

And finally Money Laundering.

In my view the Money Laundering Legislation has become utterly ridiculous. We can all quote numerous personal instances where an individual is personally known to everyone in a bank branch and has been for 20 years, yet identification of that known individual is still required under certain circumstances. I recently changed a Life Policy from one company to another and there was a small surrender value to be paid to me from the old policy. Before paying out- and I still have not received it yet at the time of writing, some three months later- I was informed that full identification of name and address from all three trustees as well as myself was necessary as it had not been obtained some 15 - 20 years ago when I took the policy out.

A bank branch manager was not allowed recently to verify that her father was her father without full identification as under the Money Laundering Regulations!!



What irritates me more than anything is that the people who are really money laundering are most likely laughing their heads off at this legislation as they walk around it, through and over it to their hearts content. Follow the Rules or go to prison says the legislation. Don't take any notice of the unnecessary frustration and stress caused to innocent individuals not the money launderers.

It is not so much the enforcers or regulators of the legislation that in my view are the problem it is the legislation itself, coupled with this British attitude – follow the rules, follow the rules, follow the rules or what?

Much of the content of this article appeared first in The Score.

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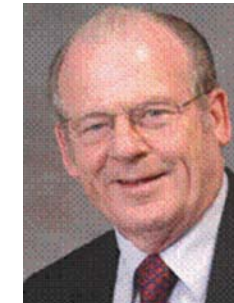
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Enforcement news



The President's View An Illustrious First Century.....

As the Enforcement Services Association (prior to February 2003 designated the Certificated Bailiffs Association) prepares to celebrate its centenary in the spring of 2006, it is perhaps opportune to pause to reflect on the not inconsiderable influence this Association has had on the evolution and professional development of the enforcement profession in England and Wales.



In the absence of long awaited and much needed legislative reform the ESA has undeniably driven up standards. This has been achieved by a thorough vetting of new applicants, a challenging pre-entrance examination, and a pre-requisite to adherence to a strict code of practice underpinned by the Association's independent complaints procedure.

As we await the dawn of a new century, in what will be "uncharted waters", we invite stakeholders to play a more inclusive role in matters which may have an impact on our profession!

Here's to a Double Century

Article by Islywn Lewis-Jones
 President Enforcement Services Association

Driven forward by an Executive Council, the democratically elected members of which are highly respected enforcement professionals drawn from a whole range of backgrounds from within the industry, the professional status of its members is higher today than at any period in the Association's long and illustrious history.

ENFORCEMENT NEWS

This special ESA newsletter has been produced on behalf of the Enforcement Services Association. Statements made and opinions expressed do not necessarily reflect the official views of the Association nor does placement of advertising imply endorsement of any service or product.

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ENFORCEMENT SERVICES ASSOCIATION

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This article reports on the development of a new qualification structure for Enforcement Agents / Bailiffs to replace the ESA's current examination.

Background

In accordance with the White Paper an "accredited professional association" will need to: (a) be an authorised training provider and (b) deliver appropriate training to agreed standards. The ESA will therefore, be obliged to apply for authorisation to administer formal training courses and qualifications.

Any qualification has to be approved by the Qualifications and Curriculum Authority (QCA) and run in partnership with a QCA accredited body. The Institute of Revenues Rating and Valuation (IRRV), who have already obtained QCA "approved" status, were identified as the ESA's preferred partner.

The new qualification structure has been designed so that all Enforcement Agents may study for a "Practising Qualification". This certificate may, then be the minimum standard obtained in order for an individual to be granted a license to enforce debts under the proposed legislation. The structure will also need to be further developed to allow for Continuous Professional Development (CPD) and a further (non-compulsory) more detailed qualification (Technician level Qualification). It is sensible to introduce the Practising Qualification first and then undertake further work and develop the rest of the structure afterwards.

A meeting was held with representatives of the Department of Constitutional Affairs in September 2004 and they implied that any

proactive development of a qualification would be more likely to assist in the accreditation of ESA as a Professional Association in due course. We are also seeking a meeting with representatives of SIA to discuss the qualification structure however the SIA are reluctant to meet until they are given legislative powers to oversee the Bailiff profession.

The Practising Certificate

At the IRRV Conference in October 2005 the concept of the new ESA/IRRV Practising Certificate will be presented to delegates. Some key points regarding the certificate are -

- The Practising Qualification will be in the format of a Vocational Related Qualification (VRQ). This means the Qualification is gained by doing module assessments or tests throughout the course work.
- There are 5 levels of qualification awarded by QCA. We are seeking accreditation for the Practising Qualification at Level 2 which is at a level that gives the individual a broad understanding of several basic concepts needed to undertake his/her duties. The Technician Qualification (when developed) will be at Level 3.
- There will be no "passporting" or "full exemption" from the current ESA qualification into the new Practising Qualification.
- Funding will be sought through the Learning Skills Council to keep costs of enrolment down.

Syllabus Framework

The syllabus will cover the several aspects of Bailiff work including -

- Communication Skills and Conflict Management
- Health & Safety
- Basic Principles of Law

- Law relating to the Origination of Debt
- Various Laws of Distress including the National Standards

The Laws of Distress will have a choice of questions to allow all Bailiffs to take the qualification. It will not be restricted, as the current exam is, to 90% rent questions and 10% local taxation.

Study Aide Material

It is anticipated that the course study time will be in line with other SIA "professions" e.g door supervisors - i.e. approximately 28 to 40 hours. The media of studying will be by Electronic Aide Study on a PC. The IRRV have already successfully produced a Benefits Training Aide "Euclidian" and the ESA/IRRV Practising Qualification Training Aide is being developed in a similar way.

Timetable

The current timetable is primarily dependant on the study aide material being finalised and signed off by the ESA and IRRV. The Practising Qualification will be officially launched when individuals can be given the study aide immediately after enrolment. The realistic timetable for the introduction of the ESA/IRRV Practising Qualification is, therefore, expected to be some time in 2006.

