

CJC Enforcement CfE: a response from Citizens Advice across Warwickshire.

(September 2024)

Introduction.

This response comes from 'Citizens Advice across Warwickshire' - a coordinated effort from Citizens Advice South Warwickshire, North Warwickshire Citizen Advice, and Brancab (Bedworth, Rugby and Nuneaton CABx) to "make our clients' voices heard" by decision-makers and influencers on matters that affect our service users and the wider community.

It emerges from internal discussion with specialist debt advisers and generalist advisers in contact with those affected, and after an interrogation of internal client case databases.

The views expressed below reflect those of our front line advisers.

Your experience and awareness of enforcement

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

As a Research and Campaigns Lead at a local Citizens Advice office my role entails listening to front line advisers and specialist debt advisers about what they see on a day-to-day basis. I am not a debt adviser and have never worked in debt enforcement. The responses below reflect the views of advisers who have day-to-day experience of all aspects of civil enforcement.

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

Our advisers believe the process is "un navigable" and "labyrinthine" to their clients - whether seeking to enforce a judgement or satisfy one. This is illustrated, for them, in the "archaic" or "prehistoric" nature of the forms required to be completed, a lack of clarity in which forms are relevant when, and issues in particular with the 'means assessment' process.

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

As we are not a significant part of the debt recovery process, from the enforcement side, we are not in a position to answer this question.

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

As we are not a significant part of the debt recovery process, from the enforcement side, we are not in a position to answer this question.

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

As we are not a significant part of the debt recovery process, from the enforcement side, we are not in a position to answer this question.

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?

Putting aside the strengths or weaknesses of individual enforcement mechanisms, we believe the initial stages of the enforcement process should be more transparent to those affected, should be clearer to those affected, and should allow debtors more time to either seek independent expert advice support or at least notify enforcement staff of relevant vulnerabilities or life circumstances they are subject to which could affect their ability to pay or their ability to communicate effectively with enforcement staff going forwards.

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?

More efforts should be made before the gears of enforcement are activated to identify and act upon potential debtor vulnerabilities. Our advisers believe it is crucial in delivering 'fair and effective' outcomes to identify the wider circumstances of those affected by these processes inasmuch as they may impact equitable debt recovery.

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

Court enforcement mechanisms, with few exceptions, are concerned with driving an equitable and just recovery of debt. Information about debtor circumstances are sought in order to facilitate better communication and the generation of affordable repayments or alternative recovery activities. All court-based efforts are underpinned by the notion of ensuring a fair balance of the interests of the creditor with the debtor. When recovery activities move outside the court environs it is not easy to guarantee that balance is reflected in the practice of all enforcement agents.

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?

Our advisers believe it is important to encourage consistency in behaviour between enforcement practices inside and outside the court system. Sharing, encouraging, and enforcing simple behavioural standards, such as forbearance and proportionality, will bring enforcement agents into better alignment with court intentions and foster more confidence in the system from those subject to its rules.

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

The behavioural standards of all enforcement agents (alongside their employers) must be reviewed, enhanced and enforced in a way that complements the intentions of the court enforcement system. We hope that this exercise is already underway, to some degree, with the Enforcement Conduct Board's current review of national standards for Enforcement Agents and Agencies.

Supply of information about potential judgement debtors

11) What steps, if any, do you consider the court could and should undertake to encourage greater engagement of potential judgement 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.]

Our advisers believe more efforts must be made, via pre-contact mechanisms, to persuade debtors that it is to their benefit to understand and engage with the enforcement process.

It must be made clearer to them (information about the process must be made clearer) what they are getting involved in, what the potential penalties may include, but also the potential “off-ramps” that are available to them as well as the long term benefits of engagement. But this cannot be done through threatening or intimidating language or behaviour, however subtle or indirect (or legal). Threats don’t work, witness the preamble to this question, despite the well rehearsed adage that “unfortunately it does”.

More importantly, because it comes earlier in the process, more efforts must be made to identify potential vulnerabilities amongst debtors and act in accordance with those vulnerabilities. Identifying debtor vulnerability is often portrayed as counterproductive because it will be used as a shield to prevent recovery action, but this should not be the case.

Vulnerabilities vary and vulnerability does not mean an inability to pay. What it means is that vulnerable debtors, depending on the type and extent of their vulnerabilities, must be effectively protected from unsympathetic recovery action. Better protected vulnerable debtors will repay debts sustainably without undue (non-financial) costs to themselves. Poorly protected debtors with unidentified and / or ignored vulnerabilities will not pay, hence the “high number of default judgements”.

