



**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?

Enforcement of High Court Writs of Control

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

Most judgments that get to the Writ stage, do so through a debtor failing to engage in any part of the process. Often this is down to apathy on the debtor's part, but it can also be because they have moved address and failed to inform their creditor. It feels as though the court could do more to confirm a debtors address during proceedings. This may reduce the volume of cases being unresolved at an earlier stage as well as assisting the enforcement of those that do go further.

Any information that can be obtained or provided to assist both contacting the debtor and locating any assets they may have would greatly benefit the enforcement and collection process. The debtor is often enabled to frustrate the enforcement or collection process with the ability to simply do nothing.

The above is often exacerbated by the advice sector who seem to do very little to encourage proper engagement or fortify the reality that a debtor with a judgment and a writ against them is in a very serious position.

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

Enforcement through a High Court Writ of Control, while not without many challenges is a highly effective method. It is often the first time that communication with the debtor has been proactively pursued. This can lead to us discovering why the debtor has failed to engage and allow us to explore resolutions such as paying over a period via instalments or the investigation of disputes.

Charging Orders are very effective; however, they are a long-term solution reliant on the Judgment Debtor selling the house selling the property.

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

From experience and commentary, creditors that simply just obtain a judgment and either do nothing more or utilise the County Court Bailiff. The County Court Bailiff is clearly underfunded and under-resourced and anecdotally we hear many stories concerning their ineffectiveness. There should be greater advice for those obtaining judgments, about what options they have available to them such as High Court enforcement.

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

Unless there is specific information held about the Judgment Debtor, which points to a more efficient approach, then Writ or Warrant of Control is the most effective as this allows for both the collection of money and can often gain useful information for the claimant if recovery is not made, which may open other avenues for enforcement. It is also relatively cost-effective.

- 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?

Orders for information could be amended to enable HCEOs and CCBs to gather information on a Judgment Debtor. This could be used to identify assets or bank accounts belonging to the debtor. This could be by having the power to request information from government bodies as well as requiring a Judgment Debtor to attend court to answer questions.

- 7) Do you consider that there should be further measures attached to any of the current enforcement mechanisms to ensure greater fairness and/or protections for debtors?

No. With the existing measures and the ECBs increasing involvement I think there is more than enough protection for debtors.

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

Yes, we provide High Court Enforcement Services, and work with both creditors, individuals, business, solicitors, debt collection agencies, and within the regulations and best practices laid down in various areas.

- 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?

The introduction of the ECB and their standards on behaviour and treatment of Judgment Debtors along with the taking over of non-court complaints later this year will also help to maintain standards and give the independent oversight that is called for. This will build on the existing national standards laid down by the Ministry of Justice as well as HCEO's Associations professional standards.

Additionally all High Court Enforcement Officers, Certificated Enforcement Agents and County Court Bailiffs all answer to the courts, so it is important that any standards flow from the legal processes.

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

This should be led by the ECB who are laying out standards, in conjunction with MoJ the professional bodies such as the HCEOA and CIVEA. It is worth noting that all enforcement agents / agencies deal with Judgment Debtors on a *debt collecting* basis, agreed without the need for the court to grant a variation order and that these processes generally work well.

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.]

Consideration should be given to non-engagement by the debtor and whether there should be penalties for failures to engage and while there are a variety of reasons, one is often simply attempting to avoid their liability. This is essentially how the enforcement fees operate under TCG and does often promote earlier engagement. The higher than expected full payments received during the Compliance period evidences this.

- 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, I think this would be a good idea as part of the judgment process and the court could have set questions for a debtor to provide information on. However, so many judgments are granted in default this is likely to have minimal impact. So, unless there were penalties for failing to comply or to ensure the information is truthful, this could represent another area for a debtor to abuse and gain unfair advantage over their creditor. Where useful information is obtained, this should be available to the creditor to assist their recovery or enable the court to grant a variation order to facilitate repayment.

However, it is important that the ability to pay, doesn't dictate whether a creditor should be awarded judgment, as this is not the function of the court. Inability to pay does not preclude a debtor from being enforced against.

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

Employment details, income and expenditure along with evidence, current address, details of other properties owned, details of bank and savings accounts, trading addresses and assets, National Insurance number, DVLA information and date of birth.

- 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)?

None, although the comments I hear is that they are not as effective as they could be.

- 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?

N/A

- 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?

The problem currently I hear is that whilst a claimant can ask questions, the judgment debtor answers how they wish to and is not compelled to provide evidence.

- 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?

This would be a contempt of court, so a fine, but this is of course just adding to the indebtedness, so would it be paid? In the most serious of cases a custodial sentence.

