



# Enforcement Fee Structure Review

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*Proposal for a new Enforcement Fee Structure and analysis of the issues and options*

**A report by Alexander Dehayen for the Ministry of Justice**

The objective of this report is to inform the Ministry of Justice (“MoJ”), and other stakeholders including other government departments and ministers, of the important considerations and issues underlying the design of a new **Fee Structure for Enforcement Agents (“EAs”)**, carrying out **“Non-High Court Enforcement”**, and **High Court Enforcement Officers (“HCEOs”)**, responsible for **“High Court Enforcement”**. (See *Glossary of terms and abbreviations* for a full list of those used in this report)

**“Non-High Court Enforcement”**, in this report, includes the Enforcement of Council Tax, Magistrates Courts fines and penalties (“HMCS”), Road Traffic Act Penalty Charge Notices (“RTA”), Child Support Agency (“CSA”), and in lower volumes, Commercial Rent and Non-Domestic Rates (“NNDR”) liabilities.

**“High Court Enforcement”**, in this report, refers to the Enforcement of High Court Writs of Fieri Facia (“Fi Fa”).

Throughout most of this report the issues considered apply equally to EAs and to HCEOs, and to the firms employing them: **Enforcement Agencies (“EACs”)**, and **High Court Enforcement Agencies (“HCEACs”)**. However, some issues relate specifically, or differently, to EAs and HCEOs, and are therefore necessarily discussed separately. To assist the reader to identify when particular parts of the report refer to only one of EAs or HCEOs:

*sections of the text that relate specifically to **Non-High Court Enforcement** are indicated by an orange-coloured two-line border; and*

*sections of the text that relate specifically to **High Court Enforcement** are indicated by a green-coloured three-line border.*

The report also describes MoJ’s initial modelling parameters, as communicated to the author of this report (“the economist”), in relation to each of the important parameters required after considering each of the key issues. These parameters have shaped an MoJ Proposed Fee Structure, which is also included in this report.

#### **UUMoJ Parameter**

In order to clearly identify the initial modelling parameters proposed by MoJ, as separate from the analysis of issues performed by the economist, they are presented in shaded boxes, headed with the title **MoJ Parameter**.

The MoJ initial modelling parameters are shown together at ***Appendix 1: MoJ Parameters arising out of the Enforcement Fee Structure Review.***

The Proposed Fee Structure contained in this report will also be published in a Consultation Paper. It may be advisable for stakeholders wishing to respond to the Consultation Paper to have read this

report and understood the issues and related MoJ parameters; this will assist stakeholders to provide a full and reasoned response to the Consultation Paper.

#### Disclaimer

This report is intended for use solely by MoJ, to assist its design of a Proposed Fee Structure to be included in a Consultation Paper on the subject of the Enforcement Fee Structure Review, to be published during 2010.

The Proposed Fee Structure presented in this report represents the initial modelling parameters proposed by MoJ and not the author.

MoJ may also choose to distribute this report to other interested parties and stakeholders, with the intention of assisting such parties and stakeholders to understand the process of analysis and review undertaken by MoJ in order to determine a Proposed Fee Structure.

This report should not be used by any other party, or for any other purpose, save those described above.

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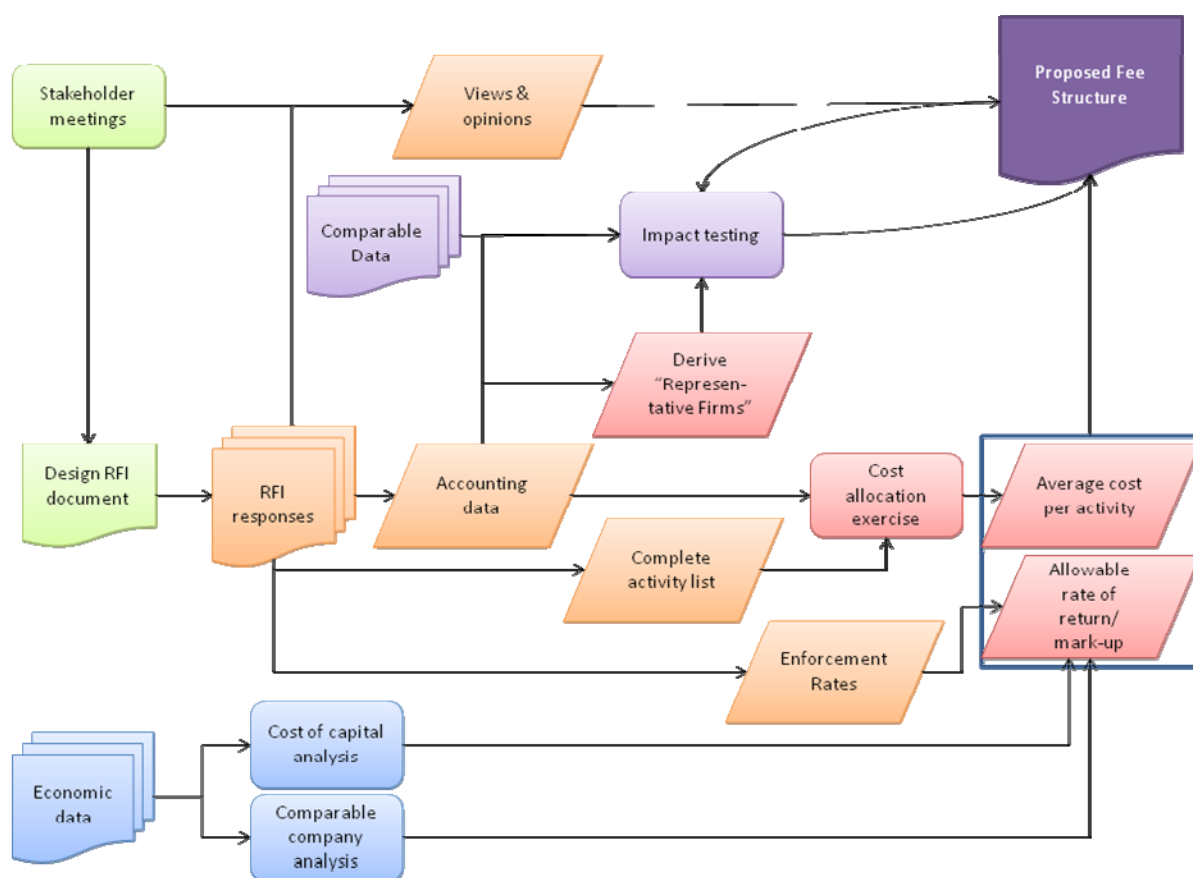
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## 1. Executive Summary

### 1.1. Approach to determining Proposed Fee Structure

The following diagram illustrates the approach adopted in this report to determining a Proposed Fee Structure:

Figure 1: Approach to determining Proposed Fee Structure



The rest of this report is structured as follows:

- **Sections 2 through 6** provide background information relating to the existing Fee Structures, the history of the current Enforcement Fee Structure Review, and some technical information concerning price control methods.
- **Section 7** explains the differences between High Court and non-High Court Enforcement and the different approaches adopted for setting fees for these types of Enforcement.
- **Section 8** explains the approach in the above diagram in greater detail.
- **Sections 9 through 18** complete each of the steps illustrated in the approach diagram. The section headings are colour-coded according to the various stages of the process.
- **Section 19** provides some recommendations for the implementation and regulation of the Proposed Fee Structure.

## 1.2. MoJ's Proposed Fee Structure

Table 1: MoJ's Proposed Fee Structure

MoJ Proposed Fees for non-High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement	£230.00	0%	7.5%
Sale	£105.00	0%	7.5%
Fee Structure Features			
Stage Triggers			
Administration	Warrant received by EAC.		
Enforcement	First attendance by EA to debtor's premises/ "door step".		
Sale	Debtor's goods sold.		
Creditor Guaranteed Fee	None.		
MoJ Proposed Fees for High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement 1	£185.00	0%	7.5%
Enforcement 2	£480.00	0%	0%
Sale	£510.00	0%	7.5%
Fee Structure Features			
Stage Triggers			
Administration	Writ received by HCEO.		
Enforcement 1	First attendance by HCEO/ EA to debtor's premises/ "door step".		
Enforcement 2	HCEO/ EA is required to reattend debtor's premises due to debtor's failure to comply with notice of seizure or with repayment arrangements previously made.		
Sale	Debtor's goods sold.		
Creditor Guaranteed Fee	£75.00. To be paid upon completion of Writ with formal notice of abortive return.		
Fee Structure Common Features			
Percentage Fees	The appropriate percentage shown in the table above is charged on the amount of the debt <i>above</i> the threshold shown.		
Order of Payment	When the EA/ HCEO recovers less than the full amount due, the repayment of original debt to the Creditor, and payment of Enforcement Fees, is to be on a <b>pro-rata basis</b> . The proportion of debt repaid, and Enforcement Fees paid, will both be equal to the proportion of the total amount collected to the total amount owed (original debt + fees).		
Multiple Warrants/ Writs	MoJ has not yet specified the calculation of fees for multiple Warrants/ Writs against a single debtor. The Consultation Paper will seek views and MoJ will use these to inform a decision.		
Exceptional Costs	The Fee Structure may be supported by an "Exceptional Costs Procedure". MoJ will ask for views in the Consultation Paper, and subsequently determine the need for, and if necessary the specification of, the procedure to be applied.		
VAT	MoJ is currently investigating the possibility of creating a uniform VAT treatment for all debt types.		
Inflation	The fixed fee levels in the Fee Structure should be updated annually by indexing to RPI. Percentage fee levels should remain unchanged. Percentage Fee thresholds should be updated periodically by indexing to RPI.		



### 1.3. Implementation and Regulation of Proposed Fee Structure

This report makes the following recommendations regarding the potential implementation and regulation of the Proposed Fee Structure:

#### 1.3.1. First time implementation

The legislation potentially introducing the Proposed Fee Structure must be clearly worded to avoid misunderstandings or misinterpretations (deliberate or otherwise) that could result in improper use of the new fees. Pre-implementation testing and a transition period leading up to the potential introduction of the Proposed Fee Structure are recommended.

#### 1.3.2. Ongoing regulation and review of the Fee Structure

The report recommends that the Fee Structure undergoes a full review at intervals of four years, with interim reviews after the second mid-review year, supported by ongoing interim measures to monitor the successful operation of the Fee Structure. Between review dates the various fee levels should be indexed to RPI, and updated annually, with Percentage Fee thresholds updated periodically.

### 1.4. Impact Testing

Two forms of impact testing were used to assess the suitability of the Proposed Fee Structure:

- Profitability Testing using a “Representative EAC” and “Representative HCEAC”, each constructed from accounting data provided in response to the RFI; and
- Fee Scenario Testing, where the fees charged in particular scenarios were compared between the Proposed Fee Structure and the existing Fee Structures.

#### 1.4.1. Profitability Testing

##### Enforcement Agencies

Under the existing Fee Structures the “Representative EAC” (constructed from a sample of 8 EACs at **13.1.1 “Representative Firms”**) achieved a **pre-tax profit margin of 8.6%**.

Projections of the “Representative EAC’s” profitability under the Proposed Fee Structure estimate a **pre-tax profit margin of 17.0%**.

The full detail of this testing is provided at **18.2.1 EAC Profitability Testing**.

##### High Court Enforcement Agencies

Under the existing Fee Structures the “Representative HCEAC” (constructed from a sample of 5 HCEACs at **13.1.1 “Representative Firms”**) achieved a **pre-tax profit margin of 10.9%**.

Projections of the “Representative HCEAC’s” profitability under the Proposed Fee Structure estimate a **pre-tax profit margin of 10.0%**.

The full detail of this testing is provided at **17.3.1 HCEAC Profitability Testing**.

## 1.4.2. Fee Scenario Testing

### Enforcement Agencies

The table on the following page shows the fees that would be charged under the Proposed Fee Structure, compared to those that would be charged under the various existing Fee Structures for a range of Enforcement scenarios.

### Observations

- In Scenarios 1 and 2, where debt recovery occurs before any attendance by an EA, the majority of existing Fee Structures provide no fees at all to the EAC. By rewarding the EAC with fees at this stage the Proposed Fee Structure should incentivise EACs to make greater efforts to recover debts without attendance.
- In Scenarios 3, 4 and 5, where Enforcement occurs during the Enforcement Stage, the Proposed Fee Structure will reward EACs with substantially higher fixed fees than available under existing Fee Structures, however EACs will no longer be able to charge the debtor with “reasonable costs”, which they may do currently for up to three separate actions (visits, attendance with a vehicle, and removal and storage). The level of these “reasonable costs” charges are difficult to quantify as EACs did not provide specific separate information about the size of these charges. However, anecdotal evidence suggests that when reasonable costs relate to vehicles (including when these are in attendance, but not specifically used for removal) they are usually in the region of several hundreds of pounds.
- HMCS provided details of the level of charges allowed under their contracts for various actions which may attract “reasonable costs” under the existing Fee Structures. The following table shows the maximum allowed contractors charges for those specific actions included in HMCS contracts:

*Table 2: Contractor fees allowed for specific actions under HMCS contracts*

Action	HMCS Maximum allowed contractor fee
Clamping	£200
Removal of motor vehicle	£200
Removal of commercial vehicle	£200
Removal of heavy goods vehicle	£200
Storage of vehicle per day	£20
Storage of non-vehicle items per day	£10
Delivery to auctioneer if not redeemed	£150
Dishonoured cheque charge	£35
Debit card payment surcharge	£3
Credit card payment surcharge	5%
Auctioneers' costs	15%

- In Scenario 6, which includes the removal and sale of goods, the fixed fees available under the Proposed Fee Structure are again substantially higher than the existing Fee Structures. However, the existing Fee Structures would allow the recharge of up to six different types of “reasonable costs” (visits, attendance with a vehicle, removal and storage, valuation, auctioneer’s fees, and advertising for the auction): none of which would be charged under the Proposed Fee Structure.

Table 3: EAC Fee Scenario Testing

Scenario	Size of debt (£)	£ Fixed Fees Charged (plus number of additional charges for reasonable costs shown in brackets)						
		Commercial Rent	Council Tax	CSA	HMCS	NNDR	Road Traffic	Proposed Fees for non-High Court Enforcement
A No successful debtor contact/ unsuccessful enforcement	Any	0.00	0.00	0.00	0.00	0.00	0.00	0.00
B1 Debtor repays in full before EA visit	100	0.00	0.00	10.00	75.00	0.00	11.20	75.00
B2 Debtor repays by instalments before EA visit	100	0.00	0.00	10.00	75.00	0.00	11.20	75.00
B3 Debtor pays in full or by instalments after first EA visit	100	0.00 (1)	24.50	10.00 (1)	275.00	24.50	11.20	305.00
B4 Debtor repays following levy on goods	100	45.65 (3)	79.00 (2)	25.50 (3)	275.00	79.00	47.70	305.00
B5 Debtor repays when EA attends to remove goods	100	45.65 (3)	79.00 (3)	25.50 (3)	275.00	79.00	47.70	305.00
B6 Debtor's goods are removed and sold to repay debt	100	60.65 (6)	89.00 (6)	35.50 (6)	440.00 (4)	89.00 (4)	62.70 (3)	410.00
C1 Debtor repays in full before EA visit	500	0.00	0.00	10.00	75.00	0.00	11.20	75.00
C2 Debtor repays by instalments before EA visit	500	0.00	0.00	10.00	75.00	0.00	11.20	75.00
C3 Debtor pays in full or by instalments after first EA visit	500	0.00 (1)	24.50	10.00 (1)	275.00	24.50	11.20	305.00
C4 Debtor repays following levy on goods	500	70.15 (3)	95.00 (2)	41.50 (3)	275.00	95.00	92.20	305.00
C5 Debtor repays when EA attends to remove goods	500	70.15 (3)	95.00 (3)	41.50 (3)	275.00	95.00	92.20	305.00
C6 Debtor's goods are removed and sold to repay debt	500	145.15 (6)	145.00 (6)	91.50 (6)	500.00 (4)	145.00 (4)	167.20 (3)	410.00
D1 Debtor repays in full before EA visit	5,000	0.00	0.00	10.00	75.00	0.00	11.20	75.00
D2 Debtor repays by instalments before EA visit	5,000	0.00	0.00	10.00	75.00	0.00	11.20	75.00
D3 Debtor pays in full or by instalments after EA visit	5,000	0.00 (1)	24.50	10.00 (1)	275.00	24.50	11.20	505.00
D4 Debtor repays following levy on goods	5,000	140.65 (3)	162.50 (2)	109.00 (3)	275.00	162.50	339.70	505.00
D5 Debtor repays when EA attends to remove goods	5,000	140.65 (3)	162.50 (3)	109.00 (3)	275.00	162.50	339.70	505.00
D6 Debtor's goods are removed and sold to repay debt	5,000	215.65 (6)	212.50 (6)	169.00 (6)	1,175.00 (4)	212.50 (4)	414.70 (3)	810.00

#### Notes

- Numbers in brackets represent the number of fees within the Fee Structure where “reasonable costs” may be charged. To determine for which actions “reasonable costs” are charged in each scenario see **Appendix 4: Summary of Existing Fee Structures**.
- HMCS fees represent the maximum amounts chargeable under the various contractors agreed fee structures.
- The 4 “reasonable costs” (clamping of vehicle, removal of vehicle, storage of vehicle, storage of non-vehicle items) shown for HMCS fees are costs allowed at prescribed levels (see **Table 2: Contractor fees allowed for specific actions under HMCS contracts**), but have been shown as reasonable costs, rather than at the prescribed levels as their occurrence or otherwise within the Enforcement Scenario is unclear.

Whilst calculating the fees due under the various scenarios and Fee Structures the following assumptions have been made:

- Existing Fee Structures for Stamp Duty Land Tax and Social Security are vague regarding how many visit fees may be charged. It has been assumed that multiple visit fees may be charged.
- For all cases including levying and/or attendance to remove it is assumed that there have been three visits made to the premises.
- Following all levies it has been assumed that “Walking possession” is taken of goods, and not “Close possession”. EACs reported that “Close possession” occurs extremely infrequently. In all cases the period of walking possession is assumed to be 30 days.
- All sales are assumed to take place at the auctioneer’s premises, and the auctioneer’s commission fee is assumed to be 10% of the sales price achieved, which in turn is assumed to be equal to the amount of debt outstanding.

## High Court Enforcement Agencies

Table 4: HCEAC Fee Scenario Testing

Scenario	Size of debt (£)	£ Fixed Fees Charged (plus number of additional charges for reasonable costs shown in brackets)	
		Writs of FiFa	Proposed Fees for High Court Enforcement
A No successful debtor contact/ unsuccessful enforcement	Any	60.00	75.00
B1 Debtor repays in full before EA visit	600	83.50 (1)	75.00
B2 Debtor repays by instalments before EA visit	600	83.50 (1)	260.00
B3 Debtor pays in full or by instalments after first EA visit	600	83.50 (2)	260.00
B4 Debtor repays following levy on goods	600	93.00 (4)	260.00
B5 Debtor repays when EA attends to remove goods	600	93.00 (4)	740.00
B6 Debtor's goods are removed and sold to repay debt	600	170.50 (6)	1,250.00
C1 Debtor repays in full before EA visit	5,000	193.50 (1)	75.00
C2 Debtor repays by instalments before EA visit	5,000	193.50 (1)	560.00
C3 Debtor pays in full or by instalments after EA visit	5,000	193.50 (2)	560.00
C4 Debtor repays following levy on goods	5,000	203.00 (4)	560.00
C5 Debtor repays when EA attends to remove goods	5,000	203.00 (4)	1,040.00
C6 Debtor's goods are removed and sold to repay debt	5,000	268.00 (6)	1,850.00
D1 Debtor repays in full before EA visit	50,000	1,318.50 (1)	75.00
D2 Debtor repays by instalments before EA visit	50,000	1,318.50 (1)	3,935.00
D3 Debtor pays in full or by instalments after EA visit	50,000	1,318.50 (2)	3,935.00
D4 Debtor repays following levy on goods	50,000	1,328.00 (4)	3,935.00
D5 Debtor repays when EA attends to remove goods	50,000	1,328.00 (4)	4,415.00
D6 Debtor's goods are removed and sold to repay debt	50,000	1,393.00 (6)	8,600.00

### Notes

- Numbers in brackets represent the number of fees within the Fee Structure where “reasonable costs” may be charged.
- Whilst calculating the fees due under the various scenarios and Fee Structures the following assumptions have been made:
- For all cases including levying and/or attendance to remove it is assumed that there have been three visits made to the premises.
  - Following all levies it has been assumed that “Walking possession” is taken of goods, and not “Close possession”. HCEOs reported that “Close possession” occurs extremely infrequently. In all cases the period of walking possession is assumed to be 30 days.
  - All sales are assumed to take place at the auctioneer’s premises, and the auctioneer’s commission fee is assumed to be 10% of the sales price achieved, which in turn is assumed to be equal to the amount of debt outstanding.

## Observations

In most scenarios the Fixed Fees available to HCEACs will increase under the Proposed Fee Structure. However, the number of instances of charging of reasonable costs will reduce from up to four (mileage for EA/ HCEO visits, mileage for attendance with a vehicle, reasonable costs for removal and storage, and for any matter not otherwise provided for, such sum as a Master, district judge or costs judge may allow upon application) during the Enforcement Stage, and up to six (as above with the addition of auctioneers fee and other costs actually and reasonably incurred as a result of sale) if goods are removed and sold.

In fact, the final category of reasonable costs allowed: “for any matter not otherwise provided” is so broad that it could be applied to almost any type of cost. The fee then past on to the debtor would be determined as “such sum as a Master, district judge or costs judge may allow upon application”.

### 1.5. Activity cost allocation exercise

A key objective of the 2003 White Paper on Enforcement was “ensuring that any new Fee Structure adequately and fairly rewards agents in public and private sectors for the work they actually do”<sup>1</sup>. This report tackles achieving this objective in three stages:

- a. identifying and understanding the work that EAs actually do by identifying the full range of activities that might take place in any Enforcement case;
- b. understanding with what frequency, or probability, these activities take place; and
- c. identifying the costs of achieving these activities; in order to use cost as the first building block to determining a fair fee level.

The table over the page summarises all of the Enforcement activities that were identified as potentially taking place, the typical frequency with which they take place, and the typical cost of performing each activity on a single occasion. The table is split between EAs and HCEOs, since the two were determined to have different activity costs and frequencies:

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<sup>1</sup> “Effective Enforcement”, A White Paper issued by The Lord Chancellor’s Department (March 2003), <http://www.dca.gov.uk/Enforcement/wp/index.htm>

*Table 5: Enforcement activities: Frequency of occurrence and typical activity costs*

Activity Name	EAC		HCEAC	
	Typical Occurrence Rate (%)	Typical Activity Cost (£)	Typical Occurrence Rate (%)	Typical Activity Cost (£)
Receive Instructions from client	100.0%	0.30	100.0%	3.08
Set up a case file	100.0%	0.29	100.0%	4.72
Further manual input of case into IT system	78.8%	0.26	100.0%	1.39
Other administrative processing (i.e. link to existing cases)	87.6%	0.62	100.0%	1.42
Confirm debtor details (address/ company searches)	84.2%	1.53	98.7%	3.01
Produce status report (probability of debt recovery)	25.5%	1.70	27.4%	1.73
Insolvency report	6.9%	0.40	52.9%	1.30
Send out first letter to advise debtor that enforcement has begun	59.6%	1.20	0.0%	N/A
Telephone call to advise debtor that enforcement has begun	10.9%	6.42	0.0%	N/A
Attend premises - first visit	97.0%	5.22	97.4%	30.65
Discuss repayment options with debtor	56.7%	4.62	36.8%	17.32
Set up payment by instalments plan	34.1%	3.00	23.5%	15.62
Administer payment by instalments plan	30.2%	2.22	23.3%	38.70
Receive repayment by credit card	24.1%	2.49	10.5%	34.68
Receive repayment by cheque	17.3%	2.35	14.7%	42.13
Sending letter to advise of failure of repayment method	21.9%	1.43	11.6%	17.41
Out of hours attendance	23.5%	1.51	27.6%	55.40
Status update letter sent to creditor	13.3%	1.65	100.0%	26.93
All subsequent attendances	89.9%	4.33	39.8%	46.55
Attendance with a view to remove goods but not removing	82.0%	3.17	31.7%	47.24
Levying goods	24.5%	5.66	34.7%	16.83
Walking possession of goods	13.7%	1.83	34.5%	17.23
Clamping vehicle	4.5%	19.42	0.3%	12.01
De-clamping vehicle	4.5%	4.61	0.0%	N/A
Close possession of goods	0.1%	2.71	0.0%	N/A
Seizure of goods	5.7%	7.16	8.5%	14.52
Removal/ transport of goods	1.2%	60.97	3.4%	674.15
Valuation of goods	0.6%	3.21	7.9%	6.09
Sale held at debtors premises	0.3%	2.33	0.1%	121.80
Sale held at site other than debtors premises	0.4%	9.67	2.8%	38.64
Pre-auction activities (i.e. advertising auction)	0.6%	1.05	2.5%	0.00
Transport of goods to place of sale	1.0%	20.39	2.4%	143.19
Auction activities (i.e. attendance of auctioneer)	0.7%	4.57	2.4%	1.70
Processing disputed ownership claims	1.4%	8.34	1.3%	333.25
Return of seized goods	0.5%	16.60	0.4%	351.00
Administration relating to case completion	100.0%	0.63	100.0%	8.88
Return of warrants	90.8%	3.30	3.7%	18.53

For details of how these activities were identified, and how the cost allocation exercise was performed to determine typical activity costs refer to sections **11. Enforcement Activities and Frequencies** and **13. Cost Allocation Exercise**.

## 1.6. Allowable rate of return

The target allowable rate of return selected was 10%.

The Proposed Fee Structure is designed to achieve a mark-up on the total cost of performing each Enforcement activity. Where the total cost includes all fixed and variable costs, both sunk and marginal costs, as well as financing costs and depreciation. This cost represents the full cost to the EAC/ HCEAC of being in business and carrying out Enforcement activities. A mark-up on such a cost

base is equivalent to a pre-tax profit margin, which shows the profit margin after all costs except tax. If set at the correct level a target mark-up on full costs (or target pre-tax profit margin) should provide an adequate and fair reward to EACs, and allow them to make the necessary investments to provide a sustainable service.

The target rate of return was set at a level determined to provide “adequate reward” and to “promote a sustainable response”<sup>2</sup>, using a variety of methods to generate target return benchmarks.

For further details regarding the selection of this rate of return refer to section **15. Rate of Return**.



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<sup>2</sup> Objectives specified in “Effective Enforcement”, A White Paper issued by The Lord Chancellor’s Department (March 2003), <http://www.dca.gov.uk/Enforcement/wp/index.htm>



## 2. About the author

Alexander Dehayen is an economist and chartered accountant (ACA). He completed his ACA qualification with Deloitte & Touche in London, gaining full membership to the Institute of Chartered Accountants in England and Wales (“ICAEW”) in 2005. Alex has a Bachelors degree in Economics from the University of Oxford (St. Catherine’s College), and a Masters degree gained at the Barcelona Graduate School of Economics (Universitat Pompeu Fabra), where his interests included microeconomics, and particularly the economics of market failure.

Alex also has a deep knowledge of economic and financial modelling, including cost allocation exercises.

Alex’s professional experience, gained as a Senior Consultant with LECG (London), includes working on price control reviews for regulated industries, working with both regulated companies and regulators. Alex now works as an independent consultant through Vemos Consulting Ltd.

LECG is a global expert services and consulting firm which conducts economic and financial analyses to provide objective opinions and advice regarding complex disputes and to inform legislative, judicial, regulatory, and business decision makers. LECG’s experts are renowned academics, former senior government officials, experienced industry leaders, and seasoned consultants.

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### 3. Chronology

The process of consultation and decision making that has preceded this report appears in numerous earlier reports, and covers a substantial time span. The key milestones in this process have been:

#### July 2001 – “Towards Effective Enforcement”<sup>3</sup>, Green Paper

The Green Paper considered the case for regulation of Warrant Enforcement Agents and a single piece of legislation to replace existing bailiff law. It also addressed the question of whether there should be a common regulatory system across all areas of Warrant Enforcement.

#### December 2001 – “Report of the Advisory Group on Enforcement Service Delivery”<sup>4</sup>

Following publication of the Green Paper an Advisory Group was formed, appointing representatives from the voluntary, private and public sectors, to provide independent advice and a market evaluation of the delivery of Enforcement services. The Advisory Group supported the Green Paper conclusion that access to information was key to effective Enforcement and strongly urged the Government to consider whether all creditors should pay an Up-front Fee to undertake Enforcement action; as a means of incentivising creditors to improve the level of information they provide to Enforcement Agencies (“EACs”). The Advisory Group believed that an Up-front Fee would be the single most effective way to raise standards and discourage exploitation of fees.

#### August 2002 – Second Report of the Advisory Group on Enforcement Service Delivery<sup>5</sup>

The Advisory Group’s second report set out its recommendations on fee principles and Fee Structures. The Report was used to inform the White Paper, which followed in March 2003, and its ten key recommendations (see **Appendix 2: Recommendations of the White Paper: “Effective Enforcement” (March 2003)**) reappeared in the White Paper’s section on fees.

#### March 2003 – “Effective Enforcement”<sup>6</sup>, White Paper

“Effective Enforcement”, a White Paper, was issued by the then Lord Chancellors Department, derived from the responses to the Green Paper and the work undertaken by the Advisory Group on

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<sup>3</sup> “Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for Enforcement”, A Green Paper issued by the Lord Chancellor’s Department (July 2001), <http://www.dca.gov.uk/Enforcement/enfrev01/index.htm>

<sup>4</sup> “Report of the Advisory Group on Enforcement Service Delivery” (December 2001), <http://www.dca.gov.uk/Enforcement/enfadgp/warrep.htm>

<sup>5</sup> “The Second Report of the Advisory Group on Enforcement Service Delivery” (August 2002), <http://www.dca.gov.uk/Enforcement/enfadgp/eagfees.htm>

<sup>6</sup> “Effective Enforcement: Improved methods of recovery for civil court debt and commercial rent and a single regulatory regime for Warrant Enforcement agents”, a White Paper issued by the Lord Chancellor’s Department (March 2003), <http://www.dca.gov.uk/Enforcement/wp/index.htm>

Enforcement Service Delivery, with the objective of improving methods of recovery for civil court debt and commercial rent and a single regulatory regime for Warrant Enforcement Agents.

This White Paper covers the areas of Enforcement Agents, data disclosure orders, and other court-based Enforcement methods. The recommendations for Enforcement Agents are split into three areas: the regulatory regime, Enforcement Agent law, and fees.

The White Paper established a commitment to ensure that any new Fee Structure should:

- adequately and fairly reward Enforcement Agents in public and private sectors for the work they do;
- be responsive to the market conditions in which it operates;
- encourage prompt payment by the debtor;
- ensure that debtors who pay do not subsidise Enforcement against those who do not;
- be sensitive to those debtors who do not have the resources to pay;
- incorporate safeguards against malpractice and exploitation;
- be supported and monitored by regulation; and
- reflect the legal position as enshrined in a single piece of Enforcement law.

Furthermore, “the new Fee Structure must support the principles of transparency, consistency and proportionality, minimise fruitless activity and promote a sustainable response”.

In line with the above principles, the White Paper suggests that a future Fee Structure should be based on the following sequential components:

- an Up-front Fee;
- fixed fees for specific activities and events generated by the Enforcement process; and
- variable fees for specific activities and events generated by the Enforcement process.

**Appendix 2: Recommendations of the White Paper: “Effective Enforcement” (March 2003)** shows the complete list of ten recommendations made by the White Paper.

### November 2006 – Tribunals, Courts and Enforcement Bill: Regulatory Impact Assessments<sup>7</sup>

When introducing or amending legislation, including new regulations, Government is required to assess whether they pose risks for individuals and organisations, particularly in relation to their health and safety, their finances, and for the environment. This regulatory assessment does so in relation to the Tribunals, Courts and Enforcement Bill.

### Tribunals, Courts and Enforcement Act 2007<sup>8</sup>

The Tribunals, Courts and Enforcement Act (“TCE Act”) 2007 received Royal Assent on 19 July 2007. Schedule 12 of the Act enables regulations to specify the fees, charges and expenses that can be

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<sup>7</sup> Tribunals, Courts and Enforcement Bill: Regulatory Impact Assessments (November 2006), [http://www.dca.gov.uk/risk/tce\\_bill.pdf](http://www.dca.gov.uk/risk/tce_bill.pdf)

<sup>8</sup>“Tribunals, Courts & Enforcement Act 2007”, [www.opsi.gov.uk/acts/acts2007/pdf/ukpga\\_20070015\\_en.pdf](http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070015_en.pdf)

charged in respect of the costs of enforcement related services. The regulations will also specify when and how the fees, charges and expenses will be recoverable from the debtor.

## **August 2008 – October 2009 – “Enforcement Fee Structure Review”**

### **August 2008**

MoJ engaged Alexander Dehayen, an economist and chartered accountant, to assist with the process of gathering detailed information to support the design of the Proposed Fee Structure. A summary of the specification requirements for the engagement of an economic consultant by MoJ are shown at **Appendix 3: Summary of specification requirements for the engagement of an economic consultant by MoJ**.

### **October 2008: Request for Information (“RFI”)**

MoJ produced a document requesting information from members of the Enforcement industry: EACs, HCEACs, and local authorities using their Enforcement services. This document (referred to as the “RFI”) requested detailed financial, accounting, and operational information and statistics, and views and opinions regarding the new Fee Structure to be provided by the respondents. The full RFI can be found at **Appendix 5: Industry Members RFI**. Responses to the RFI were returned in November 2008. More detail relating to the responses received can be found at section **10: RFI Responses: Views & Opinions** and **Appendix 8: Examples of RFI Responses**.

### **November 2008 – “Compliance & Enforcement: Joint submission in relation to the Enforcement Agents Fee Structure Review” (ACEA & ESA)<sup>9</sup>**

ACEA and ESA jointly prepared a submission to assist the Fee Structure review process, which includes a proposed Fee Structure, and is supported by many of the members of both associations as representative of their views on the new Fee Structure.

### **December 2008 – HCEOA Alternative Proposed Fee Scale<sup>10</sup>**

HCEOA submitted a paper for consideration by MoJ as part of the Enforcement Fee Structure Review, proposing a separate Fee Structure for the work of HCEOs, as HCEOA does not support the use of a uniform Fee Structure common both to EAs and HCEOs.

### **December 2008 - Marston Group submission in relation to Writs of control<sup>11</sup>**

Marston Group, as an enforcer of High Court Writs, submitted its own proposal for a Fee Structure to apply to High Court debt-types.

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<sup>9</sup> “Compliance & Enforcement: Joint submission in relation to the Enforcement Agents Fee Structure Review – Tribunals, Courts & Enforcement Act 2007”, ACEA and ESA (12 November 2008)

<sup>10</sup> “HCEOA Alternative Proposed Fee Scale for the Enforcement of High Court Writs of Fieri Facias and Writs of Possession and Restitution” (December 2008)

<sup>11</sup> “Compliance & Enforcement: Enforcement Agents Fee Structure Review – Tribunals, Courts & Enforcement Act 2007” – Marston Group submission in relation to Writs of Control (15 December 2008)

*June 2009 – September 2009 – Meetings of Industry Working Groups to discuss Enforcement Fee Structure Review*

MoJ invited representatives of the main industry associations to form two working groups:

- the **Non-High Court Enforcement Fees Working Group**, with representatives from the two main Non-High Court Enforcement industry associations: ACEA and ESA; and
- the **High Court Enforcement Fees Working Group**, with representatives from the main High Court Enforcement industry association: HCEOA.

The objective of each of the Working Groups was to collaborate with and assist MoJ by providing the required information and views and opinions, on behalf of the association members, to inform the Enforcement Fee Structure Review process. Between June and September 2009 several meetings took place between these Working Groups, representatives of MoJ, and the economist.

**November 2009 – “Enforcement Fee Structure Review”**

This report presents the results and analysis of the “Enforcement Fee Structure Review” exercise, and includes MoJ’s initial modelling parameters and a Proposed Fee Structure by MoJ. The recommendations of this report will be further considered by MoJ, along with other government departments and ministers, prior to obtaining ministerial approval for the inclusion of the Proposed Fee Structure in an industry Consultation Paper.

Under the current timetable, the process of internal government review of issues and proposals is scheduled to take place during 2009, and the Consultation Paper will be published in 2010.

## 4. Background: Why does the Enforcement industry need a Fee Structure?

**The Enforcement industry requires a Fee Structure because, in its absence, market forces do not act effectively to set a market price.**

### 4.1.Features of a typical competitive market

In a typical, competitive market the market price functions as a mechanism to equalise the quantity of the good, or service, demanded by consumers, and the quantity supplied by producers; resulting in an economic equilibrium of price and quantity. Generally, the higher the price of a good or service the more producers are willing to supply, but the less consumers desire to consume. Therefore, only at a single price: the market equilibrium price, does the quantity that consumers desire to consume match the quantity that producers are willing to produce. For this reason, this price is also known as the market clearing price.

In order for a market to behave in this “perfectly competitive” manner, a number of restrictive assumptions are necessary:

1. **Many buyers/ Many sellers** – There exist many consumers with the willingness and ability to buy the product at a certain price, and many producers with the willingness and ability to supply the product at a certain price;
2. **Homogeneous products** – The products of the different firms/ producers are exactly the same;
3. **Low entry/exit barriers** – It is relatively easy for a new firm to enter the market, or for an existing firm to leave the market;
4. **Perfect information** – for both consumers and producers; and
5. **Firms aim to maximise profits.**

There are very few markets where these conditions hold strictly. Most notably, aside from certain commodities, it is rare to find markets where the products of all firms are exactly the same. Therefore, very few markets function as, and may be described as, perfectly competitive markets.

However, where the above conditions mostly hold, markets are usually characterised as competitive, and the market forces of supply and demand may act to set a market price, or a range of market prices, for non-homogeneous products (for example, products with quality or capacity differences).

### 4.2.Features of the market for Enforcement services

Considering these criteria, it may therefore be somewhat surprising that the market for Enforcement does not function in a competitive manner, and therefore that we cannot leave market forces to set the market price:

1. **Many buyers/ Many sellers** – There are a large number of EACs agencies active in the UK (the *Plimsoll Portfolio Analysis of the UK Bailiff Industry*<sup>12</sup>, for example, identifies the top 51). There are also an extremely large number of creditors who might potentially require the services of an EAC. This number is bounded only by the number of individuals residing in, and companies operating in, England and Wales and includes at least all of the Local Authorities (“LAs”) and Magistrates Courts who are regular users of Enforcement services.
2. **Homogeneous products** – EACs employ different methods of Enforcement, and use different procedures and systems to support their business; all of which can result in achieving different Enforcement Rates. However, essentially EACs provide the same service, and the actions which they may undertake in providing that service are dictated within legislation. That is not to say that Enforcement services are homogeneous, only that they are no less so than many other product/ service markets which operate through competitive forces.
3. **Low entry/ exit barriers** – Some EACs are able to set up small businesses operating using only one, or just a few certificated EAs. The key barriers to entry are human resources; being certificated EAs with the necessary knowledge and skills of operating within the Enforcement industry. The Enforcement industry is not particularly capital intensive (see **15.1.4 Cost of capital analysis**) and entry does not require large investments in capital. Again, that is not to say that barriers to entry or exit do not exist for EACs; only that they are not obviously greater than many other product/ service markets which do operate through competitive forces.
4. **Perfect Information** – There are some potential problems of imperfect information in the Enforcement market. A typical principal and agent problem exists between the creditor (principal) and the Enforcement Agent (agent), since once the creditor has appointed an Enforcement Agent to collect his debts, the Enforcement Agent’s subsequent actions are not fully observed by the creditor. There are further information asymmetries at play. For example, the debtor is aware of their own ability to pay a debt, whilst an Enforcement Agent must surmise the debtor’s ability to pay (or the probability that the proceeds of a sale of the debtor’s goods will cover) the outstanding debt.
5. **Firms aim to maximise profits** – Some peculiarities of the Enforcement industry mean that other factors than profit may be important. For example, LAs may decide to enforce (perhaps using in-house Enforcement Agents) certain debt-types where the expected costs exceed the expected recoveries. LAs may engage in these Enforcement activities to maintain a sense, within the community, that a moral obligation exists to pay debts to the LA, and that the Enforcement of these debts is akin to the Enforcement of justice. Whilst private EACs also uphold these principals, they are naturally mainly driven by profits.

The market for Enforcement does not strictly meet all of the criteria for a perfectly competitive market. However, there are many markets for products and services which fail to meet these criteria and yet competitive market forces can, and do, operate successfully to set a market price, or range of prices.

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<sup>12</sup> “The UK Bailiffs Industry: A comprehensive financial analysis of the top 51 companies”, Plimsoll Portfolio Analysis (3<sup>rd</sup> ed. 2008).

### 4.3. Participants in the market for Enforcement services

The market participants in the Enforcement industry are:

- **Creditors** – who are owed an unpaid debt by debtors, and whom appoint an EA in order to attempt to collect that debt. Under the current legal system and Fee Structures, the creditor is most frequently not required to make any payment to the EA for these services (the exception being a £60.00 “Abortive Fee” payable when a High Court Enforcement Officer (“HCEO”) has unsuccessfully attempted to collect a debt).
- **Enforcement Agents** – who are appointed by creditors to enforce against unpaid debts owed by debtors, and then undertake a series of actions (unobserved by the creditor) which are mostly defined within legislation, to attempt to recover the debt on behalf of the creditor. By undertaking actions the EAs incur fees, which are charged to the debtor and are due to be paid by the debtor in addition to the repayment of the original debt.
- **Debtors** – who have an unpaid liability to a creditor, and who have failed to meet the payment terms, and possibly also failed to meet alternative payment terms offered by the creditor prior to the commencement of Enforcement activities.

The key difference between other “competitive” markets and the market for Enforcement services, (including markets where an agent acts on behalf of a principal) is that EAs are appointed by a creditor (principal), yet payment for these services is made by the debtor.

In this scenario price does not act as a mechanism to equilibrate supply and demand. Whilst the supply of Enforcement services increases as the price increases, demand is unaffected by price as the creditors (principals), who demand Enforcement services, do not pay the price of these services.

This scenario is created because various creditors are given the right, in statute, to attempt to collect the debts owed to them by debtors, but to pay limited or no costs: as a recognition of their right to collect. In the absence of this right, and therefore in a world where creditors are obliged to pay for the Enforcement services provided to them, market forces could act to determine an equilibrium price for Enforcement services (not withstanding the other principal and agent, and information asymmetry problems inherent in the market which may impede market forces).

It is interesting to observe that for many market failures typically studied by economists, the market failure may be addressed by assigning “rights”. For example:

- Tradable emissions permits, which establish a right for companies to create a certain amount of polluting emissions, may potentially be used to control pollution by providing economic incentives. There are active trading programs in several pollutants; for example, the European Union Emission Trading Scheme, or the national market for nitrous oxide in the United States.
- In classic economic literature the “Tragedy of the Commons” (in which multiple individuals using a shared resource and acting in a self-interested fashion may be shown to use the resource beyond its efficient limit) can be addressed by assigning property rights and taxing individuals for their use of the resource.



However, in the market for Enforcement, the market failure exists precisely because of the “right” of the creditor to be able to collect their debt from the debtor, and to be able to do so at no cost (or at a limited cost defined by statute) to the creditor.

In the presence of these market failures, which prevent market forces from determining an equilibrium price government intervention is required to set the market price through the mechanism of a regulated fee structure.

## 5. Current Fee Structures

### 5.1. Statutory Fees

Currently the fees that EACs are able to charge to debtors are laid out in statute. A separate set of statutory fees is defined for each different debt-type enforced. The table below shows the Statutory Instruments (“SIs”) that defines fees for each debt type; subsequent amendments to these SIs are listed in the footnote:

*Table 6: Statutory Instruments setting fee levels for Enforcement of different debt-types<sup>13</sup>*

Debt-Type	Statutory Instrument
<b>Council Tax</b>	SI 1992 No. 613 The Council Tax (Administration and Enforcement) Regulations 1992
<b>Child Support</b>	SI 1992/1989 Child Support (Collection and Enforcement) Regulations 1992
<b>Commercial Rent</b>	SI 1988/2050 Distress for Rent Rules
<b>County Court Judgments</b>	SI 2008/1058 Civil Proceedings Fees Order
<b>Customs &amp; Excise Duties</b>	SI 1997/1431 Distress for Customs and Excise Duties and Other Indirect Tax Regulations
<b>HMCS</b>	HMCS contracts out Enforcement service to three EACs, each covering different regions of England and Wales. Fee levels are set by competitive tender for each of the contractors individually. Specific fee level information for each of the contractors is not disclosed in this report for confidentiality reasons
<b>Non-Domestic Rates</b>	SI 1989/1058 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations
<b>Road Traffic</b>	SI 1993/2072 Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations
<b>Social Security</b>	SI 1999/980 Distraint by Authorised Officers (Fees, Costs and Charges) Regulations
<b>Stamp Duty Land Tax</b>	SI 2003/2837 Stamp Duty Land Tax (Administration) Regulations, and SI 1999/3263 Distraint by Collectors (Fees, Costs and Charges) (Stamp Duty Penalties) Regulations
<b>Taxes (Income Tax, Capital Gains Tax and Corporation Tax)</b>	SI 1994/236 Distraint by Collectors (Fees, costs and charges) Regulations 1994
<b>Writs of Fi Fa</b>	SI 2004/400 High Court Enforcement Officers Regulations 2004

<sup>13</sup> Amendments to SIs listed in table:

**Child Support:** SI 1994/227

**Council Tax:** SI 1993/733; SI 1998/295; SI 2003/2211; SI 2004/1013; SI 2006/3395; SI 2007/501

**Commercial Rent:** SI 2003/1858; SI 2003/2141

**Non-Domestic Rates:** SI 1993/774; SI 1998/3089; SI 2003/2210; SI 2004/2013; SI 2006/3395; SI 2007/501

**Road Traffic:** SI 2003/1857

A summary of the fees payable for each of the debt-types under the various statutes is shown at **Appendix 4: Summary of Existing Fee Structures**.

## 5.2. Failings of Existing Fee Structures

The failings of the existing Fee Structures fall into several categories:

- Level of fees;
- Clarity of fee scales;
- Potential for abuse; and
- Inappropriate incentives.

The key criticisms of the existing Fee Structures are different for each of the main stakeholders:

- Debtor;
- EAC; and
- Creditor.

### 5.2.1. Level of fees

The level of fees under the existing Fee Structures has been criticised from two directions. Debtors feel that the Enforcement fees, which they have to pay when attempting to clear their debts as a result of some Enforcement actions, are too high; particularly in relation to the size of the original debt.

EACs/ HCEACs on the other hand argue that the statutory fees are too low, particularly as no fees at all may be charged for many administrative actions. They claim that the higher fees charged on successful Enforcement cases are entirely necessary to compensate them for the majority of cases where they are able to collect no fees at all; and that without charging these fees they would not be able to sustain a profitable business.

This report uses a transparent and accountable approach in order to propose a level of fees at reasonable and appropriate levels.

### 5.2.2. Clarity of fee scales

Both debtors and EACs agree that the fee scales are unclear, primarily because different Fee Structures exist for different debt-types. Loose wording of the existing Fee Structures also leads to questionable treatment of charges by EACs, and to debtors feeling unfairly treated when these treatments are not in their favour.

The Enforcement Fee Structure Review aims to address this existing problem by investigating the possibility of defining a single Fee Structure to be applied, as far as functionally possible, across all debt-types. As well as reducing the number of different Fee Structures in operation, the review also aims to investigate reducing the number of different fees chargeable under these Fee Structures, and to ensure that the wording of the proposed Fee Structure and potential supporting legislation can be drafted particularly carefully.

Stakeholder views on the clarity of the existing Fee Structures are considered in more detail at **10.2.1 Views on current Fee Structures** and at **Appendix 8: Examples of RFI Responses**.

### 5.2.3. Potential for abuse

Debtors' complaints have revealed several types of alleged abuse which the existing fee structures enable or encourage EACs/ HCEACs to make:

- EACs claiming to have undertaken actions for which fees may be charged, despite not having carried out those actions;
- Charging an allowed fee multiple times when the EA holds multiple Warrants relating to a single debtor, despite carrying out the chargeable action only once;
- Using inappropriate charges for actions that do not have chargeable fees under the relevant statutory instrument; and
- Making excessive charges under the "reasonable costs" fees allowed under the existing Fee Structures.

The specifics of how these abuses may be perpetrated are explained in more detail at **10.2.2 Nature of current abuses**.

Most EACs, even where they claim not to be carrying out the above actions, do recognise that some members of the industry may be, or that the abuses may be perpetrated by individual EAs without the knowledge of EACs. Some EACs claim that the abuses are driven by the unreasonably low level of statutory fees, which they claim create a need for EACs, or individual EAs, to recover fees by manipulation or abuse of the Fee Structure.

Stakeholder views on the potential for abuse of the existing Fee Structures are considered in more detail at **10.2.2 Nature of current abuses** and at **Appendix 8: Examples of RFI Responses**.

### 5.2.4. Inappropriate incentives

The existing Fee Structures create inappropriate incentives for EA behaviour, including:

- Incentive to rapidly escalate charges, particularly in cases that are likely to result in successful recovery, by undertaking (or claiming to undertake) successive stages of Enforcement activity, whether or not the activity was necessary to achieve repayment;
- Disincentive to attempt to enforce difficult, "won't pay" debts where EA assesses that repayment may be unlikely. This is likely to include a disproportionately large volume of persistent offenders, who are more skilled at evading Enforcement action;
- Incentive to pursue debts where many additional costs may be charged through the use of the "reasonable costs" fee;

- Disincentive to accept repayment plans (such as payment by instalments) as an alternative to seeking payment in full (“PIF”), because timing of cash flows and of fee recovery are unattractive to the EAC.

The new Fee Structure should attempt to address each of the four categories of problems described above, whilst also seeking to balance the conflicting interests of all parties in a fair manner. Any new Fee Structure must represent a compromise between these interests, and it is therefore unlikely that all of the elements will be uniformly welcomed by all parties.

### 5.2.5. Debtors’ Perspective

From a debtor’s (and debtor advice agency’s) perspective the key criticisms of the existing Fee Structures are:

- There are many different Fee Structures for many different debt-types meaning that:
  - it is difficult for debtors to understand what fees they will be charged;
  - it appears unfair and incorrect if they are charged more for some debt-types than others;
  - Enforcement fees are higher for some debt-types even though the actions carried out by the EAC are almost identical; and
  - the fees and how they are calculated are difficult for debtors to comprehend, which adds to the potential for them to be exposed to the other types of abuse reported.
- EACs charge debtors for actions, such as visits (“phantom visits”) and attendance of removal vans (“van fees”), which debtors claim have never taken place.
- Since the Fee Structures include the use of “reasonable costs” it is not possible to tell in advance at what level the fees will be. Furthermore, EACs may use these fees as a way of increasing (possibly disingenuously) the total fees charged, by undertaking superfluous tasks or adopting practices designed to inflate charges.
- Where EACs hold multiple Warrants against the same debtor they may seek to make multiple charges for a single action taken against the debtor.

For a much fuller account of debtor (and debtor advice agency) criticisms of the existing Fee Structures see the Citizens Advice Bureau (“CAB”) paper *Undue Distress*<sup>14</sup>.

### 5.2.6. EACs’ Perspective

From an EACs perspective the key criticisms of the existing Fee Structures are:

- Where abuses of the existing Fee Structures by EAs or EACs take place, they do so because it is not possible to earn a reasonable profit from the unreasonably low statutory fees allowed;
- Fees were set in the past and have not kept track with inflation;

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<sup>14</sup> Undue Distress: CAB clients’ experience of bailiffs, NACAB (2000), [http://www.citizensadvice.org.uk/undue\\_distress](http://www.citizensadvice.org.uk/undue_distress)

- EACs are expected to provide a free service to the creditor. They receive no reward for the many cases that are unenforceable, and therefore need to increase (possibly disingenuously) the fees chargeable for enforceable cases in order to cover the cost of the much more numerous unenforceable ones;
- Because the service is free to the creditor, the creditor spends little or no time checking information quality, or likelihood of successful Enforcement, before passing cases to an EAC. The EAC therefore effectively assumes the costs of the creditor's information processing without being rewarded through the existing Fee Structures.

Section **10. RFI Responses: Views & Opinions** presents a more detailed account of EACs' views on the current Fee Structures.

### **5.2.7. Creditors' Perspective**

Creditors have few complaints in relation to the existing Fee Structures, primarily because they allow the creditor to use Enforcement services at no cost. However, some creditors may be dissatisfied with the Enforcement Rates (in terms of Debt Recovery Rate) that are achieved by EACs, and may associate this poor performance with inappropriate incentives generated by the Fee Structures.

## 6. Guidance for Approach to Determine Proposed Fee Structure

There are two key sources of guidance for determining an appropriate approach for defining a proposal for a new Fee Structure:

- a) Earlier consultation and documentation relating to Enforcement fees (see section **3. Chronology**); and
- b) Procedures used to set prices in other price-controlled industries.

### 6.1. Earlier consultation and documentation

The various documents that make up the earlier review process were discussed in detail at section **3. Chronology**. The preceding elements culminate in the 2003 White Paper<sup>15</sup>, which contains the clearest specific guidance for the requirements of the proposed Fee Structure.

The White Paper provided a broad framework for a Proposed Fee Structure (a full list of the White Paper's proposals is provided at **Appendix 2: Recommendations of the White Paper: "Effective Enforcement" (March 2003)**), but left elements requiring further analysis before it could be precisely specified. The proposed framework included:

- objectives that any new Fee Structure should achieve, and principles that it should adhere to; and
- specific proposed elements of a new Fee Structure:
  - **an Up-front Fee** – covering a loosely specified set of activities, with exact form and quantum of the fee to be determined;
  - **Fixed Fees** – covering a range of proposed actions, with quantum to be determined; and
  - **Variable Fees** – covering a range of proposed actions, with quantum to be determined.

This partly specified framework, along with MoJ's specification for an economic consultant (see **Appendix 3: Summary of specification requirements for the engagement of an economic consultant by MoJ**), provided the basis for the objectives which guided the approach adopted.

As well as specific guidance, the White Paper also lays out a number of key principles to which any new Fee Structure must adhere:

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<sup>15</sup> "Effective Enforcement: Improved methods of recovery for civil court debt and commercial rent and a single regulatory regime for Warrant Enforcement agents", a White Paper issued by the Lord Chancellor's Department (March 2003), <http://www.dca.gov.uk/Enforcement/wp/index.htm>

- Adequately and fairly reward agents in public and private sectors for the work they actually do;
- Encourage prompt payment by the debtor;
- Ensure that debtors who pay do not subsidise Enforcement against those who do not;
- Be sensitive to those debtors who do not have the resources to pay;
- Incorporate safeguards against malpractice and exploitation;
- Be supported and monitored by regulation; and
- Reflect the legal position as enshrined in a single piece of Enforcement Agent law.

Furthermore, “the new Fee Structure must support the principles of transparency, consistency and proportionality, minimise fruitless activity and promote a sustainable response”.

## 6.2. Other price-controlled industries

Several industries in the UK operate, or have operated, within a price-controlled environment. This is generally the case where market forces in those industries do not function effectively to set prices at a competitive level. This is most commonly the case in industries that are, or have in the past been, controlled by a monopoly provider. Examples in the UK include civil aviation, electricity, gas, post, rail, telecommunications and water.

In section **6.3 Price-Cap Regulation: A general approach**, below, I will consider the technical details of the method used by UK regulators to set controlled prices in regulated industries; with the objective of identifying a standard methodology that could be applied to set controlled prices in the Enforcement industry.

Section **6.4 Barriers to applying standard Price-Cap Regulation in the Enforcement industry** identifies several features, peculiar to the Enforcement industry, which prevent the standard methodology from being applied in a straight-forward manner. As well as identifying the barriers to applying the standard methodology, alternative methodologies that could be adopted to overcome these barriers are also considered.

The process of identifying barriers to the standard methodology and options for overcoming those barriers informed the formulation of an approach to determining a Proposed Fee Structure; which is presented in detail in section **8. Approach to Determine a Proposed Fee Structure**.

## 6.3. Price-Cap Regulation: A general approach

Under Price-Cap Regulation the price allowed to be charged for a particular quantity of goods or services is fixed by a regulator. The price is fixed by considering what rate of return the regulated company should be allowed to earn at projected volumes and costs, based on the company's assessed cost of capital. The allowed return and projected costs define the revenue required to



achieve the allowed return. The regulated price is then determined by considering the revenue requirement and volume projections. Price-Cap Regulation is used by regulators in the UK to set prices in price-controlled regulated industries.

There follows a summary of the workings of Price-Cap Regulation. The intention is not to provide a comprehensive explanation, but to examine whether some aspects of the process might be useful to inform the process adopted in this paper to determine the Proposed Fee Structure.

