CIVIL JUSTICE COUNCIL

**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: | Rachel |
| Last name: | Wilson |
| Location: | England |
| Role: | Debt Adviser |
| Job title: | Debt Adviser |
| Organisation: | Citizens Advice Sheffield |
| Are you responding on behalf of your organisation? | No |
| Your email address: | [redacted] |
| | |

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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?**

I am writing as a debt adviser from a local Citizens Advice. By far the main method of enforcement I deal with is bailiffs. I see quite a lot of clients who have deductions from their benefits but that is not always a bad thing. I occasionally advise clients about charging orders or attachments of earnings, but not very often. I don't think I have ever seen a freezing order, a third party debt order, contempt of court proceedings or an information order.

I am not sure whether this is because these methods of enforcement are less common in general or whether it is because my experience is in supporting clients who generally owe relatively small debts and who have low income and little or no assets. The debts I advise on tend to be local authority or credit debts and so, in most cases, the creditor already knows a certain amount about the client's circumstances, or at least, their circumstances at the time the debt was incurred.

2) Are there any barriers you have experienced in seeking to enforce or satisfy a judgment and, if so, what were they?
3) Which of the attached enforcement mechanisms do you find to be most effective in obtaining a resolution, and why?
4) Which of the attached enforcement mechanisms do you find to be least effective in obtaining a resolution, and why?
5) Do you consider any of the attached enforcement mechanisms should be promoted as being more effective than others?
6) **Are there any enforcement mechanisms that you consider should be amended or varied to make them more appropriate for modern litigation from the perspective of either the creditor or the debtor?**
7) **Do you consider that there should be further measures attached to any of the current enforcement mechanisms to ensure greater fairness and/or protections for debtors?**

Taking questions 6 and 7 together, I would like to make some suggestions in relation to charging orders and writs/warrants of control.

In order to make Charging orders more appropriate for modern litigation I would suggest having a minimum level of debt that must be owed before a charging order can be obtained. My understanding is that under the current legislation, the only caveat is that if the debt is a consumer credit debt then it must be over £1000. This seems to me to be quite outdated as it perhaps offered some protection at the time but now there are very few debts that would be covered by this provision.

I would imagine that, in practice, charging orders probably are only obtained for debts over a certain level but this is little comfort to debtors who cannot be certain that their home is not at risk. If the limit was set at perhaps a £5,000 to £10,000 minimum then this would offer some reassurance to debtors. I would not suggest any limit at all if the order was against a second home (perhaps unless it is occupied by the debtors children).

Where the property in question is the debtor's home, it would seem excessive to use such a draconian measure in respect of a small debt. A charging order in itself is one thing but it carries with it the risk of an order for sale in respect of a debt that was not initially a secured debt. I expect that it is rare for a charging order to be obtained for small amounts in practice anyway so creditors would not be unduly disadvantaged by imposing a lower limit. However, it would offer peace of mind to clients whose only home is at risk from a relatively small debt.

In terms of warrants and writs of enforcement, I would like to suggest that this is also quite an extreme and very intrusive measure and so it is concerning to see it used so routinely in respect of the debtors speak to. I would argue that perhaps it is used too freely by creditors, because there is a relatively low cost to the creditor despite quite high costs to the debtor - especially in relation to the size of the original debt.

The way the fees are calculated means that the debtors who do engage with bailiffs incur these costs, whereas if a debtor does not engage then the debt eventually gets passed back to the creditor and no bailiffs fees are payable.

I would like to ask that you would consider limiting the use of bailiffs to cases where the debtor is refusing to pay and not where the debtor is unable to pay. Quite how that is decided is addressed in the answers to other questions but, in principle, it would be useful if a debtor could get the court to refuse a writ or warrant if they could demonstrate that they had nothing of value to take into control and/or that they had no means of repaying the debt. Bailiffs visits should be reserved for debtors who are able to pay, or who have assets that could be sold, and who refuse to engage with their creditors.

