MOJ CONSULTATION: REGULATION OF THE DEBT ENFORCEMENT SECTOR:

RESPONSE OF THE ENFORCEMENT CONDUCT BOARD

1. **Do you agree that it is necessary to legislate to establish a statutory independent regulator for the enforcement sector? If not, please explain why**.

Enforcement is an industry collecting £1bn of debts each year owed to businesses, individuals and the public sector in England and Wales. As the consultation paper states, enforcement is critical for preserving the rule of law, investment and the growth of the economy, and the provision of vital public services. Yet despite the industry's importance to the country, it does not have a statutory regulator.

The existing model of voluntary oversight under the ECB is delivering significant value and will continue to do so, but has inherent challenges and weaknesses: 4% of the market for enforcing under Taking Control of Goods (TCOG) is able to evade the ECB's system of accreditation because it is not compulsory; the ECB lacks some levers of oversight, particularly the power of certification over individual civil enforcement agents (EAs); and for as long as the ECB's funding remains from the enforcement industry via a voluntary levy, there will always be a risk of that industry 'walking away'. Legislation is essential to address these weaknesses and bring sustainable, proportionate oversight in the long term.

Despite the ECB's success as a voluntary regulator, the fact that ECB only covers 96% of the TCOG enforcement market causes real unfairness. The 'missing' 4% of the market means that almost 1 in 20 people who experience enforcement action in England and Wales – approximately 320k people every year – are not benefitting from the ECB's standards or protections, including our independent complaints handling scheme. This cannot continue – we need to close this loophole by making all those who enforce debt subject to mandatory authorisation by the ECB. All those who experience enforcement deserve protection.

Another flaw in the current system of voluntary oversight is the lack of powers for the ECB to remove the certification of individual enforcement agents (EAs), which means that the ECB cannot act to take rogue agents 'off the road'. Despite the efforts of those working within the current court-based system of certification, we are not aware of evidence that it is working effectively to remove the certificates of agents who are unfit to practice. From the ECB Data Return system, we know that 10 EAs were dismissed by accredited firms in the 6 months from 1 April to 30 September 2024. While the reasons for dismissal can be varied, we are not aware of any agent losing their certificate to practice in that same period (or since). We fear that it is possible for a dismissed agent simply to move unchallenged to another firm and carry on enforcing on the doorstep. This cannot be right. We are doing what we can to improve this situation within the current system but to ensure real public protection, the ECB must be given powers to suspend and/or remove the certificates of unfit agents. The judiciary-led Civil Justice Council, tasked with making recommendations to make the civil justice system more accessible,

fair and efficient, has recently supported the ECB taking on responsibility from the court for certifying civil enforcement agents and authorising High Court Enforcement Officers.

The ECB understands the Government policy imperatives to encourage economic growth and reduce the overall burden of oversight by non-governmental bodies. We feel that independent statutory regulation of enforcement fits firmly within this agenda.

Recent evidence suggests that the work of the ECB is not hindering the growth of the enforcement industry. Over the last two years, under the ECB's model of oversight, turnover across the industry has increased 19%. We need to put this model of proportionate oversight on a permanent, sustainable footing, so that vulnerable consumers are protected, while a fit for purpose industry can continue to innovate and grow.

The establishment of stable, meaningful regulation of enforcement is crucial to long-term creditor confidence in the industry. Without change, growth may be jeopardised, as a continuation of the public concern and controversy over enforcement will likely risk the industry's future, as creditors, concerned about the reputation of an unregulated industry, consider switching to alternative methods of collecting debts.

Owing to the ECB's model of levy funding from the industry – which is in line with other sectors such as legal services regulation – there should be no impact on public finances or the taxpayer from giving the ECB legal powers. If anything, we believe that there should be some small cost savings for HMCTS from the switch away from court certification and authorisation of individual EAs and HCEOs.