There are several key elements which determine a regulated price:

- An allowable **rate of return**;
- A **Regulatory Asset Base ("RAB")** to which the rate of return is applied;
- Projected costs;
  - **operating expenditure**
  - **capital expenditure**
- Projected volumes over the regulatory period;
- Revenue requirement (required to achieve allowed rate of return over regulatory period); and
- Regulatory price

These key elements are described in turn below:

### 6.3.1. Rate of return

The rate of return is determined by reference to the cost of capital; specifically the weighted average cost of capital. The weighted average cost of capital, is calculated as the weighted average of the cost of debt and the cost of equity for the regulated company's actual, or sometimes target, financing structure (ratio of debt to equity).

The **real cost of debt** is the post-tax cost of interest that a company must pay to the providers of its debt finance, and can be determined with reference to a company's existing and potential sources of debt finance. The **cost of equity** is the return, in terms of dividends and capital growth, that equity shareholders expect to realise on their investments in the company. The cost of equity can be determined with reference to the companies "beta", which is a measure of the relative volatility of its share price compared to the volatility of the market as a whole.

Under Price-Cap Regulation, the regulator calculates the cost of capital and then uses this to define the rate of return that the company is permitted to earn from its operating assets: the "RAB".

### 6.3.2. Regulatory Asset Base ("RAB")

The RAB is the base of operating assets, used by the regulated company to undertake the regulated business, and upon which the regulated company is permitted to earn the allowed rate of return. There are several methods by which the RAB may be determined, broadly either cost-based or value based, each of which requires detailed asset information and follows a fairly complex procedure. The regulator assesses the RAB opening value for the base year of the regulatory period.

### **6.3.3. Projected operating expenditure**

The regulator assesses the base year operating costs of the regulated company and adjusts these costs to remove any one-off, or exceptional, items. Base year costs are normally assessed on a “cash-basis” which means stripping out capital charges such as depreciation, and any accruals or prepayments. The accurate determination of base-year costs can be a complex exercise which requires access to detailed accounting records.

The regulator may make efficiency adjustments if the actual costs of the regulated company are shown not to represent an “efficient” level of costs for the activity performed. Efficiency adjustments are usually informed by in-depth benchmarking exercises, which seek to compare the level of cost incurred by the regulated company to levels of cost incurred by comparable companies in similar industries, in the same industry in a different geography, or even by comparable divisions of companies performing different activities.

Finally, detailed forecasting is used to project, from efficient base-year costs, the expected level of costs in each year of the regulatory period; taking into account projected volumes and possible changes to cost efficiency.

### **6.3.4. Projected capital expenditure**

The regulator also assesses the capital expenditure requirements necessary for the regulated company throughout the regulatory period, and determines a planned program of capital expenditure. The regulated company is then monitored and audited to ensure that its actual capital expenditure is sufficiently in line with the planned program. Preparing a capital expenditure program is a complex task as it requires a detailed understanding of the businesses needs, and the cost of investing in capital to fulfil those needs. Capital expenditure and depreciation affect the level of the RAB over the regulatory period.

### **6.3.5. Projected volumes over the regulatory period**

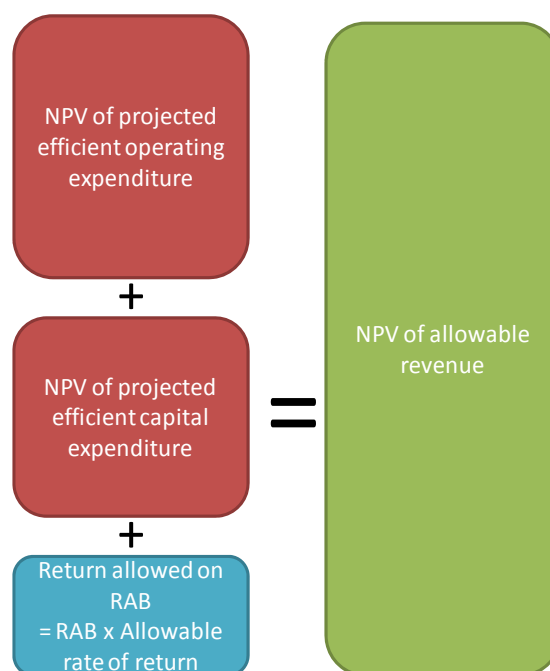
Projected volumes are important, as volumes affect the level of both costs and revenue. The relationship between volume and revenue is simple to understand as revenue is the product of volume and unit price (this relationship is most simple when the product is characterised by single homogenous units). The relationship between volume and cost is more difficult to understand as total costs consist of the sum of fixed costs and the product of marginal costs and volume. Furthermore many costs are difficult to categorise between marginal and fixed costs; for example, because some costs do increase as volume increases, but do so in steps rather than linearly.

Many price controlled industries are characterised by a large proportion of fixed costs; for example, because of large upfront investments in assets and infrastructure. In industries like these, economies of scale are important: the cost per unit of output reduces significantly as volume increases. Since unit cost is therefore sensitive to volume, accurate volume projections for the regulatory period are important to determine the appropriate unit price required to achieve the desired revenue requirement which will deliver the target rate of return. Failure to accurately project volumes over the period can result in the allowed unit price diverging from the actual unit cost, which can cause the return earned by the company to deviate significantly (in either direction) away from the target rate.

### 6.3.6. Revenue requirement

The regulator determines the required net present value (“NPV”) of revenue during the regulatory period in order for the regulated company to meet its operating and capital expenditure requirements in the period, and to provide the allowed rate of return on its RAB.

*Figure 2: Regulatory approach to determining level of allowable revenue*



### 6.3.7. Regulated price

Having determined the NPV of allowable revenue over the period, and created volume projections, the regulator calculates a regulatory unit price: by dividing the revenue requirement by the projected volumes. Calculating the unit price is simpler where the regulated company only offers a single product or service, or commodity; for example, where the regulated company is a utility provider. The regulatory price is normally indexed to inflation over the regulatory period, and may include an RPI-X component. The X may be either a positive or negative quantity, and is set in order to incentivise expected performance improvements (a negative value for X), or to allow for more difficult anticipated operating conditions during the regulatory period (a positive value for X).

## 6.4. Barriers to applying standard Price-Cap Regulation in the Enforcement industry

The output of the Price-Cap Regulation method described above is a price determined to allow the regulated company to achieve a target rate of return on its assets over the regulatory period. It might therefore seem appealing in principle to attempt to apply this approach to the Enforcement industry to determine a fair reward for the work performed by EACs/ HCEACs.

Whilst the approach adopted in this paper (see section **8. Approach to Determine a Proposed Fee Structure**) draws on many of the principles of price-cap regulation, there are a number of major impediments to applying the standard methodology to the Enforcement industry:

- Regulated price;
- Heterogeneity of Enforcement services;
- Access to accounting data;
- Determining allowable rate of return;
- Determining RAB;
- Determining efficient capital expenditure;
- Determining efficient operating expenditure;
- Projecting volumes over the regulatory period; and
- Lack of established regulatory agency

There follows a brief explanation of each of these impediments, along with an explanation of how the approach adopted in this report has attempted to address them.

#### 6.4.1. Regulated price

The largest single impediment to applying the regulated price-cap methodology is that rather than set a regulated price for a **single company**, the Fee Structure is required to set fees to function across a **whole industry**. Therefore the analysis performed to set the price cannot be a detailed analysis considering only the single regulated company, but must be an analysis that considers the industry as a whole.

This report will collect data from as many firms as possible operating in the Enforcement industry, and will use this data to construct an aggregate “Representative Firm”. Further analysis will then be performed, using the “Representative Firm”, to determine prices to apply across the whole industry. Since the “Representative Firm” should represent the whole industry, data should be collected from firms of various different sizes and types, in order to attempt to represent the whole industry rather than a subsection of it. Since the initial intention is to have all EACs and HCEACs used the same Fee Structure, and because these firms have different business models and cost bases, it is almost inevitable that a single Fee Structure will be more favourable to some firms than to others.

#### 6.4.2. Heterogeneity of Enforcement service

Unlike most traditional Price-Cap Regulation, where a regulated price is set for a homogenous unitary good or service, the Fee Structure will set prices for an Enforcement service which may have subtle, yet important, differences between service providers. Although legislation defines and constrains the actions that may be legally undertaken by EAs and HCEOs, it does allow for different approaches and emphases within the bounds of the law. Therefore different EACs/ HCEACs may provide heterogeneous services in terms of both quality and types of action undertaken. A key measure of the level of service provided: the Enforcement Rate achieved, is very likely to vary between different EACs/ HCEACs and different debt-types, and is the clearest indicator of the inherent heterogeneity of the service.

Furthermore, the Enforcement service may consist of various levels of activity dependant on when the case is successfully enforced, or abandoned as deemed unenforceable. Therefore, the service provided may consist of various levels of activity, and consequently the Fee Structure should not set a single unitary price for the service, but rather several prices for each of the various stages which the process may include.

The setting of fees for different stages of the Enforcement process will be guided both by an analysis of the estimated costs of performing the activities associated with each stage of the process, and by a broader consideration of how the fees may incentivise appropriate behaviour by EAs/ HCEOs with reference to reported, and potential, opportunities for abuse of the fee scale.

### 6.4.3. Access to accounting data

In order to perform a price control review the regulatory agency requires detailed access to almost all elements of a company's accounting data.

This is very problematic in the Enforcement industry. EACs/ HCEACs are understandably reluctant to allow access, and such detailed interrogation, of their confidential and sensitive accounting data. In price regulated industries legislation entitles a regulator to access this data, and obliges regulated companies to provide it. Where no such obligation exists, as in the Enforcement industry, obtaining sufficiently detailed access to data is very challenging.

The process could potentially proceed, at a much reduced level of detail, with access to company financial statements. However, many EACs/ HCEACs are private companies, or exempt small companies, and therefore do not publicly publish even moderately detailed accounting information.

The approach adopted in this report will be to engage closely with the participant companies in the Enforcement industry and to request that they provide the necessary data on a voluntary basis. To improve the chances of receiving sufficient data the approach should be transparent to EACs/ HCEACs and attempt to provide as robust a guarantee as possible in relation to the confidentiality of the data (see the confidentiality statement within the RFI document at **Appendix 5: Industry Members RFI**).

Data will be supplemented, where possible, by obtaining information filed at Companies House, and cross-checking this to the data provided. A further useful source of information for the Enforcement industry: *"Plimsoll Portfolio Analysis: The UK Bailiffs Industry"*<sup>16</sup>, will also be used where possible.

### 6.4.4. Determining allowable rate of return

#### Cost of capital

In the current review the allowable rate of return must be determined for the industry, rather than for a single company. The industry contains firms that may be assessed, by both lenders and equity investors, as providing investments at different levels of risk (thus having different costs of debt and equity, and providing a different rate of return). This report will attempt to identify an industry

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<sup>16</sup> "The UK Bailiffs Industry: A comprehensive financial analysis of the top 51 companies", Plimsoll Portfolio Analysis (3<sup>rd</sup> Edition 2008).

average cost of debt and equity, along with an industry average capital structure, which may be used to determine the weighted average cost of capital for the industry.

The cost of debt can be determined relatively easily by examining the terms on which debt finance is provided to EACs/ HCEACs (where this information is provided). However, determining the cost of equity is more difficult as the large majority of EACs/ HCEACs do not trade shares on any stock exchange, and therefore the beta measure (of the share price volatility) and consequently the cost of equity, cannot be calculated.

In order to estimate the cost of equity for EACs/ HCEACs a comparable companies approach may be applied. This will involve identifying companies of comparable size with comparable business activities, and which have shares traded on a public exchange. The cost of equity may then be estimated for the selected group of comparable companies, using their beta values (available from market data sources). This beta value may then be used as a proxy for the cost of equity for EACs/ HCEACs, potentially after making some adjustments to take account of factors such as the non-publicly traded status of most EACs/ HCEACs.

In order to examine whether the estimated industry weighted average cost of capital would provide an appropriate rate of return target, a broader range of comparable rates of return will also be considered (See section **15. Rate of Return**).

#### Other possible measures of the rate of return

Companies in many regulated industries often have very large capital asset bases; this is because capital intensity is often a feature of industries that are natural monopolies, and that therefore may require price-controls. In these industries it makes sense to set the rate of return in relation to the extensive capital base which is required in order to carry out the capital intensive business activity.

In comparison to such capital intensive natural monopolies, the Enforcement industry has a relatively low capital intensity. Notably, some EACs/ HCEACs are able to operate with just one or two certificated bailiffs, and their associated vehicles. The capital requirements of a larger firm extend to an office premises, to house the support and admin operation, which also requires IT, and a fleet of vehicles to perform Enforcement activities. Capital expenditure, and depreciation cost, is consequently relatively small in comparison to operating expenditure.

It is therefore appropriate to consider whether measures of return other than the cost of capital, such as the pre-tax profit margin, might provide more appropriate targets for the Enforcement industry (see section **15. Rate of Return**). One advantage of using pre-tax profit margin as a potential target would be that the relevant data is more readily available, since this measure is included in companies' filed accounts, and is often quoted in performance statistics.

#### 6.4.5. Determining RAB

The fundamental difficulty in determining the RAB, for the purpose of this review, is that it would need to be determined not with respect to an actual firm, but with respect to the industry, or a representative firm (unless an actual firm were selected as an industry representative, but this approach appears unduly biased).

Even for a single company, estimating the RAB can be a complex process, and requires access to significant company and general asset information. There are several methods available to measure the RAB, but all can be categorised as either cost-based or value-based. The cost-based methods include historic cost, indexed historic cost, replacement cost and depreciated optimised replacement cost. The value-based methodologies include fair market value, net present value, deprival value, and optimised deprival value. A full explanation of the different methodologies is not appropriate here.

This report will take the approach of estimating the RAB for a “Representative Firm” (see section **14. “Representative Firms”**). Due to restricted access to data, and limited time and resources, the RAB will be estimated using the most straightforward methodology: the historic cost method. The historic cost method can be applied using information contained in a company’s financial or management accounts, and for this reason is an accessible approach. Using this method, RAB is determined on the basis of historic costs (purchase prices) of assets, adjusted for accumulated depreciation to allow for the proportion of the assets useful economic life already elapsed.

#### **6.4.6. Determining efficient capital expenditure**

In order to determine efficient capital expenditure the regulatory agency would usually carry out a detailed review of the regulated company’s existing asset base, its business plan, and the market for relevant assets, and work very closely with the company throughout this process. There is not sufficient time, nor access to company details, in order to carry out such a process. Furthermore, the process could not focus on a single company, but would need to be representative of the industry as a whole.

These complications may be overcome by making the simplifying assumption that capital expenditure should be at a level sufficient to replace existing capital assets i.e. that investment occurs at the same rate as depreciation. This is a very simple methodology, as a single year’s projected capital expenditure is then equal to a year’s depreciation charge in the P&L.

Allowing a mark-up on all costs, including the depreciation charge, will allow companies to invest in capital at a greater rate (by the size of the mark-up) than capital is depreciated, and thus will allow for some growth in companies’ asset bases.

If strong arguments were made that greater levels of investment were required to support the efficient operation of Enforcement businesses it may be appropriate to amend this approach to project higher levels of future capital investment.

#### **6.4.7. Determining efficient operating expenditure**

In the base year of the regulatory period a regulator would normally perform a detailed analysis of the regulated company’s profit and loss account in order to determine base year operating expenses. A detailed understanding of the expenses is required to make the necessary adjustments which remove one-off expenses, and non-cash items such as accruals (which can distort the level of operating expenses in a single base year). For the purpose of the Enforcement Fee Structure Review, the level of access to accounting data will be insufficient to perform such a detailed exercise.

Instead, information on operating costs will be limited to management accounts, where they are provided, or to the lower level of detail provided in statutory accounts.

It is frequently necessary for a regulator to perform a detailed cost allocation exercise to allocate costs to various cost centres, or even to specific activities. This is required if the regulated company is engaged in some regulated and some unregulated activities, where the costs then need to be allocated accurately to reflect the true cost of the regulated activity. In order to determine efficient operating costs, the costs may be allocated to particular departments or even activities in order to compare, or benchmark, them to other companies or parts of companies containing similar departments or performing similar activities.

The cost allocation exercise is usually an extremely detailed process which involves a precise and deep understanding of the regulated company's activities, and requires significant cooperation from the regulated company.

Since the Enforcement Fee Structure will include fees for multiple activities across the whole Enforcement process, and should be linked to the actual costs of performing these activities, an exercise to allocate costs to activities will be necessary (see section **13. Cost Allocation Exercise**). However, due to time and access constraints, this cost allocation exercise will necessarily be rather simple compared to that which would be usual for a regulatory agency to perform.

Once allocated activity costs have been calculated, a benchmarking exercise will not be performed to determine whether the allocated cost levels represent **efficient** costs. Instead, since cost data will be used from various industry participants, the aggregating effect of including firms of different levels of efficiency, should ensure that the operating costs calculated represent those of an averagely efficient firm in the industry.

#### 6.4.8. Projecting volumes over the regulatory period

England and Wales is currently suffering from a recession, and increasing unemployment. Estimates regarding the severity and likely length of the recessionary period vary greatly. Such economic conditions, aggravated by the current difficulty for individuals and businesses to obtain credit, are likely to cause more debtors to struggle to meet their debts and liabilities, and are likely to lead to an increased demand for Enforcement services.

Due to the unprecedented combination of factors contributing to the current recession, and the lack of consensus of views on its likely evolution, forecasting its impact on Enforcement volumes would be a very complex task. This report will not attempt to forecast futures volumes of Enforcement cases, but rather will base unit cost calculations and price requirements on a current snapshot of industry costs.

Although this approach deviates from the typical price control approach, there are two strong arguments as to why it is valid:

- **Unit costs for Enforcement are less sensitive to volume changes than in most other price-controlled industries.** A large proportion of the costs of handling an Enforcement case are marginal. There are some economies of scale from the investment in an office space and IT



systems, but new cases require manual input and attention from admin staff, and all EA action incurs marginal costs as each new case generally requires action at a new address. These costs are not marginal if the EAC/ HCEAC is not operating close to capacity with its current staff levels, as additional volumes can be absorbed into excess staff capacity. However, assuming that EACs/ HCEACs operate at close to efficient capacity, a good proportion of costs for handling additional cases are marginal. Consequently, as volume increases the unit cost does not decrease as rapidly as for industries with mainly fixed costs.

For example, in the telecoms industry the marginal costs of handling increased call volumes are almost nil, as almost all of the costs are fixed and sunk in investments in IT, assets and infrastructure. Therefore, the unit cost decreases almost proportionately as volume increases.

- **The volume changes in the Enforcement industry are likely to be transitory rather than permanent.** In most price-controlled industries volume increases are often the result of organic, and permanent, growth in the consumer market. For example, if a telecoms company (or other infrastructure based utility) invests in a new network (such as broadband internet, or the 3G phone network) the number of consumers, and therefore the volume, is likely to grow organically from low, initially, towards full capacity, over time. Unit costs therefore reduce steadily and permanently as volume increases. Unless these unit cost decreases are taken into account when setting the revenue requirement, the company's return would grow steadily over the regulatory period and could greatly exceed the target return.

The current situation in the Enforcement industry is somewhat different as the anticipated volume increases are linked to business cycle factors (i.e. recession), which may persist throughout the review period, but which are ultimately transitory in nature. If growth in volumes reduces EACs'/ HCEACs' unit costs this will result in an increased return over the review period. However, allowing EACs/ HCEACs to retain this additional profit (by not adjusting the price to account for projected volume increases) would not represent a systematic underestimation of the actual unit cost, but would rather amount to allowing EACs/ HCEACs to benefit from transitory business cycle conditions that are beneficial to this particular industry.

#### 6.4.9. Lack of established regulatory agency

The Enforcement industry does not currently have an established regulatory agency, and therefore lacks the legal powers and resources to perform the detailed analysis that is common in most price controlled industries. It is also currently unclear who will take on the role of industry regulator in the future, and what will be the extent of the regulator's powers.

In most regulated industries the regulator not only determines the regulated price, but performs a role that is integral to the success of the price control. For example, regulated companies are subject to annual regulatory audits, which measure the impact of the price control on various aspects of the company's performance. These audits monitor the success of the price control, and provide crucial information for the following price-control review at the end of the regulatory period. Furthermore,

within a price-control period the regulator may include several indicators (linked for example to accounting measures of cost, or overall financial performance) which, if met during the period of a price control review, could prompt urgent attention and perhaps an alteration to the price-control within the regulatory period.

Close monitoring from the regulator is essential to ensure that the price-control does not generate undesirable behaviour from the regulated company. For example, that the company does not skip necessary capital investments, projected in its capital investment program, in order to retain the amounts set aside for this investment as profit. More fundamentally, with a regime that fixes prices, increases in profit can only be achieved through increases in volume or reduction in costs. Particularly where the regulator is a monopoly supplier the regulator must monitor quality levels carefully to ensure that the quality of goods/ services provided to the customer does not fall below agreed standards. Without such monitoring the regulated company may seek to cut costs, at the expense of quality, in order to increase profits. In the Enforcement industry the quality consideration is more complicated than usual as the quality of service provided by an EAC/ HCEAC affects both creditors and debtors, who each assess quality of service in a different way.

It is not currently clear which organisation will regulate the Enforcement industry, and it is possibly unlikely that the powers granted to that regulator will stretch as far as regulators of other price-controlled industries such as Postcomm (mail), Ofwat (water), and Ofgem (gas and electric). The process of determining a Fee Structure could be performed more effectively once the role of the regulator and its powers are more clearly known. Ideally the process of defining these powers should at least occur alongside the development of a new Fee Structure, to ensure that the powers are sufficient to allow the level of monitoring that may be required by various elements of any Proposed Fee Structure, and to enable the efficient gathering of information to inform future Enforcement Fee Structure Reviews.

## 7. Comparison between High Court and Non-High Court Enforcement

### 7.1. Non-High Court Enforcement

Non-High Court Enforcement is carried out by approximately 5,200<sup>17</sup> EAs operating within England and Wales. This figure is made up of approximately 600 County Court bailiffs, 1,600 other state employed EAs (such as tax collectors, customs officers etc.), 200 local authority EAs, 1,600 certificated private bailiffs and 1,200 non-certificated private bailiffs. MoJ estimates that there are approximately 150 firms operating within the industry. A good financial summary of the top 50 or so companies in the Enforcement industry is provided by Plimsoll Portfolio Analysis<sup>18</sup>, and is updated quarterly.

<sup>17</sup> "Regulation of Enforcement Agents", Department for Constitutional Affairs (DCA) Consultation Paper (30 January 2007)

<sup>18</sup> "The UK Bailiffs Industry: A comprehensive financial analysis of the top 51 companies", Plimsoll Portfolio Analysis (3rd Edition 2008).

The main debts types enforced are Council Tax, Magistrates Court fines and penalties (“HMCS”), Road Traffic Act (“RTA”) Penalty Charge Notices, Child Support Agency (“CSA”), and, in lower volumes, Commercial Rent and Non-Domestic Rates (“NNDR”) liabilities.

The vast majority of Enforcement work is carried out by private sector EAs who are recovering debts owed to the public sector. Private sector EACs operate in a competitive (considering the relationship between EAC and creditor) environment, tendering for contracts to enforce debt on behalf of creditors, whom often issue large volumes of Warrants. Creditors issuing the largest volume of Warrants are local authorities (council tax, NNDR, and RTA) and HMCS (Magistrates Court fines and penalties). EACs vary in terms of number of EAs employed and geographic coverage.

## 7.2. High Court Enforcement

MoJ collates HCEO performance statistics provided by 17 HCEACs, receiving 67,021 Writs of Fi Fa for enforcement in the calendar year ended 31 December 2008. These writs are distributed between 62 appointed HCEOs, operating across 2,256 postcodes in 105 postal districts<sup>19</sup>.

There are several key differences between Non-High Court Enforcement and High Court Enforcement:

- Maturity and level of competition;
- Legal obligations;
- Case volumes/ Economies of scale;
- Nature of client relationships;
- Legal complexity of cases handled;
- Average size of debt enforced; and
- Frequency of occurrence of exceptional cases.

The following section discusses each of these differences and describes how many of them increase the cost of High Court Enforcement compared to Non-High Court Enforcement.

### 7.2.1. Maturity and level of competition between EACs

Prior to 1<sup>st</sup> April 2004, Enforcement of High Court Writs of Fi Fa and Writs of Possession (collectively “Writs of Execution”) was carried out in the name of the High Sheriff for each bailiwick. (A “bailiwick” being the area under the jurisdiction of the High Sheriff, these areas being roughly equivalent to the pre-1974 county boundaries).

Therefore, prior to 2004, competition between HCEOs was severely restricted, with creditors selecting an HCEO only on the basis of the relevant bailiwick in relation to the Writ. Within each bailiwick the relevant HCEO had an effective monopoly.

<sup>19</sup> “The Directory of High Court Enforcement Officers for England and Wales”, HMCS (June 2009)

From 1<sup>st</sup> April 2004 a new regime for High Court Enforcement came into effect in England and Wales. Incoming High Sheriffs who took office from this date were removed from their obligation of enforcing High Court Writs. Instead, High Court Writs of execution are now executed by “High Court Enforcement Officers”, appointed and assigned districts by the Lord Chancellor or his nominated delegate. Furthermore, creditors are free to select any HCEO to enforce their debt, regardless of the district relevant to the Writ or assigned to the HCEO. Consequently, since 2004 competition has existed in the market for High Court Enforcement services. Creditors may therefore select an HCEO on the basis of the quality of service provided, or (if for example they are not sufficiently informed to select an HCEO) they may be assigned an HCEO through the NICE Sheriff database (who will be chosen using a queue like allocation mechanism).

The impact of the introduction of competition on the industry has been substantial, although the competitive environment is not as mature or well evolved as in the non-High Court Enforcement industry where competition has existed for significantly longer. Consequently, it is possible that there are some competition driven efficiencies which remain to be exploited in the High Court market, and therefore that competitive pressures may continue to act to increase the efficiency, and reduce the current cost, of High Court Enforcement activities.

There are various techniques available for measuring the amount of competition among firms in an industry. Two of the most commonly used are the Herfindahl-Hirschman Index (“HHI”) and the Concentration Ratio (commonly expressed as the *five-firm concentration ratio*, or  $C_5$ ). If Non-High Court Enforcement and High Court Enforcement are defined as different markets, the relative values of these two measures are as follows:

*Table 7: Measures of the level of competition in the markets for High Court and Non-High Court Enforcement*<sup>20</sup>

Market	$C_5$	HHI
Civil Enforcement	54.7%	7.6%
High Court Enforcement	91.1%	22.4%

### Five-firm Concentration Ratio

The concentration ratio of an industry is used as an indicator of the relative size of firms in relation to the industry as a whole. It is calculated as the sum of the percent market share of the top  $n$  (in the case of the *five-firm concentration ratio*,  $C_5$ ,  $n = 5$ ) firms.

The higher the  $C_5$  measure the greater the concentration of market share with the top 5 firms in the market. The  $C_5$  measure for High Court Enforcement is significantly higher than for Non-High Court Enforcement. In fact the measure for High Court Enforcement is so high that it would place the market for High Court Enforcement among the most concentrated of all UK markets. The 5 most concentrated UK industries have  $C_5$  measures as follows:

<sup>20</sup> Non-High Court Enforcement statistics calculated using data from “Plimsoll Portfolio Analysis: The UK Bailiffs Industry” (3<sup>rd</sup> Edition 2008)  
 High Court statistics calculated from HCEO Performance Statistics data held by MoJ

Table 8: UK industries with the highest five-firm concentration ratios<sup>21</sup>

UK industry	C <sub>5</sub>
Sugar	99%
Tobacco products	99%
Gas distribution	82%
Oil and fats	88%
Confectionary	81%

### Herfindahl-Hirschman Index (“HHI”)

HHI is a measure of the size of firms in relation to the industry and an indicator of the amount of competition among them. HHI is defined as the sum of the squares of the market shares of the 50 largest firms (or summed over all firms if there are fewer than 50) within the industry. The result is proportional to the average market share, weighted by the market share. Increases in HHI generally indicate a decrease in competition and an increase in market power, whereas decreases indicate the opposite.

Generally, an HHI of:

- < 1% indicates a highly competitive industry;
- < 10% indicate an unconcentrated industry;
- 10% - 18% indicates a moderately concentrated industry; and
- above 18% indicates a highly concentrated industry.

By this scale, the Non-High Court Enforcement industry would be classified as unconcentrated: characterised by competition among industry participants. By contrast, the High Court Enforcement industry would be classified as highly concentrated. In fact, under merger guidelines in the US, the High Court Enforcement industry would exceed the 18% HHI threshold beyond which a market is considered to be highly concentrated. As a result, any proposed mergers between companies in the industry would be considered carefully under the relevant merger laws<sup>22</sup>.

### 7.2.2. Legal obligations

An HCEO is obliged to accept any Writ sent to them for the postal districts to which they have been assigned. They also have the discretion to accept Writs from anywhere in England and Wales, but may decline or accept the Writ if it is for an area to which they have not sought assignment.

The obligation to accept Writs from certain postcodes potentially places HCEOs in a position where they must incur costs, even in some cases where they may not assess a high probability of recovering fees, and therefore may not achieve a profit on a case-by-case basis. On a case-by-case basis HCEOs may therefore potentially be obliged to undertake unprofitable activities.

<sup>21</sup> National Statistics Economic Trends: Concentration Ratios 2004

<sup>22</sup> In the EU the focus for merger investigations is the level of change in industry concentration following a proposed merger. The typical threshold, for merger investigations in the EU, is where there would be an increase in the HHI measure by at least 2.5%, and where the HHI originally shows a concentration of at least 10%.

In addition to these costs, HCEOs are also exposed to the risk that a creditor may seek damages in respect of any cases where the creditor believes that, through the HCEOs negligence or lack of appropriate action, a Writ was not successfully enforced. Due to this obligation to the creditor, the HCEO may find that he is under pressure to incur further cost in attempting to enforce the debt, at the creditor's insistence, even when the HCEO may not believe that the actions are cost effective or appropriate.

The increased level of legal obligations of the HCEO to the creditor, compared to those of the EA to the creditor are therefore likely to increase the average cost of Enforcement of High Court debt compared to Non-High Court debt.

### **7.2.3. Case volumes/ Economies of Scale**

In comparison to EACs, HCEACs handle a significantly lower volume of cases. Responses to the RFI indicated that EACs handled an average of 196,000 cases annually. HCEAC respondents handled on average only 12,000 cases: just 6% of the case volume handled by the average EAC.

Due to lower volumes, HCEACs have less scope to exploit economies of scale, which are most likely to exist in the administrative stages of cases. Benefits of economies of scale are likely to be limited to administrative activities as EA/ HCEO activities incur mainly marginal costs, assuming that EAs/ HCEOs are operating at close to capacity.

HCEAC costs per case handled are therefore likely to be higher than EACs due to a reduced opportunity to exploit economies of scale.

### **7.2.4. Nature of client relationships**

Although HCEAC case volumes are very much lower than EAC case volumes, conversely they are likely to deal with a larger number of different clients. Whilst EACs may have a smaller number of "bulk creditors", such as LAs or Magistrates Courts, many HCEO creditors are infrequent users of Enforcement services, and may only send a single Writ to an HCEO for Enforcement.

Consequently, HCEOs have less incentive to attempt costly Enforcement actions on the basis of maintaining a creditor relationship. EACs on the other hand, may undertake costly actions, even when they exceed the available fees on a particular case, in order to maintain the creditor relationship to preserve the larger volume of cases where fees exceed costs incurred.

This feature of HCEO-creditor relationships might suggest that greater incentives are required to ensure sufficient HCEO action, potentially by allowing cost recovery and profitability on a case-by-case basis. However, the HCEO obligation is useful here, as that alone (aside from financial incentives) should ensure that HCEOs take sufficient reasonable action on all cases.

Since creditors send fewer cases to HCEACs, each creditor has higher expectations (on a per case basis) of the amount of information and feedback they expect to receive from HCEACs in relation to the progress made on their case or cases. The RFI responses indicated that all HCEACs were in the practice of providing "initial reports" to their creditors, containing important debtor information and an assessment of the probability of successfully enforcing the debt. Only two EAC's were in the practice of providing a similar report.

Providing this detailed information to creditors is costly for HCEACs. Furthermore, since creditors each supply a low volume of cases they are more likely to make ad hoc enquiries relating to case progress, and to be more insistent on further specific Enforcement action: each of these factors serve to increase the cost per case of HCEO Enforcement.

#### 7.2.5. Legal complexity of cases handled

High Court Enforcement tends to be a more legally complex process than Non-High Court Enforcement, since:

- HCEOs have the obligation to have a wide ranging knowledge of Civil Procedure Rules and should be prepared to defend that knowledge and expertise before senior judiciary as the circumstances of each case dictate;
- following the levying upon goods, it is more common that an interpleader process will be entered into, during which the debtor and third parties may make representations relating to the status and legal ownership of goods levied upon;
- HCEO fees are more often challenged by debtors through the legally complex process of detailed cost assessment; and
- since the HCEOs actions are potentially subject to legal challenge by the creditor, to whom the HCEO has enhanced duties and obligations (compared to an EA), various aspects of the case must be recorded and administered to a level of accuracy and detail that could withstand examination in the context of a legal challenge. The administration of High Court Writs of Fi Fa therefore includes a greater level of detail and quality of information than that of non-High Court distress Warrants.

As a result of all of the above considerations it is necessary for HCEOs to employ admin staff with greater levels of skill, and often with legal qualifications. Suitably qualified admin staff demand higher salaries, and serve to increase the staff overhead cost per case for HCEOs compared to EACs.

The detailed analysis of accounting data, which is described in greater detail at section **13. Cost Allocation Exercise**, revealed that the average admin staff costs per case were:

- **£7.12** per case handled for EACs; and
- **£53.89** per case handled for HCEACs.

#### 7.2.6. Average debt size

In terms of case volumes the bulk of EAC case volumes (around 84%) consist of Council Tax, HMCS, and RTA Enforcement (with one EAC also enforcing significant volumes of CSA debt, and most EACs also enforcing a small number of Commercial Rent and NNDR cases in comparison to their core debt-types). The average debt size for the core EAC debt-types are as follows:

- Council Tax - £543;
- HMCS - £197; and
- RTA - £111

(see **Table 33: Average debts sizes**)



The average debt size for High Court debt was £3,696: substantially higher than the core EAC debts. There is likely to be a correlation between debt size and cost of Enforcement, particularly for the latter stages of the Enforcement process, since physical activity is required to be performed on goods with a larger total value. This correlation may also exist at the Administration Stage if debtors with larger debts are more likely to be seasoned debtors, or to expend greater effort to avoid paying debts.

The impact of these correlations would be reflected in higher costs per case for High Court debt compared to non-High Court debt.

#### 7.2.7. Frequency of occurrence of exceptional cases.

Anecdotally HCEOs report a far greater frequency of occurrence of exceptional cases; where, for example, they are required to levy and remove for sale particularly large or valuable items. These exceptional cases are more costly to enforce and increase the average costliness of cases enforced by HCEOs.

### 7.3. Cost of Enforcement

The accounting data gathered during the RFI exercise clearly shows that the impact of the sum of factors described above is to increase the cost of HCEO Enforcement to a level substantially above EAC Enforcement.

The average total cost per case for an EAC was determined to be **£30.28**, whilst for an HCEO this cost was **£207.56**, nearly seven times higher. Revenue per case for HCEACs was also higher in the same order of magnitude at £232.82 per case, just over seven times greater than the EAC equivalent at £33.13 per case handled. (See section 14. *“Representative Firms”*)

### 7.4. A Unified Fee Structure?

#### 7.4.1. What is meant by a “Unified Fee Structure”?

A unified Fee Structure refers to a Fee Structure where, contrary to existing arrangements where each debt-type has a different set of fees, there is a degree of commonality between the Fees chargeable for all debt-types.

The degree of commonality may vary from the greatest extent where all types of Fees and Fee levels are charged in the same way regardless of the debt-type, to lesser degrees of commonality where the same types of Fees may be charged for all debt-types, but where the precise Fee levels may vary for different debt-types or groups of debt-types.

Compared to the disparate Existing Fee Structures, even introducing some lesser degree of commonality between the Fees for different debt-types could represent a significant move towards a more unified Fee Structure. 61% of RFI respondents were in favour of the use of a uniform Fee Structure for all debt-types. Both of the Non-High Court Enforcement industry associations: ACEA and ESA, favoured a uniform Fee Structure, though HCEOA were not in favour of uniform fees.



### 7.4.2. In favour of a unified Fee Structure

There are several arguments supporting the use of a unified Fee Structure:

- From a debtor's perspective the same actions are undertaken when enforcing each different debt-type:
  - the case is received and administered;
  - procedures are followed to determine the location of the debtor;
  - the case is then passed to an EA who attends the debtor's premises to attempt to obtain payment;
  - the EA/ HCEO identifies the goods and levies against them, in order that they may, if necessary, be removed and sold to repay the debt;
  - the EA/ HCEO or supporting administrative staff may receive payment in either a single sum or through an arrangement such as payments by instalments; or
  - the EA/ HCEO may (although in reality this occurs only in a very small percentage of cases: see section **11. Enforcement Activities and Frequencies**) remove the goods from the debtor's premises to sell them at auction.

Furthermore with the introduction of the single piece of bailiff law, through the TCE Act, the Enforcement process will be strictly controlled, and the legislation governing the actions that an EA/ HCEO may carry out will be the same for each debt-type.

Although there are various underlying and fundamental differences between the various debt-types (explored in this section and elsewhere in the report), from a debtor's perspective the differences are not observed.

- Again from a debtor's perspective, it seems more equitable to be charged the same fees for the same actions, regardless of what debt-type the actions were undertaken to enforce;
- A uniform Fee Structure would be simpler for debtors to understand, as they would be charged the same fees for all debt-types. The fees presented to debtors would not include different types of calculation for different debt-types;
- Since fees would be simpler for debtors to understand, there would be less scope for EACs to exploit debtors' misunderstandings or uncertainties over fee levels, by attempting to abuse the Fee Structures by charging higher fees than they allowed;
- Since a uniform Fee Structure would simplify the procedure for calculating fees, EACs might be able to achieve greater efficiencies, or cost savings in the central administrative function where debtors' bills are calculated. Calculation of fees also occurs on the door-step, performed by the EA, as part of the repayment negotiation process. A uniform Fee Structure would enable EAs to perform this task more efficiently, and could reduce errors that might otherwise lead to claims of attempted abuse of the Fee Structure.

### 7.4.3. Against a unified Fee Structure

There are also several key arguments that may be made against the use of a unified Fee Structure:

- Different debt-types may involve different Enforcement actions or otherwise involve different costs to enforce;
- Different debt-types may have different Enforcement Rates.
- The underlying costs of High Court Enforcement are greater than for Non-High Court Enforcement (for the reasons explored earlier in this section).

#### Different costs/ activities

In keeping with the objective of rewarding EACs fairly for all of the activities they perform, an argument could be made for allowing different fee levels for different debt-types where those debt-types require the EAC to undertake additional actions or costs.

The evidence that I have seen, both anecdotal and in responses to the RFI, suggests that activities and costs do not differ significantly between Enforcement of different debt-types, with the exception of Enforcement of High Court debts.

HCEOA was not in favour of a uniform Fee Structure, arguing that High Court debt is significantly more costly to enforce than other debt-types. The reasons for the relative costliness of High Court Enforcement are explored earlier in this section.

#### Different Enforcement Rates

Whilst an EAC may charge fees for several activities, under both the existing and Proposed Fee Structures, it will only recover these fees (with the exception of any guaranteed fee if adopted) for those cases where it successfully recovers amounts sufficient to cover at least some elements of the original debt and the fees applied. Due to this, the EACs **expected** fee income is very closely related to the Enforcement Rate.

If different debt-types have different Enforcement Rates, then the different debt-types will also provide EACs with different **expected** levels of fee income per case. Those debt-types with a higher Enforcement Rate will provide EACs with a higher level of expected fees per case, and therefore a higher profit margin, and will therefore be more attractive to EACs to enforce.

The resultant different expected fee income levels may lead EACs to “cherry pick”: selecting only to enforce the most attractive debt-types. This would be an undesirable outcome, because creditors should have a right to be able to enforce their debts of all types. The “cherry picking” effect might be overcome if EACs were to seek to increase profits through increased case volumes. Increased case volumes are most easily achievable by EACs if they select to enforce all debt-types. Creditors may also select to offer contracts for tender that require EACs to enforce all of the creditor’s various debt-types, and prevent them from selecting between them. Further thought needs to be given to how creditors should contract with EACs and perhaps there is a role for a regulator in this regard (see **20.3.1 Contracting between EAC and creditors**).

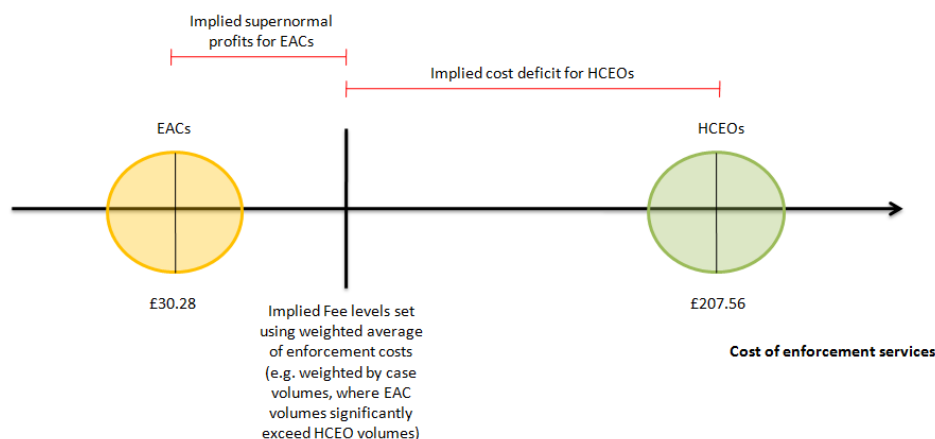
“Cherry-picking” might be accentuated by the existence of a guaranteed fee. EACs could accept large volumes of cases, but adopt a strategy of simply returning all cases in low Enforcement Rate debt-types in order to claim guaranteed fees, whilst only making attempts to enforce debt-types with higher Enforcement Rates. Close monitoring of achieved Enforcement Rates would be required to detect and potentially deter such behaviour, or regulation to ensure that EACs perform and evidence at least a minimum set of actions in relation to each case for which they claim an Administration Stage Fee.

### Greater underlying costs of High Court Enforcement

For the various reasons described in this section the underlying costs of High Court Enforcement significantly outweigh those of Non-High Court Enforcement.

Therefore any Fee Structure applying unified fee levels, potentially determined using a weighted average of the different cost levels, would reward Non-High Court Enforcement at an inappropriately large mark up to the cost of activity, but fail to provide sufficient revenue for HCEACs to even recover their costs. This is illustrated in the following diagram:

*Figure 3: Comparison of the underlying cost of High Court and non-High Court Enforcement*





### MoJ Parameter

After due consideration of all of the issues described in this section, MoJ’s initial parameter was to consider High Court and non-High Court Enforcement separately for the purposes of the Enforcement Fee Structure Review: creating a unified Fee Structure to apply to the Enforcement of all debt-types (fulfilling a key objective of the 2003 White Paper), whilst allowing for the possibility that High Court and non-High Court Enforcement may have different fee **levels** within the same unified Fee Structure.

However, the differences between the various Non-High Court Enforcement debt-types, were proposed by MoJ not to be so fundamental or significant as to prevent the same fee levels applying to all of these debt-types. The proposed Fee Structure should therefore apply the same level of fees to all Non-High Court Enforcement debt-types: Council Tax, HMCS, CSA, RTA, Commercial Rent, and NNDR.

As a result of this MoJ parameter, at various places during the remainder of this report High Court and non-High Court Enforcement will be discussed separately. Therefore, the following different page borders are used to indicate when the text relates specifically to either one of the two types of Enforcement:

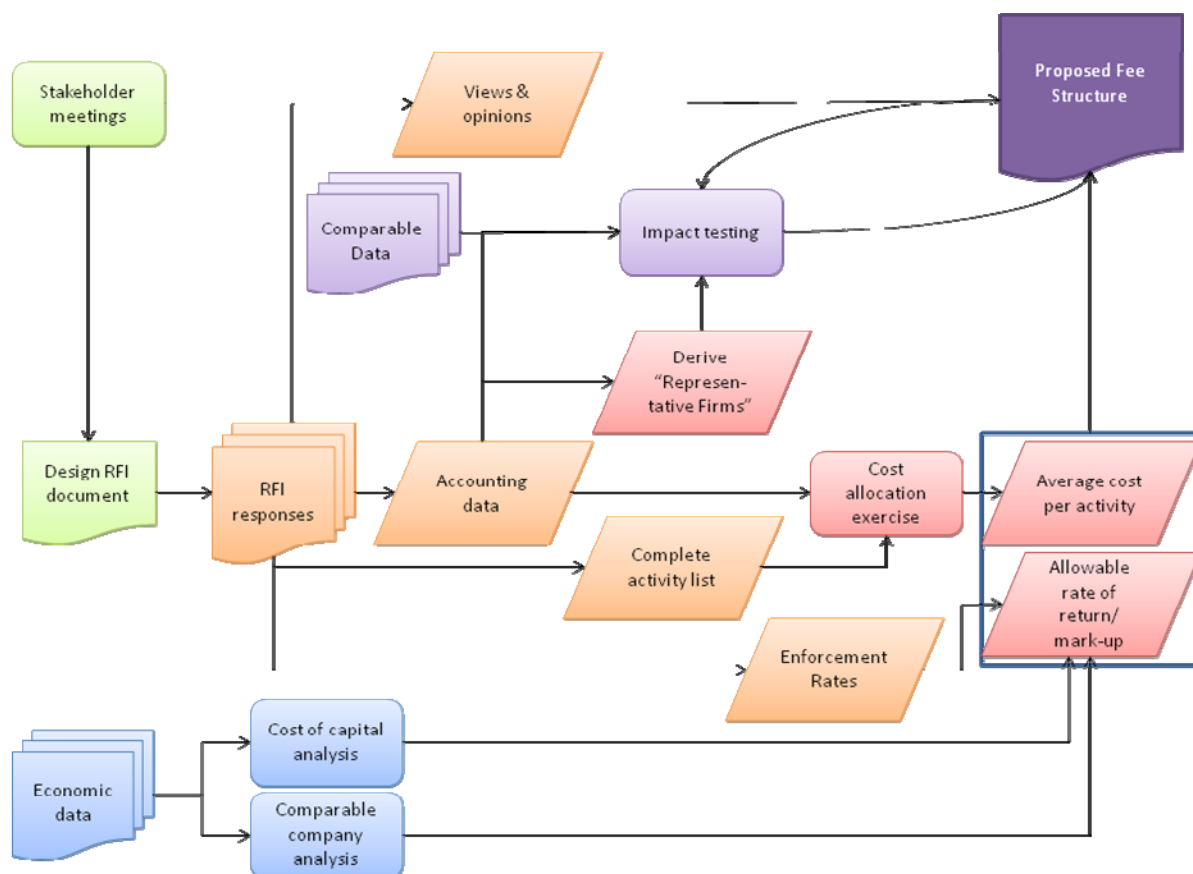
 sections of the text that relate specifically to **Non-High Court Enforcement** are indicated by an orange coloured two-line border; and

 sections of the text that relate specifically to **High Court Enforcement** are indicated by a green coloured three-line border.

## 8. Approach to Determine a Proposed Fee Structure

The following figure illustrates the approach to determine a proposed Fee Structure:

Figure 4: Approach to determine proposed Fee Structure



The various elements of this approach are described below:

### 8.1. Stakeholder Meetings

- Stakeholder meetings occurred during two key phases of the Enforcement Fee Structure Review:
- **Stakeholder meetings prior to RFI (August – September 2008)**
  - Meetings with key Enforcement industry stakeholders to gather views and opinions and to assist with;
  - design of request for information (“RFI”) to gather views and opinions more broadly and to collect necessary data to support the Enforcement Fee Structure Review.  
 (see **Appendix 5: Industry Members RFI**); and
- **Fee Structure Working Group Meetings (July – September 2009)**

- Meetings to discuss the proposed fee levels and detailed elements of the proposed Fee Structure;
- taking place between MoJ, the economist, and (separately) two industry working groups:
  - the Non-High Court Enforcement Fees Working Group; and
  - the High Court Enforcement Fees Working Group.(see section **9. Stakeholder Meetings**)

## 8.2. RFI Responses

- Review of views & opinions to:
  - understand failings of current Fee Structures and potential areas of abuse; and
  - understand ideas and preferences regarding the format of a new Fee Structure.(see section **10. RFI Responses: Views & Opinions**)

## 8.3. Enforcement Activities and Frequencies

- Review of EAC business model information to:
  - identify full range of activities performed by EACs;
  - identify frequency of occurrence of those activities within a typical Enforcement process; and
  - identify any important differences between Enforcement processes for different debt-types.(see section **11. Enforcement Activities and Frequencies**)

## 8.4. Enforcement Rates/ Fee Recovery Rates

- Review Enforcement Rate information provided by EACs;
  - Compare Enforcement Rate information to other available data sources;
  - Decide how to treat different debt-types with different Enforcement Rates; and
  - Consider impact of Enforcement Rates on Fee Structure.
- (see section
- 12. Enforcement Rates/ Fee Recovery Rates**
- )

## 8.5. Cost Allocation Exercise

- Review EAC/ HCEAC resource use information;
  - Perform allocation of total costs to activity lists;
  - Use case volume and activity frequency estimates to derive costs per incidence for activities; and
  - Derive “Representative Firms”.
- (see section
- 13. Cost Allocation Exercise**
- )

## 8.6. Rate of Return

- Cost of capital approach
  - Identify listed comparable companies;
  - Use comparable company average beta to calculate cost of equity;
  - Determine cost of debt;
  - Determine typical capital structure and calculate weighted average cost of capital;
  - Determine RAB;

- Apply cost of capital to RAB; and
  - Determine allowable revenue/ profit margin;
- Comparable companies profit margin analysis; and
- Select applicable rate of return/ mark-up.

(see section **15. Rate of Return**)

### 8.7. Fee Structure Proposal

- Group activities for Fee Stages;
  - Apply frequency estimates to costs per incidence to determine typical costs per Fee Stage;
  - Apply Enforcement Rate multiples to costs;
  - Apply allowed rate of return/ mark-up; and
  - Consider views & opinions, potential for abuse, and incentives created.
- (see sections **16. Fee Structure Features**, **17. Fee Structure Model**, and **18. MoJ Proposed Fee Structure**)

### 8.8. Impact Testing

- Use accounting data provided to test profitability impact on “Representative Firms”;
  - Perform scenario testing to examine the level of fees chargeable under existing and Proposed Fee Structures for various different Enforcement scenarios;
  - Use comparables such as existing Fee Structure scales to sense check levels of proposed fees;
  - Consider whether the Proposed Fee Structure reflects opinions expressed by stakeholder views and opinions; and
  - Use results of impact testing to feedback and amend Fee Structure proposals.
- (see Section **19. Impact Testing**)

## 9. Stakeholder Meetings

### 9.1. Request for Information (“RFI”): August – October 2008

Between August and October 2008 a series of meetings, also attended by the economist, were held between MoJ and various stakeholders with an interest in the Enforcement Fee Structure Review. The stakeholders were identified with the assistance of MoJ staff with a number of years experience working within Enforcement and with the industry’s stakeholders. These meetings were designed to inform the stakeholders about the process being undertaken by MoJ and to engage them with that process. The meetings served to educate both the economist and MoJ about the details of the Enforcement process, and the charging of fees within that process, and to enable all stakeholders to communicate the range of issues related to the Fee Structure that were particularly important to them.

Throughout these meetings feedback was gathered from stakeholders regarding the design of a request for information (“RFI”), which was intended to allow stakeholders to present their views and opinions in relation to both the existing Fee Structures, and the suitable form of a new Fee Structure. Furthermore, the RFI was designed to capture accounting and financial information, from EACs/HCEACs, which would be useful for performing an economic analysis to assist the design of a Fee Structure and the appropriate quantification of its various fee elements.

Meetings were held with the following stakeholder groups:

*Table 9: Stakeholder meeting participants*

Association of Civil Enforcement Agencies (“ACEA”)
Citizens Advice Bureau (“CAB”) (represented by Peter Tutton (CAB Policy Officer) and John Kruse (CAB Ilford))
Chartered Institute of Public Finance and Accountancy (“CIPFA”)
Enforcement Services Association (“ESA”)
Her Majesty’s Courts Service (“HMCS”)
High Court Enforcement Officers Association (“HCEOA”)
Institute of Revenues Rating and Valuation (“IRRV”)
Local Authorities Civil Enforcement Forum (“LACEF”)
Local Government Association (“LGA”)
Ministry of Justice (“MoJ”)

#### 9.1.1. RFI Versions

As a result of the consultation exercise, various versions of the RFI were designed, tailored to the specific type of useful information that could be provided by each of the stakeholders. These versions of the RFI, along with whom they were sent to, are shown in the table over the page:



*Table 10: RFI versions*

RFI Version	Sent to	Information captured:
Industry Members	Members of ACEA, ESA, and HCEOA (see <b>Appendix 6: Enforcement Association Membership Lists</b> )	Type of Enforcement cases handled Volume of cases handled Views & Opinions: Current Fee Structure, Enforcement activities, New Fee Structure Accounting information: Balance Sheet, Profit & Loss account, Cost drivers Financing arrangements Enforcement activities performed
Industry Bodies	ACEA, ESA, and HCEOA	Views & Opinions: Current Fee Structure, Enforcement activities, new Fee Structure Enforcement activities performed
Local Authorities	Distributed to all LAs (through CIPFA)	Type of Enforcement cases Volume of Enforcement cases handled (inhouse/outsourced to EACs) Views & Opinions: Current Fee Structure, Enforcement activities, New Fee Structure Request for Activity Based Costing ("ABC") exercises performed

**Appendix 5: Industry Members RFI** shows the full RFI that was sent out to industry members. The RFIs sent to the industry bodies and to the local authorities were reduced versions of the Industry Members RFI, removing those questions (mainly those requesting financial and accounting information) that were not relevant for the different target audiences.

### 9.1.2. RFI Responses

Responses to the **Industry Members RFI** were received from a total of 23 respondents. Of these respondents five indicated in their RFI that they were carrying out only High Court Enforcement work. One respondent currently performs both High Court and non-High Court Enforcement activities. This respondent provided two separate RFI responses, since the activities for each type of Enforcement are accounted for separately within the group. One respondent was performing both Enforcement work, and debt collection work<sup>23</sup>. The remaining respondents were performing only Non-High Court Enforcement work.

Responses to the **Industry Bodies RFI** were received from each of the three major industry associations for the Enforcement industry: ACEA, ESA and HCEOA.

A total of 11 local authorities provided responses to the **Local Authorities RFI**. None of the local authorities providing responses were able to provide details of any activity based costing exercises that they may have performed internally. This response rate was somewhat disappointing (in

<sup>23</sup> I refer to debt collection work here as the activities associated with pursuing debt on behalf of a creditor, but where this activity is not supported by a Warrant of execution, nor Writ of ("Fi Fa") nor any other instrument which would provide a certificated bailiff with the power to levy, remove and sell goods in order to recover the debt amount.

comparison to the very large number of LAs in England and Wales), and restricted the analysis of creditors views on the Proposed Fee Structure, particularly in relation to the proposed “Up-front Fee”.

### 9.1.3. Confirming Accuracy of RFI Responses

The approach to determining the Proposed Fee Structure proposals is reliant on information provided by EACs/ HCEACs. It is important to recognise that EACs/ HCEACs might have incentives to provide inaccurate data to potentially attempt to mislead the fee setting process to their benefit.

Where possible, EAC/ HCEAC accounting data provided was confirmed to statutory accounts filed at Companies House. However, many of the companies are sufficiently small that they have exemptions from filing any profit and loss information, and such confirmation was impossible in these instances. Those companies that are required to file profit and loss account information, file this information at a lower level of detail than the accounts that were used to perform the cost allocation exercise. However, EAC/ HCEAC incentives to mislead the analysis would primarily be to overstate total costs, rather than to misstate any particular category of costs. Where statutory accounts are filed operating costs were agreed in total to the total costs in the accounting data provided by the EACs in response to the RFI.

## 9.2. Working Group Meetings: July – September 2009

Following analysis of the RFI responses, and the development of a Fee Structure Model (to generate output Fee Structure proposals using the input data. See section **17. Fee Structure Model**) by the economist, two working groups were initiated in order to continue the cooperation between MoJ and members of the Enforcement industry:

- the Non-High Court Enforcement Fees Working Group: consisting of representatives of the industry associations ACEA and ESA, and from EACs; and
- the High Court Enforcement Fees Working Group: consisting of representatives of HCEOA, and from HCEACs.

(see **Appendix 7: Composition of Fees Working Groups**)

Both working groups met frequently to discuss the progress being made by MoJ and the economist in developing a Proposed Fee Structure. MoJ used the meetings to identify the key issues to the working groups, and to present its preferred approach as it emerged from the analysis and consideration of issues. In turn, each working group was able to consider the issues, develop a preferred approach, and communicate this preference and supporting arguments to MoJ.

