

Review of the enforcement agent reforms

Call for evidence response to the Ministry of
Justice

February 2019



TAKING CONTROL



Executive Summary

Having debts collected by bailiffs is a common experience. In 2017 local authorities alone used bailiffs to collect debts 2.3 million times.¹ When people have debts enforced by bailiffs they are often experiencing severe financial difficulty and have other vulnerabilities. It is vital therefore, that the process of enforcement action is correct and bailiffs act in a sensitive way towards the people whose debts they collect.

Unfortunately, as this call for evidence shows poor practice is widespread. Such inappropriate behaviour by bailiffs is expensive, makes people's debt problems worse,² and exacerbates their vulnerabilities.³ Yet, the bailiff sector does not have the independent oversight and effective consumer protection that have been commonplace in other sectors for many years. This call for evidence is the opportunity to introduce the regulation the industry needs to protect people in vulnerable circumstances from bad practice.

Reforms introduced in 2014, while largely positive, have failed to improve the behaviour of bailiffs. Systemic problems in the market mean bailiffs and bailiff firms are regularly breaking the new rules and revised National Standards introduced in 2014.⁴ Strikingly, since 2014, the nature of problems caused by bailiff behaviour has remained static and debt advisers were more likely to say bailiff behaviour had worsened since the reforms were introduced in 2018 than they were in 2015.⁵

Bailiffs continue to break the rules and treat people in debt badly

Last year Citizens Advice helped 41,000 people with problems caused by bailiffs and the bailiff pages on its website were visited more than 140,000 times.⁶ Not all of those problems are because of bad practice by bailiffs, but a significant proportion are. Our independent polling conducted by YouGov, found that more than 1 in 3 people contacted by bailiffs in the last two years report an incident which would constitute rule breaking:

- 18% witnessed bailiffs treating someone with an illness or disability unsympathetically;
- 18% experienced bailiffs threatening to break into their home where they did not have the power to do so,
- 11% saw bailiffs take control of goods required for their livelihood; and
- 6% saw a bailiff actually break in where they did not have the power to do so⁷

¹ Money Advice Trust, [Stop the Knock](#), November 2017

² Most commonly, a debt passed to bailiffs will accrue £310 in enforcement fees. CIVEA data in the Ministry of Justice's [One Year Review of Enforcement Agent Reforms](#).

³ 7 in 10 people who are visited by bailiffs experience increased stress or anxiety. Polling conducted by YouGov, September 2018. Base: 195.

⁴ Ministry of Justice, [Tough new laws on aggressive bailiffs](#), July 2013

⁵ See Table 2. Survey circulated to debt advisers who work for organisations in the Taking Control Coalition in 2015 (base: 208) and 2018 (base: 308).

⁶ Citizens Advice AIC client data 2017-18.

⁷ Polling conducted by YouGov, September 2018. Base: 277. Filtered to remove instances where bailiffs were collecting debts which did give them the power to use reasonable force, such as Magistrates' Court Fines.



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The problems caused by bailiffs disproportionately affect vulnerable people

Bad practice and rule breaking in the bailiff sector is particularly concerning because the people affected are often vulnerable. Of the people Citizens Advice helped with bailiffs last year, 40% had a disability or long-term health condition.⁸

The rules to protect vulnerable people - that say bailiffs should be trained to recognise and identify vulnerability and should withdraw and alert the creditor to a potentially vulnerable person in debt - aren't working. 7 in 10 people in debt with mental health problems say that their vulnerable status was not dealt with appropriately.⁹

Even where the rules are clear - they're still being broken

Bailiff rule breaking is not a product of too few rules or a lack of clarity of those rules. The notices bailiffs send people at different stages of enforcement are prescribed in regulations. Despite this, bailiffs frequently send additional notices which do not conform to the prescriptions. A sample of letters and texts shared by advice organisations (see section 4) show that bailiffs frequently misrepresent their powers and threaten people in debt with prison without putting that escalation in context.

Bad practice by bailiffs has knock on effects on people's lives

Having debts collected by bailiffs is always likely to be unpleasant - 83% of National Debtline callers who had experienced bailiff action reported a negative impact on their wellbeing.¹⁰ And when bailiffs break the rules and treat people unfairly, this detrimental impact can take particularly distressing forms. 7 in 10 people who see bailiffs break the rules said that they experienced increased stress or anxiety, felt unsafe or became afraid to answer the door.¹¹ The impact on people's sense of independence is particularly damaging. A third of people said a negative interaction with a bailiff made them feel unsafe in their own home and one in four said it made them scared to leave their home.¹²

Oversight of bailiff behaviour is out of step with other sectors

The extent of rule breaking by bailiffs is driven by the lack of accountability in the sector. Other sectors where professionals have significant responsibility in relation to people's wellbeing - from financial services to the police - have independent complaints structures which can look into grave incidents of poor practice. Yet no such infrastructure exists for bailiff firms. This leads to very low

⁸ Citizens Advice AIC client data 2017-18.

⁹ Analysis of 107 responses to a Money and Mental Health survey around bailiff behaviour, carried out online between November 2017 and December 2018, indicated that 71% included expressions of their vulnerable status being poorly dealt with or affected.

¹⁰ National Debtline, Annual Impact Survey 2018, base: 130

¹¹ YouGov polling of adults in England and Wales who had a negative experience with bailiffs, weighted to be nationally representative. Base: 192.

¹² YouGov polling of adults in England and Wales who had a negative experience with bailiffs, weighted to be nationally representative. Base: 192.



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levels of complaints. Three quarters of people who have experienced bailiff rule breaking don't complain at all and the formal process for complaining about bailiff behaviour has only been used 56 times in 4 years.¹³ People don't complain because the system is inadequate. People are encouraged to complain to the firm first - who might refer them to the individual bailiff or even creditor, then to the relevant trade body, and only then through a formal process. Both people in debt and advisers lack faith in a complaints process that is largely industry controlled.

Even when people do complain, the process works poorly. Only 1 in 10 advisers who've made a complaint about a bailiff say the process works well.¹⁴ In one case, it took a Citizens Advice client 18 months to resolve a successful complaint and have their money returned.

A lack of regulation means the sector does not improve over time

To bring the enforcement sector in line with other comparable sectors, a regulator is needed to license, supervise, and sanction bailiffs and bailiff firms that break the rules. In addition, a regulator would be able to ensure the sector was continuously improving.

Two long-running problems in the sector highlight the wider need for regulation:

1. **Training and certification:** Training standards in the bailiff sector are too low. The level of qualification required to act as a bailiff isn't sufficient to ensure knowledge of the law or good practice more generally. A regulator would be able to support the industry to improve standards of training and to monitor the impact of that training on bailiff practices.
2. **Fees and charges:** The fee structure for bailiffs needs to be reviewed. Currently, it encourages escalation of collection to increase the fees paid by people in debt. 62% of debts enforced by bailiffs go beyond the compliance stage.¹⁵ That means small debts can quickly escalate. Modelling shows bailiff firms have made excess profits since the introduction of a statutory fee structure - with a profit margin as high as 27% compared to a target of 10%.¹⁶

The Ministry of Justice must not delay the introduction of independent regulation of bailiffs

Bad practice by bailiffs is the result of systemic problems in the sector, not a few rogue bailiffs. While the rules introduced in 2014 were largely positive, a lack of oversight and an independent complaints mechanism mean there is little incentive on bailiffs, or bailiff firms, to follow those rules. Any further iterative changes to the rules that govern bailiffs would likely be similarly ineffective.

The Ministry of Justice should introduce independent regulation and an independent complaints

¹³ Citizens Advice, [The rules of enforcement: making a complaint about the behaviour of bailiffs in a self-regulated system](#), January 2019

¹⁴ Citizens Advice, [The rules of enforcement: making a complaint about the behaviour of bailiffs in a self-regulated system](#), January 2019

¹⁵ Civil Enforcement Association (2019) [Written evidence](#) to the Justice Committee Bailiffs: Enforcement of debt inquiry.

¹⁶ Modelling undertaken by Bates Wells Braithwaites commissioned by StepChange Debt Charity, for the methodology to this modelling see Appendix 5B.



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process for bailiffs and bailiff firms. A regulator should be responsible for authorisation, setting standards, supervision, and sanctioning bailiffs and firms. At present, changes to the enforcement industry around issues such as fees come about slowly and involve significant resource. Independent regulation would protect people from rule breaking and find solutions to those problems as well as reduce the risks carried by local authorities and central government when using bailiffs.¹⁷

¹⁷ For more information on the knock on costs of regulation, see Section 7.
The appendices have been removed for the purposes of online publication. Please get in touch with marini.thorne@citizensadvice.org.uk or Alison.blackwood@stepchange.org if you have further questions or would like to read these.



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About the Taking Control Campaign

The Taking Control campaign brings together a group of 11 different organisations, all of whom have concerns about the treatment of people in debt by the enforcement agent industry.

The seven organisations involved at the launch of the campaign (Citizens Advice, StepChange Debt Charity, Money Advice Trust, AdviceUK, Christians Against Poverty, Z2K and the Children's Society) published a report which contained quantitative and qualitative evidence of the impact of poor bailiff regulation on our clients.¹⁸ Subsequently, another four organisations have joined the campaign group (PayPlan, Community Money Advice, the Institute of Money Advisers and Money & Mental Health Policy Institute) because they too believe that bailiffs should be subject to independent regulation.

It is unusual for so many diverse organisations working around debt and debt advice to come together to campaign on a single issue. The fact that so many different organisations are reporting problems suggests that this is a systemic issue across the enforcement agent industry. This is the result of the current self-regulatory approach that is failing to protect people in vulnerable circumstances.

¹⁸ Citizens Advice, StepChange Debt Charity, Money Advice Trust, AdviceUK, Christians against Poverty, Z2K and the Children's Society (2017) Taking Control: the campaign for fundamental bailiff reform



Our Methodology: Sources of evidence in this call for evidence response

A. Citizens Advice

A.1 Citizens Advice client data

Citizens Advice helped more than 1.95 million people last year. For every person they help, they record an 'advice issue' - these run at three levels of detail. The first level of detail is fairly general, e.g. 'debt' or 'benefits'. The second level of detail tends to give a type of problem, e.g. 'council tax arrears' or 'parking fine' and the third level of detail states what the specific issue is, e.g. 'bailiffs - rights of entry' or 'bailiffs - offers of payment'. More than one issue can be recorded per person who visits us - on average, people who come to Citizens Advice with a bailiff query have 2.2 issues associated with bailiffs. All data which relates to clients or bailiff issues is from the financial year (running from April - March) with which it is associated.

Citizens Advice have restricted our count of bailiff issues to non-consumer credit debts collected by high court enforcement officers and certificated enforcement agents. All 'bailiff issues' discussed in relation to Citizens Advice data relate to one of the following debts: council tax arrears, magistrates court fines, unpaid parking penalties and congestion charges, and water supply and sewerage debts.

A.2 Citizens Advice website data

Citizens Advice's website is a major resource for people looking for free information and advice on their rights. Citizens Advice counts the number of unique visitors to its web pages. It screens out all visits from Local and National Citizens Advice offices.

A.3 Citizens Advice evidence forms

Where our advisers encounter significant poor practice they can submit an 'evidence form'. These forms record key issues with the case and a brief description of the client's experience. Evidence forms are not a proportional reflection of all the cases advisers deal with, but do provide a useful indication of the causes of people's problems. Our debt advisers are highly trained and independently regulated with a strong knowledge of the law, in a large proportion of the cases recorded in our evidence forms, advisers cite a specific rule or regulation which has been broken. All Citizens Advice evidence forms cited in this response were recorded in the last 12 months.

A.4 Citizens Advice Client Survey 2013-2017

Between August 2013 and August 2017, a survey was hosted on the Citizens Advice website, inviting clients to tell us about their recent experiences of bailiff behaviour. More than 5,800 people responded to this survey.

A.5 Citizens Advice Client Survey 2018

Citizens Advice ran a second client survey in August-October 2018 asking people who had experienced bailiff action about the longer term effect it had on their lives. It received 120 responses from people who had been contacted by bailiffs in the last two years.



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A.6 Qualitative interviews

Citizens Advice interviewed 14 Local Citizens Advice advisers and 15 clients to discuss their experience of complaining about bailiffs. These interviews were conducted between October and December 2018.

B. StepChange Debt Charity

B.1 Expressions of Dissatisfaction

Advisers record Expressions of Dissatisfaction when they think creditors have treated clients unfairly, or breached laws, regulations or standards. Between December 2015 and December 2018, there were 5,233 Expressions of Dissatisfaction recorded. 360 of these concerned bailiffs (7%) a disproportionately high number for the proportion of clients who have bailiffs as creditors (approximately 3%). The Expressions of Dissatisfaction covered 29 different bailiff firms.

For the purposes of this Call for Evidence, we have combined the coding of StepChange's Expressions of Dissatisfaction and Citizens Advice's Evidence Forms. Evidence Forms are flagged by Citizens Advice advisers where they see unusually poor practice by a provider or service. We coded 370 Citizens Advice evidence forms logged in the last year to identify where poor behaviour took place.

B.2 StepChange website survey 2016-17

A short website survey was included on the bailiff advice page of StepChange Debt Charity's website between 17th November 2016 and 17th February 2017. The survey was started by 1,360 people. The responses were limited to one per IP address.

B.3 StepChange Debt Charity client survey 2015.

Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

B.4 StepChange Debt Charity client surveys 2016 and 2018

2016: Survey of 2,395 StepChange Debt Charity clients 294 out of 1853 who answered the question had been visited by bailiffs.

2018: Survey of 1,032 StepChange Debt Charity clients 46 out of 740 who answered the question had been visited by bailiffs.

B.5 StepChange Debt Charity commissioned independent analysis of bailiff accounts performed by Bates Wells Briaithwaite

27 bailiff companies were identified as appropriate to consider as they had more than 10 bailiffs from the list of all the companies employing bailiffs as at 28 July 2017. The accounts of each of these companies were considered for the years 2011 to 2017 to confirm that the following conditions were met:

- That the company produced a Profit & Loss in their accounts and didn't file small company accounts;
- That they had accounts for a number of years before the regulatory change and a number of years following the change to allow a sensible comparison; and



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- That they had not been acquired, merged with another entity or otherwise materially changed their ownership structure during the period, as it was assumed that the controlling company would alter the structure and operation of the company and could make it difficult to identify changes that solely related to regulatory change.

Ten companies met these conditions.

For each of these companies the following pieces of data for at least two, and in almost all cases three years before and three years after the change in regulations were collected:

- The Profit and Loss (P&L);
- Number of employees;
- Trade debtors; and
- Any additional information that was provided in the accounts which was relevant to the analysis of the impact of April 2014 regulatory reforms (See Appendix 5B for more details)

C. Money and Mental Health Policy Institute

Money and Mental Health's Research Community is a group of 5,000 people with lived experience of mental health problem, or of caring for someone with a mental health problem, who are at the heart of everything Money and Mental Health Policy Institute do. Research Community members were invited to share their experiences of being contacted by bailiffs in an online survey, which was open between December 2017 and January 2019. The survey received 122 responses.

D. Money Advice Trust

The Money Advice Trust runs National Debtline and Business Debtline, which between them provided help to more than 204,000 people by phone and webchat in 2018, with 1.7 million website visits during the year. The National Debtline Annual Impact Survey 2018 surveyed 1,024 National Debtline callers (online) whose most recent contact with National Debtline was during 2017 and for whom there was an email address and consent to taking part in a survey. Fieldwork was conducted between 13th December 2018 and 7th January 2019. Total base for the survey was 1,024 and base sizes for individual bailiff-related questions are included in footnotes where cited in this response.

E. Taking Control

Between 7 June and 31 August 2018, we circulated a survey to 308 advisers who worked for organisations within the [Taking Control Coalition](#).¹⁹ We asked them the same questions answered by 208 advisers in a survey we circulated in 2016 for the One Year Review of Enforcement Agent Reforms.

¹⁹ A coalition of eleven debt advice organisations: AdviceUK, Christians Against Poverty, Citizens Advice, Community Money Advice, Institute of Money Advisers, Money Advice Trust, Money and Mental Health Policy Institute, Payplan, StepChange Debt Charity, The Children's Society and Z2K.



F. Independent Polling

F.1 Nationally Representative Polling of England and Wales

A nationally representative opinion poll of people in England and Wales was commissioned by Citizens Advice and StepChange Debt Charity, with a number of questions relating to debt collection, experience with bailiffs and use of complaints procedures. YouGov online field research was conducted with 5,786 respondents between 12 and 17 September 2018, 277 of whom had been personally contacted by bailiffs. Of those 107 people had experienced bailiffs breaking the rules.

Instances of rule breaking were identified by describing specific actions to survey participants, which Citizens Advice and StepChange identified as rule breaking. For instance, where someone having a council tax debt enforced said that a bailiff threatened to force entry in to their home. The full polling questionnaire is attached in Appendix 1C. Like all surveys the results are intended to provide an indication of the frequency of an event rather than a conclusive figure.

It is likely that survey respondents underreport being visited by bailiffs. Research by the Money Advice Trust found that local authorities used bailiffs 2.3 million times in 2016/17. In this survey the equivalent of 2.2 million people said they were contacted by bailiffs over the last 2 years.²⁰ That level of underreporting is consistent with other household finances surveys which underreport levels of debt and financial difficulty.

²⁰ Money Advice Trust, Stop The Knock, November 2017



Section 1: Treatment of people in debt

1.1 Question 2: Has your organisation seen any change to the volume and nature of calls/contact regarding enforcement agents since the reforms came into force?

A. Trends around the treatment of debtors

Despite the 2014 reforms, there continues to be widespread problems with the treatment of people in debt by bailiffs. In the last year, Citizens Advice has helped **41,000** people with **90,000** bailiff issues, while the bailiff pages on our website were visited more than 140,000 times. Problems with bailiffs are one of the most common debt issues Citizens Advice help people with.²¹

These problems are frequently the result of bailiffs failing to comply with rules introduced in 2014. As Table 1 shows, the number of clients we help with bailiff issues has not increased significantly over this time.

Table 1. The number of clients with bailiff issues helped by Citizens Advice since 2014/15²²

	2014/15	2015/16	2016/17	2017/18
Total number of bailiff clients	39,343	39,197	38,536	40,601

Yet, since the reforms, Local Citizens Advice offices have seen a **24% increase** in the number of bailiff issues they have helped people with. This has grown from approximate 72,000 issues in 2014/15 to nearly 90,000 in 2017/18.²³

Within that general increase, there have not been major changes in the type of bailiff problems experienced by clients. This suggests that the 2014 reforms have not led to significantly better or different conduct by enforcement agents.

Advisers do not believe there have been significant improvements in bailiff behaviour since 2014. In June 2015, 208 advisers from the Taking Control coalition, including National Debtline, the Institute of Money Advisers and AdviceUK, responded to a survey which asked whether there had been improvements in bailiff behaviour since 2014. The same survey was circulated to advisers affiliated to organisations in the Taking Control coalition in July-August 2018, and this was answered

²¹ Citizens Advice client data 2017/18.

²² Citizens Advice client data, between 2014/15 and 2017/18. This includes debts on council tax arrears, magistrates court fines, unpaid parking penalties and congestion charges and water supply and sewerage debts.

²³ In some cases advisers record multiple issues for 1 client. For instance, a client may need help with a problem relating to rights or entry as well as with an offer of affordable repayments.



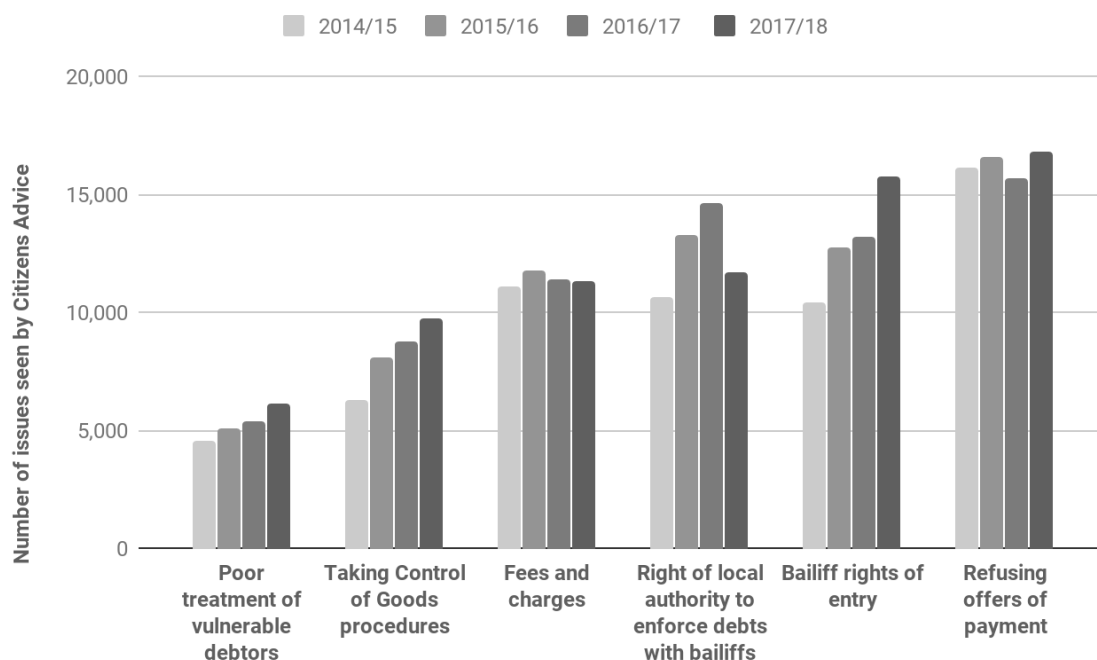
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by 308 respondents. We found that advisers tended to think that bailiffs' behaviours were worse in 2018, than in the year after the reforms were introduced.



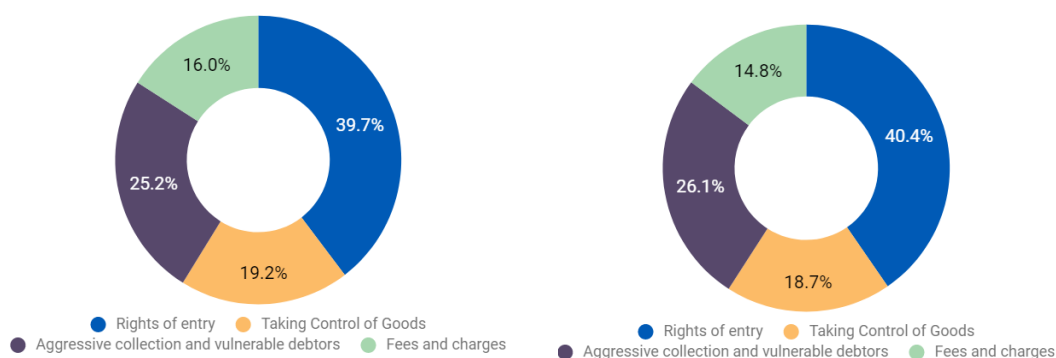
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Chart 1. The most common bailiff issues brought to Citizens Advice over the last four years



Since April 2014 advisers have recorded more detailed information on the different types of bailiff problems people face. However, even assuming that change was responsible for the uptick between 2015 and 2017, there has been a more recent increase. Citizens Advice helped people with 6,500 more bailiff related issues last year than in 2016/17.

