



# REFLECTION AND COLLECTION - THE EVOLUTION OF CIVIL ENFORCEMENT

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APRIL 2022

## INTRODUCTION

**CIVEA is the principal trade association representing civil enforcement agencies employing around 2000 certificated enforcement agents that operate in England and Wales.**

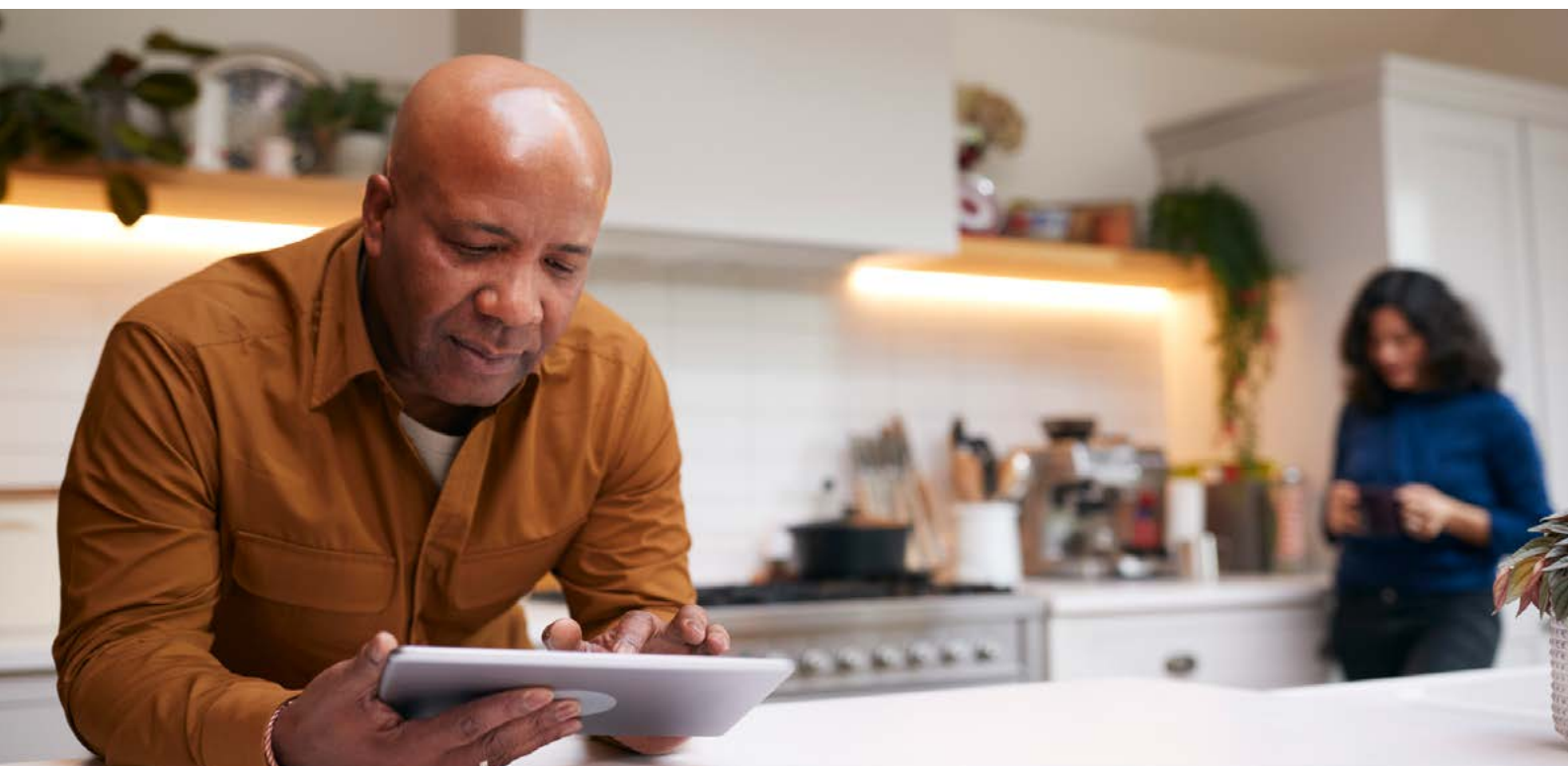
CIVEA represents 40 companies that make up over 95% of the entire enforcement industry. CIVEA's members work to enforce civil debt on behalf of local authorities and Her Majesty's Courts and Tribunals Service (HMCTS) including council tax, business rates, road traffic and parking penalties, magistrates' court fines, employment tribunal awards, child support payments, B2B and commercial rent arrears. This amounts to over £550 million (half a billion) of unpaid taxes and fines recovered each year at no cost to the public bodies themselves. Each year CIVEA members receive over 3.5 million warrants and court orders.

For many years bailiffs were known as being the hard edge of debt recovery with the power to enter homes and seize personal possessions, almost without restriction. The current reforms of the enforcement sector began with an independent review of bailiff reform in 1998. This was followed by a Green Paper on Effective Enforcement in 2001 and a White Paper in 2003. The most significant development was the Tribunals, Courts and Enforcement Act 2007 that detailed the powers and process for enforcing public debts. Up until this point, enforcement practices were not standardised, and each local authority and each enforcement firm had its own approach to debt collection.

The credit crunch of 2007 began the years of austerity that imposed harsh restrictions on government spending. This was followed by the abolishment of council tax benefit in 2013 for low-income households, which gave local authorities the freedom to design their own council tax support schemes. With less funding from central government, local authorities needed to maximise revenue. Residents were pursued for long-standing debts and some households began to pay council tax for the first time.

Reforms of the enforcement sector culminated in new regulations for taking control of goods introduced in 2014, supported by a voluntary set of National Standards. This was a significant development that was welcomed by enforcement agencies, which saw an opportunity to distance itself from the past. At the heart of the reform was the principle of fair and proportionate treatment of people in debt, with special attention to those who may be vulnerable. Along with an extensive training and certification process for enforcement agents, a new fee structure meant the charges for enforcement were fixed by statute and the operation of enforcement agents was highly prescribed.

It is important not to conflate debt collection on behalf of private firms, with the enforcement of unpaid taxes and fines owed to the public purse. Enforcement of public debt is specialist work that operates under specific and prescriptive regulations. However, civil debt is enforced using many of the same processes and technologies as private debt collection agencies, including credit reference checks, data analytics and extensive engagement prior to any enforcement visits.



## FOREWORD

I have been pleased to have been asked to write a foreword to this important report from CIVEA outlining the enforcement industry's response to recent legislation governing its activities, and its own initiatives to continue to work towards a professional approach to the way it operates.

I write as Chairman of the Enforcement Law Review Group, a post I have been privileged to hold for a number of years. This discussion forum, founded in the late 1990s under its original title of The Bailiff Law Reform Group, is a cross industry group of experts within the enforcement industry. Mostly representing trade bodies and institutes, it also has independent experts in the field, including representatives from the Ministry of Justice as observers. Its objective is to work for best practice and professionalism amongst organisations involved in public debt enforcement. It is not a policy making body, but it does often act as the catalyst for the creation of best practice initiatives. The Enforcement Conduct Board, mentioned in this Report is one such initiative. I have been keen to support closer supervision of enforcement agents, the concept of an enforcement commission and oversight of the industry, all of which have been key themes at the group's recent meetings.

Therefore, I am delighted that these reforms have been captured in the narrative of this report. The industry itself has been understandably cautious about self- promotion.

The nature of its work means it will never win any popularity polls. However, this report demonstrates the importance of having a sustainable and responsible civil enforcement procedure available to the public sector to recover unpaid taxes, charges and fines. It rewrites a narrative that traditionally presented bailiffs as intransigent and unhelpful and helps one to understand how enforcement agents rise to the challenge of delivering a service to people with all degrees of vulnerability.

It is encouraging that the industry has not stagnated with the imposition of quite prescriptive regulations several years ago. This report is a comprehensive but accessible explanation of the reforms and why they were needed.

I am particularly interested in the report in the context of the economic changes that will result from the pandemic and other geopolitical influences. It seems inevitable that our local authorities will need to adopt a new approach to our increasingly indebted communities. This will have a subsequent impact on the way that debt is enforced through our courts system. The use of technology to filter individuals according to their circumstances will inevitably lead to more innovation. This will determine the future face of civil enforcement.

The development of the new Enforcement Conduct Board is therefore well- timed and will be responsible for ensuring high standards of enforcement agents, who will encounter all degrees of vulnerability and who will need to be discerning in their duties. I applaud the industry and debt advice sector in collaborating to establish an independent oversight body. The Enforcement Law Review Group has played an important part in bringing often opposing parties together and will continue to provide a forum for healthy debate in the future.



A stylized, handwritten signature in black ink, appearing to read 'Lucas'.

**The Lord Lucas, Chairman,  
Enforcement Law Review Group**



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## 2. EXECUTIVE SUMMARY

Enforcement is a vital tool for local authorities to recover important revenue to support public services and ensure fairness— considerations widely supported by taxpayers. Enforcement isn't simply about recovering money from the non-compliant and enforcing court judgments. It is also about providing incentives for those who might otherwise choose not to pay.

Civil enforcement is critical in this regard. The industry collects over half a billion pounds annually from those who can but refuse to pay. Our members' work directly informs local authority budgets and significantly impacts the lives of constituents. Moreover, research by **Europe Economics**<sup>i</sup> estimated that without enforcement, between 8m and 11.7m more council tax, penalty charges and fines would go unpaid annually, costing between £5.7 billion and £12 billion.

