WINTER 2015

ENFORCEMENT NEWS

The quarterly magazine from CIVEA, the Civil Enforcement Association

CIVEA APPOINT NEW DIRECTOR GENERAL

VERNON PHILLIPS TAKES THE CIVEA HOT SEAT

John Kruse – Bailiff Law Author

Edward Ware – StepChange

Paul Caddy – Phoenix

Alan Golob – Call Credit

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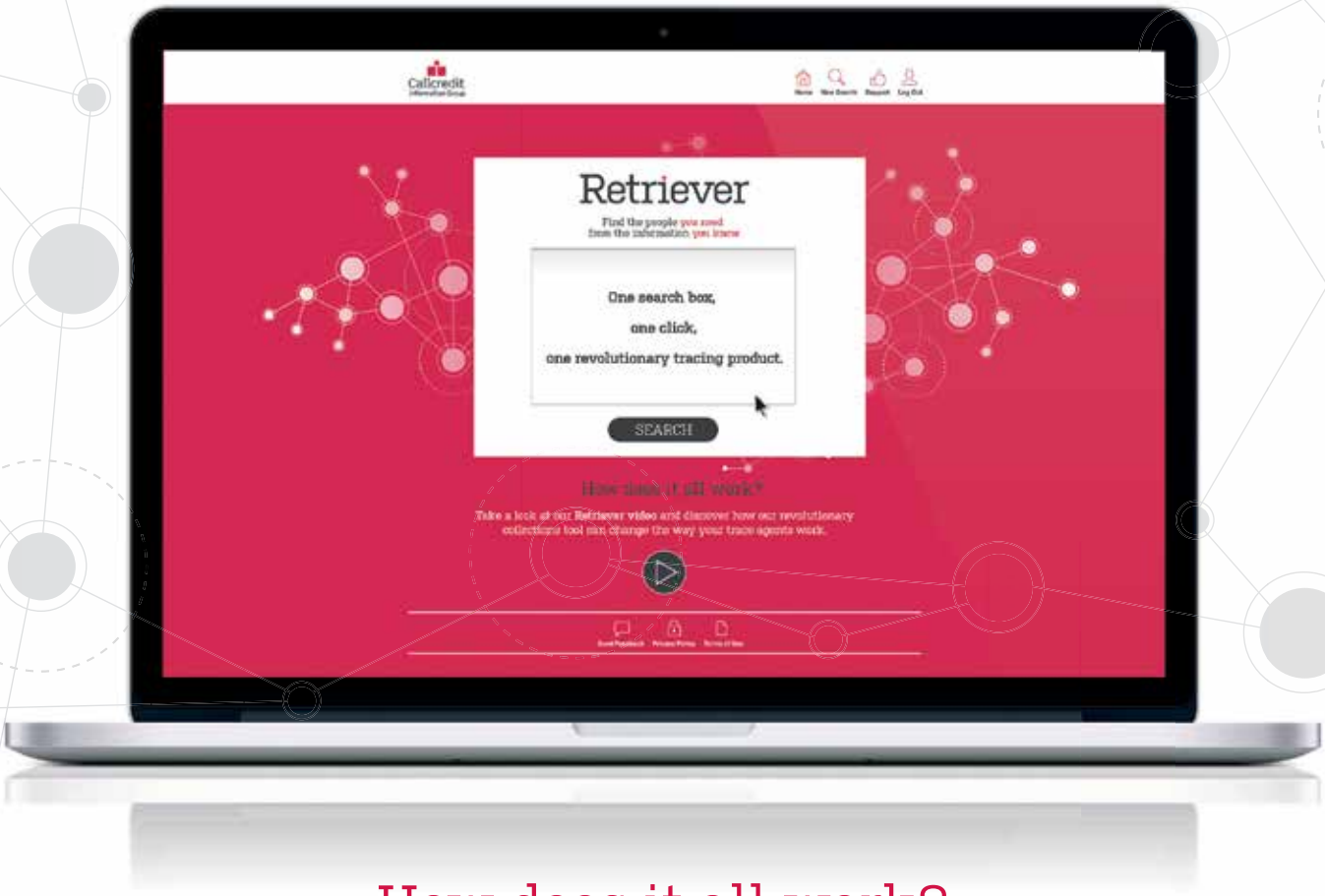

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FIRST WORDS

Mike Shang is President of CIVEA and Corporate Services Director at Rossendales

As we enter 2015, I am sure we will all remember 2014 as a true landmark within our profession, a year which has seen the unification of both legislation and fees.

It is also the year in which our association has seen three Director Generals, firstly the retirement of Steve Everson, the resignation of Stephen Caven, and the engagement of Vernon Phillips in December; it almost feels like a premiership football club! I am pleased to welcome Vernon as our new Director General, his previous experience with both the Enforcement Services Association and the High Court Enforcement Officers Association has allowed a smooth transition and his knowledge can only benefit our members, and will no doubt be invaluable in the future. I would like to thank Stephen for his contribution and wish him well for the future.

In terms of our new world, the Ministry of Justice are committed to the twelve month review and are already considering the analysis required to measure the impact - I do not envisage any major changes as a result of the review. As a profession we will need to evidence that compliance is working in terms of debtors paying without the need for an enforcement visit and the handling of other debtors such as the vulnerable, both pre and post enforcement visit. My firm belief, is that this evidence exists and that the new process works, after nine months we can start to see some of the impact of change. Certainly there is evidence that compliance is working with debtors paying without the need for a visit, creditors giving greater consideration to the debts they refer to their agents and reduced numbers of complaints within the profession, therefore no major changes are probably needed, although I am sure the Ministry will "tinker" if so required. The only outstanding question I see, will be one of an inflationary increase on existing fees, i.e. will there be one and will it be rounded to £5 (I am sure you will recall that the compliance fee was not increased at its introduction last year, unlike the enforcement fee)?

