

Money and Mental Health submission to the Enforcement Conduct Board's 2024/25 Business Plan consultation

Introduction

The Money and Mental Health Policy Institute is a research charity established in 2016 by Martin Lewis to break the link between financial difficulty and mental health problems. The Institute's research and policy work is informed by our Research Community, a group of 5,000 people with lived experience of mental health problems or of caring for someone who does.

Our wider body of research informs this written submission, which draws on our Research Community's powerful, lived-experience testimony. In particular, our policy note *Fear and foul play: The case for bailiff reform to limit psychological harm* which explores how to improve the experience of people with mental health problems on the receiving end of enforcement action.¹

Background

- When a bailiff calls on a person in problem debt, they are likely to be dealing with someone who is experiencing poor mental health.² Nearly half (46%) of people in problem debt have a mental health problem.³ During the pandemic, people with mental health problems were over three times as likely to have fallen into problem debt than the wider population (15% compared to 4%). They're more likely to be in debt for more significant amounts and are nearly twice as likely to owe more than 50% of their annual net income.⁴
- Common symptoms of mental health problems, such as difficulties communicating, impaired clarity of thought and reduced concentration or problem-solving, can make it difficult to engage effectively with creditors and enforcement agents to address problems.⁵ In a survey of 5,500 people with mental health problems, seven in ten (71%) respondents said they avoid dealing with creditors in a period of poor mental health, almost three-quarters (74%) put off paying bills, and nine in ten (92%) found it harder to make financial decisions. In these situations, lenders are more likely to escalate debt collection, meaning people with mental health problems are more likely to be engaging with bailiffs.
- Our Research Community shared with us how bailiff action led to panic attacks, insomnia and confusion, feelings of terror, and despair.⁶ All of these can make it much

¹ Braverman, R.. *Fear and foul play: The case for bailiff reform to limit psychological harm*. Money and Mental Health Policy Institute. 2020

² Ibid.

³ Money and Mental Health Policy Institute. [The facts](#). Accessed: 07/11/22)

⁴ Bond N and D'Arcy C. *The state we're in*. Money and Mental Health Policy Institute. 2021

⁵ Braverman, R.. *Fear and foul play: The case for bailiff reform to limit psychological harm*. Money and Mental Health Policy Institute. 2020

⁶ Ibid.

harder, if not impossible, to take the practical steps necessary to communicate effectively and sort the problems out, as well as causing and prolonging periods of poor mental health. We frequently hear about the negative impact of bailiff action on people's mental health, even to the point of triggering suicidal feelings and mental health crises. Several people reported being terrified to leave the house, becoming isolated through fear of the bailiff knocking on the door. This can, in itself, be a factor in deteriorating mental health.

Q1. Do you have any comments on the proposed priorities for 2024-25?

We broadly agree with the proposed priorities for 2024-25 and welcome this opportunity to comment on the direction of the enforcement conduct board. Our responses are categorised below according to each priority within the draft business plan.

Priority 1: A reliable and objective evidence base

As the draft business plan sets out, there is a lack of robust data on debt collection and enforcement activity. We are glad that the ECB recognises that, without rigorous evidence, "there is currently no baseline from which to evaluate the impact of the ECB's activity in future years". Filling this gap should be a key priority.

Therefore, we are concerned by the lack of detail throughout the business plan on how the ECB intends to do this.

We recognise the planned doorstep practices research using body camera footage, as set out in the business plan. However, this is just one set of data. We encourage the ECB to prioritise collecting a wider range of information. Given the constraints within the Board's budget and capacity, we suggest that this could be limited, in the first instance, to:

- Strongly encouraging enforcement firms and creditors to share data on enforcement activity, and anonymised client data on key demographics details like gender, age, ethnicity and mental health.
- Conducting an annual survey, similar to the FCA's Financial Lives Survey, or MaPS' Financial Wellbeing survey. This should be targeted at people who have experienced enforcement activity, and alongside standardised questions could collect information on their experience of enforcement activity and its harms.

