

Justice Committee

Oral evidence: [Bailiffs: enforcement of debt](#),
HC 1836

Tuesday 15 January 2019

Ordered by the House of Commons to be published on 15 January 2019.

[Watch the meeting](#)

Members present: Robert Neill (Chair); Mrs Kemi Badenoch; Bambos Charalambous; David Hanson; John Howell; Gavin Newlands; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer.

Questions 1 - 96

Witnesses

[I](#): Joanna Elson, Chief Executive, Money Advice Trust; Joe Lane, Policy Manager, Citizens Advice; and Peter Tutton, Head of Policy, StepChange Debt Charity.

[II](#): Russell Hamblin-Boone, Chief Executive, Civil Enforcement Association; and Simon Jacobs, Partner, Jacobs.

Examination of witnesses

Witnesses: Joanna Elson, Joe Lane and Peter Tutton.

Chair: Good morning everyone. Welcome and thank you very much for coming to give evidence. Before I come to our witnesses, we have to go through a formal procedure where we deal with any declarations of Members' interests. As Members know, I am a non-practising barrister and consultant to a law firm.

Ellie Reeves: I am a non-practising barrister.

Victoria Prentis: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor.

Q1 **Chair:** Thank you very much for coming to give evidence to this inquiry into the regulation of bailiffs and civil enforcement. We are very grateful for the written evidence that your organisations submitted. We do not need to repeat that; we have it in our brief. Perhaps you would like to introduce yourselves and tell us the organisation that you represent, for the record.

Joanna Elson: I am Joanna Elson. I am chief executive of the Money Advice Trust, which is the charity that runs National Debtline and Business Debtline.

Peter Tutton: I am Peter Tutton, head of policy at StepChange Debt Charity.

Joe Lane: I am Joe Lane, policy manager at Citizens Advice.

Q2 **Chair:** All three of your organisations have severally written to us saying that there is an issue that you thought warranted the Committee looking at. Of course the Ministry itself is, as we know, conducting a review and has put out a call for evidence.

In a nutshell, what drives you to say that this is something you think ought to be looked at, given that there were changes back in 2014? There was a national standard, a code. What is the matter that should be of concern to the Committee?

Joanna Elson: We wrote to the Committee because, despite some improvements in practice due to the 2014 reforms, our three charities and others regularly see the regulations being contravened. I think that goes beyond the idea that there are a few rogue bailiffs out there. We surveyed our National Debtline clients, and 83% who had experienced bailiff action reported a negative impact on their wellbeing, with stress, anxiety, losing sleep and depression, as well as struggling at work and their family life suffering.

To give you a tiny bit of history, back in March 2017—two years ago—seven charities, including our three, got together to write the report, "Taking Control," which you have probably seen. That published the



HOUSE OF COMMONS

evidence we have. We still continue to receive evidence from many people who experience poor practice from bailiffs, and we thought an inquiry from your Committee might be able to shed a spotlight on that evidence.

You might come to the same conclusion that we have, which is that the Government need to introduce three things: independent regulation, a clear complaints mechanism and a revised bailiff fee structure that does not incentivise poor practice.

Finally, if I may, my personal view is that we need to reduce the use of bailiffs. I can talk about that if you would like me to.

Q3 **Chair:** What is the size of the sample you used that gave you that 83%?

Joanna Elson: The size of the sample was 250 people.¹

Q4 **Chair:** How was the sample arrived at? Was it online or by face-to-face interviews?

Joanna Elson: No, it was contacting people after they had received advice through our service.

Q5 **Chair:** They were individual people who had come in.

Joanna Elson: Yes.

Q6 **Chair:** From that, do you deal with them in terms of an inquiry about bailiffs when there are specific complaints about particular types of behaviour that you are able to log?

Joanna Elson: We simply ask them what their experience has been. We know that 16% of our clients who contact us have some bailiff activity. They tell us that and then we ask them what the effects are, and they tell us the things I mentioned.

Q7 **Chair:** It was negative. You listed various things, but are there specific types of behaviour that count as negative that your clients were telling you about?

Joanna Elson: We define them in categories; we ask, "Of these things, what have you experienced?" and they tell us.

Q8 **Chair:** You define them and they say whether they have or not.

Joanna Elson: Yes.

Q9 **Chair:** What is your view, Mr Tutton?

¹ The Money Advice Trust has clarified that a survey of National Debtline callers with a sample size of 258 found that 16% had experienced bailiff action, while a separate survey of National Debtline callers who had experienced bailiff action with a sample size of 130 found that 83% reported that this had a negative impact on their wellbeing.



HOUSE OF COMMONS

Peter Tutton: It is similar to what Joanna said. We are concerned about this because, as a debt charity, we see every day what struggling with financial difficulty does to people's lives, and the hardship and harm it causes. It breaks down families, pushes people out of work and makes people ill. We see again and again that what drives the damaging things about debt is that people are stuck in a cycle of receiving demands for payment that they cannot afford and they do not feel they have any way of getting out of them. We have seen lots of problems in areas like consumer credit, and now we are seeing those problems lessening to an extent because of effective regulation.

With bailiffs, people come to us and do not feel that there is any way out of the situation in which that enforcement has put them. Our clients who face enforcement by the bailiffs we are talking about today tend to be from relatively low-income households. They often have multiple debts. Nine in 10 of them will have one or more vulnerabilities—a mental health problem or a fiscal health problem. We are talking about highly vulnerable people in an enforcement mechanism that is not controlled to take account of their particular vulnerability or to resolve their debt problems.

As Joanna said, enforcement by bailiffs can actually make people's debt problems worse. In different polls of our clients, we find that between 14% and 16% of people respond to enforcement of a payment demand that they cannot afford by borrowing more. They deal with the bailiff by borrowing more, sometimes with high-cost credit, which of course makes their debt problem worse. People go to payday lenders and things like that to deal with demands from a bailiff, or they borrow from family and friends, who may themselves not be capable of helping them, and it may cause hardship there; or they may pay that bill by missing another bill.

You have a cycle of debt problems with financially vulnerable people. Their debt problems get worse and worse. As debt counsellors, we know that the way we break that is by getting people into structured, affordable repayments. To do that, you need a structure for control of the interaction between bailiffs and people in financial difficulty.

That is why we continue to see, despite the 2014 reforms, many of the same problems we saw before the reforms. At the time, there was every reason to believe that those reforms would not work because they were not focused on conduct issues. We know quite a lot now about what works in the regulation of debt collection across the piece—from the financial services, the fuel markets and so on. Those regulations were set up as a legal technical reform. They made some things better, but they did not deal with the fundamental issues, which were control over the conduct of firms, the way incentives in the industry work and properly dealing with the vulnerability of the people they were dealing with.

Q10 Chair: It has been suggested that the system incentivises people going further down the route, because I understand that you get paid more for



HOUSE OF COMMONS

a visit than for settling at an early stage.

Peter Tutton: That is right.

Q11 **Chair:** What is the actual data you have around how much that happens?

Peter Tutton: We will dig the stats out, but we have done some polling of our clients. When they try to settle on the phone, a proportion of them are unable to settle on the phone. We will be producing written evidence with the stats.

The compliance stage was brought in to help settle that. It will settle some cases but not every case. There is an incentive to move to the next stage because there are more fees, exactly as you say. There are two issues: how the fee structure works and, importantly, who controls how it moves forward. There is no independent oversight over what has to happen at one stage before it can move to the next stage.

Q12 **Chair:** If you are able to give us the facts and figures, it will be helpful. I know that you may not have them to hand.

Joe Lane: In a nutshell, the reason we are here is that, as debt advice providers, we want to help people repay their debts and get back on track. When bailiffs break the rules, they make that more difficult. They make it more difficult for the individuals involved, obviously, and they make it more difficult for our advisers.

Each year, Citizens Advice helps around 350,000 people with debt problems. About 40,000 of those people have problems caused by or related to the way bailiffs treat them. Some of those problems are directly related to bailiffs breaking the rules. Some of them are related to more general issues of affordability and the challenges of going through bailiff collection.

To supplement that, we did further research. We did nationally representative polling with people who had been in arrears and who had debts collected by bailiffs. We asked about the specific behaviour of the bailiffs. In a third of instances where bailiffs were collecting debts, our expert legal advisers said they had broken the rules. Very common instances, both from people coming through the door and from our research, of bailiffs breaking the rules were things such as threatening to break entry into people's homes when they did not have the right to do that. In some instances, they have the right to use force—for instance, when enforcing a magistrates' fine. If it is a local authority debt, they do not. Bailiffs are misrepresenting their power and causing massive stress and anxiety for people.

Q13 **Chair:** Misrepresenting in what way?

Joe Lane: Telling people that they can break entry into their house.

Q14 **Chair:** When they are not enforcing a debt where they can do that.



HOUSE OF COMMONS

Joe Lane: Precisely, yes. In other instances, they threaten to take control of exempt goods—third-party goods, goods that are essential household items or things people need for their trade. That obviously pushes people into the debt spiral Peter mentioned, causing them to borrow from elsewhere or miss bills and fall behind on other bills and fall further into debt. We want to make sure that bailiffs follow the rules, which are pretty good on the whole. The rules that were created in the 2014 reforms were a step in the right direction, but they are ineffective because they are not properly enforced. We think that a regulator within the complaints process will create the incentive to follow the rules that are in place and stop behaviours that push people further into debt.

Q15 **Chair:** Is that the research referred to in your November 2018 publication, “A law unto themselves”?

Joe Lane: Yes.