2. **Do you agree that responsibility for setting the legislative framework about how debts should be enforced using the Taking Control of Goods procedure should remain with the Government and not be devolved to an independent statutory regulator?**

The ECB's preferred model is that Government should retain responsibility for setting overall high-level political/strategic enforcement policy and controlling the statutory framework for Taking Control of Goods (for example, the structure of the enforcement process and the powers of enforcement agents within it). An independent regulator should be consulted on any proposed changes. An independent regulator could also be given a power to make recommendations to the Lord Chancellor about improving the system of enforcement to further its statutory objectives.

Within that overall framework, the ECB believes that a regulator should be given maximum devolution to set the direction and detail of policy on enforcement behaviour and conduct, such as the creation of Enforcement Standards, and issues like the content of the Notice of Enforcement. In this work, a regulator would need to have regard to meeting its statutory objectives and it would routinely need to open any proposed changes up to public consultation.

3. **Do you think that an independent statutory regulator should play any role in reviewing the fees that the enforcement sector can recover when using the Taking Control of Goods procedure? Please explain why.**
4. **If you agree, what role should a regulator play in reviewing fees?**

The level of fees that enforcement agents may collect in the enforcement process is a critical factor in determining whether the system is fair to those who experience enforcement, as well as sustainable for providers. It is crucial that future fee levels should be decided on the basis of

evidence and economic analysis, and with a clear understanding of the potential equality and other impacts of fee changes on those who would pay the fees, notably on the vulnerable.

The ECB considers that the role of setting enforcement fees should remain with the Lord Chancellor, with fee proposals subject to consultation (and scrutiny via secondary legislation). Those requirements should include a specific statutory obligation on the Lord Chancellor to consult with an independent statutory regulator in the event of any proposed review or changes to the level or structure of fees (including where fees are paid in the enforcement process and for what purpose).

5. What objectives do you think should be set out in law for an independent statutory regulator to work towards?

The ECB's existing mission statement – to ensure that 'everyone who experiences enforcement is treated fairly' – is simple, powerful and widely recognised. We consider that an objective which promotes 'fairness' in enforcement should be the primary mission of an independent regulator too. We would welcome the chance to discuss with MoJ how best this could be expressed and defined in statute.

The ECB also understands the policy and business context within which an independent regulator would operate, and the justice responsibilities of the Lord Chancellor. Consequently, we consider that it would be reasonable if legislation, alongside introducing a primary objective of fairness, could also require an independent regulator to have regard, when carrying out its work, to a series of subsidiary requirements. These might include the need to have regard to:

- the effective enforcement of courts orders and warrants; and

- supporting sustainability, innovation and competition in the enforcement sector, where this has clear benefits for the regulator's statutory objective of fairness.

We consider that this balance will provide the regulator with a clear mission to protect fairness for those experiencing enforcement while providing reassurance over how it will carry out that mission, and its impact.

19. Do you have any views on what administrative status and accountability requirements a statutory enforcement regulator should have?
22. What role do you think that the Lord Chancellor should have in the appointment of key posts within a statutory independent regulator?
23. If you do not think that the Lord Chancellor should have a role in the appointment process, please explain why and what other steps could be taken to ensure that key appointees have the appropriate experience and skills and have no perceived or actual conflicts of interest?

In general response to these grouped questions, the ECB strongly believes that an independent regulator's mission would be best served by an oversight model which encourages agility, flexibility and pace, within a framework of proper and proportionate accountability to the public, government and parliament. Operating in such a light-touch environment has enabled the ECB to make real progress in its mission so far. It would hinder future delivery if that were undone by unnecessary and over-bureaucratic control now.

The ECB gives some further thoughts on this and on Qs, 19, 22 and 23 individually below. The options for delivering an agreed approach, while meeting the terms of Cabinet Office's deregulation review, will need to be worked through carefully and the ECB is happy to engage with the MoJ, Cabinet Office and HMT on the advantages and disadvantages of the different operating models for achieving the right outcome.

On **Q19**, there will be a variety of different administrative vehicles for establishing a statutory body. The Board favours Royal Charter status for a future regulator; other vehicles include some form of direct delegation of powers from the Lord Chancellor; and use of a framework that already exists, such as the Legal Services Act 2007 (i.e. making TCOG a reserved activity under the Act).