These two activities could provide comprehensive data that would, at a basic level, fill the following three knowledge gaps, but could be expanded to include much wider data in time:

- The scale of enforcement activity driven by specific industries, firms and debts, for example local authorities, utility companies, government departments, private individuals, and others.
- The harm experienced by people on the receiving end of enforcement activity and the extent of this harm.
- The groups that are most affected by bailiff activity and their experience. A particular focus should be given to the experience of people with mental health problems, given they are disproportionately likely to be in problem debt and, therefore, likely to be experiencing enforcement activity. Enforcement firm data on their clients could also be compared to data from debt advice agencies to identify any gaps in vulnerabilities being identified by enforcement agents.

The doorstep practises data gathering exercise referenced in the business plan is limited in the extent to which it will fill these evidence gaps. Using body camera footage presents three key challenges. First, it does little to understand the broader enforcement sector, for example, providing information on the three data gaps identified above. Second, body camera footage must be reviewed against a set framework of harms caused by enforcement activity. Without clarity on what this framework is, or how it can be developed without the data set out above, it is unclear how this will meaningfully inform the standards discussed in priority 2.

Finally, body camera evidence has many flaws as a form of evidence. As use of body cameras in law enforcement shows, data is sometimes lost through storage issues or poor data management.⁷ What footage is passed over by enforcement firms to the ECB for research is also a key consideration, as firms may select footage showing best practice rather than more representative data. Further, as the recent *File on 4* investigation, *Bailiffs Behaving Badly*, sets out, there are credible reports of enforcement agents selectively deleting data captured by body cameras, or encouraging clients to ask for body cameras to be switched off.⁸ It is therefore possible that many of the worst harms done by enforcement activity will not be captured in data from body-worn cameras and, therefore, will limit the robustness of the ECB's evidence base.

Without broader and more comprehensive data, such as those we have suggested above, it is impossible to accurately develop standards that address key challenges and harms experienced by people on the receiving end of enforcement activity. It is vital that the ECB set out a clear and comprehensive plan for how they will fill this evidence gap.

⁷ BBC. *South Yorkshire Police 'deeply sorry' for data loss affecting up to 69 cases*. Available at: <https://www.bbc.co.uk/news/uk-england-south-yorkshire-66591197> [Accessed 12/04/2024]

⁸ BBC. *File on 4: Bailiffs Behaving Badly*. Available at: <https://www.bbc.co.uk/programmes/m001vm56> [Accessed 12/04/2024]

Finally, this evidence base must be made publicly available so other organisations, such as debt advice charities, academics and research organisations, are able to conduct independent research that can inform the future direction of the ECB or government organisations.

Priority 2: A new, clear and comprehensive set of standards for enforcement work

We are pleased to see a focus on vulnerability in the ECB's approach to enforcing standards. We also agree with plans to ensure that firms are subject to standards as well as individual enforcement agents.

While we are glad to see that standards will be developed through "effective engagement of a wide range of players in development", we are concerned there is little detail of who is contained within this group. We know the ECB is currently conducting standards workshops with enforcement agents. We are concerned that there is no public timeline for engagement with wider partners in this space, such as debt advice charities and research organisations.

More pressingly, any standards risk being limited in their impact or effectiveness unless developed in partnership with people with lived experience of enforcement activity. At the very least, we would expect similar workshops to be conducted with this group, but particularly with people with mental health problems who are overrepresented amongst people on the receiving end of enforcement activity.

To truly understand how standards could be set to ensure minimal harm is done to people on the receiving end of enforcement activity, it is essential to undertake a co-production approach to developing standards. This is key if the ECB wishes their new standards to be fit for purpose in ten years' time. Without co-production, we struggle to understand how these standards can be delivered in a way that will sufficiently address the needs and concerns of people on the receiving end of enforcement activity.

