

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

Call for Evidence



1. The LGA is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services.
2. This response has been agreed by lead members of the LGA Resources Board.

General remarks

3. We welcome the opportunity to respond to the call for evidence on the 2014 enforcement agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007. Councils use enforcement agents to recover debts, notably council tax. Council tax income is a vital source of income for local authorities who use it to help pay for local services such as street cleaning, waste collection, children's services and adult social care. Council external funding has been cut by over £15 billion since 2010, and local government faces a funding gap of over £3 billion in 2019/20 just to maintain current services. Therefore it is important that local authorities are able to collect income that is due to them. Otherwise valuable local services including those that help protect children and vulnerable adults may need to face further cuts.
4. Where possible, councils will take steps to make sure that people in financial difficulty are supported, whether that's through signposting to free debt advice, or through the joint Council Tax Protocol, which the LGA has developed alongside Citizens Advice to support those who are struggling and which contains good practice in various areas such as partnership with the debt advice sector, information to council tax payers and debt recovery. The use of enforcement agents is one of the last stages in the process of debt recovery and councils will have used a variety of stages such as reminders and explored alternatives to the use of enforcement agents, such as attachment to earnings orders.
5. A number of the questions in the Call for Evidence are aimed at individuals who have had experience of action by an enforcement agent, or are seeking the experience of individual organisations, and

Submission

are therefore not relevant to the LGA as a representative body for councils. This response focuses on the elements of the Call for Evidence that are relevant to councils as a whole.

Answers to questions in the consultation

Question 1 (to anybody who has been contacted by an enforcement agent):

If you, or somebody you know, have had experience of action by an enforcement agent in the last 12 months?

a) Was the enforcement agent a High Court Enforcement Officer or civil enforcement agent? If you are not sure, please include details of what the debt was and for what amount.

b) Who was the creditor?

c) When did the enforcement activity take place (month and year)?

d) How did the enforcement agency/agent behave during the enforcement process?

6. This question is not of direct relevance to the LGA or its member councils as it addressed to individual debtors.

Question 2 (to advice sector organisations):

Has your organisation seen any change to the volume and nature of calls/contact regarding enforcement agents since the reforms came into force? If you have any statistics to assist your response, please contact bailiffreview@justice.gov.uk

7. This question is not is not of direct relevance to the LGA or its member councils as it addressed to advice sector organisations.

Question 3 (to the enforcement sector and creditors):

a) What measures has your business taken to make sure that the enforcement agents that you employ operate within the rules introduced by the 2014 reforms?

b) How do you monitor the effectiveness of these measures? If you have management information or other evidence from your compliance monitoring, please contact bailiffreview@justice.gov.uk

8. Councils who use enforcement agents and those which employ them directly have implemented the new regulations and procedures introduced in 2014. This includes ensuring that enforcement agents go through the stages set out in the regulations, including distinguishing between compliance, enforcement and the sale or disposal stage and that appropriate fees are applied, ensuring that this is set out in full on council websites (for example see [East Devon](#)). Some councils have developed their own codes of practice (see [Manchester City Council](#), [Sefton Council](#) and [Bedford Borough Council](#)).

9. Councils have a variety of ways of monitoring effectiveness as part of normal contract compliance work. The ultimate sanction is termination of contract. Individual councils will be able to supply examples.

Question 4 (to all with an interest)

a) Are you aware of, or do you have concerns about, violence towards enforcement agents when carrying out their duties in accordance with the regulations?

- b) In your experience, do the police have adequate knowledge and awareness of the new regulations?**
- c) Do you have any data on violence against enforcement agents or the number of times that the police are called out to attend?**

10. The LGA does not have any direct experience of these issues; individual member authorities may be able to provide information on this.

Question 5 (to anybody who has been contacted by an enforcement agent):

If you or someone you know has been contacted by an enforcement agent in the last 12 months:

- a) Did you/they consider yourself/themselves to be vulnerable? If yes, how?**
- b) How did you communicate your/their vulnerable status to the agent/creditor?**
- c) Did the enforcement agent and/or creditor recognise your/their vulnerability and what action was taken?**

11. This question is not of direct relevance to the LGA or its member councils as it addressed to individual debtors.

Question 6 (to advice sector organisations): Has your organisation seen any change to the volume and nature of contacts regarding vulnerable debtors since the reforms came into force? If you have any statistics to assist your response, please contact bailiffreview@justice.gov.uk?

12. This question is not of direct relevance to the LGA or its member councils as it addressed to the advice sector.

Question 7 (to the enforcement sector and creditors):

- a) What steps have you taken to make sure that vulnerable debtors are protected?**
- b) How do you assess a debtor as being vulnerable?**
- c) What procedures do you have in place to deal with debtors who you have assessed as being vulnerable?**
- d) Are there any other issues regarding debtor vulnerability you would like to raise?**

13. The MoJ National Standards have particular provisions relating to vulnerable debtors, that there should be procedures agreed between the agent/agency and creditor about how such situations should be dealt with, for example where only children are present. The LGA and Citizens Advice protocol, referred to above, states that as part of their corporate policy of debt and recovery, local authorities should have a process for dealing with cases that are identified as vulnerable. Where a local authority's vulnerability criteria apply, debts should be considered carefully before being passed to enforcement agents.

