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Response of ADR-ODR International Limited and DisputesEfiling.com Limited to the Civil Justice Council Call for Evidence about Enforcement of judgements in England and Wales

Your response is (public/anonymous/confidential):	Public
First name:	Rahim
Last name:	Shamji
Location:	London, England
Role:	Mediation service provider
Job title:	CEO
Organisation:	ADR-ODR International Limited (AOI)
Are you responding on behalf of your organisation?	Yes
Your email address:	[redacted]

Your response is (public/anonymous/confidential):	Public
First name:	Tony
Last name:	Guise
Location:	London, England
Role:	Online dispute management platform
Job title:	Director
Organisation:	DisputesEfiling.com Limited (DEF)
Are you responding on behalf of your organisation?	Yes
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Background and context

AOI

Founded by Rahim Shamji in 2016 to deliver mediation services and training to mediators. The AOI panel has 200 mediators working across 45 jurisdictions and includes well-known figures such as Dame Linda Dobbs, Mark Fenhalls, KC, Roger Levitt and Lord Peter Hain.

More information is available at: [ADR ODR International | Provider of Dispute Resolution & Training]

DEF

Founded by Tony Guise in 2015 in response to a request by Andrew Ritchie, QC, as he then was, now Mr Justice Ritchie. DEF provides a collaborative platform with bespoke functionality for mediations. The DEF platform enables the progress of mediations from inception to mediation meeting. More information is available at: DisputesEfiling.com

Neither AOI nor DEF are owned or controlled by lawyers and provide a dispute resolution service that meets the Three Tests in the Court of Appeal judgment of Churchill v Merthyr Tydfil CBC [2023] EWCA Civ. 1416, para 65: by providing a service which is: *"…proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost."*

This is the joint response of AOI and DEF to the questions raised in the Call for Evidence. Where no response is made we have no comment to make.

Your experience and awareness of enforcement

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

Together AOI and DEF provide mediation services. We have no direct experience of enforcement methods but have considerable experience of supporting the civil justice system.

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?**

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?**

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

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 address the way forward in our responses to questions 33-40, below.

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 address the way forward in our responses to questions 33-40, below.

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.]**

PAPs may not be in scope but we nevertheless make the following points which we see as central to any consideration of enforcement procedures in England and Wales.

- Introduce the reformed PAPs as an urgent priority.
- Engagement of Debtors with Creditors will improve significantly provided the PAPs are reformed as recommended by the PAP Review Working Group. The obligation to engage with a form of ADR would enable the resolution of debts in ways other than judgment which could be of immense benefit to all sides. Furthermore, mandatory mediation will reduce the number of cases commencing in Court by a significant number immediately alleviating the pressure on Judiciary, Court Staff and County Court Bailiffs.
- The digitisation of the ADR process envisaged by the Online Procedure Rule Committee can follow once the reformed PAPs have been put in place and experience of their operation gained.
- We make further proposals about the mediation of judgment debts in our response to questions 33-40, below.

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)**

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?**

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?**

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?**

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

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

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?**

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?**

32**) If the defendant engages with the court process, should the court be proactive in providing a telephone advice service, or other access to free advice through third parties, in order to potentially facilitate early resolution?**

Yes. We are aware of the support provided through the Ministry of Justice's (MoJ's) contract with We Are Digital Group (WAD) assisting parties who find difficulty engaging with digital systems. A similar approach could be taken to supporting Debtors via telephone advice using, for example Law for Life (Advice Now) with whom the MoJ already contract to provide such resources to the MoJ and WAD.

Step Change is a registered charity that offers free, flexible debt advice to anyone who needs it. They list many Government Departments (e.g. HMRC) amongst their partners but not MoJ or HMCTS. We suggest a collaboration be explored as it will likely lead to negotiated resolutions easing the pressure on County Court Bailiffs and expediting satisfaction for Creditors.

https://www.stepchange.org/how-we-help/debt-advice.aspx

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?**

We consider the system of enforcement to be under-resourced and overlooked. If the status quo is maintained enforcement will become even more unfit for purpose than it is already.

