Taking Control coalition response to Enforcement Conduct Board Consultation on Vulnerability and Ability to Pay Standards – October 2025

Background

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 organisations campaigning for independent regulation of the bailiff industry and other reforms to ensure fair and appropriate treatment of financially vulnerable people facing debt enforcement.

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

- Citizens Advice
- Christians Against Poverty
- Community Money Advice
- Debt Justice
- Money Advice Trust
- StepChange Debt Charity

The Institute of Money Advisers is part of the Taking Control coalition and has submitted a separate response on this occasion.

[1] Taking Control: the campaign for bailiff reform

Introductory comment on Vulnerability

We appreciate that it is very difficult to land in the appropriate place on enforcement and vulnerability. We recognise that the ECB wants to mitigate the risks through its new approach:

> *47: "The enforcement process can be stressful for anyone experiencing it. We want to move to a "safe by design" or "vulnerability first" approach which ensures that people in vulnerable circumstances subject to enforcement action do not experience additional harms or achieve worse outcomes than those who are not. This means that everybody involved in the process will need to be alert to this and act in a way that seeks to mitigate the risks of additional, foreseeable harms and does not exacerbate existing vulnerability.*

However, it is hard to reconcile the aims of protecting people with vulnerabilities but at the same time wanting people to pay the enforcement agent (EA) back. In our experience, our clients are already vulnerable as they are likely to be on low or benefit level income, and have negative budgets with few assets, plus both physical and mental health conditions.[2]

In many cases, the referral for enforcement action could be said to be inappropriate in the first place. However, creditors do not consistently have mechanisms in place to stop referring people in vulnerable circumstances for enforcement, or necessarily the will to do so.

We have some serious concerns relating to the definition of vulnerability and potential vulnerability which we have set out in our response below.

Whilst we appreciate that it may be possible to mitigate additional harms for people in vulnerable circumstances, we think it is too simplistic to suggest that an adaptation to the process would be sufficient. It is difficult to believe, for example, that someone who needs documents translated into another language or in braille or large print will not be experiencing additional communication difficulties or other vulnerabilities when dealing with an EA.

> *45: "Ultimately, our draft Standards make clear that we do not believe that identifying vulnerability means that enforcement should automatically cease or that everyone who is identified as vulnerable will need to receive intensive support from welfare teams or specialist staff."*

We are not in agreement with the conclusion that the ECB comes to above. However, we recognise there is a tricky balancing act for the ECB to engage in if it accepts the principle that enforcement activity using EAs must continue as a function, but that many people who have action taken against them are not suitable for the process and should not be in that situation.

We would conclude that in many cases the account should be returned to the creditor or local authority due to the inherent financial harm, the escalation in fees, the potential loss of possessions, and the stress, anxiety, worry and fear plus the worsening of existing mental health or physical health issues.

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[2] Citizens Advice (2023), *Bailiffs behaving badly: stories from the frontline*; StepChange Debt Charity (2024), *Looking through the keyhole: StepChange debt advice clients' experiences*; Centre for Social Justice [in collaboration with Money Advice Trust] (2024), *Still Collecting Dust: Ensuring fairness in council tax collection*; and Debt Justice (2025), *Ban the bailiffs*

Response to individual Vulnerability questions

Question 1: Do you have any comments on the proposed definition of “vulnerability” and “potential vulnerability”?

We are pleased to see that the ECB has moved away from the limited list of vulnerable circumstances that was set out in the National Standards for Enforcement Agents in 2014. However, we have some concerns about the proposed definition of vulnerability which we feel is unclear for the following reasons.

Proposed definition

“A person subject to enforcement is defined as being vulnerable or experiencing vulnerability for the purposes of these Standards at a time when, due to their personal circumstances, they are especially susceptible to experiencing harm if those involved in carrying out the enforcement process do not identify the person’s vulnerability and provide appropriate safeguards or support. Vulnerability may be temporary, permanent or fluctuating in nature”.

- It is **circular** – the person can only be vulnerable to harm if those involved (staff/firms) do not identify the person as vulnerable. In short, it uses vulnerability to define vulnerability.
- It is **dependent** – the definition indicates that a person cannot be vulnerable to harm if those involved identify the person as vulnerable and provide support. However, some forms of vulnerability to harm – like those in complex medical conditions or life-events – will continue to exist even if staff/firms take action. In short, a person’s status should not hinge on a system’s response.
- It may be difficult to **operationally implement** as while it (rightly) encourages staff to identify and provide support to prevent harm, its lack of clarity will overshadow the more practical direction provided in the remainder of the proposed standards.

We would suggest that a simpler definition of <u>vulnerability</u> might be aligned with a statement such as:

> *“A person subject to enforcement who, because of their personal circumstances, faces an increased risk of harm from enforcement activity without appropriate identification, safeguards or support. Those carrying out enforcement must therefore take reasonable steps to identify vulnerability to harm, and provide support/apply appropriate safeguards to prevent or reduce this.”*

The definition of **potential vulnerability** may also be operationally difficult to implement.

Proposed definition of potential vulnerability

“A person subject to enforcement is defined as being potentially vulnerable or experiencing potential vulnerability for the purpose of these Standards at a time when they are experiencing some or all of the personal circumstances described at VF2.2 of the Standards, but it has not yet been determined whether this means that they are especially susceptible to experiencing harm if

those involved in carrying out the enforcement process do not identify the person's vulnerability and provide appropriate safeguards or support."

- Again, this definition is **circular** and **dependent** (for the reasons given in relation to the current 'vulnerability' definition) and we would like to see the definition amended.
- The definition contains a **double-negative** ('not yet determined' and 'do not identify') which makes it difficult to follow. We suggest that this wording is amended.
- We suggest that use of such a definition **obscures the underlining point** – that many people subject to enforcement may face an increased risk of vulnerability to harm, and that further consideration will need to be given to the likelihood that such foreseeable harm might be experienced.

We would note that the Financial Conduct Authority (FCA), in the drafting of its vulnerability guidance to firms, did include reference to 'potential vulnerability' and 'actual vulnerability'. However, while this was included in the original consultation on its vulnerability guidance, it was **removed by the FCA** in its response to the consultation due to a recognition that this was causing confusion among firms.[3] Here the FCA stated:

"In GC 19/03 we also set out a distinction between 'actually vulnerable' and 'potentially vulnerable' consumers. This was to flag up that there are consumers who may not be vulnerable at this point in time, but that firms will need to take particular account of them because they are at greater risk of harm than others. Respondents to our consultation questioned the distinction between actual and potential vulnerability. It caused some firms to think about 3 distinct groups of consumers who were actually vulnerable, potentially vulnerable and not vulnerable, which was not our intention. As a result of feedback, we have altered our approach as we think it may be easier for firms to consider vulnerability as a spectrum of risk" (GC20/3, paragraph 2.4)."