Given the often-sensitive services performed by our members, we have taken significant steps to reform as an industry and to ensure protection of vulnerable people. From instituting body-worn cameras, implementing the Compliance Stage (which minimises additional fees added to the debt and avoid the need for an enforcement visit) to quickly responding to the pandemic, we have been proactive.

The COVID-19 pandemic has exacerbated the financial pressures faced by cash-strapped local authorities. This has directly impacted the ability of councils to deliver crucial and much needed local services. The government faces the dilemma of balancing its books to fund support services by depending on the recovery outstanding debt from potentially vulnerable debtors. For example, council tax remains the primary source of revenue to support local services, such as child and adult care.

In response to the crisis, CIVEA and its members worked closely with central and local government and other organisations throughout the pandemic. We developed new guidance and training programmes during the first lockdown, which was mandatory for all enforcement agents working for CIVEA members. The Post-lockdown Support Plan strictly followed guidance from Public Health England and Wales and provided assurances to the Ministry of Justice that our agents can work safely and responsibly while protecting themselves and the public.

The case for enforcement is as strong as ever. There is clear public support for enforcement agents. According to a YouGov survey<sup>ii</sup> conducted in 2020, over half (56%) of adults believe councils should use bailiffs to try and collect unpaid council tax from people who can but will not pay. Almost two thirds (64%) of adults believe bailiffs should be used to collect unpaid fines imposed by a court. Enforcement work is expanding with the need to enforce penalties for infringements in clean air and low emissions zones in our city centres. Enforcement firms support local authority zero carbon objectives with electric and hybrid vehicles that are mapped to ensure the most efficient routes are taken and fuel consumption is recorded. Firms sponsor debt advisers in local bureau and fund employment skills workshops as part of their social value offer, which is a common feature of contracts.

Essentially, enforcement is the recovery of debt as instructed by the courts, but the enforcement industry has evolved in response to social, economic and environmental conditions. It is comparable with any other business sector and is arguably leading reforms in local government debt management post-Covid.

We are witnessing an evolution in public debt collection, but it will always be among the most difficult debts to recover. Since the 2014 regulations the industry has continued to respond and reform with firms totally committed to act responsibly and support people who are in debt. With the establishment of the Enforcement Conduct Board, we now have firm plans for an independent, industry oversight body with the powers to drive up standards and drive out bad practice. The changing face of enforcement has never looked better.



### 3. A BRIEF HISTORY OF ENFORCEMENT

The origin of the bailiff profession in England and Wales is rooted in the mists of time. There is evidence that it goes back to the Common Celtic Period in Europe (circa 1,000 BC) but the first explicit mention is in the Laws of King Ina who ruled a part of what is now England in the late 7th Century – over 1,400 years ago. Prior to 2014, the work of bailiffs called was called “distress”, the ancient meaning of which, is to secure goods by locking them in a pound.

When distress was first used – and for centuries afterwards - debts were paid in kind. Although money was in circulation, even the smallest coin was far too valuable to use for everyday business. So, when somebody refused to hand over the goods he owed, it was not unreasonable to seize them. For centuries, distress was undertaken without recourse to a court or any judicial authority, but even after it became commonplace for courts to “order” that a debt was indeed due and payable, responsibility for enforcement remained with the creditor.

Two forms of distress are thought to be particularly ancient and the origin of all that followed. The first is **distress damage feasant**, which is the ability of a landowner to seize cattle, which have strayed on to his land, and to keep them until the owner has paid for a damage done. The second is a landowner’s right to seize the goods of his tenants until rent arrears are paid. At some stage, the Church began to use distress to enforce payment of tithes. In the 6th Century the Anglo-Saxon kings began to use distress to enforce their own orders and the first law was passed to regulate the use of distress.

One of these laws required that before goods could be seized to pay a debt, the creditor had to first go to court. Broadly speaking, anything that was practiced prior to the reign of Henry II (1133-1169) became Common Law. So commonplace was distress, that the Magna Carta (1215) gave the English barons the right to use distress against the King!

At some stage during the 12th & 13th Centuries, the courts gave themselves extra powers and “execution” (the seizure of goods to enforce a court judgment) emerged as a separate type of enforcement. For this reason, the term “distress & execution” came into use to refer to the work of bailiffs. Towards the end of the 1st Millennium, the Kings of England appointed High Sheriffs to represent their interests in the Counties. These High Sheriffs, in turn, appointed bailiffs, or sheriff’s officers, to enforce the orders made by the King’s courts. In 1601 a new form of seizure was created by statute – statutory distress. Previous laws had regulated how distress was done but this created a new form of tax and, with it, a new form of distress. The tax was essentially a local tax on income raised by parishes from residents in the area in order to help the poor: it later evolved into General Rates, a property tax, to fund local services and the modern version is Council Tax and Business Rate.

An important innovation was that the goods seized could now be sold to satisfy the debt. “Ordinary” distress caught up with this innovation when, in 1689, the law was changed to allow goods to be sold in all forms of distress or execution. The most famous legal case known to bailiffs in England & Wales is Semayne’s Case in 1604 because it ended a bailiff’s right to force entry to domestic premises. This was the case in which it was famously said that, “an Englishman’s home is his castle”.

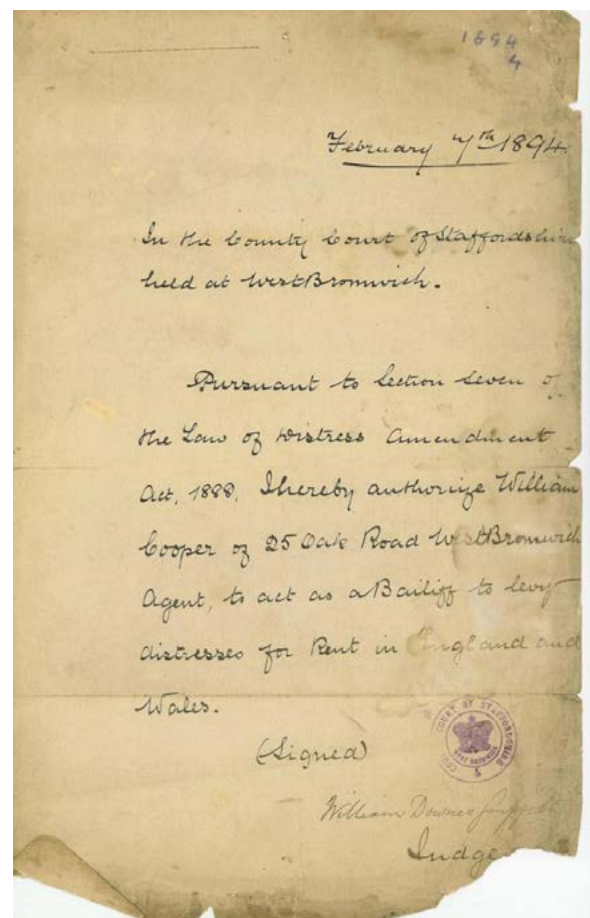
However, the case also confirmed a bailiff's right to force entry to non-domestic premises – that is, commercial properties with no residential rooms. This was later overturned when in 1680, in the case of *Poole v Longueville*, the judge denied the right to private bailiffs to force entry to any premises. A series of laws passed between 1888-1908 are the only modern reform of distress. They achieved many things but the most noticeable was the requirement for a bailiff enforcing rent arrears to have a [bailiff] certificate issued by a judge. The oldest surviving Bailiffs Certificate is dated 7 February 1894. It states: In the County Court of Staffordshire held at West Bromwich. Pursuant to section seven of the Law of Distress Amendment Act 1888, I hereby authorize William Cooper of 25 Oak Road, West Bromwich, Agent, to act as a Bailiff to levy distress for Rent in England & Wales. Signed Judge William Downes Griffith on the 7th of February 1894. William Cooper later went on to become one of the first members of the Certificated Bailiffs Association, which was formed in 1906 and was a forerunner to CIVEA.

Until the late 1970s, bailiff action was relatively uncontroversial and bailiffs, while hardly being loved for their work, were well respected. The general attitude among the population was that if a bailiff knocked on your door, you probably deserved it. A person in debt did not advertise the fact because debt carried a stigma. Today that has all changed.

As credit has become more freely available, so debt has become commonplace and social attitudes towards people in debt have changed. Today there is no stigma or embarrassment to being in debt. A watershed was breached with the highly controversial Community Charge, introduced by the Thatcher Government in Scotland in 1989 and in the rest of the UK the following year. Commonly called the Poll

Tax, it was a tax that fell on every citizen and it provoked riots in Scotland and London. The implementation of the Council Tax placed a statutory obligation on local authorities to collect the tax. The responsibility for recovering unpaid taxes has increasingly fallen to enforcement agents executing liability orders.

Modern enforcement agents support a range of organisations including local authorities, HM Courts and Tribunals Service, Highways England and Transport for London. The recent imposition of low emissions zones in our towns and cities has added an additional category of penalties that can be subject to enforcement for non-payment.





## 4. THE VALUE OF ENFORCEMENT

### Recovery of debts and impact on services

In the aftermath of the pandemic, attention is right to focus on the impact on local services. Many people face new financial pressures and the debt burden could be exacerbated by rising living costs and tax increases. This in turn will impact the revenue available to councils.

To understand whether civil enforcement continues to be relevant and necessary CIVEA commissioned a leading economic research specialist, Europe Economics, to analyse the impact on the public services if debts were not enforced.

The data used within this research was drawn from a wide range of sources including the Office for National Statistics, the Institute of Fiscal Studies, industry data and the Ministry of Justice (MoJ).

Through econometric modelling, Europe Economics estimates that, (in England) without the support of the enforcement industry, between **8m to 11.7m** of council tax debts and fines would go unpaid annually, costing taxpayers between **£6.1bn and £12.4bn**. This can be further broken down:



#### Council Tax

an additional 7 million more households would default on Council Tax per annum, resulting in an underpayment of between **£5.7bn and £12bn**.

