence Questions

Your experience and awareness of enforcement

1) Which enforcement methods do you have experience of, if any?
2) Are there any barriers you have experienced in seeking to enforce or satisfy a judgment and, if so, what were they?
3) Which of the attached enforcement mechanisms do you find to be most effective in obtaining a resolution, and why?
4) Which of the attached enforcement mechanisms do you find to be least effective in obtaining a resolution, and why?
5) Do you consider any of the attached enforcement mechanisms should be promoted as being more effective than others?
6) Are there any enforcement mechanisms that you consider should be amended or varied to make them more appropriate for modern litigation from the perspective of either the creditor or the debtor?
7) Do you consider that there should be further measures attached to any of the current enforcement mechanisms to ensure greater fairness and/or protections for debtors?
8) Do you have experience of the court enforcement mechanisms interacting with debt collection standards and practices outside the court system?
9) Do you consider that the court enforcement mechanisms need to take into account debt collection standards and practices outside the court system and, if so, in what circumstances and in what ways?
10) If court enforcement is to take into account debt collection outside the court system, what practical steps do you consider should be undertaken?

Supply of information about potential judgment debtors

11) What steps, if any, do you consider the court could and should undertake to encourage greater engagement of potential judgment debtors (given the high number of default judgments)? [NB the CJC is reporting separately on pre-action protocols (PAP) including the debt protocol and the PAP is therefore not addressed in this list of questions.]
12) Should the court require details of a defendant at the commencement of proceedings in order to ascertain whether a defendant could satisfy a potential judgment? (For example, by specific questions being including in the Directions Questionnaire, including details of any debts being enforced outside the court system);
13) If information about the means of a potential debtor is sought early in proceedings, what information would you consider to be helpful?
14) What experience, if any, have you had with making use of the provisions of CPR part 71 (orders to obtain information from judgment debtors)?
15) If you have used the provisions of part 71 to obtain information about a judgment debtor's means, have you found the process effective?
16) If not effective, why not, and what changes would you make to the provisions relating to obtaining information from judgment debtors and does there need to be an amendment to part 71?
17) What would you consider to be an appropriate sanction/appropriate sanctions for a judgment debtor who fails to provide information to questions raised by the court?
18) If judgment is obtained, should the court provide details of the judgment debtor with the claimant at the time of judgment and, if so, what details should be provided (if any)?
19) What safeguards should be put in place with respect to any data sharing to ensure that it is reasonable and proportionate and not unfairly detrimental to the debtor?
20) Should the court have a role, independent of any applications made by any creditor, in obtaining details of the debtor?
21) Should the court and/or the judgment creditor be given access to information held by HMCTS and the DWP (or other government departments or agencies) to gather financial information on the judgment debtor?
22) What safeguards should be put in place to protect the individual with respect to financial information held by HMCTS and the DWP (or other government departments or agencies) and their privacy?

23) Should the court and/or the judgment creditor be given access to information held by third parties, such as banks and credit agencies, to gather financial information on judgment debtors?
24) What safeguards should be put in place to protect the individual with respect to financial information held by third parties, such as banks and credit agencies, and their privacy?
25) Would you welcome a change to legislation to allow either (17) or (19) above, which would include safeguards suggested under (18) and (20) above?
26) What other protections do you consider should be available to the judgment debtor to prohibit all, or some, financial information being available either to the court or to the judgment creditor?

Support for debtors

27) Are you aware of any support or information provided to debtors following a judgment?
28) If so, what is that support or information?
29) What, if any, (additional) information and support do you consider should be made available to debtors and at what stage?
30) Are there any particularly vulnerable debtors who you consider need additional support. If so, how are those vulnerable debtors identified and what support do you consider is required?
31) What do you consider the most efficient and effective ways of disseminating information to debtors?
    i. through court documentation at the commencement of the action;
    ii. through court documentation at time of judgment;
    iii. through bailiffs or enforcement officers;
    iv. all the above?
    v. any further means of communication?
32) If the defendant engages with the court process, should the court be proactive in providing a telephone advice service, or other access to free advice through third parties, in order to potentially facilitate early resolution?

