

DWF Law LLP Response to CJC Enforcement Working Group Call for Evidence

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While we wish to assist as much as we can with please be advised that some of the questions we were not in a position to answer.

Response: Public
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On behalf of? Yes
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Your experience and awareness of enforcement

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

All money claim enforcements as well as personal and corporate insolvency.

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

The major area is court delays in processing judgments and actioning different enforcement requests in a timely manner.

We find a barrier to enforcement on lower value Judgment (under £600) or those arising from regulated debts is being unable to enforce by way of Writ of Control and only being able to issue a Warrant of Control as we find the County Court Bailiff process very inefficient and slow.

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

Charging Order applications have a high chance of success when followed by Order for sale applications.

Writ of Control for commercial debts works well.

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

While not strictly speaking an enforcement technique, applications for Orders for Information have low success rates due to the courts not being able to actually get the Defendant to court for examination.

County Court bailiffs also have a very low success rate and extended times in reporting supply of debtor information.

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

Using the right Enforcement Officer, we find a Writ of Control to be an effective mechanism.

Admissions should be better policed and rejected if all relevant information is not completed on the means element of the form and the form could be better designed as currently it omits information that would be useful (bank account details etc.)

6) Are there be 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?

Yes removal of financial and regulated debt barriers to using High Court Enforcement Officers through the issue of a Writ of Control.

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?

Whilst here are now checks in place via the standard Directions Questionnaire regarding whether a party is vulnerable, transparent complaints processes would also assist the debtor.

8) Do you have experience of the court enforcement mechanisms interacting with debt collection outside the court system?

No.

9) Do you consider that the court enforcement mechanisms need to take into account debt collection outside the court system and, if so, in what circumstances and in what ways?

We consider that debt collection outside the court system should be roughly aligned to that within the court system – otherwise this presents as confusing for the public. Standards on vulnerability should also match.

10) If court enforcement is to take into account debt collection outside the court system, what practical steps do you consider should be undertaken?

As above, standards should at least be similar if not match for enforcement within and without the court system.

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 including the debt protocol and the PAP is therefore not addressed in these list of questions.]

There is likely little that can be done as this challenge is merely a consequence of the behaviour creditors have experienced during their collections and pre-action processes where these debtors have refused to engage with the process. Direction to debt advisors may assist but many debtors will fail to engage even then.

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);

No - increased bureaucracy and delay will ensue. Revealing other debts within initial court proceedings could prejudice a court against a Defendant (or Claimant) by reason of not being able to manage their affairs. Plus the parties can carry out means tests if they wish to. Also, what would happen if a party defaulted?

Additionally, assessment of whether a judgment could be satisfied is an inexact science and would be an opinion at a point in time. Circumstances do change so this proposal may also be misleading to creditors. Admissions should be better policed and rejected if all information is not completed on the means element of the form and the form could be improved as referenced above at question 12 response.

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

We do not consider (see 12) that at commencement of proceedings this information should be provided, so early in the proceedings. Exceptions are when the claim is backed by LEI, or defended or there is other insurance cover

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?).**

DWF have used the procedure for Order to obtain information to try and get hold of more financial information about Judgment debtors but often they are not successful as there are difficulties getting the debtor to court in the first place – they often don't attend in our experience. Harsher sanctions may assist, although tempered by any vulnerability considerations.

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?**

Usually not.

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?**

Currently there are no sanctions without a referral upwards in the court system to a High Court Judge so this leads to delay. It is unclear why there isn't an immediate sanction where there is no attendance.

17) **What would you consider to be an appropriate sanction/sanctions for a judgment debtor who fails to provide information to questions raised by the court?**

Contempt of Court would appear an appropriate sanction here.

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)?**

The latest contact details should be provided, whether represented or unrepresented.

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?**

Safeguards may include only disclosing information that a creditor would be able to access e.g. via an Information Order plus addressing any vulnerability issues.

20) **Should the court have a role, independent of any applications made by any creditor, in obtaining details of the debtor?**

Perhaps obtaining some basic income information (just on a scale) or fact checking issues such as bankruptcy might be appropriate?

