

HHJ Graham Robinson (Sitting in Retirement) – CJC Enforcement CfE

Your response is	Public
First Name	Graham
Last Name	Robinson
Location	Sheffield
Role	Circuit Judge sitting in retirement
Job Title	Circuit Judge sitting in retirement
Organisation	Judiciary
Are you responding on behalf of organisation	No
Your email address	

Introduction

1. This is a personal submission based upon my experience of dealing with the Oral Examination procedure over 13 years as Designated Civil Judge for South Yorkshire between 1 January 2011 to 31 December 2023. The relevant courts were the County Courts at Barnsley, Doncaster and Sheffield.
2. During that period, (and up to my last working day as a civil Judge on 28 June 2024) I dealt with many hundreds of referrals following the failure of judgment debtors (or officers of judgment debtor companies) to:
 - (1) Attend court to provide information about their means or other information which is needed to enforce and judgment or order: CPR 71.2(1);
 - (2) Provide the documents specified in the standard form of order to attend court (N39).

Summary of my Evidence

3. The standard form of Record of Examination (Form EX 140) is hopelessly out of date and requires a major revamp.
4. The CPR should expressly permit the examination to be conducted remotely by telephone or video.
5. There should be clearer guidance on what to do in the event of failure by the debtor to provide relevant documents.
6. CPR 71.5(2) should be amended so as to include “or (c) such other time as the Judge may permit, including retrospectively” or some such wording.

EVIDENCE

Form EX 140

7. I was a member of the Determination of Means Working Group. Its laudable aim was to produce a standard form of statement of means, also referred to as a Standard Financial Statement (SFS). However, this ended up concentrating on Form N56 used for Attachment of Earnings applications. My consistent plea was for consideration to be given to including information about capital assets in the proposed form (or SFS). That information could be used by judgment creditors to decide what form(s) of enforcement to adopt, in particular the Warrant of Control procedure.
8. The last I heard, in May 2024, was that a paper was being worked up to take to the CPRC and that “work is continuing to look at updating some of the more outdated forms with and aim to provide more pertinent information for parties”

([REDACTED]). If this has been done, and work is ongoing, fine.

9. However, it is important that the CJC looks at Form EX 140. It might be thought that possession of a camcorder or video is relevant only because they may by now be valuable antiques!

Form EX142 – Reference to judge

10. This is completed by a Court Officer. It details failings by the debtor (or company officer) and is directed to the issue whether a suspended order of committal should be made – CPR 71.8.
11. A common occurrence is that the debtor (or company officer) has failed to bring to court relevant documents. Form EX 142 does not specify that failure, but CPR 71.8(1)(c) provides that if the debtor “otherwise fails to comply with the order” a suspended committal order can be made.
12. I know that the practice of courts differs. Procedures of which I am aware are:
 - (1) A “proper officer” order is made requiring the debtor (who has attended court but not brought the documents) to provide them by a certain time and date. In the event of failure to comply, the file is sent to the Circuit Judge who will make an order to produce documents. The order is indorsed with a penal notice. In the event of failure to comply, a suspended committal order may be made.
 - (2) Do nothing, unless the creditor complains, then (perhaps) utilise the procedure in (1) above.
 - (3) Do nothing at all, even if the creditor complains.
13. If it is justifiable to commit for failure to provide documents, should Form EX142 be amended to make this clear, even if only for the benefit of court staff?

Personal Attendance at Court

14. Some debtors and company officers are infirm or live a long way from the court. Why can’t they be sent Form EX140 (or Form EX141 for a company officer) and the examination procedure be conducted remotely? The debtor can affirm via the remote link if an appropriate Holy Book is not to hand. The court officer and the debtor can each fill in the form and, if necessary, the court can send a copy of the form completed by the court officer with an instruction to sign it and send it back with copies of relevant documents.
15. This would require a rule change. I admit that this is a procedure I have adopted over the years. It works and there have been no complaints by creditors. It may be argued that this is simply adopting CPR 1.1(2)(a) and PD 1A, but I’m not so sure given the imperative nature of the order to attend court. In any event, clarity would be welcome.

CPR 71.5(2)

16. This requires the creditor to file the relevant affidavit or affidavits not less than 2 clear days before the hearing or to produce them at the hearing.
17. Sometimes this is not done – there is no affidavit filed by the time of the hearing. On other occasions, the affidavit is sworn before 7 days from the date

of service of the N39 have elapsed. The time is important, because the debtor has 7 days to request payment of travel expenses. It is very common for LiPs to make this mistake.

18. In either case, if the debtor does not attend, and properly completed affidavits are received too late, the court is, strictly speaking, prohibited from making a committal order. This is because CPR 71.8(2) requires (full) compliance with CPR 71.5.
19. I have routinely “excused” compliance with CPR 71.5(2) provided, of course, that by the time I make the suspended committal order I have the fully compliant affidavit or affidavits.
20. I simply do not understand the need for affidavits to be filed in the time specified, provided that they have been received before a committal order is made.

Conclusion

21. I appreciate that the CJC is interested in far more than the Oral Examination procedure. I nevertheless hope that this practical insight is of assistance.
22. Finally I set out below a couple of practice forms that I devised for the use of Judges which I found useful. The first is a check list to ensure that CPR 71.8 has been complied with. The second is a notice to send to the creditor if the affidavit was sworn before the elapse of 7 clear days from service of the order to attend court (N39). It will be seen that I am allowing the supplemental affidavit to be received outside the time allowed by CPR 71.5(2).

Service Date		Plus 7 clear days			
Date Sworn				Plus 14	
Date Filed		Plus 2 clear days (non-business		clear days	
Hearing Date		days do not count) [Excused]			

The Order was delivered on [Saturday] 202 and was deemed served on [that day] [the next business day namely 202].

The debtor had 7 days to request travel expenses, that is until the end of 202 . The Affidavit was sworn on 202 , which is too soon. The earliest it could have been sworn is 202 .

A supplemental Affidavit can be sworn.

HHJ Graham Robinson (Sitting in Retirement)
12 September 2024

