



TAKING CONTROL
The campaign for bailiff reform

Coalition response to the ECB Approach to complaints handling and sanctions consultation November 2024

About us

We welcome the opportunity to comment on the Enforcement Conduct Board Approach to complaints handling and sanctions consultation. This response has been submitted by the Taking Control coalition campaign for bailiff reform.¹ Taking Control is a coalition of civil society and debt advice groups² campaigning for independent regulation of the bailiff industry and other reforms to ensure fair and appropriate treatment of financially vulnerable people facing debt enforcement.³

This response has been endorsed by and should be treated as a response by each of the following organisations.

- AdviceUK
- Citizens Advice
- Christians against Poverty
- Community Money Advice
- Debt Justice
- Institute of Money Advisers
- Money Advice Trust
- PayPlan
- StepChange Debt Charity

¹ <https://www.bailiffreform.org/>

² Members of the Taking Control coalition include Advice UK; Christians Against Poverty; Citizens Advice; Community Money Advice; Debt Justice; The Institute of Money Advisers; Money Advice Trust; PayPlan; and StepChange Debt Charity.

³

<https://www.bailiffreform.org/storage/app/media/Taking%20Control%20report%20March%202017.pdf>

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome the opportunity to comment on the ECB approach to complaints handling and sanctions. We have set out our responses to the questions below.

Generally, we are very supportive of the ECB guidance on complaints and the complaints handling process as set out in the consultation. We have made a series of specific points where we would like to see the guidance strengthened, particularly in relation to monitoring and reporting.

We are also concerned that the approach taken in the sections on complaints on ownership of goods and where court action has been taken, may not be correct.

We would highlight a gap in the complaints guidance in relation to vulnerability. This is only referenced where a firm should make adaptations in dealing with a complaint due to vulnerability. There is a wider consideration in relation to complaints and vulnerability such as enforcement firms failing to return accounts to creditors where someone is vulnerable, not removing the relevant fees, or not providing an element of breathing space and a signpost or referral for debt advice.

Insights from the Taking Control coalition show that there is a high prevalence of vulnerability among those experiencing enforcement action. To put this into perspective:

- Three in five (61%) StepChange debt advice clients who experienced enforcement action in the first half of 2024 had an additional vulnerability beyond their financial situation.
- Analysis from the Money and Mental Health Policy Institute found that more than seven in ten (73%) people in council tax arrears who have been in contact with bailiffs have experienced a mental health problem.

This consideration should be embedded throughout the design of the complaints process and accompanying guidance, with an understanding of how the presence of vulnerability relates to factors including people's willingness and ability to complain about their experiences, and how vulnerabilities might have been exacerbated or created by poor enforcement practices which in turn necessitate complaints. We have highlighted a number of areas where this consideration could be drawn out more clearly throughout our response.

Responses to individual questions

Questions on the Guidance to the Standards on Complaints - Part A – Annex A:

A) Do you have any feedback on the content of the Guidance that accompanies the Standards on Complaints?

FS7.1 publish its complaint handling policy, which must:

FS7.1.3 set out the support that is available to make a complaint

FS8.4 where appropriate, signpost the complainant to the support that is available to assist them in making a complaint.

FS9.6 notify the complainant that they can escalate a complaint to the ECB.

d) where the ECB is not the only second tier complaint handler, details of alternative organisations which the complainant can contact.

We note that at some points in the complaints process there is reference to enforcement firms letting people know about the support available to make complaint. We would like to see a specific requirement on firms to signpost to free debt advice providers. The opportunity to refer or signpost is vital at all points in the complaints process not just the initial paperwork. Information on the debt advice support available cannot be limited to a brief mention of debt advice. It is important that communications convey a clear message around help and support, the options available to people and that there will be positive outcomes if the recipient seeks advice.

In addition, if the complaint is about a different sort of conduct issue, perhaps where enforcement activity has triggered domestic abuse trauma (see case study below) then debt advice would not be appropriate. Enforcement firms need to consider possible support needs due to the vulnerability identified, and be required to interpret possible additional support needs from the complaint.

Equally, it cannot be assumed by the enforcement firm that their interaction with the complainant will be sufficient to resolve the complaint.

Welcoming complaints

An enforcement firm must:

FS7.3 have appropriate resources in place to enable it to investigate the number of complaints it anticipates it could receive.

We believe that firms should commit to and resource their internal complaints process to enable them to monitor patterns and collate data every month. There should be internal, ECB mandated timeframes for monitoring and reviewing data.

In addition, such data collection should ensure that the ECB is able to monitor that firms have taken action against individual EAs where appropriate.

Clear and accessible complaints process

An enforcement firm must:

FS8.3 accept complaints over the telephone, in writing or via any other communication channel actively used by the enforcement firm.