It is hoped that the SIA will recognise the work undertaken by ESA and IRRV in raising standards even higher in our profession through the development of the new ESA/IRRV Practising Qualification.

David Cornes
ESA Examination Sub Committee

Author: Anthony M.G.Sharp FICM Consultant, Anthony Sharp Associates

We are a strange race of people, we Brits; aren't we? We believe so strongly in following the Rules regardless, because otherwise "it is not cricket." Take the world of food hygiene. Walk into any supermarket or food shop in the UK and more often than not you will see the shop staff all decked out in incredibly attractive plastic hats with equally sexy plastic gloves. I have no doubt that as soon as Europe tells us we must also wear plastic masks, they will be worn. Italy, Spain, France, I do not think these three countries serve you with a baguette or joint of meat all wrapped up in EU plastic sheeting!!

What about our world of debt collection, The UK, true to form brought in the Data Protection Act on 28th October 1998, as required by the EU Directive of 1995. France I believe has just passed a Data Protection Act- this year!! I rest my case.

Such a commitment to the Rules has interesting implications which possibly is why we so often have to use the phrase "the law is an ass"- but we have to follow it.

The DTI- who?

Soon after the Election in May, you may remember we had the farcical two changes of name to a Government Department arbitrarily decided upon by our Prime Minister- presumably with not much consideration for the cost. The Department of Trade & Industry became, for a day, the Department for Productivity, Energy & Industry; then it changed with a further 24 hours to The Department of Technology and Innovation; finally, as a result of a public outcry at the stupidity of the idea, returning to its old title.

Clamping

I have no doubt that many of you may be aware of the confusion that has arisen over the bringing into effect (3rd May 2005) of Schedule 2 to The Private Security Act 2001, as amended by The Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2005. Yea, yea you say, I can quote it by heart!

Let me explain. This legislation was brought in to combat rogue clampers- a very laudable purpose. Unfortunately Government did not look beyond the end of its nose. It has made a release charge for the removal of a clamp on a vehicle on private property illegal, unless the clasper is registered with The

Security Industry Authority. In theory it is fine. However, firstly the Department for Constitutional Affairs who were consulted on the matter many months ago, by the bailiff industry assured certificated bailiffs that it did not refer to them. Now they have consulted Counsel and have changed their mind!

Clamping cars in this way by certificated bailiffs just happens to be a very useful way of 'encouraging' payment of Government and other debts. Shooting themselves in the foot, comes to mind. Up to a few weeks ago the DCA were still floundering in their own mire. It does not seem to me that anything particular is going to be done about regardless of the concentrated lobbying by your own organisation the ESA. Maybe they cannot do much as it is written into legislation. Rules, Rules, Rules!
To complete this picture of mayhem

, it is important to realise that the SIA are still being incredibly slow in dealing with all the bailiff applications for registration. (I have just been informed by your worthy Director that, after a little persuasion, Her Majesty's Court Service have agreed that certificated bailiffs are only required to obtain a licence if they charge a separate release fee after the debt and all other bailiff charges have been paid.) How very generous!

Data Sharing

Two recent items that caught the news recently regarding our friendly Data Protection Act that I thought might make you either laugh, scream or cry.

As a part of the credit industry's serious efforts to make data sharing via the credit reference agencies more comprehensive, the Industry wants to encourage Banks to share current account information. Ah well, now there is a problem. For those current accounts that were opened prior to the Data Protection Act 1984 coming into effect, no consent has been obtained from the customer for such data sharing. Door closed. The Industry is now busily trying to persuade Government to amend the Data Protection Act. I get the feeling that they are not too interested. So much for Government's joined up efforts to encourage responsible lending.

The Information Commissioner has recently ruled that where a County Court Judgment has been registered against an individual, but the data is poor ie possibly no initial and an incomplete address, then, although in many cases that Judgment is plainly obvious as to whom it refers, it must not be taken into account when that individual applies for credit anywhere. Don't worry about responsible lending.

As summer draws to a close and we look forward to the dark days of winter, this may be a good time to reflect on the performance of the state organisations in dealing with the issues which currently concern not only the enforcement profession but also the wider public.

There was much disappointment at the failure of the Courts and Tribunals Bill to find a slot in the Queen's Speech. The Department for Constitutional Affairs apparently still remains hopeful of finding parliamentary time for its inclusion. However, although this is a long session of Parliament (it will not end until Autumn 2006) there are already 50 items of legislation promised in the Queen's Speech, many of which will be highly contentious and occupy a lot of parliamentary time. Furthermore, the terrorist attacks in London during July will almost certainly produce emergency legislation to tackle terrorism and those who would perpetrate it. Again, much of this will be controversial and further parliamentary time will be taken up in considering it. Therefore, in spite of the DCA's assurances, I remain to be convinced that, come next summer, we will be celebrating (I think that is the word!) the arrival of the Courts and Tribunals Act 2006.

However, let us for the moment suspend reality and assume that such an event actually occurs. Here we are in summer 2006 awaiting the secondary legislation leading to the licensing of enforcement agents by...The Security Industry Authority! Do I hear a collective shudder throughout the profession? Yes, I believe I do. This is not the place to comment on the security industry's experiences of dealing with the SIA. Many of you already have first hand knowledge of the various licensing programmes within that field. What concerns many within the enforcement profession is the SIA's readiness to take on what will be a mammoth task and one which could be fraught with difficulties.

You will all be relieved to learn that I am not going to relate the sorry tale of the little local difficulty experienced with the SIA (and by extension Her

Majesty's Court Service) over the issue of licensing for enforcement agents immobilising vehicles on and/or removing vehicles from private land (note the careful use of words!). After much discussion, the exchanging of e-mails and correspondence and the obtaining of legal advice, the SIA finally accepted that an enforcement agent did not require a licence for the removal and storage of vehicles seized on private property. Only if, after all other charges have been paid by the debtor, the enforcement agent charges a separate release fee would he or she require a licence.

