Review of the 2014 enforcement agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007: Call for Evidence

Response by Yorkshire & North Lincolnshire Money Advice Group

Yorkshire & North Lincolnshire Money Advice Group (Y&NLMAG) is a forum for free-sector debt advisers from across the region. We have quarterly meetings where advisers can meet and discuss current issues. Y&NLMAG receives assistance from the Institute of Money Advisers but is an independent adviser-run body. At our meeting on 29th January we discussed the call for evidence and advisers shared observations, ideas and case studies. This response is based on the issues raised at that meeting. For context, the meeting included 52 debt advisers working for a range of employers across the region, including local and national debt advice agencies, housing associations and local authorities.

Most of the responses from our advisers related to two forms of bailiff action:

- Local authority bailiffs employed to enforce council tax debts. This reflects the increase in very low-income households who have been subject to council tax since April 2013. This has become the most common debt most advisers encounter[1].

- Bailiffs enforcing High Court writs of control. These have more than doubled since the 2014 reformed bailiff regulations, from 41,000 a year in 2014 to 89,000 a year in 2017 (2018 data not yet available)[2]

Several advisers contrasted the actions of council tax and High Court bailiffs with County Court bailiffs enforcing warrants of control. We rarely encounter any inappropriate behaviour from County Court bailiffs, despite County Court warrants of control increasing massively since 2014 (from 17,498 in quarter 2 of 2014 to 99,239 in quarter 3 of 2018[3]) and far outnumbering High Court writs. Advisers suggested that the activities of County Court bailiffs should be studied as examples of better practice.

[1] Lane, J., McCay, B. and Thorne, M. (2018) *Hidden Debts: The growing problem of being behind on bills and in debt to the government*. London: Citizens Advice

[2] Ministry of Justice (2018) *Civil Justice Statistics Quarterly: Royal Courts of Justice Tables.* Available online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738615/2017_RCJ_tables.xlsx (Accessed: 11 February 2019)

[3] Ministry of Justice (2018) *Civil Justice Statistics Quarterly: July to September 2018 Tables.* Available online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761870/civil-justice-stats-main-tables-Jul-Sep-2018.xlsx (Accessed: 11 February 2019)

Responses to questions

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?

Since April 2014, our debt advisers have continued to see high volumes of clients reporting unacceptable conduct by bailiffs.

Most of the problems highlighted fall into two categories:

1. Threatening or misleading communication or actions

2. Bailiffs refusing to consider realistic offers of payment

Threatening or misleading communication and actions

Our advisers report that many clients tell them about threats or misleading information from bailiffs. Often these accounts are very similar, and it appears there are a handful of threats used by bailiffs which are mentioned consistently by clients.

Threats of this nature rarely appear in letters or text messages. They also do not seem to occur regularly when clients call bailiffs on office numbers provided in letters. They do seem to be regularly employed face-to-face 'on the doorstep' or when a client has a telephone conversation with a bailiff's direct mobile number.

These are not occasional incidents and are reported commonly enough by our clients that they appear to be standard procedure for many bailiffs.

There are several recurring themes in the threats which clients tell us about, and these are all in breach of paragraph 20 of the National Standards[4]:

1. Threats to call the police, or to have a client arrested if they do not allow the bailiff entry to their property. Police can only assist a bailiff in the very limited circumstances where a court warrant to force entry has specifically sanctioned police involvement[5]. See case study 2 below.

2. In council tax cases, threats that the client may be committed to prison if they do not allow entry or make full payment. These threats are made even in cases where the instructing local authority do not use committal as a matter of policy. See case study 2 below.

3. Advisers also highlighted reports from Eastern European clients who were told they would be deported if they do not pay their council tax, or that they will not be able to stay in the UK after Brexit if they do not pay.

[4] Ministry of Justice (2014) *Taking Control of Goods: National Standards*. London: Ministry of Justice

[5] Paras 22(2) and 31(3) of Schedule 12 Tribunals, Courts and Enforcement Act 2007

4. Threats to visit the client's workplace, in cases where it is clear that none of the client's goods would be kept there. A bailiff cannot enter an employee's workplace[6] unless they have obtained a warrant, having satisfied a court that the client has goods there which can be taken into control[7]. See case study 2 below.

5. Threats to use a locksmith to gain initial entry to the property in cases where this is not permitted because the bailiff has no court warrant or other statutory grounds[8] to do this.

