



Ministry
of Justice

One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

April 2018

Cm 9600



Ministry
of Justice

One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

April 2018



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/publications>

Any enquiries regarding this publication should be sent to us at civil_justice_poli@justice.gov.uk.

ISBN 978-1-5286-0281-5

CCS0318311620 04/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

Contents

1. Summary	3
2. Introduction	5
3. Review aims and methodology	7
4. Results	9
5. Conclusions	19
Annex A: Enforcement agent fees	21

One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

1. Summary

1.1 Background

This post implementation review evaluates reforms introduced by the Tribunals, Courts and Enforcement Act 2007¹ regarding how enforcement agents operate and the fees they charge. The reforms were implemented in April 2014 and the review is to assess whether they are working broadly as expected after one year and if there have been any major unintended consequences.

The review started in early 2015 and involved analysing a variety of data, and gathering views from key stakeholders including creditors, the advice sector, other government agencies and enforcement agents themselves (as set out in the methodology section).

1.2 Key findings

- All stakeholders agreed that the reforms have provided transparency and consistency in the enforcement process, where this was previously lacking. The new standard forms and letters provide the debtor with clear signposting detailing where to find advice with their financial problems, information about their rights, and where to complain.
- The overall proportion of debts successfully enforced between April 2014 and April 2015 was 27% for civil enforcement officers and 33% for high court officers, which was higher than predicted during the design of the new fee structure and provides a baseline for future monitoring.
- A major component of the reforms was a new fixed structure for enforcement fees. The intention was to control excessive charging and incentivise settlement at the initial (compliance) stage before a visit and removal of goods becomes necessary. Indications are that High Court Enforcement Officers² have been particularly successful at compliance stage enforcement, exceeding predictions by nine percentage points (1% of *total warrants issued* were expected to be settled at this stage, versus 10% achieved).
- For civil enforcement agents, compliance stage enforcement rates have been lower than expected (38% of *successfully enforced warrants* settled at compliance, relative to 50% predicted). The disparity between high court and civil agents in this respect may be partly due to the difficulties making accurate predictions during reform design, however we would expect compliance stage enforcement to improve for this group as reforms bed in.

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

² There are two main groups of enforcement agents who are covered by these reforms, those who collect outstanding high court writs (High Court Enforcement Officers (HCEOs)) and those who collect other types of debt (referred to as civil enforcement agents).

One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

- By clarifying what was considered unacceptable enforcement behaviour and including advice sector contact details on enforcement letters, the reforms have provided greater transparency over debtor rights and how to complain. Data provided by the advice sector show that some debtors and debt advisors perceive that aggressive behaviour is still happening in practice, and while it is not realistic to expect this to have been eradicated altogether, the Ministry of Justice take the concerns expressed by the advice sector feedback seriously and will pay close attention to the level and nature of complaints as the reforms bed in further.

2. Introduction

2.1 Enforcement agents and types of debt collected

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

There are two main groups of enforcement agents who are covered by these reforms, those who collect outstanding high court writs (hereafter known as High Court Enforcement Officers (HCEOs)) and those who collect all other types of debt (hereafter known as civil enforcement agents). There are currently around 2,300 civil enforcement agents³ and just over 50 High Court Enforcement Officers⁴ registered with the Ministry of Justice (MoJ).

The majority of enforcement agents work for private companies rather than as individuals, but agents must now have an individual certificate. There is no regulatory body for enforcement agents though there are trade bodies they can join who offer guidance on the legislation, provide training and deal with complaints. For civil enforcement agents there are the Civil Enforcement Association (CIVEA) and the Civil Enforcement Agent Association (CEAA). High Court Enforcement Officers are required to be members of their trade body, which is known as the High Court Enforcement Officers Association (HCEOA).

There is no *precise* information about total enforcement caseload because data are not centralised or recorded consistently. Some enforcement work is generated through the county and high courts: if debtors do not pay or comply with judgments the creditor can go to court to get an enforcement order. In 2015 145,433 enforcement order applications were made at County Courts and 53,874 at High Court.⁵

Enforcement agents who execute County Court warrants are not within scope of these reforms as they are employed by HMCTS. While they operate under the same procedures (regarding how they can enter premises etc) they are crown employees and do not therefore charge fees or need to be certificated. HMRC also employ enforcement agents to collect income tax arrears – again they are crown employees and not within scope of the review.

2.2 The enforcement reforms

Prior to the reforms debtors were routinely faced with an inconsistent enforcement process which lacked transparency. The law relating to enforcement agents' powers and the seizure and sale of goods was complex, being contained in numerous statutes, secondary legislation and common law, and different enforcement powers were available

³ MoJ Certified Bailiff Register (August 2016)

⁴ High Court Enforcement Officers Association (August 2016)

⁵ Civil Justice Statistics Quarterly: <https://www.gov.uk/government/collections/civil-justice-statistics-quarterly>

according to debt type. There were also concerns that some enforcement agents were behaving inappropriately, for example misrepresenting their powers to enter or seize goods, charging excessive fees, and using unnecessary force.

