TAKING CONTROL
The campaign for bailiff reform

Coalition response to the Civil Justice Council Enforcement Working Group Enforcement call for evidence September 2024

About us

We welcome the opportunity to comment on the Civil Justice Council Enforcement Working Group Enforcement call for evidence. This response has been submitted by the Taking Control coalition campaign for bailiff reform.[1] Taking Control is a coalition of civil society and debt advice groups[2] campaigning for independent regulation of the bailiff industry and other reforms to ensure fair and appropriate treatment of financially vulnerable people facing debt enforcement.[3]

This response has been endorsed by and should be treated as a response by each of the following organisations.

- AdviceUK
- Citizens Advice
- Christians against Poverty
- Community Money Advice
- Debt Justice
- Institute of Money Advisers
- Money Advice Trust
- PayPlan
- StepChange Debt Charity

Please note that we consent to public disclosure of this response.

[1] https://www.bailiffreform.org/

[2] Members of the Taking Control coalition include Advice UK; Christians Against Poverty; Citizens Advice; Community Money Advice; Debt Justice; The Institute of Money Advisers; Money Advice Trust; PayPlan; and StepChange Debt Charity.

[3] https://www.bailiffreform.org/storage/app/media/Taking%20Control%20report%20March%202017.pdf

Introduction

We welcome the opportunity to respond to the Civil Justice Council call for evidence on enforcement in the County Court. We understand that the Civil Justice Council has a statutory duty to review the civil justice system to make it "more accessible, fair and efficient". As a group of charities, we hope to present our insight from our experience of working with people in debt. In our response, we have set out some proposals we believe would improve the court process for both defendants and claimants and help to meet the aims of the Civil Justice Council review. We hope these proposals will be helpful in framing the debate.

- We would like to see clear principles set out by HMCTS, establishing how HMCTS goes about the enforcement of debts, particularly against people in multiple debt and in vulnerable circumstances. This would help all parties to understand what is expected of them and what the court expects.

- As a general point, the use of the term "debtor" can be unhelpful, and we would fully support changing the word debtor to defendant. The term "debtor" tends to stigmatise people with debt problems who are already dealing with shame and stress. If at all possible, it would be better to use 'consumers' or 'people in debt' but in this context, 'defendant' might be the best option.

- There is an acute disparity of legal knowledge and access to justice for people in debt who are defendants in debt claims. Generally, claims for money in the County Court are between commercial consumer credit firms, utilities providers water companies, private parking firms and individuals in debt, who may be vulnerable due to their financial circumstances, and dealing with multiple debts, mental or physical health problems and a range of other issues. This means that there is a substantial inequality between the resources and capabilities of claimants and defendants in debt claims.

- This can create an imbalance in access to justice for defendants using the court system. They will be at a serious disadvantage in navigating the requirements and risking costs by taking action, which will prolong the stressful experience of litigation and risk substantial expenses. Generally, money claims are not contested by defendants. Even if there may be a defence case relating to the balance owed, fees and charges, the debt being statute-barred and so on, in many cases defendants do not engage or reply to the court claim, resulting in a forthwith judgment for the full amount owed.

- We would suggest that HMCTS looks at taking undefended debt claims for consumer credit accounts out of the court enforcement system as far as possible and reserve court enforcement for those who have subsequently failed to engage with the court, lenders and advisers as required.

- There should also be attention paid to the needs of claimants who are not traditional large consumer credit firms. Citizens Advice in particular supports claimants trying to recover employment tribunal awards. Business Debtline supports small businesses who may be in dispute with other small traders. We believe that the enforcement system should be simple and straightforward to use. Simplification of processes and the use of simple English in revised guidance and forms will benefit both claimants and defendants. The use of technology to filter cases and streamline the system to make enforcement simpler for people to use will save on enquires to courts, court time and confusion for claimants and defendants alike.

- We would like HMCTS to review the impact of court fees on people who are on lower incomes, facing vulnerable circumstances and who have multiple debts. People in these situations may not be able to afford court fees for applications even if they are not eligible for fee remission. More than two in five (43%) National Debtline clients have deficit budgets. Almost seven in ten National Debtline clients (67%) have at least one 'priority debt' which is typically a household bill. On average, our clients have 2.5 priority debts and 4.8 non-priority debts.[4] This makes it particularly hard for these groups to find the money to pay for court fees. A forthcoming report from StepChange Debt Charity highlights how financially and otherwise vulnerable people can feel pressured to respond to debt enforcement in harmful ways, such as falling behind on other bills or borrowing to meet unaffordable payment demands.

- Furthermore, nearly half (46%) of people in problem debt have a mental health problem. During the pandemic, people with mental health problems were over three times as likely to have fallen into problem debt than the wider population (15% compared to 4%). They're more likely to be in debt for more significant amounts and are nearly twice as likely to owe more than 50% of their annual net income

- We would therefore like to see mechanisms put in place to mitigate the risks of people having to make court applications to set aside judgments which they are not aware of, prevent statute-barred cases getting to court, minimise the numbers of people who have to apply to suspend warrants and writs, or have to apply to vary payments must be prioritised.

We are concerned that the paper could be interpreted as framed around and focussed on the views of creditors and enforcement agencies. We hope that the CJC will highlight responses from the perspective of defendants and their advisers in particular. We suspect there may be a comparatively large number of creditor responses to this paper. Creditor bodies are likely to have more time and resources to respond to a consultation than a small debt advice charity with limited resources. We hope that you will take this into account.

[4] 2024 National Debtline client survey https://moneyadvicetrust.org/wp-content/uploads/2024/07/Broken-Budgets-Money-Advice-Trust-July-2024.pdf

Responses to individual questions

Your experience and awareness of enforcement

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

Free debt advice services provide advice to people in multiple debts in a variety of ways. This can vary from telephone and online advice to face-to-face advice. In some cases, individual caseworkers can assist with court form completion and even represent their clients in court, particularly in possession cases.

Debt advisers will have extensive experience of giving advice on responding to county court claims, pre action protocols, varying payments and enforcement methods. We will typically provide advice on suspending warrants and writs, dealing with charging order and attachment of earnings applications, and provide advice on return of goods orders for hire purchase vehicles. We also advise on creditor bankruptcy petitions, time orders and possession claims.

Debt advisers will not usually provide detailed advice on defending court claims but may advise on setting aside judgments where appropriate.

The free debt advice sector works to encourage early intervention in debt problems by seeking advice early and by lenders being proactive to identify those who need advice. It is recognised that early intervention achieves the best results and means that clients get the advice they need when they still have the most options available to them and not at a crisis point such as an eviction hearing or an order for sale.

However, it is clear that people can face a number of barriers to both reaching out to their creditors and seeking help from debt advice. For instance, StepChange research found that people in financial difficulty were reluctant to talk to their creditors because they didn't think it would help, or would make things worse, or were worried about the impact on their credit score/ access to credit among other reasons. Feeling embarrassed and stigmatised by their financial difficulty was another common barrier[5]. StepChange research also found the tone, presentation and messaging in creditors' communications (including legal language perceived as scary) created barriers to engagement. People said they delayed seeking debt advice because they were not sure how it could help them, or the were not in a fit state to help themselves, among other reasons.[6]

So, while early engagement is important, debt collections and recovery processes are not necessarily encouraging vulnerable people to reach out for help and in some cases are helping to drive disengagement.

---

[5] StepChange Debt Charity (2022). *Falling behind to keep up: the credit safety net and problem debt.*
[6] StepChange Debt Charity & Amplified Global (2022). *Mixed Messages: Why communications to people in financial difficulty need to offer a clearer, better route to help*

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

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

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

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

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?

Yes, we have set out our thoughts in relation to how enforcement mechanisms can be amended throughout our response to the questions below.

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?

We have set out our thoughts throughout the response.

