



Civil Justice Council Enforcement Working Group: Call for Evidence

A response by
The Chartered Institute of Legal Executives
(CILEX)

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Introduction

CILEX would like to take the opportunity to respond to the Civil Justice Council Enforcement Working Group's Call for Evidence as representatives of a substantial number of civil practitioners within the civil enforcement sector. Please be advised that CILEX will not be commenting on the support for debtors or any debtor related question. CILEX does not believe that the number of CILEX members practicing in this area is sufficient to be a meaningful sample of evidential experience for the submission.

The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive Lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).

CILEX represents over 17,500 members of which 77% are female, 16% of members are from an ethnic minority background, 4% are LGBTQA+ and 6% have a disability. Additionally, in terms of social mobility, 77% of CILEX members attended a state-run or state-funded school and 41% have an undergraduate university degree (of which 63% of those members were the first to attend University).

Experiences and Awareness of Enforcement

1. Out of the listed enforcement areas, CILEX members had experience in eight out of the possible nine enforcement mechanisms. Contempt of Court proceedings being the area in which members did not declare that they had experience in this area.
2. 75% of CILEX members stated that they had encountered barriers when seeking to enforce or satisfy a judgment. CILEX recognises that there are barriers in proceedings that are difficult to manage, such as debtors leaving the country and hiding possessions that are due to be seized. However, court delays in drafting and sending judgments and/or orders is a continuing barrier that is faced in proceedings. This could be prejudicial to the Claimant's ability to enforce, as debtors have more time to dispose of assets, go into a Company Voluntary Arrangement (CVA) or Creditors' Voluntary Liquidation (CVL). CILEX hopes that these barriers can be overcome by uploading a copy of the judgment in default to Money Claim Online (MCOL) and providing both parties with a copy of the written judgment and/or order.
3. Out of the nine enforcement mechanisms, CILEX believes that Warrant of Control and Writ of Control are the most effective. Warrant of Control is highly effective where a debtor does not own the property in which they reside, and therefore, the possibility of other possessions could be seized and/or sold can encourage debtors to pay the debt or enter into a payment arrangement. Additionally, CILEX notes that for Writ of Control Orders, the Court issues these very quickly to allow the enforcement officers to proceed through the various enforcement stages more efficiently. This produces a more productive response and assists where barriers such as change of address arises.

4. In comparison, CILEX believes that the least effective enforcement mechanism is general enforcement proceedings. This is due to the limited amount of information that is available to creditors. CILEX is aware that debtors do not always declare or divulge the extent of their assets. With the limited information available in the public domain, this hinders the recovery of payment. CILEX hopes that more detailed information surrounding a debtor's financial circumstances will resolve this issue to ensure all enforcement methods are equally efficient.
5. CILEX is cautious in agreeing to the promotion of a single enforcement mechanism as being the most effective, as it is often case-specific. By focusing on ensuring each enforcement mechanism is equally efficient, a review on a case-by-case basis should be promoted as best practice as opposed to promoting a single enforcement mechanism.
6. Although most effective, CILEX believes that Warrant of Control and Writ of Control should be amended/varied to make the enforcement mechanism more efficient. CILEX recommends that the High Court Enforcement Officers be made responsible for all monetary judgments, as opposed to reliance on County Court Bailiffs. CILEX understands that the County Court Bailiffs are overwhelmed with high volumes of work, and do not have opportunity to make meaningful contact with debtors. By allocating the sole responsibility of monetary judgments to High Court Enforcement Officers, who already have the responsibility of all debts exceeding £600, ensures a more balanced resource allocation and higher quality engagement from debtors, creating a more harmonised enforcement process.
7. CILEX has a number of practitioners with experience of court enforcement mechanisms interacting with debt collection standards and practices outside of the court system. CILEX completely agrees that these practices should be considered by the Court systems more widely. CILEX recommends that active research on the attributes of the debt collection system should be conducted to analyse what performs well. This should then be integrated into the current court systems as a sufficient way to ensure that the court systems begin to work collaboratively, streamlining the enforcement process.