Chart 2. The types of rule breakages experienced by Citizens Advice clients have not changed before (left) and after (right) the 2014 reforms



Source: Citizens Advice client survey hosted online conducted between August 2013 and August 2017. Base: 5,880



Table 2. Adviser survey of bailiff practice since the introduction of the reforms

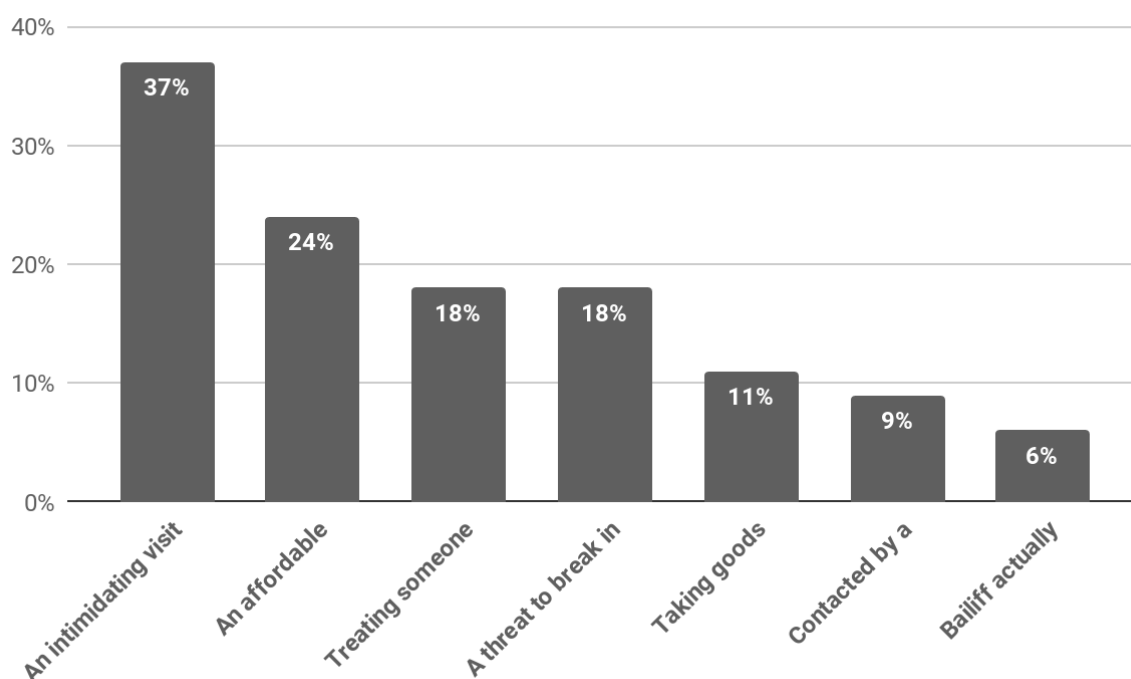
Behaviour of enforcement agents		Behaviour worse	Behaviour same	Behaviour better	Increase or decrease in standards
Using threatening behaviour	2015	30%	50%	20%	Decrease
	2018	42%	40%	17%	
Applying fees inappropriately	2015	16%	29%	55%	Decrease
	2018	30%	40%	30%	
Seizing goods inappropriately	2015	15%	58%	27%	Decrease
	2018	19%	63%	19%	
Adhering to rights of entry	2015	16%	59%	25%	Decrease
	2018	37%	50%	12%	
Treatment of vulnerable clients	2015	33%	47%	20%	Part increase - part decrease
	2018	44%	28%	29%	

Poor behaviour by bailiffs does not just affect those who visit debt advice agencies. Independent polling conducted by YouGov on behalf of Citizens Advice and StepChange asked people in debt who had personally been contacted by bailiffs, if they had experienced problems. We asked about a range of problems which, while not instances of clear rule breaking, highlight the scale of the problem caused by bailiffs.

Chart 3: Proportion of people contacted by bailiffs in the previous 2 years experiencing problems



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Source: Independent polling conducted by YouGov on behalf of Citizens Advice and StepChange in September 2018. Base: 277

A significant proportion of those problems are the result of enforcement agents breaking the rules which govern their behaviour. Citizens Advice and StepChange co-commissioned independent, nationally representative polling through YouGov to understand how often people faced problems with enforcement.

We found that more than 1 in 3 (39%) **people who experienced enforcement agent enforcement witnessed them breaking a rule or national standard.**²⁴

Common forms of rule-breaking that people experienced included:

- 18% had witnessed bailiffs treating someone with an illness or disability unsympathetically.²⁵
- 18% had experienced bailiffs threatening to break into their home.²⁶
- 11% had seen bailiffs take control of goods required for their livelihood.²⁷
- 6% had seen bailiffs using force to break into their homes.²⁸

²⁴ Base: 277.

²⁵ In addition to paragraph 10 of the [Taking Control of Goods Regulations 2013](#), the National Standards state that where enforcement agents have identified vulnerable debtors or situations, they should alert the creditor and act in accordance with all relevant legislation. Base: 277.

²⁶ This does not include cases where bailiffs were collecting magistrates' court fines, in which it would be legitimate to threaten to break in or actually break in. Paragraph 21 of the [National Standards](#) also states that bailiffs 'must not act in a threatening manner...by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors, their families, appointed third parties or property.' Base: 277.

²⁷ Base: 277.

²⁸ These people owed debts which did not permit bailiffs to use reasonable force to enter the home. Base: 277.



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As shown above, the problems people face in the sector are wider than those specific instances of rule breaking and result from practices which appear to go against the standards of ‘professional conduct, discretion and fairness’ set out in the National Standards:

- 24% had been refused an affordable payment arrangement
- 21% had experienced an intimidating phone call
- 26% had experienced an intimidating doorstep visit²⁹

Without effective oversight for the bailiff industry, there is little that can be done when rules are broken, allowing poor practice to continue unchecked.

Ultimately, the poor performance of bailiffs when compared to other creditors suggests that enforcement agents are not treating people in a way that is considered to be fair. Around 2 in 3 (64%) National Debtline callers surveyed who had experienced bailiff action disagreed that the bailiff had offered to help them resolve their debts.³⁰ In a survey of StepChange debt clients conducted in both 2016 and 2018, compared with other organisations that pursue or enforce debts, more people felt bailiffs treated them unfairly than all other providers.³¹

Table 3. StepChange client survey of how they were treated by creditors

Overall, do you feel that you were treated fairly or unfairly by the following types of organisation?	"I was treated unfairly" 2018	"I was treated unfairly" 2016
Bailiff	52%	50%
Local authority	35%	42%
DWP	29%	36%
Mobile phone company	19%	32%
Debt collection agency	24%	30%
HMRC	27%	28%
Payday lender or short term lender	32%	28%
Utilities company	25%	27%

²⁹ Base: 277

³⁰ Money Advice Trust, Annual Impact Survey, 2018, Base: 140

³¹ StepChange Debt Charity client surveys 2016 and 2018. 2016: Survey of 2,395 StepChange Debt Charity clients 294 out of 1853 who answered the question had been visited by bailiffs. 2018: Survey of 1,032 StepChange Debt Charity clients 46 out of 740 who answered the question had been visited by bailiffs. The full details of this survey and responses can be found in Appendix 1B.



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Catalogue lender	24%	26%
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The most common problems with the treatment of debtors

In some cases the problems seen by a range of debt advice agencies and reported by survey respondents represent dissatisfaction with the behaviour of bailiffs rather than rule breaking. However, in many instances there is strong evidence that despite the 2014 reforms bailiffs are still routinely breaking the rules. We look at those issues below.

A. Bailiffs misrepresenting their powers

Bailiffs are not permitted to misrepresent their powers to people in debt. The National Standards state:

20. Enforcement agents must not be deceitful by misrepresenting their powers, qualifications, capacities, experience or abilities, including, but not restricted to;

- Falsely implying or stating that action can or will be taken when legally it cannot be taken by that agent
- Falsely implying or stating that a particular course of action will ensue before it is possible to know whether such action would be permissible
- Falsely implying or stating that action has been taken when it has not
- Falsely implying or stating that a debtor refusing entry to a property is classed as an offence.³²

Problems around the misrepresentation of bailiff powers are one of the most common bailiff issues seen by debt advice organisations. This takes three key forms:

1. Bailiffs misrepresenting their power to enter a property and seize goods

The most common issue on rights of entry brought to us by clients is where bailiffs have informed clients that they will break into the property, despite lacking the authorisation to do so. This includes bailiffs stating that they are permitted to break in without a controlled goods agreement or warrant. Last year, Citizens Advice advisers helped people with more than 15,000 problems of this type, a 50% increase since 2014/15.

Table 4. The growth in issues brought to Citizens Advice on bailiffs right to enter their property³³

	2014/15	2015/16	2016/17	2017/18
Bailiff rights of entry	10,432	12,736	13,193	15,790

As with all Citizens Advice issue code data these do not all represent instances of rule breaking - but indicate the scale of the problem. Further sources of evidence show that bailiffs are commonly misrepresenting their powers to people in debt. Advisers don't think that bailiffs' behaviour in terms

³² [Taking Control of Goods: National Standards 2014](#)

³³ Citizens Advice AIC client data, 2014/15-2017/18



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of ‘adhering to rights of entry’ has improved since the 2014 reforms. Concerningly, more advisers think that it has got worse (37%) now, than they did (16%) in 2015.³⁴

Table 5. Advisers have not seen an improvement around bailiffs’ rights of entry since 2014

Adviser survey	Year	Worse	Same	Better	Adviser approval
Adhering to rights of entry	2015	16%	59%	25%	Decreased
	2018	37%	50%	12%	

Polling commissioned by StepChange and Citizens Advice, but undertaken by YouGov, found that almost **1 in 6 people** (17%) contacted by bailiffs experienced a threat to break in, despite pursuing debts where they did not have the power to do this.³⁵

Citizens Advice and StepChange advisers have recorded **235** incidents where bailiffs misrepresented their powers. We have presented an indicative sample of these in the Appendix 1A.

2. Bailiffs securing entry under false pretences

A second common issue highlighted by advisers is bailiffs entering properties under false pretences. The National Standards explicitly ban this:

57. Enforcement agents should not seek to gain peaceable entry to premises under false pretences; for example asking to use the toilet, or to use the telephone. They should be clear as to why they are seeking entry to the premises.³⁶

This level of detail is not recorded under Citizens Advice issues codes, but a few examples have been raised by Citizens Advice and StepChange advisers in recent years. This approach is a flagrant breach of the person in debt’s trust and constitutes very serious misrepresentation by the bailiff.

A StepChange adviser recounted two occasions in Expressions of Dissatisfaction:

“Enforcement agents visited our client’s property in May to recover council tax debt. They posed as gas engineers in order to gain access to the property.”

And

“Our client rang to let us know that two of her priority debts had gone to enforcement agents. The client had proof that she had been paying the court as normal but the enforcement agents were very rude to her and said there was nothing they could do, she had to pay the full amount before 4pm. A couple of days after, she had a visit from two gentlemen who said they were ‘carpet fitters’, who had come to check her carpets. She let them in and as soon as they gained entry they let her know that they were in fact enforcement agents and attempted to make a list of goods. They did not leave any paperwork and nothing was signed.”

On another occasion, a Citizens Advice adviser recorded that:

³⁴ Adviser Survey June - August 2018, base: 308.

³⁵ We removed the data of individuals who stated that the debt they owed to a bailiff was a magistrate’s court fine or warrant, for which using ‘reasonable force’ to enter a property is permitted.

³⁶ Taking Control of Good: National Standards 2014, Paragraph 57



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“Bailiffs gained entry to a client’s home. She thought they said they were police officers. Upon entry, the men revealed they were bailiffs. The client had not received any letter or call about enforcement. When she told them this, she was given the letter while the men were in her home.

The bailiffs refused any offers for payments in instalments. However, the client was told if the debt was not paid in full, they would be back with a locksmith to let themselves back into her home.”

3. Bailiffs misrepresenting the course of enforcement action

Misrepresenting the course of enforcement action is another commonly recounted experience. This might take the form of telling people in debt that if they do not pay, they will be arrested, or sent to prison.

Citizens Advice evidence forms noted in the last year contain 30 references to threats of prison, and 21 references to arrest.³⁷ These threats clearly violate the National Standards, but - as we show in the complaints section of this report - the means to complain about such threats is complex and time-consuming.

This misrepresentation often occurs through notices and letters. We provide further evidence on such letters in Section 4 of the response.

Case study: Mark

Mark is partially deaf and had been contacted by a bailiff in relation to arrears on his council tax. When the bailiff visited they stated that if Mark did not pay he would be committed to prison. They then said that on their next visit they would force entry to his property to collect goods of an equivalent value, though the bailiff firm did not have a controlled goods agreement which had been signed by him.

Mark was worried about the thought of bailiffs returning to his flat, especially as his poor hearing means he can find it difficult to identify who would be knocking.

4. A lack of knowledge of the law

The widespread nature of the ‘misrepresentation’ of bailiff powers and the process of enforcement action suggests that enforcement agents do not have sufficient knowledge of the law.³⁸

StepChange advisers raised **189** Expressions of Dissatisfaction which indicated that enforcement agents are either insufficiently aware of the law around collections, or are actively misrepresenting the law.

We are very concerned about the widespread nature of bailiffs failing to know the law around enforcement. It suggests that the process of training and licensing for individual enforcement is

³⁷ In 370 Citizens Advice evidence forms recorded in the last year.

³⁸ Certification of Enforcement Agent Regulations 2014 3b - A certificate may be issued only if judge is satisfied that the applicant has sufficient knowledge of the law and procedure relating to powers of enforcement.



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insufficient. Oversight of the training of enforcement agents is lacking under the current system, and we make further recommendations on this in section 3 of the report.

B. Bailiffs acting in a threatening manner

1. Bailiffs are forbidden to act in a way that might be considered to be threatening.

The National Standards set out:

21. Enforcement agents must not act in a threatening manner when visiting the debtor by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors, their families, appointed third parties or property.

26. Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must dress and speak appropriately and act with discretion and fairness.³⁹

Unfortunately, threatening or aggressive behaviour does appear to be extremely widespread and is commonly reported by debt advisers.

Since 2014, advisers continue to report aggressive behaviour by bailiffs. Over 4 in 5 (83%) of debt advisers feel the use of threatening behaviour by bailiffs has stayed the same or got worse since 2014.⁴⁰ Along with not accepting reasonable payment offers, this is the area where advisers have seen the least progress since 2014.

Table 6. Proportion of people in debt who experienced intimidating communication with bailiffs

Did you experience any of the following: ⁴¹	2018	2016
Intimidating doorstep visit	40%	49%
Intimidating or inappropriate phone calls	57%	40%

We found a similar picture in our nationally representative polling. Over **1 in 4 people** (26%) who had been contacted by bailiffs had encountered intimidating behaviour on the doorstep, and 21% of people had experienced an intimidating phone call. In total, intimidation took place in nearly **2 in 5** (37%) of all bailiff incidents.⁴²

Our analysis of 732 adviser notes from StepChange and Citizens Advice found that in **48%** of recorded cases aggression by the bailiff was a primary concern of the client. We have included a number of examples of threatening behaviour by enforcement agents in Appendix 1A.

³⁹ [Taking Control of Goods: National Standards 2014](#)

⁴⁰ Taking Control Adviser Survey June- August 2018. Base: 308

⁴¹ StepChange Debt Charity client surveys 2016 and 2018. 2016: Survey of 2,395 StepChange Debt Charity clients 294 out of 1,853 who answered the question had been visited by bailiffs, 2018: Survey of 1,032 StepChange Debt Charity clients 46 out of 740 who answered the question had been visited by bailiffs

⁴² Citizens Advice survey analysis of responses from those who had been contacted by bailiffs. Base: 255.



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2. Bailiffs are also expected to act in such a way that they do not embarrass people in debt.

The National Standards state that:

27. Enforcement agents must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently (that is to say through lack of care)⁴³

This standard is often ignored with bailiffs sometimes calling on people's neighbours, to ask about an individual's whereabouts. In other circumstances, we find that bailiffs contact the friends or family of the person in debt. In a 2015 survey of StepChange clients, 5% of respondents reported that enforcement agents contacted their friends and family about their debts.⁴⁴

StepChange's advisers reported this in 5 expressions of dissatisfaction. This includes the example below:

"Our client told us that an enforcement agent who was collecting a magistrate's fine went to her next door neighbour and told the neighbour they had a warrant to enter our client's address. The enforcement agent stood outside the neighbour's home shouting so people could hear that he had a magistrate's warrant and he'd force entry into the client's house. The client had already spoken to the enforcement agent about setting up an arrangement and was under the impression an instalment plan had been agreed. She only found out it hadn't been agreed when the enforcement agent turned up at her neighbour's house. She was due to make her first payment by instalment after the date of the visit."

3. Use of force against persons

In more extreme - and unusual - cases of poor practice, we have found that forceful behaviour by enforcement agents has extended to the use of force against individuals. This is outlawed under the Tribunals, Courts and Enforcement Act 2007 Schedule 12, 24 (2) "Power to use force does not include use of force against persons."

This is uncommon within our evidence but it remains concerning that some incidents are reported. StepChange and Citizens Advice advisers recorded 22 instances of force against persons.⁴⁵ Most commonly, this is the result of bailiffs pushing people aside who answer the door. This can however be intimidating, and risk actual injury. In one instance a member of the debtor's family lost consciousness as a result.⁴⁶

An instance flagged by a StepChange adviser is below:

"An enforcement agent visited our client's property for Council Tax arrears. The client let the agent in to the hallway to talk to him and said that he physically pushed her to get access to the rest of the property and he also pushed her daughter. The client had to call the police to have the agent removed from her property."

⁴³ [Taking Control Of Goods: National Standards 2014](#)

⁴⁴ StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

⁴⁵ Of 632 Citizens Advice Evidence Forms and StepChange Expressions of Dissatisfaction recorded in 2018.

⁴⁶ Citizens Advice supported this client to lodge a complaint with the bailiff firm and disciplinary action was taken.



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4. Discrimination

The National Standards state that bailiffs must abide by anti-discrimination law:

28. Enforcement agents must act in accordance with the Human Rights Act 1998 and the Equality Act 2010. They must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.

55. Enforcement agents should be respectful of the religion and culture of others at all times. They should carefully consider the appropriateness of undertaking enforcement on any day of religious or cultural observance or during any major religious or cultural festival.⁴⁷

Discriminatory behaviour by enforcement agents is not widely cited by clients, perhaps because of the more explicit threatening behaviour prevalent in the enforcement industry. StepChange advisers recorded 3 instances in which they were informed of discriminatory practices by enforcement agents. An example is below:

“Our client has had an enforcement agent come to her property to try and recover a debt. The client's husband refused to let the enforcement agent in. The enforcement agent then told the client to come outside and sit in his car, so they could list goods and make an arrangement. The client is disabled and the enforcement agent said the only reason he was doing this was because the client is disabled.”

In more general terms, we are concerned that the failure of enforcement agents to adequately identify and take account of the vulnerabilities of clients may create a risk of discrimination against protected characteristics. We will provide more information on the poor treatment of vulnerable persons in section 1.2.

We urge the Ministry of Justice to review, as a part of this Call for Evidence, whether the failure of enforcement agents to adequately make arrangements for vulnerable persons constitutes an instance of discrimination against protected characteristics.

C. Threats to seize - or actually seizing - exempt goods

The Taking Control of Goods Regulations 2013 sought to clarify the law on seizing of exempt goods:

4 (1) (a) includes items that are necessary for use in employment, business, trade, profession, study or education, that do not exceed a combined total value of £1,350;

4 (1) (b) includes goods or items that are reasonably required to satisfy the basic domestic needs of the debtor and the members of their household.⁴⁸

Additionally, the National Standards state that:

64. Enforcement agents should not remove anything clearly identifiable as an item belonging to, or for the exclusive use of a child (person under the age of 16) or items clearly identifiable as required for the care and treatment of the disabled, elderly and seriously ill.

⁴⁷ [Taking Control Of Goods: National Standards 2014](#)

⁴⁸ Taking Control of Goods Regulations 2013, Part 1, Paragraph 4.



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Despite the rule changes in 2014, which set out a series of clarifications regarding the rules around bailiffs taking control of people's goods,⁴⁹ instances in which bailiffs threaten to seize - or take control of - exempt goods are common. Citizens Advice recorded approximately 3,500 issues around the seizure of exempt goods.

Table 7. Number of problems with seizing exempt goods seen by Citizens Advice

	2014/15	2015/16	2016/17	2017/18
Goods which are exempt from bailiff action	2,416	3,111	3,341	3,437

In a recent survey of debt advisers, 81% of advisers felt that bailiff behaviour on seizing goods appropriately had stayed the same or got worse since 2014.⁵⁰ And our national polling found that 11% of people who have personally had contact with bailiffs said they took control of vehicles or tools required for their jobs.⁵¹

Common issues recorded by our advisers are:

- **Bailiffs taking control of goods that do not belong to the person in debt.** This includes adding goods that belong to children,⁵² other family members or friends to Controlled Goods Agreements. On other occasions, bailiffs are clamping cars or other household items which are on hire purchase.⁵³
- **Bailiffs including exempt household possessions - such as dining tables, chairs, beds and household appliances - in Controlled Goods Agreements.** These items are exempt in the regulations. Their inclusion in Controlled Goods Agreements can lead to clients making payments beyond what is affordable.
- **The process for disputing ownership is poor. In most cases, people do not have evidence to prove ownership (or otherwise) of the goods.** According to Citizens Advice evidence forms, bailiffs regularly treat people's possessions as belonging to the person in debt unless they can provide clear evidence (such as a receipt) showing that they belong to someone else. In most instances bailiffs tend to take control of the item until proof of different ownership can be produced. This can leave major household items under threat - including cars belonging to other family members - and often leaves people highly distressed that their debts are disrupting their personal relationships.

⁴⁹ Schedule 12, paragraph 10 of the [Tribunals, Courts and Enforcement Act](#) states that 'An enforcement agent may take control of goods only if they are goods of the debtor.'

⁵⁰ Taking Control Adviser Survey, June - August 2018. Base: 308.

⁵¹ Base: 277.

⁵² Paragraph 64 of the [National Standards](#) states that 'Enforcement agents must not remove anything clearly identifiable as an item belonging to, or for the exclusive use of a child (anyone under the age of 16).'

⁵³ The legality of this practice is contested where a client has built up a 'significant interest in the goods', but we are particularly concerned that this appears to continue to occur even where a client has not built up a significant interest.



Case Study: Sarah

Sarah owed around £400 to her council for council tax that year. The debt had been passed to a bailiff and Sarah had arranged to repay it over several months. At one point Sarah got a new debit card and forgot to update her repayment to the bailiff firm. After missing a payment, Sarah was sent a Notice of Intention to remove goods with an instruction to pay the entire sum by 2pm the next day. Sarah contacted the bailiff firm to ask for a payment plan, but was refused. She told them that she had no goods that were equivalent to the sum owed, except children’s toys and white goods.

The firm responded that she would have to hand over these goods and, that if she did not pay or allow the bailiffs entry to her property she would face imprisonment. Children’s toys and white goods are exempt. The knock on effect of this approach was significant distress and hardship to a client who was unable to meet the cost of the total sum.

D. Issues with Controlled Goods Agreements

The 2014 reforms sought to clarify the process for enforcement agents to enter into Controlled Goods Agreement with individuals. For example, the Taking Control Regulations 2013 state that:

15 2a. Specifications of controlled goods agreement must be in writing and signed by Enforcement Agent and debtor.⁵⁴

Whilst these clarifications were positive, the reforms do not appear to have resolved issues around controlled goods agreements. In 2017/18, Citizens Advice helped people with nearly 10,000 issues around the Taking Control of Goods procedure. There were 55% more issues with the Taking Control of Goods procedures in 2017/18 than in 2014/15.

Issues around Controlled Goods Agreements are also prominent amongst the incidents that StepChange advisers have recorded. Advisers have raised 48 incidents of incorrect use of Controlled Goods Agreements.⁵⁵

Table 8. Problems with Taking Control of Goods procedures seen by Citizens Advice⁵⁶

	2014/15	2015/16	2016/17	2017/18
Taking Control of Goods procedures	6,295	8,071	8,761	9,757

The most common issues we see with the controlled goods procedures are:

⁵⁴ [The Taking Control of Goods Regulations 2013](#), Regulation 15, 2a.

⁵⁵ StepChange and Citizens Advice Evidence Forms and Expressions of Dissatisfaction 2018.

⁵⁶ Citizens Advice AIC client data, 2014/15-2017/18



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- **Bailiffs failing to take the proper procedural steps around Controlled Goods Agreements.** This might include the bailiff threatening to take items before a Controlled Goods Agreement is signed.
- **Bailiffs including exempt items on Controlled Goods Agreements.** We have included examples of this in the previous section.
- **Bailiffs informing people that they are obliged to agree to the terms of Controlled Goods Agreements,** thereby pushing clients into unaffordable payment arrangements. As with the wider issues regarding unaffordable payments, when people are faced with losing household possessions they will often make financial commitments that are difficult or even impossible to keep.
- **Bailiffs failing to take steps to ensure than an individual understands the Controlled Goods Agreement** and the powers of bailiffs if payment arrangements fail.