We would like to see a mechanism put in place that would allow the court to look at an individual's debt picture as a whole, rather than just looking at the judgment debt individually. Ideally, this would be at the pre-action protocol stage with referrals to free independent debt advice.

One idea would be to phase the court process into further stages. This could involve the defendant accepting the claim as a first stage but then more time would be allocated to responding to a court-run information order stage, working out a budget, offers of payment and referral to debt advice where there are multiple debts. This would help resolve the issues earlier in the process and save the courts and creditors time and costs in fees and further court enforcement processes.

The wording of court forms and guidance should be reviewed and simplified with the aim of encouraging people to engage with the court process. Clear signposting to sources of advice should be included as a matter of course.

A holistic approach could include the court being able to grant breathing space under the debt respite scheme *of its own motion* and refer to a free debt advice provider, potentially for a debt option such as a Debt Relief Order, on the basis of information provided, rather than proceeding with enforcement. This would require changes in legislation to achieve. In the meantime, the courts could signpost people to sources of free debt advice for breathing space and debt solutions.

There needs to be a centralised and consistent approach across courts to interpretation of the rules and procedures relating to enforcement. There should not be inconsistencies in

how individual local courts behave such as the issue with how local courts interpret the rules on suspending high court writs.

We would favour a straightforward standardised mechanism for establishing income and outgoings to be used throughout HMCTS processes such as using the principles behind the MaPs Standard Financial Statement (SFS).[7] This would allow processes to be streamlined to ensure that financial information is gathered and used in the same manner from replying to court claims to enforcement of judgments.

The style and format of the SFS should be built into public facing court forms where a statement of means is required, such as the N9A, the N245 and so on. This approach has been successfully adopted in the Insolvency Service bankruptcy, Debt Relief Order and debt respite scheme application process, and the Debt Arrangement Scheme in Scotland. The advantage of introducing a consistent method of presenting income and expenditure is that clients can be assured that standards for what is an acceptable budget would not vary from one debt management scheme to another and from one enforcement method to another. It also allows the courts to receive consistent, accurate information about the applicant's financial situation and ability to pay.

The use of the SFS is, we understand, currently under consideration by HMCTS. It is already incorporated into the pre-action protocol for debt claims.

A recent review by HMCTS of county court forms with statement of means information found inconsistent budget information requirements between forms, and use of outdated terminology. The other major issue is that the determination of means guidelines have not been updated for many years. Adoption of the SFS across the county court in determination of means and through enforcement processes would assist all parties. We believe there would be benefits for our clients if the courts were to accept affordable payments using the SFS or at very least a consistent approach to budget creation. In addition, creditors would be able to rely on sustainable repayments and an order that is less likely to be defaulted upon. This would assist the courts in minimising further time and costs in administering enforcement measures.

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

As the free debt advice sector, we have extensive experience of debt collection standards and practices outside the court system.

However, the courts will vary as to how they will take into account external standards and practices such as the FCA CONC rules, or the consumer duty, or the standards set by utility sector regulators. We believe that the rules and standards set by sector regulators should be relevant to the court's consideration of claimants' pre action and pre-enforcement conduct. It is not clear whether Financial Ombudsman rulings should be treated as precedent or followed in any way within the court system as it stands. This should be reviewed.

[7] What is the Standard Financial Statement? | SFS (moneyadviceservice.org.uk)

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?

We would very much support court enforcement mechanisms taking into account debt collection standards and practices outside the court system.

We work with FCA authorised lenders who have to follow the FCA high level principles and standards as well as specialist sourcebooks such as the Consumer Credit sourcebook (CONC).[8] These set out the FCA rules in relation to debt collection. There are requirements on FCA authorised lenders that could be referenced in court enforcement. For example, lenders should follow CONC 7.3.6 (G).

Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.

Under CONC 7.3 firms should:

- Deal fairly with customers in arrears or default;
- Follow rules to treat customers with forbearance, including allowing token payments;
- Firms should refer to free and impartial debt advice;
- Should hold action under breathing space;
- Look at pursuing of statute-barred debts; and
- Have regard to the Common Financial Statement or equivalent (this is now usually the SFS).

In particular, we would highlight CONC 7.3.18 (R) which states:

A *firm must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a customer in default or arrears difficulties to pay more than they can reasonably afford.*

And in addition, CONC 7.3.19 which states that firms must "*have regard to the requirements of the relevant pre action protocol issued by the Civil Justice Council*".

We suspect that courts will not have regard to these rules when enforcing a judgment sought by FCA authorised firms. The courts will not take into account whether lenders have complied with these obligations. The court itself will not work to these standards including accepting token offers, using the SFS to work out affordable repayments, or ensuring that people are not paying more than they can reasonably afford.

[8] FCA Handbook - FCA Handbook

In addition, the FCA consumer duty[9] requires good outcomes for customers. This requirement extends to how debt collection and debt purchase firms behave, and how the firm's customers are treated throughout their journey including court enforcement.

HMCTS should be considering how its rules could ensure checks and balances on enforcement action where creditors that are FCA authorised take court action.

There is little by way of requirements on creditors or debt purchase companies to ensure that they have carried out due diligence as to current addresses and the accuracy of contact details. The requirements could become much stricter to avoid defendants having no knowledge of court action being taken against them, and therefore failing to respond.

A further example, is that there is no assessment of whether a debt is statute-barred, leaving defendants to put in a defence under the Limitations Act. This is a complex legal activity which most of our vulnerable clients could not undertake without advice.

We would like to see further action to reform debt collection practices. We are concerned that debt collection agencies and debt purchase companies are not working to consistent standards and rules. Where a firm is collecting a debt that is not FCA authorised, the FCA rules do not apply. The firm may be collecting debts that come under a variety of regulators such as Ofgem, Ofwat and Ofcom who do not have a consumer duty equivalent. This could lead to an inconsistent approach to debt collection and to verifying the accuracy of address details, the legitimacy of the debts in a portfolio, and whether a debt can be legally pursued through the courts due to the Limitation Act 1980. We also see some examples of poor practice where debt collection agencies are not regulated and treat people very poorly when recovering debts. **See example cases in Appendix 1.** This anomaly should be addressed. As far as the courts are concerned, a requirement to enforce stricter compliance with the debt pre-action protocol and stricter penalties in such cases might help.

There are a variety of industry codes, which enhance FCA regulations, such as the Lending Standards Board Standards of Lending Practice[10], the Credit Services Association Code of Practice,[11] or the Energy UK Vulnerability Commitment[12] that could be taken into account. The courts have limited requirements (if any) to follow Financial Services Ombudsman rulings or to take these into account when making decisions.

The FCA also has a comprehensive set of rules and guidance on vulnerability[13] which is mirrored to some extent by Ofgem, Ofwat and Ofcom rules and guidance. However, because energy, water, and telecoms are not CCA regulated debts, these suppliers can use HCEOs to collect debts over £600. We would like to see this option removed altogether by the regulators. In the alternative, a rigorous assessment at the pre-action stage would need to be carried out to assess vulnerability before such action could be taken.

A holistic approach to enforcement could include the court being able to grant breathing space under the debt respite scheme of its own motion and refer to a free debt advice

---

[9] PS22/9: A new Consumer Duty | FCA
[10] Best practice standards for customers | The LSB (lendingstandardsboard.org.uk)
[11] https://cdn.ymaws.com/csa-uk.site-ym.com/resource/resmgr/docs/code_of_practice/code_of_practice.pdf
[12] Vulnerability Commitment - Energy UK (energy-uk.org.uk)
[13] Guidance for firms on the fair treatment of vulnerable customers | FCA

provider, potentially for a debt option such as a Debt Relief Order, on the basis of information provided, rather than proceeding with enforcement.

As we have said throughout this response, we believe that adopting the equivalent of the SFS model into court processes, means enquiries and court forms, would enhance the sustainability of orders, taking into account ability to pay in a structured fashion.