"greater focus on potentially vulnerable debtors"

Clearly the simplicity of the new fee structure has resulted in some creditors considering the use of their own internal operations - I am lead to understand that one of the principle reasons behind this thought process is a greater focus on potentially vulnerable debtors. I feel this is an important focus and one that was considered as such during the reform process; this is the part of the purpose of the compliance stage and the reason regulations are in place to move back to compliance from the enforcement stage. If creditors are prepared to invest to minimise the risk of such debtors being referred to our profession, then that can only be for the better, however I also understand that many creditors which to ensure that their internal operations are self-financing. This is an interesting concept if their focus is purely the vulnerable, since by definition these are the people who can be dealt with during the compliance process, perhaps the fundamental question is: can the creditor undertake this process to the same level as external providers? The answer is yes but only with significant investment, therefore a further question looms, are creditors prepared to invest in these times of austerity?

We may also remember 2014 as a year in which we failed to see a tender framework materialise, it was hoped that a national framework would be in place which would ease the administrative burden on both our members and their clients. I firmly believe we need as many frameworks as possible to allow our membership greater access to the market and hopefully 2015 will see the instigation of more than one.

"we still need frameworks to ease the administrative burden on both members & clients"

We have already seen a large number of candidates undertaking the CIVEA qualification, with an excellent pass rate for an examination that's meets the legislative requirements for the certification process, it clearly demonstrates that both the quality of the training provided and the standard of agents within our profession is high. Long may this standard endure throughout 2015 and beyond.

REDUCING BUSINESS COSTS AND WASTED VISITS MEANS SPEAKING TO CUSTOMERS EARLIER

Daniel Pearce is Sales & Marketing Director for TelSolutions

The biggest barrier to resolving debt is not just the high cost of collections, but getting to speak to the person behind the door and understanding their circumstances as early as possible.

Door step visits represent the biggest expense in debt recovery and with the increasing cost of postage, letters are not far behind. But do they represent the best return on investment?

Letters are often more miss than hit when compared to actually speaking to the customer. And a simple calculation of fuel and time costs spent each month in 2014 on appointments that resulted in no contact would certainly show that alternatives are worth trying in 2015.

Evidence shows it is often more effective to try and resolve the issue by speaking to customers early and directly before a visit. Obviously, this doesn't mean visits should be scrapped, but better collection rates require more innovation than a series of letters and visits. As well as the expense, letters can be easily 'ignored' and you learn nothing of the customer's ability to pay. Most people communicate via their mobile today, whether via text message, speech, automated services, internet or instant messaging. It makes sense that the solution to pick the right message at the right time of day to optimise results with limited resources, whilst treating customers fairly, should involve telecommunications.

Of course manual outbound calling can be hugely time consuming and often has low rates of engagement. But by using automated customer contact services enforcement teams are now able to speak to a greater number of customers at the most opportune time of the day, which is not possible just by manual dialling. Combined contact services can use a variety of means to identify home presence (and often call evasion) and then use automated contact techniques to encourage a response. The very fact that a debtor is contacting you, rather than the other way round, often changes the dynamic of the conversation. People in debt have all sorts of reasons for avoiding dialogue – not least embarrassment – so identifying the best way to engage with them will help cut wasted letters and visits to a minimum and increase collection rates.

In addition to auto-dialers, automated voice messaging, SMS and email, these communication channels can include unique mobile payment options and instant messaging. This technology allows your message to meet your debtors literally at the point of most convenience – and the least cost; with a cloud-based infrastructure there are no large set-up fees and no on-site software.

Early engagement of customers, using methods they can easily interact with, not only saves a significant amount of time and money, but can also become a key component of your Treating Customers Fairly policy. Compliance Stage payments will be a key performance indicator for enforcement teams over the next few months. Trials of these services are quantifiable and make measurement of success simple. Replacing letters and visits is impossible – it's part of the enforcement process. But using alternative methods alongside them can only bring more cost effective results.

Choosing the best communications provider is never easy and trust is usually the biggest issue. Successful debt recovery is all about offering the debtor the maximum number of opportunities to pay, so selecting a partner who can provide the full range of digital communications and offer mobile web forms to integrate with your online payment channel or platforms such as PayPoint will improve recovery rates, increase Compliance Stage collections and reduce complaints. A provider that can offer a simple pay as you go model rather than contract gives you total flexibility both in the frequency and range of services used.

Enforcement Agents in the News

DAWLISH DRUG DEALER CAUGHT RED-HANDED BY BAILIFFS DURING EVICTION

Exeter Express & Echo

A drug dealer was caught with 50 bags of cannabis in his home after bailiffs became suspicious and called the police when they were evicting him.

The debtor had £150 in cash and £865 worth of cannabis when police raided the house in Dawlish and he broke down in tears when he was arrested.

He told the officers "I don't want to do this, I don't like doing this," after showing them where to find the cannabis and a small amount of ecstasy which he had for his own use.

The debtor, aged 22, who moved to Paignton, after being evicted from Elm Grove Road in Dawlish, admitted possessing cannabis with intent to supply and simple possession of MDMA.

He was jailed for nine months, suspended for a year, and ordered to receive drug rehabilitation as part of 12 months supervision by Recorder Mr Andrew Oldland, QC, at Exeter Crown Court.

