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Response to:	CJCEnforcementCfE@judiciary.uk
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Representation:	The CCUA has drawn upon the views of the CCUA membership including those of the Policy and Reform Committee. See further detail under "introduction" below.

Introduction

The Civil Court Users Association ("CCUA") welcomes the opportunity to contribute to this call for evidence from the Civil Justice Council.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost-effective court service which is fair and proportionate for all court users.

Our members participate in around 85% of all money claims in the County Court in England and Wales, as well as being involved in a wide range of other litigation including, for example, repossession and return of goods claims. They include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others representing both Claimants and Defendants.

Overall thoughts

The CCUA has long argued that enforcement provides by far the greatest scope for improvement within the Civil Courts. Justice requires that any Judgment should be enforceable in an effective, efficient but proportionate manner. Anything less risks reputational damage to the courts or even bringing the system to disrepute. The need for reform of enforcement was a key finding of the Civil Justice Review conducted by Lord Justice Briggs almost a decade ago. It is high time that the inadequacies of the system were tackled.

One of the biggest improvements would be access to information to enable quality decisions to be made regarding the method of enforcement to be employed, or even to decide whether it is worth enforcing at all. Information Orders are already on the statute book under the Tribunals, Courts and Enforcement Act 2007 ("TCEA 2007"). Their introduction could be hugely beneficial to the process.

Response to questions

You must include the following information with your response:

Your response is (public/anonymous/confidential): Public
First name: Rob
Last name: Thompson
Location: Nationwide
Role: Court Users of all descriptions
Job title: Chair
Organisation: Civil Court Users Association (CCUA)
Are you responding on behalf of your organisation? Yes

Your experience and awareness of enforcement

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

All methods.

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

- Lack of information to determine best enforcement method to choose.
- Incorrect position of the relative rights and responsibilities of the parties.
- Antiquated documentation, systems and processes.
- Performance and capacity issues within the courts.

As regards the lack of information, this is not assisted by the fact that the court often tolerates and accepts partially completed forms, e.g. Admission forms. Whilst this may appear

expeditious in the short term, it often then creates difficulties to the court users due to the lack of information.

There is even a "hole" in the Civil Procedure Rules, where if a Defendant part admits a claim but fails to file a Defence to the balance, there is no way of compelling them to do so short of applying for an Unless Order.

There is an argument that it may be more efficient in the longer term for the court to reject incomplete or incorrectly completed submissions, with an explanation that they need to be properly completed and resubmitted.

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

The method which is most appropriate to the circumstances of the case.

The idea that one method is better or worse than another completely misses the point. What works in one case may not work in another. There needs to be a tailored approach. The best improvement which could be made would be the increased availability of information, to enable quality decisions regarding the most appropriate form of enforcement in each individual case (which might even be no enforcement at all).

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

See the answer to question 3 above.

All methods have their place and might be effective in the right circumstances.

The only worthwhile and relevant comparison which can be drawn is enforcement against goods, where there are two directly comparable methods, Warrants of Control of Goods in the County Court and Writs of Control of Goods in the High Court. County Court Warrants of Control are handled by the court bailiff and are notoriously ineffective, whereas High Court Writs of Control are handled by private sector enforcement companies/ agents and are effective and worthwhile.

HMCTS have also relatively recently introduced the Warrant of Control Support centres without prior consultation. This is effectively a telephone call centre where court employees spend a period of time making telephone calls to the Judgment Debtor prior to the Warrant being passed to the court bailiff. This is dressed up as being beneficial, but it is not what the Judgment creditor has requested or paid for and simply delays matters. Whilst some money is recovered by the Support Centres and the fact that the contact is coming from the court may be beneficial in some cases, this process often simply repeats activities previously undertaken by the creditor at previous stages prior and during the claim. There is a high level of cynicism amongst creditors regarding the real reason for the introduction of the support centres, which is suspected to be purely to relieve the pressure on the court bailiffs, who have seemed unable to cope effectively with the work for decades. This cynicism is hardly surprising given the lack of prior consultation and also because it begs the question that if these support centres are generally considered to beneficial, why have they not been introduced as a standalone process for all Judgment debts, at a lower fee rate?

