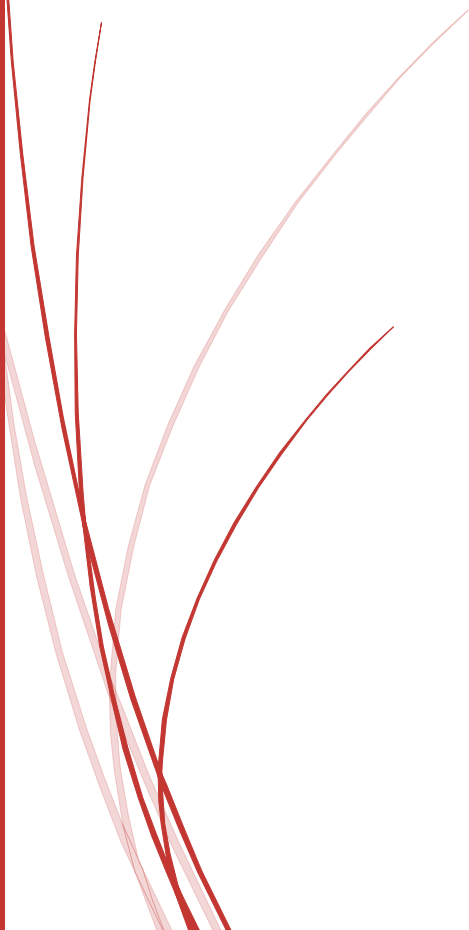




East Midlands
Money Advice
(EMMA)
Civil Justice Council
Enforcement
Working Group
Call for Evidence
response



Introduction

The East Midlands Money Advice (EMMA) is a partnership of voluntary sector advice agencies who provide advice on debt to people living within the East Midlands. EMMA is led by Leicester Community Advice and Law Centre.

When the call for evidence was initially launched by the Civil Justice Council, we discussed how best to respond in order to ensure the opinions and suggestions of advisers working on the frontline of advice were heard.

Although there was always the option for each advice agency to put forward their own individual reply, we wanted to provide them the opportunity to put forward a collective response as EMMA. Several of our participant advice agencies agreed to take part, helping to strengthen our response to this call for evidence by providing the thoughts of our frontline advisers who are the ones providing support to clients facing enforcement daily.

Advisers can face numerous challenges when attempting to help clients who are subject to court action and facing enforcement. As such, we would like to ensure both clients and advisers are sufficiently supported in order to achieve, where possible, positive, and sustainable outcomes. As a partnership, we feel this call for evidence comes at a pivotal time, primarily due to the current 'Cost of Living Crisis'. Therefore, we wanted to ensure our response was as clear and comprehensive as possible.

Some of the questions in the Call for Evidence were most centred around creditors. As a partnership we are not in a position to provide any insight on creditors' processes and position, therefore we have only provided responses to those questions concerning judgment debtors.

Comments from the EMMA Quality team are in red with responses from advisers within the EMMA partnership within the boxes below.

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

EMMA comments: From reviewing files submitted by advisers, the partnership has come across the following enforcement methods: -

- Charging Orders
- Attachment of Earnings Orders
- Warrants of Control
- Writs of Control
- Statutory Demands
- Third Party Debt Orders

2. 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?

EMMA comments: Defendants could be given the opportunity to attend court hearings remotely, rather than having to go to the expense and pressure of attending in person. Since Covid, people have generally become more comfortable with technology and the use of platforms such as Zoom and Teams.

Enforcement fees are an issue for many debtors, with considerable costs being added to debts that they are already unable to pay. Adding in a fee remission/exemption scheme in line with other county court costs would be welcomed.

Bailiff fees exemption for people on low income; reduce all enforcement fees.

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?

EMMA comments: Enforcement mechanisms should take into account debtors' vulnerabilities. Often the court is unaware of a debtor's vulnerability, as there is no current requirement for claimants to make the court aware of any information they have relating to a debtor's personal or financial situation. Comments from the partnership refer to bailiff regulation around vulnerabilities, and of consideration being given to how debtors are contacted about county court claims.