The SIA have gone to some pains to assure the ESA that when the time comes for it to consider the licensing of enforcement agents it will consult widely and at length on all aspects of the licensing regime. We can only hope that assurance is fulfilled and that they are prepared to keep an open mind until the views of all those involved have been gathered. There are none so deaf as those that will not hear.

Talking of those that will not hear you will all be aware of the Office of Fair Trading's Debt Collection Guidance and the Formal Compliance Review which it is currently carrying out. The OFT's previous threat to withdraw the consumer credit licence from enforcement agents who, in their opinion, breached the Guidance caused not a little concern within the profession. Whilst there is an argument for saying that those involved solely in the business of enforcement do not actually require a licence, many perform other duties which do and the OFT's threat was very worrying. What was particularly annoying however, was that in many instances an enforcement agent could find him or herself in breach of the guidance simply through following the guidelines set out in the National Standards for Enforcement Agents. After some persuading the OFT accepted that there could be conflicts between the two documents although it pointed out that the National Standards do not have the force of law whereas the Debt Collection Guidance does. Finally, the OFT agreed that, where there was a conflict between the two sets of guidance, it would seek to clarify the situation in talks with DCA

before making any final ruling. As the National Standards are expected to form the basis of any secondary legislation leading to the licensing of enforcement agents it will be interesting to see what happens when the statutory rules conflict with the OFT's guidance. We may be faced with the dubious prospect of the SIA and OFT trying to negotiate. Did I hear somebody mention something about the blind leading the blind?

Hidden away in the dark recesses of Parliament's website is a section dealing with the activities of the various select committees. Under the section dealing with the House of Commons Select Committee on Transport you will find the heading "Finding a Space for Parking Policy". This slightly strange title is the heading to a press notice announcing the Committee's investigation "into the current effectiveness of parking provision and enforcement policy". The inquiry results from the increased number of local authorities adopting decriminalised parking enforcement coupled with concern that there is very little guidance on enforcement, resulting in an adverse public reaction to the system. There have been many references to the new system being a "cash cow" for local authorities. When coupled with the adverse publicity recently given to the enforcement of parking, especially by television, it is perhaps little wonder that the Committee considers this to be a subject worth investigating.

In a previous report of the Transport Committee entitled Traffic Law and Enforcement, it was recommended that the Government issue guidance to local authorities about the enforcement of traffic contraventions. The recent press notice states that the Committee:

"Advised that this guidance should ensure proportionality in enforcement and proper discretion in applying measures. As more local authorities adopt decriminalised parking enforcement there is a risk that public perception of parking may deteriorate if action is not taken to promote the legitimacy of parking control and transparency in the way orders are enforced."

Parking fines hit record

The number of parking tickets issued to London motorists has risen by 500,000 to a record six million - a total greater than the adult population of the capital who are old enough to drive.

The number of cars clamped is up by almost 50 per cent to nearly 146,000. Half of them were towed away, says evidence from the Association of London Government to an inquiry by the London Assembly into parking enforcement.

The figures coincide with fresh warnings that abuse to parking inspectors is rising sharply as frustration among motorists mounts amid concern that parking tickets are simply a council revenue-raising tool.

The recently compiled figures show the number of penalty charge notices issued in London has increased by 50 per cent in just four years. During the 12 months to April 2000 just over four million were dispensed to London drivers. Even so, councils claim they are only catching a small percentage of the estimated 50 million parking offences committed in the capital each year.

Violence against parking attendants is also a record. More than three are attacked every day. In the last six months attendants have been shot at and run over in 'parking rage' attacks.

Searching For A Parking Space? Look In Cyber Space

An internet car parking scheme, said to be the first in the world, is linking Melbourne commuters with empty driveways and car parks.

A financial boost for the owners, the scheme has attracted hundreds of listings in just a few weeks. But it faces potential regulatory problems, with one council wondering if it is legal.

Last month, Melbourne entrepreneur Francis Armstrong launched www.findacarpark.com, an internet car park market that is based in Melbourne but operates nationwide.

The website is based on a simple idea. Property owners with vacant car spaces can advertise them for rent, and commuters seeking cheap parking can use the site to look for a vacant space.

The parks on offer are a mixture of private driveways and car spaces in apartment buildings.

Under the scheme, the car park tenant pays rent to findacarpark, the website subtracts a commission and passes the money into the car park owner's bank account.

However this new scheme is not without its detractors. The Mayor of the City of Yarra, Kay Meadows, warned yesterday that the scheme appeared to be in breach of the council's planning code.

"The City of Yarra is seeking legal advice about this issue, and we have

also referred the case to our traffic enforcement branch," she said.

Cr Meadows said that under the planning scheme for residential zone-one properties, a car park at a suburban house was required to be used as a residential car park.

She also is concerned that residents could rent out driveway spaces and then get council parking permits to park their own car on the street.

A South Yarra resident, Andrew, 29, conversely liked the idea.

"I thought it was a good way to save on rent, given that my car park was empty during the day," he said.

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Delivering an Equitable Funding System for Local Government

The Lyons Inquiry has completed the gathering of evidence for the final report. In finalising the recommendations I hope there is a structured response that includes the overriding principles that determine the structure of local government funding. Whilst the following list is not necessarily exhaustive I believe it creates an excellent foundation for any reform.

Local taxes should be related to ability to pay.

The concept of “ability to pay” should be related to the assets, not simply the income, available to taxpayers to meet their liabilities. Governments throughout Western Europe are currently moving away from taxation of earnings and income, and towards taxing the use of resources.

The Council Tax is an improvement over its predecessor in taking account of ability to pay, but has only a limited relationship to resource use. The value of a property in band H (the highest Council Tax band) is at least eight times the value of the property in band A, but the council tax bill is only three times higher. There are strong arguments in favour of adjusting the ratio of council tax bills between the bands, and possibly for the introduction of more council tax bands or using individual discreet values. The role of the “benefits” system should not be overlooked in the overall operation of the Council Tax; even though the application process can be complicated it does go a long way to linking tax liability to the taxpayers needs and resources.

