



**Civil Justice Council Enforcement Working Group
Call for Evidence 11 July - 16 September 2024**

Dear Civil Justice Council Enforcement Working Group,

Thank you for this opportunity to provide input to the Civil Justice Council's (CJC) call for evidence. This document sets out Bristow & Sutor Group's response to your questions.

Bristow & Sutor Group provide enforcement services, recovering a variety of debts including Council Tax, Penalty Charge Notices, Non-Domestic Rates and others including Sundry Debts. In addition to these debt types, Bristow & Sutor Group also enforces High Court writs of control, one of the enforcement methods for enforcing court judgments.

In addition to High Court Enforcement services, Bristow & Sutor Group also provides litigation services via CST Law, obtaining judgments on behalf of our clients for monies owed, and choosing the best available enforcement method to allow for monies to be best recovered.

We believe this call for evidence is an opportunity for improvements to be made to enforcement of judgments, to the benefit of all parties, including the judgment debtor, judgment creditor, and all other stakeholders.

Yours sincerely,

Michael Javens

You must include the following information with your response:

Your response is (public/anonymous/confidential):	Public
First name:	Michael
Last name:	Javens
Location:	Redditch
Role:	High Court Enforcement Officer
Job title:	High Court Enforcement Officer
Organisation:	Bristow & Sutor Group
Are you responding on behalf of your organisation?	Yes
Your email address:	

The full list of Call for Evidence questions is below:

PLEASE SEE ANNEX A - LIST OF ENFORCEMENT OF DOMESTIC JUDGMENTS FOR REFERENCE (INCLUDING ORDERS FOR SALE IN CHARGING ORDERS) THIS WORK IS NOT CONSIDERING POSSESSION ORDERS.

Your experience and awareness of enforcement

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

At Bristow and Sutor Group, we have experience in the following enforcement methods:

- Third Party Debt Order;
- Attachment of Earnings;
- Charging Orders;
- Insolvency Proceedings;
- Order to Attend for Questioning;
- High Court Enforcement.

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

Delays in the court process is a key issue in seeking to enforce a judgment. Timeliness is key to the successful enforcement of any judgment, and delays simply increase the likelihood of a judgment remaining unsatisfied. In relation to High Court Enforcement, delays to writ applications being returned back from court in a timely manner is a particular area of concern.

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

At Bristow & Sutor Group, we find that High Court Enforcement and Insolvency Proceedings are the most effective mechanisms for enforcing court judgments. Both of these methods require physical interaction from the judgment debtor, which in turn increases engagement and the likelihood of enforcement being successful.

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

We find that orders to attend court for questioning are often ignored by the judgment debtor, and as a result are largely ineffective. In addition, warrants of control enforced by the County Court bailiff are often ineffective, given the lack of resource within the County Court to enforce such warrants.

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

Each individual case will have its own unique set of circumstances, meaning the full range of enforcement methods should be available to a judgment creditor. As an example, it may

come down to personal preference of the creditor, such as the availability to attend court. Efforts should be made to make each enforcement mechanism as effective as possible. In addition to this, every enforcement method should be available for every judgment obtained. As it stands, this is not the case, with judgments under £600 and judgments for debts regulated by the Consumer Credit Act being ineligible for High Court Enforcement action. Judgment creditors should have freedom of choice between enforcement mechanisms and this does not currently exist.

- 6) 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?

As stated in our answer to question 5, judgments under £600 and judgments for debts regulated by the Consumer Credit Act should be able to be enforced by High Court Enforcement Officers. In addition, orders to attend for questioning could be optionally done on line – e.g. zoom/ teams, as they may encourage attendance and therefore engagement with the enforcement process.

- 7) 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?

Bristow & Sutor Group are already working closely with the Enforcement Conduct Board (ECB) in this area, and are already accredited by the ECB. We operate to the highest standards and treat everybody with whom we come into contact with dignity and respect.

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

Yes, we provide High Court enforcement services to judgment creditors, which takes place outside of the court system.

- 9) 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?

High Court Enforcement is currently governed by legislation and the National Standards for Enforcement Agents. The ECB is due to take over and update the standards for enforcement agents and is currently consulting on a new set of standards, which initially will exist alongside the existing National Standards. All court enforcement mechanisms should take these into account.

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

See answer to question 9.

Supply of information about potential judgment debtors

- 11) 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.]

We believe there should be sanctions for non-compliance/attendance for judgment debtors. This should help to increase engagement, which is absolutely key to improving enforcement processes. Another possibility would be that on making a request for order to attend, a list of assets belonging to the judgment debtor should be provided at that time. Such assets could then be locked down and prevented from being sold except with leave of the court, with court sanctions applicable if the asset is disposed of.