Any proposed improvements

33) Do you consider there should be any changes to the system of enforcing judgments, or should the status quo be maintained?

34) If you consider there should be changes, what changes do you feel should be made to make enforcement more accessible, fair and efficient?
35) Whether you consider there should be changes or not, what, if any, additional safeguards and advice should be given to debtors?
36) Whether you consider there should be changes or not, what, if any, additional information should be given to creditors about methods of enforcement?
37) As the majority of debt judgments are judgments in default, what further steps do you consider could and/or should be taken to encourage defaulters (potential judgment debtors) to engage in the court process at an early, or any, stage?
38) Are there any other areas of enforcement that you feel could be improved and in what way and by which method(s)?

General

39) Please set out any additional comments you would like to make about the current system of enforcing money judgments in court. These comments can expand upon the questions raised above or raise new issues.
40) Please set out any current difficulties that you identify with the system of enforcement and outline any potential improvements you consider appropriate for either the creditor or the debtor.

Appendix 2: Methods of Enforcement

General-Identifying assets	Publicly available sources: • **The Land Registry.** • **The Bankruptcy and Insolvency Register.** • **Companies House** • **The attachment of earnings index.** • **The insolvency and companies list of the business and property courts of England and Wales.** • **Instructing enquiry agents to undertake an assets check.** • **Applying to the court for an order that the judgment debtor/director of a company attends court setting out its financial position under oath.** • **Post judgment freezing order preventing dissipation of assets / the delivery up of information regarding assets.**
Charging order	• A court order that places a lien charge on the property preventing the judgment debtor selling the property without first satisfying the charge (judgment debt). The charge also provides that the judgment creditor can apply to the court for an order for sale of the property to satisfy the debt owed. • Application is made without notice to the judgment debtor and dealt with by the judge without a hearing. After that the judgment

	creditor will apply for a final charging order and at that stage the judgment debtor will be given notice of the final charging order application. • Charging Orders [£119 & £71 for a warrant if order for sale made].
Attachment of earnings order	• [Attachments of Benefits is not included as it is not an order of the court]. • An attachment of earnings order is a court order used to collect the judgment debt directly from the judgment debtor's wages. The order requires the debtor's employer to deduct a certain amount from the judgment debtor's earnings and send it directly to the judgment creditor until the debt it is paid. • An attachment of earnings order cannot be obtained against someone who is unemployed, self-employed, a company or in the armed forces. • The application is made in form N337. • Attachment of Earnings [£119].
A third-party debt order	• A third party debt order is a court order that allows the judgment creditor to seize money owed to a judgment debtor by a third party. This is often used in respect of the judgment debtor's bank account. • The order freezes funds held by the third party that are due to the judgment debtor and the third party is then ordered to pay the judgment creditor directly from the judgment debtor's funds. • An interim third party debt order is made without notice and dealt with by a judge without hearing. After which a hearing takes place

	where the court decides whether to make the final order at which point the third party can intervene and object to the order being made. • The application is made using form N349. • Third Party Debt Orders [£119].
Warrant of control	• The warrant of control authorises enforcement agents commonly referred to bailiffs to take control of the judgment debtor's possessions. This involves the enforcement agent entering the judgment debtor's premises to collect and subsequently sell the possessions. • Used for judgment debts of less than £5,000. • The application is made in form N323. • For money [£91]; for goods [£143].
Writ of control	• This is similar to a warrant of control but for debts above £600 and recovery of the goods is executed by a high court enforcement officer. • Writ of control/Warrants of execution [£83].
Insolvency proceedings	• If a judgment creditor is owed more than £5000 by an individual debtor or £750 from a company, an application can be made to make them bankrupt. • After a bankruptcy or winding up order is made, the judgment debtor's assets will be collected by a trustee and distributed to the judgment creditor.