We note that the legal costs of developing new standards for the ECB are significant, at nearly 7% of this year's operating budget. Therefore, the Board must prioritise getting these standards right the first time.

Finally, the business plan sets out the need for a system of intelligence gathering and monitoring. More information should be shared about exactly what intelligence the ECB plans to gather, and how this would be used in conjunction with the broader data we suggest in our response to Objective 1 to establish a baseline for the ECB's impact.

Priority 3: Proactive monitoring and meaningful accountability for those undertaking enforcement work

We agree with the ECB's plans to ensure accountability for enforcement agents through "swift and fair procedures for redress", and the focus on instituting an independent complaints process. We look forward to seeing more detail on these developments soon.

Priority 4: Long-term sustainability of independent oversight in this sector

We are pleased that the Ministry of Justice has committed to review the case for giving the ECB statutory underpinning. Money and Mental Health have long supported the establishment of a statutory regulator of enforcement activity and believe statutory underpinning is essential for effective regulation by the ECB.

We are glad to see a focus on ensuring in-house Local Authorities teams are also regulated by the ECB.

Priority 5: More consistent and reliable engagement from creditors in driving fair enforcement

We agree with the ECB's focus on engaging creditors to improve enforcement practices. Given the harm that can be caused by bad creditor practices and the demands they make of enforcement officers, we welcome this focus.

Q2 – Are there any activities that you believe the ECB should be prioritising that are not contained in this plan?

While priority 3 sets out the ECB's hope for statutory underpinning through an Ministry of Justice review, there is an important role for the ECB to play in demonstrating, in advance of this review, the value that statutory underpinning would provide. It's our view that all the priorities set out above will be made significantly easier by moving away from voluntary regulation, particularly the financial sustainability that statutory underpinning provides. We believe that proactive political and governmental engagement on this issue is therefore essential.

The ECB has a key role to play in gathering and sharing evidence with the wider policy and research sector. Information on the scale and impact of the enforcement industry is famously scant, and currently relies on the brilliant work of organisations such as the Money Advice Trust.⁹ The ECB has a leading role to play here in collecting data on the scale of bailiff activity in the UK, as well as further evidence on the harms or benefits of that activity.

⁹ Money Advice Trust. *Stop the Knock: An update on local authority debt collection practices in England and Wales*. 2019

We recommend that becoming a provider of better information and data on the enforcement industry should be a priority for the ECB's future work. Furthermore, any data gathered should be anonymised and published so that the wider policy sector can make informed recommendations for the ECB's future, the activity of enforcement firms, and influencing creditors.

As set out in our response to priority 1, the ECB should publish a clear plan for its research activities. This would help organisations conducting their own research identify gaps and areas of focus.

Throughout our response to priority 2, we have made clear that the operation of the ECB is limited if it does not consider the lived experience of those most affected by the activity of enforcement agents. People with mental health problems, as they are represented disproportionately in those with problem debt, should be a key population for consideration. The ECB should, therefore, develop a plan for how they intend to engage those with lived experience of enforcement activity on an ongoing basis. This should include engagement of those with mental health problems. We imagine this could look like an advisory board or regular opportunities for supported consultation, such as a "town hall" where experts by experience are invited to virtual meetings to hear updates on the ECB's recent work, and can provide feedback and guidance.

Q3 – Do you have any comments on the draft budget and levy?

We are invested in the ECB's financial sustainability, so until statutory underpinning is achieved, we encourage the board to set the levy at the highest suggested rate (0.45% of turnover).

Q4 – Are there any other comments or observations that you would like to make?

We appreciate the time that staff at the ECB have offered to allow Money and Mental Health to engage with the Board - this includes meetings with the Director of Policy and an extended deadline to contribute to this consultation. We also appreciate the ECB's ongoing commitment to transparency, including the ability to access board minutes and regular updates.

We look forward to continued engagement with the ECB on improving the standards of enforcement activity, particularly for people with mental health problems.