E. Bailiffs inappropriately entering a property;

The 2014 reforms set out provisions on the occasions and ways in which bailiffs should enter a property. Schedule 12 of The Tribunals Court and Enforcement Act 2007, sets out the provisions on when and how an enforcement agent could enter a property stating that a bailiff should only enter through a door or usual means of entry.⁵⁷ We remain concerned however, that despite the clarifications set out in the 2014 reforms, bailiffs are occasionally entering a property inappropriately.

Our polling found that 6% of people who had been visited by bailiffs had seen bailiffs ‘breaking into the property’, where they did not have the power to do so.⁵⁸

On other occasions, we find that bailiffs are continuing to use or threaten to use alternate means to enter properties. StepChange advisers have recorded 5 such incidents since 2015, one example is below:

StepChange debt adviser:

“The enforcement agents have been very threatening to our client stating that they will get a ladder to break into the house through her 15-year-old son’s window, threatening to force entry whenever the client opens the door to leave the house and threatening to take her car which is a Hire Purchase vehicle.

As a result, the client is living in fear and her son is terrified that someone is going to break in through his bedroom window.”

In more extreme - and unusual - cases of poor practice, advisers have reported cases of forceful entry into properties by bailiffs without prior warning, contravening both the regulations and the National Standards.⁵⁹ Citizens Advice advisers recorded 2 evidence forms where bailiffs have forced entry without the right to do so.

⁵⁷ [The Taking Control of Goods Regulations 2013](#), Section 20.

⁵⁸ We filtered these respondents to remove the records of people whose debts gave enforcement agents the power to break in, such as magistrate’s court fines and warrants. Base: 277.

⁵⁹ [The Taking Control of Goods Regulations 2013](#). Part 2, Regulation 6.



F. Pressuring people in debt to make unreasonable payment offers.

As part of the package of reforms introduced in 2014, the National Standards state that:

24. Debtors must not be pressed to make unrealistic offers and should be asked to consider carefully any offer they voluntarily make and where possible refer to free debt advice.

25. Where a creditor has indicated they will accept a reasonable repayment offer, enforcement agents must refer such offers onto the creditor.⁶⁰

Our evidence suggests that these provisions are not being met in practice.

In 2017/18, Citizens Advice helped people with nearly 17,000 issues associated with payment offers. And since 2014, Citizens Advice advisers have helped people with this issue more than 65,000 times.

Table 9. Number of problems related to offers of payment seen by Citizens Advice⁶¹

	2014/15	2015/16	2016/17	2017/18
Offers of payment	16,126	16,609	15,688	16,817

In a survey the Taking Control Coalition recently conducted with more than 300 debt advisers, **83% stated that bailiffs had stayed the same or got worse at accepting reasonable offers of payment** since 2014.⁶²

National polling suggests the refusal of payment offers is common amongst people who have not been in touch with a debt advice agency too. **24%** of people who have experienced a bailiff visit in the last two years found their offers of affordable payments were refused.⁶³

Table 10. StepChange client surveys in 2016 and 2018 respectively.⁶⁴

Did you experience any of the following practices from the bailiffs?	2018 (Base: 46)	2016 (Base: 294)
Refused to consider an affordable repayment offer	43%	48%

⁶⁰ [Taking Control of Goods: National Standards 2014](#)

⁶¹ Citizens Advice AIC client data 2014/15-2017/18

⁶² Taking Control Adviser Survey June - August 2018, Base: 308

⁶³ YouGov polling conducted in 2018. Base: 277.

⁶⁴ 2016: Survey of 2,395 StepChange Debt Charity clients 294 out of 1,853 who answered the question had been visited by bailiffs

2018: Survey of 1,032 StepChange Debt Charity clients 46 out of 740 who answered the question had been visited by bailiffs



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Asked me for an amount that I could not afford	55%	Not asked
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When individuals and advisers report issues associated with offers of payment, most commonly we encounter:

1. Bailiffs pressuring people in debt into repayment plans which are not affordable and not referring individuals to free debt advice

The use of the threat of escalating enforcement action to press people with debt into an unrealistic payment is commonly experienced by our clients. In a survey of StepChange clients of whom 46 had had bailiff issues, 55% stated that a bailiff had asked them for an amount that they could not afford. While a further 43% had had an affordable payment offer refused (Appendix 1B).

StepChange and Citizens Advice advisers have registered 252 expressions of dissatisfaction at the failure of bailiffs to conform to these principles.⁶⁵ Here is one illustrative example recorded by a StepChange adviser:

‘Our client reported that bailiffs are acting in a scary / threatening manner, demanding money from the client in a very menacing manner, leaving her feeling vulnerable and as though she has to comply. They asked for £200 per month, which the client simply can't afford. She has already paid one parking fine in full with them, as they led her to believe she had no other choice. The client has also raised a complaint with them but received an inappropriate reply. The client feels she has no option but to pay them.’

We understand that enforcement agents are encouraged to secure high recovery rates by clients, and this can place them under pressure to recover sums in full or within the financial year. The pressure applied by bailiffs to meet these recovery rates is pushing people into genuine hardship. An independent regulator could introduce an agreed affordability framework, like the Standard Financial Statement, to ensure that creditors and enforcement agents do not apply excessive pressure to individuals.

Amongst StepChange clients, a further issue was raised around repayment plans. In 17% of cases, the establishment of a repayment plan did not lead to the cessation of enforcement action.⁶⁶

G. Debt is not that of person visited

The Tribunals, Courts and Enforcement Act 2007 sets out that:

An enforcement agent may take control of goods only if they are goods of the debtor.⁶⁷

The National Standards also state:

⁶⁵ StepChange and Citizens Advice Expressions of Dissatisfaction 2018.

⁶⁶ StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

⁶⁷ Tribunals, Courts & Enforcement (TCE) Act 2007, Schedule 12, paragraph 10: ‘An enforcement agent may take control of goods only if they are goods of the debtor’.



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67. Enforcement agents should not take control or remove goods clearly belonging solely to a third party not responsible for the debt. Where a claim is made, the third party should be given clear instructions on the process required to recover their goods.⁶⁸

In addition to threatening to take control of third party goods when enforcing a debt against the right person, bailiffs regularly pursue the wrong person for a debt. Our polling found that 58% of those who had been contacted by bailiffs in the last two years, had been contacted in relation to someone else's debt.⁶⁹

This may be because the registered address of the person in debt might be at their former residence, which can leave new residents or family members dealing with the consequences. In these circumstances, where an individual might be registered at a former address, bailiffs are often insistent that the person continues to live there.

Citizens Advice and StepChange advisers flagged 43 such cases in the last year.⁷⁰ This amounts to 6% of the Evidence Forms and Expressions of Dissatisfaction listed by our advisers. One interviewee told us:

"My older son was using my address as a 'care-of' address. I think it was an unpaid fine for driving, and so they was kind of looking for him, but because this was a care-of address, they traced him to my house, they just kept coming to me. And I kept telling them, 'No he doesn't live here, this is just his care-of address and he comes for his mail here.' They was trying to push their way into the door. And then they just kept coming back, they was knocking at the neighbour's house. And they wouldn't take it that, it's nothing to do with me, this is just a care-of address. They was just being 'really assertive' and kind of aggressive in their manner. 'This is on camera', 'we're recording this' - They said "we're going to keep coming back. Even though you said he's not here"... They'd say to me was "if paperwork doesn't come there, it doesn't matter to us, we believe he does live there'."

The knock on effects of this practice:

- **People's goods are threatened, despite the debt not being their own.** In most cases, people do not have evidence to show ownership (or otherwise) of the goods. According to our evidence forms, bailiffs regularly treat people's possessions as belonging to the person in debt unless they can provide clear evidence (such as a receipt) showing that they belong to someone else.
- **Items are taken control of until proof of different ownership can be produced.** This can leave major households items under threat - including cars belonging to other family members - and often leaves people highly distressed that their debts are disrupting their personal relationships.

Below is an indicative example highlighted by a Citizens Advice adviser:

"The client had just returned from Jamaica when he bought a new car. Shortly afterwards, he was visited by bailiffs at his home, who stated they would impound his car if he did not meet

⁶⁸ [Taking Control of Goods: National Standards 2013](#)

⁶⁹ YouGov Polling September 2018. Base: 277

⁷⁰ StepChange and Citizens Advice Expressions of Dissatisfaction and Evidence Forms 2018.



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the cost of a traffic fine of £556 incurred by the previous owner. The client showed the bailiff his proof of purchase, its date and his identity but they insisted.

The client paid as the officers were very intimidating in front of his son, who was recently arrived from Jamaica, and his grandson recovering from brain surgery. It took him more than 9 months to receive an answer from the bailiffs. Eventually, the complaint was admitted and the client was given his money back and an apology.”

Case study: Tracy

Tracy was sent a letter by a bailiff claiming she owed money for a debt she didn't owe. There had been an admin mistake by the debt management company who were billing Tracy for the debts of another property within the building. Despite Tracy pointing out the debt was for a different address, the agent claimed “we've been told you owe this and that means we're entitled to get it from you including by taking stuff”.

Tracy felt trapped, alone and desperate in a hugely stressful situation which triggered suicidal feelings after a period of improved mental health. She felt unsupported, unheard and let down by the system.



Other problems reported by debt advice organisations

On top of the problems identified across a range of data sources, our organisations have identified instances of other forms of rule breaking and bad practice.

A. Outside allowed hours

The 2014 reforms introduced limits on the times of day when a bailiff could visit. The Taking Control Regulations 2013 state:

13 (1). The enforcement agent may not take control of goods of the debtor before 6 a.m. or after 9 p.m. on any day.⁷¹

The National Standards also set out that:

56. Enforcement action should only be carried out between the hours of 6.00am and 9.00pm, or at any time during trading hours, unless otherwise authorised by a court. Existing legislation must be observed.⁷²

Amongst clients who were helped by StepChange in 2014/15, in 12% of cases bailiffs visited the home outside 'reasonable hours' of 6am – 9pm.⁷³

This problem is less commonly cited by advisers in Expressions of Dissatisfaction and Evidence Forms. StepChange and Citizens Advice advisers have reported 4 instances of this. An indicative example is below:

"An enforcement agent collecting a council tax debt visited and knocked on our client's door at 5.30am. They had already rung her place of work and made repeated visits to her work to try and collect the debt. The client also said that the adviser in the office was rude and unhelpful and told the client "well if you paid your bills, then this wouldn't be happening"."

B. Problems with notices

The 2014 reforms introduced conditions around the enforcement notices that must be sent. These included:

An enforcement agent may not take control of goods unless the debtor has been given notice.⁷⁴

Notice of enforcement must be given to the debtor not less than 7 clear days before the enforcement agent takes control of the debtor's goods.⁷⁵

⁷¹ [The Taking Control of Goods Regulations 2013, Regulation 13](#)

⁷² [Taking Control of Goods: National Standards 2014](#)

⁷³ StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

⁷⁴ TCE Act 2007, Schedule 12, paragraph 7.

⁷⁵ [The Taking Control of Goods Regulations 2013, Regulation 6](#)



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There are three key problems around the notice provided to clients of bailiff visits:

- 1. Letters to notify people about enforcement action often do not reach people in debt.**
Postal issues mean that people in debt get less than 7 days' notice of a bailiff visit, or at times these letters do not appear to reach people in debt at all.⁷⁶ This suggests that bailiffs and bailiff firms are not always fulfilling their statutory responsibilities. The failure of such letters could also be the result of individuals who are struggling financially finding it difficult to engage with the large amount of correspondence from creditors, leaving some letters going ignored. Half of people in problem debt (45%) are also experiencing a mental health problem,⁷⁷ which can make engaging with post and other written communications dramatically more difficult.⁷⁸ This leaves people unaware of the upcoming visit by an enforcement agent.
- 2. The steps involved in the compliance period of enforcement action are ill-defined.** Whilst all debts passed to bailiffs are subject to a period of compliance, the length of this period can vary and the types of engagement are not clearly set out. This means some councils limit the compliance period to 7 days with only 1 or 2 attempts at contact, whilst other compliance periods might extend to more than a month with many more efforts to contact debtors. An independent regulator should introduce clear steps and different forms of contact in the compliance period - increasing the likelihood that people in debt have the chance to settle at an early stage - without paying the higher fees and unpleasant experience of enforcement actions.
- 3. Letters at the enforcement stage are not specified in the regulations.** This means people who might be away from their homes when a bailiff visits, can remain unaware of the visit, or - as our advisers have recorded - find themselves subject to unpleasant notices by bailiffs threatening to take people's goods. We also find that bailiffs are not always sealing the notices of enforcement - making it clear to friends and neighbours that a person is in financial difficulty, and causing embarrassment. We have included more information on how a regulator should amend enforcement letters in section 4.

In an online survey, StepChange Debt Charity found that **24%** of those who responded stated that they had not been contacted by the bailiff before their visit.⁷⁹

StepChange advisers recorded 31 issues around notices given to people in debt. An indicative example is below:

“Bailiffs visited our client's property for the first time today to collect council tax arrears but had not given them 7 days written notice. The client did not let them in. When the client spoke to them by phone later in the day the man she spoke to was very aggressive and said

⁷⁶ [Rooftops South West \(and others\) v Ash Interiors, Direct Collections \(DCBL\) and others \[2018\] EWHC 2798 \(QB\)](#)

⁷⁷ Jenkins, R. Bebbington, P., Brugha T. et al. [Mental Disorder in People with Debt in the General Population](#). Public Health Medicine 2009; 6(3): 88-92.

⁷⁸ Holkar M. [Seeing through the fog: How mental health problems affect financial capability](#). Money and Mental Health Policy Institute. 2017.

⁷⁹ StepChange website survey, November 2016-February 2017. Base: 1,376.



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he was coming to her property the next day with a locksmith to take her belongings. The client was extremely shaken and upset at hearing this.”

Of even greater concern is the threatening language used by enforcement agents in the letters sent to people in debt. We have included a number of examples of this in section 4.

C. Lack of clear and prompt information

1. Bailiffs don't provide adequate information to people in debt

The National Standards state that:

51. Enforcement agents should provide clear and prompt information to debtors and where appropriate, creditors.⁸⁰

Often it seems that enforcement agents are not providing sufficient information to people in debt about what the debts are for and how charges are being incurred, or are deliberately unclear as to the ways that they can seek help. This might include: failing to refer people in debt to debt advice, not providing sufficient information to the person in debt on the amount of debt and the fees, and not honestly informing the person about the next steps which are available to them. The tendency for enforcement agents to stress the most threatening parts of enforcement action - such as prison or the possibility of arrest is indicative of this.

StepChange debt advisers cited 33 instances of enforcement agents failing to provide clear and prompt information. An indicative example is below:

“Our client is very unhappy with an enforcement agency as they are being very rude to her and not helping her. She contacted them to find out who they were collecting on behalf of and to get a breakdown of the debts. One particular enforcement agent was very rude and refused to give this information to her. He said he didn't have that sort of information and he would never have it. The enforcement agent has been trying to scare her and her son (5 years old) is petrified. The agent is not being helpful at all.”

2. Bailiffs don't provide identification

The Tribunals, Courts and Enforcement Act 2014 reforms state that:

Enforcement Agents must show a) ID and b) authority to enter premises.⁸¹

And the National Standards state that:

22. Enforcement Agents must provide ID if asked.⁸²

Problems around enforcement agents carrying ID are not a major issue amongst our clients. It does however, cause concern and confusion for some people. StepChange debt advisers raised 13 issues where bailiffs failed to show ID. It is most concerning when it overlaps with enforcement agents entering a property under false pretences.

⁸⁰ [Taking Control of Goods: National Standards](#)

⁸¹ Tribunals, Courts and Enforcement Act 2007, Schedule 12, paragraph 26 (1)

⁸² [Taking Control of Goods: National Standards](#), Section 22.



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Enforcement agents should more clearly display their identity cards and explain the conditions which determine their authorisation to enter premises.

D. Data protection and confidentiality

Protection of individual's data and the need for confidentiality is set out in the regulations introduced in 2014. This includes:

If the debtor is not in and other people are likely to see, the Enforcement Agent must give notice in sealed envelope addressed to debtor⁸³

A Controlled Goods agreement must be in sealed envelope addressed to the debtor, if it could be seen by other occupiers of the premises.⁸⁴

The National Standards also state:

19. Enforcement agents must act within the law at all times, including all legislation and observe all health and safety requirements in carrying out enforcement. They must maintain strict client confidentiality and comply with Data Protection legislation and, where appropriate, the Freedom of Information Act.

52. Enforcement agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the debtor or a third party nominated by the debtor, for example an advice agency representative. Where the debtor is not seen, the relevant documents must be left at the address in a sealed envelope addressed to the debtor.

There have however, been a number of issues raised by our advisers in which the confidentiality of the enforcement agents' visit or the use of sealed envelopes has been overlooked. StepChange debt advisers recorded 33 issues with bailiffs ignoring these provisions. This is particularly concerning given that data protection is unlikely to be the primary grounds for complaint, in the vast majority of instances people complain about what they consider to be more 'serious' issues. This means that a large number of such issues are likely to be occurring without being reported.

Two indicative examples recorded by StepChange advisers are below:

"Our client is unhappy with enforcement agents collecting Council Tax arrears. The client is unhappy as they aren't using her letterbox and keep leaving letters outside, attaching them to walls for people to see. She has contacted them several times advising them to use the letter box but they insist on still taping it to the wall outside - one letter was opened so could have been read by someone. They also keep texting information about her situation to a number which is not hers. She has told them her number but they still keep using the other number."

And,

"Our client was visited by enforcement agents but was not in the property. The client's neighbour came out of their house to see what was happening and the enforcement agent

⁸³ TCE Act 2007, Schedule 12, paragraph 28 (5) and(6)

⁸⁴ Taking Control of Goods Regulations 2013 15 (6)



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told the neighbour details about the client and the debt they were collecting. This resulted in the neighbour calling the client's landlord and informing him of this."

The latter instance shows the severe problems which arise out of bailiffs failing to keep the purpose of their visit confidential. **It's crucial that stronger regulation - and with it improvements in training and quality standards - are introduced to prevent bailiffs sharing legally protected information with third parties.**



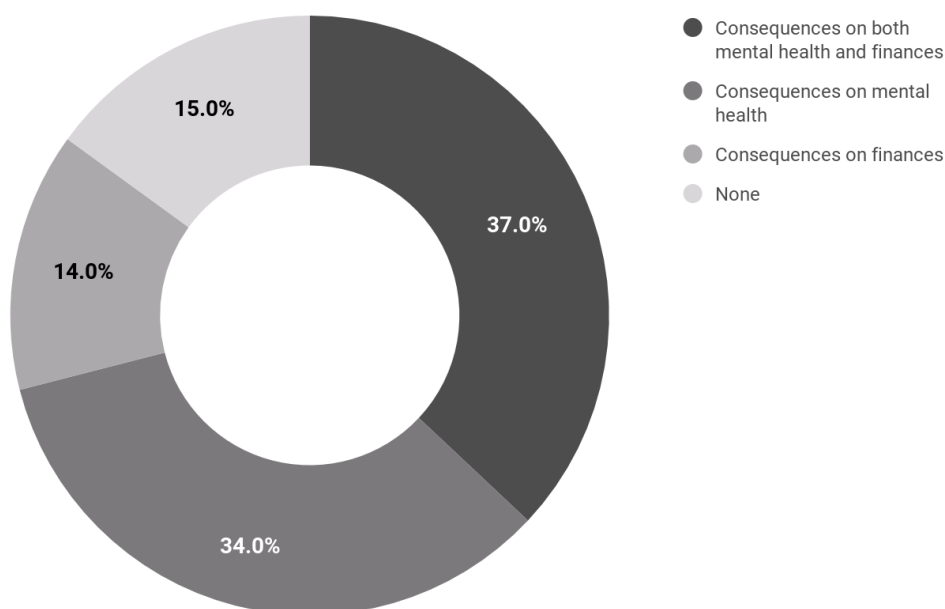
The knock on effects of poor treatment by bailiffs

Bailiff visits are always likely to be unpleasant, with people being forced to face up to their debt issues. However, too often, the behaviour of bailiffs compounds the situation.

National polling asked all people who had experienced bad practice by a bailiff what effect it had had on their lives.⁸⁵ 85% stated that the bailiff visit had a negative consequence of some kind. We broke these consequences down into effects on people's mental health and financial position:

- Half (51%) said it had a negative effect on their financial position.
- 7 in 10 (71%) said that they experienced increased stress or anxiety, felt unsafe or became afraid to answer the door.⁸⁶

Chart 4. What does poor practice by bailiffs mean for people in debt?



Source: YouGov polling of adults in England and Wales who had a negative experience with bailiffs, weighted to be nationally representative. Base: 192.

Poor behaviour by bailiffs causes distress and anxiety

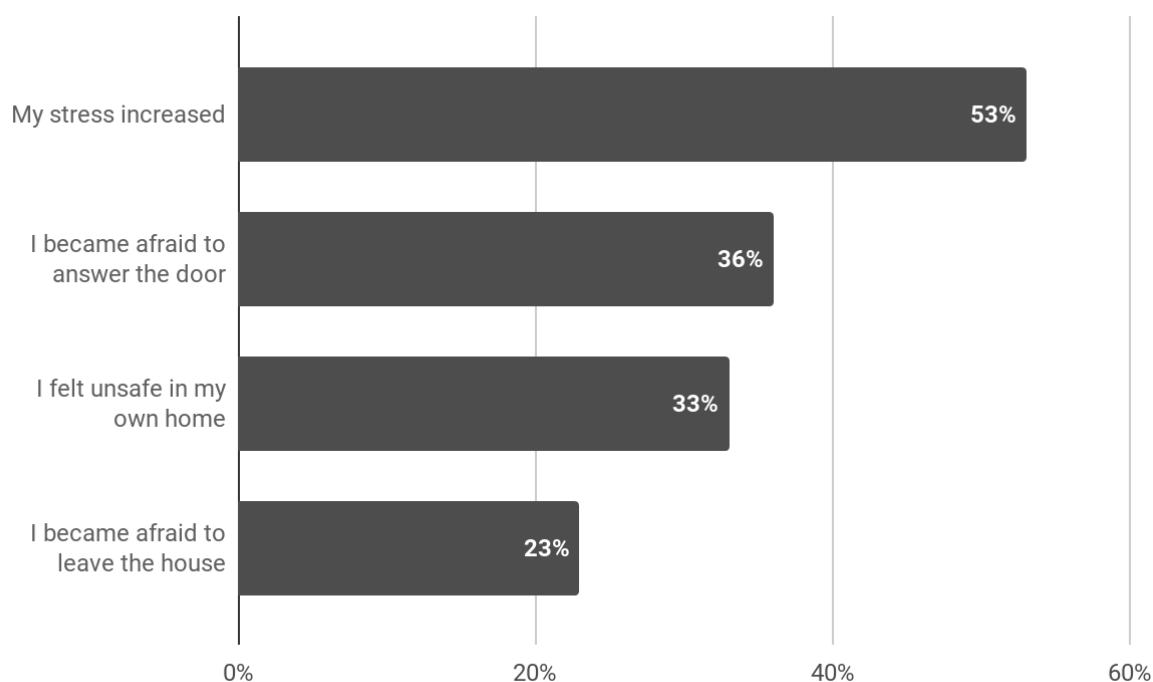
There are consequences where bailiffs act aggressively, refuse offers of payment and make threats to people in debt. These actions have long term effects on the lives of people who are visited and can leave them experiencing heightened anxiety and distress.

⁸⁵ We considered a negative experience to include anyone who answered that they had experienced: excessive bailiff fees, a doorstep visit or phone calls that were found intimidating, contact with a bailiff on more than one occasion per day, threats to break into the property, bailiffs breaking into the property, bailiffs refusing to consider an affordable repayment offer, bailiffs dealing unsympathetically with disabilities/ illnesses, bailiffs taking goods required for my livelihood, and bailiffs entering the property with a child present.

⁸⁶ YouGov polling of adults in England and Wales who had a negative experience with bailiffs, weighted to be nationally representative. Base: 192.