This would be an increase on non-payment from 3% to between 18% and 33%.



#### Speeding Fines

an additional **860,000 people** would not pay their speeding fines each year, resulting in underpayment of **£107m**.

This would be an increase in non-payment of 39%.



#### Penalty Charge Notices (PCNs) from speeding and parking fines

an additional **4.1m people** would not pay fines per annum.

This would result in an underpayment of £345m.

In 2021, government figures show that there was £847m of uncollected Council Tax<sup>iii</sup>. Given that around 18% of that tax take goes to second tier local authorities (Boroughs and Districts), who spend two thirds on supporting vulnerable people, and 100% goes to first tier local authorities (unitaries London Boroughs and metropolitan) it is a significant shortfall that could put funding for critical front-line services at risk.

The purpose of this report is to demonstrate how our industry has evolved since it implemented new



regulations in 2014. It explores how enforcement is integral to the social justice system and offers thought leadership on how civil enforcement should be used to recover government debt in the aftermath of the pandemic.

### **Essential services**

CIVEA currently represents over 95% of the entire enforcement industry and our members operate to a strict **code** of practice that promotes high standards of conduct and fair treatment of the public. In total CIVEA members recover almost half a billion pounds in unpaid taxes and fines from debtors each year at no cost to the public purse.

Certificated enforcement agents provide essential services by enforcing court orders for non-payment of council tax, business rates, parking and traffic offences, fines from the magistrates' courts, or a failure to pay commercial rent. Civil enforcement agents are not debt collectors and are only used after councils have been unable to collect the debt themselves.

In an attempt to recover unpaid debt, in 2019 local authorities passed almost 1.1m unpaid PCNs to enforcement agencies. Enforcement agents are empowered by law to take control of goods to be sold to cover the cost of outstanding debts. In practice this is very rare and mostly relates to the auctioning of vehicles.

Statistics show that debt collection of council tax within each year is high at around 95-97% with the most vulnerable council tax payers supported through a Local Authority Council Tax Reduction Scheme. This means that enforcement agencies only deal with a maximum of the remaining 3-5% of uncollected council tax debt each year from tax payers assessed with the means to make payment. For

most councils, between 1 to 3% of debt due from council tax requires enforcement.

The Institute of Revenue, Ratings and Valuation has demonstrated that council tax collection rates have been consistent for many years. The rise in council tax rates has precipitated a rise in council tax arrears. This is not an indication that councils are failing to collect debts, but that higher rates have led to more financial vulnerability. In addition, timely enforcement action leads to lower arrears levels; and weak or delayed enforcement activity leads to higher arrears.

As this report will show, the collection and enforcement process was significantly disrupted by the coronavirus pandemic in 2020, with a suspension of enforcement activity. This was exacerbated by a reduction in the number of magistrates court hearings being held and a halt to debt collection nationwide. Consequently, there were fewer in-year payments and increased levels of arrears being carried forward into the following year. As lockdown restrictions eased many people in debt had become vulnerable due to redundancy, bereavement and long-term ill health, coupled with higher living costs.

The principle of early payment, which is supported by the fixed enforcement fee structure, increases the likelihood of engagement from debtors, which prevents further arrears. The suspension of enforcement activity during the pandemic lockdown and the reduction in council tax payments is evidence that an incentive is required to ensure compliance from a significant cohort of debtors.

## 5. RESPONDING TO THE PANDEMIC

### Post lockdown Support Plan

When the government announced a national lockdown in response to the pandemic in March 2020, councils in England and Wales did not have a national policy for local revenue recovery. CIVEA acted decisively to provide leadership in the form of best practice guidance that enforcement firms could share with their local authority clients. Our guidance included advice on how agents would respond to the higher incidence of vulnerability and guided local councils on operational resilience. This was enhanced by the ground-breaking **Post-lockdown Support Plan**, which was developed with the support of government ministers across departments that set a template for public debt collection.

When it became apparent that COVID-19 presented a public health risk, on 26th March we wrote to the Ministry of Justice to confirm that all CIVEA members had suspended enforcement visits on or before that date. All other activities, such as reminder letters and outbound calls was reduced.

Councils and other creditors experienced a huge shortfall in revenue from overdue debt. CIVEA members' income dropped by between 70% and 90%. Despite this, CIVEA members accepted that the suspension of enforcement visits was the correct course of action to prevent the spread of the virus and provide appropriate support to those affected and furloughed all enforcement agents.

### During the lockdown

During the lockdown period, some councils asked agents to continue with light-touch contact to support people struggling with outstanding debt. Phone calls and emails were used to offer extensions to repayment schemes or arrange payment holidays in line with responsible collection practices.

CIVEA members sought opportunities to support voluntary work for the NHS, local and central government. Enforcement firms redirected their resources to help provide services to the most vulnerable. Across England and Wales, enforcement agents volunteered to deliver essential services such as food and medicine, utilising vehicles, fuel and IT provided and funded by their firms.

This attracted positive press coverage for an industry that is unfairly portrayed in the media<sup>3</sup>.

### Post lockdown

By the time the government implemented plans for a phased lifting of the lockdown restrictions, we had developed the Post-lockdown Support Plan, to which all CIVEA members committed.

The CIVEA Post-lockdown Support Plan was developed to ensure the safety of members of the public, clients (councils), customers and enforcement agents. The result was an industry-leading initiative that set a successful template for future public debt recovery.

Under leadership from CIVEA, an industry standard reconnection letter was sent to anyone who had missed a payment or had been out of contact. The letter helped to engage people who may have been affected by the crisis and signpost them to the Money Advice Service and debt advice support.



### Enforcement visits suspension

When enforcement visits resumed, individuals were given 30 days' notice of a visit by an enforcement agent, rather than the statutory 7 days. This provided an opportunity for early engagement, which prevented additional fees from being added to the outstanding debt. The Government released updated guidelines on enforcement activity three days before visits were set to recommence, and CIVEA ensured that this was communicated to all members and immediately implemented. When enforcement visits resumed across the UK at the end of August 2020, CIVEA made a voluntary commitment to contactless visits and to not enter residential premises. In the months that followed, debts collected were mostly those incurred before the coronavirus pandemic.

All engagement was contactless and took place from the safety of the doorstep, with no entry to domestic premises. Body-worn cameras were mandatory and enforcement agents complied with social distancing rules, wearing and using PPE in line with Public Health England and Wales guidance. Anyone identified as being vulnerable was referred back to the council and provided with additional support and help with their debts. Our members reported that enforcement agents felt safe and knowledgeable about how to conduct themselves and the public were surprisingly appreciative of the extra precautions they were taking, often welcoming the opportunity to pay down their debts or set up repayment plans.

### Training

High-quality training was already fundamental to enforcement practice, so we were able to quickly implement a bespoke training programme, covering the effective use of PPE, social distancing and contactless visits. We also uploaded two animated digital guides to the CIVEA website to show what this training involved and explain the enforcement process. Enforcement agents were required to complete the training programme before resuming visits.

Over 10 weeks, 1700 enforcement agents completed the CIVEA online training programme.

### **Post-lockdown visits**

CIVEA recognised that it was not responsible to simply restart enforcement visits after a five-month hiatus. However, with the Local Government Association (LGA) estimating that councils are facing income losses of £9bn and a funding gap of £3bn, it was vital that local authorities were able to recover outstanding debt to pay for essential front-line services.

Enforcement visits were contactless and enforcement agents did not enter premises to take control of goods. All enforcement agents undertook additional, mandatory CIVEA-approved training prior to any recommencement of visits.

### **Data collection and recording**

All CIVEA members collected and recorded details of customer vulnerabilities, and support was offered on the basis of a risk register devised by CIVEA to assess the impact of COVID-19 on households.

### **Provision of protective equipment**

When visits were necessary, CIVEA worked with its members to source sufficient work wear and hygiene supplies to protect staff and the public. This was in full compliance with the Government and Public Health England and Wales advice.

CIVEA used a sophisticated distribution model to communicate details of the Plan. Key stakeholders were identified and categorised, with government ministers and opposition spokespeople and the debt advice sector given extensive briefing and updates.

To monitor visits, CIVEA prepared a **detailed report** based on a survey of 21 enforcement firms and their field agents. The Ministry of Justice was provided bimonthly data reports



submitted by our members. In January we revised our guidance in the **COVID-19 Support Plan**, and provided refresher training through an online portal. Agents could access certified techniques for identifying vulnerability, such as TEXAS and IDEA, and BRUCE.

### **Results of CIVEA intervention**

The Post-lockdown Support Plan was a proactive response to an exceptional situation. It required a new approach to public debt collection, which enabled enforcement visits to resume safely and responsibly. As a direct result of CIVEA's proactive initiative, the industry maintained its workforce of almost 2000 agents plus thousands of back-office staff while supporting local services.

After enforcement visits resumed our members reported that the public was surprisingly appreciative of the extra precautions they were taking, often welcoming the opportunity to pay down their debts or set up repayment plans. Data collected monthly for the Ministry of Justice shows the success of the pre-visit process with, on average, 5% of visits suspended because a member of the household was either ill with the virus or self-isolating/shielding.

As a result of our proactive response and collective action, enforcement activity was deemed safe by the government to continue from August 2020. Ministerial letters of gratitude from the Lord Chancellor and Paymaster General were testament to the Plan's success.

## **6. COMPASSIONATE ENFORCEMENT**

The government has committed to review the 2014 enforcement industry reforms and is analysing feedback from a call for evidence exercise, which ended in February 2019.

