



Ministry of
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Insight work to support Transforming Bailiff Action consultation

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Independent Social Research**

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Summary

Background

Reform of the law and regulations governing bailiffs in England and Wales has been under discussion for several years. A public consultation, 'Transforming Bailiff Action', was carried out between February and May 2012 (see Ministry of Justice, 2012a, b and c). It outlined proposals designed to address some of the criticisms made of the industry over many years, including that the current system governing bailiff action does not give the public sufficient protection against unnecessary and aggressive action, is unnecessarily complex for the public to understand, and makes it difficult and burdensome for the enforcement industry to operate effectively.

This research included an evidence review and insight work commissioned to support and inform the consultation. The general proposals for reform cover bailiffs' legal powers as well as changes to certification, training and fees. This research focuses on the likely impacts of the proposed changes to certification and training, as well as fees.

These proposed changes would make certification mandatory for all bailiffs, and the process would include a clearer requirement to demonstrate an adequate level of competence, possibly through an approved programme of training. On fees, the proposals would introduce staged fixed fees for bailiff work, the same across all debt streams except High Court Enforcement Officers' (HCEO) work. Additional percentage sums are proposed for debts over £1,000. The consultation asks whether 'Exceptional charges' should be allowed on a case by case basis, subject to court approval.

Purpose of the research

This research sought evidence about:

- the effect of the introduction of certification and training (in the enforcement industry and comparable sectors) on industry practice, and, in turn, the experiences of customers;
- the enforcement industry's view of the proposed fee change, in particular whether it offers adequate (or possibly overly adequate) compensation for the introduction of mandatory training and certification;
- the potential impact of the reforms on the volume of debts enforced using bailiffs and on debt recovery rates.

Methodology

Thirty in-depth interviews with bailiffs formed the central strand of this research. These were with a mixture of independent individual operators, freelancers subcontracting work from bailiff firms, employees of firms of various sizes, and managers of firms, based in locations across England and Wales. Some participants were High Court Enforcement Officers. All bailiffs interviewed were part of the private sector,¹ competing for work; some for private creditors such as commercial landlords seeking rent arrears, or businesses enforcing debts against other businesses or individuals through the High Court and many for public sector creditors, such as local authorities recovering unpaid council tax, parking fines and business rates (National Non-Domestic Rates, known as NNDR or NDR). Other debt areas include Her Majesty's Courts and Tribunals Service recovering fines, and the recovery of unpaid child maintenance payments.

Sixteen stakeholders were also interviewed for the research, representing the three main sides of the bailiff picture: bailiffs themselves, creditors who use them and debtors who have contact with them and pay their fees.

In addition, 40 published and unpublished articles, documents and statistical records were located and examined. At best, these yielded fragments of information about a very limited part of the picture, or information that was only obliquely relevant.² Bailiff action and law is largely absent from academic and other literature.³ Clear and robust evidence about how bailiffs operate, and how the financial model of bailiff action works in practice, is difficult to find.

Findings

There was general support for mandatory certification and the option for universal training to a uniform standard. Bailiffs and stakeholders agreed that improved training in particular could deliver improved bailiff behaviour and debt recovery performance, and help 'drive out' unscrupulous bailiffs. These impacts, if achieved, could in turn reduce debtor complaints about bad experiences and perhaps even improve debtor experience – though fees reforms are also seen as key to many complaints.

¹ County Court bailiffs are salaried public employees who enforce judgement debts on behalf of private creditors. This research did not involve that part of the bailiff industry.

² Some other industries such as door security have isolated features in common with bailiffs. Other jurisdictions supplied little in the way of additional insight, as the system of competing private bailiffs with seizure powers has few if any clear parallels elsewhere.

There was general agreement among bailiffs and stakeholders that the fee reforms would have some beneficial effect, in that bailiffs will no longer be incentivised to the same extent to: escalate the enforcement process in debt streams where early stages attract no fee or a very small fee at present; claim for 'phantom visits' or take or claim other actions for which charges can be added; or simply charge an inflated or unjustified fee. Most bailiffs interviewed acknowledged that such practices currently occur within the industry. Some stakeholders believe an incentive for escalation to higher stage fees will remain, even if it is weaker than at present.

Impacts on bailiffs' profitability are hard to ascertain in the absence of clear current data, and bailiffs varied in their level of confidence in working out the impacts based on their own patterns of work. Many bailiffs and most stakeholders believed overall profits would increase, in some cases substantially. Bailiffs expressed no significant concern that new costs of training would negate or substantially reduce this increase (though potential costs of training are not yet certain).

There is little evidence, but a range of views on the potential effects of the combined proposals on volumes of debt enforced and debt recovery rates. On volumes of debt enforced, some bailiffs and creditors believe these will decrease as a result of the proposals because creditors will not instruct bailiffs on smaller debts where fees under the new regime are perceived to be disproportionate. Some councils may also take the administration stage 'in-house', with uncertain effects on overall volumes of work for bailiffs. Factors that might increase volumes include the reputation of the bailiff profession being enhanced over time by the reforms, as well as outside factors including the recession and changes in the welfare system.

There is no comprehensive information on debt recovery rates but data suggest rates vary by debt stream, size of bailiff firm and area. Different drivers could result in higher recovery rates (e.g. because better trained bailiffs could result in more effective enforcement); lower recovery rates (e.g. if debtors are faced with higher fees); or a neutral impact overall (e.g. there could be an increase in the early recovery of debt as a result of the introduction of a new compliance stage, but without an increase in the overall recovery rate).

³ One of the most informative documents remains the 2009 *Enforcement Fee Structure Review* for the Ministry of Justice by Alexander Dehayen, containing the analysis used to propose the new fees – which identified a number of evidence gaps.

Data on complaints about bailiffs is fragmented and views expressed about the level of complaints differed, especially between bailiffs and debtor representatives. Reported levels of complaints probably underestimate the number of cases of poor practice by bailiffs. Most respondents including bailiffs thought the certification and especially training proposals would tend to reduce the level of complaints against the industry as a whole. Most respondents also said the increased clarity of the fee structure should remove a key source of complaint. If more cases are resolved at a lower stage of enforcement action complaints may also fall. However the rise in fees in some circumstances, especially if perceived to be disproportionate, could trigger complaints.

Many respondents – from all sectors – thought that the proposals, though welcome, do not go far enough and that their impact will therefore be limited. Key omissions mentioned by respondents, including bailiff stakeholders, were independent systems for complaints, for formally regulating the activities of bailiff firms and for administering sanctions.

Some debtor stakeholders went so far as to question the suitability of enforcement as a modern response to debt, especially public sector debt, and said an opportunity had been missed to examine possible alternatives. One view was that vulnerable debtors already experience unjustifiably large negative impacts and that the proposals will not reduce this significantly.

There is a particular lack of independent evidence and data against which to balance the assertions, views and perspectives of different stakeholders. Examples of key information gaps relevant to monitoring and evaluating the impact of the proposed reforms over time include:

- trend data on the number and characteristics of bailiff firms and of certificated and uncertificated bailiffs; financial trend data on turnover and profitability of bailiff work;
- the number of warrants referred annually to bailiffs by debt stream, debt size and creditor;
- recovery rates overall and by debt stream, size and type of creditor and stage at which debt is recovered;
- trend data on amounts paid by debtors by debt stream;
- trend data on incidence and prevalence of bailiff action in the general population; and on characteristics of debtors by debt stream and type of creditor, including measures of income and vulnerability;
- debtor experiences of bailiffs.

1. Introduction

This is the report of findings from an evidence review and insight work commissioned to support and inform the consultation on proposed reforms to the way bailiffs operate in England and Wales, undertaken by the Ministry of Justice (MoJ) between 17 February and 14 May 2012 (Ministry of Justice, 2012a).

1.1 Transforming Bailiff Action

The proposed reforms are a response to strong and common views that the current system governing bailiff action does not give the public sufficient protection against unnecessary and aggressive action, is overly complex for the public to understand, and makes it difficult and burdensome for the enforcement industry to operate effectively. Intended to balance out the needs of debtors, creditors and enforcement agents, the aims spelled out in the consultation Impact Assessment (IA) (Ministry of Justice, 2012b) are to:

- **simplify the regulation** surrounding the work of enforcement agents to help improve their operational efficiency;
- **clarify the process** so that debtors are able to identify their rights and responsibilities when their debts are being enforced;
- **improve accountability** so that debtors and creditors can be assured that enforcement agents have appropriate levels of competence and knowledge and are accountable and authorised to carry out enforcement work;
- **bring an end to unnecessary or inappropriate activity** on the part of enforcement agents by ensuring they have the tools, regulatory framework and knowledge necessary to carry out efficient and effective enforcement and are adequately remunerated for the activities they perform.

