



Ministry
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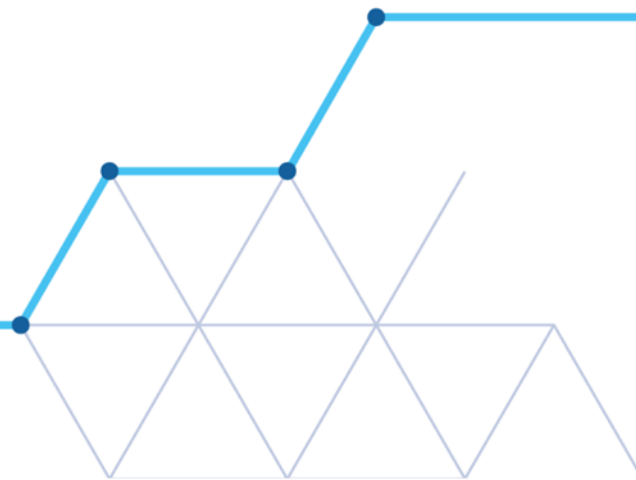
Review of the 2014 enforcement agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

Call for Evidence

This call for evidence begins on 25 November 2018

This call for evidence ends on 17 February 2019

Protecting and advancing the principles of justice





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of Justice

Review of the 2014 enforcement agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

Call for Evidence

**A call for evidence produced by the Ministry of Justice. It is also available at
<https://consult.justice.gov.uk/>**

About this call for evidence

- To:** All interested parties, particularly those who have had experience of the operation of the enforcement agent regulations since the reforms came into effect in April 2014. This includes, the enforcement industry, creditors who employ enforcement agents, debtors, the advice sector and the judiciary.
- Duration:** From 25/11/18 to 17/02/19
- Enquiries (including requests for the paper in an alternative format) to:** Civil Procedure and Enforcement Team
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: bailiffreview@justice.gov.uk
- How to respond:** Please send your response by 17 February 2019 to:
Civil Procedure and Enforcement Team
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: bailiffreview@justice.gov.uk
- Response paper:** A response to this call for evidence will be published at:
<https://consult.justice.gov.uk/>

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Foreword

The government is committed to ensuring that all enforcement agents (formerly known as bailiffs) treat debtors fairly and operate in a responsible and proportionate way. We also recognise that the enforcement of debt is necessary for both the economy and the justice system and that enforcement agents carry out a difficult role in often challenging circumstances.

The Tribunals, Courts and Enforcement Act 2007, introduced by the government in 2014 (the 2014 reforms), provided a package of reforms aimed at providing protection to debtors from the aggressive pursuit of their debt from enforcement agents, whilst balancing this against the need for effective enforcement and the rights of creditors.

The 2014 reforms introduced a set of rules which detail what goods an enforcement agent can and cannot take, how and when they can enter premises and what fees they can charge. They introduced mandatory training and an enhanced court-based certification process for enforcement agents. They also provided safeguards for vulnerable people so they are able to get assistance and advice, and required enforcement agents be trained to recognise vulnerable people.

After gathering views from a range of stakeholders and analysing a variety of data, the Ministry of Justice published the first review of those reforms on 2 April 2018. This review looked at the impact of the reforms over their first year of operation. It concluded that they had led to many positive changes. This included improved transparency and consistency, both in terms of the enforcement process and the fees charged by enforcement agents. The report noted, however, that some enforcement agents were still perceived to be acting aggressively and not complying with the new rules.

It is vitally important that the public has confidence in enforcement agents and that they are regulated appropriately. I am now launching this call for evidence to allow those who have had contact with enforcement agents to provide feedback about their experiences to inform our second review of the reforms.

I also want to hear from those who are working with the regulations, such as enforcement agents and their trade organisations, debt advice organisations, creditors and the judiciary about the implementation of the reforms.

I would encourage anyone with an interest to feed in their experiences to our review. We will consider the responses we have received and publish a post-implementation review report and, if necessary, announce action arising from our findings to ensure that all enforcement agents treat debtors fairly.

Lucy Frazer QC MP

Parliamentary Under-Secretary of State for Justice

Executive summary

Purpose of Review

This call for evidence asks for views about reforms contained in the Tribunals, Courts and Enforcement Act 2007¹ regarding how enforcement agents operate and the fees they charge. The reforms were implemented in April 2014. Evidence gathered will feed into the Ministry of Justice's second post-implementation review of the 2014 reforms.

Scope of the review - Enforcement agents and types of debt collected

Enforcement agents, formerly known as bailiffs, are used to collect unpaid debts on behalf of creditors (including local authorities, government departments and private creditors who have obtained court judgments). They have the legal power to remove and sell goods via warrants and writs of control (for county and high courts respectively) to cover the debt, and also charge a fee to the debtor.

