

# Enforcement news

## Conspiracy or Clanger

The previous edition of Enforcement News noted several issues which, if examined in conjunction with others, might lead you to believe there is a conspiracy to redirect much of the private sector's workload to that of the State employed sector.

Following its publication, such theories were ridiculed by some and explained as simple errors by others.

The fact that the White Paper, Effective Enforcement, understated the size of the private sector market by some 34% and might, therefore, have been an attempt to portray a relatively small marketplace in which the State sector could play a significant role that perhaps it could not in a larger and more demanding market, was not enough to convince the sceptics.

It was pointed out that errors in compiling such a [comprehensive] document were inevitable and this had been demonstrated by contradictions between pages 114 and 129.

Although at page 114 the figures for council tax and non domestic rate are

reasonably accurate they are, according to CIPFA 1999-2000 figures and not 2000-2001 as stated. (CIPFA figures also suggest a 2% year on year increase in council tax liability orders issued and passed to bailiffs.)

The total market issue according to page 114 is 2,084,018, whereas on page 129 it is stated as 2,277,959.

The ESA calculated the 'correct' 2001 figures, using mainly official sources, at 3,441,094. Only one element was drawn from a non-official source, that of the issue of warrants by magistrates' courts.

The White Paper noted this as 569,400 on page 129, while omitting any mention of magistrates' courts warrants on page 114. The ESA calculated (prior to the White Paper's publication) that the number for 2001 was 750,000.

One would expect the Department of Constitutional Affairs (DCA) to have accurate data for magistrates' courts and that, accordingly, the ESA is wrong and the White Paper is right.

However, in July 2003 a Regulatory Impact Assessment was published by the DCA in respect of the Courts Bill.

Under 'Competition Assessment in Section 115 of the RIA, it states, "We estimate that magistrates' courts issue around 750,000 distress warrants and around 100,000 arrest warrants annually".

Clearly this supports the accuracy of the ESA figures in that the market segment is larger than stated in the White Paper's PRIA and is, most probably, just another error.



### ENFORCEMENT NEWS

This special ESA newsletter has been produced on behalf of the Enforcement Services Association on the occasion of the IRRV Enforcement Conference. 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.

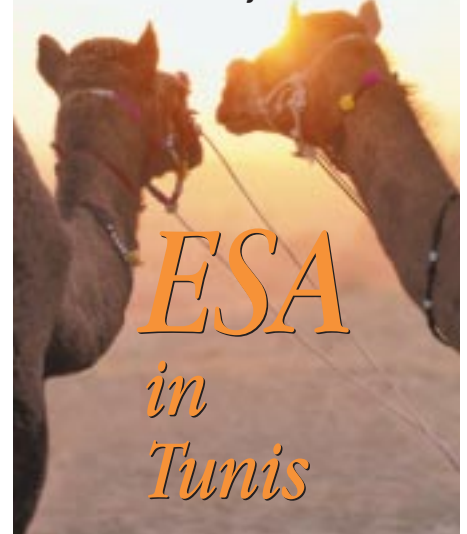
Editor - **Mike Garland**

Production Team: Vernon Phillips, Trevor Harvey & Dave Cornes



**ENFORCEMENT SERVICES  
ASSOCIATION**

*"Globalisation of law in an area of  
universal justice"*



The Enforcement Services Association attends the 18th Congress of the International Union - page 2

### Contents

**Conspiracy or Clanger** page 1

**UIHJ** page 2

**Magistrates' Courts** page 3

**Local Government Bill** page 4

**Courts Bill** page 6

**White Paper** page 8

**Fee Uplift** page 10



The Union Internationale des Huissiers de Justice et Officiers Judiciaires (UIHJ) or the International Union of Bailiffs, held its 18th Congress in May 2003 in Tunis at the invitation of the President of the Republic of Tunisia, Monsieur Zine el Abidine ben Ali.

Tunisia is one of 23 African member states of the UIHJ and welcomed the many delegates with spontaneity, warmth and friendship.

Regrettably, the existence of the war in Iraq and the SARS virus had the affect of reducing the size of delegations from member states but all were at least represented.



One sad and notable absence was that of Alexander (Sandy) Walker, Permanent UK Secretary of the Union, our colleague from Scotland who was known and respected by many in the enforcement profession and to whom the ESA is especially grateful to for his work in preparing the Association for membership of the UIHJ.

