**Civil Justice Council Enforcement Working Group**
**Call for Evidence Response – HHJ Baddeley**

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| Your response is (public/anonymous/confidential): | Public |
| First name: | Guy |
| Last name: | Baddeley |
| Location: | Sheffield Combined Court Centre, 50 West Bar, Sheffield S3 8PH |
| Role: | Circuit Judge |
| Job title: | Designated Civil Judge for South Yorkshire |
| Organisation: | Judiciary |
| Are you responding on behalf of your organisation? | No |
| Your email address: | [redacted] |

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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:**

## Your experience and awareness of enforcement

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

   All of them.

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

   The forms are old and not very user friendly – they could do with being updated and re-written in plain English.

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

   Charging orders generally work smoothly – but do not generally result in payment of the judgment straight away.

   Writs and warrants of control work on a practical basis, usually without the bailiffs having to take possession of any goods – by prompting debtors to agree payment plans.

   Third party debt orders can be effective.

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

   Attachment of Earnings orders and Applying to the court for an order that the judgment debtor/director of a company attends court setting out its financial position under oath work where the debtor cooperates – but can be difficult where the debtor does not cooperate. They can be very time consuming for staff in the court office.

   Part 71 Orders for questioning can be a lengthy process. Claimants often have unrealistic expectations of the process, seeing this as a method of enforcement that is going to result in them getting their money, rather than as a way of obtaining information. The Court enforcement manager comments that these take up a lot of work, with limited benefit, as not many actual hearings take place.

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

   No – they each have a place. There isn't one method of enforcement that works significantly better than the others, except perhaps charging orders (which are only applicable where there is a property, or rarely shares).

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?

Yes. In the 21st Century, we should not be locking up debtors. Ebeneezer Scrooge may have asked, "Are there no prisons?... Are there no workhouses?" but those are not questions we should be asking today. In my 24 years of judicial experience, as a DDJ, DJ and now CJ, I have never committed a debtor to prison for contempt. I am not sure that I would be able to easily do so – I had a case recently where I made an order that a debtor who had failed to attend a hearing to provide information about his means be arrested and brought before the court. I discovered that in my area HMCTS have no working van that the bailiffs could use – apparently the van has been out of action for some time. When I raised this with a senior manager, I received the following response:

*"The van allocated to HSY cluster is currently out of action – I was not aware of this. I understand that there are difficulties in sourcing a replacement part (rear step), and whilst it is still road worthy, it is not suitable for committal use. As a region, that leaves us without a vehicle now (we once had 3 (1 per cluster)).*

*Nationally, the civil service team have drafted a paper to consider the interim and longer term solution for the use of these vans to support committals. I don't expect a quick answer of fix on this.*

*There is considerable variation between regions on how these warrants are executed. Many regions will write to the defendant upon receipt of the warrant and invite them to surrender themselves at the court office. If this is unsuccessful and they have the use of an SCV they may arrange to make a visit if resources permit. Some regions are able to call upon their local police force for assistance and the warrant is then actioned by the police. Again, this is dependent on the region and not all police forces are willing to assist. In some courts, the warrant is referred back to the judge to request that the police action the warrant. This may be an avenue worth exploring in the interim for this warrant? Some regions are not executing the warrants at all because of the risks involved, the lack of a suitable vehicle and the absence of training. I appreciate this is not really helpful."*

Rather than threatening defaulting debtors with prison for failing to provide details of their means / employer, I would support enabling creditors to obtain information from HMRC and the Benefits Agency in those circumstances.

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?

Debtors sometimes object to answering some of the questions on the EX140 form – is it really necessary for them to provide details of their children's names?

Debtors often do not understand that the granting of a charging order does not mean that they will lose their home. It would be helpful if the standard interim charging order included information for debtors summarising the note at CPR 73.10C.1 in the White Book. I have read this out many times to debtors at charging order hearings.

Enforcement orders should signpost debtors to places where they can access debt advice.

Legal aid should be reintroduced for debt advice (at the moment it is only available where the debtor's home is at risk).

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

No.

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

N/A

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

N/A

## Supply of information about potential judgment debtors

11) What steps, if any, do you consider the court could and should undertake to encourage greater engagement of potential judgment debtors (given the high number of default judgments)? [NB the Civil Justice Council (CJC) is reporting separately on pre-action protocols (PAP) including the debt protocol and the PAP is therefore not addressed in this list of questions.]

The fee for making an application to SJA is too high - £303, compared to only £15 if they are also asking to stay enforcement. Often the fee is higher than the amount of the judgment itself.

A debt advice leaflet should be sent out with CCJs and enforcement orders. As well as providing basic debt advice, this should signpost debtors to places where they can access debt advice. Legal aid should be reintroduced for debt advice (at the moment it is only available where the debtor's home is at risk). Debtors often tell court staff that they have been unable to access debt advice because there is a shortage of advice agencies with capacity to help.

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);

No. Proceedings are complicated enough already. More onerous requirements may discourage defendants from engaging and lead to more default judgments and then applications to set aside. It is better to keep things as simple as possible and let claimants make their own enquiries as to whether it is worth commencing proceedings.

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

I would suggest just the national insurance number – to enable HMRC / the Benefits agency to provide details of an employer / earnings / benefits income.

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)?