The easiest item for a bailiff to take into control is noemally a vehicle, as this can be accessed without gaining access to the debtor's home. It is also something that the bailiffs may actually be able to sell if the debtor does not successfully maintain a controlled goods agreement. I wonder if there should be rules preventing a bailiff from taking control of a vehicle where this is a modest vehicle and necessary for a debtors access to work or caring responsibilities.

With the exception of cars, debtors with low income often have no posessions that would be of any real value for bailiffs to remove and sell. In my experience with low income debtors I have never heard of a bailiff actually returning to remove goods they had taken into control unless the client happened to have a vehicle. In many cases, controlled goods agreements are made against low value items and the debtor is coerced into making unaffordable payments to keep them.

My understanding is that the purpose of taking control of goods should be to take goods in lieu of payment where the debtor has goods of value – the posession of which would in itself indicate them having the means to pay if they chose to do so. Sadly, for the majority of my clients none of their possessions would be of genuine value to the bailiffs but the controlled goods

agreement is a way of avoiding losing items which would cost the debtor a lot to replace and/or avoiding the stress and embarrassment of the bailiffs returning. Taking control of goods, or threatening to do so, is therefore more about obtaining payment through the use of threats. Clients are often embarassed and sometimes also fearful of the presence of bailiffs in their homes. Anecdotally, I have heard of bailiffs making a controlled goods agreement against a half empty tin of paint – with the debtor paying to prevent the bailiff attending the property again and not to prevent loss of the items supposedly taken into control.

Another thing to consider when bailiffs are used to enforce debts against low income debtors is that the payments they make are often at the expense of other debts. The use of bailiffs in these situations often enables a creditor with a 'non priority debt' such as a loan to queue-jump and take precedence over a 'priority' debt. Debtors who cannot afford all their outgoings may neglect their rent or council tax because they are pressured into maintaing a controlled goods agreement for a credit debt, or because the creditor has threatened to send bailiffs.

8) **Do you have experience of the court enforcement mechanisms interacting with debt collection standards and practices outside the court system?**
9) **Do you consider that the court enforcement mechanisms need to take into account debt collection standards and practices outside the court system and, if so, in what circumstances and in what ways?**
10) **If court enforcement is to take into account debt collection outside the court system, what practical steps do you consider should be undertaken?**

Taking questions 8-10 together, in terms of debt collection practices generally, I think there are two ways of looking at how this interacts with the court process.

One way that debt collection processes interact with court enforcement mechanisms is that where debtors have limited funds, money they are paying to debt collection agencies through informal agreements (often obtained through the threat of court or bailiff action), limits the amount they have left to offer as an instalment order in court. In this sense, it seems sensible that the court should be made aware of other debt enforcement outside of the immediate court action.

On one hand, there is nothing to stop a defendant from raising this, but unless they are being supported by a debt adviser they would not necessarily think to mention their other debts unless they are directly asked. For example, they may not think to include other debt repayments on their income and expenditure form unless there is a prompt specifically asking for this.

The other way that it would be beneficial for courts to take into account what debt collection action has happened outside of litigation is to actively look at what steps the claimant creditor has taken to avoid court action. If a large proportion of claims are undefended then it may be appropriate for the court to routinely ask this of claimants, even when there is no defendant present to raise this for themselves.

One particular point that the courts could start to consider is whether the creditor has taken any action to ensure that the address the claim was served to is correct. My

understanding is that currently the court is satisfied if the creditor uses the last known address and there is no obligation at all to check this is still the correct address for the defendant. I wonder whether this could be changed to require the claimant carry out some basic checks. It seems to me to be all too common that bailiffs are suddenly able to find people that creditors were not able to find. I would suggest that if part of the Call for Evidence is to try and reduce default judgements then perhaps some basic requirement to make sure the client is aware of the claim would be relevant.