	• Insolvency action is commenced by sending a draft winding up petition to a company or a statutory demand to an individual – many cases settle at this stage with the threat of bankruptcy.
Contempt of court proceedings	• Where there has been a number of breaches of court orders in ongoing proceedings a judgment creditor can instigate contempt of court proceedings and failure to comply with the judgment or court orders.
Freezing order	• This is an order preventing the disposal of assets by the judgment debtor. • An application is made in form N244. • Without notice application [£108] but application has to be on basis of underlying claim – where court fee depends on value of the claim [£35 for a claim less than £300 up to £10,000 for claim in excess of £200,000 see Civil Court Fees EX 50].

Appendix 3: Part 4 – Tribunals, Courts and Enforcement Act 2007

Part 4 - Enforcement of judgments and orders

Attachment of earnings orders

91 Attachment of earnings orders: deductions at fixed rates

(1) Schedule 15 makes amendments to the Attachment of Earnings Act 1971 (c. 32).

(2) Those amendments are about the basis on which periodical deductions are to be made under an attachment of earnings order.

(3) In particular, they provide that deductions under certain orders are to be made in accordance with a fixed deductions scheme made by the Lord Chancellor (rather than in accordance with Part I of Schedule 3 to the 1971 Act).

92 Attachment of earnings orders: finding the debtor's current employer

(1) After section 15 of the Attachment of Earnings Act 1971 insert—

"**15A Finding the debtor's current employer**

(1) If an attachment of earnings order lapses under section 9(4), the proper authority may request the Commissioners—

(a) to disclose whether it appears to the Commissioners that the debtor has a current employer, and

(b) if it appears to the Commissioners that the debtor has a current employer, to disclose the name and address of that employer.

(2) The proper authority may make a request under subsection (1) only for the purpose of enabling the lapsed order to be directed to the debtor's current employer.

(3) The proper authority may not make a request under subsection (1) unless regulations under section 15B(5) and (8) are in force.

(4) The proper authority may disclose such information (including information identifying the debtor) as it considers necessary to assist the Commissioners to comply with a request under subsection (1).

(5) The Commissioners may disclose to the proper authority any information (whether held by the Commissioners or on their behalf) that the Commissioners consider is necessary to comply with a request under subsection (1).

(6) A disclosure under subsection (4) or (5) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(7) Nothing in this section is to be taken to prejudice any power to request or disclose information that exists apart from this section.

(8) The reference in subsection (5) to information held on behalf of the Commissioners includes a reference to any information which—

(a) is held by a person who provides services to the Commissioners, and

(b) is held by that person in connection with the provision of those services.

15B Offence of unauthorised use or disclosure

(1) This section applies if the Commissioners make a disclosure of information ("debtor information") under section 15A(5).

(2) A person to whom the debtor information is disclosed commits an offence if—

(a) he uses or discloses the debtor information, and

(b) the use or disclosure is not authorised by subsection (3), (5), (6) or (7).

(3) The use or disclosure of the debtor information is authorised if it is—

(a) for a purpose connected with the enforcement of the lapsed order (including the direction of the order to the debtor's current employer), and

(b) with the consent of the Commissioners.

(4) Consent for the purposes of subsection (3) may be given—

(a) in relation to particular use or a particular disclosure, or

(b) in relation to use, or a disclosure made, in such circumstances as may be specified or described in the consent.

(5) The use or disclosure of the debtor information is authorised if it is—

(a) in accordance with an enactment or an order of court, or

(b) for the purposes of any proceedings before a court, and it is in accordance with regulations.

(6) The use or disclosure of the debtor information is authorised if the information has previously been lawfully disclosed to the public.

(7) The use or disclosure of the debtor information is authorised if it is in accordance with rules of court that comply with regulations under subsection (8).

(8) Regulations may make provision about the circumstances, if any, in which rules of court may allow any of the following—

(a) access to, or the supply of, debtor information;

(b) access to, or the supply of copies of, any attachment of earnings order which has been directed to an employer using debtor information.

(9) It is a defence for a person charged with an offence under subsection (2) to prove that he reasonably believed that the disclosure was lawful.

(10) A person guilty of an offence under subsection (2) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum, or to both.

15C Regulations

(1) It is for the Lord Chancellor to make regulations under section 15B.