Q16 **Chair:** The sample was 6,000 and then there were 277.

Joe Lane: There are a few surveys in there.

Q17 **Chair:** That is where you get the figure of about a third from.

Joe Lane: Yes, exactly. We scaled it up to 800,000. It is likely an undercount because people do not report when they have been in debt or in problem debt. You see that across a range of surveys.

Q18 **Chair:** Are you able in all these surveys to make a distinction between inquiries about bailiffs from people concerned about the system—“I have had a letter,” or something like that—and a specific complaint about conduct and breach of rules?

Joe Lane: In each individual survey, we endeavour to do that. Obviously, as with any survey, there is always a margin of error. You aim to get your figures in the right ballpark; you are not doing it to the precise number. One of the strengths of working together is that we have used three or four organisations’ administrative data—the data collected by advisers. We have used surveys on 140,000 people who visit our website for information about bailiffs. We have used a range of data sources that all show a similar picture. That is why we are confident that it tells the right story.

Q19 **Chair:** You are nodding in agreement, Mr Tutton.

Peter Tutton: It is consistent across all the charities. In all the coverage, the evidence base is very strong.

Q20 **Chair:** Is it the same for you, Ms Elson?

Joanna Elson: Yes, absolutely.

Q21 **Bambos Charalambous:** You have partly answered my questions, which were about the evidence and whether it was just some rogue bailiffs or whether there was a systematic issue. The 2014 enforcement agent



reforms were aimed to make the system fairer and more transparent, and at least as effective at enforcing debt. How successful do you think those reforms have been?

Joanna Elson: There have been some limited improvements. For instance, there are clearer rules about when bailiffs can enter premises—as you know, it is not before 6 am or after 9 pm—and what goods they can and cannot take. It is clear what the rules are. Unfortunately, as we have all said, they are contravened very regularly.

The three areas I would highlight where they are contravened are that bailiffs will not accept affordable repayment offers, which is sometimes linked to the fee structure point; they seize goods inappropriately, as Joe said, including tools of the trade for people who need them for their livelihood; and they fail to take vulnerable circumstances into account. As the Chair said, they introduce new problems in the form of the flawed fee structure that incentivises bailiffs to escalate the situation.

Peter Tutton: The aim of the 2014 reforms was to provide more protection against aggressive enforcement agents. Looking at the current review, our evidence suggests that that has not happened. The reason why it has not happened is that the reforms were mainly a technical recoding of existing bailiff law. We had all sorts of bailiff law and it was recoded, which was welcome, and within that it dealt with some particularly egregious practices.

Members may remember the whistleblower programme before the 2005 Act where an undercover journalist showed a bailiff climbing a ladder to get through people's upstairs windows. Those kinds of practices were made illegal. It dealt with some egregious things, but it did not fundamentally and systematically deal with aggressive bailiffs and enforcement that was disproportionate and unduly harmful. It was not focused on dealing with those things.

Going all the way back to 2002, the enforcement White Paper that led to the 2005 Act and then the 2014 regulations was clearly saying that without independent regulation that package of legal reforms would not work. We see that everywhere else. Consumer credit is a good example. Consumer credit had a technical legal reform in the 2006 Consumer Credit Act. It was similar to this in a way. It was billed as a once-in-a-generation reform. Within 10 years, we had to completely reform the way consumer credit worked when payday came along.²

Unless you really get down to a regulator that has the powers and the tools to oversee and control conduct between firms and vulnerable people in financial difficulty, you will not achieve the aim of protecting people against excessive, disproportionate and harmful enforcement.

² Peter Tutton has clarified that he was referring to the Effective Enforcement White Paper (2003) and the Tribunals, Courts and Enforcement Act (2007)



Q22 **Chair:** If you agree, there is no need to answer.

Joe Lane: The research we published last week shows that the new formal complaints mechanism that the 2014 regulations introduced, where you can go to court to say, "This individual is not fit to hold a certificate," has only been used 56 times in four years. Bailiffs are used millions of times each year, and we all deal with tens of thousands of complaints about bailiff behaviour, but the process to hold bailiffs to account is completely inaccessible to the individuals affected.

When you dig underneath that, it is very understandable. Individuals who are in financial difficulty, who are being pressured to pay their debts and who do not know the law are very unlikely to be in a position to make active use of a private-based, court-based enforcement process. The big reason those rules have not been effective is that they are only as strong as their enforcement. At the moment, individuals cannot enforce their rights at all.

Q23 **Bambos Charalambous:** Ms Elson made a point at the start about the fee structures. You seemed to be suggesting that the standardised fee structure was not working. Has it achieved the aim of encouraging enforcement agents to settle debts at an early stage with debtors? Do you think it is not doing that?

Joanna Elson: I do not think it is. We see cases where a small council tax debt of under £50 very quickly goes up, with £420 added in bailiff fees because the bailiffs are moving quickly through the three stages—the compliance stage, the enforcement stage and the sale stage—without there being any requirement on the bailiff to do certain things at each point.

For instance, we would say that, before you get to the enforcement stage, bailiffs need to demonstrate efforts to negotiate an affordable repayment. We have lots of cases where people try to contact the bailiff when they get the letter. They want to put an agreement in place. Either they cannot get through on the phone or they are told that the bailiff has to visit, and then there is a cost to that visit.

To give you one example, Sasha—I have changed the name—told us: "I tried calling them to make an agreement. I was informed by the office that I couldn't do this as the officer had to visit me. His visit increased my debt. I was not at home when they called. They returned again, increasing the debt again. Each time I called I was told I had to speak to the visiting officer. I then emailed them twice via their website asking for proof that they had visited. I didn't receive any reply." We have lots of cases like that.

Peter Tutton: I have just found the stat I was looking for earlier. When we had an online poll of 1,400 people who had been visited by a bailiff during the previous six months, 24% said that they had tried to arrange repayment over the phone but found that the bailiff insisted on visiting



HOUSE OF COMMONS

their home to take payment. That is one in four. Again the question is, what are the criteria for the bailiff to make that decision?

Joe Lane: I have another stat. The most recent data available, which was submitted to the one-year review by the MOJ, was that 60% of debts collected by bailiffs are collected at enforcement stage, so they have the second £235 figure added to the initial £75. As has been said, that massively escalates people's debt.

One of the challenges of the fee structure, or that it points towards, is that periodic Government reviews looking into fees are a clumsy mechanism to make sure fees are set at the right level and are proportionate for the cost of the industry. In sectors where they are regulated, if fees are capped or controlled, the regulator, who is the industry expert and has continual oversight of the costs and revenues within the industry, is best placed to set those fees. A positive case for a regulator would be that we would not be back here in two years' time having the same discussion of an issue we only look at every two years. Let's hand it over to experts to make sure that the fee structure is continually updated and at the right level.

Q24 Bambos Charalambous: Obviously, there is the issue about an offer of payment being made but not accepted, or not even considered. Sometimes in court a small amount of between £3 and £4 a week is agreed by the courts as repayment of certain debts. Do you have any experience of offers like that being made, or if there are bigger offers? Is there any guidance about how offers are made or accepted?

Joanna Elson: What we know is that there is a wide variety of practice and there is no framework that sets out how offers should be considered. We would be calling for the independent regulation to set that out, probably in conjunction with something like the standard financial statement that the single financial guidance body oversees, and which sets out the parameters. If people are trying to repay and they can afford £3, £4, £5 or £10, let's help them do that rather than simply adding costs that they will eventually have to repay and that therefore make the whole thing unaffordable.

Peter Tutton: In survey evidence, 48% of people say that the bailiff refused to accept an affordable repayment offer. Again this is very widespread. As I said before, the core of what drives detriment from debt is when people are asked to pay things they cannot afford and are panicked into borrowing, maybe from high-cost credit, or from juggling their bills. They may pay off the bailiff, but then they have rent arrears, and round and round it goes. It is absolutely important.

Everywhere else, there is a methodology to deal with this. We deal with millions of financial services debts every year. There is a methodology, and we work with creditors on a standard financial statement. There is a detailed methodology for what counts as an affordable payment and what does not. Elsewhere across Government, the Digital Economy Act



HOUSE OF COMMONS

introduced a fairness code in relation to Government debt collection when they want to use the data-sharing powers in that legislation. They are required to look carefully at affordability. We are working with the fairness group mentioned in the MOJ review, and elsewhere we are looking at what that means and working with Government to get there.

Again, the enforcement bailiff sector is the only area I can think of where we have not seen movement. Everywhere else—financial services, fuel arrears, Government debt—is moving forward at different levels, but not there.

Joe Lane: Citizens Advice helped people with around 16,000 issues on affordability last year. With all of these individual behaviours, it is really important to trace back to the structural causes within the industry. One worrying aspect of the sector is that the firms themselves are not regulated at all. All court-based regulation is on the individual. The incentives for the firms, the managers, the people writing the policies, doing the training and assigning people work is to send the individual bailiffs out with the instruction, "Collect your debt." In many cases, individual bailiffs are paid on commission if they collect the debt. The way those individual bailiffs assess affordability and their willingness or unwillingness to accept offers of affordable repayment are driven by lack of regulation of the firms and poor incentives in the industry, which drive individual bailiffs to behave in ways that push people further into debt.

Q25 **Bambos Charalambous:** Mr Lane, you touched on changing the fee structure. What suggestions do you have about how to change the fee structure to make it better?