The costs system for enforcement agents was also complex, each enforcement power bringing with it a different costs structure. Some structures were laid down in statute whereas others existed only within contractual arrangements drawn up between an enforcement company and its clients.

The reforms were implemented in April 2014, following an extensive period of research and engagement⁶ and implementation of Part 3 of the Tribunals, Courts and Enforcement Act 2007 (the TCE Act). The broad policy objectives were to:

- Disincentivise aggressive enforcement: specifically, excessive charging and the premature or unnecessary undertaking of enforcement activity.
- Incentivise earlier recovery of debt.
- Provide protection against inappropriate enforcement agent behaviour: specifically, threatening behaviour and misrepresentation of legal authority.
- Simplify the process for enforcement agents, debtors and creditors.
- Provide adequate protection for debtors, particularly the vulnerable, and for third parties and co-owners.
- Maintain or improve the effectiveness of enforcement.
- Fairly and adequately reward enforcement agents for the work they do.

The specific measures implemented under the Tribunals Courts and Enforcement Act 2007 were:⁷

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

The fixed fee structure consists of three main stages: 1) compliance, 2) enforcement, 3) sale (further details are at Annex A). The intention behind this structure is to incentivise settlement at the compliance stage before a visit and control of goods becomes necessary. Fees are still charged to the debtor in addition to the amount owed, but by settling at compliance stage extra costs to the debtor are minimised and more intrusive action is avoided. Although the enforcement agent earns less at the compliance stage, the amount of work required is also lower so that, on balance, the agent should still receive fair financial reward.

⁶ See <https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action> for full details

⁷ <http://www.legislation.gov.uk/ukpga/2007/15/contents>

3. Review aims and methodology

The original scope of the one year review was to focus on urgent unintended consequences. In particular:

- Whether enforcement agents are complying with the regulations around aggressive behaviour.
- Any substantial changes in debt recovery rates.
- Avoidable enforcement activity being paid for by debtors/creditors.
- Any unnecessary burdens the reforms are placing on key stakeholders.
- Other unintended consequences impacting positively and negatively on the groups affected.

Although the one year review was not intended to systematically evaluate the fee regime, in practice it is impossible to completely separate fees from other impacts, as the behaviours observed are partly driven by the financial incentive. Therefore the 1 year also goes beyond the basic requirement to assess unintended consequences by seeking to identify:

- Any obvious flaws in the fee structure that appear to be driving negative impacts.
- Any clear indications that enforcement agents are earning inflated profits or not being rewarded fairly.

Since data on debts enforced are not centralised across types of debt stream and creditor the review required the use of a range of data sources, collected from different stakeholders. These included:

- Advice sector data and insight on debtor experiences since the reforms. A number of advice agencies have carried out their own surveys with debt advisors and clients, which have either been published or provided for the review as aggregate statistics.
- A call for written feedback from a variety of stakeholder groups on the impact and unintended consequences of the reforms. Questions were tailored to the different groups affected, but general responses were also accepted. Invites to respond were put to creditor groups, advice sector agencies, and enforcement agents at two points during the review, once just before April 2015, and then again over the summer of 2015. Eight submissions were received from creditors, including local authorities and representative bodies such as the British Property Federation. 16 were provided by enforcement agents and their trade groups, 2 by the advice sector and a response was also received from the judiciary. The call for feedback allowed the different stakeholders to submit concerns which they are not necessarily able to quantify, based on the knowledge and experience of practitioners working in the field.
- A specific exercise to collect quantitative data from enforcement agents themselves:
 - Civil enforcement agents provided aggregated data for 14 agencies, representing over 1.2 million warrants issued and closed between April 2014 and April 2015. The data contained information about the number of warrants and their values, the stages the cases were settled at and the average fees.

One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

- Ten High Court Enforcement Officers Agencies also provided similar data, representing around 32,000 warrants issued and closed April 2014 – April 2015.
- Workshops with advice sector representatives and enforcement agency trade bodies, were held to check interpretation of their quantitative data and discuss possible reasons for findings.

The review was publicised via presentations and written statements at stakeholder conferences and other relevant meetings across the country, encouraging parties to contact the MoJ with any feedback or unintended consequences of the reforms. Representative bodies were also asked to encourage members to participate. Posts advertising the review were placed in specialist media, for example in the Local Authority Civil Enforcement forum.

