

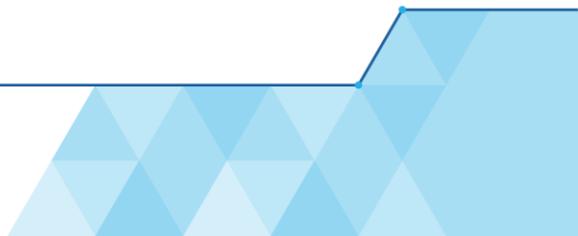


Ministry
of Justice

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

Government response

12 December 2022



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Foreword

This is the Ministry of Justice's second post-implementation review of reforms introduced by the Tribunals, Courts and Enforcement Act 2007 regarding how enforcement agents recover debt using the "Taking Control of Goods" procedure. The reforms came into force in April 2014 following an extensive period of research and engagement with stakeholders.

Our review benefited from a wealth of information and data. We want to thank all those who responded to our call for evidence which closed in February 2019. We received nearly 300 individual responses from organisations, enforcement agencies and trade association, individuals, creditors, members of the judiciary and parliamentarians. We also benefited from the findings of the Justice Committee's inquiry into this matter, which reported in April 2019.

The global Covid-19 pandemic and the Government response to it has led to this report being published much later than originally envisaged. The pandemic has also had a profound impact on the work of enforcement agents, both in terms of the volumes of cases that they have dealt with, due to restrictions on the use of the Taking Control of Goods Regulations and changes to creditor behaviour, and the need for enforcement agents to work in a Covid-secure way. The current pressures on living costs will also have an impact on the enforcement of debt. However, while this review provides a snapshot of the impact that the reforms had had prior to the pandemic, we consider that its findings continue to be relevant and will be used to inform the development of further reform in this area.

The reforms that were implemented in 2014 aimed to strike a balance between ensuring that debts could be collected effectively while protecting debtors from aggressive behaviour. It is particularly important to understand whether the reforms have been effective because the government recognises that debt recovery can have a damaging impact on the physical and mental health of vulnerable people who are struggling to repay what they owe. We also recognise that the effective enforcement of debt from those who can afford to pay is vitally important to the economy. Furthermore, data submitted to our review shows that the use of civil enforcement agents had been rising and that, prior to the pandemic they were handling over 3 million cases each year.

The reforms have been successful in many areas due to the clearer rules and procedures, and they have maintained debt recovery rates. However, regrettably our review found concerning evidence that some people were still experiencing aggressive, inappropriate or insensitive behaviour from enforcement agents. Several respondents argued strongly in favour of introducing an independent regulator and complaints body to raise standards.

Since this review was carried out, the Centre for Social Justice (CSJ) has worked with representatives from the enforcement and debt advice sectors to develop a proposal for an Enforcement Conduct Board (ECB)¹, to provide independent oversight of enforcement

¹ Centre for Social Justice: Taking Control for Good: Introducing the Enforcement Conduct Authority (July 2021) [Link to Report](#)

agents and firms. The Ministry of Justice strongly supports the recent launch of the ECB and believes that it can make a real difference in protecting vulnerable people in debt and driving up standards while improving the effectiveness of enforcement. We have committed to undertake a review of the ECB within two years to see if it is necessary to place it on a statutory footing.

The government is committed to raising standards in this area and, in addition to supporting the creation of the ECB, we intend to consult on how to make some limited reforms in response to the findings of the call for evidence. As previously announced, we will consult on how to make it mandatory for private enforcement agents to use body-worn cameras, and on guidance about their use. We also intend to hold a further review about the fees that enforcement agents can charge.

Introduction

Background

Enforcement agents and types of debt collected

Enforcement agents, formerly known as bailiffs, are used to collect unpaid judgment debts on behalf of creditors including local authorities, government departments and private creditors. They have the legal power to remove and sell goods to cover the debt and to recover an enforcement fee from the debtor.

This post implementation review evaluates reforms contained in the Tribunals, Courts and Enforcement Act 2007² and implemented in 2014 which govern how enforcement agents operate and the fees they charge in England and Wales.

The review covers civil enforcement agents (also known as certificated enforcement agents or private bailiffs) and High Court Enforcement Officers (HCEOs). At the time of the call for evidence there were around 2,500 civil enforcement agents³ and just over 40 HCEOs registered with the Ministry of Justice (MoJ).

Civil enforcement agents are permitted to enforce specific debts such as council tax, traffic penalties and non-domestic rates. They also deal with the seizing of a tenant's goods by a landlord to secure payment of rent arrears without the intervention of the court. Most enforcement agents work for private companies, but some operate as individuals or are directly employed by creditors such as local authorities.

HCEOs carry out enforcement of High Court orders and County Court orders transferred to the High Court for enforcement by the creditor. Debts include business debts; utility bills; tribunal awards and rent arrears.

County court enforcement officers (also known as county court bailiffs), who enforce judgments and orders made and registered in the county court were not within the scope of this review. While they operate under the same procedures (including how they can enter premises) they do not charge the fees set out in the Taking Control of Goods (Fees) Regulations 2014 and are Crown employees and therefore do not require certification under the Certification of Enforcement Agent Regulations 2014. Her Majesty's Revenue and Customs (HMRC) also utilise provisions in the Tribunals, Court and Enforcement Act 2007 to collect tax arrears using enforcement agents, who are also Crown employees and thus similarly were not within the scope of this review.

Enforcement reforms

The reforms introduced in 2014 were intended to deliver protection against the use of aggressive methods by enforcement agents while ensuring that debts could still be collected effectively. They aimed to simplify the enforcement process; incentivise earlier

² <http://www.legislation.gov.uk/ukpga/2007/15/contents>

³ Certified Bailiff Register (<http://www.justice.gov.uk/courts/enforcement-officers>)

recovery of debt; ensure enforcement agents behaved fairly towards debtors (especially the vulnerable); and provide a fair, transparent and sustainable costs regime. The principal measures introduced were:

- simple rules detailing how and when an enforcement agent can enter a property and which goods they are permitted to take;
- a single fee structure setting out what can be charged for each stage of enforcement action;
- a new certification process to ensure enforcement agents are suitably qualified;
- mandatory training to ensure enforcement agents have the required skills for the role.

The statutory regulations were accompanied by the MoJ's publication of the National Standards for Taking Control of Goods⁴. These standards are intended for use by both publicly and privately employed enforcement agents, their employers and the creditors who use their services. They cover:

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

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

⁴ <https://www.gov.uk/government/publications/bailiffs-and-enforcement-agents-national-standards>

The review

This is the second review of the 2014 reforms. It is informed by a call for evidence which ran for 12 weeks from 25 November 2018 to 17 February 2019 and sought views on the following topics:

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

We also conducted an exercise to collect evidence from the Civil Enforcement Association (CIVEA) and the High Court Enforcement Officers Association (HCEOA) about debt recovery rates.

Key issues raised

Data submitted suggested that at the time of the call for evidence (2018/19) enforcement agents were handling around 3 million cases a year, a 25% increase since the reforms were introduced in 2014. This appears to have been driven primarily by an increase in the number of road traffic fines enforced by agents, which rose by almost 50% since 2014/15. This may be the result of road policy changes such as the introduction of Low Emission Zones.

Responses to the call for evidence supported the findings of the one-year post-implementation review⁵ that the reforms have been successful in many areas. These include greater transparency and consistency in the enforcement process due to clearer rules and procedures; increased transparency on fees due to the introduction of the fixed fee structure; and better understanding of debtor rights and where to seek advice.