- 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 can see an argument both ways and don't have a specific view, except this information confidential to a creditor, and how would it be used.

With judgment information against a debtor the usage is clear in providing a record of a court judgment for money, and serves as a warning to other creditors looking to extend credit

- 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?

Judgment information is currently shared with Registry Trust who maintains a public register of judgments which are in the public domain. Court case information should be shared in so far as it is public, but precise details relating to judgments are confidential to the court and parties, and shared where it is relevant to parties involved.

It should not be forgotten that the debtor is not the victim in this scenario. All efforts to provide justice to the creditor should be pursued.

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

I think this is a difficult position, as if the Court asks for information and doesn't receive it, what action would be taken? Could the debtor frustrate overall efforts by delaying?

There is a clear application process for obtaining information and making that more effective would be a better than creating a new process or creating an additional burden on the court.

This process should be moved to the Court Bailiffs or HCEO's where judgments are issued for enforcement, and made a part of the role of enforcement.

- 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, this information should be available to creditors (with controls in place as to when), as this would help with ensuring that the debtor knew about applications by gathering a more accurate address as well as circumstances which might lead to different outcomes following a judgment, such as an attachment of earnings. It would also facilitate enforcement when Warrants or Writs are issued, particularly if details of assets were available. Again, this could sit with Court Bailiffs or HCEO's where judgments are issued for enforcement

- 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?

Applications should be made following a court application; however, I can see issues arising as to how the information is handled following applications by the Creditor.

I would suggest that this application ability should be given to HCEO's and CC Bailiffs who can hold the information confidentially and use it appropriately and proportionally in support of effective action where it can be controlled.

In any event sufficient controls would be needed, and a good process would be within the order for information.

It is worth noting that provision for accessing information was made in the Tribunals Courts Enforcement Act 2007 part 4, which also highlights controls needed and I would suggest that this be enacted.

- 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?

Yes, there should be the ability to raise a request to third parties such as Land Registry, banks and Credit Agencies. Where a formal request like this is used and non-public information requested, this should be as a part of a court process subject to their controls and based on a judgment or other court proceedings.

Again, this could sit with Court Bailiffs or HCEO's where judgments are issued for enforcement.

- 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?

Who should be able to conduct the searches should be limited with controls in place around the release of information. I would suggest County Court Bailiff's or High Court Enforcement Officers.

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

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

The judgment debtor should be able to make an application with merit on reasons as to why information should not be available for which the court can decide if appropriate or not.

Support for debtors

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

In High Court Enforcement we continually provide connections to advice and support to debtors, even during the enforcement process.

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

As an example, the below is included on every Notice of Enforcement Sent.

“Where to get free advice and information:

Gov.uk (go to www.gov.uk)

Citizens Advice (go to www.adviceguide.org.uk or phone 0345 404 0506/0344 411 1444 for England or 0344 477 2020 for Wales)

AdviceUK (go to www.adviceuk.org.uk/find-a-member)

Money Advice Service (go to www.moneyadviceservice.org.uk or phone 0800 138 7777)

StepChange Debt Charity (go to www.stepchange.org or phone 0800 138 1111)

National Debtline (go to www.nationaldebtline.org or phone 0808 808 4000)

Call charges may apply. Other free advice is available.”

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

I suspect that many don't see advice or guidance from the enforcement sector as independent, and it would be helpful for more independent advice from Gov, the Courts, Enforcement Conduct Board and advice sectors to re-enforce and this needs to be easy to find when a judgement debtor goes to the site.

Any advice should also be given based on providing justice to the creditor rather than assisting a debtor in avoiding liability.

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?

I think it is important to note that often when looking at vulnerability we combine what should be two distinctly separate scenarios; vulnerability and ability to pay.

When looking at vulnerability in the context of enforcement of a court judgment we need to consider how it affects the debtor's ability to pay.

The idea that rules can be applied to dealing with vulnerable debtors is problematic. Each case is very individual and has to be considered on its own merits and circumstances.

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 all the above applies, but documentation can become overwhelming where this runs into many pages of information and uses complex language that might appear straight forward to us, but not those unfamiliar with legal terms. This should also be made available online through independent websites so debtors can verify what they are told by a creditor or EA is genuine.

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?

N/A

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.

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

The enforcement of judgments could be improved by giving access to systems to provide information on Judgment Debtors held by government departments like the HMRC, DWP, Local Authorities, Banks, Registry Trust, Land Registry enabling Judgment Debtors to be traced more effectively. This would also give a better understanding to a Judgment Debtors financial position enabling better outcomes for the creditor while also supporting the Judgment debtor. This could be simply achieved by allowing the CC Bailiff or High Court Enforcement Officer the power to conduct searches or through the court route of an order to obtain information again by the CCB or HCEO.

