



**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):	Anonymous
First name:	
Last name:	
Location:	
Role:	
Job title:	
Organisation:	
Are you responding on behalf of your organisation?	
Your email address:	

Information provided to the Civil Justice Council:

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

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

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

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

The full list of Call for Evidence questions is below:

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

Your experience and awareness of enforcement

- 1) Which enforcement methods do you have experience of, if any? – Charging Order, Attachment of Earnings, Writ of Control, Warrant of Control.
- 2) Are there any barriers you have experienced in seeking to enforce or satisfy a judgment and, if so, what were they? For AOE's the barriers are court staffing/bailiff issues and work positions leading us to have to chase for information due to the poor court working timescales which then overloads the courts system as more emails are coming in chasing things which should have been worked already. Consolidated AOE's ?? For CO's the problems with land registry and the delays in application's being processed leading to finals not being registered timely and a real risk to losing the security of the charge is causing a problem. Some applications have been outstanding 12 months leading to extra work for our requests to be expedited pushing more work into land registry, so we don't lose our security. We are not using Warrants of control due to poor court performance and ROI.
- 3) Which of the attached enforcement mechanisms do you find to be most effective in obtaining a resolution, and why? In terms of more successful in security the CO route works best for us. But the cash comes in later down the line. In terms of quick cash collection, its HCE and AOE that are better although the collection rates are similar, the AOE process is long winded and resource hungry.
- 4) Which of the attached enforcement mechanisms do you find to be least effective in obtaining a resolution, and why? AOE's and Warrant of control due to poor bailiff service of papers and poor court performance for Warrants return of investment is too low based on the fee's charged and the service levels we are seeing.
- 5) Do you consider any of the attached enforcement mechanisms should be promoted as being more effective than others? –It would be helpful to see the success rates of the enforcement methods by court and the length of time that it takes to PIF to be able to make a proper decision on this. The challenge we have is the delays with court and land registry hampers our efforts. In terms of return of investment, AOE is better for cash collection but not as successful.
- 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? I think the court should drop the minimum level that Writ of control can go out for and then actively promote this for balances below £600. There aren't enough court bailiffs, or some court have bailiffs on long term sickness, and it would take a great deal of pressure off the court system and save them a lot of money. Writs should also be able to be obtained digitally for high court enforcement and sealed with a digital stamp. It would be good if writ applications and go electronically and the CO apps also now would be good it gets it in a digital format to save printing costs and time for all parties involved. Bailiff service on AOE's isn't successful due to them visiting in working hours when these people based on what we know are more likely to be in work. Out of hours visits or weekend visits would be better to effect service. We don't get any worthy information from the bailiffs it's a bog-standard response which is debt gone away but it doesn't say that they have checked in the windows it empty etc. The Substituted service

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should be easier to obtain when the bailiff has attempted service but are aware the customer is purposely avoiding. We are then paying for a process server to attempt the same thing the bailiff has which is then costing us further when sub service could just be introduced as standard into the process when the bailiff has been, and the customer is at the address. Consolidated AOE's needs to be improved, as we don't get response to our requests with the court, and we can chase multiple times in a row without any updates or service from the court and not value for money when the payment frequencies can be months in between. We feel like this process can differ between local courts and there is a standard process for all to follow and very little court staff seem to be trained on this. We constantly chase for updates and chase 3 or 4 times for a response which we do at 3-month intervals meaning we can go a year without answers. Committal orders now don't have the original purposeful threat to the debtor that they have as bailiffs no longer have the power to execute and the police no longer also execute if they pull someone over with this outstanding warrant. The police will also now not attend with the bailiff due to staff shortages, so they are totally ineffective and rare any movement on them although Southern courts do seem to perform very slightly better than the North.