The data also indicated that the overall effectiveness of enforcement had improved, with a greater proportion of debts being enforced successfully than predicted when the reforms were designed.⁶ It was predicted that around 20% of debts would be settled at any stage, but in 2017/18, 25% of all non-High Court debts were settled and in 2017, 30% of all High Court debts were settled. However, the proportion of settled cases that were resolved at the compliance stage remained very similar to the level found at the one-year review, and in the case of non-High Court debts, the percentage of settled debts settled at the

⁵ <https://www.gov.uk/government/publications/one-year-review-of-enforcement-agent-reforms>

⁶ See: Dehayen, A. Enforcement Fee Structure Review. London: Ministry of Justice & Vemos Consulting. 2009

compliance stage remained below the predicted level of 50%, at 37%. Responses indicated that some firms may be more successful at incentivising early settlement.

The evidence suggested that there were still instances of aggressive, inappropriate or insensitive behaviour from enforcement agents. However, it is difficult to determine the prevalence of this type of behaviour. A coalition of debt advice organisations called 'Taking Control' reported that problems were widespread and submitted evidence which indicated that the most common issues were unchanged since 2014/15 and were around rights of entry, aggressive collection and treatment of vulnerable debtors.

The low volume of formal complaints does not support the view that problems are widespread. Some responses from the enforcement industry suggested that the moderate level of complaints was due to improvements in the sector following the reforms. However, some responses to the call for evidence indicated that the number of complaints may be low due to barriers which deter people from making a complaint. We conclude that the problems are not as widespread as indicated by some returns, but that nonetheless the volume of formal complaints was lower than the true number of issues experienced.

The review showed there was strong support for increasing regulation from the advice sector; the Taking Control coalition called for an independent regulator in their submission. This was supported by some members of the enforcement industry, but on the whole, at the time of the review, the sector disagreed with this view and said they were already regulated effectively through their clients, the courts and compliance with the regulations.

Some suggestions for improving the enforcement process focused on creditor behaviour. For example, it was suggested that local authorities should take more responsibility for the conduct of the agents they use and should have steps in place to account for debtor health and financial circumstances before instructing agents. Responses from the advice sector also indicated that the failure of some enforcement agents to accept affordable repayment plans is a significant issue.

Justice Committee report and other parliamentary interest

The Justice Committee in the House of Commons held an enquiry into the enforcement of debt by bailiffs following a rise in complaints about enforcement agents reported by debt advice organisations. This focussed on assessing the impact of the 2014 enforcement agent reforms; the reason for the increase in complaints; whether the fee structure is working to encourage settlement at an earlier stage; and whether the system of self-regulation is working as intended. They published their report in April 2019⁷ and made recommendations in four areas:

- there should be an independent complaints body able to consider all complaints about enforcement agents escalated beyond local complaints procedures;

⁷ Justice Committee, Report, Bailiffs: Enforcement of Debt (April 2019)
<https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2017/bailiffs-enforcement-of-debt-inquiry-17-19/>

- there should be an independent regulator for the enforcement industry and the Ministry of Justice should consult widely on where this responsibility should sit and how it should be funded;
- the new regulator should regularly review and make recommendations to the MoJ about the fee structure; and
- body-worn cameras should be mandatory for all enforcement agents visiting homes and businesses.

Members of Parliament had also raised concerns about people they had met in their constituency surgeries who reported bad experiences with enforcement agents who had visited their homes. A Westminster Hall Debate on bailiff regulatory reform took place on 9 January 2019, during which MPs gave examples of poor enforcement agent behaviour.

In July 2019, the Government made a Written Ministerial Statement⁸ to provide parliament with an update on this review. This set out that whilst many firms had made considerable efforts to make sure they were treating those in debt fairly, we were considering a package of reforms to make sure that all enforcement agents operate to high standards to make sure that people do not face aggressive action from enforcement agents and to improve trust in the industry as a whole.

In the statement, the Government committed to making body-worn video cameras mandatory for privately employed enforcement agents and to considering wider reform, including improving the independence and effectiveness of the complaints system and strengthening regulation of enforcement agents. The statement said that we would publish the full response to the call for evidence, following further engagement with stakeholders. As set out in the foreword, the global Covid-19 pandemic and the Government response to it has led to this response being published much later than originally envisaged.

Wider government work

As part of its fairness agenda, the government has been introducing policies to help reduce any harm that could be caused by debt management while ensuring those who can pay, do so.

In May 2021, the breathing space scheme⁹ came into force, which provides temporary legal protections from creditor action for someone in problem debt, allowing them time and space to seek debt advice and consider an appropriate debt solution. The Government also continues to maintain record levels of debt advice funding for the Money and Pensions Service for the provision of debt advice in England.

⁸ Secretary of State for Justice, Enforcement Update, HCWS 1776, 22 July 2019

⁹ The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020

Scale of responses

There were 274 respondents to the call for evidence. A breakdown by respondent type is given in the table below.

Table 1: Respondents to the call for evidence (by type)

Type of respondent	Number	Percentage
Private individual	95	35%
Citizens Advice	36	13%
Other advice sector	33	12%
Enforcement industry	37	13%
Local authority	32	12%
Other creditor	22	8%
Other public sector	5	2%
Parliamentary	6	2%
Judiciary	3	1%
Other	5	2%
Total	274	100%

The number of responses from individuals is too small for us to extrapolate to the whole population, but the responses do provide us with insight into the types of issues that people are experiencing and are concerned about.

We also received accounts of individual experiences in responses received from over 50 debt advisors and debt advice organisations from across the country, which raised concerns that their clients have experienced. In addition, five Members of Parliament responded and provided case-studies of constituents who had experienced problems.

Data from trade associations

In order to enable us to assess debt recovery rates at different stages, CIVEA and HCEOA submitted data collected from their members on the number of cases received the stages at which these were settled, and the fee amounts charged. Submitting this information was voluntary and not all agents and firms are registered with CIVEA or HCEOA, therefore the coverage is not complete and there will be some bias towards agencies who have stronger ties to their trade body.

Data received from Civil Enforcement Association (CIVEA)

CIVEA submitted aggregated data from 26 firms of different sizes on case numbers and settlement rates. These firms included:

- 9 firms with turnover over £10m
- 4 firms with turnover over £3.75m
- 5 firms with turnover under £3.75m
- 8 firms with turnover under £1m.

The data represents around 90% of the market by volume of debts enforced. CIVEA's membership includes over 20 additional firms with turnover less than £3.75m – some of which are very small – which are not included in this data. This means there is some bias towards larger firms and we cannot be confident that findings can be generalised to all.

CIVEA also submitted aggregated complaints data from 22 firms. As with the data on settlement rates, this does not represent the entire market and, though relevant, we cannot be confident that findings can be generalised to all.

Data received from High Court Enforcement Officers Association (HCEOA)

HCEOA sent in data from five businesses (30 HCEOs in total) which responded to their request for information. This data represents 65% of all debts enforced by HCEOs. As with the CIVEA data, we do not know if findings can be generalised to all; it may be biased towards agents with stronger ties to their trade association.

Analysis of responses

Treatment of Debtors

The first review of the 2014 reforms reported that some debt advisors and people in debt still perceived some enforcement agents to be acting aggressively and not complying with the rules.

- **Question 1 (to anybody who has been contacted by an enforcement agent): Have you, or somebody you know, had experience of action by an enforcement agent in the last 12 months? Please give details of your experience.**
- **Question 2 (to advice sector organisations): Has your organisation seen any change to the volume and nature of calls/contact regarding enforcement agents since the reforms came into force? Please provide any statistics you have to assist your response.**

81 individuals responded to the call for evidence to share their experience (or that of somebody they know) of being contacted by enforcement agents in the previous 12 months. Almost all those respondents were dissatisfied with the experience, although a

small number reported that the enforcement agents they encountered had behaved professionally and politely.

