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

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Representation: The CCUA Policy & Reform Committee has drawn upon the views of the CCUA membership and corresponded with various other relevant organisations.

## **Introduction**

The Civil Court Users Association (“CCUA”) welcomes the opportunity to contribute to the Ministry of Justice’s call for evidence.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost effective court service for its members which is also fair and proportionate for all court users.

Our members issue around 85% of all money claims in the County Court in England and Wales and regularly handle a huge volume of consumer debt matters, whether requiring court action or otherwise. Our members include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

## **Approach**

Our membership includes the High Court Enforcement Officers Association (HCEOA), the Civil Enforcement Association (CIVEA), businesses conducting Civil Enforcement, plus Creditors and their Solicitors instructing Enforcement Agencies. Those members are individually better placed to provide some of the detailed statistical information requested in this paper. Nonetheless, enforcement is an extremely important topic for the CCUA and its membership generally, and we therefore feel that it is important to respond, even if some of the responses may of necessity be limited to a higher, strategic or anecdotal level.

## **Questions**

**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?**

The Association is clearly not in a position to directly respond to these points. However, we are aware of historic and ongoing suggestions of “aggressive bailiffs,” often with little or no evidence in support, which are again repeated in this paper. Our membership would strongly refute that this is their experience of the vast majority of Enforcement Agents, who generally conduct themselves extremely professionally.

We would insist that prejudice is not permitted on this point and that adverse suggestions and allegations are not accepted unless supported by investigation or truly independent verification. This has been sadly lacking to date. It should be recognised that some respondents may have a vested interest in debt avoidance and the frustration of civil justice.

## **Question 2 (to advice sector organisations)**

**Has your organisation seen any change to the volume and value 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](mailto:bailiffreview@justice.gov.uk).**

Again, this question is not one for the Association to answer directly.

We would simply point out that any such data should be carefully considered before conclusions are drawn. The fact that individuals may have greater awareness of their rights or be better signposted may well result in increased engagement with the advice sector, and that could be a very positive outcome from their perspective (even if it might then result in them making a spurious complaint, for example).

## **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?**

Our members have found that Enforcement Agencies have been extremely proactive in introducing policies, procedures, training and transparency to ensure that there is every certainty that the work is being conducted correctly.

Many of our members have their own regulators, such as the Financial Conduct Authority for example, and would not risk using an Enforcement Agency in whom they did not have absolute trust.

- 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](mailto:bailiffreview@justice.gov.uk).**

Our members have historically reported extremely low rates of complaints being raised with them regarding the activities of Enforcement Agents. Such complaints, as well as general feedback, is of course entirely possible to be made directly to instructing creditors and their lawyers, as much as to the Enforcement Agencies themselves. If our members were to have concerns regarding a particular Enforcement Agency, they would cease using them. Again, the general feeling is that the Agencies which our members use are extremely professional and operate entirely within the rules.

**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?**

This is a risk and it is a sad indictment of today's society that many individuals are able to behave very poorly towards many different types of professional carrying out their duty, with little or no prospect of any apparent consequences. Such professionals must be properly supported and protected.

- 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?**

We shall leave these questions for those better placed to answer.

**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?**

Again, we appreciate that this question is not for us. However, we feel that we should point out that creditors, Solicitors and Enforcement Agents often proactively identify potential vulnerability and act appropriately and accordingly, even when not communicated directly by the individual.

**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](mailto:bailiffreview@justice.gov.uk).**

Again, care should be exercised regarding the interpretation of any evidence gathered in this area. Awareness of sources of assistance and increased engagement are positive factors.

**Question 7 (to the enforcement sector and creditors):**

**a) What steps have you taken to make sure that vulnerable debtors are protected?**

There has been huge awareness of this topic over the last few years and our members generally have extremely robust policies and procedures. Often these are required by regulators such as the FCA. We are aware that not all creditors may have such rigorous standards however, particularly those operating outside of the regulated environment, for example local authorities. However, we would suggest that the key is to address that at creditor level, rather than at Enforcement Agency level. Enforcement Agents who enforce different types of debt are generally well-versed in the requirements.

**b) How do you assess a debtor as being vulnerable?**

Our members generally have a requirement for vigilance at all stages and a wide catchment of circumstances which could give rise to potential vulnerability, but we will obviously leave others to set out any specific parameters.

**c) What procedures do you have in place to deal with debtors who you have assessed as being vulnerable?**

Many members have specialist teams or programmes to ensure that those with potential vulnerability are handled with extreme care, but again we shall leave them to set out any specifics.

**d) Are there any other issues regarding debtor vulnerability you would to raise?**

No.

**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 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?**

Not applicable.

**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](mailto:bailiffreview@justice.gov.uk) to discuss what you have and the best way to submit it to us.**

Again, we will leave this to our members.

**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?**

Our members do not see any significant levels of justified complaint. There is little or no requirement for sanctions. There appears to be little or no need for increased 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?**

We will leave others to answer.

**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?**

The general view of our members is that Enforcement Agents are highly trained professionals and that their training is right up to date with all of the latest issues, such as identifying and handling potential vulnerability.

**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?**

No. We would strongly request that any such supposed evidence should be independently verified before being accepted.

**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?**

Yes, absolutely.

- b) What evidence do you have to support this view?**

Our members have seen a definite improvement, but we shall leave others to submit statistical support.

**Question 15 (to all)**

- a) Are there any changes that could be made to the fee structure to encourage earlier settlement?**

If High Court Enforcement was opened up to Consumer Credit Act regulated debt and/ or cases under £600, then economies of scale could potentially mean that settlement at the Compliance stage could become even more financially attractive.

**Question 16 (to all with interest or experience of using the CRAR 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 do you have to support your view?**

We have received no membership feedback on this question.

**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?**

Yes, based on member's experience of low complaints and concerns. However, if further regulation would give comfort and finally end the unsubstantiated concerns which have been raised, then that may be a price worth paying, particularly if that added comfort then enabled additional work to be allocated, e.g. Consumer Credit Act and debts under £600 to High Court Enforcement.

**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?**

Not necessary, but see the answer to question 17.

**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?**

Again not necessary, but see the answer to question 17.

**Other issues not covered in the paper**

The paper follows the historic trend of considering mostly unsubstantiated suggestions of aggressive bailiffs. In doing so, it ignores other real and pressing issues, such as genuine ongoing concerns regarding the lack of effectiveness of court enforcement.

County Court bailiff performance is considered by many of our members to be of an unacceptably low standard. Creditors will only continue to use the court if there is a realistic chance of recovering their money.

With that in mind, the CCUA would again strongly suggest that Consumer Credit Act regulated debt and debt under £600 should be opened up to High Court Enforcement as an additional option.

**15<sup>th</sup> February 2019**