We would suggest that the ECB reflect on this shift, as although the intention of a definition of "potential vulnerability" is to encourage firms to consider the likelihood of foreseeable harm, it does introduce complexity that may lead to misunderstandings among firms.

If the ECB wishes to retain the concept of potential vulnerability, this might be achieved without needing a separate definition through a statement such as (addition underlined):

> *"A person subject to enforcement who, because of their personal circumstances, <u>may</u> face an increased risk of harm from enforcement activity without appropriate identification, safeguards or support. Those carrying out enforcement must therefore take reasonable steps to identify the <u>likelihood</u> of vulnerability to harm, and provide support/apply appropriate safeguards to prevent or reduce this <u>where such harm exists</u>."*

In addition, the FCA updated its definition of vulnerability in its MCOB and CONC rules, in its words "*to replace the narrowly drawn expectations on vulnerability*" from a borrower being

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[3] Financial Conduct Authority (2020), [Consultation and feedback statement on Guidance for firms on the fair treatment of vulnerable customers]

"particularly vulnerable" to "vulnerable" to reflect the wider definition of vulnerability in line with the FCA vulnerability guidance.[4]

The FCA vulnerability guidance is generally accepted as a gold standard approach. We are therefore pleased to see the proposal to use the model developed by the FCA which identifies four key drivers of vulnerability being health, life events, low resilience, and low financial capability. These seem to be a very useful way of framing the way in which vulnerability is described and addressed.

The areas of harm identified in the paper, are clear and well described.

- Financial harm
- Emotional and psychological harm
- Physical harm
- Social and relational harm

The intention of the ECB to move to a "safe by design" approach has considerable merits.

However, we are not convinced that the ECB should in principle agree that it is possible to continue with standard enforcement even when someone is in a vulnerable situation, as currently positioned:

> *"Ultimately, our draft Standards make clear that we do not believe that identifying vulnerability means that enforcement should automatically cease or that everyone who is identified as vulnerable will need to receive intensive support from welfare teams or specialist staff."*

We note that the ECB takes the view that the potential risks of harm identified could be mitigated *"with a range of more flexible and less intensive support options than referral to a welfare team"* and that this could be *"responded to in a more tailored and nuanced way"* by firms and EAs. This is an area of concern for us, as we wonder to what extent those subject to enforcement can remain part of ongoing enforcement activities in reality without suffering further harm.

We would need to be convinced that there are a range of people who can have a little bit of help or recognition of their vulnerable circumstances, and then be suitable for continued enforcement. It is acknowledged in the paper that there is a high prevalence of people with mental health vulnerabilities in the enforcement system. We do not see how it can be appropriate for enforcement to continue in a substantial proportion of those cases without causing undue harm.

Many people will have multiple and varying vulnerabilities that will not be addressed by a simple adaptation to process.

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[4] Financial Conduct Authority (2023), Strengthening protections for borrowers in financial difficulty CP23/13 section 3.16 and Financial Conduct Authority (2024), Policy Statement and final rules

We are pleased to see that the proposed definition has been strengthened, to avoid the impression that as long as the EA "acts with sufficient care" then enforcement can proceed.

However, we remain concerned that the definitions are creating a hierarchy of vulnerability with a separation between potential and actual vulnerability. In particular, the guidance appears to create a distinction between "vulnerability" and "particular vulnerability" inherent in the proposals to allow enforcement to continue despite vulnerable circumstances being identified. This does not follow the pathway taken by the FCA, as illustrated above.

Question 2: Do you have any comments on the draft Standards on Vulnerability for Enforcement Firms?

We welcome the acknowledgement that vulnerability is chronically under recorded, reported or dealt with by EA firms.

We support the broad requirements that the ECB sets out that a firm must have a vulnerability strategy in place. The ECB is clear that this might require a cultural shift within firms to embed the vulnerability first approach into their business. We are pleased that the ECB sets out that compliance will require oversight of the strategy at a senior level. It will be vital for firms to be able to demonstrate compliance with these requirements to the ECB as part of their supervision and enforcement monitoring.

The ECB is clear in the paper that it is vital that a vulnerability disclosure is not dismissed, as follows: *"Getting identification of vulnerability right is so important that the Standards contain 'red lines' on acknowledging and evaluating all disclosures and evidence of vulnerability provided by someone experiencing enforcement. Disregarding a disclosure without any meaningful acknowledgement or assessment or treating it disrespectfully will be a breach of the new Standards."*

However, we are still of the view that it is going to be very difficult to safely proceed with enforcement when potential or actual vulnerability is identified.

We are pleased to see an acknowledgement under section VF3.2 that renumeration and targets for EAs and frontline staff can provide a disincentive to complying with the standards. We agree that firms should ensure that their policies and procedures are actively incentivising staff to identify and support people with vulnerabilities.

It is vital that firms work with creditors to identify vulnerabilities as early in the process as possible. Creditors should not be passing on cases to enforcement firms where they are already aware of vulnerable circumstances. Creditors should take a different approach to recovery of their debts when they are on notice that that person is at higher risk of detriment should they be passed on for enforcement.

We very much believe that there should be specialist teams in all EA firms that respond quickly. They must have the power to negotiate with advisers, identify vulnerability, and accept offers of payment. There needs to be a straightforward way of contacting the correct team, who should be responsive and have powers to act.

There needs to be firm guidance as to what the reasonable length of time is for the firm to put the account on pause to allow for evidence of vulnerability and circumstances. This should be extended on request.

The evidence requirement process is required to be *"reasonable and not overly burdensome"* under VF4.5. We expect that the definition of "reasonable" and what constitutes "burdensome" could be subject to very different interpretation by firms and potentially deter people in distressed circumstances from being able to comply with the evidence requirements. This would lead to poor outcomes for vulnerable households in this situation.

Evidence requirements can be too stringent and need to be flexible where the client is unable to obtain what is asked. These requirements need to be proportionate and set out in the guidance. It can be the case that the debt adviser is the first person that the client has spoken to, and have not sought medical help. This means it can be difficult to obtain evidence in a straightforward or quick way.

We would urge the ECB to monitor the evidence requirements firms use as part of its supervisory role.

We have set out key practical recommendations for the ECB to consider below.

First, we welcome the emphasis on firms (a) having a vulnerability strategy in place, (b) improving outcomes for people in vulnerable circumstances, and (c) taking account of the scales and type of vulnerability most likely to be present in the work they undertake. We would recommend that the ECB:

- review and adopt the approach taken in the w**ater sector**, where firms have to publish their vulnerability strategies (to share and raise standards across the sector in a transparent manner), and to also regularly meet with the regulator to review progress against these strategies.