Many of the issues raised by individual respondents were reflected in responses from the advice sector, including from the Taking Control coalition and Shelter. Taking Control's response included statistics indicating how often each type of problem is reported.

Responses from both individuals and advice sector organisations indicated that enforcement agents misrepresenting their powers was a common issue. Examples of this included misrepresentation of powers of entry or falsely telling debtors that they will be arrested or imprisoned.

We received reports of enforcement agents entering properties inappropriately or unlawfully (although some did not contain enough information for us to assess whether the entry was in fact unlawful). Examples included: entering and searching property when the resident was not the person named on the writ and warrant; entering under false pretences (for example by posing as a tradesman, or in one instance, allegedly as a police officer); entering through unlocked doors; and forcing entry.

Individual respondents and MPs reported instances where enforcement agents acting in an intimidating manner had caused alarm or distress. Responses from the advice sector also raised this as an issue, with Taking Control reporting that 256 of the 308 advisors surveyed by the coalition felt that the level of problems had stayed the same or got worse since 2014. The introduction of the compliance stage, which increases initial contact with debtors via telephone and letter and reduces the number of doorstep visits, seems to have reduced the proportion of people experiencing an intimidating doorstep visit, but the proportion of people who have experienced an intimidating or threatening phone call seems to have increased.

Issues relating to enforcement agents taking control of goods inappropriately or incorrectly were reported, including threatening to take control or actually taking control of exempt or inappropriate goods; failing to follow the proper procedure for entering into Controlled Goods Agreements; and failing to take steps to ensure individuals understand the agreement. Some respondents reported that enforcement agents had refused to accept that they were not the person responsible for the debt on the warrant or writ. Taking Control also reported that the process for disputing ownership was problematic, as it is typically dependent on people having evidence of ownership which is unavailable in many cases.

Problems around the agreement of affordable repayment plans were also reported, including enforcement agents pressuring people into unaffordable repayment plans; not referring people to free debt advice; pressuring people into borrowing money from friends, family or neighbours; and refusing to accept evidence regarding people's ability to pay. The advice sector recognised that creditors' behaviour can place enforcement agents under pressure to recover debts, despite the National Standards saying that debtors should not be pressed to make unrealistic offers. Some enforcement agents reported that

they were sometimes prevented from agreeing repayment plans by local authorities who require agents to enforce warrants with payment in full immediately.

Some respondents, including the advice sector, suggested using an agreed affordability framework such as the Standard Financial Statement in order to increase consistency across the enforcement sector by removing the role of personal judgement in determining affordability.

Other problems reported included: enforcement agents visiting outside reasonable hours; enforcement agents not providing identification; damage to property by enforcement agents (such as to doors); problems with standard notices (more detail is given in section 4); a lack of clear and prompt information to debtors about what their debts are for, why charges are incurred and how to get help; and issues around data protection and confidentiality.

- **Question 3 (to the enforcement sector and creditors): What measures has your business taken to make sure that the enforcement agents that you employ operate within the rules introduced by the 2014 reforms? How do you monitor the effectiveness of these measures?**

We received 79 responses to questions in this section from the enforcement sector (including individual agents, firms and trade associations) and creditors (mainly local authorities).

Respondents from the enforcement sector said that the highly competitive market is an effective way of ensuring enforcement agents and firms uphold standards and operate within the law. It was reported that competition for local authority contracts is strong and local authorities are protective of their reputations, so they have put measures in place to ensure that agents are acting within the law.

Measures put in place by enforcement firms and trade associations to ensure their enforcement agents operate within the rules introduced by the 2014 reforms included:

- **Training and monitoring.** All agents are required by law to pass an exam to qualify for certification. Best practice examples include further theoretical and practical training on resolving complaints and managing disputes, safeguarding, vulnerability and third-sector protocols, and dedicated continuous professional development time per month. Some firms require agents to have a Level 3 NVQ, which is higher than the legal requirement to have a Level 2 qualification. Some firms also outlined the training they provide to customer-facing office staff.
- **Body-worn cameras** to record visits. Many firms reported that their agents use body-worn cameras, and that the footage is reviewed by authorised users to monitor conduct and performance, identify training needs and investigate complaints.
- **Formal complaints procedures.** Some firms reported having audit and compliance teams, separate from the operational teams, to deal with complaints.
- **Tracking agents' vehicles** by satellite in order to supervise how much time agents are spending at properties.

- **Recording and monitoring call centre calls** with requirements to meet quality standards.
- **Contract and performance review** meetings with clients/creditors to discuss performance, complaints and service delivery.
- **Directly employing staff.** Some firms reported the importance of employing rather than sub-contracting agents.
- **Working with the advice sector.** Some firms reported working with the advice sector to deliver training and develop policies.
- **Membership of trade associations** including: CIVEA (the Civil Enforcement Association); the High Court Enforcement Officers Association (HCEOA); the Certified Enforcement Agents Association (CEAA); the Local Authority Civil Enforcement Authority (LACEF) and the British Parking Association (BPA).
- Four firms reported having established their own **independent advisory groups**, which challenge the firm's business culture and practices, assess whether proper ethical standards have been applied and hold the directors to account for the firm's actions. Members of the groups include individuals that have held prominent roles in the advice sector.

Local authorities, who employ or contract enforcement agents, provided examples of how they have implemented the regulations. These include developing their own codes of practice: service level agreements; formal complaints procedures and monitoring of complaints data; close monitoring of performance of enforcement agents and monitoring of recovery rates at compliance stage; regular tendering so that contracts with companies not complying with the rules can be terminated; and liaising with advice sector organisations.

- **Question 4 (to all with an interest): Are you aware of, or do you have concerns about, violence towards enforcement agents when carrying out their duties in accordance with the regulations? In your experience, do the police have adequate knowledge and awareness of the new regulations? Please provide any statistics you have to assist your response.**

Data provided by enforcement firms and their trade associations indicate that there is a growing trend in the number and severity of violent incidents towards enforcement agents, although it is difficult to gauge the overall prevalence because most firms said that they do not routinely collect this data. Incidents appear to comprise mostly of threats of and actual physical assault, including by gangs, but also include damage to vehicles and equipment, and have led to prosecutions and convictions. One firm reported that about 2% of cases resulted in a violent incident.

Treatment of vulnerable debtors

When an enforcement agent encounters a vulnerable person, they are required to return to the creditor for a decision on how to proceed. The creditor is expected to investigate the claim of vulnerability while the enforcement action is halted. Due to widely known difficulties in defining vulnerability, and a desire not to apply a prescriptive list which could exclude some debtors, there was no precise definition made in the legislation.

- **Question 5 (to anybody who has been contacted by an enforcement agent): If you or someone you know has been contacted by an enforcement agent in the last 12 months, did you/they consider yourself/themselves to be vulnerable? If yes, how? How did you communicate your/their vulnerable status to the agent/creditor? Did the enforcement agent and/or creditor recognise your/their vulnerability and what action was taken?**

Over 100 respondents to the call for evidence stated that they or someone they know who had been contacted by an enforcement agent considered themselves to be vulnerable. 35 respondents reported telling the agent who visited their home that they were vulnerable. 22 respondents said that they reported it in writing and 10 by email. A small number of respondents said that they either did not get the opportunity to do so or were unaware that vulnerability was an issue that enforcement agents had to consider. Most respondents to this question said that the claim of vulnerability had not been recognised.

Characteristics that respondents reported as indicating vulnerability included: mental health; physical disability or illness; being a single parent of young children; being pregnant; being elderly; difficulty in understanding the process either because of language or literacy problems or because the person lacked mental capacity; and financial vulnerability.