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

We have set out some suggestions in our answer to question 9 above.

Supply of information about potential judgment debtors

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 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.]

If we are to raise engagement levels with court processes then we need to look at both the current behaviour of people in debt responding to court claims and, crucially, the action of creditors, who can have a significant impact on whether and how people engage.

We would suggest that there should be a much greater emphasis on the responsibility of firms, lenders and debt collection agencies to ensure that they have obtained a judgment fairly and using the correct address details. We would hope to see further proposals to change the rules in relation to service of documents to include requirements for rigorous checks on address accuracy following this consultation. To ensure fairness for creditors who do follow the rules, there should be penalties for creditors' non-compliance.

We would expect the problems to lie with the attempted collection of private parking charges alongside utility, water and mobile phone debts and redundant TV packages where people have moved house. We wonder if there has been any analysis of the type of businesses issuing default county court judgments and whether the problem primarily lies with debt collection agencies or debt purchase companies buying "old" debt and the type of debt that is being collected.

The Ministry of Justice consulted on default county court judgments in 2018.[14] The Money Advice Trust submitted a response to this consultation. There has been no official response, or any changes put in place as far as we are aware as a result of this consultation.

In addition, we are still waiting the outcome of the Ministry of Justice consultation on including claimant data within the register of judgments, orders and fines.[15] This would allow some analysis on who is using the court system in respect of different debts.

---

[14] Default County Court Judgments: A consultation on ensuring the process works fairly, for both creditors and debtors - Ministry of Justice - Citizen Space

[15] Including claimant data on the Register of Judgments, Orders and Fines - GOV.UK (www.gov.uk)

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 including in the Directions Questionnaire, including details of any debts being enforced outside the court system)?

This is potentially an intrusive set of measures. Any such requirements would need to be designed to be fully compliant with data protection rules and protect vulnerably defendants from harm.

That said, we would like to see a mechanism put in place that would allow the court to look at an individual's debt picture as a whole, rather than just looking at the judgment debt individually. Ideally, this would be at the pre-action protocol stage with referrals to free independent debt advice.

We would welcome a more joined-up approach (a) in order to avoid situations where a court might make a series of court orders related to each individual debt in turn, and (b) to encourage a measured consideration of the totality of the circumstances of the person in debt.

However, current court rules, legal precedent and custom and practice may be incompatible. Any such measures would need to work in coordination with both district judges and court staff to ensure this information was fully taken into account when deciding on ability to pay. There would be no point in gathering information on multiple debts, assets, and full budgetary information, if the court then decides the offer or outline of circumstances are not acceptable and makes a payment order that ignores this information to benefit the one creditor who has taken court action. We note that the courts may argue judgments such as Loson v Stack[16] set a precedent that require the court to refuse an application where a judgment debtor applies under CPR 40.9A or 40.11 to pay a judgment debt by instalments, but is unable to put forward a realistic payment schedule for repayment of the debt within a reasonable time, and leaves the judgment creditor to enforce the judgment by whatever means they choose.

We believe that this precedent is out of step with broader public policy and the wider consideration of how debt enforcement may cause further. We are concerned that the civil procedure rules are out of step with the approaches taken by sector regulators such as the FCA and Ofgem, or public policy approaches like HMT debt respite scheme (breathing space) and the Debt Arrangement Scheme, in Scotland.

In addition, the Online Civil Money Claims (OCMC) affordability calculator[17] does not follow the pre-action protocol on debt which builds in the SFS. The calculator appears to have been created separately to the determination of means guidance and bears no resemblance to what a debt adviser would expect to see in a budget. It is a rigid set of rules based upon

[16] Diana Loson v Brett Stack - Case Law - VLEX 840091649

[17] http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/annex-a-explanation-affordability-calculator-online-civil-money-claims.pdf

benefit allowances used by the DWP and does not take into account actual income and expenditure.

Use of this calculator would routinely undermine any revised set of measures to look at circumstances in the round when working out affordability to pay.

HMCTS would need to build on any rules to gather information to gain a holistic picture of a defendant's circumstances to give the court powers to take meaningful action as a result, such as granting breathing space, referring to free debt advice, and dealing with debts in the round, rather than using the information gained for the benefit of a single judgment creditor.

This could result in more accurate information being obtained regarding financial circumstances and streamline the process which in turn will reduce delays and the administrative burden for the courts, and for creditors. An independent court role could ensure that the information-gathering process remains fair and unbiased, thus safeguarding the rights of both claimants and defendants. This approach would alleviate the responsibility on creditors to gather information, allowing them to concentrate on other aspects of enforcement.

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

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)?

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?

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?

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?

We do not support sanctions for people who provide information under an information order. People already see creditors and courts taking what they will see as punitive action by taking them to court in the first place, having a court judgment, affecting their credit reference file and facing the threat of enforcement. They are already too frightened to respond and are likely to not be opening letters. Threatening people with even worse outcomes is an ineffective way to encourage engagement with the court process.

Common symptoms of mental health problems, such as difficulties communicating, impaired clarity of thought and reduced concentration or problem-solving, can make it difficult to engage effectively with creditors and courts to address problems, meaning people with these challenges may be disproportionately likely to fall foul of any sanctions.

Given the challenging situations we know people in debt face, and the asymmetry of power and knowledge that can exist, we would suggest that there should be a much greater emphasis on the responsibility of firms, lenders and debt collection or debt purchase agencies to ensure that they have obtained a judgment fairly and using the correct address details in the first place. We wonder what the potential sanctions will be on the claimant for failing to ensure these basic details are correct.

We are also concerned that there should not be harsh penalties imposed on defendants who fail to complete an income, outgoings, and assets assessment. Sanctions that apply for non-compliance are likely to fall disproportionately upon the more vulnerable individuals in debt, which makes it difficult for us to support such a move. It is difficult to strike a balance, but a large commercial consumer credit firm will have comparatively vast resources available to them. If the defendant is unlikely to have access to legal advice or be eligible for any form of legal aid, as is the case with debt cases, it seems unfair to make compliance mandatory.

Failure to complete forms or engage with the court process can be for many reasons to do with various forms of vulnerability, vulnerable circumstances or lack of understanding of the implications or requirements. As there is already a problem with persuading people to engage with the court process, innovative ideas to increase engagement, rather than punitive solutions should be sought.

We would suggest a new form of communication if defendants do not respond to the court's request for information to make it clear that help is available and explaining the benefits of seeking debt advice or other forms of support.

This communication could outline how the court can help in a positive fashion if the defendant engages with the process. The language and tone of this type of court communication needs to be adjusted to be less frightening for defendants.

A more radical proposal would be to phase the court process into further stages. This could involve the defendant accepting the claim as a first stage but then more time would be allocated to responding to the court information order stage, working out a budget, offers of payment and referral to debt advice where there are multiple debts. This would help resolve the issues earlier in the process and save the courts and creditors time and costs in fees and further court enforcement processes.

We would be very interested to see the outcome of the Ministry of Justice consultation on including claimant data on money judgments in the Register of Judgments, Orders and Fines.

The Money Advice Trust response[18] said:

"We would point out the benefits to debt advisers and consumers in particular, as the lack of claimant data can cause delays in advisers being able to protect their clients from creditor action under the Debt Respite Scheme (breathing space). It also causes delays to our ability to put forward debt solutions for clients such as Debt Relief Orders, debt management plans, Individual Voluntary Arrangements and bankruptcy. This can be distressing for our clients in vulnerable circumstances who face lengthy delays whilst further information and evidence is sought to enable their applications to proceed. This can result in extra interest and charges, and creditor action in the meantime. It is also very confusing and potentially distressing for consumers who cannot easily discover the origin of a County Court judgment, for a judgment they were not aware of, perhaps from a previous address or a judgment made in error, or a claim they would have disputed if made aware of the full details."