Collecting, compiling, and analysing the information was a significant exercise, and although the data do come with caveats and limitations, annotated alongside the relevant results, every effort was made to obtain a wide coverage which balances stakeholder views.

4. Results

4.1 Transparency and consistency of process

A key ambition for the reforms was to provide more standardisation and transparency, both in terms of the fees charged and the enforcement process. In addition to implementing a consistent fee structure, standard letters and notices are also in place to inform debtors about the process, what they will be charged, their rights, and where to get further advice. The initial compliance letter must be followed by seven clear days (excluding Sundays and bank holidays) for payment or a payment plan to be made, before moving on to the Enforcement stage.

Qualitative feedback from stakeholders showed there was a general perception that these measures have been successful in improving awareness, clarifying the processes, and directing people to appropriate advice. The use of standard prescribed letters and notices prevent agencies sending aggressive or misleading notices. The notices also describe the fee regime and debtors can check the fees charged on the gov.uk⁸ or Citizens Advice website,⁹ to make sure they are correct and see how the fees escalate if no action is taken.

Some issues and areas for clarification were raised during consultation, including:

- There is no prescribed notice at the enforcement visit stage (i.e. the letter left by the enforcement agent if the debtor is not present at the visit). Some advice sector agencies said they have heard of examples where threatening or misleading letters have been posted through the door at this stage.
- Since the reforms, enforcement agents are only permitted to seize a vehicle on the land owned by the debtor or the public highway. A definition of public highway is not included in the regulations which has led to some debtors seeking advice as to how to avoid the seizure of their vehicle.
- Some advice sector representatives felt that the wording regarding fee remissions (regulation 12 of the Taking Control of Goods (Fees) Regulations 2014) is confusing. They note that without a definition of vulnerability, the fee remission is entirely at the enforcement agent's discretion. They also queried whether the regulation should extend to goods not under control or to the early compliance stage.
- Both the advice sector and enforcement agents expressed concerns that the police were not yet fully aware of the new regulations and the powers of enforcement agents.
 - The advice sector has reported occasions where the police tell the debtor to allow the enforcement agent into their property when the agent has no automatic rights of entry.
 - Enforcement agents reported instances where the police do not understand the extent of their powers and will not support them when they are legally attempting to

⁸ <https://www.gov.uk/your-rights-bailiffs/what-you-can-do-when-a-bailiff-visits>

⁹ <https://www.citizensadvice.org.uk/debt-and-money/action-your-creditor-can-take/bailiffs/>

enter a property to seize goods (i.e. when there has been previous entry and a controlled goods agreement exists).

Another issue raised by most stakeholders, not directly driven by the reforms but potentially exacerbated by the extra transparency offered, is a proliferation of social media sites which claim to help debtors evade enforcement action. These often contain misleading or incorrect information about actions debtors can take, which in reality may lead to higher fees being charged because the next enforcement stage is triggered. Some forums encourage debtors to make false complaints and claims about their status, and a minority advocate aggressive action towards agents.

Data provided by HMCTS, from the enforcement agencies they use to collect criminal fines, shows a 44% increase in complaints (not including information requests) between 2013/14 and 2014/15, from 1,635 to 2,361.¹⁰ Only a small proportion of these are upheld, which has remained stable at around 9% (so an extra 65 complaints upheld between 2014/15 and 2015/16). HMCTS attribute the rise to the additional signposting and a rise in the number of online websites encouraging vexatious complaints.¹¹

4.2 Training and Certification

The reforms have 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.

Since the training courses and subsequent certification process were phased in after implementation, the behavioural changes may not have been fully apparent at the 1 year point. Several stakeholders from the enforcement industry reported they have made in-year efforts to enhance their training courses, including via work with the advice sector and other experts such as the Royal College of Psychiatrists to improve their components on the treatments of debtors and vulnerability. Therefore, while we would still expect significant improvements in standards of behaviour the full effect should be more apparent once more time has elapsed.

Agents who specialise in the recovery of commercial rent arrears stated that the process is more complex than many other debts pursued by non-High Court agents, and that the standard training is not detailed enough for enforcement agents seeking to handle this debt as it does not cover the Insolvency Act,¹² company law or landlord and tenant legislation.

Some enforcement agents have encountered difficulties when applying for their certificate due to the fact that the Disclosure and Barring Service (DBS) checks (previously known as the Criminal Records Bureau (CRB)) need to be completed in the month before the certification hearing. As the DBS checks can take a varied amount of time to process (reportedly between one week and over a month), there is a risk they not be ready before the hearing.