It could be beneficial for debtors to be informed about bailiffs' rights by the court at the point a warrant or writ is issued. Anecdotally, we hear of Enforcement Agents and High Court Enforcement Officers who overstate their rights, or prey on a debtor's lack of knowledge to encourage them to make unaffordable payment arrangements.

Courts to ensure debtor is aware of the county court action, court pack not only sent to last address known.

Bailiff firms should have greater regulation especially around vulnerabilities.

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?

EMMA comments: Creditors who are regulated by the Financial Conduct Authority will generally be familiar with the Standard Financial Statement (SFS) that debt advisers use when negotiating on a debtor's behalf. The court does not currently use the SFS or the associated spending guidelines, so income and expenditure information provided on court response forms may be subject to additional scrutiny, potentially leading to unaffordable instalments being ordered. We feel that the court should adopt the principles of the SFS to ensure consistency across the board.

Ensure the debtor is aware of the action as court packs are only required to be sent to last known address, often people do not even know about a CCJ until enforcement action, or they check credit reports/ or apply for credit.

Signposting to advice agencies, checking if client is on benefits, checking if client has a social worker/ support worker.

They should take into account the SFS.

SFS should be accepted along with requesting information about vulnerabilities

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)?

EMMA comments: It could be made clearer to debtors that they can seek free debt advice. Having a central resource within the court that could provide advice or signpost to reputable organisations may increase engagement. Offering mediation in all cases may also be of benefit. Debtors are often incredibly anxious about the court system (largely perhaps because of the association with criminal courts as the distinction is not always clear). In a lot of cases, the debtor is scared by the court paperwork rather than actually ignoring the claim and it is often a 'head in the sand' situation. The court papers, even if they appear 'simple' to debt advisers can be confusing for debtors who are often worried about completing the forms incorrectly.

Some kind of reassurance to the debtor about what to expect if a creditor takes them to court would be beneficial, for example, letting them know that they don't necessarily have to attend a hearing, and if they do that it's in chambers rather than open court. Debtors could be given the opportunity to discuss the debt with the claimant even after court forms have been issued and before default judgment – if debtors have an opportunity to stop the judgment being made by contacting the claimant this may help. Perhaps having the options of adjourning with liberty to restore if the claimant makes initial contact but then doesn't follow through.

Signposting to advice agencies, checking if client is on benefits, checking if client has a social worker/ support worker

Ensure the debtor is aware of the action as court packs are only required to be sent to last known address, often people do not even know about a CCJ until enforcement action, or they check credit reports/ or apply for credit.

12. Should the court require details of a defendant at the commencement of proceedings in order to ascertain whether a defendant could satisfy a potential judgment? (For example, by specific questions being included in the Directions Questionnaire, including details of any debts being enforced outside the court system).

EMMA comments: This seems sensible as many of our clients are not even able to make an offer, let alone actually satisfy a debt in full or within a reasonable time. In these cases, it doesn't seem proportionate to employ enforcement methods such as bailiffs and attachment of earnings for example. It would be better, from our clients' point of view, if more onus was put on the claimant to show that it is reasonable and proportionate to use the court in this way.

The current N9A gives very limited space for a debtor to provide details of their circumstances, for example a debtor can only tick that they are employed, self-employed, a pensioner or unemployed. There is no scope on the form for a debtor to make the court aware that they are unwell or have caring responsibilities. Additionally, the sections that ask for details of court orders and credit debts are too small for many debtors. There is no question on the forms about whether the debtor has any vulnerability or is in financial difficulty, and no space for them to provide a narrative about their situation.

Claimants should take reasonable steps to find out about a debtor's situation, e.g. whether they are a homeowner, whether they are employed or on benefits, and what other debts they may have (including deductions from benefit). Many CCJs are made in default against people who have no assets and no realistic way of paying them back. Part of this is because debtors may bury their head in the sand, but part of this is because creditors sometimes don't explore debtors' positions. Potentially, requiring creditors to do a credit check before taking court action would flag up defaults and other CCJs which would be indicative of a wider problem.

