



TAKING CONTROL

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The need for fundamental bailiff reform



March 2017





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Foreword

Debt advice agencies and other charities have long raised concerns about the way bailiffs collect debt. Based on the experiences of the people we help, this report makes recommendations for fundamental changes to protect people in financial difficulty and improve the practices of bailiffs.

In recent years, some limited progress has been made in improving the way bailiffs collect debt, culminating in the 2014 bailiff reforms in England and Wales. However, these reforms have had only minimal impact. People contacting debt advice charities continue to report widespread problems with the behaviour of bailiffs and bailiff firms.

These include long-standing issues, such as bailiffs rejecting offers of payment or using threatening or even unlawful behaviour. There are also new problems arising from a statutory fee structure that can incentivise poor practice.

We are now approaching the three year anniversary of the 2014 changes – a key point at which the Ministry of Justice pledged to hold a review of their impact. Ministers now have the opportunity to deliver the fundamental reform that is needed to resolve these outstanding problems.

Our seven organisations – AdviceUK, Christians Against Poverty, Citizens Advice, Money Advice Trust, StepChange Debt Charity, The Children’s Society and Z2K – all see the impact of continued problems in the bailiff industry on the people we help.

In this report, we present evidence on the experiences of our clients who have faced bailiff action over the last three years. We also explain the benefits that further reform would bring to people in debt, as well as to creditors, local and central government and the bailiff industry itself.

We make seven key recommendations for the Ministry of Justice and other policy makers, which we believe can tackle the continued problems we are seeing in this industry. These reforms – including independent regulation of bailiffs, a single complaints mechanism, and the restructuring of bailiff fees to incentivise good practice – would represent a significant step towards the goal of building a country that works for everyone.

In the coming three year review of the 2014 reforms in England and Wales, Ministers have the opportunity to take control of the bailiff problem, and deliver the fundamental changes that people in debt need. We look forward to making this case in the months ahead.

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AdviceUK

Matt Barlow
Chief Executive
Christians Against Poverty

Gillian Guy
Chief Executive
Citizens Advice

Joanna Elson OBE
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Executive summary

The 2014 Taking Control of Goods reforms to bailiff law in England and Wales – which aimed to clean up the industry, ensure that bailiffs played by the rules and protect people from unfair practices – have had only limited success.

People contacting debt advice charities still report widespread problems with bailiffs – now officially known as enforcement agents – and our evidence suggests that in the absence of an independent bailiff regulator, or a clear and accessible complaints mechanism, the new regulations are being contravened by many bailiffs in practice. The reforms have also created some new problems through a new fee structure that incentivises bailiffs to escalate to enforcement action.

In this report, we present evidence of continued problems with bailiff behaviour, ineffective complaints mechanisms, the difficulty of suspending bailiff action and problems arising from the new bailiff fee structure – and share examples of the experiences raised with us by our clients in financial difficulty week in, week out.

We also present the benefits that we believe further reform can bring not only to people in debt, but to creditors, local and central government, and the bailiff industry itself.

Our recommendations are:

1. The bailiff industry should be independently regulated.
2. There should be a free, clear, transparent and accessible bailiff complaints procedure.
3. There should be a clear, simple and universally applicable procedure that allows people to apply to suspend action by bailiffs.
4. Bailiff fees should be restructured, so as to incentivise good practice.
5. Bailiffs should use a prescribed and consistent framework for agreeing affordable repayments.
6. There should be procedures in place to identify vulnerable people and protect them from enforcement.
7. Creditors should be required to act responsibly and do demonstrably more to collect debt before resorting to enforcement.





1. Introduction: bailiffs and the 2014 reforms

Legislation governing the activities of bailiffs to collect unpaid debts dates back centuries. The landscape is a complex and fragmented one, with several different types of bailiffs operating in England and Wales, different equivalents operating in Scotland and Northern Ireland, and widespread confusion between bailiffs of all kinds and debt collectors, which is an entirely different industry.

Amidst this complex landscape there has been one constant over many years – significant concerns raised by debt advice agencies and other charities over the actions of bailiffs, and the severely negative impact that this can have on people in financial difficulty.

DIFFERENT TYPES OF BAILIFF

Since the 2014 regulations bailiffs in England and Wales are now officially known as ‘enforcement agents’. This report uses the more common term ‘bailiff’ throughout. Bailiffs can take control of goods in different ways to raise money to offset against the debt owed. The term ‘enforcement agent’ includes:

County Court bailiffs: directly employed staff of HM Courts and Tribunals Service are used to take control of goods to recover money owed under county court judgments and any associated costs. They also effect and supervise the possession of property and the return of goods under hire purchase agreements, and serve court documents.

High Court Enforcement Officers (HCEOs): responsible for enforcing court orders by taking control of goods to recover money owed under a High Court judgment or a County Court judgment transferred to the High Court. They also effect and supervise the possession of property and the return of goods.

HMRC officers: who may be used to take control of goods to recover tax debts.

Private bailiffs: employed by private companies (and some local authorities who employ in-house bailiffs directly). Private bailiffs can enforce a variety of debts on behalf of organisations such as local authorities, and can take control of goods to raise money to offset against the debt owed. They cannot enforce the collection of money due under High Court or County Court judgments.¹

Unless they are exempt, bailiffs require a certificate from the County Court to enable them to perform their duties. The certificate confirms that the bailiff:

- is a ‘fit and proper’ person to perform their duties; and
- has sufficient knowledge of the law about taking control of goods.

HCEOs, County Court bailiffs and HMRC employees are exempt from the requirement to hold a certificate.

Bailiffs are not the same as debt collectors

A debt collector (credit collection agent or debt recovery agent) is an individual or company who recovers money owed for consumer credit such as credit cards, loans and general commercial purchases and also some other debts. They are employed by all sorts of organisations to collect debts. Debt collectors are not bailiffs, are not certificated by the court to act as bailiffs and have no legal powers to collect debts beyond contacting individuals to try to arrange repayment.

Differences in legislation in the United Kingdom

The Scottish equivalent of bailiffs are called ‘sheriff officers’, while in Northern Ireland court judgments are enforced by the Enforcement of Judgments Office. They are covered by different legislation and regulations to England and Wales.

1. Conway, L. (2013) The current regulation of bailiffs. House of Commons library



Let

In 2013 the government committed to strengthening protections against “rogue bailiffs and the unsound, unsafe or unfair methods” they used, after finding that “a significant few [bailiffs] use intimidating behaviour, treat debtors unfairly and cause unnecessary distress, destroying the reputation of the majority.”²

The resulting regulations – known as Taking Control of Goods,³ – were introduced in April 2014 and aimed to clean up the industry, ensure that bailiffs played by the rules and protect people from unfair practices.

WHAT DID THE 2014 REFORMS TRY TO ACHIEVE?

The changes introduced in bailiff regulations⁴ in April 2014 aimed to:

- Prevent bailiffs entering homes when only children were present, visiting people after 9pm or before 6am, or taking basic domestic items such as a cooker or microwave, refrigerator or washing machine.
- Ensure a notice period of seven days is sent before bailiffs can visit to take control of goods (although this can be shortened on application to a court).
- Prevent bailiffs from selling goods, unless seven days have passed from the date the goods were removed.
- Make bailiffs responsible for proving to a court that there are, or likely to be, goods on the premises before being granted the power to enter third party premises to take control of goods.
- Introduce a fixed fee structure for the different stages in bailiff action to take control of goods.
- Introduce a complete set of statutory prescribed forms that must be used by bailiffs throughout the taking control of goods process.
- Introduce further protections for people in vulnerable circumstances.
- Set a ‘competence criterion’ for entry into the bailiff profession and a mandatory training regime.

