



**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:	Natalie
Last name:	Todd
Location:	London
Role:	
Job title:	Partner
Organisation:	Cooke Young & Keidan
Are you responding on behalf of your organisation?	This response is on behalf of the London Solicitors Litigation Association (LSLA)
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.

London Solicitors Litigation Association (“LSLA”) Response

The LSLA was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has over 3700 members throughout London among all the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change. Representatives from the City of London Law Society also sit on the LSLA Committee.

This document sets out the response of the LSLA.

Your experience and awareness of enforcement

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

We have experience of a broad range of the enforcement methods listed in Annex A as well as receivers by way of equitable execution. We have significant experience (from both the Claimant and Defendant perspective) in freezing orders, search orders, disclosure orders and passport surrender orders.

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

- The costs of seeking and maintaining a freezing order are in many cases disproportionate to the quantum of the claims. The obligations on claimants in making such applications are extensive and often subject to considerable scrutiny at the return date hearings. In many cases, breaches of the full and frank disclosure obligations are relied on in order to seek a discharge of the order. This all involves considerable legal expenditure especially when multiple defendant parties are involved. In many instances, this discourages parties and litigation funders from seeking such orders. When assets are not locked down at the outset of proceedings, this can increase the costs (and the prospects of failure) of enforcement post-judgment.
- The process for registering foreign judgments and awards is complicated with many different rules and mechanisms. It generally involves considerable repetition and duplication of what has already been determined by a foreign court at first instance. A streamlined and simplified process for enforcement would make this much simpler, quicker and less costly. Ideally, there would be a single process for turning an overseas judgment into an enforceable judgment in this jurisdiction. A process similar

to the European Small Claims Procedure (a cross-border judicial enforcement mechanism) could be considered for small claims. The main advantage of this procedure is that lawyers need not be engaged to start the procedure, the claim can be resolved quicker and the procedure is simpler, especially for cross-border claims – (i) the procedure can be started online by filing a form; (ii) within 14 days of receiving it the Court must fill in an 'answer form' and send a copy to the defendant; (iii) within 30 days of receiving the defendant's answer the court must give judgment, request further detail or summon parties to an oral hearing. Once the judgment is issued, the parties in whose favour the judgment has been granted can take steps to enforce the judgment and it can be enforced in another EU Member State as if it had been given in that state, with no special procedure being required or declaration of enforceability, irrespective of the possibility of an appeal and without any security being required.

At the moment, in this jurisdiction, such cases are treated in the same manner as normal undetermined claims despite the fact that these cases have already been determined in a different jurisdiction. It may help if within the Business and Property Courts there are specific enforcement lists on days when a judge deals with only short enforcement applications or similar.

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

Which are the most effective enforcement mechanisms will depend on a case by case basis. Charging orders and third party debt orders are incredibly useful tools and are often very affordable options for claimants.

We find that early identification of assets through investigation, disclosure and in certain circumstances, search orders coupled with seeking a freezing order at the outset of proceedings to be most effective in locking down the assets. Respondents are often motivated to settle when faced with such orders. This is all the more so when assets which have been passed to family members and close associates of the defendant are also included within the freezing order.

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

Contempt of Court proceedings are included in Annex A. To the extent that these are properly considered to be enforcement tools, they are the least effective. In many instances, the defendant will have fled the jurisdiction and so rendering such orders ineffective until/if the defendant returns to the jurisdiction. It is frustrating that there is little (if any) international coordination so as to make such orders more effective. We note that there is a separate Law Commission consultation on contempt which the LSLA will be responding to.

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

The different mechanisms are all effective in different circumstances so we do not consider that any in particular 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?

This question is addressed in our answers to the other questions.

- 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?

There could be more scrutiny so as to ensure that the appropriate checks and balances are adhered to when freezing and search orders are sought. If there are aspects of the standard template orders that are not relevant or appropriate, these should be clearly identified and the proposed variation or deletion should be explained as well as any potential consequences to the defendant. The White Book 2024 notes at paragraph 25.1.25.7 that any amendments to the standard form template for a freezing order must be justified and drawn to the attention of the judge hearing the without notice application. Strict requirements also apply to changes to the standard form for Search and Imaging Orders. This should be strictly adhered to.

We see applications for such orders made by unrepresented parties who are acting as litigants in person. In such circumstances, litigants in person do not always consider all the obligations required when making such applications and many do not (or do not fully) comply with their obligations as to full and frank disclosure. In addition, many do not make provision as to how any adverse costs will be properly provisioned for. In such circumstances, given the draconian nature of such orders, it is difficult to address the injustice caused to the defendants/debtors once such orders are in place. The Courts should be encouraged to apply greater scrutiny when considering such applications and be ready to impose cost penalties or other sanctions on parties when it is appropriate to do so.

- 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.]

The courts could impose significant or higher costs and interest awards on default judgment debts or a reduction in costs and/or interest for those debtors who admit the debt and actively engage in the process of repayment.

- 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);

Imposing obligations as to asset disclosure (without the relevant court order) at the outset of proceedings could encourage speculative and unmeritorious litigation. This could be unduly burdensome and query its effectiveness (unless periodically repeated) in lengthy proceedings.

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

Asset disclosure to the value of the claim plus interest plus predicted costs. Details of any existing judgments against the debtor and any other significant creditors.

- 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)?

