



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

The Call for Evidence closes on **16 September 2024 at 23:59**.

Respondents do not need to answer all questions, if only some are of interest or relevance.

Answers should be submitted by PDF or word document to CJCEnforcementCfE@judiciary.uk. If you have any questions about the consultation or submission process, please contact CJC@judiciary.uk.

Please name your submission as follows: 'name/organisation - CJC Enforcement CfE'

As part of the process, the Working Group will be holding three webinars via MS Teams. The format of each webinar will be the same.

- Register for the 22 July (16:30-17:30) [HERE](#).
- Register for the 5 August (16:30-17:30) [HERE](#).
- Register for the 5 September (13:00-14:00) [HERE](#).

By attending, you are confirming your consent for your email address to be visible to fellow webinar attendees.

You must include the following information with your response:

Your response is (public/anonymous/confidential):	Public
First name:	Anna
Last name:	Bain
Location:	Bristol
Role:	Case handler
Job title:	Senior Associate
Organisation:	Lyons Davidson Solicitors
Are you responding on behalf of your organisation?	No
Your email address:	

Information provided to the Civil Justice Council:

We aim to be transparent and to explain the basis on which conclusions have been reached. We may publish or disclose information you provide in response to Civil Justice Council papers, including personal information. For example, we may publish an extract of your response in Civil Justice Council publications, or publish the response itself. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the General Data Protection Regulation.

Consultation responses are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Civil Justice Council.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response, but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your organisation, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If your response is anonymous, we will not include your name in the list unless you have given us permission to do so. Please let us know if you wish your response to be anonymous or confidential.

The full list of Call for Evidence questions is below:

PLEASE SEE ANNEX A - LIST OF ENFORCEMENT OF DOMESTIC JUDGMENTS FOR REFERENCE (INCLUDING ORDERS FOR SALE IN CHARGING ORDERS) THIS WORK IS NOT CONSIDERING POSSESSION ORDERS.

Your experience and awareness of enforcement

- 1) Which enforcement methods do you have experience of, if any?
Oral Examination, Third Party Debt Orders, Attachment of Earnings, Bailiffs & High Court Enforcement Officers, Charging Orders, Insolvency
- 2) Are there any barriers you have experienced in seeking to enforce or satisfy a judgment and, if so, what were they?
Slow court service, administrative processes set too rigidly (so as not to allow common sense to be used), Courts not being able to see judgments awarded by other courts e.g. CNBC and local court for purposes of charging order, lack of communication between bailiffs and other departments within the Court
- 3) Which of the attached enforcement mechanisms do you find to be most effective in obtaining a resolution, and why?
Charging orders usually result in payment (eventually) due to long term security offered
- 4) Which of the attached enforcement mechanisms do you find to be least effective in obtaining a resolution, and why?
County Court bailiff – there are frequent delays and they rarely make a recovery
- 5) Do you consider any of the attached enforcement mechanisms should be promoted as being more effective than others?
No (except possibly if there is a genuine choice between Bailiff and HCEO) because enforcement option depends on circumstances of the debtor
- 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?
We act mostly for creditors – ability to recover more than fixed costs in higher value claims e.g. follow values based of court track and allow more costs to be recovered in higher value claims
- 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?
No (but we act mostly for creditors)
- 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?

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

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.]

No – debtors already (assuming pre-action protocols are kept up to date/reviewed to be relevant and followed) have plenty of opportunity to engage with creditors and e.g. agree payment/instalment plans in the event a debt is admitted

- 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);

Not if the court asking for more information then gives rise to court deciding not to allow claim to progress, but more information at an early stage is (in theory) good, but how accurate will the information be? Will the requirement to provide more information simply prove to be another barrier to engagement?

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

Employment details, bank account details and balances, property they own, NI number and date of birth, other debts. Would be good if there was proof of what defendant is saying!

- 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)?

Have used this process but not found them to be useful

- 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?

Seems very easy for defendant to provide inaccurate information. Proof not required. Specific questions that we have requested be asked were not asked. Documents requested were not asked for/provided.

The only time useful information was provided was when a debtor inadvertently ticked a box about paying a mortgage, which allowed us to make further enquiries.

- 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?

Questioning needs to be completed before a judge and proof of what defendant is saying obtained and checked before person being questioned leaves the court

- 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?

Penal notice (already attached) isn't the solution – it's a harsh sanction but equally doesn't seem to work. Don't know how we can compel people to provide information. Most people can pay something (even a small amount) towards a debt

- 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?

Simple answer seems to be to share information only with regulated bodies who are e.g. GDPR compliant, but this puts Litigants in Person at a big disadvantage and if information has been obtained legitimately it should be available to use for legitimate purposes

- 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?

Yes – court should have access and should provide details to creditors

- 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?

Penal notice? Creditor to be penalised if they abuse the information given to them.

- 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

- 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?

Penal notice? Creditor to be penalised if they abuse the information given to them.

- 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?