2015: NEW CHALLENGES FOR ENFORCEMENT

Vernon Phillips is Director General of CIVEA

For my first article in the Enforcement News I thought it might be useful if I briefly introduce myself and then set out what I see as some of the challenges for both CIVEA and the enforcement industry in the coming year.

Some of you will know me from my previous roles of Executive Director of the ESA and Chief Executive of the HCEOA. Prior to that I held posts in the Lord Chancellor's Department and the Department for Education. I joined what was then the Certificated Bailiffs Association in 2001. During the subsequent years much of my time was spent on work leading up to what eventually became the Tribunals Courts and Enforcement Act 2007. This was followed by further work on the draft enforcement regulations.

In April this year the Ministry of Justice will conduct its first review of the regulations. This will not be a detailed study as everyone involved in enforcement acknowledges it is too early to reach any conclusions. Instead the review will look to see if there have been any unintended consequences from the regulations and if so, whether anything needs to be done. At the same time the MoJ is continuing with its work on producing a new edition of the National Standards. CIVEA will be closely involved in both projects. Hanging over all of this is the spectre of the General Election in May, especially as at present there is absolutely no way of anticipating what the outcome might be.

Vulnerability continues to be a major issue for all organisations concerned with debt and enforcement and the new National Standards will flag it up. The Financial Conduct Authority will be publishing a paper on vulnerability in February. Furthermore, by the time this magazine is published, the Money Advice Liaison Group should have produced the third edition of its Good Practice Awareness Guidelines for those dealing with debt and mental health issues. This contains guidance to assist those working in this field and includes a much expanded entry on taking court action. The Guidelines state that enforcement companies should ensure that staff are trained to recognise vulnerability. In addition local authorities, when looking to appoint enforcement agent firms, should satisfy themselves that such training has taken place.

CIVEA will continue to strive to represent all enforcement agents whether they be large corporate members or the private members. They are all important and CIVEA will be looking over the coming months to see if it can enhance the benefits of membership to make it even more appealing, particularly to private members.

Having been involved in various ways with the enforcement industry for the last fourteen years I look forward to the next year with anticipation. There are challenges ahead but CIVEA and indeed its predecessors, has never shied away from facing them and will work to ensure that the voices of all enforcement agents are heard by those who need to listen.

BEAT THE BAILIFFS AND THE BANKS – THE NEW THREAT TO BRITISH JUSTICE?

Colin Naylor is Managing Director of Dukes Bailiffs Ltd and Publications Editor for CIVEA.

Are technology and lack of Police knowledge combining to make enforcement harder?

There's little doubt that debt recovery and enforcement have become more difficult over the last decade. Whatever the reasons for this – and there are many – despite the law being changed, the Enforcement Agent's role is more complex than ever.

Technology: a double edged sword?

The use of technology has been a boon for enforcement companies. Communication with debtors is now much easier through email, SMS and automated voice messaging. Updating of case notes via iPads is real time and verification of enforcement practices through body-worn video cameras is now truly up to the minute.

But this technology is a double edged sword. The amount of information accessible by each of us has risen exponentially over the last ten years. When the cause is good, the spread of information is positive. However, the internet and particularly social media are being exploited by those who want to avoid paying and by those who want to exploit people in debt.

One such group – Beat the Bailiffs and the Banks – have transformed their threat from online to street level and are now turning up to confront enforcement agents in the course of their duties. The group 'encourage' their members to be 'lawful'. However, there are clear discrepancies between both their actions and the advice they give on their website and the reality of the law of the land.

Obstructing an Enforcement Agent

These discrepancies, which include a misunderstanding of Enforcement Agents' rights of entry, wouldn't be a problem if all Police Officers were up to speed with the law. The new regulations created an offence of "obstructing a person lawfully acting as an enforcement agent" – a description which surely captures the essence of this group's raison d'etre?

After some initial confusion and reluctance, this law is now being used by the Police. My company Dukes recently saw a successful conviction of two debtors working together to obstruct one of our enforcement officers.

Police must be fully informed

Watching the *Beat the Bailiffs and the Banks* videos, one has to feel some sympathy for the Police. If enforcement agents feel their job has got more difficult – then Police Officers must feel even harder done by. Their role seems to be judge and jury as well as peace-maker and counsellor. That said, Police Officers must be fully informed and not swayed by political arguments from groups who use the law of the land only when it benefits them.

It is crucial that Enforcement Agents remain professional in the face of intimidation. We have to allow the Police to do their job to resolve potential breaches of the peace. But we also need to educate and ensure that the Police are not there to take sides, but merely to apply the rule of law. This way, members of groups like Beat the Bailiffs and the Banks will hopefully be stopped and seen for what they are.

A cursory glance at their website (which espouses how to avoid paying your TV licence) explains all too clearly which camp this group is in: WON'T PAY rather than can't pay.

Enforcement Agents in the News

ARMED SIEGE MAN THREATENS BAILIFFS

The York Press

A man from a village near Selby is beginning a two year long suspended prison sentence, after he sparked a three hour long armed siege at his home.

The 65-year-old from Kellington pleaded guilty to charges of affray and possession of a firearm with intent to cause fear, when he appeared at York Crown Court on 8th December.

The court heard that the father-of-two, an experienced union representative, had lost his temper when two bailiffs appeared at his rural home demanding payment for a council tax debt he knew nothing about.

He feared the pair would start to take belongings from his house, and brandished both an eight inch knife and an air-rifle at the pair threatening to shoot them. When armed police arrived a siege began, and although the Defendant did not use the weapons again it was three hours before he surrendered peacefully.