¹⁰ HMCTS Management Information

¹¹ Note this is qualitative feedback

¹² www.legislation.gov.uk/ukpga/2000/39/pdfs/ukpga_20000039_en.pdf

4.3 Bonds

Enforcement agents are required to lodge a security bond of £10,000 when applying for certification, and to maintain this throughout the duration of the certificate. In practice the bond is usually put up by the employer of the enforcement agent. The judiciary have provided feedback that some enforcement agencies are offering bonds that do not cover the whole certification period. This does not occur frequently in the case of a new certification, but is fairly common in the case of renewals as the agent often has a bond up to a certain date, which does not coincide with the renewal hearing. The enforcement agent is under an obligation to ensure that the bond is renewed and in place whenever they take enforcement action, and the certificate is invalid if a bond is not in place.

4.4 Treatment of debtors

4.4.1. Enforcement Agent Behaviour

Although the reforms are designed to incentivise settlement at an early stage, many cases will inevitably still proceed to the enforcement and sale stages where debtors come into contact with enforcement agents in person. Prior to the reforms, there were complaints – in particular those voiced through the advice sector – that some enforcement agents were behaving in an aggressive or misrepresentative manner. In particular:

- Misrepresentation of legal authority, e.g. threatening the use of force, inappropriately entering a property, threatening to seize goods they are not entitled to or with a value disproportionate to the debt.
- Charging excessive fees, e.g. charging for “phantom” visits or charging for activities not carried out.
- Threatening behaviour and unnecessary use of force.

Since the reforms were implemented advice group stakeholders have reported a general increase in contact from their clients regarding enforcement agents. Management information, however, does not allow complaints to be separated from general enquiries about enforcement action, which would be expected to increase following the introduction of standard letters (which specifically direct debtors to advice sector services).

A survey by StepChange (one of the advice agencies listed on the compliance letter) found that 47% of clients surveyed said enforcement action had prompted them to seek debt advice. Doing so can help people deal with more than just the immediate issue and can be a positive step towards tackling the roots of debt problems: MoJ research (2015)¹³ found that anxiety and shame often prevented those experiencing debt issues from responding to their problem and signposts to help and advice helped those interviewed take action, as did information to help participants negotiate repayment plans.

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484182/varying-paths-to-justice.pdf

Further evidence, which is included in later sub-sections, sought to assess enforcement agent behaviour from the debtor's perspective. This was provided mainly by the advice sector, including the results from four surveys:

1. **Advisor Survey:** a collaborative survey of 209 debt advisors conducted on behalf Citizens Advice, AdviceUK, National Debtline, Business Debtline, the Institute of Money Advisers, StepChange Debt Charity and Zacchaeus 2000 Trust between 1st April 2015 and 1st June 2015. The survey is unpublished but data and a summary of findings were provided to MoJ.
2. **StepChange Survey** of 1087 clients (council tax debts only) conducted between 4th and 15th February 2015. 489 (45%) of clients encountered enforcement agents as a result of their debts.¹⁴
3. A second StepChange Survey of 1,794 clients who came to the charity for advice in Q3/4 2015. They were asked about how their interactions with creditors, debt collectors and bailiffs impacted on their experience of being in debt.¹⁵
4. **Citizens Advice Client Survey**, linked to pages containing advice regarding enforcement agents, which has been running on their website since September 2013. Citizens Advice provided MoJ with responses split pre and post reform.

There are some caveats associated with these surveys, in particular that they only represent debtors who have contacted the relevant advice agencies, and so they cannot be extrapolated across the whole population who have dealings with enforcement agents. Within the surveys sampling is not fully randomised and the responses generally present the debtor side of the situation. They are, however, the best evidence available on debtors' experiences with enforcement agents, and although results cannot be fully generalised, indicative information about behaviour and compliance is still to be taken seriously. In particular given the difficult financial and social situations often being experienced at the time of enforcement.

Since some of the relevant reforms – e.g. training – were phased in after implementation, the behavioural changes may not have been fully apparent at the 1 year point. In addition to providing evidence of the current position, the data potentially provide a benchmark for ongoing monitoring.

4.4.2. Seven Day Notice Period

Following issue of an enforcement notice, seven clear days must now be given (excluding Sundays and bank holidays) to settle before moving on to the Enforcement stage. There were initial concerns from stakeholders in the advice sector that a seven day notice period would not be long enough to allow the debtors to settle their debts. Conversely, enforcement agencies were concerned that the seven day compliance period might allow debtors to sell or hide goods that could be used to cover their debts. In practice much of the feedback from the enforcement agents, and the local authority members of the creditor stakeholders group, describes a system where the creditors insist on a longer compliance stage than the minimum allowed with many requiring the enforcement agents to leave two or three weeks after the compliance letter is delivered before attending the property.