Local taxes should be easily understood.

Taxpayers need to be able to understand their tax bills. Such an understanding is essential if public support for a given tax is to be maintained. It is worth noting that local authorities are required by law to accompany their council tax demands with extensive explanations of how the

tax bill has been calculated, and how the tax revenue will be spent. This is a requirement that is not placed on the Inland Revenue when collecting other taxes on behalf of central government! The process by which a Council Tax bill is calculated for a particular property is relatively easy to understand - the higher the band for the property, the higher the bill. It is not so easy for Council Tax payers to understand why Council Tax bands are currently based on 1991 property values.

Evidence from experienced rating advisors indicates that one of the most confusing aspects of the rating system, from the point of view of ratepayers, is the arrangement for transitional relief. Transitional relief exists in order to insulate ratepayers from large year-on-year variations (up or down) in their rates bills, which can arise as a result of five yearly re-valuations. But the current arrangements have the effect of obscuring the relationship between the tax base and ratepayer's tax liability.

Local taxes should be administratively efficient.

The property tax is a good example of administrative efficiency. In particular the costs of maintaining the tax base and costs of collection are very low relative to the yield. The property tax in the United Kingdom can boast excellent performance in all aspects of administration with high rates of collection (one of the best in year collection averages in the world), accurate tax base quality and very low losses and costs of collection.

Local taxes should be difficult to evade and avoid.

The property tax meets these criteria in that land and property are certain in terms of location and existence. It is therefore relatively easy to maintain an accurate register of land and buildings and, depending on the statutory definition of a taxpayer, an accurate list of taxpayers.

Local taxes should be impartial between one taxpayer and another.

The relevant comparison for local taxation purposes is between taxpayers located within a given local authority area. The fact that, for example, a band D council tax payer in Merton pays a different council tax bill to a band D council tax payer in Manchester, in no way undermines this principle. All band D council taxpayers in Merton, who have similar circumstances, face the same bills.

The ‘benefit’ principle of providing local services states that “those who benefit from locally provided services should make some contribution towards their cost; those who contribute towards the cost of locally provided services should benefit in some way from them” should be considered.

The extent to which those who benefit from locally provided services should bear the full cost of that provision would always be a political decision. Both central and local government politicians have a legitimate interest in the degree to which a particular service should be subsidised by those who do not benefit directly from its provision. Concluded that “businesses already pay charges for services which can be clearly costed, such as water and energy use. A much-expanded system of charges for other local government services is neither technically feasible nor politically desirable.

There should be a “basket” of taxes available to local government

Local taxes should be a mix of stable and predictable sources such as the property tax and a range of alternative buoyant sources of revenue to reduce the gearing effect.

Local taxes should be economically efficient in that local taxes must try to avoid perverse distortions of taxpayer behaviour.

The economic efficiency argument is often cited in the context of local sales taxes and cross-border shopping. There is an upside to creating economic distortions though. Society may want to affect individuals', households' or firms' behaviour when markets are working badly. For example, the obvious case is when the market left to itself leads to environmental problems. There is plenty of evidence that government can ‘right’ the market by the use of taxes that distort people's behaviour for the good. A very good example of this is the congestion charge in London.

Local authorities should be accountable, i.e. locally determined expenditure should be funded by locally determined taxation.

The property tax has one particular advantage over other taxes in that it provides a reasonably clear and effective system of accountability to the electorate. The tax base varies only marginally from year to year and, therefore, increased expenditure by regional governments or local authorities often results in high taxpayer awareness of the levels of tax, however this can be obscured by the gearing effect.

The Layfield report on Local Government Finance argued that for “local authorities... to be accountable they should be responsible to their electorates for both the expenditure they incur and the revenues they raise to finance it.”

In recent years only 20% of local authority funding has come from locally determined taxation. 80% of local authority income is determined by central government. A local authority that wishes to raise its total spending by 5% must raise its Council Tax by 25% a ‘gearing ratio’ of 5:1.

Most local authorities are prevented from raising their spending by budget capping, giving them almost no

effective influence over their own local tax levels. For a realistic democratic choice at local level, electors should be able to choose between different ‘packages’ of taxation and spending. The current financial regime limits the range of options available to the electorate, which is undesirable if public interest in local affairs, and involvement in local democracy is to be maintained.

Local government functions should be determined within a clear constitutional framework.

The patchwork reform of local government in England has left an inconsistent pattern of local administration, with a mixture of single and dual tier authorities. This can be contrasted with the reform process in Scotland and Wales where a uniform structure of unitary authorities has been created. The Institute believes the reform process in England should be completed. The creation of a consistent pattern of unitary local authorities would enhance local democracy and improve efficiency.

Central government grants should be used to narrow the gap between authorities with differing resources and needs.

‘Resource equalisation’, as currently operated, aims to ensure that, for a

given level of spending need, authorities with different tax bases, spending needs and unit costs, are able to levy similar rates of tax. It is usually achieved by adjusting the amount of central government grant that each local authority receives. For instance, it would not seem fair for the City of London, which has a business rate tax base that is greater than the whole of Northern England, to retain 100% of its rate income, for the sole benefit of its 5,000 residents!

As a general principle central government grants should be inflation linked and recognise and recompense any shift in responsibility from the centre to local administration.

Central government grants should be general rather than specific.

If local government is to be autonomous, it should retain as much control as possible over the purposes to which its resources are devoted.

The extensive use of specific grants reduces the scope for local authorities to set their own priorities for spending and service levels in response to local need.

Article By: David Magor OBE Director of the Institute of Revenues Rating and Valuation

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Finding a Space for Parking Policy

The Government's transport strategy gives little priority to parking policy, yet most drivers have experienced difficulties finding a place to park at some point, and increasing numbers of local authorities have applied to the Secretary of State for powers to take over aspects of parking enforcement from the police.

