



HCEOA

Judgment Enforcement – Time for Change

**October 2015
High Court Enforcement Officers Association**

1. Introduction

Do you want the choice of enforcement provider?

With increasing consumer judgments this is a request members of the High Court Enforcement Officers Association get on a regular basis from court users.

In the Transforming Bailiff Action Consultation of 2012, the simple question asked by MoJ was “Do you consider that the jurisdiction order should be amended?” The majority of respondents were in favour of change. But three years on there has been no change.

The existing 1991 High Court & County Court Jurisdiction Order article 8(1)(a) provides the current position in that cases under £600 or regulated under a Consumer Credit Agreement should be enforced in the County Court by County Court Bailiffs (“CCBs”), and only those judgments in excess of £600 and not subject to Consumer Credit regulation may be voluntarily transferred to the High Court for enforcement by High Court Enforcement Officers (“HCEOs”).

Judgments issued for possession of property as a result of unpaid rent or mortgage are also enforced by CCBs and only if an application is made and approved by the court under the County Courts Act 1984, section 42, can these be transferred to the High Court for enforcement.

The Association will be asking the Ministry of Justice to work towards changes to the High Court and County Court Jurisdiction Order 1991 and to allow court users with a choice of enforcement provider for all forms of judgment. The Association will be asking for the following:-

1. Allowing HCEOs to enforce judgments based on Consumer Credit Act regulated agreements
2. Allowing HCEOs to enforce County Court judgments below £600.00
3. Allowing HCEOs to enforce County Court orders for possession without the need for a further court order

2. The current position on enforcement

Since the implementation of the Tribunals Courts and Enforcement Act in 2014, all enforcement by way of Taking Control of Goods, has been under the one system, and County Court judgments are enforced either by CCBs who are directly employed by the County Courts or by HCEOs authorised by the Ministry of Justice, being private persons with responsibility to enforce Writs.

3. Right to choose HCEO

The Government in 2004 introduced the Courts Act 2003 for High Court enforcement which gave creditors the right to choose which HCEO they wished to use, doing away with the previous county boundaries which was welcomed by the creditors, as choice could be made based upon levels of service, rather than the lottery of whether you were in a good or poor area.

This change has driven many improvements in levels of service provided by HCEOs and many benefits have come as a result to creditor and customer, amongst which is the ability to tailor services

to meet the requirements of its clients and customers, who pay for the service received by fees which are set by regulation.

These benefits also include

- A fair and equitable system where clients choose how their judgments should be enforced be it County Court Bailiff (CCBs) or HCEO.
- Modern new regulation to control all enforcement activities, that applies equally to CCBs and HCEOs along with what fees a HCEO may charge
- Clients have the right to choose which HCEO they wish to use. This drives maintenance and improvements to standards of service to the customers and clients, with clients exercising this right of choice by going to another provider if the standard falls.
- HCEOs deal with clients many of whom comply with Financial Conduct Authority requirements, particularly around treating customers fairly which is an enhancement to the regulations; it is in excess of what is currently provided by CCBs. Additionally sign posting for customers needing to seek help is clear.
- Repayment schemes are easier to set up with HCEOs, as no need exists for costly court orders to be put in place. This reduces costs to customers already struggling and clients, along with being easier to setup and provides a range of payment options not currently available with CCBs, which benefits the customer and client.
- Easy access to HCEOs by phone to discuss cases and issues, along with email and post.
- HCEOs invest in their systems continually, to improve on customer contact and delivery of quality effective service to clients
- HCEOs are zero cost to taxpayers, whereas CCBs are funded by the tax payer

4. Possession Claims

When dealing with possession claims, HCEOs have seen an increase in requests to transfer, which are increasingly being granted by the courts, as the courts accept that the CCBs are unable to execute the orders in a timely enough manner. This demonstrates that the courts agree the HCEOs are suitable to be charged with the enforcement of these orders, and that this is not to the detriment of the customer being evicted.

Clients gaining possession through HCEOs, typically find that overall, they save money on the process, due to the reduced time in re-gaining possession following a court order being made, and only recently Christopher Chope MP requested that all possession claims are enforced by CCBs within 7 days, something CCBs simply do not have the resources available to achieve.

5. Clients/Court Users

For a number of years now, clients have raised issues over the service provided by the CCBs in enforcing judgments for both money and possessions where they feel that the CCB does not do enough to enforce the judgments issued, act in a timely manner, or provide adequate information on the efforts made to enforce.

With the enforcement of judgments whether for money or possession it is now quite common to have to wait over 10 weeks for an attendance or appointment with limited outcomes.

6. Survey

Because of the numerous requests from court users to have the choice of enforcement provider the Association have recently carried out a survey of Court users.

The survey was undertaken during July and August 2015. There were 312 responses from the following organisations:-

Answered: 307 Skipped: 5

| Answer Choices | Responses |
|--|------------|
| Lender writing Consumer Credit Act (CCA) regulated finance agreements | 4.56% 14 |
| Lender writing non-CCA regulated finance agreements | 1.63% 5 |
| Lender writing both CCA regulated and non-CCA regulated finance agreements | 4.23% 13 |
| Other creditor | 19.87% 61 |
| Solicitor/DCA acting on behalf of creditors | 47.23% 145 |
| Other | 22.48% 69 |
| Total | 307 |

Respondents were asked a number of questions and the results are as follows:-

Respondents were asked would you consider using High Court Enforcement Officers to enforce judgments arising from Consumer Credit Act regulated agreements if this was an option that was available to you?