Joe Lane: Going back to the point I made about a regulator, the best place for that to be done is in a regulator that has oversight of company revenue and company costs and is able to do data requests on firms and supervise firms over time. I would not suggest that the Ministry of Justice should make a decision in the review on the fee level. They should say that it is a sector that time and time again has shown that there are systematic problems and lack of enforcement. They should create the regulator and give the regulator the remit to set the fee structure.

Peter Tutton: There are two separate but connected issues with fees. One is how they get applied—control of the day to day and when and how a fee moves through the process, and when it is appropriate to do so. The second is the structure of the fees itself: how much they are and how they are set now.

I agree with Joe that someone needs to look at that, and it needs some economic analysis. If we think about what is happening, the bailiffs we are talking about are collecting Government debt. It is a bit like tax farming. It is given out to the bailiffs and they get paid by what they collect through the fee system. There is no competition or anything like that, so someone in financial difficulty cannot choose the bailiff on the lowest fee. It is absolutely incumbent on Government to keep looking and



HOUSE OF COMMONS

making sure that those fees are set at the right level and are not excessive.

The Government's review of the fee structure when it came in suggested that the amount of profit bailiff firms might make on some kinds of debt like council tax would be above target and excessive. With this review, we would like a commitment from MOJ that in the long run it would need to be a job of the regulator to do that economic analysis.

Anywhere else we would expect regulators to make sure that fees attached to enforcement for a debt were proportionate, did not cause more harm, did not impose conditions that made people's debt problems much worse and were not over-inflated because of things like lack of competition in the market. Those are the basics of regulatory oversight.

Joanna Elson: Yes, absolutely. The only point I would add is that the structure needs to move away from the problem that it incentivises poor practice. There need to be stages that clearly set out what the bailiff must do at each stage so that, as we discussed, people do not have huge sums added when they have not had a chance to make a repayment.

Q26 John Howell: I want to pick up your point about the independent regulator. It has been a theme throughout what you have been saying. You have touched on various aspects of it, but this is an opportunity for you to set out very clearly what it would do and how it would work. Maybe we can start with the big picture first of all, with you setting out exactly what it would do.

Joe Lane: The initial gateway for it to pass through would consist of three things. It should regulate firms as well as individuals. It should do the classic functions of a regulator: licensing, supervising and sanctioning. It says whether you are fit and able to practise in the market, again both for firms and individuals. It is able to collect data and go into firms where there are indications of mis-practice or just for a general check on whether the rules are being followed, and it is able to sanction firms either financially or through revoking licences.

The third thing is that it should be closely aligned to an independent complaints mechanism. A very good model of where that works is in financial services with the Financial Ombudsman Service. An individual can take their complaint to be adjudicated independently. The Financial Ombudsman Service shares data with the Financial Conduct Authority, which is the regulator that maintains the rulebook, does the supervision and ultimately sanctions firms that break the rules. I can go further into the models, but that is the big picture.

Peter Tutton: Where we have seen regulation being successful recently is when the regulator has a focus on preventing problems before they occur. What we have at the moment is a court-based system for reporting problems with bailiffs. It is very complaints driven and complaints are very difficult, as we will no doubt come on to. Effective



regulation, which we see the FCA doing very well, is that they go out, research and try to understand what is happening and try to pre-empt the problems. They look at practices. They require firms to have practices and policies, and to demonstrate how they will deal with things like vulnerability. What we are seeing in that area is a move to guidance that would be enforceable by the regulator if people were not following it.

That kind of focus on preventing harm, particularly protecting the most vulnerable consumers from harm, needs clear objectives, with a regulator operating from clear objectives about what it is trying to do. It looks at the system as a whole rather than just this thing about aggressive bailiffs. You look at individuals, but, as Joe says, you have to look at firms and how the system works as a whole. Those are the kind of big picture things that we would want a regulator to do.

Q27 John Howell: Do you have anything to say, Joanna, before I ask my next question?

Joanna Elson: I have one thing to add. Some bailiff firms are also acting separately as debt collectors and therefore they are already regulated in that capacity by the Financial Conduct Authority. Regulation will not be a new thing for them.

Q28 John Howell: What powers would the regulator have to discipline firms that went against the regulations that were set up?

Peter Tutton: Generally speaking, successful regulation may need a toolkit of powers. There is the extreme nuclear option of stopping someone trading, which licensing regimes tend to have. If you just have that, which is effectively what we have with individual bailiffs—they can have their certificate taken away—it is not very effective. It has never been just a kind of “You trade or you don’t trade.” We need intermediate sanctions. You need financial sanctions. You need the sanction of public shame—a whole toolkit of sanctions.

Q29 John Howell: I am sorry to interrupt you, but there would need to be an appeal mechanism in that.

Peter Tutton: Of course. There would be an appeal, and every regulator has that. Generally speaking, regulators operate to conditions of proportionality. There is always an appeals mechanism against a regulatory decision. It would be open for a firm or an individual bailiff to appeal against a regulatory decision. Obviously, there has to be a process of safeguards for firms, set against the powers of the regulator. That happens everywhere else; that is common.

Q30 John Howell: Why do we need a new regulator to do that? Why can’t one of the existing regulators do it?

Joanna Elson: That will be for people to decide if we go for independent regulation, which I hope we will. There are a number of models. There could be a new regulator, but equally it could be added to the remit of an



existing regulator. Personally, I think the FCA is a good candidate for that. As I have already said, they regulate some of these firms in a different capacity. They are very much an organisation that is looking at practice and foreseeing problems and dealing with them, in the way Pete described. They are about changing the culture too, so it is not tick-box regulation. It is about looking for a buy-in from the top. For all those reasons, I suggest that the FCA would be a good candidate.

Q31 John Howell: The point you have just made about a change in culture is very important. You do not want the regulators to be acting against enforcement companies; you want them to change the culture in which they operate. How is that going to work?

Peter Tutton: It is a really interesting question, and actually it is quite difficult to do. Following the debate that is happening in financial services about a possible duty of care, the FCA has published quite a lot about company culture.

The culture there has changed. It still has a way to go. What has changed it has been the regulator setting very clear standards, so the rules are very clear. They set very clear standards and expectations about how firms ought to behave and how firms ought to view the people we are dealing with. We have the Treating Customers Fairly initiative in financial services; you need to think about who you are engaging with and the outcomes your engagement might have and ensure that they are the right outcomes. There will be a balance for bailiffs between effective enforcement and not causing more harm.

There is something that regulators can do by setting those standards effectively that starts to change the culture. That is difficult. There is a mixture; there is changing the culture, which we have seen starting to happen, and you need regulatory sanctions to keep pushing it along.

Q32 John Howell: Legislatively, how simple is that going to be to do?

Peter Tutton: I do not think it will be over-complicated. It is no more complicated than any other legislation.

Q33 John Howell: That does not give me a lot of confidence.

Peter Tutton: Claims management might be an example. Claims management is a similar sized industry that was initially brought into regulation quite quickly by the Ministry of Justice itself through trading standards. That was moderately effective. It has now been moved to the Financial Conduct Authority because most of what claims management companies are now doing are complaints against financial services firms. That was quite easy to bring into legislation. The Treasury just had to relax and drop it into a thing called the regulatory activities order, and then the FCA set out their rules framework. It can be done quite quickly. Things can be brought into regulation and it does not have to be legislatively complicated.



HOUSE OF COMMONS

Q34 John Howell: How much is it going to cost, and who is going to pay for it?

Peter Tutton: It is a good question. I do not have them in front of me, but we will drop in some rough estimates of costing. How much it costs will depend on the regime. Good practice is a cost of doing business. There will be a cost, and it will cost enforcement firms more than they are paying at the moment.

There may be some offset from that. At the moment, there are the costs of certification and things like that. If you do it in a different way, they will be offset. To give an example, we are all charities. We represent charities. We are all regulated by the FCA. There is a cost for us to do that as charities, but it is an appropriate cost because it means that our clients and people who come to us for help know that someone is looking to make sure that we operate to high standards. There will be a cost, and it is a job for legislation and for the regulator to make sure that the costs are proportionate, but they are a cost of doing business, so we would reject the idea that any cost is unacceptable.

What those costs will be depends on the size and shape of the regulation. The FCA has costs for business that depend on the size and type of business. They have different fee blocks. It is quite a complicated question. It will depend on how it is viewed.

Q35 John Howell: The second part of my question looks at that: who is going to pay for it? We have seen various models, including systems of regulation paid for by the firms themselves that have not been wholly successful. Is that a model you wish to follow?

Joe Lane: The classic regulatory funding models would be that the regulator will be paid for by a levy on firms. Generally, there is an application fee and then an ongoing fee. The complaints mechanism is generally funded by a case fee or an uphold fee, so the Financial Ombudsman Service gets a fee from a financial services company every time a complaint is made about it.

In this sector, there is an opportunity for further revenue raising, which would be that when people used bailiffs or referred a debt to a bailiff they paid a small fee for the regulation of the industry they were benefiting from. In terms of the size of that, local councils alone used bailiffs around 2.3 million times last year. It is a small fee that allows you to raise a decent sum of money to regulate a relatively small sector, but it affects millions of people. There are a number of points in the customer journey that would allow you to raise the money needed to pay for the regulator.

Q36 Victoria Prentis: That would of course come from taxpayers if local councils had to fund it. I will come on to that when I talk about the complaints procedure in a minute.

I know it is not your job to stand up for bailiffs, but have you given any thought to how you would minimise the bureaucracy needed in any



HOUSE OF COMMONS

regulation to make it possible for businesses to function effectively?