About a third of local authorities in the UK have adopted decriminalised parking enforcement since the mid-1990s, and parking fines raised nearly £1 billion in 2004. Surpluses generated by parking fines can be kept by the local authority for transport related spending. More flexibility on how the surplus could be spent was introduced with the Transport Management Act 2004. Concerns have been raised over the standard of enforcement activity undertaken by some councils and contractors, in particular there have been suggestions that wheel clamping has been used inappropriately, and that the surpluses that can be raised through parking enforcement have become the main motivation for local authority parking control.

The former Transport Committee in its report on Traffic Law and Enforcement recommended that the Government issue guidance to local authorities about the civil enforcement of traffic contraventions. It advised that this guidance should ensure proportionality in enforcement and proper discretion in applying measures. As more local authorities adopt decriminalised parking enforcement there is a risk that public perception of parking may deteriorate if action is not taken to promote the legitimacy of parking control and transparency in the way orders are enforced.

In light of these developments, the Transport Committee has decided to inquire into the current effectiveness of parking provision and enforcement policy. In particular, the Committee will examine:

- Are local authorities carrying out parking control reasonably, fairly and accountably? How is performance evaluated?
- What action would raise the standard of parking enforcement activity? Is Statutory Guidance needed to promote consistency?

- Is the appeals process fair and effective? How could it be improved?
- Is it appropriate that local authorities should keep the revenue generated from parking fines? Is there any evidence that the opportunity to raise revenue through decriminalised parking enforcement has inappropriately influenced authorities' parking policy and enforcement activity?
- What criteria should be used to determine the level of parking provision that should be provided?
- What are the wider impacts of current parking policy and illegally parked vehicles?
- What role should parking policy play in traffic management and demand management?
- How can public understanding and acceptance of the need for parking policy be achieved?

The Select Committee has invited interested parties to submit memoranda and the ESA will be submitting a paper. By the time this magazine is published the closing date of 3rd October will have passed.

In my view there is no doubt that guidance is needed. The recent television programme showing some of the less savoury activities of parking attendants provides ample

justification. Furthermore, the Committee's use of the word "enforcement" will result in enforcement agents being associated with parking attendants and tarred with the same brush. The enforcement profession can ill-afford such a reputation and should welcome any action which helps to remove some of the excesses recently demonstrated on our TV screens and elsewhere.

In conclusion, you will note that I have headed this article "A Personal View" and that is exactly what it is. However, I would be surprised if most of my views are not echoed by the wider profession, even if there are differences of emphasis. If you disagree let me know.

Vernon Phillips
Executive Director Enforcement Services Association

Academics Call for Quality, not Quantity, in Parking Enforcement Regimes

With the operation of parking regimes continuing to attract considerable media coverage, and in many cases criticism, recent months has seen the publication of an independent report launched by the University of Birmingham which urges local authorities to put customer service and public accountability at the heart of their parking enforcement regimes in order to address the growing public discontent that is so widely reported in the media.

The report sponsored by NCP and produced by three eminent experts argues that councils should apply to parking enforcement the same standards of professionalism and commitment to customer service that they now routinely practice in other regulatory areas such as planning, environmental health and licensing.

The report argues that simple improvements such as more face-to-face customer service desks, prompter responses to correspondence and higher standards of communication generally would make a big difference for many motorists wishing to challenge the councils' actions.

It goes on to say that Councils, and their contractors, should also improve their recruitment and retention practices for parking attendants to build up professionalism. The emphasis should be on encouraging quality in parking enforcement by attendants rather than the quantity of tickets issued. One solution is to join up parking enforcement with other street management functions, by developing teams of multi-functional street wardens to deal with issues

such as graffiti, fly-tipping, abandoned vehicles, defects in street lighting, and other factors as well as parking infringements - this would encourage parking attendants to take more pride in their role.

A team from the University's Institute of Local Government Studies (INLOGOV) carried out the six-month research project to investigate the very best practices in council-run parking enforcement. Six authorities were identified and nominated by peers as demonstrating high quality practices: Winchester; Hammersmith and Fulham; Manchester; Cambridge; Weymouth and Portland; and Sunderland.

It is noted that problems have often arisen where contracts have based payments on the numbers of tickets issued, resulting in over zealous ticketing. The better way, as demonstrated in Manchester and Sunderland, is for contracts to incentivise 'correct ticketing' and the minimisation of enforcement decisions that end up becoming the subject of appeals.

The report goes on to say that Councils also need to raise their standards in dealing with appeals against tickets issued, with the report suggesting that local authority legal departments play a more prominent role in the process, to increase professionalism.

Finally, the report provides councils with a self-assessment method for evaluating the quality of their parking enforcement regimes, which takes account of the perceptions of local residents, businesses and motorists on the subject as well as quantitative and technical measures of performance.

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CSA A Tale of Woe?

The work and pensions secretary, Alan Johnson, has suspended plans to axe a quarter of staff at the Child Support Agency, but has hinted he may scrap it if its performance does not improve.

Mr. Johnson was responding to a damning report from MPs, which warns that it could take five years before the agency is "fit for purpose" and suggests it should be replaced if it does not turn its position around within weeks.

The report from the Commons work and pensions committee urges officials to consider alternatives, including "the abandonment option"; if the CSA's new £456m, computer system cannot be made to work. Staff is battling with a backlog of 250,000 cases.

Mr. Johnson said the government would consider "radical fall-back proposals" if performance did not improve after changes at the agency.

"Many of the committee's conclusions and recommendations accord with my own thinking," he said.

He said his department would meet its commitment to cut 30,000 jobs, but would not make major reductions to frontline CSA staff, 3,000 of whom were earmarked for departure, until the computer system worked effectively.

He added that collection of maintenance payments had improved by 10% since the committee took evidence.

