TAKING CONTROL FOR GOOD

Introducing the Enforcement Conduct Authority

July 2021



CSJ The Centre for Social Justice

Taking Control for Good: Introducing the Enforcement Conduct Authority

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About the Centre for Social Justice

Established in 2004, the Centre for Social Justice is an independent think-tank that studies the root causes of Britain's social problems and addresses them by recommending practical, workable policy interventions. The CSJ's vision is to give people in the UK who are experiencing the worst multiple disadvantages and injustice every possible opportunity to reach their full potential.

The majority of the CSJ's work is organised around five 'pathways to poverty', first identified in our ground-breaking 2007 report *Breakthrough Britain*. These are: educational failure; family breakdown; economic dependency and worklessness; addiction to drugs and alcohol; and severe personal debt.

Since its inception, the CSJ has changed the landscape of our political discourse by putting social justice at the heart of British politics. This has led to a transformation in government thinking and policy. For instance, in March 2013, the CSJ report *It Happens Here* shone a light on the horrific reality of human trafficking and modern slavery in the UK. As a direct result of this report, the Government passed the Modern Slavery Act 2015, one of the first pieces of legislation in the world to address slavery and trafficking in the 21st century.

Our research is informed by experts including prominent academics, practitioners and policymakers. We also draw upon our CSJ Alliance, a unique group of charities, social enterprises and other grass-roots organisations that have a proven track-record of reversing social breakdown across the UK.

The social challenges facing Britain remain serious. In 2021 and beyond, we will continue to advance the cause of social justice so that more people can continue to fulfil their potential.

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We are grateful to the sponsors of this report and the CSJ Financial Inclusion Policy Unit.

Disclaimer: the views and recommendations in this report are those of the CSJ and do not necessarily represent those of the individuals or organisations mentioned above.

Foreword

Do not let the cash many have saved from the fewer flat whites, dinners out and holidays over the last year-and-a-half deceive you.

While many of us have put away considerable savings throughout the pandemic (admittedly not through choice),[1] this could not be further from the truth for many of our fellow citizens. In fact, the economic shock of Covid-19 saw more than half of households in the lowest income quintile *increase* their borrowing, compared to less than a third of those in the highest quintile.[2]

As has been widely welcomed, the Government threw out several rubber rings to keep people afloat in these choppy, uncharted waters. The £20 uplift to Universal Credit, the £800 million provided to local authorities for council tax relief, and the enormously effective furlough scheme to name but a few. Lenders, meanwhile, have shown restraint, encouraged by the Financial Conduct Authority; over 4.5 million payments have been deferred since March 2020.

Even so, what looms ominously on the horizon is no less than a tidal wave of debt. And troublingly, these rubber rings are running out of air.

As payment deferrals and the furlough scheme end, the Money and Pensions Service anticipate a 60 per cent rise in the demand for urgent debt advice. As central government funds for council tax relief run dry, councils will undoubtedly be ramping up efforts to recover the £4.4 billion of arrears sitting on their balance sheets.

What this means in practice is that, in the months and indeed years ahead, tens of thousands more people are expected to receive a call or knock at the door from a bailiff.

Enforcement agents, as bailiffs became officially known in 2014, play an increasingly prominent role in the way debt is collected in this country – particularly by public sector creditors.[3] A debate has since opened up (aided by many Parliamentarians, including me) about the effectiveness of this form of collection for people who *can't* pay, as opposed to those who *won't*.

Whenever debts are enforced (as they routinely are for parking fines or unpaid child maintenance, but especially for council tax), this must be carried out fairly, professionally, and in a way which supports someone on a route out of debt. For we have increasingly good evidence of how dangerous the debt spiral can be.[4] I was struck to read recently of

1 British households built up their savings to the second highest level on record at the start of 2021 (the highest was in Winter 2020). Office for National Statistics, Quarterly economic commentary: January to March 2021, 2021
2 Resolution Foundation, Pandemic Pressures: Why families on a low income are spending more during Covid-19, 2020
3 Centre for Social Justice, Collecting Dust, 2020
4 See for example, E Turunen and H Hiilamo, 'Health effects of indebtedness: a systematic review', BMC Public Health, 14:489, 2014

a heavily indebted woman, wracked by stress, left unable to speak.[5] Tragically, for others the consequences involve family breakdown, addiction, depression, even suicide.

Combine this with data from StepChange suggesting that over one in five people in problem debt have additional vulnerabilities (most commonly a health problem), and it becomes even more self-evident that enforcement agents must use the extraordinary powers granted to them by the public with care and responsibility.

Given the strength of feeling around these issues it is therefore a stunning achievement for the enforcement and debt advice sectors to have come together, under the leadership of the Centre for Social Justice, to collaboratively develop the Enforcement Conduct Authority (ECA) proposed in this report.

To their credit, proponents of reform in the enforcement industry have listened to concerns about standards of behaviour; likewise, debt advice charities have worked pragmatically to overhaul the protections for vulnerable people in financial difficulty.

The ECA's potential is unlimited. With a strong mandate to ensure the fair treatment of people in debt, it will provide the independent, fair and formal supervision of enforcement that has been strongly advocated by, among others, the House of Commons Justice Committee. In developing new protocols on vulnerability and affordable repayment, the ECA will ensure that people experiencing enforcement are put on a more sympathetic and sustainable path out of debt.

In fact, the mission of the ECA is closely aligned with ongoing efforts by the Government to improve debt collection practices, including the recently introduced Breathing Space scheme. As such, we hope the Government will consider carefully how far providing the ECA with limited statutory underpinning would allow its mandate to be fully delivered, and its potential realised.

As 'freedom day' draws nearer, what finer example is there of building back better than improving the support for the thousands, indeed millions of people, gripped by problem debt in the years to come? And as we return to something more closely resembling normality (the coffees and commutes no doubt included), I hope that the ECA will be a legacy of these fraught times and this historic collaboration. The looming debt tidal wave on the horizon suggests we need to get started swiftly.

Rt Hon Baroness Morgan of Cotes
Secretary of State for Digital, Culture, Media and Sport, 2019–20
Chair of the House of Commons Treasury Select Committee, 2017–19
Secretary of State for Education, 2014–16

5 Sutton and Croydon Guardian, "I felt suicidal' – Croydon woman talks of her downward spiral into debt', 2019

The Enforcement Oversight Working Group

Carole Kenney
Director of Welfare and Customer Care, CDER Group

Carole was appointed Director of Welfare and Customer Care at CDER Group in 2020 building on over 20 years' experience within the enforcement profession. Carole started her career as a Certificated Bailiff, moving on to hold high profile positions focused on improving the customer journey and outcomes for individuals in debt. She has worked to support vulnerable customers in her role as a MALG (Money Advice Liaison Group) Ambassador. Carole is the serving President of the Civil Enforcement Association.

Gareth Hughes
Chief Executive, Marston Holdings

Gareth wrote an 80-page submission to the Ministry of Justice in 2008 that recommended the introduction of a pre-visit Compliance Stage to the warrant recovery process. This innovation was subsequently introduced in the *Taking Control of Goods Regulations 2014*, and he worked closely with debt advice and enforcement stakeholders over that time to build support for the reforms. A former member of the Civil Justice Council, he also won an *Entrepreneur of the Year* award in 2017 in the *Transformational Leader* category.

Gareth McNab
Director of External Affairs, Christians Against Poverty

Gareth was appointed as Director of External Affairs for CAP in January 2021 after over 15 years' experience in leadership roles in financial services and debt advice. Known as a generous collaborator and thoughtful influencer within the debt advice and debt collection sectors, he has led on and contributed to a number of initiatives that have sought to improve outcomes for people in problem debt and poverty.

Joe Shalam (Chair)
Head of Financial Inclusion & Housing, Centre for Social Justice

Joe was appointed Head of Financial Inclusion & Housing in 2019, having joined the CSJ policy team in 2016. Since then he has authored numerous reports and led the CSJ's work to secure significant changes across a range of policy areas, including private tenancy reform, support for rough sleepers, universal credit and public sector debt collection. He writes regularly for the *Times*, *ConHome* and *Reaction*, having seconded to the *Spectator* in 2018. Prior to joining the CSJ, Joe completed a masters on British politics in the eighteenth century at the University of Oxford, graduating with distinction.

Matt Hartley
Head of Public Affairs & Engagement, Money Advice Trust

Matt has worked in the debt advice and financial capability sectors for 10 years, and currently leads the Money Advice Trust's policy and influencing work – including the charity's long-standing efforts to improve the debt collection practices of central and local government. He previously worked at StepChange Debt Charity and the Personal Finance Education Group, and also serves as a Director of Greenwich & Bexley Credit Union.

Peter Tutton
Head of Policy, Research & Public Affairs, StepChange Debt Charity

Peter Tutton is Head of Policy, Research and Public Affairs at StepChange Debt Charity, a role he has held for 8 years. Previously at Citizens Advice, he has worked on mortgage, credit and related consumer policy arears for 16 years. Peter's work has been instrumental in the consumer protection debate about PPI, on mortgage arrears, regulation and safety nets following the global financial crash, on credit regulation and on support for people facing debt problems, such as the new breathing space scheme.

Russell Hamblin-Boone
Chief Executive, Civil Enforcement Association

Russell was appointed as Chief Executive Officer of CIVEA in January 2018 having previously held the post of Chief Executive of the Consumer Finance Association from 2012. Russell is consistently named in the *Credit 500*, as one of the fifty top influencers. He has also held senior positions at the Finance and Leasing Association and the Energy Retail Association, now known as Energy UK. He has worked in Downing Street for the Chief Whip and the Cabinet Office.

Disclaimer: Please note that the Joint Framework for the Enforcement Conduct Authority presented in this report was authored by all members of the Enforcement Oversight Working Group; however, membership of the Working Group does not imply agreement with the further contents of this report.

Executive summary

Enforcement in the wake of the pandemic

Problem debt ruins lives. The CSJ is reminded regularly by our Alliance of small charities of the way it tears families apart, the strain it puts on employment, and its close relationship with alcohol and substance dependency.[6] The Money and Mental Health Policy Institute estimates that as many as 100,000 people in problem debt attempt suicide every year.[7] Every individual reaching crisis point represents a missed opportunity to secure an early and sustainable pathway out of debt.

For this reason, enforcement firms – whose agents are known colloquially as bailiffs and are granted statutory powers to enforce the repayment of debt – must carefully balance the rights of creditors with a responsibility to support people out of the spiral of indebtedness.

Today, achieving this balancing act is more important than ever. While the number of enforcement orders and warrants has risen in recent years to an estimated 3.5 million annually,[8] the lightning bolt of the pandemic is expected to bring many thousands more people into contact with debt enforcement in the months and years ahead.

