



Informing Progress - Shaping the Future

CJC Enforcement Working Group Call for Evidence: Enforcement

This response is made on behalf of the **Forum of Insurance Lawyers (FOIL)** in respect of the above Call for Evidence. FOIL represents over 8,000 lawyers across the United Kingdom and the Republic of Ireland. It exists to provide a forum for communication and the exchange of information between lawyers acting predominantly or exclusively for insurance clients.

This response has been produced following consultation with FOIL members and our Sector Focus Teams.

The response is public.

Executive Summary

FOIL supports some revision to the existing enforcement framework, specifically if it enables or facilitates creditors to better differentiate between (a) those debtors who refuse to pay for reasons unrelated to financial means and (b) those debtors that acknowledge the validity of the debt but do not have the capacity or means to pay. In relation to (b), FOIL considers that early and proportionate mechanisms should be put in place to facilitate a better understanding of a debtor's ability to pay now and in the future. Early identification of those debtors in receipt of state benefits (and without assets) would be helpful for all parties to a debt. These steps should help improve the fairness of the framework and support the expenditure of proportionate costs on the enforcement of debts.

Questionnaire

Your experience and awareness of enforcement

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

FOIL members have experience of the enforcement methods outlined in Annex A. Most use is made of warrants or writs of control, charging orders and contempt proceedings (in fraudulent claims which have been successfully defended). There is a definite preference for the use of High Court Enforcement Officers.

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

Barriers are typically method specific, but in general, it is the failure of the judgment debtor to cooperate and/or supply information that is the main issue for creditors. The overall experience of members is that the current enforcement mechanisms are slow, costly and offer no guarantee of recovery.

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

Warrants or Writs of Control: enforcement via a High Court Enforcement Officer can be most effective if executed properly. However, the requirement for High Court Enforcement Officers to give notice of their initial attendance defeats the purpose and the element of surprise on elusive debtors.

Charging Orders can be effective (especially on larger debts) but can take a long time for the debt to be satisfied unless the debtor is going through a sale. This method is less useful where there is limited equity in the property or where it is owned jointly as the main place of residence.

Attachment of Earnings Orders (AOEO) and Third-Party Debt Orders (TPDO) can be effective but requires information to be provided by the debtor. You cannot apply for a TPDO against a joint bank account unless the judgment debt is a joint debt of all the account holders. This is a significant limitation. AOEO do not apply to corporate officers, the unemployed or the self-employed and instalments tend to be low.

Insolvency proceedings: the demand or commencement of insolvency proceedings can sometimes lead to judgment debtors making payment, but any creditor action must be based on a legitimate debt.

The third-party deduction scheme (deductions from benefits) rarely leads to full discharge of a debt and is by its nature a slow and ineffective mechanism for collecting debts.

The use of regulatory breathing spaces¹ also adds additional challenges for creditors seeking enforcement. Whilst creditors may apply to the court to cancel a regulatory 'breathing space', this is often time consuming and costly.

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

¹ As per the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.

Each of the enforcement mechanisms has its own pros and cons depending on the specific circumstances. We have outlined those features that make each mechanism ineffective in the answer to question 3 (above).

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

Considering the comments above, it is unlikely that direct promotion of any specific form of enforcement would be helpful.

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?

Earlier disclosure of the ability to pay information and any relevant vulnerabilities from the debtor would be beneficial. In court proceedings, this could be addressed by the debtor at the Defence or Directions Questionnaire stage of proceedings.

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?

Yes. Better accreditation standards and transparent complaints handling processes should be introduced for enforcement agents. Subject to the comments in question 9 (below), FOIL is broadly supportive of the proposals by the Enforcement Conduct Board (ECB) to introduce new standards for enforcement work plus an oversight model.²

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

FOIL members are aware of the interaction between existing ECB standards and court enforcement mechanisms, but we are unable to offer any specific examples of note.

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?

It is helpful to seek alignment between court enforcement mechanisms and debt collection standards/practices outside the court system.

FOIL is broadly supportive of the ECB accreditation model and the proposed new standards linked to accreditation.³ The most controversial aspect of the proposed standards is the explicit duty to ensure that all enforcement agents wear operational body worn video (BWV) during enforcement action. That duty is supplemented by specific training provisions (page 46). Monitoring/oversight is the primary emphasis or focus for BWV use in the draft standards. FOIL considers that the primary purpose of BWV should be protective – recordings offer protection for members of the public, the debtor, and the enforcement agents involved. FOIL considers that greater emphasis should be given to this protective purpose and the need for explicit transparency about the use of BWV during any enforcement agent interaction with debtors/members of the public.

² <https://enforcementconductboard.org/wp-content/uploads/2024/08/ECB-Standards-for-Enforcement-Work.pdf>

³ Ibid.

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

FOIL supports a unified system of accreditation for all enforcement agents whether operating inside or outside of the court system.

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)?

This is a key point for the CJC to consider. Active steps by the Court to signpost debtors to authorised debt advisors and to relevant information is important. See for example, [Best ways to pay off your debts - England and Wales | MoneyHelper](#). This information could be included with the Court response pack or in an equivalent form via the OCMC portal.

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)

Yes – this would assist the creditor in determining whether to proceed and/or to decide which further investigations are necessary. It is important for creditors/claimants to assess the prospects of recovery as early as possible to identify those debtors who can pay and those whose financial situation would mean throwing good money after bad.