Sandy died unexpectedly the week before the Congress and though his funeral took place on the opening day, board members Roger Dujardin and Leo Netten (Vice-Chairman) flew to Scotland to represent the UIHJ's grateful members.

A moving eulogy was given by fellow Scot and General Reporter of the Congress, Roderick Macpherson.

While the Congress theme was, in simplistic terms, the 'The Development of Global Justice' and debates contrasted between the progress of some states and the total vacuity of others, a lengthy paper entitled 'Scotland: A *shrinking espace de justice* for the *huissier (bailiff)*' was of particular note.

In ending the paper Mr Macpherson wrote of the Scottish 'situation', "Possibly there is some influence of English law and practice. It is sometimes thought that basic English attitudes are hostile to the officer's function being seen as any proper part of the 'legal profession'.

"The assumption that enforcement is an occupation more akin to tradesmen such as caterers and cleaners contracted by courts, rather than professionals like solicitors and barristers is widespread.

"It has been said that bailiff action in England & Wales is viewed as a shadowy occupation, faintly disreputable at best and not something which is ever likely to be in political vogue - unless it is to curb further the activities of bailiffs.

"Whilst a commentator could point to Scotland as, in an important respect, a 'blueprint for reform' in England & Wales, now the situation has been turned around.

"On 1st February 2003, the Certificated

Bailiffs Association changed its name to the Enforcement Services Association. Its President wrote that this was because, 'it is inevitable that certificated bailiffs will be replaced by licensed enforcement agents; the Association was taking early action because it intends to be a the forefront of the Government's initiative for regulation of the enforcement industry.'

"So one suspects that the title of Enforcement Officer - instead of messenger-at-arms and sheriff officer - found its inspiration outwith the jurisdiction of the Scottish legal system.

"Although never complacent about Scots law's reputation amongst United Kingdom experts, it nonetheless seems fair to suggest that one used to have some cause for national pride in our diligence system and the officers who operated it. Yet pointing as a form of diligence, reformed so recently as in 1987, was denounced in [the Scottish] Parliament by a Minister of the Crown as 'truly archaic, inhumane and deeply offensive; and now the Scottish officers may be set to lose their names, their very history.'

*It is interesting to note that shortly after Mr Tommy Sheridan introduced the infamous Bill to abolish poindings and sale in 1999, the UIHJ had offered its support to the Society of Messengers-at-Arms and Sheriff Officers to help defend their position. At the time, our Scottish colleagues and their political and corporate supporters could not imagine the real outcome and declined the offer.*

*At the latest UIHJ meeting, the Conference of Presidents in Paris on 25 September 2003, the Senior Vice-Chairman, Mr Leo Netten stated there was a 'huge change of bailiff law in progress in England & Wales' and proposed that the International Union assist the ESA in combating any proposals which would be detrimental to the UK's private sector bailiffs.*

*The meeting supported the proposal which was welcomed by the ESA's President.*

*During a discussion later in the day, Jacques Isnard, the Unions President and Roger Dujardin, Board member from Belgium, reaffirmed the Union's support for the ESA and hoped to arrange a visit to the UK in the near future.*

**BS EN ISO 9002 Quality Assured**

*Dependable  
Reliable  
Efficient*

**Jacobs**  
Certificated Bailiffs

Established 1959  
Full members of ESA & ACEA

*We adhere to the  
Lord Chancellor's  
National Standards for  
Enforcement Agents and  
make a REAL difference  
to our clients'  
collection levels.*

FOR FURTHER DETAILS Tel: 0151 491 0190  
Simon Jacobs BSc MESA  
David Carnes IRRV MESA

Richmond House, 129 Victoria Road,  
New Brighton, Wirral CH45 2JJ

Fax 0151 638 8529  
e-mail info@jacobsbailiffs.co.uk  
www.jacobsbailiffs.co.uk

Offices in Wirral, Hull and Stockton-on-Tees

# Magistrates' Courts Enforcement Review

In June 2003, the Department for Constitutional Affairs published its 'Review of Magistrates' Courts Enforcement Strategies - Final Report'.

Among other matters, the Review (regarding enforcement of financial penalties) sought to compare performance levels achieved by the public sector with those achieved by the private sector. It also considered the implications of the creation of the Unified Courts Administration and the role of Fines Officers under the draft Courts Bill.

