

## **CCJE Questionnaire – Enforcement UK Reply**

### Civil/Administrative Judgments

1. Courts in the United Kingdom have very extensive powers to make orders designed to assist and lead to the enforcement of civil judgments. However, they act not on their own initiative, but on application made by the beneficiary of the judgment. The courts' powers include, under Part V of the County Court Act 1984, the power to authorise execution (by a bailiff) against goods, the appointment of a receiver or manager and attachment of debts, powers to order a judgment debtor to attend for cross-examination, warrants of possession of premises, the power to make administration orders and the power to commit or fine for contempt of court (e.g. in case of deliberate breach of an injunction or other mandatory order). These and other powers also exist in the High Court under Civil Procedure Rules (CPR) 69 to 73. Magistrates Courts also have various enforcement powers. The Attachment of Earnings Act 1971 further enables specified courts to attach earnings to meet maintenance or judgment debts.
2. a) Not directly, since he acts only on application.  
b) Yes. The judge has extensive powers, on application by the beneficiary of the judgment, to make orders in aid of enforcement (as above).
3. Not necessarily or even usually.
4. If enforcement is necessary, yes. Some judgments (e.g. declaring the parties' rights or declining jurisdiction) do not require enforcement.
5. Yes, in the form of an order.
6. Yes, in the sense that he proceeds on the application of the judgment beneficiary (and on notice to the judgment debtor) and his orders may authorise the use of third parties, such as bailiffs or a receiver/manager.
7. See above.
8. Bailiffs and enforcement officers are certified and have undergone some training, although this is primarily run through the private sector. Others such as a receiver or manager will commonly have professional (e.g. accountancy) qualifications.
9. In the light of the above, this does not apply. It is up to the successful party to apply for the orders appropriate to achieve enforcement.
10. Again, it is up to the successful party to apply for the appropriate orders. The judge can of course then set a timetable for enforcement, or stay enforcement for a period (e.g. in appropriate cases, pending an appeal).

11. The court has no independent powers. It acts on the application of a successful party.
12. Orders will not normally be given which affect non-parties. Where (exceptionally) such an order can be and is made (e.g. for costs against a third person who has instigated and supported litigation), it is enforceable as though it were against a party: CPR rule 70.4. A judge has a wide discretion in terms of the types of enforcement orders appropriate in the circumstances of the particular case.
13. The primary problems with enforcement are (a) lack of resources on the part of the judgment debtor and (b) inability to track down a judgment debtor who has provided false or no personal details. There might be scope for more extensive facilities enabling information to be obtained about earnings and so the attachment of earnings.
14. Parts 3 and 4 of the Tribunals, Courts and Enforcement Act 2007 were designed to regulate and improve the enforcement process but these have not been brought into force and there appears to be no current plans to do so.
15. Yes. Enforcement against administrative bodies is achieved through the same process. However, orders against administrative bodies are in the United Kingdom customarily obeyed without more – i.e. without any need for enforcement measures.

#### Criminal Judgments

16. Yes. The Prison Act 1952 specifies the responsibilities of the Prison Service in respect of custodial sentences. The magistrates court is, under Powers of Criminal Courts (Sentencing) Act 2000, s.140 and Magistrates Court Act 1980, ss.75-91, responsible for the enforcement of fines whether imposed in a magistrates court or in the Crown Court, as well as for the enforcement of compensation orders, and other sums adjudged to be paid by a conviction or order. Magistrates courts also act as supervising authority for community orders. Community orders include a community punishment order, community rehabilitation orders, orders combining both these features, curfew orders, drug treatment and testing orders, and exclusion orders. The actual operation of these orders is undertaken by others, such as probation officers from the National Probation Service.
17. a) See above.  
b) Yes. He is able to make further orders upon request to aid enforcement of non-penal sanctions.
18. No, not usually.
19. Yes. Custodial sentences will be managed by HM Prison Service; fines and other monetary sentences will be enforced by bailiffs or enforcement officers; probationary sentences will be managed by the National Probation Service; absconding offenders will be notified to the police.