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)?

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?

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

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?

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?

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?

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?

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?

[18] Ministry of Justice Including claimant data on the Register of Judgments, Orders and Fines (moneyadvicetrust.org)

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?

We have combined our response to questions 18 to 26 below.

We do not have any objections in principle to the courts accessing external data to determine means but we have some major concerns about this idea.

Accurate information, and efficiencies that help to streamline the process will minimise delays and hopefully lead to fairer outcomes and more informed decisions.

Any such scheme would depend upon the type of information that is passed on to the court and disclosed to creditors. We are not in support of any measures that allow creditors access to external data such as HMRC, DWP or bank data.

One suggestion could be that defendants could voluntarily consent to allowing courts to use DWP and HMRC data which might help simplify the information gathering process. However, this should be genuinely voluntary and not compulsory.

The rules must be very clear what information can be passed on and safeguards put in place. For example, there will need to be strict data protection rules on how data relating to protected characteristics and sensitive information such as mental and physical health can be passed on, if at all.

We are concerned about the data protection issues that this measure would raise. We would urge collaboration with the Information Commission over the safeguards that would need to be put in place. Here we note the data sharing powers across government departments for the purposes of fraud prevention and debt collection introduced in the Digital Economy Act 2017. Chapter 3 of part 5 of the Act sets out a number of important safeguards before these powers can be used including consultation with the ICO and other bodies (the Government established a review body to approve and review data sharing proposals) and a statutory code that includes 'fairness principles' for debt recovery with a focus on supporting people who are financially or otherwise vulnerable.[19]

If the creditor is no longer to be required to take the initiative for the purposes of obtaining information about the defendant's income and assets, it begs the question who should be responsible for undertaking the information order gathering process instead? It would appear to be a labour intensive, time consuming and possibly cumbersome process for court staff in the current climate of resource difficulties. It also needs to be considered whether the process would need to be repeated for each creditor that took court action or would the outcome of the Information Order be available for each subsequent creditor? Otherwise, there would be duplication of effort, resources and fees. We appreciate however, that the usefulness of the information obtained in making a decision on the best enforcement option would be time limited.

[19] HM Government (2020): Code of Practice for public authorities disclosing information under Chapters 1, 3 and 4 (Public Service Delivery, Debt and Fraud) of Part 5 of the Digital Economy Act 2017. See section 3.4, paragraphs 107 to 110)

We would favour a straightforward standardised mechanism for establishing income and outgoings to be used throughout HMCS processes, such as using the principles behind the SFS. This would allow processes to be streamlined to ensure that financial information is gathered and used in the same manner from replying to court claims to enforcement of judgments. There is precedent for such a move as the SFS has already been built into the pre-action protocol for debt. This provides a tool for assessing income and outgoings so that it is possible to establish what available income there is to pay debts to creditors. This process does not provide a detailed assessment of assets as would be established by an information order so would need adaptation. HMCTS is currently considering building the SFS principles into public facing court forms where a statement of means is required.

We are also concerned that there should not be harsh penalties imposed on defendants who fail to complete an income, outgoings, and assets assessment. Failure to complete forms or engage with the court process can be for many reasons to do with various forms of vulnerability, vulnerable circumstances or lack of understanding of the implications or requirements. As there is already a problem with persuading people to engage with the court process, innovative ideas to increase engagement, rather than punitive solutions should be sort.

Support for debtors

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

Yes, there is a range of information and advice available through advice agencies and public facing websites. There is some limited information on gov.uk which should be revised to make sure this uses simple language and provides signposting to free debt advice agencies.

There should be consideration given to how the public will be able to recognise sources of legitimate consumer information online. We understand it is difficult for people to distinguish between legitimate online sources of advice and information and less reputable misinformation. We wonder if a badging or logo system for consumer information would be of assistance here.

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

Comprehensive online legal advice and information is vital to help people deal with court processes and applications and for people to represent themselves at hearings. We have identified various sources of support and information which we have set out below. However, the sources of advice and information are lacking in resources to respond to the need for legal help or advice and some have limited capacity.

Clearly there are existing sources of public information such as the Money and Pensions Service MoneyHelper website[20] or Money Saving Expert and Which?

[20] Free and impartial help with money, backed by the government | MoneyHelper

Citizens Advice has extensive advice and information online on dealing with courts, as well as its network of local Citizens Advice offices.[21]

The Money Advice Trust runs National Debtline and Business Debtline and its websites have guides on court action from county court claims to charging orders.[22] There are also extensive debt-related resources available through StepChange Debt Charity website,[23] and other free debt advice providers.

We would highlight Support Through Court which is a voluntary service to help people represent themselves in court.[24] Law for life runs Advicenow which provides online information on dealing with courts.[25] The Law Centres Network provides lists of member law centres.[26] LawWorks[27] and Advocate[28] connect lawyers and barristers with people who cannot afford legal advice.

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

As we have said, the sources of advice and information set out above are lacking in adequate resources to respond to the extensive need of clients for legal help or advice. This can be due to limited advice sector capacity due to funding restrictions.

There is a lack of access to legal help and support following the reduction in legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). LASPO brought about the removal of a wide range of debt related issues (including insolvency, consumer credit loans, credit card debts, overdrafts, utility bills, court fines and hire purchase debts) from the scope of the legal aid scheme. The scope of the legal aid help scheme should be reviewed, and more legal help made available for debt issues.

The free debt advice sector works to encourage early intervention in debt problems by seeking advice early and by lenders being proactive to identify those who need advice. It is recognised that early intervention achieves the best results and means that clients get the advice they need when they still have the most options available to them and not at a crisis point such as an eviction hearing or an order for sale. These aims are frustrated by the changes in scope of legal aid which mean that advice can only be accessed at a very late stage of proceedings e.g. when repossession proceedings are underway.

There is little help available to any of our clients who wish to put in a defence to a court claim, perhaps over the debt being statute barred and so on. The free debt advice sector is unable to provide legal advice relating to the validity of a defence to a court claim. We find it

---

[21] Citizens Advice

[22] Court action | National Debtline
Fact sheets | Business Debtline
[23] https://www.stepchange.org/debt-info.aspx
[24] Support Through Court
[25] Courts and tribunals | Advicenow
[26] Home | LCN (lawcentres.org.uk)

[27] LawWorks | The Solicitors Pro Bono Group
[28] Advocate: Finding free legal help from barristers (weareadvocate.org.uk)

very difficult to source legal help at court hearings despite relationships with free volunteer assistance from LawWorks and Advocate. One suggestion would be for funding to be provided via legal aid to help people obtain a solicitor's opinion as to the merit of a defence in lieu of full representation in court. In the alternative, advice could be provided at a fixed cost. This would at least be clear and transparent for the client to understand what the price would be for the advice provided.

We generally welcome additional information and guidance as long as it is in clear, simple English and structured in a helpful manner. We would value a set of consistent messages for consumers from a single government source.

It is vital that there is a responsibility on utilities, telecoms and other service providers as well as consumer credit lenders to remind people about the importance of sharing up-to-date address details with them. Communication through preferred communication channels is also essential for engaging people in debt - particularly for those with mental health problems. Collecting communication preferences before someone becomes mentally unwell or falls into financial difficulty is crucial to ensuring that messaging reaches them, and they can engage when needed. This should be via prescribed information added on paper notices and on electronic communications.

The messaging should stress the fact that paying a judgment in full within one month will mean the judgment is removed from the register. This is not something that is commonly known by defendants.

We have looked at whether there are any additional key messages that would be valuable to consumers.

- We would emphasise the importance of seeking free debt advice when a consumer is struggling with household bills, or credit debts, and so on. It is particularly important that people seek debt advice early on, and not to wait until they have court judgments or enforcement action being taken against them.