Crucially, however, in the absence of an independent bailiff regulator, evidence from debt advice agencies suggests that many of these measures are being ignored or contravened in practice.

The Ministry of Justice promised a staged process review of the 2014 bailiff reforms one year, three years and, if necessary, five years after they came into force.⁵ However, the outcome of the one year review has still not been published and it is unclear if further reviews will take place.⁶

2. Ministry of Justice (2013) Transforming Bailiff Action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections. The Government Response
3. Implementation of Part 3 of the Tribunals, Courts & Enforcement Act 2007, Statutory Instrument: The Certification of Enforcement Agents Regulations 2014, Statutory Instrument: The Taking Control of Goods Regulations 2013, Statutory Instrument: The Taking Control of Goods (Fees) Regulations 2014

4. Ministry of Justice (2013) Transforming Bailiff Action: The Government Response

5. Ministry of Justice (2013) Transforming Bailiff Action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections. The Government Response
6. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-10-07/46871/>



WHO USES BAILIFFS?

Local authorities use private bailiffs to collect council tax, business rates and commercial rents, parking penalty charges, Housing Benefit overpayments and sundry other debts. Some local authorities employ their own in-house bailiffs directly.

HMRC officers act as bailiffs and collect income tax, national insurance and VAT debts. HMRC can also use their own bailiffs to collect tax credit overpayments.

DWP can collect benefit overpayments through the County Court, which can lead to the use of County Court or High Court bailiffs.

Other public sector bodies also use private bailiffs after taking action through the Magistrates' Court, including the Child Maintenance Service and TV Licensing. The Magistrates' Court itself uses bailiffs to collect criminal court fines.

Consumer credit lenders can take court action in the County Court, which can lead to the use of County Court bailiffs.

Utility companies can take court action through the County Court, which can lead to the use of County Court or High Court enforcement.

The 2014 reforms have brought about some improvements,⁷ including greater transparency, clearer rules governing when bailiffs can enter premises and what goods they can and cannot take, modernised and updated language, and greater signposting to free debt advice.

However, these changes do not go far enough to address the main problems highlighted by debt advice agencies – and our evidence suggests that in the absence of an independent bailiff regulator, or a clear and accessible complaints mechanism, the new regulations are also being contravened by many bailiffs in practice.

The new regulations have also created some new problems, in particular relating to a fee structure which inherently incentivises bailiffs to charge higher fees (which are added to the debt being collected) by escalating to enforcement action.

As we approach the three-year anniversary of the 2014 reforms – a key point at which the Ministry of Justice has promised a review of their impact – AdviceUK, Christians Against Poverty, Citizens Advice, Money Advice Trust, StepChange Debt Charity, The Children's Society and Z2K have come together to make the case for further reform.

In the following sections, we present evidence of the continued problems that exist in this industry, the benefits that further reform could bring to people in debt, creditors, local and central government and the bailiff industry itself, and seven key recommendations for the Ministry of Justice and other policy makers to consider.

7. Money Advice Trust (2015) Stop the Knock: advice sector survey, Has enforcement agent behaviour changed since April 2014?



2. Evidence of continued problems

Our evidence suggests that key provisions in the 2014 regulations, such as not misrepresenting bailiff powers, ensuring bailiffs do not act in a threatening manner, production of all relevant notices, documents and identification at the correct stage of bailiff action, and protections for people in vulnerable circumstances, are being contravened in practice.



Michael* Citizens Advice

Citizens Advice helped Michael, who stays with his father during the week. His father is 75 years old and disabled. Michael took his father into town and parked, using his father's blue badge, in a loading/unloading area. He received a parking notice which was in his name and sent to his own home. He challenged the fine as he believed it was incorrect. Due to the appeal, the original fine had risen to £150. While Michael was still contesting the fine, a bailiff visited his father's home. The bailiff refused to let Michael's father contact Michael and escorted him to an ATM where he took more than £400 to pay the fine and the bailiff's fees.

*Names have been changed

A survey of debt advisers⁸ conducted after the reforms came into effect has highlighted that the following concerns about bailiffs continue, including:

- not accepting offers of payment;
- using threatening behaviour;
- not applying fees appropriately or proportionately;
- seizing goods inappropriately, in particular goods belonging to third parties;
- failure to adhere to the correct rights of entry; and
- failure to treat vulnerable clients appropriately.

2.1. Problems with bailiff behaviour

The lack of independent regulation and monitoring of bailiffs is a significant concern. Debt advice agencies continue to see evidence of aggressive and threatening behaviour by some bailiffs, as well as other bailiff practices that breach the new regulations.⁹

A 2016 survey of StepChange Debt Charity clients found that of those who had been contacted by bailiffs, nearly half said they had received an intimidating doorstep visit. A separate online survey conducted by the charity found that of 1,400 people who had been visited by a bailiff in the last six months, 24% had tried to arrange repayment over the phone but found the bailiff insisted on visiting their home to take payment, and 17% were not contacted by the bailiff before they visited – both examples of bailiffs not complying with the new regulations. In 2016 The Children's Society reported that parents and children were still finding it distressing when bailiffs came to the house to remove items or to force them to leave the house, and children were witnessing this first hand, causing them emotional distress.¹⁰

At the same time, the scale of bailiff use is significant and growing. Last year Citizens Advice helped people with 82,000 issues related to bailiff action – with 57,000 issues related to bailiff enforcement of council tax debt alone. In 2015 the Money Advice Trust, the charity that runs National Debtline, reported that the use of bailiffs by local authorities – the largest user of bailiffs – in England and Wales had increased by 16% over a two year period, with 2.1 million debts passed to bailiffs in 2014/15.¹¹

8. Money Advice Trust (2015) Stop the Knock. Advice sector survey, Has enforcement agent behaviour changed since April 2014?

9. Money Advice Trust (2015) Stop the Knock. Advice sector survey, Has enforcement agent behaviour changed since April 2014?

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

11. Money Advice Trust (2015) Stop the Knock.



Caroline's mother*
National Debtline

Bailiffs visited the property of National Debtline client Caroline's mother to collect an outstanding Magistrates' Court fine. Despite having previously visited Caroline's own residential address, they maintained they had been given permission from the court to call at her mother's house. This was denied by the court when Caroline's mother rang to check. The bailiffs arrived early in the morning demanding payment and, under duress, Caroline's mother borrowed this money from an older relative, who also lived in the property, for fear of having her goods taken to pay for a debt in Caroline's name.