Specific proposals include:

- clarifying and simplifying the law relating to bailiffs' powers, which currently differ by debt stream;
- introducing mandatory certification for all bailiffs including the requirement to demonstrate an adequate level of competence, possibly through fixed mandatory training (at a cost to the enforcement industry);
- changing the fee structure to ensure that it is transparent and fair both to debtors and bailiffs.

1.2 Research purpose and objectives

This research was commissioned to provide additional information on:

- the possible or likely effect on industry practice and the experience of customers (especially debtors) of introducing mandatory certification and training, including the impact on complaints;
- how the enforcement industry views the proposed fee change and the adequacy of the compensation it offers for mandatory certification and training;
- the potential impact of the reforms on the volume of debt recovered and on debt recovery rates.

1.3 Method

There were three main strands to the research:

1. qualitative interviews with 30 bailiff firms of different sizes working across a range of debt streams;
2. qualitative interviews with 16 stakeholder organisations representing bailiffs, debtors and creditors respectively, for example professional associations, advice agencies and local authorities;
3. a review of over 40 published and unpublished articles, documents and statistics produced by bailiff, debtor and creditor organisations in the UK and other jurisdictions, by government bodies and academics and by different industries.

Further details are contained in Appendix A. Fieldwork was carried out between 15 May and 15 June 2012.

1.4 Report structure

The rest of this report is organised thematically, with findings from all three strands of the research brought together as follows:

- Chapter 2: Certification and training proposals – potential effect on industry practice and the experience of customers;
- Chapter 3: Proposed fee changes – enforcement industry views on the potential impact on profitability and on adequacy of compensation for mandatory certification and training, and views of bailiffs and stakeholders about other potential impacts of the proposed fee changes;
- Chapter 4: Possible impact of the reforms on the volume of debt, debt recovery rates and complaints;
- Chapter 5: Concluding observations

2. Certification and training proposals – potential effect on industry practice and the experience of customers

This chapter is concerned with the potential effect of the certification and training proposals on industry practice and the experience of customers.

2.1 Debtor experience of bailiffs

Respondents generally agreed that bailiffs need to be assertive to do their job and that respect for their power to remove goods is an important deterrent against non-payment of debts and fines. They also recognised that contact with bailiffs is inherently stressful for debtors and that their experience of bailiffs is consequently often negative. Bailiff respondents often suggested that these factors account for much reported negative debtor experience:

Many complaints are from people who are aggrieved that they actually have to pay. The debtor is annoyed that they have been forced to pay and they don't like it. To some extent we see that as inevitable. *(Bailiff firm, North West, medium size)*

Nonetheless, it was acknowledged by all respondent groups, including some bailiffs, that many debtors currently have negative experiences of bailiffs who:

- threaten the use of force to break into homes;
- inappropriately enter property;
- threaten to seize goods they aren't entitled to;
- charge for phantom visits;
- charge for activities not carried out;
- use force unnecessarily;
- push people aside to get in the door;
- threaten imprisonment;
- pressure someone other than the debtor for payment;
- pressure debtors to take out loans from other sources in order to 'get the bailiff off their back'.

One debtor stakeholder said:

There is evidence out there that aggressive attitudes by bailiffs refusing to negotiate can actually make people's debt problems worse. *(Debtor stakeholder)*

There is little or no independent qualitative or quantitative research evidence on debtor experience of bailiffs, but some advice agencies have amassed thousands of case histories – especially involving hardship and other cases where debtors are potentially vulnerable – that suggest there is a problem to be addressed.^{4 5} For example, one advice agency gave an example of a woman visited by bailiffs because of unpaid council tax, who was threatened with prison unless she allowed bailiffs to enter her house. The bailiff asked if she wanted her two-year-old son to be taken from her if she went to prison. She made several offers of payment to the bailiff firm that were rejected as too low. She was told they would come back and take all her things unless she paid the outstanding amount in full.

Though compelling, much of this evidence cannot, on its own, indicate how far and in what way bad practice is linked to specific elements of the current regime, and therefore whether (or to what extent) reforms will necessarily improve standards.

2.2 Certification

In principle, certification of bailiffs offers a formal and independent means of ensuring that individuals who wish to act as enforcement agents are fit to do so and have the necessary competence. Currently, certification is needed by law only for certain types of debt, such as council tax and rent arrears, non-domestic rates and road traffic fines. In addition, some creditors, especially in the public sector, require any bailiff collecting debt on their behalf to be certificated. Under the proposals, certification will be mandatory for all enforcement officers with the power to seize goods.

The Impact Assessment (Ministry of Justice, 2012 b) provides further details of the current situation and the proposals regarding certification.

⁴ For example the Citizens Advice Bureau (CAB) through cases reported by local bureau staff and recorded on the Bureau Evidence Research Tool (BERT).

⁵ A survey of CAB cases involving bailiffs seen in July 2012 should provide more detailed, quantified information and evidence.

Current situation

At the end of July 2012 there were 1,975 certified bailiffs in the UK,⁶ but robust information about the number of uncertificated bailiffs is scarce. Every bailiff firm interviewed said they only employed certificated bailiffs. Larger enterprises said concerns about uncertificated bailiffs are exaggerated and that numbers are small. Smaller firms said that the use of uncertificated bailiffs is more prevalent than reported. Bailiffs and bailiff stakeholders said uncertificated individuals sometimes work alongside certificated bailiffs on work requiring certification. There is little evidence to say how prevalent a practice this is.

Some bailiffs and one bailiff stakeholder thought uncertificated agents were more likely to bring the profession into disrepute⁷ and said that in spite of their claims, larger firms with high workloads use uncertificated bailiffs, and even falsify certification:

One of the things they do (on local authority work) is employ people who aren't certificated. The way they get round it basically is just use documentation with a certificated bailiff's signature on it. (*Bailiff firm, Wales, small size*)

Bailiffs and all stakeholders saw certification as an important means of controlling entry to the profession and giving bailiffs a sense of their responsibilities and professionalism.

Proposed reforms

The proposal for mandatory certification of bailiffs was supported universally by bailiffs and all stakeholder groups, as was the new requirement in the certification process for applicants to demonstrate their knowledge and competence, potentially through mandatory training.⁸ Many bailiffs said that the proposals were sensible and uncontroversial, assuming no significant cost would be attached to demonstrating competence, and would ensure a level playing field with some rogue operators possibly weeded out.

However, bailiff stakeholders critical of the current certification system and all debtor stakeholders said the proposals had not gone far enough to address weaknesses in the

⁶ <http://certificatedbailiffs.justice.gov.uk/CertificatedBailiffs/>

⁷ There is no evidence about the relationship between uncertificated bailiffs and bad practice, but a small bailiff firm said they were aware of local (uncertificated) 'heavies' being taken on for bailiff roles: 'I've heard of big guys going out ... I class them as door knockers, where they go and put the frighteners on people... They threaten to do stuff that they have no authority to do.' (Bailiff firm, North East, small size)

⁸ It is not clear how the requirement would apply to uncertificated individuals who, according to some evidence from bailiffs, may currently be assisting or accompanying certificated bailiffs or carrying out non-contact elements of the enforcement process.

current system outlined below. Concerns about aspects of the current certification process thought *not* to be addressed by the proposed reforms are listed below.

- It is too easy to get a certificate. Some bailiff respondents thought this was a major reason why there weren't more uncertificated bailiffs.^{9 10} The process of obtaining a certificate was seen to be dependent on the highly variable knowledge and diligence of individual judges and was not rigorous (a view from bailiffs and all stakeholders).
- The current system offers little opportunity for debtors to complain effectively or to challenge a bailiff's certificate. The challenge process was regarded as onerous, inaccessible, potentially costly and intimidating for all except the most confident and competent citizens (debtor stakeholders).
- The absence of a centralised record of certification challenges makes it difficult to identify and weed out persistent offenders (debtor stakeholders).
- The certificate approves individuals for too wide a range of debt streams (some bailiffs).
- The current certification process, which is aimed at individual bailiffs, does not address systemic bad practice in bailiff firms:

Who is it who controls the work and contracts for work? Is it individual bailiffs?