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 judgement? (For example, by specific questions being included in the Directions Questionnaire, including details of any debts being enforced outside the court system);

Yes, but - with reference to the previous answer - this information gathering should be focused on the wider barriers to effective engagement with the process, not just how much money the debtor has at their disposal.

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

See the answer to the previous question. Information gathering should also include indirect barriers to effective repayment such as: mental health issues, caring responsibilities, housing pressures (eg, do they have security of tenure), ongoing health costs of the debtor or their dependents, the extra costs of geographical isolation (eg, living in a rural or isolated area) etc.

The court, and eventually the creditor, is better served by knowing what needs to be known about the debtor and their ability to pay; and ability to pay must be redefined in terms of the debtors capability to pay.

14) What experience, if any, have you had with making use of the provisions of CPR part 71 (orders to obtain information from judgement debtors)?

None.

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

Suggesting or requiring a sanction for non-compliance assumes the debtor chooses not to comply. The experiences of our advisers tells us there are many reasons why engagement doesn't happen; most of which relate directly to vulnerabilities not identified or ignored by the court or creditors. Unless there is reasonable evidence to show non-compliance is deliberate there should be no sanction for it. Alternative ways, ones which allow for the possibility that the debtor may be suffering from vulnerabilities not identified by the court, should be explored to encourage compliance. Sanctions should only be considered for debtors who deliberately do not engage.

18) If judgement is obtained, should the court provide details of the judgement debtor with the claimant at the time of judgement and, if so, what details should be provided (if any)?

The court should only share debtor details with the claimant a) inasmuch as they may support a more effective **and** sympathetic recovery of debts owed, and b) with the debtor's permission (there may be private details the debtor may not wish to share even to their own detriment). This should be their choice.

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?

See the answer to the previous question. A debtor's lack of permission should only be able to be overridden by a court acting in the best interests of the debtor, not the claimant.

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

Yes, the court should take the primary role in information gathering, storing and sharing; as a credible independent actor in what is (can be) in some respects a form of mediation / arbitration. The lack of a prominent role for the court contributes to a common view among debtors that the role of the court is to side with the creditors to bully debtors into unsustainable repayments knowing that default will lead to more drastic enforcement action.

21) Should the court and/or the judgement creditor be given access to information held by HMCTS and the DWP (or other government departments or agencies) to gather financial information on the judgement debtor?

See my previous answer. The court should take the role of the information gatherer and it alone, with the debtor's permission, should determine what can be shared with the creditors.

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?

See my previous answers.

23) Should the court and/or the judgement creditor be given access to information held by third parties, such as banks and credit agencies, to gather financial information on judgement debtors?

See my previous answers. Judgement creditors should play no role in information gathering or in deciding who the information is shared with.

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?

See my previous answers.

26) What other protections do you consider should be available to the judgement debtor to prohibit all, or some, financial information being available either to the court or to the judgement creditor?

See my previous answers.

Support for debtors

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

We are not aware of any statutory support available to debtors following a judgement.

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

It must be made clear to those subject to a judgement what the 'next steps' are should they fail to comply with court orders. It should be made clear to those subject to a judgement how to engage effectively with the court or enforcement agents going forward. Finally, it must be made clear to those subject to a judgement what alternative sources of free independent advice and guidance is available to them to seek alternative perspectives. Vitally, all this information should be available in a format (braille, easy-read, alternative languages, etc) suitable for that debtor and in a tone that encourages rather than discourages them from taking action.

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?

See above for content relevant to this question.

'Vulnerabilities' come in a vast range of combinations and guises (financial, mental health, physical health, social, psychological, etc). Each combination requires identification and response.

Contrary to implied industry assumptions, identifying vulnerability is not (or should not be) a "get out of jail free" card for those affected. Responding to a debtor's particular vulnerabilities sympathetically (not just emotionally but in practical terms) will ensure more affordable and more sustainable debt repayments.

Where repossession is required it will ensure tasks are carried out with the minimum of trauma for those affected and with the maximum efficiency. This benefits all parties.

Recovering debts is a traumatic experience for any debtor. It must not be made more traumatic in the name of industry efficiency, cost savings or a lack of appetite for those participating in enforcement to understand their subjects.

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 judgement;**
- iii) through bailiffs or enforcement officers;**
- iv) all the above?**
- v) any further means of communication?**

All parties benefit from the clear and transparent dissemination of relevant, accurate and timely information as soon as possible.

Debtors benefit the most from early knowledge of what's happening when, as they are the subject of enforcement action. They need as much time to seek independent expert advice as can be afforded them.