*Names and photos have been changed

Of more than 1,700 StepChange Debt Charity clients surveyed in 2016, one in six had been visited by a bailiff in the previous year. 50% of those who had been visited said they were treated unfairly, the highest "unfairness" score of any type of organisation listed. 55% of these clients said bailiffs made their debt problems harder to manage, and 16% went further by saying that they felt forced to take out more credit to deal with the demands from bailiffs.¹²



Sinead*
Christians Against Poverty

Christians Against Poverty (CAP) client Sinead got into debt as a result of financial abuse by her ex-partner who was in prison. At the time Sinead had an 11-year-old child, stated that she had attempted suicide in the past and had around £9,000 in council tax arrears. Despite Sinead making some payments towards these arrears, the debt was still passed on to a bailiff firm. Sinead was not at home when the bailiff first visited, but her neighbour informed her that he had shouted loudly outside her home for about five minutes. The bailiff had also been in touch with Sinead's employer several times and spoken to the company director, trying to find out her hours of work and threatening Sinead that he would turn up at her workplace. Sinead told CAP that she was worried that all her neighbours now knew about her financial difficulty and that she would lose her job. This had also had a damaging effect on her mental health – she was having trouble sleeping and was very anxious. Shortly before visiting CAP, Sinead had had to take time off work due to the stress caused by the bailiff visits and she was under a performance review as a result.

*Names and photos have been changed

A separate 2015 survey of over 1,000 StepChange Debt Charity clients with council tax arrears¹³ found evidence of practices that do not conform to the 2014 Taking Control of Goods National Standards:

- in 12% of cases bailiffs visited the home outside the 'reasonable hours' of 6am – 9pm;
- in 17% of cases bailiffs continued action despite clients agreeing a repayment plan; and
- in 3% of cases, bailiffs entered the home when only children were in.

12. StepChange Debt Charity (2016) Creditor and debt collector conduct: what's making debt problems worse?

13. StepChange Debt Charity (2015) Council Tax Debts: how to deal with the growing arrears crisis tipping families into problem debt



Derek*
National Debtline

A bailiff was collecting outstanding council tax from National Debtline client Derek, who is a pensioner in his late seventies, severely disabled and housebound. Following a notice being left at the house, Derek's carer contacted the bailiff firm and was told that a locksmith was due to attend to force entry to Derek's property in the evening, despite no previous entry or any controlled goods agreement being in place. The bailiff firm also suggested that there could be police attendance to the premises to arrest Derek if payment was not made in full. Derek's carer, being terrified, paid the bailiff firm using her own money when they later visited, to stop any further action.

*Names and photos have been changed

RECOMMENDATION



In the light of the continued problems that people in debt are experiencing with bailiff behaviour and evidence of some bailiffs contravening the 2014 regulations, we recommend that the government should introduce full independent regulation and monitoring of the bailiff industry to improve standards.

One unfair bailiff practice that remains a consistent theme in feedback from debt advice clients is the practice of refusing to accept affordable repayments when offered, resulting in people in debt who are trying to resolve their situation falling further into difficulty.



A 2016 survey of StepChange Debt Charity clients found that of those who had been contacted by a bailiff, 48% said the bailiff refused to accept an affordable repayment offer.

RECOMMENDATION



We recommend that independent regulation should include a requirement for bailiffs to use a prescribed and consistent framework for assessing affordability, based on an objective standard such as the Standard Financial Statement (SFS).

The Money Advice Trust has highlighted concerns over continued poor bailiff behaviour in the case of people in vulnerable circumstances,¹⁴ such as those with mental health problems. Under current regulations there is no standard system for bailiffs to identify people in vulnerable circumstances and some bailiffs seem to take little or no account of vulnerability when dealing with people in debt.

Nine out of ten StepChange Debt Charity clients (90%) who had been visited by bailiffs in the previous two years were identified as having some level of vulnerability, beyond their obvious financial difficulty. Of those clients who had been contacted by bailiffs, 22% had an ongoing mental health condition, 57% said they had depression and 66% stress or anxiety.¹⁵ This calls into question how well bailiffs are taking vulnerable situations into account, despite protections for vulnerable people forming part of the 2014 bailiff regulations.

14. Money Advice Trust (2015) Stop the Knock. Advice sector survey, Has enforcement agent behaviour changed since April 2014?
15. StepChange Debt Charity (2016) Creditor and debt collector conduct: what's making debt problems worse?



Maureen*
Z2K

Z2K client Maureen is a single adult with a severe mental health condition. Before Council Tax Support schemes were localised, she received full Council Tax Benefit and was not used to getting council tax bills. She initially received a letter from the council stating that she owed £34.50 after the council had agreed to charge those on Council Tax Benefit a proportion of the full council tax bill. Maureen did not understand the letter as she had never had to pay council tax before. Later, upon receiving a court summons, which stated she owed £164.50 (£34.50 plus £130 costs), she rang the council to inform them of her vulnerability. She was told that it was not possible to negotiate a repayment plan and unless she paid the amount owing in full her case would go to court. Shortly after, she received a knock on the door from bailiffs demanding a total of £474.50. Despite her obvious vulnerability they pressured her into allowing them access and proceeded to make an inventory of her possessions. Under threat of having her goods seized, she agreed to a repayment plan which Z2K advisers stated was “obviously unsustainable for someone in her financial situation.” The experience resulted in a worsening of Maureen’s mental health condition and she developed a fear of answering her door.

*Names and photos have been changed



Over half of parents visited by bailiffs who were surveyed by The Children’s Society stated that their children were present in the house every time or most of the time. They found that children whose home had been visited by a bailiff were over three times more likely to hold back from asking their family for things because they worried they would struggle to afford them. For those families that had a bailiff visit, they frequently found the attitude of the bailiff to be scary (four in ten parents), aggressive (a third of parents) or even physically intimidating (two in ten). Of these families, seven in ten said that they believed that their children had been frightened, sad or worried as a result of the bailiff visit.¹⁷



Ayesha*
StepChange Debt Charity

StepChange Debt Charity client Ayesha reported that in June 2016 a bailiff called at her home for the first time. When she opened the door the agent stuck his foot in the way and forced his way past her, despite not having the legal right to enter. The bailiff told her that she should repay her debt to him by not paying her rent and borrowing money from her employer or landlord. The bailiff then sat Ayesha at her computer and tried to make her apply for a payday loan to repay the debt.

*Names and photos have been changed

Given these practices, it is unsurprising that bailiff action has continued to negatively affect people’s mental wellbeing, family life and employment. In the previously mentioned 2015 StepChange Debt Charity client survey:

- 93% said bailiff action had increased their levels of stress or anxiety;
- 63% said it had put their family under strain;
- 50% said it affected their concentration at work; and
- 39% said it affected their ability to focus on getting a new or better paid job.¹⁶

16. StepChange Debt Charity (2015) Council Tax Debts: how to deal with the growing arrears crisis tipping families into problem debt

17. The Children’s Society (2015) The Wolf at the Door



In a 2016 report on council tax arrears, Citizens Advice presented evidence of the stress experienced by their clients who have been subject to bailiff action – especially when the family includes children, or household members who are disabled and unable to move about the house quickly to speak to a bailiff or prevent them entering. The stress is compounded by the knowledge that bailiff action is adding further charges to debts – and that once a debt is passed to a bailiff firm, it can be even more difficult to negotiate an affordable repayment plan.¹⁸

RECOMMENDATION



Due to the particularly negative impact that bailiff action can have on people in vulnerable circumstances, we recommend that there should be stronger procedures in place to identify vulnerable people and protect them from enforcement action.