Peter Tutton: That is a really good question. I would have to think specifically about bailiffs. Certainly we would be very clear about the need for as simple a regulation process as possible. There should not be too many forms and notices. What we are seeing in other areas, for instance in consumer credit at the moment, are a lot of very prescriptive rules. They are perhaps over-prescriptive. We are open to the idea that they can be turned into easier to understand and slightly less prescriptive rules that make it easier for business to comply.

The inspections and so on need to be proportionate. You can build in those proportionate things. There will be a cost to regulation, but I do not think it needs to be overly bureaucratic. I am not sure there is any reason why it should be.

What bailiffs do is a relatively straightforward proposition, so the rulebook would not have to be very large. Obviously, all regulators do things like consulting in advance on changing rules, which gives people good notice. The number of firms in the market is small, so it would be quite possible for a regulator to have a close relationship with firms so that they understand what is expected.

The big costs in these things are often compliance costs. The bureaucracy of regulation causes problems for firms if there is ambiguity as to what the regulator wants and expects. The key thing for a regulator to do, which would be relatively easy to do for the bailiff sector, is to set very clear expectations so that the compliance costs are very low and there is little room for ambiguity. That would be one of the main things.

Q37 **Victoria Prentis:** Can you give us an idea of what proportion of firms are larger, and what proportion are sole operators, or a few operators, in the bailiff world?

Peter Tutton: This is slightly off the top of my head. I am not sure how many there are now and your next witnesses will be able to tell you better, but there are 10 or so large firms, some smaller ones and about 2,500 individual bailiffs. There has been a lot of consolidation in the market so there is a smaller number of bigger firms. One of the effects of 2014 has been concentration of firms. It is not a huge sector. As I say, a proposition to regulate it should not be too expensive or need to be too bureaucratic.

Q38 **Victoria Prentis:** I want to move to the complaints procedure, which may or may not sit with the regulator. Mr Lane, you have obviously given the matter a great deal of thought. Would you like to sketch out for us what sort of form the independent body that deals with complaints would take?

Joe Lane: As I said, the best model at the moment is in the financial services sector with the Financial Ombudsman Service, and the FCA as a separate regulator. The ombudsman service would be capable of



HOUSE OF COMMONS

adjudicating, investigating and deciding on complaints. Crucially, it would give us a massive degree of transparency over the level of complaints.

One of the points of contention within the wider discussion has been around whether something is a complaint or a wider issue. In the financial services sector the Financial Ombudsman Service says, "There were 1.4 million complaints last year; we upheld 35% of them; we have very high satisfaction ratings of around 65%." Lots of people think that is a fair system.

If you compare it to this sector, it is very difficult to get data on complaints. We had to FOI the MOJ to get that data, and when we asked people who have been engaged in that system only around one in 10 said they were satisfied. The ombudsman system provides both transparency and, the evidence suggests, great satisfaction for everyone involved that it is a fair process.

There is already bureaucracy: "These are the rules you have to follow." The argument that there will be more bureaucracy is akin to the bailiff firms being worried that they will have to follow those rules. We are not arguing for masses of new rules to be put in place; just for a body capable of making bailiffs follow them. Hopefully, you would not end up with an expanded rulebook. There is already a pretty detailed rulebook for bailiffs to follow, but it is currently in the wrong place.

Q39 Victoria Prentis: You have described a belt-and-braces system. Do you have any further ideas about paying for it, aside from those that have been mentioned already?

Joe Lane: As Peter said, what will drive the cost of the model will be the model that is decided. The clearest thing we know is the cost of the FCA because it has a cost structure in place. We would simply be able to say, "This is the size of the firm, this is how many supervisors and this is what it would cost." It is important that we can do that sort of detailed work following the decision to investigate the best way of introducing the regulation.

Q40 Ellie Reeves: We are very concerned about vulnerable people—for example, disabled people and people with mental health problems. I have a few questions. Do you think they are adequately protected? I expect the answer to that is no. Are they properly recognised and treated as vulnerable, and should more be done to protect them?

Joanna Elson: You probably know that the 2014 reforms mean that when a bailiff comes across someone who is vulnerable they are supposed to go back to the creditor and seek advice on what to do.

Q41 Ellie Reeves: The issue is identifying whether someone is vulnerable or not, to start with.

Joanna Elson: That's right. Our experience is that that happens very rarely. I know you are talking to representatives of bailiffs later and it



might be worth asking them what their experience is. We have not seen that really happen in practice.

The Money and Mental Health Policy Institute notes that half of people in problem debt have mental health problems. Its recent report on bailiff practice describes some of the issues that those people face. To give you one example, here is a client's experience: "When I explained I had a mental health condition he told me, 'That's not my problem. You need to pay what you owe or your car gets taken away.'" We have seen a lot of cases like that, where people are not being identified as vulnerable. The bailiffs are not going back to the creditor to ask what to do about it and therefore people are facing those kinds of situations.

I contrast that with other sectors. As Peter and Joe explained, there has been a lot of work in financial services, in energy and elsewhere, to shine a spotlight on what we need to do for people in vulnerable situations. Those sectors are now much less likely to send in the bailiffs. What they have done is to invest in practice that is about talking to people earlier on about their problems and trying to help them repay. That is what we need to see in this area.

Peter Tutton: That put it very nicely.

Joe Lane: Citizens Advice helped 6,000 people last year who had specific issues such as, "My vulnerability has been ignored by a bailiff." In our survey, around 18% of people contacted by bailiffs said they had had a vulnerability ignored or not dealt with appropriately. We have seen in other sectors that this is a really difficult issue; vulnerability is very difficult to both define and assess. There needs to be a continual practice of improvement. The best people to do that are regulators. The FCA hosts conferences and publishes papers almost quarterly saying, "This is what we want you to do about vulnerability."

Ultimately, it comes back to the culture point, which is that firms and individual bailiffs need to think instinctively, "It is important that I am always thinking about vulnerability." That has to be driven by incentives. In the financial services sector, we have seen the culture gradually improve as individuals in financial services companies have become more concerned that, if they do not have good practices and do not seek to continue to improve what they do around vulnerability, they will be sanctioned by the regulator. You need a body that oversees how vulnerability is dealt with in this sector. That will create incentives that will drive improvement in culture over time.

Q42 **Ellie Reeves:** Are there specific measures you would put in place to protect vulnerable people? You have mentioned sanctions.

Peter Tutton: The starting point is that you, as a regulator, would have requirements on firms to justify what they do. As debt advice charities, we are required to have policies and procedures on how we deal with people who are more vulnerable and are seeking our help. A regulator



HOUSE OF COMMONS

can interrogate that, and, if they do not think they are very good, they can take a sanction just on that basis.

Again, it is very important that it is effective regulation and that you interrogate firms hard: "What are you doing about this? How hard have you thought about this? How are you going to ensure that this is not going to happen?" They have to ask those hard questions of senior management in the bailiff firms: "How are you going to ensure that bailiffs on the doorstep acting on your behalf are going to do all these things and are going to spot vulnerability? What are they going to do next?"

The starting point for effective regulation will be drilling hard before problems even begin to make sure that firms have thought hard about it. Then you can set some outcomes on identification. "Demonstrate to us how you are identifying and the proportion of people." The regulator would then triangulate so that they can do their own polling. According to the Financial Services Authority, 50% of the population may have some vulnerability. The number of people who are financially or otherwise vulnerable is very high. There are lots of ways a regulator can do this identification. It can look at the target population, understand vulnerability and then go to firms and say, "How many people have you spotted? Are you broadly consistent or well behind?" There are lots of ways, but it requires proactive thinking by the regulator and intervention to talk to firms and make sure that their policies are right.

Joanna Elson: I am sure that being a bailiff is not an easy job, and no doubt there are some out there who are trying to do the right thing. We have done a bit of training for a couple of bailiff firms, particularly around people in vulnerable circumstances, but that relies on the particular firm taking an interest in it. Independent regulation, which sets a standard, would mean that all the firms would be focused on it and we could move things forward. I know that at least one of the firms is in favour of independent regulation. Reputable bailiffs have nothing to fear from it.

Q43 **Ellie Reeves:** Thinking about literacy, obviously there is an issue around the letters that are supposed to be sent before bailiffs turn up at someone's home. That becomes difficult if someone is functionally illiterate, as about 15% of the adult population are. How do you think that bailiffs can recognise that vulnerability and how could the system better protect those who are functionally illiterate?

Joanna Elson: It is partly what we said about recognising people who are vulnerable, but it is also about looking very closely at the language that is used. I have an example of a text message to a debtor that reads: "Enforcement agents due to take control of goods from registered address under court warrant of control. Liability order. Further charges for actions may be applied today." If you receive that, you are under duress; and if, perhaps, you have a low literacy level I am not sure it would help you repay your debt.



HOUSE OF COMMONS

- Q44 **Victoria Prentis:** We know that 15% of the adult population is functionally illiterate. Has anybody done any assessment of the proportion of the adult population who are subject to bailiffs, and their levels of literacy?

Joanna Elson: I am not aware of that. I would expect the proportion to be higher, but I do not have any evidence for that.

Peter Tutton: No, other than what we see. We did some work that shows that clients we class as vulnerable for various reasons are more likely to be in trouble with things like council tax, which are the sort of debts that bailiffs collect.

- Q45 **Victoria Prentis:** My concern is that a very high proportion of people who get into that sort of debt difficulty may be functionally illiterate and that nobody has fully assessed it.

Joanna Elson: That is probably right.

