

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

Lucy Tilney Litigant in Person - CJC Enforcement CfE

Your response is (public/anonymous/confidential): PUBLIC
First name: LUCY
Last name: TILNEY
Location: BRISTOL
Role: LITIGANT IN PERSON
Job title: FREELANCE TEACHER OF ENGLISH
Organisation: MY OWN BUSINESS – BRISTOL HOMESTAY TUITION
Are you responding on behalf of your organisation? NO
Your email address: [REDACTED]

Your experience and awareness of enforcement

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

Notice for Questioning

CPR part 71 (orders to obtain information from judgment debtors)

Charging order

Writ of Control

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

It was very difficult to enforce my judgement against a builder. Among the barriers were the following:

a) Extremely slow and clogged legal system

b) Serving of Notice for Questioning was slow and ineffective

c) Poor communication between the courts and me led to Debtor arriving at court without me being informed.

d) Debtor lied under oath to the court officer and produced faked photocopies of bank statements and other misleading replies and documents at his Questioning to court office.

e) Court officers who did not challenge or question of veracity of statement or documents presented by Debtor at his Questioning.

f) Collusion between the privatised high court enforcement officers at HCE Ltd and the Debtor; HCE Ltd appeared to collect enough of the judgement money owed to cover their commission. Thereafter, they told me they had no leverage and were unable to collect the balance.

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

*a) **Hearing** (second one because at the first one the Debtor attended without bringing any paperwork to support his claims. I requested that the judge adjourn the hearing and rearrange for another date,*

to be attended by the Debtor with all relevant documents this time) attended by Debtor and me before a judge identified the builder's untruths and uncovered the fact that he owned an investment property which was in his wife's name (as were ALL his properties) but that he had a beneficial interest in this property. Therefore I was able to put an **Interim and Final Charging Order** on this property. However, it still took seven years from the date of the judgement to actually get the debt discharged.

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

Attachment of Earnings order – builder was not an employee so this was not applicable.

Third Party Debt Order – it was impossible to impose this as the Debtor had several bank accounts and ensured that the account identified in his Questioning was empty of money (possibly as he had faked his wife's bank account to masquerade as his own). This mechanism only works on the day the Order lands on the account, so the Debtor has only to ensure that his money is transferred to another account.

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?

The privatisation of the enforcement mechanisms into High Court Enforcement Ltd has led to a monopoly. HCE Ltd has no other competitors. HCE Ltd collects on behalf of the creditor. HCE Ltd takes their commission immediately from the collected debt. HCE Ltd assured me that after collecting their commission, they continued to collect the outstanding debt from the Debtor so that the commission is borne by the Debtor and not the creditor.

However, once HCE Ltd has collected their commission they have no further incentive to waste time and money on collecting outstanding debt which they will not benefit from.

It became clear to me from the fact that HCE Ltd were able to collect £3,500 from the Debtor by bank transfer of several amounts of £1000, £1000, 3 x £500 and extracted a written promise to discharge the debt by a deadline. Once the Debtor had paid this amount, he no longer paid any further debt. The amount that HCE Ltd collected was around the 35% commission on the debt that HCE Ltd charge.

Thereafter, HCE Ltd informed me that they had no leverage and were unable to collect any further debt because his vehicles were leased and he had told them that all the white goods belonged to his wife.

It is interesting to note that they were able to collect £3,500 without any leverage but by the Debtor simply making bank transfers to HCE Ltd.

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?

There seemed to be very little interaction between the debt collection officers at HCE Ltd and the courts.

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?

I saw that the privatisation of debt collection into HCE Ltd led to perverse outcomes such as collusion between HCE Ltd and debtors.

HCE Ltd operates as a monopoly as there is no alternative provider.

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.]

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 included in the Directions Questionnaire, including details of any debts being enforced outside the court system);

This may be a good idea but how can you ensure that the Debtor is going to submit truthful information?

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

This may be a good idea but how can you ensure that the Debtor is going to submit truthful information?

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)?

Serving of the Notice for Questioning was difficult and a further expense for me, a LIP, as I had to pay for a bailiff. I had to serve two Notices for Questioning.

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?

Part 71 was ineffective when the Debtor appeared at the court offices and provided no documents apart from copies of all the invoices he had sent me, all of which I had paid. I had to write to the judges and explain that he had produced no supporting documents and that he should appear at a second Questioning. The courts first told me that I should have to pay for a second Questioning. I wrote back to the judges to explain that he had produced NONE of the documents listed in the Notice

for Questioning at his first appearance and that I felt he should be recalled and that I should NOT have to pay a second fee.

This time the judge agreed that I was right and that he should be recalled with all the relevant documents to support his claims.