Indeed, despite unprecedented welfare support and creditor forbearance, the first year of the pandemic saw the number of people in 'severe' forms of problem debt rise by over 600,000 to 2.4 million, according to debt charity StepChange.[9] The amount of outstanding council tax grew by a record 24 per cent between March 2020 and March 2021, reaching £4.4 billion.[10] And in London alone, demand for one city-wide debt advice service was 532 per higher in Spring 2021 than in the previous year.[11] As payment deferrals and emergency support schemes come to an end, people in already difficult circumstances will be deeply anxious about any action that could make their situation worse.

In this context it is critical that enforcement is carried out fairly, effectively, and in a way which supports people to bounce back from the adversity of the pandemic. To its credit, the Government is advancing a programme of reform to debt collection, through for example the debt respite scheme (otherwise known as Breathing Space) introduced by HM Treasury in April 2021 and the ongoing Cabinet Office review of government debt

6 See Centre for Social Justice, Collecting Dust, 2021
7 Money and Mental Health, A Silent Killer, 2018
8 Estimate using unpublished data provided by The Civil Enforcement Association, 2021, which encompasses enforcement orders for local authorities (principally council tax arrears but increasingly parking fines), emissions zone fines, employment tribunal awards, child support payments and overpaid benefits, as well as magistrates' courts warrants.
9 StepChange Debt Charity, Statistics Yearbook, 2020
10 Ministry for Housing, Communities and Local Government, Collection rates and receipts of council tax, 2021
11 Debt Free London, 'New research reveals how Londoners view their finances', May 2021

management.[12] Still, the pandemic has unfortunately (though understandably) diverted government attention from important parts of this programme, including a review of the enforcement system launched in 2018.[13]

In response, the CSJ challenged the debt advice and enforcement sectors to work together to chart a credible but ambitious path forward for enforcement, built on a shared determination to raise standards, protect vulnerable people, and ensure the industry is fit to meet the challenges of the coming decade. This report – and its chief proposal, the Enforcement Conduct Authority – is the culmination of this endeavour.

Enforcement for the 2020s: establishing the Enforcement Conduct Authority

In 2020 the CSJ founded the Enforcement Oversight Working Group, bringing together the enforcement and debt advice sectors for the first time to collaboratively develop a vision for reform. This initiative set out to address the key challenges identified in recent years, including issues raised during the Ministry of Justice's call for evidence in 2018 and later Justice Committee enquiry in 2019.[14] Most prominently these include the need for:

- the continued professionalisation of the enforcement sector, building on reforms introduced in 2014 and positive industry-led initiatives;[15]
- measures to address inconsistent and, at times, inappropriate enforcement agent behaviour;
- reform to the 'fragmented and hard to navigate' complaints system;[16]
- measures to bring the whole of the enforcement industry into line with wider advances in the treatment of people experiencing hardship or other vulnerabilities; and
- independent, sustainable and authoritative oversight of the industry.

In a process of intensive discussion and consultation, the Working Group has co-designed a new, independent and fully-funded oversight body, with the functions and authority to drive progress in these areas – and indeed many more. In this report we present a Joint Framework – authored and supported by all members of the Working Group – which sets out the key aspects of this oversight body: the Enforcement Conduct Authority (ECA).

The soon to be established ECA will deliver a clear mandate to ensure fair treatment and appropriate protection for people subject to enforcement.

12 Cabinet Office, Fairness in government debt management, 2021
13 Ministry of Justice, Review of enforcement agent (bailiff) reforms: call for evidence, 2018 ; Secretary of State for Justice, Enforcement Update, HCWS 1776, 22 July 2019
14 See, for example, Taking Control, Review of the enforcement agent reforms, 2019 ; Ministry of Justice, Review of enforcement agent (bailiff) reforms: call for evidence, 2018
15 See, for example, the Code of Practice introduced by the Civil Enforcement Association in 2019
16 This was the verdict of the Justice Committee in 2019

This includes (but is not limited to):

- raising standards through the development of new rules, conditions and competencies, to be developed in consultation with the industry;
- supervising practice and issuing proportionate sanctions for rule-breaking and behaviour below the standard required of the industry;
- improving accountability through a standardised two-stage complaints process;
- independently adjudicating escalated complaints; and
- introducing fair, affordable repayment and vulnerability protocols.

The ECA will empower enforcement firms to carry out their duty to courts, creditors and taxpayers fairly and effectively, while equipping them with the tools needed to support people on a sustainable journey out of debt. Its establishment, we believe, represents a once in a decade reform with far-reaching, positive implications for social justice – and backed by supporters across multiple sectors and the political spectrum.

As it seeks to build back better, we hope that the Government will continue to work with the CSJ and the forthcoming chair of the ECA to advance this ambitious and exciting vision for reform.

Recommendation

An Enforcement Conduct Authority (ECA) should be established to provide independent oversight of the enforcement industry.[17]

The ECA should be equipped with a clear mandate: to **ensure fair treatment and appropriate protection for people subject to enforcement** – with particular regard for those experiencing financial difficulty or other vulnerable circumstances.

The ECA will:

1. Be guided in the delivery of its mandate by five key principles:

Independence

The ECA will commit to upholding the principle of independence in all its activities. This relates (but is not limited to) aspects such as Board membership, those working for the ECA, as well as how the ECA will conduct its business.

Ambition

The ECA will commit to continually drive improvements in the enforcement sector through being ambitious in raising standards and collaborating with stakeholders to ensure fair treatment and appropriate protection for people subject to enforcement.

17 While the remit of the ECA will be, in the first instance, over civil enforcement agents and all firms that employ them, the Joint Framework in Chapter Three sets out a plan to widen this remit across the wider enforcement sector, as is appropriate, in close consultation with stakeholders.

Proportionality

The ECA will work to the principle that any burden or restriction it imposes on individual agents, agencies and/or their activities should be efficient and necessary for the purpose of carrying out its mandate.

Collaboration

The ECA has been developed on the basis of collaboration between the enforcement sector and the debt advice sector. The ECA will commit to maintaining a spirit of collaboration between the enforcement sector and the debt advice sector as far as is appropriate.

Transparency

The ECA will exercise its functions as transparently as possible. One of the key outputs to that end will be an annual publication reporting its activity and findings – this will be published, shared and submitted to the Secretary of State for Justice.

2. Pursue the following objectives:

Raising standards

The ECA will drive up standards in the enforcement sector by setting out new effective standards, building on the National Standards, and will supervise performance and conduct in the industry.

Improving accountability

The ECA will improve accountability across the enforcement sector by holding enforcement firms and agents to account. This will be achieved primarily through supervisory activities (such as audits, reviews of firms' policies and procedures, compliance and complaints, reviews of enforcement agent footage, information requests and independent research); as well a firm and fair system of sanctions to penalise and strongly disincentivise non-compliance with the ECA's standards.

The ECA will develop and introduce a new standardised complaints process so that everyone subject to civil enforcement will see a two-stage resolution to their cases within a set timeframe across all firms under the remit of the ECA.

Adjudicating complaints

The ECA will host an independent complaints mechanism that will adjudicate on escalated complaints in the new two-stage process.

Protecting the vulnerable and achieving fairness

In line with its mandate, the ECA will commit to ensuring the fair treatment of people subject to enforcement in vulnerable circumstances. This will be primarily delivered through provision of new affordable repayment and vulnerability protocols drawing on best practice from other organisations, firms and bodies, as appropriate.

3. Undertake the following functions:

Authorisation

At its establishment, the ECA will commit to working with the Ministry of Justice and wider stakeholders to develop an appropriate and workable authorisation process for enforcement agents and firms, considering the existing and well-established court certification process. This will support the ECA in bringing the enforcement sector under its remit as widely as possible.

Standard setting and rule making

The ECA will seek the appropriate powers to create new binding rules and set minimum conditions, standards, and competencies, agreed in consultation with stakeholders, to which all agents and agencies under its remit must adhere. The ECA will review and propose amendments to the official National Standards, such as the inclusion of a direction of authority to the ECA.

Supervision and monitoring

The ECA will be responsible for overseeing the conduct of enforcement agents and agencies under its remit. This includes conducting supervisory activities such as audits using requested data and information; visits to firms including spot checks where appropriate; and sample checks on call handling and enforcement agent video footage.

Enforcement and sanctions

The ECA will have the autonomy to impose sanctions for non-compliance with the effective standards and competencies it has set out. Sanctions will be based on a tariff, with variation in severity to allow for a proportional application (in accordance with Principle 3) including financial penalties; operational penalties (such as the withdrawal of ECA authorisation); and, for individual agents, the use of EAC2 process to determine whether an individual is fit to operate as an enforcement agent. The ECA will set out a clear appeal process to deal appropriately with challenges to enforcement action it takes.

Complaint adjudication

In its capacity as the authority for the enforcement industry, the ECA will host an independent complaints mechanism to adjudicate escalated complaints. Separately, the ECA will develop, introduce and mandate a simplified two-stage complaints process to unify and improve accountability across the enforcement sector.

The Enforcement Oversight Working Group has initiated a collaborative process to appoint a chairperson to develop and deliver the Joint Framework published in this report.

As a matter of priority, the chairperson will conduct a review of any statutory changes needed to deliver the ECA's mandate fully and effectively; the chairperson will then make recommendations to the Ministry of Justice in its review of the ECA announced by the Government in April 2021.[18]

See below, Chapter Three, for the full Joint Framework for the Enforcement Conduct Authority.

18 Lord True, HL Deb 14 April 2021, Col 1363–4

Introduction

In 2020, the CSJ challenged the debt advice and enforcement sectors to work together to chart a credible but ambitious path forward for enforcement, built on a shared determination to raise standards, protect vulnerable people, and ensure the industry is fit to meet the challenges of the coming decade.

To this end – and following two preliminary roundtable meetings and calls for evidence – we founded the Enforcement Oversight Working Group, comprised of equal debt advice and enforcement membership. The Working Group met regularly for six months of intensive discussion, building from shared principles, to objectives, to proposals (which were then repeatedly scrutinised and tested with wider stakeholders).

The chief proposal of this report, the Enforcement Conduct Authority, is the culmination of this initiative. The Joint Framework published herein was jointly authored by the Working Group and has been reviewed by the Ministry of Justice.

The report is structured as follows:

- In Chapter one, we provide background on the enforcement industry, examining its various forms, and the scale of enforcement in the post-pandemic context.
- In Chapter two, we consider recent evolutions in enforcement policy, exploring key challenges and objectives for reform, while setting out how a new independent oversight body would address these.
- In Chapter three we present the Joint Framework for the Enforcement Conduct Authority.

chapter one

Background: enforcement in England

1.1 What is enforcement?

Enforcement agents, formerly (and still colloquially) known as 'bailiffs', enforce the payment of money owed both to private companies and public bodies.[19] The main types of 'debt' enforced include council tax arrears, utility bills and rent arrears, as well as a range of fines (including court fines and parking tickets), road charges, and unpaid child support.