In terms of High Court Enforcement, focus should be on encouraging engagement at the earliest possible stage (the compliance stage). This would increase the number of writs of control that are successfully enforced whilst at the same time limiting the amount of enforcement fees paid by the judgment debtor. Information provided at this stage via the notice of enforcement should be as simple to understand as possible, with all the necessary debt advice clearly signposted, without the need to resend documents within this stage.

- 12) 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);

Yes, as a general principle the more details obtained about the judgment debtor as early as possible in the process should aid the successful collection of judgments. However, consideration should be given to the fact that some judgment debtors do not complete Directions Questionnaires. Again, engagement in the process is key here to enforcement mechanisms being successful.

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

The below information would be useful early in proceedings:

- Employment status
- Property ownership
- Other valuable assets owned
- Income / Expenditure Information

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

We only have a small amount of experience making use of the provisions of CPR Part 71, due to the fact such orders are often ignored therefore are rarely useful.

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

See answer to question 14.

- 16) 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?

See the first paragraph of our answer to question 11.

- 17) 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?

A fine issued by the court or removal of assets would be appropriate sanctions for non-compliance.

- 18) If judgment is obtained, should the court provide details of the judgment debtor with the claimant at the time of judgment and, if so, what details should be provided (if any)?

Yes, such details should be provided if available. This would allow the creditor to choose the most effective method for enforcement. The information listed in our response to question 13, as well as details of any other ongoing enforcement action would be particularly useful.

- 19) 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?

The court should be responsible for deciding whether information obtained early in proceedings about the judgment debtor is shared with the judgment creditor, based on the individual circumstances of each case.

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

Yes, we believe the court should have such a role in obtaining details of the judgment debtor. How this is achieved given the limited resource the court currently has would need to be carefully planned. In the short term however, the court could share the details of the judgment debtor that they already know about.

- 21) 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?

Yes, we believe this information should be made available to the judgment creditor should the court allow this based on the individual circumstances of the case. Such information could be vital to the judgment creditor successfully choosing the right enforcement mechanism to allow for the debt to be recovered.

- 22) 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?

The court could decide on a case-by-case basis if this financial information should be released, providing necessary privacy safeguards.

- 23) 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?

Yes. See our answer to question 21 on why this should be the case, and how this should operate.

- 24) 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?

See our answer to question 22 above.

- 25) Would you welcome a change to legislation to allow either (17) or (19) above, which would include safeguards suggested under (18) and (20) above?

Yes, we would support such a change in legislation.

- 26) 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?

We don't believe any new protections are required.

Support for debtors

- 27) Are you aware of any support or information provided to debtors following a judgment?

Yes, there is support or information available to judgment debtors following a judgment being issued.

- 28) If so, what is that support or information?

Once a judgment has been made the debtor will have access to the following support or information:

- Guidance from the debt advice sector
- If the judgment is passed through to High Court Enforcement, the notice of enforcement sent at the start of the case includes information about the debt, the court the judgment was issued from, signposting to the debt advice sector etc.
- Guidance will be available from any enforcement firm dealing with the case.
- The ECB / MOJ will be able to provide guidance.

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

It would be useful for information and support to be made available from the outset, and if

this information and support was streamlined and from a single source.

- 30) 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?

Clearer signposting to agencies to support debtors at an early stage would be very useful. We are aware the ECB are currently working on guidelines for enforcement firms on how to deal with vulnerable debtors, and look forward to seeing the outcome of this.

- 31) 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?

Information should be disseminated to judgment debtors throughout the process, in an attempt to promote early engagement and repayment.

- 32) 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?

Yes, we would support this approach. Engagement should be capitalised on and judgment debtors (or debtors earlier in the process) should be given as much possible information and advice to resolve cases as soon as possible after the engagement occurs.

Any proposed improvements

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

Yes, there should be changes to the system of enforcing judgments. Too many methods of enforcing judgments are ineffective, and the speed of the court system itself does not facilitate positive resolution.

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

Creditors should have freedom of choice between all enforcement methods, as per our answer to question 5. Modernisation of the court system also needs to be achieved. Currently writs of control are only obtained through physical paper applications; digitizing this process would save time for both the court and creditors. In terms of High Court Enforcement in particular, regular reviews of fees should take place to ensure they are adequate. The current fees for High Court Enforcement have stayed the same since April 2014, and fees should be reviewed for enforcement to be carried out effectively.