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, certainly following a failed attendance at a CPR 71 information hearing.

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?

The current data protection regulations should be fine as long as it is clear what information can and cannot be accessed by the court and/or judgment creditor.

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 individuals with respect to financial information held by third parties, such as banks and credit agencies, and their privacy?

The DPA 2018 should be adequate protection.

25) Would you welcome a change in legislation to allow either (17) or (19) above, which would include safeguards suggested under (18) and (20) above?

N/A.

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?

Obviously vulnerable debtors need to be protected but the problem is they will regularly fail to identify as such or engage in the process until an enforcement crisis post judgment.

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

We believe that some basic advice recommending contact with Debt Centres or CAB is given, but little else.

28) **If so, what is that support or information?**

As above, signposting to advice centres is all that we are aware of.

29) **What, if any, (additional) information and support do you consider should be made available to debtors and at what stage?**

A carrot and stick approach could be undertaken, with more assistance being given to debtors who engage with the court process, such as telephone helpline or arranging debt management meetings. There should also be better signposting for debtors for details as to how they can access support.

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?**

Those with serious and genuine mental health issues, probably through evidence from GP or any charitable agencies attended. This would avoid fraud if verified.

31) **What do you consider the most efficient and effective ways of disseminating information to debtors?**

- i) through court documentation**
- ii) through court documentation at the time of judgment**
- iii) through bailiffs or enforcement officers;**
- iv) all the above?**
- v) any further means of communication.**

All of the above – given that the debtor may become engaged at any stage (or not as the case may be), the advice should be repeated at each stage of the court process.

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 facilitate early resolution?**

Yes, engagement should be encouraged.

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

CPR 71 Orders for Information hearings should carry greater and quicker sanctions for non-attendance. We consider that all debts even ones under £600 should be subject to High Court Enforcement Officers who are much more effective than bailiffs without the need to transfer up.

The Information Order process is costly for a creditor, time consuming and often results in inadequate information being supplied. This is caused by the need to personally serve notice of hearing(s) and frequent non-attendance by debtors. This is exacerbated when the information is finally obtained as, without creditor attendance, it often appears information provided is not checked for completeness or accuracy at the point of the attendance.

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

One suggestion would be to send to the debtor with the judgment a form or online portal to make an offer – however the offer would need their financial position fully disclosed and evidenced (linking with DWP were needed) and then the submitted form or online portal to make an automatic calculation (like in attachment of earnings applications) and generate an instalment order.

The calculation needs to balance creditor's interests so some areas of spending that are non-essential should be disregarded or weighted in favour of the creditor to produce a reasonable instalment.

35) Whether you consider there should be changes or not, what, if any, additional safeguards and advice should be given to debtors?

As we have said above, those with mental health or vulnerability issues should be safeguarded and advice should be given at all key points, along with further advice and help for those who engage.

36) Whether you consider there should be changes or not, what, if any, additional information should be given to creditors about methods of enforcement?

Creditors probably have enough information on enforcement choices.

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?

We have to accept, insofar as Default Judgments are concerned there is very little more that can be done to make/encourage these debtors to engage with the process. Often prior to the Claim a creditor has made numerous attempts to elicit engagement. Given the cost of legal proceedings, it isn't in a creditor's interest to rush into legal action, they're incentivised to resolve claims before that stage.

From the perspective of the debtor (we act for debtors and creditors), whilst the default Judgment itself contains a certain amount of information, if the debtor does not have the

Judgment the County Court Judgment register is next to useless in terms of tracing how that debt arose. Even the name of the claimant isn't on the register and we consider this needs adding so that debtors can challenge erroneous judgments when they don't have a copy of said judgment itself.

38) **Are there any other areas of enforcement that you feel could be improved and in what way and by which method(s)?**

As stated above, High Court Enforcement officers are more successful than bailiffs, Orders for Information rarely produce useful information and debtors often don't engage. Extra sanctions or penalties for failing to engage and more help for those that do may change this for the better.

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.**

No additional comments.

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.**

As above – no additional comments.