No, it is firms. (*Debtor stakeholder*)

2.3 Training

Some bailiff companies provide training to enforcement agents, there are voluntary national guidelines and the trade body Civil Enforcement Association (CIVEA) has an examination open to members. However, at present there are no set national competency/training requirements for enforcement agents. Under the reforms training could be mandatory, standardised, accredited and linked to certification.

The Impact Assessment provides further details of the current situation and the proposals regarding training.

⁹ One bailiff respondent commented: 'The way it works at the moment, anyone could be a bailiff, literally. You can go on a day course, appear before a judge with the right pieces of paper, that judge will sign your certificate, and literally you could be doing what I am doing, and that is frightening' (Bailiff firm, East, small size).

Current situation

It was the view of many bailiffs and all stakeholder groups that much current bad practice is linked to lack of training¹¹ and that the current training requirements are inadequate, except in respect of High Court Enforcement Officers (HCEOs)¹² who have a long and mandatory authorisation process.

Current training opportunities considered to be at the 'high end' include the HCEO training and the Institute of Revenues, Rating and Valuation (IRRV) level 2 vocational qualification. The national standards for civil enforcement agents were generally thought to provide a good foundation for training non-HCEOs, but lacking teeth because of their voluntary nature. Some bailiff firms provide training but training practices reported by bailiff respondents varied widely.

- Many larger bailiff firms said they operated formal training programmes of up to three months for their new PAYE bailiffs, involving a mixture of classroom sessions and 'on-the-job' experience.¹³
- Practices varied among those taking on experienced bailiffs. One company said they require all new experienced bailiffs and sub-contractors to undergo one week of in-house training before starting work. Others described a brief induction to the company (one or two days) followed by a week or two shadowing an experienced bailiff to determine whether further training is needed before allowing bailiffs to operate independently.
- Larger firms using self-employed bailiffs tended to say they provide a shortened version of their full training programme, focusing on company procedures, for example, rather than the details of bailiff action.
- Smaller companies usually described more informal approaches to training. They often said they valued experience over paper qualifications and training, were

¹⁰ One bailiff respondent said the process can be so peremptory that the last time he went for a certificate he timed it at 1 minute and 8 seconds. Another said that in 26 years of practice he could only recall one or two occasions when a bailiff was not granted a certificate.

¹¹ Some bailiff respondents commented on how easy it is to become a bailiff, and to start work with little or no training.

¹² High Court Enforcement Officers are authorised by the Lord Chancellor (or his designated person) to execute judgements and orders of the High and County Court of England and Wales.

¹³ A typical training programme for new entrants might involve:

- a week of classroom training covering an introduction to bailiff work, legal issues, company procedures, and an insight into one or two specific debt streams;
- two weeks to a month shadowing an experienced bailiff, to get an insight into the realities of the job;
- further classroom training mixed with on-the-job experience with an experienced bailiff for a month or more, whilst applying for certification;
- follow-up training as required on specific debt streams.

less likely to employ new entrants, and did not therefore see the need for detailed training processes.

- Some self-employed bailiffs had learned their business on-the-job and received no formal training.

Proposed reforms

Mandatory training

Most bailiffs and all stakeholders were broadly satisfied with the option of mandatory training for assessing competence as part of the certification process. Some smaller firms thought that on-the-job experience was more important.

In support of mandatory training, bailiffs said that bailiff work is not just a matter of ‘knocking on doors and asking for money’ and requires a range of skills¹⁴ and knowledge of the legal framework. Some said the proposed reforms would ‘squeeze out’ firms not providing proper training, raising standards and the image of the enforcement industry:

The wider impact will be that the unscrupulous companies out there will cease to exist. *(Bailiff firm, Wales, large size)*

Debtor and bailiff stakeholders also thought that making training compulsory would help curb bad practice based on ignorance of the law and lack of key skills. Creditor stakeholders said their own contracting process offered a means to ensure they used only trained bailiffs.

Debtor stakeholders and some bailiffs thought the proposals for mandatory training also needed:

- processes for ongoing assessment;
- independent or external supervision or accreditation.

Training content and standards

The proposals for training content were generally approved by bailiffs and stakeholders, to the extent that they have been worked out. Debtor and creditor stakeholders generally supported standardised training for all bailiffs.

¹⁴ For example, social and communication, financial management, risk assessment, conflict management.

Some smaller organisations specialising in particular debt streams said that tailored training was required, reflecting the demands of the individual sectors. For example, parking/traffic work was seen as requiring a significantly lower level of expertise than other debt streams, and commercial rent could require a particularly high level of understanding of the relevant legislation.

Debtor and creditor stakeholders especially emphasised the importance of training bailiffs to recognise vulnerable debtors and to know what to do. The issue of vulnerability has not yet been developed to any extent, and how it is dealt with in training and guidelines was considered crucial by all stakeholders, including some bailiff respondents.

Some smaller bailiff firms were concerned that ‘government training’ could be irrelevant to the reality of bailiffs’ work:

Is (bailiff) training going to be to do with reality? When you are at someone’s door trying to take the telly and they are trying to attack you, does that training help you? It needs people from the industry to put this training together, not someone who is in an office in London thinking this is what they need ... It’s a cost which is worthwhile if it is done right. *(Bailiff firm, North West, medium size)*

Some bailiff respondents also said that the training and assessment process would need to take into account that ‘most of your bailiffs won’t be very good with exams’:

They are very good at collecting money and being firm with people, but you put them in a classroom and ... most of them will struggle. They’ve got very few qualifications and that will be the downside. *(Bailiff firm, Yorkshire and Humberside, small size)*

Bailiffs said that the current proposals cover training essentials at a level ensuring both that mandatory requirements are not too onerous and that the bar is set high enough to exclude weak candidates and raise the calibre of entrants:

It will get rid of a load of bailiffs. There are bailiffs now that I know wouldn’t be able to answer half of that, and shouldn’t be doing the job, and they’ve been in it for three or four years. *(Bailiff firm, West Midlands, small size)*

One HCEO thought the level of training should be set higher to raise the level of performance of bailiffs, and include more on the interpersonal aspects of the job:

The art of collecting money is negotiating and understanding where people are coming from ... the role of the bailiff is to try and collect the money off the right people. *(Bailiff firm, West Midlands, medium size)*

Some creditor stakeholders wanted a rigorous pass mark applied to weed out weak candidates:

It has to involve more than just turning up, there has to be a possibility of failing. *(Creditor stakeholder)*

Implementation

Some smaller bailiff organisations were concerned about large firms' claims to be setting the standard for training and wanted independent accreditation:

I would like to know who they are going to give that job (awarding accreditation) to. If it is going to a proper organisation, then I think it is great and I think it is good news for the industry. But if it's just going to be one of the bigger firms, then I think that's a joke. *(Bailiff firm, West Midlands, small size)*

Debtor stakeholders were also in favour of independent accreditation.

2.4 Possible impact of certification and training proposals on industry practice and debtor experience

Most bailiff respondents said that proposed changes to certification and training would have little impact on how they carry out enforcement work or conduct their business because they were already certificated or used only certificated sub-contractors, already provided staff training either formally or informally, and acted professionally and ethically within the law. Also in relation to their own practice, they tended to say that the volume of complaints they received – as a measure of negative debtor experience – was small compared to the number of warrants handled, and that poor debtor experience was not a major problem for them.

Commenting on the industry more widely, however, bailiffs and bailiff stakeholders said the reforms could have several positive effects in terms both of industry practice and debtor experiences,¹⁵ for example:

- weed out 'rogue bailiffs' who were not certificated and/or did not adhere to best practices;¹⁶
- put pressure on less professional enforcement agencies to provide training or to cease trading;
- enhance the image and professionalism of the enforcement industry;
- provide a clearer recruitment and training process for new entrants, and raise the entry bar;
- increase recovery rates and efficiency due to better trained bailiffs.

Debtor stakeholders said there would be no or little impact on industry practice or customer experience stemming from the certification proposals because there is little change from the current situation. However, they thought the training proposals could make a bigger difference both to industry practice (and therefore debtor experience), because 'at present anyone can work as a bailiff', and standardised mandatory training would help address this.

Some creditor stakeholders said that effective contract management by creditors, rather than certification and training, is key to good bailiff behaviour and better creditor and debtor experience, although debtor stakeholders said there was too much variation between creditors in terms of the degree and quality of oversight afforded by contracting procedures.

Many respondents from all sectors thought that to have significant impact, certification and training needs to be backed by a more accessible and independent complaints system and a range of accessible options for seeking redress against bailiffs and bailiff firms.