But rather than wait for the government's report, the Centre for Social Justice (CSJ) brought together representatives from the civil enforcement and debt advice sectors with a view to designing an industry oversight body fit for the post-pandemic. The challenge presented by the centre-right think tank was to design a model of self-regulation that does not restrict innovation in a market that is responding rapidly to the needs of central and local government departments, but that recognises its responsibility to people who are struggling to manage their priority debts under additional financial pressure. The solution is a framework document that has been developed jointly by the two sectors for a new ambitious, industry-funded oversight body - the Enforcement Conduct Board (ECB).



### **High Standards**

The ECB will drive up standards in the enforcement sector by building on the existing National Standards of conduct. For the first time, it will assess the extent of perceived systemic problems that have been regularly reported by debt advisers. The ECB will monitor practices in the enforcement industry and sanction firms for

non-compliance with new rules. This will help to standardise practice and ensure the consistent application of regulations and codes of practice. We recognised that there is inconsistency and elements of the sector are falling behind the high standards we expect. The pandemic crisis has changed the rulebook and placed additional responsibility on enforcement firms tasked with recovering debt for the government. In short, the ECB is an intelligent response to a new era of enforcement.

### **Accountability**

The ECB will publish an annual report that will be presented to the Secretary of State for Justice. Through increased transparency, the industry will hold itself accountable. The ECB will conduct audits of firms' policies and procedures. It will review video footage of enforcement visits and telephone calls to ensure compliance. It will analyse complaints to identify any trends and issues with the civil enforcement process and make recommendations. While this level of scrutiny is already in place, the big difference is that the ECB will be entirely independent of the influence of the industry and debt advice sector.

### **Complaints resolution**

In the Justice Select Committee report published in 2019<sup>iv</sup>, MPs expressed frustration that it was not possible to quantify an accurate level of complaints. It considered this to be a significant failing, which prevented issues from being identified and resolved. In response, the ECB will monitor complaints and complaints-handling processes across the enforcement sector. This will include issuing guidance to enforcement agencies on how to handle complaints and ensuring appropriate measures for redress. The ECB will run an independent complaints mechanism that will review escalated complaints for debts where anyone is dissatisfied with the original decision and that fall outside the jurisdiction of the Local Government and Social Care Ombudsman (see chapter 7).



### **Independence**

Enforcement agents have become the frontline in identifying vulnerable households and the ECB will recognise this by developing new affordability and vulnerability guidance, drawing on best practice from other sectors, reflecting the unique circumstances of people in debt to the government. The development of the ECB will be led by an independent chairperson, who will be responsible for working with the industry to meet the government's expectations for public debt collection.

### **Pioneering**

In parallel the Cabinet Office is developing a programme of reform to improve how government departments manage debt and debt recovery. The Enforcement Conduct Board is leading the way for the civil enforcement process to remain a fair and proportionate element of the civil justice procedure.

The Ministry of Justice has committed to review the effectiveness of the ECB within two years of its launch.

## 7. HOW THE INDUSTRY OPERATES

The process for enforcing public debt is highly prescriptive and follows a clear timetable set by the courts. The right to collect debt is awarded to a local authority with the granting of a court order or warrant. The warrant period is valid whilst a payment arrangement is in place. Councils aim to collect taxes before the end of the financial year to ensure taxpayers can meet their current year liabilities. However, most councils will extend the payment period if payments are missed. Criminal fines imposed by the magistrates' courts are punishments and if unpaid or unenforced, undermine the justice system and mean victims are denied compensation.

The statutory costs of enforcing debt are included in the total amount paid by the person who owes money. There is no cost to the taxpayer. A survey by YouGov<sup>v</sup> commissioned by CIVEA found that 65% of the public are concerned that vital public services like social care will be put at risk if people who are able to, do not pay their council tax. Two-thirds believe the costs of collection of unpaid council tax should be added to their debt. Over 80% of people think non-payment would get worse if councils could not use bailiffs.

When an enforcement company receives an instruction from a local authority, statutory fees and charges are applied and it aims to recover the debt as soon as possible. According to YouGov, 66% of adults believe a person who has not paid their council tax should pay for the costs associated with collecting the money.

Around half of the debt cases passed to enforcement agents are settled by payment

arrangements, but this is discretionary not an entitlement. The later enforcement stages, including visits, are expensive for enforcement firms because they are required to employ agents, hire vehicles and operate sophisticated tracking systems and body-worn video cameras. The charges are higher fees at the later stages to encourage people to make contact at an early stage.

Much of the work undertaken by enforcement firms takes place in the back office as opposed to in the field. The £75 fee applied to each case covers the cost of the compliance process, which is a complex process to verify details, assess circumstances, identify vulnerability and attempt contact through a variety of channels in order to arrange payment. It can involve tracing, credit checking, DVLA licensing checks, emails, texts, calls and letters. Around 40% of overdue Council Tax debt is collected at the Compliance Stage.

The majority of public debt collection is through repayment plans, primarily at the Compliance Stage. Even at the enforcement visit stage, it may be possible to agree on a repayment plan with an enforcement agent. Payment plans are a standard feature of modern enforcement practice since 2014, especially in council tax debt cases. CIVEA members report that for the year ending March 2019, 64% of new council tax debt cases were resolved by payment arrangements.

In reality, a very small number of cases go to auction for goods to be sold in lieu of debts. Only 2.5% of fees and debt from council tax cases that are paid in full are collected at the sale stage. Less than 1% of those cases result in goods being sold at auction. When this does happen, it is predominantly vehicles, which are the most common high-value possessions. These cases are normally persistent evaders who accumulate multiple parking and road traffic fines. The table below shows that enforcement is important to reduce the loss of revenue to councils for non-payment.

New Council Tax debt cases **01.04.18** and **31.03.19**

Number of new cases received	<b>914,298</b>
Number of cases actionable (i.e. not returned to the council or gone away)	<b>668,935</b>
Number of cases paid in full during period	<b>273,347</b>
Number of cases verified vulnerable	<b>26,134</b>
Percentage of cases recovered at Compliance Stage	<b>40%</b>
Number of cases of sale of property	<b>57</b>
Percentage of cases for which a payment arrangement is agreed	<b>64%</b>
Average fee added to the debt	<b>£77</b>
Average length of first-time agreement (months)	<b>8</b>

**As a last resort an agent acting on a Magistrates' Court warrant has additional powers of entry, including using a locksmith, where this is authorised by the court. 64% of adults believe bailiffs should be used to collect unpaid fines imposed by a court, In practice, it is rare for enforcement agents to force entry. An agent would need to apply to the court for authorisation, conduct a risk assessment and possibly request a police presence. These powers are rarely used and only when circumstances dictate that it would be appropriate and necessary to use them in order to enforce an outstanding warrant.**

The enforcement visit procedure was temporarily revised in response to the risks from COVID-19. But it remains an important deterrent to non-payment of taxes and fines. According to YouGov, 56% of adults believe councils should use bailiffs to try and collect unpaid Council Tax from people who can but won't pay.



## Complaints resolution

Each local authority has its own complaints policy, to which enforcement firms must comply. The majority are based upon guidance from the Local Government and Social Care Ombudsman (LGSCO) based on principles of Accessibility; Communication timeliness; Fairness; Credibility; and Accountability.

The LGSCO recommends that the complaints process is kept as short as possible. CIVEA members agree a complaints process according to the requirements of their clients.

In addition, anyone who has complained and received a final decision from a CIVEA member company has the option to appeal the decision. There are two channels for appeal and the type of debt dictates which is the correct route.

From 1 June 2019, CIVEA passed responsibility for adjudicating complaints related to local authority or Transport for London debts to the LGSCO. The policy change was a response to concerns by stakeholders that the CIVEA complaints procedure lacked independence. The new procedure is entirely independent of the industry and presents a well-established route for anyone wishing to register a complaint. If accepted by the ombudsman, a complaint is thoroughly investigated and CIVEA members cooperate fully with the ombudsman service. The ombudsman decision is binding on CIVEA members, which ensures that standards of local authorities and enforcement agents are upheld.

The Ombudsman advised that legislation prevented him from formally adjudicating directly as part of the CIVEA process. Therefore, the change that we have implemented does not require a change in the LGSCO statutory powers, and it is concise and does not add complexity.

## CIVEA complaints and adjudication process

The second route is for complaints which relate to debts owed to HM Courts & Tribunal Service, Commercial Rent Arrears Recovery, Highways England and those issued by Welsh local authorities. In this case the procedure is that CIVEA will acknowledge a complaint within 7 days of receipt online or by post.

The Chief Executive Officer will then consider the grounds of your complaint and advise on the next steps. If CIVEA decides to investigate the matter further, we may ask the complainant or the enforcement company for more information. For example,

- From the complainant a brief outline of the complaint and explanation of why they are unhappy with the company's response to their complaint.
- We require copies of all correspondence with the enforcement company regarding the complaint.
- We ask for photographic or video evidence that supports the complaint.
- We also request a completed and signed complaints procedure leaflet, which provides CIVEA with the authority to access records held with the enforcement company
- If the complaint is being made by a third party, CIVEA will require the written authorisation from a debtor, or the person subject to the complaint.

The company involved is required to respond to the complaint with all supporting documentation, along with the computer record of the case (e.g. Civica database), body-worn video evidence, telephone call recordings. Where appropriate, we may also request additional evidence, such as GPS records of an enforcement agent's vehicle movements.

Once the Chief Executive Officer is satisfied that all the information we require has been received, the case file is passed to an independent panel to be considered. If there is a delay in providing a response, we will advise the complainant.

