Subject:

Enforcement Sector Regulation: Reforming the regulation of individuals and firms that use the Taking Control of Goods Procedure

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Representation: The CCUA has drawn upon the views of the CCUA membership including those of the Policy and Reform Committee. See further detail under "introduction" below.

Introduction

The Civil Court Users Association ("CCUA") welcomes the opportunity to contribute to this consultation from the Ministry of Justice.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner to achieve an appropriate and effective ecosystem for debt recovery which includes enforcement, and which meets the interests of claimants and defendants.

The CCUA's members participate in around 85% of all money claims in the County Court in England and Wales, as well as being involved in money claims in the High Court and other litigation such as claims for possession of real property and return of goods claims.

The CCUA's membership includes businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents and many others.

The CCUA's members are involved in enforcement of judgments obtained both in the County Court and in the High Court which are subject to the Taking Control of Goods procedure.

Executive Summary

The CCUA is in favour of the establishment of a statutory independent regulator.

The CCUA is concerned to ensure that any such regulator is appropriately funded to fulfil its remit and that its objectives and aims are commensurate with proportionate regulation.

Questionnaire

Question 1: Do you agree that it is necessary to legislate to establish a statutory independent regulator for the enforcement sector? If not, please explain why.

The CCUA agrees that a statutory regulator with appropriate powers and remit is appropriate to regulate and oversee the enforcement sector.

Question 2: Do you agree that responsibility for setting the legislative framework about how debts should be enforced using the Taking Control of Goods procedure should remain with the Government and not be devolved to an independent statutory regulator?

The CCUA agrees that the executive and legislature should retain responsibility for setting the legislative framework for how debts should be enforced using the Taking Control of Goods procedure.

Question 3: Do you think that an independent statutory regulator should play any role in reviewing the fees that the enforcement sector can recover when using the Taking Control of Goods procedure? Please explain why.

The CCUA considers that an independent statutory regulator can and should play a role in reviewing fees. It seems to the CCUA that the regulator would have relationships with a wide range of stakeholders and would be able to assess appropriate fee scales (including their relationship with fee scales in similar parts of the debt recovery process).

That assessment could form a recommendation to government for government to make the final decision on whether any changes to fees are appropriate.

Question 4: If you agree, what role should a regulator play in reviewing fees?

As referenced in our response to question 3, the CCUA considers that the regulator would be in a good position to gather and consider data and to be able to make a recommendation to government.

Question 5: What objectives do you think should be set out in law for an independent statutory regulator to work towards?

The CCUA considers that the primary objective for the regulator should be to ensure that those seeking to recover debts under the Taking Control of Goods procedure do so in a manner which is fair to both claimants and defendants, is effective as a means to recover sums due under judgments, is transparent and which seeks to ensure the protection of those identified as vulnerable.

Beyond that, the CCUA considers that the objectives of an independent regulator should be:-

- To enhance public trust in the sector by providing oversight of rules and regulations and imposing penalties where those rules and regulations are not met
- To ensure fair competition amongst companies providing services under the Taking Control of Goods procedure
- To protect those against whom recovery under the Taking Control of Goods procedure is being carried out, whether they are small businesses, consumers or others
- To protect those who engage businesses offering recovery services under the Taking Control of Goods procedure to ensure appropriate levels of service are met

Question 6: Do you agree that legislation should set out that an independent statutory regulator should produce standards and guidance for enforcement firms, agents, and creditors about the use of the Taking Control of Goods procedure? If so, should the legislation set out who the regulator should consult about that guidance, and how frequently it should be reviewed?

The CCUA agrees that an independent statutory regulator should produce standards and guidance for enforcement firms, agents, and creditors. By the use of case studies, examples, etc, a regulator can bring legislation to life and enhance the understanding of that legislation and how it should be applied in practice.

The CCUA also agrees that it would be helpful for legislation to set out who (as a minimum) the regulator should consult and at what frequency. Others who wish to respond to any such consultation should be permitted to do so.

Question 7: Do you think the Government should legislate to require all firms that enforce debt using the Taking Control of Goods procedure to be accredited or licensed by an independent statutory regulator?

The CCUA considers that all firms seeking to enforce debt using the Taking Control of Goods procedure should be accredited or licensed by an independent statutory regulator. This will ensure a level playing field and that all those who engage with such firms (either in instructing them or being pursued for recovery) can be confident that the same standards are being applied.

The CCUA's preference would be that bailiffs employed by the County Court and those employed by Local Authorities should also be directly regulated by an independent statutory regulator to ensure consistency. However, the CCUA appreciates the legislative challenges this may raise and, importantly, the method by which any regulator would be resourced with financial payment required from Local Authorities and HMCTS/MOJ.

Question 8: Do you think that the Government should set out in law what a regulator's licensing conditions should be, or do you think that an independent statutory regulator should have the power to decide on its own licensing criteria?

The CCUA considers that the Government should set out in law the primary requirements for licensing conditions but that an independent statutory regulator should have the flexibility to interpret those requirements for meeting changing needs without new legislation being required.