Sentencing, the Recorder of York Judge Stephen Ashurst told him the two bailiffs had simply been trying to do their job, and added:

"Your response to the bailiffs was to behave in an extreme, violent and potentially dangerous way."

"If an offender had confronted you with a knife and then a fire arm, and issued foul mouthed threats to shoot you, I imagine you would be the first to expect the courts to deal with them in an appropriate way."

Prosecutors told Judge Ashurst that once he was arrested, The Defendant was unremorseful and said he would do the same if bailiffs appeared again.

For the Defendent, defence barrister Glenn Parsons said his client realised this was a serious incident, and added: "It is something of a personal tragedy for him to be before the crown court."

The judge said he would take the Defendant's previous good character and health problems into account. He handed a four month prison sentence for the charge of affray, and a nine month sentence for possession of a weapon with intent to cause fear, with the two sentences to run concurrently and suspended for two years.

COUNCIL TAX DEBT – STILL LOOKING FOR ANSWERS

Edward Ware is Media Relations Manager at StepChange Debt Charity

We are still in a very difficult place on debt, with households struggling to recover from a long period of stagnant incomes and rising costs of many essentials. As a result we have seen a big increase in the number of people with debts on household bills.

StepChange Debt Charity is seeing a particularly large rise in the number of people seeking help with council tax debts – a more than fourfold increase since 2009, with more than one in six of the people we see having council tax arrears. Research by the Money Advice Trust last year found local authorities referring debts to bailiffs on 1.8 million occasions in the previous year.

Given this, we believe that public policy makers need to take a hard look at how council tax enforcement is working right now. Are local authorities and enforcement firms helping households towards sustainable and affordable debt solutions; or are council tax recovery practices driving people further into financial difficulty?

Our joint report with The Children's Society, The Debt Trap, found 33 per cent of indebted parents we polled saying their local authorities were 'not helpful at all' – the highest of any of the sources of help we asked about.

A more recent poll of StepChange Debt Charity clients asked people what they did when creditors didn't give the help they needed. Six in ten said they took out more credit to pay bills, including high cost payday loans. Nearly one in three said that they would pay an unhelpful creditor's bill by falling behind with other bills. This can help fuel a vicious circle where debts, hardship and harm quickly escalate. Problem debt can cause poor physical and mental health, lost employment, homeless and relationship breakdown. These wider consequences of debt create large social costs that have consequences for us all. We estimate the social costs arising from the 3 million or so people currently struggling with debt are around £8.3 million.

With all this in mind we need to question whether the current protections for people in financial difficulty are working as they should. There is some very good practice by some local authorities, but it seems clear that Government guidance and the LGA protocol of council tax collections is not embedding this consistently or thoroughly.

Likewise, it is not clear that the April bailiff reforms have been fully effective in stopping bad practice. At the MALG conference we heard some advisers saying that it had become easier to get bailiffs to accept affordable offers. But the reforms fall well short of the straightforward procedure to suspend enforcement action we see with other debts.

We are still seeing cases where people are reporting bad practice by bailiffs such as mis-stating entry powers, aggressive behaviour, refusing instalment proposals and escalating enforcement – issues the reforms are meant to address. It may be that these problems are becoming less widespread and we look forward to the Ministry of Justice review for an answer to this; however when compared to the regulatory action we are seeing with consumer credit, the bailiff reforms may already be behind the curve.

So there is work to be done. StepChange Debt Charity is calling for the next Government (who ever that may be) to look again at council tax collection as part of an action plan to prevent millions more households from falling into unmanageable debt.

Debt Awareness Week runs from 26th January – February 1st 2015. For more information, visit www.stepchange.org

IN HOUSE ENFORCEMENT – A LEVEL PLAYING FIELD?

Paul Caddy is Managing Director of Phoenix Commercial Collections

Since the implementation of the Tribunals Courts & Enforcement Act earlier this year, there has been much discussion of the merits of in-house enforcement operations, with a number of authorities expressing their intention to take the services in house, justified on the grounds that this allows the Authority to deal more flexibly with debtors and provide greater protection to the vulnerable. The surplus of income, or in private sector terms profit, that is now perceived to be available under the new TCE fee structure also features prominently in the reports that I have read.

Turning firstly to the profit issue, the fees for enforcement were formulated following detailed analysis of the costs of providing a private sector enforcement service and included a target profit margin. The costs of providing an in-house operation were not tested during the Ministry of Justice's analysis and as many of the costs are already incurred by a creditor elsewhere in its billing and collection operation, it is legitimate to ask whether a local authority creditor should be seeking to adopt a fee schedule formulated for the private sector.

> *"There is a strong argument that a public sector creditor has no additional costs to recoup at compliance stage"*

An examination of the activities that were identified as necessary during the compliance stage illustrates that these are not additional cost activities for a creditor. For example:

- Receiving instructions and creating case files. The creditor already has a case file on its core system.
- Confirming debtor's details. The creditor should have completed this task prior to undertaking recovery action.
- Producing status reports and probability scoring. It is reasonable to expect that the creditor had completed this task prior to initiating recovery action.
- Issuing of notices. The public sector creditor will as a matter of good practice issue notices prior to enforcement action, therefore notice processing costs are covered by the core process.
- Payment Processing. These activities are core activities already undertaken by the creditor.
- Managing Payment Plans. This activity is a core creditor function and accordingly the associated costs are incurred prior to enforcement.
- Liaising with the creditor. The creditor will not have to liaise with itself.
- Receiving correspondence and dealing with complaints. These activities are already conducted pre-enforcement.
- Returns Administration. There would be no return process for a creditor enforcing its own cases.