Assuming you mean allowing (21) and (23) with sanctions at (22) and (24) – yes

- 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?

Debtor should be able to make representations to the court as to why certain information should not be shared e.g. situation of financial abuse. Court to decide – can't envisage a system where Court isn't allowed to have information working for anyone

Support for debtors

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

No – we act for creditors

- 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?

Signposting to debt advice e.g. Citizen advice, Step Change, Money & Pensions Service

Existence of Breathing Space legislation

- 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?

There is already help available for people who ask for it. Signposting should continue. Increase funding to existing support services rather than adding more barriers for creditors

- 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?

Court should be signposting to third party providers but not getting involved in providing debt advice itself. The Court already provides mediation services for lower value disputes and this would be accessible to debtors who engage in the process

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 need a more efficient court service to be able to process the existing mechanisms more quickly. Adding in the option to request enforcement processes to be started immediately at the point default requested would save administrative time/cost and avoid delay

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

Speed and efficiency please – it doesn't serve anyone to have matters dragging through the system for long periods

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

None – continue signposting. Safeguards are already there for debtors who engage with the process

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

Likely time scales – but to be accurate court service would have to work to it's advertised time scales

- 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?

None – pre-action protocols are in place. Potential judgment debtors already have opportunity to engage

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

To make all 'final decisions' e.g. adjudication as simple to enforce as e.g. ET decision

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.

- 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.

Lack of efficiency – none of the current options are particularly complicated but each step takes much longer than it needs to. The Court service should employ more bailiffs to go out and serve papers etc

ENFORCEMENTS OF DOMESTIC JUDGMENTS

General -Identifying assets	Charging order	Attachment of earnings order	A third party debt order	Warrant of control	Writ of control	Insolvency proceedings	Contempt of court proceedings	Freezing order
Publicly available sources: • The Land Registry. • The Bankruptcy and Insolvency Register. • Companies House • The attachment of earnings index. • The insolvency and companies list of the business and property courts of England and Wales. • Instructing enquiry agents to undertake an assets check. • Applying to the court for an order that the judgment debtor/director of a company attends court setting out its financial position under oath. • Post judgment freezing order preventing dissipation of assets / the delivery up of information regarding assets.	• A court order that places a lien charge on the property preventing the judgment debtor selling the property without first satisfying the charge (judgment debt). The charge also provides that the judgment creditor can apply to the court for an order for sale of the property to satisfy the debt owed. • Application is made without notice to the judgment debtor and dealt with by the judge without a hearing. After that the judgment creditor will apply for a final charging order and at that stage the judgment debtor will be given notice of the final charging order application. • Charging Orders [£119 & £71 for a warrant if order for sale made].	• [Attachments of Benefits is not included as it is not an order of the court]. • An attachment of earnings order is a court order used to collect the judgment debt directly from the judgment debtor's wages. The order requires the debtor's employer to deduct a certain amount from the judgment debtor's earnings and send it directly to the judgment creditor until the debt it is paid. • An attachment of earnings order cannot be obtained against someone who is unemployed, self-employed, a company or in the armed forces. • The application is made in form N337. • Attachment of Earnings [£119].	• A third party debt order is a court order that allows the judgment creditor to seize money owed to a judgment debtor by a third party. This is often used in respect of the judgment debtor's bank account. • The order freezes funds held by the third party that are due to the judgment debtor and the third party is then ordered to pay the judgment creditor directly from the judgment debtor's funds. • An interim third party debt order is made without notice and dealt with by a judge without hearing. After which a hearing takes place where the court decides whether to make the final order at which point the third party can intervene and object to the order being made. • The application is made using form N349. • Third Party Debt Orders [£119].	• The warrant of control authorises enforcement agents commonly referred to as bailiffs to take control of the judgment debtor's possessions. This involves the enforcement agent entering the judgment debtor's premises to collect and subsequently sell the possessions. • Used for judgment debts of less than £5,000. • The application is made in form N323. • For money [£91]; for goods [£143].	• This is similar to a warrant of control but for debts above £600 and recovery of the goods is executed by a high court enforcement officer. • Writ of control/Warrants of execution [£83].	• If a judgment creditor is owed more than £5000 by an individual debtor or £750 from a company, an application can be made to make them bankrupt. • After a bankruptcy or winding up order is made, the judgment debtor's assets will be collected by a trustee and distributed to the judgment creditor. • Insolvency action is commenced by sending a draft winding up petition to a company or a statutory demand to an individual – many cases settle at this stage with the threat of bankruptcy.	• Where there has been a number of breaches of court orders in ongoing proceedings a judgment creditor can instigate contempt of court proceedings and failure to comply with the judgment or court orders.	• This is an order preventing the disposal of assets by the judgment debtor. • An application is made in form N244. • Without notice application [£108] but application has to be on basis of underlying claim – where court fee depends on value of the claim [£35 for a claim less than £300 up to £10,000 for claim in excess of £200,000 see Civil Court Fees EX 50].