Your experience and awareness of enforcement

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

Charging Order

Attachment of Earnings

Warrant of Control

Writ of Control

Insolvency Proceedings

As a debt adviser

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

N/A

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

N/A

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

N/A

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

No

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?

The secondary debt market where companies buy debts at heavily reduced prices should not be entitled to a Charging Order. These creditors have advanced very small sums of money and not suffered any appreciable loss. They should not be entitled to a Charging Order or an order for sale.

It should be easier to seek a set aside of a judgment consumer debtors have little if any understanding of what they can do to defend a judgment. They do not have access to advice except often poorly informed advice on the internet.

The courts guidance on means to pay should be updated. The way the court calculates affordability seems quite outdated.

Debt is much more prevalent these days and in most cases there is a significant imbalance of power in favour of the creditor. They are seldom asked to properly prove the debt before taking action and the debtor is neither given enough time nor support to defend the claim. We often see for instance energy companies bringing heavily disputed debts to court. The presumption seems to be for the defendant to prove the money is not owing claimants are rarely asked to provide evidence. The presumption should be the reverse.

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?

Charging Orders should not accrue statutory interest where they relate to consumer credit debts. The debtor in this situation has already paid substantial interest on the debt.

Orders for sale should be very difficult to obtain and legislation should be introduced to mean they can only be obtained in exceptional circumstances. Currently it is only the fact that the judiciary do not like them that prevents this being a much bigger problem. Charging Orders should be suspended or only granted with conditions more regularly. The changes to legislation giving creditors automatic rights to a Charging Order were retrogressive.

Warrants and Writs of Control should only be enforced by court officers. Private enforcement agents rarely act in a professional manner and seldom pay attention to regulatory codes. More needs to be done to alert debtors to the fact that they can ask for enforcement agents' fitness to act to be considered. There should be a statutory body that can investigate enforcement agents' behaviour. The current system where the sector regulates itself is insufficient. The experience of debt advisers is that although there is a code of conduct there is no point in raising complaints where it is not followed as the enforcement agent firm simply ignores the complaint or finds in its own favour.

We find that enforcement agents employed by the court are more likely to pay attention to codes of conduct, are less intimidatory and more often consider the debtors circumstances.

Statutory demands should be subject to greater scrutiny. The time limits to respond should be longer. On receipt of a statutory demand debtors seldom know what to do and the short response time means that they are unable to access debt advice. Almost all debt advice agencies have waiting lists much longer than the response time. It is my experience that very little is required of creditors in respect of proving the debts included on a statutory demand they often do not even have the paperwork relating to the debt. This is because statutory demands seem to be issued most often by debt purchasers. Who are, baldly speaking, taking advantage of the UKs loose regulatory systems.

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

No

9) Do you consider that the court enforcement mechanisms need to take into account debt collection standards and practices outside the court system and, if so, in what circumstances and in what ways?

Yes the court should accept the Standard Financial Statement which is accepted by the insolvency service the Financial Conduct Authority and the majority of creditors.

More needs to be done to support debtors to dispute claims before matters come to court.

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

The creditors attempts to recover the debt and the steps it has taken to establish that court action is appropriate should be scrutinised.

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.]

More access to debt advice.

The court should actively engage in dispute resolution prior to an order being made, the defendant should be offered assistance with the response form. An acknowledgment of service should provide more time for the debtor to gather information. It is often necessary to get information from the creditor which it does not supply. Yet it is allowed to continue with its claim. The claim should be stayed until the creditor provides the requested information ,

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);

Yes, enforcement is often used by creditors on defenders who cannot pay the debt. Creditors often know that the client cannot afford to pay but use enforcement as a tactic of intimidation. This is a waste of court time and in most cases the debtor is not ignoring the court's instructions. They simply do not know how to respond to a claim and cannot afford to pay the debt anyway.

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

Whether a debtor is in receipt of subsistence benefits enforcement should not be available in this case. Any disabilities, illnesses or other vulnerabilities should be considered. What steps the creditor has taken to establish if enforcement is appropriate before seeking to enforce.

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)?

I have not used this provision but have assisted debtors where a creditor has. In all cases where I have been involved the creditor already knows the debtor's situation and has used the process to bully the debtor. The sanctions for failing to provide the court with evidence, which the debtor often does not have are too severe. This procedure should not be available in consumer credit cases.

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? Civil Justice Council Enforcement Working Group Call for Evidence 11 July - 16 September 2024 2

N/A

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?

N/A

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?

Any sanction the debtor faces should be mirrored by those facing the creditor. The creditor should have to evidence that they do not already have this information, they often do. This should potentially be contempt of court by the creditor.