¹⁵ There was notable finger-pointing by bailiffs at other parts of the bailiff industry, e.g. large firms critical of small firms and vice versa, and firms with employed bailiffs critical of those using self-employed bailiffs and vice versa.

¹⁶ Many bailiff respondents said that there are people operating as enforcement agents who lack the knowledge and skills to do the job properly. Certification and training were seen as an important way to 'eradicate people coming into the business who think their job is just to knock on doors and get money out of people' (Bailiff firm, Wales, small size). More than one bailiff interviewed made comments such as: 'You need to get the thugs off the streets ... there are some bailiffs out there who are thugs' (Bailiff firm, London and SE, medium size).

Key points from Chapter 2

- There was general support for mandatory certification and the option for universal training to a uniform standard. Bailiffs and stakeholders agreed that improved training in particular could deliver improved bailiff behaviour and debt recovery performance, and help 'drive out' unscrupulous bailiffs. These impacts, if achieved, could in turn reduce debtor complaints about bad experiences and possibly even positively improve debtor experience, though fees reforms are also seen as key to many or most complaints.
- Mandatory certification *per se* was not regarded as likely to have much impact on practice and debtor experience.
- There were widespread comments from some bailiffs and most stakeholders that impacts would be more certain and more beneficial if the proposals went further.

3. Proposed fee changes – possible impacts

This chapter deals with the potential impacts of the fee proposals. It focuses especially on the key research questions about the adequacy of the new fee levels as compensation for mandatory certification (including with training) and the profitability of bailiff firms. It also covers other potential impacts that could affect customer experience and industry practice.

Currently fees vary by debt stream, actions taken by bailiffs and debt amount. Additional 'reasonable costs' can be charged according to debt stream and the actions taken and can add significantly to total fees. With some debt streams, for example council tax and non-domestic rates, no fee can be charged unless there has been a first visit.

Under the proposed reforms, fees will not vary by debt stream and will rise through three stages ('Administration/Compliance', 'Enforcement' and 'Sale'), depending on the enforcement stage reached when the debt is paid. Each stage would incur a flat-rate fee (£75, £230 and £105 respectively) and there would be no additional 'reasonable costs'. For debts in excess of £1,000, an additional 7.5% would be payable on enforcement and sale stages for balances over and above that figure. Changes are also proposed for High Court fees.

The Impact Assessment provides further details of the current situation and the proposals regarding fees.

3.1 Fee structure: current situation

Bailiffs and all stakeholder groups agreed that the current fee structure is in need of reform because it is overly complex, lacking in transparency, hard to understand for debtors and bailiffs, inconsistent across debt types, bailiff firms and different clients, and wide open to abuse.

Many bailiffs said that at present they make money only because they are able to charge reasonable expenses. Some said the current structure means bailiffs cannot make a living if they 'play it straight'. Bailiffs and all stakeholder groups said that the current fee structure:

- discourages bailiffs from seeking early settlement (e.g. on receipt of a letter or first visit), especially in debt streams where costs might not be covered by current fees;
- encourages unnecessary actions such as additional visits.

Some bailiffs admitted to having engaged personally in ‘unethical’ practices, for example making it difficult for debtors to settle at an early stage, or loading ‘reasonable expenses’.¹⁷ It was reported that some firms charge fees beyond what is both legal and ethical as a matter of course and treat the issue as an ‘error’ for immediate repayment, if the matter is raised by the debtor.¹⁸

3.2 Fee structure: proposed reforms

Bailiffs and all stakeholders were broadly supportive of the fee proposals, especially the uniform fee structure.¹⁹ The attachment of fees to different stages of enforcement work was also generally welcomed, as were the three stages outlined, although with caveats from some stakeholders (described below).

In terms of potential impacts, bailiffs said the new fee structure would:

- be clear and easy for debtors, creditors, bailiffs and advice agencies to understand;
- remove the incentive and opportunity to inflate fees with ‘reasonable expenses’ as additional actions will not be rewarded;
- reward work put in by bailiffs in the early stages of recovering a debt;
- ensure consistency of fees between different bailiff firms and creditors, removing a key source of confusion among debtors and bailiffs;
- be simpler for enforcement companies to administer;
- be easier to teach to trainees, as there will be no need to learn a separate set of fees for each debt stream or creditor.

¹⁷ One bailiff said he had misled the owner of a laundrette into delaying payment of a debt for rates and then brought a lorry and some technicians around to threaten enforcement. He had charged a legal £490, £800 for waiting time plus additional fees for other items such as portage and transfer of funds.

¹⁸ One respondent said that councils are often not aware of how much debtors actually pay to bailiffs: ‘Much of the time, 98% of debtors are paying more than what the council believes they are paying, and they do not complain because they are scared of the consequences’ (Bailiff firm, West Midlands, medium size).

¹⁹ Although one bailiff respondent thought there could be big differences between debt streams in terms of the amount of work required of bailiffs. He contrasted parking fines and council tax as follows: ‘Generally, you’ll put a clamp on, and they’ll phone you up and they’ll make a quick payment, and you go back and take the clamp off, and it’s taken you half an hour ... (With council tax) I’m inside a house, it might be a very difficult call, then I know they’ve got the money, but they don’t want to pay ... they’ve got the goods but they don’t want me to take the goods. I’m there for hours upon hours, trying to get this resolved and trying to get it sorted’ (Bailiff firm, West Midlands, small size).

Debtor stakeholders welcomed the greater emphasis on the administration stage, though they saw little in the proposals to prevent unscrupulous bailiffs from finding ways to move to the enforcement stage in order to make more money:

They are still incentivised to pursue aggressively, because they are not salaried.
(Debtor stakeholder)

Debtor and creditor stakeholders, and some bailiffs, thought the new fee levels would mean the overall financial burden on debtors would go up and this could lead to more complaints. Local authority stakeholders said the new fees could mean disproportionate increases in the amount paid by debtors owing small and large amounts, and were unhappy with this.²⁰ They also said welfare reforms would increase the number of small debts owed to local authorities for council tax by people who 'don't have much', and in view of the high bailiff fees councils may set aside more small debts rather than refer them for bailiff action. One respondent said:

The Council's considered view (is) that ... more in-depth impact assessment (needs to be) undertaken to establish the financial impact on debtors (incurring increased bailiff fees) and local authorities (incurring increased write-offs).
(Creditor stakeholder)

Debtor stakeholders said the proposals did not acknowledge that the true cause of many debt problems is misfortune rather than irresponsibility, and that the changes will worsen the situation of those who are in a cycle of debt.

3.3 Possible impact of fee proposals on profitability – enforcement industry views

Dehayen suggested that under the fee proposals average profits would increase from 8.6% to 17% for non-High Court cases and profits for High Court Enforcement Officers would drop from 10.9% to 10%.

Bailiff views about the likely impact of the new fees on profitability depended on:

- which debt streams bailiffs operated in;
- their recovery rates;
- the efficiency of their operations;

- costs, which related in part to where they were based/operated.

Unknown factors from the perspective of bailiffs included:

- whether local authorities will take on the compliance stage of enforcement;
- which costs will be recoverable as 'exceptional costs' (if any);
- whether a cap will be introduced on the 7.5% supplement for larger debts;
- how the new regulations will affect when bailiffs receive their fees – first, last or pro rata.²¹

Bailiffs thought that enforcement agents would change their methods of operation and put more energy into recovering debts by phone and letter, reducing the number of cases proceeding to enforcement and, potentially, income. However the cost to them of visits would also go down.

Larger companies generally based their responses on financial projections undertaken to assess the likely financial impact of the reform proposals. Three such firms outside London said their profits would increase under the new system. Another said profits would increase as long as local authorities did not 'hijack' the compliance stage, but some thought this was likely to happen.²²

A large London-based company specialising in traffic penalties said profits would go down because tow trucks (costing £195) are allegedly required in around 20% of cases in order to persuade debtors to pay.

Few smaller companies and independent bailiffs had made detailed profit/loss calculations based on the fee proposals.²³ They assessed the likely impact on profits by comparing recent or typical cases under the current and proposed fee structures and, on balance, thought profitability would increase – substantially in some cases.²⁴ Smaller companies covering a wide geographical area thought their profits would fall if they could no longer charge travel

²⁰ Local authorities in particular were concerned about their relationship with the population they serve.

²¹ 'Fees last' was introduced for CMEC and, allegedly, requires considerable 'upfront' funding of the enforcement process by bailiffs. In other debt streams, it was claimed, a similar arrangement could have a negative effect on profits and the viability especially of smaller companies.