(2) But the Lord Chancellor may make regulations under section 15B only with the agreement of the Commissioners.

(3) Regulations under section 15B are to be made by statutory instrument.

(4) A statutory instrument containing regulations under section 15B may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

15D Interpretation

(1) For the purposes of sections 15A to 15C (and this section)—

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"information" means information held in any form;

"the lapsed order" means the attachment of earnings order referred to in section 15A(1);

"the proper authority" is determined in accordance with subsections (2) to (5).

(2) If the lapsed order was made by the High Court, the proper authority is the High Court.

(3) If the lapsed order was made by **[**F1 the county court**]**, the proper authority is **[**F1 the county court**]**.

(4) If the lapsed order was made by a magistrates' court under this Act, the proper authority is—

(a) a magistrates' court, or

(b) the designated officer for a magistrates' court.

(5) If the lapsed order was made by a magistrates' court or a fines officer under Schedule 5 to the Courts Act 2003, the proper authority is—

(a) a magistrates' court, or

(b) a fines officer."

(2) This section applies in relation to any attachment of earnings order, whether made before or after the commencement of this section.

(3) In relation to an offence committed before **[**F2 2 May 2022**]**, the reference in section 15B(10)(b) of the Attachment of Earnings Act 1971 (c. 32) to 12 months is to be read as a reference to 6 months.

Textual Amendments

F1 Words in s. 92(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F2 Words in s. 92(3) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), Sch. Pt. 1

Charging orders

93 Payment by instalments: making and enforcing charging orders

(1) Subsections (2), (3) and (4) make amendments to the Charging Orders Act 1979 (c. 53).

(2) In section 1 (charging orders), after subsection (5) insert—

"(6) Subsections (7) and (8) apply where, under a judgment or order of the High Court or **[**F3 the county court**]**, a debtor is required to pay a sum of money by instalments.

(7) The fact that there has been no default in payment of the instalments does not prevent a charging order from being made in respect of that sum.

(8) But if there has been no default, the court must take that into account when considering the circumstances of the case under subsection (5)."

(3) In section 3 (provisions supplementing sections 1 and 2), after subsection (4) insert—

"(4A) Subsections (4C) to (4E) apply where—

(a) a debtor is required to pay a sum of money in instalments under a judgment or order of the High Court or **[**F4 the county court**]** (an "instalments order"), and

(b) a charge has been imposed by a charging order in respect of that sum.

(4B) In subsections (4C) to (4E) references to the enforcement of a charge are to the making of an order for the enforcement of the charge.

(4C) The charge may not be enforced unless there has been default in payment of an instalment under the instalments order.

(4D) Rules of court may—

(a) provide that, if there has been default in payment of an instalment, the charge may be enforced only in prescribed cases, and

(b) limit the amounts for which, and the times at which, the charge may be enforced.

(4E) Except so far as otherwise provided by rules of court under subsection (4D)—

(a) the charge may be enforced, if there has been default in payment of an instalment, for the whole of the sum of money secured by the charge and the costs then remaining unpaid, or for such part as the court may order, but

(b) the charge may not be enforced unless, at the time of enforcement, the whole or part of an instalment which has become due under the instalments order remains unpaid."

(4) In section 6(2) (meaning of references to judgment or order of High Court or county court), for "section 1" substitute "sections 1 and 3 ".

(5) In section 313(4) of the Insolvency Act 1986 (c. 45) (charge on bankrupt's home: certain provisions of section 3 of Charging Orders Act 1979 to apply), for the words before "section 3" substitute "Subsection (1), (2), (4), (5) and (6) of ".

(6) This section does not apply in a case where a judgment or order of the High Court or **[**F5 the county court**]** under which a debtor is required to pay a sum of money by instalments was made, or applied for, before the coming into force of this section.