Other enforcement options would then also come to the fore, such as Attachment of Earnings, Freezing Orders and Third-Party Debt orders.

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

The courts could issue guidelines around the handling and sharing of information to ensure that only that which is applicable is released, and retention is no longer than necessary to the enforcement process although this is most likely adequately covered by GDPR.

- 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 Court's process is relatively prescribed in leading to the judgment but after this the promotion of different options available to a creditor is limited. For example, it is easy enough to instruct the County Court Bailiff from this point but not so much a High Court Enforcement Officer. Surely by not advising on all the available options a barrier to justice is being created?

Many enforcement or recovery methods are not viable given the difficulties in obtaining information from a debtor. By making more information available under the right circumstances with the right controls would provide improvement and make the judgments more effective without the detrimental impact on the judgment debtor.

By this being able to be carried out by the CCB or HCEO that would reduce time and costs to both the courts and claimants while still providing protection to the Judgment Debtor.

The HCEOs for example, already handle payment arrangements so have systems in place, so by informing a creditor of all the options available will improve enforcement and simplify the process for creditors and save time in the courts.

- 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?

Some default judgments are a result of defaulters not receiving paperwork, whilst for others it will be a case of simply not understanding the paperwork sent to them and ignoring.

The introduction of online help from trusted sites like the Courts and .Gov with helpful advice on how to deal with matters in a positive manner would help.

There will be those that have simply chosen to ignore the paperwork in the hope that it will go away or evading where they have no dispute, which is also something that needs to be addressed. Encouragement and incentive should be considered to engage earlier.

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

Greater power to Enforcement Officers to access Gov Departments for information and then use that information to apply for attachment of earnings, or third-party debt orders, through the courts.

Continuation of the IT project to transition away from paper to a more digital process.

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.

Creditors during discussions have repeatedly highlighted challenges around the County Court Bailiff service and there want to have the right of choice to choose and would like to see the barrier with the jurisdiction for under £600 and Consumer credit removed to give the right to choose either the County Court Bailiff Service or High Court Enforcement.

Progress with IT is good, but there are still many areas that rely on Paper such as the N293a and Writ applications.

Improved IT access for Creditors to be able to view status of proceedings and where papers might be sitting, with the facility to raise questions and receive responses.

- 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.

From an Enforcement Officers position, we have only the one means of enforcement open to us of taking control of goods. We deal with many judgment debtors, who have little in the way of physical assets but are still able to pay.

There are times when assets are held at third party addresses and pre-Taking Control of Goods Regulations 2014, we were able to attend at those address without the need of a court order. Today we must make a manual application to court to attend a third-party address. This can delay enforcement and risks an already out-of-pocket creditor incurring additional costs. The court application is an unnecessary step given the writ of control gives the authority to take control of a Judgment Debtors assets and should be removed.

Where a judgement debtor who is believed to have assets but refuses entry, the time to obtain an order to force entry is again time-consuming and costly to a creditor. Streamlining of the application process would vastly improve this and continue to ensure forced entry is only used on merit.

I think by allowing Enforcement Officers wider powers like those in Scotland allowing the ability to obtain attachment of earnings, third party debt orders and freezing orders etc. would help make the enforcement of a judgment more effective and improve a creditors access to justice.

By giving Enforcement Officers, the ability to apply for orders for information and carry out searches would help creditors recover more effectively and reduce the number of judgments which go unsettled.

It should also be noted that that whilst there is an increase in individuals being defendants in cases, there is also an increase in the numbers of individuals bringing cases as the system becomes easier for claimants to act for themselves. Whilst there is a lot of focus on individual debtors we must not forget that businesses are also on both sides of the cases be they creditors or defendants and their needs are not the same as an Individuals, so any system needs to be able to support both sides, and not be unintentionally skewed to the debtor.



Civil Justice Council Enforcement Working Group

Call for Evidence July – September 2024

ENFORCEMENTS OF DOMESTIC JUDGMENTS

Annex A

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
<p>Publicly available sources:</p> <ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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. <p>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.</p> <p>Charging Orders [£119 & £71 for a warrant if order for sale made].</p>	<ul style="list-style-type: none"> [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 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]. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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]. 	<ul style="list-style-type: none"> 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. <p>Writ of control/Warrants of execution [£83].</p>	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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].



<p>dissipation of assets / the delivery up of information regarding assets.</p>			<ul style="list-style-type: none">• The application is made using form N349.• Third Party Debt Orders [£119].					
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