See section 4 for our full recommendations on **independent regulation**, **affordable repayments** and **vulnerability**.

2.2. Problems with complaining about bailiffs

Given the widespread problems with bailiff behaviour that debt advice agencies continue to observe, it is crucial that people in debt are able to access an adequate complaints mechanism and seek redress where they have been treated unfairly.

Unfortunately, as it stands, complaints against bailiffs are largely ineffective.

There is no single process to make a complaint about a bailiff to a free, independent complaints body – with people instead faced with a plethora of different complaints mechanisms depending on the situation and type of bailiff in question. These separate complaints procedures rely on the fact that the person complaining – who is often in distress or vulnerable circumstances – knows which type of bailiff they are dealing with, and can access the corresponding mechanism accordingly.



DIFFERENT COMPLAINTS MECHANISMS FOR DIFFERENT TYPES OF BAILIFFS

The 2014 regulations introduced a single process to complain about a certificated bailiff's fitness to hold a certificate through the County Court that issued the certificate. This can result in the court cancelling or suspending the certificate.¹⁹

This process is often free, but in certain circumstances can attract costs. The process for complaints about certificated bailiff fees, specifically, is still via detailed assessment in the County Court which is complicated and puts the complainant at risk of incurring substantial costs.

An individual can also complain about bailiff action, through the bailiff firm or the creditor that instructed them. Although bailiffs are expected to follow the Ministry of Justice Taking Control of Goods National Standards,²⁰ which includes a section on how complaints should be handled, the standards are not statutory and there are no sanctions if they are not followed. If a complainant is unsatisfied with the response of the bailiff firm or creditor, they can escalate their complaint to the appropriate creditor ombudsman. If the creditor is a local authority, for example, a complaint can be escalated to the Local Government Ombudsman, or if the creditor is a government department the complaint can be taken to the Parliamentary and Health Service Ombudsman (or in both cases the Public Services Ombudsman for Wales).

The bailiff trade bodies, the Civil Enforcement Association (CIVEA) and the High Court Enforcement Officers' Association (HCEOA) each have their own complaints procedure, although this only covers those who are members. However, data on complaints to trade bodies are not routinely published and are largely unsatisfactory as a source of redress for the complainant. For example, the HCEOA complaints procedure does not deal with complaints about fees; and neither CIVEA nor HCEOA deal with complaints about the amount of debt owed.²¹

Complaints about County Court bailiffs are addressed to the County Court hearing centre concerned, through the bailiff manager, then the chief clerk at the court and, if still unresolved, the court's administrator. As a last resort a complaint about a County Court bailiff can be taken to the Ministry of Justice or, through an MP, to the Parliamentary and Health Service Ombudsman.²²

19. <http://www.legislation.gov.uk/uksi/2014/421/regulation/9/made>

20. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353396/taking-control-of-goods-national-standards.pdf

21. <https://www.hceoa.org.uk/images/content/documents/want-to-complain/want-to-complain.html#p=2>

22. <http://www.ombudsman.org.uk>



George*
StepChange Debt Charity

StepChange Debt Charity client George told a bailiff who was unhelpful and rude that he would take the matter to CIVEA. George was told that the bailiff's firm were not members of CIVEA. The bailiff subsequently failed to give his own company's complaints process when George then requested this, despite this being a requirement of the 2014 Taking Control of Goods National Standards for bailiff firms. Nor would the bailiff give George the name of his company's trade body.

*Names and photos have been changed

Overall, the experiences of debt advice clients suggest that bailiff complaints processes are inaccessible, overly-complicated, sometimes involve significant costs for the complainant and do not guarantee an open decision-making process and appropriate redress.



Fiona's mother*
Christians Against Poverty

Bailiffs visited CAP client Fiona's mother's house and gained entry. They threatened to take goods belonging to Fiona's mother unless she paid Fiona's debt balance of £360. Fiona had previously made the bailiff firm aware that she no longer lived at her mother's house and this was restated by Fiona's mother during the visit. Nevertheless, the bailiff began to take control of goods and as a result Fiona's mother paid the debt. Fiona's mother was subsequently admitted to hospital and Fiona felt this was due to the trauma she had experienced as a result of the bailiff's visit. Following a complaint e-mail from CAP, the bailiff firm stated in a reply that they did not accept any liability for the mistake made.

*Names and photos have been changed

The fragmented processes for complaints about bailiffs also means there is no reliable, independent data about the volume of complaints made – meaning that a key opportunity to monitor the impact of the 2014 regulations is being missed. As far as we are aware, the Ministry of Justice does not currently require individual bailiff firms to provide statistical reports about the complaints they receive. There is also no publicly available register of bailiff complaints and their outcomes from trade bodies, nor a common definition of a complaint or a common complaints process.

RECOMMENDATION



We recommend that independent regulation of the bailiff industry should be accompanied by a free, clear, transparent and accessible complaints procedure applicable to all kinds of bailiff – with complaints data also mandatorily published by bailiff firms and trade bodies.

See section 4 for our full recommendations on **complaints**.



2.3. Problems with suspending bailiff action

The problems with bailiff behaviour that people in debt experience are compounded by the fact that while bailiff action can be initiated quickly, once this happens, it can be very difficult to stop.

As with complaints, different procedures exist for suspending action in different situations (and in reality, most people are put off applying because of the complexity of the

process) – and for a number of debts enforced by bailiffs, there is simply no process to suspend action at all.

Even when the amount of arrears is being disputed, it can often prove difficult to halt bailiff action once it has started, meaning that people who are trying to repay their debts can continue to experience the stress of bailiff visits for many months.²³ This difficulty in suspending bailiff action is also seen when mistakes have been made in identifying the person responsible for the debt.

SUSPENDING BAILIFF ACTION IN DIFFERENT SITUATIONS

The N245 procedure in the County Court²⁴ allows people to apply to the court to suspend a warrant of control and to offer affordable repayments to their creditors. This process is largely paper-based.

In the Magistrates' Court, once a warrant of control has been issued to recover a court fine, the court has little power to postpone or delay bailiff action or to make an order to allow the charge to be paid in affordable instalments.

County Court judgments which have been transferred to the High Court for enforcement by writ of control can be suspended, but the process is much more complex than the N245, requiring payment of two court fees and attendance at a hearing.

For other types of bailiff action, there is no process to suspend the action, with only creditor discretion leading to this outcome.

23. Money Advice Trust (2015) Stop the Knock

24. National Debtline (2016) Fact sheet No 08 EW County Court – Stopping Bailiff Action



John*
Citizens Advice

Citizens Advice helped John, who was in receipt of Employment Support Allowance. He owed money on an old council tax debt and an overpayment of housing benefit. He was paying the debts through deductions from his benefits. John received an enforcement notice for a debt of more than £1,500. The notice stated John's goods could be removed in his absence. A bailiff tried to enforce the debt but John's partner refused the bailiff entry. The reason for the notice was that there had been a problem with the payment of the deductions from his benefits to pay off the old council tax debt. When Citizens Advice contacted the bailiff to let them know, the bailiff refused to suspend enforcement action.