- both review the **PAIR model** for outcome definition, operationalisation, information analysis, and responsive action that is being developed in the Financial Services sector (we can provide further details about this), as well as explicitly following the **FCA's lead on monitoring and evaluation where:** "*firms should be able to provide us with the information they are using to monitor whether they are achieving outcomes for consumers with characteristics of vulnerability that are as good as those for other consumers"*.[5] This emphasis on enforcement firms sharing their outcome frameworks and providing evidence of equivalent outcomes should be key to the ECB standards.

- emphasise to firms the importance of internal and external data in building a **profile of the extent, type, and likelihood of different harms** among the people they most commonly enforce against. Creating such a profile – or 'taxonomy of harm' – is an

[5] Financial Conduct Authority (2021), Guidance for firms on the fair treatment of vulnerable customers Paragraph 1.28

indicator of both how mature a firm's approach and understanding of vulnerability is likely to be, as well as assisting firms to then identify the most relevant and reasonable forms of support and safeguarding to provide.

Second, in relation to identification it is important to note:

- that this encompasses both staff identification of vulnerability to harm, as well as **identification from data** or other information sources. Only five references to data are made in the consultation. Consequently, it is vital that a stronger emphasis is placed on firms and staff not only focusing on the accurate recording of data once a vulnerability is identified, but also using available data and information to identify vulnerability and foreseeable harm in individual client cases and wider client groups.

- a range of tools exist to help achieve this (as well as well as managing other aspects of vulnerability interactions, including disclosure and recording) – consequently, the ECB should **compile a practitioners' toolkit** (as other regulated sectors have) in order to showcase the best tools and resources that have already been created.

Third, in regard to **recording, storing, and sharing data**, the draft standards state that the ECB will "not be prescriptive about how firms do this". However, it is important that the ECB provides or points to basic guidance on what **type of information** should be recorded in order for firms to be able to evidence 'as good' outcomes for vulnerable people subject to enforcement (compared to non-vulnerable people). Without such guidance, firms will not be able to make such outcome comparisons, nor segment their outcome and experience analysis by different types of vulnerabilities. This will result in firms taking potentially positive action in line with the ECB standards, but being unable to demonstrate that it has the effect the ECB are looking for.

Fourth, specific reference is made in the standards both to **'evidence of vulnerability'** (to validate a person's circumstances are as described) and also responding to people with mental health problems (with such conditions being routinely encountered in enforcement work). With this in mind, the ECB should review the Money and Mental Health Policy Institute and Money Advice Trust guidance on evidence collation and mental health, which aims to make this process as simple, accurate, and non-intrusive as possible.[6]

Fifth, in relation to the **provision of support**, it is worth noting that the Money Advice Trust have published a comprehensive guide of support needs, reasonable adjustments, and service changes that may help people in vulnerable situations (including those who are disabled), based on a review of activity in the financial services, energy, water, telecommunications, retail, and delivery sectors.[7] While no firm could offer all of the support needs outlined in our 'Help!' guide, it provides a useful resource to establish what a range of firms already offer.

Sixth, in relation to customers who have decision-making limitations, we would refer to the guidance on the identification and (ongoing) support that can be given to such individuals. This is

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[6] Money and Mental Health Policy Institute and Money Advice Trust (2020), The need to know: Understanding and evidencing customers' mental health problems-A guide for creditors

[7] Money Advice Trust (2025), Help! What support can firms give disabled consumers and people in vulnerable situations guide

outlined in the Money Advice Trust's guidance for firms in the motor finance sector, but is equally applicable to other sectors. [8]

Question 3: Do you have any comments on the draft Standards on Vulnerability for Enforcement Agents (including the proposed application to third parties)?

It is highly preferable for vulnerability to be identified by creditors before being passed on for enforcement or at least at the initial compliance stage. EAs should not find themselves in the position where they are the first point of contact for a person on the doorstep who is in a desperate situation.

We very much agree that there should be processes in place to ensure that vulnerability is identified early. However, as this often is not the case, we welcome the view that agents should cease enforcement *"when the level of someone's vulnerability makes it unsafe to proceed, even with adaptations to the process"*.

It is also vital that an EA must "*proactively look for indicators*" of vulnerability or potential vulnerability as required under section VA4.1 in the standards. Having said this, we have demonstrated over the years that there are many cases where it is very clear that the EA has been told about the client's vulnerability on the doorstep, but this has been dismissed or ignored. It is crucial that these practices do not continue.

The definition in the standards for EAs in section VA2 suggests to us that EAs could be tempted to assess more people as **potentially** vulnerable rather than vulnerable and use this section to justify that position.

"A person subject to enforcement is defined as being potentially vulnerable or experiencing potential vulnerability for the purpose of these Standards at a time when they are experiencing some or all of the personal circumstances described at VA2.2 below, but it has not yet been determined whether this means that that are especially susceptible to experiencing harm if those involved in carrying out the enforcement process do not identify the person's vulnerability and provide appropriate safeguards or support."

This could lead to EAs carrying on with the enforcement process using section VA2 as justification for that position. This is allowed under section VA4.5 which specifically states:

"….for the time being, the enforcement process can be carried out in the standard way without making the person especially susceptible to experiencing harm".

We would like to see these provisions strengthened to prevent them from being used as a loophole for some EAs or firms to carry on with the usual enforcement processes.

In addition, unless the new vulnerability standards for EAs are rigorously monitored and enforced both by the firm and the ECB, we do not have faith that practices will change for the better. In our

[8] Money Advice Trust (2023), Customer vulnerability: Decision making when purchasing a vehicle

opinion, the standards will not eliminate or reduce poor practice on their own, and will need the monitoring regime to be put in place. There needs to be positive incentives for EAs to identify vulnerability and either adapt or cease their collections activity. Unless these incentives are in place, then EAs will be likely to prioritise their fees and the firm its contract terms before they will prioritise the needs of vulnerable people.

Vulnerability Case Studies:

As one senior debt adviser at Christians Against Poverty put it: *"Clients with vulnerabilities might struggle to work out and set up affordable payments. Working well with other agencies including debt advice charities is essential for enforcement agents to identify and deal with people appropriately."* Unfortunately, this is not always the case in reality.