These will require further discussion. But in terms of giving a view on the best form of oversight and accountability, we set out below our preferences on its key features:

- **Accountability to Parliament -** this could be via Select Committee, so that there is a direct link to Parliament, allowing the work of the regulator to be properly scrutinised and held to account. Select Committees are also publicly accessible, with proceedings broadcast online and reports published, allowing the public to understand the work of the body and enabling transparency in its decision-making.

- **Accountability to Ministers** - this could be via appointment of the Chair by the Lord Chancellor, with oversight by the Commissioner for Public Appointments. It will be important for the Chair to have a clear role description. This would clarify responsibilities and expectations, defining the scope, duties, and responsibilities of the chair and body. It is also important for the role to be clear on the limits of its authority. In terms of Board appointments beyond the chair, the preference would be for the body to make its own appointments, as now. (See below).

- **Income / funding** - a regulator should continue as currently i.e. industry funded via a levy. It is not envisaged that any grant-in-aid should be necessary. The legislation should make clear a commitment to consult publicly on the amount of the levy and in a timely way (annually, in good time ahead of the levy being raised), with any other necessary safeguards in place to protect the levy setting process. The legislation might need to state expressly what arrangements are in place if there is future financial failure in the system e.g. if levy payments do not meet the cost of the regulator due to a significant unforeseen economic shock or similar. (See also Qs 24-26 which follow)

- **Financial accountability** - via presentation of an annual report and accounts to Parliament, laid by the Lord Chancellor on the body's behalf. Independent external audit to be undertaken. Unnecessary for there to be consolidation with the whole of government accounts given the origin of the funding being a levy on the sector.

- **Duration** - enduring, but with set review points – the legislation might want to set out the timing of those review points.

- **Departmental oversight** - to preserve independence from government, this needs to be minimal - it is envisaged that oversight should be targeted, with the relationship being trusted and cordial.

- **Status of staff** - Not civil servants but to be employed by the body directly, with the pay and other terms and conditions to be set by the body.

In response to **Qs 22 & 23**, we suggest that the Chair role should be a full public appointment, made by the Lord Chancellor. This would give effect to the accountability points raised earlier in our response.

The remaining Board members could be appointed by the Board itself, without being public appointments. This would save public time and money and maintain the ability for the Board to handle governance swiftly and proportionately, under the leadership of the Lord Chancellor-appointed Chair (whom the Lord Chancellor would also be able to remove for poor performance etc).

The legislation should include safeguards around the composition of the Board to avoid capture, and specify professional or other backgrounds that it would be helpful to have on the Board. This would help to avoid overall 'capture' by any particular group with a vested interest.

24. **Do you agree that an independent statutory regulator should be funded wholly by a mandatory levy on the sector, or should it also receive some funding from the Government? Please explain why?**
25. **Do you think that legislation should set out how a regulator's costs should be managed to avoid placing an undue financial burden on the sector? If so, what safeguards could be put in place?**
26. **Do you think that legislation should set out how a regulator should account for how it has spent the money it receives? If so, please could you set out how?**

On **Q24**, as we set out in our responses to Qs1 & Q19, the independent regulator should continue to be funded by a proportionate levy from the enforcement industry. Industry funding is the right model and consistent with other sectors.

This levy should be mandatory. While the enforcement industry has shown great responsibility in meeting levy requirements, the voluntary model continues to be fragile. It is potentially susceptible to future co-ordinated action from the industry should they decide, for whatever reason, to 'walk away' from oversight or seek to hold the ECB to ransom on a particular point. While not a live risk so far, this remains a possibility as direct operational oversight from the ECB starts to really take hold. Making paying the levy an explicit statutory requirement would secure the long-term future of independent oversight.

On **Qs 25 & 26** regarding controls and accountability for the use of the levy, the ECB considers that it would be reasonable for an independent regulator to be subject to a statutory duty, when setting a future levy on the enforcement industry, to:

- consult on its overall draft budget and the proposed levy, providing justification if it wishes to apply different levy amounts to different parts of the enforcement sector;
- set a levy level(s) which has regard to the sustainability of the enforcement sector; and
- include the proposed levy as part of a final business plan and account for it in a published annual report to the Lord Chancellor and Parliament.