## 10. RFI Responses: Views & Opinions

The RFI included questions which gave respondents the opportunity to provide their views and opinions on both the current Fee Structures, and their preferences for a new Fee Structure, as well as some important broader industry issues. The following section presents a summary of the responses received. Specific responses, selected because they illustrate the general trends particularly well, are included in **Appendix 7: Examples of RFI responses**.

### 10.1. Case Volumes

The majority of respondents (64%<sup>24</sup>) predicted an increase in case volumes in the future. Respondents cited various factors combining to place increased strain on debtors finances, causing more debtors to fail to meet their obligations to creditors through pre-Enforcement means, and hence more cases escalating to Enforcement for collection. The most frequently cited factors were: recession (58%), and changes in government legislation leading to more Enforcement activity (50%).

Changes in government legislation (as quoted from RFI responses<sup>25</sup>) that were expected to affect the volume of cases handled included:

- Decriminalisation of parking violations in London authorities and latterly across the country.
- Extension/ contraction of the London congestion charging zone.
- “Enforcement of commercial rent to decrease as a result of CRAR.” (Enforcement Agency)
- “Implementation of the Traffic Management Act and the Court Act is expected to reduce volumes issued. The HMCS South-West region has implemented the Courts Act more fully than other HMCS regions, and on implementation the volumes issued fell by half.” (Enforcement Agency)
- HCEOs would increase volumes of cases handled if the Ministry of Justice changed rules to allow Enforcement of judgments under £600 and the Enforcement of judgment debts obtained under regulated agreements to be enforceable by HCEOs. (HCEOA)
- Decriminalisation of various fines and penalties which would make them a civil justice matter resulting in a County Court Judgment.
- “Work will decrease with the implementation of the Tribunals Courts and Enforcement Act as clients will have to pay for us executing their Warrants.” (Enforcement Agency)

<sup>24</sup> Where percentages of responses are quoted in this section the percentage is calculated as a percentage of respondents who actually answered the specific question. Many respondents left blanks to some questions, and these responses have not been included when calculating responses.

<sup>25</sup> These are direct quotes from responses received to the RFI. They do not represent the views of MoJ, and in some cases may not be factually correct, but nonetheless reflect the expectations and sentiment of the respondent.

## 10.2. Current Fee Structure

### 10.2.1. Views on current Fee Structures

The RFI asked respondents to indicate how they rated the current fee scale in terms of:

- a. Level of clarity;
- b. Fairness in rewarding EAs for work actually performed; and
- c. Extent to which the current fee scale is prone to abuse.

Using the following scale:

(1) = Not at all; (2) = To some extent; (3) = Moderately; (4) = Very much so; (5) = Completely

The simple average scores given, for all respondents completing these questions were:

- a. Level of clarity: 2.21;
  - b. Fairness in rewarding EAs for work actually performed: 1.94 ; and
  - c. Extent to which the current fee scale is prone to abuse: 2.85.
- 61% of respondents thought that the level of clarity of the existing Fee Structures was less than moderately good;
  - 76% of respondents believed that the existing Fee Structures were less than moderately fair in rewarding EAs for the work they perform; and
  - 58% of respondents thought that the existing Fee Structures were at least moderately prone to abuse.

These responses confirm my understanding of the sentiment towards existing Fee Structures: that they are unclear, do not adequately reward EAs, and can be prone to abuse.

### 10.2.2. Nature of current abuses

When asked to describe the nature of abuses of which they were aware, respondents identified three major types of abuse: “phantom visits” (67%), use of inappropriate charges (50%), and excessive use of “reasonable costs” (27%).

#### “Phantom visits”

“Phantom visits” refers to the form of abuse whereby an EA may attend a premises for the first time, according to the debtor’s account, yet charge for multiple visit fees; relating to visits that the debtor claims had never taken place. “Phantom visits” are particularly troublesome because from the debtor’s perspective it is practically impossible to prove that an EA has not made the visits they claim to have made, and likewise it can be difficult for many EACs to demonstrate reliably that they have in fact made all of the visits for which they are charging (certainly without incurring investment cost in GPS or other tracking systems, for example).

#### Use of inappropriate charges

Where the Fee Structures allow for multiple visits, EACs may take advantage of this by making multiple visits on the same day, perhaps within a very short space of time, even where they have

reason to believe that the debtor will not be present when they return for subsequent visits. Other alleged use of inappropriate charges include charging fees for attending to remove goods but with no such intention to remove or, in respect of council tax and NNDR, where no levy has been made, or charging excessive fees for attending to remove goods. EACs might also charge for steps in the process which cannot be proven through contemporaneous notes or system checks.

### Excessive use of “reasonable costs”

Excessive use of “reasonable costs” refers to instances where the EAC makes claims for “reasonable costs” which either were not, or should not have been, reasonably incurred. Under the current system debtors often pay these fees, as they are concerned about the consequences of not paying them. Furthermore, the onus is on the debtor to appeal, and make a case, against the “reasonable costs”. At this point many EACs simply withdraw their claim for these fees and say that they had been charged in error.

### 10.2.3. Order of payment

RFI responses indicated that for most EACs (50%) the order of repayment of debt and fees varied from contract to contract. Order of payment could be used as an important incentive mechanism (see **15.6 Order of payment**), yet the variations observed within the current Fee Structures contribute to a lack of clarity for EACs, and indicate that the current Fee Structures are not consistently creating efficient incentives for EAs.

## 10.3. Admin Stage Activities

### 10.3.1. Accuracy of data

Previous studies<sup>26</sup>, and statistical performance data, have indicated that the quality of data provided to the EAC by the creditor is often very poor. RFI respondents indicated that, depending on the debt-type, between 5% and 75% of debtors’ addresses could be provided incorrectly by the creditor. Though many respondents made reference to the fact that, in some instances, the creditor may only use information that could easily be incorrectly provided by the debtor themselves in the first instance.

*Judicial and Court Statistics 2007*<sup>27</sup> showed that, overall, 21 pence in the pound was recovered by County Court bailiffs, with 90 pence in the pound being recovered from Warrants of execution where the creditor had provided a correct address for the debtor. Although it is not separately recorded, these statistics indicate that the Enforcement Rate (for County Court bailiffs) when an incorrect address is provided is substantially less than 21 pence in the pound. This highlights that the

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<sup>26</sup> “Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for Enforcement”, A Green Paper issued by the Lord Chancellor’s Department (July 2001), <http://www.dca.gov.uk/Enforcement/enfrev01/index.htm>; and “Report of the Advisory Group on Enforcement Service Delivery” (December 2001), <http://www.dca.gov.uk/Enforcement/enfadgp/warrep.htm>

<sup>27</sup> “Judicial and Court Statistics 2007”, Ministry of Justice (2007), <http://www.justice.gov.uk/publications/judicialandcourtstatistics.htm>

accuracy of data provided to the EAC/ HCEAC is an important determinant of the Enforcement Rate that can be achieved.

This data indicates that the quality of data provided by the creditor, particularly the accuracy of the debtor's address details, is a key factor determining the efficiency of the overall Enforcement process. 75% of respondents believed that the provision of incorrect debtor addresses by creditors was a particular problem that needed to be resolved.

Amongst other potential consequences, the proposed "Up-front Fee" could encourage creditors to improve their internal data processing, to reduce to a minimum the number of unenforceable cases (such as those with incorrect debtor address details). The "Up-front Fee" is an important issue to consider when designing the new Fee Structure and is considered in greater detail in section **15.3 Creditor Guaranteed Fee**.

### **10.3.2. Initial Report**

The White Paper<sup>28</sup> indicated that the admin stage (potentially covered by the Up-front Fee) would "cover the take-up of a case by an EA and the setting up of a case file, and constitute a financial recognition that the creditor is paying for the use of licensed and reputable Enforcement staff. It will also cover initial action/s or investigations by the EA, and may lead to a probability report being supplied by the agent to the creditor indicating the likelihood of debt recovery". However, the RFI discovered that just 2 of the 17 EACs responding were in the practice of producing such reports for the creditor, although all 6 of the HCEO agencies produced initial reports.

## **10.4. Enforcement Stage Activities**

### **10.4.1. Visits**

All of the respondents indicated, in the RFI, that their standard practice was to send one EA to attend a debtor's premises. However, 73% of respondents indicated that two EAs were sent in other circumstances such as when removing, or when there might be a threat of violence from the debtor.

57% of the respondents indicated that it was their standard practice to make 3 visits before returning a Warrant as unenforced, although the number of visits that EAs made as standard varied between 2 and 6.

### **10.4.2. Larger debts**

EACs were asked whether, at what debt level, and why, larger debts were more expensive to enforce. No clear consensus emerged from the responses, which indicated a mixture of beliefs concerning the relative costliness of enforcing larger value debts. Where EACs indicated that enforcing larger debts was more expensive, no responses provided a clear and compelling explanation of this increased costliness. Some reasons provided were that:

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<sup>28</sup> "Effective Enforcement: Improved methods of recovery for civil court debt and commercial rent and a single regulatory regime for Warrant Enforcement agents", a White Paper issued by the Lord Chancellor's Department (March 2003), <http://www.dca.gov.uk/Enforcement/wp/index.htm>

- a larger debt often indicates a multiple offender, who may have more effective techniques for preventing a successful Enforcement;
- larger debts require more admin work and risk assessment; and
- levying against larger debts requires the levying on and removal of a potentially larger number and value of goods.

#### 10.4.3. Instalment plans

10 EACs (all of those responding to the question) indicated that they currently managed payment by instalment arrangements, and that the costs involved were administrative time and banking charges, imposed on them by the banks for transactions.

#### 10.4.4. Return of Warrants

Only 1 EAC respondent indicated that Warrants were returned following a refused entry by the debtor. All of the other respondents indicated that they took a holistic approach, incorporating the consideration of many factors, before deciding to return a Warrant to the creditor unenforced. Only the HCEO agencies are currently receiving an “Abortive Fee” (not as a statutory fee, but rather as a contractual convention), payable by the creditor upon return of cases as unenforced and abortive. For other EACs no statutory return fee exists and none indicated the existence of return fees through contracting or any other mechanism.

### 10.5. New Fee Structure

#### Uniform Fee Structure?

61% of respondents were in favour of the creation of a new **uniform** Fee Structure that could apply across all debt-types. One EAC specified that the structures might be the same across all debt-types, with level of fees varying according to different collection rates of the different debt-types; another indicated that the Fee Structure should have uniform fees for all debts, but only for activities prior to the removal stage.

#### Fixed fees or bandwidths?

- 54% of respondents favoured a Fee Structure consisting of fixed fees only;
- 19% favoured the use of negotiable bandwidths within the Fee Structure; and
- 27% favoured the use of fixed fees in addition to percentage debt charges or reasonable costs.

#### 10.5.1. Up-front Fee

71% of the EACs responding to the RFI question indicated that they were not in favour of an up-front fee. Furthermore, all of the three industry associations opposed the up-front fee, as did all of the 11 Local Authority respondents.

Where EACs were opposed to the use of an “Up-front Fee”, this was largely because they believed that creditors, particularly bulk creditors such as local authorities or HMCS, could not, or would not, be able to find the necessary budget and cash flow in order to make up-front payments in respect of cases passed to EACs.

Many EACs expressed a concern that the introduction of an Up-front Fee would significantly negatively affect the volume of cases passed to them for Enforcement. These EACs believed that creditors would rather internalise the Enforcement process, using their own staff and systems, than pass cases to an EAC where it was costly to do so.

Many EACs felt that creditors had become used to a service which was provided to them “free of charge”, and that if they did not respond by internalising the process when faced with the prospect of paying, that they would instead seek to make contractual arrangements with EACs intended to circumvent the requirement to pay an Up-front Fee in the case of unsuccessful Enforcement.

Since most respondents were not in favour of an Up-front Fee, they did not provide detailed responses concerning what activities should potentially be covered by such a fee, and it was not possible to determine a consensus of opinion on this matter.

The key issues and arguments concerning the use of an “Up-front Fee” are considered in more detail, and proposals are made, at **16.3 Creditor Guaranteed Fee**.





## 11. Enforcement Activities and Frequencies

### 11.1. Identification of Enforcement activities and frequencies

Through discussions at the stakeholder meetings, and consideration of representations provided by the Enforcement industry associations, an initial proposed list of Enforcement activities was developed. The RFI then requested that respondents made additions to this list where they identified additional activities.

The majority of respondents did not identify any new activities that had been omitted from the original list. Where there were additions, these generally related to sub-activities, further defining components of activities already listed, or provided more detail about how a particular activity was performed.

Respondents were also requested to estimate the frequency (per 100 Warrants, i.e. on a percentage basis) with which the various Enforcement activities were performed.

### 11.2. EAC activity frequencies

There was a good degree of consistency between the various estimates provided by EACs, indicating that, on the whole, EACs undertake their business activities in a similar manner. In order to determine activity frequency estimates representative of the Non-High Court Enforcement industry a weighted average activity frequency was calculated from the estimates provided. Of the 16 EAC respondents to the RFI, 11 provided activity frequency estimates which could be used to calculate the weighted average.

One respondent's activities consisted of around 50% debt collection activity. This respondent's frequency estimates were excluded from the weighted average on the basis that debt collection does not permit activities such as levying and removal, and therefore will necessarily have significantly different activity frequencies.

Only a single EAC provided different activity frequency estimates for specific different debt-types. I therefore made the assumption that activity frequencies were broadly comparable across different debt-types. For the single respondent referred to here, I included the estimates provided for their most common debt-type when calculating the weighted average activity frequencies.

The following table shows the frequency estimates provided by EAC companies, and the weighted average frequencies for this group of companies, weighted by number of cases handled<sup>29</sup>:

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<sup>29</sup> The number of cases handled by each respondent has been excluded from the table in order to disguise the identity of the individual respondents.

Table 11: EAC activities and frequencies<sup>30</sup>

Activity	Respondents estimated activity frequencies											Weighted average
Receive Instructions from client	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Set up a case file	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Further manual input of case into IT system <sup>19</sup>	0.0%	100.0%	0.0%	100.0%	100.0%	0.0%	100.0%	100.0%	100.0%	100.0%	100.0%	78.8%
Other administrative processing (i.e. link to existing cases)	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	83.2%	100.0%	10.0%	100.0%	100.0%	87.6%
Confirm debtor details (address/ company searches)	100.0%	35.3%	100.0%	100.0%	100.0%	100.0%	42.8%	100.0%	10.0%	100.0%	100.0%	84.2%
Produce status report (probability of debt recovery)	0.0%	12.8%	0.0%	10.0%	100.0%	0.0%	0.0%	100.0%	0.0%	50.0%	100.0%	25.5%
Insolvency report	0.0%	5.6%	4.0%	1.0%	11.0%	5.0%	0.0%	0.0%	1.0%	15.0%	100.0%	6.9%
Send out first letter to advise debtor that enforcement has begun	0.5%	26.5%	23.0%	100.0%	100.0%	100.0%	10.3%	5.0%	12.0%	80.0%	60.0%	59.6%
Telephone call to advise debtor that enforcement has begun	0.0%	35.0%	5.0%	20.0%	16.0%	0.0%	0.0%	0.0%	0.0%	0.0%	20.0%	10.9%
Attend premises - first visit	90.0%	84.6%	95.0%	100.0%	100.0%	100.0%	85.3%	100.0%	98.0%	98.0%	100.0%	97.0%
Discuss repayment options with debtor	128.0%	74.0%	60.0%	40.0%	35.0%	25.0%	42.9%	100.0%	60.0%	66.0%	70.0%	56.7%
Set up payment by instalments plan	114.0%	33.9%	40.0%	5.0%	35.0%	20.0%	32.4%	91.0%	40.0%	7.7%	50.0%	34.1%
Administer payment by instalments plan	99.0%	29.4%	40.0%	5.0%	21.0%	10.0%	32.4%	91.0%	40.0%	7.7%	40.0%	30.2%
Receive repayment by credit card	64.0%	26.1%	35.0%	10.0%	12.0%	5.0%	20.7%	48.0%	20.0%	32.4%	60.0%	24.1%
Receive repayment by cheque	52.0%	11.9%	14.8%	5.0%	22.0%	2.0%	14.3%	52.0%	10.0%	8.7%	50.0%	17.3%
Sending letter to advise of failure of repayment method	49.0%	20.3%	20.0%	2.5%	65.0%	0.0%	8.7%	3.0%	20.0%	0.8%	40.0%	21.9%
Out of hours attendance	38.0%	40.0%	25.0%	0.0%	1.0%	60.0%	24.5%	100.0%	65.0%	35.7%	75.0%	23.5%
Status update letter sent to creditor	0.0%	50.0%	5.0%	2.5%	72.0%	100.0%	10.8%	0.0%	0.0%	0.0%	5.0%	13.3%
All subsequent attendances	150.0%	11.3%	150.0%	30.0%	55.0%	60.0%	74.0%	300.0%	150.0%	238.3%	20.0%	89.9%
Attendance with a view to remove goods but not removing	61.0%	14.5%	105.0%	80.0%	66.0%	60.0%	61.2%	400.0%	100.0%	0.0%	40.0%	82.0%
Levying goods	41.0%	13.5%	21.7%	10.0%	19.0%	30.0%	13.3%	21.0%	60.0%	15.0%	60.0%	24.5%
Walking possession of goods	29.0%	10.3%	12.8%	2.0%	17.0%	20.0%	8.1%	20.0%	20.0%	15.0%	55.0%	13.7%
Clamping vehicle	7.0%	2.0%	1.5%	5.0%	6.0%	5.0%	1.3%	7.0%	1.0%	1.7%	15.0%	4.5%
De-clamping vehicle	7.0%	2.0%	1.5%	5.0%	6.0%	4.0%	1.3%	7.0%	1.0%	1.7%	15.0%	4.5%
Close possession of goods	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	2.0%	0.1%
Seizure of goods	0.2%	11.9%	0.0%	1.0%	17.0%	1.0%	10.0%	30.0%	1.0%	0.0%	35.0%	5.7%
Removal/ transport of goods	0.2%	0.3%	0.0%	1.0%	3.0%	1.0%	0.3%	5.0%	0.1%	0.0%	8.0%	1.2%
Valuation of goods	0.0%	0.1%	0.0%	1.0%	0.5%	1.0%	0.5%	4.0%	0.1%	0.0%	0.0%	0.6%
Sale held at debtors premises	0.0%	0.1%	0.0%	0.5%	1.0%	1.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%
Sale held at site other than debtors premises	0.1%	0.3%	0.0%	0.5%	0.0%	1.0%	0.1%	0.0%	0.1%	0.0%	5.0%	0.4%
Pre-auction activities (i.e. advertising auction)	0.1%	0.3%	0.0%	1.0%	1.0%	1.0%	0.2%	0.0%	0.1%	0.0%	2.0%	0.6%
Transport of goods to place of sale	0.0%	0.3%	0.0%	1.0%	3.0%	2.0%	0.3%	0.0%	0.1%	0.0%	5.0%	1.0%
Auction activities (i.e. attendance of auctioneer)	0.0%	0.3%	0.0%	1.0%	1.0%	1.0%	0.1%	0.0%	0.1%	0.0%	5.0%	0.7%
Processing disputed ownership claims	0.0%	0.1%	0.0%	1.0%	6.0%	1.0%	0.0%	0.0%	0.2%	0.0%	5.0%	1.4%
Return of seized goods	0.0%	0.1%	0.0%	1.0%	0.5%	1.0%	0.0%	0.0%	0.0%	0.0%	3.0%	0.5%
Administration relating to case completion	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Return of warrants	100.0%	100.0%	80.0%	80.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	90.8%

<sup>30</sup> On the original RFI activity list “Further manual input of case into IT system” read “Input of case record into NICE system”. The NICE system is an IT database used by HCEOs to record Writs. The database is only relevant for HCEOs. There was some misunderstanding of this activity, and some non-HCEO EAs responded that they undertook this activity. Enquiries revealed that those respondents had understood that the activity was some further manual input of the case data into an IT system.

### 11.2.1. Variances in EAC activity frequency estimates

The most significant variances in frequency of practices were for the following activities:

- “Produce status report (probability of debt recovery)” – three of the EACs follow the practice of always providing the creditor with a status report for each case handled, whilst five never provided a status report on an individual case basis. Of the remaining three EACs two provided status reports infrequently (10.0% and 12.8%), and the other provided reports for approximately half of all cases handled. These different levels of reporting to creditors may reflect different levels of sophistication in IT systems employed by EACs. The most sophisticated EAC IT systems share information directly with creditors over the internet, and can therefore provide the creditor with a status report for every case, should the creditor decide to interrogate the case data. (The activity “Status update letter sent to creditor” also identified some variance in current practices, which may relate to similar causes.)
- “Sending out first letter to advise debtor that Enforcement had begun” – Three of the EACs always send out a letter to advise the debtor of the start of the Enforcement process, and a further two EACs sent letters for the majority of cases. Of the remaining six EACs, two sent letters in around one quarter of cases, whilst four send letters for only 1 in 10, or less, cases. These differences may reflect differences in the existing Fee Structures, where some<sup>31</sup> allow fees to be charged for letters, whilst the others do not; or may represent different levels of focus on achieving repayment before doorstep Enforcement begins, which may in turn reflect different contractual arrangements with creditors relating to the “compliance stage”.
- The extent to which EACs attempt to discuss repayment options with debtors, and to set up and administer payment by instalment plans, varied. This reflects different strategies with respect to obtaining repayment: whether a manageable plan spread over time is preferable, or an attempt to achieve quick payment in full (“PIF”) through levy and/ or removal of goods.
- EACs’ attendance strategies varied in terms of both “Out of hours attendances”, which revealed a full range of strategies from never attending out of hours (0%), to always attending out of hours (100%); and “All subsequent attendances”, which varied from an EAC rarely returning (11%) to an EAC returning on average three times (300%).
- EACs’ attitudes to the threat of removal and actual removal varied considerably. One EAC reported that it had not removed goods (0%), nor attended with a view to remove (0%): employing a strategy of doorstep persuasion without recourse to the removal option. On the other hand, another EAC attended with a view to remove on an average of four occasions per case (400%), and the highest actual removal rate reported was 8%. This company also had the highest reported frequency of sales (5% of cases, with removed goods returned in 3% of cases).

These variances represent different EAC approaches at different stages of the Enforcement process, and not completely different approaches to the whole process. By taking a weighted average I would hope to increase the chances that the new Fee Structure is compatible with a broader range of possible approaches to the Enforcement process, and does not disproportionately reward, nor punish, any particular valid and reasonable approach.

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<sup>31</sup> CSA and RTA.

Inevitably, the introduction of a new Fee Structure is likely to impact all EAC business models to some extent, and therefore the frequency with which activities are undertaken. The objective in designing the Proposed Fee Structure must be to understand what changes a new Fee Structure will incentivise, and to avoid any unanticipated negative consequences.

### 11.3. HCEAC activity frequencies

HCEAC activity frequency estimates were provided by 5 HCEAC respondents. The weighted averages of the activity frequencies were calculated in the same way as for the EAC respondents, and are shown in the table below:

*Table 12: HCEAC activities and frequencies*

Activity	Respondents estimated activity frequencies					Weighted average
Receive Instructions from client	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Set up a case file	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Further manual input of case into NICE system	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Other administrative processing (i.e. link to existing cases)	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Confirm debtor details (address/ company searches)	80.0%	100.0%	100.0%	100.0%	100.0%	98.7%
Produce status report (probability of debt recovery)	100.0%	0.0%	0.0%	0.0%	100.0%	27.4%
Insolvency report	100.0%	100.0%	0.0%	40.0%	100.0%	52.9%
Send out first letter to advise debtor that enforcement has begun	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Telephone call to advise debtor that enforcement has begun	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Attend premises - first visit	100.0%	87.4%	100.0%	100.0%	100.0%	97.4%
Discuss repayment options with debtor	28.0%	44.0%	30.0%	50.0%	37.1%	36.8%
Set up payment by instalments plan	22.0%	21.7%	30.0%	33.0%	7.4%	23.5%
Administer payment by instalments plan	20.0%	21.7%	30.0%	33.0%	7.4%	23.3%
Receive repayment by credit card	0.0%	6.3%	6.0%	30.0%	14.0%	10.5%
Receive repayment by cheque	0.0%	15.5%	12.0%	33.0%	12.0%	14.7%
Sending letter to advise of failure of repayment method	8.0%	0.0%	20.0%	25.0%	0.0%	11.6%
Out of hours attendance	12.0%	15.3%	50.0%	30.0%	0.9%	27.6%
Status update letter sent to creditor	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
All subsequent attendances	32.0%	40.0%	30.0%	50.0%	54.0%	39.8%
Attendance with a view to remove goods but not removing	18.0%	61.0%	10.0%	80.0%	18.0%	31.7%
Levying goods	22.0%	18.8%	30.0%	80.0%	34.2%	34.7%
Walking possession of goods	19.0%	18.8%	30.0%	80.0%	34.2%	34.5%
Clamping vehicle	0.0%	0.0%	0.0%	0.0%	1.7%	0.3%
De-clamping vehicle	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Close possession of goods	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Seizure of goods	1.5%	0.5%	1.0%	5.0%	34.5%	8.5%
Removal/ transport of goods	1.5%	0.5%	1.0%	5.0%	10.0%	3.4%
Valuation of goods	0.0%	0.0%	1.0%	2.0%	34.5%	7.9%
Sale held at debtors premises	0.0%	0.0%	0.0%	1.0%	0.0%	0.1%
Sale held at site other than debtors premises	1.5%	0.4%	1.0%	1.0%	10.0%	2.8%
Pre-auction activities (i.e. advertising auction)	1.5%	0.4%	0.0%	2.0%	10.0%	2.5%
Transport of goods to place of sale	1.5%	0.4%	0.0%	1.0%	10.0%	2.4%
Auction activities (i.e. attendance of auctioneer)	0.0%	0.4%	0.0%	2.0%	10.0%	2.4%
Processing disputed ownership claims	3.0%	0.1%	1.0%	1.0%	2.8%	1.3%
Return of seized goods	0.0%	0.1%	0.0%	1.0%	1.0%	0.4%
Administration relating to case completion	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Return of warrants	0.0%	4.0%	0.0%	20.0%	1.2%	3.7%

#### 11.3.1. Variances in EAC activity frequency estimates

The most significant variances in frequency of practices were for the following activities:

- “Produce status report (probability of debt recovery)” – two of the HCEACs were in the practice of always producing a status report for each case (100%), and three did not produce status

reports (0%).“Attendance with a view to remove goods but not removing” – HCEACs use a variety of strategies concerning attendance to remove, ranging from the least frequent use of the threat to remove in 10% of cases, to the most frequent use of this threat in 80% of cases.

- “Removal/ transport of goods” – HCEAC removal strategies ranged from 0.5% of cases, to a maximum of 10% of cases. The HCEAC reporting removal in 10% of cases also escalated to an actual sale of goods in all 10% of their cases in which they had removed goods.

## 12. Enforcement Rates/ Fee Recovery Rates

### 12.1. Enforcement Rate

An “Enforcement Rate” is a measure related to the Enforcement of debt, which typically measures the amount of debt recovered in comparison to the amount of debt originally outstanding. The Enforcement Rate may be measured in several alternative ways. Traditionally the two most commonly used methods are:

- **“Paid-in-Full (“PIF”) Enforcement Rate”** – This measures the percentage of cases where repayment of the debt is achieved in full. For example, if an LA passes 20,000 Distress Warrants to an EAC, which recovers 4,000 of the debts in full, the PIF Enforcement Rate would be recorded as 20% (4,000/ 20,000). The PIF Enforcement Rate is most often used to measure the success of High Court and non-High Court Enforcement.
- **“Pence-in-Pound Enforcement Rate”** – This measures the amount (in pence) recovered for every one pound of original value of debt. For example, if an LA passes Distress Warrants to an EAC with a total value of debt outstanding of £2,000,000, and the EAC recovers £400,000, the Pence-in-Pound Enforcement Rate would be 20p (or 20%). The Pence-in-Pound Enforcement Rate is traditionally used to measure the success rate for County Court bailiffs.

EACs and HCEACs currently only recover fees on the cases that they successfully Enforce. This is because in almost all cases (the exception being the Abortive Fee for High Court Enforcement) the creditor does not pay the EAC/ HCEAC any fees for the Enforcement service. Therefore, the only possible source of fees is amounts collected from the debtor (and even these may potentially, depending on the arrangement between the EAC/ HCEAC and creditor, need to be paid first to the creditor, to repay the debt, before fees can be recovered).

#### Those that pay subsidise those that do not

Whilst the only source of fees continues to be amounts collected from debtors that pay (following Enforcement), Enforcement Rates will determine the extent to which those debtors that pay are required to subsidise those that do not. The lower the Enforcement Rate, the greater the level of subsidy. This is a consequence of the principle that creditors should be entitled to recover their debt (once in receipt of a Warrant/ Writ entitling them to do so) at no cost.

Following recommendations contained in the 2003 White Paper<sup>32</sup>, the current review considers whether this principle should be retained, or whether creditors should be expected to make a contribution to the cost of Enforcement under certain circumstances. The White Paper recommends

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- <sup>32</sup> “Effective Enforcement: Improved methods of recovery for civil court debt and commercial rent and a single regulatory regime for Warrant Enforcement agents”, a White Paper issued by the Lord Chancellor’s Department (March 2003), <http://www.dca.gov.uk/Enforcement/wp/index.htm>
  -

an “Up-Front Fee”, which is considered further in this report, along with a more general “Creditor Guaranteed Fee” (see **15.3 Creditor Guaranteed Fee**). For any element of fees that are guaranteed by the creditor, the Enforcement Rate is no longer a determinant of fee recovery: the fee is recovered from the debtor when Enforcement is successful, and from the creditor otherwise. However, for any fee elements that are not guaranteed the Enforcement Rate continues to be an important determinant of fee recovery.

## 12.2. Fee Recovery Rate

Whilst the Enforcement Rate is an important determinant of fee recovery, it actually measures the rate of recovery of debt: referred to in this report as the “**Debt Recovery Rate**”. Although the rate of recovery of debt is related to the recovery of fees, they are not one and the same.

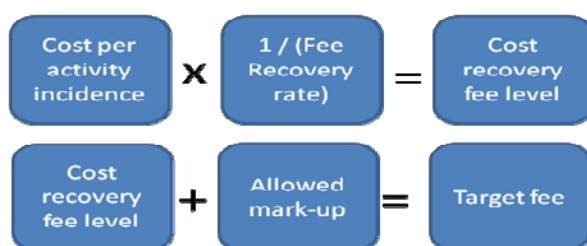
The analysis in this report is concerned with the recovery of fees, which allow EACs/ HCEACs to recover their costs and to earn a profit margin. The rate of recovery of fees is therefore a more important concept for this report, and for this reason it defines the concept of a “**Fee Recovery Rate**”.

In the approach adopted in the Enforcement Fee Structure Review, the Fee Recovery Rate is a more important determinant of the quantum of fees than the Enforcement Rate. The objective of the Review is to set fees at a sufficient level to cover costs and to allow a target profit margin (which fairly rewards EACs/ HCEACs and enables them to provide a sustainable service). The Fee Recovery Rate is therefore more important since it is the recovery of fees (and not the original debt) which drives EAC and HCEAC revenue. In turn this revenue allows EACs/HCEACs to recover their costs and to earn a profit margin in excess of full cost recovery.

## 12.3. Fee Recovery Rate multiple

Section **13. Cost Allocation Exercise** determines the typical cost of performing each Enforcement activity. Since this cost can only be recovered in fee income (with the exception of any guaranteed fee element) from successfully enforced debts, the fee needs to be greater than the actual cost by a multiple of the inverse of the Fee Recovery Rate. That is to say, if fees are collected in only 25%, or one in four cases, that the fee needs to be four times as large as the cost, in order that recovered fees can meet costs. The allowable margin should then be added to the multiplied cost base to enable a profit margin to be earned as a mark-up over costs.

*Figure 5: Approach to deriving fee levels from activity costs*





## 12.4. Determining Fee Recovery Rates

Unfortunately, all current Enforcement Rate statistics, though these may be calculated in a variety of ways, measure the Debt Recovery Rate. Typically the Enforcement Rate has been a method of allowing the creditor to monitor, and the EAC/ HCEAC to demonstrate, the rate of the EACs/ HCEACs success in their assigned task of recovering debts. The Enforcement Rate has not previously been used as an input to determine the levels of fees as illustrated in **Figure 4**, and consequently has not historically been calculated in the most appropriate manner for performing this task. For the benefit of monitoring the potential new Fee Structure and to assist future reviews, it may be sensible to require EACs/ HCEACs to record, and submit for audit, the more clearly specified performance measures: Debt Recovery Rate and Fee Recovery Rate (see **20.4 Ongoing Price Control & Review**).

Nonetheless the Fee Recovery Rate is a vital input for calculating appropriate fee levels, and therefore it is necessary to determine this Rate in the most reliable manner available. With this objective, evidence was sought from independent and verifiable sources, and in order to be representative of the industry as a whole, from sources able to provide the greatest coverage in terms of geographic area and proportion of the totals Warrants/ Writs issued.

### 12.4.1. Adjustment to Enforcement Rates

The best source of data, in terms of independence, verifiability and coverage, was generally from large volume creditors. However, since these creditors record a Debt Recovery Rate it was necessary to make adjustments to the creditors' reported Debt Recovery Rate to obtain estimates of the associated Fee Recovery Rate.

In order to estimate the size of the necessary adjustment to reported Debt Recovery Rates to obtain a Fee Recovery Rate, testing was performed using the IT system and case records of an EAC with a large share of the Non-High Court Enforcement Market. Detailed analysis of the case records revealed that in 7.9% of the cases reported as enforced with debt PIF, no fees had been recovered by the EAC<sup>33</sup>. Details of this testing, and the resulting rate adjustment, were presented to, and discussed by, the Non-High Court Enforcement Working Group. The Working Group proposed that this discount be extrapolated and applied uniformly to all creditor reported Enforcement Rates (Debt Recovery Rates) in order to determine the associated Fee Recovery Rate.

The following sub-section describes how this was achieved for each of the debt-types:

### 12.4.2. Non-High Court Enforcement Fee Recovery Rates

#### Council Tax

LAs were contacted and asked to report their observed successful Enforcement Rate for Council Tax liability orders passed to EACs for Enforcement in the 12 months ended 31 March 2008. Responses were received from 96 (25% of the 378 LAs in England and Wales) LAs, passing a total volume of 538,906 Council Tax liability orders to EAs. Of these Warrants 133,702 (24.8%) were recovered PIF by

<sup>33</sup> Detailed examination of the EAC IT system revealed that of 68,396 cases where the debt was repaid in full, and therefore the case had contributed to the creditor's PIF Enforcement Rate measure, in 5,402 of these cases the EAC had not been able to recover fees. For 7.9% (5,402/ 68396) of PIF cases the EAC did not recover fees.



the EACs. LAs reported the Enforcement Rate as a Debt Recovery Rate, with a weighted average of 24.8%.

A 7.9% discount was applied to the reported Debt Recovery Rate to determine a **Fee Recovery Rate of 22.8%**.

### CSA

Currently CSA liabilities are enforced by a single EAC. Detailed examination of the IT system and case records for this EAC revealed that the debt was recovered PIF in 1,827 cases of 11,701 issued in the year ended 31 March 2008: a Debt Recovery Rate of 15.6%.

A 7.9% discount was applied to the reported Debt Recovery Rate to determine a **Fee Recovery Rate of 14.4%**.

### HMCS

HMCS records Enforcement Rate information as part of the Balanced Scorecard for EACs enforcing Magistrates Court fines and penalties. Complete Balanced Scorecard information for all three HMCS Enforcement contractors is available for the 6 months ended 31 December 2008. The statistics for this period show 248,174 Warrants issued in total (less those recalled or returned), and a total paid of 45,136: an Enforcement Rate of 18.2% (45,136/ 248,174).

Applying a discount of 7.9% gives a **Fee Recovery Rate of 16.8%**.

### RTA

In the 12 months ended 31 March 2008 10,503,465 PCNs were issued under the RTA by Transport for London ("TfL") (1,440,964) and LAs issuing PCNs (9,062,051)<sup>34</sup>. These PCN issuers were contacted and asked to confirm the number of PCNs issued, the number passed to EACs, and the number paid after being passed to EACs.

Responses were received from PCN issuers issuing a total of 5,259,830 PCNs: achieving 50% coverage of the total PCNs issued. Of this total 625,856 had been passed to EACs, who had returned 94,838 successfully paid: a Debt Recovery Rate of 15.2% (94,838/ 625,856).

A 7.9% discount was applied to the reported Debt Recovery Rate to determine a **Fee Recovery Rate of 14.0%**.

### Commercial Rent and Non-Domestic Rates

For Commercial Rent and NNDR it was not possible to identify creditors issuing a sufficiently large proportion of total Warrants whom might conveniently provide independent and verifiable data. In the absence of creditor driven information, the EACs responding to the RFI were requested to determine the Debt Recovery Rates they had achieved for these two debt-types.

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<sup>34</sup> The Traffic Penalty Tribunal  
<http://www.trafficpenaltytribunal.gov.uk>

The weighted averages of the Debt Recovery Rate estimates received from the EACs were 40.2% for Commercial Rent, and 36.1% for NNDR. Discounting these Debt Recovery Rates by 7.9% to determine **Fee Recovery Rates gives 37.0% for Commercial Rent and 33.2% for NNDR.**

### **Sale Stage Fee Recovery Rate**

For cases where Enforcement actions proceed as far as the Sale Stage, the debtor and their address have been correctly identified, the EA/ HCEO has identified and levied on goods to be removed, and escalated the Enforcement process to actually remove and proceed to sale of the levied items. For cases that have proceeded to this stage, the probability of successful Enforcement of the debt and the fees must necessarily be significantly greater than for a case that it is initially received by the EAC, before any Enforcement action has been undertaken. Furthermore, the probability of successful Enforcement is no longer related to the specific debt-type, but instead governed by how successfully the EA/ HCEO has performed the Enforcement process, and with what degree of certainty the sale of the assets will result in sufficient proceeds to repay the debt and to pay the EAs/ HCEOs fees.

Although EAs/ HCEOs should use professional judgement not to proceed to removal and sale where proceeds will be insufficient, due to uncertainty over the auction price that will be achieved, there remains the possibility that the debt amount, or the fees incurred, may not be recovered in full from sale proceeds. **Members of the Non-High Court Enforcement Working Group estimated that the Fee Recovery Rate following the Sale Stage was 80%.** A Fee Recovery Rate assumption of around 80% for the Sale Stage, applied to all Non-High Court Enforcement debt-types, appropriately reflects that the activity should not be performed where sufficient recovery of monies is not significantly likely, but also that there are uncertainties inherent in the sale by auction process.

**The Non-High Court Enforcement Working Group accepted that the Fee Recovery Rates described above represented the appropriate assumptions to apply to the Fee Structure Model.**

### **MoJ Parameter**

MoJ's initial modelling parameter was that the Non-High Court Enforcement Fee Recovery Rate assumptions described above should be applied to the Fee Structure Model.

### **12.4.3. High Court Enforcement Fee Recovery Rate**

In common with Commercial Rent and NNDR it was not possible to identify creditors issuing a sufficiently large proportion of the total High Court Writs of Fi Fa whom might conveniently provide independent and verifiable Enforcement Rate data.

Some data was available, in the form of the MoJ's HCEO Performance Statistics, which are provided by the members of HCEOA on a monthly basis and compiled by MoJ to provide aggregated summary statistics. However, these numbers are not independently audited by MoJ, and the statistics recorded are simply aggregated from the data provided directly by the HCEOs. Furthermore, the statistics do not record the Fee Recovery Rate that would be most appropriate for use as the input assumption in the Fee Structure Model, but rather record a range of different Debt Recovery Rates calculated on various bases.

It was the view of MoJ and HCEO that none of the measures as currently recorded by the MoJ's HCEO Performance Statistics would be appropriate to adopt as the Fee Recovery Rate assumption in the Fee Structure Model. With the benefit of an understanding of the Fee Recovery Rate concept, MoJ asked the members of the High Court Enforcement Fees Working Group to provide estimates of the appropriate rate to be used in the Model. The estimates provided by the Working Group member companies are shown in the table below:

*Table 13: HCEOA members' estimates of appropriate Enforcement Rate assumption.*

Respdondent	Enforcement Rate
1	25.3%
2	16.9%
3	22.5%
4	22.2%
5	18.1%
Simple average	21.0%

**MoJ proposed to adopt the simple average of these estimates: 21.0% to use as the Fee Recovery Rate assumption in the Fee Structure Model.**

#### **Sale Stage Fee Recovery Rate**

As for Non-High Court Enforcement, and for similar reasons, the Enforcement Rate for cases proceeding to Sale Stage must exceed the general Enforcement Rate for cases initially received. **The High Court Enforcement Working Group estimated the Fee Recovery Rate on cases proceeding to Sale Stage to be 60%.**

This Fee Recovery Rate assumption is lower than that made for Non-High Court Enforcement. This reflects that HCEOs may sometimes be compelled to proceed to removal and sale, due to pressures from and obligations to creditors, when they are less certain that the proceeds from sale will successfully cover the original debt and fees incurred.

#### **MoJ Parameter**

MoJ's initial modelling parameter was that the High Court Enforcement Fee Recovery Rate assumptions described above should be applied to the Fee Structure Model.

#### **12.4.4. Fee Recovery Rates Summary**

The table on the following page shows the overall Fee Recovery Rate assumptions used to inform the Fee Structure Model:

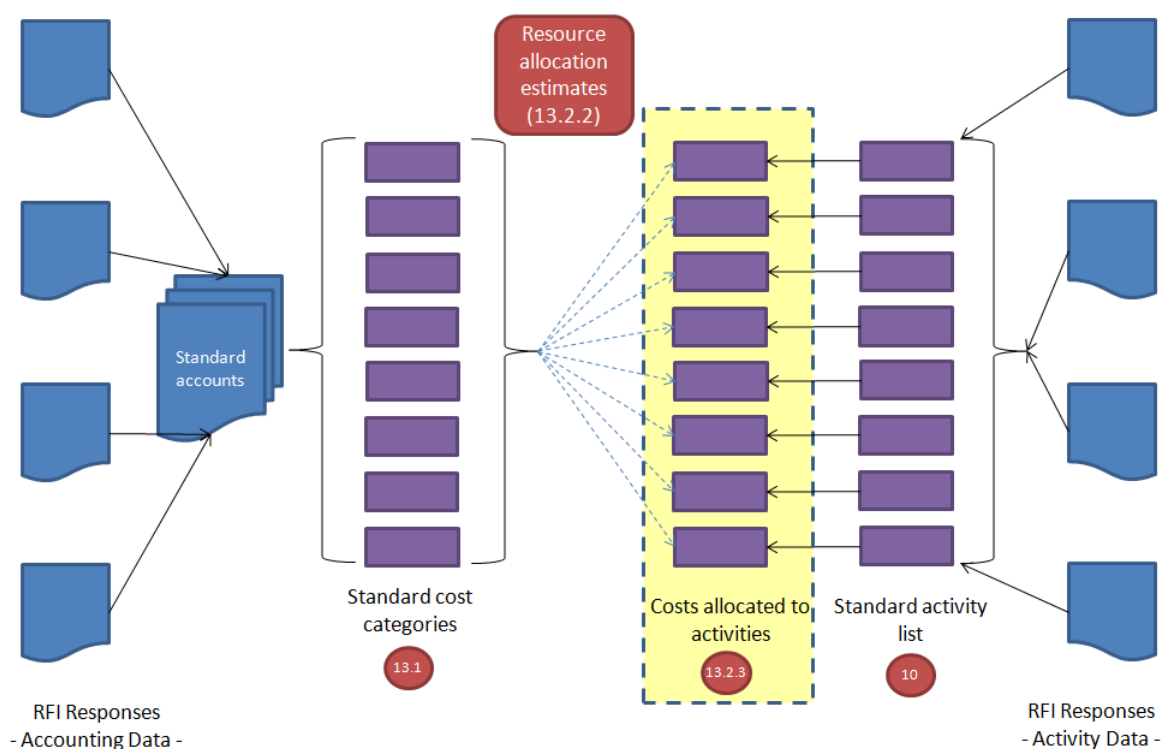
*Table 14: Fee Recovery Rates Summary*

Debt-Type	Debt Recovery Rate	Fee Recovery Rate
Council Tax	24.8%	22.8%
CSA	15.6%	14.4%
HMCS	18.2%	16.8%
RTA	15.2%	14.0%
Commercial Rent	40.2%	37.0%
NDR	36.1%	33.2%
High Court Writs of Fi Fa	-	21.0%

## 13. Cost Allocation Exercise

The following diagram illustrates the approach adopted for allocating total costs to the various Enforcement activities:

Figure 6: Approach to allocating EAC costs to activities



The Cost Allocation Exercise was informed by the RFI responses including sufficient accounting data. Accounting data was received from 8 EACs, representing approximately one third of the total Non-High Court Enforcement market<sup>35</sup>.

Five HCEOs provided sufficient accounting data, representing over 90% of the High Court Enforcement market<sup>36</sup>.

The various steps of the above approach are described in this section of the report, and the resulting outputs are presented separately for EACs and HCEACs.

<sup>35</sup> Aggregate revenue of the 8 EACs was £52m, approximately one third of the total market revenue as measured at £157m by "Plimsoll Portfolio Analysis: The UK Bailiffs Industry" (3<sup>rd</sup> Edition 2008)

<sup>36</sup> 5 HCEO respondents accounted for 93% of total HCEO market share by number of Writs received according to MoJ HCEO Performance Statistics.

### 13.1. Standard cost categories

The accounting data received in response to the RFI was in a range of different formats and different levels of detail from each of the respondents. Some respondents completed the accounting data template included in the RFI, whilst others submitted management accounts.

The first task was to analyse the accounting information provided to understand the nature of the costs incurred during the Enforcement process, and to categorise the types of cost incurred into a standard cost template. Cost categories were defined with the objective of being sufficiently specific that they could identify genuinely different types of costs with different cost drivers, yet broad enough to assist in simplifying the process of allocating the various costs to different activities.

Having defined a standard cost classification, applicable to both EACs and HCEACs, the accounting data supplied by each of the respondents was restated using the standard classification of costs shown below:

*Figure 7: Standardised Profit & Loss Statement*

Enforcement Agent Standardised Profit & Loss Statement		
<b>Revenue</b>		
<b>Staff Costs</b>		
- Directors' fees		
- Bailiff staff costs		
- Admin staff costs		
Admin costs		
Building costs		
Vehicle costs		
Removal & Storage		
Other costs		
Finance costs		
Depreciation		
Management charges		
<b>Total Operating Costs</b>		
<b>Pre-tax profit</b>		

## 13.2. Costs allocated to activities

### 13.2.1. Cost allocation approach

The approach to determining a Proposed Fee Structure requires that the “Total Costs” of undertaking Enforcement activities are allocated between each of the activities identified at section **11. Enforcement Activities and Frequencies**.

“Total costs” includes all profit and loss account items, including non-cash items such as depreciation, and bad debts and provisions. All operating costs are included, including insurance premiums and fees to sub-contractors and other third parties, and all financing costs, such as interest on bank loans. It is important to allocate “total costs”, as E`1AC profitability requires that revenue is sufficient to recover **all** costs and to generate a reasonable profit margin above those costs. Failure to allocate all costs when setting activity costs would result in a revenue and Fee Structure which would not allow sustainable profitability.

“Activity Based Costing” (“ABC”) is an established accounting method for allocating costs to activities. Whilst direct costs can be allocating directly to the activities they are incurred in respect of, ABC is a method of allocating indirect costs (overheads) to individual activities, products and services, or for example, to a particular department within an organisation. An ABC approach examines each activity in detail to determine what resources and in what quantities (perhaps time, volume or number) are required to complete each activity. Indirect costs associated with resources are then assigned to the activities on the basis of the resource quantities required to complete each activity.

Undertaking an ABC study requires detailed collaboration with the subject company, is costly and time-consuming, and produces results that are specific to the company undertaking the study. Due to time and resource constraints, and because an understanding of typical industry costs (not company-specific costs) is required, a typical ABC approach has not been applied to the EAC/ HCEAC accounting data.

Instead a much simplified cost allocation process was used, focusing on the key internal resources of EAC/ HCEAC firms: EA staff, administrative staff (and IT used predominantly by administrative staff), and owned vehicles. Indirect costs associated with each of these resources were allocated to activities on the basis of the role of each resource in performing the activities.

### 13.2.2. Resource allocation estimates

RFI respondents were requested to estimate, in terms of either actual time or percentage of time spent, the amount of each resource required for each of the Enforcement activities. The resources that respondents were asked to consider were: EA staff time, admin staff time, and owned vehicle time. A large majority of responses provided estimates based on a percentage of resource capacity, and this approach was adopted in the analysis which followed. This convention has the advantage that where resource utilisation estimates sum to 100%, this ensures that the whole cost is allocated. Furthermore, where the data provider has a good understanding of the various resource roles, assessing the focus of the role in terms of percentages is an intuitive approach.

The following two tables show the weighted average resource utilisation estimates provided by EAC and HCEAC respondents (weighted by volume of cases handled). A weighted average was used in order that any differences in activity resource utilisation between companies are reflected in proportion to the companies' relative market shares.

### EAC resource allocation estimates

*Table 15: EAC weighted average activity resource utilisation estimates*

Activity Resource Utilisation Estimates (EACs Weighted Average)			
Activity	Admin staff utilisation	EA Staff utilisation	Owned vehicle utilisation
Receive Instructions from client	2.8%	0.0%	0.0%
Set up a case file	2.7%	0.0%	0.0%
Input of case record into NICE system	1.8%	0.0%	0.0%
Other administrative processing (i.e. link to existing cases)	3.1%	0.2%	0.0%
Confirm debtor details (address/ company searches)	6.4%	1.4%	0.0%
Produce status report (probability of debt recovery)	1.6%	0.0%	0.0%
Insolvency report	0.4%	0.0%	0.0%
Send out first letter to advise debtor that enforcement has begun	4.5%	0.0%	0.0%
Telephone call to advise debtor that enforcement has begun	3.8%	0.1%	0.0%
Attend premises - first visit	5.7%	18.1%	22.2%
Discuss repayment options with debtor	11.8%	6.4%	3.7%
Set up payment by instalments plan	7.0%	2.3%	0.6%
Administer payment by instalments plan	6.9%	0.2%	0.1%
Receive repayment by credit card	4.3%	0.9%	0.0%
Receive repayment by cheque	4.6%	0.5%	0.0%
Sending letter to advise of failure of repayment method	2.0%	0.0%	0.0%
Out of hours attendance	0.7%	6.5%	7.7%
Status update letter sent to creditor	1.1%	0.0%	0.0%
All subsequent attendances	4.6%	15.4%	19.3%
Attendance with a view to remove goods but not removing	2.0%	23.1%	20.6%
Levying goods	2.1%	7.8%	4.9%
Walking possession of goods	1.1%	3.3%	3.2%
Clamping vehicle	0.6%	2.0%	3.0%
De-clamping vehicle	0.6%	2.0%	3.0%
Close possession of goods	0.1%	0.1%	0.1%
Seizure of goods	1.6%	2.1%	1.8%
Removal/ transport of goods	0.8%	1.8%	2.2%
Valuation of goods	0.2%	0.1%	0.1%
Sale held at debtors premises	0.2%	0.0%	0.0%
Sale held at site other than debtors premises	0.5%	0.0%	0.0%
Pre-auction activities (i.e. advertising auction)	0.2%	0.0%	0.0%
Transport of goods to place of sale	0.3%	0.7%	0.7%
Auction activities (i.e. attendance of auctioneer)	0.2%	0.0%	0.0%
Processing disputed ownership claims	1.0%	0.2%	0.0%
Return of seized goods	0.7%	0.2%	0.4%
Administration relating to case completion	6.5%	0.5%	0.0%
Return of warrants	6.0%	4.1%	6.3%
	100.0%	100.0%	100.0%



## HCEAC resource allocation estimates

Table 16: HCEAC weighted average activity resource utilisation estimates

Activity Resource Utilisation Estimates (HCEACs Weighted Average)			
Activity	Admin staff utilisation	EA staff utilisation	Owned vehicle utilisation
Receive Instructions from client	3.1%	0.0%	0.0%
Set up a case file	5.2%	0.1%	0.0%
Input of case record into NICE system	1.7%	0.0%	0.0%
Other administrative processing (i.e. link to existing cases)	1.6%	0.1%	0.0%
Confirm debtor details (address/ company searches)	2.5%	0.1%	0.0%
Produce status report (probability of debt recovery)	0.3%	0.0%	0.0%
Insolvency report	0.5%	0.0%	0.0%
Send out first letter to advise debtor that enforcement has begun	0.0%	0.0%	0.0%
Telephone call to advise debtor that enforcement has begun	0.0%	0.0%	0.0%
Attend premises - first visit	1.8%	29.2%	38.9%
Discuss repayment options with debtor	4.7%	3.2%	0.0%
Set up payment by instalments plan	3.1%	0.5%	0.0%
Administer payment by instalments plan	11.1%	0.1%	0.0%
Receive repayment by credit card	3.1%	0.3%	0.0%
Receive repayment by cheque	4.5%	2.5%	0.0%
Sending letter to advise of failure of repayment method	3.5%	0.1%	0.0%
Out of hours attendance	2.2%	16.9%	18.0%
Status update letter sent to creditor	29.3%	0.1%	0.0%
All subsequent attendances	4.1%	16.1%	9.0%
Attendance with a view to remove goods but not removing	1.3%	11.1%	18.6%
Levying goods	0.0%	6.9%	6.3%
Walking possession of goods	0.2%	6.5%	5.8%
Clamping vehicle	0.0%	0.0%	0.0%
De-clamping vehicle	0.0%	0.0%	0.0%
Close possession of goods	0.0%	0.2%	0.0%
Seizure of goods	0.0%	1.3%	1.4%
Removal/ transport of goods	1.3%	3.3%	1.0%
Valuation of goods	0.0%	0.5%	0.0%
Sale held at debtors premises	0.2%	0.0%	0.0%
Sale held at site other than debtors premises	0.7%	0.0%	0.0%
Pre-auction activities (i.e. advertising auction)	0.0%	0.0%	0.0%
Transport of goods to place of sale	0.0%	0.5%	0.9%
Auction activities (i.e. attendance of auctioneer)	0.0%	0.1%	0.0%
Processing disputed ownership claims	3.6%	0.1%	0.0%
Return of seized goods	0.4%	0.0%	0.0%
Administration relating to case completion	9.8%	0.1%	0.0%
Return of warrants	0.3%	0.2%	0.0%
	100.0%	100.0%	100.0%

An examination of the above estimates, for both EACs and HCEACs, stands up to tests of common sense:

- **Administrative staff time** is occupied with tasks across all of the Enforcement activities, with a focus on the setting up and administering of case files, discussing repayment options with the debtor, the setting up and administering of payment plans, and administration relating to case completion. For HCEACs, the importance of reporting to creditors is illustrated by the focus of Admin staff time (29.3%) on the activity: "Status update letter sent to creditor".
- **EA staff time** is occupied primarily with attendances, as well as levying, and discussing repayment options with the debtor. Only a small percentage of EA staff time is occupied with *removal/ transport of goods*. This corresponds with the low reported incidence of

removals (see **Table 11: EAC's activities and frequencies** and **Table 12: HCEAC's activities and frequencies**).

- **Owned vehicle time** is used mainly for attending premises, and for levying and helping maintain walking possession of goods. The low utilisation for removal and transport activities is in line with the low reported frequency of these activities (see **Table 11: EAC's activities and frequencies** and **Table 12: HCEAC's activities and frequencies**).

### 13.2.3. Activity cost allocations

The following table describes the principles that were applied to allocate costs, in the various standard cost categories, to activities:

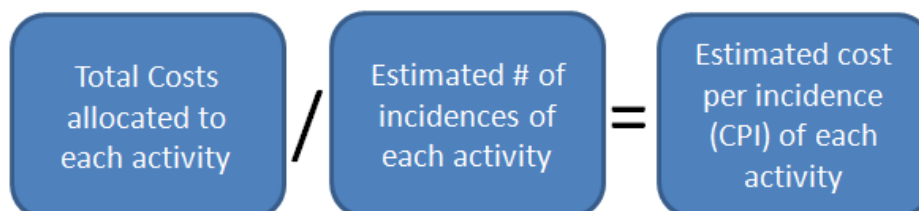
*Table 17: Cost allocation principles*

Cost Allocation Principles	
Cost Type	Allocation method
Directors' Fees	Allocate by average of % EA Staff and % Admin Staff time
EA Staff Costs	Allocate by % EA Staff time
Admin Staff Costs	Allocate by % Admin Staff time
Building Costs	Allocate by % Admin Staff time
Admin Costs	Allocate by % Admin Staff time
Vehicle Costs	Allocate by % Owned Vehicle time
Removal & Storage Costs	Allocate between removal/ storage activities ("Removal/ transport of goods", "Transport of goods to place of sale", and "Return of seized goods") in proportion to number of reported incidences
Other Costs	Allocated by average of % EA Staff, % Admin Staff, and % Owned Vehicle time
Finance Costs	Allocated by average of % EA Staff, % Admin Staff, and % Owned Vehicle time
Depreciation	Allocated by average of % Admin Staff, and % Owned Vehicle time
Management Charges	Allocated by average of % EA Staff, % Admin Staff, and % Owned Vehicle time

The cost allocation exercise was performed using the above principles. Where they were provided, each company's own estimates of resource utilisation were used to allocate that company's costs to the activity lists. For company's that did not provide resource utilisation estimates, the weighted averages were used.