¹⁴ The full survey results were published and can be found at:
<http://www.stepchange.org/Portals/0/documents/media/reports/Council-tax-debt-report-2015.pdf>

¹⁵ <https://www.stepchange.org/policy-and-research/creditor-and-debt-collector-conduct.aspx>

The advice sector did provide examples of cases where the minimum time was allowed to pay the debts, and reported that some debtors do not recall receiving the compliance letter before the enforcement agent attended their property.

An issue raised by creditors and agents who specialise in commercial rent arrears is that some debtors are prepared to pay the £75 compliance fee as a cheaper alternative to taking out a loan or overdraft to cover the shortfall. They know the creditor has to apply for the enforcement order, and when the compliance letter arrives they have seven days' notice. This is leading to some landlords incurring debt themselves.

4.4.3. Behaviour of individual agents

The survey of advisors outlined above asked a question about advisors' perception of bailiff behaviour, based on recollection of experiences with clients before and after the reforms. Table 1 shows the responses. Across all categories there were significant numbers of advisors who believed behaviour has improved, in particular related to the category "collecting the correct fees" where 52% thought behaviour is now better. For other categories more advisors believed behaviour has stayed the same (note that 'staying the same' is relative to previous experience which may be positive or negative depending on the individual). Across the categories there were also significant numbers who perceived behaviour has become worse, in particular related to use of threatening behaviour (28%), and treatment of vulnerable clients (31%).

Table 1 Advisor Survey responses to: "In what areas has bailiff/enforcement agent practice got better/worse since April 2014?" Total responses: 208

Enforcement Agent Practice	Behaviour has got worse %	No change to behaviour %	Behaviour has got better %	Don't know %
Using threatening behaviour	28%	47%	19%	6%
Applying fees appropriately	15%	28%	52%	5%
Seizing goods appropriately	12%	47%	22%	19%
Adhering to rights of entry	15%	54%	23%	8%
Treatment of vulnerable clients	31%	44%	19%	6%

The advisor survey asked respondents about whether they had experienced examples of aggressive or misrepresentative behaviour from the enforcement agencies they encountered on a regular basis. 63% of advisors believed that the firm they came across most frequently had demonstrated examples of aggressive or intimidating behaviour towards advice sector clients.

The initial StepChange client survey (number 2 in the above list) outlined above found that 30% (130) of the clients surveyed stated that the enforcement agent threatened forceful entry the first time they visited. 11% (49) of those surveyed claimed that the agent visited their home before 6am or after 9pm. The other StepChange client survey (number 3 in the list) found 50% of clients who were contacted by bailiffs felt they were treated unfairly

The Citizens Advice also asked about aggressive behaviours as part of their online client survey. The proportion of people who reported they had experienced aggressive behaviours by enforcement agents was around a quarter both pre and post reforms.

4.4.4. Treatment of vulnerable debtors

When an enforcement agent encounters a vulnerable debtor, they are required to return to the creditor to seek their advice on how to proceed. The creditor is then expected to investigate the claim of vulnerability while the enforcement action is halted.

Under the reforms, all enforcement agents have to demonstrate knowledge of the law, customer care, and dealing with conflict situations and identifying vulnerable situations. Enforcement agents are prohibited from entering premises where the debtor is a child under the age of sixteen or where a child or vulnerable persons are the only persons present in the premises. 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 Act.

Feedback from enforcement agents is that they have made substantial attempts to address vulnerability, with most of the larger firms having set up dedicated welfare teams to deal with vulnerable cases. Best practice examples include tailored training courses, which contain modules on vulnerability developed in consultation with the advice sector.

During the stakeholder engagement process, the enforcement agents and creditors both mentioned a perceived increase in vulnerability claims. The perceptions of practitioners as to the reasons were:

- Increased transparency and awareness of the enforcement process, helping those who would not have previously realised they should receive some protection from the enforcement process.
- An increase in vulnerable people facing the enforcement process, due to changes to debtor demographics and the mix of warrants being enforced. Published advice sector research notes a decrease in clients experiencing consumer credit debt and an increase in contacts regarding council tax arrears.¹⁶
- Some enforcement agents perceive that improvements in awareness have increased the number of vexatious claims of vulnerability, claiming they are often sent identical template letters which can be downloaded from forums and websites that advise people on how to put off enforcement action. There is potential for an increase in such tactics, but this is difficult to quantify and it may be that a level of abuse by some dishonest debtors is a by-product of the extra protection now afforded to those who genuinely need it.