- **Question 6 (to advice sector organisations): Has your organisation seen any change to the volume and nature of contacts regarding vulnerable debtors since the reforms came into force? Please provide any statistics you have to assist your response.**

Citizens Advice reported an increase in the number of clients with issues related to the treatment of vulnerable people. The Local Government and Social Care Ombudsman received 44 cases about vulnerability between 2014/15 and 2017/18 and found fault in 18 of these, including 8 where the enforcement agent was found to be at fault.

A local Citizens Advice Bureau reported concern that enforcement agents seem to have set the bar for vulnerability exceptionally high. They reported examples of enforcement agents attempting to enforce at domestic abuse safe houses, sheltered accommodation units and in one incident at a homeless hostel. The Taking Control coalition provided examples of cases where enforcement agents were reported to have asked visibly vulnerable householders (such as pregnant women, the elderly, and those with disabilities) who were alone to allow them into the property.

Concern was raised about how enforcement agents check that an individual can understand the proceedings. Around 1 in every 100 Expressions of Dissatisfaction involving enforcement agents by StepChange advisers considered that the client was not fully capable of understanding what was taking place. This can be for several reasons, including those experiencing mental health problems, hearing or sight impairments or because the individual does not speak English.

- **Question 7 (to the enforcement sector and creditors): What steps have you taken to make sure that vulnerable debtors are protected? How do you assess a debtor as being vulnerable? What procedures do you have in place to deal with debtors who you have assessed as being vulnerable? Are there any other issues regarding debtor vulnerability you would like to raise?**

Enforcement agents

Enforcement agents reported that they have made substantial attempts to address vulnerability and that the reforms have brought about a cultural change in the way that agents and firms operate. All CIVEA members have a welfare team or a dedicated individual responsible for managing cases where individuals are identified as potentially vulnerable. The enforcement industry reported they require individuals in debt to provide evidence of vulnerability, which is then verified, assessed, and if appropriate, referred back to the creditor for a decision on further action. Some in the industry acknowledged that requesting this evidence may be perceived as difficult or obstructive, but that a council or court will not accept a case being returned without evidence, due to concern that some people will state they are vulnerable to try and avoid paying.

Data provided by CIVEA suggests that the percentage of cases in which the debtor is flagged as vulnerable is low, but highest in council tax cases. These percentages have remained stable since 2014/15. Despite the low percentages, the total volume of cases means that the numbers of cases flagged as vulnerable are high. Not all vulnerable cases are returned to the creditor. In 2017/18 CIVEA members flagged as vulnerable and returned to the creditor 1.4% of all council tax cases (which equated to 22,000 cases), 1% of all road traffic cases (14,000 cases) and 0.4% of domestic rates cases (360 cases).

Creditors

40 creditors responded to questions on vulnerability. The majority were local authorities, but we also received responses from other creditors including transport authorities. One County Council reported that they contact debtors many times to identify potential vulnerability, while some acknowledged that it was not always possible for them to identify vulnerable people and, therefore, enforcement agents still have a role to play in identifying vulnerability.

Creditors reported agreeing vulnerability protocols and policies with enforcement agents and firms and some reported requiring enforcement firms to have welfare/vulnerability teams. Some reported that the tender process for contracting enforcement agents measures how firms handle vulnerable debtors.

Creditors reported a range of ways in which they deal with cases where enforcement agents have identified vulnerability, such as: providing debt advice; conducting assessment visits; using alternative enforcement methods; or cancelling the debt. The evidence provided indicates that there is some variance in the approach that creditors expect enforcement agents to take.

Complaints process and remedies

The call for evidence asked about experiences of making a complaint about an enforcement agent, following reports by the advice sector during our first review of the 2014 reforms that debtors were experiencing difficulties doing so. The figures provided by enforcement trade associations, agents themselves and local authorities suggest that the number of complaints made is low relative to the volumes of debts enforced.

- **Question 8 (to anybody who has been contacted by an enforcement agent): If you had a complaint against an enforcement agent in the last 12 months, how did you find out how to make a complaint? Was the information that you received about how to make a complaint easy to understand? If you made a complaint, who did you make it to? If you did not make a complaint, why did you not do so? Were you satisfied with the way in which the complaint was handled? If not, did you take any further action? If your complaint was upheld, were you satisfied with the sanction or remedy that was imposed?**

Just over 100 respondents answered these questions. Respondents reported using a range of sources to find out how to make a complaint, including: enforcement agents' websites, government websites, internet search engines, online forums, the advice sector, local authority websites, MPs and friends and family. 32 respondents said that the information that they received about how to make a complaint was easy to understand, but 52 said it was not. Concerns included a lack of guidance on how to navigate the process and use of language that was difficult to understand for those without legal experience.

Most respondents had complained directly to the enforcement agent or enforcement agent company. Other routes taken included complaining to the court, the local authority, the police and to the Local Government and Social Care Ombudsman (LGSCO). One advice organisation reported that they now complain direct to creditors, as they no longer have faith in the ability of enforcement agents "to police themselves."

42 respondents gave details about why they had not made a complaint. Reasons included: a lack of faith in the process, with three respondents reporting that they felt too frightened to complain; concern about the potential cost of complaining to a court; not knowing who to complain to or how; a belief that the process is too long, complicated and stressful; the fact that complaining does not halt the enforcement action; concern that the trade associations are not independent; and a lack of evidence to support their complaint.

Just under 60 respondents reported that they were not satisfied with how their complaint was handled, although some of these said that the complaint was ongoing. Fewer than 10 respondents reported being satisfied with how their complaint had been handled.

We asked respondents who had made complaints which had been upheld, whether they were satisfied with the sanction or remedy that was imposed. Only a small number of respondents answered this question. Nine said they were satisfied. Sanctions described included suspension of the agent's certificate; a court order for the agent to repay money collected; withdrawal of action; and reimbursement of fees.

- **Question 9 (to advice sector organisations, the enforcement sector and creditors): Do you have any recent statistics or other evidence about the number and nature of complaints that have been made against enforcement agents and whether these have changed since the 2014 reforms?**

Advice sector organisations

Citizens Advice reported having helped people with 3,680 issues related to complaints about bailiffs in the preceding year (a 76% increase since 2014, but we note that these figures cannot reliably be compared due to a change in accounting).

The Taking Control coalition cite several statistics to say that very few people who feel they have been treated unfairly by enforcement agents or have experienced enforcement agents breaking the rules make a complaint. A StepChange client survey found that, of those who felt they had been unfairly treated by enforcement agents, less than 5 people had made a complaint. This was a survey of 1,032 clients, but only 46 of whom had been visited by bailiffs and only 26 of these felt that they had been treated unfairly, so the resulting sample sizes are very small.

The main barriers to making a complaint highlighted by the Taking Control coalition included: not knowing how to complain; the fact a complaint will not halt the enforcement action; a lack of faith in the process; the length of time it takes and a lack of transparency. Taking Control also reported that firms are more likely to take complaints seriously if they hear that a debt advice organisation is involved.

Enforcement agents

The figures provided by enforcement trade associations and agents themselves suggest that the number of complaints made is very low relative to the volumes of debts enforced. The most complained about areas were 'conduct of office staff' and 'conduct of agents'. Feedback from the enforcement sector is that complaints have remained low because: firms have expanded their customer care teams, which has meant complaints are resolved to a customer's satisfaction at first contact which avoids escalation; the rules are very prescriptive, which makes it easier to identify a breach of regulations; and the introduction of a compliance stage means many payments are generated without sending an agent at all. It was also noted that the use of body-worn cameras had deterred people from making speculative complaints.