Chart 5. What consequence did having a negative interaction with bailiffs have on your life?



Source: YouGov polling of adults in England and Wales who had a negative experience with bailiffs, weighted to be nationally representative. Base: 192.

This anxiety can prevent people from undertaking everyday activities, such as answering the door, feeling safe in their own homes or even leaving the house. We asked clients how long they felt the consequences of a negative interaction lasted and the most commonly selected response was for more than two years.⁸⁷

Increased stress and anxiety as a result of financial concerns can also exacerbate physical health conditions. **1 in 2** clients surveyed stated that being visited by a bailiff had an effect on their **physical health**.⁸⁸

These findings have recurred in a number of settings. **83% of National Debtline callers surveyed who had experienced bailiff action reported a negative impact on their wellbeing**.⁸⁹

Poor behaviour by bailiffs often has **knock on effects on people's relationships and family members as well**. In 2016, The Children's Society reported that parents and children found it distressing when

⁸⁷ Survey of clients conducted by Citizens Advice, August-October 2018. Base: 120

⁸⁸ Survey of clients conducted by Citizen's Advice, August - October 2018. Base: 120

⁸⁹ National DebtLine Annual Impact Survey 2018. Base: 130



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bailiffs came to the house to take control of goods, remove items or to force them to leave. They also found that children were witnessing this first hand, causing them particular emotional distress.⁹⁰

Families in The Children's Society research that had a bailiff knock at the door, frequently found the attitude of the enforcement agent to be scary (4 in 10), aggressive (a third of parents) or even physically intimidating (2 in 10).

Almost 1 in 5 families facing council tax debt had had a bailiff visit their home and of these, 70% said that they believed that their children had been frightened, sad or worried as a result of the visit. 80% of parents in council tax debt who had had a bailiff visit said their children were at home when they came.

A third of parents said that the enforcement agency was inconsiderate to children being in the house – all the more worrying when these same parents told us that in over half of cases their children were present most or all the times a bailiff visited. Nearly one fifth (17%) of children in families who have faced council tax debt surveyed said that they had had someone call at the house to ask about money that was owed, with nearly half of these children saying that they felt frightened and three quarters of them felt worried.⁹¹

⁹⁰ The Children's Society, [The Damage of Debt: the impact of money worries on children's mental health and well-being](#), 2016.

⁹¹ The Children's Society, [The Wolf at the Door: How council tax debt collection is harming children](#), 2015.



1.2 Treatment of vulnerable debtors

A crucial part of the 2014 bailiff reforms related to new protections for vulnerable people. There is now a duty for bailiffs to refer the case back to the creditor where there is ‘a cause for concern’ and bailiffs are expected to ‘withdraw from the property if only a vulnerable person is present’.

Question 6: Has your organisation seen any change to the volume and nature of contacts regarding vulnerable debtors since the reforms came into force?

The National Standards document does not define who might be vulnerable, but does list some groups who might be considered vulnerable:

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

Citizens Advice clients with bailiff issues are disproportionately likely to be female, live in social housing or be single parents, with a significant proportion (40%) experiencing a disability or long term health condition.

Chart 6. The demographic characteristics of Citizens Advice clients with bailiff issues compared with Citizens Advice clients as a whole, and the UK population



Source: Citizens Advice client data 2017/18 and data from the UK Census 2011.



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Analysis of the Adult Psychiatric Morbidity Survey, a nationally representative survey assessing prevalence of mental health problems across the UK, finds that nearly half of people in problem debt (45%) are also experiencing a mental health problem.⁹² Mental health problems, however, are often undiagnosed: more than a third of people (36%) who screen positive for a common mental disorder, like anxiety or depression, have never received a diagnosis.⁹³ While people who have never been diagnosed with a mental health problem may be difficult to identify, they are still at very serious risk. 13% of people in problem debt have thought about suicide in the last year, and three in every hundred have attempted suicide.⁹⁴ Aggressive action by enforcement agents is a common contributor to the psychology of suicidality, particularly when people feel trapped, unsafe in their own homes or a burden to others.⁹⁵

In 2017/8, Citizens Advice saw over 5,600 clients with issues related to the treatment of vulnerable people in debt by bailiffs, a 42% increase from 2014/15 as seen in Chart 7. Despite the reforms, we continue to see large numbers of vulnerable individuals experiencing issues with the use and conduct of bailiffs. Since 2014, more than **21,000** instances of bailiffs failing to act appropriately towards vulnerable people in debt have been brought to Citizens Advice offices.

Chart 7. Number of Citizens Advice clients with issues related to poor treatment of vulnerable people in debt since the introduction of the reforms

⁹² Jenkins R, Bebbington P, Brugha T et al. Mental Disorder in People with Debt in the General Population. *Public Health Medicine* 2009; 6(3): 88-92.

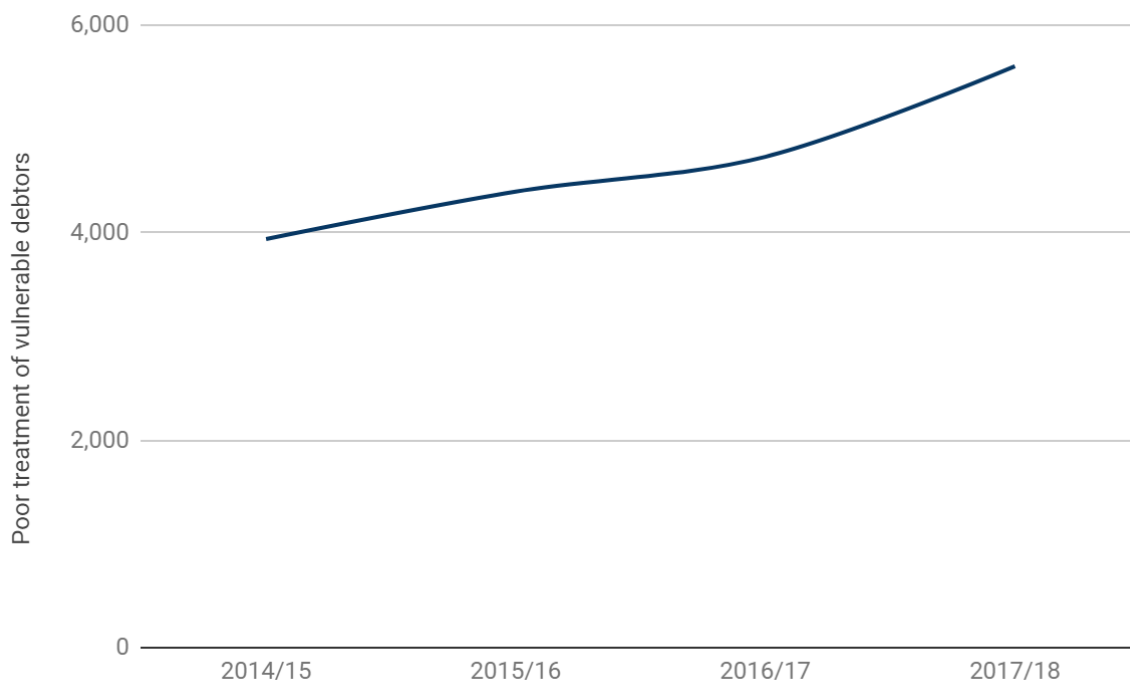
⁹³ McManus S, Bebbington P, Jenkins R, Brugha T. (eds.) (2016) Mental health and wellbeing in England: Adult Psychiatric Morbidity Survey 2014. Leeds: NHS Digital.

⁹⁴ National Centre for Social Research (NatCen) analysis of the Adult Psychiatric Morbidity Survey 2014, for Money and Mental Health.

⁹⁵ Bond N and Holkar M. A silent killer: Breaking the link between financial difficulty and suicide. Money and Mental Health Policy Institute. 2018.



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A. New rules on vulnerability haven't improved bailiffs' behaviour

The 2014 reforms set out how vulnerable people should be treated by bailiffs. However, Citizens Advice polling found that almost 1 in 5 people (18%) contacted by bailiffs saw them act unsympathetically towards people with illnesses and disabilities.⁹⁶

The National Standards indicate that an enforcement agent should be trained to recognise and identify vulnerability, withdraw, and alert the creditor to a potentially vulnerable person in debt. Yet, 7 in 10 people in debt with mental health problems say that their vulnerable status was not dealt with appropriately.⁹⁷ The failure of enforcement agents to adequately identify and take account of clients' vulnerabilities amounts to discrimination against protected characteristics, in addition to a failure to reasonably adjust the Taking Control of Goods process for those with a disability.

Diane's story

⁹⁶ In addition to paragraph 10 of the [Taking Control of Goods Regulations 2013](#), the National Standards state that where enforcement agents have identified vulnerable debtors or situations, they should alert the creditor and act in accordance with all relevant legislation.

⁹⁷ Analysis of 107 responses to a Money and Mental Health survey around bailiff behaviour, carried out online between November 2017 and December 2018, indicated that 71% included expressions of their vulnerable status being poorly dealt with or affected.



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"The bailiffs called as a result of me losing my health, my career as a Headteacher and thus around 75% of my monthly income. I was unable to shed commitments fast enough and got into debt. It was Council Tax arrears which triggered the bailiffs as we simply did not have any money.

The enforcement company were atrocious. They visited neighbours sharing more than they should have, and they had no paperwork to backup supposed issues of our case. However worst and most stressful for us was their willingness to make repayment agreements, only to insist we'd broken them when we phoned to make payment. This endless deceit and lying really took its toll, especially as I'd just been retired on medical grounds due to very severe mental health problems which I now know will be lifelong. Treatment was terrible. It exacerbated my condition without a doubt, leading to an attempt to hang myself and me being sectioned. "

As well as a broad failure to follow the National Standards by identifying vulnerability and alerting creditors, bailiffs are breaking a number of specific rules.

B. There is a lack of effective vulnerability training

National Standards state:

42. Enforcement Agent should be trained to recognise and identify vulnerability and withdraw.⁹⁸

Despite the introduction of these guidelines half (48%) of advisers think that bailiffs have got worse at treating vulnerable people appropriately since 2014.⁹⁹ Most commonly advisers think that 'the behaviour of bailiffs varies, but there is widespread bad practice in the bailiff industry.'¹⁰⁰ This has been a consistent problem following the reforms, with similar proportions of people experiencing bailiffs dealing unsympathetically with disability or illness in both 2016 and 2018.¹⁰¹

One fifth (21%) of StepChange advisers expressed issues around a lack of vulnerability training for enforcement agents.¹⁰² One adviser recounted a particular case highlighting the importance of agents receiving and abiding by training regarding vulnerable people in debt:

⁹⁸ [Taking Control of Goods: National Standards 2014](#)

⁹⁹ Analysis of a survey with more than 300 advisers who worked for organisations within the Taking Control Coalition. Circulated Between 7 June and 31 August 2018.

¹⁰⁰ 63% of advisers responded 1 (Most appropriate) or 2 to the question "Which of the following would you say best characterises the performance of the bailiff industry since the 2014 reforms?", for the statement "The behaviour of bailiffs varies but there is widespread bad practice across the industry".

¹⁰¹ StepChange Debt Charity analysis of a client survey conducted in 2016 (Base: 294) and 2018 (Base 46), with a 18% and 17% proportion of respondents who had had contact with bailiffs experiencing bailiffs dealing unsympathetically with disability or illness.

¹⁰² Analysis of StepChange 360 'Expressions of Dissatisfaction' made by advisers concerning bailiff enforcement.



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“Our client has been dealing with an enforcement agency over council tax arrears. The client has tried to resolve with payment offers and has made the enforcement agency aware that they are severely ill and the stress that the enforcement agency have caused has contributed to her being hospitalised on several occasions. The enforcement agency have also wrongly told the client what they can do such as breaking into property without a warrant being explained and entering via other openings in the house like windows.”

Thiaba’s story



“[The bailiff] was deliberately rude and intimidating, even after I explained I was out of work due to mental health issues. He lied about stuff, like it made no difference if my only income was benefits, and he mentioned possible social services involvement regarding custody of my son if my furniture was taken to pay my bills. He claimed he could call & the van would be outside, in front of all my neighbours, within 20 minutes, and that he could legally come into the house at any time even if it meant breaking in. He gained entry by lying to my son, pushing past him and saying I was expecting him. It left me too terrified to leave the house, in case I came back to my possessions gone and social services informed.”

C. Entering when only children or vulnerable adults are present

Evidence from Citizens Advice advisers includes a number of cases where **bailiffs ask visibly vulnerable householders who are alone to allow them into the property**. For example, heavily pregnant women, elderly people, and disabled people have been asked to open the door by bailiffs.

The Taking Control of Goods Regulations state that:

10. An Enforcement Agent may not take control of goods if a child or vulnerable person (whether more than one or a combination of both) is the only person present in the relevant or specified premises in which the goods are located
- 23 (2)(b). Enforcement Agent may not enter, re-enter or remain if a child or vulnerable person is the only person on the premises

Additionally, the National Standards outline how agents and creditors should proceed if vulnerable persons are the only individuals present:

70. Enforcement agents/agencies and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected
72. Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 16 or is deemed to be vulnerable by the enforcement agent; they can ask when the debtor will be home - if appropriate.
73. Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.¹⁰³

¹⁰³ [Taking Control of Goods: National Standards 2014](#)



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However, StepChange research conducted after the implementation of the reforms found that in 3% of cases, bailiffs entered the home when only children were in.¹⁰⁴ Bailiff visits can be extremely difficult for children, even when adults are present, causing emotional distress and fear. Research by The Children's Society has found that 2 in 3 parents said they believed their children had been frightened, sad or worried as a result of a bailiff visit.¹⁰⁵

Rachel's story



I have been paying [energy company] £50 a month but cannot afford the full bill of £100 a month. I explained the situation on the phone to them and they knew I was paying. The day the bailiff came round I was ill in bed and my daughter answered, the man didn't explain who he was at all, just put his foot inside the door and asked if he could step inside as it was cold outside. My daughter being a caring person let him in, but in all honesty didn't have a lot of choice as his foot was in the door. She said that I was in bed as suffer with M.E. (as well as depression). My son was quite scared as to what was going on because although he's 17 he has autism as well as mental health issues. It pushed me over the edge when I found out, I felt totally humiliated, as well as let down. They should know that people with mental health problems will be worse affected than the average person without mental health problems. The bailiff was even aware of my mental health problems as he said to [daughter]"

Evidence from both advisers and polling demonstrates that often bailiffs fail to withdraw when children or vulnerable adults are the only ones present at the time of their visit. Enforcement agents misrepresent their reasons for visiting and entering the property, or use that vulnerability as a means to gain peaceable entry.

D. Lack of assistance or advice for vulnerable people in debt

Given over 5,600 clients come to see Citizens Advice regarding bailiffs poor treatment of vulnerable people in debt every year, it seems salient that these vulnerable individuals are signposted by creditors and agents to debt advice as soon as possible.¹⁰⁶ The Taking Control of Goods (Fees) Regulations 2014 outline how agents must conduct themselves if they are dealing with a vulnerable individual:

12. Where the debtor is vulnerable, enforcement stage fees are not recoverable unless the debtor has been given adequate opportunity to get assistance and advice in relation to the exercise of the enforcement power.

Around 4 in 10 people who had negative experiences with bailiffs felt lasting consequences on both their mental health and finances.¹⁰⁷ The consequences of poor enforcement practice are high for many people in debt, but for vulnerable people the knock on effects often feel more overwhelming.

¹⁰⁴ StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

¹⁰⁵ The Children's Society, The Wolf at the Door: How council tax debt collection is harming children, 2015. Base: 82.

¹⁰⁶ Citizens Advice AIC client data, 2017/18

¹⁰⁷ Citizens Advice, A law unto themselves: How bailiffs are breaking the rules, November 2018.



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Vulnerable people in debt can find it difficult to cope and engage with the stages of enforcement they are experiencing. This potential lack of financial and emotional capability is often exacerbated through contact with bailiffs, with 85% of who had a negative experience with bailiffs stating that the bailiff visit had a negative long term consequence of some kind.¹⁰⁸

In spite of the 2014 reforms, 20% of StepChange advisers' Expressions of Dissatisfaction emphasised the lack of assistance bailiffs provide to clients who are vulnerable.¹⁰⁹ A StepChange adviser summarised one client's difficulties dealing with bailiffs while experiencing mental health issues:

"Our client has council tax arrears which have been passed to enforcement agents to collect. The client feels the enforcement agents are being unreasonable and are lying to her because they have threatened that they can force entry while she is out of the house and bring a locksmith to get in. They have shouted at her through the door and sworn at her. The client has mental health issues and says this is making her condition worse. She is trying to find out how much she owes but the enforcement agents will not tell her. They previously told her that if she paid £160 before Christmas then they would pass it back to the council and stop enforcement action. She paid this amount but the enforcement action continued as fees had been added."

E. Capability & understanding

The Taking Control of Goods Regulations (2013) focus on capacity in relation to entering a controlled goods agreement:

14. The enforcement agent may not enter into a controlled goods agreement with the debtor or another person who it appears (or ought to appear) to the enforcement agent does not understand the effect of, and would therefore not be capable of entering into, such an agreement.

The National Standards also outline:

75. The enforcement agent must be sure that the debtor or the person to whom they are entering into a controlled goods agreement understands the agreement and the consequences if the agreement is not complied with.

78. Wherever possible, enforcement agents should have arrangements in place for rapidly accessing interpretation services (including British Sign Language), when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.¹¹⁰

¹⁰⁸ Citizens Advice, [A law unto themselves: How bailiffs are breaking the rules](#), November 2018. Base: 192.

¹⁰⁹ Analysis of StepChange 360 'Expressions of Dissatisfaction' made by advisers concerning bailiff enforcement.

¹¹⁰ [Taking Control of Goods: National Standards 2014](#)



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However, around 1 in every 100 Expressions of Dissatisfaction involving bailiffs by StepChange advisers considered that the client was not fully capable of understanding what was taking place. This can be for a number of reasons including those experiencing mental health problems, with hearing or sight impairments, or those with limited English. The following StepChange case demonstrates how a vulnerable person's state can be used to further enforcement proceedings:

"Our client let an enforcement agent into her property. The enforcement agent then asked her to sign a blank form as he had entered the property. He then proceeded to add items to this form after the client had signed it. The enforcement agent at no stage informed the client what he was doing and left no copy of this agreement with the client. Our client expressed dissatisfaction over her dealings with enforcement agents as they have been uncooperative and unfair over English not being her first language."

Vulnerable individuals often struggle with communicating with creditors and managing their finances.¹¹¹ Their own vulnerable circumstances combined with being in financial difficulty might leave people responding to the effects of a 'scarcity mindset'. This is a tendency for those who are worried about their financial situation to have less cognitive capacity to devote to other areas of their life.¹¹² In particular, we are concerned that there is little opportunity in the enforcement process for people to flag that they are struggling with capacity - or for bailiffs to clearly check an individual is capable of understanding the proceedings.

¹¹¹ Citizens Advice & Britain Thinks, [Essential service markets and people with mental health problems](#), May 2018; Holkar M. [Seeing through the fog: how mental health problems affect financial capability](#). Money and Mental Health Policy Institute. 2017.

¹¹² Mullainathan, S. Shafir, *Scarcity: The true cost of not having enough*. 2014.



Section 2: Complaints process and remedies

Question 9. 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?

A. Small number of complaints

Citizens Advice helped people with 3,680 issues related to complaints about bailiffs last year. A 76% increase since 2014. A major problem people experience with complaints in the bailiff sector is knowing how to make one.

The 2014 reforms updated the court based complaint process so people can challenge a bailiff's fitness to hold a certificate more easily while the new National Standards set out requirements for the complaints processes of enforcement agencies. **In spite of these efforts to improve complaints procedures, few people who experience a bailiff breaking the rules make a complaint.**

As demonstrated in Section 1 rule-breaking by bailiffs is common. However, our national polling found that **3 in 4 people (74%) who experienced bailiffs breaking the rules didn't complain.**¹¹³ A Step Change client survey found that, of those who felt they had been unfairly treated by bailiffs, only 15% made a complaint.¹¹⁴ **In the 4 years since the 2014 regulations there have been only 56 complaints to court about a bailiff's fitness to hold a certificate.**¹¹⁵

There are a number of reasons why complaints are infrequently made. First, there are barriers that put people off making a complaint. Second, even when people do make a complaint, the process is ineffective at holding bailiffs to account. These failings are self-reinforcing, negative experiences and lack of adequate outcomes serve to further put people off complaining.

B. Barriers to complaints

We conducted depth interviews with advisers and people in debt and found that the complexity of the complaints process and a widespread lack of faith in it leads many people to choose not to make a complaint when a bailiff has broken the rules. The fact that enforcement action is not put on hold when a complaint is made also puts people off making a complaint.

1. People don't know how to complain

Citizens Advice adviser: "Clients don't even know they have a right to complain. That's the most common thing I come across these days. People really aren't aware of the fact that there is a complaints process that exists because they [bailiffs] don't say so. None of the paperwork says 'if you are unhappy with our conduct you can complain.' The only way you can find it is if you go

¹¹³ Citizens Advice analysis of YouGov polling, based on the question "Did you use any formal complaints procedures (e.g. to the creditor, the organisation, the trade association etc.) to raise concerns about your experience?". Base: 198.

¹¹⁴ Survey of 1,032 clients 46 of whom had been visited by bailiffs. 56% felt they had been treated unfairly.

¹¹⁵ Citizens Advice, The Rules of Enforcement, January 2019



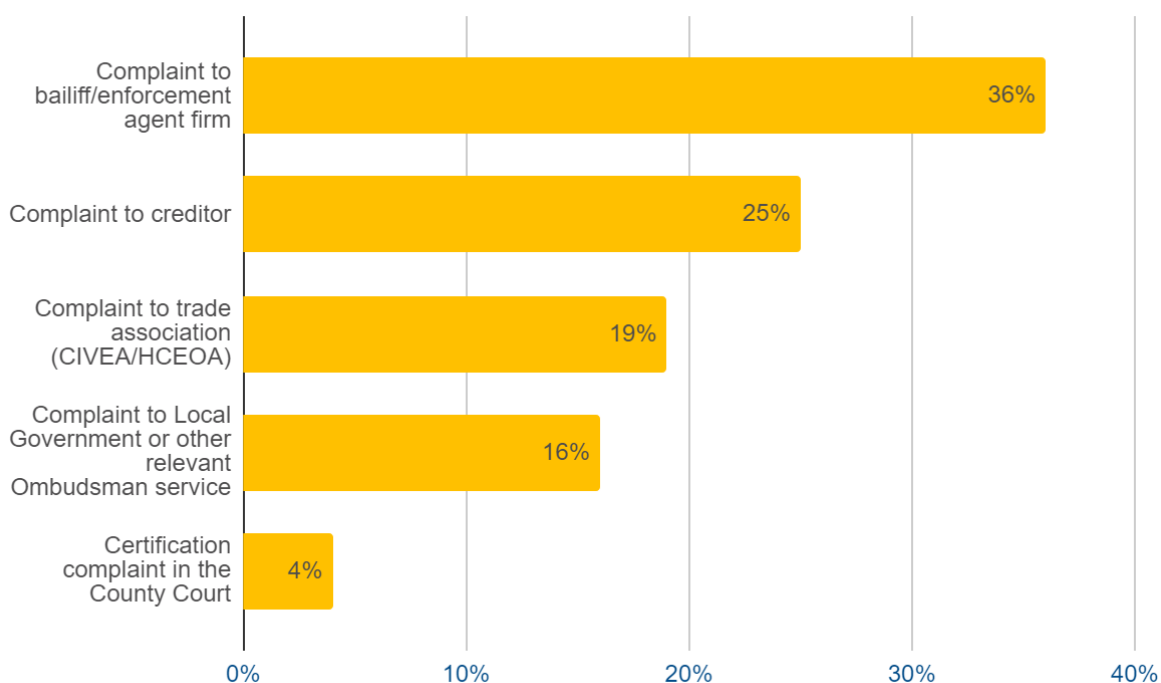
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looking on their sites. A lot of people that we speak to are surprised that there even is a complaints process.”

There is rarely information in the literature received by people in debt that informs them they can complain. Many people, therefore, are unaware that they can make a complaint.