The first point of note is that the comparison between in-house civilian enforcement officers (CEOs) and private bailiffs, or Approved Enforcement Agencies (AEAs), is somewhat misleading in suggesting that the in-house option produced better performance at less cost than private sector provision.

The Final Report (FR) states that the average total cost of executing arrest warrants was 19p per pound collected using in-house CEO's compared with 29p per pound collected using AEA's.

The FR goes on to note that the range of total cost varies from 8p to £1.41 (per pound collected) for CEOs to 20p to 41p for AEAs which may have something to do with the fact that the bulk of enforcement undertaken

by the private sector is distress (rather than arrest) which is currently a free service as for as the courts are concerned.

While the FR concludes that 'the public sector option appeared to be, on average, more cost effective', it did not, nor could it, compare like-for-like. It did not mention in the specific comparison, distress which accounts for the lion's share of enforcement activity

In another area of the FR, the cost to MCCs in managing and administering distress warrants (all of which are undertaken by the private sector) is 12p per pound recovered.

According to its figures elsewhere, the private sector clears around 29% of the 750,000 warrants issued.

Clearly then, the actual cost of making at least two abortive calls on each of the failed 532,500 warrants (over one million attendances) is met by the private sector.

Using the industry estimate of 40% warrant misdirection, at least half a million of these calls would have failed even using arrest warrants.

Taking these realities into account, it would seem that magistrates' courts have a somewhat impressive deal with the private sector.

## PAINFUL CONTRACTION

Since the publication of both the White Paper and the Courts Bill and subsequent concerns over the potential contraction of private sector enforcement in favour of state employed bailiffs (i.e. county court bailiffs), representatives from DCA and in particular, the Court Service, have denied the existence of plans for county court bailiffs to undertake all enforcement under a Unified Court Administration.

Notwithstanding such assurances, the FR notes, 'County Court Bailiffs have a good record of performance and some professional structure within the Court Service'.

It goes on to note how direct comparisons between county court bailiffs and private bailiffs is not possible (although it seemed possible earlier in the FR when addressing cost) but that the work 'bears many similarities and it is envisaged in the Enforcement White Paper that enforcement in these two [public - private] areas will continue to converge.

'Prior to that, DCA intends to take advice on the legal implications of closer working (e.g. the powers of a county court bailiff to execute magistrates' courts warrants)'.

## REVIEW NOTE

The Review states that collection agencies (debt collectors rather than bailiffs) would be unable to handle the complexity of fines enforcement activity. It also stated that there is a 'large number of AEA / bailiff organisations operating in England & Wales' and cited Intrum Justicia and Granada Financial Services as 'among the largest players in this market'. Unless the enforcement industry has missed something, neither of these organisations have any contracts to provide bailiff services anywhere in England & Wales and if Reviews such as this are designed to inform future decisions which will shape the enforcement industry and the livelihoods of those in it then Heaven help us all.

## Option 5

The Review's favoured option for improvement to the collection of financial penalties is Centralisation of Collection and Enforcement - Option 5.

This would see the responsibility for collection and enforcement policy and processes held centrally and 'merged with the collection strategy for civil enforcement'.

**Does civil enforcement mean county court enforcement?**



*Bespoke service built to  
match our customers' needs*

Equita has a proven reputation in the collection of Local Government taxes. Our continual investment in new technologies ensures Equita's unrivalled service delivery and collection success.

**Equita**  
*The total debt management solution*

For further information, please contact the Marketing Department:  
Equita Ltd  
42-44 Henry Street, Northampton NN1 4BZ  
T: 01604 250116 F: 01604 633489  
E: [Info@equita.co.uk](mailto:Info@equita.co.uk) W: [www.equita.co.uk](http://www.equita.co.uk)

# Local Government Bill

Regulations 7 & 8, Council Tax (Administration and Enforcement)  
(Amendment) Regulations 2003 (Annex D)

The White Paper, Effective Enforcement, was the Government's package of proposals to reform enforcement, a major part of which was to introduce a unified law. This will, it proclaims, enable 'straightforward effective warrant enforcement'.

The Government department dealing with this 'modernisation' is, of course, the Department of Constitutional Affairs - DeCAff.