The panel (the Compliance, Adjudication and Review of Enforcement (CARE) Panel) is made up of four people that are committed to working with us to maintain high standards of professionalism and provide the first ever objective supervision of our profession. Dr Wendy Kennett is Lecturer at Cardiff University, Caroline Wells is an award-winning Customer Insight professional and former senior official at the Financial Ombudsman Service, Dave Pickering is former CEO of the Lending Standards Board and an expert in regulatory compliance, Sheila Harding is founder of Bailiff Advice Online and an expert on enforcement regulation.

Once the panel has investigated the complaint and reached a decision, the CIVEA Chief Executive Officer will write to advise if the complaint is upheld and what recommendations are made by the panel, including refunds and compensation awards. All decisions are binding on the company. Repeated or serious failings by a member company could lead to expulsion from the trade association. As most council clients require enforcement agents to have trade association membership, this is a severe sanction.

If a complainant feels the enforcement agent should face further sanction because they believe that he or she is not a fit and proper person to hold a certificate, a complaint can be made to the County Court Hearing Centre that issued the enforcement agent's certificate. This can be submitted on form EAC2, "Complaint against a Certificated person". A District Judge will then review the complaint and conduct a court hearing if it is appropriate to investigate the complaint.

The partnership with the Local Government and Social Care Ombudsman (LGSCO) has proved to be successful. It is an excellent way

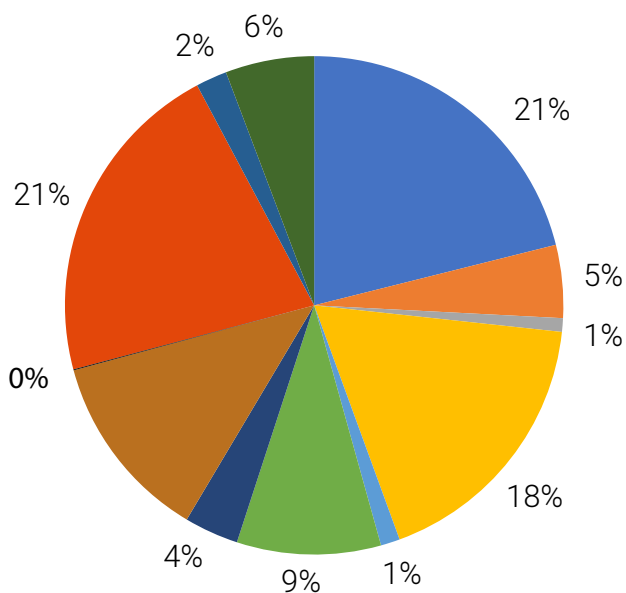
to independently verify and record complaints. The process is transparent with all complaint outcomes published online. The LGSCO evidence is that many people make complaints based on a misunderstanding of the enforcement process. Figures from the Local Government Ombudsman (table below) show that, between 1 April 2014 and 31 October 2018, out of over 76,000 complaints only 540 were attributed to enforcement activity. Of those investigated 36 cases were upheld, mainly for technical breaches of the regulations. None were for aggressive or intimidatory behaviour.

During this period CIVEA members dealt with 5.52M Local Authority Liability Orders for Council Tax and Business Rates, and 4.5M Warrants for Penalty Charge Notices, that is a total of 10M cases resulting in 36 upheld Ombudsman complaints.



<b>Local Government and Social Care Ombudsman</b>	<b>All complaints</b>	<b>%</b>	<b>EA complaints</b>	<b>%</b>
Total enquiries	<b>76,410</b>	<b>100%</b>	<b>540</b>	<b>0.71%</b>
<b>Of which -</b>				
Referred back to authority complaint process	<b>30,895</b>	<b>40%</b>	<b>368</b>	<b>68%</b>
Not investigated	<b>23,727</b>	<b>31%</b>	<b>69</b>	<b>13%</b>
Investigated	<b>21,434</b>	<b>28%</b>	<b>67</b>	<b>12%</b>
<b>Of which -</b>				
Upheld	<b>10,150</b>	<b>13%</b>	<b>36</b>	<b>7%</b>

The misunderstanding often stems from complaints from debtors who have reported their experiences to debt advice agencies. These reports give the impression that agents act aggressively, are inflexible and are quick to charge for an enforcement visit. However, system records and video footage show unequivocally that the reports from debtors are often selective and omit important details like the number of letters, calls, emails and texts debtors receive from enforcement firms attempting to make contact to discuss repayment options.



- Conduct of Agent 4377
- Not responsible for debt 981
- Illegal Seizure 183
- Other 3679
- Disputed Visits/Not happy with visit 258
- Fees of Charges 1939
- Correspondence from member 731
- Incorrect Procedures 2544
- Unrealistic payments/arrangements 12
- Conduct of Office Staff 4432
- Court Order error 420
- Vulnerability 1995

We recognise that these are low complaint numbers compared to commercial creditors (see table below). Despite the comparably small size of the sector, the number of complaints may give rise to concerns that the complaints process is prohibitive. However, the figures do not show how effectively most complaints are successfully managed on first contact through firms' internal complaints teams. In a survey conducted for the Ministry of Justice in 2018, CIVEA members reported that they had managed 20,751 complaints across 22 firms between 2014 and 2018 (see chart above).

A more likely explanation for the low number is that the highly prescriptive regulations, the clear operational path and the use of body-worn video deters speculative complaints, and the ombudsman only receives genuine cases to investigate.

This is coupled with the quality of first contact resolution that reduces complaints. All firms are monitored by local authority clients to resolve disputes at the earliest stage. Enforcement firms also give local authorities access to their case management systems that mean complaints can be resolved quickly through instructions on individual case management.

Sector	Number of complaints (2019)
Communications (Ombudsman Services)	20,183
Financial Services (FOS)	271,468
Water (Consumer Council for Water)	10,256
Energy (Ombudsman Services)	48,496

## 8. THE CHALLENGE OF PUBLIC DEBT COLLECTION

Local authorities have a legal obligation to recover council tax and other public debt. In some cases, such as council tax, charges are set according to a property element and means-tested reductions and exemptions. Discounts are applied in line with a customer's circumstances. This can be contrasted with the private sector, which is able to price against the risk of non-payment and levy interest over an extended period. Public debt needs to be recovered without interest to avoid placing new debt on top of existing debt.

With recurring bills like council tax, people can accumulate debt over a period of years. Therefore, it becomes a matter of ongoing management of the customer. In the private sector, a creditor (lender) is unlikely to lend again to an individual who is already in arrears.

However, unlike private-sector creditors, the public sector cannot choose who to do business with or withdraw its service for non-payment. This is quite different to, say, utility and energy companies where debt is based on individual consumer use and behaviour, and priced accordingly. Consequently, the public sector encounters far more vulnerability in debt recovery than the private sector collectors.

Debt collection practice in the commercial sector is often held up as an example to the public sector. But the same engagement with the money advice sector, communication with customers, support for vulnerable people and affordability assessments for repayment plans can be seen in the enforcement industry and have become integral to daily operations.

Civil enforcement follows clear legislation, case law and established best practice and clear rules and council guidelines on how to manage people in debt. Local authorities give strict guidance to enforcement firms about the terms of payment arrangement. CIVEA members collect over half of debt through sustainable repayment plans ranging from 3 months to 15 months depending on the type and size of the debt and an individual's circumstances.



