



The Bar Council

Bar Council response to the Civil Justice Council Enforcement Working Group Call for Evidence

1. This is the response of the General Council of the Bar of England and Wales (“the Bar Council”) to the Civil Justice Council Enforcement Working Group Call for Evidence.¹

2. The Bar Council represents approximately 18,000 barristers in England and Wales. It promotes the Bar’s high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (“BSB”).

A. Your experience and awareness of enforcement

Q1 Which enforcement methods do you have experience of, if any?

4. The Bar Council has experience in all forms of enforcement, both in the County Court and in the High Court.

¹ <https://www.judiciary.uk/wp-content/uploads/2024/07/July-2024-CJC-Enforcement-Call-for-Evidence.pdf>

Q2 Are there any barriers you have experienced in seeking to enforce or satisfy a judgment and, if so, what were they?

5. There are lengthy delays in seeking to enforce a judgment. Many of the delays are attributed to a delay in listing hearings and the process can be expedited through judicial decisions made on the documents, rather than needing a court hearing.

Q3 Which of the attached enforcement mechanisms do you find to be most effective in obtaining a resolution, and why?

6. Attendance by High Court Enforcement Officers is frequently the most effective enforcement mechanism. That is because there is a relatively prompt attendance and, if enforcement is not able to be undertaken, it enables more rapid consideration of other methods of enforcement. Whilst a Charging Order is effective, it is very frequently slow, as it entails an Interim Charging Order, then a Final Charging Order and then a Part 8 claim for a forced sale.

Q4 Which of the attached enforcement mechanisms do you find to be least effective in obtaining a resolution, and why?

7. Insolvency proceedings are frequently delayed by debtors, as spurious defences are frequently raised before insolvency judges with multiple hearings ensuing. County Court bailiffs are frequently ineffective in debt collection.

Q5 Do you consider any of the attached enforcement mechanisms should be promoted as being more effective than others?

8. No, the selection of the appropriate enforcement mechanism should be a matter for the judgement of the individual barrister advising on enforcement. As a matter of access to justice, information for Litigants in Person as to the respective advantages and disadvantages of each method of enforcement would assist in avoiding unmeritorious enforcement mechanisms being selected with a consequent effect on court resources.

Q6 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?

9. The distinction between County Court and High Court enforcement should be removed, particularly in relation to bailiffs. The distinction between interim and final charging orders should be removed and replaced with the single concept of a charging order. There should also be a "rolled up" procedure available as an option for creditors for an application for combined charging orders and forced sale.

Q7 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?

10. No.

Q8 Do you have experience of the court enforcement mechanisms interacting with debt collection standards and practices outside the court system?

11. High Court Enforcement agents frequently attend residential properties outside normal hours. The Court should introduce clearer rules for when enforcement agents attend residential properties, especially when children under the age of 16 are present.

Q9 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?

12. The Court Order should specify between what hours a High Court Enforcement Officer may attend a residential address. The Court Order should contain within it as standard wording key elements of the debt collection standards, including that enforcement agents cannot enter a residential property by force; if only children under 16 or vulnerable people (with disabilities, for example) are present; between 9pm and 6am; and/or through anything except the door.

Q10 If court enforcement is to take into account debt collection outside the court system, what practical steps do you consider should be undertaken?

13. See the answer above.

B. Supply of information about potential judgment debtors

Q11 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.]

14. It is not considered that any further steps need to be taken. The remedy to the high number of hearings to set aside judgment in default is that the process can be expedited through judicial decisions made on the documents, rather than needing a court hearing.

Q12 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);

15. Yes, the Court should specify that a Defendant list all judgments that remain to be satisfied in the Directions Questionnaire.

Q13 If information about the means of a potential debtor is sought early in proceedings, what information would you consider to be helpful?

16. A completed means form, including information about net income per month (income minus expenditure), employer, bank and property owned.

Q14 What experience, if any, have you had with making use of the provisions of CPR part 71 (orders to obtain information from judgment debtors)?

17. This process is slow and cumbersome given that debtors frequently flout attendance at court and the mechanism for enforcing failure to attend court is very laborious. The system can be improved by a Defendant automatically being ordered to complete a means form within 2 weeks of judgment being entered if judgment is not satisfied within 2 weeks, as an alternative to an application being made for a debtor to attend court for questioning.

Q15 If you have used the provisions of part 71 to obtain information about a judgment debtor's means, have you found the process effective?

18. See the answer to question 14 above.

Q16 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?

19. See the answer to question 14 above.

Q17 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?

20. Contempt proceedings initiated by the Court.

Q18 If judgment is obtained, should the court provide details of the judgment debtor [to] the claimant at the time of judgment and, if so, what details should be provided (if any)?

21. See the answer to question 14 above.

Q19 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?

22. Where a debt is owed, it is considered reasonable and proportionate for the debtor to be ordered to complete a means form to enable cost-effective enforcement to ensue. See the answer to question 14 above.

Q20 Should the court have a role, independent of any applications made by any creditor, in obtaining details of the debtor?

23. See the answer to question 14 above.

Q21 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?

24. Yes.

Q22 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?

25. See the answers to questions 14 and 19 above.

Q23 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?

26. Yes.

Q24 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?

27. See the answers to questions 14 and 19 above.

Q25 Would you welcome a change to legislation to allow either [21] or [23] above, which would include safeguards suggested under [22] and [24] above?

28. Yes.

Q26 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?

29. Where a debt is owed pursuant to a judgment, the public interest in such a debt being paid outweighs the debtor's right to privacy of financial information.

C. Support for debtors

Q27 Are you aware of any support or information provided to debtors following a judgment?

30. Yes.

Q28 If so, what is that support or information?

31. Primarily through the Citizens Advice Bureaux.

Q29 What, if any, (additional) information and support do you consider should be made available to debtors and at what stage?

32. At the point that a claim is sent, the Directions Questionnaire is sent and alongside all Notices of Hearing/Listing, information about support for debt should be sent to the Defendant.

Q30 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?

33. The Defence and Counterclaim form should include a section where the Defendant may self-declare that they are vulnerable. It remains the case that judges may be able to identify a vulnerable party during the course of proceedings in which case appropriate directions could be made.

Q31 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?

34. All of the above. Information should be sent through all forms of contact provided by a Defendant (postal address, email and text message).

Q32 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?

35. Yes.

D. Any proposed improvements

Q33 Do you consider there should be any changes to the system of enforcing judgments, or should the status quo be maintained?

36. Please see the answers above.

Q34 If you consider there should be changes, what changes do you feel should be made to make enforcement more accessible, fair and efficient?

37. Please see the answers above.

Q35 Whether you consider there should be changes or not, what, if any, additional safeguards and advice should be given to debtors?

38. Please see the answers above.

Q36 Whether you consider there should be changes or not, what, if any, additional information should be given to creditors about methods of enforcement?

39. Please see the answers above.

Q37 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?

40. Please see the answers above.

Q38 Are there any other areas of enforcement that you feel could be improved and in what way and by which method(s)?

41. Please see the answers above.

E. General

Q39 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.

42. Please see the answers above.

Q40 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.

43. Please see the answers above.

Bar Council²

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² Prepared by members of the Legal Services Committee and Law Reform Committee.

Our response is public, and I am responding on behalf of the Bar Council

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