There is therefore a strong argument that a public sector creditor has no additional costs to recoup at the compliance stage, as such costs are already provided for in their normal operating budget and accordingly it creates a profit margin for the public sector in excess of that intended for the private sector, which must constitute an unintended consequence. This is something that I am sure the Ministry of Justice will examine in their 12 month review.

Furthermore, as the trigger for charging the compliance fee is the receipt of the instruction to use the TCE procedure, how are in-house operations going to satisfy this requirement if they are part of the creditor organisation? If they are not properly separated the criteria to raise a fee is not satisfied and accordingly the compliance fee is not chargeable.

A further issue which I think needs to be addressed is the potential conflict of interest that exists with respect to in-house operations. Will there be sufficient independent review and oversight of an in-house team and how can stakeholders be given assurance that the decision to move to enforcement is based on an appropriate objective escalation decision rather than the commercial considerations of the additional fee income.

There is a risk that creditors with an in-house operation may be pressured to fast track cases to enforcement in order to generate additional revenue, revenue over and above the summons cost that will have been added to a liability order, without the creditor necessarily incurring any additional costs or undertaking any additional work. I know that this situation is being closely monitored by the advice sector and I am sure that April 2015 will produce a flood of

freedom of information requests seeking details of issued Liability Order numbers, to establish if those creditors with newly established in-house operations progress a higher proportion of overdue accounts to enforcement.

Is there any substance to the suggestion that an in-house operation provides greater protection to the vulnerable?

Private enforcement companies are subject to rigorous controls and are accountable to clients; have invested in specialist vulnerability training, for all staff; have designed and implemented multiple stage compliance processes, supported by contact centres with multi-faceted contact strategies to identify vulnerability early in the process.

How many of the proposed new in-house operations can demonstrate a similar level of investment, or have the specialist sector skills to provide an effective enforcement service?

There are many excellent, experienced in-house operations, such as those at Bradford and Brighton; the question is whether the new entrants will have the knowledge and experience gained within the existing services through many years of practical experience. What safeguards are in place to ensure that the public are not at risk due to any potential knowledge gap within these new service providers?

I wonder whether there are any contingencies in place to address the possible income shortfall that will occur if the new teams can't match the collection performance of the private sector. If revenue collections drops, as experience of similar initiatives suggest - whose budget will be reduced or which services will be cut as a result?

I have heard that some in-house operations only issue the notice of enforcement prior to making an enforcement visit, whereas most private sector Enforcement Agencies issue a number of reminders and make outbound calls; utilise SMS messaging; utilise diallers for contact campaigns; email and other contact strategies to facilitate contact prior to escalation. If it is correct that in-house teams will only issue a single NoE, then this is surely evidence of reduced flexibility, rather than greater flexibility?

The private sector has invested significant sums in sophisticated strategies to support debtors through the compliance process in recognition that many of our customers lead chaotic lives and as a consequence will not keep to an arrangement without constant prompts, review and support. I would hope that the new in-house operations will be able to demonstrate similar levels of support.

In terms of comparative performance analysis, the fact that almost without exception the proposed in house teams state that they intend to send out of area and "difficult" cases to the private sector, means that there will clearly not be a level playing field in terms of fees and complaint volumes.

> *"if compliance cases are "syphoned off", Enforcement and Sale stage fees will need to increase significantly"*

If the in-house operations attempt compliance on all cases, regardless of location or perceived difficulty, then the private sector is only going to be dealing with those cases that require escalation and accordingly will have a far higher proportion of cases at the enforcement stage – will this be presented by some, as evidence of the private sector being more aggressive? This impression would clearly be incorrect, but we all know the maxim about statistics!

I have written previously that I believe that if an in-house operation undertakes compliance on cases when they have no intention to undertake the full process that they would be vulnerable to a criminal fraud charge, a risk I would not want to take if I was a director of finance.

If the private sector is only to be instructed on cases where an in-house operation has been unsuccessful or did not want to deal with a case due to perceived difficulty, then private sector companies are necessarily going to be subject to higher complaint volumes – another fact that might be used selectively to "bash" the private sector.

The potential for distortion of the market for enforcement services presented by an increase in in-house operations may prove to be one of MoJs "unintended consequences", as the current fee structure was designed using the data and enforcement profile that existed pre TCE, if that profile changes, then the fee model will need to be reviewed and if compliance cases are "syphoned off", then the Enforcement and Sale stage fees will need to increase significantly.

In common with all members of the Enforcement Profession, I welcome competition and am confident that if judged on equal terms we will be able to provide a more efficient, cost effective and flexible service than that provided by the new entrants. My concern however is that creditor subsidised operations enjoy a financial advantage and that only a partial view of performance will be presented and accordingly there will not be a level playing field.

TRACING: CREATING CONNECTIONS THROUGH 'ELASTIC SEARCHING'

Alan Golob is Head of Collections & Recoveries at Callcredit Information Group

When it comes to contacting debtors and securing payments, one of the most difficult challenges the industry faces is trying to quickly and efficiently trace the correct person. As consumer information changes over time or due to variations in the data held on an individual – whether that be their name or address - tracing agents are often left with the task of locating the right person with limited information.

Most current tracing tools will only return a match if there is information on exactly the same input data, meaning deviations to a debtors name for example "Tom" instead of "Thomas", will not be returned. The rigidness of such tools means the tracing process can often be time consuming and costly, with out-of-date data and agents having to repeatedly enter information into multiple input fields in order to find an exact match. This leaves tracing agents sifting through lots of consumer data and having to undertake a process of elimination, which could possibly cause customer detriment along the way, in order to find the people they need.