²² These large firms had been extensively involved in the consultation with the Ministry of Justice and strongly supported the overall reform package. In most cases they were happy with the new fee structure.

²³ Some heard about the proposed fees for the first time during the interview.

²⁴ One bailiff, commenting on the proposed fee structure, said: 'I would take that without a shadow of a doubt, with both hands, and book a holiday' (Bailiff firm, London and South East, small size).

costs, but this seemed unlikely to be the case on the basis of evidence discussed in interviews.

In relation to different debt streams, the (sometimes contradictory) views expressed by bailiffs included:

- council tax will be more profitable, because of the new compliance stage;
- traffic fines will be less profitable, because currently fees often escalate quickly if debtors wait to the last moment to pay;
- commercial rent profits will go up dramatically because of the higher fees and the 7.5% supplement for debts over £1,000;
- or, profits will go down because cases are more complex and time-consuming and legitimate fees will not be covered by the proposed structure.

Some firms thought that HCEO profits would go down slightly and others that there would be an increase. A medium sized firm dealing with High Court debt estimated a drop in income of around 10%, but also said they would focus more on telephone- and letter-based systems in the future, reducing costs to avoid any real drop in profit. There was no indication that large companies that had purchased HCEO companies were motivated to reconsider these investments.

3.4 Adequacy of proposed fees as compensation for mandatory training/certification – enforcement industry views

The cost of certification for an individual bailiff was estimated at around £500–£600, with the requirement to advertise in the local press often being the largest part of this fee.²⁵

The Impact Assessment estimates that it costs about £120 to place an advertisement.²⁶

Some bailiff respondents estimated the current cost of in-house training at c. £5,000, with the bulk accounted for by the salary of the trainee bailiff. They said that trainees might assist experienced agents, but would not earn fees for the company until they had qualified.

The likely starting salary for a bailiff would be £15,000 to £20,000 a year.

²⁵ The total cost might be broken down as follows, with an additional element for insurance: Court fee: £175, advertising costs: £300, CRB check: £26.

²⁶ Some bailiffs said that the requirement to advertise in the local press is expensive and out-dated; a factor that can increase the cost of certification. Readership of local newspapers is declining rapidly. According to 2011 statistics published by the Audit Bureau of Circulation, circulation figures for local papers have declined by more than half since 1994. The Newspaper Society estimates that 200 titles have closed in the past 10 years, including weeklies. According to an Ofcom discussion document on local and regional media in the UK published in September 2009, only 24% of local residents at the time said they used local papers as their main

The cost of external training was estimated to be £200–£300 per day. A mandatory *external* accredited training course would therefore cost £300–£500 for a two-day course. This would be an additional cost for independent bailiffs.

Assuming they could accredit their own training programmes, larger firms said the training requirement would impose no additional costs. Some said the reforms could enable them to streamline training, for example in relation to the fee structure, and make savings:

Generally with one set of rules and fees, it's a much simpler training process.
(Bailiff firm, North West, large size)

Some bailiff stakeholders, including HCEO representatives, noted that under the current proposals HCEOs doing non-High Court work will have to have standard certification and undertake the new training in addition to their own HCEO requirements, at extra cost to the HCEO.

In summary, larger bailiff firms thought that training and certification requirements would be cost-neutral; their bailiffs are already certificated and they already provide training that matches the new requirements. Some thought they might be able to reduce training costs through streamlining and simplification. If it became mandatory to send staff to an external training provider to gain the accredited training, this would be an additional cost for companies, but most assumed they would be able to have their existing programmes accredited.

The additional cost of the training requirement for independent bailiffs was generally regarded as fair. Some smaller companies said they could not express an opinion until the full cost implications of training had been made clear.

Bailiff respondents seldom raised the subject of possible additional costs imposed by certification and training requirements and the need for compensation. In most cases, there would be no additional costs and any increase in profitability would be retained by the firm.

source of information about their local area (cited in House of Lords Select Committee Report on the Future of Journalism, 3rd Report, Session 2012-12).

3.5 Response to individual fee elements

Compliance fee – £75

Bailiffs viewed the £75 compliance fee, payable as soon as a warrant is issued, as an interesting development representing a significant increase over what can be charged at present, especially for council tax and non-domestic rates, and for traffic fines where the fee for sending a first letter is £11.50. Work with call centres and by letter to gain early settlement was thought likely to become more important and bailiff visits less frequent:

If it encourages payment at letter stage, then we will need less bailiffs and will be making more per warrant. *(Bailiff firm, London and South East, medium size)*

Debtor and creditor stakeholders were broadly supportive of a fee incentive to focus bailiff attention on the administration stage. One debtor stakeholder thought that this impact would be greater if an even higher fee was attached to the administration stage and that a first visit should be included in the administration stage to allow bailiffs to gain information about debtors, including ability to pay and vulnerability.

Some bailiffs said the proposed compliance-stage fee was too high and would lead to more complaints from debtors and fewer warrants for small debts being issued by councils:

If I was the consumer, I'd think blimey, that's a bit over the top. You have to be careful that it's not abused, just sending out £75 for a letter. *(Bailiff firm, London and South East, medium size)*

Local authorities have said they are concerned about the £75. They are saying how can you go from £22.50 (for council tax) to £75? They have said that for debts of under £100 we are virtually doubling the debt. There is a concern that debts under £100 will not come out for enforcement. *(Bailiff firm, Wales, large size)*

A possible unintended consequence identified by many bailiffs was that the new fee will incentivise council creditors to 'hijack' the compliance stage, referring only the harder enforcement cases. Bailiffs said that in this situation the rationale behind the fee structure as a whole could be undermined and some potential benefits of the new fee proposals undone.

Enforcement stage – £230

Most bailiffs said the proposed enforcement fee of £230 offered sufficient compensation on average for the work involved at this stage and that it was in line with average charges under current arrangements, including various fees and reasonable costs:

I think they did a good job in finding the base fees. *(Bailiff firm, West Midlands, medium size)*

Some thought costs might not be covered in cases involving long distances and multiple visits:

(Say) you're the client ... and want us to go all the way down to Llandudno to find out why (a client) hasn't paid, and I'm not allowed to charge anything for that. Sod that for a game of soldiers. *(Bailiff firm, Yorkshire and Humberside, small size)*

You can finish up going to see the same bloke 20–30 times in the life of a warrant (because) he promises to pay you, he doesn't pay you, he bounces his cheque, he says I'll pay you tomorrow, etc. ... If you've got a fee structure that says first visit you get so much, now that's great, but what happens if I have to go 10 times? *(Bailiff firm, Yorkshire and Humberside, small size)*

Some bailiffs said the new enforcement fee would encourage them to press for full settlement on first visit, because they would not receive any additional payments for subsequent visits. This could be positive for debtors but could also result in bailiffs applying more pressure. Some bailiffs thought that levying could become almost redundant because debtors would pay up on the first visit, once they realised that two fees had already been applied.

The impact could vary across debt streams; for example, a commercial rent specialist thought the fee was low and would push him towards removal, at least for smaller debts. Another bailiff thought the fee too high for a parking fine:

If that's what they want to charge I'll take those fees all day long, but is it really sensible? £230 for turning up once! *(Bailiff firm, London and South East, medium size)*

Removal and sales stage – £105

Bailiff respondents said that the removal and sale of goods is currently rare; an estimated frequency of 2% or less of cases. This is because most households pay up if faced with a realistic and immediate threat of removal and because the value of household goods in most homes visited by bailiffs is insufficient to cover the debt. Removals were said to be especially rare for debt streams such as council tax, magistrates' court work and commercial rent (where landlords do not want empty premises on which they will be liable for rates). However, clamping and removal of vehicles were said to be not uncommon.

