CIVIL JUSTICE COUNCIL

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 <u>must</u> include the following information with your response:

Your response is (public/anonymous/confidential):	Public
First name:	Angela
Last name:	Willoughby
Location:	Manchester
Role:	Head of Enforcement
Job title:	Head of Enforcement
Organisation:	Horwich Farrelly Solicitors
Are you responding on behalf of your organization?	Yes
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?

   General – Identifying assets, charging orders, attachment of earnings orders, warrant of control & 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?

   Obtaining of information from the Debtor in particular contact information

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

   Charging order applications. These tend to appear more serious and Debtors tend to be more willing to engage if they realise that their home could be at risk

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

   Warrant of control. From our experience the impetus doesn't appear to be there for CC bailiffs to go out and make a recovery. Updates are hard to obtain and poor when received

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

   It depends on the enforcement outcome required but we do find charging order applications most effective.

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?

   There should be an amendment to part 71 to require debtors to provide documentary evidence to support their responses.

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?

   In our experience it feels that debtors are already given a fair amount of protection as more often than not the onus falls on the creditor to counter any submissions made by debtors, rather than them proving their position, to see any results from enforcement.

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

   No

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?

   N/A

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

Supply of information about potential judgment debtors

11) <u>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.]</u>
There should be greater emphasis placed on the severity of enforcement actions to ensure that debtors engage rather than creditors having to drive forward faced with no response.

12) <u>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);</u>
Whilst greater provision of details of the parties involved in enforcement is needed, this places a great amount of the onus on defendant's in claims. As a defendant firm all of our enforcement takes place against claimants. If this were to be implemented all of our clients would be required to provide this information which would then create no more benefit than the current situation when we come to enforce. In addition if an insurer has been sued what information would realistically be required here.
Maybe an appropriate time to require this information is at the point judgment is entered and an order to provide details be made, or an amendment to the CPR that if a judgment is not satisfied in a certain period there is an obligation to provide information, which the debtor must comply with.

13) <u>If information about the means of a potential debtor is sought early in proceedings, what information would you consider to be helpful?</u>
Salary; job title, description and contact details; home owner status; details of savings accounts, details of bank accounts
This information should be required but should the courts implement more stringent methods in enforcement for collection of this information it could be provided at the commencement of enforcement action. Or as a pre-cursor to potential enforcement action by way of preliminary application potentially. If it was to be provided within early proceedings there would need to be consideration of insurance matters where an insurer is indemnifying a defendant meaning no personal details of the defendant are required and both claimant and defendant must provide details as both could be subject to later enforcement action.

14) <u>What experience, if any, have you had with making use of the provisions of CPR part 71 (orders to obtain information from judgment debtors)?</u>
We have used this method

15) <u>If you have used the provisions of part 71 to obtain information about a judgment debtor's means, have you found the process effective?</u>
No.

16) <u>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?</u>

We found that the Debtor was able to just answer questions on paper and wasn't put to proof on any of the answers 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?
The current sanctions (contempt of court) are satisfactory if upheld but only on the basis that the judgment debtor is required to provide sufficient evidence in support of their responses, rather than blanket reliance being placed on the information provided.

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)?
Yes, information provided should be everything stated in answer to question 13

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?
The information can be held at the court and only released if the Debtor defaults on payment and the applicant able to sufficiently prove their need for the information based on their being a creditor.

20) Should the court have a role, independent of any applications made by any creditor, in obtaining details of the debtor?
Yes, at the point judgment is entered and an order to provide details be made, or an amendment to the CPR that if a judgment is not satisfied in a certain period there is an obligation to provide information, which the debtor must comply with.

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?
The information can be held at the court and only released if the Debtor defaults on payment and the applicant able to sufficiently prove their need for the information based on their being a 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 the individual with respect to financial information held by third parties, such as banks and credit agencies, and their privacy?
The information can be held at the court and only released if the Debtor defaults on payment and the applicant able to sufficiently prove their need for the information based on their being a creditor.

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?
N/A

Support for debtors

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

Yes

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

We provide debtors with the details of the CAB

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

It would be useful for debtors to be aware of the sanctions which may be levelled at them (on the basis those sanctions are implemented) to assist with getting them to actively engage in the process and hopefully reach satisfactory conclusion for all involved. This could be in the form a standard guidance doc from the court to be served on them when enforcement is commenced.

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?

There will be vulnerable debtors who should be able to self-declare. There should also be a process by which all parties involved in the enforcement are able to declare if they believe a party is vulnerable. Upon a vulnerable party being identified they should be offered support in the same way an individual party to litigation would be, by assistance from any professional parties involved and/or a "litigation friend" or similar. That said there must be protections around debtors being able to use this as a way of escaping paying their debt, in the same way there are for those that require litigation friends in litigation.

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?

iv) all of the above – court documents are particularly important to convey the severity of the situation to debtors to avoid the process escalating through them ignoring the matter

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?

Advice is already available through CAB, in an ideal world additional support that may drive to early resolutions would only assist, however the reality of funding for this and the advice being sufficiently impartial may hamper efforts to provide this.

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?

Yes

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

More online access. Most are still paper based which is time consuming and can be problematic when it comes to service of documents.

Processes in place to obtain party details.

Requirement that evidence is provided by debtors in support of responses.

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

Debtors should always be pointed towards support and clear advise documents from the court relating to enforcement processes and appropriate bodies to assist them could be provided.

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

Clear guidance should be given on available methods and how to utilise to support individual creditors looking to enforce.

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?

Clarity from the beginning as to sanctions should each stage of the process be ignored, so people are aware at the start the worst case scenario for them which would hopefully encourage engagement to avoid that. In addition debtors should not be taken at face value over creditors, sanctions should be implemented as they are defined and the process should be upheld with debtors made to provide evidence etc where appropriate to avoid creditors having to progress their enforcement using potentially unnecessary means.

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

N/A

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.

There should be an amendment to part 71 to require debtors to provide documentary evidence to support their responses.

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.

There should be an amendment to part 71 to require debtors to provide documentary evidence to support their responses.

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].