*Names have been changed

Bailiff action in the case of council tax arrears can be particularly hard to stop. It is often not easy to negotiate directly with local authorities to avoid them taking further enforcement action, or to stop bailiff action once the warrant has been passed on for collection, even when an affordable repayment plan has subsequently been agreed.²⁵



Selina*
National Debtline

National Debtline client Selina called on behalf of her mother who had mental health problems and was very worried about a Magistrates' Court fine of more than £1,000 which was not in her name, which a bailiff had been contacting her about. Although she complained to the court and the bailiff firm, Selina's mother was told by the bailiffs that she must pay the debt or they would break into her home.²⁵ This distressed Selina's mother still further. Selina had been told by both the court and the bailiff firm that they could not discuss the case with her, because the fine was not in her name.

*Names and photos have been changed

This is because the Council Tax (Administration and Enforcement) Regulations²⁷ set out the rules that must be followed in order to recover council tax arrears. These state that the council should apply for a liability order within seven days of the final notice, if the amount due is wholly or partly unpaid. Often bailiffs are instructed immediately after the liability order has been obtained,²⁸ despite the fact that local authorities could consider using other recovery methods, such as attachment of earnings orders, at this point. Alternatively, a council could use their statutory powers to find out further information about the means of the person in council tax arrears, and use this to make an informed decision about the best way to ensure they negotiate an affordable repayment plan.

25. Bailiffs collecting criminal fines routinely use this threat. However a Freedom of Information request for the period April 2014 to December 2015 shows that forced initial entry for fines was only used four times nationally

26. Money Advice Trust (2015) Stop the Knock

27. <http://www.legislation.gov.uk/uksi/1992/613/contents/made>

28. Money Advice Trust (2015) Stop the Knock



Chloe*
StepChange Debt Charity

In August 2016 StepChange Debt Charity client Chloe had had a dispute with her council who were charging her council tax, despite the fact that as a student she should have been exempt. Her disputed arrears were passed to a bailiff firm by the council almost immediately. However, after several months the dispute was sorted out and the council agreed Chloe was exempt from council tax charges and that she didn't owe any council tax. Despite this, the bailiffs still said that Chloe owed their fees of £412.69 and continued to threaten Chloe with action to collect the disputed debt and their additional fees.

*Names and photos have been changed

The problems created by the difficulties in suspending bailiff action are wide-ranging. Where people find that their creditors will not, or cannot, stop bailiff action and that additional bailiff fees have been added to the debt, their financial problems worsen. For example 61% of surveyed StepChange Debt Charity clients who continued to face bailiff action borrowed more money as a result.²⁹



Peta*
National Debtline

A High Court Enforcement Officer attended National Debtline client Peta's property to collect a business debt owed by her son, who was then living abroad. The bailiffs were aware that he was living abroad. However, they went on to clamp Peta's car, demanded several thousand pounds in full from her and stated that if she did not pay the full debt in one lump sum the amount owed would rise to an amount nearly double the original balance. Peta felt compelled to pay the balance by credit card, despite this not being her debt and being unable to afford to do so. After paying she saw that the fees already added to the debt included amounts for the removal of goods, despite this occasion being the first visit by bailiffs to her property. The bailiffs had ignored the fact Peta was not responsible for the debt, threatened her by misrepresenting their powers, and added excessive and incorrect fees to the amount owed. As a result Peta had felt obliged to use unaffordable credit and had fallen into debt herself.

*Names and photos have been changed

RECOMMENDATION



Just as there should be a single complaints mechanism, we recommend that there should be a clear, simple and universally applicable procedure that allows people to apply to suspend bailiff action if they believe they have a case to do so.

See section 4 for our full recommendations on **suspending bailiff action.**



2.4. Problems caused by the new bailiff fee structure

In addition to not going far enough in addressing existing problems in the bailiff industry, the 2014 reforms have also created a significant new problem in the form of the new bailiff fee structure.

This entails separate fees for a ‘compliance stage’ (£75), ‘enforcement stage’ (usually either £190 or £235 depending on the type of bailiff) and ‘sale stage’ (usually either £110 or £525), which inherently incentivises bailiffs to escalate to enforcement action.



THE NEW BAILIFF FEE STRUCTURE

The 2014 reforms brought in a new bailiff fee structure, with fixed fees for different stages of the process being added to the debt being collected.³⁰

For **bailiffs not acting under a High Court writ of control**, there are three stages of the process, with a fixed fee that can be charged for each. At compliance stage (being instructed by the creditor, carrying out initial checks and investigations, receiving payments) a fee of £75 can be added. At enforcement stage (where the bailiff visits and enters the home and takes control of goods) a fee of £235 can be added (and an additional 7.5% of the amount owing over £1,500, if the debt is more than £1,500). At the sale stage (where the bailiff removes and sells goods that were taken control of at the enforcement stage), a fee of £110 can be added (and, again, an additional 7.5% of the amount owing over £1,500, if the debt is more than £1,500).

For **bailiffs acting under a High Court writ of control**, the compliance stage is the same (a £75 fee) but there are two enforcement stages rather than one, with the bailiff able to charge £190 at the first enforcement stage (and an additional 7.5% of the amount owing over £1,000, if the debt is more than £1,000) and if the person in debt does not make and stick to a ‘controlled goods agreement’, a further £495 at the second enforcement stage. At the sale stage the fixed fee is £525 (and an additional 7.5% of the amount owing over £1,000, if the debt is more than £1,000).

Bailiffs are also able to charge other reasonable expenses for activities such as storage, locksmith fees and auctioneer costs.

High bailiff fees continue to cause small arrears to spiral into much larger debt problems. A 2015 survey of more than 1,000 StepChange Debt Charity clients in council tax arrears found that bailiff charges were adding significantly to their levels of debt.³¹ A small council tax debt can now have £420, or more, in bailiff fees added within just a few months, making it even harder for people to pay.

On top of this, Citizens Advice has reported that debts accumulated in different financial years from the same creditor are sometimes being treated as individual debts, to each of which separate bailiff fees are applied.³² This is despite the Taking Control of Goods (Fees) Regulations 2014 requiring bailiffs “to minimise the fees and disbursements charged where they act in relation to more than one debt to the same creditor. Where practicable, they are expected to deal with the goods together and on as few occasions as possible”.³³

30. National Debtline (2017), High Court enforcement and Magistrates’ Court fines fact sheets, <https://www.nationaldebtline.org/EW/information/fact%20sheet%20library/Pages/default.aspx>

31. StepChange Debt Charity (2015) Council Tax Debts: how to deal with the growing arrears crisis tipping families into problem debt

32. Citizens Advice (2016) Catching up: improving council tax arrears collection

33. <http://www.legislation.gov.uk/uksi/2014/1/note/made>



At the same time, any money collected by bailiffs goes to paying off their compliance stage fees first before the creditor sees a penny, with the remaining money collected being divided pro-rata between payment of the debt and payment of the remaining fees due to the bailiffs.³⁴ This can often result in bailiff action having a disproportionate impact on people in financial difficulty compared to the returns for creditors.