6. Threats to return to remove goods, where no entry has been made and no goods taken into control[9].

7. Threats to take control of protected goods, including pets[10] and third-party goods[11]. See case studies 1 and 2 below.

Other threatening or misleading actions commonly reported by our clients include:

8. Where clients have had debt advice and been informed of their correct legal rights, bailiffs contradicting this advice, for example by challenging the knowledge or professionalism of debt advisers. This attitude is in stark contrast to the co-operative approach taken by FCA-authorised debt collectors towards the debt advice sector[12].

9. Bailiffs banging loudly on doors and attracting the attention of neighbours, or waiting for long periods in their vehicle outside a client's house. These actions are contrary to paragraphs 21 and 27 of the National Standards

[6] A bailiff can only enter a client's home or a place where the client runs a business - Para 14(6) of Schedule 12 Tribunals, Courts and Enforcement Act 2007

[7] If a bailiff wants to visit an address other than the client's home or business (e.g. a workplace where the client is employed) they must apply for a warrant and justify this measure - Para 15 of Schedule 12 Tribunals, Courts and Enforcement Act 2007

[8] These grounds are outlined in Paras 14-22 of Schedule 12 Tribunals, Courts and Enforcement Act 2007. At a domestic residence, these are limited to enforcement of fines or HMRC taxes. In both cases, actual use of force for initial entry is very rare, with single figures of cases per year for fines.

[9] Regs 19, 32 and 34 of The Taking Control of Goods Regulations 2013 only allow for removal of controlled goods. It follows that if no goods have been taken into control, the bailiff has no right to remove anything. Threatening to do one before the other disregards the order of the taking control process which is central to the reformed Regulations. Also see paragraph 22 below.

[10] Domestic pets cannot be taken into control – Reg 4(c) The Taking Control of Goods Regulations 2013

[11] Only the debtor's goods can be taken into control – Para 10 of Schedule 12 Tribunals, Courts and Enforcement Act 2007

[12] For example, the FCA rules forbid an authorised firm from refusing to deal with a client's appointed debt adviser. See CONC 7.12.2, available at: https://www.handbook.fca.org.uk/handbook/CONC/7/?view=chapter (Accessed 14 February 2019)

Bailiffs refusing to consider realistic offers of payment

Clients often tell our advisers that attempts to agree repayment plans fail because bailiffs will not agree to realistic payment offers, and pressure clients to pay more than they can afford. Examples of this include:

10. Refusing to accept a client's best possible offer of payment, even where this is supported with an up-to-date SFS budget. This is contrary to paragraph 24 of the National Standards. See case study 1 below.

11. Challenging items of expenditure in a budget which are reasonable and within SFS guidelines. An example given was a bailiff refusing an offer of payment on the basis that £200 a month in a budget for a couple's food and housekeeping was 'excessive'.

12. Clients being told to borrow money to pay debts. Examples included clients being told to borrow from family, or to miss rent payments. Note that for FCA-authorised debt collectors, the FCA rules (CONC 7.3.10) specifically forbid pressuring a client to borrow to repay debts.

13. Not informing the instructing creditors about a client's offer of payment before rejecting it. This is likely to be in breach of paragraph 25 of the National Standards. See case study 1 for an example of this, where the creditor was happy to accept an offer which the bailiff had refused.

14. Refusal to make an agreement to pay by instalments at the compliance stage without a visit to the property, which triggers the £190 / £235 enforcement fee.

15. There is a problem specific to High Court enforcement officers (HCEOs), where they have a policy of refusing to discuss any offer of instalments at the compliance stage. We can find no legislative basis for this. Our advisers have experience of HCEOs citing two reasons for this, neither of which we accept as valid grounds to refuse a client's reasonable offer of payment:

    a) The wording of the writ of control form[13] states that the HCEO is 'commanded to take control of the goods', and HCEOs claim this does not give them discretion to accept payment by instalments without taking control.

    b) Paragraph 7.3 of the explanatory memorandum to the Taking Control of Goods (Fees) Regulations 2014[14] says *'Unless a debtor pays in full at the compliance stage, the enforcement agent is obliged to visit the debtor in every High Court case in order to take control of goods, thereby triggering the first enforcement stage'.* We respectfully suggest there is no basis for this claim.