There are two main groups of enforcement agents who are covered by this review: Civil enforcement agents (also known as certificated enforcement agents or private bailiffs) and High Court Enforcement Officers (HCEOs). There are currently around 2,500 civil enforcement agents² and just over 40 High Court Enforcement Officers registered with the Ministry of Justice (MoJ).

Civil enforcement agents are permitted to enforce specific debts such as council tax, traffic penalties and non-domestic rates. They also deal with the seizing of a tenant's goods by a landlord to secure payment of rent arrears without the intervention of the court.

High Court Enforcement Officers carry out enforcement of High Court writs of control and writs of possession. High Court Enforcement Officers can also enforce county court money judgments where the amount it is sought to enforce exceeds £600 and the creditor chooses to transfer the debt to the High Court for enforcement.

A third group of enforcement agents, county court enforcement officers (also known as county court bailiffs) are not within the scope of this review. While they operate under the same procedures (regarding how they enter premises etc) they are Crown employees and do not therefore charge fees or need to be certificated. County court enforcement agents enforce judgments and orders made and registered in the county court (up to the value of £5,000) They enforce warrants of control, repossess land with warrants of possession and recover goods under warrants for return of goods.

Her Majesty's Revenue and Customs (HMRC) also utilise provisions in the Tribunals, Court and Enforcement Act 2007 to collect tax arrears using enforcement agents who are Crown employees and are not within the scope of this review.

¹ <https://www.legislation.gov.uk/ukpga/2007/15/contents>

² Certified Bailiff Register (<http://www.justice.gov.uk/courts/enforcement-officers>)

The enforcement reforms

Prior to the 2014 reforms, the law and costs systems relating to enforcement by the seizure and sale of goods were complex, unclear and confusing. This resulted, in some cases, in enforcement agents misrepresenting their legal authority to the detriment of debtors.

The costs structures lacked clarity, were difficult to interpret in some instances and did not provide adequate remuneration for all aspects of enforcement work. These factors combined to make the old charging process prone to abuse.

The overarching aim of the reforms introduced in 2014 was to deliver protection against enforcement agents who used aggressive methods, whilst ensuring debts could still be collected effectively. In particular, the reforms sought to balance the following objectives:

- Providing more protection against aggressive enforcement agents whilst ensuring debts could still be collected effectively.
- A fair, transparent and sustainable costs regime that provides adequate remuneration.
- Minimising excessive regulation on business whilst ensuring effective protection for the vulnerable.

The specific measures introduced under the reforms were:

- A simple set of rules detailing when an enforcement agent can enter a property and what goods they can and cannot take.³
- A single fee structure clearly setting out what a debtor can be charged at each stage of enforcement action.⁴
- A new certification process for enforcement agents to ensure they are the right people for the job.⁵
- Mandatory training to ensure enforcement agents have the skills required to perform the role.⁶

Post implementation review of the reforms

The previous government made a commitment to review the reforms after one, three, and if necessary five years.

The Ministry of Justice conducted the first review in 2015, which it published in 2018⁷, after extensive gathering of views from key stakeholders including creditors, the advice sector, other government agencies and enforcement agents.

The review found that, at the one-year point in 2015, the reforms were having many positive benefits. This included better awareness around debtor rights and how to complain, more clarity for debtors about the fees that can be charged, the processes that

³ <http://www.legislation.gov.uk/uksi/2013/1894/contents/made>

⁴ <http://www.legislation.gov.uk/uksi/2014/1/contents/made>

⁵ <http://www.legislation.gov.uk/uksi/2014/421/contents/made>

⁶ <http://www.legislation.gov.uk/uksi/2014/421/contents/made>

⁷ <https://www.gov.uk/government/publications/one-year-review-of-enforcement-agent-reforms>

should be followed, and where to go for advice. It was also reported, however, that debt advisors and debtors still perceived some enforcement agents to be acting aggressively and in some cases not acting within the regulations. We take these concerns seriously and this call for evidence seeks views from all interested parties about enforcement agent behaviour.

The call for evidence seeks views on the following topics:

- treatment of debtors;
- complaints and process;
- training and certification of enforcement agents;
- transparency and consistency of process;
- fees charged;
- Commercial Rent Arrears Recovery; and
- whether further regulation is needed.

We are conducting a separate exercise to collect evidence from the Civil Enforcement Association (CIVEA) and the High Court Enforcement Officers Association about debt recovery rates, which will inform the review.