4.5 Complaining about enforcement agent behaviour

During stakeholder discussions, advice sector representatives highlighted the difficulty some debtors have faced in bringing a complaint against an enforcement agent. Although it is possible to complain directly to the agency or its trade body, debtors are generally directed to a court procedure to obtain redress.¹⁷ The court considers complaints and may make a decision, based on the papers or in a court hearing, to impose sanctions or strip

¹⁶ <http://www.stepchange.org/Portals/0/documents/media/reports/Council-tax-debt-report-2015.pdf>

¹⁷ <https://www.gov.uk/your-rights-bailiffs/how-to-complain-about-a-bailiff>

an agent of their certificate if a compliant is successful. The advice sector reported that many of the debtors they encounter are of low means and legal capability, and do not want to go through a court as they are concerned they will incur additional costs and cannot afford legal advice.

The combined advice sector survey (number 1 in the list of surveys) found that 35% of respondents had made at least one formal complaint about bailiff practice in the last year. Of these, 89% had complained directly to a firm and 43% to a creditor. While 19% felt their experiences had been, on the whole, positive, 43% said they had been mixed and 38% felt they had been, on the whole, negative.

An intent of the reforms was to minimise excessive regulation on business while providing effective protection for the vulnerable. During the original consultation on reform design, some groups in the third sector argued that the proposed regulatory framework should go further. They would have preferred to see the introduction of an independent regulator, which would set certification standards and handle first tier complaints (e.g. an ombudsman). Feedback from advice sector representatives is that they have not changed their position, and feel that further regulation is needed to ensure consistency of good practice.

4.6 Debt recovery rates and settlement stages

As noted in earlier sections this review went beyond the basic 1 year requirement. It also sought to understand obvious flaws in the fee structure and any clear indications that enforcement agents are earning inflated profits or are not being rewarded fairly.

As well as incentivising early payment, it is important that the reforms do not drive a reduction in the effectiveness of enforcement to the detriment of creditors. Creditors, many of whom are individuals or small businesses, can suffer serious financial hardship if debts are not repaid. If they feel enforcement action via formal channels is not effective it undermines confidence in the justice system and the rule of law, and for public sector organisations income from council tax and other revenue streams is used to fund vital public services.

To assess debt recovery at different stages, a significant exercise was carried out with civil enforcement agents and High Court Enforcement Agents through their trade bodies, which involved collating information on over 1.2 million warrants issued since the reforms were implemented. This included data about the number of warrants for different debts and their values, the progression of cases through stages, and the average fees charged.

The data provided do have some limitations, in particular that not all agents are registered with a trade body and submitting the information was voluntary. Therefore the coverage is not complete and there will be some bias towards agencies who have stronger ties to their trade body. Since the data only cover the early period after reform introduction, the full impacts are unlikely to be fully apparent – for example creditor groups have pointed out that for repeat debtors it may take longer to experience the higher fees and be incentivised to pay at an earlier stage next time. Nevertheless the data provide a new level of information on debts enforced, which goes beyond the information available when the reforms were designed.

Before implementation it was predicted that around 20% of debts would be settled (settled is defined as being closed by the creditor after being paid or part paid). The post reform data provided by enforcement agents shows 27% of debts are being settled by civil

enforcement agents and 33% by High Court Enforcement Officers, and while there may be other factors influencing this as well as the reforms (e.g. changes in markets and the economy) this does indicate that overall collection rates have not suffered.

When the reforms were designed it was also predicted that around 50% of civil enforcement agent cases that settle would do so at compliance stage. Data provided by civil enforcement agents show that 38% of cases have been settled after the one year point, with some variation by debt stream (see table 2). We did not, however, expect 50% to have been achieved after one year due to the bedding in period.

During the stakeholder engagement exercise, many of the enforcement agencies stated they had altered their working practices to improve success rates when collecting debts at compliance, for example additional call centre facilities and more back office staff to deal with debtors via phone and email. While these have incurred significant set up costs, the agencies said they hope to offset this over time by increasing early settlement rates thus saving the expense of enforcement agents attending debtors' premises

Table 2. Stages that Debts were collected at by CIVEA Enforcement Agents, April 2014 – April 2015

Debt Stream (with number of warrants)*	% of Total Cases Settled	% of settled cases, settled at Compliance	% of settled cases. settled at Enforcement	% of settled cases, settled at Sale
Council Tax (660,000)	23%	41%	58%	1%
Non Domestic Rates (57,000)	31%	23%	74%	3%
Road Traffic Fines (491,000)	31%	38%	59%	3%
All (1,209,000)	27% (322,000)	38% (123,000)	60% (192,000)	2% (6,000)

* Volumes rounded to nearest 1,000

For High Court Enforcement Officers, settlement rates at compliance stage were predicted on a different basis – as a percentage of all debts received, rather than as a percentage of debts settled. Table 3 shows the prediction that 1% of all debts received would settle at compliance stage, whereas the data provided shows 10% of debts received settled at compliance (this represents 31% of all debts settled). Predicting the number of cases that settle at compliance was difficult for this group as High Court Enforcement Officers traditionally used to proceed directly to taking control of goods with no advanced request for payment. This may partly explain the disparity between the prediction and the reality, but both the High Court Enforcement Officers and civil enforcement agents also described the significant investments they had made in improving compliance rates, such as establishing call centres and transferring their efforts from door step visits to make it easier to pay at an early stage.