The ECB considers that with these controls it would be unnecessary and disproportionate, and would likely cause harmful delays, for an independent regulator to have to present its levy(s) to the LC for prior approval.

6. **Do you agree that legislation should set out that an independent statutory regulator should produce standards and guidance for enforcement firms, agents and creditors about the use of the Taking Control of Goods procedure? If so, should the legislation set out who the regulator should consult about that guidance, and how frequently it should be reviewed?**

As a general principle, if an independent statutory regulator is to be an agile and lean organisation in pursuit of its mission, it needs to avoid unnecessary legislation which weighs it down with disproportionate oversight or excessive accountability. The ECB believes that enforcement standards and guidance for firms and agents provide a clear example of this.

The production of standards for enforcement firms and agents should be a core duty of an independent regulator. The ECB introduced new standards for enforcement firms and agents in October 2024: ECB Enforcement Standards

So long as a regulator is given powers of mandatory authorisation of firms and certification of agents (see Q7), the ECB sees that compliance with enforcement standards would not require a power to be written into legislation. Instead, it could be achieved as a published, transparent, but non-legislative requirement of the application of a regulator's authorisation and certification.

Should the Government prefer to set out a power to create enforcement standards and guidance in any Bill, then the ECB would strongly argue against using legislation for:

a) any prescription of the standards themselves in legislation (even secondary). This would involve a regulator perpetually needing to use legislation for even small changes to standards.

b) any need for the Lord Chancellor to be given a requirement to approve all new ECB standards and guidance.

Given the pressures on the legislative timetable and Ministerial time, these would be harmful for a regulator's mission to improve fairness, and would be unnecessary. Safeguards on the content of any new standards, and their impact, would be provided by the regulator undertaking extensive consultation on the standards with the enforcement industry, debt advice sector, creditors and government – as the ECB is currently doing on proposed standards on Vulnerability and Ability to Pay – and by the need for a regulator to have regard to its statutory objectives, such as the sustainability of the enforcement sector.

The need for (non-legislative) enforcement standards to apply to creditors will require careful thought and the ECB would welcome further discussions with MoJ, HMT, the Department for Business and Trade and creditors on this. The ECB is currently developing its creditor strategy, because good practice by creditors – for example, in the early identification of vulnerable customers and the sort of debt cases which are referred to enforcement – is critical to the success of a regulator's mission. There are many examples of creditor good practice now. How to engage creditors in this further, in a way that is commensurate with growth and suitable burdens on business, and how it might best be achieved – for example via the requirements of explicit standards or another route like codes of practice – should involve wide stakeholder discussions.

7. **Do you think that the Government should legislate to require all firms that enforce debts using the Taking Control of Goods process to be accredited or licensed by an independent statutory regulator?**

The ECB considers that this is the single most important requirement for legislation. We set out the drawbacks of the loophole caused by the current voluntary system in response to Q1. The loophole needs to be closed by bringing all firms who enforce debt under the Taking Control of Goods legislation under the statutory authorisation of an independent regulator.

27. **Do you think that county court bailiffs and local authorities and the individuals they employ to use the Taking Control of Goods procedure should be regulated by an independent statutory regulator? If so, please explain why.**

In principle, the ECB sees no difference between the need for compulsory authorisation of the private enforcement industry, and enforcement under Taking Control of Goods done by county court bailiffs and local authority in-house teams. Similar arguments apply to all – those who undergo enforcement on the doorstep arguably see no distinction between them and potentially may suffer an adverse experience from any of them. We believe that they all should be subject to consistent, modern enforcement standards and should be held accountable to an independent body.

Our preference then is for mandatory authorisation to extend to both county court bailiffs and local authority in-house teams, alongside the private sector. We look forward to engaging MoJ, HMCTS, MHCLG and individual local authorities should they see things differently, including where there may be existing, alternative regimes of oversight.