Supply of information about potential judgment debtors

1. CILEX appreciates that encouraging greater engagement is a difficult and complex process and acknowledges that the Court is limited in its powers as to how it can improve engagement of debtors. CILEX does recommend however that there be additional signposting to free organisations for assistance to debtors, whether this is for debt management advice or for assistance when receiving a Response Pack. Additionally, CILEX would like to stress that due to the Court's limited resources, establishing early in the litigation process whether a debtor can pay a judgment can avoid both time and money resources that are better utilised for those debtors who can settle their outstanding payments and choose not to engage in the process. CILEX hopes that a more thorough investigation into the debtors' financial circumstances prior to litigation may enable more time for creditors to encourage debtors where the proportionality of recovering the judgment debt is much higher.

2. CILEX strongly agrees that the Court should require details of a Defendant at the commencement of proceedings to ascertain whether they could satisfy a potential judgment. CILEX appreciates that whilst there are considerations that should be made, such as the requirements and exemptions under GDPR, overall CILEX is supportive of this information being made available. Knowing this information upfront ensures that creditors can assess the best course of action in the litigation process, avoiding emotional distress and ensuring a better use of resource from an overworked profession. CILEX recommends that the ability of a Defendant to satisfy a potential judgment should be considered within the directions questionnaire. CILEX believes that in doing so, details of other debts can provide assistance to the Judge in making their decision. CILEX hopes that the data could be shared with other agencies such as the Department of Work and Pensions (DWP) and the Defendant's local council, as this will be of assistance should the Defendant encounter future litigation for another matter.
3. In providing information about a Defendant at the commencement of proceedings, CILEX would like to see whether the debtor has other County Court Judgments (CCJs) registered against them, if they are employed or working, their income and their expenditure. Furthermore, CILEX believes information surrounding the debtors' assets and any other debts would be useful to the Court.
4. Having several practitioners with experience making use of the provisions of CPR Part 71, CILEX has the most experience with orders to attend Court, service of an order and adjournment of a hearing. CILEX has found the provisions of CPR Part 71 to be helpful in the enforcement process. CILEX recommends that the provisions be changed to impose sanctions upon debtors that fail to provide the information requested of them at the hearing, this is particularly the case where it is apparent the debtor is not being cooperative.
5. CILEX believes that summons to Court for questioning is an appropriate sanction for a judgment debtor who fails to provide information to questions asked by the Court in the first instance. Should the Defendant then fail to provide the information when appeared in front of the Court, Contempt of Court proceedings should be initiated.
6. CILEX strongly believes that if judgment is obtained, the Court should provide details of the judgment debtor with the Claimant at the time of judgment. CILEX believes this would be useful for the Claimant to have details of any other debts that the Defendant has, the Defendant's means to pay a judgment debt, alongside a list of assets and the recoverability of the debt.
7. CILEX believes that the Court and/or judgment creditor be given access to information held by HMCTS and DWP (and other government departments or agencies). CILEX hopes that providing this information to creditors will help create an accurate representation of the debtors' financial circumstances.
8. CILEX feels that there is currently sufficient information available to Creditors surrounding the methods of enforcement.

Any Proposed Improvements

1. CILEX feels that there should be changes to the current system of enforcing judgments. It is apparent to CILEX that the customary approach of evenly supporting both debtors and creditors seems to be tilted in favour of debtors. CILEX wishes to raise that creditors are often faced with significant working pressures and feel that their obligations to debtors is only increasing onto their workload without reciprocation. Whilst CILEX acknowledges and appreciates the importance of supporting debtors in an emotionally turbulent time, CILEX hopes that the system can be returned to supporting both creditors and debtors evenly.

Summary

CILEX is pleased to see that the Civil Justice Council Enforcement Working Group are gathering evidence to improve the enforcement process. CILEX hopes that the information gathered will seek to create a more transparent and efficient process to ease the pressure from creditors, debtors and their agents respectively.