Enforcement agents do this through the collection of payments (either in part, through payment plans, or in full). In a small minority of cases, repayment is made through the seizure of goods to be sold at auction.[20] Fees set by the Ministry of Justice are attached to the principal debt and included within the repayment, which pays for the enforcement action.

Reforms introduced in 2014 established a set procedure for the enforcement of debt, through a fixed fee structure. This is comprised of three stages: compliance; enforcement; and sale. The intention behind this structure, according to the Ministry of Justice, 'is to incentivise settlement at the compliance stage' as settling at this stage does not require a home visit, thus incurring fewer costs to enforcement firms and fees to the person in debt.[21] Fees at the compliance stage are £75, whereas the enforcement stage fee is £235 (although this is higher for High Court writs). According to the Civil Enforcement Association (CIVEA), 60 per cent of cases handled by industry proceed to the enforcement stage on average across England and Wales.[22]

19 The power to enforce a writ, or warrant, of control is contained in schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

20 According to Marston Holdings, 0.8 per cent of their enforcement caseload involves the seizure of goods, although 60 per cent involve home visits. Marston Holdings, in evidence to the Justice Committee, 2019

21 A recent High Court case tested the conventional way this process has been followed since 2014, after a legal challenge was brought by an organisation called Just. Just proposed that while the Taking Control of Goods Regulations 2014 say that a 'visit' needs to take place before an enforcement agent may enter into a controlled goods agreement with a debtor, they do not specify whether this visit has to be in-person or virtual (e.g. over Zoom), thus incurring the lower compliance stage fee. The High Court ruled that the regulations do not technically prohibit virtual 'visits', but also observed that the 2014 regulations did not anticipate their possibility, concluding that 'the Regulations to do not fully enable it' either (see [2021] EWHC 15, QB). Just, alongside CIVEA and the HCEOA, have made a joint invitation for the Ministry of the Justice to review the judgement and provide appropriate statutory guidance.

22 Estimate produced by CIVEA through membership data requests, 2021

Importantly, enforcement agents are not the same as 'debt collectors',[23] who are individuals or companies that typically recover money owed for consumer creditors and are subject to regulation by the Financial Conduct Authority. Debt collectors are not certified by the courts to act as enforcement agents and as such do not have legal powers to enforce debts.

1.2 There are different types of enforcement agent

There are several types of enforcement, with different functions. The majority of civil enforcement agents are employed by some 40 firms of varying size, while others are self-employed, employed 'in-house' by local authorities, or employed directly by public bodies including HM Courts and Tribunals Service. Typically, enforcement agents are commissioned by both private companies and public bodies (such as local authorities) once a court has issued an enforcement order, County Court Judgement or Liability Order. Enforcement agents fall into four main categories:[24]

- **Civil enforcement agents (or certificated enforcement agents)**
  Civil enforcement agents are employed to enforce non-High Court orders and are normally employed by private enforcement agencies or are self-employed. All civil enforcement agents are individually certificated by the County Court and registered with the Ministry of Justice. Civil enforcement agents enforce debts such as council tax arrears, parking fines, traffic fixed-penalty notices, and child support payments (see Figure 1);

- **High Court enforcement officers**
  High Court Enforcement Officers are appointed to enforce High Court orders or County Court orders transferred to the High Court by the creditor. Debts include utility bills; business debts; tribunal awards; and rent arrears;

- **County Court bailiffs**
  County Court bailiffs are employed directly by HM Court and Tribunals Service to enforce County Court Judgments and orders made by the tribunals service that have been transferred to the County Court for enforcement. This includes collection of debts regulated by the Consumer Credit Act 2006 (for example, credit cards, personal loans or overdrafts);

- **Civilian enforcement officers (or Approved Enforcement Agents)[25]**
  Civilian enforcement officers enforce magistrates court orders. They can be employees of HM Courts and Tribunals Service or employed by private companies.

23 However, many companies combine both enforcement and debt collection services.
24 For more information, see: House of Commons Library, Enforcement officers (formerly known as bailiffs), 2019
25 Not to be confused with Civil enforcement officers, known colloquially as traffic wardens.

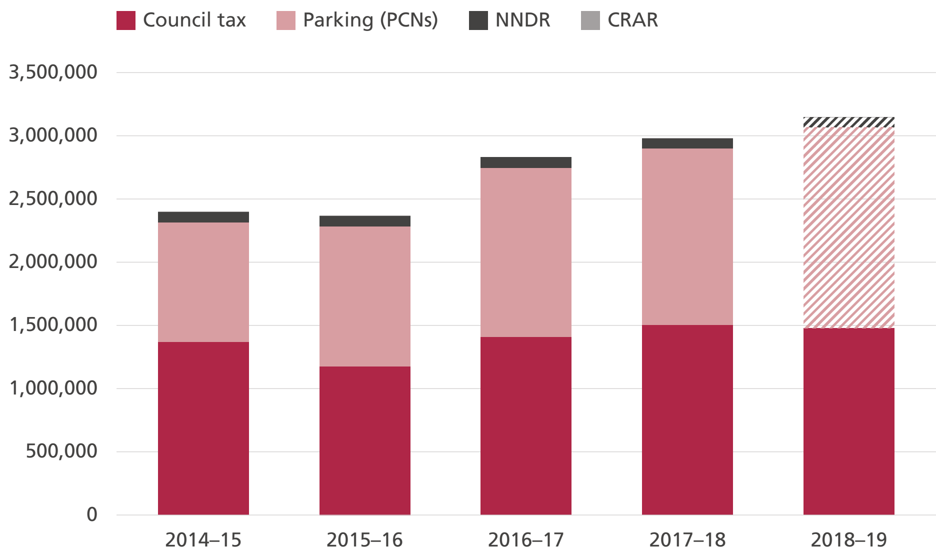
Civil enforcement agents comprise the largest proportion of the enforcement industry, with currently around 2,000 certificated enforcement agents active.[26] There are around 50 High Court Enforcement Officers registered with the Ministry of Justice.[27]

1.3 The use of enforcement has risen significantly

Enforcement has become increasingly relied upon by 'creditors' in recent years – including, most prominently, by local authorities. As noted by the Ministry of Justice, we lack precise information about the total enforcement caseload because data are not centralised or recorded consistently. However, available data indicate an upward trend in this caseload in since 2014 (prior to the sharp fall seen in 2020 for several reasons related to the pandemic which we explore below).[28]

CSJ analysis of data submitted by the Civil Enforcement Association (CIVEA) suggests that annual cases received by civil enforcement firms rose by 31 per cent between 2014 and 2019.[29] Prior to the pandemic, this meant that civil enforcement cases (as the most common type of enforcement) stood at approximately three million a year, an increase by over 600,000 in five years.

Figure 1. Cases received by CIVEA membership (civil enforcement agents)[30]



Source: CSJ analysis of CIVEA data, 2021

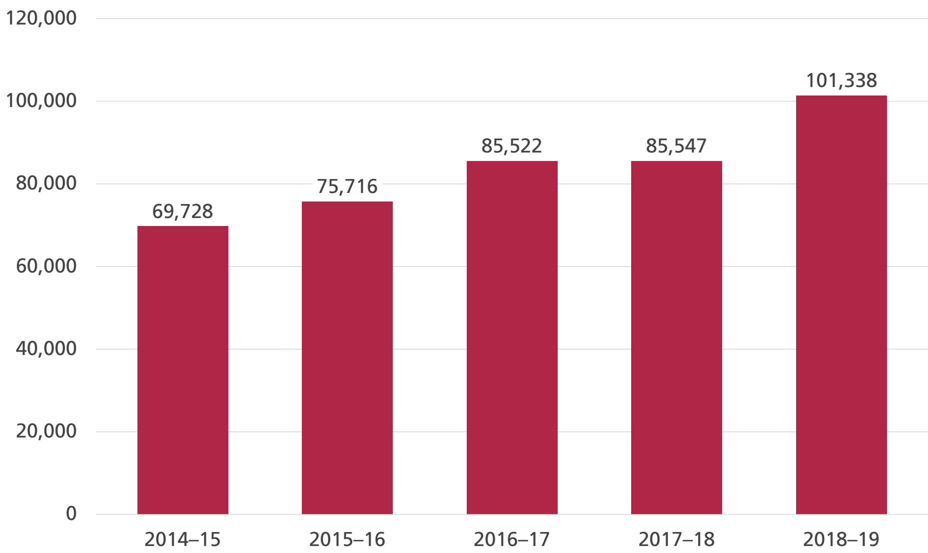
CIVEA have argued that reductions in council tax support schemes (as these became localised in 2013) have been a key driver of this growth, as thousands more low-income households have been required to pay council tax.[31] Others point to large reductions

26 According to CIVEA
27 Ministry of Justice, One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007, 2018
28 Ministry of Justice, Explanatory Memorandum to the Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020, 2020
29 CIVEA in evidence to the CSJ, 2021
30 PCN/NNDR/CRAR data for 2018–19 were not collected by CIVEA and so this is estimated using the five-year trend.
31 Ministry of Justice, Review of enforcement agent (bailiff) reforms: call for evidence, 2018

in local authority funding; subsequent fiscal reliance on road and parking charges; widespread 'in-year' collection targets; and institutional bias towards court action owing to blunt legal requirements which require councils to quickly escalate small tax debts.[32]

Analysis of data presented by the High Court Enforcement Officer Association reveals that the number of writs received rose by 45 per cent over the same five-year period, stabilising at roughly 90,000 a year prior the pandemic.[33]

Figure 2. Cases received by HCEOA membership (High Court enforcement officers)



Source: HCEOA, 2021

While comparable annual data is (at time of publication) unavailable for cases received by civil enforcement agents after 2019, the Ministry of Justice's quarterly civil court statistics give an impression of the scale of the disruption caused by the pandemic. In the last quarter of 2020, enforcement applications were down 40 per cent and enforcement orders were down 44 per cent compared to the last quarter of 2019.[34] Writs received by High Court enforcement officers fell by 30 per cent.[35] The number of home visits by civil enforcement officers collapsed during the first lockdown following industry-led guidance, although other methods of contacting debtors continued even as visits were banned between April and August 2020.

