

Justice Committee inquiry on 'Bailiffs: Enforcement of debt' – written evidence from the Money Advice Trust



February 2019

1. Introduction

- 1.1. The Money Advice Trust welcomes this opportunity to contribute written evidence to the Justice Committee 'Bailiffs: enforcement of debt' inquiry.
- 1.2. This written evidence supplements the appearance of Joanna Elson OBE, chief executive of the Money Advice Trust to give evidence at the oral evidence session held on 15th January 2019.
- 1.3. Our evidence has also contributed to the Taking Control campaign's submission¹ to the Ministry of Justice 'Review of enforcement agent (bailiff) reforms: call for evidence' which closes on February 17th 2019.
- 1.4. Please note that we consent to public disclosure of this response.
- 1.5. For more information about this response contact Matt Hartley, Money Advice Trust Head of Public Affairs, at matt.hartley@moneyadvicetrust.org.

2. About the Money Advice Trust

- 2.1. The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence. The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.
- 2.2. In 2018, our National Debtline and Business Debtline advisers provided help to more than 204,000 people by phone and webchat, with 1.7 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2018 we delivered this free training to over 820 organisations. Furthermore, through our training and

¹ For the response submitted by the 11 agencies behind the Taking Control campaign on 15th February 2019 see <https://s3-eu-west-2.amazonaws.com/bailiffreform/media/taking-control-response-to-moj-call-for-evidence-feb-2019.pdf>

consultancy services we have worked with over 224 creditor organisations to help them to identify and support customers in vulnerable circumstances.

- 2.3. We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.
- 2.4. The Money Advice Trust is one of 11 debt advice and other organisations behind Taking Control², the campaign for bailiff reform which launched in March 2017.

3. Executive summary

- 3.1. The 2014 bailiff reforms have had only a limited impact – and debt advisers across the advice sector report that the new regulations are being contravened in practice.
- 3.2. 16% National Debtline callers surveyed have experienced bailiff action³ – and we continue to see widespread problems with the behaviour of bailiffs and bailiff firms. This has a significantly negative impact on the people we help, with 83% of National Debtline callers surveyed who had experienced bailiff action reporting a negative impact on their wellbeing⁴.
- 3.3. To address these problems the government needs to introduce independent regulation of bailiffs and bailiff firms, a clear, independent complaints mechanism and a revised bailiff fee structure that does not incentivise poor practice.
- 3.4. There is also a need to reduce the use of bailiffs in the first place – in particular, by improving local authority debt collection practices so that people in financial difficulty receive the support they need at a much earlier stage. Our research shows that 2.3 million debts were passed to bailiffs by local authorities in England and Wales in 2016/17 – an increase of 14% on two years previously⁵. The majority of these debts (1.38 million) were council tax arrears. Independent regulation by bailiffs must be complemented by measures to ensure a significant reduction in the volume of debts being passed for enforcement.

4. What was the impact of the 2014 enforcement agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007?

- 4.1. The 2014 reforms brought some limited improvements – with clearer rules governing when bailiffs can enter premises and what goods they can and cannot take, and

² Taking Control: The need for fundamental bailiff reform, 2017, <https://www.bailiffreform.org/storage/app/media/Taking%20Control%20report%20March%202017.pdf>

³ National Debtline client survey 2018, based: 258 callers

⁴ National Debtline annual impact survey 2018, base: 130 callers who had experienced bailiff action

⁵ Money Advice Trust, 2017, Stop The Knock: Mapping local authority debt collection practices, <https://www.stoptheknock.org/storage/app/media/downloads/money-advice-trust-stop-the-knock-2017-report.pdf>

better signposting to free debt advice. However, the rules continue to be contravened in practice – most notably, with reports of bailiffs not accepting affordable repayment offers, seizing goods inappropriately, and failing to take vulnerable circumstances into account. The problems caused by bailiffs disproportionately affect vulnerable people.

- 4.2. The reforms also introduced new problems in the form of a flawed statutory fee structure that incentivises bailiffs to escalate the situation (see section 6).
- 4.3. At National Debtline our advisers continue to report significant problems with the actions of bailiffs and bailiff firms, which can have a highly negative impact on the wellbeing of people in debt, as well as their ability to recover their financial situation. More than eight in 10 National Debtline callers (83%) surveyed who had experienced bailiff action reported a negative impact on their wellbeing⁶.

5. Why has there been an increase in complaints regarding enforcement agents?

- 5.1. It is important to make a clear distinction between ‘complaints’ and problems reported to debt advice charities. The high number of problems with bailiffs reported to debt advice agencies has not translated into a high number of formal complaints, which we would suggest is a systemic problem with complaints processes rather than a lack of grounds for complaint. Our clients in debt are very likely to be in vulnerable circumstances and dealing with many competing difficulties in their lives. They are not necessarily in the best place to make formal complaints, especially where there is no clear complaints mechanism or defined outcome.
- 5.2. The Ministry of Justice itself reports that there have only been 56 complaints through the new court-based process introduced in 2014, and Citizens Advice research has shown that in the last 2 years, just 28% of people who experiences a bailiff breaking the rules made a complaint.
- 5.3. The process for complaining about fees remains via detailed assessment in the county court which is costly, complicated and puts the client at risk of incurring substantial costs. It is very difficult to challenge high court enforcement officers over their fees. This is a common concern amongst both clients and advisers. There is no simple, easy access and cheap mechanism for complaints about fees.
- 5.4. Without the twin approach of independent regulation and a clear free complaints mechanism, we can expect that poor practice is going to continue.