We would suggest the ECB should actively monitor firms to ensure that they are accepting complaints through a variety of communication channels. If the firm's process is inaccessible, then the client will not be able to raise either their complaint, or a complaint about the process being inaccessible either

Confirming the complaint

32. It is better to notify the complainant at the outset if there are any aspects of the complaint that the enforcement firm is unable to consider. That way the complainant can direct their complaint to the correct body as soon as possible. For example, complaints about the actions of the creditor. The enforcement firm should let the complainant know at the outset if there are any aspects of the complaint that it cannot consider. If known, it should provide to the complainant information about how to escalate those concerns. If not known provide the contact details for relevant advice organisations.

We are concerned that this does not go far enough. It should at very least be a requirement on the firm to provide information on how to complain to the creditor as they are appointed by them to act in the first place. This should be part of the process for the enforcement agency to put the complainant in touch with the creditor concerned where they are unable to consider the complaint.

We do not think it is sufficient to "*provide the contact details for relevant advice organisations*" instead at this point either. We are all aware that people who are vulnerable and under stress are less likely to raise complaints in the first place. They are even less likely to have the mental bandwidth to take the complaint up all over again with a different body, once they have made the initial effort to do so. There should be higher expectations on the firms to resolve issues and not be seen to deflect the complaint elsewhere. Where they are not able to resolve complaints, it would be positive if firms take responsibility to pass the complaint on to the correct body.

The informal resolution of the complaint

38. Regardless of the method taken to complete the informal resolution stage it would be helpful for a firm to provide a written summary setting out its conclusion to the complainant and / or their representative,....

We would suggest that the firm should be required to provide a written summary to the complainant. It is not sufficient to suggest that doing so would be good practice or helpful, as this should be standard procedure.

The formal investigation of the complaint

40. Decisions about the information that is required will differ from case to case. Evidence that is likely to be relevant includes:

a) body worn video footage of interactions with the complainant, (where that is relevant to the subject of the complaint);

We believe there should be really clear rules that if there has been a complaint to an enforcement agent that could still potentially be passed to the ECB (i.e. is within the time limits) the enforcement firm must be required to keep the camera footage to be passed on.

We have seen examples such as this LGSCO case⁴ where the enforcement firm kept the body worn camera footage for their response to the complaint, and then deleted it before the ombudsman could view the footage. We believe it is the intention of the ECB to make this a requirement as referenced in the ECB standards document which states:

FS4.5 retain body worn video footage for an appropriate period of time to allow for the submission of complaints or, where the footage is relevant to a complaint, until it is no longer required for the resolution of that complaint, and for a minimum of 12 months from the date of the complaint.

B) Do you have any feedback on the definition of a ‘complaint’? Does this definition present any challenges in terms of identifying what should be treated as a complaint?

We have identified the potential for people to present to the firm with a mix of a service request and a complaint. For example:

“I cannot pay as agreed, the bailiff didn't listen to any of my circumstances when we agreed the payments. Please lower the amount to £x which I can afford”.

The firm needs to be able to distinguish between the two and to deal with the complaint element of the query, but also identify the service request that may need to be actioned quickly. Complaints should be seen in the light of dealing with the specific case and considering the lessons learnt from the issue to prevent it from happening again.

C) We recognise that there can be challenges within the complaints process where the enforcement firm is enforcing a debt under a High Court writ, but the High Court Enforcement Officer is not part of the enforcement firm. Do you see any challenges in operating the complaints process in the way we have proposed?

⁴ [23 020 627 - Local Government and Social Care Ombudsman](#) North Northamptonshire Council

We are concerned that there is potential for a complaint running with the ECB against the enforcement firm that took the action, with a court case running against the HCEO at the same time. We are not sure if this would be an issue in practice, but there needs to be some consideration as to what approach the ECB should take in such circumstances.

There also needs to be consideration given for where the accountability would lie in cases where there has been poor supervision of the enforcement firm by the HCEO under the High Court writ. Whilst there is case law that agrees on the distinction between the parties, the writ is the responsibility of the HCEO who would typically not be enforcing at the door.

Questions correlating to the ECB's complaints handling process Part B – Annex A:

A) Do you have any feedback on the ECB's complaints handling process?

ECB's Complaints Handling Process

11. We may, at times, require expert advice to help us with our consideration and investigation of complaints because a case is particularly technical or legally complex. We will recruit a pool of technical experts that we can call on for advice, which will include representatives from across the enforcement industry.

We are concerned about the suggestion of the ECB relying on a panel of 'technical experts' from the enforcement industry to give a steer on technical and legally complex cases. Given the historically poor practice in the industry, we would have thought it best to seek technical advice from independent legal experts rather than representatives of the enforcement industry to ensure a balanced and neutral perspective. Any external technical experts should have only enough access to case details to answer technical questions.