From National Debtline, reported by advisers:

- *Client has a serious medical condition which requires her not to be stressed whilst waiting for medical assessment and has written to the EA firm to make them aware, as well as verbally. In response they have said "don't put your illness on us" and have been generally intimidating and bullying her.*
- *Client is disabled on benefit income. Client had a letter from the EA and phoned them up last week to put an arrangement to pay in place, but they declined this and asked her to "go away and call back with better offer". Client has spoken to the vulnerability team but "they didn't care". Client received another letter this week and debt has gone up by £235, but EA said nothing they can do. Client has spoken to manager too but same results.*
- *Client has called EA firm to inform them about her mental health problems and vulnerability and the response she got was "It doesn't matter about that" which has made the client feel intimidated.*
- *Client who is vulnerable, a safeguarding concern and isolated contacted us to say that the EA firm are threatening to take her to prison if she doesn't pay the debt owed to the council. The client has even had her housing association call them and try to explain her situation, but they are refusing to listen. The client has no online access and is dyslexic so struggles with communication naturally and due to her location has very limited support. The EA firm are aware of all this and yet refuse to pass the debt back to the council. They are being very aggressive with the client.*

Introductory comment on Ability to Pay

Reflections on current poor industry practice around ability to pay

In spite of the importance of affordability, the approach of enforcement firms and agents to 'ability to pay' is currently a point of significant failure and poor practice in the enforcement industry at present. Recent Citizens Advice research found that EAs made 1 in 4 people (23%) to pay more than they could afford, even after being made aware of personal circumstances making them more vulnerable.[9]

Debt advisers hear regularly from clients who have experienced poor conduct linked to failures to identify or properly consider affordability. A StepChange debt adviser described an interaction where an enforcement agent had the client's car clamped, and then put pressure on her to make unaffordable repayments, despite a blue badge being clearly displayed in the window:

> *The client, who is disabled, had her car clamped by an enforcement agent despite a clearly displayed blue badge being present in the window. The enforcement agent has proceeded to tell the client that if she pays £400, he will take the clamp off. When she contacted him to say she has the money he then told her that she now needs to pay another £100. Little regard was shown to her vulnerability throughout the process.*

One StepChange client described in their own words below how an attempt to highlight their limited ability to pay to an enforcement agent received little acknowledgment or accommodation. Worryingly, this case study also shows an agent misrepresenting their powers:

> *"[The enforcement agent's] attitude was more passive aggressive I guess. Mentioning that I could face prison if I couldn't find all the money within a few days. They wanted half then and there, which was nearly £500. I tried explaining that I simply didn't have it. I remember opening my door wide and showing him the state of my carpets and the broken blinds at the windows. I said, do you think I'd be living in this if I had money tucked away. It didn't make much difference though."*

A National Debtline adviser also described the following worrying interaction:

> *The client's only income is from Universal Credit and he is currently looking after his child, who is recovering from a serious illness. He fell behind on his council tax, and agreed to make payments of £100 a month, although he felt pressured to agree to this and did not feel he could afford it. He ended up falling behind on these payments and the bailiff has now visited his property, despite the client making them aware of his and his child's circumstances. The client was not at the property when they visited, but they left a letter stating they will be returning in the next week to take goods (this is despite the fact they have not gained entry, meaning they would not be able to come back to take goods under the current regulations). When the client contacted the EAs to try and come to an arrangement, he was told "you've missed your chance to pay instalments".*

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[9] Citizens Advice (2023), *Bailiffs behaving badly: stories from the frontline*

What's more, a high proportion of those subject to enforcement have no or limited ability to pay.

To put this into perspective:

- In 2024, almost four in 10 StepChange clients who had experienced bailiff enforcement – representing 16,000 clients – had a negative budget (37%), meaning after going through a full debt advice and budgeting session their monthly income is not enough to cover their basic monthly costs.
- In 2024 almost half (49%) of Citizens Advice debt clients in England with council tax arrears were in a negative budget, with an average of -£18 deficit – a significant consideration when local authorities often act quickly to involve EAs in their collection processes, and are one of the primary users of this form of collection activity.
- More widely, around 43% of people helped at National Debtline have a negative budget.
- An average of 48% of the budgets that Christians Against Poverty prepared for clients between July-September 2025 were negative budgets, and needed an additional £263 per month on average to make ends meet.

As one Christian Against Poverty senior debt adviser, discussing commonly observed enforcement for council tax arrears, relayed: *"Growing numbers of households are unable to meet their council tax liability because their income no longer covers essential living costs. The escalation of council tax debts to enforcement agents is counterproductive, increasing financial and emotional distress for vulnerable residents."*

As the ECB has noted, the enforcement industry has until recently referred to standards set out across the Taking Control of Goods Regulations 2014 and the accompanying non-statutory National Standards. Those standards did not keep pace with developments in thinking and progressive approaches elsewhere, including the financial services and energy sectors, and this is particularly apparent in regard to affordability as well as vulnerability.

Bad and outdated practice means intervention to drive up affordability standards in the sector is therefore urgent. Driving practice and culture change in the enforcement industry in regard to affordability assessments is also essential to the ECB's important aspiration of an enforcement process that is 'safe by design'.

Response to individual Ability to Pay questions

Question 4: Do you have any comments on the proposed ability to pay outcome and the categories of ability to pay?

Summary of over-arching Taking Control view on draft ability to pay standards

We warmly welcome the ECB's recognition in this consultation that 'no one wins with an unsustainable arrangement' and that enforcement should stop where those subject to enforcement have no ability to pay (102). We also welcome the recognition that while things are working well some of the time, the proposed standards are intended to 'drive consistent improvement across the market' (103).

However, as this comment recognises, many enforcement firms and agents are currently not delivering reasonable minimum expectations. The consultation states: 'there are a wide range of views on what constitutes an ability to pay a debt or 'affordability' (104). It may be true that there are a wide range of views, but there are not a wide range of objectively justifiable approaches to establishing ability to pay or affordability. It is an important part of the ECB's role to align currently patchy and often poor practice with responsible good practice.

Moreover, the nature of enforcement itself – particularly through doorstep visits – creates high risks of pressurised environments for people in vulnerable circumstances, which contributes or leads directly to unaffordable repayments and poor outcomes.

With these factors in mind, the ability to pay standards must be sufficiently strong and detailed to shift practice, address poor conduct, and account for the specific risks of doorstep enforcement. The standards have a number of welcome elements but do not yet do that in full. More than that, as drafted, they risk codifying aspects of poor practice at an early stage of the development of enforcement regulation. For example:

- They do not set important minimum expectations and go too far to accommodate practices that are not compatible with a responsible approach to ability to pay, including creditor requirements (which we will explore further in this response).
- We have concerns about the proposed approach to the treatment of assets in the ability to pay standards. This seems to allow an enforcement agent to behave as many do now: namely, if the person subject to enforcement has an asset the agent can/should seize it, without consideration of the person's actual situation (for example, if a car was required for work and there was no viable public transport option).
- The standards neglect to explicitly mention the use of objective affordability assessment tools, notably the Standard Financial Statement.
- As drafted, it is unclear how enforcement firms or agents would be expected to act in the event that a negative budget position was identified.