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

FOIL considers that the following information would be helpful from the debtor:

- *Is the debtor in receipt of state benefits and if so, provide details?*
- *What assets and property do they have and how are they owned (jointly/sole/UK or abroad).*
- *The existence of other unpaid/discharged debts and whether they are secured or not. Further information about those creditors.*
- *Employment details (including job title and employer's details) to assist with Attachment of Earnings Orders.*
- *Details of bank accounts, assets, directors etc when the debtor is a corporate entity.*
- *If the debtor has insurance that is supporting the litigation (e.g. LEI or insurer in contract who are ultimately indemnifying the party).*

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)?

FOIL members do have experience of CPR Part 71. The general view is that this provision is time-consuming and costly for clients. It would be preferable for debtors to provide basic financial information at an early stage of debt recovery proceedings and ideally at the pre-litigation stage.

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?

FOIL members have not always found the Part 71 provisions to be effective. It is often a time consuming and expensive process to secure information.

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?

The primary area of delay is CPR71.8 – waiting for a case to be referred to a Circuit Judge or High Court Judge to order contempt of court or apply other sanctions. Ideally this power needs to be available to the judge at first instance providing an appropriate penal notice is given to the debtor.

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?

An appropriate sanction would be for the ordinary penalties for contempt of court – where the failure to provide information amounts to a deliberate (including reckless) interference with the administration of justice in a non-trivial way. Please see the [Law Commission Consultation on Contempt of Court](#). This would be covered by the Law Commission's latest proposals for general contempt or for contempt by breach of a court order or undertaking.

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)?

Yes – the debtor's name and legal representative's details (including contact information). If unrepresented, the court should also provide contact information for the debtor.

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?

Adequate safeguards already exist for debtors – for example, when a debtor applies for a breathing space moratorium and seeks to withhold their residential address because it is reasonably expected that showing the address would lead to violence against them or someone who normally lives with them. Existing legal provision under the Data Protection Act 2018 also regulates the disclosure of personal data to third parties. Creditors are permitted to share data with third parties where they are required to do so by law.

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

Yes, active steps should be taken by the Court to identify and verify defendants that are/claim to be in receipt of state benefits. That would enable the court to assess whether the debtor is impecunious and is likely to have disposable income/assets to settle a debt.

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?

Yes, subject to appropriate safeguards to prevent unauthorised disclosure to 3rd parties.

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?

An appropriate order can be made by the court (with a penal notice attached as appropriate) to prevent and/or restrict unauthorised disclosure of such information by the judgement creditor and their legal representatives to 3rd parties. Otherwise, existing legal protection in the Data Protection Act 2018 is sufficient.

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?

Yes, that would be helpful for the enforcement process.

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?

FOIL repeats the answer to question 22 (above).

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?

Yes, as to change and safeguards – see above (the numbering in the question may be incorrect).

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?

*Appropriate protective mechanisms should be available to the debtor where they can show that on the balance of probabilities the judgment debt was obtained as a result of fraud, or collusion or a miscarriage of justice. Similarly, there should be adequate protective mechanisms for a creditor and penalties built into the enforcement process where there is likely fraud or abuse of process by a debtor (see for example, *Kaye v Lees* [2023] EWHC 152 (KB)).*

Support for debtors

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

Yes, FOIL members are aware that support and/or information is sometimes provided to debtors following judgment.

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

For example, FOIL is aware of the provision of information relating to the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020. Under these Regulations, a breathing space is intended to help to create time and space for a person to get the help they need, without having to worry about their financial situation getting worse. It is not intended to be used to avoid payment where the debtor has the means to pay a legitimate interest debt.

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

Signposting to the CPR and support organisations at the start of proceedings (in the Court response pack or equivalent).

It would also be helpful to offer debtors support with considering their assets and means and proposing settlement offers and the consequences of not settling.

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?

FOIL is generally supportive of the provisions in respect of mental health moratoriums⁴ but also notes the scope for abuse.⁵ Those debtors with language or communication barriers or disabilities merit specific attention in the enforcement process. In many cases, vulnerability will be identified at a pre-issue stage but if not, provision should be made to assist identification of vulnerability early within court proceedings.

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 (31 iv).

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, FOIL repeats the answer to question 11.

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?

Yes, changes should be made as outlined above.

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

Key changes would include:

- *Simplify the enforcement process*
- *Signpost clear support for those who are subject to an enforcement application/order.*
- *Better support for debtors around considering their assets/means, proposing settlement offers and assessing the consequences of not settling.*
- *Better mechanisms to allow access to information on debtor's means and assets.*
- *Earlier identification of the ability to pay and generally supporting the differentiation between (a) those debtors who refuse to pay for reasons unrelated to financial means and (b) those debtors that acknowledge the validity of the debt but do not have the capacity/means to pay?*
- *The requirement for High Court Enforcement Officers to give notice of their initial attendance defeats the purpose and the element of surprise on elusive debtors.*

⁴ Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020.

⁵ *Kaye v Lees* [2023] EWHC 152 (KB)

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

See the answers to questions 38 and 40 (below) and the earlier answers to questions.

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

FOIL does not have any specific recommendations to make here.

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?

The key is to get debtors to engage with creditors actively and constructively either directly or via an authorised debt advisor or legal representative before the commencement of court proceedings.

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

Specific financial penalties (for example, higher interest payments) (a) for those debtors who do not cooperate in the enforcement of legitimate debts and (b) where there has been demonstrable fraud or abuse of process by a debtor during any enforcement or other legal action.

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.

The assignment of a debt should be communicated by the original creditor to the debtor with details of the assignee in writing.

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.

See earlier responses.

The proliferation of asset protection strategies and enforcement avoidance media - often produced by non-accredited creators or organisations - can be unhelpful. FOIL takes no issue with media that accurately represents the legal rules and frameworks around debt enforcement. However, the provision and circulation of misleading information for debtors can unnecessarily prolong the legitimate enforcement of debts. This is an area that should receive attention from the CJC.

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