Civil Justice Council Enforcement Working Group Call for Evidence 11 July - 16 September 2024

The Call for Evidence closes on **16 September 2024 at 23:59**.

Respondents do not need to answer all questions, if only some are of interest or relevance.

Answers should be submitted by PDF or word document to **CJCEnforcementCfE@judiciary.uk**. If you have any questions about the consultation or submission process, please contact **CJC@judiciary.uk**.

Please name your submission as follows: 'name/organisation - CJC Enforcement CfE'

As part of the process, the Working Group will be holding three webinars via MS Teams. The format of each webinar will be the same.

- Register for the 22 July (16:30-17:30) **HERE**.
- Register for the 5 August (16:30-17:30) **HERE**.
- Register for the 5 September (13:00-14:00) **HERE**.

By attending, you are confirming your consent for your email address to be visible to fellow webinar attendees.

You must include the following information with your response:

Your response is (public/anonymous/confidential):	Anonymous
First name:	[redacted]
Last name:	[redacted]
Location:	[redacted]
Role:	[redacted]
Job title:	[redacted]
Organisation:	[redacted]
Are you responding on behalf of your organisation?	[redacted]
Your email address:	[redacted]

Information provided to the Civil Justice Council:

We aim to be transparent and to explain the basis on which conclusions have been reached. We may publish or disclose information you provide in response to Civil Justice Council papers, including personal information. For example, we may publish an extract of your response in Civil Justice Council publications, or publish the response itself. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the General Data Protection Regulation.

Consultation responses are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Civil Justice Council.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response, but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your organisation, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If your response is anonymous, we will not include your name in the list unless you have given us permission to do so. Please let us know if you wish your response to be anonymous or confidential.

The full list of Call for Evidence questions is below:

PLEASE SEE ANNEX A - LIST OF ENFORCEMENT OF DOMESTIC JUDGMENTS FOR REFERENCE (INCLUDING ORDERS FOR SALE IN CHARGING ORDERS) THIS WORK IS NOT CONSIDERING POSSESSION ORDERS.

Your experience and awareness of enforcement

1) Which enforcement methods do you have experience of, if any?

   All enforcement methods excluding the freezing order.

2) Are there any barriers you have experienced in seeking to enforce or satisfy a judgment and, if so, what were they?

   Generally speaking debts under £600.00 are not worth pursuing due to the limited enforcement options against unemployed, individual debtors or company debts below the £600.00. The service received from the County Court Bailiffs under a Warrant of Control is lacking regular updates and results.

3) Which of the attached enforcement mechanisms do you find to be most effective in obtaining a resolution, and why?

   Although the most succesful mehtod varies from debt to debt based on circumstances, the most commonly used method is a Writ of Control. The agents commanded under the Writ tend to work harder to get paid and are financially motivated. In terms of specific success, it is far more difficult to ignore a person in physical attendance than correspondence.

   Where debtors are employed and earning over the threshold an AEO is an attractive and safe option, however, there is limited scope for this due to the criteria being quite narrow. However the lower yeild for an AEO tends to put people off in the first instance as Creditors have often been waiting months or years for their money and would take the risk to be paid sooner.

4) Which of the attached enforcement mechanisms do you find to be least effective in obtaining a resolution, and why?

   Warrant of Control appears to be the least effective, although to caveat this, it is the least used due to value and the perception of it being the least effective and therfore there may be some ocnfirmation bias.

   Generally speaking, we receive little to no progress updates and the recoveries are generally few and far between.

5) Do you consider any of the attached enforcement mechanisms should be promoted as being more effective than others?

I do not think it is the courts place to recomened enfrocement strategy and should be left to the relevant proffesional who have appropriatly considered the circumstances of the debt and are able to advise accordingly.

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?

I would like to see the value threshold of a writ of control be removed entirely so as to increase a creditors chance of recovering modest debts below the threshold.

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?

Due to the cost of living increasing, it may be appropriate to review the threshold for protected earnings under the Attachment of Earnings order and it may need to be increased.

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 Civil Justice Council (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.]

There is little that can be done to force debtor engagement.

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);

Income and Expenditure provided on acknowledgement of service or admissions, requesting details on DQ of Defendant could be uneccessary, especially if they have a defence to the claim. It may assist the Claimant in determining cost risk but I cannot foresee a Defendant, in the belief they will be succesful in defending the claim will see their finances as relevant to the matter.

13) If information about the means of a potential debtor is sought early in proceedings, what information would you consider to be helpful?

As a team that acts solely for the creditors, income and expenditure would be useful, and/or details of any other CCJS or property ownership.

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)?

They are used with a fair degree of regularity.

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?

Somewhat effective. The local courts delays vary and can be a siginifcant cause of delay to swift enforcement action. The debtors often rarely comprehend the order and bring the requested documents and information and the process appears to differ from court to court. Some debtors have been left to complete the form themsleves, others have correctly been questioned by a court officer.

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?

I would like to see an automatic reissue of the order to attend on the day should the debtor not turn up with the requested documents and be served personally on the defendant by the court.

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?

Contempt of Court process deals with this be should be expedited. The current process gives too many second chances before penal notices and contempt of court can begin. I would suggest that the second order to attend should be the one carrying the penal notice.

i.e. Debtor is served with first order to attend.

Debtor attends without correct information or does not attend at all.

Court issues new order, this one contains the Penal Notice saying that failure to attend and should non-compliance occur a second time the debtor appropriately punished.

My view is that this will encourage prompt co-operation with the rules and order.

Perhaps somewhat radical but I would like to see an automatic process whereby a debtor is subject to a judgment, together with being served the judgment order, they are required to complete and return an income and expenditure to the court within 30 days of the judgment being granted.

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?

Yes

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?

Only released on judgment for claimant being entered.

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?

Yes

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?

Only released where judgment for claimant has been entered and not when judgment in defualt has been entered. This information should not be released in matters where the debtor has not engaged.

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?

Yes

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?

Only released on Judgment being entered or an admission filed by the Defendant, no information should be collected where judgment in default is entered.

Support for debtors

27) Are you aware of any support or information provided to debtors following a judgment?

No

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?

Recommendations to the various debt charities.

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?

Yes

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?

Changes are needed as outlined particularly in quesitons 6, 12, 13 17 and 21.

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

Creditors should be barred from taking action as soon as they are on notice that an application to set aside has been filed. Currently action may ocntinue until a stay of execution has been made.

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.

Annex A

Civil Justice Council Enforcement Working Group Call for Evidence July – September 2024

ENFORCEMENTS OF DOMESTIC JUDGMENTS

General -Identifying assets	Charging order	Attachment of earnings order	A third party debt order	Warrant of control	Writ of control	Insolvency proceedings	Contempt of court proceedings	Freezing order

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.	• 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].	• [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 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].	• 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].	• 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].	• 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.	• 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.	• 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].