Furthermore, although most fees being charged by bailiffs can be charged legitimately under the new fee structure, there is also evidence that a minority of bailiff firms are charging more than the standard fee charges. Nearly one in five StepChange Debt Charity clients surveyed (19%) said they had been charged VAT on top of bailiff fees, even though VAT is only usually chargeable to the purchaser of a service, in this case the creditor, not the person in debt.³⁵ Meanwhile, a separate StepChange Debt Charity client survey found that over half of clients who had been visited by bailiffs had felt that they had added excessive fees to their debts.³⁶

We are also seeing worrying examples where the current fee structure is being misused to maximise returns for bailiffs. StepChange Debt Charity has recently had several reports from clients of bailiffs refusing to speak to clients on the phone and insisting that they had to visit their home, despite the fact that the client was trying to contact them to agree a repayment plan at the compliance stage. This means that the client has to pay an extra £190 or £235 fee as, if a visit has taken place, the bailiff can claim that the action has moved to the enforcement stage.

For High Court Enforcement Officers specifically, the two different enforcement stage fees that can be applied are a particular problem, as this structure incentivises these bailiffs to refuse instalment offers or insist on offers that are so high that the client defaults at the first enforcement stage, so allowing them to charge the second enforcement stage fee of £495.

Nina*
Citizens Advice

Citizens Advice helped Nina, a single parent with three children. She had had been paying a Magistrates' Court fine of £600 via a deduction from her benefits whilst she was looking for work. The deduction finished when she found a job. As Nina had been paying for a long time, when the payments stopped she thought she had paid off the fine. She received notice from a bailiff regarding an outstanding fine of £60 with an additional £310 in fees. The bailiff had given the original documents to Nina's 17-year-old daughter, who does not live with her so she had not received them. The bailiff contacted Nina by phone threatening to come to her house that day with a locksmith and a removal van if she could not pay in full.

*Names have been changed

RECOMMENDATION



We recommend that bailiff fees should be restructured so as to incentivise good practice in debt collection, with a common fee structure that encourages early resolution of the debt problem, and statutory requirements that set out a list of activities that bailiffs must carry out before moving on to each next stage of enforcement.

See section 4 for our full recommendations on **bailiff fees**.

34. <http://www.legislation.gov.uk/uksi/2014/1/note/made> Regulation 13

35. Citizens Advice (2016) Catching up: improving council tax arrears collection

36. StepChange Debt Charity (2016) Creditor and debt collector conduct: what's making debt problems worse?



2.5. Problems caused by creditor use of bailiffs

While the focus of this report is the need to improve regulation of bailiffs themselves, the actions of creditors who instruct bailiffs are also deserving of scrutiny. Creditors have a duty to act responsibly and take every step possible to collect debts they are owed before resorting to enforcement action.

The debt collection practices and readiness to escalate to bailiff action displayed by local authorities, in particular, have been the subject of significant concern amongst debt advice and other charities in recent years (see below).

RECOMMENDATION



We recommend that all creditors should offer 'breathing space', where interest, fees and enforcement actions are frozen when people seek free debt advice. Local authorities in particular should be required to do demonstrably more to collect debt before resorting to enforcement, and should adopt Citizens Advice's collection of council tax arrears good practice protocol.

See section 4 for our full recommendations on **creditor use of bailiffs**.

A SPOTLIGHT ON LOCAL AUTHORITY BAILIFF USE

The issue of local authority debt collection – which accounts for the majority of bailiff use in England and Wales – has been the subject of concern amongst debt advice and other charities for some time.

A July 2016 survey by StepChange Debt charity found that 51% of clients who were contacted by bailiffs were being chased for council tax arrears.³⁷ In its Stop the Knock report based on Freedom of Information research in 2015, the Money Advice Trust found that council tax debts were passed to bailiffs in England and Wales on 1.27 million occasions during 2014-15. Overall bailiff referrals by local authorities (for all types of debt) were 16% higher than two years before.³⁸

Local authorities have guidance from the Department for Communities and Local Government (DCLG) on collecting council tax arrears, but it is not a statutory requirement for them to follow this guidance and compliance is not monitored.³⁹ A 2015 survey of StepChange Debt Charity clients with council tax arrears found that 65% of people who contacted their council about the council tax they owed, received a tough demand or threat of enforcement – being threatened with bailiff or court action, or having a demand for the full arrears to be paid in one go.⁴⁰

Council tax arrears have increased as a result of the localisation of Council Tax Support in 2013, with a reduced level of support compared to the previous national Council Tax Benefit meaning that many people on low incomes began to pay council tax 'minimum payments' for the first time. This has led many to fall into arrears. In their 2016 report, Still too poor to pay, Z2K and the Child Poverty Action Group found that in 2015-16, 131,000 Council Tax Support claimants in London had council tax arrears, and over 19,000 of these were referred to bailiffs – a 51% increase in such bailiff referrals from 2014-15, despite a fall in Council Tax Support claimant numbers.⁴¹

In May 2016 the Money Advice Trust and StepChange Debt Charity issued a joint call⁴² for the government to place existing voluntary guidance on a statutory footing, and for the government to put an end to the use of bailiffs in the case of recipients of Council Tax Support – a measure that has already been implemented by several authorities.

In its 2015 The Wolf at the Door report, The Children's Society has also suggested that the way that councils have to report their council tax collection rates to DCLG incentivises them to refer unpaid debts to bailiffs rather than explore other options, such as deductions from benefits or attachment of earnings, which while taking longer can be a more sustainable way to recover arrears.⁴³

37. StepChange Debt Charity (2016) Creditor and debt collector conduct: what's making debt problems worse?

38. Money Advice Trust (2015) Stop the Knock

39. Citizens Advice (2016) The State of Debt Collection https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210478/Guidance_on_enforcement_of_CT_arrears.pdf

40. StepChange Debt Charity (2015) Council Tax Debts: how to deal with the growing arrears crisis tipping families into problem debt

41. Z2K and CPAG (2016) Still too poor to pay: three years of localised council tax support in London

42. BBC News (2016), Council tax bailiffs should be called off, say charities, <http://www.bbc.co.uk/news/business-36193490>

43. The Children's Society (2015) The Wolf at the Door



3. The benefits of further reform

Improved regulation of the bailiff industry would provide improvements not only for people in debt, but also for creditors, local and national government and the bailiff industry itself.

Further reform would benefit:

- **People in debt** – by reducing stressful and threatening bailiff visits and ensuring they have the time and support to put in place affordable repayment plans where possible.
- **Creditors** – as the evidence suggests that all creditors are likely to collect more of the money they are owed, in the long-term, through better debt collection practices, as well as improving their reputation with customers and the people they provide services to.
- **Local and central government** – in the immediate form of improved engagement with taxpayers and service users, but also through having to cover fewer of the long-term additional social and economic costs resulting from problem debt.
- **Bailiff firms** – by ensuring that those who abide by the rules are not undermined by the actions of firms who do not, helping to improve the reputation of the bailiff industry.