Taking Control of Goods: National Standards

In this Call for Evidence when we refer to the National Standards document we are referring to a document which the Ministry of Justice publishes⁸. These standards are intended for use by all enforcement agents, public and private, the enforcement agencies that employ them and the creditors who use their services. The standards cover:

- what a creditor should do if they want to use enforcement agents;
- ethical and professional duties;
- the complaints and disciplinary process;
- times and hours of visits;
- gaining entry to a property;
- taking goods; and
- dealing with vulnerable individuals.

These standards do not replace the law, codes of practice or local agreements. They are intended to be a helpful tool for the industry and for creditors against which they may benchmark their professional standards.

⁸ <https://www.gov.uk/government/publications/bailiffs-and-enforcement-agents-national-standards> k

Government action to support people who are suffering from problem debt and to improve creditor practice

The government is looking at how to support vulnerable debtors who owe money through different initiatives. These include the following initiatives to help people in debt and to ensure that creditors are acting responsibly.

Breathing space: The implementation of a breathing space scheme was a 2017 manifesto commitment. The scheme has two elements: a period of breathing space and a statutory debt repayment plan. A breathing space period would give someone in serious problem debt the right to legal protections from their creditors for a period of time, in order to receive debt advice and enter into a sustainable debt solution. A statutory debt repayment plan (SDRP) would enable those with unmanageable debts to enter into an agreement to pay their debts to a realistic timeframe. Individuals entering an SDRP would receive legal protections from creditor action during their plan.

The government is committed to implementing this scheme as soon as is practicable, and, to that end, HM Treasury launched a consultation on a single policy proposal on 29 October 2018.

Fairness Group: The government has established a fairness group, which includes central government departments, including the Ministry of Justice and representatives from the debt advice sector. The purpose of this group is to create an open dialogue between government and the debt advice sector to look at the issue of fairness.

Her Majesty's Courts and Tribunals Service (HMCTS) Enforcement Reform Project

As part of its wider Reform Programme, HMCTS is focusing on improvements to its existing Civil Enforcement Service which provides for the enforcement of final judgments, orders or awards arising from civil, family and tribunals proceedings as well as from other government departments. The Civil Enforcement Project is a two-and-a-half-year project which commenced in January 2018 and its vision is to deliver a simple, digital civil enforcement service which supports users to enforce an unpaid civil, family or tribunal judgment, and ensures a fair and just outcome for all parties involved.

The project will initially focus on improving the guidance and information provided to users about the options available for enforcement once a judgment is granted and on physical enforcement methods (Warrants and Writs of Control), which account for 75% of all enforcement applications.

A glossary of terms is attached at **Annex A**.

Links to the legislation underpinning the legislation of enforcement agents are at **Annex B**.

Introduction

This call for evidence asks for views relating to the enforcement agent reforms which came into force in 2014.

We are interested in hearing from you if you have experience of the operation of enforcement agents in England and Wales since the reforms came into effect in April 2014.

A Welsh language paper is available at <https://consult.justice.gov.uk/digital-communications/review-of-enforcement-agent-bailiff-reforms>

Copies of the call for evidence are being sent to:

- Advice UK
- Age UK
- Association of District Judges
- British Banking Association
- British Parking Association
- British Property Federation
- Certificated Enforcement Agents Association
- Chartered Institute of Credit Management
- Chartered Institute of Public Finance and Accounting
- Children's Society
- Christians Against Poverty
- Church Action on Poverty
- Civil Court Users Association
- Citizens Advice
- Civil Enforcement Association
- Civil Procedure Rule Committee
- Commission for Local Administration in England
- Community Money Advice
- Council of Her Majesty's Circuit Judges
- Credit Services Association
- Criminal Procedure Rule Committee
- The Debt Advice Foundation
- Enforcement Law Reform Group
- Equality & Human Rights Commission
- Finance & Leasing Association

- High Court Enforcement Officers Association
- Information Commissioner
- Institute of Money Advisers
- Institute of Revenue Ratings and Valuation
- Judicial College
- Local Authorities
- Local Authority Civil Enforcement Forum
- Local Government Association
- MIND
- Money Advice Liaison Group
- Money Advice Trust
- Money Advice Service
- Money and Mental Health Policy Institute
- Northern Ireland Court Service
- PayPlan
- Phoenix Consulting
- Scottish Executive
- Security Industry Authority
- Senior Master
- StepChange
- Transport for London
- Welsh Assembly
- Z2K

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this call for evidence.

Scope of the review and questions

The one-year review, conducted in 2015 (and published in April 2018), found that many aspects of the reforms were still bedding in and that full impacts would require further time to materialise. This review is an opportunity to assess the *current position* and we are therefore interested in hearing about recent experiences of action by enforcement agents and whether/how these have changed since the one-year point.