32 See, for example, PayPlan, Keeping Court for the Last Resort, 2018 ; Citizens Advice, The Costs of Collection: The high price of council tax debt collection, 2019

33 HCEOA, 'Our statistics', 2021

34 Ministry of Justice, Civil Justice Statistics Quarterly: October to December 2020, 2021

35 HCEOA, 'Our statistics', 2021

1.4 Demand for enforcement is set to rise in the wake of the pandemic

Despite the sharp drop in enforcement applications, orders and visits during the first lockdown in 2020 (due to the combined effects of temporary payment deferrals, statutory restrictions to operating and increased welfare support), the industry is expecting its caseload to widen as the economic impact of the pandemic continues to materialise. Indeed, as the restrictions on enforcement firms' operations introduced by the Ministry of Justice in April 2020 were lifted that Autumn, CIVEA members conducted over 1.5 million enforcement visits between September 2020 and April 2021 alone (although primarily for debt incurred pre-lockdown).[36]

Yet there is strong evidence to suggest there will be further increases in demand from both public and private creditors for enforcement as we emerge from the pandemic. In the 15 months following the first lockdown, the number of private renters in arrears rose by 450,000 while a statutory intervention protected them from eviction and enforcement action. This ended in June 2021. With 400,000 eviction processes now underway, many are likely to result in County Court Judgements as landlords seek to recoup lost rental income.[37]

Similarly, while over 4.5 million payment deferrals have been granted since March 2020 for mortgage payments, credit cards and loans – including high-cost short-term credit – it remains to be seen how creditors, many struggling financially themselves,[38] deal with customers still unable to repay money they owe when such schemes come to an end.[39]

The Money and Pensions Service (MaPS) is preparing for the wave of debt looming on the horizon. While debt advice charities reported large falls in demand in 2020, MaPS announced a £38 million increase in its budget for debt support in England in 2020-21, anticipating a 'peak' at the end of 2021.[40] Their analysis predicts the number of people needing urgent debt support will have increased by over 60 per cent on pre-pandemic figures.[41] MaPS's 2021-22 budget now stands at £46.6 million more than its pre-pandemic levels.[42]

An additional £10.3 billion of debt and arrears has already been built up as result of the pandemic.[43] For while the conditions of the pandemic have seen many better off households reduce their indebtedness through record levels of savings, this has not been the case for those less well off.[44] In fact, more than half of adults in families from the lowest income quintile have had to borrow more to cover everyday costs since the

36 CIVEA in evidence to the CSJ, 2021
37 Joseph Rowntree Foundation, As 400,000 renters face eviction, JRF warns the UK risks a 'two-tier recovery', 2021
38 Financial Times, 'Subprime lenders battle for survival as regulator takes harder line', 2021
39 Financial Conduct Authority, Coronavirus linked forbearance: key findings, 2021
40 Money and Pensions Service, 'Extra £38 million for debt support in England in the wake of coronavirus', 2020
41 Money and Pensions Service, 'Debt advice budget update', 2021
42 Ibid
43 StepChange, Tackling the coronavirus personal debt crisis, 2020
44 Bank of England, 'How has Covid affected household savings?', 2020

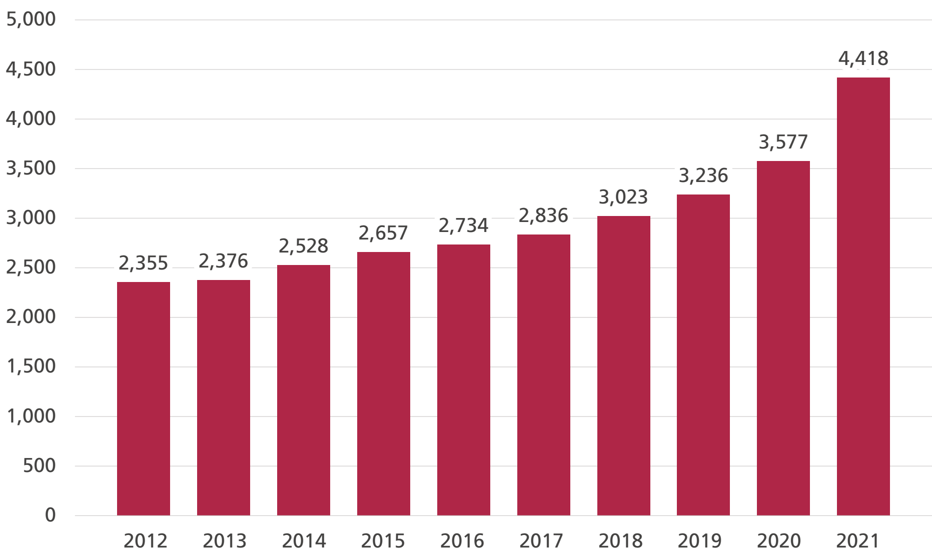
pandemic began.[45] Eight months into the pandemic, a major Financial Conduct Authority survey found that the number of people unable to withstand any additional financial shocks had increased to 14.2 million.[46]

With the financial resilience of lower income groups stretched to such a degree, the forthcoming withdrawal of the successful furlough scheme (and the planned cut to Universal Credit) is sadly likely to see families increase their borrowing even further and fall behind on essential bills such as rent and council tax.

One analysis by Citizens Advice suggested that 1.3 million households fell behind on their council tax bill in the first three months of the pandemic alone.[47] In response the Government provided local authorities with a £500 million Hardship Fund to provide council tax relief to vulnerable people and those whose incomes were hit by COVID-19.[48] At the Spending Review in 2020 the Government set out a commitment to provide councils with some £800 million to cover 75 per cent of irrecoverable council tax and business rates revenues.[49]

Still, the pandemic has sent a shockwave through local government finances. The National Audit Office calculated the pandemic's cost to councils stood at £6.9bn last year, forecasting further losses of £2.8bn in lost income in the 2020–21 financial year.[50] Official statistics published in June 2021 showed the amount of outstanding council tax reaching £4.4 billion, after £1.5 billion worth of bills went unpaid in 2020–21 – the highest on record (see Figure 3).

Figure 3. Total outstanding council tax arrears in England (£ million)



Source: MHCLG, 2021

45 Resolution Foundation, Pandemic Pressures: Why families on a low income are spending more during Covid-19, 2020
46 Financial Conduct Authority, Financial Lives 2020 survey: the impact of coronavirus, 2021
47 Citizens Advice, 1.3 million households have fallen behind on council tax due to coronavirus, 2020
48 Ministry of Housing, Communities and Local Government, 'Government confirms £500 million hardship fund will provide council tax relief for vulnerable households', 2020
49 Ministry of Housing, Communities and Local Government, February 2021: COVID-19 funding for local government in 2021 to 2022 policy paper, 2021
50 National Audit Office, Local government finance in the pandemic, 2021

As the largest commissioners of civil enforcement already, this increased financial pressure on local government is likely to direct many council collections teams to enforcing even relatively small debts deemed recoverable. Of course, while some councils price in losses from non-payment through a 'bad debt' contingency in local tax levels (estimated at roughly two per cent), they do not generally have the flexibility available to commercial creditors to manage risk. They cannot apply, for example, interest rates or limit their customer base; however, council tax support and exemption schemes funded through local taxation are based on a similar principle.[51] In any case, inflexible legislation which governs the way council tax debt is both escalated and collected, paired with blunt but widespread 'in-year' collection targets, will continue to direct many councils to enforcement despite some seeking to adopt alternative approaches.[52]

The rising reliance on enforcement to collect debt seen in recent years – and the uniquely vulnerable position many families (and indeed local authorities) find themselves in post-pandemic – make it more important than ever for enforcement to be carried out fairly, effectively and to the high standards the public deserve. Meanwhile recent inquiries into this matter, which we explore in Chapter Two, indicate that this is not yet always the case.

51 IFS, Reforming Council Tax Benefit, 2012
52 See CSJ, Collecting Dust, 2021

chapter two

The path forward for enforcement

2.1 The policy context

The lightning bolt of the pandemic obscures several years of debate over the future of enforcement, which became animated following a Ministry of Justice review in 2018 of major reforms introduced by the Coalition Government.

To recap, in 2013 the Government committed to strengthen protections against 'rogue bailiffs and the unsound, unsafe or unfair methods' they used, having found that 'a significant few use intimidating behaviour, treat debtors unfairly and cause unnecessary distress, destroying the reputation of the majority.'[53] Subsequently, the Taking Control of Goods regulations were introduced in 2014 and aimed to professionalise the industry, with 'bailiffs' becoming 'enforcement agents' and a new set of procedures and rules established (see Box 1).

Box 1. 2014 reforms to the enforcement of debt

- **A new procedure bailiffs must follow when collecting debt (The Taking Control of Goods Regulations 2013).** This includes standard letters and notices to inform debtors about the process, what they will be charged, their rights and where to get further advice. The procedure includes measures to prevent bailiffs from taking vital household essentials or items which are necessary for use by the debtor in their work or study. Two regulations provide protections for children and vulnerable people (although the regulation does not contain a definition of 'vulnerable person');
- **A new standardised fee regime with trigger points for payment at stages in the process (The Taking Control of Goods (Fees) Regulations 2014).** There are fixed fees which can be charged to the debtor at each stage for:
  - compliance (i.e. issuing an enforcement notice requesting payment);
  - enforcement (i.e. visit); and
  - sale (removing and selling controlled goods).

53 Ministry of Justice, 'Transforming Bailiff Action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections', 2013

The Ministry of Justice set out in an Explanatory Memorandum its intention to review the level of fees annually, and to uplift the baseline fees with reference to the most recent September Consumer Price Index (CPI) figure (although this review has not yet been implemented and fees have remained static).

- **Requirements that individuals must meet before they are certified to act as bailiffs (The Certification of Enforcement Agents Regulations 2014)**; and
- **Mandatory training** to ensure enforcement agents have the skills required to perform the role–for example, that they recognise vulnerable people. Enforcement agents are required to pass an exam to qualify for certification.

Source: Justice Committee, 2019

However, responding to new 'concerns that at a minority of bailiffs are still acting aggressively when collecting money from debtors – particularly from vulnerable people', the Ministry of Justice launched a call for evidence in 2018 to examine the efficacy of the 2014 changes and renew the 'crackdown on rogue bailiffs'.[54]

Despite consensus over the increased transparency and clarity established by the 2014 reforms, the call for evidence exposed concerns that elements of the enforcement industry were still falling short of the standards needed to treat people in debt fairly while honouring the rights of creditors.[55] Enquiring further in 2019, the Justice Committee also concluded that the 'under-regulation' of enforcement, as well as a complaints system that was 'fragmented and hard to navigate', were holding the sector back from fulfilling this role.[56]

The then Justice Secretary responded with a commitment to 'pushing forward with a reform package to make sure that people do not face aggressive action from enforcement agents and to improve trust in the industry as a whole.'[57] However, beyond making body-worn cameras mandatory in 2019 (an important measure such that it is),[58] the introduction of this package of reform has been stalled first by a change of government, and then by the urgencies of the pandemic.