While all aspects of the White Paper are being considered, improved, amended and generally dissected by all and sundry, the Office of the Deputy Prime Minister (ODPM) has issued a consultation document on the above Regulations 7 and 8.

In a wonderful display of joined up Government and public expenditure, the Government (in ODPM) proposes changes to enforcement law which DeCAff may or may not be aware of.

Proposed Regulation 7 requires bailiffs to hand to the debtor or leave at the premises, a copy of the letter that was sent (under current Regulation 45a) at least 14 days before the visit. The letter, by regulatory requirement, advises, among other matters, that if payment is not made within 14 days, distress may be levied and further costs incurred by the debtor.

One imagines the only purpose this serves is to remind debtors that they were warned of the consequences of non-payment. Fine, but who pays the costs? Potentially, this could mean a million copy letters at a conservative figure of .02p per copy or an additional burden [to bailiffs?] of £20,000 per annum.

Regulation 8 is more welcome in the scheme of things in that it will require written information to be left at the debtor's premises when making a visit which attracts a fee. The industry supports the principle though the detail (as ever) is not ideal. Some of the information required to be left such as contact information regarding the local authority 'to which a complaint relating to a visit may be addressed' is flawed.

There would be only three reasons for attending and not levying distress; one, because the debtor paid; two, because payment was not possible and the debtor's circumstances were such that goods could not or should not be seized (in which case the bailiff would withdraw) and, three, because no

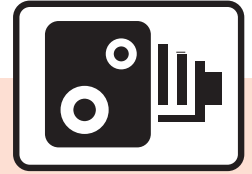
one was there to receive the bailiff.

If the first two situations applied, it is highly unlikely the debtor would have genuine cause to complain and in the third situation, even more unlikely.

The proposal seems to encourage complaint and in so doing, weakens, frustrates and delays the enforcement process.

There is merit to the proposal to leave a note of charges incurred during such visits, as well as the time and date and advice relating to further action.

However, is this not best dealt with under the Government's process for reform, Effective Enforcement, rather than continue with sideline tinkering to rules and regulations by all and sundry?



## Caught - Red Handed

A former bailiff tried to burn down a £15,000 speed camera as he walked home from the pub. Someone had placed a cardboard box over the camera and Clarke, of Stone, Stafford, decided to set fire to it. A passing police officer extinguished the fire and arrested Clarke who was later fined £250 with £118 costs.

## SLUR

During the 3rd Reading of the Licensing Bill this year, when responding to a suggestion that enforcement of licensing fees would be effectively carried out by local authorities as they do in using bailiffs to recover council tax, Lord Brooke of Sutton Mandeville said,

'Debt enforcement by local authorities is frequently done by bailiffs, as all members of another place know, because they are the ones on whom the complaints are visited, from the people who are called on to recover council tax which they have already paid, or whatever.'

'Given the description of the pattern of behaviour by some bailiffs, I like the idea of bailiffs and licensees clashing in the middle of the West End'.



# Advice on the White Paper

**T**he general view of the advice sector is that it welcomes Effective Enforcement.

Mainly, it welcomes the simplification and clarification of bailiff law whereby it will be easier and less costly to train advisors and they will be able to provide more dependable and accurate advice to their clients.

The advice sector also welcomes the proposed system of licensing and harmonized and rationalized legal powers for enforcers.

As a consequence disputes should be less frequent and complaints more quickly and effectively resolved.

It sees the regulatory body's role in enforcement of adherence to future codes of practice, guidelines and regulation as a further means of reducing the scope for dispute and that fully documented fees and actions will make the advice process smoother and quicker.

It also recognises that there is a price for all this improvement and generally welcomes proposed fee increases provided the result is raised standards and adherence to meritorious fee levels.

On the subject of up-front fees (see further in this publication) the advice sector sees this is a necessary filter to protect the vulnerable who might instead be pursued by more proportionate means.

It does fear, however, that a negative impact of reform on the enforcement industry would, if the market contracted, result in more aggressive enforcement by agencies.

The greatest concern of the advice sector appears to be the proposed changes to Attachment of Earnings Orders and Charging Orders.

For example, the attachment system, for administrative convenience, is being made less sensitive to the particular needs of individual debtors.