We are only collecting evidence about the operation of High Court Enforcement Officers and civil enforcement agents (also known as certificated enforcement agents or private bailiffs).

We appreciate that people may not know which type of enforcement agent they have been contacted by. Below we have listed the types of debts that are collected by High Court Enforcement Officers and civil enforcement agents to help people to identify the type of enforcement agent that they were contacted by.

High Court Enforcement Officers enforce High Court writs, relating to High Court judgments or County Court Judgments (CCJs) worth over £600, where the creditor has applied for the debt to be transferred to the High Court for enforcement. The debt could include:

- **utility bills;**
- **business debts;**
- **tribunal awards;** or
- **rent arrears.**

High Court Enforcement Officers cannot enforce court judgments in respect of debts that are regulated by the Consumer Credit Act (also known as regulated debt), for example, credit cards, personal loans or overdrafts. Court judgments relating to these types of debts are enforced by County Court bailiffs, who are outside the scope of this review.

Civil enforcement agents enforce the following types of debts:

- **council tax;**
- **parking fines;**
- **traffic fixed penalty notices;**
- **magistrates' court fines;**
- **child support payments;** and
- **commercial rent arrears.**

Section 1: Treatment of debtors

1.1 Enforcement agent behaviour

Action by an enforcement agent is by its very nature intrusive. It is sometimes necessary for an enforcement agent to be assertive and firm if they are to be effective. The government is clear, however, that aggressive behaviour by enforcement agents is not acceptable. The 2014 reforms were designed to protect against such behaviour, by:

- requiring enforcement agents to issue standard letters and notices, which inform debtors about the enforcement process, what they will be charged, their rights and where to get further advice.
- introducing a new regulatory regime about what enforcement agents can do, supported by a new training and certification process.
- implementing a clear and transparent fee structure.

The first review concluded that the reforms had led to many positive changes. It was reported, however, that some debt advisers and debtors still perceived some enforcement agents to be acting aggressively and not complying with the new rules.

We are interested in collecting evidence from anybody who has experienced recent action by an enforcement agent (roughly within the last 12 months). As well as evidence of inappropriate behaviour, we are also interested in experiences where you feel the agent was fair and acted within the scope of the regulations.

We understand that it is not a pleasant experience to be visited by an enforcement agent, however, often the debtor's dissatisfaction will be with the creditor for taking that method of enforcement action, rather than the enforcement agent. It is not the decision of the enforcement agent which debts are referred to them for action – that is a matter for the creditor and in some cases the courts. Creditors should act proportionately when seeking to recover debt, taking into account debtors' circumstances. However, complaints about the fact that the creditor has sought to enforce a debt via an enforcement agent are outside the scope of this section of the call for evidence.

We have listed the types of behaviour by enforcement agents that we consider to be unacceptable. This list may not include all types of unacceptable behaviour and is intended to act as a guide.

- **Failing to comply with the law that governs the behaviour of enforcement agents, for example:**
 - threatening the use of unlawful force;
 - inappropriately entering a property;
 - threatening to seize goods they are not entitled to;
 - seizing goods with a value disproportionate to the debt;
 - pressuring debtors to make unreasonable payment offers.

- **Charging excessive fees, for example:**
 - charging for “phantom” visits;
 - charging for activities not carried out.
- **Threatening behaviour, for example:**
 - unnecessary use of force;
 - pushing someone aside to get in the door;
 - threatening imprisonment.

Question 1 (to anybody who has been contacted by an enforcement agent):

If you, or somebody you know, have had experience of action by an enforcement agent in the last 12 months⁹?

- a) **Was the enforcement agent a High Court Enforcement Officer or civil enforcement agent? If you are not sure, please include details of what the debt was and for what amount.¹⁰**
- b) **Who was the creditor?**
- c) **When did the enforcement activity take place (month and year)?**
- d) **How did the enforcement agency/agent behave during the enforcement process?**

Please note that separate questions are asked below about people’s experience of making a complaint against an enforcement agent.

Question 2 (to advice sector organisations):

Has your organisation seen any change to the volume and nature of calls/contact regarding enforcement agents since the reforms came into force? If you have any statistics to assist your response, please contact bailiffreview@justice.gov.uk

⁹ 12 months is roughly the time frame we are interested in to understand the current position, but it is not a hard cut off for your response.

¹⁰ Information about the type and value of a debt will only be used to help us to identify the type of enforcement agent and will not be disclosed in the review findings.