Table 3. Debt settlement stages for high court enforcement agents, April 2014 – April 2015*

	% Settled at Compliance	% Settled at Enforcement 1**	% Settled at Enforcement 2**	% Settled at Sale	% settled
HCEOA Data	10%	10%	11%	2%	33%
Enforcement Fee Structure Review Prediction	1%	6%	12%	2%	21%

* Based on data provided for around 32,000 high court writs – including those not settled at the time of data collection.

** As described in Annex A, High Court Enforcement Officers split the enforcement stage into two parts

4.7 Fees charged

The reforms are a type of market regulation, implemented to limit some behaviours while incentivising others. As such the reforms – in particular the fee regime – need to strike a balance between providing sufficient remuneration for agents to run a profitable business, without overly rewarding the industry to the detriment of the debtors.

4.7.1. Average fees

A light touch check of average fees was carried out to assess any dramatic differences from predictions made during the formulation of the fee structure. This was only possible for High Court Enforcement Officers as they were able to provide more granular data for analysis. Table 4 (on the next page) shows mean and median fees from the high court data, and the mean predicted fees.

- The mean is the sum of fees divided by volume of cases. Although a small number of exceptionally high value debts were excluded as outliers the mean is still inflated by high value cases. The mean therefore provides a measure of average revenue across all cases but is not a good indicator of the typical fee a debtor would be charged.
- The median is the fee charged for the middle data point, when cases are arranged in order by debt value. The median is skewed less by extreme values and provides a better measure of the typical fee for an individual debtor.

The table below shows mean average fees for debts which are settled, and for total cases. For total cases the average fee is very close to that predicted (£222 compared to £233), but for debts settled (closed after being paid in full or part), the average fee is less than half than the amount predicted (£515 compared to £1,100). Although this could be seen as indicator that enforcement agents are not earning predicted levels of revenue, the disparity appears to be largely driven by the high success rate when enforcing warrants at the compliance stage (as seen in Table 3). In other words, more warrants are being successfully enforced, and settled at an early stage where fees are lower. This is in keeping with the intents of the reform, and early feedback from High Court Enforcement Agents is that revenue – on balance – is at similar levels. As stated previously, the data contain caveats around completeness, and for the fees analysis only high court debts are included at this stage.

Table 4. Average Fees collected by High Court Enforcement Officers, April 2014 – April 2015

Fees for all settled cases			Fees for all warrants		
Mean	Median	Predicted Mean	Mean	Median	Predicted Mean
£515	£292	£1,100	£222	£75	£233

4.7.2. Disbursements

The reforms have limited the types of disbursements enforcement agents can charge in an attempt to protect debtors from unnecessary and excessive charges. Disbursements can now only be charged for locksmiths, court fees, storage fees and auction fees. A detailed examination of disbursements was beyond the scope of the one year review, but for cases enforced by civil enforcement agents, disbursements were applied in around 0.4% of settled warrants. For High Court Enforcement Officers around 4% of settled warrants had a disbursement attached.

4.7.3. Direct payment of debt

One issue raised by enforcement agents is that debtors are sometimes erroneously 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. In this situation, the creditor is supposed to pay the compliance fee to the enforcement agent out of the debtor's payment and the shortfall remains outstanding. If the debt has reached the enforcement stage it becomes more complicated as the enforcement fee is paid pro rata from the amount paid off. This leads to an administrative burden on the Local Authority as they have to separate the fees and a portion of the debt still remains requiring enforcement.

Although the simple solution to this problem would be to reject direct payments, many Local Authorities have systems that do not allow a payment to be rejected, particularly when the debt is paid online. Some have said that the extra burden of dealing with this has equated to a full time member of staff.

5. Conclusions

Enforcement agent action has been and is likely to remain a highly divisive subject. It is not a pleasant experience for debtors, and it would be unrealistic to expect those who face enforcement to have high levels of satisfaction with the process. Those who experience debt problems represent a broad spectrum of society, from those suffering as a consequence of deprivation, poverty, or other circumstances through to those who have deliberately refused to pay for products and services used. Some of those facing enforcement are in difficult situations because they themselves are owed money which has not been repaid. The role of government is to balance the needs of creditors – many of whom are individuals, small businesses, and public bodies – who must have recourse to an effective legal process to regain money owed, while supporting those debtors who have difficulty paying due to hardship, vulnerability, or may be victims themselves.