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

- At present most of the enforcement process is managed using 20^{th} century methods of administration: paper, phone and email. The entire enforcement process should be digitised. At the last open Public Engagement Event held by HMCTS/MoJ in February 2023 Nick Goodwin, CEO of HMCTS, explained that only the commencement of enforcement procedures will be digitised. The vast majority of debtors interact with Government services via a smart phone. It is therefore important that the enforcement process is fully digitised to enable the administration of the courts and the rule of Law to be made more efficient.
- We commend to the Working Group evidence submitted to the House of Commons Justice Select Committee Inquiry into *"The Work of the County Court"*. The evidence touches in part on questions of enforcement. We draw attention to the evidence of Registry Trust Limited (RT, evidence ref WCC0052) and the Civil Court Users Association (CCUA, evidence ref WCC0057). Both organisations are likely to make submissions to this Review but in case they do not we provide a summary of and links to their evidence below:
- Highlights of RT's evidence:
    a) *Registry Trust are required to return to the courts any records that have … issues which prevent the judgments being properly recorded. Examples of return reasons are where we see multiple …names used, or where we see missing or incomplete defendant details.*
    b) *From July-November 2023 3,873 records were returned because they were missing required information. All of those records remain outstanding at (December 2023) meaning the CNBC has a backlog dating back a minimum of six months. This cannot be seen as delivering proper access to justice for anyone.*
    c) *RT receive an average of 49 e-mail requests per month from various local courts to update records manually. The e-mail requests are typically to update the Register by amending an outstanding judgment to that of a Satisfied or Cancelled judgment. The courts should actually be updating their own records via CaseMan so RT receive it in an electronic feed overnight. The number of requests is not necessarily problematic but does raise questions over why court staff are not following their own internal processes.*
    d) *RT suggest the size and scale of the backlogs of work indicate insufficient staff to manage the workload. Furthermore, the queries received on county court processes from court staff suggest staff are not always as well-trained or consistently trained as they should be.*

e) *It is widely acknowledged that there is a dearth of available usable data from the courts system. RT has first-hand experience of this, in that when seeking to obtain information on the types of inbound calls received by the courts service, particularly relating to obtaining the name of the claimant, the courts were unable to provide that information, as they did not track it. An internal analysis shows RT receive c. 200 queries a week regarding the same.*

f) *In their submission to the Justice Committee RT identify key areas which would improve the efficiency and effectiveness of the county courts, the most significant of which is the addition of claimant data to the public Register. This change would significantly reduce incoming calls and queries to the courts, allowing for more effective use of resources elsewhere.*

- Highlights of the CCUA's evidence:
  a) *[Members] report that the current situation with county court bailiffs/warrants of control is dire. It is reported that at some courts their enforcement applications are not actioned for many months and in some cases, they receive no responses at all. There are not enough court bailiffs to execute Warrants of Control.*
  b) *The introduction of Warrant of Control Support Centres was not requested or required by court users. Whilst some success is claimed by the courts in terms of money collected (which is welcome), it is effectively no more than a telephone collection service which serves to delay the attendance of the bailiff, which was actually the service requested and paid for by the court user.*

Our edited highlights are no substitute for reading the evidence the links to which are here:

RT: committees.parliament.uk/writtenevidence/127128/pdf/

CCUA: https://committees.parliament.uk/writtenevidence/127179/pdf/

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

See the telephone advice support we propose in answer to question 32, 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?**

Online resources should be made available for both Creditors and Debtors to enable both sides to understand options and solutions. This resource could be signposted by a link appearing on the form of judgment.

This approach has already been taken by HMCTS in connection with applications for non-molestation/occupation orders. The form of application signposts the support available via the RCJ Citizens Advice Centre's CourtNav platform. The link appears in the top right-hand corner of the second page of form FL401. That simple step has, according to the Centre, seen 10,000 users find the CourtNav service.

See,

https://www.gov.uk/government/publications/apply-for-a-non-molestation-or-occupation-order-fl401

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?**

See our answer to question 11, above.

Further, we propose the use of mediation in relation to civil judgments. This is not without precedent as the use of mediation in criminal proceedings was called for by Sir Vivian Ramsey as long ago as October 2011 (see, Criminal-case mediation 'by 2020' | News | Law Gazette):

"…mediation could take over the process of restorative justice, in which defendants meet the victims of their crimes. [Sir Vivian] said victims often feel marginalised or excluded by the criminal justice system and mediation would bring them and the defendant more into the process."

Since 2011 Victim-Offender Mediation has been used and the College of Policing have carried out studies that support its use. See, Victim-offender mediation | College of Policing

Another approach is Restorative Justice which may bear consideration by the Working Group. The College of Policing have used to good effect. Key conclusions from several studies are:

"Reoffending costs would be significantly more than the cost of running the schemes, with £9 of savings being made for every £1 spent.