Question 3 (to the enforcement sector and creditors):

- a) What measures has your business taken to make sure that the enforcement agents that you employ operate within the rules introduced by the 2014 reforms?**
- b) How do you monitor the effectiveness of these measures? If you have management information or other evidence from your compliance monitoring, please contact bailiffreview@justice.gov.uk**

We are also aware of reports of violence against enforcement agents and that enforcement agents sometimes have to call the police for protection. There were some concerns raised in the one-year review that the police were not at that time fully aware of the new regulations and the powers of enforcement agents.

Question 4 (to all with an interest)

- a) Are you aware of, or do you have concerns about, violence towards enforcement agents when carrying out their duties in accordance with the regulations?**
- b) In your experience, do the police have adequate knowledge and awareness of the new regulations?**
- c) Do you have any data on violence against enforcement agents or the number of times that the police are called out to attend?**

1.2 Treatment of vulnerable debtors

The 2014 reforms contained safeguards to protect the most vulnerable in society. All enforcement agents now have to demonstrate knowledge of the law, customer care, dealing with conflict situations and identifying vulnerable situations.

The creditor and enforcement agent have a duty of care to vulnerable debtors. When an enforcement agent encounters a vulnerable debtor, they are required to return to the creditor to seek their advice on how to proceed. The creditor is then expected to return to investigate the claim of vulnerability while the enforcement action is halted. Enforcement agents are not allowed to enter premises where a child or vulnerable person is the only person present.

Where the debtor is a vulnerable person, the fees for the enforcement stage are not recoverable unless the enforcement agents has, before proceeding to remove goods which have been taken into control, given the debtor an adequate opportunity to get assistance and advice.¹¹

Due to difficulties in defining vulnerability and a desire not to apply a prescriptive list which could exclude some debtors, the legislation does not contain a precise definition of a vulnerable debtor. The National Standards document lists some groups who might be

¹¹ The Taking Control of Goods (Fees) Regulations 2014, Regulation 12.

considered to be vulnerable. This list is not exhaustive and enforcement agents must take care to assess each situation on a case by case basis. The list is set out below:

- the elderly;
- people with a disability;
- the seriously ill;
- the recently bereaved;
- single parent families;
- pregnant women;
- unemployed people; and
- those who have obvious difficulty in understanding, speaking or reading English.

Question 5 (to anybody who has been contacted by an enforcement agent):

If you or someone you know has been contacted by an enforcement agent in the last 12 months:

- a) **Did you/they consider yourself/themselves to be vulnerable? If yes, how?**
- b) **How did you communicate your/their vulnerable status to the agent/creditor?**
- c) **Did the enforcement agent and/or creditor recognise your/their vulnerability and what action was taken?**

Question 6 (to advice sector organisations):

Has your organisation seen any change to the volume and nature of contacts regarding vulnerable debtors since the reforms came into force? If you have any statistics to assist your response, please contact bailiffreview@justice.gov.uk?

Question 7 (to the enforcement sector and creditors):

- a) **What steps have you taken to make sure that vulnerable debtors are protected?**
- b) **How do you assess a debtor as being vulnerable?**
- c) **What procedures do you have in place to deal with debtors who you have assessed as being vulnerable?**
- d) **Are there any other issues regarding debtor vulnerability you would like to raise?**

Section 2: Complaints process and remedies

There are several routes available for someone to make a complaint against an enforcement agent, including complaints to the firm, trade association, creditor, a creditor's ombudsman and to the court.

Enforcement agencies must operate complaints and disciplinary procedures. The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and include an independent appeal process where appropriate. Enforcement agents must make available details of their own and the creditor's complaints procedure, on request or when circumstances indicate it would be appropriate to do so.

Enforcement agents/agencies are encouraged to make use of the complaints procedures of the Civil Enforcement Association (CIVEA) or the High Court Enforcement Officers Association.

When contracting and working with enforcement agents, it is the creditor's responsibility to make sure that the enforcement agent is acting within the law and the creditor can be held accountable if they are not. Creditors must operate a complaints procedure for debtors to use. Some creditors will have an ombudsman who can deal with complaints.

The court considers complaints about whether an enforcement agent is fit to practice and may make a decision, based on the papers or in a court hearing, to strip an agent of their certificate if the complaint is serious enough to satisfy the court that the enforcement agent is no longer fit to practice.

Civil enforcement agents must pay a security bond of £10,000 to the court when they apply for a certificate. If a judge decides that a complaint against an enforcement agent is well founded then he or she may order the security bond to be forfeited either wholly or in part in order to compensate the complainant for the failure of the enforcement agent to fulfil their duties and/or to cover the complainant's costs in making representations.

The advice sector informed the one-year review, in 2015, that debtors were experiencing difficulties in making complaints against enforcement agents. Of particular concern, was the perceived cost and accessibility of making a complaint to a court.