- Given the disproportionate number of people with mental health problems who are in problem debt, courts should have clear information or referral pathways on accessing mental health support

- We would like to see a consistent reference to seeking free debt advice with a link to the Money and Pensions Service Money Helper tool[29] on all the key messages. In addition, we have identified the following key messages.

  - ✓ Many people do not seek debt advice when they need to, because they are trying to preserve their credit rating.
  - ✓ Your credit rating can be important but not worth preserving at the cost of falling behind with essential household bills, or your physical and mental health.
  - ✓ Seek free debt advice rather than further credit if you are falling behind with payments.

[29] Use our debt advice locator | MoneyHelper

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?

We appreciate that people in debt will be represented within all sections of the community by way of gender, race, disability, age and so on. However, we think it highly likely that more vulnerable groups are more likely to fall into debt or once in debt to feel the effects of enforcement more keenly than other sections of the population.

The FCA Financial Lives survey in January 2024[30] found as follows.

A higher proportion of adults in certain groups were struggling financially in January 2024, compared with the UK average. These included:

- *adults from low-income households*
- *unemployed adults*
- *others not in work such as the long-term sick and full-time carers*
- *renters*
- *single adults with financially dependent children*
- *those living in the North of England and in the most deprived areas of the UK*

The survey also found:

In the 12 months to January 2024, due to the rising cost of living:

- *43% (22.7m) suffered anxiety or stress*
- *20% (10.4m) had suffered with their mental health.*

We would argue that people in debt should be considered particularly vulnerable. People in debt can be considered particularly vulnerable to additional stress and anxiety in coping with a court judgment. When considering indirect discrimination, we would suggest that people in vulnerable circumstances and with mental health issues in particular might be less likely to engage and therefore see the relevant information or engage with the courts.

Common symptoms of mental health problems, such as difficulties communicating, impaired clarity of thought and reduced concentration or problem-solving, can make it difficult to engage effectively with creditors and enforcement agents to address problems. In a survey of 5,500 people with mental health problems, seven in ten (71%) respondents said they avoid dealing with creditors in a period of poor mental health, almost three-quarters (74%) put off paying bills, and nine in ten (92%) found it harder to make financial decisions. In these situations, lenders are more likely to escalate debt collection, meaning people with mental health problems are more likely to be engaging with courts.

---

[30] https://www.fca.org.uk/publications/financial-lives/jan-2024-recontact-survey-summary#lf-chapter-id-summary-research-findings

Research for Money and Mental Health found that 77% of people in council tax arrears who had contact with the court system had experienced a mental health problem.[31]

Advice sector referrals

If sanctions are placed on defendants, then for many vulnerable people, there will be little access to justice without the intervention of a third party such as the free advice sector. This additional cost burden on sources of free advice by an increase in demand for such services should be factored into considerations of the impact of any changes in policy. There needs to be thought given to assistance by way of court helplines and face-to-face support at court venues. Many people need assistance to fill in paper forms. People who are able to complete digital forms will need support to do so.

Communications

It is vital to ensure that communications channels provided allow access to services for all court service users. If access is limited to online methods of communication only, then for many vulnerable people, there will be little access to justice without the intervention of a third party such as the free advice sector. It is also vital that there is an assisted digital approach to this system, to help people with limited ability to use digital services, for example by ensuring web accessibility issues are taken into account.

For many people who have specific disabilities or are in vulnerable circumstances digital services will not be appropriate, and alternative assistance needs to be provided. This "assisted digital" approach is being built into the HMCTS "Transforming our justice system"[32] programme and ensures that support will be available for people who may struggle to access digital services.

Steps should also be taken to ensure that any information and advice available online is also readily available and easily accessible in paper formats. Information on the support available should be accessible through bodies and centres where people in vulnerable circumstances are likely to go, such as GP surgeries, clinics, mental health services, advice agencies and so on. This will enable people who do not have access to, or are not able to use, the internet to have access to all of the information and materials they need. Failure to do so can have a detrimental impact on many people in debt.

A multi-channel approach to communications should be adopted that includes text alerts as a handy channel for notifications, time management alerts and hearing reminders. We would suggest that web chat and email would also be useful tools for some consumers. However, this would always need to be caveated by consideration of the needs of particular individual users rather than the type of service. There is always someone who cannot make use of the online application due to digital exclusion or a particular disability.

Access to court

People should be able to attend court hearings at an accessible venue, in person. This is particularly vital where they are facing mortgage or rent repossession proceedings or are in debt and having to attend a hearing in relation to county court or High Court enforcement.

---

[31] Debt and mental health (moneyandmentalhealth.org)

[32] https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement

Even in areas where courts are scheduled for closure, there should be facilities in place to hold hearings at a venue within a reasonable distance of a defendant's home. It is not reasonable to expect people in financial difficulties with limited incomes to travel long distances. They are unlikely to have access to a car or be able to afford the petrol or the public transport costs.

The process for setting aside a judgement is difficult for people to engage with. We frequently provide advice to people who wish to set aside a judgment but the fees, application process and requirement to act "promptly" all create barriers for people who wish to take this action.

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?

We would consider all these stages to be important in sharing information to defendants. The information will need to be different at each stage and tailored to fit the stage that the case has reached.

HMCTS carried out a pilot into sending a pre action notice (PAN) before court action in 2005. The University of Exeter carried out research into the PAN outcomes.[33] We felt that there was potential in this approach, where defendants were urged to seek advice in a friendly notice, but the eventual outcome was that it was not sufficiently conclusive for HMCTS to make it a requirement on creditors to send the notice.

Point 6 of the summary of this paper states: *"Furthermore one coping strategy adopted by debtors in hopeless financial situations was to throw away anything that looked like a communication from a creditor unread*".

At point 18 the summary continued:

"The sense of hopelessness was clearly dysfunctional, in that it blocked people from doing even the little that they could do to reduce their financial problems, and led to behaviours such as discarding correspondence unopened. Both creditors and courts need to give consideration to making their demands on debtors, ones that can reasonably be met".

Although the PAN project was not continued, the debt pre action protocol was developed after the Pre action notice (PAN) pilot and includes an information sheet with debt advice signposting as well as a response form.[34]

---

[33] [ARCHIVED CONTENT] (nationalarchives.gov.uk)
[34] PRE-ACTION PROTOCOL FOR DEBT CLAIMS Redraft spring 2015 (justice.gov.uk)

In Scotland, creditors are obliged by law to issue a statutory "Debt advice and information package"[35] which provides useful information about the rights and responsibilities of people in debt and signposts them to sources of free-to-client money advice.

The courts and creditors should provide standard information to people in debt that should be in clear plain English. There should be rules that set out the requirements on the courts and creditors to send standard information and by what method. The information should be in a **prescribed** format and be subject to research with consumers to ensure that the information is easy to understand.

It is vital to promote early engagement and proactive contact from HMCTS is crucial to encourage a positive response. We would like to see an innovative use of texts and WhatsApp messaging and web chat. it is important to give people a reason to engage. If you are being pursued by a creditor and the court system is sending you brown envelopes asking for money you cannot pay, and at no point are you offered any solution to the problem then you have little to no incentive to engage and are highly unlikely to.

There needs to be communications designed to give positive messaging that someone can help, and might be able to stop the process, or accept affordable payments or enable the defendant to get help through a particular source or independent advice provider. These ideas may help encourage people to get in touch.

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?

As we have set out in our response to this paper, we firmly believe that the court should be proactive in providing a telephone advice service, and other methods of communication to enable defendants to engage in the court process.

Given the overlap between mental health problems and problem debt, an advice line to mental health support should also be implemented.

We have set out in our response to question 34 below that the warrant of control support centre model could be expanded to become "judgment support centres" whereby an initial fact find could be carried out and ability to pay assessed using the SFS instead of the old means forms. Court warrant centres should carry out information-gathering exercise as a mandatory step in the pre-enforcement process before a warrant is issued.