Sir Archy Kirkwood, the Liberal Democrat chairman of the committee, said the CSA was "operating on borrowed time".

Nicola Simpson, chief executive of the association One Parent Families, said the agency's failure was "devastating" and encouraged a culture of non-payment by absent parents.

The CSA has struggled since its inception in 1993, with problems ranging from miscalculations to unprocessed cases.

It is pursuing outstanding payments totaling more than £720m, while a further £947m has been designated "unrecoverable".

CSA Enforcement Figures 2003-2005

Court Hearings	2003-04	2004-05	% Increase
Liability Orders	3385	5638	45.1
3rd Party Debt Orders	1395	1573	12.8
Charging Orders Applied For	922	1087	17.9
Committal Initial Hearings	331	617	86.4

In 2004-5, the annual report states that:

- 5047 cases were referred to bailiff action, resulting in collections of almost £3 million compared to 3063 producing £1.5 million in 2003-04
- 212 suspended committal sentences compared to 95 in 2003 -04
- 8 actual committal sentences compared to 8 in 2003 - 04
- 28 suspended driving licence sentences compared to 9 in 2003 - 04
- 5 actual driving licence sentences, compared to 1 in 2003-04
- Almost 8 million collected by enforcement teams. There is no comparative data for 2003-04

An enforcement directorate has been created with its own dedicated director to bring together enforcement teams, criminal compliance teams, court presenting functions and other court compliance functions under one national management. A re-structure has been carried out to demonstrate the higher priority now given to enforcement

Guiding the Guiders

By Kurt Obermaier of The Credit Services Association

Firstly, let us make our position perfectly clear. The CSA welcomes the OFT review, in the same way that it welcomed its original guidelines. We would, for example, very definitely like to see the process of Licensing tightened considerably.

What it does not welcome, however, is the unnecessary hype that has surrounded the review announcement, nor the inference in the press (some of whom should know better) that the industry has somehow chosen to ignore the OFT, as evidenced by its list of 'common breaches'. It will be interesting to see what further 'guidance' might look to achieve, that hasn't already been debated, discussed and agreed, and that isn't already being actively promoted by the Association.

The OFT's guidance on debt collection, issued in July 2003, sets out minimum standards for debt collection by those holding consumer credit licences. It describes unfair business practices that will call into question fitness to retain or be awarded a consumer credit licence. Applicants and licence holders are expected to abide by this guidance.

Since that date, the OFT has monitored compliance on a case by case basis, primarily on a reactive basis and responded to complaints, taking action as appropriate, including giving warnings or removing licences. Since 2003, 79 firms, we are told, have been warned about their actions, and 12 credit licences have been refused or revoked.

The most common breaches of the guidance identified by the OFT are:

- Pressurising debtors to pay in full, in large instalments or increasing payments when the debtor cannot meet the demand - an action already condemned in the existing

Code of Conduct by which all CSA members are obliged to abide

- Refusing to deal with appointed or authorised third parties such as CAB, independent advice centres or money advisors - an action similarly already covered by our Code.
- Failing to investigate and/or provide details as appropriate when a debt is queried or disputed, possibly resulting in debtors being wrongly pursued - again, covered by our Code
- Disclosing or threatening to disclose debt details to third parties without being legally entitled to do so - an action not only covered by our Code, but perhaps more importantly, illegal!

As part of the compliance review the OFT will issue a questionnaire to current licence holders involved in debt collection including creditors, Trading Standards and free/independent advice agencies. The OFT will write to previously consulted bodies, key stakeholders and other interested parties, inviting comments and opinions on compliance with the guidance and how it is used in practice. There will also be a form available for consumers who wish to make a complaint against a licence holder or applicant.

Again, this is to be encouraged, and the OFT should itself look to work ever more closely in liaising with such bodies as Trading Standards and Citizens Advice Bureau.

It is interesting to look at the 79 firms who have been warned about their actions, and the types of breaches they are allegedly guilty of. There are, in our minds, two key questions to consider: 1). Of those 79 firms, how many are actually debt collection agencies or members of the CSA and 2). What breaches are they guilty of that

aren't already covered in the CSA's existing Code of Conduct?

Our assessment of 'the 79' shows that most are not, in fact, debt collection agencies but rather individual companies, firms or lenders being over-zealous in their pursuit of debt. The irony here, of course, is that they might not have had any such accusation levied against them if they had chosen to use a professional debt collection agency in the first place! Our assessment of the 'common breaches' is that there is not a single issue raised that isn't covered by our own Code, and that therefore the 'guidance' required for any would-be collector is already very much in place.

The Government is trying hard, so it says, to tackle the issue of over-indebtedness, and encourage consumers to have a more responsible approach to debt. We understand this, and understand how advice to debtors is a key element in financial recovery. The OFT states that: "the compliance review will also raise awareness of the guidance amongst those in debt, who are some of the most vulnerable consumers. If they are experiencing unfair treatment we want to know so that we can tackle that unfair conduct." We agree. But we must be very careful on the one hand to urge the consumer to be more responsible, and then on the other put strictures in place on the collections industry that might end up doing the very opposite.

The guide is a very useful document, and one that the CSA actively endorses and promotes. We see it as complementing our own Code, rather than being in competition against it. Our Code works well amongst our members, and would encourage the OFT to look at extending it across the whole industry.

This article first appeared in Credit Today.

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Improving Individual Voluntary Arrangements

In a report recently published by The Insolvency Service an independent working group has put forward plans to increase access to individual voluntary arrangements

Representatives from the insolvency profession, creditors and advice providers formed a working group to look at ways of improving access to IVAs and offering those in debt an appropriate method to address their problems whilst offering creditors better returns than bankruptcy. The working group's report recommends simplifying individual voluntary arrangements using changes to both industry best practice and insolvency legislation.