This time, I intended to attend but due to poor communication between the bailiff, the courts and me, the Debtor arrived at the court offices despite me being informed that this meeting had been cancelled. The bailiff had told me he was unable to serve the Notice but had had a conversation with the Debtor which led to the Debtor appearing for the Questioning on the date which had been cancelled. The court office heard the Debtor's oath and received his documents but I wasn't present, as I had been informed it had been cancelled. It took a further two weeks of investigation by me to ascertain what had happened.

On this occasion, the Debtor appeared with documents which, on inspection by me (not by anyone at the court offices), I discovered were faked photocopies of another bank account (possibly of his wife's bank account), along with other misleading documents.

I wrote to the judges and explained this situation. The DJ decided that there should be a hearing in person in December 2019 ((this was during the Covid lockdown).

As explained above, the hearing had to be rescheduled because the Debtor appeared at the first hearing without any supporting documents. I requested that the judge adjourn and reschedule the hearing which was rescheduled for January 2020.

At the second hearing, the judge ascertained that he had a beneficial interest in an investment property which was registered in his wife's name at The Land Registry. This knowledge enabled me to put charging order on his beneficial interest in that property.

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?

It is ineffective because in my experience, the Debtor produced faked photocopies of bank statements purporting to be his own bank statements; he produced mortgage repayment statements for his home which were paid for by his wife; he concealed the fact that he owned various investment properties. He lied under oath about his financial situation. The court officer accepted his lies as the truth. There was no attempt to verify the authenticity of the documents or his assertions.

I spoke to the court officers after the Questioning at which I was not present (because of the courts' poor communication and decision to accept the Debtor's visit, despite telling me it had been cancelled) as to why nobody had checked to see if his documents were valid, I was told that wasn't their job. I was told that it was unusual for a Debtor to arrive with any kind of documentation at all. I asked the court officer if they functioned like a post office. I received an enthusiastic affirmation from the court officer who said "Yes! Exactly!".

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?

I understand that the current sanction is a short period of incarceration. In my situation, as a LIP, I think this would have been a suitable sanction.

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?

Yes.

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. I had to do all my own research, using The Land Registry, Companies House, ex-workers and other victims of this builder's work.

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?

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?

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?

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.

In my experience as a creditor, it was very hard to enforce the judgement on a Debtor who refused to pay, rather than couldn't pay. I succeeded DESPITE High Court Enforcement Ltd and it took me over six years as an untrained litigant in person (including Covid and lockdown).

The enforcement is weak which means that it is ineffective as a sanction.

The privatisation of enforcement which has created a monopoly means that there is no alternative to the company who offer this service, High Court Enforcement Ltd.

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.

High Court Enforcement Ltd employs their agents on a self-employed basis, on commission. HCE Ltd collect their 35% commission on any monies they collect on behalf of their creditor. HCE Ltd were able to persuade the Debtor to transfer money to them by bank transfer. However, once he had paid enough to cover their commission, they no longer seemed to be able to collect. They told me that they had no leverage as they were unable to gain entry or identify any external assets.

In my case, once they had recovered enough to cover their commission they no longer found it viable to spend time and money attempting to collect the judgement debt. I was interested to note that they did not need any leverage to enable the payment of £3,500 from the Debtor?

There was also a coincidental visit by an officer from HCE Ltd on the same day (31st August 2017) as I later received an aggressive message from Debtor, with a reference to me 'badgering the high court officers'. It may be a coincidence but looked rather like a conversation had been had between the HCE Ltd agent and the Debtor. At the time, I would ring HCE Ltd regularly to check progress. This often resulted in a visit or a phone call by an agent.

Eventually HCE Ltd told me considered my judgement an 'abortive case'. They charged me £90 including VAT to close the file. However, their contract states that should I succeed in recovering the monies, I should pay them their outstanding debt.

I contacted my MP, Thangam Debbonaire, about the behaviour of HCE Ltd. Ms Debbonaire submitted a written question to Lucy Frazer, MP to which she replied. Thangam Debbonaire forwarded me a

response from RH Lord Elie of Keene QC. Neither responses were satisfactory and dodged the issue of the perverse incentives created by the commission basis and self-employment status of their agents.

I finally succeeded in placing a Charging Order on the beneficial interest that he had in an investment property (all his properties were registered in his wife's name at The Land Registry) in 2022 after two in-person court hearings and three telephone hearings. The outstanding judgement debt was finally paid to me in April 2023. I succeeded in this battle, as a lay person without any legal training, supported only by students studying at the University of Bristol Law Clinic. I did not have any help from HCE Ltd. However, their contract states that should I succeed in recovering the monies, I should pay them their outstanding debt.