### 13.2.4. Cost per single incidence of activities

*Figure 8: Calculation of CPI of each activity*



After costs had been allocated in total to different activities (Total activity costs), case volumes and weighted average percentage activity frequencies were used to estimate the number of occurrences of each activity (Total case volume x activity frequency = # of activity occurrences). The cost per incidence of each activity was then estimated by dividing the total activity costs by the number of

occurrences for each activity (Cost per incidence = Total cost allocated to activity/ # of activity occurrences).

The table on the following page shows the weight average estimated costs per incidence of each of the activities, for EACs and for HCEACs, and a comparison showing the cost difference between the two types of Enforcement:

### Weighted average cost per activity incidence

*Table 18: Weighted average allocated cost per activity incidence*

Activity	Average allocated cost of activity (£) (per occurrence)		Difference
	EACs	HCEACs	
Receive Instructions from client	0.30	3.08	934%
Set up a case file	0.29	4.72	1513%
Input of case record into IT system	0.26	1.39	442%
Other administrative processing (i.e. link to existing cases)	0.62	1.42	130%
Confirm debtor details (address/ company searches)	1.53	3.01	97%
Produce status report (probability of debt recovery)	1.70	1.73	2%
Insolvency report	0.40	1.30	225%
Send out first letter to advise debtor that enforcement has begun	1.20	N/A	N/A
Telephone call to advise debtor that enforcement has begun	6.42	N/A	N/A
Attend premises - first visit	5.22	30.65	487%
Discuss repayment options with debtor	4.62	17.32	275%
Set up payment by instalments plan	3.00	15.62	420%
Administer payment by instalments plan	2.22	38.70	1644%
Receive repayment by credit card	2.49	34.68	1292%
Receive repayment by cheque	2.35	42.13	1694%
Sending letter to advise of failure of repayment method	1.43	17.41	1113%
Out of hours attendance	1.51	55.40	3576%
Status update letter sent to creditor	1.65	26.93	1529%
All subsequent attendances	4.33	46.55	975%
Attendance with a view to remove goods but not removing	3.17	47.24	1389%
Levying goods	5.66	16.83	197%
Walking possession of goods	1.83	17.23	844%
Clamping vehicle	19.42	12.01	-38%
De-clamping vehicle	4.61	N/A	N/A
Close possession of goods	2.71	N/A	N/A
Seizure of goods	7.16	14.52	103%
Removal/ transport of goods	60.97	674.15	1006%
Valuation of goods	3.21	6.09	90%
Sale held at debtors premises	2.33	121.80	5121%
Sale held at site other than debtors premises	9.67	38.64	299%
Pre-auction activities (i.e. advertising auction)	1.05	0.00	-100%
Transport of goods to place of sale	20.39	143.19	602%
Auction activities (i.e. attendance of auctioneer)	4.57	1.70	-63%
Processing disputed ownership claims	8.34	333.25	3895%
Return of seized goods	16.60	351.00	2014%
Administration relating to case completion	0.63	8.88	1320%
Return of warrants	3.30	18.53	462%

## 14. "Representative Firms"

In order to assist various parts of the analysis, accounts were generated for the "Representative Firms": the "Representative EAC" and the "Representative HCEAC". This was done by calculating, from the Standard Profit & Loss Account (see **Figure 7: Standardised Profit & Loss Account**), a simple average from the data supplied by the eight EAC firms (to determine the "Representative EAC") and the five HCEAC firms (to determine the "Representative HCEAC"), providing sufficiently detailed accounting data in response to the RFI.

The tables on the following two pages illustrate both the aggregate and simple average "Representative EAC" and "Representative HCEAC" accounting data:

### "Representative EAC"

Table 19: Aggregate, and simple average ("Representative EAC") profit & loss data

Sample EAC Aggregate				Simple Average ("Representative EAC")			
No. of warrants handled	Council Tax	29%	461,770	Council Tax	29%	57,721	
	CSA	4%	64,343	CSA	4%	8,043	
	HMCS	23%	357,459	HMCS	23%	44,682	
	RTA	32%	500,943	RTA	32%	62,618	
	Commercial Rent	3%	47,322	Commercial Rent	3%	5,915	
	NDR	9%	139,056	NDR	9%	17,382	
	<b>Total</b>		<b>1,570,892</b>	<b>Total</b>		<b>196,362</b>	
<b>Revenue</b>			<b>52,036,353</b>	<b>Revenue</b>			<b>6,504,544</b>
<i>Average revenue per case</i>			<b>33.13</b>	<i>Average revenue per case</i>			<b>33.13</b>
<b>Staff costs</b>				<b>Staff costs</b>			
- Directors' fees	2,642,934				330,367		
- Bailiff staff costs	20,416,835				2,552,104		
- Admin staff costs	11,181,385				1,397,673		
			<b>34,241,154</b>				<b>4,280,144</b>
<b>Admin costs</b>				<b>Admin costs</b>			
Building costs	2,558,834				327,149		
Vehicle costs	2,750,646				319,854		
Removal & Storage	267,930				343,831		
Other costs	3,359,998				33,491		
Finance costs	1,121,998				420,000		
Depreciation	504,301				140,250		
Management charges	137,460				63,038		
<b>Total Operating Costs</b>			<b>13,318,361</b>				<b>1,664,795</b>
<i>Average operating cost per case</i>			<b>30.28</b>	<i>Average operating cost per case</i>			<b>30.28</b>
<b>Pre-tax profit</b>			<b>4,476,838</b>	<b>Pre-tax profit</b>			<b>559,605</b>
<b>Pre-tax profit margin</b>			<b>8.60%</b>	<b>Pre-tax profit margin</b>			<b>8.60%</b>
<i>Average pre-tax profit per case</i>			<b>2.85</b>	<i>Average pre-tax profit per case</i>			<b>2.85</b>

## Representative HCEAC

Table 20: Aggregate, and simple average ("**Representative HCEAC**") profit and loss data

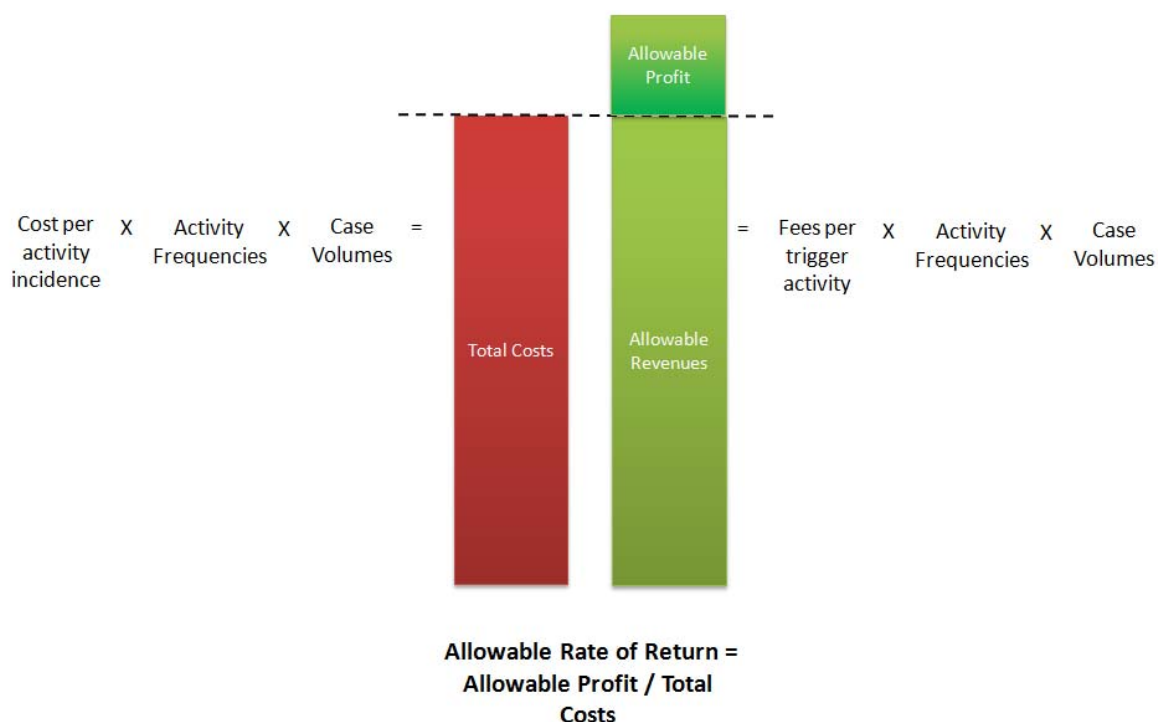
Sample HCEAC Aggregate		Simple Average ("Representative HCEAC")	
No. of writs handled	60,544		12,109
Revenue	14,096,048		2,819,210
Average revenue per case	232.82		232.82
Staff costs			
- Directors' fees	1,079,948		215,990
- Bailiff staff costs	3,412,312		682,462
- Admin staff costs	3,262,636		652,527
	7,754,896		1,550,979
Admin costs	761,760		152,352
Building costs	634,186		126,837
Vehicle costs	453,090		90,618
Removal & Storage	1,243,902		248,780
Other costs	1,566,043		313,209
Finance costs	2,301		460
Depreciation	203,577		40,715
Management charges	-53,000		-10,600
Total Operating Costs	4,811,859		962,372
Average operating cost per case	207.56		207.56
Pre-tax profit	1,529,293		305,859
Pre-tax profit margin	10.85%		10.85%
Average pre-tax profit per case	25.26		25.26

## 15. Rate of Return

The objectives of the Proposed Fee Structure are to fairly reward EACs/ HCEACs for the work they perform and to ensure that they are able to provide a sustainable service. In the approach adopted, the key to ensuring that these objectives are achieved is setting the allowable rate of return at an appropriate level. The target rate of return will determine the amount of profit that EACs/ HCEACs earn after incurring all costs.

The following diagram illustrates the allowable rate of return:

*Figure 9: Allowable rate of return*



In order to “fairly” reward EACs/ HCEACs, the return that they earn should not be excessively high so as to burden the debtors who will pay their fees, nor should it be too low to enable the sustained provision of an Enforcement service of the desired quality. A return that is too low would cause EACs/ HCEACs to exit the industry, and thus would not result in a sustainable Enforcement service. Since the concepts of “fairness” and “sustainability” are subjective, the task of determining what level of return satisfies them simultaneously is not a straight forward one. However, a variety of methods with objective outcomes may be applied to simplify the problem.

Rather than adopt a single method to determine the appropriate rate of return, the approach adopted here will be to employ a number of different methods to determine various benchmarks for

setting the rate of return. After determining the level of various potential benchmarks for the target rate of return, these will be considered to assist with the setting of a single target rate of return.

The following methods were employed to determine profitability benchmarks to assist in the selection of a target rate of return:

- EAC profitability under current Fee Structures;
- RFI respondent profitability
  - EACs
  - HCEACs;
- DCA profitability;
- Cost of capital analysis (supported by identification of comparable listed companies to determine proxy for cost of equity of non-listed firms);
- Comparable listed company profitability;
- Regulated company profitability;
- MoJ internal guidance; and
- Average UK profitability;

## 15.1. Rate of return benchmarks

### 15.1.1. EAC profitability

Anecdotal evidence, including that gathered during stakeholder meetings and the RFI exercise, suggests that EACs are struggling to remain profitable within the current Fee Structures, and that the reported abuses of the existing Fee Structures are prompted by EACs struggling to remain in business.

Nonetheless, an analysis of the industry's current profitability is an appropriate starting point to consider the selection of a target rate of return.

Industry data was obtained from "Plimsoll Portfolio Analysis: The UK Bailiffs Industry" (3<sup>rd</sup> Edition 2008) ("Plimsoll"). In most instances the latest company data included is for financial years ending between 31 December 2006 and 31 December 2007. The analysis includes data provided by "the top 51 companies" in the industry.

Of the 20 EACs providing a response to the RFI 10 of these were included in the Plimsoll analysis. Plimsoll did not include any companies specialising in the Enforcement of High Court Writs. Therefore, of the 10 respondents not included in the Plimsoll report, 5 of these excluded companies were the 5 HCEO RFI respondents. This is a good indication that the RFI respondents represented a broad spread of the EAC industry, with 10 of them included in the top 51 companies, and 5 of them coming from outside of this group. The Report also shows that the RFI respondents included 3 of the top 10 (including the first), and the 11<sup>th</sup> largest company by market share.

The 10 year period covered by the Plimsoll Analysis contains many indicators which in fact suggest that the period has been rather buoyant for EACs<sup>37</sup>:

- Combined sales growth of the top 51 companies of 193% over the past 10 years: “Typically this means that if a company had a sales turnover of £1 million 10 years ago and it went on to achieve industry average sales growth in each of the last 9 years, they would now have a turnover of £2.9 million”;
- “Currently at an average company in this industry, sales are increasing by 9.2%”;
- “Two thirds of the companies recorded an increase in sales with an average increase of 15%”
- However “Almost one third of the companies analysed recorded a fall in sales with an average fall of 28%”;
- “In general, the larger companies are growing at 9.5% growth, compared to the smaller companies who are growing at 10.6%”.
- “On first glance it would seem in the last 10 years that pretax margins have not increased. Yet what seems to happen every year is that there is a group of companies that lose money. In each of the last 10 years, almost a third of companies lose money which drags down the industry average”.

These figures indicate that EACs are experiencing mixed fortunes in the current market. There are indications however, such as in the penultimate bullet, that these fortunes are not linked to size of firm, but rather to efficiency.

It may be that even after an amendment to the Fee Structure some inefficient EACs continue to perform badly in terms of profitability, or even make a loss. When there is such a wide range of profitability this is inevitable, except in the case where a Fee Structure allows even the least efficient EAC to be profitable. The unavoidable effect of such an approach, of course, would be that the most efficient EAC would then be able to generate very large profit margins. In a typical competitive industry where industry members have a broad range of different efficiency levels, it would not be unusual to see the least efficient members of the industry forced to exit. This would usually be achieved by the efficient firms reducing their prices, still making healthy profits due to their superior cost efficiency, and forcing the less efficient firms to reduce their price until the point that they can no longer exist profitably. The mechanism for such a process in a competitive industry would be the price. Of course, in an industry where price is regulated this mechanism does not exist as a market force, but rather is a result of the regulated price.

A Fee Structure is necessary in the Enforcement industry because of the reasons discussed in section **“4. Background – why does the Enforcement industry need a Fee Structure?”**. The Fee Structure has many objectives, which have been discussed throughout this paper, its essential role however is to set a price in the absence of effectively functioning competitive forces, which would otherwise act to set the price. The Fee Structure should assist in replicating competitive forces, and therefore it may be the case that the least efficient firms cannot operate profitably with that Fee Structure. The Fee Structure should not be seen as a mechanism to protect all firms in the industry, beyond

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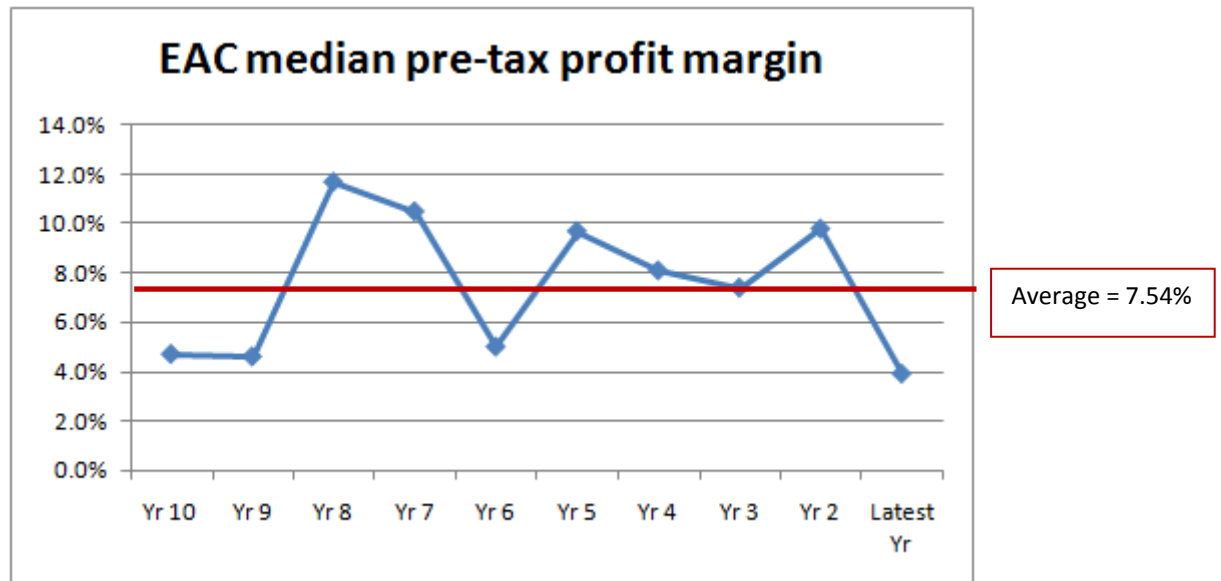
<sup>37</sup> All figures and quotes are taken from “Plimsoll Portfolio Analysis: The UK Bailiffs Industry” (3<sup>rd</sup> Edition 2008)



ensuring that a reasonable level of profit can be earned by an averagely efficient company within the industry.

The chart on the following page shows the evolution of the median pre-tax profit margin, from Plimsoll's figures, over the past ten years to 31 December 2007:

Figure 10: EAC Median pre-tax profit margin, 10 year historic trend to 31 December 2007



Industry profitability looks healthier still when considering pre-tax profit plus directors fees margin (adding back the fees that directors were paid). The median margin for this measure was 17.9% in the current year.

### 15.1.2. RFI Respondent Profitability

The two charts on the following page show the pre-tax profit margin for all those EACs and HCEACs providing sufficient accounting data in response to the RFI:

Figure 11: Pre-tax profit margin reported by EAC RFI respondents

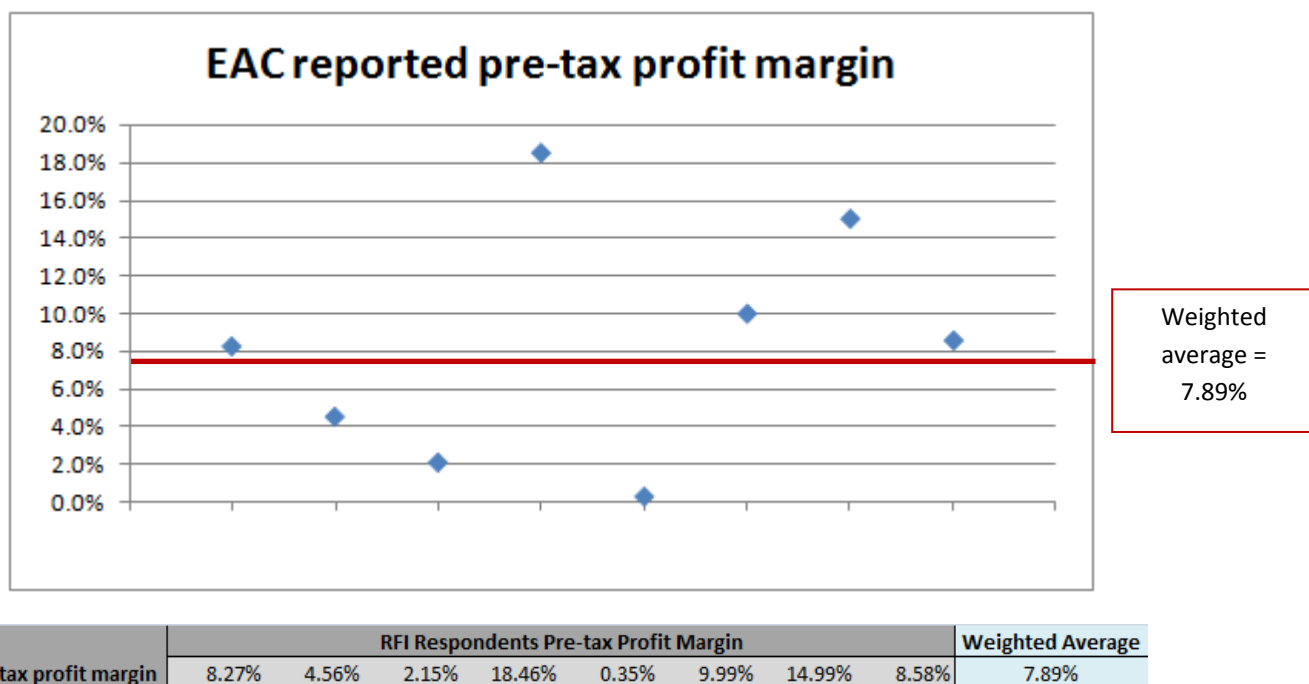
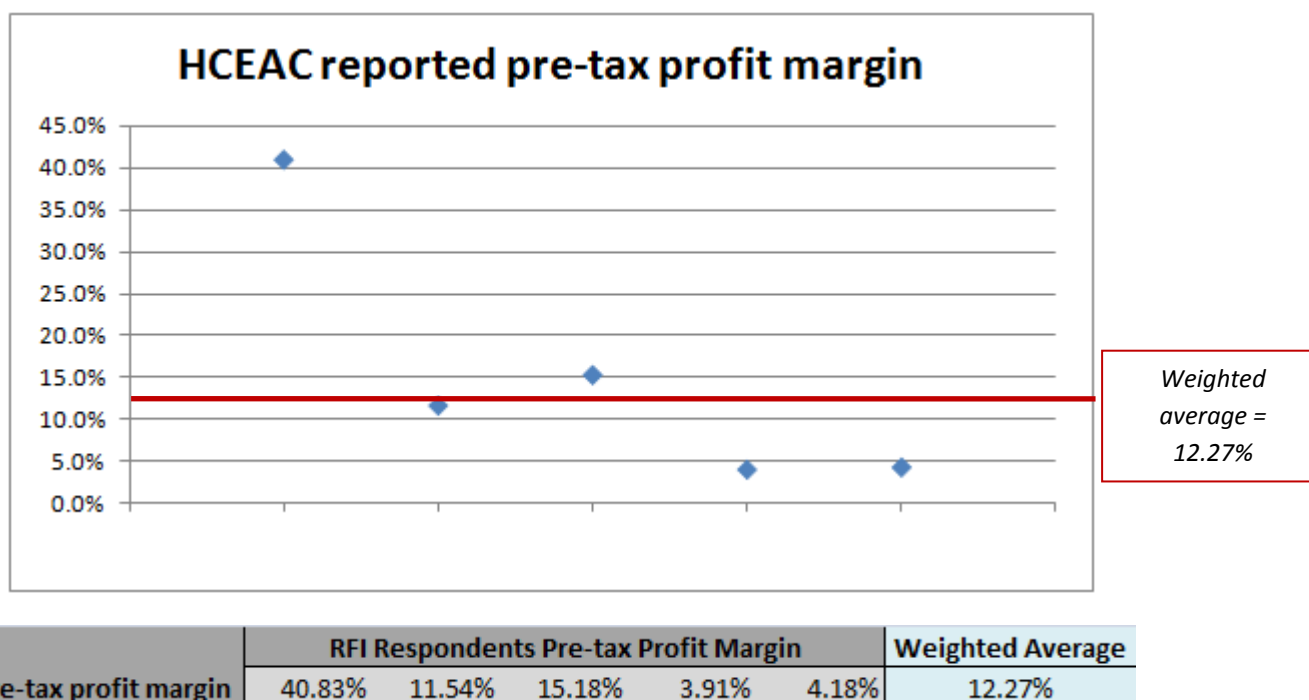


Figure 12: Pre-tax profit margin reported by HCEAC RFI respondents



### 15.1.3. Debt Collection Agency (“DCA”) profitability

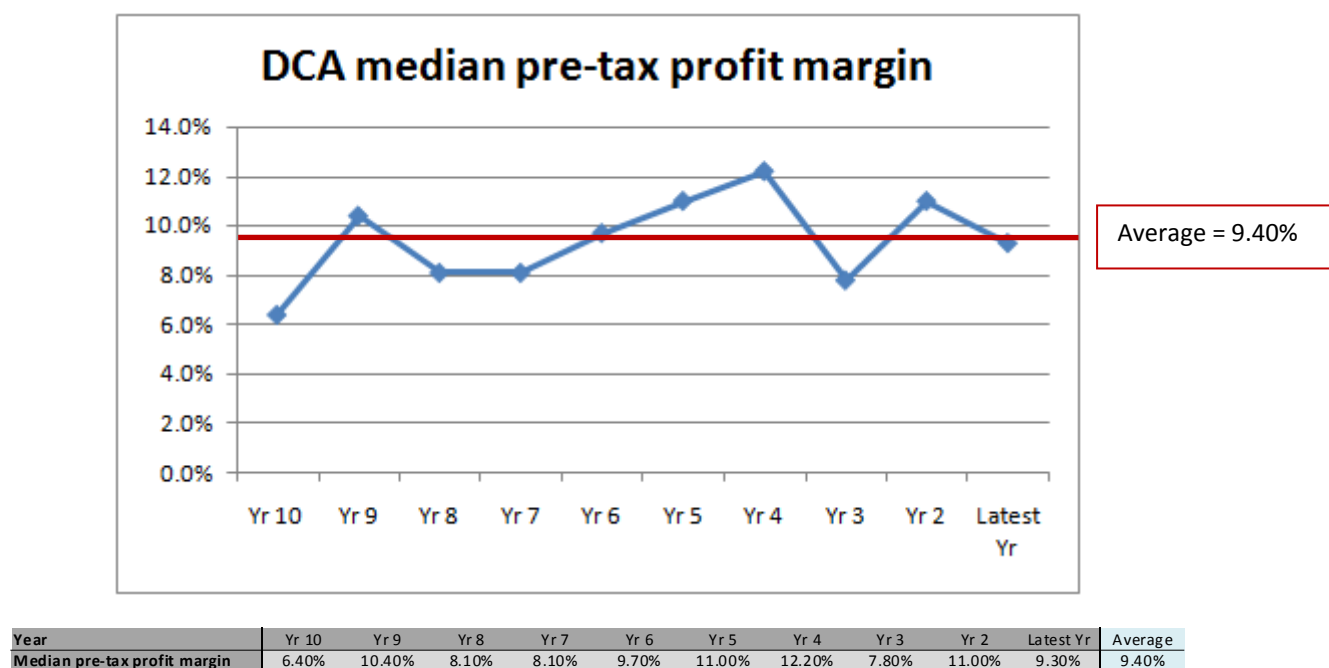
DCAs pursue debts on behalf of creditors, when the collection of the debt is not subject to a court order. Therefore the DCA merely acts as an agent of the creditor, and not of a court, and hence has no powers to levy, or to remove and sell goods. Most DCAs charge the creditor a fee or percentage of the total amount owed. Some agencies, referred to as “debt purchasers”, purchase debts from creditors for some percentage of the total value of the debt, and then pursue the debtor for the full balance.

In both types of business model the activities of the DCA are a subset of those of an EAC, as the DCAs lack the legal powers that EACs have to take certain actions such as levying on goods. Due to the way in which DCAs earn revenue, the risk involved to the DCA is also different: debt buyers take on the whole risk of the debt, and for DCAs revenue is more closely linked to the size of the amount recovered than is the case under the current Fee Structures.

Nonetheless, both types of collection agency have many business activities and business risks in common with EACs, and therefore provide a good performance benchmark.

Data on the debt collection industry is available from: “Plimsoll Analysis: UK Debt Collection Agencies – An industry overview”<sup>38</sup>.

Figure 13: DCAs median pre-tax profit margin, 10 year historic trend to 31 December 2007



<sup>38</sup> “Plimsoll Analysis: UK Debt Collection Agencies – An industry overview”, Plimsoll Analysis (4<sup>th</sup> Edition 2008)

#### 15.1.4. Cost of capital analysis

This section describes the approach used to approximate the regulatory price control exercise to determine the cost of capital, which is described in section **6.3 Price Cap Regulation: A General Approach**. The approximation uses a much reduced and simplified methodology due to constraints of time, resources, and access to information, along with other complicating factors described at **6.4. Barriers to applying Price-Cap Regulation in the Enforcement industry**.

The approach adopted estimates a cost of capital for the Enforcement industry of **4.28%**.

For a detailed explanation of this calculation please refer to **Appendix 9: Cost of Capital Calculations**.

#### Regulatory Asset Base ("RAB")

Due to significant restrictions on the availability of data (particularly in comparison to the level of access granted to a typical regulatory agency) a historical cost basis has been used for estimating the level of the RAB in a typical EAC. Access to asset information through the RFI exercise was mainly restricted to the level of detail appearing in a fixed asset note in a set of statutory accounts, sometimes with some additional accompanying management level information.

Historical cost is the simplest method that can be used for estimating the level of the RAB. The main disadvantage of the approach is that it does not allow for revaluations of the asset base over time due to price inflation and/ or technological advances. For this reason, the historical cost approach tends to significantly underestimate the values of large assets with considerable service lives, and leads to the underestimation of depreciation.

For the seven<sup>39</sup> EACs providing sufficiently detailed accounting information the aggregate level of RAB was £2,491,476. This is equivalent to an average RAB per EAC of just £355,925. This means that on average these seven EACs were utilising fixed assets with an average value of just £355,925<sup>40</sup> to carry out their Enforcement business. This value can be significantly negatively impacted if companies rent, and do not own, the properties from which they carry out their business, or if the properties have been removed from the company books, for example by the owners holding them privately.

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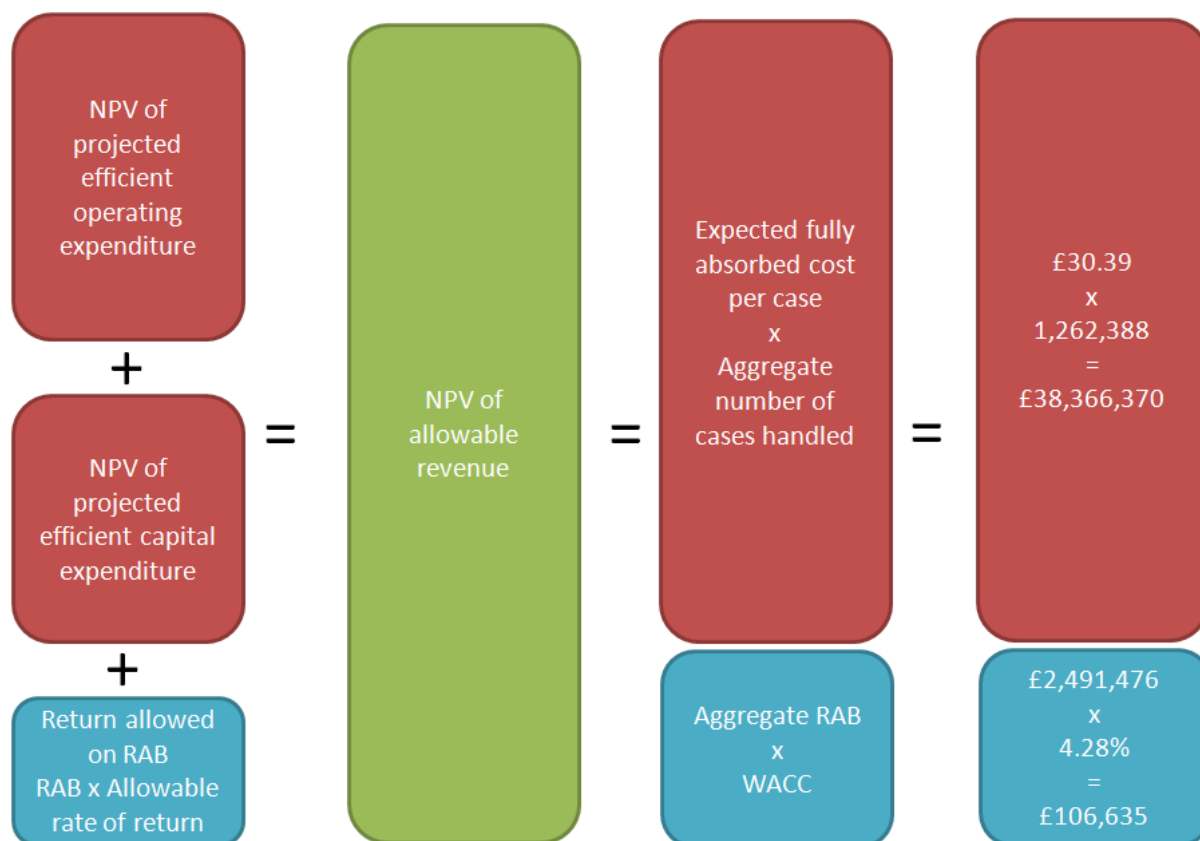
<sup>39</sup> The Representative Firm was calculated using the aggregate accounting data from the eight companies providing sufficient Profit & Loss account information. One fewer company was able to provide sufficient balance sheet information, and therefore only seven companies were used to determine the aggregate and average RAB.

<sup>40</sup> The annual depreciation charge of the Representative firm was £55,472. This represents an average useful economic life ("UEL") of approximately 6.5 years. This seems reasonable given the mix of assets in use at a typical EAC; being vehicles (5-6 years), IT equipment (2-3 years), and perhaps some freehold land and buildings (which would pull up the average UEL).

### Allowable return on RAB

The following diagram illustrates the allowable return on RAB:

Figure 14: Allowable return on EAC Regulatory Asset Base



Because of the low level of RAB, a return on capital of 4.28% earned on the value of the RAB, allows revenue of £38,473,005 on a total cost base of £38,366,370 (for the seven companies included in the RAB estimate), leaving a pre-tax profit of only £106,635, which is equivalent to a pre-tax profit margin of only **0.28%**.

This pre-tax profit margin appears very low in comparison to the other benchmarks considered, and is clearly not at a level that would allow EACs to provide a sustainably high level of service, and particularly not to remove barriers of entry for new entrants who would also face start-up costs.

It appears that a cost of capital approach does not provide a sensible benchmark return for the Enforcement industry. The most important factor in this outcome is the relatively low level of capital intensity (the investment cost in assets required to carry out the businesses activities) of the Enforcement industry compared to other industries that are regulated using a cost of capital approach. These industries include civil aviation, electricity, gas, post, rail, telecoms and water; all of which require a large and expensive network of infrastructure, and in some cases expensive and technologically advanced fixed assets.

A good measure of the capital intensity of a company is the ratio of depreciation to total operating costs, where a higher ratio indicates a greater capital intensity. The following table shows the ratio of depreciation to total operating costs for regulated UK companies in several industries, and for the "Representative EAC" in the Enforcement industry.

*Table 21: Capital intensity of various regulated companies<sup>41</sup> compared to "Representative EAC"*

Company	Ratio of depreciation to total operating costs
BAA (British Airports Authority)	0.23
British Telecom	0.13
Centrica (British Gas)	0.04
Network Rail	0.34
Royal Mail	0.03
"Representative EAC"	0.01

The table shows that the least capital intensive regulated company (of the examples) is Royal Mail, which is approximately three times (by this measure) as capital intensive as the Enforcement industry. The most capital intensive (by this measure) is Network Rail, which is 34 times as capital intensive as the Enforcement industry.

#### 15.1.5. Comparable listed company profitability

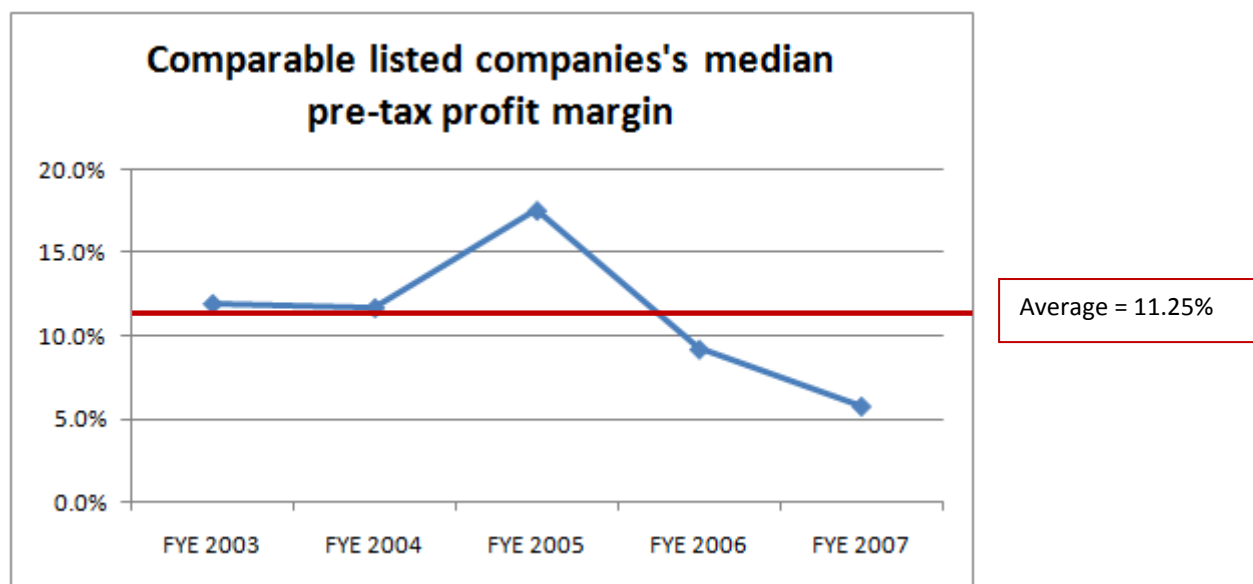
Having identified a number of comparable listed companies as part of the cost of capital analysis above (**15.1.4 Cost of capital analysis**), the historic pre-tax profit margins achieved by these companies were also examined to provide a further rate of return benchmark.

Selecting publicly listed companies as comparables is a necessary component of the cost of capital analysis. However, although these companies are a close match to EACs in terms of business activities, they are mostly larger companies (by turnover) than even the largest EACs (companies with publicly traded shares are usually larger companies) and many of the companies operate in other geographic locations than England and Wales. The benchmark provided by examining the pre-tax profit margins of these companies is therefore a less relevant benchmark than that provided by considering the whole EAC or DCA market in England and Wales; nonetheless these listed companies provide a valid benchmark.

The following chart shows the historic trend in median pre-tax profit margin for the selected comparable publicly listed companies:

<sup>41</sup> Taken from latest available statutory accounts

Figure 15: Listed comparable companies median pre-tax profit margin, 5 year historic trend



Year	FYE 2003	FYE 2004	FYE 2005	FYE 2006	FYE 2007	Average
Median pre-tax profit margin	11.97%	11.72%	17.59%	9.21%	5.77%	11.25%

#### 15.1.6. Regulated company profitability

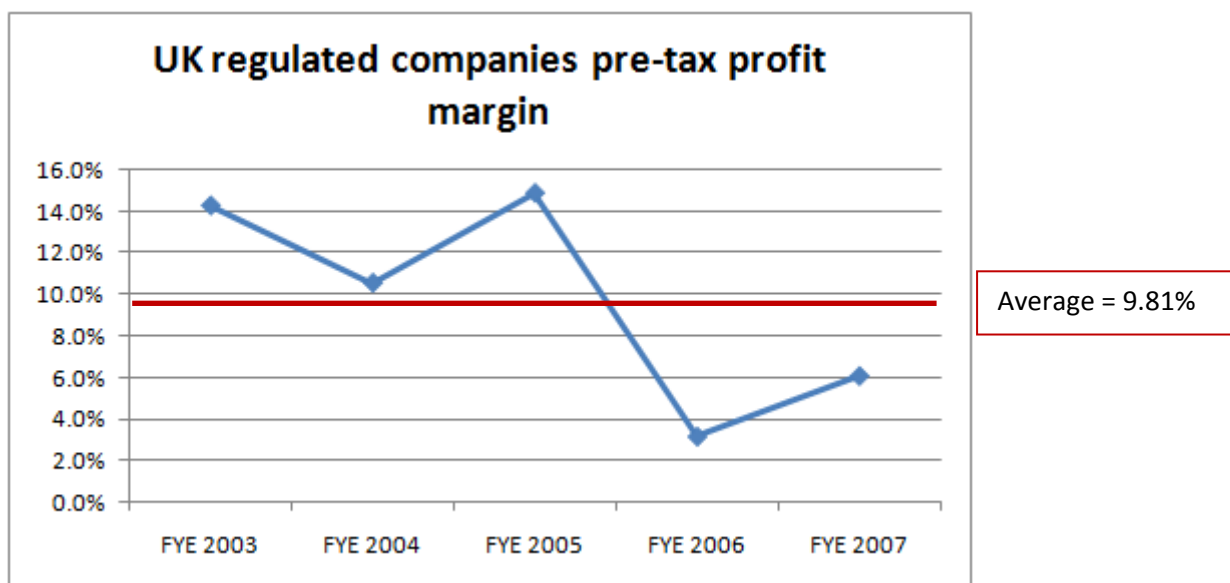
The analysis at **15.1.4 Cost of capital analysis** revealed that the regulated cost of capital approach could not provide a strong benchmark for a rate of return for Enforcement companies due to the low capital intensity of the industry. Although price-controls for the other UK companies considered earlier (BAA, British Telecom, Centrica, Network Rail, and Royal Mail) are set via a target rate of return on capital, the pre-tax profit margin achieved by these companies could also be used as a valid benchmark.

The regulators of these companies attempt to ensure that they can achieve a fair level of profitability, and although this process uses a different target metric, the pre-tax profit margin achieved by the regulated companies provides a strong indication of whether the price-controls have achieved their goal of a fair level of profitability.

The chart on the following page shows the historic trend in average pre-tax profit margin for the five selected regulated UK companies:



Figure 16: UK regulated companies average pre-tax profit margin, 5 year historic trend to 31 December 2007



Year	FYE 2003	FYE 2004	FYE 2005	FYE 2006	FYE 2007	Average
Median pre-tax profit margin	14.30%	10.58%	14.90%	3.19%	6.10%	9.81%

#### 15.1.7. MoJ internal guidance

HM Treasury publishes a document: “Managing Public Money”<sup>42</sup>, which “sets out the main principles for dealing with resources used by public sector organisations in the UK”. Section 6 of the document deals with “Fees, charges and levies”, and this section was examined for guidance. Although the potential new Fee Structure may apply increasingly to private EACs, and the data for this investigation has come primarily from this source, Enforcement services are in essence a public service. This public service has been, and still is, provided “in-house” by many government bodies, such as local authorities using in-house EAs, and of course by County Court bailiffs. It is therefore relevant to examine what guidance exists for setting fees for services provided by the government to the public: “It is government policy to charge for many publicly provided goods and services. This approach helps allocate use of goods or services in a rational way because it prevents waste through excessive or badly targeted consumption. It also makes for easier comparisons with the private sector, promotes competition and helps develop markets”.

The document states that the norm is to charge the public for these services at full cost. Certain exceptions to full cost charging are listed, which include “certain discretionary services provided in competition with the private sector, where a commercial rate is normally charged”. Enforcement services are a clear example of a service which, when provided by a government body, may be provided in competition with private EACs.

The “How to calculate fees” annex to the section explains that full cost recovery “normally means recovering a 3.5% real charge for the cost of capital”. The annex notes however, that exceptions

<sup>42</sup> “Managing Public Money”, HM Treasury (October 2007)

include services that are provided in competition with private providers, and that “these should aim to recover full costs plus a real rate of return in line with the rates achieved by comparable businesses facing a similar level of risk”. The normal range of rates is stated as 5-10%, “but rates as high as 15% may be appropriate for the very highest risk businesses”.

### 15.1.8. Average UK profitability

Plimsoll Analysis records the UK average pre-tax profit margin as **3.3%** for the year ended 31 December 2007 (the analysis does not specify which companies are included, or how the figure was calculated). This does not provide an especially good benchmark for the target return for EAC/HCEACs as it includes too broad a base of companies to be comparable. This is particularly the case as the Enforcement industry has a very specific set of business risks and activities, and its business cycles are likely not to coincide with many other types of company, as sales growth is most likely during times of greatest indebtedness, and particularly in current times which may be described as a “financial crisis”.

This measure does, however, show that in comparison to other industries across the UK, the Enforcement industry is enjoying higher current levels of profit before tax. For the reasons described above, this might be expected at the current phase of the business cycle.

### 15.1.9. Summary

The following table summarises the various benchmarks considered to help determine an appropriate profit target:

*Table 22: Summary of return benchmarks*

Benchmark	Measure	Value	Pre-tax profit approximation	Strength of benchmark
EAC Profitability	Pre-tax profit margin	7.54%	“	Strong
RFI Profitability - EACs	Pre-tax profit margin	7.89%	“	Strong
RFI Profitability – HCEACs	Pre-tax profit margin	12.27%		Strong
Debt Collection Agency Profitability	Pre-tax profit margin	9.40%	“	Strong
Cost of Capital	Return on capital	4.28%	0.28%	Weak
Comparable listed company profitability	Pre-tax profit margin	11.25%	“	Moderate
UK regulated company profitability	Pre-tax profit margin	9.81%	“	Strong
MoJ internal guidance	Real rate of return	5-15%	“	Moderate
UK Average	Pre-tax profit margin	3.30%	“	Weak

## 15.2. Form of profit target

### Rate of return on RAB

There are various ways in which a profit target may be defined. In most regulated UK industries (see **6.3 Price Cap Regulation: A General Approach**) this is achieved by defining an allowed return on the

RAB. We have seen (**15.1.4 Cost of capital analysis**) that this method does not appear to provide a realistic target for EAC profitability, due to the low capital intensity of the industry.

### Pre-tax profit margin

An alternative method could be to use a pre-tax profit margin as the profit target. Such a target would be appealing as pre-tax profit margin is a commonly used and understood measure of profitability, and would retain incentives for firms to structure their operations in a tax efficient manner.

### Mark-up on cost

Alternatively, another intuitive way to define a profit target could be to allow a mark-up on costs: the allowed revenue would be set with reference to the costs incurred plus an allowed mark-up, usually defined as a percentage of the costs.

A different cost-base may be used to define the mark-up depending on the objective of the exercise. For example, to set the price of a new product to be added to a production line, one might use the marginal cost of producing the product (for example the variable cost of components and any additional labour and building costs required), since sunk costs (usually fixed costs) are already incurred and will therefore not affect the marginal additional profitability of the new product if it is introduced.

However, when defining the mark-up on costs to be allowed in order to ensure the sustainable profitability and continued existence of a company as a whole, it is more appropriate to use a cost-base that absorbs all costs. This is because, to continue in business, the company will need to incur costs such as ongoing financing costs, and future capital investment costs. In order to achieve this and remain profitable a company will need to earn a mark-up above a total cost-base.

Since pre-tax profit is calculated as revenue less all costs (except tax), in theory the pre-tax profit margin is a very close equivalent to a mark-up allowed on total costs. There will always be some difference between the two measures however, as the net profit margin is calculated as a percentage of the total revenue, whereas a mark-up is usually defined as a percentage of the total cost. Since in a profitable business revenue is higher than total cost, any percentage pre-tax profit margin is equivalent to a slightly higher percentage mark-up on total costs.

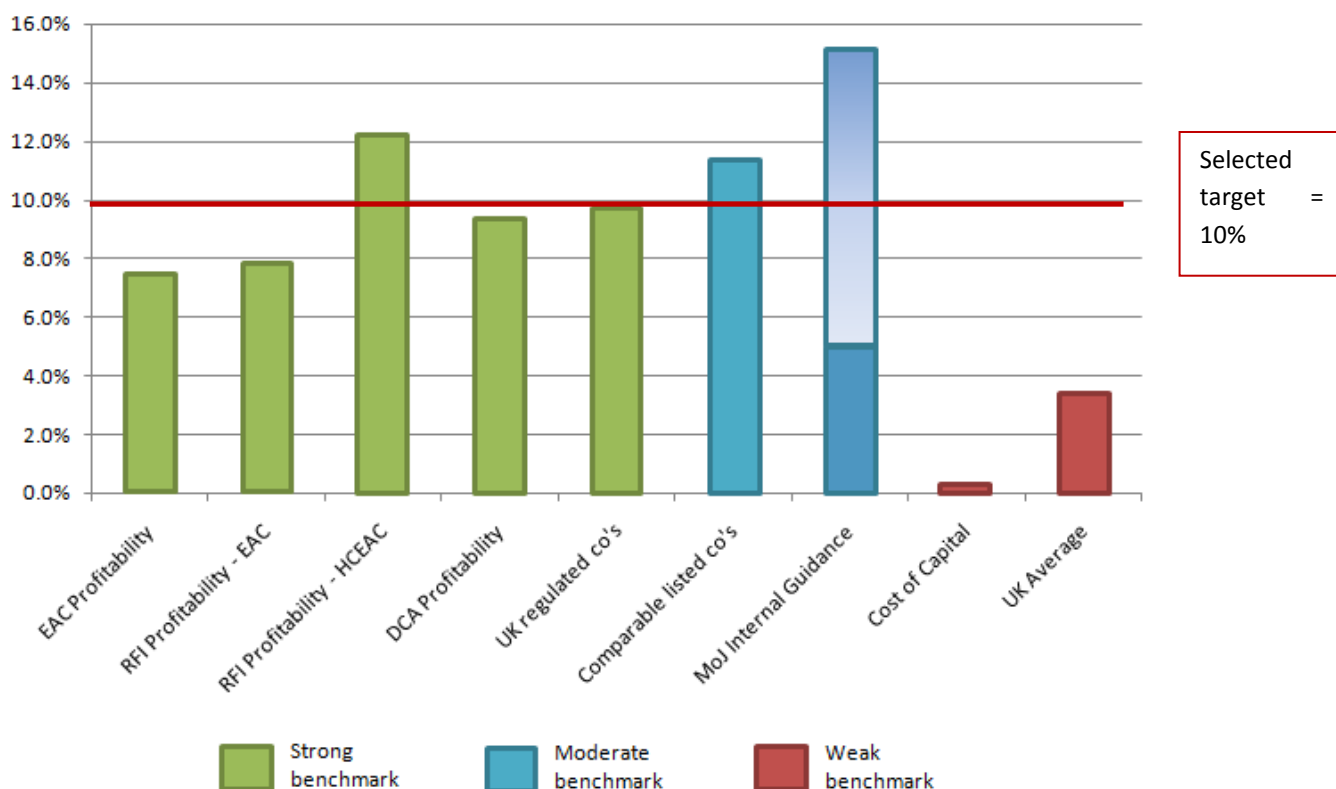
## 15.3. Selected Profit Target

The Fee Structure Model uses a defined mark-up on total costs in order to achieve a desired profit target. Defining the profit target as a mark-up on total costs fits intuitively with the approach of the Fee Structure Model: to determine the total cost of performing Enforcement activities, to allow an Enforcement Rate multiplier, and then to allow the addition of a mark-up to provide EACs/ HCEACs with a reasonable profit.

Due to the relationship between mark-up on total costs and net profit margin, described above, when applying any given mark-up on total cost, it should be reasonable to expect the resultant pre-tax profit margins achieved to be fairly close to the level of the mark-up used.

The following chart summarises the return benchmarks that have been considered, and shows MoJ's selected profit target:

Figure 17: Summary of return benchmarks



Average of strong benchmarks = 9.38%

#### MoJ Parameter

Considering all of the available benchmarks for a target profit margin, MoJ's initial modelling parameter was that the profit target, for both EACs and HCEACs, should be a **pre-tax profit margin of 10%.**

This pre-tax profit margin should be targeted using the approach described in this paper, which uses a Fee Structure Model in which a mark-up on total costs of 10% is used to achieve a close approximation to a pre-tax profit margin of 10%.

## 16. Fee Structure Features

This section considers each of the key features of the Fee Structure; and, for each key feature:

- Discusses the important issues;
- Presents the various options available, and considers their pros and cons; and
- Concludes with the MoJ parameter, after consideration of the issues and options, of which option should be initially included in the MoJ Proposed Fee Structure.

The following Fee Structure key features are considered in this section:

- Number and nature of Fee Stages;
- Administration Stage;
- Creditor guaranteed fee;
- Fees linked to specific actions;
- Percentage Fees;
- Order of payment;
- Multiple Warrants/ Writs;
- Exceptional costs;
- VAT;
- Updating of Fees

### 16.1. Number and nature of Fee Stages

The grouping of activities into stages, and applying fees to stages rather than activities, achieves two important objectives:

- The Fee Structure is simplified as it contains fewer separate fees; and
- Fees are triggered by the initiation of clearly separated phases of activity. The actions that mark the initiation of each phase are more easily evidenced, and their occurrence can be subject to less debate, than individual activities. Thus the charging of fees for “stages” rather than for “activities” helps to overcome the problem of EAs/ HCEOs charging for “phantom” actions, such as “phantom visits”.

The trade-off to using Fee Stages is some loss of direct proportionality between actions and fees. For example, two debtors paying the same fee for a particular stage of Enforcement will pay the same fee; however one debtor’s case, since not every component activity within a stage will be performed in every case, may have required more actions to be undertaken by the EA/HCEO.

The grouping of activities into stages should seek to strike a balance between proportionality of activity/ cost to fees on the one hand, and simplicity of the Fee Structure and clarity of charges made on the other.

Fee stages should be defined by two “trigger activities”: one of which indicates that a particular stage of Enforcement has begun, and another which indicates that the stage has been completed

and the next stage begun. The effectiveness of a stage-based Fee Structure requires that the Fee Stage “trigger activities”:

- are clearly defined;
- clearly mark a transition of the Enforcement process to a new type of activity;
- occur necessarily if any of the other activities in the same Fee Stage are to occur; and
- can be reliably verified to have actually taken place in any given Enforcement case.

#### **MoJ Parameter**

##### **Non-High Court Enforcement**

The Proposed Fees for Non-High Court Enforcement should consist of three Fee Stages, with the following trigger points:

*Table 23: MoJ Parameter on Proposed Fee Stage triggers for Non-High Court Enforcement*

Fee Stage	Stage Trigger
<b>Administration</b>	Warrant received by EAC.
<b>Enforcement</b>	First attendance by EA to debtor's premises/ "door step".
<b>Sale</b>	Debtor's goods sold.

##### **High Court Enforcement**

The Proposed Fees for High Court Enforcement should consist of four Fee Stages, with the following trigger points:

*Table 24: MoJ Parameter on Proposed Fee Stage triggers for High Court Enforcement*

Fee Stage	Stage Trigger
<b>Administration</b>	Writ received by HCEO.
<b>Enforcement 1</b>	First attendance by HCEO/ EA to debtor's premises/ "door step".
<b>Enforcement 2</b>	HCEO/ EA is required to reattend debtor's premises due to debtor's failure to comply with notice of seizure or with repayment arrangements previously made.
<b>Sale</b>	Debtor's goods sold.

## **16.2. Administration Stage**

#### **MoJ Parameter**

Both Proposed EA Fees and Proposed HCEO Fees should incorporate an Administration Stage.

The Administration Stage should include all of the administrative activities that are required to be performed after a Warrant/ Writ is received until the point that an EA/ HCEO is ready to attend the debtor’s premises. The Administration Stage should include the EAC/ HCEAC making contact with the debtor and providing them with an opportunity to make payment. MoJ would set out

regulations stating what action should be taken by the EAC, during the Administration Stage, before an attendance is made at a debtor's property.

### **Non-High Court Enforcement**

For Non-High Court Enforcement the debt may be repaid either in full or by instalments, where the debtor does not break any instalment plan agreed, and in these circumstances only the Administration Stage Fee will be charged.

### **High Court Enforcement**

For High Court Enforcement, only if the debt is repaid in full prior to attendance by an HCEO will the Administration Stage Fee be the only fee chargeable. If a debtor wishes to repay a Writ of Fi Fa using a payment plan (such as payment by instalments) the HCEO will be obliged to attend the debtor's premises to secure goods, and therefore the Enforcement Stage 1 Fee will also become chargeable.

## **16.2.1. Administration Stage Enforcement Rate**

If the introduction of the Administration Stage is successful, debts will be recovered in a greater number of cases before any attendance by an EA/ HCEO at debtors' premises. Whilst the introduction of the Administration Stage may change the point in the Enforcement process at which successful debt recovery occurs, it will not necessarily change the overall rate of successful Enforcement. Consequently if, in some enforceable cases, the debt is recovered without the need for attendance, the Enforcement Rate for cases where attendance is required may change.

In order to quantify the two effects on Enforcement Rate described, the following analyses was performed:

1. For those debt-types where fees may currently be earned before EA attendance (i.e. where some possibility and incentive, such as letter fees, currently exist for "Administration Stage" Enforcement): CSA, HMCS and RTA, detailed analysis was performed to determine the current Enforcement Rate prior to EA attendance.

Contractors enforcing HMCS debt are already required to perform an Administration Stage, giving debtors the opportunity to pay prior to attendance by an EA. As such, the current HMCS debt Administration Stage most closely resembles the Administration Stage that will be required as part of all Non-High Court Enforcement.