Learnings from best practice elsewhere

There is deep experience among debt advice providers, regulators and responsible creditors of handling affordability in a way that supports sustainable repayment. Detailed norms around affordability are widely established: the FCA has embedded expectations of objective affordability assessments in its rules; regulators like Ofgem are doing so in codes of practice; the government has prepared ability to pay guidance for government departments recognising the Standard Financial Statement (SFS); and the SFS is also embedded within statutory debt solutions including the Debt Respite Scheme (breathing space), Debt Relief Orders, bankruptcy and Individual Voluntary Arrangements.

The work of regulators like the FCA and Ofgem are not so different from the ECB: the FCA's forbearance rules, for example, interact with the potential for some lenders to take possession of goods, while Ofgem's rules interact with the potential for suppliers to disconnect customers. While we accept there are specifics to the enforcement process related to taking control of goods that demand tailored standards, we do not accept that the enforcement industry is exceptional in the ability to pay challenges it faces or should be exempted from the expectations to which other regulated organisations conducting debt collection are subject.

While the detailed specifics of budget protocols like the SFS are rightly subject to continual development and improvement, we do not consider these tools to be contentious or unclear. The SFS has been in place since 2017, and the Common Financial Statement for 15 years before that. The approach of firms and agents should be aligned with responsible practice that is well-established.

In defining the level above which those subject to enforcement could afford to make payment, the ECB proposes the language 'basic living costs', which is further articulated in the annex as:

> *the expenses required to cover the essential needs of a person subject to enforcement. These could, for example, include expenses for housing, food, transportation, utilities and healthcare.*

We do not believe that will provide a minimum standard of protection against unaffordable repayment demands. The language of 'basic living costs' does not account for the real essential living costs of someone subject to enforcement: it does not mention council tax, court fines, priority debts, and nor does it account for the minimum expenses of dependents like children. These are essential considerations in repayment arrangements that are sustainable. Here we also note that the FCA more clearly articulates in its rules on forbearance that essential expenses <u>are not limited to</u> those listed – that is a clearer instruction against an arbitrarily minimalistic approach than the ECB's language here.[10]

The proposed 'ability to pay' outcome put forward by the ECB is that:

> *"An enforcement firm/enforcement agent ensures that it and those who work for it carry out the enforcement process fairly, in a way which ensures that a person subject to enforcement is able to satisfy as much of their debt as is feasible in a way that is sustainable and as efficient as possible for their circumstances."*

We would highlight that the FCA (and other bodies responsible for the conduct of creditors) have gone further to specify what they mean by 'sustainable', recognising the specific <u>risks</u> around affordability. For example, FCA rules and guidance specify that:

- a repayment arrangement is unlikely to be sustainable if it has the result that the customer cannot meet their priority debts and essential living expenses;
- that an income and expenditure assessment should be informed by sufficiently detailed information; and
- that a firm must not pressurise a customer to pay a debt in so few repayments or in unreasonably large amounts that would have an adverse impact on the customer's

[10] FCA handbook, CONC 7.3.5C G

financial circumstances; an unreasonably short period of time; or to raise funds to repay the debt by selling their property or borrowing money.[11]

The FCA regulates a sector with a somewhat better (if imperfect) record than the enforcement industry but nevertheless sees these points as important for the avoidance of doubt. In contrast, the ECB's draft standards for a sector with higher levels of consumer vulnerability and a worse track record of responsible conduct do not put the appropriate emphasis on a precautionary approach.

The ECB should revise its approach in the ability to pay standards to embed an objectively justifiable definition of essential living costs – making reference to unavoidable essential costs and making clear the items listed are not exclusive – and include guidance on specific affordability risks likely to arise in an enforcement context, particularly the ability to meet essential living expenses and priority debts, and forcing those subject to enforcement to borrow money.

Standard Financial Statement (SFS)

The ability to pay standards make no reference to the SFS. While we recognise that the SFS cannot be used in all cases, it is an essential reference point for an objective budget standard overseen by an independent agency. While the FCA does not require firms to use the SFS, it makes reference to it in its handbook to highlight its importance, and in reality it would be extremely difficult to identify an FCA firm (and in particular a consumer credit lender) that does not adhere to the SFS principles when considering debt repayment offers.[12] In principle, the Insolvency Service and Individual Voluntary Arrangement guidance have also adopted the SFS as a means to assess disposable income.

Neglecting to cite the industry standard reference point risks a lack of clarity about what approach should anchor the concept of 'objectivity' and the policies and practices of enforcement firms and agents. This also risks incoherence in the standards as they require firms to "take into account" budgets prepared by regulated advice agencies, which in reality will be completed in line with the SFS (APF5.11).

Here, we note that this requirement should be strengthened, as there is risk that 'taking into account' could too easily translate into a repayment recommendation based on regulated debt advice being ignored. Firms should not refuse to accept budgets prepared by regulated advice agencies unless there is an objectively justifiable reason for doing so (such as if someone's financial circumstances have significantly changed).

With this in mind, the ECB should go further in its standards to specify what approaches and actions in regard to ability to pay are unacceptable, including not seeking or accepting arrangements that will force those subject to enforcement to borrow money.

The need for both further clarity and expectation setting in the above areas are clear. In a particularly egregious case, on StepChange debt advice client described a situation where they felt pressurised to borrow a large amount of money from a friend in order to bring a troubling enforcement interaction to an end.

[11] FCA handbook, CONC 7.3.10 R
[12] FCA handbook, CONC 7.3.5E G

- *"[The bailiff] pushed me through my front door in front of my 13-year-old daughter, I made a complaint asked for footage and they said the bailiff did nothing wrong… He went through all my kitchen cupboards and drawers and took my car keys off the side, and I had to borrow £450 off a friend so he would leave. He was laughing at me and mocking me the whole time, laughing because I said I had bad mental health issues."*

Ability to pay and taking control of goods

In an enforcement context, ability to pay is complicated by the potential consideration of assets. At present, responsible practice when working within existing regulations is for enforcement firms and agents to seek to agree a sustainable repayment plan at both the compliance and enforcement stages and only seek to take assets where a repayment agreement is not possible, or where someone agrees this is the best course of action to settle debt.

Assets are typically assessed at the enforcement stage but the use of 'controlled goods agreements' means even then a repayment agreement can be put in place without assets being taken, and a list is drawn up of goods that could be removed at a later date if someone does not keep up with the agreed payments.

We have concerns about how this system is working in practice and the extent to which this provides effective ability to pay protections, but it is also important to recognise that present practice and regulations do not proceed straight to consideration of assets in ability to pay assessments either at the compliance or enforcement stages.

The ECB seems to be proposing through its ability to pay categories that assets are always considered in the ability to pay assessment at both compliance and enforcement stages. Moreover, the use of the 'most efficient' framing will encourage firms and agents to do so. That risks those subject to enforcement experiencing less favourable outcomes through the ECB standards than through the Taking Control regulations because the option of making a sustainable repayment agreement to protect assets is removed or implicitly discouraged.