The pandemic, nevertheless, provided the CSJ and the Enforcement Oversight Working Group with an opportunity to reconsider the key challenges and develop solutions through constructive dialogue between the civil enforcement industry, debt advice sector and other key stakeholders. Below, we examine the issues raised during the Ministry of Justice's call for evidence and Justice Committee inquiry, and consider how a new, independent oversight body could address these.

54 Ministry of Justice, 'Crackdown on rogue bailiffs', 2018
55 See, for example, Taking Control, Review of the enforcement agent reforms, 2019
56 Justice Committee, Bailiffs: Enforcement of Debt, 2019
57 Secretary of State for Justice, Enforcement Update. HCWS 1776, 22 July 2019
58 Ministry of Justice, 'Body-worn cameras to curb aggressive bailiffs', 2019. It is worth noting that CIVEA had already mandated this of its members.

2.2 Raising standards

Both the Ministry of Justice call for evidence and Justice Committee inquiry revealed broad agreement that the 2014 reforms had helped to standardise key elements of enforcement practice (such as the fee structure) and professionalise the sector through higher levels of competency and certification. As set out above, all civil enforcement agents are now individually certificated by the County Court (although the Justice Committee concluded that 'this seems to be a rubber-stamping exercise' as there is no requirement for continued professional development).[59] Additionally, extensive new guidance in the form of the *Taking Control of Goods: National Standards* (2014) provided a common point of reference for the standards expected of the industry.

Alongside the statutory changes determining acceptable enforcement practice (see Box 1), these National Standards were introduced to be, the Ministry of Justice describes, 'a helpful tool for the industry and for creditors which, it is hoped, will inform their own arrangements and against which they may benchmark their professional standards.'[60] The National Standards include – critically, non-binding – guidance on, for example, professional behaviour, financial requirements, training, discipline, conducing visits, and the treatment of vulnerable people.

While initially welcomed by advice, creditor and enforcement sectors alike, the National Standards have also been described to the CSJ by members of the enforcement sector itself as the 'bare minimum' that should be expected of its firms and agents. Indeed, the trade body CIVEA introduced a welcome new Code of Practice for civil enforcement agents in 2019 explicitly on the basis that this would 'exceed' the National Standards.[61] Notably, some firms have also independently introduced more sophisticated compliance stage measures to improve standards. This includes working with debt advice services to train staff on assisting vulnerable people, employing data science to understand more about people's behaviour and working with credit reference agencies.

In line with changing technological capabilities, some firms have embedded software linked to open banking where customers can provide authorisation for income and expenditure to be verified by their bank to produce a more accurate understanding of affordable repayment. Likewise, Propensity to Pay assessments and customer data analytics are used by some firms to improve the data intelligence and the best path to take on collection methods.

But despite areas of progress, the key pitfalls identified in efforts to raise collective standards are that they are non-binding (and so not upheld universally), and that there lacks sufficient supervision, disincentive, or accountability to uphold them consistently.

As a result, there is evidence to suggest that people experiencing enforcement have been exposed to conduct falling below the standards (and indeed the rules) established in 2014. A YouGov poll commissioned by StepChange and Citizens Advice found that, of those experiencing enforcement action between 2016–18, 17 per cent reported agents threatening to break into their home, while 11 per cent report agents taking control

59 Justice Committee, Bailiffs: Enforcement of Debt, 2019
60 Ministry of Justice, Taking Control of Goods: National Standards, 2014
61 CIVIEA, Code of Practice for Enforcement, 2019

of goods exempt in the rules such as laptops and vehicles required for employment purposes.[62] The charities suggested that one in three people undergoing enforcement had experienced behaviour contravening the guidance set out in the National Standards.[63]

Notwithstanding the scale of rule-breaking indicated by this analysis, which is strongly contested,[64] the impact of substandard enforcement on individuals experiencing financial difficulty (see Box 2) is undoubtedly significant where it does occur. In 2018 the National Audit Office found that an intimidating doorstep visit led to a 22 per cent increase in the probability of anxiety or depression levels rising, and a 15 per cent increase in the probability of debt problems becoming harder to manage.[65] Conversely, with the right training agents can play an important role identifying vulnerability in many cases (see Box 3). As such, both the Ministry of Justice call for evidence and Committee inquiry received submissions emphasising the need for rigorous application of the rules and protections for vulnerable people (we explore the latter in section 3.3).

Box 2. Thelma's story

Thelma lives alone in a property but her ex-partner is still registered as living there as the landlord has refused to let her take over the tenancy.

Thelma's ex-partner has a magistrates' court fine for domestic abuse, where Thelma was the victim. A debt advice charity discovered that although enforcement agents were aware that this is what the fine is for, they were still visiting her address. The client also had young children living with her, suffered from anxiety, and had COVID symptoms so was self-isolating. The enforcement agents were made aware of all of this. By the end of September 2020, the agents contacted Thelma and said they intended to force entry and take any goods she can't prove ownership of.

Source: Taking Control (names anonymised)

Box 3. Matthew's story

In May this year, an agent visiting to enforce a council tax debt discovered an extremely vulnerable person called Matthew with mental health conditions, who had failed to engage or claim his state pension and welfare support as he as he 'did not want to be a bother to the council during lockdown'. The agent alerted the police and social services. Matthew, it transpired, had also been financially abused by his cousin. Swift action from the agent and Barnsley council working together resulted in the individual getting urgent healthcare and financial support.

Source: CIVEA (names anonymised)

62 YouGov online field research was conducted with 5,786 respondents between 12 and 17 September 2018. Commissioned by StepChange and Citizens Advice. Published in 'A law unto themselves: how bailiffs are breaking the rules', November 2018
63 Ibid
64 See, for example, CIVEA in evidence to the Justice Committee, 2019
65 National Audit Office, Tackling problem debt, 2018

Indeed, consensus has emerged on the need to redouble efforts to raise standards. At roundtable discussions hosted by the CSJ in 2020 and subsequent calls for evidence, we heard from enforcement and debt advice organisations alike that independent supervision via a formal, independent oversight body would help to drive up standards universally across the sector and improve the consistent application of the rules.

Recognising the absence of this form of supervision, some larger enforcement firms have introduced semi-independent advisory boards to scrutinise internal practices and improve accountability.[66] However, this is not an option for many smaller firms. Agents and firms may choose to join a number of trade associations who offer guidance, training and complaints adjudication (many agents are members of multiple associations).[67] But as there is no formal oversight body comparable with other industries, the sector is reliant on voluntary Codes of Practice.[68] These are welcome but, as with the National Standards, limited insofar as they are non-binding.

This is not the case in other comparable sectors, where regulated firms undergo formal supervision (that is, independent of the industry itself) to ensure conduct reaches the appropriate standard. For example, firms approved by the Financial Conduct Authority are bound to a set of 'Treating Customer Fairly' principles, which mandate that the fair treatment of customers is embedded within the culture of regulated firms. Similarly, as part of gaining approval from Ofcom, UK broadcasters are bound in their license conditions to uphold the Advertising Code established by the Advertising Standards Agency. The existence of these bodies also means that new guidance can be developed and issued with the aim of continually raising standards (in contrast to the National Standards which have remained static since 2014).

Given the anomalous absence of a formal oversight body for enforcement, the Justice Committee in 2019 recommended the introduction of a 'regulator' to oversee the industry. This, the Committee argued, should 'work to change culture and raise standards (for example, by dissemination of good practice, owning and updating the National Standards, and supporting continuing professional development).'[69]

To address the pitfalls in earlier attempts to raise standards, the oversight body was envisaged by the Committee as 'able to stop unfit enforcement agents and companies from practising' and 'have the power to set intermediate sanctions such as fines for poor behaviour'. The Committee noted that the trade body CIVEA was not opposed to independent oversight; and the large enforcement firms they heard from were supportive, as long as the industry was involved in its design.[70] Building on this, the Enforcement Oversight Working Group has developed a model for enforcement oversight collaboratively with the enforcement and debt advice sectors, combining elements of comparable industry regulators. We return to this proposal in section 2.5.

66 Marston Holdings in evidence to the Justice Committee, 2019

67 Civil enforcement agents may join the Civil Enforcement Association (CIVEA) or the Certificated Enforcement Agent Association (CEAA). High Court Enforcement Officers are required to be members of their trade association (the High Court Enforcement Officers Association).

68 See, for example, CIVEA, Code of Practice, 2021

69 Justice Committee, Bailiffs: Enforcement of Debt, 2019

70 Ibid

2.3 Addressing the 'fragmented and hard to navigate' complaints system

Another key area arising in the reviews of enforcement undertaken recently is the accountability of the industry – and specifically the system through which people submit complaints about the treatment they have experienced. The accountability of (and public confidence in) enforcement, as pointed out by both enforcement and advice organisations during the CSJ's research, relies on the existence of fair and accessible avenues for redress. Moreover the protection of enforcement agents acting in accordance with the rules also relies on a robust mechanism for complaint adjudication. However, the effectiveness of the existing complaints system has been called into question on both these counts.

For background, current GOV.UK guidance suggests that complainants first raise their issue with the relevant agent or firm, and that they may also be able to raise the complaint with the appropriate enforcement trade association (that is, if the agent or firm is a member). Enforcement trade associations have made welcome efforts to introduce adjudication panels to assess escalated complaints; even so, the independence of these processes, given that they are hosted by industry bodies, is contested. What's more, the Civil Enforcement Association (CIVEA), the High Court Enforcement Officers Association (HCEOA) and the Certificated Enforcement Agents Association (CEEA) (which represents individual enforcement agents), all have different procedures in relation to escalated complaints.[71] This means there is a lack of consistency in the way complaints are assessed and escalated.

Complicating the picture further, complainants may also complain directly to local authorities (if the enforcement relates to a local authority debt); and then to the Local Government and Social Care Ombudsman (LGSCO) if they are not satisfied with the local authority judgement. In any case, it has been argued that neither trade association, local authority, nor LGSCO are equipped with sufficient powers to sanction firms and discourage misconduct. This is particularly the case for the LGSCO whose sanction power only extends to local authorities rather than the enforcement agents themselves. There is, however, a court process where stronger sanctioning power exists; complainants must submit an 'EAC2' form to the court which certificated the agent in question. The court may then rule to order goods to be returned, damages be paid and for an agent's certificate to be suspended or cancelled.

Some have reasonably pointed towards the low numbers of complaints (both raised and upheld) as evidence for low levels of misconduct. Just 249 complaints were received by CIVEA in 2018; 132 LGSCO decisions on cases were made between 2007–19; and just 56 cases were received by the courts between 2014–19.[72] These numbers are small in the context of the several million enforcement cases received by enforcement agents every year.