For those who do try to make a complaint, it is confusing working out how best to make it. There are multiple routes through which to make a complaint about bailiffs. Generally people complain through the bailiff firm but this route can involve multiple levels of escalation within the firm before moving to the trade association and finally the courts (see Appendix 2A for an example of this confusion). Confusion about how to complain is demonstrated by the range of routes preferred by debt advisers that we surveyed. Although 36% went through the firm, a significant proportion used other routes (see also Appendix 2A).

Chart 8: Who do you complain to?



Source: Survey of debt advisers conducted between June - August 2018, base: 219.

2. The pressure of enforcement action puts people off complaining

People in debt and advisers alike naturally prioritise relieving financial pressures over challenging bailiff malpractice. This is particularly pertinent given that embarking on a complaint does not halt enforcement action. This means that charges accrue and people in debt can expect further bailiff visits even after making a complaint.

Citizens Advice adviser: “It's really flawed because of the time it takes. They don't put action on hold. We've had people withdrawing complaints because they feel the bailiffs will be harsher.”



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With the prospect of continued action, advisers and clients seek to limit the impact of this rather than pursue a complaint. This often results in complaints being dropped. Once a person in debt has rectified their situation to some extent - by agreeing a repayment plan or getting a debt relief order for example - they no longer wish to continue.

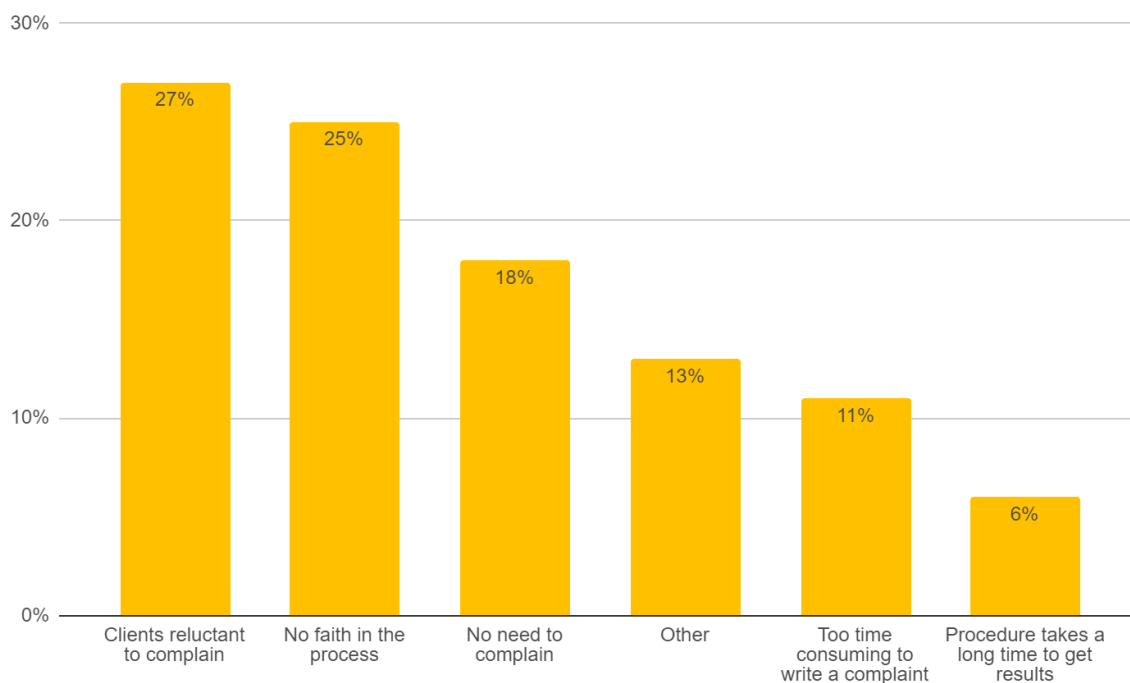
Citizens Advice adviser: “Even though they've been treated badly by the bailiff they don't want to follow up with the complaint because they've got what they wanted. If it was a quicker process it would be different.”

During such a high-pressure period for a person in debt the time involved in making a complaint is a significant deterrent. This is also the case for advisers managing large caseloads of clients with pressing financial issues. The time involved in making a complaint and the fact it has no impact on the enforcement process is a significant driver in suppressing the number of complaints made.

3. There is a lack of faith in the process

Both people in debt and advisers are put off making a complaint due to a lack of faith in the process. As shown in the chart below, nearly 3 in 10 advisers report that clients with bailiffs issues are reluctant to complain. And 1 in 4 advisers say they don't use the complaints process because they have lost faith in it.¹¹⁶

Chart 9: Why haven't you used complaints procedures to raise concerns about bailiff/enforcement agent practices since April 2014?



Source: Survey of debt advisers conducted between June - August 2018. Base: 83.

¹¹⁶ Survey of debt advisers conducted between June - August 2018. Base: 83.



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People in debt are doubtful about seeking redress from the company they perceive the bailiff to be working for. Despite often being self-employed, all correspondence from bailiffs contains references and branding related to the firm. The thought of directing complaints to the same organisation that has been acting inappropriately does not seem an attractive option.

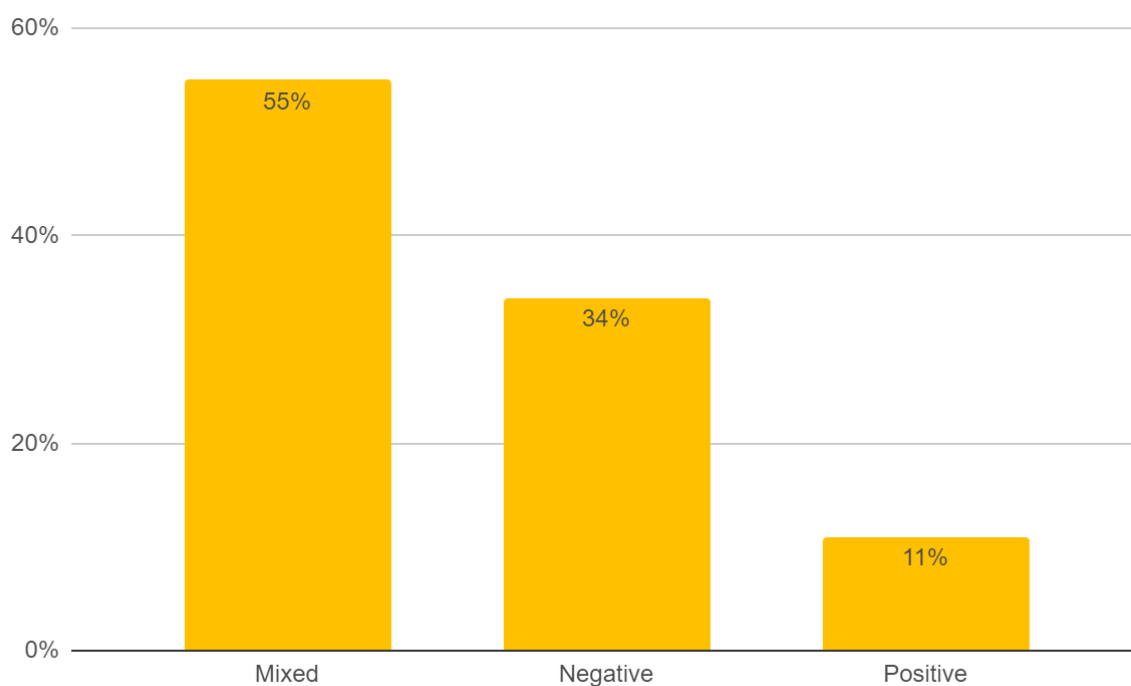
Our polling of advisers showed that 1 in 4 don't advise clients to make a complaint as they have no faith in the process.¹¹⁷ This is largely down to previous experience of the system's failure to hold bailiffs to account. With more pressing concerns to deal with for clients advisers do not see the worth in making a complaint.

Citizens Advice adviser: "It's a waste of time complaining to [the firm]. Their head office does nothing."

C. The complaints process doesn't work well

When people do complain the process doesn't work well. This serves to further suppress future complaints. As shown in the chart below, **over a third of advisers have a negative experience when complaining. Only 1 in 10 report a positive experience.**

Chart 10: How was your experience of the complaints procedure you used?



Source: Survey of debt advisers conducted between March - September 2018. Base: 205.

¹¹⁷ Survey of debt advisers conducted between June - August 2018. Base: 83.



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Details of these issues people experience with the complaints process are set out below. These are largely based on depth interviews with clients and advisers with experience of making a complaint about a bailiff.

1. Lack of independence

The only truly independent body in the bailiff complaints process are the courts.¹¹⁸ People in debt are suspicious of directing complaints to the firm a bailiff works for. There are often multiple levels of escalation within a firm before complaints are moved to the trade association, another body that is not independent from the bailiff industry.

Citizens Advice client: "If you're complaining to the financial ombudsman, it's an independent body. But here, you're going back to the bailiff firm. An independent body is going to say what they feel, they're going to say if something's not right. If you own the firm you're not going to say that. I can't really see it doing us any good because these people just clan together when it comes to [things like this] but we won't let it rest"

Relying on the courts to adjudicate on bailiff conduct issues is neither efficient nor effective. The One Year Review of the 2014 bailiff reforms noted that people perceive this to be a costly course of action.¹¹⁹ This is reflected in by the fact only 56 complaints have been made using the court form introduced in 2014. Approaching the courts is an intimidating prospect for people in debt. There are multiple ways to complain about bailiffs and different requirements depending on the subject of the complaint.¹²⁰ In the housing sector, less than 1% of tenants with a disrepair issue that warranted a complaint took their landlord to court. A central factor for tenants was their confusion about the process.¹²¹

2. Treatment of people in debt compared with advisers

Both advisers and clients have noted a disparity in how complaints are handled when they are submitted by an adviser compared to a client. Firms are much more likely to take complaints seriously when they hear an organisation like Citizens Advice is involved.

Case study: Jane

Jane's baby had just died when the bailiff came round. She relayed this information to him but he refused to listen. Jane came to Citizens Advice in a distressed state. An adviser rang the bailiff firm to question the bailiff's action, and was able to negotiate a more lenient approach for the client.

¹¹⁸ The Local Government and Social Care Ombudsman only has relatively limited oversight over the actions of bailiff firms, as their responsibility tends to lie in tracking whether the local authority was correct to pass the debt over to the bailiff in the first place, rather than being able to monitor or provide redress where there are problems around a bailiff's behaviour. Complaints about bailiff practice are often, therefore, referred to a court solution by the Ombudsman.

¹¹⁹ Ministry of Justice, [One Year Review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007](#), 2018, p. 15.

¹²⁰ Gov.uk, [CPR - Rules and Directions, 2018](#).

¹²¹ Citizens Advice, [It's broke, let's fix it: Improving redress for private renters](#), July 2017



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When the adviser drew attention to the bailiffs unsympathetic approach, she was told “the thing is, love, everyone’s baby has just died.”

This difference in approach depending on who is leading the complaint results in tangible differences in how bailiffs pursue a case. Advisers report how previous reluctance to accept repayment plans or claims of vulnerability are suddenly forgotten once Citizens Advice has lodged a complaint.

Citizens Advice adviser: “Sometimes a client will try and they say no to repayment plan, but then goes to Citizens Advice and the bailiff will say yes.”

3. Raising a complaint takes too long

There is consensus between both advisers and clients that the complaints procedures across bailiff firms are excessively time-consuming. Firms do not respond quickly to complaints or appeals.

A lack of communication from enforcement agencies slows down the process of complaining (see Appendix 2B for example of poor administration leading to an excessively drawn out process). Ideally, the complainant should receive an email confirming receipt of a complaint, and giving an indication of when resolution will be reached. Complaints procedures should have clear timescales for responding at each stage of the process. Sometimes this does not happen. Several advisers reported that they had to regularly contact the enforcement agency for updates because there was no communication received from the firm. There is often no clear point of contact when the complainant seeks information on the progress of their complaint.

Case study: Kevin (Citizens Advice adviser)

A client came to Kevin after being chased aggressively for a third party debt by a bailiff that they were intimidated into paying. Kevin helped the client lodge a complaint with the firm.

Initially the complaint was refused as the name on the complaint did not match the debt - despite this being the issue at dispute. Eventually the firm considered the complaint but determined that as the client resided at the property and had paid the amount in full no refund would be given.

Kevin escalated the complaint through three levels at the firm. Throughout this time he heard very little on the progress of the complaint repeatedly phoning up to chase information. Eventually, after 18 months, the complaint was upheld and a full refund was given.

In the example illustrated above, it took the adviser 18 months to see a complaint through and have the clients’ money returned. Firms regulated by the Financial Conduct Authority (FCA), on the other hand, must resolve complaints within 8 weeks of receiving them.¹²²

4. Complaints lead to unsatisfactory outcomes

¹²² FCA Handbook, [DISP 1.6.2 Complaints time limit rules](#), access: December 2018.



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There is very little information about the outcome of complaints about bailiffs. There are no requirements for firms to report on the number of complaints handled and how they were resolved. The data below shows the percentage of complaints upheld by firms delivering contracts for HMCTS in comparison to other independently regulated sectors. Although it's difficult to make direct comparisons between industries it's striking how small a proportion of bailiff complaints are upheld. 9% of complaints were upheld in the bailiff industry compared with an average of 30% on average by the Financial Ombudsman Service (FOS).¹²³

Even when complaints are upheld there are no statutory guidelines for firms about how complaints should be reviewed or the kind of sanctions or compensation that should be enforced. Advisers find that after the long process of complaining sanctions do not match the infraction committed by the bailiff.

Table 11: Percentage of complaints upheld in different sectors

Complaints body	Sector and dates	% complaints upheld or partially upheld
Financial Ombudsman Service	1 st Jan – 30 th June 2018	30%
	Banking and credit	34%
	Mortgages and home finance	24%
	General insurance	31%
	PPI	29%
	Investments	34%
	Life and pensions decumulation	22%
Ombudsman Services	1 st Jan 2017 – 31 st December 2017	
	Communications sector	58%
	Energy sector	63%
	Property sector	56%
Legal Ombudsman Service	3 rd October 2017 – 6 th August 2018	70%

¹²³ See Table 1.1



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Parliamentary & Health Service Ombudsman	UK government departments 2017 - 2018	24%
	NHS complaints Q2 2018	35%
Data provided by enforcement firms to HMCTS	1 st April 2013 - 31 st March 2015	9%

Case study: Helen

Helen was mistakenly visited by a bailiff on one occasion when a firm that conducts debt recovery accidentally passed her debt to an enforcement agent. The bailiff told Helen that he would call the police and get her sent to prison. When a complaint was raised by our advisers, the bailiff firm simply apologised and passed the debt back to the other side of the firm. There was no further action to discipline the bailiff.

Advisers suggest there is rarely more than recognition of wrong-doing on behalf of the firm when complaints are accepted. Knowing that it is unlikely for individual bailiffs to be sanctioned for breaking the rules, this puts advisers off complaining in the first place.

D. The regulation of bailiff complaints is inadequate

The non-statutory voluntary guidelines in the National Standards are the only place expectations about how bailiff firms should approach complaints are set out.¹²⁴

¹²⁴ Ministry of Justice, [Taking Control of Goods: National Standards, 2014.](#)



Taking Control of Goods: National Standards, April 2014

Complaints/Discipline

43. Enforcement agencies must operate complaints and disciplinary procedures with which their agents must be fully aware of.
44. The debtor should be able to easily find out how to make a complaint and obstacles should not be placed in their way.
45. The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and include an independent appeal process where appropriate. A register should be maintained to record all complaints and complainants should be notified of the outcome of disputes.
46. Enforcement agents/agencies are encouraged to make use of the complaints and disciplinary procedures of professional associations such as The Civil Enforcement Association or the High Court Enforcement Officers Association.
47. The enforcement agent must make available details of their own and the creditor's complaints procedure on request or when circumstances indicate it would be appropriate to do so.

These requirements are much less exhaustive than those found in other sectors. The FCA, for example, has a section in its handbook dedicated to disputes and resolution.¹²⁵ These rules are much more prescriptive about how complaints procedures should be publicised, how they should be handled, what the outcomes should be as well as the levels of transparency expected.

1. Awareness of complaints processes

As previously noted people in debt are often unaware they are able to make a complaint as there is generally nothing in the literature they receive from bailiff firms to tell them that they can. Complaints processes can be found on bailiff firm websites and this has been deemed sufficient to meet the National Standards, although there is no body to enforce these standards. This restriction of complaints guidance to website-only prevents those who are digitally excluded from accessing such information. The FCA handbook is more explicit about requiring firms to make customers aware of complaints processes at the point of contact whilst it oversees firms to ensure proper compliance.

FCA Handbook DISP 1.2 Consumer Awareness Rules¹²⁶

Firms are obligated to refer people to their complaints process at the point of contact. Information

¹²⁵ FCA Handbook, DISP: Disputes Resolution: Complaints, 2018.

¹²⁶ FCA Handbook, DISP 1.2, 2018.



must be provided in a clear, comprehensible and easily accessible way. Complainants must also be signposted to the Financial Ombudsman.

2. Handling of complaints

The National Standards leave it to firms to set time limits for complaints and do not require any independent adjudication. Once again this contrasts with the more stringent requirements for firms regulated by the FCA. The FCA requires that complaints can be submitted by any reasonable means which differs from some firms and trade associations that require complaints in writing. Firms are expected to ‘investigate the complaint competently, diligently and impartially, obtaining additional information as necessary.’¹²⁷

There is an obligation for investigation into the systemic issues driving complaints that is absent from the regulations on bailiff firms. In addition, as previously stated, FCA regulated firms must resolve complaints within 8 weeks.

DISP 1.3 Complaints handling rules¹²⁸

People must be able to make a complaint by any reasonable means and the firm must recognise all complaints as requiring of resolution. Firms must ensure lessons are learnt and determinations by the Ombudsman are effectively applied in future complaints handling.

Firms must ensure that in handling complaints it identifies and remedies any recurring or systemic problems. They must have an individual employed to ensure they are compliant with these regulations.

3. Resolving complaints

The National Standards do not mention remedial action to be applied by bailiff firms. They encourage firms to use the complaints procedures of their trade associations but there are no obligations placed on these bodies for the types of redress to be offered. Only the various court forms have explicit outcomes in terms of sanctions for bailiffs or compensation.

The FCA oversees that, in their handling of complaints, firms must “assess fairly, consistently and promptly what remedial action or redress (or both) may be appropriate.”¹²⁹ It also sets out clearly the awards that FOS can make in the event it upholds a complaint.

¹²⁷ FCA Handbook, [DISP 1.4](#), 2018.

¹²⁸ FCA Handbook, [DISP 1.3](#), 2018.

¹²⁹ FCA Handbook, [DISP 1.4](#), 2018.



DISP 3.7 Awards by the Ombudsman¹³⁰

Where a complaint is determined in favour of the complainant, the Ombudsman's determination may include one or more of the following:

- (1) a money award against the respondent; or
- (2) an interest award against the respondent; or
- (3) a costs award against the respondent; or
- (4) a direction to the respondent.

4. Complaints reporting

The National Standards suggests that there should be a register kept of all complaints. Beyond this there are no requirements in the regulations for any transparency with these records. As a result it is difficult to find statistics about the complaints handled by bailiff firms.

The FCA on the other hand has strict reporting rules that lead to a high level of transparency in relation to the complaints handled by the firms it regulates. FCA regulated firms are required to report to the FCA up to twice a year depending on how many complaints they receive. They must include information about the number of complaints received, along with a breakdown of how many were upheld and the compensation paid.¹³¹ There is also an obligation for firms to publish this data publicly. Without this level of regulatory oversight, data on bailiff complaints is guarded by bailiff firms, excluded from the public domain and lacks independent review.

¹³⁰ FCA Handbook, [DISP 3.7](#), 2018.

¹³¹ FCA Handbook, [DISP: Disputes Resolution: Complaints](#), 2018.



Section 3: Training and certification

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?

It should be the aim of good regulation to ensure that the collection of debt is carried out by qualified, skilled and competent professional agents. However, there is no single body to oversee the process of appointment of civil enforcement agents (CEAs) or monitoring their on-going training or conduct.

The requirements are set out in the Certification of Enforcement Agents Regulations 2014.¹³² Under regulation 3 (b) the judge has to decide amongst other considerations if:

“(i) the applicant is a fit and proper person to hold a certificate” and

“(ii) the applicant possesses sufficient knowledge of the law and procedure relating to powers of enforcement by taking control of goods and of commercial rent arrears recovery to be competent to exercise those powers;”

The Civil Procedure Rules Practice Direction 84.18 2.1 (e) (i) Enforcement by taking control of goods requires:

“proof that the applicant—

(i) has achieved at least a qualification on Taking Control of Goods at (or above) Level 2 of the Qualifications and Credit Framework or equivalent as determined by a nationally accredited awarding body.”¹³³

A. The level of training required for enforcement agents is too low

The current requirement on enforcement agents to hold only the equivalent of a Level 2 or higher qualification is inadequate. In many other European countries, an equivalent of a law degree is required to operate as an enforcement agent.¹³⁴ Guidelines for a better implementation of the Council of Europe’s recommendation on enforcement issued by the European Commission on Efficiency of Justice (CEPEJ) state: *“Member states should accredit enforcement agents only if the candidates concerned are of a standard and training commensurate with the complexity of their tasks. A high quality of training of professionals is important for the service of justice and to increase the trust of users in their justice system.”¹³⁵*

We are concerned that there is no overseeing body to ensure a consistency of approach amongst courts with regards how individual judges process certification applications or the level of evidence

¹³² [Certification of Enforcement Agents Regulations 2014](#)

¹³³ [Civil Procedure Rules Practice Direction 84.18 2.1](#)

¹³⁴ Kennett, W. Different national enforcement structures and their consequences for cross-border enforcement (draft). 2018

¹³⁵ *ibid*



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required by judges to demonstrate that the applicant possesses sufficient knowledge of the law to be granted a certificate. Previously, the Ministry of Justice set out its intention to create a national expert panel of county court judges to specifically deal with the certification of and complaints about bailiffs. That would have enabled some form of centralised coordination and monitoring. This doesn't appear to have happened in practice.

The Campaign for Enforcement Reform works with the enforcement industry and has called for bailiffs to have higher levels of qualifications:

“Enhanced qualifications at a higher level are required; specialised individual modules are also highly desirable, covering such areas as [Commercial Rent Arrears Recovery] CRAR..., fines enforcement, identifying the vulnerable, insolvency and valuation. These could build up in combination to a qualification equivalent to a degree. During this initial training process, CEAs should be limited to working on areas covered by the modules that they have successfully completed.”¹³⁶

We recognise that High Court Enforcement Officers (HCEOs) training operates to a higher standard. However, there are only 45 HCEOs who are authorised to carry out High Court enforcement duties.¹³⁷ This means that HCEO work is in practice being carried out by certificated enforcement agents who are trained to a much lower level.¹³⁸

The National Standards does not require higher standards than the regulations. The National Standards state :

23. “Enforcement agencies must ensure that all agents, employees and contractors are provided with appropriate training to ensure that they understand and are able to act, at all times, professionally and within the bounds of the relevant legislation. This training should be provided at the commencement of employment and at intervals afterwards to ensure that their knowledge is kept up to date.

24. Professional training/assessment should be to a standard that complies with relevant legislation.”

The lack of clarity and ambition in the National Standards means that the standards of training in the sector are low - generally equivalent to a level 2 NVQ.¹³⁹ This doesn't demand sufficient knowledge of the law or understanding of professional debt enforcement to enable bailiffs to meet the standards required by the regulations and the National Standards more broadly.

B. There is no evidence of consistent training across the sector

From our review of training standards shared on enforcement firm websites, the Civil Enforcement Association (CIVEA) code of practice and discussions with sector professionals, we have found little

¹³⁶ Kruse, J. Tribunals, Courts and Enforcement Act 2007: [Report of an independent review](#), April 2017.

¹³⁷ High Court Enforcement Officers Association (HCEOA), [Authorised Members Directory](#).

¹³⁸ [Rooftops South West \(and others\) v Ash Interiors, Direct Collections \(DCBL\) and others \[2018\] EWHC 2798 \(QB\)](#)

¹³⁹ City & Guilds, [Qualification Comparisons in NVQ](#).