Overall, many creditors simply will not use the County Court bailiffs due to the perceived lack of effectiveness and delay. One massively beneficial change would be to widen up the scope of High Court enforcement to those Judgments where the only current option for enforcement against goods is the County Court bailiff, or to do nothing, i.e. Consumer Credit Act regulated debt and debts under £600. This is currently a huge access to justice issue. There needs to be effective enforcement against goods for these areas of work, albeit ensuring proportionate pricing and oversight. The introduction of the Enforcement Conduct Board should provide comfort on the latter point.

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

Only in the area of enforcement of goods, as in answer 4 above. The High Court should be able to provide enforcement against goods for all Judgments, as the County court has a proven track record over decades, of being unable to provide an acceptable service. This would in turn potentially free up the County Court bailiffs to concentrate on their other duties, such as service of documents.

(It is sometimes argued that the County Court bailiff must in fact provide value, as many Warrants of Control are issued regardless of the concerns raised above. However, we would argue that there are two drivers to that, pricing and lack of information. Warrants of Control are a cheaper form of enforcement, so if a Judgment creditor has limited information on which to base a decision as to which form of enforcement is likely to prove most effective, the cheapest option is the one that they will obviously use. This is therefore often a driven behaviour, which is not necessarily in the best interests of the court (increased workload for the bailiffs), the Judgment creditor (ineffective method) or the Judgment debtor (as it may well be an inappropriate method which will not work and will simply create inconvenience).

More widely regarding other forms of enforcement, our answer is no. The correct enforcement is that which is most appropriate to the circumstances of each case, which may vary every time. The better approach would be to allow increased access to information, with which the Judgment creditor can then base a decision regarding the best form of enforcement for the circumstances of the case.

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?

Virtually all of them could benefit from a review to simplify, streamline and make them less bureaucratic. Much of the documentation is old fashioned and would benefit from re-wording to ensure that it has maximum impact and promotes engagement. It is disappointing that this was not picked up as part of the court reform project, as we requested from the outset.

Some are worse than others. As examples-

High Court enforcement requires antiquated procedures to transfer up and issue.

Attachment of Earnings is a long-winded process which has not been reviewed for decades. The initial step requesting a response is often ignored and the process could therefore easily be speeded up by moving straight to an Order requiring the response.

There is even some thought that the step within an Attachment of Earnings application allowing a defendant to request a Suspended Order to allow them the time to pay and avoid employer involvement is now unnecessarily drawing out the process. The introduction of the Debt Pre Action-Protocol, together with the rules surrounding a service address in the CPR and the relatively easy ability to set aside, means that anyone getting to the stage of being issued with an Attachment of Earnings application has had plenty of opportunity to resolve it without. They've already had the chance to 'keep their employer out of it' and chose not to. Giving them that chance again is unnecessarily wasting time where otherwise the employer could be making deductions.

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?

Not particularly, most methods already have protections built in where appropriate. As examples, Attachments of Earnings have the Protected Earnings Rate and Third Party Debt Orders have mechanisms where they might cause hardship.

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

Yes, many of our members work in heavily regulated environments.

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

Yes, they need to modernise and be reformed. For example, there are different versions of income and expense assessment forms throughout the court system, whereas for consumers many creditors and the advice sector use the Standard Financial Statement, or a variant thereof. Some court forms are completely inappropriate to their target audience, for example the response pack sent with a Claim Form is always consumer focused, there is no alternative and appropriate equivalent for use when serving a business.

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 are not sure what this question is asking.

However, we have long made the point that once a Judgment is in place, there is no real need for the courts to remain involved in the administration of enforcement. They do not make a good job of it. The administration could easily be outsourced to the private sector, only involving the court when necessary, such as when a hearing is required regarding a charging order, for example.

Most creditors and their representatives deal with electronic communications (with clients, third parties etc) not paper and the court should consider moving away from paper where and when possible, to a properly linked system based on digitisation.

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.]

Better communication with updated Notices and Orders.

For example, we have very recently had to raise instances where the first communication being sent by courts after the entry of Judgment was an explanation as to how to apply to set aside Judgment. Whilst we agree that information should be easily available, it should not be the main thrust of the first communication. The Judgment is a court order requiring payment to be made, so communications should emphasise the need to either make payment, or if unable to make payment then to engage with an explanation regarding their circumstances.