[13] Available online at: https://www.gov.uk/government/publications/form-no53-writ-of-control (Accessed: 10 February 2019)

[14] Available online at: http://www.legislation.gov.uk/uksi/2014/1/pdfs/uksiem_20140001_en.pdf (Accessed 10 February 2019)

Case study 1

Our client had moved towns to leave an abusive relationship. She was living short-term with family. Bailiffs pursuing four council tax debts contacted her at this temporary address, but no goods were taken into control. She was told to pay £200 a month from her £800 income, or they would return and take her family's goods. No attempt was made to ask her income or assess her ability to pay this amount. Our adviser prepared a budget with her, showing the most she could realistically pay was £20 per month. We then contacted both the local authority and the bailiffs to explain her vulnerability and the proposed offer. The bailiffs did not acknowledge our information about her vulnerability and replied in writing to say the £200 offer was no longer enough and they wanted £230 a month instead. The local authority agreed to recall the warrant and accept the £20 offer.

Case study 2

Our client is an Eastern European citizen and speaks no English. She is a carer for her two disabled adult children, who both speak English. Our client works part time, earning a very low wage and gets other benefits. A bailiff attended to enforce a council tax debt. Her blind daughter opened the door, and the bailiff walked in. Using her daughter to translate, the bailiff demanded £200 a month from our client, without carrying out any assessment of her ability to pay. When the client's daughter explained this was unaffordable, the bailiff threatened to visit our client's workplace, have her arrested and jailed, have her daughter taken into local authority care, and take her daughter's Motability vehicle. The client and daughter presented at their debt advice appointment terrified at what they had been told.

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

Many of our advisers work face-to-face with especially vulnerable clients. While the credit and collections industries have made great strides in recent years to understand vulnerability and adapt their services accordingly, our advisers report little evidence that the bailiff industry has taken any similar steps. Problems that were highlighted include:

16. Failing to report obvious vulnerability issues to the instructing creditor, contrary to paragraph 70 of the National Standards. Examples cited included heavily pregnant clients, homeless 'sofa-surfing' clients, clients who speak little or no English, and clients with obvious mental health issues or cognitive impairments.

17. Bailiffs remaining in a client's home and attempting to get payments, even where the only people at the premises are vulnerable adults (e.g. those listed in paragraph 16 above) and/or children[15].

18. Creditors are not being informed where a client speaks little or no English, despite paragraph 77 of the National Standards stating that they should be reported to the creditor as potentially vulnerable.

    This is often the case even where it is obvious the client would not have understood the interaction with the bailiff (breaching paragraph 75 of the National Standards) because the debt adviser themselves has had to rely on interpreters to communicate with them.

    There is also no indication that bailiffs are using interpreting or translating services as required by paragraph 78 of the National Standards, even in areas with high densities of non-English speakers. See case study 2 above for an example.

19. Where a client or debt adviser highlights vulnerability, bailiffs often demand far more detailed evidence than other creditors would ask for. This can be especially difficult where the client's mental or physical health makes the process of obtaining this evidence difficult, or where the nature of the vulnerability is not easily proven by written evidence (for example, clients suffering domestic violence).

    We note that neither the Regulations nor the National Standards impose any obligation on a bailiff to demand documents to prove vulnerability. However, paragraph 70 of the National Standards refers to a *'duty'* to report any *'potential cause of concern'* to creditors (as distinct from an 'actual' or 'proven' cause of concern). This would appear to preclude any need for evidence and put the onus on bailiffs to report *any* suggestion of vulnerability.

20. The National Standards gives some examples of vulnerability at paragraph 77, and correctly states this is not exhaustive, but some bailiffs treat this as a list of 'accepted' vulnerabilities and will not consider issues not listed.

Question 13 - 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?

21. Advisers have seen cases where standard letters from the bailiff or local authority have been amended by the individual bailiff by hand-writing their own comments or highlighting words such as 'court' or 'prison'. We have seen cases where non-English speaking clients have had misleading comments added in their own language, presumably translated online.

[15] This breaches paragraph 72 of the National Standards and Reg 10(1) The Taking Control of Goods Regulations 2013.

The content of notices is specified in Regulations and adding extra comments to these potentially alters the meaning of the notice, so it may no longer comply with the statutory requirements[16].

22. Text messages are commonly sent stating that a removal van has been booked for a specified date, where this is not possible because no goods have been taken into control[17].