We very much support any move to signposting or referring to free debt advice for advice where there are multiple debts that need to be resolved holistically. We firmly believe that such a move would facilitate early resolution.

However, there is clearly a funding and resources issue for independent advice providers to offer such services to court defendants that HMCTS must address as part of any such proposals.

---

[35] Accountant in Bankruptcy - Scotland's Insolvency Service - Understanding Creditor Actions and Accessing Free Money Advice (aib.gov.uk)

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?

There should be substantial changes to the system of enforcing judgments to make the system fairer for people in debt.

A debt in the court enforcement system is likely to be only one of a number of issues affecting a defendant at that time, and therefore a 'good outcome' for a person in debt is likely to be one that addressed their whole debt problem, not just an individual debt.

Put in place easy to use processes and procedures to allow enforcement to be stopped at an early stage and for people to be signposted and referred for debt advice.

A holistic approach could include the court being able to grant breathing space under the debt respite scheme of its own motion and refer to a free debt advice provider, potentially for a debt option such as a Debt Relief Order, on the basis of information provided, rather than proceeding with enforcement.

Clearly there needs to be reforms to ensure a central upgraded digitalised service to ensure that the county court enforcement system works in a joined up and holistic manner. There seems to be a reliance on paper systems, variable local court practices and inefficient processes that may help provide an impression amongst some creditors that County Court enforcement is slow and unreliable. This, when combined with inaccuracy in contact details from creditors will lead to an inefficient system.

In addition, there needs to be greater data sharing with government departments to make the courts both more efficient but to help to flag up people who cannot pay, are on benefit income and are vulnerable who should be removed from court enforcement. This would be great step forward. Such a portal could also be used to indicate where debts are already being recovered to avoid duplication or recovery of excessive amounts by government and other creditors in competition with each other.

However, we have set out our concerns about the potential for harm caused by data sharing powers in our response above. We believe that there needs to be robust safeguards in place to protect court users from poor outcomes with government and court system data sharing. We would again caution against any potential to give creditors information gathering powers, as this could have a damaging impact on vulnerable people in multiple debt. There should be clear protections put in place for the way in which the courts should address any evidence of vulnerable circumstances and the conflict we have identified between the way in which the courts approach creditor "rights" to recover in all circumstances (even where someone has no assets and no money).

We have previously suggested the idea of an 'online portal' in which claimants and defendants could provide information, including an SFS-style income and expenditure for the defendant which need only be provided once (unlike the current system, where an income and expenditure might be required at several stages in the process and have to be supplied separately on each occasion). This could be in conjunction with changes to the scope of the warrant of control support centres.

The other major issue is that the determination of means guidelines have not been updated for many years. The court forms are outdated and require outdated and inadequate budget information. Adoption of the SFS across enforcement would assist so that creditors and the courts would have to accept affordable payments.

- We would like to see a model that enables people to pay their court judgment in a way that is affordable and sustainable using the SFS as a basis and has flexibility built into the model so people can easily change their payments if their circumstances change.

- It should be easy and straightforward to suspend enforcement where necessary.

- Court application fees should be minimised. These are set at punitive levels for N244 and N245 applications where people are not eligible for fee remission.

- The court should gather information to assess income, outgoings and assets as part of an initial fact-finding process, so that inappropriate enforcement outcomes are not undertaken. There is no point in making attachment of earnings applications where someone is not in employment, or using EAs where there are no assets. This information-gathering exercise should become a mandatory step in the pre-enforcement process, rather than an 'optional extra' for creditors if they choose to use it.

- This should be on the basis of incentives to contact the court and to provide information rather than the threat of sanctions. The threat of imprisonment for non-compliance with an order to obtain information is not likely to persuade vulnerable people to voluntarily cooperate with the court.

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

We have set out our suggestions in relation to each method of enforcement below.

Warrant of control

We very much support the **warrant of control support centres**. They have been a very welcome initiative by HMCTS to engage with defendants at an early stage with the aim of resolving the warrant as soon as possible.

We believe that this is a model that could merit expansion and further development. Warrant of control support centres could become "judgment support centres" whereby an initial fact find could be carried out and ability to pay assessed using the SFS instead of the old means forms. Court warrant centres should carry out information-gathering exercise as a mandatory step in the pre-enforcement process before a warrant is issued.

There is no point in setting up one payment on a court judgment where there are multiple debts. This could be resolved together.

This process should take place **before** enforcement is permitted. If their remit was expanded then there would be fewer cases passed to enforcement, which would save time and costs for creditors and the courts. In addition, where there are multiple debts and/or vulnerable situations identified, then the support centres should refer or signpost on to sources of free debt advice.

In general, the centres have too limited a scope as to what informal payment arrangements they can make. For most people in multiple debt, three months is not long enough to pay back the amount owed. However, assisting people with applying to suspend a warrant or a variation of payments is very helpful.

Their operations are restricted to county court warrants. Potentially there should be expansion to other methods of enforcement.

Our front-line debt advice services find County Court enforcement agents (EAs) generally easier to deal with than either High Court Enforcement Officers or EAs acting under a magistrates' court order. We have many causes for complaint by our clients about EA activity, but it is rare to hear complaints or problems relating to how county court EAs behave. This appears to be because the process for suspending County Court EA action is relatively straightforward, and because County Court EAs are not paid commission based on the amount they recover, so are more likely to look at defendant's situations more realistically and objectively. As directly employed staff of HMCTS, there is no incentive for a county court enforcement agent to act improperly or use poor tactics to recover their fees.

We would like to see HMCTS reconsider how court judgments are recovered to ensure that warrants or writs of control are not typically the first stage of enforcement. A better fact-finding process before the warrant is issued, and a more holistic approach to assessing a defendant's financial status could help determine whether this form of enforcement is appropriate.

Reforming county court information gathering and streamlining and digitalising processes should greatly enhance the ability of county court enforcement agents to operate when required, without the need for High Court enforcement.

HMCTS will be able to provide statistical information on returns from warrants. We suspect a substantial number are returned because the defendant could not be traced, potentially because the creditor had supplied incorrect contact information originally. In other cases, there will be not goods worth taking into control, which means court costs, creditor court application fees, and EA time and costs has been used inappropriately. We are also concerned that goods such as vehicles may be taken into control where the value is vastly higher than the outstanding debt, where this is not necessary.

- We support retaining the system of county court enforcement agents as directly employed staff of Her Majesty's Courts and Tribunals Service.
- It is vital to ensure that the N245 application procedure to suspend a warrant and vary instalments is preserved and made as simple and accessible as possible for someone to use at any point in the court process.

- The N245 application form needs to be updated to reflect the SFS budget categories and structure in line with all the means forms in the county court system.

- The process for challenging ownership of third-party goods that have been taken into control by an EA has to be initiated by the third party who has to pay a substantial court fee and pay into court a deposit to cover the value of the items taken into control. They can also become liable for substantial court costs.

- There is no easily accessible process for challenging this. Where the third party is, for example, the defendant's landlord, and disclosure may put the client's tenancy at risk, this makes the current process impractical.

- There should be greater protections for vehicles as assets under the taking control of goods regulations or through court rules, to protect all vehicles required for employment, and in rural areas for transport to school and so on as well as the current disability protections. Alternatively, the Ministry of Justice and the judiciary could devolve rule making powers to the ECB, if it became a statutory enforcement regulator.

- There should be a much more straightforward process introduced for the defendant to challenge ownership of goods. Where ownership of goods is disputed, the burden of proof for this should fall on the creditor and the enforcement agent, not the defendant or the third party.

- We have suggested that a straightforward application process to suspend or stop EA action should be expanded to other courts such as magistrates' court. This should be via a single simple form equivalent to an N245 and take place without the need for a hearing. The ECB could also have input here regarding their forthcoming affordability of payment arrangement standards.