Whilst I understand the argument that it is beholden on the debtor to inform their creditors if they move house, the other side of this is that it leads to far too many debtors finding out too late about court action and only once further costs have been incurred. It seems easy enough for bailiffs or enforcement agents to find debtors and it would be preferable for the creditor – or perhaps even the court – to locate debtors before court costs and collection fees have been added to the debt. Once again, in the cases I have experience of, these costs are often very large compared to the original debt and certainly compared to the debtors income.

One obvious example of debt collection standards overlapping with court enforcement is the rules that govern the behaviour of enforcement agents. It is difficult for debtors to hold enforcement agents to account when the National Standards rules are only really guidelines and there is no Ombudsman or statutory regulator. I am hoping that the Enforcement Conduct Board will go some way to improving this situation, as without this there is not really anywhere to report bad practice in a meaningful way. However, there is a limit to what the ECB will be able to do as they can only really enforce what the legislation and guidance says.

Given that, in my experience at least, writs and warrants of are one of the most widely employed methods of enforcement, it important that the call for evidence really scrutinises what the law requires and does not require of enforcement agents and the firms that employ them and whether this needs to be changed.

There is also very limited action that a debtor can take against bad practice by debt collectors other than bailiffs. If a debt collection agency happens to be enforcing a consumer credit act regulated debt then I believe the Financial Ombudsman Service will consider a complaint about debt collection but for collection of any other debts I am not sure that there is any recourse where bad practice is experienced. It might therefore be helpful for the court to ask questions of what debt collection methods have been used prior to court action as this is one possible way of holding creditors and their agents to account, particularly where debtors are vulnerable.

## 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.]**

**12) Should the court require details of a defendant at the commencement of proceedings in order to ascertain whether a defendant could satisfy a potential judgment? (For example, by specific**

**questions being including in the Directions Questionnaire, including details of any debts being enforced outside the court system);**

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

Speaking as someone dealing with mainly very low income defendants, I wonder whether one reason that so many defendants do not engage with proceedings might be that debtors who have no income to make an offer might feel like there is nothing that they could say to improve the situation even if they did respond to the claim form. As I understand it, there is no option for courts to refuse to make an order based on a defendant having no means to pay and no assets to seize.

As debt advisers this puts us in a difficult position. Where a client has received a claim form, the only advice we can give is to somehow 'find' the money to offer a repayment and request an instalment order. This means that the client might be repaying a debt which would normally take second place to more pressing obligations like rent arrears or council tax. It does not sit well with the general principles of debt advice – that priority debts should be addressed first and 'non-priority' debts such as payday loans or catalogue debts should all be treated equally with a proportionate share of whatever the client has left after paying their ongoing bills and servicing their priority debts. A creditor who would normally get £1 if the surplus income was shared proportionately to the size of each debt might be offered £10 in an attempt to set up an instalment order to prevent any bailiff action. We are often dealing with clients where the margins are very small.

At a time where the cost of living is soaring I wonder whether there could be an option for clients on low income, insecure work or on welfare benefits to reply to the court forms without making any offer of payment where no offer is affordable. The court could be given the option to revisit the situation in a years time, for example, or the judge could invite the creditor to consider writing off the debt, especially where this is a creditor obliged to treat customers fairly under the Financial Conduct Authority rules or is a local authority who could use their section 13A discretion to write off a council tax debt, for example.

If there was the option for defendants to respond to the court summons and state that there was no way to make an offer and that they have no assets of value then perhaps the stress of a bailiff visit could be avoided and this method of enforcement could be saved for debtors deliberately avoiding repaying affordable debts.

14) What experience, if any, have you had with making use of the provisions of CPR part 71 (orders to obtain information from judgment debtors)?
15) If you have used the provisions of part 71 to obtain information about a judgment debtor's means, have you found the process effective?

16) If not effective, why not, and what changes would you make to the provisions relating to obtaining information from judgment debtors and does there need to be an amendment to part 71?