There is certainly nothing which would prevent the fundamentals of ECB oversight applying to council in-house teams, judging from the experience we have found with a significant proportion of teams in England and Wales, which have shown foresight in seeking voluntary accreditation with us: Wrexham, London Borough of Merton, Mid-Kent, Durham, Flintshire, Birmingham, Conwy, LB of Southwark, Anglia Revenues Partnership, and oneSource based at Newham.

20. **Do you think that an independent statutory regulator should be solely responsible for accrediting individual EAs and HCEOs with the existing oversight by the District Judges and Lord Chancellor (via the Senior Master) removed, or do you think that the District Judge and Lord Chancellor (via the Senior Master) should retain a role in certification and authorisation?**

Yes. Taking on the power of authorisation over HCEOs and, especially, certification of civil EAs is important if an independent regulator is to take effective action to improve the behaviour and conduct of all agents who enforce debt using TCOG. It is imperative that a regulator where necessary can consider complaints and evidence against an agent and have the power to suspend or remove their certification/authorisation in proven serious cases.

We also deal with the need for an independent regulator to become the certificator/authoriser in our response to Q1, a role which would naturally include running the public ‘register of bailiffs’. Should this step not be taken under legislation, it would be permitting the continuation of a system in which a regulator is given some powers of oversight, but not the means to take bad agents off the road, which would remain in a fragmented system with the courts.

The Civil Justice Council, in its working group report on Enforcement reform published in April 2025, has agreed with the ECB, by recommending that it should replace the existing court role in certificating/authorising and removing EAs and HCEOs.

The ECB appreciates that making effective a move to give it a power of certification and authorisation would need careful planning, resourcing and implementation. We would welcome discussion on these points, and on how the distinctions between the current systems of certification of EAs and authorisation of HCEOs might be addressed. As an example, civil agents are certificated by the county court for the regime of enforcing debt under TCOG. HCEOs, on the other hand, are authorised by the Senior Master under the regulations *as* HCEOs (i.e. in that capacity), under which they may use enforcement powers wider than those available under TCOG and for wider purposes.

However, the ECB does not see these differences as being long-term impediments to reform. It considers that the certification/authorisation of both should come under an independent, statutory regulator. However, the ECB is open to discussing potential legislation, transitional arrangements and a timetable for this, with the taking on of EA certification being the priority for a regulator.

Finally, the ECB considers that the powers of a new regulator to certificate agents should extend under statute to EAs employed by local authority in-house teams in TCOG work. They are already subject to certification by the courts under the current system, and we see no reason why this should not pass over to a new regulator.

8. **Do you think the Government should set out in law what a regulator's licensing conditions should be, or do you think that an independent statutory regulator should have the power to decide on its own licensing criteria?**
9. **Do you think any changes should be made to the current certification and authorisation criteria for individual EAs and HCEOs, and if so, why?**

The current 'licensing' criteria for civil EAs and HCEOs are set out in the Certification of Enforcement Agents Regulations 2014 and the High Court Enforcement Officers Regulations 2004 respectively. The current criteria seem to be reasonable at present. However, the Board consider that it should be a role for an independent statutory to decide on future licensing criteria, consulting where necessary.

To give a regulator flexibility and freedom to decide and amend the criteria, the simplest approach would be to replace the need for criteria to be set out in regulations with a power for a regulator to provide qualifying criteria for agents as part of its certifying/authorising process. This would be the responsive option and would avoid the need for legislation to approve every change made by a regulator.

However, as the licensing criteria are currently set out in secondary legislation, this might not be favourable to government. In which case, a regulator might instead be given a power to recommend new licensing conditions to the Lord Chancellor, for her to implement if agreed via regulations.

20. **What appeal process do you think should be put in place to allow regulated entities to appeal decisions made by a statutory independent regulator?**
21. **Do you agree an individual or firm should pay a fee in respect of any appeal to a tribunal or court?**

On **Q20**, on appeals against a suspension or refusal of certification or authorisation of an agent, the ECB sees the sense in a Bill providing a statutory right of appeal to a tribunal (probably the General Regulatory Chamber). Such a right of appeal is routine for decisions on professional

regulation by administrative bodies (e.g. appeals to the magistrates' court are allowed against the licensing decisions of the Security Industry Authority).