Most bailiffs thought that the £105 set for the removal and sales stage was generally too low. If items such as removal lorries, tow trucks and storage were allowable as exceptional costs, the proposed amount would be adequate, otherwise not:

Admin £75 is fine, more than adequate. £230 enforcement is more than adequate; but the £105 is too low, it's way off. For example, removals require two bailiffs or a porter, for health and safety; and a larger van. It might be a lot of work and take a long time. *(Bailiff firm, Wales, large size)*

Some bailiff firms²⁷ said they were happy to take the occasional loss since removals were rare:

I'm looking at the whole picture ... there's enough fat in the earlier charges.
(Bailiff firm, Wales, large size)

However, bailiffs specialising in traffic fines, especially in London, said removals were not so rare and the low amount proposed would therefore have more impact on them. Some commercial rent specialists that are confronted with very high removal costs in certain cases were anxious to know if 'exceptional costs' would be allowed, and what they would cover. A few bailiffs were also concerned about the amount of time it could take a county court to allow exceptional costs, assuming that they will be allowed at all:

They are 7, 8, 9 weeks behind with everything ... if you are wanting to start making an application to the county court for something, then you'd better be prepared for a three-month wait. We've only got 12 months lifespan on a parking

²⁷ Including large companies but also some medium and smaller firms.

fine, and then it has died, and we can't waste three months. *(Bailiff firm, Wales, small size)*

Threat of removal was widely seen by bailiffs as an important bargaining tool and some bailiffs thought that debtors would be less likely to pay if they came to believe that bailiffs would not carry through the threat (because removal was unprofitable).

A lot of bailiffs will be walking away from those jobs because you can't enforce. And people will know that you are not going to enforce because there is no money in it. *(Bailiff firm, London and South East, medium size)*

High Court fees

Many bailiffs had not thought that the differential between Non-High Court fees and High Court fees would be retained in the reforms:

It was always part of discussion and intention, a single piece of law, a single set of fees, and I was amazed as anybody else to find it then fragmented into two. *(Bailiff firm, West Midlands, large size)*

Non-HCEOs (and one HCEO) were generally critical of this, claiming that there was no meaningful difference in the work of HCEOs and non-HCEOs:

In the majority of cases, we are all doing the same job, so really it's not justified. *(Bailiff firm, Yorkshire and Humberside, small size)*

Other HCEOs and HCEO employers approved of the differential, arguing that:

- HCEOs require broader legal knowledge than other bailiffs because they face a potentially wider variety of types of case;
- qualifying as an HCEO takes longer and is more expensive than the process for normal bailiffing, and should be rewarded accordingly;
- HCEOs are personally obliged to the creditor to seek to enforce in every case, and their risk of loss is therefore higher;
- HCEOs deal with only 75,000 writs a year compared with around 4 million warrants issued to non-HCEO bailiffs (in other words, they do not benefit from volume referrals of routine cases).

Debtor stakeholders were generally in favour of a single fee structure for all enforcement agents, including HCEOs, on the basis that the same kind of work is being undertaken and that costs are no higher. Some think that firms doing High Court work are incentivised to encourage creditors to use the High Court for recovering debts too small to justify the use of such costly procedures.^{28 29} The High Court procedure is more intimidating for debtors and also more expensive, in part because the debts accrue interest at a set rate from the issue of the writ.

7.5% addition for amounts over £1,000

Many bailiff respondents said they enforced relatively few debts above £1,000 and would be largely unaffected by the 7.5% supplement. But debts over £1,000 were said to be common in High Court enforcement, commercial rent and non-domestic rates,³⁰ and in some areas were not uncommon in council tax.

The impact of the 7.5% supplement on overall fee levels was recognised as potentially very significant. One bailiff calculated that a recent debt of £250,000 for which he had earned £5,000 would now yield almost £19,000.³¹

Some bailiff respondents thought the supplement was justifiable on the grounds that larger debts are allegedly more complex and time-consuming to collect. Others thought the proposals were overly generous:

I've got debts of £100,000 (to collect) which happens, so then you'll be talking about £75 and £230 and £7,500 which is ridiculous money. I would love it, thank you very much, but if I am being honest, that's crazy. (*Bailiff firm, Yorkshire and Humberside, small size*)

²⁸ A survey by the Bailiff Studies Centre (Kruse, 2011b) found that the average debt pursued through the High Court was £2,400; a figure that is boosted by a relatively small number of very large debts. One-third of debts were under £1,000 and 72% under £2,000.

²⁹ It is claimed that some creditors are financially incentivised because it is cheaper to enforce a county court judgement by transfer to the High Court than it is to instruct the county court bailiffs.

³⁰ Around £3,000–£5,000 was given as a typical figure.

³¹ One large firm realised during the interview that the 7.5% addition could be applied twice in the course of enforcing a case – at enforcement and sale, and felt they understood for the first time why costs were not included: 'You charge the 7.5% twice, because it's charged at enforcement and at sale ... well, then there's no wonder there's no allowance for extra charges at sale – Wow!' (Bailiff firm, North West, large size).

Some bailiffs thought that the much higher fees could adversely affect recovery rates and/or timescales for recovering debts, and that creditors would be unhappy with this. Some bailiff stakeholders thought very large debts might be retained in-house by local authorities for this reason and because of concern about disproportionately high costs to business debtors (these cases were described by one as ‘the icing on the cake, but icing that bailiffs will very rarely get to eat’.)

Overall, bailiff responses suggest that they thought the effect of the addition could be inadequate at lower levels and too generous at higher levels, implying the need for some kind of a sliding scale.

Some creditor stakeholders thought £1,000 was a low threshold for triggering the 7.5% supplement. One local authority respondent said that council tax debt frequently exceeds £1,000 and the additional element would add considerably to the financial burden on debtors. Another local authority said that 98% of the 167 liability orders for business rates referred to bailiffs in 2011–12 were in excess of £1,000. The average debt level was £8,000 and under the reforms bailiff fees in most cases would be £830 (£75 compliance, £230 enforcement, £525 for the additional 7.5% fee). This compares with the current average cost of £258 for business rates:

An average rise from £258 to £830 would therefore be considerable, especially in the difficult economic climate. *(Creditor stakeholder)*

Key points from Chapter 3

- There was general agreement among bailiffs and stakeholders that the fee reforms would have some beneficial effect, in that bailiffs will no longer be incentivised to the same extent to: escalate the enforcement process in debt streams where early stages attract no fee or a very small fee at present; claim for 'phantom visits' or take or claim other actions for which charges can be added; or simply charge an inflated or unjustified fee. Most bailiffs interviewed acknowledged that such practices currently occur within the industry. Some stakeholders believe an incentive for escalation to higher stage fees will remain, even if it is weaker.
- Impacts on bailiffs' profitability are hard to ascertain in the absence of clear current data, and bailiffs varied in their level of confidence in working out the impacts based on their own patterns of work. Many bailiffs and most stakeholders believed overall profits would increase, in some cases substantially.
- Bailiffs expressed no significant concern that new costs of training would negate or substantially reduce this increase (though potential costs of training are not yet certain).

4. Possible impact of reforms on volume of debt enforced, recovery rates and volume of complaints

This chapter utilises evidence from all sources to discuss the potential impact of the reforms on the volume of debt enforced, recovery rates and the volume of complaints.

4.1 Volume of debt enforced by bailiffs

Available data suggest that very large numbers of debt cases are put out to bailiffs currently. For example, in the three years between 2007 and 2010, local councils referred nearly 6 million cases³² to third party debt recovery agents, including bailiffs, for the late payment of council taxes (c. 4.5 million) and parking fines (c. 1.5 million) (Hamilton, 2011).³³ CIPFA figures for 2009/10 show 1.4 million council tax bills were referred to bailiffs (CIPFA, 2010). CIVEA notes that their members deal with approximately 4 million orders and warrants per year.³⁴ County court cases in 2010 showed that about 1 million cases were ‘money’ claims – down by 19% from 2009. Thirty-six percent of these claims had a claim value of less than £500, down from 38% in 2009. During 2012, 151,000 warrants of execution were issued, down by one third from 2006 with the number having declined year on year. A trend of creditors using High Court enforcement rather than county courts has been identified by the Citizens Advice Bureau (Phipps, 2010). This may be linked to cheaper costs for creditors.

There are no very clear and consistent pointers about the likely impact of the reforms on the volume of debt enforced by bailiffs in the future. This is because of several factors that could work in opposite directions.

³² 5,939,003 – estimate from Big Brother Watch, see Hamilton, 2011.

³³ Statistics from the Department for Transport show that the number of local authorities in England and Wales with civil enforcement powers for parking rose from 20 in 2000 to 237 in 2009/10. This represents a considerable increase in the volume of debts referred to bailiffs. See <http://assets.dft.gov.uk/statistics/tables/cpe0301.xls>

³⁴ Approximate figure quoted by stakeholder respondent from internal records.