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evidence of a consistently applied training programme. Firms appear to generally use their own in-house schemes. These are not monitored by any central body for quality and consistency and it is not possible to know if these in-house training programmes are even equivalent to the NVQ Level 2. This can be compared with the standards of training expected with debt advisers which are NVQ Level 4 and are independently accredited by the Money Advice Service.¹⁴⁰

1. There is no body with responsibility for monitoring the standards of the in-house training.

Currently, there is no check on whether training run by firms are equivalent, to NVQ Level 2, and of a high enough standard to comply with the regulations. We would expect there to be a common accredited training programme for civil enforcement agents. This should operate using approved standards that should be set out and agreed at a regulator level.

2. There also appears to be no common approach taken to continuing professional development (CPD). From our examination of the industry we can see an inconsistent approach to CPD, where it is mentioned. It is not clear whether CPD always exists in practice, and it does not appear to be consistently applied across firms. A robust set of CPD requirements should be put in place for firms and enforcement agents to adhere to rather than a requirement for one initial assessment followed by bi-annual reviews when their certificates expire.

3. Vulnerability training isn't consistent

The Taking Control of Goods National Standards (April 2014) state:

27. "Enforcement agents should be trained to recognise vulnerable debtors, to alert creditors where they have identified such debtors and when to withdraw from such a situation."

However, a common CPD programme of training in relation to vulnerability is not required, and is provided piecemeal amongst some firms. The Campaign for Enforcement Reform recently highlighted that there is support within the industry for a centralised record of professional development:

"There was also strong sector support for a professional development document that must be kept and produced to the court every time an enforcement agent applies for a new certificate. It should show that the agent has a firm understanding of the law and has transferred this into practice in the field which should be continued throughout an individual's professional practice to show learning and understanding of the legislation. It could contain copies of any relevant changes in legislation, Bailiff Studies Centre documents issued, and proof of personal membership of a professional association such as the CEEA [Certificated Enforcement Agents Association] or LACEF [Local Authority Civil Enforcement Forum]. An expanded curriculum and improved training for county court judges were also endorsed."¹⁴¹

¹⁴⁰ Wiseraadviser is one of the main sources of debt advisers accreditation and helps advisers meet the Money Advice Service Quality Framework for individuals delivering debt advice.

¹⁴¹ Kruse, J. Tribunals, Courts and Enforcement Act 2007: [Report of an independent review](#), April 2017.



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And that:

“Professionals in the sector strongly agreed that the process for the certification of enforcement agents needs to be looked at and tightened up as there are currently too many agents with very little knowledge of the job at hand. Reports are received of more experienced agents of coming across EAs who have received their certificate without any field experience and who have very little understanding of the process.”



Section 4: Transparency and consistency of process

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?

Notices from enforcement agents, either through letters or texts, continue to show widespread use of aggressive and misleading messages. Furthermore, in contrast to best practice in a number of sectors, notices of enforcement stress the worst outcome for people in debt and tend to provide little helpful advice to people who are struggling with problem debt. This may reinforce feelings of hopelessness and being trapped among recipients, which are in turn associated with suicidal ideation.¹⁴² We have included a sample of these in Appendix 4 of this report.

The most common problems we encounter are:

- **Threats of goods removal, including in a person's absence.** Many letters and texts from bailiff firms describe how a person's goods will be removed if the individual does not repay the sum owing. In a number of instances, as in text messages 1 and 2 cited in the appendix, this includes a threat to bring a removal van from the premises and begin to remove goods. Letter 1 states that if the individual does not contact the enforcement agent immediately, the enforcement agent will be required to return to the property and take control of and remove goods, whether the individual is present or not. This is not a reasonable representation of a bailiff's powers. The bailiff does not have the power to remove goods without the individual present, nor to take control of goods without a signed Controlled Goods Agreement.¹⁴³
- **Threats of arrest or imprisonment.** Letters from bailiff firms often cite that if a person does not pay, committal proceedings will commence or that an arrest warrant will be released. These threats represent significant escalations of the enforcement process and can cause very significant concern for individuals, especially as, in the majority of cases, people fall behind on bills simply because they don't have the money to pay. Given the high levels of vulnerability amongst individuals who are visited by bailiffs - 40% of Citizens Advice clients with a bailiff issue have a long term health condition or disability - these threats can be very detrimental to those with existing physical or mental health needs.

¹⁴² Bond N and Holkar M. A silent killer: Breaking the link between financial difficulty and suicide. Money and Mental Health Policy Institute. 2018.

¹⁴³ Bailiffs are allowed to take control of goods by removing them from the premises and transporting them to safe storage (Paragraph 13(1)(c) Schedule 12 TCE Act 2007; Regulation 19 Taking Control of Goods Regulations 2013). This is rare in personal debt cases, primarily due to the cost of removal and storage – but in theory it is possible to remove goods without first having made a Controlled Goods Agreement. However, if a bailiff intended to take control of goods in this way, they would not have a right to force entry to the client's premises. The right to force entry only arises where a Controlled Goods Agreement has been made and subsequently broken (Paragraph 19A Schedule 12 TCE Act 2007). If no Controlled Goods Agreement was made then this power would not exist. Bailiffs are not supposed to mislead people about their powers (Paragraph 20 National Standards), so any misrepresentation around this is a clear breach of the rules.



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- **No options for payment plans and generally an insistence on repayment in full.** Only 1 of the 5 enforcement letters sent to clients below offered the possibility of a repayment plan. The majority of debt advice clients who fall behind on payments or bills, do so because they ‘don’t have enough money to cover bills and other expenses’. With this in mind, it is very concerning that bailiffs so regularly push, both in written communications and in person, for full payment. It is for this reason that 1 in 6 people turn to credit, such as credit cards, to meet the cost of bailiff fees.¹⁴⁴
- **No signposting to free debt advice.** In none of the letters cited below is there a reference to the presence of free debt advice which might help individuals to deal with their debts. This is despite the statement in the National Standards which states that bailiffs should refer to free debt advice ‘where possible’. Notices of enforcement action are an entirely appropriate opportunity for bailiffs to refer individuals to free debt advice; it is therefore surprising that none of the firms cited do so.

Table 12. Evidence of aggressive or misleading enforcement communications

Evidence	Threat to remove goods in a person’s absence	Threat of arrest or imprisonment	No offer of payment plan	No signposting to free debt advice agency
Letter 1	X		X	X
Letter 2	X	X		X
Letter 3	X		X	X
Letter 4		X	X	X
Letter 5		X	X	X
Letter 6				X
Letter 7			X	X
Text 1	X	X	X	X
Text 2	X		X	X

Alongside the poor practices described above, there are notices missing from the prescribed list that leads to further poor practice. The absence of these prescriptions means that:

- There are inconsistency, errors and the possibility of misleading information being included in notices. Vital information is often left out including the prescribed contents that exist in the statutory notices.

¹⁴⁴ High Court Writs of Control possibly restrict bailiffs from accepting offers of payment at the compliance stage - and so are often at odds with the early resolution of debt repayments. Though these only make up a small proportion of debts enforced by bailiffs.



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We would suggest that there are a number of notices that should be set out in a prescribed form to match the existing prescribed notices.¹⁴⁵

- Notice where enforcement agent has visited, but not gained entry. This should set out the details of the visit and any fee added.
- A notice setting out any instalment arrangement entered into, its terms and effects. This could be applicable at various stages of the process, including under a controlled goods agreement, the taking control of goods on the highway, and so on.

Furthermore, there are examples where forms and notices are not being completed correctly. It is not sufficient to include “all goods” or a partial description of goods on the inventory. It is not sufficient to provide an inventory unsupported by the correct notice. If a signature is not obtained as required, for example on a controlled goods agreement, then the notice will not be valid.

We would suggest that if these issues are not remedied, then the unintended consequences of the regulations will be that goods are not being secured lawfully, fees are charged that are invalid, and further complaints, confusion and error will result. Threats of serious escalation, particularly when combined with a lack of signposting to help, also pose a serious psychological danger, and could contribute substantially to suicidality.

With the introduction of a bailiff regulator, a review of enforcement agent communications should be undertaken. This should:

- work alongside councils to improve their notifications to people in arrears;¹⁴⁶
- introduce signposting to debt advice agencies in their letters;
- encourage firms and local authorities to make explicit the possibility of setting up a payment plan;
- develop notices for occasions when enforcement agents have visited but not gained entry; and
- review the wording on writs of control, to instruct that the HCEO now collects the debt as per the procedure in schedule 12 of the Tribunal Courts and Enforcement Act.

The level of regulatory prescription that is required in the bailiff sector to get bailiff firms to send clear and accurate notices highlights the need for regulation.

- A regulator would be better placed to supervise the notices used and to test and improve these notices.
- A regulator that held the power to sanction poor practice would encourage bailiffs to follow the rules that are in place - thus reducing the need for further prescription.

¹⁴⁵ Bailiff Studies Bulletins Issue 29 and 31 have a more fully developed list.

¹⁴⁶ An example of how this could be approached can be found in the collaborative work between Local Government Association and Behavioural Insights Team, [Supporting Councils to Improve Revenue Collection](#), December 2017



Section 5: Fees charged and debt recovery rates

Question 14 (to all) a) Do you think that the fee structure is working to encourage enforcement agents and debtors to settle at an early stage and to minimise the financial impact on debtors?

We have evidence to suggest that the fee structure is not working sufficiently well to encourage bailiffs and people in debt to settle at an early stage and to minimise the financial impact on people in debt.

There are four distinct problems relating to enforcement agent fees that cause this:

- A. The fixed fee structure does not establish regulation around what needs to be done to complete the compliance stage and encourages escalation** when affordable repayment options have not been properly explored or, in some cases, completely ignored;
- B. There is currently no transparency around how the fees are working in the price-controlled enforcement industry** and whether current fees are producing the target profit margins intended by the Ministry of Justice;
- C. The fees that can be added to small amounts of arrears or fines are disproportionate and push people into further financial difficulty, increasing their chances of falling into problem debt.** The new post-2014 fee structure, although addressing the lack of clarity around fees that existed previously, has merely legitimised the excessive fees that people in debt are forced to pay once bailiff action begins, often facing fee charges of over £300 for a missed monthly payment of less than £100;
- D. There are a range of problems with the way bailiffs charge fees.** Despite the prescriptive fee structure, there are still instances where the incorrect fees are charged.

An independent regulator of the bailiff industry would address all these issues. The regulator should have the powers to seek sufficient information from firms to set fees at levels that meet the Ministry of Justice's profit margin targets and ensure that enforcement agents work according to "fairness" principles,¹⁴⁷ ensuring that people are not charged excessive or disproportionate fees for small amounts of debt. A regulator could also carry out monitoring and oversight of enforcement agent conduct ensuring that certain steps are completed by enforcement agent firms before escalating action from the compliance to enforcement stage. This is analogous to the way the Financial Conduct Authority (FCA) monitors the actions of financial services firms against the "treating customers fairly" principle.¹⁴⁸

¹⁴⁷ Digital Economy Act, [Informational Sharing Code of Practice: Public Service Delivery, Debt and Fraud](#)

¹⁴⁸ Financial Conduct Authority, [Principles for fair treatment of customers](#), February 2018.



Question 14b) What evidence do you have to support this view

A. The fixed fee structure does not set out the requirements of enforcement agents at ‘compliance stage’

The 2014 regulatory reforms aimed to introduce a fixed fee structure for the different stages in enforcement agent action to take control of goods. However, the new regulations have created a significant new problem in the form of the new fee structure. This entails separate fees for a ‘compliance stage’ (£75), ‘enforcement stage’ (usually either £190 or £235 depending on the type of enforcement agent) and ‘sale stage’ (usually either £110 or £525). HCEOs have a further incentive to escalate their collection action to charge the second enforcement fee. For both types of bailiff, this structure inherently incentivises bailiffs to escalate to enforcement action unless controlled by effective safeguards.

1. The fee structure does not appear to encourage the enforcement agents to settle debts early

The Ministry of Justice’s One Year Review,¹⁴⁹ using data supplied by certificated enforcement agent firms, showed that between April 2014 and April 2015 38% of successfully enforced warrants were settled at the compliance stage. This is much lower than the 50% predicted by the Ministry of Justice when calculating fee levels in 2009.¹⁵⁰

The One Year Review was unable to assess whether there were any dramatic differences from predictions made during the formulation of the fee structure because the data provided by certificated enforcement agencies was “*not sufficiently granular*” – an issue that could have been resolved by an independent regulator with powers to access this information.

The review suggested that the Ministry of Justice “*would expect compliance stage enforcement to improve for this group as reforms bed in*”. However, evidence from StepChange Debt Charity suggests that the compliance stage settlement rates have not increased in subsequent years, and that the fee structure is incentivising enforcement agents to decline offers of repayment at the compliance stage and escalate to the enforcement stage. In 2015, 58% of clients surveyed said they were charged at least £235 for a visit from the bailiffs.¹⁵¹

¹⁴⁹ Ministry of Justice One Year Review of Enforcement Agent Reforms introduced by the Tribunals, Court and Enforcement Act 2007. 2018

¹⁵⁰ Dehayen, A. Enforcement Fee Structure Review. London: Ministry of Justice & Vemos Consulting. 2009

¹⁵¹ StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.



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In 2016/17¹⁵² and 2018¹⁵³ short website surveys aimed at people visiting the bailiff advice landing page on the StepChange Debt Charity website, who had been contacted by bailiffs within the last six months produced the following results (Table 13):

Table 13. Results of StepChange Debt Charity website surveys in 2016-17 and 2019¹⁵⁴

1. When arranging repayments for my debt being collected by bailiffs (select one):	Numbers 2016/17	% 2016/ 17	Numbers 2019	% 2019
"I arranged repayment over the phone, and am now repaying the debt"	131	9.7	37	9.9
"I didn't get in contact with the bailiff before they visited my home"	234	17.2	79	21.0
"I haven't arranged repayment"	306	22.6	75	20.1
"I tried to arrange repayment over the phone, but the bailiff insisted on visiting my home to take payment"	359	26.5	108	28.9
"The bailiff didn't get in contact with me before they visited my home"	327	24.1	75	20.1
Total numbers	1357	100	374	100

From the client survey (from the number charged £235 for a visit) and website surveys (the number who reported a visit to their home), we would estimate the following amount of cases settled at the compliance and enforcement stages for StepChange Debt Charity clients (Table 14).¹⁵⁵

¹⁵² A short website survey was included on the bailiff advice page of StepChange Debt Charity's website between 17th November 2016 and 17th February 2017. Base: 1,357

¹⁵³ A short website survey was included on the bailiff advice page of StepChange Debt Charity's website between 14th January 2019 and 12th February 2019. Base: 374

¹⁵⁴ Results of StepChange Debt Charity website surveys in 2016/17 (Base: 1,357) and 2019 (Base: 374)

¹⁵⁵ We do not have estimates for how many went on to the sale stage from this data, but assume it is small (1%) from oral evidence presented by organisations representing the enforcement agent industry at the Justice Committee Inquiry on enforcement agents January 2019



Table 14. Estimated percentage of StepChange Debt Charity clients contacted by enforcement agents whose debt was settled at the compliance and enforcement stages¹⁵⁶

Settlement stage	2014-15	2016-17	2019
Compliance	42%	33%	30%
Enforcement	58%	67%	70%

In 2016/17, 27% of those answering the website survey said that they had tried to arrange repayments over the phone, but that the bailiff insisted on visiting their home to take payments. This figure was 29% in 2019, which suggests that the higher fees for settlement at the enforcement stage are incentivising enforcement agents to escalate action, rather than going through all the options that would enable early settlement at the compliance stage.

2. A regulator could ensure enforcement agents were incentivised to arrange repayments and avoid escalation of enforcement

The conditions involved in the ‘compliance’ period of enforcement action vary between creditors. This variation in approach can leave clients vulnerable to an enforcement agent escalating the debt to enforcement stage, having attempted to contact the person in debt only over the phone. This runs contrary to the objective of the 2014 regulations and the introduction of a staged fee structure. It would be fairer for all concerned if the enforcement fee could only be added on clear entry to the property. The alternative is that enforcement agents could skip any meaningful activity at the compliance stage beyond the serving of the notice, and then add the enforcement stage fee after the 7 day notice has elapsed, a fee incurred for little or no activity on the part of the enforcement agent. If the enforcement fee can be added without entry to the property then an appropriate prescribed notice to this effect should be provided, setting out the effect of the notice and that the enforcement stage fee has been added.

A bailiff regulator would be able to supervise the actions taken by bailiffs and could set out rules requiring set activities that must be carried out by an enforcement agent before moving on to each next stage of the enforcement process. We recommend that an equivalent to the Mortgage Pre-action Protocol Checklist¹⁵⁷ or the Debt Pre-Action Protocol¹⁵⁸ should be introduced. The checklist is required by the court to demonstrate that lenders have complied with the Protocol. An enforcement pre-action checklist should prescribe what actions must be taken by the bailiff before they can move from the compliance stage to the enforcement stage. This would safeguard the bailiff by enabling them to show that every effort had been made to contact and negotiate with the person in debt. It would also protect the person in debt and mitigate the possibility that the first stage could

¹⁵⁶ Estimated percentage of StepChange Debt Charity clients contacted by enforcement agents whose debt was settled at the compliance and enforcement stages from a client survey in 2015 (Base: 1,087), a website survey in 2016/17 (Base: 1,357) and a website survey in 2019 (Base: 374)

¹⁵⁷ Ministry of Justice, Pre-action Protocol for Possession Claims based on Mortgage or Home Purchase Plan arrears in respect of residential property, January 2017.

¹⁵⁸ Ministry of Justice, Pre-action Protocol for Debt Claims, Spring 2015.



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be bypassed without a realistic attempt to negotiate, in the search for greater fee rewards and higher returns to creditors.

A regulator would also oblige bailiffs to demonstrate that they have agreed affordable repayments using the Standard Financial Statement.¹⁵⁹ There should be a requirement for the bailiff to actively engage in establishing a payment plan with the person in debt. The regulations and costs structure should require this payment arrangement to be reasonable and affordable for the person's circumstances. If the payments demanded are unaffordable or over an unrealistic timescale that cannot be met in practice, then it should be held that the bailiff cannot proceed to the enforcement stage when the person fails to comply with the unrealistic arrangement. These requirements should be set out in the regulations and monitored by an independent regulator.

B. There is currently no transparency around how the fees are working in the price-controlled enforcement industry

The lower level of cases settled at the compliance stage than predicted in the Ministry of Justice's modelling suggests that profit margins for enforcement firms are likely to be higher than the Ministry of Justice's target of 10%.

An independent analysis of the profit and loss accounts of nine enforcement agent companies provides evidence that bailiff firms' profit margins are indeed higher than the target 10% and that they have increased since the introduction of the 2014 reforms. StepChange Debt Charity commissioned Bates Wells Braithwaite to undertake this work because of their independence and accounting expertise (Appendix 5B).

Their analysis showed that the profitability of the companies reviewed was significantly higher than that predicted in the Ministry of Justice report (Chart 11).¹⁶⁰ This report outlined a suitable profit target for bailiff firms of 10% and predicted on figures that it was provided with that the new fee structure would result in profit margins of 17% for CEAs and 10% for HCEOs. In fact, the accounts of the nine largest enforcement agent firms analysed, showed average profit margins of 18% before the 2014 reforms and 27% after.¹⁶¹

Chart 11. Operating profit margins of enforcement agent companies reviewed before and after the regulatory changes in April 2014.¹⁶²

¹⁵⁹ [Money Advice Service What is the Standard Financial Statement?](#)

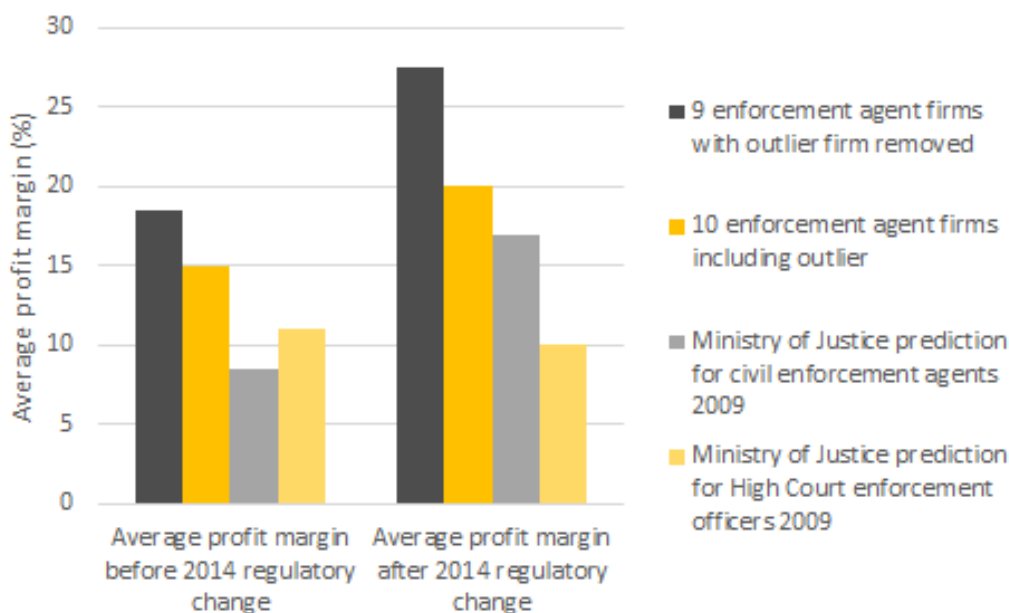
¹⁶⁰ Dehayen, A. [Enforcement Fee Structure Review](#). London: Ministry of Justice & Vemos Consulting. 2009

¹⁶¹ One firm was excluded from the results as its business structure had changed so frequently after the 2014 reforms it was a significant outlier over the course of the years analysed

¹⁶² Analysis by Bates Wells Braithwaite.



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The bright yellow bars represent the average percentage profit margin for the 10 firms whose profit and loss accounts were publicly available for 2012/13 to 2016/17. The dark grey bars represent the average percentage profit margins for nine firms with an outlier firm which had undergone major restructuring over this period excluded. The light grey and yellow bars represent the percentage profit margins predicted for civil enforcement agents and high court enforcement officers respectively, from the Ministry of Justice's 2009 analysis. The overall target profit margin set by the Ministry of Justice was 10%.

The Ministry of Justice attempted to introduce a target profit margin of 10% for the enforcement agent industry because the set fee structure means that the price is controlled and not subject to normal market competition forces. Although local authorities can choose the enforcement agent firm they contract with, the fees the enforcement agents charge will always be at the levels set in the fee structure introduced in 2014 and people in debt will have no choice over the firm who enforces their debt. Our evidence suggests that this profit margin target is being exceeded by the larger enforcement agent firms, and furthermore, that profit margins do not seem to have been monitored or reviewed by the Ministry of Justice since their initial 2009 analysis.

One determinant of the profit margin calculated in the report is the proportion of debt types enforced. Each debt type has a different profit margin (based on the fee recovery rate) so if the proportion of referrals of that debt type changes it could have a huge impact on profit margin overall for enforcement agent companies. An analysis to compare the debt type proportions predicted in the Ministry of Justice report to StepChange's 2016/17 data on the types of bailiff referrals is shown below (Table 15).



Table 15. The proportions of debt referral types reported in the Ministry of Justice report compared with those estimated by StepChange Debt Charity in 2016/17¹⁶³

Debt type	Profit margin (MoJ commissioned report 2009)	Debt type referral proportions predicted in MoJ commissioned report 2009	Debt type referral proportions calculated by StepChange
Council tax	35%	29%	44%
Criminal fines	12%	23%	24%
Road traffic and penalty charge notices	7%	32%	26%

It is clear that the debt type with the higher profit margin (council tax, which has a much higher fee recovery rate) is seen much more frequently than was predicted in the Ministry of Justice report. This means that since the fees were structured around a certain frequency level, now that the frequency has changed, but the fees have remained the same, it would be expected that profit margins would be higher than previous analysis predicted.

Another determinant of the profit margin is the proportion of fees collected at the enforcement and compliance stage. The Ministry of Justice has modelled the impact on profit margins of changes in the proportion of debts settled at the compliance stage (Table 16).¹⁶⁴ This shows that the higher the level of successful enforcement at the compliance stage, the lower will be the profit margin for the enforcement firm.