However, the case has also been made that low levels of complaints cannot accurately reflect the scale of rule-breaking due to the confusing and, in places, intimidating complaint processes which deter many people from pursuing them. As noted by the Money Advice Trust, people in problem debt commonly experience additional vulnerabilities (see below,

71 Campaign for Enforcement Reform in evidence to the Justice Committee, 2019
72 Justice Committee, Bailiffs: Enforcement of Debt, 2019

Box 4) meaning that '[t]hey are not necessarily in the best place to make formal complaints, especially where there is no clear complaints mechanism or defined outcome.'[73] Equally, enforcement agents must have confidence that, when mistaken or indeed vexatious complaints are brought against them, there are robust and independent processes to clear innocent agents of misconduct.

Meanwhile the current system, as the Justice Committee concluded, is 'fragmented and hard to navigate'.[74] The result is that both enforcement agents across the sector and the clients of debt advice organisations are let down. The Committee is right, then, to recommend 'a more clearly defined and independent complaints process [that] would give important reassurance that all complaints will be fairly and properly investigated.'[75] An ancillary benefit of this is that it would provide greater transparency about the true numbers of complaints and scale of misconduct.

Given the extraordinary statutory powers granted to enforcement agents to enforce debts, the lack of formal oversight with regards to complaints is anomalous. In comparable sectors, complaint handling processes are independently regulated, formalised and standardised – with a defined time period and clearly staged process.

For example, Ombudsman Services offers dispute resolution for customers and providers across a range of regulated sectors including energy and communications. Approved by OfCom and OfGem, and with some 2,000 providers registered across both sectors, Ombudsman Services provides a clear process through which complaints are handled (within a six to eight-week period), before being escalated for adjudication if either party is unsatisfied.[76] Similarly the Financial Conduct Authority mandates that a 'final response' be given to a complainant within an eight-week period and that appropriate guidance is given on how to escalate a complaint to an independent adjudicator (see Box 4).[77]

Box 4. FCA rules on complaints handling

2016 saw the introduction of new complaints handling rules by the Financial Conduct Authority (FCA). The FCA defines a complaint as 'any expression of dissatisfaction, whether oral or written, and whether justified or not'. All complaints must be handled over a maximum eight-week period in a 'two stage' process in which the firm itself provides the first point of resolution, before unresolved cases are escalated to the Financial Service Ombudsman. Regulated firms are mandated to:

- have processes for handling complaints fairly and promptly;
- publish the in-house complaint handling process'
- refer in writing to the availability of this summary at (or immediately after) the point of sale or the point of first contact with the customer;
- give this information in writing to customers when requested and when acknowledging a complaint;

73 Money Advice Trust in evidence to the Justice Committee, 2019
74 Justice Committee, Bailiffs: Enforcement of Debt, 2019
75 Ibid
76 See: www.ombudsman-services.org
77 Financial Conduct Authority, FCA Handbook DISP 1.6, 2021

- send the customer a prompt written acknowledgment or a summary resolution communication (if resolved);
- keep the customer reasonably informed about the progress of their complaint;
- send the customer a final response either accepting the complaint and, where appropriate, offering redress; offer remedial action without accepting the complaint;
- inform the customer their complaint has been rejected and send them guidance about the Financial Services Ombudsman if they wish to escalate the complaint.

Source: FCA Handbook; Financial Services Ombudsman

The Enforcement Oversight Working Group agreed that an independent oversight body for the enforcement industry should seek to integrate the complaints system and take responsibility for hosting the adjudication of escalated cases. The body would need to work with the various existing points of contact for complaints (including trade bodies, local authorities, the LGSCO and court) in a transition to centralised responsibility under one authority.

The oversight body would then be able to implement a much simpler, two-stage complaints process whereby anyone undergoing the enforcement would be able to raise a complaint via a clear, free and effective process (see Chapter Three, Function 8e). The authoritative, independent adjudication provided by this body would improve confidence in the system, producing the fair outcomes both people in debt and enforcement agents deserve. The oversight body would, however, need proportionate and fair sanctioning powers for it to conduct this role effectively (see Chapter Three, Function 7.2 and Function 8a).

2.4 Advancing affordable repayment and fair treatment of vulnerable people

Enforcement plays an important role in the ecosystem of debt collection, particularly when all other methods have been tried. This role also includes upholding individuals' duty to pay the tax they owe, as well as the fines imposed on them by the justice system – these are both essential components of a fair and just society.

Yet agents also have a responsibility to ensure that people in vulnerable situations, including those caught in a dangerous spiral of indebtedness, do not experience unnecessary harm or hardship. For this reason, debt advice charities and proponents of reform in the enforcement industry have advanced proposals for new affordability and vulnerability standards, bringing enforcement in line with recent improvements in the treatment of people in debt, while recognising the discrete role enforcement plays. The Enforcement Oversight Working Group agreed that an independent body with the authority to raise standards in the industry should also, following a process of extensive consultation, set out new affordable repayment and vulnerability protocols which are appropriate for the enforcement sector. We consider the case for these below.

2.4.1 Affordable repayment

In the hope of driving the industry towards less 'aggressive' and more sustainable forms of debt collection, the 2014 reforms (as outlined in section 2.2 above) introduced the 'compliance stage'. This incentivised the establishment of repayment plans through letters or phone calls with people in debt, rather than through doorstep visits or seizing of goods. The compliance stage thus also avoids a higher fee being incurred and attached to the principal debt. Prior to this, nearly every person receiving a council tax liability order would have also received an agent visit (and the attendant visit fees), as there was no mechanism to settle repayment without sending an enforcement agent. Industry figures suggest that 40 per cent of council tax debts are now recovered before the enforcement visit stage, mostly through a repayment plan.[78] As mentioned earlier, members of the industry have also invested in technology to enhance the compliance stage and offer more sophisticated channels of communication and assessments for the ability of repayments. This includes accessing data sources and employing analytics to work out an individual's circumstances and their Propensity to Pay. These are clear marks of progress in the industry.

Yet there is still more to be done. There remains, for example, a high degree of inconsistency around the repayment options offered to people at the 'compliance stage'. While voluntary Codes of Practice have made welcome efforts to steer firms' policies towards 'sustainable' repayment,[79] there is no standardised approach recommended, or best practice framework for assessing the affordability of payments, nor the regulatory teeth to mandate this (as explored in section 2.2 above). While many firms and agents endeavour for repayments to be 'sustainable' (as they perceive it), there is in effect a lottery depending on which local authority or enforcement firm a person happens to encounter as to whether they are offered a repayment plan they can genuinely afford, or face demands that could push them into further debt, hardship or crisis.

While some firms should be commended for adopting the Standard Financial Statement (a tool used across the debt advice sector to calculate affordable repayment plans), this is far from universal – and often hampered by firms' contractual obligations to 'creditors'. Indeed, Service Level Agreements between enforcement companies and 'creditors' such as local authorities can fundamentally limit the ability of firms to apply standardised and affordable repayment models, owing to many local authorities' blunt 'in-year' collection targets.[80] As such, the charity StepChange found that 49 per cent of its clients who experienced the enforcement of council tax debt said they were pressured into 'unaffordable' repayment plans at the compliance stage.[81]

Recent research has shown that, where enforcement firms adopt the aggressive repayment models often required of them to be competitive in winning contracts, this can not only have profoundly harmful effects for the health of people in debt, but can actually hinder the collection of the money they owe. One survey published by Citizens Advice, for example, found that 54 per cent of debt advice clients said the council's collection activities had made it harder for them to repay their debt.[82] Where people in debt miss a payment

78 CIVEA in evidence to the Justice Committee, 2019
79 CIVEA, Code of Practice, 2019
80 See CSJ, Collecting Dust, 2021
81 StepChange, Council tax debts, 2015
82 Citizens Advice, The Costs of Collection, 2019

(as is often the case when these are set at unaffordable levels), this can also result in the automatic escalation to the 'enforcement stage', which in turn incurs a higher fee and worsens the spiral of debt for the individual.

Sometimes a local authority will agree to a discretionary payment arrangement based upon a conversation with the debtor without requiring supporting evidence of their means. However, where a debtor requires a payment arrangement beyond a timescale deemed acceptable the authority usually requests evidence of income, savings or capital, and expenditure to justify the extended arrangement. While the CSJ heard numerous examples of good practice in this regard, application of the standard financial statement was reported to be highly inconsistent.[83]

In light of the inconsistency of practice there is clear need to empower enforcement firms to conduct collections through repayment plans at the compliance stage in way that is fair, affordable and consistent. The Enforcement Oversight Working Group agreed that a new oversight body should set out to develop a new affordable repayment protocol, standardise practice and establish fair expectations for both creditors and people in debt.

The enforcement industry deals with a complex range of clients and, as we have seen, for a wide range of debt types – including those owed for fines. Where payment is demanded in full, for example, this is sometimes the case due to the debtor having deliberately evaded paying on several occasions, despite having the means to; or it is when a 'recycled' case passed onto a new firm following several failed attempts to recover the debt more sustainably. As such any new affordable repayment protocol should put fairness at its core, recognising the difference between those who *can't* pay, as opposed to those who *won't* pay. Given the complexities here, any new affordable payment protocol should be developed through wide consultation with stakeholders across the enforcement, creditor, debt advice and justice sectors.

2.4.2 Vulnerability

Recent years have seen major advances in companies' treatment of vulnerable people when carrying out their business, providing a service or indeed collecting debt.[84] Encouraged by various Government initiatives (as well as wider evolutions in commercial practices), regulators have made efforts to limit harm and provide care to people experiencing vulnerabilities in the many forms these can take (see Box 5).

Members of the enforcement sector have similarly made important strides in their treatment of vulnerable individuals in recent years (of course recognising that their 'customers' are in effect the creditors who commission them, rather than the individuals whose debt they enforce). The 2014 National Standards established that enforcement agents 'each have a role in ensuring that the vulnerable and socially excluded are protected', and as such advise 'appropriate use of discretion' and 'agreed processes' between creditors and agencies for when vulnerability is detected.[85] Moreover, nearly all enforcement firms have employed specialised vulnerability teams to, according to one large firm, 'ensure each case is managed in the most helpful, supportive, and empathic way ensuring

83 See, for example, data in the Money Advice Trust, Stop the Knock, 2019
84 CSJ, Collecting Dust, 2021
85 Ministry of Justice, Taking Control of Goods: National Standards, 2014

vulnerable customers are not disadvantaged because of their personal circumstances'.[86] Measures to respond to vulnerable people have become increasingly embedded in firms, from contact centre operators to enforcement agents in the field, while specialists are trained in the use of management tools such as TEXAS and IDEA to make decisions about additional support needs.

Box 5. What is 'vulnerability'?

There is no single definition of vulnerability across statutory bodies and regulators.

According to OfGem's Consumer Vulnerability Strategy 2025, vulnerability is defined as when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where he or she is:

- significantly less able than a typical domestic consumer to protect or represent his or her interests; and/or
- significantly more likely than a typical domestic consumer to suffer detriment or that detriment is likely to be more substantial.