There seems to be some muddiness here in the ECB's intentions. The consultation states (120): *"Enforcement should also cease, with the case being returned to creditor where someone has no ability to repay their debt (APF5.2) - for example, where there is a negative budget."* However, this statement does not acknowledge that the presence of a negative budget does not mean – as it stands – that enforcement will always stop or cease.

The ECB's approach should be to build on and extend present good practice from some firms and agents, consistent with regulations, that offers those subject to enforcement the opportunity to agree a repayment plan that protects eligible assets. The proposed outcome and ability to pay standards do not appear to do that: in reality, what is sustainable and what is efficient will often be in tension, i.e. it may be efficient to take assets like vehicles and IT equipment, but that would undermine someone's ability to maintain a sustainable repayment agreement.

As a result, the outcome and standards seem under-developed as they are yet to adequately ensure enforcement firms and agents navigate the range of options that come into play in the enforcement process, and the order those options should be considered.

To achieve this, the ECB should:

- re-draft its ability to pay outcome so that a sustainable repayment agreement is the over-riding priority and it is clear that consideration of assets should come after someone's ability to agree a repayment plan has been considered – here the phrase 'as efficient as possible' should be removed because it could encourage an approach that is less flexible than some existing good practice and is too blunt to ensure regulated firms and agents navigate ability to pay questions with adequate flexibility;
- extend the proposed standards to address more clearly the need for the separate consideration of sustainable repayment agreements and assets, building on existing protections and responsible practice;
- amend the standards to make it clear that firms should not refuse to accept budgets prepared by regulated advice agencies unless there is an objectively justifiable reason for doing so (such as if someone's financial circumstances have significantly changed); and
- provide clearer guidance on circumstances in which eligible assets should be protected, in particular where this is essential to support sustainable repayment agreements – without this, it will not be possible to address the sharp separation between responsible practice, which involves making sensible decisions regarding assets (taking into account all factors to facilitate repayment agreements), and widespread poor practice of pressuring those subject to enforcement to repay as much as possible immediately regardless of the consequences.

<u>Role of creditors in determining fair enforcement</u>

We are concerned that the integrity of the ECB's ability to pay standards could too easily be eroded by creditor requirements, which – as section 118 relays following industry feedback – largely shape how a firm approaches ability to pay, whether accommodating or otherwise.

Within the same section, the ECB simultaneously notes industry feedback that some creditors *"will press for the full amount or a shorter term, even where there is evidence that this is unlikely to be possible"* while saying it is "*important that [creditor] requirements are clearly articulated as a core part of the [firm's] strategy and that agents and frontline staff understand how to work within these parameters."* These statements are fundamentally incompatible with one another. We are worried that unreasonable creditor requirements could enable enforcement firms to circumvent the ability to pay standards by citing these agreements.

While we appreciate that the ECB does not have oversight over creditors who instruct enforcement agents, it should provide further clarity on the steps that will be taken to engage creditors – particularly those passing on more aggressive collection requirements to enforcement firms – and establish clearcut expectations around how creditors should approach ability to pay in accordance with its new standards, perhaps through good practice guidance.

<u>Interaction with wider ECB standards</u>

Finally, the ECB should consider how the ability to pay standards interact with wider ECB standards. The ECB expects that firms 'behave professionally, working constructively with other organisations involved in the enforcement process including creditors and debt advice organisations' (FV4).

One significant reason that firms and agents do not always meet this value now is that they are working with different ability to pay concepts and assumptions depending on the organisations they work with. If the ECB's expectations around ability to pay fall short of other regulators and stakeholders, that misalignment will make it difficult to ensure firms and agents behave consistently and fulfil this expectation around professionalism.

Question 5: Do you have any comments on the draft Standards on Ability to Pay for Enforcement Firms?

We welcome the statement in APF4 that enforcement firms should ensure that those who work for them take reasonable and proactive steps at the earliest opportunity and throughout the enforcement process to identify which ability to pay category applies to a person subject to enforcement. As we have noted already, we would like this language strengthened to be clearer that firms should always seek to do so objectively.

We also welcome the requirement for firms to have in place a clear strategy and policies and procedures (APF3). However, the ECB should go further and specify that firms should have a clear written, publicly available policy setting out how and in what circumstances they conduct income and expenditure assessments (as the FCA requires of regulated firms). This is a core safeguard and function of the enforcement process, and it is difficult to see how firms could have reasonable ability to pay policies without clearly defined expectations around income and expenditure assessments.

APF4.4 states that firms should *"whenever practical, using financial information, seek to assess objectively which ability to pay category applies"*. We take it here that the emphasis is on using financial information whenever practical (since APF4 addresses the responsibility to identify which ability to pay category applies). 'Whenever practical' here leaves open too much ambiguity about the responsibility on firms to always make proactive efforts to make ability to pay assessments using an objective approach (whether that is ultimately possible or not).

We also note that 'practical' here is not a clear term: there is a difference between what is impractical due to factors within the control of a firm, for example because it has insufficient intention or capacity to obtain financial information, and what is not in control of the firm such as whether those subject to enforcement engage with the process. Simplifying the wording will make clearer that firms should always seek to assess ability to pay objectively using financial information without creating unrealistic obligations where they cannot do so due to factors beyond their control.

APF4.4 should be framed alternatively to read:

- *Seek to assess objectively which ability to pay category applies to a person subject to enforcement using financial information that has been obtained or provided for this purpose.*

We welcome the requirements in APF5.1 and APF5.2 to mitigate the risk of harm and stop enforcement, returning the case to the creditor where those subject to enforcement have no ability to pay. This noted, these requirements are contingent on effective efforts to identify ability to pay, where we believe that the standards must be stronger – to ensure enforcement includes effective processes and safeguards to identify those with no (or only some) ability to pay wherever possible.

Paragraph 124 makes further reference to these requirements, saying *"enforcement should also cease, with the case being returned to creditor where someone has no ability to repay their debt (APF5.2) - for example, where there is a negative budget"*. There is also reference made to negative budgets in the flowchart contained under paragraph 102. However, there is no explicit mention of what firms or agents would be required to do in response to a negative budget being identified in the actual proposed standards wording. As drafted, it is currently unclear:

- If a person subject to enforcement action went through a debt advice budgeting session which revealed a negative budget, or indeed a very low surplus, whether firms would be *required* to pass the case back to the creditor.
- If a person subject to enforcement action had not gone through a debt advice budgeting session, how an enforcement firm or agent would establish that this person had a negative budget without a requirement to carry out an objective affordability assessment being present in the ECB's standards.

We believe that the ECB should be more assertive here and embed an expectation in the standards that anyone identified as having a negative budget should have their case passed back to the creditor, as this clearly demonstrates a lack of ability to pay.