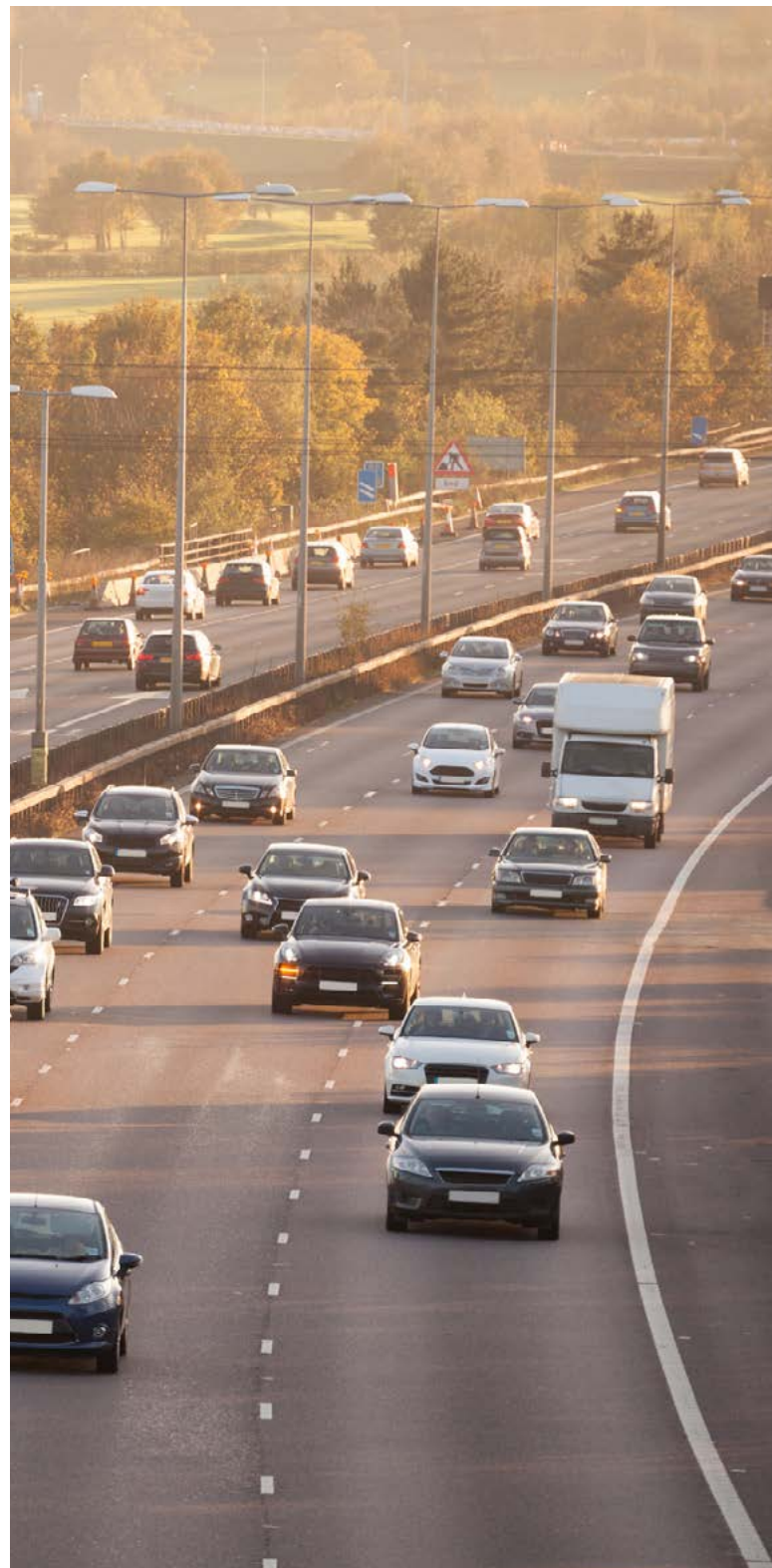
### **Persistent evaders**

There is an on-going battle to tackle persistent evaders, which are responsible for millions of pounds of lost revenue to local authorities. Persistent evaders are defined by the Department of Transport as a vehicle owner that has three or more unpaid PCNs from the last 12 months, which have not been appealed or challenged. The drivers of these vehicles are able to continue to park unlawfully, and in many cases avoid paying road tax, insurance and may not have an MOT and cannot easily be traced.

Persistent evaders occur in large numbers nationwide and have a significant impact on local authorities revenue, with an estimated cost of £500 million. Around £74 million is lost in parking fines alone. In 2020, 62% of persistent evaders also had no tax, MOT or DVLA registrations.

Enforcement firms are often required to detect and enforce high value arrears on behalf of councils, Highways England and Transport for London. There are powers within the Traffic Management Act (TMA) to deal with persistent evaders but this legislation requires the offending vehicle to be in contravention at the time of action (this means a PCN must be on the vehicle windscreen and only the single PCN can be recovered, even if there are many others for the same vehicle).

If the vehicle has a name and address with the DVLA after six months a Warrant of Control is obtained by the local authority and enforcement agents are used to recover the debt. However typically only 25% of these PCNs are paid and the remaining 75% of debts written off.



## 9. PUBLIC PERCEPTION OF THE INDUSTRY

Prior to the pandemic, the use of enforcement by central and local government was on the increase. There are several reasons for this:

Benefit reforms coincided with the removal of centralised support for Council Tax support claimants, meaning many more potentially vulnerable people being brought into the enforcement process for non-payment of Council Tax bills.

Increasing numbers of Penalty Charge Notices are issued as part of the implementation of broader public policy objectives, for example, clean air (Congestion Charging, Ultra Low Emission Zone etc).

Austerity measures have led to councils pursuing historic debt more diligently.

Signposting to debt advice organisations has contributed to many more requests for support – this was an intended outcome of the 2014 reforms, which introduced the stipulation that the Notice of Enforcement must include details of free and independent sources of debt advice.

Already hundreds of millions go unpaid every year and over 80% of the public think that this would continue or get worse if local councils didn't use bailiffs to recover unpaid debts<sup>vi</sup>. Unsurprisingly, twice as many adults back the use of enforcement agents to recover Council Tax debts than oppose civil enforcement. For many years bailiffs were known as being the hard edge of debt recovery with the power to enter homes and seize personal possessions, almost without restriction. Up until the Tribunals, Courts and Enforcement Act 2007, enforcement practices were not standardised, and each local authority and each enforcement firm had its own approach to debt collection. While Council Tax has proven to be a successful way to fund local government and is largely considered to be a fair tax. Local authorities have adopted rigorous procurement process for enforcement services. These has led to strict service level agreements with integral policies

for identifying, supporting and safeguarding vulnerable people with debts. Strong competition for local authority contracts has ensured the highest standards are maintained and that the market continues to innovate. Some 66% of those polled said they supported the current practice of recouping the costs of collecting the debt from the person who owed the outstanding debt.

### **Identification of vulnerability and debtor support**

Enforcement agents are often the first to identify people in vulnerable situations, particularly during enforcement visits. If agents encounter vulnerable people, enforcement action is suspended, and they will refer that person for additional support to welfare teams and council support services.

Enforcement agents undertake extensive training on all levels of vulnerability to help people engage with the debt enforcement process. Not all vulnerability prevents an individual from repaying their debts. Misunderstanding of what constitutes vulnerability in the context of enforcement is undoubtedly a driver of complaints, both from customers and from debt advice organisations.

Vulnerability may be short-term or long-term. For a short-term vulnerability, a payment holiday may be sufficient to support a customer, whereas a long-term vulnerability may require a long-term payment arrangement - or for a case to be returned to a client. Some stakeholders have called for vulnerability to be defined, whilst others (including some advice organisations) recognise the benefits offered to customers by being able to identify vulnerability on a case by case basis, rather than through broad segmentation, which can never be exhaustive for fear of excluding some customers altogether.

Agents adopt a flexible and tailored approach to address the transient and subjective nature of some customers' circumstances, and when dealing with those customers that are in arrears with several different creditors, they may request evidence of vulnerability. Requesting evidence can be perceived as being difficult or obstructive, but agents have a responsibility to make an assessment on the basis of the facts. Without this, they would not be able to meet obligations to council clients, to the court or to the taxpayer whose money is ultimately recovered.

Enforcement agents are tasked with making sure those who are vulnerable are given the appropriate protection and that payment comes from those who wilfully refuse to pay, rather than those who want to pay but cannot afford to.

The Institute for Fiscal Studies found that those with the lowest incomes had been hardest hit and almost one in ten additional households had fallen behind on their Council Tax payments<sup>vii</sup>. Therefore, during the lockdown period it was especially important for enforcement action not to contribute to vulnerable circumstances. CIVEA implemented its **Post-Lockdown Support Plan** to ensure enforcement activity taking place during the health crisis was safe and responsible when engaging with vulnerable members of society. Reconnection letters were sent to assist with identifying vulnerable people before visits resumed in August 2020. Mandatory CIVEA-approved training was delivered to every CIVEA member, covering the effective use of PPE, social distancing and protection of the public.

Enforcement firms have joined many other sectors in adopting the use of Open Banking. Open Banking presents valuable opportunities to assess income and expenditure and give people in debt access to budgeting support. The ability to engage online is vital with an increasing number of customers preferring to engage that way. The flexibility it offers is particularly valuable, as affordability, like vulnerability, is dynamic. Static income and expenditure assessments can miss the opportunity to help people resolve their debts more quickly.

Debts that are collected promptly can avoid exacerbating an individual's debt situation. For example, Council Tax debt that should be collected within the financial year and court fines that must normally be collected within the expiry date of a warrant. That does not, however, prohibit longer-term payment solutions or a Breathing Space to seek independent debt advice for those individuals genuinely experiencing financial hardship. CIVEA members adopt a variety of tools and processes to identify financial vulnerability early in the process and provide support which achieves a fair outcome for both the debtor and creditor.



### Returning cases to clients

If a customer cannot afford to repay a debt, they may have assets that could be sold to repay this debt: this is the fundamental premise of court order enforcement. However, if a customer does not have goods, or if this cannot be assessed (for example, being unable to access a property), the case is returned to the client (the local authority or court). Half of all the cases passed to agents by public sector clients are returned each year, and in doing so this provides information that will assist councils to determine the appropriate course of action.

Where agents encounter vulnerable people, additional support is provided by internal welfare teams and referral to other council support services. Many households have benefited from government support schemes and furlough payments have helped to cover their ongoing bills. However, a growing cohort will struggle to pay and may have incurred additional debt that had been put on hold during the pandemic.

The debt advice sector is warning of a false impression of wealth that hides increasing problem debt. StepChange reports that 36% of its clients have on average £1,292 in Council Tax arrears.<sup>viii</sup> Analysis by the Money and Pensions Service in 2021 indicated that the number of people needing help with debt would climb for at least 18 months, with an increase of over 60% by the end of that year.<sup>ix</sup>

Enforcement is a vital tool for local authorities to recover important revenue to support public services and ensure fairness. Enforcement isn't simply about recovering money from the non-compliant and enforcing court judgments. It is also about providing incentives for those who might otherwise choose not to pay.

Effective communication is key, whether by phone, letter, online or in-person for payment to be arranged or to establish the reasons for a case to be returned to a client. This also helps to reassure people about a customer regarding the enforcement process and dispelling commonly-perpetuated myths and scare stories.

Enforcement firms use multi-channel communications tools and apply plain English and behavioural insights techniques in our written communication in order to encourage engagement. A Notice of Enforcement is an official notification of enforcement action. While it is a legal obligation to set out the potential consequences of non-engagement in the statutory notices, firms are careful to explain these clearly and in non-threatening language.



### Social Value contributions

In the last few years, there has been an increased importance placed on social value commitments in tender applications for local government enforcement contracts. Social value is an important part of the contracts that enforcement firms deliver to local authorities. These could contribute relevant social, economic, or environmental benefits to local communities, as agreed between the council and the contracted company.