Question 9: Do you think any changes should be made to the current certification and authorisation criteria for individual EAs and HCEOs and, if so, why?

The CCUA considers it would be appropriate for the independent statutory regulator to take on the role of certification of individual EAs . This would ensure that all "licensing" of both firms and individuals is managed within the same entity, bringing consistency of decision making. Such an approach will also relieve the judiciary of a task (and the associated time) which can be used elsewhere.

As referenced in our response to question 5, it may be appropriate for individuals employed as bailiffs by the County Court and/or by Local Authorities to also be certified by the independent regulator, but this would require appropriate financial support for the regulator and to overcome legislative hurdles relating to the status of bailiffs employed by the County Court.

The CCUA considers that the authorisation of HCEOs should remain with the Lord Chancellor, not least as HCEO's are authorised to provide services beyond the proposed remit of the statutory independent regulator.

Question 10: Do you think that an independent statutory regulator should be solely responsible for accrediting individual EAs and HCEOs with the existing oversight by the District Judges and Lord Chancellor (via the Senior Master) removed, or do you think that the District Judge and the Lord Chancellor (via the Senior Master) should retain a role in the certification and authorisation?

For the reasons set out in our response to question 9, the CCUA considers that the independent statutory regulator should be solely responsible for accrediting individual EAs (and firms) with the Lord Chancellor (via the Senior Master) retaining responsibility for authorisation of HCEOs

Question 11: Do you think that an independent statutory regulator should be given powers to gather data from the enforcement sector?

The CCUA considers that an independent statutory regulator should be given such powers to assist in exercising its statutory obligations to oversee individuals, firms, and the industry. Such data is also important to assess trends and influence any further reviews/activity by the regulator who should be proactive and not simply reactive.

Question 12: What powers, if any, should they be given to ensure that data provided is accurate? What safeguards should be put in place, if any, to ensure that data requests are proportionate, and that the data is used effectively and appropriately?

The CCUA considers that the independent statutory regulator should be able to sample check data from individuals and/or firms to assess its accuracy.

Safeguards would be necessary to ensure that such data is only available, in this regard, for the purposes of ensuring its accuracy. Additionally, to ensure that any requests are proportionate, such requests should be limited unless concerns as to accuracy of data have been raised.

Question 13: Do you think that an independent statutory regulator should be given powers to monitor the work of enforcement firms? If so, what should those powers be?

The CCUA considers that the independent statutory regulator should be given powers to monitor the work of enforcement firms. These powers should include to collect appropriate data from firms and to undertake visits/audits to ensure that enforcement firms are meeting the expectations of the legislation and the standards and guidance issued. The regulator should be proactive and not simply reactive.

Question 14: In addition to powers to request data and carry out monitoring visits, do you think an independent statutory regulator should be given any further powers? If so, please explain why you think the power would be necessary.

Should monitoring visits or other investigations highlight issues with firms and/or individuals, the CCUA considers that the independent statutory regulator should have the power to impose binding rectification plans, to issue fines, to issue suspensions and, ultimately, to withdraw licences/authorisations from individuals and firms.

Question 15: Do you think that an independent statutory regulator should be given statutory powers to consider complaints?

The CCUA considers that it would be appropriate for the independent statutory regulator to consider complaints, both against firms and individual EAs. The independent statutory regulator would be best placed to consider the legislative requirements and the standards and guidance that it has issued to build up a consistent approach to complaint responses and resolution.

The existing regulations relating to complaints concerning HCEOs themselves should remain as this provides direct judicial oversight for the relatively small group of HCEOs who should, in our view, remain directly authorised by the Lord Chancellor (or his/her delegate).

Question 16: If you agree that an independent statutory regulator should consider complaints, do you think that District Judges and the Lord Chancellor (via the Senior Master) should still consider complaints against individuals? Or should their role in considering complaints be abolished?

The CCUA considers that the District Judges and the Lord Chancellor’s (via the Senior Master) roles in dealing with complaints against individual EAs should be abolished. All complaints should be dealt with by the independent statutory regulator to support consistency.

We believe that the Lord Chancellor (via the Senior Master) should continue to consider complaints against HCEOs.

Question 17: Do you think that the legislation should allow a statutory independent regulator to be able to share data with any other bodies? If so, please set out which bodies they should be able to share data with and for what purpose?

The CCUA considers that, subject to appropriate safeguards concerning content and proportionality, the independent statutory regulator should be able to share data with other bodies.

The CCUA would suggest that sharing data with HMCTS/MOJ, the FCA, and the ICO would be appropriate.

Question 18: What sanctions do you think that a statutory independent regulator should be able to impose on enforcement firms?

The CCUA agrees that the statutory independent regulator should be able to:-

- Issue a note of concern
- Issue a binding direction
- Publish any note of concern or direction
- Suspend any licence/accreditation
- Withdraw any licence/accreditation

We also consider that the independent statutory regulator should be able to issue fines to an agreed level. These sanctions would be against individual EAs and/or firms with HCEOs being dealt with by the Lord Chancellor (via the Senior Master) where appropriate.