I used this method occasionally in practice and now regularly make suspended committal orders where debtors fail to attend hearings.

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?

My experience is that the process works where the debtor cooperates but the process where the debtor does not cooperate is lengthy, complicated and cumbersome.
The Court enforcement manager has commented that this is not an effective process, taking up a lot of her staff's time for little benefit. Creditors can have unrealistic expectations.

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?

Firstly, I would introduce an initial step like the CPR 89.5 process with attachment of earnings orders, whereby the creditor could obtain an order administratively that the debtor completes a standard income and expenses form (like the N56 or the form completed at a Part 71 hearing) and returns this to the creditor via the Court.

Secondly, if the debtor does not return the form, there should be a process whereby the creditor could obtain an order for the disclosure of employment / benefits / property details directly from HMRC / the Benefits agency / HMLR.

Thirdly, if the creditor then applied for an order to obtain more detailed information and the debtor failed to attend, there should be power for the Court to make attachment of earnings orders / orders for nominal deductions from benefits / charging orders at that hearing (with the debtor having the power to apply to vary or set aside within 14 days of service of the order upon them).

Fourthly, the power to imprison for contempt should be abolished.

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?

See the answer to question 16.

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)?

I don't understand this question.

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?

The requirement to obtain a court order for third party disclosure as per question 16 above.

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

No. The court should remain impartial. The Court does not have the resources to do this in any event.

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, with a Court order.

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?

The need to obtain a Court order and the restriction of the third party disclosure order to the information necessary to enable the creditor to take an informed view as to enforcement, for example, the name and address of the employer(s), the gross income in the previous tax year and in the current tax year to date, the benefits paid, including amounts, the HMLR numbers of any properties owned or jointly owned by the debtor.

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?

I am not sure how this would work in practice. It would not be practical for requests to be sent out to every financial institution. I am unsure of the amount of information that can currently be obtained commercially through credit reference checks etc. Others will be better placed to comment on this than me.

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?

A court order should be required to ensure that only the relevant, proportionate information is shared.

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, but the committal process as a means of compelling debtors to cooperate should be abolished too.

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?

I would not support a process whereby information was obtained by the Court but not shared with either of the parties. This goes against principles of open justice.

## Support for debtors

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

There is no formal process. Debtors and people who have receive default judgments frequently ring the court asking what they can do. Court staff try to signpost to debt advice agencies and will explain the process of applying to set the judgment aside – but Court staff cannot give legal advice.

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

N/A

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

An advice leaflet explaining the process for applying to set aside a default judgment would be helpful if sent out with every default judgment. Debtors often do not understand the difference between satisfying a judgment and having it set aside i.e. if they pay a judgment it will still show up on their credit reference as a CCJ.

A debt advice leaflet should be sent out with CCJs and enforcement orders. As well as providing basic debt advice, this should signpost debtors to places where they can access debt advice. Legal aid should be reintroduced for debt advice (at the moment it is only available where the debtor's home is at risk).

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?

Yes. Those with disabilities. Those with learning difficulties. Those whose first language is not English. I am not aware that any steps are taken to identify vulnerable debtors e.g. when entering default judgments. Including basic signposting information in multiple languages with the information leaflet may be the most that can be achieved here.

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?

Through court documentation at time of judgment.

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?

Access to a telephone mediation service, like the one operating with small claims would be an excellent idea. Sometimes claimants make unrealistic demands of debtors in terms of repayment plans and debtors struggle to make contact with creditors.

The Court should not however provide advice. If resources are available for advice provision, they should be given to the Legal Aid Agency to provide debt advice. The Court is not the best placed organisation to deliver debt advice. It needs to remain impartial.

## 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?

Yes. By introducing third party disclosure orders against government departments, the attachment of earnings process would be simplified. The N63 procedure should not be required as courts could make orders (with a right to apply to vary or discharge) based on the earnings information disclosed in cases on non-engagement by the debtor.

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

See above.

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

See 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?

The information leaflets should be updated and made available in paper form and online. That should be sufficient for creditors.

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?

The fee for making an application to SJA is too high - £303, compared to only £15 if they are also asking to stay enforcement. Often the fee is higher than the amount of the judgment itself.

This is probably a pre-action protocol issue. The N9A / N9B forms should be made as simple as possible with it being made very clear that failure to respond to the claim will lead to judgment being entered in default.

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

The statutory demand procedure should be modernised with forms in plain English and the rules moved into the CPR, with the other enforcement provisions.

## 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.

It is time to abolish the judgment summons procedure – again, “Are there no prisons?... Are there no workhouses?”

Also, it is time to abolish administration orders, as they have largely been replaced by debt relief orders. Administration orders involve a lot of work for Court staff for little benefit, given the small amounts of money involved. Any distributions to creditors come at disproportionate cost.

There would then be no need to keep any of the old County Court Rules!

40) Please set out any current difficulties that you identify with the system of enforcement and outline any potential improvements you consider appropriate for either the creditor or the debtor.

## ENFORCEMENTS OF DOMESTIC JUDGMENTS

| General -Identifying assets | Charging order | Attachment of earnings order | A third party debt order | Warrant of control | Writ of control | Insolvency proceedings | Contempt of court proceedings | Freezing order |
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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.<br>• Third Party Debt Orders [£119]. | • 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]. |