14. Councils which have their own locally developed codes of conduct, such as [Manchester City Council](#), may well have their own definitions of vulnerability and special procedures to deal with debtors who are vulnerable by these definitions, for example, returning the case to the

Council without charging an enforcement fee.

Question 8 (to anybody who has been contacted by an enforcement agent)

If you had a complaint against an enforcement agent in the last 12 months,

- a) How did you find out how to make a complaint?**
- b) Was the information that you received about how to make a complaint easy to understand?**
- c) If you made a complaint, who did you make it to?**
- d) If you did not make a complaint, why did you not do so?**
- e) Were you satisfied with the way in which the complaint was handled? If not, did you take any further action?**
- f) If your complaint was upheld, were you satisfied with the sanction or remedy that was imposed?**

15. This question is not of direct relevance to the LGA or its member councils as it addressed to individual debtors. The LGA's views on complaints and the place of an independent regulator are covered in the answer to questions 17 to 19 below.

Question 9 (to advice sector organisations, the enforcement sector and creditors)

Do you have any recent statistics or other evidence about the number and nature of complaints that have been made against enforcement agents and whether these have changed since the 2014 reforms? If you have figures please email bailiffreview@justice.gov.uk to discuss what you have and the best way to submit it to us.

16. The LGA has not collected any evidence on this matter.

Question 10 (to all with an interest) Do you think that the sanctions that the organisation or court considering a complaint can impose are effective and proportionate? If not, please set out what other sanctions should be permitted?

17. Many councils have complaints procedures as part of their contract compliance. This will set out the stages a complainant should go through and their right of appeal. Dissatisfaction with the service, as evidenced by a pattern of complaints could be a factor in deciding whether or not to renew contracts. In addition enforcement agent action is covered by the Local Ombudsman which can find that there was maladministration and order the repayment of any fees wrongly levied. The LGA does not have any suggestions for further sanctions.

Question 11 (to all) Have you encountered or are you aware of any practical difficulties with the procedure for applying to the court for a certificate to act as a civil enforcement agent?

18. The LGA has no views on this.

Question 12 (to all) Do you think that the training requirements are sufficient to enable civil enforcement agents to perform their duties? If no, are there additional training requirements that would be beneficial?

19. The LGA is aware that the Certification of Enforcement Agents

Regulations 2014 specify that a certified bailiff must have a knowledge of the law and procedure relating to powers of enforcement and that it is a feature of local authority contracts with enforcement agents that they must be properly certified in line with the legislation. We are not aware of any additional training requirements at this point.

Question 13 (for all): Within the last 12 months do you have any evidence of aggressive or misleading letters being left for debtors by enforcement agents? If yes, what did the letters say?

20. The LGA has not collected any evidence of such aggressive or misleading letters.

Question 14 (to all) a) Do you think that the fee structure is working to encourage enforcement agents and debtors to settle at an early stage and to minimise the financial impact on debtors? b) What evidence do have to support this view?

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

21. When the fee structure was introduced, the LGA was aware of concern within the sector that, although it did standardise a regime which had been criticised by some, the system of fixed fees (£75 for compliance stage and £235 for enforcement stage) can be disproportionate, particularly for small debts, such as Council Tax Support. In addition, the system of percentages (7.5 per cent of debts above £1500) can add up to substantial amounts in the case of some business rates debts.

22. The LGA considers that the Government should review the fees regime. It should also consider offering a discount to incentivise prompt payment.

Question 16 (to all with interest in or experience of using the CRAR (Commercial Rent Arrears Recovery) procedure): a) Do you think that the CRAR procedure strikes the appropriate balance between providing protection against aggressive action by enforcement agents whilst ensuring that debts can still be collected effectively? b) What evidence to you have to support your view?

23. The LGA has no views on this matter.

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

Question 18: Do you think that enforcement agents should be regulated by an independent regulator? If so, what powers, scope and structure should the independent regulator have and how should it be funded?

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

24. As stated above many councils have complaints procedures as part of their contract compliance which set out steps to be followed with the possibility of appeal if the complainant is not satisfied. The ultimate sanction is termination of contract and dissatisfaction with the service

provided, as evidence a pattern of complaints could be a factor in deciding whether or not to renew contracts. In addition enforcement agent action is covered by the Local Ombudsman which can find that there was maladministration and order the repayment of any fees wrongly levied.

25. The LGA is aware that some organisations have made the case for an independent regulator. The Government should look carefully at the case for this. An argument for that might be that it would benefit councils to be assured that when they contract enforcement agents they can be confident that enforcement agents are adhering to agreed industry practices, to ensure that we maintain trust and confidence in the system overall.

26. Councils in any case have experience of working with independent regulatory bodies covering various services, such as Ofsted and the Care Quality Commission.

Local Government Association
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