**17) What would you consider to be an appropriate sanction/appropriate sanctions for a judgment debtor who fails to provide information to questions raised by the court?**

I think that if a debtor was unaware of proceedings then any sanction should be lifted as soon as the required information is provided. Perhaps any sanctions imposed should be on a sliding scale so that debtors who do not have any assets to hide are not treated the same as debtors deliberately withholding information that would otherwise enable the debt to be recovered.

I think there are a number of reasons why debtors do not engage with the process and not all debtors should be punished – and certainly not all punished to the same extent. A defendant who has no surplus income and no assets to hide is not gaining anything from refusing to disclose this. Also, any flat rate financial penalty for failing to reply is going to more adversely affect debtors with less resources.

**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)?**

Is this asking if the debtor should be provided with the details of the creditor? I think the defendant should be provided with the contact details of the creditor so that they can offer repayment and clarify any questions they may have about the debt. If the judgement debtor was not aware of proceedings and a default was obtained in their absence then they may have questions and need the opportunity to be able to sort this out with the creditor, perhaps avoiding the need to set aside or vary the judgement if an agreement can be reached.

Whilst this may be outside the scope of this consultation, I wonder if there could be a more general duty for creditors to identify themselves and provide contact details. I have experience of debt management companies enforcing debts where it is not at all clear what the original debt was for and this seems very unfair. In terms of CCJs, I think it should be a lot easier for a debtor to find out who has got a court order against them. As a debt adviser, I can sometimes have to wait months for the court service to respond to a request for the identity of a creditor who has obtained a CCJ and it does not seem very cost effective for us to pay for a search on the register every time.

Whether or not you disclose the contact details of the creditor in every single case, it seems only fair that at least the identity of the creditor can be immediately identified and at no cost to the debtor. For local authorities and professional companies I would argue that there should be an obligation to disclose contact details as well. I can see that for a private individual this may be more complicated but there is no reason why a company should not be immediately contactable if they have obtained a court judgement and the debtor is vulnerable to all kinds of enforcement, some with very serious consequences.

19) What safeguards should be put in place with respect to any data sharing to ensure that it is reasonable and proportionate and not unfairly detrimental to the debtor?
20) **Should the court have a role, independent of any applications made by any creditor, in obtaining details of the debtor?**

I am not sure that it is appropriate for the court to do too much work for the creditor, unless it is in the interests of the debtor. I wonder if any help given to the creditor would hinder the impartiality of the court. In my personal experience of assisting low income debtors, I would say that there is often a large imbalance in terms of resources and power already.

However, it may sometimes be in the debtors interest for some information to be obtained by the court, as discussed below. If the court is able to find contact details for the debtor then they could use these to let them know about the claim, even if they don't share this with the creditor.

I think the court should also make information available to debtors after the judgement. If there is a claim made against a debtor then it is surely in the interests of justice for that person to be able to know who made the claim and on what grounds. It should also be made much easier to ascertain this information if the judgement was made in default and the debtor has – knowingly or otherwise – missed the chance to ask any questions at the hearing.

**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?**

Again, I would say that the court should not be doing the creditor's work for them. However, I wonder whether there is one instance where access to this information may be appropriate. If the debtor wants to offer little or no payment (or offers smaller instalments than the creditor is requesting) and they claim that they cannot afford to pay more then perhaps the court should be able, with the debtor's permission, to verify these claims by confirming their earnings and/or benefits through these channels.

**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?**

I think if the debtor wants to rely on this evidence and gives explicit permission for the court to verify their circumstances then this is the only scenario where this would be appropriate. Any thing else would be too intrusive and could introduce a further source of potential stress and embarrassment to defendants who genuinely cannot afford to repay their debts.

**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?**

Again, I think if there was some sort of open banking system where defendants could have the option to voluntarily agree to the court verifying their assertion that they have no funds then

this would be helpful. If a defendant claimed to have no money but refused to have this verified then this may trigger the creditor to take further action, such as an information order.