On **Q21** and the charging of a fee, the ECB considers it reasonable, should precedent and access to justice demand it, that there should be no fee for appealing a regulator's decision to the Tribunal.

17. **Do you think that the legislation should allow a statutory independent regulator to be able to share data with any other bodies? If so, please set out which bodies they should be able to share data with and for what purpose?**
11. **Do you think that an independent statutory regulator should be given powers to gather data from the enforcement sector?**
12. **What powers, if any, should they be given to ensure that data provided is accurate? What safeguards should be put in place, if any, to ensure that data requests are proportionate, and that the data is used effectively and appropriately?**

In response to these questions, the ECB expects any powers of gathering and sharing data given by Parliament to be minimal, essential, and specific.
The ECB considers that as a starting point, an independent regulator would require a power to:

- require information and documents to be submitted from authorised/certificated enforcement firms and agents as part of a regulator's oversight and supervisory functions; and

- be able to share data with the Local Government and Social Care Ombudsman and the Public Services Ombudsman for Wales, as part of carrying out the new regulator's complaints-handling function. These powers would need to be reciprocal and complement the Ombudsmen's existing data-sharing powers.

13. **Do you think that an independent statutory regulator should be given powers to monitor the work of enforcement firms? If so, what should those powers be?**
14. **In addition to powers to request data and carry out monitoring visits, do you think an independent statutory regulator should be given any further powers? If so, please explain why you think the power would be necessary.**
18. **What sanctions do you think that a statutory independent regulator should be able to impose on enforcement firms?**

In response to questions **13, 14 & 18**, the ECB sees that it might be reasonable to balance the need for minimum prescription of monitoring and sanctioning powers – to aid flexibility and responsiveness to emerging and evolving situations – with the need for certainty and fairness for those who may be subject to the powers.

The ECB however would prefer that the Government avoid defining a regulator's powers of oversight, monitoring and sanctions more than is absolutely necessary in legislation. The ECB itself has recently published a transparent non-legislative framework for oversight and sanctions rules, with firms bound to them as a condition of accreditation: ECB monitoring and sanctions.

It may be that in the interests of predictability and certainty for business, Government may wish to put an enforcement regulator's powers for monitoring, oversight and sanctioning on the face of the legislation. The ECB would be happy to discuss this with MoJ and other stakeholder to help strike the right balance here.

15. **Do you think that an independent statutory regulator should be given statutory powers to consider complaints?**
16. **If you agree that an independent statutory regulator should consider complaints, do you think that District Judges and the Lord Chancellor (via the Senior Master) should still consider complaints against individuals? Or should their role in considering complaints be abolished?**

On **Q15**, while a role to consider and decide on complaints is vital, the ECB, consistent with its other comments on potential over-prescription in a Bill, would prefer parliament not to provide in legislation detailed statutory powers to consider and adjudicate on complaints.

Cooperating with a regulator's complaints-handling service and abiding by its adjudications should be a condition of authorisation of firms. This is the approach taken by the ECB in its guidance on complaints and decision-reviews when it began to handle enforcement complaints against firms and agents from 1 January 2025 ECB complaints policies and guidance.

In response to **Q16**, we do not believe that it would be necessary or helpful to maintain the EAC2 complaints route to the courts if a regulator takes over certification/authorisation of individual agents, as these complaints would be better made to the regulator.

28. **Should a statutory independent regulator regulate any other types of civil enforcement activity?**

The ECB agrees that there is a role for statutory body to regulate other types of civil enforcement, and proposes that any Bill provides that regulator with a power to recommend future extensions of its role to the Lord Chancellor, subject to consultation and implementing legislation as necessary.

For the moment, any new statutory body will need to prioritise and focus its energy on making effective its role as a regulator of TCOG enforcement. However, once that is established there may be a case for extending its role to an enforcement sector ancillary to its current scope. A possible candidate for future regulation might be oversight of the recovery of houses or land, a role currently undertaken by HCEOs – but not under TCOG. This would require careful thought and analysis at the time, which would need to include how such oversight would be resourced.

Enforcement Conduct Board
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