These orders are helpful, but it is too easy for judgment debtors to get the hearing postponed and to cause significant delays. In many complex cases, the assets identified at CPR part 71 hearings are not of any significant value and are not worth pursuing. In such instances, the hearings waste an enormous amount of time and cost. The applicant's costs can be added to the judgment debt but if the judgment debt is unlikely to be recovered then the utility of CPR part 71 as an information gathering exercise is called into question. In such cases, contempt is likely the better enforcement mechanism to focus minds.

- 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?

Yes, but as set out above, to a varying degree.

The Form which must be completed under Part 71 is very general and the applicant can ask for more information in a schedule. The requests for information can become incredibly burdensome given the wide ambit of questioning some applicants adopt. For instance, a request for details of investments could be construed to backdate many decades.

For lower value judgments, the debtor questioning will be transferred to the local County Court of the debtor from the High Court. The process in the County Court does not appear to be

particularly effective. The CPR part 71 questioning is simply done by a member of HM Courts and Tribunals Service sitting asking the debtor to answer the questions on the pre-printed Form.

It can take some time for hearings in the High Court to take place and such applications can lead to satellite litigation as the consequence of non-compliance is only a suspended sentence. In relation to debtors' questionnaires completed pursuant to CPR part 71, the process often ceases to be the simple summary process it was intended to be and particular difficulty arises in complex cases where even the certification process in relation to non-compliance with the part 71 process can result in lengthy involved hearings. In such cases the two-stage process of certifying non-compliance with a subsequent contempt of court application is unsuitable and simply adds to the disproportionate costs, time and use of court resources that the more complex CPR part 71 applications cause.

- 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?

Rather than allowing applicants to set out their requests in a schedule, there could be a prescribed list of questions which are precise in scope and time. The temporal and jurisdictional scope can be sought to be varied by the party applying for the order at the outset and they can justify at that stage why it is necessary to adopt a more expansive information gathering exercise.

Who conducts or hears these types of hearing needs to be addressed. A member of the HM Courts and Tribunals Service hears them in the County Court. Such individuals are not the appropriate person to conduct these hearings which should be dealt with someone more senior.

- 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?

Judges could have the opportunity to dispose of the suspended sentence and to provide for enhanced interest and costs provisions.

- 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?

We would suggest that the implied undertaking is sufficient in cases where the parties are represented. In cases involving litigants in person, careful thought should be given as to safeguards to ensure that information is protected. Perhaps a suitable safeguard would be that information should only be given once an independent solicitor has been appointed or a separate application brought however those protections could quickly become costly exercises.

The unintended consequences of trying to be helpful to creditors needs to be thought through.

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

We consider such an obligation to be too onerous. In addition and of utmost importance is the fact that the judiciary need to be seen to be independent.

- 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?

It would be incredibly useful to be provided with some information. The extent of the information provided would need to be carefully considered. An application on notice could be required for litigants in person, which may then be dealt with on paper if not opposed but with built in safeguards that the underlying claim and valid service of the claim must be considered.

- 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?

Consider only providing certain information. The implied undertaking could apply only to cases with represented parties and so litigants in person would not be able to obtain the information.

- 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?

In cases with well represented parties and judgment debts following a trial, a process that provides for better international cooperation and access to some additional information from banks and other financial institutions would be a good idea to undermine the various strategies used by judgment debtors to avoid having to pay those judgment debts. This would save the applicant the costs and time incurred of seeking disclosure orders. However, in order to avoid injustice, it will be necessary to clearly differentiate between judgment debts following a contested or opposed hearing, judgment debts obtained on an application in default where the issues in the claim have been considered at least to some extent by a judge and those where a judgment in default is obtained on request and or as between litigants in person.

We have seen some situations where significant multinational company clients have been pursued by litigants in person but are completely unaware of the claim going through the courts. The litigants in person purport to serve a claim for monies owed by an invalid means of service and file a certificate of service and then seek and obtain judgment in default. In such circumstances, the case is never seen by a judge and judgment in default is awarded. Only then at the enforcement stage will the multinational company client become aware of the claim and judgment. It cannot be right that in such circumstances a litigant in person judgment creditor

should be given access to obtain vast amounts of information about that multinational company's finances without that company even being aware of the claim against it.

We would be concerned that this may encourage sophisticated debtors to hold their assets offshore.

- 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?

Information should only be shared in circumstances where the defendant debtor is given proper notice that a claim is in progress and/or such information will be shared.

If information is to be made available to creditors, then it should only be in certain types of cases or courts or types of parties (unlikely to include those involving litigants in person).

It may also be advisable to restrict the information which is made available.

Consider in high value cases that the provision of highly sensitive information be subject to a cross undertaking in damages.

- 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?

Not aware of any save for legal advice centres. The majority of the LSLA members tend to focus on cases outside of the County Court. We understand the questions in this section to be aimed at county court judgment debtors and litigants in person.

- 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?

Please amend this header with your name/organisation

- 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?

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?

Noting that there are no proposals for a separate new specialist enforcement division or court, if budget permits, there could be something akin to the costs judges who determine enforcement matters who sit slightly separate to the Chancery Division and King's Bench Division although who fall under the remit of the King's Bench Division.

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

More cooperation internationally akin to that in place under the New York Convention.

- 35) Whether you consider there should be changes or not, what, if any, additional safeguards and advice should be given to debtors?
- 36) Whether you consider there should be changes or not, what, if any, additional information should be given to creditors about methods of enforcement?
- 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?
- It is often strategic to not engage.
- 38) Are there any other areas of enforcement that you feel could be improved and in what way and by which method(s)?

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.

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].