We would also reiterate here that, as we have highlighted earlier and in previous submissions to the ECB, it is important to get to a position where creditors put in place measures in their contracting to prioritise and encourage accountability and fair enforcement. This includes expectations of proactive efforts to establish affordability, agree affordable repayment plans and pass back cases where those subject to enforcement have no ability to pay.

Creditor practices also need to be considered further upstream. All too often, coalition members hear of situations where creditors have passed people onto enforcement action despite this move being preventable or inappropriate for their personal circumstances, leading to harm and negative outcomes. While we appreciate that the ECB does not have oversight over creditors who instruct EAs, work to engage creditors to build trust and further support for the ECB's mission – and therefore minimise risks of creditor actions undermining this – is vital.

Here, we would draw attention to the work that the Government Debt Management Function is carrying out in relation to embedding responsible ability to pay expectations across government. Debt owed to local authorities is currently a notable omission from its Government Debt Fairness Charter, first published in March 2024. Bringing local authority debts into scope would send a strong signal that expectations of local authorities must be aligned with best practice elsewhere.

<u>Aligning expectations of firms and agents</u>

We comment in response to question 6 on our concerns that the standards for agents leave too much scope for EAs to continue behaviours and tactics which involve putting pressure on those subject to enforcement to make unaffordable repayments. Here there seems to be inconsistency between the standard for firms, where we welcome expectations in:

- APF5.3 that firms should have processes in place for staff to agree sustainable repayment plans at the compliance stage where someone subject to enforcement has the ability to pay 'in part', though as drafted this could be complicated by the inclusion of assets in the proposed ability to pay categories; and in

- APF5.9 for firms to have processes in place to ensure agents can agree sustainable repayment plans at the enforcement stage. The standard for agents, meanwhile, sets low expectations for agents to make efforts to assess ability to pay.

Signposting and referrals

The signposting guidance in APF5.6 and throughout the standards focuses on referrals to debt advice where firms or agents identify that someone subject to enforcement has only the ability to pay in part or no ability to pay. While this is technically likely to encompass situations where those subject to enforcement have multiple debts, in practice having multiple debts is a significant factor in accurately assessing ability to pay. Relying on affordability as a prompt for referrals to advice is likely to be less effective than more obvious indicators like multiple debts.

The language addressing referrals and signposting in both the standard for firms and for agents should be clarified to also require that firms and agents refer or signpost to advice where they identify that those subject to enforcement have multiple debts.

We would also note here that those subject to engagement will usually be unfamiliar with debt advice and evidence shows those struggling with financial difficulty face barriers to accessing advice, including low understanding of the support available and fear about consequences, and will not engage unless they perceive a non-threatening, attractive offer of help.[13]

To put this into perspective, approaching four in ten (38%) Christians Against Poverty clients surveyed said that they delayed seeking debt help because they didn't think anyone could help, while over a third (36%) said they didn't know where to find help.

We would like to see the standard here include a requirement to provide an adequate explanation of what debt advice is and how it can help, and would highlight here relevant language from the FCA handbook:

> *If a customer is in or approaching arrears or in default, the firm should, where appropriate:*
>
> *(a) inform the customer that free and impartial money guidance and debt advice is available from not-for-profit debt advice bodies and can be accessed through a range of delivery channels, including digital tools;*
>
> *(aa) effectively communicate to the customer the potential benefits of accessing money guidance or free and impartial debt advice from not-for-profit debt advice bodies; and*
>
> *(b) refer the customer to a [free] not-for-profit debt advice body.*[14]

The ECB or MOJ should design a simple and clear consumer facing information sheet that all EA firms should be required to include with communications.

We also believe further clarity is needed around what might constitute a “reasonable period” under APF5.8, “where a person subject to enforcement expresses a desire to seek debt advice and provides evidence that they are pursuing this, pause the enforcement process for a reasonable period to allow this to take place”. As it stands, this could be interpreted in many, varying ways, so the ECB should consider setting some parameters or guidelines for firms.

[13] Money and Pensions Service (2023), Motivations and barriers to seeking debt advice
[14] FCA handbook, CONC 7.3.7A G

The ECB also needs to consider how this requirement would interact with live Ministry of Justice proposals to “require EAs and HCEOs to extend the compliance period for up to a minimum of 28 clear days from the date that the Notice of Enforcement is sent, where someone has sought advice from a debt advice provider and the debt advisor contacts the enforcement agent or their firm to request an extension of the compliance period”.[15]

Further to this, the impacts of this standard would be further diluted without clarity that firms are expected to accept the outcome of that debt advice and accept the resulting budget and offer of payment (with the ability to challenge as is the case with creditors using the SFS now). Here, we note that creditor contracts can cause major problems with assessing ability to pay due to the frequent imposition of unreasonable time scales for repayment, or setting minimum payment amounts that they will accept as an offer. This approach fundamentally conflicts with assessing actual ability to pay.

The ECB should consider requiring enforcement firms to provide data on the numbers of payment arrangements made at compliance and enforcement stage, how long these lasted, and the outcome (whether the debt was successfully repaid or not, and any instances of missed payments). We believe it would also be useful if firms had targets around breakage rates, and reported this data to the ECB.

We welcome the expectation outlined in APF3.3 that firms would be required to “outline the ways in which it remunerates and engages enforcement agents and frontline staff who work for it, and sets any targets or key performance indicators, to ensure that they do not act as a disincentive to complying with these Standards”. We have previously highlighted problems with how enforcement employment models and payment structures currently operate, with commission-based payments likely to affect the behaviour of agents and drive the misleading statements and aggressive tactics we hear about from those facing enforcement action.[16]

Question 6: Do you have any comments on the draft Standards on Ability to Pay for Enforcement Agents, including the proposed application to third parties?

The ECB states that its ambition is for the enforcement process to become ‘safe by design’. Doorstep enforcement, in particular, creates situations in which those subject to enforcement typically find visits by EAs to be intrusive, experience fear and feel under pressure to agree to proposals made by EAs. The Taking Control Coalition has shared extensive evidence of poor conduct by EAs during visits including misrepresenting powers, taking action such as seizing goods needed for healthcare proscribed by regulations, using threatening and incendiary language, threatening action they cannot reasonably carry out and refusing to agree affordable repayment plans.[17]

Intentionally or otherwise, informal and relatively quick interactions regarding affordability also give rise to the potential for misunderstandings and poor decisions. There is ample evidence of the poor outcomes that result from these combined circumstances, whether from poor practice

[15] Ministry of Justice (2025), Taking control of goods regulations consultation response
[16] Taking Control Coalition (2024), Response to Enforcement Conduct Board consultation on Standards for Enforcement Work and Oversight Model
[17] As before.

or from the inherently pressurised nature of doorstep enforcement itself. The standards for agents should put an emphasis on caution but, as drafted, do not yet do so sufficiently.