Writ of control

We believe that there should be serious consideration given to simplifying and streamlining the enforcement process and to abolish High Court enforcement via a writ of control for most cases. There might need to be exceptions for certain categories of claimant such as individuals enforcing employment awards, damages and so on. EA enforcement should be carried out through one warrant of control process in the County Court only using the same rules and fee structure.

There is no justification for the level of fees, the arcane processes and the behaviour of HCEOs in a modern court system that believes in treating vulnerable people fairly. The consultation in 2023 on limited reforms set out by the Ministry of Justice into the Taking Control of goods regulations has not yet reported back, so the reforms remain to be implemented. We very much welcome the proposals in the consultation, but they are limited in scope, hence we believe further action is needed to protect vulnerable people.

Even were they to do so, we do not feel these go far enough to protect vulnerable people.

We consider it to be disproportionate to allow HCEOs to enforce utilities and other consumer debts. Consumers who have fallen upon hard times through a change in circumstances, are ill-suited to such enforcement methods, lacking both the income and the assets to justify the use of such costly procedures.

We would suggest that given the cost-of-living rise, that more people than ever will be struggling to pay business debts, domestic energy, water and telecoms bills, all of which could be enforced by HCEOs if they exceed the £600 transfer threshold on their county court judgment.

HCEOs are not required to be certificated and do not operate under the same rules as other enforcement officers.

We do not always see good practice from HCEOs who do not always:

- consider financial circumstances;
- accept affordable repayment offers;
- accept standard financial statements in support of offers;
- take into account vulnerabilities; and
- accept offers of payment from debt advisers on behalf of their clients.

We have set out some example cases in Appendix I.

We would like to see reform for the following reasons.

- There is inconsistency in the application of processes between courts such as differing procedures to stay High Court enforcement depending on the district registry and the judge.
- The language and procedures of the High Court are both arcane and intimidating.
- The use of the High Court for enforcement of judgments introduces an unmerited degree of complexity and formality into the process. In our experience, this has the effect of putting off debt advice clients from engaging in the process.
- High Court enforcement fees escalate very quickly and are disproportionate for the types of debt that we see, typically debts over £600 for energy, water, telecoms and small business debts.
- The application process for a stay of execution is time consuming, very difficult for clients to understand and there are often delays with hearings. This contrasts with the simple, straightforward process of suspending a warrant in the County Court using an N245.
- We also hear from debt advisers who find it very difficult to follow the process to suspend a High Court writ and no legal advice is available.

- The process as it stands would be completely inaccessible to most of our clients who would be unable to deal with the application process, submitting an affidavit of means, let alone drawing up their own order and serving it on all parties. We predict that as a result in many cases vulnerable people would have no access to justice.

- It will be more costly in terms of court time to deal with the application to stay a writ of control because applications are generally scrutinised by a district judge, whereas county court staff deal with applications to suspend a warrant of execution.

- There is no automatic transfer to the local court when a defendant applies for a stay of the writ. It appears that practice is different in each court and the applicable fee may vary too.

- We would argue that this places a very much increased financial burden on the person in debt and is not supportable.

- The two enforcement stages in the fee scale for High Court enforcement will in many cases be capable of adding a greater amount in charges than was originally owed. Additional fees can be charged at 7.5% of the amount owed above £1,000. This will have a huge impact on the ability of a much more potentially low-income and vulnerable group of people in debt to pay what they owe.

- We believe that the enforcement stage 2 fee does not serve a purpose and should be abolished. We do not believe that HCEOs incur sufficient extra costs to justify its continuation. We see no reason for HCEOs to charge two enforcement stage fees, and the HCEO fee structure should be aligned with the general fee structure for County Court EAs.

- It is very difficult to challenge High Court Enforcement Officers over their fees. This is a very common complaint amongst both clients and advisers. There is no simple, easily accessible and cheap mechanism for complaints about fees.

- The High Court Enforcement Officers Association will not deal with fee-related complaints. This means that the only avenue for our clients is an obscure and costly court process.

Charging orders

We believe the changes in charging order rules has moved to far in favour of creditors without adequate protections being put in place to protect defendants.

Charging order legislation does not look at unpaid debts holistically but only the debt for which the application has been made (which may be very small). The charging order or order for sale will ensure payment only of that debt, and not consider the debt situation as a whole. This unfairly benefits the creditor who takes enforcement action first, and perversely incentivises unsecured creditors to lend, knowing that they can become effectively a secured creditor on default.

We would like to see charging orders reformed to more closely resemble a Scottish inhibition which prevents the sale of property. The charge is automatically extinguished after a certain number of years. An inhibition lasts for five years and runs out unless the creditor asks for it to be reviewed. The inhibition prevents further secured borrowing whilst it is in place, but the defendant can ask for permission to sell and clear the debt as part of the sale. It is not possible for creditors to apply for an order for sale in any circumstances.

Obtaining a charging order

- We would suggest that the charging order principle is unfair, as it turns an unsecured debt (which would, by virtue of being unsecured, have been advanced at a higher rate of interest than a secured debt) into a secured one. The creditor therefore gains the benefit of both security for their debt and a higher initial rate of interest.

- In addition, the charging order application allows creditors to protect their position in the event of insolvency – there is, for example, an incentive for a creditor to pursue a charging order if they know that the defendant is about to apply for an IVA.

- The protections in place to allow defendants to contest charging orders are weak, and a charging order is often granted as a matter of course following the lender's request for a forthwith judgment. In practice, it can be very difficult to persuade the court not to make the charging order final.

- The changes to charging order rules in 2012, allowed a creditor to obtain a charging order even when the defendant has not defaulted on the terms of their CCJ. This overturned long standing legal precedent. (Mercantile Credit Ltd v Ellis 1987). This seems unfair as it allows enforcement even where a defendant is complying with the court rules and making payments as ordered.

- Where a defendant is making every attempt to pay what they can afford, and have not defaulted on an instalment order, then it should not be possible for the creditor to apply for a charging order.

- There should, at the very least, be a minimum debt threshold for charging order applications in relation to Consumer Credit Act regulated loans. This should be reviewed regularly.

- The rules on when statutory and contractual interest can accrue should also be reviewed and the thresholds increased.

Orders for sale

- From 2012, a creditor can not obtain an order for sale if the defendant is up to date with instalments. This is an important protection.

- The rules also state that, from 2013, the court should not make an order for sale if the debt is regulated under the Consumer Credit Act 1974, *and* the amount owed is less than £1,000.[36] However, we do not believe this is currently adequate protection for people facing financial difficulties. The £1,000 lower limit for an order for sale

[36] The Charging Orders (Orders for Sale: Financial Thresholds) Regulations 2013 (SI 2013/491)

application is disproportionately low, particularly when compared to the creditor petition in bankruptcy limit of £5,000.

- In an ideal world, we would like to see a complete prohibition on the ability of creditors to apply for orders for sale on Consumer Credit Act regulated debts.

- If this does not happen, then at very least the lower limit for an order for sale application should be increased and apply to all orders for sale applications, not just those for CCA regulated debts. There should be a mechanism put in place to review the amount of the lower limit regularly.

- The order for sale process is rarely used by high street lenders. However, the threat of an order for sale could be extremely difficult for people in vulnerable circumstances. We also wonder if the use of such a draconian enforcement method to collect an originally unsecured debt, is compatible with lender responsibilities under the FCA Consumer Duty.

Attachment of earnings

- The attachment of earnings process only deals with one court judgment and does not take into account other debts, unless these are subject to a court judgment, which allows an application for a consolidated order.

- Where the individual has multiple credit debts, this may have the effect of using all or a substantial part of their available income for all their creditors towards just the one debt. Unless this provision is linked to a multiple attachment of earnings order system that allows payment distribution of the amount deducted to be shared amongst all the creditors, then the result will favour the creditor that took action first. The other creditors may be left with little more than token payment offers.