Debtors, in the view of our advisers, should be receiving information only from the court once the first element of enforcement action is taken. Only the court carries the reputation for independent credibility and authority that debtors need to feel they are not being threatened.

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 - but the court must keep itself aware of the practical difficulties in accessing such support from organisations under their own capacity stresses.

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?

The status quo cannot go on. The high number of default judgements, the number of clients we see who come to us as bystanders in a process they are the central characters in, the issues trained advisers have navigating out-of-date forms and processes, all militate in support of an overhaul of an "antiquated" system.

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

Changes must focus on slowing the initial steps in enforcement down so that the subjects of enforcement can better engage with and respond to what is being asked of them. More efforts must be made to identify debtor vulnerabilities and debtors should be treated differently according to their vulnerabilities. This does not give "the vulnerable" a free pass to ignore debt recovery. A reformed process means more debtors come to more affordable and sustainable payments with less trauma than currently. Creditors get their money, or as much as can be reasonably expected (based on a court decision), and debtors find a path forward to a more sustainable future; to the wider benefit of society as a whole.

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

See previous answers.

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

See previous answers.

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 judgement debtors) to engage in the court process at an early, or any, stage?

See previous answers.

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.

Rather than expanding at length on points made earlier we would prefer to reiterate key phrases emerging from our front line staff that reflects their core views on this topic.

Currently, they believe their clients find the system of enforcing money judgements 'labyrinthine' and 'un navigable'. They, themselves, feel varying degrees of confidence in understanding the relevant processes, forms and options available to them in service of the clients they serve; despite their training.

They believe that, for the most part, by the time they (as advocates) see clients caught up in the enforcement process, collection processes are already well underway and preventative or effective mitigating options are no longer available. The work of advisers then seems to focus on mitigation at the margins (for example, generic budgeting and income maximisation exercises) and on merely explaining to clients what is happening to them.

Finally, as a broad brush comment, they view the current forms and processes around them as 'archaic' and, in the words of one adviser, "prehistoric". Related issues, such as the assessment of 'means' and 'affordability' come in for similar criticism.

Note.

It was felt that the questions posited in this call for evidence seemed to be, from our advisers' perspectives at least, biased towards the needs and preferences of creditors and those tasked with enforcing judgements.

While, on reflection, it was recognised that Citizens Advice staff do also deal with clients who sit in the 'creditor' camp - for example, those chasing Employment Tribunal awards or those chasing Child Maintenance payments - it was felt that our primary concern is supporting those subject to the sharp end of the enforcement process.

Consequently, efforts couched in the desire to achieve "fair and effective regulation" in this field have been interpreted by our advisers as efforts to achieve regulation that enables

creditors and enforcement agents to work more quickly and with fewer barriers to progress in collecting debts. This, our advisers believe, is not only **not** in the general interest of creditors (for good faith reasons) but would also be counterproductive to the sustainable and affordable recovery of debt within regulations that should also protect the vulnerable from undue or unfair practices.

This broad assumption, that quicker more seamless enforcement is better, also seems to belie a deeper (and older) assumption that most debtors can pay but choose not to. Barriers to the efficient recovery of debt, therefore, are framed as struggles between 'righteous' creditors and 'undeserving' debtors.

Placed in this moral framework it is easy to side with the 'righteous'. Anyone involved in debt recovery, however, knows this framework to be inaccurate.

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.

Our advisers, understandably, support the adage "more haste, less speed" when it comes to civil enforcement of money judgements. Their experience tells them that trying to make the enforcement process quicker, more seamless and more efficient will not better serve justice (even if it seems more attractive to the enforcement community) and will risk either making enforcement take longer in practice or speed up enforcement at an unjustifiable cost to the debtor.

Debtors owe money but that doesn't mean they waive rights to be protected. They need to be clear what they owe to whom. Creditors need to know what debtors can afford to repay sustainably without disproportionate costs to their ability to continue to feed, heat and house themselves. Both parties need to be clear 'what comes next' if agreement is impossible to reach. All parties need to feel they are being treated fairly, and haste benefits no-one.

Our advisers believe there is considerable room to update forms, clarify processes and make aspects of the entire experience more transparent, in advance, for those either contemplating entering the enforcement process as creditors or subject to enforcement processes as debtors.

Our advisers believe "fair and effective regulation" must balance the rights of debtors with those of creditors and does not automatically place recovering "every penny owed to a creditor" as quickly and cheaply as possible as the primary objective of enforcement action. Debtors remain people with families to care for, health issues to manage, and other pressures to bear. This understanding should be embedded in any improvements to current processes aimed at delivering a civil enforcement regime fit for the future.

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