In 2015 Lord Young said in his Review of the Social Value Act that social value outcomes should be relevant to the service being procured and that it is best described as **“something that would benefit from being thought about in a wider way (as an element in the optimum design of a service), rather than buying something completely unrelated.”**

### Some examples of social value that CIVEA members provide through councils are:

- Sponsoring debt advisers working in council offices
- Providing support for Residents Associations, Parish Councils and Voluntary Sector groups
- Providing CV clinics and mock interview events for local job seekers
- Upskilling staff in the supply chain
- Helping with community clear up days
- Reducing deliveries and vehicle movement with smart mapping
- Converting to electric vehicles for field agents

CIVEA partnered with YPO - a leading public sector procurement organisation - to assist local authorities that prepare tender documents for enforcement services. Guidance was published that provides a definition and examples of social value, which local authorities can use in their invitations to tender.



## 10. REGULATION AND REFORM

### The changing face of enforcement

It is important not to conflate debt collection and the impact on household debt levels, with the enforcement of unpaid taxes and fines owed to the public purse. Enforcement of public debt is specialist work that operates under regulations specific to this type of debt. However, civil debt is enforced using many of the same processes and technologies as private debt collection agencies, including credit reference checks, data analytics and extensive engagement prior to any enforcement visits.

Society no longer wants to stigmatise anyone for getting into debt and has become uncomfortable with the punitive consequences of debt. A duty of care on creditors has been developed in the government's policy on a Breathing Space introduced in May 2021. The Breathing Space applies to government-generated debt, such as Council Tax debt, unpaid PCNs and commercial rent for small businesses. In the case of public debt arrears, the creditor is the local authority and it is, therefore, appropriate for responsibility for a Breathing Space to rest with these public bodies.

However, Council Tax debt recovery is only a proportion of the work that falls to enforcement agents. Enforcement agents execute warrants of control in respect of criminal fines. Many Liability Orders for Council Tax debt issued by local authorities are also due to failed payment arrangements, but fines are also imposed as a form of punishment meted out by the courts, often as an alternative to custodial sentences.

Warrants are mainly issued when a defendant fails to maintain a court-imposed payment arrangement. The justice system would be undermined if enforcement agents were too lenient and did not carry out the courts instruction to recover the debt or take control of goods in lieu of payment.

It is vital for local authorities to collect debts that were incurred before the coronavirus lockdown to fill the funding gaps in their budgets. According to the National Audit Office, the pandemic's cost to councils stood at £6.9bn last year, forecasting further losses of £2.8bn in lost income in the 2020-21 financial year.<sup>x</sup>

Therefore, the government faces the dilemma of balancing its books to fund support services by depending on the recovery of outstanding debt. Whatever our opinion of Council Tax, it remains the primary source of revenue to support local services, such as child and adult care. Enforcement is an effective and fair way to incentivise people to pay their dues where the usual levers of risk pricing and interest rates do not apply.

However, since the credit crunch, every business sector has had to embrace a new level of corporate responsibility for data protection, public accountability and conduct. Enforcement now looks very different since the reforms of 2014.

Many households have benefited financially from the lockdown restrictions with government support schemes and furlough. These people will make up the majority that will pay their Council Tax. However, a growing cohort will struggle to pay their taxes and may have incurred additional debt that has been put on hold during the pandemic.

## Why reform was necessary

The most recent reforms of the enforcement sector culminated in new regulations for taking control of goods introduced in 2014, supported by a voluntary set of National Standards. At the heart of the reform was the principle of fair and proportionate treatment of people in debt, with special attention to those who may be vulnerable.

Along with an extensive training and certification process for enforcement agents, a new fee structure meant enforcement charges were fixed by statute and the operation of enforcement agents was highly prescribed.

The single most significant change was the implementation of an early intervention, known as the Compliance Stage. This gives anyone in debt advanced notice that an enforcement visit is due and provides a final opportunity to engage and make a payment arrangement. This has halved the number of debts that are collected at the door.

Fewer people receiving doorstep visits means a much smaller fee is added to the debt. The simplified and statutory fee structure has reduced the number of complaints, which remain at extremely low levels. Enforcement agents have a greater awareness and training in all aspects of vulnerability and enforcement firms have developed specialist welfare support teams. All enforcement agents are externally verified and certificated by the courts.

Around half of all debt is recovered at the Compliance Stage, which is an excellent outcome for debt that councils have been unable to collect. Income and expenditure assessments are standard practice during the Compliance Stage. The conditions of payment plans are agreed between enforcement firms and their clients, local councils.

The success of the Compliance Stage is due to the innovative approach that enforcement firms take to engage with people with overdue debt. The technology used by the commercial credit sector is equally applied in public debt collection. Enforcement firms contract with the same credit reference agencies with access to 18 data sources and use data analytics to assess an individual's circumstances and propensity to pay. Behavioural analytics can improve responses to communication using 'nudge' theories to adapt communications to specific debtor types. For example, individuals who are identified as potentially vulnerable through verification checks are processed through a bespoke welfare workflow and receive communications with enhanced and tailored signposting links to internal welfare teams and external debt advice.

Incoming calls and self-serve tools are part of the increased use of non-verbal communication, such as webchat and chatbots for simple queries and where people are initially reluctant to speak directly to a contact centre operative. Firms also use multi-channel contact campaigns to encourage people to seek help resolving their debts.

There is evidence of best practice being adopted by enforcement firms that are building more sophistication into the Compliance Stage, in particular. For example, working with debt advice services to train staff on assisting vulnerable people, employing data science to understand more about people's behaviour and working with credit reference agencies. Firms use webchat to engage with customers and speech analytics to identify vulnerable people.

Other CIVEA members use the standard financial statement and have technology software linked to open banking where customers can provide authorisation for income and expenditure to be

verified by their bank and affordability analysis can be more accurate, Propensity to Pay and customer data analytics is used by agencies to improve the data intelligence and the best path to take on collection method. CIVEA members received a presentation on the Vulnerability Registration Service and a number of members use the service.

Firms also have excellent working relationships with the third sector and free to access advice agencies with protocols to place cases on hold while negotiating repayment plans. Firms also have online access and apps for both the customer and advice agency to access on their behalf.

CIVEA has led its members on a path of improvement with a model of self-regulation, which included a revised independently monitored code of practice. All members of the Association have signed up to the code, which involves a detailed compliance audit and review by the independent panel, the Compliance, Adjudication and Review of Enforcement (CARE) Panel.



**The code builds on the existing industry code and was a response to calls for better supervision of enforcement agents after an inquiry by MPs. The Justice Select Committee published a report in April 2019<sup>1</sup> which included the following recommendations:**

- Independent and transparent complaints body
- Referral of eligible complaints to the Local Government and Social Care Ombudsman
- Establish a regulatory oversight body for the enforcement sector
- Review the fixed fee structure to ensure they are set as low as possible while ensuring the sustainability of the enforcement sector
- Mandate the use of body-worn videos, supported by best practice.

The government has yet to respond to the recommendations, but the industry has made great strides towards measures to meet the Justice Committee's requirements.

The CARE Panel comprises of experts in compliance, complaints handling, regulation and consumer affairs. The panel will receive reports from the Code assessor on CIVEA members conduct and compliance; review complaints submitted to CIVEA where a final decision has been made by a member (this only applies to HM Courts and Tribunals Service and transport-related complaints); and offer expert advice to the CIVEA executive.

The industry introduced a binding commitment in its code of practice for all CIVEA members to provide body-worn video and guidance on its use. All agents wear body-worn cameras and video footage is constantly reviewed to monitor conduct and performance. CIVEA was proactive in committing its members to mandatory use of body-worn video cameras ahead of the government's industry-wide mandate.

The industry has been instrumental in designing and establishing an industry-funded oversight body to ensure high standards and good conduct.

As well as a strengthened code of practice, which exceeds the statutory requirements and the MoJ National Standards, agents' vehicles are often tracked by satellite and their phone use can be monitored and call centre calls are recorded. This high degree of close monitoring means that complaint levels are consistently very low.

## 11. ENFORCEMENT BEYOND THE PANDEMIC

Since 2014, the industry has witnessed an evolution in public debt collection, especially among the most difficult debts to recover. Enforcement firms are committed to acting responsibly and supporting people who are in debt and, for the most part, the industry has embraced the reforms and is distancing itself from practices of the past.

Looking forward, data is the key to unlocking effective public debt collection. In addition to the adoption of advanced technology by enforcement firms, we believe that local authorities have the opportunity to do more with data in order to segment their cases at a pre-enforcement stage and ensure that only cases suitable for enforcement action are passed through to court order (or in the case of Council Tax, Liability Order) stage. This will prevent fees from being added to cases where a customer genuinely cannot afford to pay them and prevent us from incurring irrecoverable costs in the course of pursuing these.

The statutory fee schedule for enforcement, and the potential reputational risk involved in enforcement, means that we have no incentive to pursue a customer that has no means of repaying their debt. Enforcement firms have therefore invested considerably in data analytics to help identify customer circumstances, in order to prevent unnecessary action where inappropriate, and maximise collections from customers who are able to pay. Multi-million-pound data investment incorporates leading technology, data, reporting and analytical capability. Firms have partnered with organisations in money and debt advice

to use bespoke technology, data analytics and enrichment to inform workflows. Different statistical models are applied to data, which is enriched through credit reference agency searches. Historical case data is used to help inform potential affordability, behavioural patterns and payment and communication channel preferences.

The use of premium trace data is an essential component, and the enforcement industry has invested in the best and most accurate data for the tracing and intelligence gathering process. Trace results are subject to complex trace result strength algorithm calculations, which are used to intelligently inform the 'next best action' for the case.