This is also supported by Strang and others (2013), who found that, depending on the kind of offender and the point in the criminal justice system where RJ was administered, for every £1 spent, between £1.20 and £14 was saved.

Additionally, RJ can have a beneficial effect on the health and social welfare costs implicated in the criminal justice process, reducing demand for GPs, social workers, councillors, mental health services and welfare systems by assisting the recovery of the victim (Strang and others, 2013)."

This idea of introducing collaborative mechanisms rather than the blunt instrument of the County Court Bailiff or other process may save MoJ costs and bring wider benefits to society by improving the mental and physical health of the Debtors.

A link to the College of Policing briefing is here: Evidence briefing | College of Policing

Similar approaches could be applied prior to the enforcement stage but post entry of judgment.

We also urge the Working Group to bear in mind the findings of the "Evaluation Rental Mediation Service Pilot: Post Implementation Review" undertaken by MoJ and DLUHC and published on 2 February 2023 (the Review).

We appreciate possession cases are not within scope but we would say a possession judgment is a judgment and one that has features similar to a money judgment. The outcomes of the Mediation Service Pilot do have, we believe, relevance to the CJC Enforcement Review.

Both AOI and DEF were involved in the tender for this Pilot, which was won by the Society of Mediators.

A major point found by the Review was that:

- *"…anxiety driven behaviours such as 'head burying' can be common amongst those with financial problems meaning people often wait until the situation becomes critical to engage.*

As noted by participants, other dispute resolution attempts are likely to have been attempted and failed by the time a case comes to court. With that in mind a 'whole system approach', which considers user behaviour and different forms of advice and support, while significantly more complex, might be considered in the longer term to assess different points and mechanisms for dispute resolution." (p.36)

We are sure the parallels with debt judgments and the Ostrich Debtor syndrome will not be lost on the Working Group.

- *"Where mediations did take place the chances of success were relatively good, although the small number of cases prevents generalisation."* (p.37)

A 45% settlement rate was reported. Even that rate would bring about a significant reduction in the case load of the County Court Bailiffs.

- *"The parties involved in disputes, particularly tenants, struggle to understand the possession process and housing law and lacked awareness of what mediation involved or how it could help. Tenants who did want to mediate also reported a lack of clear information about the process and information about what was happening in their case and why mediation had not proceeded as planned."* (p.37)

As we understand it the Pilot was managed using paper, email and phones. Whilst we recall the urgency attaching to the start of the Pilot we nevertheless believe that running a Pilot without an online management system was a missed opportunity.

- *"…there were some communication difficulties between the parties responsible for delivering the pilot. Duty Advisers were pivotal to the success of the pilot as they were responsible for signposting tenants to participate…"* (pp.37-38)

In the AOI/DEF bid we emphasised how important it would be for all parties to collaborate using an online platform. Our experience shows that the simple act of working together on a platform such as that used by AOI increases the likelihood of settlement as all parties feel invested in working together to find a solution. Unfortunately, we did not have the opportunity to demonstrate this through the Pilot.

We would be interested in developing such a Pilot to deal with the mediation of Judgments.

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

Please see our answers above.

<u>**General**</u>

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 find it difficult to suggest additional suggestions for improvement in the absence of data about, for example, the number of County Court Bailiffs employed by HMCTS. This data is surprisingly not in the public domain and we hope HMCTS/MoJ in their submission address the issue. We have, in any event, asked MoJ for this data via a FOIA request made on 12 September 2024. It may be up to 2 months before we receive a reply but when we do we will share the MoJ's answer with the Working Group.

A firm of High Court Enforcement Officers, Frank G Whitworth, say that, as at 11 January 2023, there were 150-200 County Court Bailiffs employed by HMCTS. See link below:

The difference between a High Court Enforcement Officer, a Certificated Enforcement Agent, and a County Court bailiff - The Sheriffs are Coming

In 2023 the MoJ's Civil Justice Statistics confirm 288,642 Warrants of Control were issued.

Detailed data is needed to understand the challenges faced in the enforcement of Judgments. A point also made by RT, see above.

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.**

Please see our answers above

We hope our submission is helpful. Should the Working Group wish to discuss any aspect of this submission we may be contacted via the email addresses provided above.

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