In the majority of cases the complaint is not upheld. For example, in the year up to December 2017, the High Court Enforcement Officers Association received 187 complaints, only six of which were passed to their Complaints Board. Three of those complaints were upheld with a fine imposed. The remaining three were still pending at the time of the response to this CfE. In 2016, six complaints were passed to the Board, all of which were upheld with a fine imposed.

Creditors

A small number of creditors, mainly local authorities, submitted data about the number of complaints they have received in respect of agents they have instructed, or in the case of some local authorities, agents that they directly employ. They all reported having received

either no complaints or an extremely low number and a reduction since the 2014 reforms. One local authority attributed the low numbers in part to the increasing usage of body-worn video cameras, which allows them to resolve spurious complaints.

Local Government and Social Care Ombudsman (LGSCO)

The LGSCO submitted details of the complaints it has received about enforcement visits since 2014/15. As shown in table 2, there has not been a large volume of upheld complaints, with the agent, rather than the local authority, found at fault in around a third of these over the past four years.

Table 2: Number of complaints upheld by the LGSCO, broken down by year, whether the agent was at fault and where the agent was at fault due to vulnerability.

	No of upheld complaints	Agent at fault	% of complaints the fault of the agent	Agent at fault, vulnerability
2014/15	43	19	44%	<5
2015/16	41	11	27%	0
2016/17	40	11	28%	<5
2017/18	32	9	28%	5

- **Question 10 (to all with an interest): Do you think that the sanctions that the organisation or court considering a complaint can impose are effective and proportionate? If not, please set out what other sanctions should be permitted?**

58 respondents, the majority from the enforcement industry or local authorities, thought that the sanctions that the organisation or court considering a complaint can impose were effective and proportionate. 51 respondents, mostly individual respondents or from the advice sector, felt that the current sanctions were not effective and proportionate.

Members of the HCEOA and CIVEA reported that the associations had robust complaints procedures. The HCEOA can impose fines of up to £15,000 and there is a charge of £500 for any HCEO who has a complaint against them considered by the Complaints Board. The HCEOA can refer cases to the Senior Master¹⁰ who has the power to remove the HCEO's authorisation. CIVEA provides a range of remedies including refunds of fees, payment of compensation, or a formal apology or goodwill payment.

There are mixed views about whether the sanctions available to the county court are proportionate and some respondents raised specific concerns about the process of

¹⁰ The Senior Master of the Queen's Bench Division of the High Court is the designated person with responsibility for High Court Enforcement Officers.

bringing a complaint to court. Concern was raised that there is no established procedure for making a complaint to the Senior Master about an HCEO.

It was suggested that consideration should be given to whether it should be a mandatory requirement for agents to wear a body-worn camera to reduce the need for findings of fact to be made on a complaint.

Some in the advice sector raised concern that the inaccessibility and ineffectiveness of the current complaints process means that in practice there are no sanctions. The Taking Control coalition believed that a single independent complaints body should be created with the power to impose fines on individual agents and firms and to remove certificates.

Training and certification

The reforms introduced a new training and certification process, as set out in the Certification of Enforcement Agent Regulations 2014. Prior to this there was no standardised training for enforcement agents. All agents are required to be qualified in Taking Control of Goods to Level 2 NVQ or equivalent. The decision on whether to certify enforcement agents is made by a county court judge who must be satisfied that an applicant possesses sufficient knowledge of the law and procedure relating to their powers of enforcement and is a fit and proper person to act as an enforcement agent. Enforcement agents must appear in front of a judge every two years to demonstrate that they continue to demonstrate these qualities.¹¹

- **Question 11 (to all): Have you encountered or are you aware of any practical difficulties with the procedure for applying to the court for a certificate to act as a civil enforcement agent?**

We received mixed views on the application process. It was reported that there is a lack of consistency between courts about some of the certification requirements. Uncertainty about what will be accepted makes the application process difficult to manage, and sometimes results in unsuccessful applications which add costs to enforcement businesses. Some respondents suggested that enhanced guidance for the courts and judiciary would be helpful, as would digitising the process.

The advice sector expressed concern that some courts take different approaches when processing applications. A small number of respondents thought that the requirement to renew enforcement agents' certificates every two years was too onerous and that a certificate should be valid for longer. It was also suggested that the renewal process should be streamlined to reduce the administrative burden and cost to agents.

- **Question 12 (to all): Do you think that the training requirements are sufficient to enable civil enforcement agents to perform their duties? If no, are there additional training requirements that would be beneficial?**

¹¹ High Court Enforcement Officers are subject to a separate authorisation process set out in the High Court Enforcement Officers Regulations 2004.

Some firms go beyond the statutory requirement for agents to receive a Level 2 qualification by requiring their agents to achieve Level 3. A range of respondents, including members of the judiciary, thought that all agents should be required to achieve Level 3 and that there should be a requirement for face-to-face training, for example, a course designed specifically to deal with face-to-face communication, vulnerability and mental health, and conflict management.

Some respondents called for higher levels of qualification, suggesting that modules (e.g. on vulnerability, fines enforcement, Commercial Rent Arrears Recovery) could build up in combination to a qualification equivalent of a degree. It was suggested that enforcement agents should be limited to working on areas covered by the modules they have completed.

The advice sector said they support a common accredited training programme for civil enforcement agents and called for a robust set of continued professional development (CPD) requirements. There is some consensus on this, with the enforcement industry also recognising the importance of CPD.

Concern was raised that some judges were accepting non-compliant qualifications. Some respondents suggested that judges should be required to do more to test whether an applicant had the required knowledge. It was suggested that more should be required at renewal hearings to demonstrate CPD and that the NVQ qualification should be renewed every two years. It was also suggested that part of CPD should be consideration of an annual review by an employer with 360-degree feedback by use of body camera footage on an actual attendance.

Transparency and consistency of process

The Taking Control of Goods Regulations require enforcement agents to use standard prescribed letters and notices to inform debtors about the debt owed, the enforcement process, what they will be charged, their rights, and where to get further advice.

- **Question 13 (for all): Within the last 12 months do you have any evidence of aggressive or misleading letters being left for debtors by enforcement agents? If yes, what did the letters say?**

The Taking Control coalition, debt advisors and individual respondents reported that they had seen or received communications that overstated enforcement agents' powers and were threatening in tone and content. Issues reported included: threats to remove goods in an individual's absence and/or without a Controlled Goods Agreement being in place; threats of arrest or imprisonment; and not providing information about options for payment plans and insisting on payment in full.

The LGSCO reported that they have not come across evidence of misleading or aggressive correspondence used by enforcement agents, based on complaints they have investigated since 1 April 2014. Similarly, some local authorities and the Local

Government Association reported that they had not seen evidence of aggressive letters being sent by their agents, and most said they had not received any official complaints.

Other issues

The Taking Control coalition noted instances where forms and notices are not being completed correctly, such as inventories that specify 'all goods' or a partial description of goods. Another example was of an enforcement agent requiring someone to sign a blank form to which the agent subsequently added items.

Some individual respondents reported that they had not received a notice of enforcement before an agent visited them. Some respondents reported that following receipt of a notification of enforcement, they had had difficulty in getting through to the enforcement agent / firm on the telephone.

A debt advice organisation reported that many people in debt do not open letters. A survey of their clients found that as many as 80% were afraid to open the post. Some respondents raised concern about the tone and content of letters received regarding complaints. For example, in a letter sent by one firm dismissing a complaint, no information was given about how to appeal their decision.

Concern was also raised about the inappropriate use, frequency and content of text messages sent by enforcement agents.

It was noted that there are no prescribed forms for some notices, such as where an agent has visited but nobody was in or setting out instalment arrangement terms and effects.