As a direct consequence to these challenges, a number of new solutions have been bought to the market place. These provide automated tracing processes using things such as public data, address links, financial associates and Big Data searching technology to establish connections between people, places and things such as mobiles, emails and landlines. All of such data has been appropriately obtained for use in validation and tracing purposes and make the results returned more intuitive and reliable.

By allowing for "elastic searching" to capture not only exact matches but also those individuals with similarities, these new technologies can identify any data entry errors or name and address variations. By then ranking and scoring all the results with the most relevant at the top, it's easier for tracing agents to make quicker and more informed decisions.

By combining traditional credit data with marketing datasets in this way, tracing agents now not only have immediate insight into the whereabouts of debtors as well as the best way to contact them; ensuring that the debt is resolved as quickly as possible, but also the likelihood of mistracing a customer is dramatically reduced by over 40% in some cases.

As the Financial Conduct Authority continues to put pressure on the Collections and Recoveries industry, it's more vital than ever that businesses use all the data that is available to them and use solutions that are not only cost effective and accurate but also compliant.

As a business the ongoing challenge for Callcredit is to ensure that we keep pace with what the market needs, with growing volumes of data and the increasing requirements of the end user. The future for the successful implementation of any new strategy is to ensure that we derive the maximum benefit both from the data we hold and from the advancements in technology.

THOUGHTS FROM THE LOCAL GOVERNMENT OMBUDSMAN

Andrew Hobley, Assessment Team leader at the Local Government Ombudsman (LGO)

The number of complaints we have received at the LGO about bailiff action has dropped since I last wrote, and many of those complaints we do receive are along the lines of 'they knocked at the door and charged £235' – which as we know is legal.

A fall in complaints can mean one of three things – clearer processes, better complaint handling so more cases are resolved earlier, or cases being headed off before they get to us. And, while not ruling out the later options early signs are the new Regulations have made matters much clearer for complainants and reduced areas of legitimate dispute.

Since I last wrote the LGO has still not found fault with bailiff action taken under the Taking Control of Goods process, although I am aware of some cases where investigations are still in progress and this may change.

There has been a steady trickle of decisions where we have found fault with bailiffs' actions under the old regulations. I expect this will continue for some months as complaints about pre-April 2014 action work their way through council and then our complaint processes. There is little point drawing out 'lessons learnt' from these decisions; many involve errors in fees, but the law has changed and things moved on. But some issues are still relevant.

A bailiff sent Bob a Notice of Seizure for a PCN. Bob contacted the bailiff and the council and said the car registration on the PCN was not his. The council told Bob to contact the police and the DVLA; it did not investigate his complaint.

The bailiff contacted Bob saying if he disputed the warrant he should contact the council, but if the council asked them to stop action they would. A few days later Bob showed the bailiff evidence from the DVLA that he was not the car's owner. The bailiff explained that when tracing the debtor its system had thrown up Bob's details. The bailiff removed his details, apologised and said the company would not contact him again about the matter.

Bob complained to the council whose response was to tell the bailiffs to contact him about compensation, but they did not check if the bailiff replied. After Bob chased the council the bailiff offered £50 and a further apology. Bob did not cash the cheque, came to us and we made enquiries. The council said that it had failed to investigate his original complaint and had it done so the further contact from the bailiffs would not have happened. It offered £400 compensation for its faults, which we considered to be a suitable settlement.

I think the bailiff's response was appropriate here, if a little late, but it is a fine example of a council not taking proper responsibility for investigating complaints about its contractors.

THE (PARKING) TIMES THEY ARE A-CHANGIN'

David Smith ACIM
Head of Public Affairs and Research
British Parking Association

To say that the parking profession is in a state of flux would be an understatement. Constantly evolving and adapting, it has changed significantly over the years, whether by necessity – with new laws and customer demand driving better management and provision of parking services – or whether through advances in new technologies, helping shape and provide better understanding of the parking needs of communities, authorities and motorists.

Some things however never seem to change and those who seek to challenge the profession do so on a daily basis. The media scrutinise those that manage and deliver parking services in an increasingly intense way and this year, we were even treated to a BBC fly on the wall documentary that sought to show us what parking was really like in the UK in 2014. The 4 programme series Parking Mad was greeted with a mix of disdain, cynicism and in places, mild appreciation for the work that is being done by local authorities, civil enforcement agents, landowners and adjudication services to try and effectively manage more and more cars wanting to park on our increasingly crowded island.

What it did show is that there is no one size fits all solution and what works perfectly well in one location will not necessarily be suitable in another. Educating the media and the public as to the differences between how parking is managed on regulated land and on private land continues to be a challenge. The launch of Know Your Parking Rights is just the start of a process which aims to provide clear, easy to understand information about parking rules so that motorists understand what to look out for to reassure themselves that wherever they park, they do so legally and compliantly.

There is no doubt that a parking story is a big draw for the public and the media knows this. Local news places the magnifying glass on parking on a daily basis. National news will inevitably turn the spotlight where it feels the motorist as a consumer is getting a raw deal, but without taking too much notice of what it actually costs to provide and manage a car park. As we know there is simply no such thing as free parking space but this message is often overlooked.

The campaigners, lobbyists, activists and bloggers will always be there to challenge, question, push back and generally hold up examples of poor practice and instances where our desire to raise standards is perhaps not holding true. That's healthy, and we always welcome feedback and constructive criticism so that we can improve our communication to members and the public. It's also our role to educate and inform, and ultimately ensure our members provide a better service for the motorist.