Textual Amendments

F3 Words in s. 93(2) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F4 Words in s. 93(3) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F5 Words in s. 93(6) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Commencement Information

I1 S. 93 in force at 1.10.2012 by S.I. 2012/1312, art. 3

94 Charging orders: power to set financial thresholds

In the Charging Orders Act 1979 (c. 53), after section 3 there is inserted—

"**3A Power to set financial thresholds**

(1) The Lord Chancellor may by regulations provide that a charge may not be imposed by a charging order for securing the payment of money of an amount below that determined in accordance with the regulations.

(2) The Lord Chancellor may by regulations provide that a charge imposed by a charging order may not be enforced by way of order for sale to recover money of an amount below that determined in accordance with the regulations.

(3) Regulations under this section may—

(a) make different provision for different cases;

(b) include such transitional provision as the Lord Chancellor thinks fit.

(4) The power to make regulations under this section is exercisable by statutory instrument.

(5) The Lord Chancellor may not make the first regulations under subsection (1) or (2) unless (in each case) a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(6) A statutory instrument containing any subsequent regulations under those subsections is subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I2 S. 94 in force at 17.5.2012 by S.I. 2012/1312, art. 2

Information requests and orders

95 Application for information about action to recover judgment debt

(1) A person who is the creditor in relation to a judgment debt may apply to the High Court **[**F6 the family court**]** or **[**F7 the county court**]** for information about what kind of action it would be appropriate to take in court to recover that particular debt.

(2) An application under subsection (1) must comply with any provision made in regulations about the making of such applications.

Textual Amendments

F6 Words in s. 95 inserted (22.4.2014) by The Crime and Courts Act 2013 (Family Court: Consequential Provision) Order 2014 (S.I. 2014/605), arts. 1, 23

F7 Words in s. 95(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

96 Action by the court

(1) This section applies if the creditor in relation to a judgment debt makes an application for information under section 95.

(2) The relevant court may make one or more of the following in relation to the debtor—

(a) a departmental information request;

(b) an information order.

(3) The relevant court may exercise its powers under subsection (2) only if it is satisfied that to do so will help it to deal with the creditor's application.

(4) Before exercising its powers under subsection (2), the relevant court must give notice to the debtor that the court intends to make a request or order.

(5) The relevant court may not make a departmental information request to the Commissioners unless regulations are in force that have been made under section 102(4) and (7) and relate to the use or disclosure of debtor information disclosed by the Commissioners.

(6) The relevant court may disclose such information (including information identifying the debtor) as it considers necessary to assist the recipient of a request or order to comply with the request or order.

(7) A disclosure under subsection (6) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(8) Nothing in this section is to be taken to prejudice any power that exists apart from this section to request or order the disclosure of information.

97 Departmental information requests

(1) A departmental information request is a request for the disclosure of information held by, or on behalf of, a government department.

(2) The request is to be made to the Minister of the Crown, or other person, who is in charge of the department.

(3) In the case of a request made to the designated Secretary of State, the disclosure of some or all of the following information may be requested—

(a) the full name of the debtor;

(b) the address of the debtor;

(c) the date of birth of the debtor;

(d) the national insurance number of the debtor;

(e) prescribed information.

(4) In the case of a request made to the Commissioners, the disclosure of some or all of the following information may be requested—

(a) whether or not the debtor is employed;

(b) the name and address of the employer (if the debtor is employed);

(c) the national insurance number of the debtor;

(d) prescribed information.

(5) In the case of any other request, the disclosure of prescribed information may be requested.

(6) In this section—

"designated Secretary of State" means the Secretary of State designated for the purpose of this section by regulations;

"government department" does not include the following—

(a) any part of the Scottish Administration;

(b) a Northern Ireland department;

(c) the Welsh Assembly Government or any member of staff appointed under section 52 of the Government of Wales Act 2006 (c. 32);

"prescribed information", in relation to a departmental information request, means information that falls within the category or categories of information (if any) prescribed by regulations in relation to the department to which the request relates.

98 Information orders

(1) An information order is an order of the relevant court which—

(a) specifies a prescribed person ("the information discloser"),

(b) specifies prescribed information relating to the debtor ("the required information"), and

(c) orders the information discloser to disclose the required information to the relevant court.

