

Local Government & Social Care OMBUDSMAN

8 February 2019

Civil Procedure and Enforcement Team
Ministry of Justice
Civil Justice and Law Division
102 Petty France
London SW1H 9AJ
Email: bailiffreview@justice.gsi.gov.uk

Dear colleague,

Local Government and Social Care Ombudsman (LGSCO) response to the Ministry of Justice (MoJ) Call for Evidence on the 2014 enforcement agent reforms introduced by the Tribunals Courts and Enforcement Act 2007

About the Ombudsman

The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about councils and some other authorities and organisations, including education admission appeal panels and independent adult social care providers. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.

Our experience, of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services. We welcome the opportunity to contribute to the call for evidence.

We are responding to this consultation due to our existing role in considering complaints about local authorities' use of enforcement agents, which we have set out below.

Key points

LGSCO has no direct jurisdiction over enforcement agents. If the agent is a direct employee of a local authority, their actions fall within our jurisdiction. If the agent is contracted to work for the local authority they are also in our jurisdiction, as performing a function on behalf of the authority. Therefore, we are able to investigate whether there was fault in the way the local authority used the enforcement agents, as well as whether there was fault in the actions of the agents themselves (which would be the responsibility of the local authority because the agents were acting on its behalf).

As with other areas of services, local authorities can choose to contract services out to enforcement agencies. We expect local authorities' arrangements with enforcement agents to also include how complaints should be handled, including ensuring complainants are

appropriately signposted to LGSCO where they cannot be resolved locally. Fault in these cases can often be exacerbated by failures in communication, including passing a complaint between the local authority and enforcement agents without actually addressing it.

We can only consider complaints concerning the recovery of local taxation and parking debts, as they are recovered by enforcement agents directly responsible to the local authority. Figures¹ suggests our current jurisdiction covers a majority of cases passed to enforcement agents – at least 90 percent. Other local authority debts (housing benefit overpayments, sundry debts and rent) are recovered by enforcement agents directly answerable to the courts and so are outside our jurisdiction.

We publish all our decisions on our website (unless there is a risk of identifying the complainant) to ensure openness and transparency and to allow lessons to be learnt.

We believe the existing role we currently play in considering complaints about enforcement agents recovering debts on behalf of local authorities needs to be taken into account as part of any proposals for reform. We would also stress the importance of ensuring that routes of redress do not become confused with the regulatory process. Furthermore, we believe that it would be helpful for any reforms to be considered within the context of the Government's broader ambitions of reform of complaints about public services and public sector ombudsmen.

Below we have provided answers to questions from the call for evidence which are relevant to our work.

Question 2: Has your organisation seen any change to the volume and nature of calls/contact regarding enforcement agents since the reforms came into force?

The nature of the way we classify our complaints means it is difficult to give precise figures on the number of pre- and post- TCE complaints we have received. We have not seen a significant change in the number of complaints about the actions of enforcement agents that are brought to us. However, what has changed is a decline in the proportion of cases where we have found enforcement agents to be at fault.

To give some context between 1 April 2014 and 31 December 2018:

- We made a total of 54,800 decisions on all categories of complaints
- Of these, 5,790 decisions concerned complaints about local taxation or parking.
- 1,142 of these complaints were investigated in detail.
- Of these, in 164 decisions we found fault with the actions of the local authority or their enforcement agents

Of these 164 decisions 32 involved enforcement action under the pre TCE law; in 47 percent of cases the enforcement agent was at fault.

Of these 164 decisions 132 involved enforcement action under the TCE legislation; in 27 percent of cases the enforcement agent was at fault.

In the other cases, the local authority was at fault, rather than their agents. We do not criticise enforcement agents if, for example, they visit after receiving an instruction the local authority should not have sent them, but the agent does not know this.

¹ Citizens Advice (2019) "[A law unto themselves: How bailiffs are breaking the rules](#)", pp.5.

Many upheld pre-TCE complaints concerned fees and costs. Post-TCE the number of upheld complaints about costs is much lower.

The availability of body worn video camera evidence means we can make a firm ruling on complaints about the behaviour of the bailiffs, as opposed to relying on the unsupported statements of the parties involved. We have, in the period under consideration, not found fault with the agent's behaviour in any case where there was video camera evidence available.

Question 6: Has your organisation seen any change to the volume and nature of contacts regarding vulnerable debtors since the reforms came into force?

Before the 2014 reforms were enacted, the issue of vulnerability was less high profile, as while it featured in Codes of Practice and guidance it was not a statutory duty and complainants themselves tended not to use the phrase. Therefore, this issue did not feature as an explicit issue in the complaints coming to us.