Table 16. Ministry of Justice model of the impact of changes in enforcement at the compliance stage on enforcement agent firms profit margins.

% of successfully enforced done at compliance stage	Total expected revenue	Profit margin
40.0	£156 million	27%
50.0	£138 million	14%
60.0	£120 million	1%

Bates Wells Braithwaite concluded that:

“Our review of the financial statements has shown that for the companies that we have examined in the enforcement sector, revenues are increasing, as are profit margins. It appears likely from the timings, plus from statements in the company accounts, that these

¹⁶³ Data analysed by Bates Wells Braithwaite. For debt type referral proportions calculated by StepChange see Appendix 7C (Estimated cost of poor regulation for people in debt).

¹⁶⁴ Ministry of Justice [Transforming Bailiff Action Impact Assessment](#), 2013



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improvements are due to some extent to the reforms in the sector which introduced fixed fees for bailiff work. From the figures with which we have been provided, it appears as though the number of referrals to bailiffs have grown which could account for at least a part of the revenue growth in the companies which we have been considering. However, while we do not have enough data across either the market or changes in bailiff referrals over time across all referral types, the numbers we do have point towards an increase in the money earned per referral over time. The fact that profit margin had increased across all companies means that the ratio of revenue to costs has increased in the time period around the change in regulations. However, more work would need to be done to understand the underlying causes of this. It does appear though, that the profit margins of bailiff companies are far higher than the Ministry of Justice was expecting them to be when they were calculating the fee structure. Whether this is due to costs having reduced, or fees earned per referral increasing, it does suggest that it would be worth considering the fee structure again if they do wish to bring the profit margin back down to the 10% target for the sector.”¹⁶⁵

Taking the evidence of increased profit margins and the reported experiences of StepChange Debt Charity clients, it appears that the increase in enforcement agent companies’ profitability after the 2014 reforms might be explained by the lower than expected rate of referrals settled at the compliance stage and the higher proportion of referrals for council tax arrears - both occurring at a higher frequency than estimated in the Ministry of Justice’s report. This provides strong evidence that the fee structure requires urgent review if it is to ensure that people in debt are not subsidising excessive and unintended profit margins for enforcement agent firms, which in turn are making people’s financial problems worse. An independent regulator with the powers to assess profit data from enforcement agent firms is the only way to ensure the price-controlled fee structure is fair to both enforcement agent firms, creditors and people in debt, and to monitor that profit margins remain within agreed targets.

C. The fees that can be added to small amounts of arrears or fines are disproportionate and push people into further financial difficulty

High enforcement agent fees continue to cause small arrears to spiral into much larger debt problems. A 2015 survey of more than 1,000 StepChange Debt Charity clients in council tax arrears found that these fees were adding significantly to their levels of debt.¹⁶⁶ A small missed monthly council tax payment can now have £420 in bailiff fees added within just a few months, making it even harder for people to pay.¹⁶⁷

On top of this, Citizens Advice has reported that council tax debts accumulated in different financial years from the same creditor are sometimes being treated as individual debts, to each of which

¹⁶⁵ For more details on this analysis see Appendix 5B.

¹⁶⁶ StepChange Debt Charity, [Council Tax Debts: how to deal with the growing arrears crisis tipping families into problem debt](#), September 2015.

¹⁶⁷ The Children’s Society, [The Wolf at the Door: how council tax debt collection is harming children](#), 2015.



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separate enforcement agent fees are applied.¹⁶⁸ This is despite the Taking Control of Goods (Fees) Regulations 2014 requiring enforcement agents *“to minimise the fees and disbursements charged where they act in relation to more than one debt to the same creditor. Where practicable, they are expected to deal with the goods together and on as few occasions as possible.”*¹⁶⁹

The higher bailiff fees introduced in 2014 have had a significant financial impact on people in debt. People are getting into deeper financial difficulty in order to pay both the arrears and fees. A 2015 StepChange Debt Charity client survey showed that:

- 38% borrowed from friends/family to pay the arrears and bailiff fees;
- 14% used credit to pay the arrears and bailiff fees; and
- 58% fell behind on other bills to pay the arrears and bailiff fees.

At the same time, any money collected by enforcement agents goes to paying off their compliance stage fees before the creditor sees a penny. The remaining money collected is divided pro-rata between payment of the debt and payment of the remaining fees due to the enforcement agents. This can often result in bailiff action having a disproportionate impact on people in financial difficulty compared to the returns for creditors. This distribution of the fees between enforcement agents and creditors may also add to the disincentives for the enforcement agent of settling the debt at an early stage by offering an affordable repayment plan. In contrast, if enforcement agents insist upon an unaffordable repayment plan at the compliance stage, they will be paid the compliance fee and, if there is a missed payment (which is significantly more likely if affordability has not been properly assessed) this will result in automatic escalation to enforcement stage action, with its additional £235 fee. For small debts of less than £100, this will provide a greater pro-rata payment to the enforcement agent than the creditor over the course of any new repayment arrangement. In essence, the person in debt is paying enforcement agent fees, at the expense of repayment of the original debt to the creditor.

D. There are areas of ambiguity in the rules around fees

As well as the direct impacts of the fee structure discouraging early settlement, there are a number of problems caused by a lack of clarity in the current fee structure. These should also be reviewed and monitored by an independent regulator of the enforcement agent industry.

1. Problems with VAT being added to enforcement agent fees

A StepChange Debt Charity 2015 client survey showed that 19% of respondents said they had been charged VAT on top of bailiff fees, an additional financial impact on people in debt.¹⁷⁰ Current HMRC guidance on the addition of VAT to bailiff fees¹⁷¹ states that:

¹⁶⁸ Citizens Advice, [Catching up: improving council tax arrears collection](#), July 2016.

¹⁶⁹ Taking Control of Goods (Fees) regulations 2014, Section 11.

¹⁷⁰ StepChange Debt Charity client survey, 2015. Sample: 1,087 clients with council tax arrears who came to the charity for advice in 2014. Fieldwork conducted February 2015.

¹⁷¹ HMRC, [VAT Business/Non-Business Manual](#), July 2016.



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- **For High Court judgments:** “The full amount charged, including tax, is recoverable from the debtor”.
- **For County Court judgments:** “VAT is not chargeable on the cost of their services because these bailiffs are employees.”
- **For Magistrates’ Court judgements:** “The services of certified independent bailiffs in these circumstances are supplied to the creditor. The creditor is the local authority which instructs them....The local authority needs tax invoices from the bailiff to support its claim under section 33(1) of the VAT Act 1994.

This guidance also contradicts previous 2014 guidance from the Ministry of Justice and HMRC that stated that VAT should never be added to the fees charged by bailiffs to people in debt.¹⁷²

High Court Enforcement Officer fees can amount to £1,285 for a debt of less than £1,000 and with the addition of VAT over £257 would be added on top. However, the 19% of StepChange clients who said they were charged VAT seems disproportionate if enforcement agent firms are following these guidelines, as only 1.7% of referrals for enforcement actions are to High Court Enforcement Officers.¹⁷³ In addition, these different rules on VAT for different types of judgment are simply confusing for people in debt, as they often do not recognise the difference between county court and certificated enforcement agents nor high court enforcement officers.

2. Problems with the sale stage fee

Our evidence suggests that there is some confusion as to correct practice with regards to when the point of sale fee can be added to the debt. The regulations need to be amended to provide clarity about this point. There appear to be instances where the enforcement agent accelerates the point at which the final sale stage of the process is reached in order to add the sale fee. According to the Taking Control of Goods (Fees) Regulations 2014, this stage arises on: “*First attendance at the property for the purpose of transporting goods to the place of sale*”.¹⁷⁴

If the intention of the regulations is for the sale fee to only apply at a late stage in the process, then further clarity is required. We would suggest that attendance for the purpose of transporting goods for sale should only be possible **after** goods have been taken into control. If this stage has not been reached, then the sale fee should not be added and the sale fee should not be recoverable.

The High Court Enforcement Officers Association’s good practice guidance on fees shows that there is a spirit that should be followed. However, EAs and HCEOs are ignoring the spirit of the law, and the HCEOA guidance. A independent regulator and complaints system would facilitate the enforcement of this guidance. The wording of the regulations also could be taken to imply that the

¹⁷² Kruse, J. (2014) Taking Control of Goods: Bailiff powers after the Tribunal, Courts and Enforcement Act 2007. St Albans: PP Publishing

¹⁷³ Figures from Civil Justice Statistics Quarterly 2018

¹⁷⁴ Taking Control of Goods (Fees) Regulations 2013, 5 (1c).



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“first attendance” to remove goods does not require entry into the property. Both of these interpretations appear contrary to the purpose of the regulations.

3. Problems with different fees for High Court Enforcement Officers

We are extremely concerned that there have been unintended consequences that are a direct result of setting up a different fee structure for High Court enforcement. The effect of a different High Court fee scale is that an extremely high level of fees can be added to the outstanding debt. The stated aim of the “transforming bailiff action” consultation proposals was to provide:

- *“more protection against aggressive bailiffs whilst retaining an effective regime;*
- *a fair, transparent and sustainable costs regime that provides adequate remuneration; and*
- *a proportionate regulatory regime that is targeted where action is needed.”*

We are not convinced that the resulting fee regime is fair and transparent in relation to High Court fees. The explanatory note to fee regulations states:

“Where the enforcement agent and the debtor enter into a controlled goods agreement (defined in accordance with paragraph 13(4) of Schedule 12 to the Act) which the debtor complies with, only the first enforcement stage fee is payable. However, if the debtor does not enter into such an agreement, or does so but breaches the agreement, both the first and second enforcement stage fees are applicable.”

We have heard arguments made by High Court Enforcement Officers (HCEOs) that they are required by their duties to creditors in the High Court to charge the first enforcement stage fee in all circumstances. This means that the first enforcement stage has the effect of being an extra compliance stage fee. This does not seem to be the intention of the fee regulations. Some HCEOs also take the view that they should attempt to complete enforcement on the first visit. This means that there is no intention of entering into a controlled goods agreement. Again, an independent regulator for enforcement agents could provide clarification of the intentions behind the fees regulations and an indication as to what the correct course of action is in relation to the requirement to even attempt to enter into a controlled goods agreement and when the sales fee should be added under the High Court fee scale. Additionally, it must be reiterated that HCEOs often subcontract out to certificated bailiffs, which adds another facet to the argument against a separate fee structure for HCEOs.

4. The remission of fees for vulnerable clients is unworkable in practice

We were pleased to see the inclusion of regulation 12 in the 2014 fee regulations in relation to vulnerability:

“Where the debtor is a vulnerable person, the fee or fees due for the enforcement stage (or, where regulation 6 applies, the first, or first and second, enforcement stages as appropriate) and any disbursements related to that stage (or stages) are not recoverable unless the enforcement agent has, before proceeding to remove goods which have been taken into



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control, given the debtor an adequate opportunity to get assistance and advice in relation to the exercise of the enforcement power.”

Unfortunately, this wording does not provide sufficient clarity for enforcement agents, people in debt or debt advice organisations. We do not have any evidence that this provision has been used in any case so far. The regulation acknowledges that fees may cause hardship to vulnerable individuals, while giving them time to seek assistance and advice. The fact that this provision is rarely cited in our case notes suggests that the current regulation is ineffective and needs to be supervised to ensure the intended protections are provided.

5. Complaining about fees is currently difficult for people in debt

The High Court Enforcement Officers Association (HCEOA) will not deal with fee-related complaints and the process for complaining about high court fees remains via detailed assessment in the county court which is costly, complicated and puts the client at risk of incurring substantial costs. It is therefore very difficult to challenge High Court Enforcement Officers over their fees. This is a very common complaint amongst both clients and advisers. A single, accessible, free complaints mechanism that deals with complaints about all areas of enforcement would address the difficulty some individuals face when attempting to complain about fees for debts enforced by HCEOs.

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

Our answer to question 14 detailed our evidence that the current fee structure:

1. results in disproportionate fees being added to small debts, and that this escalates people's financial difficulties and drives them into problem debt;
2. is creating above target profit margins for enforcement agent firms;
3. is incentivising escalation to the enforcement stage rather than encouraging early settlement; and
4. is ambiguous in too many instances.

We see the introduction of an independent regulator of the enforcement industry as crucial to monitoring and reviewing the fee structure to address these issues. Independent regulation of the financial services sector has seen a huge improvement in good debt collection practice¹⁷⁵ and caps placed on the amount firms can charge in fees and charges.¹⁷⁶

With the introduction of a bailiff regulator, enforcement agent fees should be restructured so as to incentivise good practice in debt collection, with a common fee structure that encourages early

¹⁷⁵ The Money Advice Service, [Working collaboratively with debt advice agencies: a strategic toolkit for creditors](#), July 2017.

¹⁷⁶ FCA, [FCA confirms price cap rules for payday lenders](#), November 2014, FCA, [FCA proposes introduction of price cap on rent-to-own firms to protect vulnerable consumers from high costs](#), November 2018.



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resolution of the debt problem, and statutory requirements that set out a list of activities that enforcement agents must carry out before moving on to each next stage of enforcement.

The regulator would have the powers and resources needed to keep the statutory fee structure under review. As a minimum a regulator should:

- **Create a clear, common fee structure that covers both High Court and other forms of enforcement with fees that are proportionate to the amount of debt owed.** This should encourage early resolution of the debt problem with as little cost to the person in debt, creditor and enforcement agent as possible.
- **Introduce statutory requirements on enforcement agent firms that set out exactly what is expected at each stage of the enforcement process.** This should set out a checklist of activities that would be expected to be covered before moving to the next stage.
- **Set out clear protections for those who are vulnerable and/or on low incomes.** This might include Council Tax Support building on the intentions of regulation 12 of the 2014 fee regulations or greater protections for those in receipt of Council Tax Support.
- **Give clarity on when VAT can be charged by enforcement agent firms.** The regulator should abolish recovery of VAT on all enforcement agent fees for people in debt. This would reduce confusion as to whether the charge is legitimate or not, regardless of the type of enforcement agent used. More importantly it would reduce the amount people already in financial difficulty have to pay in additional charges, thereby increasing their chances of stabilising their finances and repaying their creditors .
- **Regularly review the fee structure using information gathered from the industry.** A regulator could access the information needed so fees were set to hit target profit margins. Regulation is needed so that people in debt are treated fairly in a price-controlled industry where there is no market competition for the enforcement service provided to people in debt.

In addition a regulator should look at the way bailiffs are remunerated learning from best practice - both in local authorities and in FCA regulated debt collection.

The London Borough of Hammersmith & Fulham

The London Borough of Hammersmith & Fulham was the first council to officially stop using enforcement agents to recover council tax and will now only refer debts to enforcement agents as a last resort.¹⁷⁷ They have subsequently been followed by Bristol City¹⁷⁸ and Slough¹⁷⁹ councils.

London Borough of Hammersmith & Fulham decided that they wanted to bring Financial Conduct Authority best practice debt collection to the public sector. They have contracted a debt collection

¹⁷⁷ London Borough of Hammersmith & Fulham, [Ethical debt collection in H&F to end the use of bailiffs](#), Number 2017.

¹⁷⁸ BBC, [Bristol City Council to drop "hired muscle" bailiffs](#), July 2018.

¹⁷⁹ Credit Strategy, [Slough latest council to stop using bailiffs as it hires Intrum](#), January 2019.



agency that uses technology, analytics and a person-centred approach and abides by FCA CONC rules to deliver a debt collection service for the council. The Financial Conduct Authority (FCA) rules a debt collection firm must abide by are listed in Appendix 5A. **Crucially FCA regulation specifically warns against using staff incentives with regard to collection activity. This contrasts with the enforcement sector where collection-based payment by results is the norm:**

“Incentive schemes for collections staff based on the amount they collect can increase the risk that staff will use inappropriate methods to collect repayments. Some firms told us that when they moved away from incentive schemes based on cash collected to schemes based on quality and customer service, they have seen many benefits. These included improved staff satisfaction and retention and an overall decrease in customer default rates. Incentives based on productivity metrics (such as average handling time or number of transactions handled) can also carry risks. Firms should treat customers in arrears that are particularly vulnerable, such as those with limited mental capacity or mental health difficulties, fairly and appropriately. Productivity-based incentives could discourage staff from recognising vulnerability if doing so is likely to affect their bonus.

“Where staff pay is purely variable (such as sales or collections commission with no basic salary) they may become dependent on making a minimum level of commission. This significantly increases the risk that staff may engage in inappropriate sales or collections practices to earn commission.”¹⁸⁰

The debt collection agency working in Hammersmith & Fulham is already providing additional returns. For example, figures provided to us by the debt collection agency showing that an additional 13% of aged council tax arrears that had not been collected by enforcement agents had been collected using the new system.

Evidence from StepChange Debt Charity clients suggests that in many cases the possibility of charging a higher fee when action is escalated to the enforcement stage is incentivising enforcement agents to visit, a particularly intimidating way of collecting a debt for vulnerable people.

¹⁸⁰ Financial Conduct Authority, [Staff incentives, remuneration and performance management in consumer credit](#), March 2018.



Section 7: Bailiff regulation

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

We do not believe the current level of regulation of the enforcement agent industry is sufficient.

A. There is an urgent need for an independent regulator to monitor enforcement agent conduct

Our answers to the questions in sections 1, 2 and 4 of the Call for Evidence provide considerable evidence that the current level of regulation of the industry is insufficient. (Please refer to evidence provided in answer to questions 2, 6, 9 and 13). While often the rules and National Standards are clear, there is little incentive for bailiffs to comply with the rules. There is no supervision of the conduct of bailiffs and no independent complaints mechanism to ensure that poor conduct is sanctioned. Bailiff firms are not regulated at all, so poor business practices are monitored, remedied and that systemic issues are addressed.

As a result of a lack of accountability, despite the positive changes made in 2014 there has been little change in the enforcement agent conduct issues reported before and after the 2014 regulatory reforms. Problems relating to the treatment of vulnerable people in debt, taking control of goods, and rights of entry have, in contrast to expectations, all become more common since the introduction of new regulations in 2014.¹⁸¹ Bailiff issues brought to local Citizens Advice have increased by 24% since the reforms. Adviser perception of the effect of the reforms on bailiff behaviour has also fallen, with a higher proportion of advisers tending to think enforcement agent behaviour has stayed the same or got worse in 2018, than in 2015. Furthermore, bailiffs actively breaking the rules which are intended to govern their conduct appears to be a widespread issue. Independent national polling found that at least one in three (39%) of those contacted by enforcement agents within the last two years – an estimated 850,000 people across England & Wales - had encountered a bailiff breaking a regulation or National Standard.¹⁸²

Poor conduct is not limited to “a few rogue bailiffs”, but is a systemic problem across the enforcement industry. StepChange Debt Charity advisers record any issues clients report to them of creditors breaching regulations, standards or codes of conduct in an “Expressions of Dissatisfaction” (EoD) register. When they looked at those recorded between December 2015 and December 2018, the proportion relating to enforcement agents was disproportionately high (in relation to the total number of clients with debts recorded to enforcement agent firms compared with creditors). The number of EoDs about individual enforcement agent firms was associated with the number of enforcement agents registered as working for that firm (using the Ministry of Certificated Bailiff Register data from July 2017¹⁸³) and this was highly statistically significant (Chart 12). Over 70% of

¹⁸¹ Citizens Advice, [A law unto themselves: how bailiffs are breaking the rules](#), November 2018.

¹⁸² *ibid*

¹⁸³ Ministry of Justice, [Certificated Bailiff Register](#).

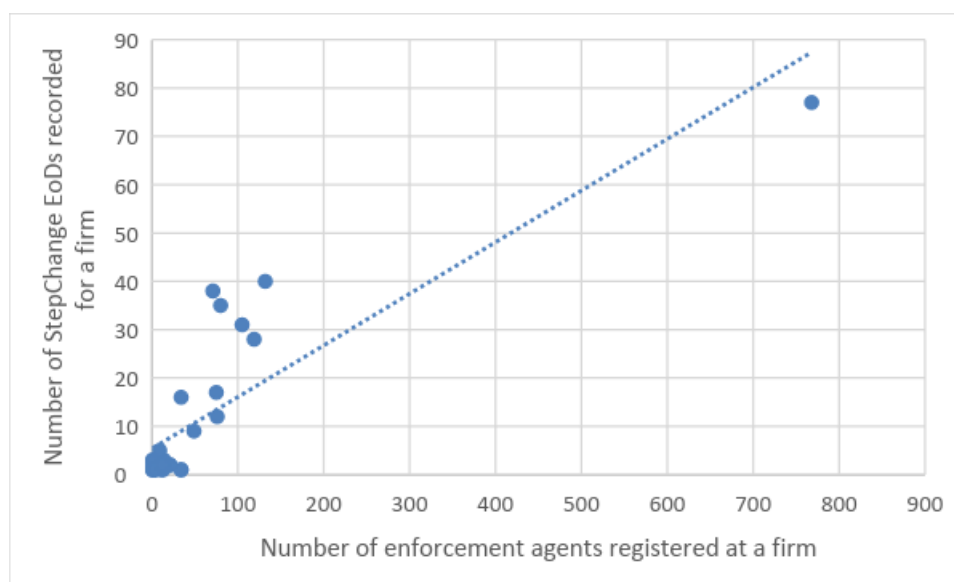


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the variation in the number of EoDs recorded is explained by the number of enforcement agents registered as working for that firm (more details of this analysis are given in Appendix 7A).

If the EoDs reported by StepChange Debt Charity advisers were the result of the action of “a few rogue bailiffs” we would expect to see odd spikes in EoD numbers at a few firms, regardless of how many enforcement agents were registered as working for them. In fact, we might expect to see a higher number of EoDs at smaller firms who might be expected to have less robust monitoring and governance structures than larger firms. Instead, the strong statistically significant association is evidence that the problem exists across the enforcement agent industry, even in the largest firms. This evidence of systemic problems suggests that the current system is not working to improve conduct and protect people in vulnerable circumstances. It can only be addressed by greater oversight and monitoring of the enforcement industry – a role most effectively performed by an independent regulator.

Chart 12. Association between number of enforcement agents registered with a firm against number of StepChange Expressions of Dissatisfaction¹⁸⁴



¹⁸⁴ An analysis of the association between the number of enforcement agents registered with an enforcement agency firm (taken from the Ministry of Justice’s Certificated Bailiff Register in July 2017) against the number of Expressions of Dissatisfaction (EoDs) reported by StepChange Debt Charity advisers between December 2015 and December 2018. The correlation was tested using the Spearman rank correlation test and was highly statistically significant ($r^2= 0.711$ $p<0.0005$) and remained so when the outlier firm’s data was removed from the analysis (see Appendix 7A for more details). The EoDs involved 29 different enforcement agent firms.



B. An independent regulator is needed to protect vulnerable people from the knock on effects of poor conduct

People visited by bailiffs are disproportionately likely to be vulnerable. 40% of Citizens Advice clients with a bailiff issue have a disability or long term health condition, 29% are single parents and 48% live in social housing. Yet, the treatment of vulnerable people in debt by bailiffs leaves a huge amount to be desired: client issues of the poor treatment of vulnerable people in debt has increased by 35% since 2014.¹⁸⁵ Bailiffs regularly fail to effectively identify vulnerability and often fall short of the guidance in the National Standards on giving vulnerable people additional time to seek advice or referring debts back to the creditor.

This poor conduct has knock on effects on people's lives, often imposing a cost on other public bodies. 50% of people polled said a bad experience of enforcement action had a long term negative effect on their financial position and seven in ten reported that that they had experienced increased stress or anxiety, felt unsafe or became afraid to answer the door.¹⁸⁶ Further evidence of this long-term negative impact is provided by a National Audit Office analysis of StepChange survey data from 2018. Their modelling estimated that intimidating letters, phone calls or doorstep visits led to a 15% increase in the probability of debt problems becoming harder to manage, and a 22% increase in the probability of anxiety or depression levels rising. Similarly, added charges (for example, penalties or enforcement agent fees) increased the probability of debt problems becoming harder to manage by 29%, and the probability of anxiety or depression levels rising by 15%.¹⁸⁷ The FCA has also provided evidence that financial services firms that focused on securing payment as quickly as possible, often at the expense of considering their customer's circumstances, exacerbated the customer's financial and emotional distress, particularly if they were already vulnerable.¹⁸⁸

Despite this clear evidence of long-term wider detriment caused by poor enforcement agent conduct and the lack of effectiveness of the 2014 regulations in addressing this, the enforcement industry remains self-regulated. This is an anomaly in a world where other sectors, such as water, energy, and financial services, have acknowledged the need for, and introduced, independent regulation to protect their service users, with a particular emphasis on protecting those in vulnerable circumstances.