- Q46 **Ellie Reeves:** Might it be that a letter gets sent and then there would be a follow-up phone call to assess whether someone can actually read the letter that has been sent to them, for example?

Joanna Elson: Yes, that would be very helpful. Another point our clients make is that it is very hard for them to get through on the phone. A requirement for there to be a properly staffed phone line available at reasonable hours of the day, with people who are trained to cope with people with vulnerabilities, would be very sensible.

- Q47 **Gavin Newlands:** I have a brief question on protections for the vulnerable groups that Ms Reeves outlined. Would you agree that, with regard to protections for vulnerable groups, introducing a debt arrangement scheme such as Scotland has, which offers statutory protections for the debtor, unlike the current scheme in England and Wales, would probably keep many of that group out of the orbit of bailiffs in the first place?

Peter Tutton: There is a lot of truth in that. We have all been campaigning for a breathing space and statutory debt management repayment plan for England, Wales and Northern Ireland that would mirror the Scottish scheme. That would be quite important. Interestingly, the Government there have recognised that, when people are recognised as being in financial difficulty, it is appropriate to suspend enforcement and further charges that will only make their debt problems worse.

When people who come to us are appropriate for breathing space and statutory debt protection, that is what we will do. However, people who may only have one debt or are not appropriate for those things will not get that protection. It makes the point that if you are inside that statutory debt scheme you get the protection that the Government recognise is necessary, but in the everyday interaction between people in



financial difficulty and bailiffs—maybe before they come to us—that protection is not there.

We need a twin-track strategy: first, debt protections that bring into England, Wales and Northern Ireland similar protections to those you have successfully introduced in Scotland, and, secondly, building some of those protections into the everyday relationship between bailiffs and individual debtors. The principle that people who are in hardship should not face disproportionate enforcement that makes their problems worse has been recognised by Government, and it needs to be brought into practice by firms, which is why we need a regulator as well.

Chair: Thank you all very much for your evidence. It is much appreciated. Thank you for your time and trouble. If there are any follow-ups, feel free to write to us. I know that you are giving evidence to the Ministry of Justice consultation, to which we will have access when it is published.

Examination of witnesses

Witnesses: Russell Hamblin-Boone and Simon Jacobs.

Q48 **Chair:** Gentlemen, thank you very much for coming to give evidence to us. Thank you for your written evidence, which I know has also been submitted. We are grateful for your time. You have heard some of the discussion initially. Perhaps you would introduce yourselves and the organisations you represent in the industry.

Russell Hamblin-Boone: I am Russell Hamblin-Boone. I am chief executive of the Civil Enforcement Association. I represent firms that employ certificated enforcement agents.

Q49 **Chair:** Is that the sole trade association or one of a number?

Russell Hamblin-Boone: It is the primary trade association. There is a trade association that represents individually certificated agents. I represent 95%-plus of firms that employ agents.

Simon Jacobs: I am Simon Jacobs. I am an officer of CIVEA, but we are also an enforcement company. We work for around 100 councils enforcing council tax liability orders, and for around 60 councils doing parking tickets as well. We only work for local authorities, for councils.

Chair: Right. You do not do the other side of things. That is helpful. Ms Rimmer will start.

Q50 **Ms Marie Rimmer:** Good morning. I am going to address the questions to each of you, so could you both respond? What are the characteristics of a high-quality enforcement agency? Perhaps you, Mr Hamblin-Boone, as the representative, could tell us.

Russell Hamblin-Boone: The first thing is that what we see generally is high-quality enforcement. From what we heard this morning, we are not



HOUSE OF COMMONS

opposed to a lot of the measures that people are proposing. They would be good things. Monitoring of agents happens at the moment. There should be independence in the complaints process.

Where we probably disagree is on the evidence base and the motivation for the reforms. We would say that reforms are part of the evolutionary process of driving up standards, as opposed to a reactive response to something that needs to be fixed and there being some systemic problem. That is where we do not agree.

At the moment, enforcement agents are closely monitored. Many of them have body-worn video cameras, which means that we can review their conduct and see exactly what happens on the doorstep. Calls to call centres are monitored and consistently reviewed. Video is also consistently reviewed. It is not just recorded and then forgotten about. It is monitored and sampled. Even the vehicles are tracked to make sure that we know where people are, how long they are spending at premises and things like that, to ensure that they are doing their job properly. A good enforcement agent is somebody who follows the very prescriptive regulations that are already in place.

Simon Jacobs: First, as a member of CIVEA, because we are the only trade organisation that local authority enforcement companies can be members of, you have to have qualified and trained staff. That includes agents and office staff. They have to be able to identify vulnerability. They have to be trained in doing that.

They have to follow the regulations. The regulations are very prescriptive. What we do is very detailed in regulation. There are national standards to follow. There is a code of conduct from CIVEA to follow. There are also very detailed contracts from councils that tell us what we can and cannot do. They say what arrangements we can make and when they want us to progress to different stages.

We have welfare teams to manage vulnerable cases. It is important that any enforcement company has one of those teams just to look after those cases. We need to work actively with the third sector. When we start a contract we meet up with local third sector organisations and engage with them. We have a third sector protocol, whereby we always suspend action for 40 days once the third sector is involved, to give them a chance.

Q51 **Ms Marie Rimmer:** Is the third sector Citizens Advice and advice agencies?

Simon Jacobs: Yes, that's right. We need to provide as many contact channels as we can. In April 2014, the compliance stage was brought in. It is a new stage where we have an opportunity to collect before knocking at the door. Prior to April 2014, the first thing we did was knock at the door. My company can collect 53% of what we collect without visiting. You need to be able to engage with people and have the channels for



them to ring you Monday to Sunday, to go online or to use My Account apps—all the electronic things that people want nowadays—plus you need the staff to answer the phone. All CIVEA members have really geared up in the last few years, and we all have those facilities to engage with people before visiting.

You have to have a good complaints process. I accept that things can always be done with complaints procedures. We have a robust complaints process that is independently audited by the ISO 10002 quality standard. You need facilities to record phone calls. You need video badges for your agents to record what happens on the doorstep, so that we can all step back and investigate it properly. That is the big problem; you need to step back and investigate what has actually happened.

Last year, we reviewed 134 video badges and we only found two fully justified complaints. Our clients, the councils, looked at those video badges as well. Video badges really are a godsend. They have come in during the last few years and they help everyone to see what happened. You also need quality checks in place to look at video badges and to listen to the phone calls, to randomly check that you are doing the job you are supposed to be doing in accordance with the regulations. That is really important.

Finally, you need the right culture in the organisation. That was mentioned by the previous panel and it is a really important part. My personal view, like, I think, that of many other members of CIVEA, is that we are open to having a regulator. We are out there doing a very difficult job. We are following the regulations. We believe that we are doing it properly, but it is difficult to get our message across because not everybody necessarily wants to listen to what we have to say.

Q52 Ms Marie Rimmer: You say you have systems for checking how it operates and that it is operating in that manner. How often do you check when the third sector approaches you for a delay, when they have had someone come to them? When people get the letter advising them they can go to the third sector for advice, how often do you check that the actions you have described happen?

Simon Jacobs: The protocol in place is that at any point in the process, whether at the initial compliance stage, the enforcement stage or right at the end at the sale stage, we suspend action for 40 days and engage with the third sector. We give the third sector the opportunity. They have pressures and they often do not have the opportunity to get the customer in to do a financial statement. We suspend action for 40 days, and other CIVEA members operate the same protocols. Some councils have signed up to a joint protocol. That happens regularly.

I will give you an example of the kind of complaint that can happen. Last week, we had the CAB contact us in the north-east, in Yorkshire. They were concerned that our agent had not identified himself and had not explained who he was when he went to the premises. Ultimately, we sent



HOUSE OF COMMONS

the video to the council. They viewed the video and said there was nothing in the allegations at all. They invited Citizens Advice to come and look at the video to see that that was not actually what happened.

Q53 Ms Marie Rimmer: Do you respond to Citizens Advice if they raise complaints so that they are aware of what is happening?

Simon Jacobs: Yes. To be honest, the way that the complaints procedure works at the moment is that all CIVEA members have a formal complaints procedure. The contract with the local authority, which is a very detailed contract, says that we must have a complaints procedure, but it really operates as a subset of the local authority complaints procedure. When a complaint is made to the local council, it will often run through our procedure at the same time.

Ultimately, the local council's complaints procedure will end up at the local government ombudsman. The local government ombudsman does have teeth. I read somewhere in a recent report that they said they cannot do anything except make recommendations, but those recommendations are closely followed by local authorities.

I will give you an example. We were part of a complaint last year in which someone phoned our call centre and said they had paid. Ultimately, we ended up visiting and it turned out that they had paid. We were criticised by the local government ombudsman for not taking the extra step of checking to see if they had paid, so we changed our procedures. If anyone rings us and says, "We have paid. I dispute the debt. I do not understand the debt," we actually make the calls for them to the local council. We often have numbers to get through directly to the relevant officers. We resolve that for them before we go any further, so the LGO does make a difference. In this case, I think they recommended that we pay compensation to the customer, and we did. We accepted the LGO recommendation and implemented the change.

Russell Hamblin-Boone: The important point about engagement with the third sector is that, while enforcement agent firms can have their own conversations, ultimately, they have to act on the instructions of the local authorities. The local authorities are their clients and they dictate the terms of engagement in everything they do, including repayment plans, which you have just heard a lot about.

