

# **ENFORCEMENT OF FAMILY FINANCIAL ORDERS – AN OVERVIEW**

## **About the project**

- 1 Our project is concerned with the enforcement of family financial orders. Put simply, once you have a family financial order, how do you get your money from a debtor (your former spouse or partner) who does not want to pay? We have recently published a Consultation Paper; this summary is a very brief overview of some of the ideas in that paper. A more detailed executive summary is also available on our website.
- 2 Family financial orders are court orders made between spouses or civil partners for the benefit of the adults or children involved, or between un-married parents for the benefit of a child. This project is not concerned with the basis on which the court makes family financial orders, or with the amounts that are awarded. Nor are we concerned with the enforcement of child maintenance, unless that is contained in a court order (the majority of child maintenance arrangements are not). The project is about how to make the system of enforcement that applies once a court order has been made as effective and efficient as possible. And how to make the system fair, by which we mean not punishing the debtor who cannot pay but giving the best chance to the creditor of recovering what he or she is owed from a debtor who can pay but is choosing not to pay.
- 3 Family financial orders are usually made to meet living expenses and housing requirements. That means that an unpaid family debt has the potential to cause real hardship, probably more hardship than any other unpaid civil debt. For that reason, the enforcement of family financial orders is worth considering separately from the enforcement of general civil debts. In addition, there are features of family financial orders and family proceedings that mean different considerations apply. Family financial orders are based, among other things, on an assessment of the debtor's ability to pay; they may endure for a long time and be subject to changing circumstances; and there is the inescapable reality that emotions often play a big role in family proceedings, including enforcement proceedings.
- 4 This project is taking place against the backdrop of the introduction of the single Family Court and the changes to legal aid – both of which have had an impact on enforcement. The changes to legal aid mean that more people than ever are representing themselves in enforcement proceedings. We have been very conscious of this when formulating our questions and proposals.

## **Information**

- 5 Ensuring that the parties and the courts have the right information is crucial to an effective system of enforcement. Both the creditor and debtor need to understand the system and the enforcement options that are available, and the creditor and the court need to have up to date and accurate information about the debtor and his or her financial position. We propose ways to improve the provision of information about both the system and the debtor.

- 6 Information about the system has two aspects. First the legal rules themselves need to be as clear as possible for all those who seek to access them. Secondly, the rules need to be supplemented by more comprehensible guidance for non-experts. The rules are contained in statutes and in family and civil rules of court, and we invite responses as to whether any difficulties are caused by the absence of standalone family rules. We also think there is a need for more, and more accessible, information for the parties, and we consider how and at what stage in proceedings this could best be provided.
- 7 For information about the debtor we propose that on every enforcement application the debtor should complete a financial statement – evidence about his or her financial circumstances. In addition, we propose the use of two information gathering tools that do not rely on the debtor to provide the information: information requests and information orders which would require Government, Her Majesty's Revenue and Customs or private organisations to provide information about the debtor in order to support enforcement.

### **Improving methods of enforcement**

- 8 Broadly speaking, there are two ways of enforcing an order against a debtor who can pay but is choosing not to: 1) bypass the debtor and directly target his or her assets; or 2) put pressure on the debtor to comply. Most existing enforcement mechanisms work by bypassing the debtor, and we consider ways to improve these. In addition, we consider introducing new orders to enable creditors and courts to put pressure on debtors who are choosing not to pay.
- 9 As part of considering the existing methods of enforcement, we look at three ways to improve third party debt orders (orders that require a third party, such as a bank, to pay money owed to the debtor directly to the creditor): streamlining the procedure to make them more efficient; applying them to joint accounts to broaden their reach; and enabling them to operate periodically to increase their utility. We also consider ways to make attachment of earnings orders (orders that require an employer to pay part of the debtor's wages to the creditor) more secure when a debtor changes employment.
- 10 We propose introducing a range of coercive orders for use against a debtor who is refusing to pay: orders disqualifying the debtor from driving; orders disqualifying the debtor from foreign travel; and curfew orders. We think there is merit in equipping creditors and the courts, in this context, with such orders; they are about encouraging compliance, not punishment. They are not orders to be used against debtors who cannot pay.
- 11 There is no single solution to the difficulties of enforcement. Our paper looks at how we can improve the tools we already have and what else might be needed. We also consider whether more could be done at the time of making the original order, and whether there is any greater role for resolution out of court, perhaps by way of mediation. To see the full range of our ideas, please take a look at our Consultation Paper or its executive summary. We invite responses to our questions and proposals during our consultation period, which runs from 11 March to 11 July 2015.