Question 19: Do you have any views on what administrative status and accountability requirements a statutory enforcement regulator should have?

The CCUA considers that it would be appropriate for a statutory enforcement regulator to be accountable to parliament via a minister but also directly accountable to parliament.

Question 20: What appeal process do you think should be put in place to allow regulated entities to appeal decisions made by a statutory independent regulator?

The CCUA considers that an appeals process is appropriate to allow EAsand firms to appeal decisions made by an independent statutory regulator.

The CCUA considers that, following any internal review process, a route of appeal to the Senior Master of the King's Bench Division would be appropriate, given the underlying services which are to be regulated by the statutory independent regulator.

Question 21: Do you agree an individual or firm should pay a fee in respect of any appeal to a tribunal or court?

The CCUA considers that an individual or firm should be required to pay a fee which will help prevent frivolous or vexatious appeals.

Question 22: What role do you think that the Lord Chancellor should have in the appointment of key posts within a statutory independent regulator?

The CCUA agrees that the Lord Chancellor should have a role in appointing the Chair/Board of the statutory independent regulator for reasons of good governance and to support ensuring public trust in the appointments process.

Question 23: If you do not think that the Lord Chancellor should have a role in the appointment process, please explain why and what other steps could be taken to ensure that key appointees have the appropriate experience and skills and have no perceived or actual conflicts of interest?

This question is not relevant given the CCUA's response to question 22.

Question 24: Do you agree that an independent statutory regulator should be funded wholly by a mandatory levy on the sector, or should it also receive some funding from the Government? Please explain why?

The CCUA agrees that the independent statutory regulator should be funded by a mandatory levy but should have some funding from government.

It is right that the industry predominantly funds the regulator but, given the CCUA's responses to this consultation, some tasks are proposed to be reserved to the independent statutory regulator instead of the judiciary and those savings should be used to ensure that the regulator can fulfil its roles and responsibilities.

Further to our response to question 5, were County Court bailiffs and/or Local Authority equivalents to be regulated directly by the independent statutory regulator, then central and local government would need to appropriately fund the regulator via the levy system to ensure that the regulator has sufficient resources to undertake its role effectively.

Question 25: Do you think that legislation should set out how a regulator's costs should be managed to avoid placing an undue financial burden on the sector? If so, what safeguards could be put in place?

The CCUA considers that, of primary importance, is that the regulator is funded to fulfil its role properly and ensure that it can meet its statutory objectives. Provided that the objectives are properly scoped and that the industry meets the standards set out in legislation, standards and guidance, the regulator's costs should not be an undue financial burden.

Question 26: Do you think that legislation should set out how a regulator should account for how it has spent the money it receives? If so, please could you set out how?

The CCUA considers that the regulator should account for how it has spent the money it receives. Such transparency is important to support trust in the regulator that it is spending its industry levy (and any other funding) wisely.

Question: 27: Do you think that county court bailiffs and local authorities and the individuals they employ to use the Taking Control of Goods procedure should be regulated by an independent statutory regulator? If so, please explain why.

The CCUA considers that it would be helpful for consistency that county court bailiffs, local authorities and the individuals they employ should be regulated by the statutory regulator.

We appreciate the additional burden this may place on the regulator and would want to ensure that appropriate funding was in place from central and local government to support any extension of the regulator's remit beyond private firms and individuals..

In the absence of direct regulation, the CCUA would welcome a position where county court bailiffs, local authorities and the individuals they employ were obliged to meet the same legislative requirements and standards and guidance as private firms and individuals but without direct oversight which would remain with the county court and local authorities.

Question 28: Should a statutory independent regulator regulate any other types of civil enforcement activity?

The CCUA considers that, in the initial phase, the regulator should be limited to dealing with matters arsing under the Taking Control of Goods procedure.

The CCUA would propose that any subsequent review of the regulator and its remit should consider whether other types of work undertaken by EAs and HCEOs should be brought within the regulator's scope.

Question 29: For proposals likely to affect businesses, charities, or the public sector an Impact Assessment will be undertaken at consultation response stage. To assist with this, please provide a high-level outline of what costs or benefits (and, if possible, any monetary value) the proposals are likely to be generate and, if appropriate, of any issues which might be of concern.

Whilst clearly, there will be a financial cost to ensuring that the statutory independent regulator is appropriately funded, the objectives and aims for the regulator should ensure that those expected to pay a levy recognise the benefits of an independent regulator which will be able to ensure that the enforcement industry can effectively fulfil its important role in debt recovery whilst instilling public trust in the process and ensuring high standards by all involved.

Question 30: Do you agree that we have correctly identified the range and extent of the equalities impacts for introducing a statutory independent regulator for the enforcement sector? Please state yes/no/maybe/don't know and give reasons. If possible, please supply evidence of further equalities impacts as appropriate.

No Response

Question 31: What do you consider to be the equalities impacts on individuals with protected characteristics for introducing a statutory independent regulator for the enforcement sector? Please give reasons.

No Response