(2) In subsection (1) "prescribed" means prescribed in regulations.

(3) Regulations under this section may be made by reference to—

(a) particular persons or particular descriptions of person (or both);

(b) particular information or particular descriptions of information (or both).

(4) Regulations may, in particular, be made under this section so as to ensure that—

(a) an information order made against a particular person, or a person of a particular description, may order that person to disclose only particular information, or information of a particular description;

(b) an information order that orders the disclosure of particular information, or information of a particular description, may only be made against a particular person, or a person of a particular description.

(5) Regulations under this section must not make provision that would allow the relevant court to order—

(a) the disclosure of information by the debtor, or

(b) the disclosure of information held by, or on behalf of, a government department.

99 Responding to a departmental information request

(1) This section applies if the relevant court makes a departmental information request.

(2) The recipient of the request may disclose to the relevant court any information (whether held by the department or on its behalf) that the recipient considers is necessary to comply with the request.

(3) A disclosure under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(4) Nothing in this section is to be taken to prejudice any power that exists apart from this section to disclose information.

100 Information order: required information not held etc.

(1) An information discloser is not to be regarded as having breached an information order because of a failure to disclose some or all of the required information, if that failure is for one of the permitted reasons.

(2) These are the permitted reasons—

(a) the information provider does not hold the information;

(b) the information provider is unable to ascertain whether the information is held, because of the way in which the information order identifies the debtor;

(c) the disclosure of the information would involve the information discloser in unreasonable effort or expense.

(3) It is to be presumed that a failure to disclose required information is for a permitted reason if—

(a) the information discloser gives the relevant court a certificate that complies with subsection (4), and

(b) there is no evidence that the failure is not for a permitted reason.

(4) The certificate must state—

(a) which of the required information is not being disclosed;

(b) what the permitted reason is, or permitted reasons are, for the failure to disclose that information.

(5) Any reference in this section to the information discloser holding, or not holding, information includes a reference to the information being held, or not being held, on the information discloser's behalf.

101 Using the information about the debtor

(1) This section applies if—

(a) the creditor in relation to a judgment debt makes an application for information under section 95, and

(b) information ("debtor information") is disclosed to the relevant court in compliance with a request or order made under section 96.

(2) The relevant court may use the debtor information for the purpose of making another request or order under section 96 in relation to the debtor.

(3) The relevant court may use the debtor information for the purpose of providing the creditor with information about what kind of action (if any) it would be appropriate to take in court (whether the relevant court or another court) to recover the judgment debt.

(4) If the creditor takes any action in the relevant court to recover the judgment debt, the relevant court may use the debtor information in carrying out functions in relation to that action.

(5) If the creditor takes any action in another court to recover the judgment debt—

(a) the relevant court may disclose the debtor information to the other court, and

(b) the other court may use that information in carrying out functions in relation to that action.

(6) Debtor information may be used or disclosed under any of subsections (3) to (5) only if—

(a) regulations about such use or disclosure of information are in force, and

(b) the use or disclosure complies with those regulations.

(7) In addition, if the debtor information was disclosed by the Commissioners, the information may be used or disclosed under any of subsections (3) to (5) only with the consent of the Commissioners.

(8) Consent for the purposes of subsection (7) may be given—

(a) in relation to particular use or a particular disclosure, or

(b) in relation to use, or a disclosure made, in such circumstances as may be specified or described in the consent.

(9) The use or disclosure of information in accordance with this section is not to be taken to breach any restriction on the use or disclosure of information (however imposed).

(10) Nothing in this section is to be taken to prejudice any power that exists apart from this section to use or disclose information.

102 Offence of unauthorised use or disclosure

(1) This section applies if—

(a) an application is made under section 95 in relation to recovery of a judgment debt ("the relevant judgment debt"),

(b) a departmental information request or an information order is made in consequence of that application, and

(c) information ("debtor information") is disclosed in accordance with the request or order.

(2) A person to whom the debtor information is disclosed commits an offence if he—

(a) uses or discloses the debtor information, and

(b) the use or disclosure is not authorised by any of subsections (3) to (6).