We are also concerned that for a period of time the 'technical' view might be the same as 'this is the way the industry does it', which may not be aligned with new standards.

Who can complain

8. Support can be obtained via various sources, such as:

- a) Money Advice Trust;*
- b) Citizens Advice Bureau;*
- c) Stepchange;*
- d) Christians Against Poverty.*
- e) Local debt advice organisations*

As suggested in previous consultations, we would be grateful if you can amend this list.

- Money Advice Trust should be replaced by National Debtline and Business Debtline.
- Citizens Advice no longer uses "bureau".

- The full name is StepChange Debt Charity.
- We suggest including the [MaPs Debt Advice Locator Tool](#) in the list. We also suggest adding Community Money Advice.

Who can complain

9. We will require written authorisation from the complainant (or their recognised power of attorney) for the representative to act on their behalf.

Please note that in some cases debt advisers or other third parties will assist their clients to complete a complaints form, or even complete the form for the client. However, they would not be acting on the client's behalf by offering an ongoing casework service or act as an ECB point of contact for the complaint.

There should be enough leeway in the process to ensure that this assistance can take place without requiring written authorisation. Help with form filing and 'acting on behalf' are sufficiently different that it should be clear when authority to act is needed. However, making this crystal clear in the guidance will be important.

Complaints we cannot consider

20. We may decide that it would not be appropriate for us to consider a complaint. For example, it would not usually be appropriate for us to consider a complaint where:

c) it relates to a matter that has already been considered by a court, or which would be more appropriately considered by a court;

We would ask the ECB to look at this section relating to complaints it cannot consider again. It would be a very disappointing outcome if the ECB was to take a very narrow view of a "matter that has already been considered by a court". We would not expect this to be the ECB's intention.

It is often the case that an enforcement agency is acting to collect a debt relating to an order of the court, in particular following a Liability Order in the magistrates' court for council tax collection. We have seen the LGSCO adopt an approach that appears to exclude all consideration of enforcement agency cases where there has been a Liability Order in place for the debt. As it is not possible for a local authority to collect council tax using an enforcement agent until a Liability Order is in place, then this could in theory prevent consideration of complaints relating to all council tax enforcement.

We would not like to see the ECB take such a narrow view of its own parameters which would prevent it from considering complaints of this nature.

Step 2- Further consideration

30. We will consider:

d) Whether it would be more appropriate for the matter to be considered by a court:

ii) the content of the complaint that has been put, including:

a) if the complaint relates to a contractual matter between the creditor and the enforcement firm;

b) if the complaint relates to a dispute over the ownership of goods.

We disagree that the ECB should not intervene in a dispute over the ownership of goods. We believe that the ECB should think again about their approach to goods.

Goods might be taken under control where they are exempt goods, in which case presumably the complaint would be made by the person subject to enforcement action. However, where goods might belong to a third party it would be possible for the complaint to be made to the ECB by either the person subject to enforcement action or the third party.

We would suggest that the court process for determining the ownership of third-party goods is both complicated and expensive with the potential for substantial court costs as well as court application fees. There is a mechanism under the regulations for the third party to contact the enforcement agent who in turn must contact the creditor. If this process falls down, then we would have thought at the very least there would be grounds for complaint about the process.

Step 3 Investigation

Gathering evidence

36. *We will ask the parties to provide their comments and evidence within ten working days.*

We would suggest that this might be a rather too formal a process for dealing with complaints where people have specific vulnerabilities. We would expect the ECB to use different techniques and make appropriate adjustments for complainants who are not likely to be in a position to comply with an evidence requirement.

We believe there should be much more emphasis on the ECB collecting a narrative from the complainant and ask for evidence much more informally. "Can you send that text you mentioned?" rather than "Please send your evidence within ten working days". Perhaps the Financial Ombudsman Service might be of assistance in developing this approach.

B) We are asking for complaints to be put to us within three months of the person becoming aware that they had a complaint or within one month of the accredited firm's response, whichever is the later. Do you see any challenges in terms of the timeframe we are proposing for the submission of complaints? We would be particularly interested to receive information and / or examples to support your point of view.

We will consider sympathetically any reasonable explanation a complainant provides for not putting their complaint within the time limit.

We would like to see the proposal to consider a reasonable explanation "sympathetically" strengthened. We have seen instances in other complaints bodies where complaints are regularly dismissed on the basis of the length of time it has taken for someone to complain. We do not think this is altogether fair where people are struggling with multiple issues

relating to debt, mental health and other vulnerabilities. They may not have had the capacity to raise a complaint in a timely manner.

It would be helpful for the ECB to consider how vulnerability might affect the ability of individuals faced with enforcement action to stick to complaint timescales and look at this again.