In explaining its approach, the ECB notes (144):

> *Some concerns have been expressed about the practical implications of assessing income and expenditure during an enforcement visit and we recognise the challenge and do not want to create expectations that make it impractical for payment arrangements to be made on the doorstep. This is particularly important given that we want to encourage greater use of payment plans were appropriate. We have also heard about a variety of good practice which is working effectively and have sought to set the expectations in APA5.6 at a sufficiently high level to enable sensible and proportionate approaches.*

Here we note that the standards are interacting with a fundamental point of tension between the way doorstep enforcement is conducted and reasonable minimum expectations of EAs. Perceptions of what is practical according to the enforcement industry cannot dictate the strength of standards. While we recognise that the ECB must work constructively with the enforcement industry, part of its role must be to challenge and raise expectations.

Fundamentally, there can be no ambiguity that it is a core responsibility of enforcement agents to take proactive and effective steps to both establish and respond appropriately to ability to pay. While we welcome that APA4.4 touches on this concept, and notes that disclosures or evidence must never be dismissed without appropriate evaluation or be treated disrespectfully, our evidence shows there is a long way to go to embed this practice consistently across the enforcement industry.

One StepChange client described their perception that EAs “aren’t interested in reasons why you owe money. You are just another name to them.” They went on to say: “I have anxiety and dystonia, their visits were intimidating and made my symptoms worse. It was soul destroying.” Another said: “their position is recover at all costs. [They showed] unwillingness to listen or look at evidence provided to challenge debts. [They] make you feel despondent and extremely vulnerable. You know they don’t care and it is a very frightening position to be in.”

At present, the proposed standard for agents leaves too much ambiguity that will allow existing poor practice to continue:

- In APA4.5, which sets expectations to assess ability to pay objectively using financial information, the clause ‘whenever practical’ leaves a significant and unwarranted amount of ambiguity. Unless EAs can establish using reasonable evidence that those subject to enforcement are obviously able to afford repayments, it should always be necessary to conduct an ability to pay assessment. If the ECB has specific alternative approaches in mind (as in the reference to good practice above), it should be more specific about what this means and include relevant steps in the standard. Perceptions of practicality will vary, and the incentives for enforcement agents to minimise the checks they make are strong (to enable quicker doorstep interactions). As drafted, the impression left is that the contents of the paragraph are optional.
- Similarly, in APA5, which sets the expectation that agents should provide those subject to enforcement with the opportunity and support to satisfy their debt in a sustainable way, the qualification that agents should do so ‘where possible’ significantly undermines the clarity of the standard. It is not clear in what circumstances it would not be possible to

provide this support while conducting enforcement responsibly. The wording “where possible” should therefore be removed from the current wording.

Overall, the standard risks perpetuating the harmful dynamic of many doorstep enforcement visits, involving pressure exerted by a bailiff and hasty and sometimes desperate responses by those subject to enforcement. The ECB standard should be significantly strengthened to be much clearer that ability to pay is established after proactive steps by an agent to gather information and subsequent steps aligned with clear good practice norms.

We do, however, welcome the contents of APA5.7, which would require an enforcement agent to make a record of any payment plan which has been agreed with the person subject to enforcement and provide a justification setting out why the enforcement agent is satisfied that the payment plan is sustainable.

Finally, as we noted in relation to the standard for firms, the responsibility on agents to refer or signpost to debt advice (APA5.4) should be clarified so that it is clear agents should do so where those subject to enforcement have multiple debts.

Third parties

As an over-arching point, enforcement agents and firms should not be engaging with a third party without consent, including family members, friends and neighbours. We appreciate that there will be certain circumstances where a family member or friends may want to help a loved one pay off debts, and become involved in this process. However, such individuals should only be involved in these conversations when the person subject to enforcement action is aware and has consented to their involvement.

We see examples where enforcement agents attempt to persuade typically older householders that they are liable to pay their adult child’s court fine, or that their goods will be seized even where they no longer live there, or it is obvious that the person with the fine will not own most/any of the household goods.

In the event that a third party and the person subject to enforcement consent to involvement in enforcement discussions and the former expresses a desire to contribute, we would strongly emphasise that third parties should not be subject to lower ability safeguards than those directly subject to enforcement or pressured into making any payment. The impact of an unaffordable payment on them is likely to be just as significant as those directly subject to enforcement. The presence of ability to pay standards for third parties must not legitimise or encourage pressure whether subtle or overt on third parties.

As such, agents should take steps just as rigorous to establish ability to pay. Here, the ECB should note the FCA’s rules on affordability assessments for third party guarantors put in place to address poor practice in the guarantor loan market.[18]

The guidance in APA6 on payment offers by third parties is not strong enough and will invite agents to continue practices that lead to unsustainable payments by, or inappropriate pressure on, third parties. The expectation to ‘identify any obvious indicators’ that the third party is not able to make a payment whilst still paying for basic living costs is a very limited safeguard, and is lower than the proposed expectations of conduct towards those subject to enforcement in the wider standard. We would reiterate here that the expectations around ability to pay should not be lower

[18] FCA handbook, CONC 5.2A.31 to CONC 5.2A.32 R

for third parties than for those subject to enforcement themselves. Such a setup could provide a potential loophole for unscrupulous enforcement agents to take advantage of.

Almost all indicators that a third party cannot afford to make a repayment, or should not do so for another reason, will not be obvious, including their financial situation, other factors and vulnerabilities like caring responsibilities and health problems, and financial responsibility for dependents.

At minimum, the language here should be clear that agents are expected to take proactive steps to identify indicators that third parties cannot afford to make a payment.

Similarly, language on responding to disclosures by third parties (APA7) is only likely to be effective if enforcement agents take steps that lead to such disclosures, and the expectation goes beyond what is 'obvious'.

Response to individual Implementation questions

Question 7: Do you have any general comments on the draft standards or the ECB's approach to developing them, as set out in this consultation paper?

We do not have any additional comments to provide beyond what we have covered in response to earlier questions.

Question 8: Are there proposals in this consultation paper that you think would impose a cost or other burden that is disproportionate to the intended outcome? Are there alternative ways it could be achieved?

We have not identified any proposals that we think impose a disproportionate cost.

Question 9: Do you have any comments on the proposed approach to implementing the standards?

We would like to see the standards updated and then implemented as soon as possible following consultation. There has already been a substantial delay due to vulnerability and ability to pay standards being developed later than the general ECB standards.

We believe that a requirement for firms to put together implementation plans within three months of launch seems reasonable. We do not fully support a further delay of six months for firms to deliver the plan. We would like to see this time period shortened so that the standards are fully operational earlier than October 2026.