**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?**

I think this is an interesting issue and there may be ulterior motives or creditors abusing this process, for example sharing personal information to a claimant who is a private individual and the debtor is personally known to them. I would say that if the court finds out information independently then it should be for the defendant to choose whether this is revealed to the creditor. If the debtor refuses to agree to this disclosure then the creditor can read into this that they may need to do more digging – it is not for the court to do too much work for the claimant.

**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?**

My perspective is from working with debtors who do not have any assets to hide and do not have very much, if any, spare income. In these cases, I think that if the debtor asserts that they have no funds then it would be positive for the court to be able to verify this if the debtor requests it. Any right for the creditor to have the court disclose such information is more concerning, especially given that there is a high rate of default judgements where the debtor is not involved in the hearing. You could imagine for example, a defendant may get an attachment of earnings and this be the first things they have heard about the claim.

26) What other protections do you consider should be available to the judgment debtor to prohibit all, or some, financial information being available either to the court or to the judgment creditor?

## Support for debtors

27) Are you aware of any support or information provided to debtors following a judgment?
28) If so, what is that support or information?
29) What, if any, (additional) information and support do you consider should be made available to debtors and at what stage?
**30) Are there any particularly vulnerable debtors who you consider need additional support. If so, how are those vulnerable debtors identified and what support do you consider is required?**

In my work providing free to client debt advice, I deal with a lot of clients who are vulnerable for a variety of reasons. This ranges from physical and mental health problems, domestic violence (often including financial control) to debtors with overlapping problems such as inadequate housing. It can include long and short term vulnerability and often involves a combination of factors causing a debtor to be vulnerable.

A lot of the time, these vulnerabilities are exacerbated by low income and low financial resilience due to low paid work or reliance on benefits. I would argue that for many clients, having a low income is, in itself, a cause of vulnerability. Clients on a low income have no way to accrue any savings and often end up in debt outside of their control, such as buying essential household items on credit or borrowing money to pay the bills.

I wonder whether there is any possibility that for clients who genuinely have no surplus income, there would be a way of delaying repayment of debts, or setting up an instalment order on the basis of 'token' payments of a very low amount as a way of preventing bailiffs visiting a debtor who has nothing of value to take into control anyway.

If there is to be increased engagement by people in vulnerable situations then there has to be a way of dealing with these issues so that debtors feel that is is safe to engage with court processes and that some good can come from proactively engaging with the process, even if they cannot afford any significant repayments at the present time.

**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?**

I think debtors should be encouraged to engage in the court process at all points. Ideally, the earlier they engage the better, however, if the matter has progressed it is still preferable for them to become involved at a later stage rather than not at all.

I think information should be disseminated in all the ways listed above but also through other channels as well. If a vulnerable debtor is not able to engage with the court directly, and perhaps is not opening their post, having information in other areas where they might see it could be helpful. This could include, for example, having posters in a GP surgery signposting places to get advice and explaining the benefits of seeking advice and engaging with the court as early as possible.

**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?**

It will be interesting to see how the recent introduction of compulsory mediation for small claims helps to facilitate early resolution, I am hopeful that this will bring a positive change.

I think a telephone advice service would be a good idea in principle, however, in my experience most telephone services tend to end up oversubscribed to the point where they are of little use in an emergency. I wonder if it would be possible to also have advisers present at the court in person, that way help could be accessed even on the day of the hearing.

**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?**

I think there should be more to help debtors who are unable to repay their debts, and the court should concentrate enforcement on those debtors who have either the income or assets available but choose not to repay their debts.

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

I think it would be more fair if it was easier for a debtor to find out details of a creditor who obtained a judgement against them. I know there is talk of this information being included in credit reports and I would welcome this but there could also be better ways of obtaining this information easily, quickly and free of charge.

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

I think that after an order for payment outright is obtained (whether in default or not) the debtor should be sent a leaflet explaining in plain English that applying for an instalment order can prevent further enforcement and how to go about applying for one. Also at the start of proceedings, a leaflet in plain English sent at the same time as the claim form explaining how to defend the claim or make an instalment offer.