Question 8 (to anybody who has been contacted by an enforcement agent)

If you had a complaint against an enforcement agent in the last 12 months,

- a) How did you find out how to make a complaint?**
- b) Was the information that you received about how to make a complaint easy to understand?**
- c) If you made a complaint, who did you make it to?**
- d) If you did not make a complaint, why did you not do so?**
- e) Were you satisfied with the way in which the complaint was handled? If not, did you take any further action?**
- f) If your complaint was upheld, were you satisfied with the sanction or remedy that was imposed?**

Question 9 (to advice sector organisations, the enforcement sector and creditors)

Do you have any recent statistics or other evidence about the number and nature of complaints that have been made against enforcement agents and whether these have changed since the 2014 reforms? If you have figures please email bailiffreview@justice.gov.uk to discuss what you have and the best way to submit it to us.

We are seeking views about whether the regulations around complaints sanctions need to be improved and if so how. Please note that there are further questions about the regulation of enforcement agents in section 7.

Question 10 (to all with an interest)

Do you think that the sanctions that the organisation or court considering a complaint can impose are effective and proportionate? If not, please set out what other sanctions should be permitted?

Section 3: Training and certification

The reforms introduced a new training and certification process for civil enforcement agents, which are set out in the Certification of Enforcement Agent Regulations 2014.

The 2014 Regulations require civil enforcement agents to be certificated by the county court. The certificate must be renewed every two years. To qualify for a certificate, the applicant must satisfy the court that they are a “fit and proper” person to act as an enforcement agent. The applicant must prove that they have a “sufficient knowledge of the law and procedure relating to powers of enforcement” and provide a security bond.

Question 11 (to all)

Have you encountered or are you aware of any practical difficulties with the procedure for applying to the court for a certificate to act as a civil enforcement agent?

Question 12 (to all)

Do you think that the training requirements are sufficient to enable civil enforcement agents to perform their duties? If no, are there additional training requirements that would be beneficial?

Section 4: Transparency and consistency of process

Standard notices

A key objective of the 2014 reforms was to provide more standardisation and transparency about the enforcement process and the fees that can be charged. Before an enforcement agent can visit a debtor they are required to send them a standard letter (a compliance letter) to inform them about the debt owed, what they will be charged, and how to contact the enforcement agent. This letter must be followed by seven clear days (excluding Sundays and Bank Holidays) for payment or a payment plan to be made, before visiting the debtor (the enforcement stage). The use of standard prescribed letters and notices are intended to prevent agencies sending aggressive or misleading notices.

The one-year review found that there was a general perception that the requirement to send a standard compliance letter had improved awareness, clarified the process and directed people to appropriate advice.

Some concerns were raised about the fact that there is no prescribed notice at the enforcement visit stage (i.e. the letter left by the enforcement agent if the debtor is not present at the visit). Some advice sector representatives said they had heard of examples of threatening or misleading letters being left.

Question 13 (for all):

Within the last 12 months do you have any evidence of aggressive or misleading letters being left for debtors by enforcement agents? If yes, what did the letters say?

Section 5: Fees charged and debt recovery rates

5.1 Fees charged

The 2014 reforms sought to strike a balance between providing sufficient remuneration for enforcement agents to run a business, without overly rewarding the industry to the detriment of debtors.

The Taking Control of Goods (Fees) Regulations 2014¹² introduced a single fee structure clearly setting out what a debtor can be charged at each stage of the enforcement action.

The fixed fee structure consists of three stages: 1) compliance, 2) enforcement, and 3) sale. Details about how much can be charged at each stage are at **Annex C**. The intention behind this structure is to incentivise settlement at the compliance stage before a visit and control of good becomes necessary.

At the compliance stage a letter is sent to inform the debtor about the process and what they will be charged. The compliance letter must be followed by seven clear days (excluding Sundays and bank holidays) for payment or a payment plan to be made, before moving on to the enforcement stage. Fees are still charged to the debtor, but by settling at

¹² <http://www.legislation.gov.uk/uksi/2014/1/made>

the compliance stage extra costs to the debtor are minimised and more intrusive action is avoided.

Question 14 (to all)

- a) **Do you think that the fee structure is working to encourage enforcement agents and debtors to settle at an early stage and to minimise the financial impact on debtors?**
- b) **What evidence do you have to support this view?**

Question 15 (to all)

- a) **Are there any changes that could be made to the fee structure to encourage earlier settlement?**

If you have any statistics to support your response to questions 15 and 16, please email bailiffreview@justice.gov.uk to discuss what you have and the best way to submit it to us.

5.2 Debt recovery rates

As well as incentivising early payment, it is important that the 2014 reforms do not reduce the effectiveness of enforcement. Creditors, many of whom are individuals or small businesses, can suffer serious financial hardship if debts are not paid.