3.1. Benefits for people in debt

If individuals and families are given the time and support to recover from problem debt, the wider negative impacts of debt on their lives, such as poor mental health, relationship breakdown and reduced productivity, are reduced.⁴⁴ When people get help from their creditors via affordable payment plans, stopping interest, charges and enforcement action, they have a greater chance of getting out of debt and seeing these wider benefits. Of those StepChange Debt Charity clients surveyed who had received such help:

- 79% said that their anxiety reduced;
- 74% were able to sleep more easily;
- 60% said it stabilised their finances;
- 47% said it led to family relationships improving;
- 32% of those who had been out of work said it made it easier to apply for a new job;
- 27% of those who had been out of work said it made it easier to sustain a new job; and
- 83% of those in work said it made it easier to sustain their current job.⁴⁵

In contrast, where people find that their creditors will not stop bailiff action or continue to add charges and interest to the debt, their debt problems worsen. Six in ten people (61%) who continued to face collection action and additional interest and charges borrowed more money as a result, getting deeper into debt. 49% of those who received a demand for payment in full and were threatened with bailiff action fell behind on essential bills, such as electricity, gas and rent, in order to pay their arrears. Those on the receiving end of aggressive action were three times as likely to take out a payday loan.⁴⁶



44. StepChange Debt Charity & Baker Tilly (2014) Transforming Lives: a review of the social impact of debt advice for UK individuals and families evaluated using SROI
 45. StepChange Debt Charity client survey, 2014. Sample: 923 StepChange Debt Charity clients who came for advice in 2013. Fieldwork conducted June–July 2014.
 46. StepChange Debt Charity client survey, 2014. Sample: 923 StepChange Debt Charity clients who came for advice in 2013. Fieldwork conducted June–July 2014.



A 2015 StepChange Debt Charity client survey showed that bailiff action had:

- increased levels of stress or anxiety in 93% of cases;
- put their family under strain in 63% of cases;
- affected concentration at work for 50%; and
- affected the ability to focus on getting a new or better paid job in 39% of cases.⁴⁷

The Children's Society has also shown the wider impacts on the whole family. More than half of parents who had council tax debt thought their children had also suffered anxiety, stress or depression as a result. Almost one in five families facing council tax debt had had a bailiff visit their home and of these seven in ten said that they believed that their children had been frightened, sad or worried as a result of the visit.⁴⁸

All of the above research suggests that good debt collection practices, particularly using bailiffs as a last resort and ensuring that they abide by the 2014 bailiff regulations, will benefit people in debt. This could be through reducing their risk of mental and physical health problems, improving their employment prospects, reducing their chances of relationship breakdown, avoiding some of the harmful emotional effects on their children or a combination of these benefits.

Good debt collection practices also enhance people's ability to repay their debts by encouraging them to seek advice and repay their debts at an affordable, sustainable rate. Many more StepChange Debt Charity clients reported helpful and supportive behaviour by creditors when they were supported by debt advice. As a result nearly eight in ten said their anxiety had reduced and nearly half said their family relationships had improved.⁴⁹

A steady, proportionate approach to debt repayment also reduces debt problems. The free debt advice provided by StepChange Debt Charity in supporting clients to agree affordable repayment of their debts was suggested to have resulted in gains to creditors of over £82 million in respect of the 109,397 clients studied.⁵⁰ Evidence from the charity suggests that once debt advice clients' debts are under control and they are making steady repayments, levels of stress and anxiety reduce, increasing the chances of financial stability in the future.⁵¹

47. StepChange Debt Charity (2015) Council Tax Debts: how to deal with the growing arrears crisis tipping families into problem debt

48. The Children's Society (2015) The Wolf at the Door

49. StepChange Debt Charity (2015) Safe Harbours

50. StepChange Debt Charity (2014) Cutting the cost of problem debt

51. January 2017 survey of 461 StepChange Debt Charity Debt Arrangement Scheme (DAS) clients in Scotland.



3.2. Benefits for creditors

In addition to delivering tangible benefits to people in debt, further bailiff reform would also deliver significant benefits for creditors.

There are strong cost-saving arguments for collection practices that encourage people to seek advice and repay their debts at an affordable, sustainable rate. Analysis by Baker Tilly found that a steady, proportionate approach to debt repayment actually yielded a higher recovery rate for creditors.⁵²

From the customers' perspective, how creditors communicate with them and their approach to debt repayment shapes their relationship. If creditors get these things right, the chances of recovering the money owed to them increase. If they get them wrong, the customer may disengage from further dialogue and stop repayments. In this context, research for Arrow Global⁵³ has found that repeated threats of legal action by creditors are ineffective in improving debt collection.

The Money Advice Trust, which works with a range of creditors to improve the experience and outcomes for

customers in vulnerable circumstances, also reports a number of benefits for creditors who identify and support vulnerable people who are in debt, including better understanding their customers and meeting their legal and regulatory responsibilities. In one survey, 59% of creditor staff reported that if they could take customer mental health fully into account, they would be more likely to recover debts.⁵⁴

Many creditors have also testified to the financial benefits of good debt collection practices that are based on agreeing affordable repayment plans and good customer relations, rather than a default approach of referring debts straight to bailiffs.⁵⁵ One creditor firm which adopted a flexible approach to its customers' debt repayment arrangements by altering its collections strategy to focus on customer engagement and communication, increased the amount of debt collected by 64% over an 18 month period. A bank that allowed customers who were in financial difficulty a break from repayments found that over 20% began pro-actively making payments within three or four months of being placed on the moratorium and additionally, that 'resting' the debt for a period of time brought greater returns in the long run.⁵⁶

52. StepChange Debt Charity & Baker Tilly (2014) Transforming Lives: a review of the social impact of debt advice for UK individuals and families evaluated using SROI
 53. Collard, S. (2013) Working Together: understanding the motivations and barriers to engagement in the consumer debt marketplace,
 54. Money Advice Trust & Royal College of Psychiatrists (2014) Lending, debt collection and mental health: 12 steps for treating potentially vulnerable customers fairly.
 55. McDermott, A (2010) Do the right thing. Citizens Advice, Money Advice Trust, Institute of Money Advisers & AdviceUK
 56. McDermott, A (2010) Do the right thing. Citizens Advice, Money Advice Trust, Institute of Money Advisers & AdviceUK



3.3. Benefits for local and central government

Further bailiff reform can also deliver benefits to local and central government, both in the immediate sense of improving their engagement with taxpayers and service users, and also in reducing the wider social and economic cost of problem debt.

Poor debt collection practices are less effective in getting council tax arrears paid, more costly to local authorities and increase the longer term economic and social costs to local government. In its 2015 Stop The Knock report, the Money Advice Trust found no correlation between the extent of bailiff use and the amount of council tax arrears collected. In fact, the data shows the heaviest local authority users of bailiffs had less success, on average, in collecting arrears from previous years.⁵⁷

Government creditors themselves pick up some of the estimated £8.3 billion social costs of problem debt,⁵⁸ including the costs of people losing their home because of debt problems and additional costs in the areas of physical health, mental health and social care.

By improving debt collection practices and reducing the use of bailiffs, government creditors can improve their engagement with taxpayers and service users, while also reducing demand for their own services in the longer run by focusing on supporting people to make sustainable, affordable debt repayments.

There is also strong public support for better debt collection practices by government agencies, particularly in relation to council tax:

- 80% of those surveyed in recent Citizens Advice research⁵⁹ thought councils should try to agree a plan with householders to repay arrears before taking further action, compared to 5% who thought legal action should start as soon as possible.
- 68% did not agree cancelling monthly instalments and asking for a lump sum was the best way to deal with a missed repayment, even though this is what usually happens in practice.

- Only 21% agreed that bailiffs should be used to collect council tax arrears under £500, with just 11% agreeing they should be used for arrears under £100.
- 36% thought bailiffs should never be used.