(3) The use or disclosure of the debtor information is authorised if it is in accordance with section 101.

(4) The use or disclosure of the debtor information is authorised if it is—

(a) in accordance with an enactment or order of court, or

(b) for the purposes of any proceedings before a court, and it is in accordance with regulations.

(5) The use or disclosure of the debtor information is authorised if the information has previously been lawfully disclosed to the public.

(6) The use or disclosure of the debtor information is authorised if it is in accordance with rules of court that comply with regulations under subsection (7).

(7) Regulations may make provision about the circumstances, if any, in which rules of court may allow access to, or the supply of, information disclosed in accordance with a department information request or an information order.

(8) It is a defence for a person charged with an offence under subsection (2) to prove that he reasonably believed that the use or disclosure was lawful.

(9) A person guilty of an offence under subsection (2) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding **[**F8 the general limit in a magistrates' court**]**, to a fine not exceeding the statutory maximum, or to both.

Textual Amendments

F8 Words in s. 102(9)(b) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), Sch. Pt. 1

103 Regulations

(1) It is for the Lord Chancellor to make information regulations.

(2) But the Lord Chancellor may make the following regulations only with the agreement of the Commissioners—

(a) regulations under section 97(4)(d);

(b) regulations under section 102(4) or (7) so far as the regulations relate to the use or disclosure of debtor information disclosed by the Commissioners.

(3) Information regulations are to be made by statutory instrument.

(4) A statutory instrument containing information regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5) But subsection (4) does not apply in the case of a statutory instrument that contains only—

(a) regulations under section 95, or

(b) regulations under section 97 which designate a Secretary of State for the purpose of that section.

(6) In such a case, the statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section "information regulations" means regulations under any of sections 95 to 102.

104 Interpretation

(1) This section applies for the purposes of sections 95 to 103.

(2) In those provisions—

"Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"creditor", in relation to a judgment debt, means—

(a) the person to whom the debt is payable (whether directly or through **[**F9 any court,**]** an officer of any court or another person);

(b) where the debt is payable under an administration order (within the meaning of Part 6 of the County Courts Act 1984 (c. 28)), any one of the creditors scheduled to the order;

"debtor", in relation to a judgment debt, means the person by whom the debt is payable;

"departmental information request" has the meaning given by section 97;

"information" means information held in any form;

"information discloser", in relation to an information order, has the meaning given by section 98(1)(a);

"information order" has the meaning given by section 98;

"judgment debt" means either of the following—

(a) a sum which is payable under a judgment or order enforceable by the High Court **[**F10 the family court**]** or **[**F11 the county court**]**;

(b) a sum which, by virtue of an enactment, is recoverable as if it were payable under a judgment or order of the High Court **[**F10 the family court**]** or of **[**F11 the county court**]** (including a sum which is so recoverable because a court so orders);

"required information", in relation to an information order, has the meaning given by section 98(1)(b);

"relevant court", in relation to an application under section 95, means the court to which the application is made.

(3) Any reference to information held on behalf of a government department, or on behalf of an information discloser, includes a reference to any information which—

(a) is held by a person who provides services to the department or to the information discloser, and

(b) is held by that person in connection with the provision of those services.

Textual Amendments

F9 Words in s. 104 inserted (22.4.2014) by The Crime and Courts Act 2013 (Family Court: Consequential Provision) Order 2014 (S.I. 2014/605), arts. 1, 24(a)

F10 Words in s. 104 inserted (22.4.2014) by The Crime and Courts Act 2013 (Family Court: Consequential Provision) Order 2014 (S.I. 2014/605), arts. 1, 24(b)

F11 Words in s. 104(2) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

105 Application and transitional provision

(1) Sections 95 to 104 apply in relation to any judgment debt, whether it became payable, or recoverable, before or after the commencement of those sections.

(2) In relation to an offence committed before **[**F12 2 May 2022**]**, the reference in section 102(9)(b) to 12 months is to be read as a reference to 6 months.

Textual Amendments

F12 Words in s. 105(2) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), Sch. Pt. 1