For the one-year review, a significant exercise was carried out with civil enforcement agents and High Court Enforcement Officers through their trade bodies to assess debt recovery at different stages. The data provided in 2015, indicated that the overall effectiveness of enforcement had improved, with a greater proportion of debts being successfully enforced at the one-year point than predicted.

We are conducting a separate exercise to collect evidence from CIVEA and the High Court Enforcement Officers Association about debt recovery rates, which will inform the review.

Section 6: Commercial Rent Arrears Recovery

The Taking Control of Goods Regulations 2013 included a new procedure called Commercial Rent Arrears Recovery (CRAR), which allows a landlord of commercial premises to recover rent arrears by taking control of the tenant's goods and selling them, without the need to take the matter to court.

CRAR replaced the law of distress, which was also an out of court procedure. CRAR contains new procedural safeguards for tenants. These include a requirement to provide tenants with seven days' notice of enforcement action and restrictions on when and how an enforcement agent can enter premises and what they can and cannot take.

The CRAR procedure only applies to the main rent, VAT and interest. It does not apply to other payments such as service charges, insurance premiums and rates.

Question 16 (to all with interest in or experience of using the CRAR procedure):

- a) **Do you think that the CRAR procedure strikes the appropriate balance between providing protection against aggressive action by enforcement agents whilst ensuring that debts can still be collected effectively?**
- b) **What evidence do you have to support your view?**

Section 7 - Further regulation

As set out in the introduction, one of the aims of the 2014 reforms was to minimise excessive regulation on business whilst ensuring effective protection for debtors.

During the original consultation on the design of the 2014 reforms some groups argued that the proposed regulatory framework should go further. They would have preferred to see the introduction of an independent regulator.

There is no regulatory body for enforcement agents, though there are trade bodies they can join who offer guidance on the legislation, provide training and deal with complaints. Both High Court Enforcement Officers and civil enforcement agents are authorised to act as such by the court. High Court Enforcement Officers are awarded certificates to practice by the Senior Master, under delegated authority to do so from the Lord Chancellor, and civil enforcement agents are certificated by judges in the county court. The Senior Master and the county court consider complaints about enforcement agents and have the power to revoke practice certificates.

In 2014, the government, at that time, did not consider that introducing an independent regulator was necessary. The changes to the law, introduction of a transparent fee structure and enhancement of the court-based certification process were considered to be a targeted and more proportionate approach to concerns about the operation of enforcement agents.

In March 2017, a coalition of debt advice organisations published a report called "Taking Control: The need for fundamental reform"¹³ which called for the enforcement agent sector to be subject to independent regulation. The Taking Control group have suggested that an independent regulator should have the following duties: approval of practice certificates; monitoring of business practices; setting standards of practice and training requirements; and dealing with complaints and imposing sanctions.

¹³<https://www.bailiffreform.org/storage/app/media/Taking%20Control%20report%20March%202017.pdf>

These measures would require primary legislation. They might also require public funding and additional costs to the enforcement industry. The level of funding would be dependent on the regulatory model to be adopted. Potential regulatory models include: setting up a new independent regulator; using an existing independent regulator; or setting up an Advisory Council (similar to the Council that has been set up in Scotland¹⁴). The potential regulatory models could undertake either all or some of the duties that the Taking Control Group has suggested should be performed by an independent regulator.

The government intends to review the implementation of the 2014 reforms before deciding whether further reform is necessary. We will use this call for evidence to gather views from all interested parties about whether enforcement agents should be subject to an independent regulator, and if so what functions a regulator should fulfil and how the regulator should be funded.

We are also interested in gathering views about whether there are any other steps that could be taken to improve the regulation of enforcement agents.

Questions (for all with an interest)

Question 17:

Do you believe that the current level of regulation of the enforcement agent industry is sufficient? What evidence do you have to support this view?

Question 18:

Do you think that enforcement agents should be regulated by an independent regulator? If so, what powers, scope and structure should the independent regulator have and how should it be funded?

Question 19:

As an alternative to setting up an independent regulator, do you think that there are any other steps that the government should take to improve the regulation of enforcement agents?

¹⁴ See Section 13 of the Public Services Reform (Scotland) Act 2010.