Enforcement agents are not empowered to agree repayment plans if the council has said, "We don't want repayment plans in these circumstances." A lot of what enforcement agents do might not necessarily be the right thing, but it is what they have to do contractually.

Q54 Ms Marie Rimmer: Because of the service level agreement.

Russell Hamblin-Boone: Because of the service level agreement, yes. It is a very competitive market, and, if you do not do what the council you are working for wants, they will go to another agent.



HOUSE OF COMMONS

Simon Jacobs: One of the difficult areas to accept is that we are principally instructed to take control of goods.

Russell Hamblin-Boone: As opposed to collecting debt.

Simon Jacobs: Back in 2011, when I first went to meetings on behalf of CIVEA with the Ministry of Justice, when they were looking at drafting the new regulations, we sat down in a room and they said, "We're looking at drafting regulations that you can have the case for 90 days and then you need to return it to the creditor or the council." I said, "What if we want to take an arrangement?" They said, "You take arrangements?" There was a real theory that we were just bailiffs and would never be called an enforcement agency, although I think the name has changed. They thought we were bailiffs and were just there to take goods, but the reality is that, particularly when we are collecting council tax, local authorities prescribe what they want us to do. It is generally standard that we can give people at least six months for an arrangement, and then we work our way down from there.

A difficult area is the new compliance stage that we have, where we can collect without visiting, before we move to enforcement. As I said, my company collects 53% of what we collect at that stage. When we end up visiting, it is normally because we get no contact whatsoever. You have to bear it in mind that in a lot of cases people just do not contact us.

Q55 **Ms Marie Rimmer:** That is when the first letter goes out. Fifty-three per cent. make contact after that letter.

Simon Jacobs: In the compliance stage, the law says that we must give a minimum of seven clear days, which in practice is probably about 12 or 13 days, before issuing the notice of enforcement. That is a statutory notice, which looks like the one I am holding up. On the back page, it has the advice agencies to contact—the third sector. Local authorities require us to do more than that. All CIVEA members, particularly for council tax, give 30 days minimum instead of 14 days. We send three notices and we also try to telephone people, if we can source their telephone number. Often local authorities pass us the telephone number. We engage with people during that period to try to make an arrangement with them.

There comes a point at the end of the compliance stage where, if the offer of repayment you are receiving does not fit what the council requires, you have to go out and search for goods. That is when you move to the enforcement stage. As a business owner, I do not want to send out an enforcement agent. I have to put someone in a company vehicle, insure him, and pay him wages and holidays. There is a high chance of him getting assaulted when he is out doing that work. There can be complaints. It is much easier if I can collect at the compliance stage, but sometimes there is a requirement from the council to go out and see if there are goods, because that is our fundamental purpose. We are instructed to take control of goods.



Q56 Ms Marie Rimmer: That is a crucial stage. I am a debtor and I want to offer you £25 per week, but the local authority is saying, "This much has got to be collected." Would you say that is a crucial stage when things may go wrong for the client?

Simon Jacobs: I would not necessarily say "go wrong". Under the contracts with local authorities and the guidelines, if we come across a vulnerable case and it is inappropriate for us to have it, it simply gets returned. There is no point in us keeping a case that is wrong. It is against the regulations, and it is not going to do any good for anyone for us to go out and visit that case.

The important point with vulnerability is that once you identify vulnerability you have to sit down and look at it and say, "How does it affect the ability to pay?" I will give a rather simple example. My father is in his 80s now. If you told him that he was vulnerable and you were not even going to ask him for the money, he would probably take exception. The enforcement agent company has to take account of the age and decide to act appropriately. It may be that we write to them and try to engage with them, but, when we come to visit, we might decide it is not appropriate to visit.

There are other cases where we return immediately, and there are some cases where we talk to the council and say, "Have you got any more information? How do you want us to proceed on that?" We may move the case to our welfare team. We have a team of people with special numbers. When the customer rings, they get through to that team. They speak to the person who is potentially vulnerable and manage the process. They are not always confirmed as vulnerable but they are potentially vulnerable.

Q57 Ms Marie Rimmer: What proportion of the enforcement agency sector do you think is high quality?

Russell Hamblin-Boone: All of my members, of course.

Q58 Ms Marie Rimmer: You wouldn't say anything different.

Russell Hamblin-Boone: There is always room for improvement. Having said that, without being flippant, Simon's figures are slightly higher in terms of how much is collected at the new compliance stage, which is pre-visit. We must remember that even the compliance stage is the end of the process. The council has had lots of engagement and lots of attempts and opportunities before it has gone to the effort of going to court to get a court order to take control of goods. It has gone through a long process by the time it has got to Simon's company. There are lots of opportunities for someone to engage. The average is about 40% collected across the industry. Some firms are better than others; it is a competitive thing.

We were talking about the sale stage—the point when goods are taken into control. Only 2.5% of fees and debt is collected at that stage, and



HOUSE OF COMMONS

less than 1% are actually goods taken into control and sold at auction. That end of the process is a very small number of people.³ The majority of it is about collecting before the visit.

Q59 Ms Marie Rimmer: The advice charities tell us that they believe there are systemic problems in enforcement agencies rather than just a few rogue bailiffs. How do you respond to that?

Russell Hamblin-Boone: I do not want to get into a debate on figures, but their figures were based on a survey of 277 self-selecting individuals. Our evidence is based on firms that collected 10 million orders and warrants over the last year.⁴ The market itself, as I said, is very competitive and firms have to comply with the requirements of local authorities. The local authorities obviously have a reputational risk working with firms, particularly in this very delicate and sensitive type of work. If they were not meeting standards and conducting themselves appropriately, the local authorities would be doing something about it.

It goes back to what I was saying at the beginning. We disagree about what rule breaking is. The previous witnesses were saying that agents are breaking the rules because they are not agreeing repayment plans. Simon has just explained that it is not within his gift for his agents to agree those repayment plans. There are lots of examples where an observer would think that must be breaking the rules and surely it is wrong that an agent is doing that, whereas actually that is what the agent is instructed to do. The regulations are very prescriptive.

Chair: You have made the point. We need to keep the questions and answers fairly concise because we are pressed for time.

Q60 Ellie Reeves: I want to pick up on the issue of vulnerability. We have heard evidence from the previous panel on that. Do you think that vulnerable people are adequately protected under the current regulations?

Simon Jacobs: One of the difficulties is that when they drafted the regulations they were originally going to include the vulnerable categories in the regulations themselves. The difficulty once it is written down in statute is how an enforcement agent can actually act. I will give you a simple example. One of the categories in the national standards is pregnancy. If it was in a regulation that we could not proceed if someone was pregnant, how would you deal with that in practice on the doorstep if someone just said, "I'm pregnant"? The definition of vulnerability was

³ Russell Hamblin-Boone has clarified that 2.5% of fees and debt collected from those cases that pay in full are collected at Sale Stage. Less than 1% of fees and debt collected from those cases that pay in full are collected by taking goods into control and selling them at auction.

⁴ Russell Hamblin-Boone has clarified that his evidence is based on firms that collected approximately 10 million orders and warrants since the regulations were introduced in 2014. This equates to 2.8 million over the last year.



HOUSE OF COMMONS

never actually put into the regulations, and it was left in the national standards.

On council tax, we identify 8.5% of cases as vulnerable. You have to bear it in mind that a lot of the cases we get just do not engage with us. It may be that we never hear from 50% of cases. We are identifying 8% of the 40% who engage, which, in the number of people who engage, is a higher percentage. We send more than half of them, 4.8%, straight back to the local authority. The other few per cent. we often engage with and they manage to arrange payments with us.

The national standards cover the issue of vulnerability, but it is difficult to prescribe it in regulations.

Q61 Ellie Reeves: That 8.5% statistic sounds quite low, particularly when thinking about some of the triggers that end up with people getting into difficulty with debt in the first place. Do you think that more could be done, for example, to identify vulnerability?

Simon Jacobs: We do all we can. Maybe you need to speak to the councils about what they do at their end. They pass vulnerability flags to us if they have identified it. Some local authorities never issue a vulnerable case at all; other local authorities issue it to the enforcement agency company and ask them to manage it. With some council clients we have instructions, if we come across a vulnerable case, to return it straightaway. With other council clients, in the contracts we have instructions to manage the case, to speak to them or to return it. It is on a case-by-case basis. There are different rules applied by different councils.

Russell Hamblin-Boone: The benefits process has changed as well. A lot more people who would have got some sort of benefit or rebate for council tax are now having to pay council tax. Councils are probably finding that if they went by the national guidance, which is guidance and not regulation, they could not collect from an awful lot of their population. Then we would have a separate debate about how to collect the appropriate amount of council tax. That is a challenge that enforcement agents are finding in their conversations with local authorities. Clearly local authorities have to maximise their revenue.

Q62 Ellie Reeves: The previous panel talked about having robust standards put on bailiffs for dealing with vulnerable people. Would you agree that we need robust standards in this area?

Russell Hamblin-Boone: Yes, but it has to be in context; if you have gone down this road and you are at the last resort, where your case has been passed to an enforcement agent as the result of a court order, there is a good chance that the majority of people will be vulnerable. Therefore, perhaps we need some protocols, recognising that we are dealing with a majority of vulnerable people, but we still want them to pay.

Q63 Ellie Reeves: I have a final point, which is about literacy. A letter is



HOUSE OF COMMONS

supposed to go to people before the bailiffs come round. Fifteen per cent. of the adult population are functionally illiterate. Do you think further measures should be in place in light of that fact, in terms of telephone calls, checking that people can read the letters and those sorts of things? What is your view on that?