Throughout 2014 we have continued to raise standards through Park Mark®, the Approved Operator Scheme, BPA Model Contract, Healthcare Charter, Higher Education Charter, regular appearances in the media, consultation responses, successful lobbying of Government, collaboration with stakeholders and our overall commitment to see the parking profession grow and evolve. It will be interesting to see how much the landscape will have changed in another 12 months but for certain, the BPA will be at the centre, determined to ensure that our members remain represented.

LOOK TO THE FUTURE NOW, IT'S ONLY JUST BEGUN....

John Kruse has specialised in Enforcement Law for the last 25 years and produces Bailiff Studies Bulletin

What are the prospects for the ongoing development of bailiff law reform? The first eight months of the reformed regime have been surprisingly quiet, but it does not seem probable that this will continue, particularly considering the intention of the Ministry of Justice to review the law's impact from April 2015.

Overall it seems that changes are likely to be felt at two levels. The general structure of the sector may be shifting, whilst there will continue to be detailed adjustments and refinements to the legislation. Considering the broader perspective first, we may see some change in the focus of enforcement agencies. The deliberate attempt to move from enforcement to compliance, from taking control of goods to receipt of instalment repayments, appears to be reshaping firms. Moreover, features of the fee scale and of the regulations on taking control are likely to accelerate this rebalancing by making removals less commercially attractive and less likely to occur. A steep fall off in auction sales may already be taking place. Also, given the almost complete harmonisation of powers between bailiffs and HCEOs, the separation between the two parts of the sector may be increasingly eroded.

Secondly, at the level of fine detail, we cannot regard the new law as being a final version. It must be refined and adjusted in the light of experience, both by MoJ through consultation and by the courts through litigation. Another driver for change will undoubtedly be the growing familiarity of enforcement agents with the revised regulations. Because existing certificates were left in place, it will not be until April 2016 that all agents will have been trained and qualified under the reformed law. Until this point is reached, not every agent will combine a theoretical understanding of the new procedures with practical familiarity with the new rules. Only when this is achieved will all the implications of the changes be appreciated. Attention will probably fall in a number of areas:

- The latter stages of the taking control process, once again those concerned with re-entry, removal and sale, need to be finessed; there are too many loose ends and dead ends in the current regulations;
- The taking control process is a great deal more detailed and time consuming than was formerly the case. It is far more demanding in terms of technical accuracy than levies of distraint were and agents must adapt to these new expectations. Early experience suggests that there seems to be some doubt over the difference between removals for the purposes of taking control and removals for the purposes of sale, and that the clear separation made by the legislation between enforcement and sale stage are not wholly understood or applied.
- Fees on the whole are far less controversial than they were, but for those agencies still seeking to charge VAT against HMRC guidance, complaints and litigation are likely to persist.

The new legislation provides the foundation for a much improved enforcement regime, but the first version of the rules and regulations are not perfect. Further work based upon practical experience and changing needs is required, but we have taken the most important steps.

HOW TO BUILD A CHARTERED ASSOCIATION

Claire Sandbrook is a Director of Shergroup Legal

It is with a great deal of pride that I write my first article for Enforcement News to report that the Institute of Credit Management achieved its "Charter" status this week. This is by no means a small accomplishment and for which I am very proud as I write as a Vice Chair.

The CICM, as we should now refer to the Institute, has certainly had its challenges over the last decade as it has grappled with the changing role of professional associations to both maintain its membership and keep interest alive in the topic of credit.

But it has been both prudent and savvy in its approach. Firstly it appointed Master Robert Turner, the former senior Master of the Queen's Bench Division to be its President. Robert (I think I can call him by his first name) did sterling work in raising the profile of the Institute and travelled far and wide to support its members. Secondly it appointed Philip King as the Chief Executive. Philip's love of the subject of credit, his passion and commitment I think are now legendary. And also I hope are his totally objective approach to the subject in hand. He wanted from Day 1 to put the Institute on the map and he worked tirelessly to impress on Government and the members and every other imaginable stakeholder that good credit management was worth developing.

From these bases of knowledge, wisdom and practical experience the CICM has flourished.

So how does this relate to enforcement? Well firstly the subject matter of credit is a raw material for some of the business that is sent to enforcement agents to manage so there is a clear affinity with what enforcement officers handle in their businesses. Secondly the CICM kindly took up the challenge of creating professional qualifications in a most innovative way leaving the enforcement associations such as CIVEA and the IRRV in their wake. And thirdly and perhaps most importantly, the CICM provides true thought leadership on the subject of credit, and leaves vested interests and market share firmly at the door when it comes to promoting its interests.

How refreshing it would be if the enforcement associations could be seen to do this! As a former Chair of the HCEOA I argued for the Association to have a professional exam structure. I was fortunate to have the contacts through Philip and the wonderful Debbie Tuckwood of the CICM to do this. But I also wanted the HCEOA to be a pinnacle for the profession, one that led the way on all things to do with enforcement, and which did so in the belief that being an HCEO should be the icing on the cake of any enforcement officer's CV.

I think there is some way to go in getting to that point and yet enforcement officers need to be able to relate to one association which meets all the regulatory requirements and which has independence from the vested interests of those that make the decisions.

If we want an example of how this can be made to work and which carries influence and credibility then we need look no further than the CICM – a milestone in the development of credit not only in the UK but in the world. From the land that invented Sheriffs we could do well to follow its example.

DEMOCRATISATION OF ENFORCEMENT

Michael Jackson is Director of High Court Services at Marston Group

The democratisation of High Court enforcement over recent years is a good thing, says Michael Jackson, Director of High Court Services at Marston Group.