Back Ground

Individual Voluntary Arrangements (IVAs) were introduced by the Insolvency Act 1986 as an alternative to bankruptcy. It was envisaged that they would provide a rescue and rehabilitation process for 'business generated' personal insolvency. Since their introduction there has been a large increase in the availability of credit and, as a consequence, increasing numbers of individuals with debt problems. Over time, non-traders have become the main users of the various debt solutions for individuals, including IVAs.

Stakeholders have suggested that shortcomings with the IVA process have caused many debtors to seek to resolve their debt problems by alternative (and less appropriate) means. Against that background the Insolvency Service commissioned Michael Green of the University of Wales, to carry out research into IVAs, which was discussed at a seminar.

In September 2004 a stakeholder

working group was formed to consider how the IVA regime could be improved, and has now produced a report into their findings.

The Report

The Working Group has concluded that the current IVA regime should remain in place for trader and more complex cases. However, to increase the accessibility of the IVA, the Working Group recommends the introduction of a streamlined, lower cost simple IVA regime (SIVA), which is more suited to the needs of those experiencing financial difficulty today.

The simple IVA is a two-tier system, entry being dependent on debt levels. It is aimed at those indebted individuals with debts below £75,000 who have sufficient income and assets to make payments to their creditors, but are currently unable to enter into an IVA due to, amongst other things, the level of their debts or the attitudes of their creditors.

For those with debts below £25,000/30,000 the Working Group recommends the introduction of a SIVA1. An individual with debts of less than £25,000/30,000 would be eligible to enter a SIVA 1 without creditors voting on the proposal, subject to there being a better return than bankruptcy and the debtor paying the maximum affordable contribution. A non-voting structure, combined with simplifications recommended later in the report would reduce costs and therefore offer a better return to creditors than a traditional IVA.

The SIVA 2 is designed for individuals with debts above £25,000/30,000 but below £75,000. In these cases, creditors would be able to vote for or against

the proposal (but not make modifications), acceptance being by a simple majority vote, rather than the current 75%.

To ensure the integrity of the scheme debtors whose conduct has been irresponsible, reckless or dishonest would be barred, and creditors would retain the right of appeal to the court.

The Working Group also recommends a number of other changes to working practices which would not only facilitate the introduction of the SIVA regime but also improve the efficiency of the current IVA, some of which may be adopted quite easily as they do not require a change in legislation, these include: -

- Improving the publicity and profile of the IVA process.
- Clearly identifying who provides IVAs
- Having a standard Executive Summary
- Having standard terms and conditions
- Meeting with the debtor
- Standardised failure and termination clauses in an IVA
- The debtor's home
- Windfalls
- Reducing the role of the court
- Removing a creditor's right to modify a proposal
- Having standard guidelines on assessing a debtor's income, expenditure and sustainable contribution to an IVA/SIVA
- Removing the requirement for a physical meeting of creditors
- Requisite majorities
- Introducing a time limit for creditors claims
- Allowing the supervisor some discretion when varying the arrangement
- Electronic communication and payment
- Keeping creditors informed

Enforcement Around the Globe

Now here's something bailiffs don't get to seize everyday; bailiffs in South Korea drove a ramp vehicle and climbed up the steps to slap a seizure notice on the side of a jumbo jet just before take-off at Incheon International Airport.

The plane, owned by Phuket Airlines had numerous debts with Korean airlines and related businesses. It had been stranded for some days because Korean firms had refused to supply fuel and onboard meals. The debts totalled 1.2 billion Korean Won, that's about £650,000. I understand the plane was later released when counter claims were made and has now been chartered to fly Japanese troops out of Iraq.

Bailiffs in Rotorua, New Zealand have been very pro-active catching fine defaulters. Teams of bailiffs have been scouring the streets and driveways and randomly checking number plates to see if the vehicle owners owe fines. The fines outstanding range from parking to criminal offences. Collections manager Ken Runciman said; "Parking tickets are much easier to pay at \$10 (about £4) than waiting until we wheelclamp at a cost of \$140 (£55)".

In Tel Aviv, the bailiff's office have taken this a stage further by registering seizure notices against a debtor's car even if the creditor applying for the warrant does not know the car's registration number or even if the debtor owns a vehicle. Under this new ruling, a confiscation order is registered in the debtor's name and the Vehicle Licensing Bureau (VLB) has to provide details of any vehicle owned by the debtor. It appears this step has been taken because in the past the VLB has been reluctant to supply vehicle details to the bailiffs.

If only we could get the DVLA here on the same wave-length!

And did you know that in Finland, you cannot even hire a DVD or video if you have an outstanding debt to a utility company, as your social security

number is cross-linked to a debtors' database. A similar system is used in China. When a car is having it's annual MoT, a search is made to see if motoring fines have been registered against the car. If so, the car is not released until all the fines are paid.

In Antwerp, a bailiff found a neglected child alone at a house he called at to take repossession. The 3 year old boy was seriously neglected and had been lying in his own excrement. The boy is said to have the mental age of an 18 month old and suffering from a mild form of Downs Syndrome. The twist to this story came when the father of the boy reported to the police that he had seen a stranger, possibly a burglar enter his house 'via his webcam'. It seems that the parents used a webcam to watch the boy whilst they ran their café business. The parents now face a 3 year prison sentence.

Here at Brighton, the bailiffs liaise and report on child and adult protection issues. Often, the bailiff is the first contact these people have with officialdom and we can then bring them to the attention of social services. A vital role that is sometimes overlooked.

In Cameroon, bailiff chambers went on strike earlier this year after receiving no allowances from the government and had for sometime been using their

own money to prop up the service. In some areas, bailiffs had been unpaid for up to 2 years. There seems to be little sympathy though as many people accuse them of targeting the poor whilst accepting bribes from the rich.

In Ukraine the government has decided to privatise the bailiffs and make them independent of the Justice Ministry. Whilst in Bulgaria, the recent general election has temporarily delayed the Private Executions Act. This act will overhaul and privatise most of the bailiff function although the court bailiffs will be retained but offered a lesser role.