There is a great deal of opportunity for communications to be improved to drive far better outcomes.

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);

We are confused by this question. Does “at the commencement of proceedings” mean prior to the issue of a Claim Form? Or does it mean at the commencement of enforcement proceedings? The example of including specific questions in the Directions Questionnaire does not assist, as that is neither of those, and is in fact a third possibility.

Prior to Claim Form would be inappropriate as there is no confirmation that the debt is owed at that point.

Specific questions on the Directions Questionnaire would equally be inappropriate for the same reason, as clearly the claim will have been Defended at that point.

Immediately upon entry of Judgment there should be much greater emphasis upon requiring the Judgment Debtor to engage and either satisfy the Judgment by way of payment, or if unable to do so, to give detailed explanation of their circumstances including if appropriate full details of their income, expenditure and assets.

For far too long Judgment Debtors have simply been allowed to ignore a court order, which does not treat the court with respect and risks undermining the credibility of the whole court process.

The Judgment Debtor has been given every opportunity to engage or defend prior to that point, they should at last take some responsibility. It should not continually be left to the Judgment Creditor to have to chase and continually pay additional fees to do so (although ultimately we accept that if enforcement is required, then they will have to pay).

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

As above, we do not feel it would be appropriate to require this.

Court action on a defended case exists to establish liability or otherwise.

However, we do agree that if a Defendant would ultimately struggle to satisfy a subsequent Judgment, then they should be *encouraged* to engage with details of their situation in order that the creditor might consider whether it is worth continuing and to potentially facilitate some form of early settlement. The potential benefits of this should be explained to them.

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)?

Extensive.

They can on occasion be helpful, particularly if the Judgment Creditor has specific questions to ask.

However, they can also be very long winded. There is plenty of opportunity for evasion by the Judgment Debtor.

Also, whilst it is accepted that the Judgment Debtor is on oath, there is no means to verify the information provided.

Ultimately, many Judgment Creditors would rather take a reasonably informed decision to try a particular method of enforcement, rather go through the delay and expense of this process with no idea of whether they will obtain any further information of value.

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?

As above, it can be, but often isn't.

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?

A non-cooperating Judgment Debtor is likely to remain uncooperative, both during the service of process and during questioning.

We would therefore suggest leaving the process as it is, for the odd occasion where it might be worthwhile, e.g. where specific information might be required regarding assets.

Generally, it would be better to take an alternative approach altogether-

1. Do everything possible to promote and encourage open and honest engagement by the Judgment Debtor.
2. If the Judgment Debtor then fails to engage, we would suggest that the Judgment Creditor should be able to apply to the courts for further information regarding the Judgment Defendant's circumstances. This could be facilitated by way of the Information Orders already in place under the Tribunals, Courts and Enforcement Act 2007 ("TCEA 2007"), but not yet introduced. HMCTS could approach HMRC and DWP, for example, to establish whether the Judgment Debtor appears to be in full time employment and pass limited but sufficient information to the Judgment Creditor so that they could then consider the most appropriate type of enforcement. This would benefit the court (not wasting the court's time with successive, abortive enforcement methods), the Judgment Creditor (not wasting time and money) and the Judgment Debtor (not being disturbed and inconvenienced by enforcement methods which ultimately will not work).

Any such application should be as quick and easy as possible, preferably automated, and ideally the court should have information exchange set up with the other government departments too. This should become a routine step when required, certainly not requiring a bureaucratic formal application such as by way of N244.

Knowledge is by far the most important and powerful reform which could improve enforcement.

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?

Orders to obtain information under Part 71 should remain contempt of court/ perjury.

More generally, where a Judgment Debtor fails to voluntarily and proactively respect the court's Judgment by making payment or engaging with a full and frank disclosure of their circumstances, that should open the door for an application for an Information Order under the TCEA 2007.

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)?

As above, the Judgment debtor should be encouraged to engage and given a short opportunity to do so. Failing that, the door should then be open to obtaining a swift Information Order under the TCEA 2007.

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?
Only sufficient information to assist in decision making regarding enforcement should be shared. This should only happen when the Judgment Debtor has failed to respect the court's Judgment by engaging. The limited information provided would be required to be kept confidential by the Judgment creditor and any legal representatives.