6. Is the fee structure working to encourage enforcement agents and debtors to settle at an early stage and to minimise the financial impact on debtors?

⁶ National Debtline annual impact survey 2018, base: 130 callers who had experienced bailiff action

- 6.1. The current fee structure is not working to encourage settlement at an early stage or to protect the most vulnerable. There are separate fees for the 'compliance stage' (£75), enforcement stage (usually £235) but for high court enforcement there is a first enforcement stage (£190) and a second enforcement stage (£495). In addition there are two levels of fees added for the 'sale stage' of £110 or £525 for high court enforcement. These fees can escalate sharply.
- 6.2. The current fee structure means that a small council tax debt, for example, can have £420 in bailiff fees added within just a few months. These fees are added to the debt – making it even harder for people to pay.
- 6.3. This fee structure is inherently flawed – with bailiffs given every incentive to escalate enforcement action, rather than settle at the earliest stage possible – which is always in the best interests of the person in debt.
- 6.4. The fee structure should be revised to make sure that bailiffs are incentivised to do the right thing, with a statutory list of activities set out in regulations that bailiffs must carry out before moving on to each next stage. For example, this could include:
 - Demonstrating efforts to make contact, and to negotiate a realistic, affordable repayment arrangement using the standard industry accepted budget, the Standard Financial Statement.
 - A requirement to actively engage in establishing a payment plan with the person in debt. The regulations and costs structure should require this payment arrangement to be reasonable and affordable for the person's circumstances.
 - Each firm being subject to a requirement to provide a fully-staffed phone line for people to use, provided at reasonable and accessible hours of the day.
- 6.5. Advisers frequently report that high court enforcement officer (HCEO) charges cause debts to escalate disproportionately. There should be one consolidated fee structure that aligns high court enforcement with other forms of enforcement.
- 6.6. There is no simple, easily accessible and cheap mechanism for complaints about HCEO fees. A further problem is that VAT continues to be charged to people in debt by HCEOs despite HM Revenue and Customers guidance suggesting this is not allowed.

7. Does the current system of self-regulation work as intended, and if not, should enforcement agents be regulated by an independent regulator?

- 7.1. It is important to recognise that the problems identified with the industry practice goes far beyond the actions of a few so-called 'rogue bailiffs', which is a term the Ministry of Justice has often used. These problems are systemic. Self-regulation has not been effective in reducing the harm we see from this industry.

- 7.2. Given the scale of the problems that the advice sector is reporting, only independent regulation can address this – and just as importantly, this needs to be accompanied by a clear, free independent complaints mechanism. These mechanisms need to work together to address the systemic harm in the way in which the industry operates.
- 7.3. We would suggest that the lack of independent regulation of the bailiff sector is highly anomalous. Debt collection agencies are authorised by the FCA, must follow strict rules, and are supervised closely as to their conduct. This is in spite of the much more intrusive powers that the bailiff sector has to collect debt and potentially to interact with vulnerable people in their own homes. As a free debt advice charity, we are also authorised by the FCA and must comply with FCA rules. We are therefore more strongly regulated than bailiff firms.
- 7.4. Regulation should be the responsibility of an independent statutory body, and should provide control and oversight of both individual bailiffs and bailiff firms, to tackle both individual and systemic bad practice. The regulator should have the power to monitor business practices, including supervision of individual bailiffs and bailiff firms – and should set standards of practice and training requirements. Compliance with these requirements should be monitored, with action taken where these are not met.
- 7.5. Various different models of regulation that have been suggested – including setting up a new independent regulator or adding bailiffs to the remit of the Financial Conduct Authority. We view regulation by the FCA as the most attractive option. The FCA already regulates debt collection agencies, and does this very effectively – and in some cases already regulates firms operating in the enforcement industry, in respect of their debt collection (but not their enforcement) activities.
- 7.6. A further advantage of regulation by the FCA is its strong focus on the experiences of and outcomes for people in vulnerable circumstances, following the publication of its Occasional Paper on Consumer Vulnerability⁷ in 2015. The FCA is this year consulting on new guidance for firms on identifying and supporting customers in vulnerable circumstances, demonstrating its continued commitment to bring about improvements in the financial services industry. A similar focus on vulnerability is badly needed in the enforcement industry.
- 7.7. In addition to the introduction of independent bailiff regulation and an accompanying complaints mechanism, the government should take steps to reduce the number of debts passed to bailiffs in the first place. Money Advice Trust research published in 2017 showed that 2.3 million debts were passed to bailiffs by local authorities in

⁷ FCA Occasional Paper No 8: Consumer Vulnerability, 2015, <https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability>

England and Wales in 2016/17 – an increase of 14% on two years previously⁸. The majority of these debts (1.38 million) were council tax arrears.

- 7.8. Independent regulation by bailiffs must be complemented by measures to ensure a significant reduction in the volume of debts being passed for enforcement.

⁸ Money Advice Trust, 2017, Stop The Knock: Mapping local authority debt collection practices, <https://www.stoptheknock.org/storage/app/media/downloads/money-advice-trust-stop-the-knock-2017-report.pdf>