The Digital Economy Act 2017 may support the future provision of further information prior to enforcement, and we welcome any changes to prevent enforcement visits when it is not appropriate. The Act presents options for local government to interrogate data from a wide range of public bodies and develop a single customer view across departments. We are only just discovering the new opportunities for innovation.

At present, a revenue collection team pursuing a Council Tax debt may not have access to details of other public debts or repayments like court fines or overdue benefits. The level of affordability assessments and vulnerability identification could be improved by better use of data.

Access to data needs to be supported by better policy. For example, council teams can get data on employment and benefits and apply for an attachment of earnings. But this will be calculated using a 30-year-old pricing policy that does not reflect current living costs.

The Cabinet Office is investigating debt management in the public sector. It is rightly concerned at the level of problem household debt that is attributed to central and local government. Such debts represent money owed to the taxpayer and this money is used to fund public services, public bodies are conscious that proportionate enforcement responses are taken against those who could pay but choose not to. Now that COVID-19 is in the mix, the government will have to consider what financial support mechanisms are legitimate and appropriate. There are calls for a Government Debt Management Bill, which would bring the Cabinet Office's 'Fairness Principles' (currently in the Digital Economy Act's Code of Practice) onto a statutory footing, establish a centralised debt aggregator within the Cabinet Office to give a 'single customer' view of all debts owed by an individual to public bodies, and ensure more consistency about public bodies through the use of the Standard Financial Statement and published policies for dealing with those in vulnerable situations.



## 12. CONCLUSION

CIVEA recognises the need to constantly work with our stakeholders to ensure that the operating environment remains in line with best practices. However, we also understand that the pandemic and other world events have reverberations from a national level, down through communities to individual households. We cannot fully predict how significantly our economy will change, but we can prepare for change. In less than ten years the role and responsibilities of an enforcement agent have changed dramatically. The evolution of enforcement has reflected the march of technology and the shift in society's attitude to debt and vulnerability. It is appropriate, therefore, that the industry is preparing for an emerging new role beyond the pandemic by establishing independent oversight and innovating to meet the demands of public bodies in the future.

To continue the sector's good progress in safeguarding vulnerable debtors and supporting local council finances, CIVEA supports the following recommendations:

1. Prescriptive regulations provide consistency but inhibit enforcement agents' ability to conscientiously adapt to individual circumstances and difficulties. **CIVEA proposes that communications should be tailored to improve the level of engagement at an earlier stage.**
2. We need an independent adjudication process for all public service providers so that we can ascertain any concerns about our industry. **The government should bring forward its draft bill on a Public Service Ombudsman, which was published in draft in December 2016.**
3. It is not effective to conflate all central and local government debt within the same policy framework. **Debt incurred as a result of a punitive charge should not attract the same level of forbearance as local taxation debt, and the recovery process should be adaptable to each individual case.**
4. The majority of local authority contracts for Council Tax collection require the enforcement agent to operate an extended compliance period to incorporate multiple attempts at contact by all means available. **To ensure consistency, this approach should be enshrined within updated National Standards.**
5. Enforcement is not used in the majority of cases with problem household debt – where people are paying but struggle to manage finances. **The government should further explore better ways to engage with people that are traditionally hard to reach.**

Local authorities have distinct financial means testing located in finance, welfare benefits, housing, social services and education departments, all of which process the same customer for different reductions, benefits and grants. **The government should consider how it can develop better data-sharing partnerships between public bodies, and in turn with the private sector.**



# KEY STATISTICS

- Each year CIVEA's members receive around 2.8 million cases from local authorities, courts and tribunals.
- Before 2020, more than £550m was collected annually at no cost to the public purse.
- The net collection rate from CIVEA members across all forms of unpaid taxes or fines is around 70%.
- An average of 65% of unpaid council tax is recovered, which would otherwise be lost to the public purse.
- In almost 50% of cases, unpaid taxes and fines are successfully recovered without the need for a doorstep visit, over half of overdue debt cases are resolved through affordable repayment plans.
- Councils have had the case for at least 3 months before it is passed for enforcement, and often the time period is much longer.
- Around 40% of overdue Council Tax debt is collected at the Compliance Stage.
- The average enforcement fee added to a council tax debt is £77
- In 2014 new regulations were introduced, improving transparency, setting fixed fees and simplifying the system – since its introduction, only 164 complaints have been filed with the Local Government Ombudsman involving enforcement agents and just 36 were upheld in four years.
- Goods are only seized in 0.1% of cases.
- For the year ending March 2019, 64% of new council tax debt cases were resolved by payment arrangements.
- Only 2.5% of fees and debt from council tax cases that are paid in full are collected at the sale stage
- The average enforcement fee added to a council tax debt is £77



### According to a YouGov survey conducted in 2020<sup>xi</sup>

- 56% of adults believe councils should use bailiffs to try and collect unpaid council tax from people who can but won't pay (28% said they should not and 16% do not know).
- 64% of adults believe bailiffs should be used to collect unpaid fines imposed by a court (20% said they should not be used and 16% don't know).
- 66% of adults believe a person who has not paid their council tax should pay for the costs associated with collecting the money (12% said the council should pay, 6% neither and 15% don't know).
- Over 80% of adults believed the current situation, where millions of pounds go unpaid every year, would remain or get worse if councils were to stop using bailiffs to collect council tax (5% said more people would pay, 14% don't know),
- 65% of adults think local services, such as social care, would be put at risk if fewer people paid their council tax (15% said it wouldn't be at risk, 20% don't know).

## Footnotes

<sup>i</sup> [https://www.civea.co.uk/assets/documents/The\\_impact\\_of\\_enforcement\\_on\\_tax\\_and\\_fines\\_compliance\\_Oct2021.pdf](https://www.civea.co.uk/assets/documents/The_impact_of_enforcement_on_tax_and_fines_compliance_Oct2021.pdf)

<sup>ii</sup> All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1,606 adults. Fieldwork was undertaken between 4th - 5th August 2020. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

<sup>iii</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1024187/Collection\\_rates\\_and\\_receipts\\_of\\_council\\_tax\\_and\\_NNDR\\_2020-21\\_revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1024187/Collection_rates_and_receipts_of_council_tax_and_NNDR_2020-21_revised.pdf)

<sup>iv</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1836/report-summary.html>

<sup>v</sup> <https://www.civea.co.uk/news-and-media/public-backs-debt-enforcement-to-support-vital-public-services-survey>

<sup>vi</sup> Of the 80%, 42% thought fewer people would pay and 39% said it would not make much of a difference.

<sup>vii</sup> <https://ifs.org.uk/publications/14908>

<sup>viii</sup> [https://www.stepchange.org/Portals/0/assets/pdf/stepchange\\_statistics\\_yearbook\\_2020.pdf](https://www.stepchange.org/Portals/0/assets/pdf/stepchange_statistics_yearbook_2020.pdf)

<sup>ix</sup> <https://moneyandpensions.service.gov.uk/2020/06/09/extra-38-million-for-debt-support-in-england-in-the-wake-of-coronavirus/>

<sup>x</sup> <https://www.nao.org.uk/report/local-government-finance-in-the-pandemic/>

<sup>xi</sup> All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1,606 adults. Fieldwork was undertaken between 4th - 5th August 2020. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

# Glossary

- **Civil enforcement (as opposed to debt collection etc)**

Civil enforcement is the execution of non-High Court orders, which relate to debts such as council tax, child support, parking and traffic offences or magistrates' court fines.

- **Compliance stage (and other stages)**

The first step in the three-stage enforcement process where a 'Notice of Enforcement' is sent to the debtor's address. There will be at least seven days (not including Sundays or Bank Holidays) before any further action is taken by the enforcement agent or company, unless a court has decided otherwise.

- **Public debt collection**

Debt incurred with a consumer credit provider can escalate with high levels of interest and charges for missed payments. Debts for unpaid council tax, traffic enforcement penalties and court fines do not attract interest and there is no cost to the taxpayer.

- **Enforcement agents**

Enforcement agents were previously called bailiffs. Enforcement agents are certificated by the County Court. This certification must be renewed every two years.

- **Customer vulnerabilities**

Vulnerability and how to respond to vulnerable people are embedded in every part of the enforcement business, from contact centre operators to enforcement agents in the field. Debt advice charities work closely with CIVEA members to provide training on how to identify and support vulnerable people. All CIVEA members have either a welfare team or a dedicated individual responsible for managing cases where individuals are identified as potentially vulnerable. These specialists are trained in the use of management tools such as TEXAS and IDEA and are empowered to make decisions about additional support needs.

- **National Standards of Conduct**

The Taking Control of Goods National Standards is a set of common standards supporting the underpinning legislation. In order to improve the public's perception of the profession, enforcement agents and those who employ them or use their services, must maintain high standards of business ethics and practice. Although voluntary they are adopted universally by enforcement agents.

- **Breathing Space**

Debt Respite Scheme (Breathing Space)  
A standard breathing space is available to anyone with problem debt. It gives them legal protections from creditor action for up to 60 days. The protections include pausing most enforcement action and contact from creditors and freezing most interest and charges on their debts.

- **Social value**

Social value is the additional benefit that enforcement companies bring to local communities through environmental, social and economic initiatives, such as employment and training schemes or the use of electric vehicle fleets. The definition of social value differs across local authorities.

- **Vulnerability Registration Service**

The Vulnerability Registration Service (VRS) is a not-for-profit organisation providing a central, independent register of vulnerable people – helping companies to identify vulnerability and keep people safe.

- **Compliance, Adjudication and Review of Enforcement (CARE) Panel**

The independent Compliance, Adjudication and Review of Enforcement Panel (CARE) comprises of experts in compliance, complaints handling, regulation and consumer affairs. The panel receives reports code compliance; reviews escalated complaints and offers expert advice to the CIVEA executive