Russell Hamblin-Boone: Simon might have his personal views from his business, but the issue of financial literacy is probably not one that you are going to be able to solve through enforcement agents. The creditors at the front end of the process—the local authorities—need to be able to understand who their population are and understand their demographics. We all see examples, particularly where complaints have been raised, where the bailiff has not done anything wrong but neither has the individual. The communication process simply has not worked for that individual because it has been through a formal type of letter and they just have not been able to engage with that. I have seen that door to door myself.

Simon Jacobs: Our vulnerability figures are the real figures I have on our system. You have to bear in mind, as I said before, that in 25% or 30% of the cases we get the people do not live there. Maybe 30% do not engage with us. If we are identifying 8% out of 30% or 40% of people who want to tell us—because not everyone wants to tell us—it is a much higher figure than you think for the people you are engaging with.

Q64 **Ellie Reeves:** If you are saying it is about 40%, it is more like one in four that are vulnerable.

Simon Jacobs: Yes, we are flagging it in the system. Where we can source telephone numbers or where the local authority passes them to us, we ring people at the compliance stage. We ring people later on as well. We send some SMSs, not as complex as the one I heard read out. We send people an SMS to remind them to pay. If they have an arrangement with us to pay over 12 months, we send an SMS the day before they are due to pay just to remind them and help them to stick to the arrangement.

I am not quite sure where the figures on vulnerability have come from. Sometimes vulnerability is defined as financial vulnerability, and inevitably a lot of the cases we receive could be put into that category. The reality is that we have a job to do, and if we are presented with what we think is someone who cannot engage with us, who cannot deal with the process, it is appropriate to withdraw immediately and return the case. If they can engage with us, we need to weigh up how that vulnerability affects their ability to pay. If it affects their ability to pay, it is not appropriate to continue, but if they are still able to pay we should engage with them.

Russell Hamblin-Boone: There was a comment made about the speed at which enforcement agents race through the process to get to the big fines. The process, as we said, is very prescriptive. You cannot speed up



the process. The council can dictate minimums if it wants. Enforcement agents have some flexibility to add maximums, but it is certainly not the case that you can shortcut or expedite the process in order to avoid all the other parts of the stages. That is an important point.

Q65 Mrs Kemi Badenoch: I have a quick point of clarification. When Ms Rimmer was asking about the systemic number of incidents, you mentioned that it was a self-selecting survey of 277 people. Citizens Advice said it was about a third of 2 million. Why is there a discrepancy?

Russell Hamblin-Boone: Their survey was 277 people and they extrapolated it to 2.2 million. They surveyed 5,000, and said that of those 277 had contact with a bailiff, so they used that as the basis for their survey, which gave them the figure of 825,000 people who had had a problem with a bailiff. Actually it was 825,000 extrapolated who had had experience with a bailiff. Given that there were 10 million court orders and warrants collected over the last year, if there were 2 million people or even 825,000 who had had a problem, I would be a very busy person.⁵

Q66 Chair: Interesting. You gave us your own figures. You said you had investigated 130 complaints last year.

Russell Hamblin-Boone: Yes. There were 249 submitted and I needed to investigate 130.

Q67 Chair: And 45 of those were upheld.

Russell Hamblin-Boone: Yes.

Q68 Chair: Of the ones that actually got investigated it was about a third, so not dissimilar figures.

Russell Hamblin-Boone: Upheld, yes.

Q69 David Hanson: The CAB have told us that there has been a 24% increase in complaints in the last four years. Is that figure correct?

Russell Hamblin-Boone: Yes, absolutely, and I am surprised it is not more. Under the regulations, since 2014, the notice of enforcement, which Simon showed you, and all further communications include details of the debt advice sector and encourage people to call the helplines. Perhaps we need to look at getting that figure higher.

Simon Jacobs: The important thing with complaints, as I said before, is that they need to be investigated. I went to a joint meeting with a local authority and Citizens Advice in the north-east of England. Citizens Advice came forward and said they had had five complaints since the previous meeting. The previous meeting had been six months before. I said that I only had one on my record. We investigated that, watched the

⁵ Russell Hamblin-Boone has clarified that their evidence is based on firms that collected approximately 10 million orders and warrants since the regulations were introduced in 2014. This equates to 2.8 million over the last year.



video and it was unfounded. They said, "Oh, we didn't tell you about the other four because they wanted to stay anonymous." Well, how can you investigate a complaint like that? It is logged as a complaint, yet there has been no proper investigation of it.

Q70 David Hanson: We also had the figure this morning at the Committee that 83% of people contacted felt that they had suffered a negative impact. What is your response to that?

Russell Hamblin-Boone: Somebody visiting your property is not a very nice experience. Somebody asking you to pay back a debt is not a very nice experience. I would be very surprised if anybody said that it was a good experience when a bailiff came. If they had asked them about the conduct or behaviour of the bailiff, we could present you with lots of testimonials from people who said, "Actually I just want to say thanks very much for the way the bailiff worked with me."

Q71 David Hanson: Let's get to the bottom of the CAB report. You talked with Ms Rimmer and Mrs Badenoch about that report. Of the 277 who were asked whether the bailiff had behaved in particular ways, 49 people recall threats to break into the property. Obviously the CAB has extrapolated and you have challenged why you think that is wrong. Have you gone back to the CAB or discussed with them the examples they gave in terms of the percentages for which they extrapolated?

Russell Hamblin-Boone: We could obviously look at the detail and view the videos. We could look at the computer records and talk to the local authorities, but they are not able to give us the specific personal details of those individuals. We can only investigate when an individual complains, or someone from Citizens Advice complains on behalf of that individual.

A lot of these complaints are about misunderstanding of the regulations as they are. We may not like the regulations, and that might be what we are complaining about, but they are the regulations, which is why the majority of complaints are not upheld.

Q72 David Hanson: You have said that verbally now and in written evidence to us. Could you give us quickly one example of how it is working in practice?

Russell Hamblin-Boone: With a lot of people it has got to the point where there is a visit, because they have not engaged with the individual. An enforcement agent has turned up at the door and they say to them, "I'm disputing that with the council; I've got records of my emails," and whatever. At that point, as far as the council is concerned, they are no longer in dispute. They have gone to court and they have passed it to the enforcement agent and asked someone to collect.

Somewhere that communication has not been passed from the individual to the person who is making the dispute. If that person realised that their case was no longer in dispute, they would not be challenging the



HOUSE OF COMMONS

enforcement agent, saying that they were acting illegally. They would not be saying, "I am already going through a process."

Q73 **David Hanson:** Would you clarify that? Ms Reeves has to go and there are some other questions we want to ask.

Russell Hamblin-Boone: The point is that often there is no communication between the council and the individual to say, "We are no longer reviewing your dispute; we have passed it to an enforcement agent."

Q74 **David Hanson:** Run through what happens when I, as a citizen, make a complaint about one of Mr Jacobs' officers.

Simon Jacobs: Initially, the complaint will be made to the council or to ourselves. More often it is made to the actual council and it will go through their formal complaints procedure. What we do initially is look for all the evidence we have. We look for any phone calls through our contact centre or through the office and get copies of the recordings. If the enforcement agent has visited, we get a copy of the video and watch it. Then we report back to the council. We give the council a copy of all the evidence we have, which will include the video and the recordings from the office.

This is an example just from last week. It is an email from the council to me: "The CAB have been on the phone. They want to make a formal complaint. They are just gathering all the information. A couple of things they mention are that the bailiff pushed their three-year-old child when he attended; the EA would not give his name or tell them why he was there."

We sent the video to the council. They came back to us and said: "I am going to ring the CAB and tell them there is nothing to substantiate what the taxpayers are saying. The visit was rather tense, to say the least, but I think the EA was as patient as he could be under the circumstances. I think it is a really good idea to show them the footage, which hopefully will show the CAB what the EAs have to put up with when they attend properties."

Q75 **David Hanson:** I do not want to single out your company; you just happen to be here today.

Simon Jacobs: I know, but that is an example of investigating a complaint.

Q76 **David Hanson:** In context, if it is possible to do so, could you give us an example of roughly how many people you are in contact with during the course of the year, how many complaints would be registered from those contacts and how many of those registered complaints would be upheld?

Simon Jacobs: Last year, my company processed 275,000 cases. We had 373 complaints to either the council or ourselves; 24 were partly



HOUSE OF COMMONS

justified and 24 were fully justified. In those complaints, we viewed 134 videos as well. We had video evidence from when the agent was visiting.

The kinds of reasons we have justified are not the kinds of reasons you will necessarily hear in the reports. They are things like the agent acted unprofessionally; he attended the wrong address; his notes were inaccurate; he provided incorrect information; he breached data protection—with GDPR it is very difficult since May; he made an inappropriate comment; and the agent was aggressive. We sometimes see videos where we perceive he is being aggressive.

- Q77 **David Hanson:** I appreciate the fact that you have put your company on the line and given those figures. It is appreciated. Can you give us examples of what happens in complaints that are partially or fully upheld? What is the response of the company to the individuals the complaint has been made against? How are the learning points put into context with other colleagues who have not had complaints made about them?

Simon Jacobs: That is a really important part of it. That is why I said at the beginning, when we were asked about what makes a good enforcement agent company, that it is about learning from the complaints you have and talking to the council. Where you have procedural errors, wrong addresses and inaccurate notes, they are all administrative operations that can be dealt with.