The existing Fee Structures for other debt-types: Council Tax, Commercial Rent, and NNDR do not allow for the charging of any fees prior to attendance by an EA, and therefore there is no incentive for Enforcement prior to attendance.

In order to estimate the likely observed Administration Stage Enforcement Rate for these other debt-types, the relative rate currently observed for HMCS (being the debt-type with the current most relevant "Administration Stage") was extrapolated to these debt-types.

For High Court Enforcement, HCEO was consulted regarding their likely approach to the Administration Stage and projected success rates.

2. Based on the estimates of the Administration Stage Enforcement Rates (obtained in 1.), Enforcement Stage Enforcement Rates were calculated assuming that the introduction of an Administration Stage would not affect the overall Enforcement Rate.

## Analysis

1. The following table illustrates the assumed Administration Stage Debt Recovery Rates:

*Table 25: Relative effectiveness of Administration Stage*

Debt Type	Council Tax <sup>(2)</sup>	CSA <sup>(1)</sup>	HMCS <sup>(1)</sup>	RTA <sup>(1)</sup>	Commercial Rent <sup>(2)</sup>	NNDR <sup>(2)</sup>	Writ of Fi Fa <sup>(3)</sup>
(1) Overall Debt Recovery Rate	24.8%	15.6%	18.2%	15.2%	40.2%	36.1%	21.0%
(2) Administration Stage Debt Recovery Rate	10.8%	4.1%	7.9%	4.7%	17.4%	15.7%	1.1%

### Notes

- (1) Administration Stage Debt Recovery Rate determined through detailed testing of EAC data
- (2) Administration Stage Debt Recovery Rate proportion extrapolated from HMCS figure
- (3) Calculated from High Court Working Group estimate that 5% of successfully enforced debt would occur at the Administration Stage, once the stage was established for High Court Enforcement

2. The following table demonstrates the calculation of Enforcement Stage Debt Recovery Rates, and Fee Recovery Rates for Non-High Court Enforcement debt-types. The Fee Recovery Rate is calculated by applying a 7.9% downward adjustment to reflect cases where the debt is enforced but the fee is not recovered (see **12.4.1 Adjustment to Enforcement Rates**).

*Table 26: Enforcement Stage Debt and Fee Recovery Rates for Non-High Court Enforcement debt-types*

Debt Type	Council Tax	CSA	HMCS	RTA	Commercial Rent	NNDR
(1) Overall Debt Recovery Rate	24.8%	15.6%	18.2%	15.2%	40.2%	36.1%
(2) Overall Fee Recovery Rate	22.8%	14.4%	16.8%	14.0%	37.0%	33.2%
(3) Administration Stage Debt Recovery Rate	10.8%	4.1%	7.9%	4.7%	17.4%	15.7%
(4) % of Total cases entering Enforcement Stage [(1) - (3)]	89.2%	95.9%	92.1%	95.3%	82.6%	84.3%
(5) % of Total cases enforced in Enforcement Stage [(1) - (3)]	14.0%	11.5%	10.3%	10.5%	22.8%	20.4%
(6) Enforcement Stage Debt Recovery Rate [(5)/(4)]	15.7%	12.0%	11.2%	11.0%	27.6%	24.2%
(7) Enforcement Stage Fee Recovery Rate [(6) x 92.1%]	14.5%	11.0%	10.3%	10.1%	25.4%	22.3%

### Notes

- (2) Calculated by applying a 7.9% Fee Recovery discount to the Debt Recovery Rate
- (3) see **Table 25. Relative effectiveness of Administration Stage**

The different “Overall” (2, above) and “Enforcement Stage” (7, above) Fee Recovery Rates have implications for the way in which the Fee Structure Model calculates required Fee levels (see **17.1 Fee Structure Model Functionality**).

For any given case received, which immediately enters the Administration Stage, the likelihood of successful Enforcement is given by the Overall Debt Recovery Rate (1), and the appropriate Fee Recovery Rate is the Overall Fee Recovery Rate (2). However, once a case has been passed to an EA



for attendance, this indicates that debt recovery has not been successful at the Administration Stage, and the case enters the Enforcement Stage. The Enforcement Rate of these cases is different, for the reasons explained above, and is given by the Enforcement Stage Debt Recovery Rate. The appropriate Fee Recovery Rate is then the Enforcement Stage Fee Recovery Rate.

*Table 27: EA Fees Model Fee Recovery Rate assumptions*

Fee Stage	Relevant Fee Recovery Rate Assumption for Model					
	Council Tax	CSA	HMCS	RTA	Commercial Rent	NNDR
Administration Stage	22.8%	14.4%	16.8%	14.0%	37.0%	33.2%
Enforcement Stage	14.5%	11.0%	10.3%	10.1%	25.4%	22.3%
Sale Stage	80%	80%	80%	80%	80%	80%

Since High Court Enforcement has two Enforcement stages, there will be a similar effect on the applicable Enforcement Rate moving between Enforcement Stage 1 and Enforcement Stage 2. HCEOA estimated that of all Writs enforced at the Enforcement Stages, 34% of those would be enforced at Enforcement Stage 1, and 66% at Enforcement Stage 2. The following table shows the calculation of the applicable Fee Recovery Rates for High Court Enforcement:

*Table 28: HCEO Fees Model Fee Recovery Rate assumptions*

Fee Stage	% of Total cases entering Stage (1)	% of Total cases enforced at Fee Stage	Notes	Stage Enforcement Rate (6)	Fee Recovery Rate	Notes
Administration	100%	1.1%	(2)	1.1%	21.0%	(7)
Enforcement 1	97.4%	6.2%	(3)	6.4%	20.5%	(8)
Enforcement 2	39.8%	12.0%	(4)	30.2%	34.6%	(9)
Sale	2.9%	1.7%	(5)	60.0%	60.0%	(10)
<b>Total</b>		21.0%				
<b>(Overall Fee Recovery Rate)</b>						

#### Notes

- (1) See 11.3 HCEAC activity frequencies
- (2) See **Table 25. Relative effectiveness of Administration Stage.**
- (3)  $34\% \times (21.0\% - 1.0\% - 1.7\%) = 6.2\%$
- (4)  $66\% \times (21.0\% - 1.0\% - 1.7\%) = 12.0\%$
- (5)  $60\% \times 2.9\% = 1.7\%$
- (6) % of Total cases enforced at Fee Stage/ % of Total cases entering Stage
- (7) Overall Fee Recovery Rate
- (8)  $(6.2\% + 12.0\% + 1.7\%) / 97.4\% = 20.02\%$
- (9)  $(12.0\% + 1.7\%) / 39.8\% = 34.1\%$
- (10)  $1.7\% / 2.9\% = 60\%$

### 16.3. Creditor Guaranteed Fee

The 2003 White Paper<sup>43</sup>, which provided the basis of many of the principles of the current Fee Structure Review, proposed that the Fee Structure should include an Up-Front Fee to be guaranteed

<sup>43</sup> "Towards Effective Enforcement: A single piece of bailiff law and a regulatory structure for Enforcement", A Green Paper issued by the Lord Chancellor's Department (July 2001), <http://www.dca.gov.uk/Enforcement/enfrev01/index.htm>

by the creditor. The current Fee Structure Review considers more broadly the feasibility of a creditor guaranteed fee, independently of the timing of the payment of that fee.

A Creditor Guaranteed Fee would impact the Enforcement process in a number of ways:

- Absolute level of fee required
- Recovery of costs for unenforced cases (who subsidises those that don't pay?)
- Quality of information provided by the creditor
- Creditor budgets

### 16.3.1. Absolute level of fee required

#### Without a Creditor Guaranteed Fee

Without a Creditor Guaranteed Fee all fees are only recovered when the debt and fees are successfully enforced. Therefore, fee levels must be set at a multiple of the marked-up cost required to perform activities, in order that each successfully enforced case covers the total cost incurred on the appropriate number of unenforced cases. The required multiple is given by  $1/\text{fee recovery rate}$ .

For example, assume that the fee recovery rate is 20% (or 1 in 5), then the level of the fee needs to be 5 times the level of the marked-up cost, since fees from the one debtor in five that pays must provide revenue to cover the costs incurred attempting to enforce all five cases.

#### With a Creditor Guaranteed Fee

When some element of fees are guaranteed, no multiple needs to be applied to the marked-up cost of this fee element, as the fee will be recovered in 100% of cases: either from the debtor for successfully enforced cases, or from the creditor for unsuccessful cases (In effect the relevant multiple =  $1/100\% = 1$ ).

#### Worked Example

Suppose that the typical costs for an EAC to complete three stages of Enforcement are as follows (with costs plus 10% mark-up shown in brackets):

- Administration stage, £10 (£11);
- Enforcement Stage, £50 (£55); and
- Sale Stage, £200 (£220)

Suppose that the Fee Recovery Rates are:

- Administration Stage, 8%;
- Overall Fee Recovery Rate, 20%;
- giving an Enforcement Stage Fee Recovery Rate of 13%<sup>44</sup>; and
- Sale Stage Enforcement Rate, 80%

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<sup>44</sup> % of Total cases entering Enforcement Stage =  $100\% - 8\% = 92\%$

% of Total cases enforced after Enforcement Stage =  $20\% - 8\% = 12\%$

Enforcement Stage Fee Recovery Rate = (% of Total cases enforced after Enforcement Stage) / (% of Total cases entering Enforcement Stage)

=  $12\% / 92\% = 13\%$

The following table shows the required fee levels (for the worked example) with, and without, a creditor guaranteed fee covering the Administration Stage activities:

*Table 29: Creditor Guaranteed Fee worked example:*

Without Creditor Guaranteed Fee				With Creditor Guaranteed Fee			
Fee Stage	Marked Up Cost (£)	Recovery Rate Multiple	Required Fee Level (£)	Fee Stage	Marked Up Cost (£)	Recovery Rate Multiple	Required Fee Level (£)
Administration	11.00	1/ 20% = 5	55.00	Administration	11.00	1/ 100% = 1	11.00
Enforcement	55.00	1/ 13% = 7.7	423.50	Enforcement	55.00	1/ 13% = 7.7	423.50
Sale	220.00	1/ 80% = 1.25	275.00	Sale	220.00	1/ 80% = 1.25	275.00

### 16.3.2. Recovery of costs for unenforced cases

#### Without a Creditor Guaranteed Fee

Without a Creditor Guaranteed Fee the costs incurred for unenforced cases must necessarily be recovered through fees earned on cases that are successfully enforced.

Fees for successfully enforced cases must therefore be higher than they would otherwise be if some fees (the Creditor Guaranteed Fee) were being recovered on unsuccessful cases, since the same level of costs is incurred in either scenario.

For successfully enforced cases all fees are collected from the debtor. Therefore the subset of debtors who repay their debts, subsidises the subset of debtors who never pay. This will always be the case as long as debtors who pay are the only source of revenue to the EAC.

#### With a Creditor Guaranteed Fee

A Creditor Guaranteed Fee element would be paid by the creditor for all cases where the debt cannot be recovered from the debtor. Since these fees contribute to the revenue required to cover all costs and earn a profit margin, the revenue that needs to be generated from successfully enforced cases is lower. Consequently the fees for successfully enforced cases can be set at a lower level than they could be without being guaranteed by the creditor.

The creditor now subsidises the subset of debtors who never pay. Depending on the level at which the guaranteed fee is set it may completely or partly subsidise the cost on unenforced cases, with any remainder subsidised through fees to debtors who pay.

For public sector creditors, since their budget is derived from government funds, the “taxpayer” subsidises the subset of debtors who never pay.

### 16.3.3. Quality of information provided by the creditor

#### Without a Creditor Guaranteed Fee

With no Creditor Guaranteed Fee there is no direct financial incentive for creditors to enhance quality controls around the cases passed to EACs for Enforcement. Since the cost of passing a case to an EAC is nil, creditors are likely to elect to pass all outstanding debts to an EAC for Enforcement.

Cases passed to an EAC with poor quality information are likely to contribute to current and future poor Enforcement Rates.

On the other hand, since the EAC will only be paid in cases where the debt and fees are successfully recovered, this provides an incentive to the EAC to attempt to enforce all cases received.

#### **With a Creditor Guaranteed Fee**

If creditors were required to pay a fee for cases that could not be successfully enforced, this would create an incentive for creditors to attempt to reduce the total cost of Enforcement services to themselves by:

- filtering the cases they send to EACs to remove any clearly unenforceable cases; and
- attempting to improve the information provided to EACs in order to maximise the chances of successful recovery of the debt.

### **16.3.4. Creditor budgets**

#### **Without a Creditor Guaranteed Fee**

In the absence of a Creditor Guaranteed Fee, creditors' use of Enforcement services has no effect on the cost side of their budget, as Enforcement services are provided for no fee.

Amounts recovered through Enforcement increase creditors' revenue, and therefore creditors will tend to select EACs based on which can achieve the greatest Enforcement Rate.

#### **With a Creditor Guaranteed Fee**

If creditors were to face a guaranteed fee, becoming payable to the EAC in the event of unsuccessful Enforcement, the expected total cost of this fee would need to be taken into account by creditors when deciding how many and which cases to pass to an EAC for Enforcement. Budget limitations might then reduce the number of cases that creditors are able to pass for Enforcement, and consequently reduce the total amount of debt recovered.

The budget constraint is a particularly important consideration for public sector creditors. Public sector creditors face certain obligations to attempt to enforce public debt, and may therefore find it more difficult to reduce the number of cases sent to EACs for Enforcement. Furthermore, due to the very large volume of cases for public sector debt-types (Council Tax, HMCS, RTA and NNDR), issued by a single creditor (for example, a local authority), the budgetary burden of the Creditor Guaranteed Fee could be very substantial.

However, even for a single creditor with a large number of cases, if total collections from Enforcement activity exceed the total cost of paying Creditor Guaranteed Fees, the collection activity could fund itself, and would be commercially viable compared to the alternative of not using Enforcement services. Only where actual collections were less than total Creditor Guaranteed Fees paid would it make commercial sense to cease using Enforcement activities.

### 16.3.5. Summary

The key considerations presented above include arguments both in favour of, and against, the use of a Creditor Guaranteed Fee. The financial impacts of many of the arguments act in opposing directions and are difficult to quantify or estimate.

However, the argument is most simply summarised with reference to the principle of who should subsidise the debtors who never pay. There is no correct answer to this question: it is a subjective decision and a policy decision.

The two alternatives are:

- If no Creditor Guaranteed Fee is used, the debtors who never pay are subsidised by the debtors who do pay following Enforcement;
- If a Creditor Guaranteed Fee is used, the debtors who never pay are subsidised by the creditor; and to the great extent that the debt is public debt, the subsidy is provided by the taxpaying population.

### 16.3.6. An Up-front Fee?

The potential benefits of a Creditor Guaranteed Fee, previously described, do not rely on the “up-front” payment of the fee i.e. paid by the creditor before the EAC/ HCEAC has commenced any activities in relation to the Warrants/ Writs. The timing of the fee payment does however have cash-flow implications for both the EAC/ HCEAC and the creditor. A fee paid “up-front” would be more beneficial, in terms of cash-flow and credit control, for the EAC/ HCEAC, and if paid upon the return of the unenforced Warrants would be more beneficial for the cash-flow of the creditor.

#### **MoJ Parameter**

##### **Non-High Court Enforcement**

MoJ’s initial modelling parameter was that there should be no Creditor Guaranteed Fee for Non-High Court Enforcement. The key considerations in proposing this parameter were:

- Public sector creditors face budget constraints that would not allow them to absorb the additional cost of Enforcement services, if they included a Creditor Guaranteed Fee;
- Since public sector creditors issue large volumes of Warrants, the impact of a Creditor Guaranteed Fee of any size (even a very small fee) would become a large burden when multiplied by the very large case volumes issued; and
- Public sector creditors have an obligation to attempt to enforce public debt, and therefore could not avoid the additional costs of Enforcement by scaling back the use of Enforcement services.

##### **High Court Enforcement**

MoJ’s initial modelling parameter was that there should be a Creditor Guaranteed Fee for High Court Enforcement. The key considerations in proposing this parameter were:

- HCEOs currently charge creditors an “Abortive Fee” for cases where monies are not recovered from the debtor. This “Abortive Fee” is not currently a statutory fee but exists by convention as a contractual fee between HCEO and creditor. The Proposed Fee Structure is designed to be free-

standing, and not to run alongside any non-statutory fees. Incorporating a Creditor Guaranteed Fee within the statutory Fee Structure removes the duality of statutory and non-statutory fees;

- The majority of creditors holding High Court Writs are likely to be private organisations, whose decision to pursue a debt through High Court Enforcement is a commercial one, and one which should be made after giving due consideration to the costs as well as the expected benefits;
- An HCEO has extended obligations and duties in relation to a High Court Writ compared to an EA in relation to a Distress Warrant (see section **7. Comparison between High Court and non-High Court Enforcement**). Requiring the creditor to pay a guaranteed fee recognises that the HCEO will need to fulfil these extended obligations and duties even when it is unlikely that any monies could be recovered from the debtor.

MoJ's initial modelling parameter was that the Creditor Guaranteed Fee element should be at the same monetary value as the Administration Stage Fee. The Fee should therefore operate by requiring the creditor to pay the Administration Stage Fee in the event that no monies are collected from the debtor, but deducting the Administration Stage Fee from amounts collected from the debtor when sufficient monies are recovered.

In those instances that the creditor is required to pay the Administration Stage Fee this should not be paid "upfront" (i.e. as soon as the case is passed to the HCEO for Enforcement), but rather only after the HCEO has attempted to enforce the debt, but has ultimately returned the Writ unenforced and closed the case.

#### 16.4. Fees linked to specific actions

The existing Fee Structures contain certain instances of fee charged for specific actions, such as letters, visits, levying, removal etc. The proposed use of Fee Stages (see **16.1 Number and nature of Fee Stages**) would replace the use of specific actions as fee trigger points, with the commencement of a stage of activity as the fee trigger. Nonetheless, consideration should be given as to whether any fees linked to specific activities should be retained.

The charging of fees for specific activities, if correctly applied, would be the best way to ensure the objective of proportionality of fees with activity, as debtors should only be charged for the specific actions that EAs/ HCEOs have been required to undertake in enforcing their case.

However, a Fee Structure made up of many fees for specific activities becomes complicated to understand and apply, and debtors are unaware of the likely level of fees at the outset of the process.

Furthermore, the most commonly reported current abuse of existing Fee Structures is the charging of fees for "phantom actions", such as "phantom visits". Retaining the charging of fees for specific actions retains the potential for this type of abuse. Creating and retaining evidence of specific actions is also costly for EACs, and is a cost that would ultimately be born by debtors.

Through discussions at Stakeholder and Working Group meetings particular consideration was given to whether a specific separate fee should be charged to debtors paying by instalments.

### **MoJ Parameter**

MoJ's initial modelling parameter was that the Fee Structure should consist only of fees related to Fee Stages, consisting of groups of activities, and should not contain any fees relating to specific actions. The proposed definition of Fee Stages for High Court and non-High Court Enforcement is felt to satisfy the objective of proportionality of fees and activity, whilst also maximising the simplicity of the Fee Structure, and minimising the potential for abuse.

## **16.5. Percentage Fees**

### **16.5.1. Aligning fees charged with cost to enforce**

Using **only** fixed fees, it should be possible to set the level of fixed fees (with reference to the typical cost of performing activities) such that across a sufficiently large portfolio of cases, the EAC/ HCEAC should expect on average to recover typical costs and earn the target profit margin. However, since the cost of enforcing individual cases is likely to deviate from the typical cost very often (in either direction), using only fixed fees may result in either excess profits or a loss (depending on the direction of the deviation from typical cost) on any individual case basis: with these individual profits and losses levelling out to deliver the target profit margin over the full portfolio of cases.

If a mechanism could be found to align costs and fees more closely, even on a case-by-case basis, this might be preferable as it would lead to a more predictable profit margin being earned on each case (not only across the whole portfolio of cases). Aligning fees with cost on an individual case basis could help to prevent "cherry picking", whereby firms might otherwise seek to enforce only the least costly cases (and be unwilling to attempt to enforce the more costly) in order to earn super profits.

A Percentage Fee might provide a mechanism to achieve a closer alignment between costs and fees, since there is a generally accepted<sup>45</sup>, yet imperfect, correlation between debt size and the cost of

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<sup>45</sup> 70% of those EACs responding to the relevant RFI question indicated that larger debts were more costly to enforce. These respondents provided two main explanations of why larger debts are more costly to enforce:

- Since the debt is larger, more goods need to be levied on, and potentially removed, and therefore these processes are more costly;
- Debtors with larger debts are more likely to be persistent debtors and therefore take more effective actions to evade Enforcement; meaning consequently that an effective Enforcement process is more costly.

Compelling reasons were also provided to explain why larger debts may be more costly to enforce when they are "commercial" rather than "domestic":

- The levy may take place at non-standard types of premises: For example, levying commercial goods may involve searching for assets in factories, warehouses, or large industrial sites. In comparison to levies taking place at domestic premises the degree of variability is higher, and there are likely to be actual costs related to searching premises for assets;
- The nature of assets removed is also likely to be more varied, due to the range of different businesses operating in England and Wales. Assets might also include plant and machinery, which could be more difficult and costly to remove than standard household items;
- Businesses are more likely to hold items on hire purchase or leasing agreements, and therefore the EAC is likely to need to perform more checks on the nature of ownership of goods before levying or removing.



Enforcement. A larger debt size might, **in general though not in every case**, drive higher costs in a number of ways:

- Debtors with larger debts are more likely to attempt to avoid repayment of the debt, and are more likely to be seasoned debtors, and therefore more practiced at frustrating Enforcement efforts;
- Creditors sending higher value debts for Enforcement are likely to make greater demands for information from the EAC/ HCEAC, and are more likely to insist upon the greatest extent of possible Enforcement action even when recovery does not look likely. This is particularly the case for High Court Enforcement due to the HCEO's obligations to the creditor (see **7.2 High Court Enforcement**).
- Levying on goods of a higher value (to cover a larger debt) requires levying on a greater number of, or more valuable, goods, and therefore generally requires more time and is more likely to involve complications such as disputes over the ownership of goods levied, and the associated extra costs.
- If Enforcement progresses to actual removal of goods, a greater number or value of goods will be required to be removed where the size of the debt is larger. The goods are likely to be costlier to remove, in terms of the size or number of removal vehicles required, the cost of any necessary insurance, storage space, or specialist removal or valuation services.

Such arguments establish a potential correlation (albeit imperfect) between debt size and the cost of Enforcement. Percentage Fees create a correlation between debt size and fees charged, and by virtue of the relationship described above, create a correlation between the cost to enforce and the fee charged.

### 16.5.2. Which activities?

The arguments presented also indicate that the correlation between debt size and cost is most apparent for activities that directly involve goods (i.e. levying and removal), since these should be of a greater value when the debt size is larger. Administration Stage activities remain largely unchanged regardless of the size of the debt, and therefore there is likely to be no or little correlation between size of debt and cost for these activities.

This observation would suggest that Percentage Fees could be most effective at aligning cost and fees if they are applied for the activities where the correlation between cost and debt size is likely to be the clearest.

### 16.5.3. Fees proportional to debt size

As well as aligning fees with the cost to enforce on a case-by-case basis, Percentage Fees also achieve proportionality between the size of the debt and fees charged. That is to say, above the threshold at which Percentage Fees apply, a larger debt will attract larger fees for any given set of actions. This could be a desirable feature of a Fee Structure: not only does it seem just, but would also encourage debtors to try to settle, or limit, their debts before they grow larger.

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#### 16.5.4. Tapering of Percentage Fees

Since Percentage Fees align debt size with fees charged, fees for very large debts could potentially also become very large. However, since there is only an imperfect correlation between the size of debt and the cost to enforce, a very large debt may not prove costly to enforce, yet could still attract much larger fees due to the use of a Percentage Fee.

“Tapering” of the Percentage Fee could potentially be used as a mechanism to limit the impact of the effect described above. Tapering refers to the reduction of the size of the percentage applied as the size of the debt becomes larger. For example, one way to taper Percentage Fees as debt size increases is shown in the table below:

*Table 30: Illustration of potential Percentage Fee tapering*

Thresholds applied to original debt size	< £1,000	£1,001 - £5,000	£5,001 - £10,000	> £10,000
Percentage applied within threshold	0%	5%	2.5%	1%

By reducing the level of the Percentage Fee applied to larger debts, above a certain threshold, the tapering of Percentage Fees reduces the escalation of fees for larger debts. Capping the escalation of fees seems particularly appropriate for activities such as levying; where cost is likely to be correlated to the size of the debt, but where the cost is unlikely to increase indefinitely with the size of the debt, but rather to reach some limit and then to plateau. This argument may still apply, although less clearly, to activities such as removal where each additional good (removed to cover each additional amount of debt) requires additional activity and therefore additional cost.

#### MoJ Parameter

MoJ’s initial modelling parameter was that the following Percentage Fees should be applied:

*Table 31: MoJ Parameter on Proposed Percentage Fees*

Civil Enforcement			High Court Enforcement		
	≤ £1,000	> £1,000		≤ £1,000	> £1,000
Administration Stage	0%	0%	Administration Stage	0%	0%
Enforcement Stage	0%	7.5%	Enforcement Stage 1	0%	7.5%
Sale Stage	0%	7.5%	Enforcement Stage 2	0%	0%
			Sale Stage	0%	7.5%

The Percentage Fee should be applied to the amount of the debt above the £1,000 threshold, and not applied to the whole debt.

The size of debt used when calculating the Percentage Fee should be the total value of the original debt specified in the Writ or Warrant (and not the amount recovered), as this will make the total potential fees chargeable clear to the debtor from the outset of the Enforcement process.

There should be no tapering of the Percentage Fee level for larger debts: the 7.5% Percentage Fee should be charged on the full original value of the debt, above £1,000.

For example for a debt of £15,000 the Percentage Fee element of the Sale Stage Fee would be calculated as follows:

*Table 32: Percentage Fee calculation example*

Threshold	Debt within threshold (£)	Percentage applied	Fee applied (£)
≤ £1,000	1,000	0%	0
> £1,000	14,000	7.5%	1,050
<b>Total Sale Stage Percentage Fee</b>			<b>1,050</b>

### 16.5.5. Impact of Percentage Fees on fixed fee levels

The objective of the Enforcement Fee Structure Review is to determine fee levels that will fairly reward the EA/ HCEO for the work they perform. The Fee Structure Model calculates the level of fee that is required to achieve this objective, through the targeting of a 10% profit margin, given the desired fee trigger points. The Model calculates the required fee size in total. The introduction of a Percentage Fee allows the EA/ HCEO to recover the total target fee in two components: a fixed element and a percentage element related to the size of the debt.

The two fee elements must sum together to equal the total target fee. Therefore, upon introduction of a Percentage Fee element, the accompanying fixed fee will need to be reduced to ensure that fees sum in total to the target. In order to calculate the necessary reduction in the fixed fee, it is necessary to understand the typical size of the fee that will be charged as a percentage of the debt size. The average size of debt for each debt-type is required in order to perform this calculation.

The following table shows the average debt-size for each debt-type:

*Table 33: Average debt sizes*

Debt Type	Average debt size	Source
Council Tax	£543.39	Estimates provided by EACs in response to RFI
CSA	£6,037.53	Detailed analysis of CSA sole enforcement provider
HMCS	£197.42	HMCS Balanced Scorecard
RTA	£110.92	Estimates provided by EACs in response to RFI
Commercial Rent	£5,403.95	Estimates provided by EACs in response to RFI
NNDR	£2,870.52	Estimates provided by EACs in response to RFI
Writ of Fi Fa	£3,695.98	MoJ HCEO Performance Statistics

## 16.6. Order of payment

The order of payment of debt (to the creditor) and fees (to the EAC/ HCEAC) from the total recoveries made by the EA/ HCEO is an important parameter, which may incentivise EA/ HCEO action. When a full recovery of the debt and total fees due is made the order of payment is not an important issue as both the creditor and the EAC/ HCEAC can be paid in full. However, when a partial

recovery is made one or both of the creditor and EAC/ HCEAC will not be able to be paid in full as the amount recovered would be insufficient. In such circumstances an order of payment mechanism is required to determine who should receive payment first.

The order of payment is not defined in the existing Fee Structures, and therefore is normally a matter resolved through contracting between creditors and EAC/ HCEAC, or resolved with consideration to the commercial pressures on a case by case basis. In any case the existing absence of an order of payment mechanism leads to a lack of clarity, and divergent practices in an area that affects both EA/ HCEO behaviour and Debt and Fee Recovery Rates (and in fact causes the divergence between the two recovery measures).

There are several possible order of payment mechanisms that might be established, which would function as follows when the total amount recovered was insufficient to pay both debt and fees:

### **1. Fees First**

From the total monies recovered, the EAC/ HCEAC would first collect the sum required to pay the total fees charged, and then the remaining balance of the amount collected would be used to pay part of the creditor's debt. An advantage of this mechanism is that, compared to the alternatives, the EAC/ HCEAC is most likely to be paid in full for the Enforcement actions undertaken. A disadvantage is that the EA/ HCEO might be incentivised to undertake actions designed to increase fees, even where these actions do not increase the likelihood of making a full or substantial recovery of the debt after fees have been paid. For example, the EA/ HCEO may decide to remove and sell goods in order to be able to collect fees charged up to and including this action, even when the proceeds of sale are unlikely to make a significant (or any) impact, after paying fees, towards repaying the original debt. This approach would increase the Fee Recovery Rate compared to the Debt Recovery Rate.

### **2. Debt First**

From the total monies collected the creditor's debt would be repaid first, and only then would remaining amounts recovered be used to pay Fees. The advantage of this mechanism, compared to the alternatives, is that the creditor's debt is repaid to the greatest possible extent from the amount collected. The disadvantage is that EAC/ HCEACs may undertake many Enforcement actions for which they do not receive full, or perhaps any, fees. This approach would reduce the Fee Recovery Rate compared to the Debt Recovery Rate.

### **3. Pro-rata payment**

The original debt and the fees incurred are paid pro-rata to the amount collected.

For example, the original debt value is £9,000, and £2,000 has been recovered whilst incurring £1,000 of fees. Therefore, 20% (£2,000) of the total amount due (debt plus fees = £9,000 + £1,000 = £10,000) has been recovered. Under a pro-rata payment mechanism 20% of the debt (20% x £9,000), £1,800, would be repaid to the creditor; and 20% of the fees (20% x £1,000), £200, would be paid to the EAC/ HCEAC.

This method of repayment is appealing because it aligns the incentives of the EAC/ HCEAC with those of the creditor, and shares the risk and reward of recovering amounts from the debtor until the debt and fees have both been recovered in full.

#### 4. Some Fees first, remainder pro-rata

As an extension of the pro-rata mechanism described at (3) above, a mechanism might be designed to pay first those fees that the EAC/ HCEAC was obliged to incur (potentially Administration and Enforcement Stage (1)), and then to pay the remaining fees (Enforcement Stage 2, and Sale Stage), which the EAC/ HCEAC has incurred through their own discretion or judgement on a pro-rata basis.

This mechanism would, where possible, pay the EAC/ HCEAC in full for the actions undertaken necessarily upon receiving the Writ/ Warrant, but share the risk of recovery equally between EAC/ HCEAC and creditor for those actions that the EA/ HCEO elected to undertake using their own discretion and an assessment of the likelihood of successful recovery. The amounts to be repaid are significantly more complicated to calculate under this mechanism than the others.

#### Illustration of order of payment mechanisms

The following scenario and table illustrate the different payments that would result from a particular scenario under each of the different payment order mechanisms suggested, and demonstrates the important impact that the payment order mechanism can have on the outcome of the Enforcement process:

##### Scenario

- Original debt = £10,000
- An EA/ HCEO proceeds to removal and sale of goods.
- Total amount recovered = £2,000

*Table 34: Fees incurred in payment order mechanism example scenario*

Fees incurred		
	EA	HCEO
Administration Stage	75	75
Enforcement Stage (1)	230	185
Enforcement Stage (1) %	325	675
Enforcement Stage 2	N/A	480
Sale Stage	105	510
Sale Stage %	325	675
<b>Total Fees</b>	<b>1,060</b>	<b>2,600</b>

*Table 35: Amounts recovered in payment order mechanism example scenario*

Amounts Recovered				
Repayment Mechanism	EA	Creditor	HCEO	Creditor
1	1,060	940	2,000	0
2	0	2,000	0	2,000
3	192	1,808	413	1,587
4	686	1,314	1,087	913

Note

The calculation of fees recovered under Mechanism 4 assumes that EACs would recover the Administration Stage Fee and the Enforcement Stage Fee first from monies recovered, and the remaining balance would be recovered pro-rata between the EAC and the creditor. For HCEAC, the Administration Stage Fee and the Enforcement Stage 1 Fee are recovered first by the HCEAC before pro-rating.

As an alternative to all of the order of payment mechanisms suggested, the status-quo could be maintained, by excluding any specific statement regarding order of payment from the Fee Structure, and continuing to allow different orders of payment to be adopted through contracting and commercial pressures.

**Moj Parameter**

A **pro-rata payment mechanism**, as described above, should be adopted for the repayment of original debt and Enforcement Fees charged.

## 16.7. Multiple Warrants/ Writs

One of the most widely reported perceived abuses of the existing Fee Structures is the charging of fees multiple times when an EA/ HCEO holds multiple Warrants/ Writs relating to a single debtor, but has carried out the chargeable action only once (**5.2 Failings of Existing Fee Structures**). The principle of rewarding EAs/ HCEOs fairly for the actions they perform (which implies aligning fees charged with costs incurred, and allowing a fair profit margin) would suggest that additional fees should only be charged on multiple Warrants/ Writs when additional actions have been undertaken, and therefore additional costs have been incurred.

For example, an EAC holding several Warrants qualifying for visit fees might attend a debtor's premises on one occasion but charge visit fees in respect of each of the qualifying Warrants held (Council Tax, NNDR: £24.50, Customs & Excise, Social Security, Stamp Duty, Taxes: £12.50).

The impact of multiple fee charging will be greatly accentuated under the Proposed Fee Structure, as an uplift is proposed to the basic fixed fee levels, offset by the removal of "reasonable costs". In the above example, an EAC may seek to charge the Enforcement Stage Fee of £230 for each of the Warrants held. Therefore, the appropriate treatment of fees charged for multiple Warrants/ Writs becomes all the more important, and the principles of aligning costs and fees would seem to suggest that the Enforcement Stage Fee should not be charged more than once for multiple Warrants/ Writs against the same debtor. This treatment should be clearly defined and specified, and monitoring should ensure that it is applied correctly in practice.

If a requirement of the Administration Stage were to identify, for each Warrant/ Writ, other existing Warrants/ Writs with the same debtor, in theory multiple Warrants/ Writs could be grouped after the Administrative Stage to avoid repeating later Enforcement actions unnecessarily.

Allowing the charging of multiple Administration Stage Fees would reflect that the activities of the Administration Stage (including identifying and grouping Warrants/ Writs) had been performed on multiple occasions: for each Warrant/ Writ. If all Warrants/ Writs to a single debtor were then aggregated at that point, although single fixed fees might then be charged for any Enforcement or Sale Stages performed, the Percentage Fee elements of those stages would be larger reflecting the larger size of the aggregated debt.

Although the principles of such an approach appear fair and would align fees with level of activity, and therefore cost, there are a number of practical issues which introduce complications:

- if Warrants/ Writs for the same debtor are received by different EACs/ HCEAC, it seems unavoidable that the Enforcement activities will be duplicated, and therefore also the fees. A debtor might potentially therefore be expected to pay higher fees in total for multiple Warrants/ Writs because of the coincidence that the multiple debts were enforced by different EACs/ HCEACs, rather than having been received by a single EAC/ HCEAC and amalgamated after the Administration Stage.
- Where multiple debts exist, and where the amount due in debt and fees is only partially recovered, there must be some “payment priority order” (whether defined in law due to the nature of the debts, or imposed by circumstances) for the repayment of the debts and the Enforcement fees incurred. If multiple Warrants/ Writs are to be aggregated and enforced as if a single Warrant/ Writ after the Administration Stage, attention needs to be paid to how the “pecking order” for repayment of the various debts and fees will be defined.
- The feasibility of aggregating multiple Warrants/ Writs will be affected by the time period over which Warrants/ Writs are received and actions are undertaken. For example, after a certain feasible time period has elapsed following the attempted Enforcement of a Warrant/ Writ, the receipt of a new Warrant/ Writ for the same debtor is likely to necessitate duplication of Enforcement actions, and therefore aggregation of the Warrants/ Writs would not be appropriate, and multiple charges would seem justified. Defining the appropriate time period over which aggregation of Warrants/ Writs should be a requirement is not straight-forward.

These practical considerations might be better tackled within the legislation governing EAC/ HCEAC procedures and actions rather than within the Fee Structure.

#### **MoJ Parameter**

MoJ will use the Consultation Paper to seek views and opinions on the appropriate charging treatment for multiple Warrants/ Writs held against the same debtor. Following the Consultation Paper responses MoJ will propose a treatment for charging fees in respect of multiple Warrants/ Writs.



## 16.8. Exceptional Costs

### 16.8.1. Problems with “Reasonable Costs”

The existing Fee Structures, instead of specifying a precise fee level for a particular activity, in many instances allow for the recharge of “reasonable costs” to the debtor. The use of “reasonable costs” facilitates one of the most commonly reported abuses of the current Fee Structures: making excessive charges under the “reasonable costs” fees allowed (see **5.2 Failings of existing Fee Structures**). The proposed Fee Structure attempts to move away from a reliance on “reasonable costs” fees for this and other reasons:

- The potential that “reasonable costs” may be added to the fees to be paid by the debtor causes uncertainty on the debtor’s part about the final amount of fees they will be liable to pay. This causes misunderstanding and can lead to debtor disputes and complaints. The Fee Structure is made more transparent by removing the “reasonable costs” element.
- If EACs/ HCEACs are allowed to recharge “reasonable costs” the level of these charges may be different across different EACs/ HCEACs undertaking the same actions, and so consistency of charging levels is not achieved.
- The “reasonableness” of costs is a subjective matter, and when disputes arise it requires the use of costly court time in order to perform an assessment of those costs.
- Anecdotal evidence suggests that some current abuse of the existing Fee Structures may involve charging excessive “reasonable costs” fees; relying on the ignorance of most debtors about their legality, but dropping the fees if a debtor does seek to challenge them.
- It is difficult to ensure the arm’s length nature of relationships between EACs/ HCEACs and the third party companies that may supply services to the EACs/ HCEACs at a price which later can be recovered by the EAC as “reasonable costs”. Potentially EACs/ HCEACs may seek to setup separate companies providing these support services at inflated prices, which could then be passed on to the debtor through the use of “reasonable costs”.
- Even where the relationship between EAC/ HCEAC and the third party is at arm’s length, because of the existence of the “reasonable costs” fee within the current Fee Structures, prices in the support service industry may become artificially inflated through market forces relating to the existence of this fee, which enables cost pass through.
- Third party service providers operate in industries (such as vehicle or equipment hire) that are unregulated, and for which MoJ has not undertaken a detailed cost investigation exercise. Having performed such an exercise in the Enforcement industry, it then seems counter-productive to expose significant elements of the proposed Fee Structure to external and unregulated industry prices.
- Furthermore, whilst it is accepted that debtor’s fees should cover EAC/ HCEAC costs (including all overheads) and allow them to earn a reasonable reward, it is harder to support the idea that the fees should cover overheads of third parties’ non-Enforcement activities and support a profit margin for those third parties, particularly without the ability to monitor the margin earned by those third parties.
- Different EACs/ HCEACs have different business models with regards to owning/ leasing certain assets (normally assets relating to removal activities, since they are very rarely called upon). A Fee Structure including reasonable costs causes problems if it suggests that EACs/



HCEACs owning assets (and therefore not incurring a direct cost for their use) should be able to charge lower fees; or causes additional complications if transfer pricing needs to be used to determine prices to allow for the recharge of intra-company costs incurred.

- If reasonable costs are removed from the Fee Structure this would provide strong incentives for EACs to invest in any assets which they currently require third parties to provide. Especially where an EAC makes significant use of third party services, this should indicate that the assets required to provide the service are core to the role of the Enforcement agency. It would therefore seem reasonable that a creditor employing the services of an EAC should not expect the EAC to need to contract third parties to provide core services, such as removal vehicles. The status-quo, whereby many EAs do need to sub-contract these services, is supported by the existence of the “reasonable costs” fee in the current Fee Structures.

### 16.8.2. Overcoming problems with “Reasonable costs”

The need for specific recovery of “reasonable costs” can be avoided if fees are set at levels, which are sufficient to enable EACs/ HCEACs to recover all costs incurred, **including those incurred to obtain third party services**, and to earn a fair profit margin across their full portfolio of cases. In the approach adopted to determine a Proposed Fee Structure this has been achieved through the cost allocation exercise performed at section **13. Cost Allocation Exercise**, which determined the typical cost of each of the Enforcement activities using cost data which was inclusive of **all costs**.

Setting fees at such a level to allow these typical activity (total) costs to be recovered with a target profit margin, avoids the need to further reward EACs/ HCEACs specifically for any third party costs that may have been incurred as a part of total costs.

Since fees are therefore set to allow the recovery of typical costs per case, this does mean that there will be cases where the costs to enforce may exceed the fees chargeable. However, by virtue of using typical costs from a large volume of cases to set fees, the outcome across a large number of cases should include a sufficient number of cases where costs to enforce are lower than typical, in order to balance the more costly cases, and to enable the target profit margin to be achieved.

### 16.8.3. “Exceptional Costs”

In some cases the costs that are necessary to enforce a debt may be exceptionally high. Meetings with Enforcement Industry Associations have provided examples of cases in which levying or removing goods has proved exceptionally costly. This may be the case, for example, if:

- the debtor has many (or particularly valuable) assets available, which the EA/ HCEO assesses could be seized and sold to recover the debt, but where the actions necessary to do so would be particularly costly. For example, the debt is large, the debtor owns a very valuable asset (such as an airplane), which could be sold to recover the debt, but where it would be costly to seize, remove, store and arrange the sale of the asset. However, since the action would accomplish the goal of repaying the debt, and the EA/ HCEO is empowered to undertake the action, it seems appropriate that the action should occur: and that the Fee Structure should allow, or facilitate, this action taking place, without the EA/ HCEO unduly bearing the costs of achieving this successful Enforcement outcome.

- the EA/ HCEO may be compelled to undertake costly actions even when they do not appear likely to lead to the successful recovery of the debt and fees owed. For example, an HCEO may be compelled by a judge or a creditor (either by specific instructions, or in order to fulfil the HCEO's specific duties and obligations to the creditor) to incur costs. For example, an HCEO might have removed a debtor's assets to storage, where they are held awaiting sale at a cost to the HCEO, only to be told by the judge to hold before proceeding to sale whilst elements of the case against the debtor are resolved (for example an Interpleader process); potentially causing exceptionally large storage costs to be incurred.

The Fee Structure is designed to allow EACs/ HCEACs to recover the typical costs of Enforcement plus a margin on every case, and therefore to recover costs and earn a profit margin across the **full** portfolio of cases (with some alignment of fees and more costly cases through the use of Percentage Fees). Therefore, it would not be appropriate to allow EACs/ HCEACs to recover "exceptional costs" on every occasion that the actual cost of Enforcement exceeds the fees allowed, since this is already factored into the Fee Structure. However, at some level of cost, in a specific case, it may be desirable to allow the EAC/ HCEAC to recover costs directly, so that cashflow and fees versus cost timing misalignments do not cause operational or profitability problems, which could jeopardise a sustainable Enforcement service.

Although the use of a Percentage Fee to attempt to align the cost of Enforcement with the available fees would reduce such instances, this may still occur in some cases. In such cases an "Exceptional Costs Fee" may be desirable, to enable EAs/ HCEOs to successfully enforce debts by taking actions within their powers, even when those actions are exceptionally costly. The "Exceptional Costs Fee" should apply only in circumstances where it could be justifiably evidenced that the costs necessarily incurred in order to successfully enforce a debt significantly exceeded the ordinarily available fees by some multiple of those fees.

Any "Exceptional Costs Fee" should not apply in every case that costs exceed available fees (as previously explained), and therefore a threshold (possibly stated as some multiple of the ordinarily available fees) is required to define when an "Exceptional Costs Fee" might be applied for. The exact specification of the mechanism for applying for an "Exceptional Costs Fee" requires the definition of this multiple and several other parameters and procedures. Specifying the procedure and parameters for the "Exceptional Costs Fee" is a task that should be careful and precisely performed, to ensure that this fee element is not considered in the same way as the current allowances for "reasonable costs" which have been the cause of reported abuses. This detailed specification of the procedure is not covered within this report.

#### **MoJ Parameter**

MoJ anticipates that the fees prescribed in the Proposed Fee Structure should be sufficient to cater for all aspects of Enforcement, however it may be necessary to support the fees available by the use of an "Exceptional Costs Procedure", which will enable EACs/ HCEACs to apply for additional fees where the costs of Enforcing specific cases are shown to be exceptionally high, and significantly in excess of the fees otherwise available for successful Enforcement. It is proposed that specific

questions be directed towards this issue in the Consultation Paper with a decision being taken based on those comments as to whether such a process is necessary.

## 16.9. VAT

VAT treatment in respect of fees charged to debtors is currently inconsistent:

*Table 36: Current VAT treatment on fees charged to debtors<sup>46</sup>*

Type of debt	Traffic Management Act	HMCS	Child Support Agency	Council Tax	Non-Domestic Rates	Commercial Rent
VAT on fees charged to debtor paid by:	Debtor	Creditor	Debtor	Creditor	Creditor	Debtor

In respect of unpaid parking penalties VAT is payable by the debtor, in accordance with the *Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993*: “[In addition to any amount authorised by this Table,] the amount of value added tax payable may be passed on to the debtor by adding an equivalent amount to the sum due.”

The VAT treatment for road traffic debt is inconsistent with that of criminal distress Warrants, where the net amount is charged to the debtor and HMCS is invoiced for the VAT amounts. Magistrates’ Court Areas then reclaim the VAT charged, in accordance with Business Brief 15/98: “Magistrates’ Court Committees...will be entitled to recover the VAT charged on [bailiff’s] fees, provided they are in possession of a VAT invoice from the bailiff...This is under the provisions available...for the refund of VAT incurred on their non-business activities.”

Where VAT is charged to the debtor it has a significant impact on the level of fees charged, and when charged to the creditor it has a similar impact on the net amount of recoveries (where the VAT is not zero-rated). In keeping with the objective of unifying the Fee Structure across different debt-types, it would seem appropriate to apply the same VAT treatment across all debt-types. Furthermore, since the debtor is not the recipient of any product or service it does not seem appropriate that VAT should be charged to the debtor.

MoJ will need to decide on a preferred approach to the charging of VAT, and then to collaborate with HMRC in order to implement the preferred approach as closely as possible.

### **MoJ Parameter**

MoJ is currently investigating the possibility of creating a uniform VAT treatment for all debt-types. The Consultation Paper will seek to gauge views on the desirability of a uniform VAT treatment, and a decision will be made subsequently.

<sup>46</sup> “Joint ACEA and ESA submission in relation to the Enforcement Agents Fee Structure Review” (12 November 2008)

## 16.10. Inflation

The existing Fee Structures do not make provisions for inflationary increases, and most EACs/ HCEACs complain that the value of the fees they are able to charge has been eroded steadily through inflation, whilst the level of their typical costs have increased.

To maintain the ongoing relevance of the Fee Structure, between any major reviews such as the current exercise, the level of fees should be adjusted annually to track inflation. To maintain the simplicity of the Fee Structure, published fee levels should continue to be rounded to nearest whole pound amounts as they are updated through indexing, but the cumulative effect of inflation on the original fee level should be tracked to the nearest penny.

The indexing of price controls is traditionally linked to the Retail Price Index (“RPI”) or the Consumer Price Index (“CPI”). The Office for National Statistics also maintains a (currently experimental) Services Producer Price Index (“SPPI”). This index would be more closely linked to the costs faced by EACs/ HCEACs, and might provide a superior index in the future if its use becomes more broadly recognised.

For Percentage Fees the level of percentages charged does not need to be increased to reflect inflation. Inflationary increases will naturally affect debt sizes and, since the fee is calculated as a percentage of the original debt size, the effect of inflation will automatically be reflected in the Percentage Fee levels. The Percentage Fee thresholds should be indexed to inflation, but in the interest of maintaining simplicity, should only be updated when the inflated threshold level reaches a round amount: for example, the currently proposed £1,000 threshold might be updated when inflation linked increases suggest a threshold of say £1,100, but held at £1,000 to maintain simplicity until such time.

### **MoJ Parameter**

The Proposed Fee Structure should be implemented at the fee levels shown in the consultation paper from the date of implementation (currently due for April 2012). Following implementation fee levels should be updated annually by indexing to RPI.

Percentage Fee levels charged should remain as in the current Proposed Fee Structure, but thresholds will be indexed to RPI and updated when inflated threshold levels reach sensible round amounts to maintain simplicity.

## 17. Fee Structure Model

This section describes the functioning of the Fee Structure Model, which uses input data collected from the RFI and the desirable Fee Structure features, determined by MoJ (section **16. Fee Structure Features**) to generate fee level outputs.

### 17.1. Fee Structure Model Functionality

The functionality of the Fee Structure Model is illustrated in the diagram at **Appendix 10: Fee Structure Model Functionality**, and summarised in the steps below:

#### 1. Accounts received in response to RFI → Converted to standard accounts template

Accounting data was provided by RFI respondents in a variety of accounts formats. The first step of the Model was to standardise the accounts received, from each company, into a single standard accounts template. The accounts template was constructed by carefully examining all of the accounting data provided, then identifying the main common types of cost, of which 11 were identified at **13.1 Standard Cost Categories**.

Figure 18: Standard accounts template

Enforcement Agent Standardised Profit & Loss Statement		
Revenue		
Staff Costs		
- Directors' fees		
- Bailiff staff costs		
- Admin staff costs		
Admin costs		
Building costs		
Vehicle costs		
Removal & Storage		
Other costs		
Finance costs		
Depreciation		
Management charges		
Total Operating Costs		
Pre-tax profit		

The conversion of each company's accounting data into the standard accounts template was a fairly straight-forward exercise, consisting of categorising similar cost items into standard

cost categories. Each conversion was agreed back to the provider of the accounts to ensure that it was done in an appropriate manner.

**2. Standard accounts cost categories (11) → Standard activities (37)**

The standard accounts templates consisting of 11 cost line items were then used to allocate costs to each of the 37 Enforcement activities (see **11.1 Identification of Enforcement Activities and Frequencies**), using the resource allocation estimates (see **13.2.2 Resource Allocation Estimates**) provided by the companies. The resulting allocation showed the total cost for each company split over the 37 activities.

**3. Activity frequency estimates**

The number of times each company had carried out each of the 37 activities during the period covered was then calculated by multiplying the company's total caseload by the frequency estimate for the specific activity.

**4. Standard activities ÷ activity frequency estimates = Cost per incidence of standard activities**

The cost per incidence of each of the activities was then calculated by dividing the total cost allocated to each activity by the estimate of the number of times the activity had been performed. This calculation was performed for each company, and then a weighted average (weighted by caseload) was calculated for the cost per incidence of each of the activities.

**5. Divide activities into Enforcement stages and adjust activity frequencies → Typical cost per stage of Enforcement**

The Model then groups the activities into the desired Fee Stages, and calculates the typical cost of performing the Stage on a single occasion (taking account of the relative frequencies of the activities in each stage). Since Fee Stages are different for EAs and HCEOs two versions of the Model are used.

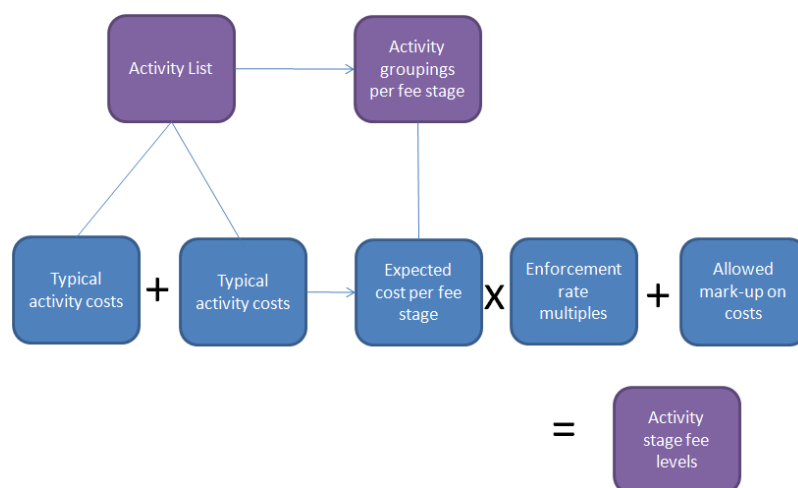
**6. Typical cost per stage of Enforcement → Marked up cost per stage of Enforcement**

Having calculated the typical cost of performing each of the Fee Stages, the profit margin target is added as a mark-up on costs.

**7. Marked up cost per stage of Enforcement x (1/ Fee Recovery Rate) = Total Target Fee Level**

The target Fee Level is then calculated by multiplying the marked-up Fee Stage cost by the appropriate Enforcement Rate multiple.

*Figure 19: Calculation of Total Target Fee Levels*



## 8. Total Target Fee Level = Fixed Fee + Percentage Fee

Having calculated the total target fee level, the Model then determines (with reference to the average debt size and desired Percentage Fee levels) how the total target fee will be made up of a combination of fixed and Percentage Fee elements.

## 17.2. Understanding and using the Fee Structure Model Outputs

The Fee Structure Model performs calculations using a set of inputs and assumptions designed to model a complex real-life activity. In order to summarise a potentially very large number of different scenarios and to produce meaningful and useful outputs, the Model necessarily makes simplifying assumptions and generalises by using weighted average data.

The Model combines “objective” data, such as the EAC/ HCEAC cost data, with “subjective” information and estimates, such as EAC/ HCEAC resource allocation estimates, in order to produce outputs which would not otherwise be attainable. Furthermore, in many instances the input required for the Model is not currently recorded, such as Fee Recovery Rates, and therefore approximations have been made from data that is currently recorded, like Debt Recovery Rates.

In order to use the Model appropriately its basis and limitations should be understood, and consequently the outputs should not be viewed as a “correct answer”; but rather as carefully constructed, and verifiable, guidance as to the appropriate quantum of fees. Careful consideration, common sense, and other tests to verify fitness for purpose, should be applied to this output when using it to assist in the setting of fee levels.

## 17.3. Fee Structure Model Outputs

### 17.3.1. Non-High Court Fees Model

The Non-High Court Fees Model performs calculations for each of the different Non-High Court Enforcement debt-types separately: in each case producing output fee levels that could be

appropriately applied to each debt-type should different fee levels be desirable within Non-High Court Enforcement.

However, since MoJ has determined that the Fee Structure and fee levels should be the same across all Non-High Court Enforcement debt-types, it is necessary to consider these separate outputs and to amalgamate them into a single set of Proposed EA Fees.