- 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?
We only enforce against those that we believe have a propensity to pay through our internal scorecards and route away those who don't have a propensity to pay or maybe vulnerable.
- 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? Yes, I think it needs to consider statutory debt and the regulatory guidance put in place for these companies to support the restrictions we have in place such as the fair billing guidance issued by OFWAT.
- 10) If court enforcement is to take into account debt collection outside the court system, what practical steps do you consider should be undertaken? Due diligence by all companies to ensure fair warning has been given to the debtor, debt balances should be considered to make the enforcement proportionate. The costs the court charges for actions such as a claim or Judgment or N244 applications vs companies then having to carry out the enforcement themselves.

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.] Change the wording used on court documents, forms and processes to ensure its basic reading age and understandable by all individuals regardless of background. Make things more plain English and look at why debtors are not engaging with courts through surveys or workshops to understand the gaps. Use more supportive language rather than threatening language and make the court forms easier to fill in or understand. Look at the admission process to ensure and strengthen that replies are completed fully. Too many admissions are only completed partially or are inaccurate. Given that the majority of Judgment Debtors fail to maintain agreed admission judgments, these form an essential part of our enforcement data to make the

correct enforcement choices. One option for a change could be that a fully and accurately completed form of admission does not automatically allow for a "Judgment by Admission" to be made and it acts more in the way of a Tomlin Order. This may encourage far more engagement by admission if it's made very clear that on failure of the admission payment that judgment can be then automatically entered. Clearly this would have to be automated and not individual applications, however.

- 12) Should the court require details of a defendant at the commencement of proceedings in order to ascertain whether a defendant could satisfy a potential judgment? (For example, by specific questions being included in the Directions Questionnaire, including details of any debts being enforced outside the court system); **yes – it would be better for the court to order a full income and expenditure be completed by the debtor to support companies identifying the best route of enforcement for the customer and the business. It will also help to ascertain that the tariff we have them on is the best one for them and to identify any additional support needs such as the priority services register needs or affordability issues so we can help them become debt free.**
- 13) If information about the means of a potential debtor is sought early in proceedings, what information would you consider to be helpful? **Full income and expenditure, details of any illnesses, vulnerabilities for us to better help the customer resolve the debt issues going forward and know the best way to help them get debt free. Whilst there may be some benefits in seeking early information, careful consideration would have to be given to the likelihood that this may cause more potential debtors to ignore the litigation process and fail to engage at all. It would seem difficult or unlikely that the Court could impose any sanction in such circumstances.**
- 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)? **We have issued them in the past but no longer use it.**
- 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? **No the process is far too long winded**
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? **with failure to comply or later failing to attend the court for questioning lead customers to ignore the initial questionnaire. We found that the local courts could not cope with the numbers we wanted to process, and it ground to a halt.**
- 16) 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? **court costs being added to the Judgment debt or being brought in front of the judge to answer why they are not complying with a legal process. There should be a consequence that isn't counterproductive to the cant payers vs the wont payers.**
- 17) If judgment is obtained, should the court provide details of the judgment debtor with the claimant at the time of judgment and, if so, what details should be provided (if any)? **Yes, this helps us understand their situation and be able to find the most appropriate route of enforcement if needed or better information about them to be able to tailor the contact we send to get better engagement.**
- 18) 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?
The relevant safeguards should mirror the current DPA legislation and be proportionate to the matter in hand. For instance, the type and value of the Claim. Additional thought would have to be put into place about data held if the matter is disputed, as it would appear inappropriate for that data to be held in those circumstances.

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

The Court could automatically advise Judgment creditors of any known enforcement actions that have been applied against a judgment Debtor ,together with the outcome and make them available without application or searching. Note, this would require far greater co-ordination in the Court service.

- 20) 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, it would make choosing the right support for the debtor and the right enforcement method easier. For example, we may apply for water direct if we find the debtor is on benefits as this maybe a more supportive option taking the onus off them to make the payments should the application be successful.

- 21) 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?

Again, mirroring current DPA ,particularly about the duration and use of the data held ie deleted after purpose fulfilled.