You have to monitor an aggressive enforcement agent closely. You have to get him back in for conflict and vulnerability training. If he is not operating correctly, ultimately you would have to dismiss him. We have not had to do that, but if you watched some of the videos you would see how difficult the job can be sometimes.

- Q78 **David Hanson:** Russell, do you keep a record or have you information you can share with the Committee on how many agents have lost their certification in a given 12-month period?

Russell Hamblin-Boone: If they had lost their certificate, it would have been a separate court process that someone would have taken privately. I can certainly share with you where fines have been levied or firms have had to—

- Q79 **David Hanson:** What the Committee would be interested in is the totality of the number of agents and the proportion of complaints, and how you dealt with those complaints. How many people have had a punitive sanction, of whatever nature, against them for that complaint? It is just to put it into some sort of context for us.

Russell Hamblin-Boone: We can look at that; absolutely.

Simon Jacobs: It was mentioned before that there had been 56 complaints. To make a complaint about an enforcement agent prior to April 2014 there was a potential cost liability against the complainant. That was removed in the regulations and the civil procedure. Now a



HOUSE OF COMMONS

member of the public making a complaint to the court about an enforcement agent has no cost liability. They also do not have to attend the hearing held in the court.

It is a very simple, one-page form to complete. You submit that to the court and the enforcement agent will be called before the judge to explain himself. Since April 2014, we have had seven of those. I think they said in total there had been 56. One was only a couple of months ago, so it is not completed yet. The other six were dismissed. In one of them, the judge actually viewed the video and reported back: "The bodycam evidence does not support the allegations in this complaint at all." If enforcement agents are acting incorrectly at premises, I encourage the public to complete this form, and I would make them attend at court.

Q80 David Hanson: On a process point, if there is a disagreement or an issue at the point of contact, do agents advise the individual that they have the right of complaint?

Simon Jacobs: Yes.

Q81 David Hanson: They would do that as a matter of course.

Simon Jacobs: Yes.

Q82 David Hanson: If there is a bit of a dust-up and a bit of aggro, they can say, "Look, if you don't like the way I am approaching it, you can complain. Here's the form. Go away and do it." Is that normal practice as far as you are concerned?

Simon Jacobs: The beauty of the video is that you have to advise someone that you are recording them when you arrive at the premises. The video evidence is there and we will release it to someone, subject to an access request, so that they have a copy of it. If they make a complaint, we give them a copy of it, so they have a copy and we have a copy. Then it can be dealt with. We have had complaints under this process withdrawn once the member of the public has seen the video and seen what really happened.

Russell Hamblin-Boone: That is why the complaint level is low. The rules are so prescriptive that you have to have a strong case that the rule has been breached. Because there is so much monitoring, complainants know that we can go into so much detail to prove exactly what happened.

Q83 David Hanson: It is not compulsory for agents to have videos though, is it?

Russell Hamblin-Boone: No, and that is something the Committee might want to consider.

Q84 Chair: Is it something you would welcome?

Russell Hamblin-Boone: From an adjudication point of view and a protection point of view, absolutely. With the type of work that people do,



HOUSE OF COMMONS

increasingly councils require agents to have them, although there are some that say, "We don't want you to subject our residents to that."

Chair: That is helpful.

- Q85 **Mrs Kemi Badenoch:** I have a very quick question on what proportion of bailiff enforcement is private sector versus public sector. Simon, I think you exclusively work for councils. Russell, overall, how much of it is council tax, and TV licensing versus utilities?

Russell Hamblin-Boone: The firms that I represent collect primarily on council tax, penalty charge notices for parking and some court fine activities. The majority of them do not do private work, so they are not debt collectors.

- Q86 **Mrs Kemi Badenoch:** They don't do mobile phone collections and things like that.

Russell Hamblin-Boone: No.

- Q87 **Chair:** You said that some local authorities will not put payment plans in the contract. Is that common?

Russell Hamblin-Boone: They do not give flexibility to enforcement agents.

- Q88 **Chair:** You said the enforcement agents were constrained by their contracts.

Russell Hamblin-Boone: And I would argue that enforcement agents are not skilled to do an affordability assessment on anyone anyway. We have increasingly to look at local authorities as if they were a creditor, like any other financial service creditor. They need to take that responsibility.

- Q89 **Chair:** Did you have a point on that, Mr Jacobs?

Simon Jacobs: I want quickly to explain one thing. There are three stages to the regulations now. It was mentioned earlier that there is a real incentive for us to push to move forward to the enforcement stage.

When they rewrote the regulations in April 2014, they tried to simplify the process to three stages. The problem was that in the past each time we did another visit we got another fee. There was a perception that we were only making another visit to get another fee, so they simplified it by having one stage where we get one fee. It was mentioned before that maybe we should stagger it more. That would be a backward step because we would then go back to the same confusion about whether another visit should create a fee.

As I said before, we do not want to visit. We would prefer not to send an enforcement agent to the premises. It is much easier for us if we can make an arrangement in the office. Before April 2014, my company had more people outside the office than inside. It is now the other way round.



HOUSE OF COMMONS

We now have 150 people in our office dealing with cases, and 70 people in the call centre taking calls. We are open seven days a week taking arrangements from people and engaging with people. Yes, there is a job to do later in the process, but a lot of our clients, councils, now encourage us to collect as much as we can at the compliance stage without visiting. They realise that, if we can collect with a fee of £75 instead of £310, it leaves more money to pay the current debts.

Russell Hamblin-Boone: To sum up, we have two debates going on. There is violent agreement about some of the solutions. Our concern is that we make sure we base the policy on the evidence. We will continue to challenge talk of systemic problems and aggressive behaviour until we see the evidence of that. We do not want the solutions to be driven by the tone and the sense that we are reacting to something that desperately needs fixing because it is broken.

The solutions we are talking about, we would probably agree, are some of the things we should do. We have set up a working group to look at independent complaints handling. We have set up a working group to look at a review of our code, to ensure that it goes over and beyond the regulations and that that has some independent monitoring. We are doing all the things we need to do, which will pave the way for what I imagine will ultimately be some sort of additional regulation, but we do not want to be driven to that under the perception that there is something systemically wrong with the system.

Q90 **Chair:** I understand that. Mr Jacobs, your point about the way you settle things was helpful. Do you have any statistics across the industry, or certainly as the major trade body, that might help us on that in terms of the percentage that settle at an early stage?

Russell Hamblin-Boone: I am sure we can find some.

Simon Jacobs: Yes, absolutely. I can give you those statistics.

Q91 **Chair:** I get the sense that you are not against regulation per se. Do you have views on it, or is the evidence base that leads to it ostensibly what you are talking about?

Russell Hamblin-Boone: We appear to have come up with a solution and now we are looking for the problem. We need to identify where we have problems and then look at what the solutions are. In principle, yes, we are not against it. As the previous witnesses said, we will need to move from rules based to principles based. That is a big cultural shift. We would argue that the Financial Conduct Authority is not the appropriate authority because the firms are not subject to the Financial Services and Markets Act. In fact, you would need to regulate the creditors, who are the local authorities instructing the enforcement agents.

Simon Jacobs: In April 2014, when they brought all the multiple types of distress and execution into one set of rules, they left it that the compliance stage had one minimum requirement, one statutory notice. I



HOUSE OF COMMONS

think the MOJ hoped that responsible creditors such as local authorities would say to the people they were employing, "I want you to do a bit more at that stage."

We do more at that stage, as do a lot of CIVEA members, because we work for councils. You cannot take away the basic right of a creditor. It might be a business-to-business debt that a High Court executes. It could be a business rate debt, where a local authority is looking to recover a large debt from commercial premises. You cannot take away the right of that creditor to get the enforcement agent to visit within the minimum period. Obviously, for domestic-type debts like council tax that we deal with, we are doing a much longer compliance stage and it is working. We are collecting 53% of what we collect without visiting.

Q92 **Chair:** You are going to be giving evidence yourselves to the Ministry's consultation.

Simon Jacobs: Yes.

Q93 **David Hanson:** Who should fund that regulation ultimately?

Simon Jacobs: As I said at the beginning, CIVEA members and I are open to a regulator, but what you necessarily cannot regulate is the fact that we are instructed to take control of goods. We are not there just to make arrangements. You need to leave it for the council or the creditor to prescribe to the company they are using how they want them to engage with people before visiting.

Q94 **David Hanson:** You are talking about regulating councils' approach to using enforcement agents.

Russell Hamblin-Boone: If councils are creditors and they are supposed to be deciding whether somebody is able to pay and whether it is an affordable repayment, you probably need some regulation for how they go about doing that. Every other creditor would, and I imagine the debt advice sector would agree. They should be treated as creditors. Some councils like the standard financial statement and some do not, so there is a debate there around the appropriate way of doing it.

Q95 **Chair:** I get the sense that you are not against regulation. On the point about councils, you are saying that is where the FCA regulation comes in, a lot of which you do not like.

Russell Hamblin-Boone: Yes. You would have the equivalent type of thing.

Q96 **Chair:** You are perhaps looking for a different regulator or a different system.

Simon Jacobs: What we do is described in detail in regulations. In that way it is regulated at the moment. What I am saying is that once you have a regulator involved I do not think it will stop the complaints that you get, because they are not being investigated properly. If they were



HOUSE OF COMMONS

investigated properly, we would get to the bottom of it, but you also cannot take away the fact that a creditor may require the enforcement agent to move from the compliance stage to enforcement agents to see if there are goods.

Chair: I understand that. That is the main thing.

Thank you very much for your time and your evidence, gentlemen. It is much appreciated.