Question 14 - 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?

23. The structure of the post-2014 fee scale provides a significant financial incentive for bailiffs to refuse offers of payment to justify attending the property once to get the £190 / £235 enforcement fee. We believe this discourages bailiffs from making reasonable agreements in the compliance stage.

    While the guidance on the from the High Court Enforcement Officers' Association (HCEOA)[18] is welcome, we do not believe this is widely adhered to by HCEOs, and a regulator (see below) would be able to enforce more stringent rules about exactly when a stage in the fees is triggered.

24. Any investigation into practices in the bailiff sector needs to thoroughly consider the terms under which individual bailiffs are employed or contracted by the enforcement companies. Remuneration based on a percentage of the fees recovered will inevitably incentivise bad practice on the part of bailiffs, including finding excuses to escalate the case beyond the compliance stage.

25. Advisers often see the £190 / £235 enforcement fee added where there is no evidence that the bailiff has attended the property. It was noted that the range of statutory letters[19] needs to be expanded to include a letter confirming an initial visit where the client is not in.

26. Advisers also reported seeing cases of HCEOs adding first and second stage enforcement fees (£195 and £495) on their first visit when the client was not in. This is contrary to published guidance from the High Court Enforcement Officers Association (HCEOA)[20] but it still appears to be occurring in a similar way to the

[16] Examples of the notice requirements can be found in regs 7, 26 and 30 The Taking Control of Goods Regulations 2013
[17] Regs 19, 32 and 34 of The Taking Control of Goods Regulations 2013 only allow for removal of controlled goods. It follows that if no goods have been taken into control, the bailiff has no right to remove anything. Threatening to do one before the other disregards the order of the taking control process which is central to the reformed Regulations (also see paragraph 6 above)
[18] High Court Enforcement Officers' Association (2016) HCEOA Best Practice – Fees. Available online at: https://www.hceoa.org.uk/images/content/documents/HCEOA-Best-Practice-Fees.pdf (Accessed: 14 February 2019)
[19] In the Schedule to The Certification of Enforcement Agents Regulations 2014. Available online at: http://www.legislation.gov.uk/uksi/2014/421/contents/made (Accessed: 10 February 2019)
[20] Available online at: https://www.hceoa.org.uk/images/content/documents/HCEOA-Best-Practice-Fees.pdf (Accessed: 10 February 2019)

'front-loading' of fees which debt advisers commonly saw from HCEOs before the 2014 reforms.

27. VAT continues to be charged in all cases on HCEO fees. We would welcome a clear and unambiguous statement from HMRC on the legality of this.

28. The higher fees associated with High Court enforcement are unfair to clients, particularly if the second enforcement stage fee of £495 is added. Advisers are seeing increasing numbers of small (<£1000) debts[21] enforced by HCEOs, and these fees disproportionately inflate these debts.

    While there may be legitimate higher costs associated with enforcing large business-to-business debts, when enforcing small personal debts, it is hard to justify why an HCEO should be able to charge more than another bailiff doing exactly the same job.

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?

29. Our advisers did not discuss this in detail but were supportive of the concept of an independent regulator, along the lines proposed by the Taking Control campaign.

30. A concern was raised that if a regulator was funded by a levy on the enforcement sector, this might be used as leverage by bailiff companies to argue for an increase in the level of statutory fees, and no such increase should be permitted.

31. Debt advisers are currently under great pressure with increasingly complex client cases and difficult targets. An independent regulator overseeing an impartial complaints process would mean that our clients would be more able to start and pursue complaints on their own.

32. A regulator, along the lines of the Financial Conduct Authority, would be more than just a route to escalate complaints. They could proactively supervise and monitor the industry, changing behaviours and culture just as the FCA has done in the markets it regulates. The whole ethos would change, and if we accept there are 'rogues' they would be ousted by firms.

33. Finally, we suggest the industry is currently so uncontrolled it needs immediately regulating before further tragedies and injustices occur. The recent case Rooftops judgment in the High Court[22] detailed a catalogue of malpractice from High Court bailiffs, which far from being exceptional, reflects the typical bailiff behaviour our clients are used to experiencing.

[21] This is possible for debts over £600 not regulated by the Consumer Credit Act 1974. Common examples include water and energy bills, nursery fees, wage overpayments and credit union loans.

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