Subject:	Taking Control of Goods Regulations consultation
Published by:	HM Ministry of Justice
Publication Date:	10th October 2023
Closing Date:	4th December 2023
Response Date:	4th December 2023
Response to:	bailiffreview@justice.gov.uk
CCUA Contacts:	Rob Thompson, Chair Email: robertt@ccua.org.uk Claire Stokes, Association Administrator Email: claires@ccua.org.uk
Representation:	The CCUA has drawn upon the views of the CCUA membership including those of the Policy and Reform Committee. See further detail under “introduction” below.

Introduction

The Civil Court Users Association (“CCUA”) welcomes the opportunity to contribute to this consultation from the Ministry of Justice.

Membership of the CCUA is open to all those who use the courts, whether Claimants, Defendants, working in enforcement, etc.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost-effective court service which is fair and proportionate for all court users.

Our members participate in around 85% of all money claims in the County Court in England and Wales, as well as being involved in a wide range of other litigation including, for example, repossession and return of goods claims. They include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Overall thoughts

It is essential that enforcement is adequately resourced in order to safeguard the interests of all court users.

Enforcement must be firm and effective, whilst also being fair and proportionate. It is essential to recognize what steps have previously occurred in each situation, to avoid unnecessary processes and the repetition of steps which have previously been taken. This could otherwise cause unnecessary inefficiency, delay, expense, poor outcome, harm to court users and harm to the environment.

Response

Proposal A

To amend the TCG Regulations to extend the minimum period of notice that must be given before EAs and HCEOs move from the compliance stage to the enforcement stage from a minimum period of 7 days to 28 days for individual debtors, but not for debts owed by businesses.

Question 1: Do you agree that the minimum period of notice that must be given to a debtor before the EA or HCEO is able to take control of goods should be increased from 7 clear days to 28 days?

No.

Question 1.a: If not, please explain why.

Enforcement should be be effective and efficient. Many Judgment creditors will already have had to wait a considerable period of time to have reached this point, whilst out of pocket and potentially facing financial difficulties of their own as a result.

Judgment debtors will have had numerous opportunities to engage prior to this point, including often a similarly lengthy period prior to the issue of the Claim Form under the requirements of the Debt Pre Action Protocol. Their failure to engage is a direct breach of a Judgment where they have been ordered by the court to pay.

This continued weakening of the effectiveness and efficiency of the courts is likely to encourage people to ignore court orders and bring the whole system into disrepute.

Creditors who are forced to use the courts have to pay considerable fees to do so. The balance of effectiveness and protection needs to be proportionate. Continued repetition of steps which have previously been taken and have not worked is utterly pointless and cannot be justified.

Question 2: Do you agree that the minimum period of notice that must be given to a debtor that is not an individual, but is for example, a company, a corporation or a partnership, should remain at 7 clear days?

Yes.

Question 3: Do you agree that the reference to an individual should include a sole trader?

If a distinction is to be made then yes, as that aligns with the understanding elsewhere, such as the definition of individual under the Consumer Credit Act 1974. However, as set out at question 1.a. above, we do not agree that a distinction should be made at all, 7 days should continue to apply to all.

Question 4: Do you agree that where it is not clear whether the debt is owed by an individual that the longer period of 28 days should apply?

No.

Question 4.a: If not, please explain why.

See our answers above. 7 days should continue to apply to all.

Proposal B

To amend the Fees Regulations to clarify that EAs and HCEOs enforcing High Court writs can agree to payment by instalments at the compliance stage.

Question 5: Do you agree that the proposed amendment to the Fees Regulations makes it clear that HCEOs will be able to agree at the compliance stage to payment in instalments over a longer time-frame than the minimum notice period (currently 7 days), meaning that they do not have to visit the property if payment is not made in a single payment at the compliance stage?

We do not agree that this amendment is acceptable. It appears to fundamentally change the situation, removing consent and decision making from the Judgment Creditor and instead obliging the EA or HCEO to consider instalments in every case, regardless of the wishes of the Judgment Creditor. This is a deterioration of the rights of the Judgment Creditor and is unacceptable.

Question 5a: If not, please explain why and how the requirement could be made clearer?