3.4. Benefits for the bailiff industry

We believe that further bailiff reform could also benefit the bailiff industry itself, by ensuring that those who abide by the rules are not undermined by the actions of firms who do not.

There is a degree of correlation between robust sector regulation, and lower scores for unfair treatment in exercises conducted by charities such as StepChange Debt Charity.⁶⁰ Research conducted by the charity has found that people in financial difficulty scored bailiffs as much worse on the fairness of their debt recovery practices than financial services creditors, who are subject to greater regulation through the independent Financial Conduct Authority (FCA). Bailiff firms have no such independent regulator and their conduct is subject to less scrutiny as a result. This lack of regulation has a negative effect on the reputation of bailiff firms, compared with the more positive customer feedback for financial services creditors.

A failure to follow good debt collection practice can result in negative publicity for bailiff firms, which may reduce their chances of gaining work through competitive tender processes. Many bailiff firms recognise this and have welcomed tighter regulation in the past.

CIVEA, the private bailiff trade association, was set up to improve the image of, and increase professionalism within, the bailiff industry and has its own code of practice to help members demonstrate better practice.⁶¹ CIVEA has made some progress in improving practice, including recently establishing a pilot 'vulnerable client referral scheme' with the Money Advice Trust. However, it is a trade body, not a regulator, and membership is voluntary. An independent regulator of bailiffs would provide more confidence in bailiffs and improve the reputation of the industry.

57. Money Advice Trust (2015) Stop the Knock

58. StepChange Debt Charity (2014) Cutting the cost of problem debt.

59. Citizens Advice (2016) Catching up: improving council tax arrears collections

60. StepChange Debt Charity (2016) Creditor and debt collector conduct: what's making debt problems worse?

61. <http://www.civea.co.uk/code-of-practice.htm>



4. Our recommendations

Our seven organisations have come together to jointly make the case for the following set of measures, which we believe can tackle the continued problems people in debt are experiencing from bailiff action, and help realise the significant benefits outlined in this report.

1. The bailiff industry should be independently regulated.
2. There should be a free, clear, transparent and accessible bailiff complaints procedure.
3. There should be a clear, simple and universally applicable procedure that allows people to apply to suspend action by bailiffs.
4. Bailiff fees should be restructured, so as to incentivise good practice.
5. Bailiffs should use a prescribed and consistent framework for agreeing affordable repayments.
6. There should be procedures in place to identify vulnerable people and protect them from enforcement.
7. Creditors should be required to act responsibly and do demonstrably more to collect debt before resorting to enforcement.



Recommendation 1: The bailiff industry should be independently regulated

- Regulation should be undertaken by an independent statutory body to provide a credible deterrent to aggressive behaviour and excessive enforcement by bailiffs.
- Regulation should provide control and oversight of both individual bailiffs and bailiff firms to tackle both individual and systemic bad practice.
- The regulator should have the power to monitor business practices, including supervision of individual bailiffs and bailiff firms.
- The regulator should set standards of practice, training requirements, and monitor compliance with these, taking enforcement action where these are not met.



Recommendation 2: There should be a free, clear, transparent and accessible complaints procedure

- The complaints procedure should enable people in debt to complain about individual bailiffs or bailiff firms or both.
- There should be two stages to the complaints procedure, with complaints made first to the firm concerned and then to an independent body if the complaint is not resolved at the first stage.
- The complaints procedure should include procedures to deal with complaints to HM Revenue & Customs (HMRC), local authorities, and other creditors using bailiffs to recover debt on their behalf.
- The complaints procedure should include effective remedies against bad practice and provide for individual redress where appropriate.
- Bailiffs and bailiff firms should be required to provide details of the complaints procedure to people in debt.
- Complaints should be monitored and a summary of complaints received publicised in a similar way to that in which the Financial Ombudsman Service publishes details of complaints that it has received.



Recommendation 3: There should be a clear, simple and universally applicable procedure that allows people to apply to suspend action by bailiffs

- This procedure should be available in the High Court, the County Court and the Magistrates’ Court and applicable to all debts dealt with in any of these courts, as well as to enforcement started directly by local authorities or HMRC.
- In practice, this means that there should be an equivalent procedure in the Magistrates’ Court to the N245 procedure in the County Court that allows people to apply to the court to suspend warrants and offer affordable payments to their creditors.



Recommendation 4: Bailiff fees should be restructured so as to incentivise good practice

- There should be a clear, common fee structure that covers both High Court and other forms of enforcement.
- This should encourage early resolution of the debt problem with as little cost to the person in debt, creditor and bailiff as possible.
- There should be statutory requirements on bailiff firms that set out exactly what is expected of bailiffs at each stage of the enforcement process. This should set out a list of activities that would be expected to be covered before moving to the next stage.
- The structure should guarantee protection to those who are vulnerable and/or on low incomes and Council Tax Support.
- There should be clarity on when VAT can be charged by bailiff firms. VAT should not be added to the fees that people in debt have to pay.



Recommendation 5: Bailiffs should use a prescribed and consistent framework for agreeing affordable repayments

- This should acknowledge hardship and be based on an accepted objective standard such as the Common Financial Statement (CFS) or Standard Financial Statement (SFS).
- In cases of financial hardship and vulnerability the courts, local authorities and creditors should always have the opportunity to remit debts and fines owed to them in law.



Recommendation 6: There should be procedures in place to identify vulnerable people and protect them from enforcement action

- Creditors should be required to have a vulnerability strategy or code and make these public.
- Creditors should identify vulnerable households and amend the collections process appropriately.
- Creditors should not pass anyone for enforcement who

has been assessed as in vulnerable circumstances.

- There should be a clear and efficient mechanism to refer cases back to creditors where enforcement action is not appropriate.
- In cases of vulnerability the courts, local authorities and creditors should have the opportunity to remit debts and fines owed to them in law.
- The Taking Control of Goods National Standards should be given statutory force.
- The Department for Communities and Local Government (DCLG) guidance to local councils on good practice in the collection of council tax arrears should be made binding upon local authorities.



Recommendation 7: Creditors should be required to act responsibly and do demonstrably more to collect debt before resorting to enforcement

- The use of bailiffs should be a last resort and all other options should be exhausted first.
- There should be a responsibility on creditors to refer to sources of free debt advice in a pre-emptive way before accounts are sent for enforcement.
- Creditors should be required to offer “breathing space”, where interest, fees and enforcement actions are frozen when people seek free debt advice, allowing them time to recover from their financial difficulties without seeing their debts spiralling out of control.
- There should be an obligation on creditors to be proactive and find out about the person’s circumstances, and ability to pay before sending accounts for enforcement.
- Creditors should be required to make affordable arrangements to pay without passing on the account for further action using an accepted objective standard such as the Common Financial Statement (CFS) or Standard Financial Statement (SFS).
- Local authorities should adopt the Citizens Advice Collection of Council Tax arrears good practice protocol.
- DCLG should intervene to put an end to local authorities’ use of bailiffs as an enforcement method for recipients of Council Tax Support and other vulnerable people.

This report was produced by AdviceUK,
Christians Against Poverty, Citizens Advice,
Money Advice Trust, StepChange Debt Charity,
The Children's Society and Z2K.

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TAKING CONTROL