

The need for a bailiff regulator

Response from **Citizens Advice Sheffield** to the Ministry of Justice's call for evidence on the 2014 bailiff reforms.

Consultation Section 1 Question 1 : Has your organisation seen any change to the volume and nature of calls/contact regarding enforcement agents since the reforms came into force?

Citizens Advice Sheffield has seen an increase in the number of clients reporting problems with bailiffs' behaviour over the past four financial years, as follows:

2014-15	315 clients
2015-16	344 clients
2016-17	378 clients
2017-18	377 clients

In these cases bailiff involvement has been due to one or more of the following (not in priority order):

- Council Tax arrears
- Water supply and sewerage debts
- Maintenance and child maintenance arrears
- Bank and building society overdrafts
- Credit, store and charge card debts
- Unsecured personal loan debts
- Catalogue and mail order debts
- Unpaid parking penalties and congestion charges
- Magistrates Courts fines and compliance order arrears

Evidence from our clients' experiences, compared against the Ministry of Justice's 2014 National Standards

The recent, anonymised case studies outlined below typify our clients' experiences:

"I've just had a bad year and I want them to get the money but [it] seems to be getting bigger amounts of money they are wanting I don't have a car or nothing I live in a little flat with my son."

Jo is a single parent unable to work due to anxiety and depression. She had £200 of Council Tax arrears left from the previous year, and the debt was passed to an enforcement agency. They refused her offer to agree a payment plan but kept sending her letters, texts and calls, which she found threatening. Then she began to be contacted about the same debt by a different agency, receiving numerous enforcement notices from them. She had e-mailed repeatedly explaining her situation and offering a monthly £35 deduction from her benefits, but the reply was always that they wanted the amount in full, or they would remove goods. They also claimed that bailiffs had visited her home and not found her there, whereas she maintained she was at home every day due to her mental health issues. As this process continued, her original debt had escalated from £200 to £800 due to fees.

Via webchat she told us: *"I'm so scared they just won't listen they just want money or there [sic] coming. And now they want £800 pounds in full both of them.They said they will send me to prison Two agencies are after the same debt And it was £200 now £800.I have a little kid I can't go prison."*

Sam is working but has no savings, pension or other assets. He had incurred a total of £4,667 in Council Tax arrears for five years going back to 2014-15, all of which had been referred to an enforcement agency, whose compliance fee for each year's liability had added £375 to the debt.

Sam's father had agreed with the agency to take on liability for the debt and repay £100 per month – which he was doing regularly. This agreement was unilaterally overturned, however, when the account was transferred to a different bailiff who demanded an additional £260 upfront as well as the £100 per month, which neither Sam nor his father could afford. They both tried without success to negotiate: his father showed us several long text messages he sent to the enforcement agency and the one/two word (at most) responses he had received. The bailiff would not provide accurate, up-to-date information on how much was still owed, but when we asked the local council it emerged that they were working on a figure some £400 higher than his actual debt.

Alex's income dropped suddenly by £1,000 per month when he lost his job, meaning he could no longer afford to keep up his agreement to repay Council Tax arrears. He e-mailed the enforcement agency several times to keep them notified about this change

of circumstances and the action he was taking, with help from Citizens Advice Sheffield, to address his problems. He also offered – and made – a £20 interim payment, which was all he could afford. Despite his proactive efforts he then received three letters from them accusing him of breaking their agreement and threatening to remove goods. He e-mailed again enclosing the financial statement we had helped him compile and offering to continue to repay, at £4 per month which was as much as he could afford – as the financial statement showed. The agency replied that “ ...Upon review of the figures provided, the minimum payments required are £420.00 per month. Your first instalment is required within the next 10 days; We must warn that failure to adhere to the above will result in further recovery action.” We advised him to continue paying £4 per month.

From these and other clients’ stories some common themes emerge, which show how numerous parts of the National Standards are routinely ignored:

Refusing offers of payment and/or demanding unrealistic sums

By far the most common problem reported to us is that bailiffs refuse even to discuss offers to make an affordable repayment arrangement, and insist on immediate payment of the whole amount as the only option. We have also seen that bailiffs have:

- refused to accept income and expenditure statements indicating how much – or how little – a client could afford, even when these have been drawn up with specialist Citizens Advice support
- over-stated a client’s income in calculating how much they can apparently afford to repay
- miscalculated amounts due – in one case by £400 too much
- refused to tell clients how much they owe or how this was calculated

This contravenes the following National Standards:

- “Debtors must not be pressed to make unrealistic offers” (paragraph 24).
- “Enforcement agents should provide clear and prompt information to debtors” (paragraph 51).