The following table shows the output from the Non-High Court Fees Model:



Table 37: Non-High Court Fees Model Output

FEE MODEL OUTPUTS								
			Selected incidences		CPIAverage		Mark-up on cost	
			ActivAverage2		CPIAverage1		10.0%	
Activity Index	Activity	Stage Trigger Activities	Fee Stage	%Incidences ActivAverage2%Incide nces	Fee frequency index	CPIAverage1	Marked-up cost	Fee Component
1	Receive Instructions from client	Administration Stage	Administration Stage	100.0%	1.00	0.30	0.33	0.33
2	Set up a case file		Administration Stage	100.0%	1.00	0.29	0.32	0.32
3	Input of case record into IT system		Administration Stage	78.8%	0.79	0.26	0.28	0.22
4	Other administrative processing (i.e. link to existing cases)		Administration Stage	87.6%	0.88	0.62	0.68	0.59
5	Confirm debtor details (address/ company searches)		Administration Stage	84.2%	0.84	1.53	1.68	1.42
6	Produce status report (probability of debt recovery)		Administration Stage	25.5%	0.25	1.70	1.87	0.48
7	Insolvency report		Administration Stage	6.9%	0.07	0.40	0.44	0.03
8	Send out first letter to advise debtor that enforcement has begun		Administration Stage	59.6%	0.60	1.20	1.32	0.79
9	Telephone call to advise debtor that enforcement has begun		Administration Stage	10.9%	0.11	6.42	7.06	0.77
10	Attend premises - first visit	Enforcement Stage 1	Enforcement Stage 1	97.0%	1.00	5.22	5.74	5.74
11	Discuss repayment options with debtor		Enforcement Stage 1	56.7%	0.58	4.62	5.09	2.97
12	Set up payment by instalments plan		Administration Stage	34.1%	0.34	3.00	3.30	1.13
13	Administer payment by instalments plan		Administration Stage	30.2%	0.30	2.22	2.44	0.74
14	Receive repayment by credit card		Enforcement Stage 1	24.1%	0.25	2.49	2.74	0.68
15	Receive repayment by cheque		Enforcement Stage 1	17.3%	0.18	2.35	2.58	0.46
16	Sending letter to advise of failure of repayment method		Enforcement Stage 1	21.9%	0.23	1.43	1.58	0.36
17	Out of hours attendance		Enforcement Stage 1	23.5%	0.24	1.51	1.66	0.40
18	Status update letter sent to creditor		Enforcement Stage 1	13.3%	0.14	1.65	1.82	0.25
19	All subsequent attendances		Enforcement Stage 1	89.9%	0.93	4.33	4.76	4.41
20	Attendance with a view to remove goods but not removing		Enforcement Stage 1	82.0%	0.85	3.17	3.49	2.95
21	Levying goods		Enforcement Stage 1	24.5%	0.25	5.66	6.22	1.58
22	Walking possession of goods		Enforcement Stage 1	13.7%	0.14	1.83	2.01	0.28
23	Clamping vehicle		Enforcement Stage 1	4.5%	0.05	19.42	21.37	0.99
24	De-clamping vehicle		Enforcement Stage 1	4.5%	0.05	4.61	5.07	0.23
25	Close possession of goods		Enforcement Stage 1	0.1%	0.00	2.71	2.99	0.00
26	Seizure of goods		Enforcement Stage 1	5.7%	0.06	7.16	7.87	0.46
27	Removal/ transport of goods		Enforcement Stage 1	1.2%	0.01	60.97	67.07	0.86
28	Valuation of goods	Sale	Sale	0.6%	1.00	3.21	3.53	3.53
29	Sale held at debtors premises		Sale	0.3%	0.57	2.33	2.57	1.46
30	Sale held at site other than debtors premises		Sale	0.4%	0.72	9.67	10.64	7.71
31	Pre-auction activities (i.e. advertising auction)		Sale	0.6%	1.10	1.05	1.16	1.27
32	Transport of goods to place of sale		Sale	1.0%	1.79	20.39	22.42	40.11
33	Auction activities (i.e. attendance of auctioneer)		Sale	0.7%	1.26	4.57	5.02	6.32
34	Processing disputed ownership claims		Sale	1.4%	2.52	8.34	9.18	23.08
35	Return of seized goods		Enforcement Stage 1	0.5%	0.01	16.60	18.26	0.10
36	Administration relating to case completion		Administration Stage	100.0%	1.00	0.63	0.69	0.69
37	Return of warrants		Administration Stage	90.8%	0.91	3.30	3.63	3.30

Enforcement Rate Assumptions	Council Tax	HMCS	CSA	RTA	Commercial Rent	Non-Domestic Rates
Administration Stage Enforcement Rate assumption	10.8%	7.9%	4.1%	4.7%	17.4%	15.6%
Reported overall "debt recovery" enforcement rate	24.8%	18.2%	15.6%	15.2%	40.2%	36.1%
"Fee recovery" rate adjustment	7.9%	7.9%	7.9%	7.9%	7.9%	7.9%
<b>Overall "Fee Recovery" Enforcement Rate</b>	<b>22.8%</b>	<b>16.8%</b>	<b>14.4%</b>	<b>14.0%</b>	<b>37.0%</b>	<b>33.2%</b>
Implied Enforcement Stage Recovery Rate	13.5%	9.6%	10.7%	9.7%	23.7%	20.8%
Payment by Installments Fee	40.0%	40.0%	40.0%	40.0%	40.0%	40.0%
Removal/ Sale	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
Goods Release	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Average debt size	£ 543.39	£ 197.42	£ 6,037.53	£ 110.92	£ 5,403.95	£ 2,870.52
% Fee Threshold	£ 1,000.00	£ 1,000.00	£ 1,000.00	£ 1,000.00	£ 1,000.00	£ 1,000.00

Chargeable Fees	Total Fee Components	Council Tax				HMCS			
		Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee	Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee
Administration Stage	£ 10.79	£ 47.26	0.0%	£ -	£ 47.26	£ 64.43	0.0%	£ -	£ 64.43
Enforcement Stage 1	£ 22.72	£ 167.83	7.5%	£ -	£ 167.83	£ 236.17	7.5%	£ -	£ 236.17
Sale	£ 83.48	£ 104.35	7.5%	£ -	£ 104.35	£ 104.35	7.5%	£ -	£ 104.35

Chargeable Fees	Total Fee Components	CSA				RTA			
		Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee	Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee
Administration Stage	£ 10.79	£ 75.12	0.0%	£ -	£ 75.12	£ 77.25	0.0%	£ -	£ 77.25
Enforcement Stage 1	£ 22.72	-£ 165.57	7.5%	£ 377.81	£ 212.24	£ 234.62	7.5%	£ -	£ 234.62
Sale	£ 83.48	-£ 273.46	7.5%	£ 377.81	£ 104.35	£ 104.35	7.5%	£ -	£ 104.35

Chargeable Fees	Total Fee Components	Commercial Rent				Non-Domestic Rates			
		Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee	Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee
Administration Stage	£ 10.79	£ 29.16	0.0%	£ -	£ 29.16	£ 32.50	0.0%	£ -	£ 32.50
Enforcement Stage 1	£ 22.72	-£ 234.48	7.5%	£ 330.30	£ 95.81	-£ 31.20	7.5%	£ 140.29	£ 109.09
Sale	£ 83.48	-£ 225.94	7.5%	£ 330.30	£ 104.35	-£ 35.93	7.5%	£ 140.29	£ 104.35

Implied fixed fee < £0.00

### Selection of a single fee point

The Model works with a separate set of assumptions for each debt-type and therefore produces different output fee levels for each debt-type. These multiple outputs are useful for identifying and quantifying differences between the various debt-types. However, since MoJ's proposal is to have a single Fee Structure and level of Proposed Non-High Court Fees (see **7.4 A Unified Fee Structure?**), it is necessary to use these multiple outputs to inform the proposal of a single fee level.

There are several alternative methods for selecting a single fee point, some of the most appealing being:

- **Selecting a fee level around the lowest output fee level:** Although appealing in terms of delivering low fees to the debtor, this method is flawed. If the lowest fee point were selected (i.e. around the level of fees output for Council Tax) then the 10% profit margin could only be achieved enforcing the most profitable (due to having highest Enforcement Rate) debt-type: Council Tax. Since Enforcement Rates are lower for all other debt-types, the profit margin target would be unlikely to be reached for these debt-types and the Enforcement service may become unprofitable and unsustainable.
- **Using an average/ weighted average of all of the output fee levels:** This method could be appealing as it would enable an EAC with a balanced portfolio of cases from each of the debt-types to achieve the target profit margin across its full portfolio of cases. However, due to averaging, the fee level would be set around the middle of the set of fee levels. Consequently, the EAC would be likely to exceed the 10% profit margin target on the more profitable debt-types (higher Enforcement Rate), but fail to achieve this profit level on the less profitable cases, only achieving the target level across its full portfolio. Selecting a fee level on this basis could be problematic if some EACs do not have a mixed portfolio of case types, but specialise in the Enforcement of a particular debt-type. The specialist Enforcement of the less profitable debt-types might not be sustainable under a fee level selected in this way.
- **Selecting a fee level around the highest output fee level:** The only method to ensure that an EAC can achieve the profit margin target for all debt-types, even when they enforce only a single debt-type, is to select a fee level around the highest output fee level. Although this method should ensure profitable and sustainable Enforcement of all debt-types, it has the disadvantage of being more costly to the debtor in terms of higher fees, and of rewarding the more profitable debt-types with higher profits than the profit margin target.

Whichever method is used to select the desired fee level, an inevitable side-effect of the different Enforcement Rates (determining the rate at which revenue is generated) of the debt-types, is that the different debt-types will enable different levels of profitability where a single unified Fee Structure is applied to all.

An undesirable consequence of this may be "cherry-picking", whereby EACs may select to enforce only the most profitable debt-types, and not to enforce the least profitable at all. This could result, through different causes, in the Enforcement of certain debt-types being unsustainable.

An incentive would exist for EACs to increase absolute profits by handling a larger volume of cases, including all debt-types. If the profit margin target has been set appropriately (and can be achieved on the least profitable debt-types) this incentive should be sufficient to overcome the “cherry-picking” problem.

#### **Moj Parameter**

Moj’s initial modelling parameter was that it is essential that an EAC be able to provide a profitable and sustainable Enforcement service for each of the different debt-types, even if the EAC were to enforce only a single debt-type in isolation. Therefore, the single fee point would need to be selected so that even the least profitable (lowest Enforcement Rate) of debt-types could be enforced sustainably.

This parameter implies that the single fee level needs to be selecting to accommodate RTA Enforcement, which has the lowest Fee Recovery Rate and therefore the highest Model output fee levels. Moj’s final parameter regarding the proposed fee level is shown at **18.1 Proposed Fees for Non-High Court Enforcement**.

### 17.3.2. High Court Fees Model

The following table shows the output from the High Court Fees Model:

Table 38: High Court Fees Model Output

APPROACH PROPOSED AT LAST HCEOA MEETING (WITH ADDITION OF PBI FEE)								
		Selected incidences		CPIAverage		Mark-up on cost		
		ActivAverage1		CPIAverage1		10.0%		
Activity Index	Activity	Stage Trigger Activities	Fee Stage	%Incidences ActivAverage1%Incide nces	Fee frequency index	CPIAverage1	Marked-up Cost	Fee Component
1	Receive instructions from client	Administration Stage	Administration Stage	100.0%	1.00	3.08	3.39	3.39
2	Set up a case file		Administration Stage	100.0%	1.00	4.72	5.19	5.19
3	Input of case record into NICE system		Administration Stage	100.0%	1.00	1.39	1.53	1.53
4	Other administrative processing (i.e. link to existing cases)		Administration Stage	100.0%	1.00	1.42	1.56	1.56
5	Confirm debtor details (address/ company searches)		Administration Stage	98.7%	0.99	3.01	3.31	3.27
6	Produce status report (probability of debt recovery)		Administration Stage	27.4%	0.27	1.73	1.90	0.52
7	Insolvency report		Administration Stage	52.9%	0.53	1.30	1.43	0.75
8	Send out first letter to advise debtor that enforcement has begun		Administration Stage	0.0%	0.00	#DIV/0!	#DIV/0!	0.00
9	Telephone call to advise debtor that enforcement has begun		Administration Stage	0.0%	0.00	#DIV/0!	#DIV/0!	0.00
10	Attend premises - first visit	Enforcement Stage 1	Enforcement Stage 1	97.4%	1.00	30.65	33.72	33.72
11	Discuss repayment options with debtor		Enforcement Stage 1	36.8%	0.38	17.32	19.05	7.20
12	Set up payment by instalments plan		Enforcement Stage 1	23.5%	0.24	15.62	17.18	4.14
13	Administer payment by instalments plan		Enforcement Stage 1	23.3%	0.24	38.70	42.57	10.19
14	Receive repayment by credit card		Enforcement Stage 1	10.5%	0.11	34.68	38.15	4.11
15	Receive repayment by cheque		Enforcement Stage 1	14.7%	0.15	42.13	46.34	6.99
16	Sending letter to advise of failure of repayment method		Enforcement Stage 2	11.6%	0.29	17.41	19.15	5.60
17	Out of hours attendance		Enforcement Stage 1	27.6%	0.28	55.40	60.94	17.27
18	Status update letter sent to creditor		Enforcement Stage 1	100.0%	1.03	26.93	29.62	30.40
19	All subsequent attendances	Enforcement Stage 2	Enforcement Stage 2	39.8%	1.00	46.55	51.20	51.20
20	Attendance with a view to remove goods but not removing		Enforcement Stage 2	31.7%	0.80	47.24	51.96	41.34
21	Levying goods		Enforcement Stage 1	34.7%	0.36	16.83	18.52	6.58
22	Walking possession of goods		Enforcement Stage 1	34.5%	0.35	17.23	18.96	6.70
23	Clamping vehicle		Enforcement Stage 2	0.3%	0.01	12.01	13.21	0.12
24	De-clamping vehicle		Enforcement Stage 2	0.0%	0.00	#DIV/0!	#DIV/0!	0.00
25	Close possession of goods		Enforcement Stage 2	0.0%	0.00	#DIV/0!	#DIV/0!	0.00
26	Seizure of goods		Enforcement Stage 2	8.5%	0.21	14.52	15.97	3.41
27	Removal/ transport of goods		Enforcement Stage 2	3.4%	0.08	674.15	741.56	62.47
28	Valuation of goods		Sale	7.9%	2.82	6.09	6.70	18.90
29	Sale held at debtors premises		Sale	0.1%	0.05	121.80	133.98	6.26
30	Sale held at site other than debtors premises	Sale	Sale	2.8%	1.00	38.64	42.50	42.50
31	Pre-auction activities (i.e. advertising auction)		Sale	2.5%	0.91	0.00	0.00	0.00
32	Transport of goods to place of sale		Sale	2.4%	0.86	143.19	157.51	135.44
33	Auction activities (i.e. attendance of auctioneer)		Sale	2.4%	0.87	1.70	1.87	1.64
34	Processing disputed ownership claims		Sale	1.3%	0.47	333.25	366.57	172.48
35	Return of seized goods		Sale	0.4%	0.13	351.00	386.10	50.72
36	Administration relating to case completion		Administration Stage	100.0%	1.00	8.88	9.76	9.76
37	Return of warrants		Administration Stage	3.7%	0.04	18.53	20.38	0.75

<u>Enforcement Rate Assumptions</u>	Frequency	Proportion of cases PIF	Cases per 100 PIF	Total cases per 100 PIF	Fee Recovery Rate	Enforcement Stage Split
Administration Stage	100.0%	1.1%	1.1	1.1	21.0%	
Enforcement Stage 1	97.4%	6.4%	6.2	7.3	20.5%	34%
Enforcement Stage 2	39.8%	30.3%	12.1	19.3	34.5%	66%
Sale	2.8%	60.0%	1.7	21.0	60.0%	
PIF Enforcement Rate	26.7%					
Fee Recovery Adjustment	7.9%					
Adjusted Fee Recovery Rate	21.0%					
Payment by installments Fee					40.0%	
Goods Release Fee					100.0%	

%age threshold      Average Writ Size  
 £ 1,000.00      £ 3,695.98

Chargeable Fees	Total Fee Components	Fee Recovery Rate	Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee
Administration Stage	£ 26.72	21.0%	£ 127.23	0.0%	£ -	£ 127.23
Enforcement Stage 1	£ 127.29	20.5%	£ 419.58	7.5%	£ 202.20	£ 621.78
Enforcement Stage 2	£ 164.14	34.5%	£ 475.76	0.0%	£ -	£ 475.76
Sale	£ 427.95	60.0%	£ 511.05	7.5%	£ 202.20	£ 713.24

### Aligning Administration and Enforcement Stage 1 Fee levels

In keeping with the desire the to simplify and unify the Fee Structure to the greatest extent possible, MoJ sought to align the Administration Stage fees for High Court Enforcement and Non-High Court Enforcement. This adjustment was achieved through the HCEO Fees Model by setting the Administration Stage Fee to be the same as that selected for Non-High Court Enforcement: £75.00 (see 17.1 Proposed Enforcement Agent Fees), and adjusting the Enforcement Stage 1 cost base appropriately to maintain the principles of the Model.

The resulting adjusted output is shown in the table below:

*Table 39: HCEO Fees Model: Adjusted Output*

Admin Fee adjusted to set equal to £75

Chargeable Fees	Total Fee Components	Fee Recovery Rate	Fixed Fee	Percentage Applied	Average Percentage Fee	Average Total Fee
Administration Stage	£ 75.00	100.0%	£ 75.00	0.0%	£ -	£ 75.00
Enforcement Stage 1	£ 79.01	20.5%	£ 183.74	7.5%	£ 202.20	£ 385.94
Enforcement Stage 2	£ 164.14	34.5%	£ 475.76	0.0%	£ -	£ 475.76
Sale	£ 427.95	60.0%	£ 511.05	7.5%	£ 202.20	£ 713.24

MoJ's final parameter regarding the proposed level of fees for High Court Enforcement is shown below at **18.2 Proposed Fees for High Court Enforcement**.

## 18. MoJ Proposed Fee Structure

### 18.1. Proposed Fees for Non-High Court Enforcement

Table 40: MoJ's Proposed Fees for Non-High Court Enforcement

MoJ Proposed Fees for non-High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement	£230.00	0%	7.5%
Sale	£105.00	0%	7.5%
Fee Structure Features			
Stage Triggers			
Administration	Warrant received by EAC.		
Enforcement	First attendance by EA to debtor's premises/ "door step".		
Sale	Debtor's goods sold.		
Creditor Guaranteed Fee	None.		

### 18.2. Proposed Fees for High Court Enforcement

Table 41: MoJ's proposed Fees for High Court Enforcement

MoJ Proposed Fees for High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement 1	£185.00	0%	7.5%
Enforcement 2	£480.00	0%	0%
Sale	£510.00	0%	7.5%
Fee Structure Features			
Stage Triggers			
Administration	Writ received by HCEO.		
Enforcement 1	First attendance by HCEO/ EA to debtor's premises/ "door step".		
Enforcement 2	HCEO/ EA is required to reattend debtor's premises due to debtor's failure to comply with notice of seizure or with repayment arrangements previously made.		
Sale	Debtor's goods sold.		
Creditor Guaranteed Fee	£75.00. To be paid upon completion of Writ with formal notice of abortive return.		



### 18.3. Fee Structure Common Features

Table 42: Proposed Fee Structure Common Features

Fee Structure Common Features	
<b>Percentage Fees</b>	The appropriate percentage shown in the table above is charged on the amount of the debt <i>above</i> the threshold shown.
<b>Order of Payment</b>	When the EA/ HCEO recovers less than the full amount due, the repayment of original debt to the Creditor, and payment of Enforcement Fees, is to be on a <b>pro-rata basis</b> . The proportion of debt repaid, and Enforcement Fees paid, will both be equal to the proportion of the total amount collected to the total amount owed (original debt + fees).
<b>Multiple Warrants/ Writs</b>	MoJ has not yet specified the calculation of fees for multiple Warrants/ Writs against a single debtor. The Consultation Paper will seek views and MoJ will use these to inform a decision.
<b>Exceptional Costs</b>	The Fee Structure may be supported by an "Exceptional Costs Procedure". MoJ will ask for views in the Consultation Paper, and subsequently determine the need for, and if necessary the specification of, the procedure to be applied.
<b>VAT</b>	MoJ is currently investigating the possibility of creating a uniform VAT treatment for all debt types.
<b>Inflation</b>	The fixed fee levels in the Fee Structure should be updated annually by indexing to RPI. Percentage fee levels should remain unchanged. Percentage Fee thresholds should be updated periodically by indexing to RPI.

## 19. Impact Testing

### 19.1. Impact testing methodology

In this section two different types of impact test are applied to each of the Proposed EA Fees and the Proposed HCEO Fees:

- Profitability Test; and
- Fee Scenario Testing.

#### Profitability Test

The Profitability Test takes the Proposed Fee Structure fee levels and applies them to the “Representative EAC” and “Representative HCEAC” to determine what profit margin would have been realised by these representative industry participants had they operated under the Proposed Fee Structure during the period for which accounting data was provided in response to the RFI.

Ideally, the outcome of this profitability test would project that the Representative EAC and Representative HCEAC to achieve a 10% profit margin, the target profit margin, under the Proposed Fee Structure. Since the proposed fee levels have been built up by applying a 10% mark-up on costs, and due to the way that a mark-up on cost measure approximates a net profit margin measure, we might expect that the Profitability Tests would project a profit margin of around 10% for each of the Representative EAC and HCEAC.

Although the proposed fee levels were arrived at through building up detailed cost data and applying a 10% mark-up on typical costs to attempt to achieve a 10% profit margin, the profitability test projections may not necessarily project a 10% margin:

- the Fee Structure Model uses a cost focused analysis, and performs several stages of aggregation of data and calculations of weighted averages in respect of costs and activity frequencies, before re-aggregating costs to determine Fee Stages. The Fee Structure Model necessarily performs a number of complex transformations of the input data in order to determine appropriate outputs. The Profitability Test on the other hand uses a simple average of the weighted aggregate input data to determine the Representative EAC and HCEAC, and then performs a much simpler revenue focused analysis with this data. The different analyses performed should tend to produce similar results, though they need not be identical. For this very reason the Profitability Test is a useful test of the appropriateness of the figures calculated by the Fee Structure Model;
- the fee levels included in the Proposed Fee Structure include some rounding of the Fee Structure Model outputs, and other applications of judgement to the output numbers, in order to arrive at “sensible” round numbers for proposed fee levels. These rounding and applications of judgement may cause the Profitability Test outcome to deviate from the target 10% profit margin;

- the two measures: mark-up on cost, and profit margin, are calculated differently (see **15.2 Form of profit target**). Since a mark-up on cost was used to set the target fee levels, and a profit margin is used to project the potential impact, some difference between the two measures is inevitable as a result of how they are each calculated;
- Finally, Proposed EA Fees were determined by performing analysis on each Non-High Court Enforcement debt-type individually to determine the implied fee level to achieve a 10% profit margin separately for each fee type. These implied fee levels were then amalgamated into a single set of Proposed EA Fees, which would then necessarily provide different profit levels to each of the different debt-types. Therefore the overall projected profit margin for the Representative EAC will depend upon the composition of that EAC's caseload, in terms of the relative volume of different debt-types enforced.

### Fee Scenario Testing

Fee Scenario Testing uses several representative Enforcement scenarios where the EA/ HCEO has undertaken certain defined actions and achieved a certain outcome; and presents the fees that would be charged under each of the various existing Fee Structures, and under the Proposed Fee Structure.

## 19.2. EAC Impact Testing

### 19.2.1. EAC Profitability Test

#### Core Debt-Types (Council Tax, HMCS, RTA)

In the first Profitability Test, shown on the following page, it has been assumed that the "Representative EAC's" caseload of 196,392 cases is divided equally among the three core EAC debt-types: Council Tax, HMCS, and RTA:

Table 43: EAC Profitability Test (Core debt-types)

MoJ Proposed Enforcement Agents Fees					
Fee Stage	Fixed Fee	Percentage Fees			
		£0 - £1,000	£1,000 - £5,000	£5,000 - £10,000	>£10,000
Administration	£75.00	0%	0%	0%	0%
Enforcement	£230.00	0%	5%	2.5%	1%
Sale	£105.00	0%	5%	2.5%	1%
Proposed Fee Impact on "Representative EAC" enforcing core debt-types					
	Council Tax	HMCS	RTA	Total	Fees Recovered
Number of cases handled	65,454	65,454	65,454	196,362	
Average size of debt (£)	543.39	197.42	110.92		
<b>Admin Stage Fees</b>					
Frequency <sup>(1)</sup>	100%	100%	100%		
# Fees charged	65,454	65,454	65,454	196,362	
£ Fees charged	4,909,050	4,909,050	4,909,050	14,727,150	
Fee Recovery Rate <sup>(3)</sup>	22.8%	16.8%	14.0%		
<b>Fees Recovered</b>	<b>1,119,263</b>	<b>824,720</b>	<b>687,267</b>	<b>2,631,251</b>	<b>2,631,251</b>
<b>Enforcement Stage Fees</b>					
Frequency <sup>(2)</sup>	86.2%	89.1%	92.3%		
# Fees charged	56,421	58,320	60,414	175,155	
£ Fees charged	12,976,910	13,413,488	13,895,230	40,285,628	
Fee Recovery Rate <sup>(3)</sup>	14.5%	10.3%	10.1%		
<b>Fees Recovered</b>	<b>1,881,652</b>	<b>1,381,589</b>	<b>1,403,418</b>	<b>4,666,659</b>	<b>4,666,659</b>
<b>Enforcement Stage % Fees</b>					
Frequency	0.0%	0.0%	0.0%		
# Fees charged	0	0	0	0	
Average Fee charged (£)	0	0	0		
£ Fees charged	0	0	0	0	
Fee Recovery Rate <sup>(3)</sup>	14.5%	10.3%	10.1%		
<b>Fees Recovered</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Sale Stage Fees</b>					
Frequency <sup>(1)</sup>	0.7%	0.7%	0.7%		
# Fees charged	458	458	458	1,375	
£ Fees charged	48,109	48,109	48,109	144,326	
Fee Recovery Rate <sup>(3)</sup>	80.0%	80.0%	80.0%		
<b>Fees Recovered</b>	<b>38,487</b>	<b>38,487</b>	<b>38,487</b>	<b>115,461</b>	<b>115,461</b>
<b>Sale Stage % Fees</b>					
Frequency	0.0%	0.0%	0.0%		
# Fees charged	0	0	0	0	
Average Fee charged (£)	0	0	0		
£ Fees charged	0	0	0	0	
Fee Recovery Rate <sup>(3)</sup>	80.0%	80.0%	80.0%		
<b>Fees Recovered</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Revenue</b>					
	3,039,402	2,244,797	2,129,172	7,413,371	7,413,371
<b>Total Costs <sup>(4)</sup></b>					
	1,981,646	1,981,646	1,981,646	5,944,939	5,944,939
<b>Profit</b>					
	1,057,756	263,150	147,526	1,468,432	1,468,432
<b>Profit Margin</b>					
	34.8%	11.7%	6.9%	19.8%	19.8%

### Notes

- (1) Activity frequencies from EAC activity frequency estimates provided in response to RFI: See **Table 11: EAC activities and frequencies**.
- (2) Enforcement Stage frequency of occurrence adjusted to reflect 97% (see **Table 11: EAC activities and frequencies**) less estimated Administration Stage Enforcement Rates (see **Table 25: Relative effectiveness of Administration Stage**).
- (3) Fee Recovery Rates calculated at **Table 26: Enforcement Stage Debt and Fee Recovery Rates for Non-High Court Enforcement debt-types**. Sale Stage Fee Recovery Rate taken from assumptions at **12.4.2 Non-High Court Enforcement Fee Recovery Rates**.
- (4) Total Costs to enforce are assumed to be the same for each debt-type, and therefore the proportion of total costs distributed to each debt-type reflects the proportion of cases handled of each debt-type: in this scenario case volumes and therefore total costs are the same for each debt-type.

### Observations

The total profit margin projected for an EAC enforcing only the core debt-types in equal proportions is 19.8%. This overall profit margin reflects the composite of the profit margin projected to be achieved for each of the debt-types:

- Council Tax: 34.8%
- HMCS: 11.7%
- RTA: 6.9%

The projected profit margin for Council Tax exceeds the 10% target profit margin, since the Fee Recovery Rate for Council Tax (22.8%) exceeds those for HMCS (16.8%) and RTA (14.0%). As the table shows, the projected achieved profit margin is proportional to the estimated Enforcement Rate, which is a parameter that is inherent to each debt-type, and reflects the likelihood of successful Enforcement and all of the factors which influence that in reality.

Due to the weight of Council Tax Enforcement in this balanced portfolio of debt-types the overall projected achievable profit margin is **19.8%**, which exceeds the profit margin target of **10%**.

### “Cherry-Picking”

This Profitability Testing highlights an inherent problem in setting a single Fee Structure to cover different debt-types, where those debt-types have different characteristics: most importantly in the rate of successful Enforcement, and therefore Fee Recovery Rate that can be achieved. This problem being that debt-types with superior Fee Recovery Rates, all else including fees being equal, will allow EACs to achieve a superior profit margin.

Since the Proposed EA Fees were set to allow all debt-types to be sustainably and profitably (using the target profit margin of 10%) enforced (see **17.3.1 Non-High Court Enforcement Fee Structure Model**), any debt-types with Enforcement Rates exceeding the lowest debt-type Enforcement Rate, are likely to result in profit margins which exceed the sustainable profit margin target.

The different Enforcement Rates, and therefore different expected profitability of each of the debt-types, may lead EACs to attempt to “cherry-pick”, by selecting to enforce only the most profitable debt-types. Should this occur it could cause two major problems:

- No EACs may choose to enforce the less profitable debt-types, as they would prefer to earn a higher profit margin by focusing their limited resources on the Enforcement of more profitable debt-types; and
- If EACs are only, or mainly, enforcing the more profitable debt-types, and their portfolios are not balanced with some of the less profitable debt-types, EACs realised profit margins could substantially exceed the target profit margin of 10%.

Following the introduction of uniform fees for all Non-High Court Enforcement debt-types an industry regulator should carefully monitor its impact in terms of volume of cases handled, and Enforcement Rates and profit margins achieved for different debt-types. This monitoring would require a greater degree of transparency and reporting that is currently provided by EACs, but should ideally in the future be required by an industry regulator.

Should the effect of “cherry-picking” be demonstrated to be too severe, there may exist several possible options to address the problem:

- Creditors could use contracting, for example by bundling together all of their different debt-types when contracting EAC services to enforce those debt-types, to ensure that all debt-types were attractive to enforce and that the level of EAC profitability was not allowed to benefit from only enforcing the most attractive debt-types;
- Fee levels could be revised so that the uniform Fee Structure was maintained, but different fee **levels** were used for each debt-type to reflect the different probabilities of Enforcement, in order to equalise their profitability;
- Alternatively, and reliant on the introduction of a creditor fee (which would not need to be a Creditor Guaranteed Fee in the event of unsuccessful Enforcement) the fees faced by the debtor could be uniform for each debt-type, but supplemented in each case by a different sized creditor fee for each debt-type reflecting the different Enforcement Rates for each debt-type. The creditor fee could be set at different levels for each debt-type (higher for those debt-types with a lower Enforcement Rate, and lower for debt-types with a higher Enforcement Rate) in order to allow each debt-type to achieve the same overall target level of profitability. This approach would require a rebalancing of the current debtor fees to allow for the existence of a creditor fee.
- The above principle could be extended further to set debtor fees, and allow a fee element charged to the creditor to be determined through competitive tendering between EACs/ HCEACs and creditors.

### **Non-Core Debt-Types (CSA, Commercial Rent, NNDR)**

The examination above, of the core debt-types, reveals a potential problem: since the unified Fee Structure has been set to enable the profitable Enforcement of all debt-types covered, it appears to deliver more favourable returns to some debt-types than others. Specifically, debt-types with

superior Enforcement Rates, and therefore superior fee recovery, are likely to generate higher profit margins.

There are two main reasons why the non-core debt-types might appear to generate superior profit margins under the Proposed EA Fees:

- Commercial Rent (37.0%) and NNDR (33.2%) have higher expected Fee Recovery Rates than the core debt-types, and are therefore likely to recover more fees/ revenue for a similar number of cases handled; and
- The average debt size for each of the non-core debt-types is significantly larger than for the core debt-types (CSA: £6,038, Commercial Rent: £5,404, and NNDR: £2,871) and large enough to exceed on average the Percentage Fee charging threshold of £1,000.

The following table examines the possible impact on profit margins for non-core debt-types using an analysis of the cost and fees for 1,000 cases of each non-core debt-type (which could be extrapolated to a larger number of cases handled).

Table 44: EAC Profitability Test (non-core debt-types)

MoJ Proposed Fees for Enforcement Agents					
Fee Stage	Fixed Fee	Percentage Fees			
		£0 - £1,000	£1,000 - £5,000	£5,000 - £10,000	>£10,000
Administration	£75.00	0%	0%	0%	0%
Enforcement	£230.00	0%	5%	2.5%	1%
Sale	£105.00	0%	5%	2.5%	1%

Proposed Fee Impact on "Representative EAC" enforcing core debt-types			
	CSA	Commercial Rent	NNDR
Number of cases handled	1,000	1,000	1,000
Average size of debt (£)	6,037.53	5,403.95	2,870.52
<b>Admin Stage Fees</b>			
Frequency <sup>(1)</sup>	100%	100%	100%
# Fees charged	1,000	1,000	1,000
£ Fees charged	75,000	75,000	75,000
Fee Recovery Rate <sup>(3)</sup>	14.4%	37.0%	33.2%
<b>Fees Recovered</b>	<b>10,800</b>	<b>27,750</b>	<b>24,900</b>
<b>Enforcement Stage Fees</b>			
Frequency <sup>(2)</sup>	92.9%	79.6%	81.4%
# Fees charged	929	796	814
£ Fees charged	213,670	183,080	187,220
Fee Recovery Rate <sup>(3)</sup>	11.0%	25.4%	22.3%
<b>Fees Recovered</b>	<b>23,504</b>	<b>46,502</b>	<b>41,750</b>
<b>Enforcement Stage % Fees</b>			
Frequency <sup>(2)</sup>	92.9%	79.6%	81.4%
# Fees charged	929	796	814
Average Fee charged (£)	226	210	94
£ Fees charged	209,897	167,239	76,130
Fee Recovery Rate <sup>(3)</sup>	11.0%	25.4%	22.3%
<b>Fees Recovered</b>	<b>23,089</b>	<b>42,479</b>	<b>16,977</b>
<b>Sale Stage Fees</b>			
Frequency <sup>(1)</sup>	0.7%	0.7%	0.7%
# Fees charged	7	7	7
£ Fees charged	735	735	735
Fee Recovery Rate <sup>(3)</sup>	80.0%	80.0%	80.0%
<b>Fees Recovered</b>	<b>588</b>	<b>588</b>	<b>588</b>
<b>Sale Stage % Fees</b>			
Frequency	0.7%	0.7%	0.7%
# Fees charged	7	7	7
Average Fee charged (£)	226	210	94
£ Fees charged	1,582	1,471	655
Fee Recovery Rate <sup>(3)</sup>	80.0%	80.0%	80.0%
<b>Fees Recovered</b>	<b>1,265</b>	<b>1,177</b>	<b>524</b>
<b>Total Revenue</b>			
	<b>59,246</b>	<b>118,495</b>	<b>84,739</b>
<b>Cost per case</b>			
	30.28	30.28	30.28
<b>Total Cost<sup>(4)</sup></b>			
	<b>30,280</b>	<b>30,280</b>	<b>30,280</b>
<b>Profit</b>			
	<b>28,966</b>	<b>88,215</b>	<b>54,459</b>
<b>Profit Margin</b>			
	<b>48.9%</b>	<b>74.4%</b>	<b>64.3%</b>



#### **Notes**

- (1) Activity frequencies taken from EAC activity frequency estimates provided in response to the RFI: See **Table 11: EAC activities and frequencies**.
- (2) Enforcement Stage frequency of occurrence adjusted to reflect 97% (see **Table 11: EAC activities and frequencies**) less estimated Administration Stage Enforcement Rates (see **Table 25: Relative effectiveness of Administration Stage**).
- (3) Fee Recovery Rates calculated at **Table 26: Enforcement Stage Debt and Fee Recovery Rates for Non-High Court Enforcement debt-types**. Sale Stage Fee Recovery Rate taken from assumptions at **12.4.2 Non-High Court Enforcement Fee Recovery Rates**.
- (4) Total Costs calculated based on number of cases and the Representative EAC average cost per case of £30.28.

The table appears to show very high profit margins achievable for the non-core debt-types. However, these projections are based on the assumption that the costs to enforce these non-core debt-types are the same as for the other debt-types. The cost data received in response to the RFI was not sufficiently detailed to distinguish between different debt-types, and therefore to be able to determine a cost per case for each debt-type.

In fact EACs report that the non-core debt-types are, on average, significantly more costly to enforce than the core debt-types, for the following reasons:

- for Commercial Rent and NNDR, EAs are often required to attend on the same day that the Warrant is received;
- EACs use more, and more experienced, EAs to enforce these debt-types as the average debt sizes are larger, meaning that: a) creditors are more concerned to recover the debt; and b) debtors often go to greater lengths to avoid repayment of the debt and may be seasoned or persistent debtors; and
- for Commercial Rent, the creditors are not public bodies, but rather private landlords who have similar demands for information and effectiveness that HCEOs face from the holders of High Court Writs.

In fact, EACs have compared the Enforcement of these debt-types to the Enforcement of High Court Writs in terms of the relative difficulty of achieving successful Enforcement and the relative costliness of committing sufficient resources to the task of achieving successful Enforcement; and have suggested that these debt-types should share the Proposed HCEO Fees rather than Proposed EA Fees.

The superior Enforcement Rates that lead to the higher projected profitability of these debts, and the argument that the average cost per case is higher for these debt-types are likely not to be independent, but rather the superior Enforcement Rates achieved could be as a result of the additional efforts taken by EACs to enforce these debt-types, and therefore potentially the relatively higher average cost per case.

The following table examines what the implied cost per case for the non-core debt-types would need to be in order for the Proposed EA Fees to produce the target profit margin of 10% for each of the non-core debt-types:

*Table 45: Adjusted non-core debt-type cost bases*

Non-Core Debt-Types: Adjusted cost bases			
	CSA	Commercial Rent	NNDR
Number of cases	1,000	1,000	1,000
Total Revenue	59,246	118,495	84,739
Cost per case	53.32	106.65	76.26
Total Cost	53,321	106,646	76,265
Profit	5,925	11,850	8,474
Profit Margin	10.0%	10.0%	10.0%

The implied average costs per case for each of the non-core debt-types, in order for each to achieve a target profit-margin of 10%, are higher than the average cost per case for the core debt-types: £30.28. However, if the reasons for higher costs in the non-core debt-types, and the comparison of these debt-types with High Court Writs, are acceptable, then the increased costs per case appear feasible. The implied average costs per case are still significantly lower than what the HCEAC cost data demonstrates to be the average cost per Writ of Fi Fa: £207.56.

#### **Balanced Caseload (All debt-types)**

The final EAC Profitability Test accepts that the cost per case for the non-core debt-types may be higher than that for the core debt-types, and sets these costs per case at the levels calculated above (CSA: £52.23, Commercial Rent: £101.78, NNDR: £73.00). The “Representative EAC” projected profit margin is then calculated using the current average split of case load, the fee levels in the Proposed EA Fees, and amended cost per case bases for the non-core debt-types.

*Table 46: EAC Profitability Test (balanced case load, amended non-core debt-type cost bases)*

MoJ Proposed Fees for Enforcement Agents							
Fee Stage	Fixed Fee	Percentage Fees				Total	Fees Recovered
		£0 - £1,000	£1,000 - £5,000	£5,000 - £10,000	>£10,000		
Administration	£75.00	0%	0%	0%	0%		
Enforcement	£230.00	0%	5%	2.5%	1%		
Sale	£105.00	0%	5%	2.5%	1%		

Proposed Fee Impact on "Representative EAC" enforcing all debt-types								
	Council Tax	HMCS	RTA	CSA	Commercial Rent	NNDR	Total	Fees Recovered
% of total caseload	29%	23%	32%	4%	3%	9%	100%	
Number of cases handled	56,945	45,163	62,836	7,854	5,891	17,673	196,362	
Average size of debt (£)	543.39	197.42	110.92	6,037.53	5,403.95	2,870.52		
<b>Admin Stage Fees</b>								
Frequency <sup>(1)</sup>	100%	100%	100%	100%	100%	100%		
# Fees charged	56,945	45,163	62,836	7,854	5,891	17,673	196,362	
£ Fees charged	4,270,874	3,387,245	4,712,688	589,086	441,815	1,325,444	14,727,150	
Fee Recovery Rate <sup>(3)</sup>	22.8%	16.8%	14.0%	14.4%	37.0%	33.2%		
<b>Fees Recovered</b>	<b>973,759</b>	<b>569,057</b>	<b>659,776</b>	<b>84,828</b>	<b>163,471</b>	<b>440,047</b>	<b>2,890,940</b>	<b>2,890,940</b>
<b>Enforcement Stage Fees</b>								
Frequency <sup>(2)</sup>	86.2%	89.1%	92.3%	92.9%	79.6%	81.4%		
# Fees charged	49,087	40,240	57,997	7,297	4,689	14,385	173,696	
£ Fees charged	11,289,912	9,255,307	13,339,420	1,678,267	1,078,499	3,308,660	39,950,065	
Fee Recovery Rate	14.5%	10.3%	10.1%	11.0%	25.4%	22.3%		
<b>Fees Recovered</b>	<b>1,637,037</b>	<b>953,297</b>	<b>1,347,281</b>	<b>184,609</b>	<b>273,939</b>	<b>737,831</b>	<b>5,133,995</b>	<b>5,133,995</b>
<b>Enforcement Stage % Fees</b>								
Frequency <sup>(2)</sup>	0.0%	0.0%	0.0%	92.9%	79.6%	81.4%		
# Fees charged	0	0	0	7,297	4,689	14,385	26,371	
Average Fee charged (£) <sup>(2)</sup>	0	0	0	226	210	94		
£ Fees charged	0	0	0	1,648,629	985,179	1,345,416	3,979,225	
Fee Recovery Rate <sup>(3)</sup>	14.5%	10.3%	10.1%	11.0%	25.4%	22.3%		
<b>Fees Recovered</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>181,349</b>	<b>250,236</b>	<b>300,028</b>	<b>731,613</b>	<b>731,613</b>
<b>Sale Stage Fees</b>								
Frequency	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%		
# Fees charged	399	316	440	55	41	124	1,375	
£ Fees charged	41,855	33,195	46,184	5,773	4,330	12,989	144,326	
Fee Recovery Rate <sup>(3)</sup>	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%		
<b>Fees Recovered</b>	<b>33,484</b>	<b>26,556</b>	<b>36,947</b>	<b>4,618</b>	<b>3,464</b>	<b>10,391</b>	<b>115,461</b>	<b>115,461</b>
<b>Sale Stage % Fees</b>								
Frequency	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%		
# Fees charged	0	0	0	55	41	124	220	
Average Fee charged (£)	0	0	0	226	210	94		
£ Fees charged	0	0	0	12,422	8,664	11,570	32,656	
Fee Recovery Rate	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%		
<b>Fees Recovered</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9,938</b>	<b>6,931</b>	<b>9,256</b>	<b>26,125</b>	<b>26,125</b>
<b>Total Revenue</b>								
	2,644,280	1,548,910	2,044,005	465,343	698,040	1,497,554	8,898,132	8,898,132
<b>Costs per case</b>								
	30.28	30.28	30.28	53.32	106.65	76.26		
<b>Total Costs<sup>(4)</sup></b>	<b>1,724,294</b>	<b>1,367,544</b>	<b>1,902,669</b>	<b>418,801</b>	<b>628,260</b>	<b>1,347,711</b>	<b>7,389,279</b>	<b>7,389,279</b>
<b>Profit</b>								
	919,986	181,366	141,336	46,542	69,780	149,843	1,508,853	1,508,853
<b>Profit Margin</b>								
	34.8%	11.7%	6.9%	10.0%	10.0%	10.0%	17.0%	17.0%

#### Notes

- (1) Frequency estimates taken from EAC activity frequency estimates from RFI: See **Table 11: EAC activities and frequencies**.
- (2) Enforcement Stage frequency of occurrence adjusted to reflect 97% (see **Table 11: EAC activities and frequencies**) less estimated Administration Stage Enforcement Rates (see **Table 25: Relative effectiveness of Administration Stage**).

- (3) Fee Recovery Rates calculated at **Table 26: Enforcement Stage Debt and Fee Recovery Rates for Non-High Court Enforcement debt-types**. Sale Stage Fee Recovery Rate taken from assumptions at **12.4.2 Non-High Court Enforcement Fee Recovery Rates**.
- (4) Total Costs calculated based on average cost per case, where the implied average cost per case from **Table 45: Adjusted non-core debt-type cost bases** has been applied for the non-core debt-types.

The above test assumes that the Representative EAC handles the same case load as in the base year (RFI responses), undertakes Enforcement activities with the same frequency, and therefore incurs exactly the same costs as in the base year. Revenue is generated from successfully enforced cases, which are assumed to occur at the same rate as in the base year, but is generated according to the Proposed EA Fees instead of the existing Fee Structures.

The Profitability Test projects a profit margin for the representative EAC of **17.0%**.

## 19.2.2. EAC Fee Scenario Testing

The following table illustrates the EACs fees that would be payable under a number of different Enforcement scenarios, and for debts of different sizes:

Table 47: EAC Fee Scenario Testing

Scenario	Size of debt (£)	Fees Charged (£) (plus number of additional charges for reasonable costs)										Proposed EA Fees
		CCJ	Commercial Rent	Council Tax	CSA	Customs & Excise (+ other indirect taxes)	NNDR	Road Traffic	Social Security	Stamp duty land tax	Taxes	
A No successful debtor contact/ unsuccessful enforcement	Any	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
B1 Debtor repays in full before EA visit	500	55.00	0.00	0.00	10.00	0.00	0.00	11.20	0.00	0.00	0.00	75.00
B2 Debtor repays by instalments before EA visit	500	55.00	0.00	0.00	10.00	0.00	0.00	11.20	0.00	0.00	0.00	75.00
B3 Debtor pays in full or by instalments after first EA visit	500	55.00	0.00 (1)	24.50	10.00 (1)	12.50	24.50	11.20	12.50	12.50	0.00 (1)	305.00
B4 Debtor repays following levy on goods	500	55.00	70.15 (3)	95.00 (1)	41.50 (3)	73.00	95.00	92.20	72.75	72.75	35.25 (3)	305.00
B5 Debtor repays when EA attends to remove goods	500	55.00	70.15 (3)	95.00 (2)	41.50 (3)	73.00	95.00	92.20	72.75	72.75	35.25 (3)	305.00
B6 Debtor's goods are removed and sold to repay debt	500	130.00 (2)	145.15 (6)	145.00 (6)	91.50 (6)	148.00 (3)	145.00 (4)	167.20 (3)	147.75 (3)	147.75 (3)	110.25 (6)	410.00
C1 Debtor repays in full before EA visit	5,000	55.00	0.00	0.00	10.00	0.00	0.00	11.20	0.00	0.00	0.00	75.00
C2 Debtor repays by instalments before EA visit	5,000	55.00	0.00	0.00	10.00	0.00	0.00	11.20	0.00	0.00	0.00	75.00
C3 Debtor pays in full or by instalments after EA visit	5,000	55.00	0.00 (1)	24.50	10.00 (1)	12.50	24.50	11.20	12.50	12.50	0.00 (1)	505.00
C4 Debtor repays following levy on goods	5,000	55.00	140.65 (3)	162.50 (1)	109.00 (3)	140.50	162.50	339.70	140.25	140.25	102.75 (3)	505.00
C5 Debtor repays when EA attends to remove goods	5,000	55.00	140.65 (3)	162.50 (2)	109.00 (3)	140.50	162.50	339.70	140.25	140.25	102.75 (3)	505.00
C6 Debtor's goods are removed and sold to repay debt	5,000	130.00 (2)	215.65 (6)	212.50 (6)	169.00 (6)	215.50 (3)	212.50 (4)	414.70 (3)	215.25 (3)	215.25 (3)	177.75 (6)	810.00
D1 Debtor repays in full before EA visit	50,000	55.00	0.00	0.00	10.00	0.00	0.00	11.20	0.00	0.00	0.00	75.00
D2 Debtor repays by instalments before EA visit	50,000	55.00	0.00	0.00	10.00	0.00	0.00	11.20	0.00	0.00	0.00	75.00
D3 Debtor pays in full or by instalments after EA visit	50,000	55.00	0.00 (1)	24.50	10.00 (1)	12.50	24.50	11.20	12.50	12.50	0.00 (1)	1,030.00
D4 Debtor repays following levy on goods	50,000	55.00	291.40 (3)	312.50 (1)	259.00 (3)	290.50	312.50	2,814.70	290.25	290.25	252.75 (3)	1,030.00
D5 Debtor repays when EA attends to remove goods	50,000	55.00	291.40 (3)	312.50 (2)	259.00 (3)	290.50	312.50	2,814.70	290.25	290.25	252.75 (3)	1,030.00
D6 Debtor's goods are removed and sold to repay debt	50,000	130.00 (2)	366.40 (6)	362.50 (6)	309.00 (6)	365.50 (3)	362.50 (4)	2,889.70 (3)	365.25 (3)	365.25 (3)	327.75 (6)	1,860.00

### Notes

- Numbers in brackets represent the number of fees within the existing Fee Structure where “reasonable costs” may be charged.
- Whilst calculating the fees due under the various scenarios and Fee Structures the following assumptions have been made:

- Existing Fee Structures for Stamp Duty Land Tax and Social Security are vague regarding how many visit fees may be charged. It has been assumed that multiple visit fees may be charged.
- For all cases including levying and/or attendance to remove it is assumed that there have been three visit made to the premises.
- Following all levies it has been assumed that “Walking possession” is taken of goods, and not “Close possession”. EACs reported that “Close possession” occurs extremely infrequently. In all cases the period of walking possession is assumed to be 30 days.
- All sales are assumed to take place at the auctioneer’s premises, and the auctioneer’s commission fee is assumed to be 10% of the sales price achieved, which in turn is assumed to be equal to the amount of debt outstanding.

### Observations

- In Scenarios 1 and 2, where debt recovery occurs before any attendance by an EA, the majority of existing Fee Structures provide no fees at all to the EAC. By rewarding the EAC with fees at this stage the Proposed EA Fees should incentivise EACs to make greater efforts to recover debts without attendance.
- In Scenarios 3, 4 and 5, where Enforcement occurs during the Enforcement Stage, the Proposed EA fees will reward EACs with substantially higher fixed fees than available under existing Fee Structures, however EACs will no longer be able to charge the debtor with “reasonable costs”, which they may do currently for up to three separate actions (visits, attendance with a vehicle, and removal and storage). The level of these “reasonable costs” charges are difficult to quantify as EACs did not provide specific separate information about the size of these charges. However, anecdotal evidence suggests that when reasonable costs relate to vehicles (including when these are in attendance, but not specifically used for removal) they are usually in the region of several hundreds of pounds.
- HMCS provided details of the level of charges allowed under their contracts for various actions which may attract “reasonable costs” under the existing Fee Structures. The following table shows the maximum allowed contractors charges for those specific actions included in HMCS contracts:

*Table 48: Contractor fees allowed for specific actions under HMCS contracts*

Action	HMCS Maximum allowed contractor fee
Clamping	£200
Removal of motor vehicle	£200
Removal of commercial vehicle	£200
Removal of heavy goods vehicle	£200
Storage of vehicle per day	£20
Storage of non-vehicle items per day	£10
Delivery to auctioneer if not redeemed	£150
Dishonoured cheque charge	£35
Debit card payment surcharge	£3
Credit card payment surcharge	5%
Auctioneers' costs	15%

- In Scenario 6, which includes the removal and sale of goods, the fixed fees available under the Proposed EA Fees are again substantially higher than the existing Fee Structures. However, the existing Fee Structures would allow the recharge of up to six different types of “reasonable

costs” (visits, attendance with a vehicle, removal and storage, valuation, auctioneer’s fees, and advertising for the auction): none of which would be charged under the Proposed Fee Structure.

**MoJ Parameter**

Having considered the impact testing performed in respect of Proposed Fees for Non-High Court Enforcement, MoJ is of the view that the outcome of the testing is satisfactory and will proceed to include the Proposed Fee Structure in the Consultation Paper.

### **19.3. HCEAC Impact Testing**

#### **19.3.2. HCEAC Profitability Test**

Using accounting data generated for the “Representative HCEAC” I have calculated the expected profit outcome if the “Representative HCEAC” had operated under the same cost conditions experienced during the period covered by the RFI, but generated revenue under the Proposed HCEO Fees instead of the existing HCEO Fee Structure.

The results of this Profitability Test are shown in the table on the following page:

*Table 49: HCEAC Profitability Test*



MoJ Proposed Fees for High Court Enforcement Officers			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement 1	£185.00	0%	7.5%
Enforcement 2	£480.00	0%	0%
Sale	£510.00	0%	7.5%

Proposed Fee Impact on "Representative HCEAC"	
	Council Tax
Number of cases handled	12,109
Average size of debt (£)	3,695.98
<b>Admin Stage Fees</b>	
Frequency <sup>(1)</sup>	100%
# Fees charged	12,109
£ Fees charged	908,175
Fee Recovery Rate <sup>(2)</sup>	100.0%
<b>Fees Recovered</b>	<b>908,175</b>
<b>Enforcement Stage 1 Fees</b>	
Frequency <sup>(1)</sup>	97.4%
# Fees charged	11,794
£ Fees charged	2,181,921
Fee Recovery Rate <sup>(2)</sup>	20.5%
<b>Fees Recovered</b>	<b>447,294</b>
<b>Enforcement Stage 1 % Fees</b>	
Frequency <sup>(1)</sup>	97.4%
# Fees charged	11,794
Average Fee charged (£)	202.2
£ Fees charged	2,384,763
Fee Recovery Rate <sup>(2)</sup>	20.5%
<b>Fees Recovered</b>	<b>488,876</b>
<b>Enforcement Stage 2 Fees</b>	
Frequency <sup>(1)</sup>	39.8%
# Fees charged	4,819
£ Fees charged	2,313,303
Fee Recovery Rate <sup>(2)</sup>	34.5%
<b>Fees Recovered</b>	<b>798,090</b>
<b>Sale Stage Fees</b>	
Frequency <sup>(1)</sup>	2.9%
# Fees charged	351
£ Fees charged	179,092
Fee Recovery Rate <sup>(2)</sup>	60.0%
<b>Fees Recovered</b>	<b>107,455</b>
<b>Sale Stage % Fees</b>	
Frequency <sup>(1)</sup>	2.9%
# Fees charged	351
Average Fee charged (£)	202.2
£ Fees charged	71,004
Fee Recovery Rate <sup>(2)</sup>	60.0%
<b>Fees Recovered</b>	<b>42,603</b>
<b>Total Revenue</b>	
	<b>2,792,493</b>
<b>Total Costs</b>	
	<b>2,513,351</b>
<b>Profit</b>	
	<b>279,142</b>
<b>Profit Margin</b>	
	<b>10.0%</b>

**Notes**

- (1) Frequency estimates taken from HCEAC activity frequency estimates from RFI: See **Table x: HCEAC activities and frequencies**.
- (2) Fee Recovery Rates calculated at **Table x: Fee Recovery Rates for High Court Enforcement**. Sale Stage Fee Recovery Rate taken from assumptions at **11.4.3 High Court Enforcement Fee Recovery Rate**.

The Profitability Test projects a profit margin for the Representative HCEAC of **10.0%**.

### 19.3.3. HCEAC Fee Scenario Testing

The following table illustrates the HCEACs fees that would be payable under a number of different Enforcement scenarios, and for debts of different sizes:

Table 50: HCEAC Fee Scenario Testing

Scenario	Size of debt (£)	£ Fixed Fees Charged (plus number of additional charges for reasonable costs shown in brackets)		
		Writs of FiFa	Proposed Fees for High Court Enforcement	
A No successful debtor contact/ unsuccessful enforcement	Any	60.00		75.00
B1 Debtor repays in full before EA visit	600	83.50	(1)	75.00
B2 Debtor repays by instalments before EA visit	600	83.50	(1)	305.00
B3 Debtor pays in full or by instalments after first EA visit	600	83.50	(2)	305.00
B4 Debtor repays following levy on goods	600	93.00	(4)	305.00
B5 Debtor repays when EA attends to remove goods	600	93.00	(4)	765.00
B6 Debtor's goods are removed and sold to repay debt	600	170.50	(6)	1,265.00
C1 Debtor repays in full before EA visit	5,000	193.50	(1)	75.00
C2 Debtor repays by instalments before EA visit	5,000	193.50	(1)	605.00
C3 Debtor pays in full or by instalments after EA visit	5,000	193.50	(2)	605.00
C4 Debtor repays following levy on goods	5,000	203.00	(4)	605.00
C5 Debtor repays when EA attends to remove goods	5,000	203.00	(4)	1,065.00
C6 Debtor's goods are removed and sold to repay debt	5,000	268.00	(6)	1,865.00
D1 Debtor repays in full before EA visit	50,000	1,318.50	(1)	75.00
D2 Debtor repays by instalments before EA visit	50,000	1,318.50	(1)	3,980.00
D3 Debtor pays in full or by instalments after EA visit	50,000	1,318.50	(2)	3,980.00
D4 Debtor repays following levy on goods	50,000	1,328.00	(4)	3,980.00
D5 Debtor repays when EA attends to remove goods	50,000	1,328.00	(4)	4,440.00
D6 Debtor's goods are removed and sold to repay debt	50,000	1,393.00	(6)	8,615.00

#### Notes

- Numbers in brackets represent the number of fees within the Fee Structure where “reasonable costs” may be charged.

Whilst calculating the fees due under the various scenarios and Fee Structures the following assumptions were made:

- At least one incidence of “reasonable costs” is shown in each scenario to reflect fee order 12 of the HCEOs fees: “For any matter not otherwise provided for, such sum as a Master, district judge or costs judge may allow upon application”.
- Existing Fee Structures for Stamp Duty Land Tax and Social Security are vague regarding how many visit fees may be charged. It has been assumed that multiple visit fees may be charged.
- For all cases including levying and/or attendance to remove it is assumed that there have been three visit made to the premises.
- Following all levies it has been assumed that “Walking possession” is taken of goods, and not “Close possession”. HCEACs reported that “Close possession” occurs extremely infrequently. In all cases the period of walking possession is assumed to be 30 days.
- All sales are assumed to take place at the auctioneer’s premises, and the auctioneer’s commission fee is assumed to be 10% of the sales price achieved, which in turn is assumed to be equal to the amount of debt outstanding.