20. a) and (b) No. The judicial role is normally restricted the handing down of sentence, and so only reactivates if an issue is referred back to the court. However, since the Criminal Justice Act 2003, s.178 a limited number of courts have on a pilot basis acquired a more extensive supervisory role. See Annex A for s.178 and for the description of the manner in which one such court (the Liverpool Justice Centre) now operates.
- (c) Yes. He has the power to make further orders to ensure enforcement.
21. The judge is always required to have regard to rights of the defendant under the ECHR, as well as any other statutory provisions and the common law, which provide a number of possible remedies for prisoners. Third parties affected by the order will have their circumstances taken into account in the exercise of the sentencing discretion. Victims of crime are entitled to make statements to the court after conviction to state the effect that the crime has had upon them. Compensation orders may in clear cases be made by criminal courts in their favour (without prejudice to their rights to invoke the civil courts). Otherwise they are not involved.
22. Any sentencing exercise requires the judge to consider what sort of sentence (if any) is appropriate. The range is from absolute discharge to fine or some form of community service, to a suspended or immediate term of imprisonment to, last of all, life imprisonment. (Life imprisonment does not normally mean that a prisoner will actually remain in prison for the rest of his or her life – a tariff period will normally be set, according to the circumstances, after which period the prisoner is eligible to be considered for parole). A prison sentence should always be regarded as a last resort, to be ordered only where necessary.
23. None. Prison arrangements are organised by HM Prison Service and the Ministry of Justice. Release arrangements are organised by the Parole Board. The involvement of the judge usually ends with the determination of the sentence and its minimum term. Some experiments are being conducted with courts where the judges do have a continuing role in the supervision of sentences: see Annex A.
24. The court may make arrangements as to the amount to be paid and the time over which payment is to be made. If the offender does not meet the payment schedule ordered he may, if shown to have had the means to pay, face a custodial sentence upon application by the prosecuting authorities. Alternative non-custodial sentences may include: community sentences, fines, compensation orders, discharges, mental health orders and a number of ancillary orders.
25. According to figures released by the Prisons and Probation Ombudsman 4,288 complaints were received in 2008-09. The leading issues for complaint concerned general conditions in custody, complaints about treatment of property (including cash) and general complaints about the probation service.

26. Prisoners can complain to the Prisons and Probation Ombudsman. Any breach of ECHR rights can be addressed through an application for judicial review to the courts.
27. The prison population has substantially increased in recent years, placing pressure on conditions in prisons and on the sentencing decisions of courts. Judicial guidance has been provided as to the relevance of prison places in making sentencing decisions. Over-crowding in prisons is generally thought to have been detrimental to the use of prisons as means to rehabilitate and has also led to early release of some prisoners being ordered in order to ease pressure.
28. (a) A better combination of (i) an adequate number of properly resourced prison places, (ii) a greater legislative, political and public willingness to contemplate alternatives to custodial sentences, and (iii) more funding for offender management and rehabilitation programmes. Over the last twenty years, “law and order” and changes to the criminal justice system (particularly as regards sentencing) have become political themes, and the prison population has, in part probably due to this, steadily increased.  
  
(b) The volume of outstanding fines appears steadily to have increased over the years. Fines not yet paid (admittedly including fines payable only by instalments) were recorded as at June 2008 as £500 million (against an annual total of new fines imposed of £270 million).

## ANNEX A

### Liverpool Community Justice Centre

<http://www.communityjustice.gov.uk/northliverpool/about.htm>

#### **“2. Tackling crime and its causes**

The Community Justice Centre combines the powers of a courtroom, run by Judge David Fletcher, with a range of community resources, available to all North Liverpool residents as well as victims, witnesses and offenders.

Our Centre deals with problems with anti-social behaviour and cases involving crimes committed in North Liverpool that affect quality of life for local people, such as vandalism and graffiti.

The Judge has a range of powers and can sentence offenders in a way that benefits the community, although he can also issue custodial sentences where appropriate and necessary.

He works with a team of experts drawn from a range of agencies, such as the Crown Prosecution Service, Probation Service and Youth Offending Team, together with specialists providing advice and support on drug and alcohol issues, housing and debt. He can also offer support to offenders from volunteer mentors, able to provide practical support in carrying out their sentence and achieving their longer term goals.

Together they aim to make sure offenders repay their debt to the local community, while at the same time addressing the underlying issues that contribute to their offending.

The team may make recommendations for extra support such as a drug treatment programme, or debt counselling, either through the centre or at other locations.

The Judge takes a personal interest in offenders and meets them for regular reviews while they are carrying out their sentence, where it involves a community penalty such as an unpaid work order.

This happens because of new powers given to the centre under Section 178 of the Criminal Justice Act 2003, enabling the Judge to review sentences by bringing offenders back to see him, to monitor their progress.”

**The Criminal Justice Act 2003 s. 178** provides:

“178 Power to provide for court review of community orders

(1) The Secretary of State may by order—

(a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,

(b) enable a court to amend a community order so as to include or remove a provision for review by a court, and

(c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.”