Vulnerable clients

We see little evidence that bailiffs are observing any of the National Standards intended to protect vulnerable clients, despite the vast majority of the people concerned clearly falling into one or more of the categories explicitly cited (in paragraph 77). We routinely need to alert creditors to a client’s vulnerability, following their contact with a bailiff, and get them to agree to take back the debt from the enforcement organisation. The relevant parts of the National Standards are:

- “Where enforcement agents have identified vulnerable debtors or situations they should alert the creditor” (paragraph 30).
- “Enforcement agents should be trained to recognise vulnerable debtors, to alert creditors where they have identified such debtors and when to withdraw from such a situation.” (paragraph 42).
- “Enforcement agents/agencies and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected The agent has a duty to contact the creditor and report the circumstances in situations where there is evidence of a potential cause for concern.” (paragraph 70).
- “Enforcement agencies should be aware that vulnerability may not be immediately obvious.” (paragraph 76).
- “Some groups who might be vulnerable are listed below. However this list is not exhaustive. Care should be taken to assess each situation on a case by case basis. The elderly; people with a disability; the seriously ill; the recently bereaved; single-parent families; pregnant women; unemployed people; ... those who obviously have difficulty in understanding, speaking or reading English.” (paragraph 77).

Complaints

We have little or no experience of bailiffs offering clients any information, verbally or in writing, about the option to complain about them and the process for doing so. In practice they go out of their way to withhold even routine contact details such as an address (making it harder for a client to communicate with them in writing so that they can keep a record of the exchange). This contravenes the following National Standards:

- “The debtor should be able to easily find out how to make a complaint and obstacles should not be placed in their way.” (paragraph 44).
- “The enforcement agent must make available details of their own and the creditor’s complaints procedure on request or when circumstances indicate it would be appropriate to do so.” (paragraph 47).

Behaviour and powers

Until we are able to reassure them, our clients are often unclear about the true extent of bailiffs’ powers, and fear the worst – possibly due to impressions picked up from the television, or through hearsay. The most positive interpretation of our evidence is that bailiffs make no effort to dispel such unfounded fears, presumably because they find them convenient; at worst, as one of our typical cases shows, they wilfully overstate and misrepresent their powers.

Our clients’ experience shows that bailiffs will say many things to scare a debtor. In practice, however, it is virtually unheard of for them to take goods unless they have obvious value and are easily transportable (e.g. a car), and they cannot take items deemed to be for “basic domestic need” (e.g. a cooker or fridge/freezer) – though outside those parameters we have seen a Controlled Goods Agreement with a toaster

listed on it, which was clearly just a ploy to scare a debtor as a bailiff would not really want try to sell such a small, low-value item at auction. In behaving as they do, they fail to observe the following principles of the National Standards:

- “Enforcement agents must not be deceitful by misrepresenting their powers” (paragraph 20)
- “Enforcement agents must not act in a threatening manner” (paragraph 21)
- “Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must speak appropriately and act withfairness. (paragraph 26)

We would argue too that refusing to discuss repayment offers, ignoring vulnerability, and withholding relevant information, also constitute bullying, unacceptable behaviour.

Consultation Section 7 Question 18: Do you think that enforcement agents should be regulated by an independent regulator?

Citizens Advice Sheffield strongly endorses national Citizens Advice’s call for an independent regulator and a free complaints process. Our client’s experiences show that the 2014 National Standards alone have had little impact and therefore need ‘teeth’ to ensure they are observed throughout the industry. Bailiffs who deal with clients in a transparent, assertive and humane way have nothing to fear from such scrutiny; bailiffs who bully, bewilder and intimidate deserve to be stopped.

Enforcement organisations – and the individuals who work for them – have a significant impact on, and power over, the lives of the poor and vulnerable people who approach us for help. These are not people who wilfully withhold money they could readily repay and remain blasé about debt; rather, they struggle to get by on a very meagre income and often are not well-equipped to manage everyday life. The vast majority are scared and despairing about the money they owe, and are anxious to agree repayment arrangements, provided these are affordable and sustainable, to give them the peace of mind that comes with regaining some control over their life. A good bailiff will play a part in helping them achieve this as well as successfully securing creditors’ money.

Citizens Advice Sheffield

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Submitted to: bailiffreview@justice.gov.uk