According to the Financial Conduct Authority (FCA), a vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. Examples of vulnerability include (but are not limited to):

- poor health, such as cognitive impairment;
- life events, such as a new caring responsibility;
- low resilience to cope with financial or emotional shocks, such as following a bereavement;
- low capability, such as poor literacy or numeracy skills.

According to the charity StepChange, one in five of their clients in problem debt have other vulnerabilities. The most common type of vulnerability was a mental health issue, with 43 per cent of vulnerable clients identifying this as their main vulnerability.[87]

Source: OfGem, 2021; Financial Conduct Authority, 2021

Even so, the advances in the treatment of vulnerable people seen in other sectors have not been applied universally across the enforcement industry. In 2021 the non-binding National Standards themselves are rather limited in scope and ambition in comparison to the high standards required of other sectors. To its credit, the CIVEA Code of Practice includes mandatory training for agents so that they 'identify and respond appropriately to cases of vulnerability, with referral to the client/creditor where required'.[88] But similarly the Code does not define broader responsibilities and outcomes for both firms and individual agents with regards to dealing with vulnerable people to the extent of comparable regulatory requirements.

86 Marston Holdings, 'Vulnerability Support', accessed 2021
87 StepChange, Breaking the Link, 2018
88 CIVEA, Code of Practice, 2019

Once again, the *scale* of harmful practice seen towards vulnerable people is strongly contested. One poll published in 2018 found that 1 in 5 people (18 per cent) contacted by enforcement firms reported that they had acted unsympathetically towards a person with a disability or health condition.[89] A Westminster Hall debate on Bailiff Regulatory Reform similarly heard MPs give examples where vulnerable constituents had had serious health conditions ignored, faced threats of prison, and one elderly constituent being wrongly forced to pay the debt of her adult son.[90]

While anecdotal evidence and polling data is both unsettling and reasonably contestable, many in the enforcement industry itself favour stronger requirements in the treatment of vulnerable people to improve public confidence in the sector collectively and to avoid any cases of vulnerable people being treated unfairly.

To raise standards in this area and ensure these are consistent, the Enforcement Oversight Working Group agreed that any new supervisory body should develop up-to-date vulnerability protocols in a process of wide consultation. This would draw out and enshrine the best practice already seen by leaders in in the sector, and incorporate advances seen in other sectors as far as is appropriate.

2.5 Establishing an independent oversight body: the Enforcement Conduct Authority

In light of these challenges, the CSJ is convinced of the case for an independent oversight body for the enforcement industry. This would not only raise standards and improve both accountability and fairness in the sector, but ensure the industry is fit to meet the challenges of the coming decade. Equipped with a clear mandate to ensure fair treatment for people subject to enforcement, the introduction of such a body would mean that thousands, if not millions, of people gripped by problem debt are better supported on a sustainable route out.

Responding to the Justice Committee report in a formal 'update' on the Ministry of Justice's 2018 call for evidence, the then Justice Secretary in 2019 said:

> We believe that regulation of this sector could be strengthened but we do not yet have a firm view on the form this should take. It is an issue that would benefit from further discussions with stakeholders. We are clear that any further regulation must be effective, proportionate and sustainable. [91]

The Enforcement Oversight Working Group was founded with this in mind – and committed itself to collaboratively developing an effective and proportionate solution supported by both the enforcement and debt advice sectors.

The Working Group set out to explore how an oversight body could work given the Government's stated position. In the succeeding chapter we present a Joint Framework, authored and supported by all members of the Working Group, which outlines the key aspects of this oversight body: the Enforcement Conduct Authority (ECA). But

89 Citizens Advice (2018), A law unto themselves
90 Westminster Hall, Bailiffs: Regulatory Reform, 9 January 2019, Volume 652
91 HC WS 1776

first it is necessary to consider some practical points about how a body of this kind could be established. These relate to its remit, independence, sustainability, and statutory underpinning.

First, the remit of the Working Group was, initially, limited to civil enforcement so as to focus on the largest constituent of the enforcement sector and keep the scope of the initiative realistic given its ambition. However, as the Working Group made progress in its discussions and relayed these to external stakeholders, it became clear that there was appetite to extend the remit across the enforcement sector more widely – for example by including oversight of High Court Enforcement Officers. The future development of the ECA will advance these discussions to widen the ECA's remit as far as is appropriate.

Second, the independence of any new oversight body is critical – a point made by the Justice Committee and reaffirmed by the Working Group. The Enforcement Conduct Authority will be set up as a new company limited by guarantee, with its own corporate governance and articles of association. To this end it will be wholly independent of government, enforcement trade associations, advice organisations and creditors. As set out in chapter three, an advisory board will, however, support the appointed ECA chair and/or chief executive in the establishment and early development of the ECA, supported by seed funding voluntarily provided by enforcement firms.

Third, 'sustainability' in this context alludes to the funding of such an oversight body. The Working Group agreed that the ECA would request no funding at all from government, and rather would be entirely funded by the enforcement industry via pro-rata contributions. In accordance with the ECA principle of 'proportionality' (see above Box 5), the level of contributions would be set recognising the size of the industry, the needs of its members, and a commitment to avoid unfairly burdening firms and agents. Contributions would be uprated in line with inflation to safeguard the sustainability of the ECA.

Finally, while the Government has steered campaigners away from a full statutory regulator in the form of a public body (hence the design of the ECA borrowing from successful self-regulatory models), the Enforcement Oversight Working Group agrees that, if limited statutory changes would support the full delivery of its mandate, these should be adopted by Government. For example, statutory underpinning could support the ECA in authorising agents and firms formally, while also equipping it with the authority necessary to compel high standards and effectively limit the operations of substandard firms. Providing limited statutory authority would also ensure the ECA has the authority it needs to act with complete independence – that is, to challenge the industry, the debt advice sector and, occasionally, government. These will be matters for the incoming ECA chairperson to review and make recommendations about, feeding into the Ministry of Justice's review of the ECA announced in April 2021.[92]

92 Lord True, HL Deb 14 April 2021, Col 1363–4

chapter three

The Enforcement Conduct Authority

3.1 Joint Framework for the Enforcement Conduct Authority

In this Chapter we present a Joint Framework, authored and supported by all members of the Working Group, which sets out the key aspects of the Enforcement Conduct Authority. This includes its objectives, its form and governance, and its functions. The Working Group has initiated a process of appointing a senior chairperson to develop and deliver this Joint Framework and launch the ECA.

Mandate

The principal mandate of the ECA is to ensure fair treatment and appropriate protection for people subject to enforcement. In doing so it will have particular regard to the need to protect people in financial difficulty or other vulnerable circumstances.

The delivery of this mandate is to be guided by five key principles.

1. Principles

1.1 Independence

1.1.1 The ECA will commit to upholding the principle of independence in all its activities. This relates (but is not limited) to aspects such as Board membership, those working for the ECA, as well as how the ECA will conduct its business.

1.2 Ambition

1.2.1 The ECA will commit to continually drive improvements in the enforcement sector through being ambitious in raising standards and collaborating with stakeholders to ensure fair treatment and appropriate protection for people subject to enforcement.

1.3 Proportionality

1.3.1 The ECA will work to the principle that any burden or restriction it imposes on individual agents, agencies and/or their activities should be efficient and necessary for the purpose of carrying out its mandate.

1.4 Collaboration

1.4.1 The ECA has been developed on the basis of collaboration between the enforcement sector and the debt advice sector. The ECA will commit to maintaining a spirit of collaboration between the enforcement sector and the debt advice sector as far as is appropriate.

1.5 Transparency

1.5.1 The ECA will exercise its functions as transparently as possible. One of the key outputs to that end will be an annual publication reporting its activity and findings – this will be published, shared and submitted to the Secretary of State for Justice.

2. Objectives

2.1 Raising standards

2.1.1 The ECA will drive up standards in the enforcement sector by setting out new effective standards, building on the Taking Control of Goods: National Standards (2014) (hereby 'National Standards'), supervising performance and conduct in the enforcement industry, and issuing firm and proportionate sanctions for non-compliance. This will aim to standardise practice and raise standards by ensuring the consistent application of regulations and codes of practice.

2.1.2 Standards will relate to (but will not be limited to) professional conduct; firms' policies and procedures; the treatment of vulnerable people; and fair and affordable repayment (see below, *Function 8b*).

2.1.3 As a matter of priority, the ECA will conduct a review of the National Standards in its first year of operation and will make recommendations to the Ministry of Justice on this basis.

2.2 Improving accountability

2.2.1 The ECA will increase accountability across the enforcement sector by holding enforcement firms and agents to account. This will be achieved primarily through supervisory activities (such as audits, reviews of firms' policies and procedures, compliance and complaints, reviews of enforcement agent footage, information requests and independent research); as well a firm and fair system of sanctions to penalise and strongly disincentivise non-compliance with the ECA's standards. This will also be achieved through the publication of an annual review of the ECA's activities, to be submitted to the Secretary of State for Justice.

2.2.2 The ECA will develop and introduce a new standardised complaints process so that everyone subject to civil enforcement will see a two-stage resolution to their cases within a set timeframe across all firms under the remit of the ECA (see below, *Function 8e.2–4*).

2.3 Adjudicating complaints

2.3.1 The ECA will host an independent complaints mechanism that will adjudicate complaints escalated from any bodies handling complaints relating to enforcement agents which fall under the ECA's remit.

2.4 Protecting the vulnerable and achieving fairness

2.4.1 In line with its mandate, the ECA will commit to ensuring the fair treatment of people subject to enforcement in vulnerable circumstances, and to drive improvements in practice building on work already undertaken in this area. This will be primarily delivered through provision of new affordable repayment and vulnerability protocols drawing on best practice from other organisations, firms and bodies, as appropriate.

3. Remit

3.1 The ECA's initial remit will be over certificated enforcement agents (also known as civil enforcement agents) and all firms that employ them.

3.2 The ECA will – in the absence of statutory powers to compel all certificated firms and agents to fall under its authority – deliver a strategy to bring all certificated enforcement agents under its authority. The ECA chairperson will review whether and what statutory powers are necessary to bring as many certificated agents as possible under the authority of the ECA (in line with *Function 8a*). ECA authorised firms will be listed in a public register and kitemarks will be provided as appropriate.

3.3 The ECA, following its establishment, will consult on the most effective way to bring other types of enforcement agents – such as High Court Enforcement Officers, County Court bailiffs, and Civilian enforcement officers – under its remit.

4. Independence

4.1 The ECA will operate entirely independently. This includes (but is not limited to) the following:

4.1.1 Having an independent chairperson, appointed collaboratively by the Working Group. The chairperson will in turn appoint independent board members.