Step 2 Further consideration

30. *We will consider:*

b) The time taken to submit the complaint: We will check that a complaint has been put to the ECB within the relevant time period (three months of the complainant becoming aware that they had a complaint or within one month of the accredited firm's final response, whichever is the later). If a complaint has been put to us outside of the relevant time period, we will ask the complainant to clarify why that is the case. Where the complainant has provided a reasonable explanation for the delay in submitting the complaint, we will consider waiving the time limit. Factors we will take into consideration will include:

i) the significance of the circumstances that led to the delay in submitting the complaint;

ii) the seriousness of the issue that is being complained about;

iii) the length of time since the events that gave rise to the complaint;

iv) whether relevant evidence is available to enable an evidence-based decision to be provided.

The consideration of the time period in **Step 2 Further consideration** does not include any reference to vulnerability in the list of factors to be considered in relation to why there was a delay in submitting the complaint. We would strongly recommend that the ECB adds an additional factor to the list that reflects that they delay could be due to the complainants' circumstances, and vulnerability.

Evidence from our respective organisations highlights the importance of this accommodation. A StepChange debt adviser described the following concerning interaction below, where a client felt unable to complain to an enforcement firm due to her vulnerable situation:

- *The client's council tax arrears have been passed onto an enforcement agent (EA), but the EA doesn't answer the phone or respond to messages and the client has been unable to contact him despite numerous, daily attempts. The client is in an extremely vulnerable domestic violence situation and absolutely cannot have the EA turning up on doorstep. The enforcement firm's head office have said they can't do anything, that it's with the agent now and if he turns up, he turns up. They have suggested to the client that the only thing she can do is pay in full, and was made to know that the EA can call the police on her.*

The client is extremely upset and panicked; she is being stalked by her former partner, there is an active police investigation and she has been advised by the police to prevent anybody from entering her property.

The adviser suggested that the client lodge a formal complaint with the enforcement firm, however she does not feel she has the energy or capacity to do this at the moment.

This incident clearly indicates that the presence of vulnerability should be explicitly referenced as one of the factors for consideration when it comes to the time taken to submit a complaint.

C) Do you have any feedback on the proposed timeframe of 90 calendar days from the date a complaint is accepted for investigation for us to complete the investigation of complaints?

Whilst 90 days does appear to be a lengthy timeframe, we appreciate the ECB's intention to keep the target timeframe under review. We would like to see the potential for setting a shorter time frame for the completion of the complaint investigation by the ECB if realistic to do so.

D) Do you see any challenges in operating the complaints process in the way we have proposed, where the enforcement firm is enforcing a debt under a High Court writ, but the High Court Enforcement Officer is not part of the accredited firm?

See our comments above.

Questions correlating to the ECB's Guide to Remedy Part B – Annex B:

A) Do you have any feedback on the ECB's Guide to Remedy?

Step 2 further consideration the ECB's complaints handling process

h) Whether the complaint relates to a personnel issue at an accredited firm: We will not investigate complaints relating to personnel matters at an accredited firm. Those would include complaints about:

i) the action or lack of action that has been taken in relation to the member of staff that was the subject of a complaint;

ii) the accredited firm's internal human resource policies, including recruitment, training and induction.

We are concerned that there is not a great deal of reference in the paper to either disciplinary or other action by firms where there is a problem with an individual EA that has been identified.

The advice sector has provided the ECB with case examples previously where we have had serious concerns about abusive behaviour by an individual EA. It is unclear what approach the ECB would take in such cases. There is a suggestion that this is an internal HR question for the firm. We do not see how this could be the right approach when looking at sanctions.

We would suggest that this is a key oversight issue that the ECB complaints process should address. One would expect the ECB to feed back any remediation by firms where an upheld complaint requires this.

B) We will be developing a practical framework which will set out how we will approach consolatory payments for the emotional and practical impact of mistakes and / or poor service. The aim is to consult on that in the second half of 2025. Do you have any feedback on that approach?

We are broadly happy with this approach and do not have any concerns to raise at this point.

Question correlating to the ECB's Decision Review Process Part B – Annex C:

A) Do you have any feedback on the Decision Review Process?

The paper states that the intention is that the ECB will not provide an automatic right for the review of a decision. We are concerned that the ECB will need to monitor the instances of requests for decision reviews. The ECB should then consider whether a more formal review process should be put in place, potentially involving the input of an Independent Assessor (as suggested in the Sanctions rules).

10. Support can be obtained via various sources, such as:

- a) Money Advice Trust*
- b) Citizens Advice Bureau*
- c) Stepchange*
- d) Christians Against Poverty*
- e) Local debt advice organisations*

As suggested in previous consultations and in our consultation response above, can you please amend this list of debt advice providers as suggested.

Question correlating to the Non-Compliance and Sanction Rules Part C – Annex A:

A) Do you have any feedback on the draft Non-Compliance and Sanction rules and procedure?

We have no specific feedback on the draft non-compliance and sanction rules.