

GUIDE TO VULNERABILITY & MENTAL HEALTH IN ENFORCEMENT PRACTICES



**HIGH COURT
ENFORCEMENT
GROUP®**

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Disclaimer: Please note that this guide does not constitute legal advice. The author has used his best endeavours to make this guide as accurate and complete as possible, but requests that the reader be aware that the law of England and Wales frequently changes. The author strongly advises the reader to take legal advice before embarking on any enforcement action.

Guide to vulnerability and mental health enforcement practices

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Introduction

This eBook has been designed to serve as a guide for debtors who might be deemed vulnerable, for whatever reason, as well as any person supporting them, creditors and solicitors working for either party.

The eBook's aim is to give information about what can and cannot be done when enforcement action is taken against debtors who may be vulnerable.

Mental health problems in particular are closely associated with debt, both as a cause and as an effect, and all those involved in enforcement need to be aware and have policies and procedures in place to appropriately support those debtors.

For those readers who wish to gain deeper understanding about vulnerability and mental health in relation to enforcement practices, High Court Enforcement Group provides workshops and a level 3 qualification on this subject.

These are available to local authorities, enforcement agents, welfare teams, debt collection agents and the advice sector.

Further details on the workshop and qualification are available in the "[About High Court Enforcement Group](#)" section.

Defining vulnerability

Generally, a person is vulnerable if it would be unreasonable to expect them to be able to deal with a problem themselves.

The Taking Control of Goods: National Standards 2014 give the following categories of people as being potentially vulnerable:

- Older people
- Disabled people
- Mentally ill
- The seriously ill
- The recently bereaved
- Single parent families
- Pregnant women
- Unemployed people
- Those who have obvious difficulty in understanding, speaking or reading English

Vulnerability is not clear cut; we must look at every claim of vulnerability and look at the individual circumstances and remember that vulnerability can be transient.

It is also important to note that these are circumstance where the debtor **may** be vulnerable, but it does not follow that a person who falls into one of these categories is automatically considered to be vulnerable.

Mental health

Mental health problems are perhaps the most challenging aspect of vulnerability to identify, as it may not be immediately apparent.

Mental health problems can be caused by a variety of situations and circumstances. Causes can include:

- Abuse
- Social isolation
- Death of someone close
- Poverty, debt and unemployment
- Military combat
- Victim of crime
- Physical causes, in particular head injuries
- Genetic factors

Mental health problems will affect the way a person thinks, feels and behaves. This can mean that debtors with mental health problems may react quite differently than might be expected when faced with debt recovery or enforcement action.

Many might ignore the debt, which will compound the amount owed, causing greater pressure and difficulty.

Prevalence

1 in every 4 people suffers from mental health problems. The Royal College of Psychiatrists finds a clear connection between debt and mental health, with startling statistics:

- 1 in 2 British adults with debt issues has a mental problem
- 1 in 4 British adults with a mental problem has debt issues

Enforcement action

Vulnerability does not prevent enforcement: enforcement action can proceed, provided the creditor and enforcement agent have undertaken the necessary steps to fulfil their obligations.

When enforcement agents undertake work they not only have to abide by the schedules and the regulations, they also must assume the role of the public body and are bound by all the rules that apply.

Below is an overview of the process and the obligations of the creditor and enforcement agent.

Advantages of knowing about mental health

Beyond the legal obligations, there are many advantages to knowing and understanding about any vulnerability the debtor may be experiencing.

Many enforcement agencies will have welfare teams who will engage with vulnerable debtors. When the welfare team and enforcement agents have all received appropriate and adequate training, they are in a far better position to treat the debtor fairly and sensitively and effectively share information with the creditor.

All these actions can improve the overall chances of debt recovery, whilst still complying with legislation.

Enforcement fees

Under The Taking Control of Goods Regulations (Fees) 2014, Regulation 12 states that, where the debtor is a vulnerable person, the fees due for the enforcement stage are not recoverable UNLESS the enforcement agent has, before proceeding to remove goods which have been taken into control, given the debtor adequate opportunity to get assistance and advice in relation to the exercise of the enforcement power.

Regulation 10 of The Taking Control of Goods Regulations 2013 specifies the circumstances under which the enforcement agent may not take control of goods, this is where:

- The debtor is a child
- A child or vulnerable person (whether more than one or a combination of both) is the only person present
- The goods are also in premises in which a child or vulnerable person (whether more than one or a combination of both) is the only person present

Other relevant legislation

[The Mental Health Capacity Act 2005](#)

This covers permanent or temporary mental incapacity to make informed decisions. It covers any decision, whether big or small. There are five statutory principles within the Act:

1. A person must be assumed to have capacity unless it is established that they lack capacity
2. A person is not to be treated as unable to decide unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to decide merely because they make an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action

[The Equality Act 2010](#)

This legally protects people from discrimination in the workplace and in wider society. Protected characteristics include disability, whether physical or mental. Discrimination may be direct or indirect.

Indirect discrimination is more likely to apply to the work of enforcement agents. It can occur when policies or working practices are applied equally to all but result in extra disadvantage for people with protected characteristics.

[The General Data Protection Regulation \(GDPR\)](#)

GDPR protects individuals' data. When capturing data from vulnerable debtors, the enforcement agent must gain explicit consent and explain to them, and/or their representative, how the data collected will be used, stored, shared, retained and disposed.