Court should check if the client has the potential means to be able to make any payment

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

EMMA comments: As detailed above in question 12, an overhaul of the N9A appears overdue. There are many factors that contribute to indebtedness and the current process does not give debtors the opportunity to make the courts aware of their situation.

Is the client working or not, are they vulnerable due to ill health, do they have priority debts they are currently trying to pay.

Existing debts, Income/ expenditure.

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?

EMMA comments: There is an important distinction between debtors who can't pay and those who won't pay. For debtors who have the means to pay but choose not to, sanctions may be appropriate, however for the rest this is unlikely to be appropriate and may even cause further harm to people already struggling. If information is gathered by the creditor or the court at an early stage in proceedings, this would give an indication of whether sanctions would be appropriate. As we deal with people who can't pay as opposed to debtors who won't pay, we are unable to suggest what sanctions may be appropriate for these debtors.

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

EMMA comments: This would be a good idea. Debtors hide from creditors but if the court were to reach out and offer some kind of mediation or information gathering at an early stage that could potentially stop a CCJ, debtors may be more open to this. Perhaps consideration could be given to a contract being offered to a debt advice provider to actively contact debtors at risk of CCJs, and offer help, in a similar way to how Local Authorities are informed when mortgage possession claims are listed at their local courts.

not sure, often people are just scared or incapable of providing the information so will a sanction help? Perhaps a call from the court would work better.

Yes, as clients are more likely to respond to a court direction, and the creditor may not be aware of the debtor's situation.

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?

EMMA comments: Assuming this means without consent in cases where no information is forthcoming, this may be useful as an indication of vulnerability and inability to pay but is unlikely to give the whole picture and without other information could be misleading. That said, if it is clear someone is on means-tested benefits, that is generally a fairly accurate marker that they won't be able to pay a judgment debt so creditors or the court accessing DWP information could be useful.

Accessing information held by HMCTS may be beneficial as this could flag up any magistrates' court fines that a debtor is liable to pay, and potentially any Liability Orders for council tax which could have a significant impact on a debtor's disposable income.

Yes absolutely, it would save a lot of time issuing judgements which are impossible to repay.

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?

EMMA comments: Gathering information from third parties could be useful to give an indication of the client's situation, however this will only tell part of the story and could be misleading. Accessing credit reports to establish consumer credit indebtedness, along with information around whether payments are up to date or defaulted could help to identify whether a debtor is experiencing financial difficulties. Accessing information about money held in bank accounts is less likely to be helpful, as a debtor could appear to have a large balance, but have the funds earmarked for essential living expenses.

Credit agencies yes, banks not so sure.

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?

EMMA comments: Perhaps the ability to gather this kind of information should only be granted to creditors if certain criteria have been met, e.g. where there has been no contact with debtor for a period of time, if a debtor is actively avoiding the debt or the debtor won't pay rather than can't pay. Debtors could be made aware that if they don't respond the court has the right to gather this information but if they do co-operate it won't happen.

I think only the court should have access, not creditors. Courts to make the judgement based on information and facts

It should be available to the court, not the creditor then it is for the court to make an appropriate decision.

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

EMMA comments: Guidance notes for completing the response pack states that help is available from solicitors, Citizens Advice or the County Court, but we are not aware of any support or information for debtors once a judgement is made.

There is a section on how to pay on the judgement which states that a leaflet is available from the court. We have been able to find EX20 Paying the Judgement and information for the claimant but information about what to do if you cannot pay a judgement, does not appear to be readily available (an internet search showed that a Form EX326 appears to exist but no link from .gov as with other forms and does not come up in the online search facility)

No, just instructions on who to pay.

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

EMMA comments: N/A

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

EMMA comments: Support should be available for help with the whole process, for example form filling, mediation and the court hearing, both before and after judgement.

Information about the support available should be provided from the beginning of the process and should be easy to find online. Information should be provided in 'plain English' as it is often the language and technical terms used that create a barrier to debtor engagement. Information should also be made available in different formats and languages for those with additional needs.

Where to get advice if they cannot pay.

A referral from the court or creditor to an advice agency early in the proceedings to enable them to take advice and provide information.

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?