#### **Observations**

In most scenarios the Fixed Fees available to HCEACs will increase under the Proposed HCEO Fees. However, the number of instances of charging of reasonable costs will reduce from up to four (mileage for EA/ HCEO visits, mileage for attendance with a vehicle, reasonable costs for removal and storage, and for any matter not otherwise provided for, such sum as a Master, district judge or costs judge may allow upon application) during the Enforcement Stage, and up to six (as above with the addition of auctioneers fee and other costs actually and reasonably incurred as a result of sale) if goods are removed and sold.

In fact, the final category of reasonable costs allowed: “for any matter not otherwise provided” is so broad that it could be applied to almost any type of cost. The fee then past on to the debtor would be determined as “such sum as a Master, district judge or costs judge may allow upon application”.

The following table shows examples of the levels of reasonable costs currently being charged by members of HCEOA:

#### **MoJ Parameter**

Having considered the impact testing performed in respect of Proposed Fees for High Court Enforcement, MoJ is of the view that the outcome of the testing is satisfactory and will proceed to include the Proposed Fee Structure in the Consultation Paper.



## 20. Implementation and Regulation of the Fee Structure

### 20.1. Importance of Implementation and Regulation of Proposed Fee Structure

Careful and considered implementation of the Proposed Fee Structure, supported by appropriate regulation, is vital to the Fee Structure's success in achieving its objectives.

The need to closely integrate the design and potential implementation of the Proposed Fee Structure, with appropriate regulatory measures, has been recognised since the outset of the Enforcement Fee Structure Review exercise: The White Paper described the desired Fee Structure as "a structure that is supported by, and inseparable from, regulation of the Enforcement services profession and a single piece of Enforcement agent law"<sup>47</sup>. Professor Beatson in his *Independent Review of Bailiff Law*<sup>48</sup> indicated that the setting of fees was so closely connected with the regulation of bailiffs that he could not make recommendations without knowing what the regulatory framework was to be.

The current review of the Enforcement Fee Structure, contained in this report, has necessarily pressed ahead with a limited amount of information regarding the likely future state of regulation within the Enforcement industry, and certainly without knowledge of what specific regulatory powers will exist. This report therefore necessarily makes recommendations for a new Fee Structure separately to recommendations for the regulatory environment. However, to proceed much further without a close interaction between the potential implementation of the Fee Structure and the design of the regulatory environment would be a mistake. In a commercial environment the Fee Structure is probably the most important determinant of industry behaviour. Since Enforcement is an industry where stakeholder interests are at odds, it is important that behaviour is not driven by fees alone, hence the need for a regulatory body. Any attempts to determine behaviour through the design of a regulatory framework will need to understand, and consider very carefully, the incentives for behaviour created by the Fee Structure: controls and incentives will act in unison to determine the outcomes for the industry. To achieve the desired outcomes it is vital that the interaction of these two forces is carefully controlled and coordinated.

The focus of this report is the design of the Fee Structure, and not its implementation or regulation. However, in this section I will briefly consider the most important issues concerning the implementation and regulation of the Proposed Fee Structure:

- First time implementation;

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<sup>47</sup> "Effective Enforcement", a White Paper issued by the Lord Chancellor's Department (March 2003)

<sup>48</sup> "Independent Review of Bailiff Law: A Report to the Lord Chancellor", Professor Beatson (July 2000), [www.dca.gov.uk/Enforcement/beatson.pdf](http://www.dca.gov.uk/Enforcement/beatson.pdf)

- Implementation and regulation of the Fee Structure features;
- Other fee issues; and
- Ongoing regulation and review of the Fee Structure.

## **20.2. First Time Implementation**

### **20.2.1. Drafting of legislation**

The legislation potentially introducing the proposed Fee Structure must be carefully worded to ensure that the workings of each of the proposed fees is clearly specified, and particularly that no abuses can arise as a result of misinterpretation (deliberate or otherwise) of the wording of the intended structure.

### **20.2.2. Pre-implementation testing**

A period of pre-implementation testing of the potential Fee Structure would be desirable. Ideally this could happen with the cooperation of one or several EACs/ HCEACs which could submit (a sample of) closed cases over a period. During this period fees would continue to be charged under the existing Fee Structures, however fees that would be due under the Proposed Fee Structure should also be calculated. This period would allow most potential difficulties in applying the new Fee Structure to be discovered, and would also allow a dummy P&L to be calculated to ensure that the profitability impact of the new Fee Structure was as anticipated.

If possible the drafting of the new Fee Structure legislation and regulations could wait until after this test period so that difficulties encountered during the test period could be dealt with through the wording of legislation or through regulatory measures.

Full implementation of the proposed new Fee Structure could be conditional upon the profitability impact being within tolerable bounds. If the profitability impact was too extreme in either direction, the fees could be fine tuned before full live implementation.

### **20.2.3. Transition period**

Following the potential formal introduction of the new Fee Structure, a transition period would be a good precaution against unforeseen and undesirable effects of proposed new Fee Structure. Ideally, if a regulatory body had sufficient powers it should require all EACs to submit financial records showing the impact of the new Fee Structure. At the end of the transition period the regulator could review the impact of the new fees on the industry as a whole (in a similar way to the pre-implementation recommendation) to ensure that the impact of the new fees was not undesirable. The potential legislation introducing the Fee Structure might include a provision to amend the fees based on the outcome of the transition period, possibly reverting to the old Fee Structures for a period while the new Fee Structure is amended, should this prove necessary. In the event that the outcome of the transition period was satisfactory the new Fee Structure could then be fixed, subject to annual indexing and any subsequent future Enforcement Fee Structure Review.

## 20.3. Other fee issues

### 20.3.1. Contracting between EACs and creditors

If the proposed Fee Structure is to be successful it is important that creditors cannot use contractual arrangements with EACs/ HCEACs in order to circumvent the level of fees. Whilst contracts may specify quality and reporting requirements, they should neither be able to change the level of any of the new Fee Structure fees, nor to challenge the right of the EAC/ HCEAC to collect those fees where they are appropriately charged.

If contracts amend or remove any of the proposed Fee Structure fees it would jeopardise the important objective which the new Fee Structure attempts to achieve: to guarantee a fair reward to EACs/ HCEACs by setting fees in relation to costs, and allowing a fair mark-up on those costs. If creditors are able to use contracts to circumvent the EAC's/ HCEAC's right to charge any of the fees, the profit margins earned could be reduced below the target profit margin as a result.

Even where fees are charged at appropriate levels in the first instance, creditors may attempt to use contracts to require the EAC/ HCEAC to pass on a proportion of the Enforcement fees. Since this practice would have a similar effect to amending the actual fee levels it should also not be allowed. Similarly any attempts by EACs/ HCEACs themselves to obtain a competitive price advantage by offering to reduce fees below the Fee Structure level should not be allowed, and competitive differentiation should be made on quality of service alone.

In conclusion, ensuring that the contracts between EACs/ HCEACs and creditors do not attempt to circumvent the proposed Fee Structure in any way is an important role for legislation and regulation.

### 20.3.2. "In-house" Enforcement Agents

The term "In-house Enforcement Agent" is used to refer to those EAs who are directly employed by a creditor, which seeks to enforce its own debts. "In-house Enforcement Agents" are employed by:

- County Courts, which use employed staff (County Court bailiffs) to enforce their debt;
- HMRC; and
- some local authorities who employ their own EAs to enforce debts.

When "In-house" EAs are employed, the structure of the relationship between entities in the Enforcement framework is changed: instead of three parties (being creditor, debtor, and Enforcement agent), there are now only two (creditor and debtor). The principal agent relationship no longer exists between the creditor and EA as these now represent a single entity.

The Proposed Fee Structure is robust for application to "In-house Enforcement Agents", since these EAs must incur essentially the same costs as "third-party" EAs, and there is no particular reason to assume that the level of these costs should be any different between "In-house" and "third-party" Enforcement Agents. Therefore, EAs should charge exactly the same fees whether they are operating on an "in-house" or "third-party" basis.

## 20.4. Ongoing Price Control & Review

In keeping with other price controlled industries, it should be strongly recommended that the Fee Structure is fully reviewed at regular intervals of four years, with interim reviews every two years, and ongoing interim procedures to ensure that the fees continue to be relevant and appropriate, and that they result in desirable and sustainable levels of profitability for the industry participants.

Experience gained from the current Enforcement Fee Structure review process could valuably inform the design of a routine and documented practice for future review of the Fee Structure. Particularly some of the data gaps for the current review, which might be addressed by a regulatory requirement for EACs/ HCEACs to provide the necessary data to support more efficient and effective future price control reviews. For example, EACs/ HCEACs might be required to record the Debt Recovery Rate and Fee Recovery Rate, as defined in this paper, in order that the actual measures may be used to inform future reviews, rather than estimates based on related measures.

Depending on the type of regulatory regime and the extent of the regulator's powers, the regulator might require EACs/ HCEACs to prepare annual audited regulatory accounts (as for other regulated price-controlled industries). These accounts, which would be independently audited, would record those measures specified by the regulator that would assist with future fee reviews, and with monitoring the performance of the new Fee Structure. Benchmarks could be defined for performance measures, which if breached by the industry on aggregate (or by a measured average), could prompt urgent review of the Fee Structure, even between regular review periods.

### **MoJ Parameter**

MoJ is aware of the need to determine procedures for the ongoing monitoring and review of the Fee Structure. These procedures might sensibly include specifying measures of performance (such as Debt Recovery Rate and Fee Recovery Rate) that EACs/ HCEACs would be obliged to record, and potentially submit for independent audit along with financial statements. MoJ will invite views and comments in the Consultation Paper, and subsequently develop proposals.



## Appendices

### Appendix 1: MoJ Parameters arising from Enforcement Fee Structure Review

#### Unified Fee Structure

##### *(7.4 A Unified Fee Structure?)*

After due consideration of all of the issues described in this section, MoJ's initial parameter was to consider High Court and non-High Court Enforcement separately for the purposes of the Enforcement Fee Structure Review: creating a unified Fee Structure to apply to the Enforcement of all debt-types (fulfilling a key objective of the 2003 White Paper), whilst allowing for the possibility that High Court and non-High Court Enforcement may have different fee **levels** within the same unified Fee Structure.

However, the differences between the various Non-High Court Enforcement debt-types, were proposed by MoJ not to be so fundamental or significant as to prevent the same fee levels applying to all of these debt-types. The proposed Fee Structure should therefore apply the same level of fees to all Non-High Court Enforcement debt-types: Council Tax, HMCS [Does this need to be described as Magistrates Court throughout? per AG comment], CSA, RTA, Commercial Rent, and NNDR.

#### Fee Recovery Rates

##### Non-High Court Enforcement Fee Recovery Rates

##### *(12.4.2 Non-High Court Enforcement Fee Recovery Rates)*

Fee Stage	Relevant Fee Recovery Rate Assumption for Model					
	Council Tax	CSA	HMCS	RTA	Commercial Rent	NNDR
Administration Stage	22.8%	14.4%	16.8%	14.0%	37.0%	33.2%
Enforcement Stage	14.5%	11.0%	10.3%	10.1%	25.4%	22.3%
Sale Stage	80%	80%	80%	80%	80%	80%

##### High Court Enforcement Fee Recovery Rates

##### *(12.4.3 High Court Fee Recovery Rates)*

Fee Stage	% of Total cases entering Stage (1)	% of Total cases enforced at Fee Stage	Notes	Stage Enforcement Rate (6)	Fee Recovery Rate	Notes
Administration	100%	1.1%	(2)	1.1%	21.0%	(7)
Enforcement 1	97.4%	6.2%	(3)	6.4%	20.5%	(8)
Enforcement 2	39.8%	12.0%	(4)	30.2%	34.6%	(9)
Sale	2.9%	1.7%	(5)	60.0%	60.0%	(10)
Total (Overall Fee Recovery Rate)		21.0%				

## Profit Target

### (15.3 Selected Profit Target)

Considering all of the available benchmarks for a target profit margin, MoJ's initial modelling parameter was that the profit target, for both EACs and HCEACs, should be a **pre-tax profit margin of 10%**.

This pre-tax profit margin should be targeted using the approach described in this paper, which uses a Fee Structure Model in which a mark-up on total costs of 10% is used to achieve a close approximation to a pre-tax profit margin of 10%.

## Fee Stages

### (16.1 Number and nature of Fee Stages)

#### Non-High Court Enforcement

Fee Stage	Stage Trigger
Administration	Warrant received by EAC.
Enforcement	First attendance by EA to debtor's premises/ "door step".
Sale	Debtor's goods sold.

#### High Court Enforcement

Fee Stage	Stage Trigger
Administration	Writ received by HCEO.
Enforcement 1	First attendance by HCEO/ EA to debtor's premises/ "door step".
Enforcement 2	HCEO/ EA is required to reattend debtor's premises due to debtor's failure to comply with notice of seizure or with repayment arrangements previously made.
Sale	Debtor's goods sold.

## **Administration Stage**

### **(16.2 Administration Stage)**

Both Proposed EA Fees and Proposed HCEO Fees should incorporate an Administration Stage.

The Administration Stage should include all of the administrative activities that are required to be performed after a Warrant/ Writ is received until the point that an EA/ HCEO is ready to attend the debtor's premises. The Administration Stage should include the EAC/ HCEAC making contact with the debtor and providing them with an opportunity to make payment. MoJ would set out regulations stating what action should be taken by the EAC, during the Administration Stage, before an attendance is made at a debtor's property.

### **Non-High Court Enforcement**

For Non-High Court Enforcement the debt may be repaid either in full or by instalments, where the debtor does not break any instalment plan agreed, and in these circumstances only the Administration Stage Fee will be charged.

### **High Court Enforcement**

For High Court Enforcement, only if the debt is repaid in full prior to attendance by an HCEO will the Administration Stage Fee be the only fee chargeable. If a debtor wishes to repay a Writ of Fi Fa using a payment plan (such as payment by instalments) the HCEO will be obliged to attend the debtor's premises to secure goods, and therefore the Enforcement Stage 1 Fee will also become chargeable.

## **Creditor Guaranteed Fee**

### **(16.3 Creditor Guaranteed Fee)**

### **Non-High Court Enforcement**

MoJ's initial modelling parameter was that there should be no Creditor Guaranteed Fee for Non-High Court Enforcement. The key considerations in proposing this parameter were:

- Public sector creditors face budget constraints that would not allow them to absorb the additional cost of Enforcement services, if they included a Creditor Guaranteed Fee;
- Since public sector creditors issue large volumes of Warrants, the impact of a Creditor Guaranteed Fee of any size (even a very small fee) would become a large burden when multiplied by the very large case volumes issued; and
- Public sector creditors have an obligation to attempt to enforce public debt, and therefore could not avoid the additional costs of Enforcement by scaling back the use of Enforcement services.

### **High Court Enforcement**

MoJ's initial modelling parameter was that there should be a Creditor Guaranteed Fee for High Court Enforcement. The key considerations in proposing this parameter were:

- HCEOs currently charge creditors an "Abortive Fee" for cases where monies are not recovered from the debtor. This "Abortive Fee" is not currently a statutory fee but exists by convention as a

contractual fee between HCEO and creditor. The Proposed Fee Structure is designed to be free-standing, and not to run alongside any non-statutory fees. Incorporating a Creditor Guaranteed Fee within the statutory Fee Structure removes the duality of statutory and non-statutory fees;

- The majority of creditors holding High Court Writs are likely to be private organisations, whose decision to pursue a debt through High Court Enforcement is a commercial one, and one which should be made after giving due consideration to the costs as well as the expected benefits;
- An HCEO has extended obligations and duties in relation to a High Court Writ compared to an EA in relation to a Distress Warrant (see **7. Comparison between High Court and non-High Court Enforcement**). Requiring the creditor to pay a guaranteed fee recognises that the HCEO will need to fulfil these extended obligations and duties even when it is unlikely that any monies could be recovered from the debtor.

Moj's initial modelling parameter was that the Creditor Guaranteed Fee element should be at the same monetary value as the Administration Stage Fee. The Fee should therefore operate by requiring the creditor to pay the Administration Stage Fee in the event that no monies are collected from the debtor, but deducting the Administration Stage Fee from amounts collected from the debtor when sufficient monies are recovered.

In those instances that the creditor is required to pay the Administration Stage Fee this should not be paid "upfront" (i.e. as soon as the case is passed to the HCEO for Enforcement), but rather only after the HCEO has attempted to enforce the debt, but has ultimately returned the Writ unenforced and closed the case.

## Fees linked to specific actions

### *(16.4 Fees linked to specific actions)*

Moj's initial modelling parameter was that the Fee Structure should consist only of fees related to Fee Stages, consisting of groups of activities, and should not contain any fees relating to specific actions. The proposed definition of Fee Stages for High Court and non-High Court Enforcement is felt to satisfy the objective of proportionality of fees and activity, whilst also maximising the simplicity of the Fee Structure, and minimising the potential for abuse.

## Percentage Fees

### *(16.5 Percentage Fees)*

Moj's initial modelling parameter was that the following Percentage Fees should be applied:

Civil Enforcement			High Court Enforcement		
	≤ £1,000	> £1,000		≤ £1,000	> £1,000
Administration Stage	0%	0%	Administration Stage	0%	0%
Enforcement Stage	0%	7.5%	Enforcement Stage 1	0%	7.5%
Sale Stage	0%	7.5%	Enforcement Stage 2	0%	0%
			Sale Stage	0%	7.5%

The Percentage Fee should be applied to the amount of the debt above the £1,000 threshold, and not applied to the whole debt.

The size of debt used when calculating the Percentage Fee should be the total value of the original debt specified in the Writ or Warrant (and not the amount recovered), as this will make the total potential fees chargeable clear to the debtor from the outset of the Enforcement process.

There should be no tapering of the Percentage Fee level for larger debts: the 7.5% Percentage Fee should be charged on the full original value of the debt, above £1,000.

For example for a debt of £15,000 the Percentage Fee element of the Sale Stage Fee would be calculated as follows:

Threshold	Debt within threshold (£)	Percentage applied	Fee applied (£)
≤ £1,000	1,000	0%	0
> £1,000	14,000	7.5%	1,050
Total Sale Stage Percentage Fee			1,050

## Order of Payment

### (16.6 Order of Payment)

A **pro-rata payment mechanism** should be adopted for the repayment of original debt and Enforcement Fees charged.

## Multiple Warrants/ Writs

### (16.7 Multiple Warrants/ Writs)

MoJ will use the Consultation Paper to seek views and opinions on the appropriate charging treatment for multiple Warrants/ Writs held against the same debtor. Following the Consultation Paper responses MoJ will propose a treatment for charging fees in respect of multiple Warrants/ Writs.

## **Exceptional Costs**

### **(16.8 Exceptional Costs)**

MoJ anticipates that the fees prescribed in the Proposed Fee Structure should be sufficient to cater for all aspects of Enforcement, however it may be necessary to support the fees available by the use of an “Exceptional Costs Procedure”, which will enable EACs/ HCEACs to apply for additional fees where the costs of Enforcing specific cases are shown to be exceptionally high, and significantly in excess of the fees otherwise available for successful Enforcement. It is proposed that specific questions be directed towards this issue in the Consultation Paper with a decision being taken based on those comments as to whether such a process is necessary.

## **VAT**

### **(16.9 VAT)**

MoJ is currently investigating the possibility of creating a uniform VAT treatment for all debt-types. The Consultation Paper will seek to gauge views on the desirability of a uniform VAT treatment, and a decision will be made subsequently.

## **Inflation**

### **(16.10 Inflation)**

The Proposed Fee Structure should be implemented at the fee levels shown in the consultation paper from the date of implementation (currently due for April 2012). Following implementation fee levels should be updated annually by indexing to RPI.

Percentage Fee levels charged should remain as in the current Proposed Fee Structure, but thresholds will be indexed to RPI and updated when inflated threshold levels reach sensible round amounts to maintain simplicity.

## Selection of a single fee point for Non-High Court Enforcement

### *(17.3.1 Non-High Court Enforcement Fee Structure Model)*

MoJ's initial modelling parameter was that it is essential that an EAC be able to provide a profitable and sustainable Enforcement service for each of the different debt-types, even if the EAC were to enforce only a single debt-type in isolation. Therefore, the single fee point would need to be selected so that even the least profitable (lowest Enforcement Rate) of debt-types could be enforced sustainably.

This parameter implies that the single fee level needs to be selecting to accommodate RTA Enforcement, which has the lowest Fee Recovery Rate and therefore the highest Model output fee levels. MoJ's final parameter regarding the proposed fee level is shown at **18.1 Proposed Fees for Non-High Court Enforcement**.

## MoJ Proposed Fee Structure

### (18. MoJ Proposed Fee Structure)

MoJ Proposed Fees for non-High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement	£230.00	0%	7.5%
Sale	£105.00	0%	7.5%

Fee Structure Features	
Stage Triggers	
Administration	Warrant received by EAC.
Enforcement	First attendance by EA to debtor's premises/ "door step".
Sale	Debtor's goods sold.
Creditor Guaranteed Fee	None.

MoJ Proposed Fees for High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,000	>£1,000
Administration	£75.00	0%	0%
Enforcement 1	£185.00	0%	7.5%
Enforcement 2	£480.00	0%	0%
Sale	£510.00	0%	7.5%

Fee Structure Features	
Stage Triggers	
Administration	Writ received by HCEO.
Enforcement 1	First attendance by HCEO/ EA to debtor's premises/ "door step".
Enforcement 2	HCEO/ EA is required to reattend debtor's premises due to debtor's failure to comply with notice of seizure or with repayment arrangements previously made.
Sale	Debtor's goods sold.
Creditor Guaranteed Fee	£75.00. To be paid upon completion of Writ with formal notice of abortive return.



Fee Structure Common Features	
Percentage Fees	The appropriate percentage shown in the table above is charged on the amount of the debt <i>above</i> the threshold shown.
Order of Payment	When the EA/ HCEO recovers less than the full amount due, the repayment of original debt to the Creditor, and payment of Enforcement Fees, is to be on a <b>pro-rata basis</b> . The proportion of debt repaid, and Enforcement Fees paid, will both be equal to the proportion of the total amount collected to the total amount owed (original debt + fees).
Multiple Warrants/ Writs	MoJ has not yet specified the calculation of fees for multiple Warrants/ Writs against a single debtor. The Consultation Paper will seek views and MoJ will use these to inform a decision.
Exceptional Costs	The Fee Structure may be supported by an "Exceptional Costs Procedure". MoJ will ask for views in the Consultation Paper, and subsequently determine the need for, and if necessary the specification of, the procedure to be applied.
VAT	MoJ is currently investigating the possibility of creating a uniform VAT treatment for all debt types.
Inflation	The fixed fee levels in the Fee Structure should be updated annually by indexing to RPI. Percentage fee levels should remain unchanged. Percentage Fee thresholds should be updated periodically by indexing to RPI.

## Impact Testing

### (19. Impact Testing)

#### Proposed Fees for Non-High Court Enforcement

Having considered the impact testing performed in respect of Proposed Fees for Non-High Court Enforcement, MoJ is of the view that the outcome of the testing is satisfactory and will proceed to include the Proposed Fee Structure in the Consultation Paper.


#### Proposed Fees for High Court Enforcement

Having considered the impact testing performed in respect of Proposed Fees for Non-High Court Enforcement, MoJ is of the view that the outcome of the testing is satisfactory and will proceed to include the Proposed Fee Structure in the Consultation Paper.

## Appendix 2: Recommendations of the White Paper: “Effective Enforcement” (March 2003)

1. There should be an up-front fee, payable by the creditor to initiate Warrant Enforcement action. Such a fee will apply across all Enforcement sectors and all debt-types. There are three potential models for such a fee:
  - a. fixed fee;
  - b. negotiable fee within a bandwidth (with a fixed floor and ceiling); or
  - c. a matrix of the two.
2. The up-front fee should cover the following elements:
  - a. take-up of a case by an Enforcement agent;
  - b. the setting up of a file;
  - c. the use of licensed and reputable Enforcement staff;
  - d. initial action(s) or investigation, which may lead to the provision of a probability report to be supplied by the agent to the creditor indicating likelihood of debt recovery.
3. The up-front fee should be recovered from the debtor when Enforcement is successful.
4. Following the up-front fee and initial action and report that it covers, if Enforcement action continues, there are a range of activities that may be undertaken by the Enforcement agent, for which fixed fees shall be charged, common areas across all types of Enforcement business for the following actions:
  - a. enquiries;
  - b. letter;
  - c. visit; and
  - d. securing goods (including levy, seizure, walking and close possession).

The sequence and frequency of these following activities will, subject to the law and regulation, be a matter to be determined between creditor and Enforcement agent. A future regulatory body will have relevant powers to ensure that abuses do not occur, but the necessary flexibility to enable professional Enforcement agents to exercise their own best judgement according to the circumstances of the case will be critical.
5. Fees for the following activities shall not be fixed and shall not include charges to cover hourly attendance rates by Enforcement agents. Fees for these activities shall be clearly conveyed to the debtor at the earliest stage in the Enforcement process, and be monitored by a future regulatory body:
  - a. removal;

- b. storage;
  - c. valuation;
  - d. auction.
6. There shall be no fixed 'abortive removal visit' fee.
7. Enforcement agents should be able to charge a fee for establishing and administering a repayment plan. This fee, which should be proportionate to the size of the debt, is to be recoverable from the debtor.
8. The fees for enforcing a judgment for a large amount, which exceeds a threshold to be determined by the regulator, shall be negotiable, between the creditor and the Enforcement agent. One possibility is as a commission at a percentage rate.
9. Any future Regulatory Body charged with the responsibility of advising the Lord Chancellor on a detailed Fee Structure should have the necessary investigative powers to obtain any relevant information they require from those providing Enforcement services.
10. Based on the information currently available to us, we are minded to recommend that these fee principles should apply to those enforcing civil and criminal Warrants.
- 

## Appendix 3: Summary of specification requirements for the engagement of an economic consultant by MoJ

### Up-front fee

- Analysis of the options for an up-front fee, and recommendations on the level, or minimum and maximum limits, which should be set for the fee;
- Analysis of whether the same type of up-front fee should apply to all debt-types.

### Fixed fees

- Analysis to obtain options and recommendations on the levels at which fees should be set for individual activities;
- A view on whether any additional activities not already mentioned, should be included in the list of fixed fee activities.

### Variable Fee

- Analysis and recommendations on minimum and maximum limits for variable fees for individual activities;
- A view on an approach for determining the number of times fixed fees for abortive removal may be charged.

### Payment by instalments

- Analysis and recommendations on the two options for a fee for establishing and administering an instalment arrangement.

### Enforcing large debts

Analysis and recommendations on:

- level and threshold amount; and
- the two options for determining the size of the up-front fee for large debts.

## Appendix 4: Summary of existing Fee Structures

Debt Type	County court judgments	Child Support	Council Tax	Customs and excise duties and other indirect taxes	Distress for Rent	Non-domestic rating debts
<b>Admin Fee</b>	Warrant < £125 = £25; Warrant > £125 = £45	N/A	N/A	N/A	N/A	N/A
<b>Letter</b>						
Advise debtor	N/A	10.00	N/A	N/A	N/A	N/A
Making general enquiries	N/A	N/A	N/A	N/A	N/A	N/A
<b>Visits</b>						
First visit	N/A	Reasonable costs and fees incurred	24.50	12.50	Reasonable costs and fees incurred	24.50
Second visit	N/A	Reasonable costs and fees incurred	18.00	12.50	Reasonable costs and fees incurred	18.00
Subsequent visits	N/A	Reasonable costs and fees incurred	N/A	12.50	Reasonable costs and fees incurred	n/a
<b>Levying distress</b>						
Sum due less than £100	35.00	12.50	24.50	12.50	21.65	24.50
First £100 (when sum due exceeds £100)	N/A	12.50%	24.50%	12.50%	21.65%	24.50%
Next £100 (on first £100)	N/A	N/A	N/A	N/A	12.50%	N/A
Next £400	55.00	4.00%	4.00%	4.00%	4.00%	4.00%
Next £1,500	N/A	2.50%	2.50%	2.50%	2.50%	2.50%
Next £8,000	N/A	1.00%	1.00%	1.00%	1.00%	1.00%
Additional amounts	N/A	0.25%	0.25%	0.25%	0.25%	0.25%
<b>Charges</b>						
Close possession (fixed)	N/A	0.00	0.00	0.00	0.00	0.00
Close possession (per day)	N/A	4.50	15.00	4.50	7.80	15.00
Walking possession (fixed)	N/A	0.00	12.00	7.00	0.00	12.00
Walking possession (per day)	N/A	0.10	0.00	0.00	0.80	0.00
Attendance with vehicle	N/A	N/A	Reasonable costs and fees incurred	N/A	N/A	N/A
Removal & Storage	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred
Valuation	5% of appraised value	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising
<b>Sale</b>						
Auctioneer's premises	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	15% of the sum realised	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.
Debtors premises (or other means)	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.
Sale does not take place	Auctioneers fee and out-of-pocket expenses (not exceeding 10% of value of goods). Reasonable costs and fees for advertising.	Reasonable costs and fees incurred	£22.50 or actual costs up to 5% of liability	n/a	n/a	£24.50 or the actual costs incurred to a maximum of 5% of the liability, whichever is greater
<b>Percentage of amount recovered</b>						
First £100	N/A	N/A	N/A	N/A	N/A	N/A
Above £100	N/A	N/A	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A	N/A	N/A

Reasonable costs and fees incurred

Debt Type	Road traffic	Social security	Stamp duty land tax	Stamp duty penalties	Taxes (income tax, capital gains tax, corporation tax)	Writs of fieri facias
<b>Admin Fee</b>	N/A	N/A	N/A	N/A	N/A	£60 Abortive Fee
<b>Letter</b>						
Advise debtor	11.20	N/A	N/A	N/A	N/A	N/A
Making general enquiries	N/A	N/A	N/A	N/A	N/A	Max £2.00 + £2.00 (expenses)
<b>Visits</b>						
First visit	N/A	12.50	12.50	12.50	12.50	£0.292 per mile up to a maximum of £50
Second visit	N/A	12.50	12.50	12.50	12.50	N/A
Subsequent visits	N/A	12.50	12.50	12.50	12.50	N/A
<b>Levying distress</b>						£2.00 for each building or place at which goods are seized
Sum due less than £100	28.00	12.50	12.50	12.50	12.50	N/A
First £100 (when sum due exceeds £100)	28.00%	12.50%	12.00%	12.50%	12.50%	N/A
Next £100 (on first £100)	N/A	N/A	N/A	N/A	N/A	N/A
Next £400	N/A	4.00%	4.00%	4.00%	4.00%	N/A
Next £1,500	N/A	2.50%	2.50%	2.50%	2.50%	N/A
Next £8,000	N/A	1.00%	1.00%	1.00%	1.00%	N/A
Additional amounts	5.50%	0.25%	0.25%	0.25%	0.25%	N/A
<b>Charges</b>						
Close possession (fixed)	0.00	4.50	4.50	4.50	4.50	2.00
Close possession (per day)	5.60	0.00	0.00	0.00	0.00	3.00
Walking possession (fixed)		0.00	0.00	0.00	4.50	2.00
Walking possession (per day)	0.55 (first 14 days), 0.05 (thereafter)	0.45 (14 days max)	0.45 (14 days max)	0.45 (14 days max)	0.45 (14 days max)	0.25
Attendance with vehicle	N/A	N/A	N/A	N/A	N/A	£0.292 per mile up to a maximum of £50
Removal & Storage	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred	Reasonable costs and fees incurred
Valuation	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising	Reasonable fees and expenses of the broker appraising	n/a
<b>Sale</b>						
Auctioneer's premises	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 15% of sum realised). Reasonable costs and fees for advertising.	15% of first £100, 12.5% on next £900, 10% on amounts above £1,000
Debtors premises (or other means)	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	Auctioneers fee and out-of-pocket expenses (not exceeding 7.5% of sum realised). Reasonable costs and fees for advertising.	7.5% of sum realised plus expenses actually and reasonably incurred.
Sale does not take place	Reasonable costs and fees incurred		n/a	n/a		10% of the value of goods if the goods have been removed to the auctioneer's premises; 5% of the value of the goods plus expenses actually and reasonably incurred if goods have not been removed
<b>Percentage of amount recovered</b>						
First £100	N/A	N/A	N/A	N/A	N/A	5.00%
Above £100	N/A	N/A	N/A	N/A	N/A	2.50%
Other	N/A	N/A	N/A	N/A	N/A	For any matter not otherwise provided for, such sum as a Master, district judge or costs judge may allow upon application

Reasonable costs and fees incurred

## Appendix 5: Industry Members RFI



### Enforcement Agents Fee Structure Review Request for Information (RFI)

#### Industry Members

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1. Confidentiality Statement
2. Basic Instructions
3. Basic Information
4. Views & Opinions
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7. Enforcement Activities
8. Enforcement Information
9. Current Fees
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11. Overhead Costs
12. Any other information

## 1. CONFIDENTIALITY STATEMENT

The following statement concerns the information that you may provide in response to this Request for Information ("RFI") document. The statement deals with the confidentiality and use of data under two scenarios. The first relates to how we intend to use the data in the ordinary course of events during the fee structure review process, and is dealt with under the heading "Data confidentiality & use". The second relates to the scenario in which a request is received for disclosure of information under the Freedom of Information Act ("FOIA"), and is dealt with under the heading "Freedom of Information Act".

### Data confidentiality & use

All information and data provided to HMCS throughout the Enforcement Agents Fee Structure Review, which includes data provided in completing this form and any further enquiries resulting from that data, will be treated on a strictly confidential basis (subject to the limitations of the Freedom of Information Act outlined below).

The data will be used solely for the purpose of informing HMCS' investigations throughout the process of reviewing the fee structure, and may be used to generate inclusions for a report prepared by HMCS on the subject of the review.

Aggregated or anonymous data will be included in the report to the extent that it is required to support the arguments or conclusions that will be presented in the report. Since such arguments and conclusions will be made at an industry level, with very few possible exceptions, the data used to support the arguments is also very likely to be presented at an industry level.

Before making any inclusions in the final report, HMCS will provide the proposed inclusions to the relevant company, or to each of the industry bodies (ACEA, ESA, and HCEOA) where the data is industry-wide, to ensure that the nature of the data does not unintentionally identify its source. Aside from these verifications the data will not be provided to any third parties, other participants in the review process, or other government departments.

All data will be securely stored by HMCS as "commercial in confidence", within the Government Secure Internet (GSI), on a drive only accessible by the nominated members of the MoJ Fees Review Team.

### Freedom of Information Act

Information provided in response to this consultation, 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 Data Protection Act 1998 ("DPA"), and the Environmental Information Regulations 2004 ("EIR").

While Respondents are generally entitled to expect information provided in response to this consultation to be treated in confidence, HMCS are unable to give a blanket assurance of confidentiality as they can only withhold information requested under FOIA and the EIR where the exemptions and exceptions contained therein properly apply. To assist such consideration, if there is a particular reason why you consider that the information you have provided is sensitive and/or should be treated as confidential, it would be of great assistance if you could set out those reasons at the time of your response (in a covering email).

If we receive a request for disclosure of the information we will of course take full account of your reasons when considering whether the information can be disclosed. HMCS will of course process your personal data in accordance with the DPA and in the majority of circumstances this will mean that such data will not be disclosed to third parties.

When assessing a request for disclosure of information the Ministry will consider various exemptions which exist within the FOIA, including:

"Section 41. (1) Information is exempt information if -

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

"Section 43. (1) Information is exempt information if it constitutes a trade secret.

- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

**Notwithstanding the above, HMCS would urge you to complete this RFI with as much information as you are able and comfortable to provide. If you are particularly concerned about providing specific elements of the information requested, you should withhold that specific information (indicating in your response that you have done this). In this case, please do still provide the rest of the information requested.**

Alongside the potential confidentiality conflicts we would ask you to consider the ramifications of not supplying data for this exercise: If insufficient information is received it will be more difficult to accurately determine cost levels in the enforcement industry, and therefore, by extension, to propose a suitable fee structure. Failure to determine an appropriate, cost-based, fee structure at this time, could jeopardise the ability of the industry to operate effectively under the new fee structure proposed.



## 2. BASIC INSTRUCTIONS

*Thank-you for agreeing to take part in assisting Her Majesty's Court Service (HMCS) with the current Review of Fee Structure for Enforcement Agents.*

*We are grateful for your assistance, and believe that your involvement in the process will help to ensure that the design of any new fee structure is performed with all stakeholders in mind, and results in a structure which supports the proper functioning of the industry and appropriate returns for all those working in the industry.*

**Please complete each of the sections in this Request For Information (RFI) using this Excel file to capture your responses. When you have completed all sections of the form, re-save the file and send your completed response to [alex.dehayen@justice.gsi.gov.uk](mailto:alex.dehayen@justice.gsi.gov.uk) by FRIDAY 7 NOVEMBER.**

This form would be best completed by someone with both an accounting and operational knowledge of the company; it may be the case that it is appropriate for different members of the company to complete different sections of the form. Where you have obtained substantial information from another source, we would be grateful, for ease of communication, if you could provide the name and contact details for that individual. Each form includes a space for you to provide this information where relevant.

If you feel that a particular question is not applicable to your company, please do not leave the response blank, but respond "N/A" and provide a brief explanation. Each cell in the form requiring a response from you has a *blue* background. Cells with a *green* background indicate where additional information may be useful if you can provide it.

The form is designed to be completed by companies of varying size, and with varied accounting and IT resources. It may be the case therefore, particularly if you are able to provide detailed accounting records (in response to section 3. Accounting Information), that other sections of the form ask for information that you have already provided in your detailed submission. Where this is the case please reference the first information provided in response to later questions - ensuring that the information referenced covers all aspects of the later question.

Where the following questions require you to provide data or estimates, please do so with reference to the last full financial year for which you hold records. (e.g. If you are a company with a 31 December year end, please provide data relating to the 12 months ended 31 December 2007).

When providing information or estimates, please provide the source of the data and any calculations you have made (even if these are rough). If the information or supporting data/ calculations will not fit on this form, please provide as a separate attachment in the most appropriate format, and make reference to the attachment in your response in this document. The best responses will provide supporting data that can be traced back to accounting or management records.

When providing written responses and explanations, please type as much text as you require into the cell indicated for your response. Do not worry if the response does not all fit in the box as displayed on the screen, it is still being recorded.

**If you are unable to provide exactly the information requested in the form, or at the level of detail requested, please do still provide the most relevant information at the best level of detail that is available to you.**

**If you have any further questions or require assistance with completing any part of this RFI, please do not hesitate to contact Alex Dehayen at:**

Email: [alex.dehayen@justice.gsi.gov.uk](mailto:alex.dehayen@justice.gsi.gov.uk)

or

Telephone: 020 3334 6333 or Mobile: 0777 972 8585

**Please email your completed form to  
[alex.dehayen@justice.gsi.gov.uk](mailto:alex.dehayen@justice.gsi.gov.uk) (by FRIDAY 7 NOVEMBER)**

3. BASIC INFORMATION				
3.1	Company/ Agent Name:			
3.2	Your Name:			
3.3	Your Position:			
3.4	Contact Email:			
3.5	Contact Telephone:			
3.6	What types of enforcement activity do you perform? Please also indicate the approximate percentage of your business that comes from each type of warrant, and how you believe this mix may change over the next 5 years:			
		<b>Enforcement activity performed? (Y/N)</b>	<b>Percentage of current business</b>	<b>Anticipated percentage of business in 5 years</b>
	Writs of Fi Fa			
	Writs of possession			
	Writs of restitution			
	Writs of delivery			
	Compulsory purchase orders			
	County court judgments (as Fi Fas)			
	Magistrates court fines and penalties			
	National taxes and duties			
	Council tax			
	Non-domestic rates			
	Road Traffic Act penalties			
	Maintenance and child support			
	Domestic rent recovery			
	Commercial rent recovery			
	Other (Please specify):			
	<b>Total</b>		<b>0%</b>	<b>0%</b>
3.7	Please estimate the total number of enforcements you handled in the last full financial year:			
3.8	Please estimate how the total number of warrants you handle annually will grow or shrink over the coming 5 years. Please explain your reasoning.			
3.9	Please explain what factors you believe will drive changes in the mix of business over the next 5 years:			
3.10	How many enforcement officers do you engage (employ/ contract) who carry out evictions of trespassers on land? <i>(this information is required for purposes not connected with the fee structure review)</i>			
	<b>Additional Information provided by:</b>			
	Name:			
	Position:			
	Email:			
	Telephone:			
	Where you are unable to provide the exact information requested, please provide an estimate and explain your reasoning			
	Please remember that all information supplied will be treated confidentially as described in the worksheet "Confidentiality"			

4. VIEWS & OPINIONS											
4.1	<p>To what extent do you believe that the current fee structure fulfills its objectives: <i>Please mark the appropriate boxes below with an "X"</i></p> <p><b>Clarity:</b></p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> </tr> <tr> <td><i>Not at all</i></td> <td><i>To some extent</i></td> <td><i>Moderately</i></td> <td><i>Very much so</i></td> <td><i>Completely</i></td> </tr> </table> <p><i>Please provide comments:</i></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>						<i>Not at all</i>	<i>To some extent</i>	<i>Moderately</i>	<i>Very much so</i>	<i>Completely</i>
<i>Not at all</i>	<i>To some extent</i>	<i>Moderately</i>	<i>Very much so</i>	<i>Completely</i>							
4.2	<p><b>Fairness in rewarding enforcement agents for work actually performed:</b></p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> </tr> <tr> <td><i>Not at all</i></td> <td><i>To some extent</i></td> <td><i>Moderately</i></td> <td><i>Very much so</i></td> <td><i>Completely</i></td> </tr> </table> <p><i>Please provide comments:</i></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>						<i>Not at all</i>	<i>To some extent</i>	<i>Moderately</i>	<i>Very much so</i>	<i>Completely</i>
<i>Not at all</i>	<i>To some extent</i>	<i>Moderately</i>	<i>Very much so</i>	<i>Completely</i>							
4.3	<p>To what extent do you believe that the current fee structure is prone to abuse by unscrupulous enforcement agents?</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> <td style="width: 20%; height: 20px;"></td> </tr> <tr> <td><i>Not at all</i></td> <td><i>To some extent</i></td> <td><i>Moderately</i></td> <td><i>Very much so</i></td> <td><i>Completely</i></td> </tr> </table> <p><i>Please provide comments:</i></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>						<i>Not at all</i>	<i>To some extent</i>	<i>Moderately</i>	<i>Very much so</i>	<i>Completely</i>
<i>Not at all</i>	<i>To some extent</i>	<i>Moderately</i>	<i>Very much so</i>	<i>Completely</i>							
4.4	<p>To the extent that you believe current abuses may exist, please describe the form that you believe they may take:</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.5	<p>In your opinion would a move to a uniform fee structure for all different types of debt streams (see list at worksheet "Basic Information") be beneficial for the industry? Which debt streams may require a different/ separate fee structure? Please explain:</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.6	<p>Do you believe that any new fee structure should consist of fixed fees for given activities, or fee bandwidths allowing for some negotiation of fee levels? Please explain:</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.7	<p>In your current creditor relationships do you recover your fee first from debtors' payments, does the creditor recover first, or is there a mixture?</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.8	<p>Do you believe that an "upfront fee" - payable by the creditor to the enforcement agent (before enforcement begins), and recoverable from the debtor only upon successful enforcement - would be beneficial to the industry? Please explain:</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.9	<p>If applied, which activities should be covered by the "upfront fee"? What minimum level of enforcement services should the enforcement agent be obliged to perform in return for an "upfront fee"?</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.10	<p>How frequently are you provided with incorrect debtor details by the creditor? Please estimate based on a percentage of all warrants.</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.11	<p>In your opinion is provision of incorrect debtor details by creditors a particular problem that needs to be addressed?</p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>										
4.12	<p>Please estimate the percentage of successful enforcements:</p> <table style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 60%;">When creditor supplies <b>correct</b> (address) details</td> <td style="width: 5%; text-align: center;">%</td> <td style="width: 35%; text-align: center;"> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </td> </tr> <tr> <td>When creditor supplies <b>incorrect</b> (address) details</td> <td></td> <td style="text-align: center;"> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </td> </tr> </table> <div style="margin-top: 20px;"> <p><b>Additional Information provided by:</b></p> <p>Name: <div style="border: 1px solid black; width: 50px; height: 20px; display: inline-block;"></div></p> <p>Position: <div style="border: 1px solid black; width: 50px; height: 20px; display: inline-block;"></div></p> <p>Email: <div style="border: 1px solid black; width: 50px; height: 20px; display: inline-block;"></div></p> <p>Telephone: <div style="border: 1px solid black; width: 50px; height: 20px; display: inline-block;"></div></p> </div>	When creditor supplies <b>correct</b> (address) details	%	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>	When creditor supplies <b>incorrect</b> (address) details		<div style="border: 1px solid black; height: 20px; width: 100%;"></div>				
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<div style="border: 1px solid black; background-color: yellow; padding: 2px; margin: 5px 0;">Where you are unable to provide the exact information requested, please provide an estimate and explain</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px; margin: 5px 0;">Please remember that all information supplied will be treated confidentially as described in the worksheet</div>											

5. ACCOUNTING INFORMATION																																																		
<p>Please provide management accounts, including balance sheet &amp; P&amp;L data, for the last two completed financial years. Please provide cost and revenue information at the greatest level of disaggregation at which you record them (but which can be sensibly interpreted).</p> <p>The preferred format for this information would be in an Excel file, however, please provide the information in whichever form you are able (including hard copy, where only this is appropriate). An electronic copy of the information would greatly assist the process of analysis.</p> <p>Please note that management accounting information will be verified by reconciliation to published statutory accounts. Please be prepared to supply details of any reconciling items that will be necessary in order to produce this reconciliation.</p>																																																		
<p>If you do not regularly keep detailed accounting records, such as management accounts, containing the information requested above, please use the following sheet "3b. Accounting Information Template" to assist you to provide us with the key information, or estimates where necessary.</p>																																																		
5.1	<p>Please list the key assets (IT, Motor Vehicles, Fixtures &amp; Fittings etc.) used in your business along with the following details:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="text-align: left;">Asset</th> <th style="text-align: left;">Year of Purchase</th> <th style="text-align: left;">Purchase Price</th> <th style="text-align: left;">Depreciation Policy</th> <th style="text-align: left;">Depreciation Rate</th> <th style="text-align: left;">Book Value</th> <th style="text-align: left;">Comments?</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> <p style="font-size: small; margin-top: 10px;">For categories of fixed assets where you have a large number of individual assets (e.g. motor vehicles), please enter values for year of purchase and depreciation that are typical for the whole asset class, and purchase price and book value which represent the total for the asset class.</p> <p style="font-size: small;">Please insert new rows in the above table if you have more key fixed assets. If you will find it easier please supply your fixed asset register.</p>	Asset	Year of Purchase	Purchase Price	Depreciation Policy	Depreciation Rate	Book Value	Comments?																																										
Asset	Year of Purchase	Purchase Price	Depreciation Policy	Depreciation Rate	Book Value	Comments?																																												
5.2	<p>Do you have any significant planned fixed asset investments? Please describe the assets, anticipated costs and reasons for investment:</p> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>																																																	
5.3	<p>Please provide details of any outstanding loans:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="text-align: left;">Start year of loan</th> <th style="text-align: left;">Original amount</th> <th style="text-align: left;">Interest Rate</th> <th style="text-align: left;">Amount outstanding</th> <th style="text-align: left;">Repayment year</th> <th style="text-align: left;">Comments?</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> <p style="font-size: small; margin-top: 10px;">Please insert new rows in the above table if you have more outstanding loans</p>	Start year of loan	Original amount	Interest Rate	Amount outstanding	Repayment year	Comments?																																											
Start year of loan	Original amount	Interest Rate	Amount outstanding	Repayment year	Comments?																																													
5.4	<p>If you have recently (within the last 12 months) applied for new loans, what rate of interest have you been offered?</p> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>																																																	
5.5	<p>What is the current financial gearing (debt:equity ratio) for the company? Where holding companies are used for financing purposes, please specify the group debt:equity ratio.</p> <table style="width: 100%; margin-top: 10px;"> <thead> <tr> <th></th> <th style="text-align: center;">Company %</th> <th style="text-align: center;">Whole group %</th> </tr> </thead> <tbody> <tr> <td>Debt</td> <td style="border: 1px solid black; width: 100px;"></td> <td style="border: 1px solid black; width: 100px;"></td> </tr> <tr> <td>Equity</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> </tbody> </table>		Company %	Whole group %	Debt			Equity																																										
	Company %	Whole group %																																																
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5.6	<p>What is your target financial gearing (debt:equity ratio) for the forthcoming 5 years? Where holding companies are used for financing purposes, please specify the group debt:equity ratio.</p> <table style="width: 100%; margin-top: 10px;"> <thead> <tr> <th></th> <th style="text-align: center;">Company %</th> <th style="text-align: center;">Whole group %</th> </tr> </thead> <tbody> <tr> <td>Debt</td> <td style="border: 1px solid black; width: 100px;"></td> <td style="border: 1px solid black; width: 100px;"></td> </tr> <tr> <td>Equity</td> <td style="border: 1px solid black;"></td> <td style="border: 1px solid black;"></td> </tr> </tbody> </table> <div style="margin-top: 20px;"> <p><b>Additional Information provided by:</b></p> <table style="width: 100%;"> <tr> <td style="width: 60%;">Name:</td> <td style="border: 1px solid black; width: 40%;"></td> </tr> <tr> <td>Position:</td> <td style="border: 1px solid black;"></td> </tr> <tr> <td>Email:</td> <td style="border: 1px solid black;"></td> </tr> <tr> <td>Telephone:</td> <td style="border: 1px solid black;"></td> </tr> </table> </div>		Company %	Whole group %	Debt			Equity			Name:		Position:		Email:		Telephone:																																	
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<div style="border: 1px solid black; background-color: #ffffcc; padding: 5px; margin: 10px auto; width: 80%;">Where you are unable to provide the exact information requested, please provide an estimate and explain your reasoning</div> <div style="border: 1px solid black; background-color: #ffffcc; padding: 5px; margin-top: 10px; width: 80%;">Please remember that all information supplied will be treated confidentially as described in the worksheet "Confidentiality"</div>																																																		

5b. ACCOUNTING INFORMATION TEMPLATE									
<p>Please only complete the following template if you are not able to provide the detailed accounting information, such as management accounts, requested in sheet "3. Accounting Information".</p> <p>Please provide data for the last two completed financial years, indicating the year end dates at the top of the template.</p> <p>Please complete as many of the cells as you can using estimates where necessary, and briefly explain the basis of these estimates in the comments boxes provided.</p>									
Financial year ended:			Comments				Comments		
Profit & Loss									
Turnover		£	£	£	£	£	£	£	£
(If you are unable to split turnover by debt type, as requested, please just enter a value for total turnover)									
		Writs of Fi Fa				Writs of possession			
		Other high court writs				County court judgments (as Fi Fas)			
		Magistrates court fines and penalties				National taxes & duties			
		Council tax				Non-domestic rates			
		Road Traffic Act penalties				Maintenance & Child support			
		Rent recovery				Other debt types (please specify)			
		<b>Total</b>				<b>Total</b>			
Cost of Sales									
		Bailiffs (total salary, bonus, expenses etc.)				Removal, storage & transport costs			
		Defendant refunds				Credit card and bank charges			
		Other costs of sales (please specify)				<b>Total</b>			
Gross Profit/ (Loss)									
Administrative Expenses									
		Directors fees (total salary, bonus, expenses etc.)				Admin staff costs- collection			
		Admin staff costs - other				Office costs (inc. heat & light, printing postage & stationery)			
		Operating leases (equipment)				Vehicle costs			
		Legal & professional				Insurance			
		Depreciation				Other admin expenses/ indirect costs (please specify)			
Operating Profit/ (Loss)									
		Exceptional income/ (costs)							
Profit/ (Loss) on ordinary activities before interest and tax									
		Interest payable				Interest receivable			
Profit/ (Loss) on ordinary activities before tax									
Tax									
Profit/ (Loss) for the year									

Balance Sheet									
Fixed Assets		£	£	£	£	£	£	£	£
		Land & Buildings				Computer equipment			
		Fixtures, fittings & equipment				Motor vehicles			
		Other fixed assets (please specify)							
Current Assets									
		Cash at bank and in hand				Trade debtors			
		Prepayments & Accrued income				Other debtors (please specify)			
Creditors (falling due within 1 year)									
		Trade creditors				Bank loans and overdrafts			
		Corporation tax				Other creditors (please specify)			
Net current assets									
Creditors (falling due after more than 1 year)									
		Bank loans				Other creditors (please specify)			
Net assets									
Capital & Reserves									
		Called up share capital				Share premium account			
		Other reserves				Profit & Loss account			
Shareholders funds									

<b>6. ENFORCEMENT ACTIVITIES (INSTRUCTIONS)</b>
<p>The list of activities which is shown on the following page represents what we understand to be the full list of activities which may take place during any enforcement. If this list is incomplete please amend it by inserting new rows where required and entering information relating to those activities.</p> <p><b>Debt type</b>          It is anticipated that the activity list, and the details that you will provide to support them, will represent <b>all</b> different types of enforcement activity (i.e all debt streams). If however you believe that the activities, or the details relating to them, are significantly different for different types of debt stream please provide a separate copy of the activity list and details for each type of debt stream. You may provide separate copies by copying the "Enforcement Activities (1)" worksheet and renaming it "Enforcement Activities (2)" etc. for each debt stream reported separately. At the top of each sheet please list the debt stream activities covered by the current sheet, using the drop down lists.</p> <p><b>Necessary Activities</b>          Activities listed in bold represent those activities which we believe must take place in <b>every</b> enforcement case regardless of its success or failure, and regardless of what particular form enforcement takes. Please amend the current list, by enboldening or disenboldening the relevant activities to indicate which are necessary regardless of success or failure of enforcement, and regardless of the nature of enforcement.</p> <p><b>Stage</b>          We have provisionally divided the enforcement process into various 'stages'. Please make any amendments to these stage divisions where you believe that the various activities may be grouped together more appropriately.</p> <p><b>Activity inserted?</b>          In each row where you have made an amendment to the activity list, such as to add a new activity to the list, please mark column A with an 'X'.</p> <p><b>Instances per 100 warrants</b>          Please estimate for what percentage of warrants the listed activity takes place as part of the enforcement process. For those emboldened activities which take place for every warrant the entry in this column should be 100.</p> <p><b>% Admin staff time</b>          Please estimate the percentage of admin staff time that is spent dealing with the activity listed.</p> <p><b>Admin staff time per incidence</b>          Please estimate the amount of time that admin staff spend completing the listed activity for each incidence. If the amount of time can vary please provide a range estimate.</p> <p><b>% Bailiff time</b>          Please estimate the percentage of bailiff time that is spent dealing with the activity listed.</p> <p><b>Bailiff time per incidence</b>          Please estimate the amount of time that bailiffs spend completing the listed activity for each incidence. If the amount of time can vary please provide a range estimate.</p> <p><b>% Owned vehicle time</b>          If you use vehicles that you own to carry out the activity please estimate the percentage (of total time in use) that your owned vehicles spend engaged in this activity.</p> <p><b>Owned vehicle time per incidence</b>          If you use a vehicle that you own to carry out the activity please estimate the amount of time needed to carry out each incidence of the activity listed. If the amount of time can vary please provide a range estimate.</p> <p><b>3rd party costs: Nature</b>          If you incur 3rd party costs in carrying out the activity (e.g. vehicle hire, auctioneer's fees) please list what these are.</p> <p><b>3rd party costs: Cost per incidence</b>          If you incur 3rd party costs in carrying out the activity, please estimate the cost per incidence. If the cost can vary please provide a range estimate.</p> <p><b>Sources of information</b>          Where possible your estimates should be linked to underlying data or records. However, where data is not recorded at a sufficient level of detail to allow such interrogation you may generate these estimates using other appropriate and supportable methods. Please indicate in the <b>Sources of information</b> box, how the various estimates have been obtained.</p> <p><b>Primary cost driver</b>          Please list the factor that you believe is most critical to determining the actual cost to you of completing the activity. This will normally relate to the most costly input factor for performing the activity. Examples of cost drivers may be "Bailiff time" where the activity is carried out by the bailiff with little other support, "Size of debt" where larger debts cause the cost of carrying out the activity to rise significantly, or "Mileage" where vehicle/ transport costs are the main cost of the activity.          Cost drivers may include factors that cause activities to be more time consuming or difficult to complete.</p> <p><b>Other cost drivers</b>          Where you believe that there are other very important determinants of the total cost of carrying out the activity which are not captured by the "Primary cost driver" listed, please list these other cost drivers in descending order of importance.</p>

7. ENFORCEMENT ACTIVITIES															
The following activity list and its contents represents enforcement of the following debt types: Please select from drop-down lists															
7.1 Enforcement activities															
Activity/ row Amended?	Stage	Activity	Incidences per 100 warrants	% Admin staff time	Admin staff time per incidence	% Bailiff time	Bailiff time per incidence	% Owned vehicle time	Owned vehicle time per incidence	3rd party costs: Nature	3rd party costs: Cost per incidence	Primary cost driver	Other cost drivers	Fee chargeable under current fee scale	Comments?
	Case set-up	Receive instructions from client													
	Case set-up	Set up a case file													
	Case set-up	Input of case record into NICE system													
	Case set-up	Other administrative processing (i.e. link to existing cases)													
	Initial investigation	Confirm debtor details (address/ company searches)													
	Initial investigation	Produce status report (probability of debt recovery)													
	Initial investigation	Insolvency report													
	Initial actions	Send out first letter to advise debtor that enforcement has begun													
	Initial actions	Telephone call to advise debtor that enforcement has begun													
	Initial actions	Attend premises - first visit													
	Repayment options	Discuss repayment options with debtor													
	Repayment options	Set up payment by instalments plan													
	Repayment options	Administer payment by instalments plan													
	Repayment options	Receive repayment by credit card													
	Repayment options	Receive repayment by cheque													
	Repayment options	Sending letter to advise of failure of repayment method													
	Subsequent actions	Out of hours attendance													
	Subsequent actions	Status update letter sent to creditor													
	Subsequent actions	All subsequent attendances													
	Subsequent actions	Attendance with a view to remove goods but not removing													
	Subsequent actions	Levying goods													
	Subsequent actions	Walking possession of goods													
	Subsequent actions	Clamping vehicle													
	Subsequent actions	De-clamping vehicle													
	Subsequent actions	Close possession of goods													
	Subsequent actions	Seizure of goods													
	Subsequent actions	Removal/ transport of goods													
	Sale of goods	Valuation of goods													
	Sale of goods	Sale held at debtors premises													
	Sale of goods	Sale held at site other than debtors premises													
	Sale of goods	Pre-auction activities (i.e. advertising auction)													
	Sale of goods	Transport of goods to place of sale													
	Sale of goods	Auction activities (i.e. attendance of auctioneer)													
	Abandoned Sale	Processing disputed ownership claims													
	Abandoned Sale	Return of seized goods													
	Case closure	Administration relating to case completion													
	Case closure	Return of warrants													
Total				0%		0%		0%							
Please provide some anonymised examples of bailiffs checklists completed during attendance at debtor's premises. If possible, please provide these covering all or as many of the above listed activities as possible															
7.2 Sources of information															
Additional Information provided by:															
Name:															
Position:															
Email:															
Telephone:															
Where you are unable to provide the exact information requested, please provide an estimate and explain your reasoning															
Please remember that all information supplied will be treated confidentially as described in the worksheet "Confidentiality"															

8. ENFORCEMENT INFORMATION

8.1 Please provide an estimate for the percentage of warrants that are successfully enforced at each stage of the enforcement process:

At each stage of the enforcement process, as listed below, please estimate the percentage of cases where repayment arrangements are successfully achieved at that stage. So, for example if 10% of debtors make arrangements after receiving the first letter, please enter 10% alongside "First Letter", if a **further** 5% make arrangements following subsequent letters please enter 5% alongside "Subsequent Letters". The balancing figure to cover 100% of warrants issued should relate to warrants not successfully enforced. Please enter these estimates for all debt types that you enforce - you may estimate the same probabilities for different debt types.