- The process for calculating the amount of an attachment of earnings is very complicated. The protected rate is calculated in an obscure way by court staff using set figures for essential expenditure such as housekeeping. It is unclear if these figures are annually reviewed and updated. It is not possible to predict what level the order will be set at for our individual clients.

- However, we do not agree with a fixed percentage model (as used for attachment of earnings orders for criminal fines and council tax). The idea of replacing this model with income thresholds and percentages of income used to pay back creditors regardless of individual circumstances is neither fair nor sufficiently nuanced in our opinion. Where fixed percentage models have been used in other types of enforcement, the thresholds have not kept pace with earnings and household expenses. In England, the schedule of deduction rates and thresholds have not been uprated since April 2007.

- The N56 form needs to be updated to reflect the SFS budget categories and structure in line with all the means forms in the county court system.

- Adopting any model that uses income thresholds in this way would mean that a single person living at home with their parents with no outgoings would pay the same as an individual supporting a family with private rent and household bills, high heating costs and a disability. They would both pay the same *irrespective of their circumstances* if they are on the same income.

- Whilst defendants have the power to apply for an attachment of earnings order to be suspended if it will affect their employment, it is not straightforward to reduce the amount they have to pay under the attachment of earnings order once the court has worked out the protected amount. This should be made more straightforward as there be many priority outgoings that have not been taken into account or new expenses and changes in circumstances that affect ability to pay.

- We believe that the power to imprison defendants who do not cooperate with the process should be abolished. Whilst this is rarely used in practice, it can be given undue prominence by creditors as a way of intimidating people into paying.

- There is a requirement for the defendant to give the court details of any new employer or potentially commit an offence. This can result in a fine from the court or being sent to prison. This again seems overcomplicated and likely to catch out people who have not understood their obligations or forgotten to inform the court.

Third party debt order (TPDO)

- Although third party debt orders are very rarely used against our clients, their effect can be devastating for the client.

- We would like to see the use of TPDOs prohibited in relation to consumer debt.

- For claimants, the guidance should be a lot clearer, so that they can judge if the application is likely to be successful. The formula used should be more transparent.

- In addition, we believe that such orders should not be applicable to current accounts as in most cases, any money present in a current account will be earmarked for household bills and general housekeeping. Therefore, TPDOs should apply to savings accounts only.

- One proposal is to introduce a minimum protected level of income similar to the Scottish system. However, if this is put in place, the level needs to be substantially increased. In addition, any minimum protected level would need to be reviewed on a frequent basis to ensure that the level was increased. This would need to be embedded into any change in regulations.

- Another challenge with the minimum protected level of income is that it is inflexible and cannot adapt to individual circumstances. Ideally, any protected amount under a minimum income level system would therefore need to be calculated based on the defendant's actual needs, particularly in relation to rent, mortgage and household bills.

- The process for obtaining a 'hardship payment order' to release funds frozen under an interim third-party debt order is too complicated and demanding for people in urgent need of funds.

- The costs of the court application are also a very real issue as it would stand to reason, that anyone requiring a hardship payment order will not have the money to pay the court fee.

- Delays in notifying the defendant of the interim third-party debt order, will also cause issues with failed direct debits and standing orders, and banking charges for these, as well as overdraft charges.

Return of goods orders

We are familiar with return of goods orders for hire purchase/conditional sale vehicles that are regulated under the Consumer Credit Act (CCA)1974, in particular. We believe that the requirement for lenders to apply for a return order where a third or more of the agreement has been paid, can lead to better outcomes for defendants in the court. The application for a return order allows defendants to ask that the order be suspended and gives an opportunity for the defendant to make an offer to pay in monthly instalments. The application comes with a hearing in the local county court included, which is cancelled if the creditor accepts the offer.

The right to apply for a time order either at the default notice stage or in court for CCA regulated hire purchase and conditional sale agreements under the CCA also provides a greater level of consumer protection for defendants.

- We would like to see the process streamlined to ensure that it is easy to apply for a suspension.

- The court application forms should be simplified, and the wording updated to ensure that the documents are in clear and simple English. This would assist defendants to understand the process and the requirements on them.

- HMCTS should ensure that communications are clear and simple, and that there is signposting to sources of free debt advice at every stage of the process.

In addition, it is worth noting that debts secured by Bills of Sale still provide no protection from recovery. Despite Law Commission recommendations for reform,[37] legislation was never brought forward.

Insolvency proceedings

We have not covered insolvency proceedings in any detail in this response as this is an area being looked at by the Insolvency Service as part of its Insolvency Review. However, we very much support retaining the £5,000 debt limit that must be owed before a judgment creditor can petition for bankruptcy.

[37] 56839_Law Comm 369 Bills of Sale (publishing.service.gov.uk)

This should be subject to a mechanism that ensures the threshold is reviewed on a regular basis and increased with inflation or other factors through an automatic process.

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

We have covered this question in our responses above.

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

There will be substantial variations in technical expertise and experience in dealing with court systems between consumer credit sectors and an individual or sole trader recovering a debt or enforcing an employment tribunal award.

The information provided to creditors should be in simple language and be clear and straightforward to follow. It is also important that information is provided in various formats and at each stage of the process.

Advice on managing expectations for creditors and the likelihood of recovery using different recovery methods should also be supplied. It is a costly process to pursue recovery in situations where it may be better not to do so e.g. where there are no assets, property, and someone is on benefit income.

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 covered these in our response to the questions above.

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

We have covered these in our response to the questions above.

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.

We do not have any additional comments to add at this stage.

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.

We have covered these in our response to the questions above.

Appendix 1 Case studies

Debt collection firms who are not authorised by the FCA

Business Debtline August 2024

An enforcement agency firm is acting as a debt collection agent to collect a business debt from a sole trader which our client disputes. From the outset our client has asked verbally and in writing for proof of the debt which they have failed to provide. The agency has visited our client's home on several occasions. They visited last night at about 5pm using an aggressive tone and threatening to return at 9pm (which they did not do). Despite acting as debt collection agency, the firm are trying to convince our client they have more enforcement powers than they do.

National Debtline August 2024

Debt collection agency is pursuing our client for a debt for £1.2m that a district judge has already dismissed in court. The debt collection agent has come to their address and is stating they will use drones and are sending emails despite proof that the claim has been dismissed. This is not an FCA regulated firm.

High Court Enforcement cases

National Debtline April 2024

Client has a debt with their energy supplier. The client claims that no ability to pay was taken into account and was not notified of the action taken. Debt was passed on to High Court Enforcement Officers and this then came to the attention of the client. Fees and costs have been applied and now the client has an unaffordable arrangement to pay in place with the HCEO. The client attempted to escalate this and complain to the Energy Ombudsman. They told the client that they can only help if the client was to set aside the court judgment that is on the debt. The client states they were unaware of the court action. The client cannot afford to pay the application fee to set aside the court judgment. Client is unemployed and in ill health, with a deficit budget.

National Debtline May 2024

Client reported HCEO inappropriate behaviour. HCEO came to the client’s property and told them that they were the police. They kicked the back door and were aggressive.

National Debtline May 2024

The client reported that the HCEO had got into their property by deception to collect an energy debt. The client is extremely vulnerable with mental health issues and disabilities. The firm representative got a neighbour to let him into the client's address at which point the client started hitting himself. They refused to leave.

National Debtline June 2024

Use of High Court Enforcement Officer to enforce a judgment for household water arrears. HCEO would not discuss the debt at the compliance stage and advised the client to wait for a visit ensuring further fees. Vehicle clamped on first visit. Will not accept less than a £2,000 payment from client. Vehicle used to visit and care for mother as client is their carer.

National Debtline June 2024

HCEO come round today to collect on a water arrears debt. Client is vulnerable and told the HCEO this. The HCEO stuck his foot in the client's door and stopped him from closing it.