Bailiff and other respondents thought the volume of debt enforced by bailiffs could **decrease** under the new proposals if:

- local authorities decide not to instruct bailiffs on smaller debts where fees under the new regime are perceived to be disproportionate;³⁵
- local authorities take the compliance stage for council tax in-house and/or choose to negotiate directly with major non-domestic rates clients;
- landlords negotiate payment arrangements with their tenants instead of instructing bailiffs because of the difficulty of finding new tenants in the current business climate, and because landlords are liable for business rates on empty properties.

On the other hand, **increases** in the volume of debt issued to bailiffs could arise from:

- enhanced professional standing of bailiffs resulting from the reforms;³⁶
- various welfare reforms, changes to council tax benefit and benefit caps that could lead to increases in debt levels, and potentially therefore to an increase in debt enforced by bailiffs.

4.2 Recovery rates

There is no comprehensive and reliable information on debt recovery rates. Available statistics include data on the percentage of cases where payment is received and/or the percentage of total debt recovered. One London local authority estimates that business rate debts are recovered in around 30% of cases. Manchester City Council reported that bailiff action recovered around 25% of council tax owed and a similar percentage of parking fine debt (Manchester City Council, 2010).³⁷

Bailiff respondents said recovery rates vary by debt stream, size of firm and area (major cities having lower recovery rates than rural areas) but that the national average is around

³⁵ This concern is borne out in the example of a local authority respondent who said that: 'If the proposed fee structure is implemented, we would have great difficulty in referring council tax cases where less than £305 is owed (35% of cases in 2011/12) because potential bailiff fees would in most cases be equal to or greater than the unpaid council tax. We believe that this would lead to an increase in complaints. Also it would be difficult to justify referring to bailiffs – especially in the context of needing to act with "proportionality"' (Creditor stakeholder).

³⁶ Evidence from the security guard industry indicates that many who took part in a survey said their organisation's turnover or the amount of business conducted had *increased* since regulations were introduced (Security Industry Authority, 2010a).

³⁷ Official statistics appear to show dramatic differences in recovery rate for county court cases where correct address information is available. The chances of success with a warrant of execution go up from an average return of 21p in the pound to almost 90p for 'correctly directed warrants' where the creditor has specified the correct address (see Baldwin and Cunnington, 2010pp. 159–174).

30%. Information on recovery rates for different debt streams obtained from bailiff and creditor stakeholders is summarised below. The figures for each debt stream used in the Dehayen report are also noted:

- **Council tax and non-domestic rates**³⁸ – a range between 20% and 50%, but most estimating around 30%. Lower recovery rates in major cities (possibly as low as 10%), higher in rural areas (Dehayen – 24.8% CT; 36.1% NDR);
- **Traffic /parking** – a wide range from 10% (from a medium sized firm) to 62% (from a small firm).The British Parking Association estimates 30–40% (Dehayen – 18.2%);
- **Commercial rent** – a narrow range at the higher end, from 75% to 95% (Dehayen – 40.2%);
- **High Court Commercial** – wide range from 20% to 80% (no data from Dehayen).

In terms of the potential impact of the reforms on recovery rates, different drivers were identified that respondents thought would result in higher recovery rates, lower recovery rates or have a neutral effect overall.

Increases in the recovery rate could result if:

- better trained bailiffs result in more effective enforcement across the whole industry and raise professional standards more widely (view from bailiffs and other stakeholders).

Recovery rates could be **lower** if:

- debtors are faced with higher fees from enforcement companies; timescales for recovery might also increase with more arrangements for payment by instalment and fewer payments in full (view from bailiffs and all stakeholders);
- payment arrangements defaulted on are not pursued because of significant cost implications for the bailiff, particularly travel costs (bailiffs and some creditor stakeholders);
- bailiffs lose the element of surprise in commercial rent and cannot levy on goods of third parties found at the premises – in the case of business premises which have been sublet (bailiff respondents);

³⁸ Data for these two debt streams are often not separated out by bailiff respondents who provided figures.

- debtors are less willing to pay because they think that bailiffs are unlikely to remove their goods or vehicle because of the cost of doing so (bailiffs);
- bailiffs' power of entry, for some debt streams, is curtailed by the new reforms (bailiffs).

Possibly **neutral** overall impacts could arise if:

- Local authorities take the compliance stage in-house. This could lower the recovery rate for local authority debt issued to bailiffs because enforcement agencies would be left with more difficult debtors, but it would not necessarily affect the overall recovery rate of debt (bailiffs and all stakeholders);
- There is an increase in the early recovery of debt as a result of the introduction of a new compliance stage, but this would not necessarily imply an increase in overall recovery rates.

4.3 Volume of complaints

The volume of complaints received about bailiff action is relevant to this research from a number of perspectives:

- first, complaints are an important indicator of customer experience and bailiff conduct, especially in the absence of more rounded, robust and independent data;
- second, dealing with complaints takes time and imposes a financial and resource burden on bailiffs firms, and on bailiff, creditor and debtor stakeholders – especially those in the advice industry.

This section considers the potential impact on the volume of complaints of the proposed reforms to certification and training and to fees.

There is no single or independent complaints process and therefore no reliable, independent data about the volume of complaints made about bailiffs. Currently, the main sources of information about complaints are the bailiff professional associations (CIVEA and HCEOA), which have their own complaints procedure covering most debt enforced; bailiff firms and creditors, which receive complaints directly; and advice agencies, which are often intermediaries for complaints about bailiffs.

Information about complaints by type is largely anecdotal. Most sources agree that the majority of complaints are about fee levels and mischarging in some form. Bailiffs interviewed

also gave examples of complaints of breaches of confidentiality, use of abusive language and assault. However they did not necessarily accept that the complaints were justified.

Reports of the volume of complaints received by bailiff respondents varied. Numbers quoted by larger companies varied from 300 complaints received over the last 17 years (Bailiff firm, London and South East, medium size) to 2–3 serious complaints requiring a response per week (Bailiff firm, London and South East, large size).

CIVEA reported 279 complaints over a 12-month period,³⁹ around 60% of which related to excessive fees and 40% to inappropriate bailiff action. Additionally, CIVEA reported that out of around 4 million orders and warrants issued to CIVEA members each year, around 6,000–7,000 complaints are received by member companies – about 0.2% of total claims.⁴⁰ However, using warrants issued to bailiffs as the denominator for these calculations gives a seemingly much lower level of complaints than would be derived from using the number of cases where contact was actually made with debtors.

Complaint handling occupied considerable resources within some of the sample bailiff firms. Two larger companies reported that they had full-time complaints departments, with three staff in one case and six in the other. One firm with fewer than 10 bailiffs said they spend £35,000 a year on two members of staff dealing solely with complaints. In others complaints were said to be handled by a company director, depending on their seriousness. One said that a serious complaint took between one and a half to two hours to handle. A High Court Enforcement Officer estimated that he spent a third of his time dealing with complaints, which was one of his main roles within the business.

Data held by one advice agency show over 1,000 cases of harassment by bailiffs brought to their attention in the first 6 months of 2012.⁴¹

Debtor and some bailiff stakeholders said that the number of complaints made represents only the ‘tip of the iceberg’ for a variety of reasons, including that debtors:

- are often intimidated and frightened of complaining or too distressed or lacking in personal resourcefulness to complain;

³⁹ Dates not given.

⁴⁰ Quoted by respondent from in-house records.

⁴¹ Citizens Advice Bureau, administrative data, 2012.

- don't know how to complain and information isn't well publicised or routinely provided by bailiffs or creditors.

Some bailiffs thought that many debtors, especially more vulnerable groups, would lack both the confidence and the knowledge to complain.⁴²

Generally, bailiffs said they did not think the volume of complaints their firm received would go down markedly because of the reforms to certification and training, because they only used certificated bailiffs and already provided training. But they thought that the volume of complaints in the enforcement industry as a whole might go down.

Some bailiff, debtor and creditor stakeholders thought volumes of complaints could go down because of better trained staff, but struggled to see how the proposed reforms to certification would have an impact.

In respect of the fee reforms, respondents thought that the general effect would be to reduce complaints, though there could also be some off-setting increases in complaints in relation to small and large debts:

Factors that might lead to a **decrease** in the volume of complaints could include those listed below.

- Most bailiff respondents and all stakeholders thought that having a fixed and clear fee structure could reduce the number of complaints received, for example because of debtors not understanding how the fees have been calculated. But this would depend on debtors knowing and understanding the fee structure.
- One bailiff respondent said that under the present system, fees go up in direct relation to the number of bailiff visits, which is seen by debtors as aggressive. Under the new system involving a standard fee it was thought that debtors would be less likely to feel the situation is out of control, and therefore be less likely to complain.
- Stakeholders said debtor and creditor experiences could improve and complaints could go down if fee changes result in more cases being resolved before the enforcement stages.