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

Ideally yes, this could become a routine action whenever a Judgment Debtor fails to voluntarily engage with details of their circumstances. As suggested earlier, these sort of administrative functions could also be privatised.

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, as above.

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?

As above, information should be limited to that necessary to make decisions or enforcement methods (or even whether to enforce at all).

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?

Ideally yes.

Some commercial creditors will already have enhanced access to the information held by credit reference agencies. This could be extended to all Judgment Creditors where the Judgment Debtor is not engaging.

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 theirprivacy?

That is more difficult if the information is made available to litigants in person. It may be that any enhanced access should attract criminal sanctions if the information is not treated confidentially.

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 above, there is already provision in place to some extent under the TCEA 2007.

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?
The Judgment Debtor has been ordered by the court to make payment. If unable to comply with the order then there should be a full and frank disclosure in any event.

Only data sufficient to inform enforcement decisions should be shared, not irrelevant detail.

Support for debtors

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

Yes.

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

Many Judgment creditors provide signposting to debt advice, before and after Judgment.

Many commercial Judgment creditors have programs and processes to provide forbearance or otherwise assist debtors who are struggling to pay. However, that does require the creditor to be in possession of that information.

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

Clearer communication from the court, including making it clear that the Judgment Debtor does bear ultimate responsibility for satisfying the Judgment, or otherwise engaging with full and frank disclosure of the circumstances which are impacting their ability to do so.

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?

Many commercial creditors have sophisticated processes in place to identify and assist vulnerable debtors.

Litigants in person might well be less aware or concerned about this aspect and may require additional guidance.

Ultimately, it is not in the interests of a judgment creditor to enforce against a vulnerable customer. Apart from being completely inappropriate, it would also be a waste of time and money. The main issue is lack of awareness of the vulnerability, even in spite of considerable efforts to gain information so the situation can be fully considered. Encouraging engagement is of fundamental importance.

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.

Judgment Debtors are often far more likely to trust and act upon communications from the court or debt advisors than they are communications from the Judgment creditor, however well intentioned.

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, signpost to debt advice and/or encourage engagement with the Judgment creditor. However, this should run concurrently with other activity, it must not create yet a further delay. It should certainly not become another version of the Warrant of Control Support Centres, for example. The Judgment Debtor will have had plenty of opportunities to engage and will have been signposted previously, and should be encouraged to communicate with the Judgment creditor direct.

Care must be taken to ensure that the court doesn't become routinely dragged into providing legal advice or creating legal arguments for litigants. The court should merely signpost.

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?

As above, the most enormous improvement would be swift, early access to information prior to commencement of enforcement. That would hugely improve the situation.

Most forms of enforcement are fairly well designed in balancing the needs of all parties.

There is definitely scope for improvement in communications and administration.

There are also small tweaks which could be beneficial and bring enforcement up to date.

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

As above, increased information would be hugely beneficial.

Improved communication and administration.

Modernisation – for example, Attachment of Earnings can cover payments under occupational pensions. That dates from a time when they were common. Many people now have personal pensions, could it be extended to cover those as well?

There is a gap in enforcement whereby some regular payments cannot be targeted, such as monthly rental income. That would not fall under the Attachment of Earnings method. A Third Party Debt Order could target individual payments, but not regular payments. Bankruptcy would work, but would be draconian. Could another method of enforcement perhaps be considered, albeit with protections (e.g. if a rental income is needed to cover mortgage payments, only the net difference might be available)?

There is huge scope for fundamental reform.

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

Better communication generally, as 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?

As long as there is clear information available on the internet, that should be sufficient.

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?

This has been discussed time and time again and generally concludes with yet more requirements on creditors, which have little or no benefit in driving engagement from the debtor.

Clear communication about the adverse consequences of failure to engage is probably the best option. Creditors try very hard with this, but court documentation could be much improved.

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

As above, particularly see our answer to question 34 above.

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 current problems with bailiffs could be alleviated if the court focussed on automatic information orders to better target enforcement, as well as lifting restrictions on use of High Court Enforcement Officers.

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.

Addressed in earlier questions.

Rob Thompson
CCUA Chair

16th September 2024