And Finally

In Helbra, Germany a debtor attacked bailiffs attending his house with a chainsaw. As the 'deranged' man chased the bailiffs he also threw home-made gas bombs at them. Police later arrested the 52 year old man. He has been charged with attempted manslaughter amongst other charges. A police spokesperson said: "We've had a number of repossessions before but never had anything quite like this."

And we think we have it tough.....

Article by Barry Minnie Senior Bailiff Brighton and Hove Borough Council



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OFT to review compliance

with its debt collection guidance

Background

A review to find out how the OFT's guidance to debt collectors has changed behaviour in the sector has been launched by the OFT.

The OFT's guidance on debt collection, issued in July 2003, sets out minimum standards for debt collection by those holding consumer credit licences. It describes unfair business practices which will call into question fitness to retain or be awarded a consumer credit licence.

Applicants and licence holders are expected to abide by this guidance.

Since July 2003 the OFT has monitored compliance on a case by case basis, primarily on a reactive basis and responded to complaints, taking action as appropriate, including giving warnings or removing licences. The compliance review seeks to probe in more depth compliance levels across the industry.

In 2003 there were approximately 270 debt collection businesses, of which 130 were members of the Credit Services Association (CSA) and it had £3 billion referred to its members for collection. In 2005 there were approximately 500 debt collection businesses, of which 200 were members of the CSA and it had £5 billion referred to its members for collection. These figures relate to business as well as consumer debt.

It is reported by the OFT that the most common breaches of the guidance seen are:

- pressurising debtors to pay in full, in large instalments or increasing payments when the debtor cannot meet the demand
- refusing to deal with appointed or authorised third parties such as CAB, independent advice centres or money advisors
- failing to investigate and/or provide details as appropriate when a debt is queried or disputed, possibly resulting in debtors being wrongly pursued
- disclosing or threatening to disclose debt details to third parties without being legally entitled to do so.

As part of the compliance review the OFT has issued a questionnaire to

current licence holders involved in debt collection including creditors, Trading Standards and free/independent advice agencies. The OFT has also written to previously consulted bodies, key stakeholders and other interested parties, inviting comments and opinions on compliance with the guidance and how it is used in practice. There is also a form available for consumers who wish to make a complaint against a licence holder or applicant.

Penny Boys, OFT Executive Director, states

'Our guidance sets out practices we view as unfair and relevant to fitness of those holding consumer credit licences. We have some evidence of non-compliance and also examples of changes in behaviour as a result of the guidance. This review will give us a clearer picture of compliance levels across the industry. The compliance review will also raise awareness of the guidance amongst those in debt, who are some of the most vulnerable consumers. If they are experiencing unfair treatment we want to know so that we can tackle that unfair conduct.'

A report on this review will be published in Spring 2006

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Enforcement and the Press

As levels of consumer credit race past the £1tn mark the enforcement industry has never been more high-profile. When enforcement professionals are being presented in a relatively sympathetic light on the television then this is all for the good. But when the papers are running stories about bailiffs behaving badly then there is a problem.

From the smallest to the biggest firm there is very little that can bring down a business faster than negative press attention.

Sadly there is no magic wand to wave to make the media write nice things about you but there are some fairly simple things that you can do to understand the media better and to give yourself a better chance of presenting yourself in a positive way.

These broadly split into two sections – one covering what you can do internally to improve your image and then secondly one on how you can work more affectively with journalists to get across the messages you want.

In terms of how to prepare, I would point to these key ideas:

- Be informed. Make sure you know the rules and best practice and be aware of what is on the horizon. This will generally mean reading widely both in print and online and attending industry conferences.
- Make sure all your staff are aware of the rules. This can be trickier than many companies think. It is easy enough to understand that your employees heading out of the office to meet customers need to be aware of, say, the Data Protection Act but what about your receptionist? She will probably speak to more clients than anyone else but has

anyone ever thought to teach her what she can and cannot say?

- Make sure you check this regularly. As staff come and go it is all too easy for new people to go without the right training.
- Join a trade association so it can affectively put your views across to government and the press. Also actively get involved with your association. I do not know about the ESA but I do know that some other trade bodies are finding it hard to encourage their members to take part in their committees and this severely undermines their lobbying activity.
- Actively consider your media policy right now (i.e. before the problem arises) and make sure all staff are aware of it. Particularly who do you want to be answering media enquiries?

So you are faced with a situation where a journalist has come to you asking difficult questions, or else you have a story of your own that you would like to place. Again a few basics will stand you in good stead:

- The first rule is do not panic! Many journalists will try and put the pressure on to have you answer questions there and then. You might well need time to collect your thoughts. Any journalist should be happy to take you through what they want to know and then have you call them back in five minutes when you are more settled. But please be aware of the journalist's deadlines and stick to them.
- Always do give some kind of response to questions. If you do not say anything then the journalist will not be able to put your point of view and human nature is to assume the worst.

- Be aware that making outrageous comments to a journalist and then mentioning at the end of the conversation that "oh that was all off the record" will not help you with many journalists. Different publications will have different policies on this but in general unless you are a very regular source for the magazine and have a long-term relationship with the journalist, do not say things that you would not wish to appear in print.
- If you want to place a story in a particular magazine or newspaper, talk to them first about what they need. This will first help you to find and build a relationship with the right person to send material to but it will also help to avoid a situation that all journalists dread where someone has simply written an article without talking to them first and then present it and expect it to go straight in. This only leads to disappointment all round. You need to be sure from the journalist, what aspect of your story, if any, is of interest to them.

- Do not forget the trade press! Maybe I would say this, but in general terms it can feel very glamorous to have your story in the national newspapers but in general terms the trade press will understand your issues better because they are working with them every day and should be interested in what you have to say.

These are only some first steps to think about but the key messages are: be prepared and informed; stay calm and try to understand what the journalist actually needs.

Stephen Kiely, editor, Credit Collections & Risk
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