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

See our answers to questions 29 and 30. In addition, consequences of non-compliance with enforcement action should be clear from the outset.

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

We don't believe any further information is necessary, as the current information for creditors is sufficient. However, the issue is around the lack of effectiveness of some of the options for enforcing judgments, and the fact that creditors cannot access all of the options in all circumstances. Efforts should be made to increase the effectiveness of all options, and freedom of choice should exist between all options.

- 37) 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?

See our answer to question 29.

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

See our answer to question 34.

General

39) 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.

The key issues that need to be resolved to make the system for enforcing judgments more effective are as follows:

- Engagement – Steps should be taken to promote engagement by judgment debtors, and for judgment debtors to engage in the process as early as possible
- Effectiveness of enforcement methods – Steps should be taken to make all enforcement methods as effective as possible, with meaningful sanctions or consequences for non-compliance
- Freedom of choice – Allowing all possible enforcement options for all judgments (subject to the court ruling otherwise on appropriateness based on the individual circumstances of the case.
- Proper funding of the enforcement sector.

40) 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.

See answer to question 39.

ENFORCEMENTS OF DOMESTIC JUDGMENTS

General -Identifying assets	Charging order	Attachment of earnings order	A third party debt order	Warrant of control	Writ of control	Insolvency proceedings	Contempt of court proceedings	Freezing order
Publicly available sources: • The Land Registry. • The Bankruptcy and Insolvency Register. • Companies House • The attachment of earnings index. • The insolvency and companies list of the business and property courts of England and Wales. • Instructing enquiry agents to undertake an assets check. • Applying to the court for an order that the judgment debtor/director of a company attends court setting out its financial position under oath. • Post judgment freezing order preventing dissipation of assets / the delivery up of information regarding assets.	• A court order that places a lien charge on the property preventing the judgment debtor selling the property without first satisfying the charge (judgment debt). The charge also provides that the judgment creditor can apply to the court for an order for sale of the property to satisfy the debt owed. • Application is made without notice to the judgment debtor and dealt with by the judge without a hearing. After that the judgment creditor will apply for a final charging order and at that stage the judgment debtor will be given notice of the final charging order application. • Charging Orders [£119 & £71 for a warrant if order for sale made].	• [Attachments of Benefits is not included as it is not an order of the court]. • An attachment of earnings order is a court order used to collect the judgment debt directly from the judgment debtor's wages. The order requires the debtor's employer to deduct a certain amount from the judgment debtor's earnings and send it directly to the judgment creditor until the debt it is paid. • An attachment of earnings order cannot be obtained against someone who is unemployed, self-employed, a company or in the armed forces. • The application is made in form N337. • Attachment of Earnings [£119].	• A third party debt order is a court order that allows the judgment creditor to seize money owed to a judgment debtor by a third party. This is often used in respect of the judgment debtor's bank account. • The order freezes funds held by the third party that are due to the judgment debtor and the third party is then ordered to pay the judgment creditor directly from the judgment debtor's funds. • An interim third party debt order is made without notice and dealt with by a judge without hearing. After which a hearing takes place where the court decides whether to make the final order at which point the third party can intervene and object to the order being made. • The application is made using form N349. • Third Party Debt Orders [£119].	• The warrant of control authorises enforcement agents commonly referred to as bailiffs to take control of the judgment debtor's possessions. This involves the enforcement agent entering the judgment debtor's premises to collect and subsequently sell the possessions. • Used for judgment debts of less than £5,000. • The application is made in form N323. • For money [£91]; for goods [£143].	• This is similar to a warrant of control but for debts above £600 and recovery of the goods is executed by a high court enforcement officer. • Writ of control/Warrants of execution [£83].	• If a judgment creditor is owed more than £5000 by an individual debtor or £750 from a company, an application can be made to make them bankrupt. • After a bankruptcy or winding up order is made, the judgment debtor's assets will be collected by a trustee and distributed to the judgment creditor. • Insolvency action is commenced by sending a draft winding up petition to a company or a statutory demand to an individual – many cases settle at this stage with the threat of bankruptcy.	• Where there has been a number of breaches of court orders in ongoing proceedings a judgment creditor can instigate contempt of court proceedings and failure to comply with the judgment or court orders.	• This is an order preventing the disposal of assets by the judgment debtor. • An application is made in form N244. • Without notice application [£108] but application has to be on basis of underlying claim – where court fee depends on value of the claim [£35 for a claim less than £300 up to £10,000 for claim in excess of £200,000 see Civil Court Fees EX 50].