Next Steps

The call for evidence will close at 12:00 noon on 17 February 2019. Following the call for evidence, we intend to publish our second review of the implementation of the enforcement agent reforms later that year. The review will set out whether we intend to make any further reforms to the regulation of enforcement agents. Any proposed further reforms would be subject to consultation in order to clarify and substantiate the full impacts on business, consumers and the third sector.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by to:

**Civil Procedure and Enforcement Team
Ministry of Justice**

**Civil Justice and Law Division
102 Petty France
London SW1H 9AJ**

Email: bailiffreview@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Alternative format versions of this publication can be requested from bailiffreview@justice.gov.uk

Publication of response

The responses to this call for evidence will feed into the government's second post-implementation review of the enforcement agent reforms. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this call for evidence, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulations (GDPR), and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the GDPR.

Annex A: Glossary of terms used in this call for evidence

Advice sector – is used to refer to charities and organisations that provide debt advice to people who are concerned about debt.

CIVEA - The Civil Enforcement Association. CIVEA is an independently funded association formed to represent civil enforcement agents in England and Wales. They set and enforce standards through training and education. It has a Code of Conduct and Good Practice Guide that is mandatory for all its members. They operate a complaints procedure about its members.

Civil enforcement agent - Enforcement agents are persons authorised and certificated by the court to take control of goods under section 64 of the Tribunals, Courts and Enforcement Act 2007.

County court enforcement agent (bailiff) - is a person employed by HM Courts and Tribunals Service (HMCTS) and is responsible for enforcing court orders issued through the county courts.

Creditor – This term refers to the company, organisation or person who has engaged an enforcement agent to enforce a debt on their behalf.

Enforcement agents – refers to both High Court Enforcement Officers and civil enforcement agents.

Enforcement stages:

- **Compliance stage:** - all activities from the receipt by the enforcement agent of instructions up to and not including the commencement of the enforcement stage. This may include activities such as background checks on the debtor or sending a letter a letter to the debtor.
- **Enforcement stage:** - activities from the first attendance at the premises up to but not including the Sale or Disposal stage, where the enforcement agent and debtor either enter into a controlled goods agreement and the debtor breaches the agreement, or no agreement is made.
- **Sale or disposal stage:** - activities relating to enforcement from the first attendance at the property for the purpose of transporting good to the place of sale, or from

commencing preparation for sale if the sale is to be held on the premises, until the completion of the sale or disposal.

Enforcement Agent Business - Enforcement agents are normally employees or sub-contractors of companies which tender for contracts from creditors local authorities or in the case of HCEOs, court judgments. The size of businesses varies from single agent operations to companies providing work to hundreds of enforcement agents.

High Court Enforcement Officer (HCEO) -An HCEO is a person authorised by the Lord Chancellor to enforce Writs of Control and other writs under the High Court Enforcement Officers Regulations 2004, and Schedule 7 of the Courts Act 2003.

High Court Enforcement Officer Association (HCEOA) –The Association provides training and regulatory guidance to its members. They operate a complaints procedure about the conduct of an HCEO or their enforcement agent.

Taking Control of Goods -is the procedure under a writ or warrant of control to secure the goods of a debtor. This involves taking an inventory of the goods and where necessary having a controlled goods agreement relating to the use of those goods signed by the debtor.

Warrants of Control – are issued by the county court to authorise enforcement agents to attend at the judgment debtor's home or business address. To collect money (or monies) owed under the judgment debt or remove goods from the home or business to sell at auction. A Warrant of Control cannot be issued for more than £5,000 except to enforce an agreement made under the Consumer Credit Act 1974.

Writs of Control – are issued by the High Court to give authority to a High Court Enforcement Officer to take control and sell a debtor's goods in order to satisfy a judgment debt.

Annex B:

The legislative framework for the regulation of enforcement agents introduced by the Tribunals, Courts and Enforcement Act 2007

Certification of Enforcement Agents Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/421/contents/made>

Civil Procedure Rules Parts 83 and 84 Writs and Warrants and Enforcement by Taking Control of Goods

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules>

Taking Control of Goods Regulations 2013 -

<http://www.legislation.gov.uk/uksi/2013/1894/contents/made>

Taking Control of Goods (Fees) Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/1/contents/made>

Annex C: Enforcement Agent Fees under the Taking Control of Goods (Fees) Regulations 2014

Non High Court enforcement

<i>Fee Stage</i>	<i>Fixed Fee</i>	<i>Percentage fee (regulation 7): percentage of sum to be recovered exceeding £1500</i>
Compliance stage	£75.00	0%
Enforcement stage	£235.00	7.5%
Sale or disposal stage	£110.00	7.5%

High Court enforcement

<i>Fee Stage</i>	<i>Fixed Fee</i>	<i>Percentage fee (regulation 7): percentage of sum to be recovered exceeding £1000</i>
Compliance stage	£75.00	0%
First enforcement stage	£190.00	7.5%
Second enforcement stage	£495.00	0%
Sale or disposal stage	£525.00	7.5%

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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