There is a caveat in the regulations that if you are acting in the best interests of somebody you may not need explicit consent, but it must stand up to external scrutiny. Our recommendation would be to always gain explicit consent to process the data.

Creditor obligations

Creditors have a key role in ensuring vulnerable debtors are identified and protected, so selecting the right enforcement agency with robust policies, procedures and training for staff is key.

For the enforcement process to be transparent there should be a service level agreement outlining the expectations and this should include the sharing of information such as background information detailing health, welfare and case history which should include detail around vulnerability.

Creditors should avoid using enforcement agents where they have evidence that the debtor is vulnerable.

Under the National Standards the creditor has obligations, the agreement they have in place with their enforcement agency should include agreed protocols to deal with vulnerability. The creditor should be prepared to take the case back if it is deemed necessary.

Enforcement agent obligations

Enforcement agents have an obligation to report to creditors when they encounter a vulnerable debtor.

Complying with legislation means the enforcement agent can treat debtors fairly and sensitively and comply with the legal aspects, which improves the overall chances of recovering the debt.

If a debtor is vulnerable they must be given the opportunity to obtain assistance and advice before taking control of goods and applying the enforcement stage fee.

Telephone teams

We would recommend that telephone teams are trained to pick up cues that might suggest vulnerability during a phone call, as this can ensure that the enforcement agent is aware in advance of a visit. It may also support resolution of the debt without requiring an enforcement visit.

This training can also be very beneficial to telephone collections teams within the creditor's organisation to improve support and provide more targeted assistance.

The debt and mental health evidence form

The debt and mental health evidence and consent forms are a standardised tool to gather the necessary evidence and information from health and social care professionals in support of vulnerability.

The forms are signed by a medical professional. While the forms are being completed and verified, enforcement action and unnecessary contact is suspended.

The form contains eight basic questions that give overall insight into the situation of the debtor. Once a completed and verified form has been received it will be used to make appropriate and fair decisions on any further actions.

The process for dealing with vulnerable debtors

- Mental health problem identified
- Decide evidence needed
- Explain data protection requirements
- Obtain explicit consent
- Dispatch the debt and mental health evidence form and consent form
- Include covering letter and return address stamped envelope
- Debtor/ carer/ family member reads and signs consent form
- Medical professional completes and returns the debt and mental health evidence form
- Received by the enforcement agency, which sends copies to the debtor and informs the creditor
- Decide on action

Training – qualifications and workshops

We deliver training to local authorities, Government departments, the legal profession and the third sector.

High Court Enforcement Group is the only enforcement agency which is an approved educational assessment centre for awards and certificates which are endorsed by the [Chartered Institute of Legal Executives \(CILEX\)](#).

We are the only enforcement company in the country offering CILEX endorsed:

- Level 2 Awards for entry into the enforcement profession
- Level 3 Certificates, which are a requirement to be accepted onto to the [Level 4 CICM Diploma](#) for the High Court Enforcement Officers Association

We are also the only enforcement agency which is a preferred training provider to the MoD's Career Transition Partnership.

The workshops can be tailored to suit different local authorities or firms of solicitors, as well as different types of teams within an organisation, to make the learning most suitable for their needs and the situation within which they work.

The workshops and qualifications are engaging and interactive. If you wish us to deliver training for a team, we can come to your premises to do so.

About High Court Enforcement Group Limited

We are the largest independent High Court enforcement company in the country. We are privately owned, with more authorised and experienced officers than anyone else. This allows us to build and manage our business in a way that puts our clients first.

Clients trust us to deliver and our service level is paramount – we are committed to meeting and exceeding their expectations. Transparency and ethical behaviour are also at the heart of our business, both with our clients and their debtors.

We achieve this by recruiting excellent people and investing in their development, allowing us to ensure quality, transparency and ethical behaviour – firm but fair enforcement.

Our highly skilled enforcement agents are recognised for their impressive local knowledge and their steadfast commitment to upholding the values of responsibility and accountability. Ensuring exemplary professionalism through time-honoured dedication to firm but fair enforcement.

We are committed to educating as well as enforcing. We believe that an informed decision is a correct decision and that our clients should also understand the processes associated with enforcement. We believe in sharing our knowledge and expertise with our clients, to help them make informed choices.

To instruct us or find out more

If you would like any further information, please click through to our [website](#).

Should you wish to discuss a case, please do not hesitate in calling our Client Services team on **08450 999 666**

Remember, we are here to help.

Useful links

Legislation

[Ministry of Justice Civil Procedure Rules](#)

[The Mental Health Capacity Act 2005](#)

[The Equality Act 2010](#)

[The General Data Protection Regulation \(GDPR\)](#)

Advice sector

[Citizens Advice - visit site](#)

[National Debtline - visit site](#)

[Money Advice Service - visit site](#)

[Advice UK - visit site](#)

[Vulnerability Registration Service – visit site](#)

[Gov.UK - visit site](#)

[Stepchange - visit site](#)

[Money and Mental Health - visit site](#)

[CIVEA - visit site](#)

High Court Enforcement Group

[Further reading on the HCE Group site](#)

To find out more or instruct us

If you have any questions or wish to instruct High Court Enforcement Group then please contact us on **08450 999 666** or visit our website at **[hcegroup.co.uk](https://www.hcegroup.co.uk)**, go to the instruct us page and select the service you require from the menu.

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