- 22) Should the court and/or the judgment creditor be given access to information held by third parties, such as banks and credit agencies, to gather financial information on judgment debtors? Yes, I believe if we knew the bigger picture about the customers finances then it would help to find the best way forward with them to becoming debt free in the quickest possible way and to onboard them onto our affordability support schemes without the need to signpost them to other agencies which isn't always effective. It means we could take a more proactive approach to helping them rather than waiting for them to supply details and things being reactive.

- 23) 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?

See (21)

- 24) Would you welcome a change to legislation to allow either (17) or (19) above, which would include safeguards suggested under (18) and (20) above?

Broadly yes, however the data would have to be accurate and timely. There would be no point in waiting weeks or months for manual searches/applications that slowed down our automated processes.

- 25) 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? Make sure everything is in line with GDPR and publicised on the courts privacy statements. Data not to be held once “ for the use “processes completed.

Support for debtors

- 26) Are you aware of any support or information provided to debtors following a judgment? Not from the court no. I think there needs to be better explanation on the court forms as to what will happen if they admit the debt as very few customers realise Judgment will be the outcome. Once Judgment is entered a leaflet on what happens next or where they can go for support would be good to be included in the Judgment order that is posted. A better Judgment order or letter explaining what it means is also an option.

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- 27) If so, what is that support or information? Next steps on how to clear the balances, signposting to agencies for support to encourage engagement. More info about the impact this will have on the customer and their credit file so they see the bigger picture.
- 28) What, if any, (additional) information and support do you consider should be made available to debtors and at what stage? Help with understanding court forms as the wording is very antiquated. Explaining what a CPR rule means if its being referred to. Signposting to agencies who can help them in times of difficulty.
- 29) 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? English isn't first language, hard of hearing, visually impaired of those with mobility issues to make services through the court better accessible. The ability to send a court form large print off the bat for a customer where a company knows they are not able to see things or printed in another language if English isn't their first one so its gives them a better chance of filling in the papers instead of needing support from others to do so which can cause delays. An easier way to be able to flag this need in the bulk sending of claims process via SDT.
- 30) 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? Definitely all of the above
 - v) any further means of communication? Today other methods of contact such as webchat and email should be available through to courts to make it more accessible for all and for them to get support easier.
- 31) 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? Absolutely or webchat as some people struggle to pick up the phone but will do webchat to ask a quick question as it could be done whilst working if they need to due to their working hours being shift led or outside of the courts hours of operation.

Any proposed improvements

- 32) Do you consider there should be any changes to the system of enforcing judgments, or should the status quo be maintained? **Yes some changes are needed.**
- 33) If you consider there should be changes, what changes do you feel should be made to make enforcement more accessible, fair and efficient? **I feel bailiff service need to be massively improved and the operating hours of bailiffs to effect service needs to change to support the claimants. The Writ of control amount needs to be lowered to give claimants more options to enforce the lower balances taking pressure off a court system which clearly doesn't have enough bailiffs and saving the court money in the process. Should help drive efficiencies for all parties. I think the agencies such as land registry who's work positions are appalling should be answerable and transparent to all parties that are enforcing through it as it's a government agency. Through experience we are waiting on average 6-8 months for pending application on land reg to be completed which is holding up our application to secure a charging order. We have applications over 12 months old.**
- 34) Whether you consider there should be changes or not, what, if any, additional safeguards and advice should be given to debtors?
- 35) Whether you consider there should be changes or not, what, if any, additional information should be given to creditors about methods of enforcement?
- 36) 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?
- 37) Are there any other areas of enforcement that you feel could be improved and in what way and by which method(s)?

General

- 38) 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. **We don't feel we are getting value for money on the service we receive through the court for AOE's and CO's as enforcement methods. We feel that our options to enforce have dropped to 3 main methods due to poor court performance and ROI.**
- 39) 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. **How can the AOE process be made more efficient so updates, can they be sent on a spreadsheet to claimants to update or upload in their systems instead of lots of papers post coming in via DX saving money for the court and the claimant. The process is lengthy without the time taken for bailiffs to serve papers or for us to then pay to process serve due to bailiff non-service costing us as the claimant more in the long run.**

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].