⁴² A report from MIND states that debtors with mental health conditions don't know who to complain to, think there is no point, and are often too distressed.

- One bailiff said the new fees should also help reduce complaints about cases where bailiffs become aggressive because they have put in a lot of time on a case and know they may get 'nothing out of it'.

Respondents thought, however, that two factors might lead to a **rise** in the volume of complaints.

- Bailiffs and all stakeholders thought that complaints could go up because the new structure will mean that fees could be disproportionate in some cases – especially at the lower and higher end of the scale; and the current economic climate means the number of small debts is rising.
- One stakeholder thought there could be a short-term rise in complaints from payers who know the system and know the current fee system 'probably better than we do'.

Key points from Chapter 4

- There is little evidence but a range of views on effects of the combined proposals on volumes of debt enforced and debt recovery rates.
- On volumes of debt enforced, some bailiffs and creditors believe these will decrease as a result of the proposals because creditors will not instruct bailiffs on smaller debts where fees under the new regime are perceived to be disproportionate. Some councils may also take the administration stage 'in-house', with uncertain effects on overall volumes of work for bailiffs. Factors that might increase volumes include the reputation of the bailiff profession being enhanced over time by the reforms, as well as outside factors including the recession and changes in the welfare system.
- There is no comprehensive information on debt recovery rates but data suggest rates vary by debt stream, size of bailiff firm and area. Different drivers could result in higher recovery rates, lower recovery rates or a neutral impact overall.
- Data on complaints about bailiffs is fragmented and views expressed about the level of complaints differed, especially between bailiffs and debtor representatives. Reported levels of complaints probably underestimate the number of cases of poor practice by bailiffs. Most respondents including bailiffs thought the certification and especially training proposals would tend to reduce the level of complaints against the industry as a whole.
- Most respondents also said the increased clarity of the fee structure should remove a key source of complaint. If more cases are resolved at a lower stage of enforcement action that may also reduce complaints. However, the rise in fees in some circumstances, especially if perceived to be disproportionate, could trigger complaints.

5. Concluding observations

This final brief chapter brings together some general observations from the research.

5.1 Bailiffs

A bailiff seeks to recover money from someone who has not paid a debt, and who may not intend or be able to pay it. Yet bailiffs themselves do not get paid for their work unless they are able to recover debt, so there can be a temptation to behave in unethical ways if more professional conduct proves ineffective.

Most bailiffs, and some creditors, stressed that the typical bailiff interaction is far from the stereotype ‘bully-boy’ image, and that key skills are engaging and negotiating with people in stressful circumstances. Although seldom willing to acknowledge poor practice themselves, bailiff respondents were nevertheless of the opinion that many bailiffs do behave with undue aggression, and debtor representatives especially in the advice industry have amassed evidence of cases where this holds true.

Reforms to how bailiffs work have been long anticipated. The proposals outlined in ‘Transforming Bailiff Action’ are designed to address some of the most enduring criticisms made of the industry, but many of those interviewed as part of this research – from all sectors – feel they have not gone far enough and that their impact will therefore be limited. Key omissions mentioned by respondents, including some bailiff stakeholders, were independent systems for complaints, for formally regulating the activities of bailiff firms and for administering sanctions. Some stakeholders, especially from the advice industry, were also disappointed that the reforms did not, for example, spell out the steps that bailiffs would be required to demonstrate they had taken at each stage in enforcing a debt before proceeding to the next. Some also wanted to see a standardised financial framework being used by bailiffs in working out affordable payment plans with debtors unable to pay within a specified timeframe,⁴³ and stronger provision for identifying and dealing with vulnerable debtors. Some went so far as to question the suitability of enforcement as a modern response to debt, especially public sector debt, and said an opportunity had been missed to examine possible alternatives.

⁴³ The Common Financial Statement developed for the Money Advice Trust, the British Bankers Association and the Finance and Leasing Association for use by the Insolvency Service was often cited as a good example of such a framework.

This research was concerned with a small number of clearly defined questions about the possible impact of the reforms to certification and training of bailiffs and to the current fee structure. We explored the likelihood that proposed changes would bring about anticipated effects by means of anticipated mechanisms and processes, but we also learned about potential impacts that may not have been foreseen. For example, there is the possibility that in future local authorities will seek to take the administration stage of debt enforcement 'in-house', thereby removing business from the bailiff industry. Or the possibility that creditors will decide not to issue warrants for smaller debts to bailiffs because they want to avoid disproportionate financial penalties being meted out to debtors.

Not all potential impacts that might have negative (mainly financial) consequences for bailiffs are necessarily undesirable *per se*. If recovery rates and debtor experiences were improved, for example, such wider benefits could outweigh a negative impact on bailiffs.

There is a lack of comprehensive and reliable research evidence and data on the enforcement industry, the work of bailiffs and bailiff firms and the experience and response of debtors and creditors. This is acknowledged by all stakeholders and academics with an interest in the field:

The research literature on bailiffs is pretty sparse, and most authors ... tend to refer to them merely in passing while dealing with other issues. (*Independent Stakeholder*)

There is a particular lack of independent evidence and data against which to balance the assertions, views and perspectives of different stakeholders.

Some illustrative examples are provided below of key information gaps relevant to monitoring and evaluating the impact of the proposed reforms over time.

1. **Changes in the structure and profitability of the bailiff industry** – Trend data on the number and characteristics of bailiff firms and of certificated and uncertificated bailiffs. Financial trend data on turnover and profitability. *Possible data sources: CIVEA; sample surveys of bailiff firms including sole practitioners.*
2. **Use of bailiffs and volume, type and size of debt enforced by bailiffs** – The number of warrants referred annually to bailiffs by debt stream, debt size and creditor.

Possible data sources: court data and data from local authorities⁴⁴ and other public sector organisations.

3. **Recovery of debt** – Recovery rates overall and by debt stream, size and type of creditor and stage at which debt is recovered. *Possible data sources: as point 2 above.*
4. **Financial impact on debtors attended by bailiffs** – Trend data on average amounts paid by debtors by debt stream. *Possible data sources: as above and from surveys of bailiff firms and/or debtors.*
5. **Characteristics of debtors attended by bailiffs** – Trend data on incidence and prevalence of bailiff action in the general population; and on characteristics of debtors by debt stream and type of creditor, including measures of income and vulnerability. *Possible data sources: Quantitative research with debtors including omnibus and bespoke sample surveys, as well as in-depth qualitative research.*
6. **Debtor experiences of bailiffs** – *Possible data sources: as point 5 above.*

⁴⁴ One option for obtaining data from local authorities would be to set up a working group comprising a small number of authorities, who would help to develop a process (and related documents/forms) for obtaining data. This could then be rolled out more widely.

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Appendix A

Key methodological information

Appendix A contains the following key information:

1. Bailiff sample characteristics
2. Stakeholder sample

1. Characteristics of bailiff sample interviewed

No. of bailiffs in firm

1	4
2-10	7
11-50	11
over 50	8

Employees or self-employed

All direct employees	12
Some direct employees, some self-employed contract	17
All self-employed contract	1

Type of debt enforced by bailiff firm

Commercial rent	22
Council tax	15
Child Support Agency	3
Court fines and charges	5
Non-domestic rates	15
Traffic and parking	17
Tax arrears	2

Writs of Fi-Fa (High Court)	8
Other (please specify)	0

Certification

None certificated	0
Some certificated, but not all	0
All certificated	30

Training

Company provides/bailiff has received formal instruction	24
Company does not provide/bailiff has not received training	6

Membership of professional bodies

All bailiffs members of CIVEA	13
All bailiffs members of HCEOA	2
All bailiffs members either of CIVEA or HCEOA	1
Some bailiffs members of either CIVEA OR HCEOA, some not	4
None	10

Firm authorised to enforce High Court writs

One or more authorised officers	9
Not involved	21

2. Stakeholder sample

1. Advice UK
2. Age UK
3. Barnet Borough Council
4. British Parking Association
5. Child Maintenance and Enforcement Commission
6. Citizens Advice Bureau
7. City of London Corporation
8. CIVEA
9. Civil Court Users Association
10. Consumer Credit Counselling Service
11. Flintshire County Council
12. High Court Enforcement Officers Association
13. Institute of Revenue Ratings and Valuations
14. Local Authority Enforcement Forum
15. Money Advice Trust
16. Zacchaeus Trust