EMMA comments: How to identify is good question, as often creditors and collectors are aware of vulnerabilities and do not pass on the information or make adjustments. We understand the Pre Action Protocol (PAP) is being looked at separately but strengthening the PAP or adding extra protections requiring the creditor to have considered this before using the court system if debtor is vulnerable would be a good start.

Low income households, people with illness, disabilities or poor mental ill health - courts could check for benefits received to identify those who may need further support.

Most of our clients have mental health issues, many need face to face advice due to literacy issues or anxiety/ health issues. More time is required and enforcement options other than bailiffs which are often not appropriate.

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?*

EMMA comments: Court documentation at commencement of action because as much clear information to debtors as possible at the beginning of the process is likely to be most effective. Information should be available in different formats; not just written documents, but for example braille, audio, video, webinar and should also be made available in different languages. QR codes on letters that people can scan to access the info in different formats such as links to videos explaining the process could also be useful.

(i) through court documentation at commencement

People take more notice of court forms, and bailiff letters are too threatening and just make people bury their heads more. Information should be given as soon as possible, by the court, with decent time limits and signposting or referrals to support/ advice agencies who often have long waiting lists.

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?

EMMA comments: Absolutely, access to advice and assistance as early as possible in the process would increase engagement. We don't know of any reliable figures, but anecdotally

we would say that engagement with the claims process has reduced since the removal of legal aid for debt cases. Debtors (particularly vulnerable debtors) need access to the support at an early stage.

Yes, this would be very helpful.

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

EMMA comments: More consideration of potential vulnerability should be given before enforcement. Creditors should only use enforcement that is proportionate to the debtor's circumstances.

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

EMMA comments: Maybe an interim stage could be introduced, where the court would contact the debtor to inform of an application for enforcement, giving the debtor the opportunity to object and to declare vulnerability or inability to pay for example.

Holding creditors to account for taking disproportionate enforcement action and not taking vulnerability into account would also be appropriate and may prevent misuse of the court process.

Reducing fees and giving debtor more advance notice which would give more time to seek advice.

More understanding around vulnerabilities is required as enforcement can cause serious harm to someone already struggling and clients mentioning suicide are not uncommon.

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

EMMA comments: We would welcome more information and training for Court staff and Court bailiffs around recognising potential vulnerabilities. Debtors should be urged to seek advice as soon as possible and be made aware of how to use the complaints process.

What the rules to enforcement are, and how to complain if they want to.

To seek advice as soon as possible and reassurance that if they engage then a resolution can be found.

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?

EMMA comments: Debtors should be provided with information about sources of advice and support and given the opportunity for initial mediation in all cases.

An explanation about what the court process involves would also be useful as debtors are likely to be scared and anxious due to lack of knowledge about the court system and what to expect and so are less likely to engage.

Offer a telephone advice service to help them negotiate affordable repayment plans if they are struggling to pay.

Spelling out that if they don't respond then the court will decide the amount they will have to repay and it might not be affordable. This is not clear on the claim pack.

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.

EMMA comments: None

Reduce the need for any bailiffs or enforcement agents - come up with new/alternative ways to recover debt

Enforcement conduct board should be given greater powers.

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.

EMMA comments: Online guidance is good but very much geared towards what happens if you don't pay. More information about what to do if you cannot afford to pay would be useful in encouraging engagement at an early stage.

Make it clearer to people who are not used to court forms what needs to be done and give a number they can call if they have questions.

People don't understand it, phrases like warrant and writ are often used interchangeably and enforcement language is threatening. All of this is detrimental to people's mental health. They should be encouraged to get help, to provide information because it will help the court make a fair decision, and not to be routinely sent to bailiffs when not enough is known about their financial situation, household situation or vulnerabilities.

Summary

From the responses received, it is clear that advisers feel an overhaul of civil court enforcement would be welcomed. Although it is highly unlikely that default judgments will reduce to zero, there are certain steps the court and creditors could take to reduce the number of them. The key appears to be early engagement with debtors and gathering as much information as possible about their circumstances to establish the most appropriate enforcement methods.

Respondent details

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