With this in mind the reforms have imposed significant extra regulations on the enforcement process and the behaviour of agents themselves, while incentivising those who face enforcement to settle what they owe without incurring disproportionate fees. They were designed to help people to understand their rights and identify sources of advice and support, while also making sure that debtors cannot simply avoid their responsibilities.

As shown throughout the report many aspects of the reforms are still bedding in at the 1 year point. In particular the introduction of training and certification processes, which took some time to implement and have been improved and refined subsequently. General awareness of the reforms is also increasing which is likely to impact on debtor behaviour, for example as experiences are shared within communities.

The primary purpose of the one year review was to identify any major unintended consequences that require amendments to the legislation. The evidence provided does not indicate that such changes are required at this stage and shows the reforms are already having many positive benefits. In particular regarding standardisation and transparency which is providing clarity over the level of fees, processes followed, and where to go for advice. These improvements have led to an increase in contacts to the relevant advice agencies, both for general advice, and to complain where agents are not complying. By defining more clearly what constitutes aggressive behaviour and the rights debtors have, there is potential for vexatious complaints to increase, but also for debtors to identify genuine examples of inappropriate behaviour.

The advice sector findings show advisors and debtors still perceive some agents are behaving aggressively, and in some cases not acting within the regulations. While the findings cannot be generalised, they do indicate inconsistent practice between and within agencies. We will pay close attention to further sources of data on the volume and nature of complaints, to understand more about enforcement agent behaviour and the behaviour of debtors who are facing the process.

Regarding the fee structure, 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. High Court Enforcement Officers have been particularly successful at compliance stage enforcement, exceeding predictions by nine percentage points (1% of total warrants issued were expected to be settled at this stage,

One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007

verses 10% achieved). More warrants are now being successfully enforced, and settled at an early stage, meaning that the average fee being charged to debtors is lower than predicted.

For civil enforcement agents, compliance stage enforcement rates have been lower than expected (38% of successfully enforced warrants settling at compliance, relative to 50% predicted). While the disparity between High Court Enforcement Officers and civil agents in this respect may be partly due to the difficulties making accurate predictions, we would expect compliance stage enforcement to improve for this group as reforms bed in.

Annex A: Enforcement agent fees

Table 5. Fees chargeable by civil enforcement agents (other than those collecting high court debts) at each stage.

Stage of process	Action	Fixed fee	Percentage fee (over £1500 only)
Compliance	Issuing an enforcement notice requesting payment of the debt. Seven clear days must be given (excluding Sundays and bank holidays) to settle before moving on to the Enforcement stage.	£75	0 per cent
Enforcement	Visiting the debtor's home or business premises to take control of goods, including everything involved in identifying, valuing and taking control of their belongings	£235	7.5 per cent
Sale	Removing and selling the belongings that were taken control of in the previous stage	£110	7.5 per cent

In addition to these fees, agents can also charge disbursements for certain costs reasonably incurred, including, storage fees, locksmith fees, auction fees, and court application fees.

During the design of the fee structure it was recognised that the cost of pursuing a high court debt is generally higher than that of pursuing other debts due to the complexity of the cases, the larger sizes of the debts and the legal accountability placed upon the High Court Enforcement Officer.¹⁸ Although the high court fee structure broadly mirrors that of the civil enforcement agents, these differences are accounted for by a slightly different fee structure and an additional enforcement stage, as set out below:

¹⁸ The detailed argument for this can be found in chapter 7 of the Enforcement Fee Review (pg. 41–51) https://consult.justice.gov.uk/digital-communications/transforming-bailiff-action/supporting_documents/enforcementfee%20structurereview.pdf

Table 6. Fees chargeable by High Court Enforcement Officers at each stage.

Stage of process	Action	Fixed fee	Percentage fee (over £1000 only)
Compliance	Issuing an enforcement notice requesting payment of the debt. Seven clear days must be given (excluding Sundays and bank holidays) to settle before moving on to the Enforcement stage.	£75	0 per cent
First enforcement stage	If the debtor reaches a controlled goods agreement with the enforcement agent and keeps to the payments agreed, this is the only enforcement stage fee that will apply. It covers everything from the first visit to the debtor's property until the time the agreement is completed or broken.	£190	7.5 per cent
Second enforcement stage	If the debtor does not reach a controlled goods agreement with the enforcement agent or they fail to make the agreed payments, they are liable for this fee in addition to the first enforcement stage fee. It covers visiting the debtor's home or business premises to take control of goods, and everything involved in identifying, valuing and taking control the debtor's belongings.	£495	0 per cent
Sale	Removing and selling the belongings that were taken control of in the previous stage	£525	7.5 per cent

CCS0318311620

ISBN 978-1-5286-0281-5