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

I am not sure, but I would say that for the public at large I don't think there is a very good understanding of what methods of enforcement are available to them if they need it and/or could be used against them if they fail to repay a debt. Similarly, there could be better education about how interest can be applied to judgements. There is a lot that I did not know until I became a debt adviser and I am not sure there is a lot of information available in accessible formats for the general public.

**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?**

As mentioned above, if a defendant genuinely has no money to offer, or assets to sell, then there needs to be a process for addressing this situation, otherwise there would seem to be little point for debtors to engage with the process as there is nothing the court can do for them.

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.**

I wonder if the enforcement options could be tailored a bit more to the specific situation. For example, there should be more of a distinction drawn between debtors who refuse to pay debts and debtors who are unable to afford their debts.

Similarly, it may be possible to include a more formal consideration of the means of the creditor, as well as the means of the debtor. For example, a small business who needs to recoup money to stay solvent, or an individual who has been personally deprived of funds should be treated differently than a loan company who have lent money on the basis that they accept some loans will never be recovered and factor this into the interest they charge.

I also wonder if there could be the possibility of waiving enforcement fees for debtors who are eligible for fee remission at other stages of the process.

When a debtor has no funds to make a repayment offer, their best option is not to engage with bailiffs at all and not to open the door when they visit. This is the only way that debtors can avoid the bailiff fees that are added to already unaffordable debts. This is an unfortunate position and makes it difficult to advise clients in this situation. If there was some formal process for a debtor to declare that they do not have any possessions of value, and if a bailiff was obliged to return the account on that basis, then this would be more satisfactory as there would be a reason for debtors to actively engage with the enforcement process.

It could be down to the debtor to assert that they have no belongins and/or there could be a requirement for the creditor (or bailiff) to prove reasonable grounds to believe there are items of value before a bailiff attends the property. Perhaps if a debtor wishes to claim that they have no funds or assets then a statement could be made to the court on this basis.

In terms of other reasons why people do not engage with court proceedings, I wonder whether there is a fear about the idea of being 'taken to court' and a stigma to this which would be lessened if court paperwork included an explanation that this is a civil court and not a criminal court.

Finally, given that there is an acknowledgement in this consultation that there is a high proportion of claims where judgment is made in default, I wonder if there could be more stringent requirements for a creditor to prove their claim, even if it is not being defended. I am thinking, for example, that creditors could have to prove that a claim is not statute barred.

There is a whole industry where firms buy up 'bad' debts cheaply and then recover the full amount from debtors where the original creditor was happy to accept that the debt was

irrecoverable for their accounting purposes.  This is probably not the forum to question whether this practice should be permitted in general, but given that these companies are often pursuing quite old debts it would be useful if claimants had to present evidence of the last payment or written acknowledgement in order to prevent statute barred debts being enforced by companies who never loaned the money in the first place and are therefore not recouping genuine 'losses'.

## 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 |
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| Publicly available sources:<br>• The Land Registry.<br>• The Bankruptcy and Insolvency Register.<br>• Companies House<br>• The attachment of earnings index.<br>• The insolvency and companies list of the business and property courts of England and Wales.<br>• Instructing enquiry agents to undertake an assets check.<br>• Applying to the court for an order that the judgment debtor/director of a company attends court setting out its financial position under oath.<br>• 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.<br>• 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.<br>• 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].<br>• 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.<br>• An attachment of earnings order cannot be obtained against someone who is unemployed, self- employed, a company or in the armed forces.<br>• The application is made in form N337.<br>• Attachment of Earnings [£119].<br>. | • 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.<br>• 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.<br>• 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.<br>• The application is made using form N349. | • The warrant of control authorises enforcement agents commonly referred to 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.<br>• Used for judgment debts of less than £5,000.<br>• The application is made in form N323.<br>• 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.<br>• 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.<br>• 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.<br>• 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.<br>• An application is made in form N244.<br>• 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]. |

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| | | | • Third Party Debt Orders [£119]. | | | | | |