The creditor should explain what steps it has taken to ascertain the debtor's financial circumstances. This should be sufficient otherwise the cost of getting this information falls on the court and advice services. Creditors should not enter into court lightly but they do as they are not required to provide any information unless the debtor defends the claim.

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)?

The court should provide details of the claimant to the debtor. In many cases the first thing that the debtor is aware of is that there is a judgment. The claim forms are often not received there is a volatile housing market where renters are required to move frequently, they can miss service of the claim. Claims should be served at the debtor's current address. Where a judgment has been obtained at the wrong address it should be set aside and reissued.

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?

It would be acceptable for the court to determine an appropriate order once it has determined ability to pay the creditor need not be given the information on which the decision is based unless they seek to appeal

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

No the court should act when invited to do so but should act fairly and proportionally when it is.

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?

No this would be detrimental to the debtor. Creditors already have too much power. If it is ascertained that a debtor is in receipt of subsistence benefits it should not be possible to use court enforcement. Subsistence benefits are the absolute minimum required to live. They should never be used to repay debt or if they are any order should be automatically limited to £1.00 a calendar month. The court may develop a procedure that allows for this in extreme circumstances. For instance both the claimant and defendant could be in receipt of benefits here it would be acceptable

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?

This should only be provided with the debtors express permission.

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?

No it should not. Debtors should be invited to obtain debt advice. Information then presented by the adviser should be accepted.

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?

Creditors and the court should only have access to this information if the debtor provides it.

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?

I would welcome the protection of a debtor's information. It is unfair that a debtor's circumstance could be investigated. If this is undertaken the creditor should have to provide information on what steps it took to meet its regulatory duties. The debt should be able to examine what steps the creditor took to establish affordability and capability before lending.

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?

Support for debtors

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

No formal support or information that I am aware of. Debtors can access independent not-for-profit debt advice but there is insufficient supply to meet demand. Debtors can access for profit advice but our experience is that this is seldom independent.

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

Debt advice, dispute resolution focussing on both the debtor and the creditors actions prior to issuing the claim.

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

Debtors should be assisted to complete and return the claim form. The time given to respond should be longer debtors need longer to access advice than the 14 days given.

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?

Older people can be vulnerable particularly where they are expected to respond to claims on-line. Debtors with mental health conditions struggle to respond to claims even where they might have a defence it should be easier to seek a set aside once they have obtained advice. There is usually a long wait for advice. Debtors with long-term health problems and those in receipt of subsistence benefits struggle to respond to claims and cannot afford to discharge he debt. Where the only income is benefits the presumption should be that they cannot satisfy a debt. Judgement can be made but in these circumstances the judgment should be suspended and enforcement should be refused particularly consumer credit debts.

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?

All of the above. local advice services should also be highlighted pointing to national providers as now is not sufficient

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? Civil Justice Council Enforcement Working Group Call for Evidence 11 July - 16 September 2024 3

Yes it should, there is an imbalance creditors can use solicitors most debtors do not have access to advice. Debtors should be assisted with completing the forms.

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 changes enforcement should not be available against those on low incomes

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

The court should assess whether enforcement is appropriate on application by the creditor. If it is not the creditor should be refused enforcement.

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

Debtors should be provided with free independent debt advice. The scope of legal aid should be opened again to include debt advice this is the only way supply can be raised to meet potential demand.

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

N/A

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?

Referral to local advice services undertaken by the court. The court could have a liaison officer who can build links with local advice provision. This should be provided to the debtor along with the claim form.

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

N/A

General

39) Please set out any additional comments you would like to make about the current system of enforcing money judgments in court. These comments can expand upon the questions raised above or raise new issues.

Debtors getting subsistence benefits should not be subject to enforcement in most cases these debtors cannot afford to satisfy the debt and enforcement does not change that. More consideration needs to be applied to the debtor's vulnerabilities. More needs to be done to done to inform the debtor on what they can do. The creditors behaviour post claim should be considered. The over-riding objective should carry greater weight particularly where the creditor seeks

judgement in the full knowledge that the debtor cannot pay. Rules around setting debts aside and the time given to respond to claims need to loosened. The system currently unfairly favours the creditor they are not required to prove a debt or anything but the debtor is required to defend it.

Debt advice should be covered by legal aid again.

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.

enforcement agents should not be used where recovering consumer credit debts. Better regulation of enforcement agents is required. There needs to be more emphasis on avoiding court via dispute resolution. The court should have more leeway to determine what is appropriate and proportionate. There should be more latitude in respect of what the court can order when Charging Orders and or Orders for Sale are sought.