4.1.2 Having no direct or indirect control from enforcement agencies, agents, advice organisations, or trade bodies.

4.1.3 Having its own independent budget.

4.1.4 Having sufficient infrastructure and resources to operate fully independently, in accordance with *Principle 1.3*.

5. Form, governance and establishment

5.1 The Enforcement Oversight Working Group will agree a collaborative process for appointing a chairperson to lead and design the development of the ECA in the run up to its establishment.

5.2 The appointed chairperson's primary duties will include (but will not be limited to):

5.2.1 Advancing the development of the principles, objectives, functions, and governance of the ECA as is required for practical implementation – and building on the framework agreement set out herein.

5.2.2 Commissioning an independent valuation of estimated operational costs as soon as feasible. This will take into account the policy, external engagement, IT and administrative staff required to fulfil the ECA's mandate, in accordance with *Principle 1.3.* An 'establishment budget' based on minimum viable product estimates will be provided as seed funding by enforcement sector representatives.

5.2.3 Developing the ECA constitution, articles of association, terms of reference and companies house registration.

5.2.4 Developing the terms and conditions of board membership and overseeing the appointment of board members.

5.2.5 Overseeing all ECA activities and representing the authority externally until appropriate external engagement staff are acquired.

5.2.6 Ensuring that all ECA activities are conducted according to the founding principles.

5.3 For a time-limited period, the appointed chairperson will be assisted in the early development of the ECA and its establishment by an Advisory Panel including representatives from the Ministry of Justice, enforcement industry, debt advice sector and Enforcement Oversight Working Group.

5.4 Enforcement industry representatives will provide the chairperson with appropriate financial support in the form of an 'establishment budget', enabling them to conduct the duties required to establish the ECA.

6. Funding

6.1 The ECA will be funded by pro-rata contributions from all firms that employ certificated enforcement agents.

6.2 In the event the ECA brings under its remit other types of enforcement agents (such as High Court Enforcement Officers, County Court bailiffs, and Civilian enforcement officers), it will review and adapt its funding arrangements accordingly.

6.3 In line with Principle 1.3, the rate of pro-rata funding contributions will be based on the independent operational cost estimates commissioned by the Chairperson (see 5.2.2) which will be proportionate to the ECA's functional requirements, without placing unfair burdens on individual firms. These will rise with inflation as is appropriate.

7. Statutory status

7.1 The chairperson will undertake a rapid review of the appropriate statutory authority required by the ECA to carry out its mandate fully and effectively. The review will also examine and set out the routes available to achieve this. The chairperson will make recommendations to the Ministry of Justice review of the ECA's activities announced by the Government in April 2021.[93]

7.2 The scope of the chairperson's review will include (but won't be limited to) the statutory authority necessary to deliver the ECA's mandate, principles, objectives, remit and functions (see s. 8). This will consider the precedent seen widely in sectors such as the financial services and utilities markets, and will look particularly at whether/how statutory underpinning would enable the ECA to:

- compel high standards universally across the enforcement sector;
- effectively limit the operation of substandard firms; and
- ensure it has the authority to act independently, in line with *Principle 1.1*.

8. Functions

8a Authorisation

8a.1 At its establishment, the ECA will commit to working with the Ministry of Justice and wider stakeholders to develop an appropriate and workable authorisation process for enforcement agents and firms, considering the existing and well-established court certification process. This will support the ECA in bringing the enforcement sector under its remit as widely as possible (see s. 3).

8a.2 The ECA will undertake a phased authorisation strategy during this process of engagement with the Ministry of Justice and stakeholders:

8a.2.i At its establishment, the ECA will endeavour to bring enforcement firms and agents under its remit by contributing, as far as is appropriate, to an environment for local authorities and other purchasers of enforcement services which strongly encourages the services of enforcement agencies and individual agents who are authorised by the ECA.

8a.2.ii Taking into account a range of views, and working closely with the Ministry of Justice, the ECA will then pursue the most effective route to bring as many enforcement agencies and agents as possible under its remit (see 7.2). This could include (but will not be limited to):

93 Lord True, HL Deb 14 April 2021, Col 1363–4

8a.2.ii.a The possibility of legislative amendments to The Certification of Enforcement Agents Regulations (CEAR) 2014 to make the decisions to issue certificates as set out in CEAR Part 1, section 3 conditional on ECA membership; and the cancellation or suspension of certificates as set out in CEAR 2014 section Part 1, section 10 conditional on ECA membership and/or sanctions.

8a.2.ii.b The possibility of legislative changes to prohibit local authorities from purchasing the services of enforcement agencies and agents who are not authorised by the ECA.

8a.2.ii.c The possibility of legislative changes to make ECA authorisation a condition of taking out liability insurance.

8a.3 Subsequently, and as far as is necessary to support the delivery of its mandate, the ECA will review the criteria for authorisation, building on existing requirements for certification as set out in The Certification of Enforcement Agents Regulations (CEAR) 2014[94] and including (although not limited to):

- Competencies on vulnerability.
- A commitment to ongoing professional development.

8b Standard setting and rule making

8b.1 The ECA will seek the appropriate powers to create new binding rules and set minimum conditions, standards, and competencies, agreed in consultation with stakeholders, to which all agents and agencies under its remit must adhere.

8b.2 The ECA will review and propose amendments to the official National Standards, such as the inclusion of a direction of authority to the ECA.[95]

8b.3 The ECA will consult widely to develop and issue new guidance on vulnerability, drawing on best practice from other organisations, bodies and firms, as appropriate.

8b.4 The ECA will develop a best practice framework for fair and affordable repayment as determined by the ECA board following public consultation and drawing from existing frameworks, for example the Standard Financial Statement. This repayment framework will be developed with stakeholders taking into account a range of views, while focusing firmly on the delivery of the ECA's mandate.

8b.5 Once developed, the ECA will assess firms against the fair and affordable repayment framework. It will also be published and disseminated among the customers of enforcement firms, such as Local Authorities.

94 The Certification of Enforcement Agents Regulations 2014
95 Ministry of Justice, Taking Control of Goods: National Standards, 2014

8b.6 Where enforcement firms are required to work to Service Level Agreements by customers, the ECA will work closely with customers and other stakeholders to bring the terms of Service Level Agreements into alignment with the ECA fair and affordable repayment framework.

8b.7 The ECA will undertake thematic reviews into key issues as they emerge, in accordance with *Principles 1.2* and *1.3*.

8c Supervision and monitoring

8c.1 The ECA will be responsible for overseeing the conduct of enforcement agents and agencies under its remit.

8c.2 The ECA will have the authority to conduct supervisory activities over all enforcement agencies and agents under its remit. This will include (but will not be limited to):

8c.2.i Requesting data and information (additionally to complaints data reports, see *Function 8e.9*);

8c.2.ii Conducting visits to firms including spot checks where appropriate;

8c.2.iii Conducting independent on-site assessment of firms' policies and procedures, including on compliance and complaints;

8c.2.iv Conducting sample checks on call handling and enforcement agent video footage;

8c.2.v Auditing agencies; and

8c.2.vi Conducting and commission its own independent research.

8c.3 The ECA will have the power to conduct annual audits of the enforcement industry. Currently, certificated enforcement firm audits are undertaken by independent compliance consultancy, with the Civil Enforcement Association (CIVEA) administering the process. The ECA chairperson will decide whether it wishes to bring this entire process under its remit.

8d Enforcement and Sanctions

8d.1 The ECA will have the autonomy to impose sanctions on agents and agencies for non-compliance with the minimum conditions, standards, and competencies it has set out.

8d.2 Sanctions imposed by the ECA will:

8d.2.i be based on a tariff, with variation in severity to allow for a proportional application according to severity of rule-breaking (in accordance with *Principle 1.3*).

8d.2.ii be firm enough to act as effective deterrents for rule-breaking.

8d.2.iii include (but will not be limited to): financial penalties; operational penalties (such as the withdrawal of the ECAs authorisation); and, for individual agents, the use of EAC2 process to determine whether an individual is fit to operate as an enforcement agent.

8d.2.iv be published.

8d.3 The specificities of sanctions will be agreed by the ECA and will be subject to periodic review.

8d.4 The ECA will commit to reviewing the efficacy of sanctions, based on data it will collect, on a periodic basis.

8d.5 The ECA will develop and set out a clear appeal process to deal appropriately with challenges to enforcement action it takes.

8e Complaints adjudication

8e.1 In its capacity as the authority for the enforcement industry, the ECA will host an independent complaints mechanism to adjudicate escalated complaints. This will be fully in accordance with ECA's *Principle 1.1* of Independence and will determine complaints by reference to what is, in its opinion, fair and reasonable in all the circumstances of the case.

8e.2 Separately, the ECA will commit to develop, introduce and mandate a simplified two-stage complaints process to unify and improve accountability across the enforcement sector. The new standardised complaints process means that everyone subject to civil enforcement will see a two-stage resolution to their cases within a set timeframe across all firms under the remit of the ECA.

8e.3 At stage one, firms will be required to address complaints within a set timeframe from notification of incident. This will include a deadline for the recognition of a complaint upon notification, as well as provision to incentivise effective early resolution. If a case is not resolved before the set timeframe, it will become automatically eligible for escalation. Complainants may request for complaints to be escalated before the timeframe, and the ECA will use discretion to consider early escalation.

8e.4 The ECA will issue guidance on firms' complaints handling processes within stage one, drawing from good practice seen in the sector.

8e.5 The ECA will host an independent adjudication for disputes escalated to stage two, or 'ECA stage'. Herein, the ECA will host an independent review of evidence such as body-worn and complainant video footage as well as individual testimonial. The ECA will then pronounce a judgement on a case, and will apply the appropriate redress in accordance with ECA Principles.

8e.6 When 8e.2 has been agreed, developed and implemented, firms which fail to adhere to the two stage complaints process will not be authorised by the ECA, and those found to be falling below ECA standards will be subject to sanctions as per *Function 8d*.

8e.7 The ECA will mandate firms to record 'expressions of dissatisfaction', so that all complaints are appropriately addressed.

8e.8 The ECA will require individual enforcement agents to self-report EAC2 complaints made against them and the outcome of the complaint.

8e.9 Firms will be required by the ECA to report and submit data on complaints and complaints processes. This will include (but is not limited to):

8d.9.i complaint volume;

8d.9.ii complaint type;

8d.9.iii complaint outcomes;

8d.9.iv annual complaints received, dismissed, and resolved.

The ECA will seek the powers to request additional information and conduct investigations on enforcement agencies as per *Function 8c*.

8e.10 The ECA will work closely with all bodies which currently have oversight on complaints relating to enforcement agents which will fall under its remit – such as industry trade bodies and the Local Governance and Social Care Ombudsman (LGSCO) – to determine the most effective transitional framework for bringing oversight on complaints under its purview.

The Centre for Social Justice

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