The EA or HCEO should only be empowered to consider accepting instalments where the Judgment Creditor has given that instruction, and the Judgment Creditor should thereafter make the decision as to whether any proposed instalments are acceptable to them or not.

Question 6: Do you have any concerns about the proposal to require HCEOs to consider whether debts could be repaid in instalments before moving to the enforcement stage?

Yes.

Question 6a: If so, please explain why.

As above, this should be a decision for the Judgment Creditor not the HCEO.

Proposal C

To amend the TCG Regulations to set out the tasks that should be carried out as part of the compliance stage.

Question.7 Do you think that it would be beneficial to set out in guidance that the steps set out in the section about proposal C, at points a to I, should be undertaken at the compliance stage before moving to the enforcement stage?

No.

Question .7a If not, please give reasons.

These proposals seem unnecessarily bureaucratic and seemingly fail to appreciate the wider picture where similar steps will have been taken previously, sometimes on multiple occasions.

As an Association representing <u>all</u> court users, we look at the situation in the round. Debtors need the right protections, but enforcement also needs to be fast and efficient when appropriate.

We agree with signposting to advice when appropriate, for vulnerability to be communicated back to the creditor and instructions taken, and for instructions to be sought from the instructing creditor regarding instalment proposals.

However, the constant and repetitive requirement for notices and warnings (particular in the wider context of previous communications before and during the prior legal action) constitute an unnecessary burden and a barrier to efficient progression.

Also, the fact that the enforcement agents would need to take on such extra burdens without any additional remuneration risks the quality of the overall service they are able to provide. It is essential that a quality service is maintained, for the benefit of both creditor and debtor.

Question 8. Do you agree that the steps set out in the section about proposal C at, points d to l, should be prescribed in the TCG or Fess Regulations.

No.

Question 8a. If you disagree, please set out why.

See our answer to Q7a above.

Question 9 Are there any other steps you think should be prescribed in the TCG or Fees Regulations and/or in guidance?

No.

Proposal D

To amend the statutory requirements for information that must be sent to debtors to signpost advice and encourage engagement with EAs and HCEOs.

Question 10. Do you agree that the TCG Regulations should be amended to require EAs and HCEOs to send a statutory information sheet with a Notice of Enforcement?

We have no objection in principle, providing that the content is appropriate.
There may certainly be benefits in terms of ensuring the debtor's understanding.

Question 11. Do you agree with the information provided on the Information Sheet (Annex B)?

No.

Question 11a If not, please explain why**.**

We have concerns on the following points-

Contrary to the suggestion in the Information Sheet, it is the creditor who should determine whether instalments are appropriate. Moreover, expecting the Enforcement Agent to conduct income and expenditure assessments and the suitability of instalments (rather than the creditor) is a further expectation placed upon them with no additional remuneration provided. Again, this should be of concern to anybody who has an expectation of standards being maintained, which is important to both creditor and debtor.

As addressed previously in this response, 28 days is far too long, particularly for cases which has already been through similar processes before and during litigation.

Question 12. Is there any other information that you would want to be included in the Information Sheet?

No.

Question 13. Given the proposal to require EAs and HCEOs to send debtors the Information Sheet with a Notice of Enforcement, do you think that it is additionally necessary to amend the notice?

No necessarily, no.

Proposal E

Amending the Fees Regulations to make it clearer when the fee for enforcement stage two (ES2) can be recovered under the High Court enforcement fee scale.

Question 14. Do you agree with the proposals listed in the section about proposal E setting out the circumstances when the ES2 fee can be recovered?

No, there is insufficient detail to be able to agree.

Question 14a. If you do not agree, please explain why.

The text refers to guidance to be provided within the National Standards. The detail needs to be provided and consulted upon. We are concerned that the guidance may be too restrictive or counter-productive, if not properly balanced and agreed.

We are further concerned that the proposals introduce a degree of ambiguity as to when exactly ES1 and ES2 are to apply. Depending on exactly how these ideas might be applied, we are concerned that this may result in a watering down of the effectiveness of enforcement, encourage evasion or prevarication tactics, and reduce the amount of remuneration available to provide a quality service to the benefit of all court users.