Answered: 166 Skipped: 146

| Answer Choices | Responses |
|----------------|------------|
| Yes | 92.17% 153 |
| No | 7.83% 13 |
| Total | 166 |

Respondents were asked if you were able to use High Court Enforcement Officers to enforce judgments arising from Consumer Credit Act regulated agreements, how might this affect the number of claims issued by you/your usage of the court service?

Answered: 145 Skipped: 167

| Answer Choices | Responses |
|-------------------------|------------|
| Likely to increase | 51.72% 75 |
| Likely to decrease | 2.76% 4 |
| Likely to stay the same | 37.93% 55 |
| Don't know | 7.59% 11 |
| Total | 145 |

Respondents were asked if you were able to use High Court Enforcement Officers to enforce judgments arising from Consumer Credit Act regulated agreements, how would this affect your usage of the following judgment enforcement methods/debt recovery methods:

Answered: 139 Skipped: 173

| | Increase | Decrease | Remain unchanged | Not applicable | (no label) | Total | Weighted Average |
|---|--------------|--------------|------------------|----------------|------------|-------|------------------|
| Would applications for Charging Orders... | 9.56% 13 | 15.44% 21 | 70.59% 96 | 4.41% 6 | 0.00% 0 | 136 | 2.70 |
| Would the issue of statutory demands and/or petitions for bankruptcy... | 5.88% 8 | 30.88% 42 | 54.41% 74 | 8.82% 12 | 0.00% 0 | 136 | 2.66 |
| Would the issue of County Court Enforcement Officer warrants... | 22.46% 31 | 53.62% 74 | 20.29% 28 | 3.62% 5 | 0.00% 0 | 138 | 2.05 |
| Would applications for Attachment of Earnings Orders... | 10.37% 14 | 25.19% 34 | 61.48% 83 | 2.96% 4 | 0.00% 0 | 135 | 2.57 |
| Would applications for Third Party Debt Orders... | 4.41% 6 | 20.59% 28 | 58.82% 80 | 15.44% 21 | 0.74% 1 | 136 | 2.88 |

Respondents were asked about the changes introduced in the Enforcement industry in April 2014, new regulations came into force to introduce, among other things, a '7 day notice' requirement prior to taking control of goods, together with a revised fee structure. The Ministry of Justice is keen to understand any implications of these changes. In your experience post April 2014, how have the following changed?

Answered: 207 Skipped: 105

| | Increase | Decrease | No change | Don't know | Total | Weighted Average |
|--|---------------------|---------------------|----------------------|---------------------|-------|------------------|
| Complaints regarding Enforcement Officer fees | 11.39% 23 | 14.85% 30 | 43.07% 87 | 30.69% 62 | 202 | 2.93 |
| Complaints regarding Enforcement Officer process | 9.36% 19 | 10.84% 22 | 49.26% 100 | 30.54% 62 | 203 | 3.01 |
| Number of cases returned as negative/abortive | 28.92% 59 | 8.82% 18 | 37.75% 77 | 24.51% 50 | 204 | 2.58 |
| Overall cost to Defendants | 20.30% 41 | 19.31% 39 | 26.73% 54 | 33.66% 68 | 202 | 2.74 |
| Overall cost to Claimant | 34.63% 71 | 8.78% 18 | 34.15% 70 | 22.44% 46 | 205 | 2.44 |

Respondents were asked do you consider that there is any justification for maintaining a distinction in the High Court and County Courts Jurisdiction Order between CCA-regulated and non-CCA regulated judgments?

Answered: 193 Skipped: 119

| Answer Choices | Responses |
|----------------|-------------------|
| Yes | 10.88% 21 |
| No | 89.12% 172 |
| Total | 193 |

Respondents were asked whether they would support a change in the High Court and County Court Jurisdiction Order to remove the prohibition on enforcing money judgments arising from Consumer Credit Act regulated agreements using High Court Enforcement Officer's?

Answered: 190 Skipped: 122

| Answer Choices | Responses | |
|-----------------------|------------------|------------|
| Yes | 87.89% | 167 |
| No | 12.11% | 23 |
| Total | | 190 |

7. Summary

The survey overwhelming suggests that the court user wants the right to choose which enforcement provider to use, be that CCB or HCEO, being something that has been sought now for some years, and that there should not be a distinction because of the debt type.

The results speak for themselves:-

92.17% would consider using High Court Enforcement Officers for the enforcement of Consumer Regulated Judgments.

89.12% see no justification for maintaining a distinction in the High Court and County Courts Jurisdiction Order between Consumer regulated and non-regulated judgments.

87.89% would support a change in the High Court and County Courts Jurisdiction Order to remove the prohibition not allowing High Court Enforcement Officers to enforce consumer regulated judgments.

Please let other court users know the outcome of this survey and do write to the MoJ to lobby for change to the jurisdiction order. Their address is:-

Enforcement Reform

Ministry of Justice, 4th Floor post point 4.23, 102 Petty France, London, SW1H 9AJ



HCEOA

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- Ethical Enforcement

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