Fees charged

The fixed fee structure¹² was designed to strike a balance between providing sufficient remuneration for enforcement agents to run a profitable business, without overly rewarding the industry to the detriment of debtors, who pay the fees. The structure was designed to incentivise settlement before a visit and control of goods becomes necessary.

- **Question 14 (to all): Do you think that the fee structure is working to encourage enforcement agents and debtors to settle at an early stage and to minimise the financial impact on debtors? What evidence do have to support this view?**

198 respondents answered this question. 77 thought that the fee structure was working as intended but 121 thought it was not.

Reasons given to support the view that the fee structure is working

The enforcement sector and creditors reported that the fee structure is successfully encouraging settlement at an earlier stage. CIVEA and several enforcement firms and local authorities reported that there has been an increase in cases settling at the

¹²The Fees that EAs can charge are set out in the Schedule to the Taking Control of Goods (Fees) 2014 Regulations, <http://www.legislation.gov.uk/ukSI/2014/1/contents/made>

compliance stage, the removal of goods is very rare, and they receive very few complaints about the fees charged.

Some enforcement agents and creditors reported that the transparency of the fee structure, which is set out in the Notice of Enforcement, acts as a deterrent to escalation of fees by encouraging settlement of the debt at the compliance stage.

Reasons given to support the view that the fee structure is not working

The advice sector took a less positive view, identifying four problems relating to fees: the lack of specification for what needs to be done at the compliance stage encourages escalation; insufficient transparency around how the fees are working and impact on the profit margins of enforcement companies; the fees are disproportionate for small arrears; and incorrect fees are being charged in some instances. The advice sector said that an independent regulator could oversee all these issues.

Some respondents raised concern that the fees are too high. A debt advice organisation reported that in some cases multiple debts to the same creditor are being treated separately (for example, council tax debts accumulated in different financial years) so that separate enforcement fees are applied to each. This is despite the 2014 regulations requiring enforcement agents to minimise the fees charged where practicable.

Concern was raised from a range of respondents that a significant number of people report not receiving a notice of enforcement and do not have the opportunity to settle at the compliance stage.

There was agreement that clarification was needed in some areas including: clarifying at what point each fee can be charged and when VAT can be added to fees and who is liable to pay it.

- **Question 15 (to all): Are there any changes that could be made to the fee structure to encourage earlier settlement?**

We received a number of suggestions in response to this question:

- Introduce statutory requirements on enforcement firms that set out exactly what is expected at each stage of the enforcement process. This was suggested by the advice sector and some members of the enforcement industry. This could be a checklist of activities to be completed before moving to the enforcement stage.
- Require local authorities and/or enforcement agents to report annually on the number of collections at the compliance stage.
- Provide those in debt with information about the fixed fee scales at an earlier stage and in more detail. It was suggested that detailed information about the fixed fee structure should be sent at the stage that a judgment or liability order is made to encourage prompt payment of the debt.

- Regularly review the fee structure using information gathered from the industry. To ensure that the fees are set at a level which is producing the correct profit margins for firms.
- Offer fee discounts to incentivise prompt payment. Some creditors suggested that offering fee discounts (for example waiving the compliance fee) might incentivise prompt payments.
- Creditors should pay the fees. It was suggested that local authorities and other creditors should pay more for enforcement.
- Prevent firms from remunerating agents using collection-based payments. The Taking Control coalition noted that the FCA's regulations for debt collection firms warn against using staff incentives regarding collection activity, which contrasts with the enforcement industry where they say that collection-based payment by results is the norm.
- Make changes to the fees charged at each stage. It was suggested that payment at the compliance stage could be made more attractive to debtors by either reducing the fee charged at that stage or by increasing the enforcement and sale fees. It was also noted that the fees have not been uplifted to reflect inflation since they came into force in 2014.

Debt recovery rates

The 2014 reforms were intended to incentivise early repayment before an enforcement visit becomes necessary, without adversely affecting creditors' ability to recover their money.

Alongside the call for evidence, we conducted an exercise to collect evidence from CIVEA and HCEOA regarding debt recovery rates. We have used this to evaluate the effectiveness of enforcement and assess how the fee structure is working with regards to encouraging settlement at the compliance stage.

There had been an increase in cases received by enforcement agents since 2014/15. CIVEA's data suggests that the increase had been driven largely by an increase in the number of road traffic cases, as can be seen in table 3. Road traffic cases accounted for a higher proportion of the total cases received by CIVEA members (an increase from 39% in 2014/15 to 47% in 2017/18).

Table 3: Total cases received by CIVEA members, broken down by year and debt type¹³

	2014/15	2015/16	2016/17	2017/18	14/15-17/18 % change ¹⁴
Council Tax	1,370,000	1,175,000	1,410,000	1,505,000	+10%
Road traffic fines	945,000	1,105,000	1,335,000	1,395,000	+48%
NNDR ¹⁵	84,000	85,000	83,000	81,000	-3%
CRAR	3,000	2,000	2,000	3,000	-11%
Total	2,400,000	2,368,000	2,830,000	2,980,000	+24%

Data provided by enforcement agencies indicates that overall effectiveness of enforcement has improved, with a greater proportion of debts now being successfully enforced than predicted.

Before implementation of the reforms, it was predicted that around 20% of debts would be settled at any stage. The one-year review found that 27% of debts were settled by civil enforcement agents and 33% by High Court Enforcement Officers.¹⁶

The data submitted to this review showed that in 2017/18, 25% of all debts were settled by civil enforcement agents and this had remained stable between 2014/15 and 2017/18. Figure 4 illustrates the percentage of cases received by CIVEA members paid in full, broken down by year and debt type.

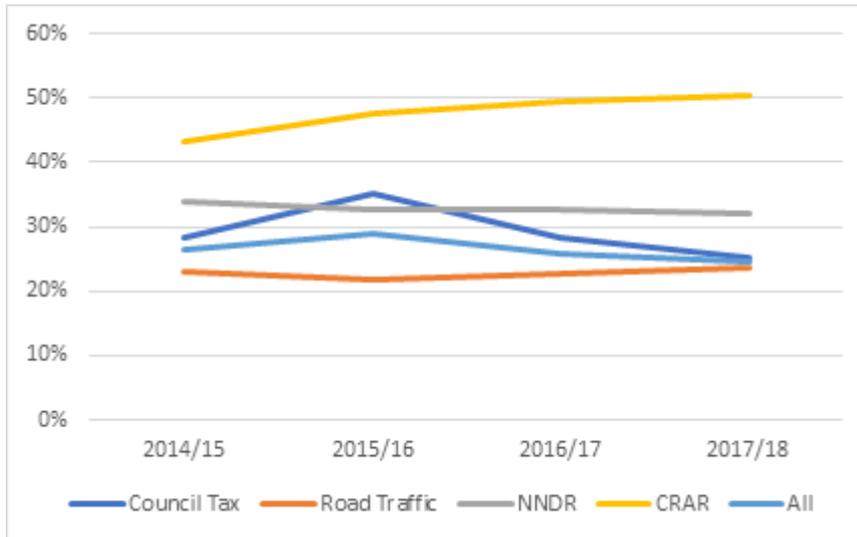
¹³ The figures in this table have been rounded as follows: 0-1,000 (nearest 10), 1,000-10,000 (nearest 100), over 10,000 (nearest 5,000)

¹⁴ Percentage changes are based on actual, non-rounded figures.

¹⁵ Non Domestic Rates

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695833/one-year-review-bailiff-reform-web.pdf p15

Figure 4: Percentage of CIVEA cases received in each year and paid in full as of February 2019, broken down by year and debt type.



Data provided by High Court Enforcement Officers indicates that in 2017, 40% of cases that were closed that year were paid in full. In 2016, this was a slightly lower rate of 36%. While there may have been other factors influencing the recovery rates (e.g., changes in the economy), this does indicate that overall collection rates have not suffered as a result of the reforms.