Debt recovery is something that affects everyone and without the ability to effectively recover debt, access to credit would simply dry up over time.

Traditionally High Court recovery has been a business-to-business service, but in recent years it has evolved becoming more accessible as the industry has professionalised, meeting the different and expanding needs of its creditors.

The impact of completing a transfer up process to High Court for enforcement is unquestionably a big benefit for small and large businesses. When debts are recovered efficiently and effectively it makes a real difference to cash flows and in some circumstances solvency. For the public services providers, it can be simply the difference between being able to provide some services or not.

There is often the perception that enforcement is the act of a big business demanding repayment of money by a customer who is often in difficult financial circumstances. However, it is also the creditor that is feeling the financial squeeze after the non-payment of a debt by their customer.

High Court in recent years has also played an important role in employment tribunal awards, where enforcement regularly supports individuals by helping recover money that is owed to them. Money without which could send them spiraling into debt, being evicted from their home or meeting the needs of their families. This is vital work and we congratulate the government for making High Court enforcement more accessible to people in recognition of the value it offers. Democratising the service is helping to challenge historic perceptions of enforcement and demonstrates the service and the value we, as a profession, are delivering to all aspects of society.

COMMERCIAL RENT CRISIS: IS CRAR FORCING LANDLORDS INTO LOCKOUTS?

A breath of fresh air blew across the world of enforcement last April, created by the new regulations implemented through the Tribunals, Courts and Enforcement (TCE) Act 2007.

The new legislation rightly addressed concerns about the lack of notice debtors received when being visited by enforcement agents and also sought to simplify charges across all types of debt into one standard structure.

Although the TCE Act has been successful in its main aims, there is unanimous agreement from managing agents, landlords and enforcement firms that the recovery of commercial rent is facing unintended consequences, driving many towards forfeiting leases rather than enforcing rent arrears.

The compliance stage which now starts the enforcement process commences with a Notice of Enforcement which provides debtors with 7 clear days' warning. The notice adds £75 to the amount owed and has been welcomed (and even lengthened) by creditors, including many local authorities chasing Council Tax.

> *"a number of commercial tenants are exploiting the new regulations"*

However, anecdotal accounts from landlords, managing agents and enforcement agents in the field is building strong evidence to suggest that a significant number of commercial tenants are exploiting the new regulations; in particular the 7 days' notice (in reality at least 10 days and often more).

- **Some tenants use the notice period to abscond**
  An absconding tenant leaves the Landlord with rent arrears, no tenant and no goods to seize, in other words a lose:lose situation.
- **Some tenants use the notice period to remove valuable goods**
  The removal of valuable goods leaves nothing of worth to Take Control of and therefore no assets to secure the arrears against.
- **Some tenants use the notice period as extra time to pay**
  With commercial rent arrears running in to tens (or even hundreds) of thousands of pounds, the penalty of only a £75 compliance fee is no deterrent to repeat this offence.

There is also the added complication of Landlords not wanting to put struggling tenants under further financial pressure – particularly those who owe large sums which would be subject to an additional percentage increase of 7.5%. For example, a tenant owing £30,000 in rent arrears would be subject to a percentage increase in enforcement fees of £2,137.50 on top of the £75 compliance fee and the £235 enforcement fee. This charge could be doubled if payment is not made until Removal/Sale stage making the total charge for enforcement nearly £5,000 – regardless of the level of input required from the Enforcement Agent.

The compliance stage of enforcement, whilst honourable in its aim, gives unscrupulous tenants the opportunity to avoid settlement without the requisite financial penalty. Forfeiting a tenant's lease is fast becoming a more desirable alternative for landlords who

> *"The new regulations appear to have made fraud considerably easier"*

can either rid themselves of problem tenants, or demand new lease terms upon re-entry. One further complication: the new regulations appear to have made fraud considerably easier. Enforcement companies are now facing the threat of falsified warrants where the 'landlord' and the 'tenant' are the same person. The 'debtor' pays via credit card at compliance stage but then claws the money back once funds have been remitted to the 'landlord'.

The new regulations have undoubtedly undermined the power property-owners once had. Managing agents and landlords are left with the option of risking everything through the remedy of Taking Control of Goods, or locking tenants out. The latter is the only truly effective way of putting balance of power back where it should be in rent arrears cases – in the hands of the property-owner.

shergroup legal

solutions for business

when the going gets tough

We are here to support enforcement agents with any kind of court proceedings which helps them and helps their business. Whether its an application to determine fees, or review exceptional disbursements, or handling claims by third parties and co-owners to goods that have been taken into legal control we are a specialist legal team with one mission in mind - to protect our clients.

Headed by Claire Sandbrook, the former chair of the High Court Enforcement Officers Association, and author of the leading text, "Enforcement of a Judgment" you can instruct shergroup legal to help you get it right when it comes to using the court system to protect your interests.

Our credentials include trailblazing on proceedings to deal with fee reviews, questions on human rights, extent of duties in relation to goods, and even Section 42(2) of the County Courts Act 1984 which came out of shergroup's research into the rules on allowing enforcement officers to enforce possession orders of the county courts.

We don't need to spend time researching the issues or the law - we are experts in getting to the heart of any issue. We are also supported by junior and leading counsel who are themselves experts and have helped us to develop a robust approach which is supported by the court.

We offer a no-obligation initial chat and then a sensibly priced initial fixed price review to give you your options. We can issue proceedings and applications to the court, and we can also help you defend unfair and frivolous claims and proceedings which may be taking up valuable time in your own business.

So when the going gets tough .... you can call us on

0845 890 9210

shergroup legal – making you the good guy!

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