Since 1 April 2014, we have decided around 44 local taxation or parking complaints where the complainant claimed to be vulnerable and enforcement agents were involved. We found fault in 40 percent of these cases. However, there were only three cases where the enforcement agent was at fault in how they dealt with a vulnerable debtor. In other cases, it was the local authority which was at fault for its actions – generally for not properly considering any evidence of vulnerability the complainants had. We have come across examples of good practice by enforcement agents, such as referring cases to their welfare teams or back to the local authority. We also have come across cases where the local authority has reasonably decided that, although the debtor is vulnerable, this is not a reason to stop enforcement action.

Question 9: Do you have any recent statistics or other evidence about the number and nature of complaints that have been made against enforcement agents and whether these have changed since the 2014 reforms?

Please refer to the statistics provided in answer to question 2.

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

Where we find fault, either as a result of actions by the local authority or by the enforcement agent, we can make recommendations to put things right. Where we find fault with the local authority's procedures or practices, we will often recommend that the authority introduces changes so the same problem will not happen again. A local authority has a responsibility to remedy any injustice arising from fault by enforcement agents acting on its behalf. While our recommendations are not legally binding, the vast majority of authorities do comply with them.

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

Based on complaints we have investigated since 1 April 2014, where we found the enforcement agents to be at fault, we have not come across evidence of misleading or aggressive correspondence used by enforcement agents.

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

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

We note recent calls from various stakeholders for the establishment of an independent regulator for bailiffs. The role of the ombudsman is to provide an authoritative independent investigation and recommend remedy for redress when things go wrong. It is distinctly independent from, but complementary to, the role of regulators. While we do not take a view on the need for further regulation of bailiffs or what form such regulation might take, we do have a role in investigating complaints about actions of local authorities and the enforcement agents they use, so it will be important that any reforms avoid any future duplication of roles.

In many regulated sectors, there is a clear demarcation between the regulatory process and the complaint system. For example, the model that applies in social care usefully illustrates this, even though we appreciate this may not be directly transferrable to the issues at hand:

- Where regulatory issues arise, these fall clearly within the remit of the Care Quality Commission (CQC) or if the issue relates to the practice of a social worker, this is addressed by the relevant professional regulator.
- Where an individual member of the public has experienced injustice by a care provider, the LGSOC is able to investigate and where there is evidence of maladministration or service failure, we can make recommendations for how the issues can be remedied.

This ensure there is clarity about who is responsible for regulation and who is responsible for resolving complaints. This has allowed both LGSCO and CQC to focus on our respective roles, while having clear processes in place for sharing information and intelligence.

It will be important that any future reform takes account of existing routes to redress including that there already is a clear route to the LGSCO for complaints about local authorities and the enforcement agents they use. Published figures² suggest that at least 90 percent of cases passed to enforcement agents already fall within our jurisdiction. Our understanding is most of the other cases, the enforcement agent is acting as an officer of the court. It is our view that to include the investigation of complaints about bailiffs within the role of an independent regulator risks complicating the route to redress for members of the public and creating confusion about who to approach when they have been let down.

One benefit of the current system is that we are able to consider complaints as a whole, by being able to investigate both actions of the local authority as the creditor and those of the enforcement agent. Our experience is many complaints about enforcement agents also involve the actions of the creditor – such where questions around the debt owed arise. Often the agent may be acting on their client’s instructions and policies about vulnerability and acceptable arrangements. When we investigate, we can establish whether the client – the local authority – or the agent is at fault. We would not criticise an enforcement agent solely for acting on their client’s instructions. Separating the actions of the creditor and the enforcement agent would undermine such a holistic service for complainants.

² Citizens Advice (2019) “[A law unto themselves: How bailiffs are breaking the rules](#)”, pp.5.

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

In December 2016, the Government published a draft Bill to create a Public Services Ombudsman (PSO) in England to cover complaints against local authorities and central government departments, health and social care providers and possibly social housing providers. The draft Bill is currently awaiting parliamentary scrutiny. We therefore believe there is a strong argument for any reforms to be considered in the context of the Government's ambition for reform of complaints about public services more generally.

If it were established by the Government, the PSO would cover the actions of the Courts Service – and so any enforcement agents employed by the court service. The new service would have in its jurisdiction all central and local authority creditors, and potentially housing provider creditors. It would provide an end-to-end independent and transparent complaint investigation covering the actions of the creditor and enforcement agents across the board. It would also, once set up, not make any extra demands on the public or private purse, unlike the creation of a separate regulator.

We are keen to share our experience of resolving complaints in this area with the Ministry of Justice to help inform any potential reforms under consideration and would welcome the opportunity for further discussions.