The proportion of debts paid in full at each stage remained very similar to those found at the one-year review, with debts settled at the compliance stage remaining under 40% of total debts paid in full to CIVEA agents. These rates vary by debt type, with higher rates for Commercial Rent Arrears Recovery (CRAR) and lower rates for road traffic charges. Data provided by individual firms suggests that some are more successfully incentivising early settlement than others; however, this may also be due to geographical variation.

Before implementation of the reforms, it was predicted that 50% of debts settled by civil enforcement agents would be settled at the compliance stage. In 2017/18, 37% of all CIVEA debts paid in full were paid at the compliance stage (9% of all debts received), compared to 38% of all debts settled at this stage at the one-year review in 2014/15.

The one-year review found that High Court Enforcement Officers had exceeded expectations of the percentage of debts that were settled at the compliance stage, with 10% of all debts received (31% of all debts settled) being settled at the compliance stage; compared to a prediction of 1% of all debts received settling at that stage. However, this review found that by 2017/18, the percentage of HCEO debts paid at compliance stage had fallen to 7.7% of all debts received (26% of all debts settled). There may be a number of reasons for the slight fall, including wider economic and policy changes which have changed debtor demographics.

A very small percentage of cases reach the Sale stage. These proportions have remained fairly stable between 2014/15 and 2017/18 for all types of debt received by CIVEA members, as shown in table 5.

Table 5: % of cases settled at the Sale stage by CIVEA members, broken down by year and debt type

	Council Tax	Road Traffic	NNDR	CRAR	All
2014/15	2%	4%	2%	2%	3%
2015/16	3%	3%	1%	1%	3%
2016/17	3%	2%	2%	0%	3%
2017/18	2%	3%	1%	0%	2%

The HCEOA also report low percentages of all cases paid in full at Sale stage - 3% of cases paid in full in both 2016 and 2017, which equates to 1.2% and 0.9% of all debts received respectively. This is lower than the Enforcement Fee Structure Review prediction, which predicted 2% of all debts received would be settled at Sale.

The HCEOA report that around 55% of all cases paid in full are paid in instalments. We did not receive data on the proportion of cases paid in full via repayment plans for CIVEA members.

Not all agencies are registered with CIVEA or the HCEOA and not all members provided their association with data, therefore the coverage is not complete and there will be some bias towards agencies who have stronger ties to their trade association. Some large firms submitted data as part of CIVEA's response and separately sent in their own data/statistics.

During the one-year review, enforcement agents raised the issue that debtors are sometimes incorrectly advised (mainly by informal online sources) to pay their creditor directly after receiving notice that the enforcement process has begun in an attempt to avoid the enforcement fees. Evidence submitted from enforcement agents suggests that this is still an issue.

Commercial Rent Arrears Recovery (CRAR)

The Tribunals, Courts and Enforcement Act 2007 abolished a landlord's ancient right of distress against his or her tenant and in its place introduced a new regime for commercial rent arrears recovery (CRAR). The new law was implemented in 2014.¹⁷

The CRAR system is a non-court-based enforcement method. The rules require at least seven days of arrears of rent before CRAR can be used and it can only be used to collect outstanding rent, whereas previously the distress rules were used to enforce the payment of other charges specified in a lease, such as service charges.

¹⁷ Part 7 of the Taking Control of Goods Regulations 2013

Enforcement agents recovering rent under the CRAR procedure are subject to the other aspects of the Taking Control of Goods reforms, including the standard fees prescribed by the Taking Control of Goods (Fees) Regulations 2014 and a requirement to give tenants at least seven days' warning of an enforcement visit using a standard notice.

The use of CRAR was restricted between 2020 and 2022 as part of a package of measures to provide firms with breathing space to negotiate how to address the cost of commercial rent debts caused by the pandemic.

- **Question 16 (to all with interest in or experience of using the CRAR procedure): Do you think that the CRAR procedure strikes the appropriate balance between providing protection against aggressive action by enforcement agents whilst ensuring that debts can still be collected effectively? What evidence do you have to support your view?**

39 respondents reported that they thought the new procedure did strike the appropriate balance. Data provided to this review indicates that CRAR is an effective method of debt recovery: the percentage of CRAR cases paid in full and the percentage of paid cases that were settled at the compliance stage were significantly higher than for other debt streams.

32 respondents had concerns about the procedure. These included dissatisfaction with its restricted scope and concerns that the requirement to give tenants notice of an enforcement visit and the relatively low compliance fee might be incentivising tenants to delay paying rent.

Most of the concerns expressed related to the restrictions the procedure imposes on landlords. For example, the fact that the CRAR procedure only applies to the principal rent could lead to landlords requiring larger deposits to account for potential difficulties in enforcing service charges and might use more aggressive enforcement methods such as forfeiture.

There were mixed views from landlords and the enforcement sector about the requirement to provide tenants with seven days' notice of a visit. Some said this was effective in encouraging prompt payment without the need for an enforcement visit, while others said that some tenants appeared to be using this period as an unofficial overdraft facility, as the £75 compliance fee is not enough deterrent to late payment. It was also reported that in some cases tenants removed goods from their premises during the compliance period, in order to prevent them being seized for payment of the debt.

Further regulation

The 2014 reforms aimed to minimise excessive regulation on business while ensuring effective protection for debtors. Although some groups suggested an independent regulator during the original consultation on the reforms, the government at the time considered that the changes to the law, introduction of a transparent fee structure and enhancement of the court-based certification process were a more proportionate approach to improving standards in the sector.

- **Question 17: Do you believe that the current level of regulation of the enforcement industry is sufficient? What evidence do you have to support this view?**

67 respondents said the current level of regulation was sufficient and 127 said it was not. Over half of the respondents to this question thought that there should be an independent regulator.

- **Question 18: Do you think that enforcement agents should be regulated by an independent regulator? If so, what powers, scope and structure should the independent regulator have and how should it be funded?**

The Taking Control coalition said that the current level of regulation was insufficient and called for an independent regulator. They cited the regulation of debt collection agencies, debt advice organisations and financial services by the Financial Conduct Authority (FCA) as a positive example. Other debt advice organisations, individuals and MPs expressed similar views.

The majority of enforcement agents and major creditors who responded to this question thought that the current level of regulation was sufficient. However, it was recognised that some areas of regulation are open to interpretation.

A small number of local authorities and enforcement agents and firms thought greater oversight and regulation of enforcement agents – including independent regulation – would be beneficial to the industry as it would raise standards and improve public perceptions.

The Taking Control coalition set out that an independent regulator should be an independent statutory body and should have the following functions. The need for some of these functions to be undertaken by an independent regulator were also suggested by some other respondents:

- authorisation and licensing of individual agents and firms;
- setting standards for conduct;
- developing training and competence requirements;
- oversight and compliance monitoring including supervision of firms and individual agents;
- oversight of fees including undertaking a review of the fee structure;
- supervision of complaints processes and ensuring a free, independent complaints mechanism is in place;
- imposing sanctions where appropriate, including removal of authorisation or licenses, imposing fines and awarding compensation; and
- oversight of the industry, including investigating systemic problems and liaising with stakeholders.

It was suggested that using an existing regulator such as the FCA would reduce set-up costs. The FCA was cited due to the overlap with their existing role regulating some

enforcement firms in their capacity as debt collectors. Other suggestions included the Security Industry Authority, OFSTED and the Care Quality Commission.

The Taking Control coalition suggested funding the costs of regulation through an initial registration fee and on-going fees for enforcement firms, with additional fees based on the number of complaints a firm receives. Enforcement trade associations stated that a full cost-benefit analysis would be essential, while a small number of respondents said that funding should come from outside the industry, for example from the government, in order to ensure complete independence.