Your estimates should related to the last complete financial year for which you have records.

Type of debt	High court warrants			County court judgments (as Fi Fas)	Magistrates court fines	National taxes and duties	Council tax	Non-domestic rates	Road Traffic Act	Maintenance and Child support	Domestic rent recovery	Commercial rent recovery	Comments
	% Successfully enforced at this stage			% Successfully enforced at this stage	% Successfully enforced at this stage	% Successfully enforced at this stage	% Successfully enforced at this stage	% Successfully enforced at this stage	% Successfully enforced at this stage	% Successfully enforced at this stage	% Successfully enforced at this stage		
	Writs of Fi Fa	Writs of possession	Other high court writs										
First Letter													
Subsequent Letters													
First Visit													
Second Visit													
Third Visit													
Subsequent Visits													
Phone call to collect													
Levy of goods													
Attendance to remove													
Sale of goods													
Not successfully enforced:													
Returned as absconded/ gone away													
Returned by client request/ guidelines/ sent in error													
Total	0%	0%	0%										

8.2 For each debt type enforced please provide the following information/ estimates in relation to the last complete financial year:

Type of debt	High court warrants			County court judgments (as Fi Fas)	Magistrates court fines	National taxes and duties	Council tax	Non-domestic rates	Road Traffic Act	Maintenance and Child support	Domestic rent recovery	Commercial rent recovery	Total	Comments?
	Writs of Fi Fa	Writs of possession	Other high court writs											
Number of warrants received													0	
Average level of debt covered by each warrant													0	
Total debt covered by warrants														
Number of warrants where some repayment achieved													0	
Average repayment (debt + fees) achieved where some achieved													0	
Total repayment achieved														
Average fees charged to debtor														
Average fees charged to creditor													0	



8.3	Please indicate the source of the above information/ estimates.	
8.4	What factors affect the probability of successfully enforcing the debt at each stage of the process? For example, information provided by creditor, size of debt. Please explain.	
8.5	How many visits would you generally attempt before deciding to return a warrant as unenforced? Does this differ by type or size of debt?	
8.6	How do you make the decision to cease collection activities and to return a warrant unenforced?	
8.7	Do you currently charge any "return fees" to creditors for warrants where enforcement is not successful? In what circumstances and how frequently are these charged?	
8.8	At what level are "return fees" set, and how is this level determined?	
8.9	Would you support an increased role for "return fees" within a new fee structure, whereby creditors pay some fee regardless of success of enforcement? Please comment:	
8.10	How many enforcement agents attend a typical debtor visit? If the number sometimes varies please explain how often and why?	
8.11	Are you currently in the practice of producing initial reports for creditors indicating the probability of successfully enforcing their debt? If so, how often (for what percentage of warrants) do you provide these reports?	
8.12	What work is required in order to produce an initial report - which of the enforcement activities previously listed are performed, and how many checks, letters or visits are performed?	
8.13	Where initial reports are produced, how accurate are the predicted enforcement probabilities? How do actual enforcement rates compare to those predicted in initial reports?	
8.14	How and when in the enforcement process do you determine whether the creditor has supplied a correct address for the debtor?	
8.15	What costs are incurred in checking that the creditor has supplied a correct address for the debtor?	
8.16	In a typical enforcement process, how many times, on average, will enforcement agents attend a premises: but be unable, for whatever reason, to make contact with the debtor: but be refused entry by the debtor and therefore unable to undertake any further activities:	
		<b>Additional Information provided by:</b> Name: <input type="text"/> Position: <input type="text"/> Email: <input type="text"/> Telephone: <input type="text"/>
Where you are unable to provide the exact information requested, please provide an estimate and explain your reasoning		
Please remember that all information supplied will be treated confidentially as described in the worksheet "Confidentiality"		

9. CURRENT FEES															
Please complete the following table with reference to the last completed financial year for which you hold records. For each of the following types of debt stream that you enforce, please state (estimate where necessary) how frequently each of the various fees was charged, and at what level charges and recovered charges were in total:															
		High court warrants			County court judgments (as Fi Fas)	Magistrate court fines	National taxes and duties	Council tax	Non-domestic rates	Road Traffic Act	Maintenance and child support	Domestic rent recovery	Commercial rent recovery	Other (Please specify)	Comments?
	Number of enforcement cases	Writs of Fi Fa	Writs of possession	Other high court writs											
Letter to debtor	# times fee charged														
	Total fees charged														
	Total fees recovered														
Visit	# visits made														
Visit fee	# times fee charged														
	Total fees charged														
	Total fees recovered														
Levying distress	# times fee charged														
	Total fees charged														
	Total fees recovered														
Walking possession	# times fee charged														
	Total fees charged														
	Total fees recovered														
Closed possession	# times fee charged														
	Total fees charged														
	Total fees recovered														
Attendance with vehicle	# times fee charged														
	Total fees charged														
	Total fees recovered														
Transport of removed goods	# times fee charged														
	Total fees charged														
	Total fees recovered														
Storage of removed goods	# times fee charged														
	Total fees charged														
	Total fees recovered														
Valuation of goods	# times fee charged														
	Total fees charged														
	Total fees recovered														
Sale	# on debtors premises														
	# on other premises														
Sale of goods	# times fee charged														
	Total fees charged														
	Total fees recovered														
Charges where sales do not take place	# times fee charged														
	Total fees charged														
	Total fees recovered														
Return fees	# times fee charged														
	Total fees charged														
	Total fees recovered														
Other fees charged (e.g. Schedule 12) (Please specify nature of fee)	# times fee charged														
	Total fees charged														
Add new rows where necessary	Total fees recovered														
Other fees (Please specify nature of fee)	# times fee charged														
	Total fees charged														
Add new rows where necessary	Total fees recovered														

For all types of warrant that you enforce, please provide a representative sample of contracts held between you and the creditors on whose behalf you enforce warrants. Where confidentiality requires, please anonymise the contract by removing direct references to the creditor's name.

If you are unable to provide any contract documents, please summarise the typical clauses that are contained in your contracts with creditors, with particular reference to:

- Fees chargeable to the debtor
- Any fees payable by the creditor
- Any requirements to perform a minimum/ maximum set, or number, of activities
  - Guidance for when a warrant should be returned as unenforced
- Details of what information the creditor requires you to supply throughout the process
  - Any other clauses commonly included in your contracts with debtors

Additional Information provided by:

Name:

Position:

Email:

Telephone:


Where you are unable to provide the exact information requested, please provide an estimate and explain your reasoning

Please remember that all information supplied will be treated confidentially as described in the worksheet "Confidentiality"

10. COST INFORMATION									
10.1	Does enforcement of larger debts incur greater costs?								
10.2	If answer to 10.1 is yes, at what size of debt do costs begin to rise as a result of the size of the debt?								
10.3	If answer to 10.1 is yes, what is the nature of the additional costs incurred on larger size debts, and what is the relationship between debt size and level of costs?								
10.4	When enforcing multiple warrants on the same individual are costs incurred at the same level as when enforcing a single warrant on one individual? If not, which costs are incurred at a greater level?								
10.5	Do you currently implement payment by instalment plans?								
10.6	If answer to 10.5 is yes, what costs are incurred in implementing such plans? Are these costs related to the size of the debt?								
10.7	If answer to 10.5 is yes, what other factors increase the cost of implementing a payment by instalment plan?								
10.8	How frequently do you deal with "bulk issue" creditors?								
10.9	If you deal with "bulk issue" creditors, please explain how the costs involved differ when dealing with this type of creditor.								
If the information requested in questions 10.10 - 10.15 has already been provided in your detailed accounting submissions (management accounts) for section "5. Accounting Information", please ignore questions 10.10 - 10.15									
10.10	How many <u>enforcement agents</u> (FTE) do you employ/ engage?								
		<b>Employed</b>		<b>Contracted/ Self-employed</b>		<b>Other basis</b>	<i>Please explain</i>		
	London								
	Regions								
	<b>Total</b>	0		0		0			
10.11	What is the average annual cost of an <u>enforcement agent</u> ?								
		<b>Employed</b>		<b>Contracted/ Self-employed</b>		<b>Other basis</b>			
	<b>London</b>	Basic		Basic		Basic			
		N.I		Commissions		Commissions			
		Commissions		Bonuses		Bonuses			
		Bonuses		Expenses (& any other costs)		Expenses (& any other costs)			
	<b>Regions</b>	Basic		Basic		Basic			
		N.I		Commissions		Commissions			
		Commissions		Bonuses		Bonuses			
		Bonuses		Expenses (& any other costs)		Expenses (& any other costs)			
10.12	How many <u>administrative staff</u> (FTE) do you employ/ engage?								
		<b>Employed</b>		<b>Contracted/ Self-employed</b>		<b>Other basis</b>	<i>Please explain</i>		
	<b>Collection Administration</b> (including all activities directly connected to the warrant or order)	London							
		Regions							
		<b>Total</b>	0		0		0		
	<b>Other Administrative Staff</b>	London							
		Regions							
		<b>Total</b>	0		0		0		
10.13	What is the average annual cost of <u>administrative staff</u> employed/ engaged?								
		<b>Employed</b>		<b>Contracted/ Self-employed</b>		<b>Other basis</b>	<i>Please explain</i>		
	<b>Collection Administration</b> (including all activities directly connected to the warrant or order)	Basic		Basic		Basic			
		N.I		Commissions		Commissions			
		Commissions		Bonuses		Bonuses			
		Bonuses		Expenses (& any other costs)		Expenses (& any other costs)			
	<b>Other Administrative Staff</b>	Basic		Basic		Basic			
		N.I		Commissions		Commissions			
		Commissions		Bonuses		Bonuses			
		Bonuses		Expenses (& any other costs)		Expenses (& any other costs)			
10.14	How many <u>other staff</u> (not covered by enforcement agents or administrative staff details provided above) do you employ/ engage?								
		<b>Employed</b>		<b>Contracted/ Self-employed</b>		<b>Other basis</b>	<i>Please explain</i>		
	London								
	Regions								
	<b>Total</b>	0		0		0			
10.15	What is the average annual cost of <u>other staff</u> employed/ engaged?								
		<b>Employed</b>		<b>Contracted/ Self-employed</b>		<b>Other basis</b>			
	<b>London</b>	Basic		Basic		Basic			
		N.I		Commissions		Commissions			
		Commissions		Bonuses		Bonuses			
		Bonuses		Expenses (& any other costs)		Expenses (& any other costs)			
	<b>Regions</b>	Basic		Basic		Basic			
		N.I		Commissions		Commissions			
		Commissions		Bonuses		Bonuses			
		Bonuses		Expenses (& any other costs)		Expenses (& any other costs)			
10.16	Please describe the nature and size of any one-off start-up costs that you incurred when you set up your business, but do not incur on a recurring basis:								
									Additional Information provided by:
									Name:
									Position:
									Email:
									Telephone:
Where you are unable to provide the exact information requested, please provide an estimate and explain your reasoning									
Please remember that all information supplied will be treated confidentially as described in the worksheet "Confidentiality"									

### 11. OVERHEAD COSTS

Please identify any other specific overhead costs, such as training, HR, or office costs, not previously listed in section 3 (Enforcement Activities) or section 6 (Cost Information):

Type of cost	Reason for incurring cost	Annual cost	P&L line item where cost included

*Please insert more rows where required*

*Please provide the annual cost information in relation to the last complete financial year for which records are held.*

**Additional Information provided by:**

Name:	
Position:	
Email:	
Telephone:	

Where you are unable to provide the exact information requested, please provide an estimate and explain your reasoning

Please remember that all information supplied will be treated confidentially as described in the worksheet "Confidentiality"

## 12. ANY OTHER INFORMATION

Please use the space below to record any other information or comments that you believe may be useful for HMCS' Review of Enforcement Agent Fees. Please also provide any other information that you believe could usefully inform the review, by attaching it to this response in whatever format is appropriate.

**Additional Information provided by:**

Name:   
Position:   
Email:   
Telephone:

Where you are unable to provide the exact information requested, please provide an estimate

Please remember that all information supplied will be treated confidentially as described in the

## Appendix 6: Enforcement Industry Association Membership Lists

Association	ACEA Association of Civil Enforcement Agents	ESA Enforcement Services Association	HCEOA High Court Enforcement Officers Association
<b>Full Members</b>		1st Class Bailiffs Limited	Nicholas Alexander Mid-West Enforcement
Alexanders Limited		B & S Bailiff Services	Michael Anderson High Court Enforcement Group Limited
Andrew James Enforcement Limited		Birchalls Limited	John Arnold High Court Enforcement Group Limited
Birchalls Limited		Bristow & Sutor	David Asker Sherforce
CCS Enforcement Services Limited		CAM-Collections	Penelope Bache Marston Group Limited
Collect Services Limited		Chandlers Ltd	Helen Baitson Gilbert-Baitson
Dukes Bailiffs Limited		DKB Collections Ltd	Michael Baitson Gilbert-Baitson
Equita Limited		Dorman & Co (Certificated Bailiffs) Ltd	Simon Barnett High Court Enforcement Group Limited
JBW Enforcement Limited		Dukes Bailiffs Ltd	Gary Bovan C N Gaunt & Son
Marston Group Limited		Equita Limited	David Bowen Victoria Chambers
MC2 Debt Recovery		Excel Civil Enforcement Limited	Andrew Bradley C W Harrison & Son
NBS (Northern) Limited		Goodwillie & Corcoran	Richard Bullock High Court Enforcement Group Limited
Newlyn Plc		Grosvenor Legal Services Limited	Malcolm Butler Marston Group Limited
Philips Collection Services		Howes Bailiffs Ltd	Bryan Constant High Court Enforcement Office
Phoenix		JBW Enforcement Ltd	Malcolm Davies Elliot Davies (Sheriffs) Limited
Ross & Roberts Limited		L & L Commercials Ltd	Derek Dean High Court Enforcement Group Limited
<b>Associate Members</b>		M A Julious Co Ltd	Paul Dean High Court Enforcement Group Limited
Chandlers Limited		Philips Collection Services Ltd	Gordon Dean High Court Enforcement Group Limited
Constant & Co.		Regional Collection Services	Andrew Duncan High Court Enforcement Group Limited
Davies Enforcement Limited		Ross & Roberts Ltd	Angela Egmores High Court Enforcement Group Limited
DKB Collections Limited		Rossendales Ltd	Philip Evans High Court Enforcement Group Limited
Empire Enforcement Limited		Rundle & Co Ltd	Andrew Ewart-James Mid-West Enforcement
Greater London Bailiff Company		S R Walker & Co Ltd	Patrick Farrington High Court Enforcement Group Limited
Lawson MacLaine Limited		Southern Independent Auctions Ltd	Kathleen Fellows Storey & Fellows
Newbolds		Swift Credit Services Ltd	Hugh Fitzgerald High Court Enforcement Group Limited
Penham Excel Limited		Whyte & Co	Jonathan Gater High Court Enforcement Group Limited
Smith Certificated Bailiffs			Richard Griffiths High Court Enforcement Group Limited
Stanford and Green Limited			Brain Hall MEA Enforcement
Task Enforcement Limited			John Hargrove Sherforce
			Charles Harrison C W Harrison & Son
			Karl Harrison C W Harrison & Son
			John Hathaway
			Charles Henty
			Nigel Horner High Court Enforcement Group Limited
			Michael Jackson Marston Group Limited
			John James High Court Enforcement Group Limited
			Anthony Jenkins
			Michael Kimber High Court Enforcement Group Limited
			John Laing C N Gaunt & Son
			Stephen Lambert C W Harrison & Son
			Martin Leyshon High Court Enforcement Group Limited
			John Marston Marston Group Limited
			David Mason High Court Enforcement Group Limited
			Ian Morgan Marston Group Limited
			Nigel Pepper High Court Enforcement Group Limited
			Philip Reed Cornwall High Court Enforcement
			Claire Sandbrook Sherforce
			Timothy Sills MEA Enforcement
			Alan Smith Marston Group Limited
			Norman Southern High Court Enforcement Group Limited
			Martin Stephens
			Wilfred Storey Storey & Fellows
			Carole Tacagni Marston Group Limited
			Patricia Thomson Andrew Wilson & Co
			Nicholas Todd
			Peter Tunstill Marston Group Limited
			Edward Vann High Court Enforcement Group Limited
			Peter Watt Sheriffs High Court Enforcement
			Frank Whitworth
			James Williams Marston Group Limited
			Andrew Wilson Andrew Wilson & Co

## Appendix 7: Composition of Fees Working Groups

Non-High Court Fees Working Group			High Court Fees Working Group		
Name	Company	Industry Body/ies	Name	Company	Industry Body/ies
Adrian Bates	Equita Limited	ACEA, ESA	Gareth Hughes	Marston Group Limited	HCEOA
Steve Everson		ACEA (Director General)	Martin Leyshon	High Court Enforcement Group	HCEOA (Vice President)
Julie Green Jones	Rossendales	ESA (President)	Vernon Phillips		HCEOA (Chief Executive)
Gareth Hughes	Marston Group Limited	ACEA,	Claire Sandbrook	Sherforce	HCEOA (President)
Simon Jacob	Jacobs	ESA (Vice President)	Alan Smith	Sherforce	HCEOA
Colin Naylor	Dukes Bailiffs Limited	ACEA, ESA	Mark Smith	Sherforce	
Vernon Phillips		ACEA	Jim Walker	Northern Sheriffs	
Mike Shang	Rossendales	ESA	Andrew Wilson	Northern Sheriffs	HCEOA
Paul Sharpe	Equita	ACEA			
			Christine Sharples - Ministry of Justice		
			Alex Dehayen - Vemos Consulting		



## Appendix 8: Examples of RFI Responses

### Views on Current Fee Structure

#### Level of clarity

- “The current structures vary between debt-types leaving debtors and their advisors confused as to what may and may not be charged. They also do not take into account the current overhead costs, particularly in light of IT that is now required to fulfil the majority of client requirements. The funding for such investments only comes from those that pay and will vary on the success levels of each debt-type that is achievable.” (ACEA)
- “The present Fee Structures are confusing to the public and the terminology used is not generally understood. The fee scales are unclear and it is not always apparent to the debtor as to why he or she is being charged a particular amount.” (ESA)
- “With over 15 different types of Fee Structure and different charges made for different steps in the process there is no consistency even though essentially the job of enforcing any money judgment is the same. This is an opportunity for the fees charged for Enforcement Officers to be rationalised.” (HCEOA)
- “The current Fee Structures are ambiguous and confusing to the point that ACEA and ESA have on occasion employed barristers to try to make sense of them.” (Enforcement Agency)
- “The current Fee Structure can be confusing to the public and the terminology in use is not readily understood for example walking possession and close possession charges, levy fees, poundage fees etc.” (Enforcement Agency)
- “Most fee scales provide for reasonable fees to be charged....there is no indication of how such fees are calculated and the debtor has no means of knowing if the charge is reasonable or not.” (Enforcement Agency)
- “The [current] schedules are based on charging per Enforcement action, many of which are not easy to independently evidence...This provides an inherent economic incentive for contractors to proceed to the end of the Enforcement process, rather than to conclude at the earliest possible stage.” (Enforcement Agency)
- “There is nothing wrong with the current structure. It is the deliberate misinterpretation of the regulations by some bailiff companies that is the problem.” (Enforcement Agency)

#### Fairness in rewarding Enforcement agents

- “Many of the requirements/ guidelines for the Enforcement agent laid down by the client do not produce fee income, and the current Fee Structures are, therefore, promoting the fast-tracking of Enforcement actions to the later stages to maximise bailiff costs. There is no incentive or viable Fee Structure at the initial stage to allow Enforcement agents to financially survive.” (ACEA)
- “The fees do not reward the bailiff for the considerable amount of work involved in administering cases. With certain exceptions no provision is made for fees to cover tasks

such as receiving instructions and setting up the case file, sending initial letters, monitoring and administering agreements and instalment plans, reminder letters, telephone calls, fees for bounced cheques, etc.” (ESA)

- “There are two current practices which will tend to encourage the less scrupulous to abuse the system. The first of these is the tendency for clients to insist on a ‘nil cost’ service or, in some instances, even expect payment from the bailiff for carrying out the work. These may tend to encourage the less scrupulous to try to recover the shortfall through the fee system. The second problem, and one the ESA has been concerned with over many years, is the failure by successive governments to carry out regular reviews of fees resulting in their value being eroded in real terms. Whilst the level of fees does not increase, bailiffs’ overheads continue to do so, resulting in financial pressure which the less scrupulous might tend to try and alleviate through inappropriate fees.” (ESA)
- “Despite introducing the Regulations in 2004, the “matters” for which High Court Enforcement Officers could charge was not reviewed except that under Part 3 of the Regulations a discretionary element was provided for through “Item 12” to allow HCEOs to make a charge for any matter not charged for elsewhere in the Fee Structure. It is by using this fee that HCEOs can pass on the true cost of enforcing judgments which in turn can be subject to detailed assessment by the Court under CPR Part 47.” (HCEOA)
- “The fee scales do not reward the bailiff for all other work associated with administering a case. For example, receiving instructions, setting up a case file, sending an initial letter to the debtor (except for parking penalties), setting up instalment plans, monitoring agreements, Writing reminder letters, telephone calls, fees incurred for bounced cheques etc.” (Enforcement Agency)
- “The main unfairness of the Fee Structure is that the majority of debts are irrecoverable and bailiffs receive no remuneration for all the work undertaken in attempting to recover them. Further unfairness arises because of all the work we have to carry out for which we are not permitted to charge – administering payment arrangements, dealing with “bounced cheques”, Writing letters and making phone calls, to name a few.” (Enforcement Agency)
- “Non chargeable actions range from the setting up, administration through management of the account, monitoring of arrangements to tracing and reporting. Any new Fee Structure must recognise and allow charges to be levied to cover the full range of activities undertaken.” (Enforcement Agent)
- “The more effective a contractor is at delivering early-stage collections, the more its profits reduce – as these are recoveries that would otherwise have been recovered at much higher fees following attendance by an officer at the address.” (Enforcement Agency)
- “...the system adopted by the HMCS contract has a degree of sensibility and fairness.” (Enforcement Agency)

### Nature of alleged abuses

- “Sending letters claiming that the Enforcement agent has made visits when no visit has been made and adding charges for such visits”. (Enforcement Agency)
- “Charging a fee for attending to remove goods in respect of Council Tax and NRD debts where no levy has been made”. (Enforcement Agency)

- “The fees where the values are not specified (where it states “Reasonable”), are prone to abuse by unscrupulous Enforcement agents, especially where the creditor has no interest or does not check/ monitor the level of fees being charged by their contractor.” (Enforcement Agency)
- “Based on 32 years relevant experience – 16 as a local authority revenues officer...and 16 working at a senior level within the bailiff profession, I would say that abuse has been commonplace, widespread and institutional.” (Enforcement Agent)
- “There is institutional abuse where a company quite deliberately and on a massive scale, charges illegal fees, by for example adding a “visit fee” to a letter fee. They are able to get away with this simply because the vast majority of people have not got a clue what the correct charge should be and simply pay up. In the very small percentage of cases where the fee is disputed the company simply backs down and blames it on computer error.” (Enforcement Agency).
- “When a Fee Structure is linked to specific actions then such a structure will always provide opportunity to those who may wish to act in an unscrupulous manner...Similarly the lack of continuous review of the fees, which should ideally be up-rated on an annual basis, erodes the value of fees in real terms”. (Enforcement Agency)
- “Abuse can also occur when an attendance to remove goods is made when there is no intention on the part of the Enforcement Officer to really remove goods...We hear plenty of stories of cases in the County Court and with other High Court Enforcement Officers where goods are never removed. It is almost as if it has become too much trouble to remove goods.” (HCEOA Member)
- “We would say as the HCEOA that our current Fee Structure leaves no room for abuse by unscrupulous Enforcement agents.” (HCEOA)

### Order of payment

- “In 95% of cases [the fee is taken first] although there is a tendency for more clients to request that their debt is paid first. In our view it is imperative that legislation provides for fees to be taken first.” (Enforcement Agency)
- There is currently a mixture although there is a growing tendency for clients to now expect fees last and some tenders actually demanding a fee return! These two occurrences greatly encourage unscrupulous practices.” (Enforcement Agency)

## Admin Stage Activities

### Accuracy of data

- “Clearly it would always be advantageous to be supplied with accurate data however it has to be accepted that the public are less than diligent in supplying the correct information themselves in the first instance therefore it is not always possible for the creditor to guarantee the infallibility of the information they pass to the Enforcement agent.” (Enforcement Agency)

## Enforcement Stage Activities

### Larger debts

- “The initial phase of Enforcement costs the same as we need to get an operative to an address on multiple occasions to ensure contact with the debtor. Perversely some of the costs of recovery of a larger debt are lower because larger debts tend to be businesses so easier to contact and remedies for collection if bailiff action is not successful e.g. bankruptcy/ liquidation are more effective. If Enforcement is required by way of removal then costs will be larger but these costs tend to fall under reasonable costs so are generally recovered.” (Enforcement Agency)

### Instalment plans

- “We incur considerable costs negotiating arrangements then confirming in Writing and monitoring them. We have calculated our costs to be £32 this cost is incurred every time the arrangement is broken. The size of the debt does not affect the cost.” (Enforcement Agency)

### Return of Warrants

- “Return fees would be a much better option than an up-front fee – as it involves providing information resulting from doorstep attendances that clients would not otherwise have had access to. This enables them to make better decisions as to how to progress with the Warrant.” (Enforcement Agency)

## New Fee Structure

### Uniform Fee Structure for all debt-types?

- “A uniform Fee Structure would save enormous problems with interpretation.” (ACEA)
- “There is virtual unanimity that a uniform Fee Structure would be beneficial both to the industry and debtors. The cost of carrying out the various actions prior to actual seizure of the goods is the same irrespective of the debt-type...The only proviso we would place on the above is... that the percentage success rate for different debt streams varies and it may therefore be necessary to consider higher levels of fees for those streams where the percentage rate is lower.” (ESA)
- “Whilst the process of civil justice and Enforcement should follow the same process, the level of remuneration by those carrying out the process may well need to differ to take account of specialisms and complexities.” (HCEOA)
- “In our opinion a uniform Fee Structure would be of great benefit to the industry. A uniform fee scale would remove some of the current anomalies”. (Enforcement Agency)
- “The problem with a uniform structure is that it takes no account of the fact that some debt streams are considerably more difficult, and therefore expensive, to collect than others.” (Enforcement Agency)
- “I believe that a more uniform approach across the board would be beneficial, however I also believe that High Court Enforcement is a completely different animal to normal liability order Enforcement. HCE clients are far more demanding on our resources than Local Authorities.” (HCEOA Member)

- “The unique nature of each different Enforcement stream is often overstated in order to maintain Fee Structures that continue to provide scope for discretion in fee charging levels.” (Enforcement Agency)
- “No – it would be a disaster. The idea of a “one size fits all” scale is a nice theory which ignores the practical operation of different types of Non-High Court Enforcement work. There is a good reason for different scales – they reflect the different problems in particular types of Enforcement.” (Enforcement Agency)
- “The cost of undertaking an action prior to the actual removal of goods...is identical irrespective of the debt-type or the size of the debt and therefore the Fee Structure should be uniform across the profession.” (Enforcement Agency)
- “A uniform Fee Structure would provide consistency but it would have to reflect the different cost structures for every type of Enforcement process.” (Enforcement Agency)

### Fixed fees or bandwidths?

- “Fixed fees are easier to understand and apply, but do need to be linked to an increase on certain size of debts to reflect the greater responsibility of the Enforcement agent when dealing with enforcing larger amounts”. (ACEA)
- “In general we believe that fees should be fixed. However, rather than relating to specific actions each fee should cover a series of actions and be set at a sufficient level to ensure proper remuneration for the bailiff. The series, or tiers, of action would have the benefit of being transparent both for creditors and debtors. There is an argument for suggesting a degree of flexibility in the charges for actual removal of goods as the cost involved can vary considerably, depending on the circumstances, amount of debt, debt-type or etc. There is little support for negotiated fee levels as this may lead to a repeat of the present situation where those firms who obtain work by undercutting their competitors may be forced to either cut corners or bend the rules in order to make a profit.” (ESA)
- “We are not in favour as HCEOs of introducing a fee bandwidth structure which might allow for some negotiation of fee levels. We believe that such negotiation could lead to parties demanding the lowest possible fee within the bandwidth...We do believe that certainty and consistency are the key ingredients for a successful new fee regime.” (HCEOA)
- “In general we believe that fees should be fixed however provision must be retained for flexibility to charge in the event of the removal of large quantities of goods or where specialist contractors are employed.” (Enforcement Agency)
- “We believe that fees should be task based, on actual work performed, with certain weightings to take into account factors such as time, for example recognising the time factor difference between removing goods from a single dwelling, and removing goods from an industrial complex.” (Enforcement Agency)
- “I would prefer a fixed fee as bandwidths will encourage debtors to expect to be able to negotiate discounts which will make collection more difficult, costly and time consuming.” (Enforcement Agent)
- “Any new Fee Structure should move away from charging per Enforcement action to charging a fixed amount for a group of actions. This would incentivise contractors to conclude Enforcement at the earliest possible stage.” (Enforcement Agency)

- “Fee bandwidths would be prone to abuse and would still result in complaints and negotiations after the Agents have visited.” (Enforcement Agency)

### Up-front fee?

“Do you believe that an ‘up-front fee’ payable by the creditor to the Enforcement agent (before Enforcement begins), and recoverable from the debtor only upon successful Enforcement, would be beneficial to the industry?”

- “While such an up-front fee paid by the creditor is an ideal scenario...it would not be practicable as the creditors would look to finding alternative ways to avoid paying such a fee due to their own financial restraints... It would lead to an increase in in-house Enforcement, a drop in the expertise of Enforcement agents and in the long run a breakdown in collection levels.” (ACEA)
- “Whilst the up-front fee might be good in theory, in practice it would be financially unsustainable... Local authority budgets are already tight and the current economic climate would only cause further problems for councils. Furthermore, as indebtedness is demand led and not easy to forecast, particularly if we are about to enter a recession, there is no guarantee that the amount budgeted for would be sufficient in which case councils would need to take money from other projects which may or may not be possible. One argument which has been put forward in support of the up-front fee is that it would encourage councils to ensure a higher quality of cases is passed to the bailiffs which, in turn, should result in a higher number of successful recoveries. However, the resources required by the councils to provide that improved quality are a further drain on their budget and there is no guarantee that the expense of such resources would be cost-effective. If the fee were to be introduced there would be nothing to prevent commercial arrangements between creditors and bailiffs in which the fee was waived or additional services were provided in lieu of the fee.” (ESA)
- “Whilst an up-front fee will be good for the cash flow of an HCEO agency, we believe it is unrealistic to think that certain types of creditors would be prepared to pay it. What we would suggest to Government however is that they follow our model of “abortive fees” so that the Enforcement Agent is always paid something towards costs for the work that has been undertaken even if the Warrant is returned as unsuccessful.” (HCEOA)
- *“No – Because the councils cannot afford it, and they would put bailiff action in house.” (HCEOA member)*
- “It would be far simpler to provide that a creditor is compelled to pay a fee for unsuccessful cases. It would have the same effect as an up front fee i.e. it would encourage creditors to vet cases prior to referral to the Enforcement agent, however it would have far less affect on a creditor’s cash flow, and would be easier to administer from both the creditors’ and the Enforcement agents’ perspective.” (Enforcement Agency)
- “I worked for four different London Boroughs and every one of them used to obtain Liability Orders for non-payment of Council Tax and Business Rates and then simply “dump” them on the bailiff with little or no screening to weed out cases where bailiff action was inappropriate...It was common practice to issue cases to the bailiff where we knew the debtor was no longer resident at an address, in the hope that the bailiff might discover a

forwarding address through calling at the property. Vast amounts of bailiff time were and still are wasted chasing cases that should never have been issued to them in the first place because it costs the creditor to screen the cases but costs nothing to issue them unscreened. If the creditor had to pay an up-front fee they would inevitably have to introduce more efficient practices, to everyone's benefit." (Enforcement Agent)

- "It is essential for equity. The costs of non-payment of Council Tax and Business Rates should be borne by all the tax and ratepayers of a local authority equally. At present...the costs of attempting to collect from the...cases which are irrecoverable are not borne by everyone but by [those] from whom recovery is successful." (Enforcement Agency)
- "My concern regarding an up-front fee is that creditors will be unwilling/ unable to pay it...What is likely to happen in practice is that they will look to use alternative methods of debt recovery and employ in-house bailiffs" (Enforcement Agency)
- "Financially yes, commercially it would be a disaster for both Enforcement agents and creditors. It would seriously change the focus and would inevitably be negotiated away by creditors in order to pay costs." (Enforcement Agency)
- "An up-front fee would not benefit the industry. It would be very difficult, in practice, to prevent commercial pressures resulting in the up-front fee being discounted – either overtly or covertly...A 'return fee/ abortive fee' should be applied at the back-end of the process. This would be for intelligence gained by the Enforcement agent" (Enforcement Agency)
- "Proponents of an up-front fee intended this mechanism to reduce the proportion of unenforceable Warrants issued by clients. Clients are, however, unlikely to know (prior to Enforcement) which debts are enforceable by distress and which are not." (Enforcement Agency)
- "Most Local Authorities we act for are horrified with this proposal as they have no budget and their response is to take collection in house" (Enforcement Agency)
- "There is also a clear moral argument that it should be the debtor who should pay the costs of recovery rather than the paying taxpayer who would ultimately be responsible for funding any up front fee." (Enforcement Agency)
- "Local authorities have advised us that they would send us less instructions or set up their own in-house bailiff department due to the burden of the cost of paying for Enforcement...We are not in favour of the up-front fee. This would bring an end to private bailiff companies." (Enforcement Agency)



## Appendix 9: Cost of Capital Calculations

### Cost of capital

In order to determine a cost of capital to apply to the Enforcement industry I examined the cost of debt and equity, and the typical capital structure of EACs in order to estimate the weighted average cost of capital.

### Cost of debt ( $K_d$ )

RFI respondents were asked to provide details of the debt finance used for their business activities, including the total amounts outstanding and the applicable interest rates, along with interest rates that they had recently been offered on new finance.

I calculated that the weighted average (weighted by amount of loan outstanding or amount of loan requested) interest rate on debt finance in the Enforcement industry as 6.35%.

The real cost of debt is calculated by allowing for the effect of inflation, as follows:

$$\text{Real Cost of Debt} = ((1 + \text{Nominal Cost of Debt}) / (1 + \text{CPI})) - 1$$

- Nominal cost of debt = applicable interest rate = 6.35%
- CPI = Consumer Price Index = 3.53% (12 month, monthly rolling average, December 2008)<sup>49</sup>

This gives a real cost of debt of 2.8%.

### Cost of Equity ( $K_e$ )

Since the majority of EACs do not have publicly traded shares, I selected a group of publicly listed comparable companies in order to estimate the cost of equity in the Enforcement industry.

Comparable companies were selected by first identifying potentially comparable market segments using listing groupings, and other industry and activity codings to identify broadly comparable industries and sub-sections of industries. Companies within these large groupings were then eliminated if their size, in terms of revenue, was disproportionately large in comparison to EACs in England and Wales. Finally, remaining potentially comparable companies were identified through a detailed consideration of company activities using company annual reports and company snapshot information services. The broad initial industrial groupings that I considered were as follows:

- **UK SIC**
  - UK SIC (92) 74.84/1 Debt collector.
  - UK SIC (92) 74.11/9 Bailiffs Activities.
  - UK SIC (92) 65.22/2 Debt purchasing, Discount company (e.g. debt factoring), Factoring company (buying book debts), Invoice discounting.

<sup>49</sup> Source: CPI Dataset, National Statistics, [www.statistics.gov.uk](http://www.statistics.gov.uk)



- UK SIC (92) 65.22/2 Discount company (e.g. debt factoring).
- **FT500 listed companies**
  - Support Services
- **AIM listed companies**
  - Business Support Services
  - Consumer Finance
  - Delivery Services
  - Financial Administration
  - Speciality and Other Finance
  - Support Services
  - Waste & Disposal Services
- Various company snapshot services (such as [www.hemscott.com](http://www.hemscott.com), [www.corporateinformation.com](http://www.corporateinformation.com), [www.hoovers.com](http://www.hoovers.com), [www.reuters.com](http://www.reuters.com), and [www.alacrastore.com](http://www.alacrastore.com)).
- Listed companies selected from Plimsoll analyses of UK bailiff and debt collection agencies<sup>50</sup>.

Potentially comparable listed companies from the sources above were narrowed down to the comparable listed companies in the table on the following page:

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<sup>50</sup> “The UK Bailiffs Industry: A comprehensive financial analysis of the top 51 companies”, Plimsoll Portfolio Analysis (3<sup>rd</sup> Edition 2008).

“UK Debt Collection Agencies – An industry overview”, Plimsoll Analysis (4<sup>th</sup> Edition 2008).

*Table 51: Comparable companies with publicly traded shares*

ANNDrew Sykes Group
Aktiv Capital ASA
Asset Acceptance Capital Corp
Bglobal
Cash Flow SA
Cleardebt Group Plc
Collection House Ltd
Debt Resolve Inc
Dorchester Pacific Limited
Homeserve Plc
Jpn Collection Service Co Ltd
L'inventoriste
Loanmakers Holdings Plc
Noram Capital Holdings Inc
Nissin Servicer Co Ltd
Portfolio Recovery Associate Inc
Repcol Ltd
Resources in Insurance Group Plc
Shanks Group Plc

I used the Capital Asset Pricing Model ("CAPM") to calculate the average cost of equity for the above companies:

$$\text{CAPM } K_e = K_{rf} + (K_m - K_{rf})B$$

Where:

$K_e$  = Cost of Equity

$K_{rf}$  = Risk-free rate of interest = 2.60<sup>51</sup>

$B$  = Beta coefficient = 0.818<sup>52</sup>

$K_m - K_{rf}$  = "Market Premium" or "Risk Premium" = 5.00%<sup>53</sup>

**Using the CAPM calculation the cost of equity = 6.69%**

When using listed companies to estimate the cost of capital for a non-listed company it would be usual practice to consider applying a premium to the calculated cost of equity to reflect that an investment in a non-listed company is riskier as it is relatively more difficult to exit or realise an

<sup>51</sup> "Cost of Capital for PR09: Final Report for Water UK", NERA (June 2008), [http://www.nera.com/image/PUB\\_Cost\\_of\\_Capital\\_PR09\\_final.pdf](http://www.nera.com/image/PUB_Cost_of_Capital_PR09_final.pdf)

<sup>52</sup> Average of comparable companies 4 year Betas obtained from Bloomberg

<sup>53</sup> "Cost of Capital for PR09: Final Report for Water UK", NERA (June 2008), [http://www.nera.com/image/PUB\\_Cost\\_of\\_Capital\\_PR09\\_final.pdf](http://www.nera.com/image/PUB_Cost_of_Capital_PR09_final.pdf)

investment in a non-listed company, for example by selling the shares, as the shares are not readily traded.

### *Capital structure*

RFI respondents were asked to provide details of the companies' capital structure. Using the information provided I calculated an average capital structure to consist of 62% debt finance and 38% equity finance.

### **Weighted Average Cost of Capital ("WACC")**

$$WACC = (E/(D+E)) * K_e + (D/(D+E)) * K_d$$

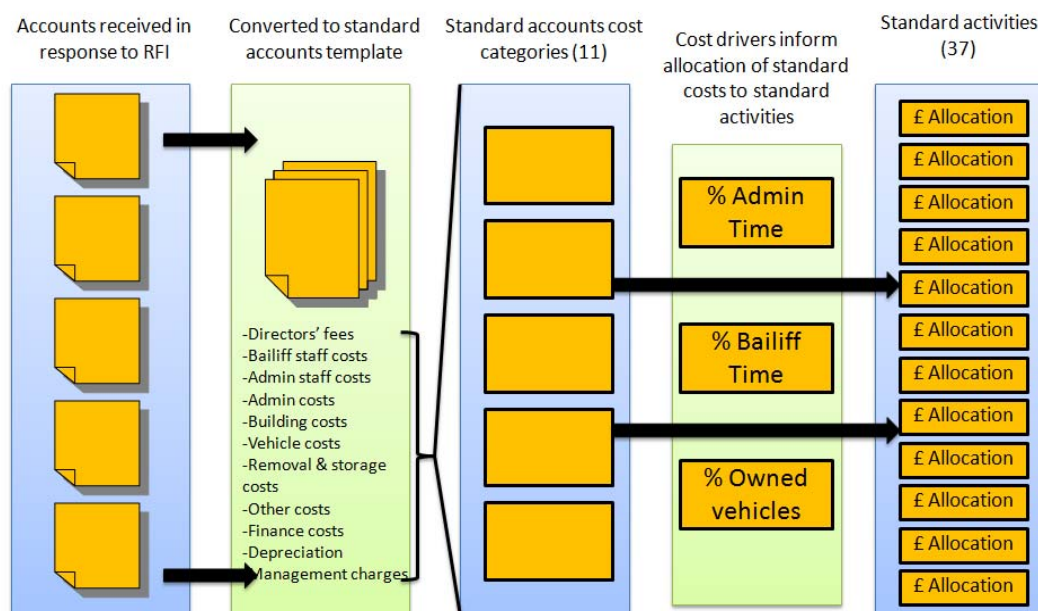
- $E/(D+E)$  = proportion of equity finance
- $D/(D+E)$  = proportion of debt finance

**WACC = 4.28%**



## Appendix 10: Fee Structure Functionality

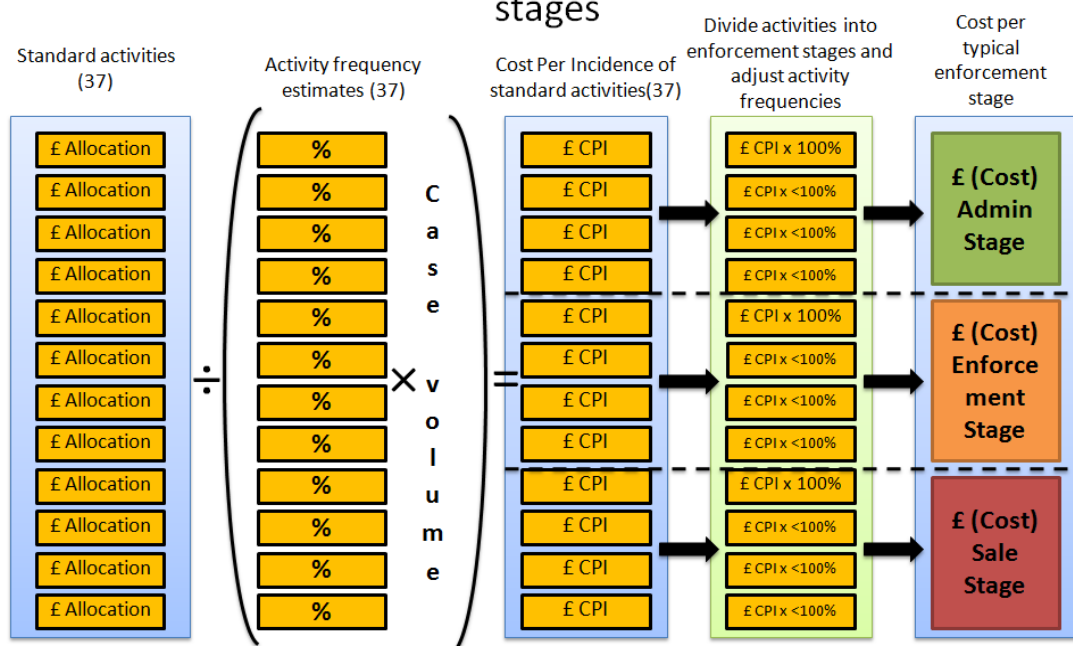
### Allocating P&L costs to activities



Fee Structure Model Approach

1

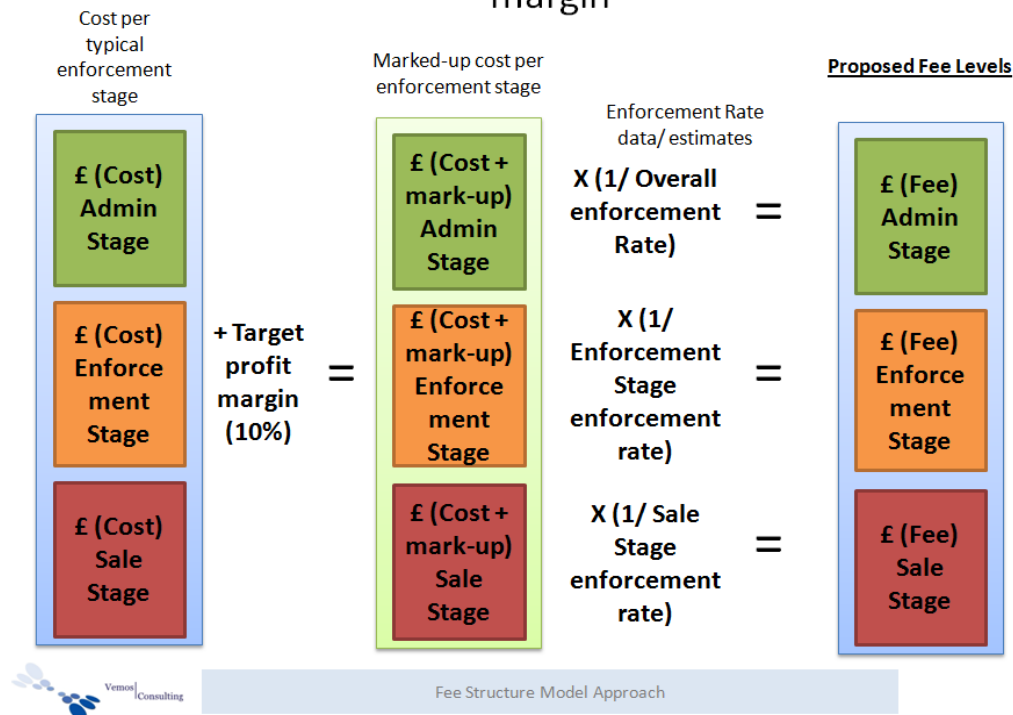
### Combining activities to determine cost of enforcement stages



Fee Structure Model Approach

2

## Determining fee levels to allow cost recovery and profit margin



## Glossary of terms and abbreviations

Term	Abbreviation	Definition
Activity Based Costing	"ABC"	A recognised cost accounting methodology that assigns costs to activities based on their use of resources, and assigns costs to cost objects (products, services, functions, departments, projects etc.) based on their use of activities. It attempts to allocate overhead costs based on the real factors that create costs.
Association of Civil Enforcement Agents	"ACEA"	An industry body representing EACs and EAs carrying out Non-High Court Enforcement.
Child Support Agency	"CSA"	
Commercial Rent		Debt relating to unpaid rent due to a commercial landlord.
Consultation Paper		The Consultation Paper that will be published in 2010, which will contain MoJ's Proposed Fee Structure, along with key questions allowing any interested parties and stakeholders to provide views and opinions.
Cost of capital		The rate of return a company has to offer to induce investors to provide it with capital. A company's securities typically include both debt and equity, and one must therefore calculate both the cost of debt and the cost of equity to determine a company's cost of capital.
Cost of debt		The rate of interest paid by a company to its providers of debt finance.
Cost of equity		The risk-weighted projected return required by investors who buy a company's shares.
CSA debt		Warrants to collect debts relating to unpaid child support contributions.
Debt Recovery Rate		The rate of recovery of debt = Amount of debt recovered/ Original debt outstanding.
Enforcement		The recovery of debts by Enforcement Agents through the act of taking control of goods; as permitted by either a Distress Warrant or a Writ of Fi Fa.
Enforcement Agency	"EAC"	Business employing EAs
Enforcement Agent	"EA"	A Certificated Enforcement Agent (formerly a Certificated Bailiff) carrying out Enforcement. In this report, to distinguish between those EAs Enforcing High Court and those Enforcing Non-High Court debts, the term EA has been used solely to refer to an Enforcement Agent Enforcing a Non-High Court debt. Enforcement Agents Enforcing High Court debt, are referred to in this report as High Court Enforcement Officers ("HCEOs"); although in reality these may be Enforcement Agents acting on behalf of the HCEO to whom the Writ of Fi Fa has been assigned.
Enforcement Fee Structure Review		The exercise undertaken to consider the issues affecting the design and implementation of a new Enforcement Fee Structure, and informing MoJ's selection of a Proposed Fee Structure.
Enforcement Rate		A measure related to the Enforcement of debt, which measures the amount of debt recovered in comparison to the amount of debt originally outstanding. The Enforcement Rate may be measured in several alternative ways. Traditionally the two most commonly used methods are the Paid-in-Full Enforcement Rate, and the Pence-in-Pound Enforcement Rate.
Enforcement Services Association	"ESA"	An industry body representing EACs and EAs carrying out Non-High Court Enforcement.
Fee Recovery Rate		The rate of recovery of Enforcement fees charged = Total fees recovered/ Total fees charged.
Fee Stage		A group of activities for which a fee may be charged within the Proposed Fee Structure.
Fee Structure		The system of fees applied by EACs and HCEACs in respect of enforcement duties carried out by EAs and HCEOs, and administrative functions performed by administrative staff.
Fee Structure Model		The Model built by the economist to generate fee level proposals using the input data and parameters decided by MoJ.
Fixed Fee		An fee element of the Proposed Fee Structure which requires the debtor to pay a fixed amount for a certain Fee Stage that is undertaken, and where the fixed amount does not vary despite the size of the debtor's debt.
High Court Enforcement		The enforcement of High Court Writs of Fi Fa by an HCEO.
High Court Enforcement Agency	"HCEAC"	Business employing HCEOs.
High Court Enforcement Fees Working Group		A working group consisting of representatives from the main High Court Enforcement industry association: HCEOA, set up to assist the MoJ in determining its Proposed Fee Structure.
High Court Enforcement Officer	"HCEO"	Person appointed by the Lord Chancellor to carry out the enforcement of High Court Writs.

High Court Enforcement Officers Association	"HCEOA"	An industry body representing HCEACs and HCEOs carrying out Non-High Court Enforcement.
HMCS	"HMCS"	Her Majesty's Courts Service.
HMCS debt		Magistrates Courts fines and penalties.
Industry Working Groups		The two working groups set up to assist the Fee Structure Review by providing a means for exchange of ideas and views between MoJ and industry participants: the Non-High Court Enforcement Fees Working Group, and the High Court Enforcement Fees Working Group.
Local Authority	"LA"	One of the 378 Local Authorities of England and Wales.
Ministry of Justice	"MoJ"	The government department overseeing the Enforcement Fee Structure Review, and which will produce the Consultation Paper on the subject.
Non-High Court Enforcement		In this report, refers to the enforcement of Council Tax, Magistrates Courts fines and penalties, Road Traffic Act Penalty Charges Notices, Child Support Agency, and in lower volumes Commercial Rent and Non-Domestic Rates
Non-High Court Fees Working Group		A working group consisting of representatives from the two main Civil Enforcement industry associations: ACEA and ESA, set up to assist the MoJ in devising its Proposed Fee Structure.
Non-Domestic Rates	"NDR"	Debt relating to unpaid Non-domestic rates or Business rates liabilities.
Order of Payment Mechanism		The order in which the debt is repaid to the creditor, and fees paid to the EAC/ HCEAC in circumstances where less than the full amount due has been collected and where therefore either or both of the creditor and EAC/ HCEAC may not be paid in full.
Paid-in-Full	"PIF"	Term applied when a Warrant/ Writ is successfully Enforced and the full amount of the debt is recovered from the debtor.
Paid-in-Full Enforcement Rate		The rate of enforcement that measures the proportion of total cases that are Enforced "Paid-in-Full".
Penalty Charge Notice	"PCN"	A fine issued for an offence under the Road Traffic Act.
Pence-in-Pound Enforcement Rate		The amount (in pence) recovered for every one pound of original value of debt.
Percentage Fees		Fees within the Proposed Fee Structure that are calculated as a percentage of the original debt value.
Proposed Fee Structure		The Enforcement Fee Structure proposed by MoJ, after full consideration of all of the issues contained in this report and raised during the Enforcement Fee Structure Review, and which will appear in the Consultation Paper to be published in 2010.
Proposed Fees for High Court Enforcement		Fee levels within the Proposed Fee Structure that would be applicable to the work performed by HCEOs and HCEACs.
Proposed Fees for Non-High Court Enforcement		Fee levels within the Proposed Fee Structure that would be applicable to the work performed by EAs and EACs.
Regulatory Asset Base	"RAB"	The base of operating assets used by a regulated company to undertake the regulated business, and upon which the regulated company is permitted to earn the allowed rate of return.
Representative EAC		A hypothetical company generated to be representative of the Non-High Court Enforcement industry by calculating from the Standard Profit & Loss Account a simple average from the data supplied by the eight EAC firms providing sufficiently detailed accounting data in response to the RFI.
Representative HCEAC		A hypothetical company generated to be representative of the High Court Enforcement industry by calculating from the Standard Profit & Loss Account a simple average from the data supplied by the five HCEAC firms providing sufficiently detailed accounting data in response to the RFI.
Request For Information	"RFI"	The Request For Information sent to industry stakeholders, and responded to in November 2008, allowing stakeholders to present their views and opinions in relation to both the existing Fee Structures, and the suitable form of a new Fee Structure, and to capture accounting and financial information.
Road Traffic Act	"RTA"	The Road Traffic Act 1991.
RTA debt		A debt originating from an outstanding PCN issued under the RTA.
Standardised Profit & Loss Account		A standardised profit & loss account, applicable to both EACs and HCEACs, generated for each company providing data by restating the accounting information using a standard classification of costs.
Up-front Fee		A fee-type, first proposed by the Advisory Group on Enforcement Services Delivery (2001), whereby the creditor is required to pay a guaranteed fee to the EAC/ HCEAC before Enforcement action commences, which will be retained where Enforcement is unsuccessful or recovered from the debtor where it is successful.
Variable Fees		Any type of fee element that is not fixed, but varies perhaps in relation to the size of the debt. For example, Percentage Fees.
Writs of Executioun		Collectively Writs of Fieri Facia and Writs of Possession.
Writ of Fieri Facia	Writ of "Fi Fa"	A Writ commanding an HCEO to recover a debt from a debtor by taking immediate distraint of the debtor's goods.

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