C. There is a need for an independent regulator to ensure complaints are adequately monitored and addressed.

The financial services regulator, the Financial Conduct Authority (FCA) states that:

¹⁸⁵ Citizens Advice AIC client data, 2014/15-2017/18

¹⁸⁶ *ibid*

¹⁸⁷ National Audit Office, [Tackling problem debt](#), September 2018.

¹⁸⁸ Rowe, B., Holland, J., Hann, A. & Brown, T. (2014) [Vulnerability exposed: the consumer experience of vulnerability in financial services](#). London: Financial Conduct Authority & ESRO



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“Being transparent about the number of complaints that firms receive is helpful for the industry and consumers. Firms can compare their performance with their peers and consumers have an additional source of information about the firms we regulate.”¹⁸⁹

The FCA currently provides comprehensive complaints data on the firms it regulates, including the number of complaints and the number upheld. In contrast, it is very difficult to find comprehensive complaints data on the enforcement agent industry. Citizens Advice had to use a Freedom of Information request to find out that there had been only 56 complaints to the county court about a bailiff’s fitness to hold a certificate over the last few years.¹⁹⁰

National polling commissioned by Citizens Advice and StepChange also showed that in the last two years, just 26% of people who had experienced an enforcement agent breaking regulations or National Standards made a complaint.¹⁹¹ And further interviews with Citizens Advice clients and advisers ascertained that they did not have faith in the enforcement industry complaints system being independent, transparent or producing a good outcome for them.¹⁹²

However, despite this evidence of increasing conduct problems, low proportions of people complaining and a lack of public trust in the industry, enforcement agent firms have told us they have not seen any increase in the number of valid complaints they receive. Without an independent regulator to monitor enforcement agencies’ complaints data and procedures, and a single independent body to resolve disputed complaints, it is difficult to find definitive figures on the extent of problems in the industry and the level of harm caused to people in debt. This, in itself, should be sufficient to establish that the current level of regulation of the enforcement industry is insufficient.

The only publicly available complaints data on the enforcement agent industry is that listed in the Ministry of Justice’s One Year Review of the 2014 regulations¹⁹³ and figures provided to the recent Justice Committee inquiry on enforcement agents.¹⁹⁴ The former certainly suggests that complaints against enforcement agents are increasing following the 2014 regulatory reforms. Data provided by HMCTS, from the enforcement agencies they used to collect criminal fines, showed a 44% increase in complaints between 2013/14 and 2014/15, from 1,635 to 2,361. As the proportion of these upheld remained stable at around 9%, it demonstrates that an extra 65 complaints were upheld against enforcement agencies after the 2014 regulatory reforms came into effect. The steady 9% complaints

¹⁸⁹ Financial Conduct Authority, [Complaints data](#), October 2018.

¹⁹⁰ Citizens Advice (2019) *The rules of enforcement: making a complaint about the behaviour of bailiffs in a self-regulated system*

¹⁹¹ Citizens Advice analysis of national YouGov polling, based on the question “Did you use any formal complaints procedures (e.g. to the creditor, the organisation, the trade association etc.) to raise concerns about your experience?”. Base: 198.

¹⁹² Citizens Advice (2019) *The rules of enforcement: making a complaint about the behaviour of bailiffs in a self-regulated system*

¹⁹³ Ministry of Justice (2018) *One Year Review of Enforcement Agent Reforms introduced in the Tribunals, Courts and Enforcement Act 2007*.

¹⁹⁴ Civil Enforcement Association (2019) [Written evidence](#) to the Justice Committee Bailiffs: Enforcement of debt inquiry.



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uphold rate over this period is a strong indicator that this was attributable to increasing problems within the industry, rather than a result of more vexatious complaints. It also provides evidence of a very low proportion of complaints being upheld in the enforcement industry compared with other sectors.

As a result of HMCTS' evidence, we have compared these two sources of enforcement industry complaints data with financial services sector data. The lack of regulation that results in little public information being provided by the enforcement agent industry means this analysis cannot provide conclusive evidence (more details of the analysis are provided in the appendix to Section 7). However, the findings suggest that current levels of regulation are insufficient around complaints handling in the enforcement industry:

- The average number of complaints per 1000 cases is significantly lower for the enforcement firm data provided (1.4 and 0.1) than for the financial services firms (7.6).
- The percentage of complaints upheld by the enforcement firms (13% and 9%) is much lower than the average for financial services firms (53%).
- The average number of complaints per 10,000 cases referred to a second-tier complaints body is an order of magnitude lower in the enforcement industry (0.5 and 0.1) than in the financial services sector (3.0).
- The average percentage of complaints against enforcement agents upheld by CIVEA, the enforcement industry trade body, is lower than that by similar second tier complaints handling. The Local Government Ombudsman upheld 54% of cases compared to 35% by CIVEA.
- Across the financial services firms we analysed, a lower proportion of complaints upheld by firms is statistically significantly associated with a higher proportion of complaints upheld by FOS. This is particularly noticeable for high-cost credit lenders where the proportion of complaints upheld by firms is significantly lower than for other firms analysed and the proportion of complaints upheld by FOS is significantly higher.
- The same pattern can be seen in banks and building societies. Where they have seen increases in PPI complaints they have a significantly higher complaints uphold rate and a significantly lower proportion of complaints upheld by FOS.
- The percentage of complaints upheld by enforcement agent firms (9% and 13%) are lower than the average for high cost credit lenders (28%), suggesting that independent arbitration of bailiff complaints would result in a higher level of upheld complaints.
- This can be seen where there is access to arbitration. The percentage of complaints against the enforcement industry upheld by the LGO (54%) is similar to those upheld by FOS against the high cost credit firms we analysed (56%). It is also higher than the overall average complaints uphold percentage for the LGO (47%). So, the LGO seems to be upholding a greater proportion of complaints when firms themselves are upholding fewer complaints



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than average, as seen in the financial services sector. However, CIVEA (at 35%) is upholding a much lower proportion.¹⁹⁵

The 2014 reforms made minor changes to the way in which people can complain about bad practice by bailiffs. Further changes to this process will not be effective without independent oversight and the presence of a free and impartial organisation to deal with complaints.

While the financial services sector is clearly distinct from the enforcement sector, the gulf in how complaints are dealt with and used to improve practice is striking. More complaints data is needed to determine the precise nature and extent of poor conduct in the enforcement industry and to improve the process by which people can complain about that poor practice. Our analysis indicates that the independent LGO is demonstrating the expected increase in the proportion of complaints upheld in a sector where firms' uphold rates are disproportionately low. This suggests its independence ensures that it may be a more effective second tier complaints handler for the enforcement sector than the trade body, CIVEA.

This initial analysis provides strong evidence that current levels of regulation are insufficient and greater monitoring of, and transparency across, the enforcement industry's complaints processes are required. We recommend that, in the current absence of an independent regulator for the private enforcement sector, the Ministry of Justice undertakes a more complete analysis of this area, as part of its response to the Call for Evidence.

D. There is a need for an independent regulator to review the bailiff fee structure

The Ministry of Justice commissioned work on the bailiff fee structure, published in 2009, that highlighted the problem of having ineffective regulation in a non-competitive price-structured industry. The report stated:

*"In most regulated industries the regulator not only determines the regulated price, but performs a role that is integral to the success of the price control. For example, regulated companies are subject to annual regulatory audits, which measure the impact of the price control on various aspects of the company's performance. These audits monitor the success of the price control, and provide crucial information for the following price-control review at the end of the regulatory period. Furthermore, within a price-control period the regulator may include several indicators (linked for example to accounting measures of cost, or overall financial performance) which, if met during the period of a price control review, could prompt urgent attention and perhaps an alteration to the price-control within the regulatory period."*¹⁹⁶

¹⁹⁵ While the LGO can deal with complaints against local authorities it cannot look at complaints about bailiffs themselves.

¹⁹⁶ Dehayen, A. Enforcement Fee Structure Review. London: Ministry of Justice & Vemos Consulting. 2009g



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This report recommended that:

“Close monitoring from the regulator is essential to ensure that the price-control does not generate undesirable behaviour from the regulated company.....More fundamentally, with a regime that fixes prices, increases in profit can only be achieved through increases in volume or reduction in costs. Particularly where the regulator is a monopoly supplier the regulator must monitor quality levels carefully to ensure that the quality of goods/ services provided to the customer does not fall below agreed standards. Without such monitoring the regulated company may seek to cut costs, at the expense of quality, in order to increase profits. In the Enforcement industry the quality consideration is more complicated than usual as the quality of service provided by an EAC [enforcement agency]/ HCEAC [High Court enforcement agency] affects both creditors and debtors, who each assess quality of service in a different way.”¹⁹⁷

It also noted that:

“The Enforcement industry does not currently have an established regulatory agency, and therefore lacks the legal powers and resources to perform the detailed analysis that is common in most price-controlled industries.”¹⁹⁸

All these are strong arguments for an independent regulator to ensure the fee structure does not incentivise poor conduct in a price-controlled sector, such as the enforcement agent industry. The fact that the 2009 report’s analysis has not been repeated, and enforcement agencies’ profit margins seem to have increased far above the target 10% (see answers to questions 14 and 15), is yet more evidence that current levels of regulation are insufficient. Unlike the Ministry of Justice, a regulator would have responsibility to keep the fee structure under constant review.

E. There is a need for an independent regulator to provide guidance on, and monitor the use of, body worn video cameras by enforcement agents.

The relatively new innovation of requiring enforcement agents to wear video cameras has the potential to provide extra protections for both people in debt and enforcement agents. However, data available suggests that complaints that are judged according to body worn video evidence have a very low uphold rate of 1.5%.¹⁹⁹

The Information Commissioner’s guidance on the use of body worn video (BWV) cameras lacks clarity on issues such as when these cameras should be turned on and off, as well as when and how

¹⁹⁷ *ibid*

¹⁹⁸ *ibid*

¹⁹⁹ House of Commons Justice Committee Inquiry, Bailiffs: enforcement of debt (2019) [Oral evidence](#)



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any footage should be disposed of. The guidance is also not tailored to the specific needs of the enforcement industry.

For example, the guidance on switching the camera on and off states:

“..it is important to know when and when not to record, Continuous recording will require strong justification as it is likely to be excessive.....Further justification will be required if you are thinking of recording in more sensitive areas, such as private dwellings....The pressing social need will have to be far greater in order for the use of BWV systems to be necessary and proportionate. This will require the operator to provide more evidence to support its use in this situation.”²⁰⁰

This suggests that the protections provided by continuous recordings of visits must be balanced by the ability to switch the camera on and off to avoid capturing other people on video or filming inside private homes.

It also states that in developing a policy for retention or disposal of videos:

“You should also consider whether you need to retain all of the footage captured by a device, or whether extracting short clips would be more appropriate.”

The guidance suggests that the increasing reliance on BWV clips as evidence in complaints cases against enforcement agents, agents must be balanced against data protection issues. However, it does not provide a clear list of circumstances in which enforcement agents should switch off their BWV or are justified in extracting short clips from longer video footage. Currently it is enforcement firms that decide on the BWV policy for enforcement agents, in light of the ICO’s guidance. An independent regulator of the enforcement industry could provide clearer guidance around the use and storage of BWV specifically tailored to the industry. An independent regulator could ensure that this balances the rights of the people being filmed against those of the enforcement agent filming them. They could also monitor compliance and effectiveness of the guidance, as technology improves. It is only with clear guidance on BWV use, which is actively monitored and can be adapted to encompass technological change, that people in debt will have sufficient checks and balances to ensure confidence in the use of BWV evidence in deciding complaints cases.

F. There is a need for an independent regulator to ensure people in debt, creditors and the taxpayer are not forced to subsidise a poor quality enforcement industry.

There is a direct cost to people in debt caused by a lack of independent regulation. We estimate that this is at least £29.3million per year in additional enforcement agent fees and £3.9million per year in interest from credit taken out to pay enforcement agent fees (Appendix 7C).

There is also an impact on government creditors in lost repayments as a result of enforcement agents refusing to accept affordable repayment plans. We have evidence from the financial services

²⁰⁰ Information Commissioner’s Office (2014) In the picture: a data protection code of practice for surveillance cameras and personal information.



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sector that good debt collection practices, such as assessing the affordability of repayments and referring on to debt advice, can increase collection rates by as much as 30% while also saving administration costs by reducing the number of dropped plans²⁰¹ Data from an FCA-regulated debt collection agency currently contracted to collect council debt through using such regulated debt collection practices has reported that in the early part of its contract it had collected an additional 13% of aged council tax arrears that enforcement agents had previously failed to collect.²⁰²

This suggests that the increased collection rates financial services firms saw when increased regulatory requirements came into force, could be replicated within the enforcement industry. Better regulation should ensure that enforcement agents accept affordable repayment plans using the Standard Financial Statement to assess this. We estimate that this would raise an extra £81.1 million per year for creditors (Appendix 7D).

Finally, there are wider social costs caused by the impact of unnecessary enforcement agent visits to people in debt, which our research suggests negatively affects their mental health, puts family relationships under strain and reduces their ability to find work or their productivity if in work. We estimate these require the additional use of public services that incur a cost to the taxpayer of £46.9 million per year (Appendix 7C).

These estimates suggest that the introduction of an independent regulator could bring a total cost benefit of £161.2 million per year to people in debt, government creditors and through savings to taxpayers. This is significantly larger than any of the costs we have estimated to set up and maintain an independent regulator for the enforcement industry – all costed models calculated as less than £3 million per year (see response to question 18 and Appendix 7E).

G. The need for an independent regulator to restore public trust in the enforcement industry.

It is important for public trust in the political process that any policy change has legitimate support. A recent YouGov poll of 5,786 people commissioned by Citizens Advice and StepChange shows that:²⁰³

- 83% think enforcement agents should be subject to independent regulation – this equates to 39 million people in England & Wales^{204, 205}

²⁰¹The Money Advice Service (2017) Creditor toolkit: Working collaboratively with debt advice agencies, April 2017.

²⁰² Data provided by debt collection agency, Intrum.

²⁰³ Independent polling conducted by YouGov and co-commissioned by Citizens Advice and StepChange, September 2018.

²⁰⁴ Population of England & Wales who are over 18 is 46.25 million according to Office for National Statistics

²⁰⁵ In response to the question: "To what extent, if at all, do you support or oppose each of the following? 'Bailiffs being subject to regulation by an independent body (i.e. outside of the court process) to ensure that they comply to rules around debt collection'". Methodology for this extrapolation is explained in Appendix 1 of Citizens Advice (2018) *Law Unto Themselves*



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- 86% think that there should be an independent complaints mechanism covering enforcement agents – extrapolated to 40 million people in England & Wales²⁰⁶
- 82% think there should be a framework for enforcement agents to agree affordable repayments
- 74% think enforcement agents shouldn't be used to collect debts from vulnerable people
- 66% think that enforcement agents shouldn't be used to collect debts of less than £500 (this figure was chosen for the question as total certificated enforcement agent fees on a debt of less than £1000 can amount to £420 per debt).

These figures demonstrate strong public support for independent enforcement agent regulation.

They also highlight concerns amongst the public about the lack of an affordable repayment framework, the use of enforcement agents to collect debt from vulnerable people and the size of debt that enforcement agents are being used to collect.

On top of this, the public are accustomed to a variety of industries and services, such as financial services, utilities, debt advice and legal services being independently regulated. More and more people are referring complaints to FOS when they disagree with the result, to seek redress. It is an anachronism that an industry that has powers to visit people in their homes, a particularly intimidating form of intrusion into their lives, has no form of independent regulation. As a result, people feel unable to complain and are unable to seek redress when they experience poor conduct from enforcement agents. More worryingly, there is evidence that enforcement agent practices are increasing the financial problems and destroying the health and well-being of the most vulnerable people in our communities. The introduction of an independent regulator for the enforcement industry is long overdue.

In summary

The current model of 'self-regulation' of the enforcement industry is insufficient and our evidence suggests has resulted in:

- Poor conduct and unaddressed breaches of regulations and National Standards by enforcement agents.
- Greater hardship and reduced health and well-being for people already in vulnerable circumstances.
- Over-target profits for enforcement agencies, which are subsidised by the fees paid by people in debt.
- A lack of understanding or use of the enforcement agent complaints system demonstrated by disproportionately low complaints per case numbers and complaints upheld by firms.

²⁰⁶ In response to the question: "To what extent, if at all, do you support or oppose each of the following? 'An independent complaints procedure to address the actions of bailiffs should they not comply to rules around debt collection'"



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- A lack of clarity on the use of body worn video cameras in relation to data protection legislation and an over-reliance on their use in complaints handling.
- The costs of a poor quality enforcement sector being passed on to people in debt, creditors and the taxpayer.
- A loss of public confidence in the ability of the enforcement industry to enforce debts fairly.

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?

We agree that enforcement agents should be regulated by an independent regulator, in common with debt collection agencies, debt advice organisations and financial service providers, as well as legal services. Less than 1% of all enforcement agent action ends in the taking control of and sale of goods,²⁰⁷ suggesting that the main purpose of enforcement action at present is to ensure the repayment of a debt, rather than to recover this cost through the sale of goods. Many enforcement agencies already also provide debt collection services regulated by the Financial Conduct Authority so they have experience of, and already pay the costs for, independent regulation. The introduction of an independent regulator of enforcement agents would also address the anomaly that one of the most intrusive forms of debt collection through enforcement in a potentially vulnerable person's own home is currently not subject to independent regulation to monitor and improve practice.

Regulation should be undertaken by an **independent statutory body** to provide a credible deterrent to aggressive behaviour and excessive enforcement by bailiffs.

- Regulation should provide control and oversight of both individual bailiffs and bailiff firms to tackle both individual and systemic bad practice. Currently there is no oversight of the policies of firms and the conduct of non-bailiff management staff or customer facing workers.
- The regulator should have the power to monitor business practices, including supervision of individual bailiffs and bailiff firms.
- The regulator should set standards of practice, training requirements, and monitor compliance with these, taking action where these are not met.

The powers and scope of an independent regulator, costed in Appendix 7E, should include as a minimum:

- Authorisation and licensing - assessing fitness / threshold conditions and badging for enforcement agent firms, as well as individual enforcement agents;
- Setting standards and issuing guidance for conduct – rule making for enforcement agent firms as well as individuals;
- Oversight and compliance monitoring;
- Systematic and rigorous regular supervision of both firms and individual agents;

²⁰⁷ Justice Select Committee Inquiry 2019



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- Gathering market intelligence and liaising with creditors, policymakers and consumer advocates;
- Oversight and regular reviews of fees and profit margins;
- Supervision of complaints handling processes;
- Investigating systemic problems and issues in the enforcement industry;
- Imposing sanctions, removing authorisation or licences and - in extreme cases bringing prosecutions - ensuring redress to people in debt, where appropriate;
- Developing training and competence requirements;
- Monitoring bailiff firms' systems and controls; and
- Ensuring that a free, independent and accessible complaints mechanism is in place.

It is for policymakers to determine the most appropriate model for an independent regulator, and linked independent complaints system for, enforcement agents and enforcement agent firms. In general, we would suggest the use of an existing regulator should ensure that set-up costs are reduced. We recommend that a decision should be made to introduce an independent regulator.

This would entail further work in this area to establish an appropriate model and include the following considerations.

- Explore further the different potential models of independent enforcement agent regulation. We believe there are already existing model regimes that could be used as a blueprint here (see a similar such bill for better regulation of the private rented sector housing market in Appendix 7G).
- Ensure that a single regulation regime covers certificated enforcement agents, High Court Enforcement Officers and the enforcement agent firms that use their services.
- Ensure that regulation is accompanied by sufficient powers and resources to monitor compliance and provide appropriate redress when things go wrong.
- Ensure training and conduct standards build on current best practice, including regulation of collection incentives and management practices, as currently applied to those services regulated by the Financial Conduct Authority.
- Explore the cost of regulation using a sliding fee scale depending upon enforcement agent firm size, as the Financial Conduct Authority does.
- Review employment practices within the enforcement agent industry to ensure that they do not incentivise poor quality enforcement practices that have to be subsidised by people in debt, creditors and the taxpayer.

The funding of such a model should mainly be through a levy on enforcement agent firms by way of an initial registration fee and an on-going annual fee, with additional fees based on the number of complaints a firm receives, following the model used in the financial services sector.^{208, 209}

²⁰⁸ FCA, [Fees and levies](#), July 2018.

²⁰⁹ Financial Ombudsman Service, [Information for businesses covered by the ombudsman service](#), September 2018.



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Compliance costs should be a standard business cost, as these simply ensure a well-run business that follows best practice in its field. When the Financial Conduct Authority introduced greater regulation requirements to firms that provided debt collection services, although many firms initially opposed the measures, they found that changing to best practice collection processes that treated customers fairly and required firms to set up repayments based on affordability, resulted in an increase in debt collection rates (see Appendix 7D for further estimates).²¹⁰

There is also an argument for charging a small up-front levy to creditors who commission enforcement agents to collect debt, to ensure that they do not, as currently, pass on inappropriate cases.²¹¹ The Ministry of Justice's review of enforcement fee structures shows that an upfront fee from creditors could also reduce the amount of financial risk for the enforcement agent firms they commission to collect debts and arrears.²¹²

We do not believe that the cost of the regulation of enforcement agents and enforcement agent firms should be passed on in the form of additional fees for people in debt. Our estimates suggest that the costs would form only a small proportion of the average increased profit margin that changes in the market have already provided to enforcement agencies over the past four years (see response to question 14). Further increases to the fees of people in debt would simply make their financial problems more difficult to deal with and increase the cost to taxpayers through the associated increase in use of public services.

An independent regulator would ensure the following improvements to the industry:

- More cases would be settled at the compliance stage and doorstep visits would be reduced. We have estimated (using the Ministry of Justice's own figures) that at least 12% of cases referred to bailiffs are currently settled at the enforcement stage when they could be settled at the compliance stage. Regulation would reduce the amount of fees added to the debt. This could also reduce the negative impacts of doorstep visits in relation to the stress and anxiety experienced by people subject to enforcement activity and help with their family relationships, employment and productivity.
- It should be a requirement that affordable repayment plans are accepted at the compliance stage. We estimate that 17% of people visited by bailiffs take out credit to repay their debts. Independent regulation would therefore reduce the use of credit to repay debt with the additional interest this incurs, which drives people into further financial difficulty.
- Use of a consistent standard method of assessing affordable repayments, through the Standard Financial Statement would increase returns to government creditors by at least an estimated 15 percentage points.²¹³

²¹⁰ Money Advice Service, [Working Collaboratively with Debt Advice Agencies](#), July 2017.

²¹¹ Justice Committee Inquiry 2019

²¹² Dehayen, A. [Enforcement Fee Structure Review](#). London: Ministry of Justice & Vemos Consulting. 2009

²¹³ See Appendix to section 7 for more information on how we estimated an increase of 15% points in repayments using the Standard Financial Statement.



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- The social impact of bailiff visits on mental health, the strain on family relationships, productivity at work and employment would be reduced, so lowering costs to other public services.

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

If there continues to be no independent regulator of enforcement agents and agencies, there will be no means to ensure conduct improves in the sector. Existing self-regulation hasn't been effective in driving up standards.

Evidence provided throughout this response demonstrates that the reforms to regulation and the reformed National Standards in 2014 have failed to address the problems the government previously identified in this sector. An independent regulator with sufficient powers and resources to provide effective oversight of the industry is the only way to ensure improvement. This is now the "norm" in all related sectors where there is the potential to cause significant detriment to people in vulnerable circumstances.

The appendices have been removed for the purposes of online publication. Please get in touch with marini.thorne@citizensadvice.org.uk or Alison.blackwood@stepchange.org if you have further questions or would like to read these.