Question 15. Do you think the proposals could go further?

Yes. There is a lot of scope for imaginative proposals for improvement to enforcement.

The current proposals seem very limited and narrow, basically focusing on limiting fees, limiting the scope of action at different stages, and increasing bureaucracy.

Having to conduct increased levels of work, with possibly reduced efficiency, for proportionately less remuneration, is not helpful in maintaining standards and could be harmful to the interests of all court users.

Proposal F

To seek views on amending the Fees Regulations that apply to High Court enforcement to prevent a higher fee being applied to low value debts.

Question 16. Do you think that the Regulations should be amended to require the non-High court fee scale to be used for low value High Court cases?

No.

Question 16a. If not, please explain why?

We are concerned at the impact this may have on the viability of High Court enforcement operations. As we have mentioned above, it is essential that enforcement is properly remunerated if a quality service is to be maintained for the benefit of all concerned, including both Judgment Creditor and Judgment Debtor.

Our view might be different if High Court enforcement was permitted on debts under £600. Economies of scale might then permit reduced fees, although we cannot say for sure as that would clearly be a matter for consideration by those providing High Court enforcement.

At the moment though, the proposals are all "one way traffic" – increased requirements for proportionately less remuneration.

Question 17. Do you think that the threshold below which the non-High Court fee scale should be used should be set at: £800 or £1,200: or do you think the threshold should be set at a different amount?

Neither. It should remain at £600.

Question 17a. If you think the threshold should be set at a different amount, please set out why.

The threshold should remain at £600 but High Court Enforcement should be permitted below that sum. We understand that businesses providing High Court enforcement might be prepared to enforce debts under £600 off the High Court scale, due to the volume of work at that level and the economies of scale that would allow.

This is a very important point. Relatively few Judgment creditors use County Court Warrants of Control as they have no faith in them. They currently have no access to effective enforcement of goods.

We are aware that statistics might suggest a contrary position if interpreted incorrectly. Warrants of Control attract the lowest fee of all enforcement methods. A small number of bulk issuers issue a large proportion of the warrants issued, more as a debt recovery tactic and in view of the lower cost. These factors skews the figures and may well make warrants of control look more popular than they truly are.

Judgment Creditor deserve an effective solution for debts under £600. Judgment Debtors also deserve to benefit from the high levels of training and professionalism provided by the High Court enforcement sector.

(The same points also apply to regulated debts under the Consumer Credit Act 1974, which we believe should also be able to be enforced in the High Court).

We would also make the point that this debate should not be led purely on the basis of the cheapest option. We are aware of arguments made from some quarters that the cost of enforcement is ultimately passed to the Judgment Debtor and should therefore be kept to the lowest possible level. However, we believe that it is important that standards are maintained and there must be quality options available, with sufficient remuneration to enable them. As we have mentioned continuously, this not only allows an effective and efficient enforcement option for creditors but also means that Judgment Debtors are treated professionally and correctly at all times. Dumbing down to the cheapest possible approach would be counter-productive and should not be an option for consideration.

Proposal G

Amend the National Standards to prohibit creditor from receiving extra payment or profit-sharing from the use of EAs and the charging of fees.

Question 18. Do you agree with the proposed amendment to the Taking Control of Goods: National Standards?

Yes.

Proposal H

Question 19. Do you agree with the proposal to review these reforms and the fee levels after three years, and to review the fee levels every three years thereafter?

No, we see no reason to depart from the previous commitment to review the fees annually with reference to the latest Consumer Price Index.

As set out in previous answers above, it is essential that enforcement is adequately resourced to ensure that standards are maintained to the benefit of all parties. The implied suggestion that fees be allowed to decline year on year in real terms once inflation is considered (which has already been allowed to occur over recent years) is simply unacceptable and a dereliction of duty.

Impacts

Regulatory Impact

Questions for creditors and other court users

Question 23. Do any of the proposals create a new business requirement?

No.

Question 24. Will any of the proposals require a need to amend IT systems?

No.

Question 25. Will the proposals require any staff training?

No, aside from minimal training regarding the changes themselves.

Rob Thompson

CCUA Chair

4th December 2023