- **Question 19: As an alternative to an independent regulator, do you think there are other steps the government should take to improve the regulation of enforcement agents?**

Suggestions as alternatives to an independent regulator included: extending the powers of the Local Government and Social Care Ombudsman; extending the powers of the trade associations and mandating membership of them; independent advisory groups to monitor compliance with the Regulations; enhancing the court-based certification process; and regulation of creditors.

Other issues

Some respondents said that enforcement firms should be made to directly employ agents and pay them a salary. It was reported that the firms who do this are able to ensure higher standards and accountability of their agents. Concerns were raised that contracting self-employed agents and paying them on a commission basis, could be incentivising them to pursue debts aggressively.

Whilst not the focus of this review, some respondents suggested that reform of the courts system is required to create a unified enforcement court, to improve the enforcement process for both debtors and creditors. Some respondents commented that the current system of enforcement by different courts with different processes and procedures, using different types of enforcement agents with different routes for complaint, is extremely confusing for consumers and can lead to very different outcomes. Some creditors and enforcement agents reported that they consider the current restrictions on the use of HCEOs for accounts regulated by consumer credit legislation as outdated and unnecessary and say they should be lifted.

Government response and next steps

We are encouraged by the evidence presented to us that the 2014 reforms have been successful in many areas, particularly regarding improved transparency in the enforcement process and the fees charged. Responses to this call for evidence showed that many firms and creditors had made considerable efforts to implement the regulations and there appears to have been a cultural shift within parts of the enforcement industry to ensure that people in debt are treated fairly. However, there remained concern about the behaviour of some enforcement agents, particularly regarding the treatment of vulnerable individuals and concern that the current level of oversight over enforcement firms is insufficient. In light of the current pressures on the cost of living, we recognise that it is important to make sure that enforcement agents and creditors treat those in financial difficulty fairly.

Having regard to these findings and the subsequent establishment of the Enforcement Conduct Board (ECB), we intend to take forward a programme of work and support the work of the ECB in the following areas:

Complaints process and remedies

We believe that there is a strong case for reform to the way in which complaints about enforcement agents are made and dealt with. We received evidence that individuals were being deterred from bringing complaints by barriers in the system. In addition to undermining accountability within the enforcement industry, this has also presented a major difficulty for this review in identifying with confidence the true extent and nature of problems in the industry.

The ECB's Board has said that it will seek to ensure public confidence in an accessible and independent complaint-handling system. The Ministry of Justice fully supports efforts to improve these systems, as we recognise that an accessible and independent complaints process is important both in ensuring complaints are handled fairly and in improving transparency around problems in the sector.

As set out above, we intend to review the work of the ECB within two years. As part of that review, we will consider whether the government needs to take any further action, including legislative changes to ensure that the system for making a complaint against private enforcement agents is effective, transparent and independent.

In the meantime, however, we will consult on a limited reform to extend the range of sanctions that are available to available to the Senior Master¹⁸ in cases where it has been

¹⁸ The Senior Master of the King's Bench Division of the High Court is the designated person with responsibility for High Court Enforcement Officers.

identified that rules have been broken by HCEOs. Currently, the only statutory sanction is to remove the HCEO's authorisation which can only be justified in the most egregious circumstances. This means that it is not possible for the Senior Master to sanction less serious, but still significant instances of rule breaking.

Body-worn cameras

We received evidence to suggest that the use of body-worn cameras is effective at improving standards and allowing complaints to be dealt with fairly. The enforcement industry also reported that their use improves the safety of EAs and deters spurious complaints against them. As previously announced, we will make it mandatory for private enforcement agents to use body-worn cameras and will publish guidance about their use. This work was delayed as a result of the response to COVID-19, but we intend to consult shortly on how to legislate to make body worn cameras mandatory for private enforcement agents and on the draft guidance for their use.

Independent regulation

Whether the enforcement industry should be subject to independent regulation was raised by many respondents. However, it was difficult to quantify the scale of problems experienced by those subject to enforcement action due to the significant differences in accounts and the limitations of the available data. The low volume of formal complaints is not a reliable gauge of compliance with the existing regulations, as it could indicate a lack of faith in or difficulties accessing the complaints processes. In the absence of central monitoring and supervision of enforcement agents and firms, it is difficult to know whether standards are being consistently upheld. This lack of transparency lends weight to the arguments in favour of increased regulation, although it is important that this should remain proportionate.

The ECB will provide independent oversight of its members. This oversight activity will provide an evidence base about the scale and nature of issues in the industry, which will be used to help inform decisions about whether further statutory reforms are needed.

We acknowledge that some stakeholders would prefer us to legislate now to ensure that all enforcement agents and firms are subject to independent regulation by the ECB. The Government has already committed to reviewing the operation of the ECB within two years to see if legislative changes are needed to ensure appropriate oversight of enforcement agents and firms. This will provide time for the ECB to gather an evidence base to allow the government to decide if and how further statutory regulation could be developed to ensure that regulation of the enforcement industry is effective, proportionate and sustainable. If necessary, however, the government will review the position within the two-year period.

Vulnerability and affordability

In line with the Government's fairness agenda to reduce the physical and mental impact of debt recovery on those who are vulnerable, we take the concerns that have been raised to this review about the identification and treatment of vulnerable people very seriously. We

also note that many firms and creditors have made significant efforts to make sure that people in financial difficulty are treated fairly. This has included showing greater flexibility in terms of agreeing to affordable repayment plans. However, we agree that more should be done to raise standards across the sector in this area, particularly given the impact of the rising cost of living on the ability of people and businesses to pay debts.

We welcome the proposal for the ECB to consult widely on and develop new affordability and vulnerability protocols for its members, as part of its objective to ensure fair treatment and appropriate protection for people subject to enforcement – with particular regard for those experiencing financial difficulty or other vulnerable circumstances.

Fees

Respondents from the enforcement sector and creditors reported that the fee structure is successfully encouraging settlement at the compliance stage, without a visit being necessary, so that the removal of goods is very rare, and they receive very few complaints about the fees charged. The advice sector took a less positive view, identifying four problems: the lack of specification for what needs to be done at the compliance stage encourages escalation; insufficient transparency around how the fees are working; disproportionately high fees for small debts; and incorrect fees being charged in some cases. The data showed that fewer cases are being settled at the compliance stage than were predicted (37% compared to 50%), but that some firms seem to be better at incentivising payment at that stage than others and that the percentage of cases settling at the compliance stage varied by debt type.

It was also reported that further clarification was needed in some areas, including regarding who is liable to pay the cost equivalent to any VAT incurred on fees. The government has since clarified the position regarding VAT by amending the Taking Control of Goods (Fees) Regulations 2014¹⁹ and by issuing guidance to the HCEOA. The legislation, which came into force on 9 December 2021, sets out that the costs equivalent to the VAT that applies to fees and disbursements can only be recovered from the judgment debtor in cases where the creditor is not VAT-registered.

In response to the concerns that were raised in this review and by the Justice Committee about the level that the fees are set at, we therefore intend to undertake a more fundamental review of the Fees Regulations.

This review, which will report next year, will consider:

- what more can be done to encourage higher settlement rates at the compliance stage leading to lower costs for both enforcement agents and those in debt;
- whether the level the fees are set at remain appropriate given technological, economic and regulatory changes that have taken place since they were set; and

¹⁹ The Taking Control of Goods (Fees) (Amendment) Regulations (SI.2021/1288)

- in respect of the High Court fee scale only, to consider when Enforcement Stage fee 2 should be recovered; and whether the High Court fee scale is appropriate for low-value debts.