## Bristow & Sutor

Civil Enforcement Agents

**We won't say we're the best - You Will**

**Providing civil enforcement services to Local Authorities since 1977.**

**Embracing a philosophy of continuous improvement and professional delivery.**

**Tailored approach to meet customer needs.**

- Council Tax and Business Rates
- Parking Debt (PCN's) - Road Traffic Act 1991
- Commercial Rent Arrears
- Magistrates Court Fines
- Execution of Arrest Warrants
- Benefit Fraud Inspections
- Process Serving
- Eviction of Itinerants
- Sundry Debt Collection

For further information contact Andrew Rose:

**Bartleet Road Washford Redditch  
Worcestershire B98 0FL**

**Tel: 01527 - 504002 Fax: 01527 - 504020**

**[www.bristowsutor.co.uk](http://www.bristowsutor.co.uk)**



A Member of the  
British Parking Association



## BAILIFFS AT THE WALDORF

Wealthy guests looked on in disbelief as five bailiffs entered the 5 Star Waldorf Hotel in London recently and began removing luxury chairs, cupboards, a grand piano and antiques from its foyer.

One elderly lady sipping her cup of tea, momentarily stood up only to find her chair whipped away by one of the bailiffs.

The manager, Amanda Scott, added to the mayhem by screaming at the bailiffs to stop, which they eventually did while bosses sorted matters out.

Apparently Westminster Council sent in the bailiffs to recover £500,000 in rates. The Waldorf was put into receivership in July for non-payment of rent. A spokesman for Le Meridien Hotels which own the Waldorf advised there was a misunderstanding, as receivers don't pay business rates. The council warned it would not give up as it has an obligation to collect the money.



## Chandlers Limited

Certificated Bailiffs & Enforcement Services

Chandlers Limited uses the most up to date technology and holds the Investors In People award, which helps to achieve the best Bailiffs, Enforcement Officers and office staff within the industry who work as a team with its clients to produce best value and good working partnerships.

*Instant Real Time accounts through secure Internet connection for clients,  
Charge Payers, Defendants, Customers and On-line payments.*

*High collection rates with comprehensive reporting and  
statistical information with full case history.*

*A dedicated Client Manager who will attend regular meetings putting the client first and making sure  
that the changes in policy and procedures are adhered to and executed.*

Contact: Mr Casey Waterman M.E.S.A.

Telephone: 020 8290 0866 E-mail: [casey.waterman@chandlers.ltd.uk](mailto:casey.waterman@chandlers.ltd.uk)

5 Cobden Court, Wimpole Close, Bromley BR2 9JF



# Courts Bill Comment

Extracts from the second reading of the  
Courts Bill : 9 June 2003

Mr Cranston: 'I welcome the fact that they [the Government] are considering some sort of advice network, which will be developed in courts to provide support and advice for those who run into difficulties with paying fines'.

Mr Hogg: Although I understand why the hon. and learned Gentleman welcomes such flexibility, I am sure that he wants to emphasise that fines are a penalty, which is intended - at least to some extent - to be a burden on those who have been fined'.

Mr Malins: The fines officer, who will be a shining example, has to serve notice on the defendant that he intends to do something. That is most interesting. It is good news that the fines officer will write to the defendant saying that he will enforce the fine by a certain method, thus inadvertently giving the defendant notice that he can so arrange his affairs as not to have to pay the fine'.

Mr Malins: 'The Bill contains the majestic little passage that says that the fines officer can issue a distress warrant.

'It beggars belief that the Minister should suggest that the fact that the distress warrant is now in the hands of the fines officer, as opposed to the magistrate, is a new development that will really help.

'Then there is registering the fine in the register of judgments. That is irrelevant. I cannot think of a defendant in the Camberwell Green area who would be the slightest bit concerned whether the fine was registered in the register of judgments or not; ditto on the attachment of earnings order and - this is the best bit - on the taking of other steps.

'I do not know what the other steps the fines officer will take, except the new, magic clamping order to fit an immobilisation device on a vehicle that is registered in the defendant's name.

'Does anyone believe that any of these vehicles in the east end are registered in the defendant's name or in anyone's name? Of, course they are not. People who get their cars registered in their names, pay their fines.

'This is the absolute clincher. What happens if the defendant removes the clamp from his vehicle?

'He can be fined'!

## Courts Bill

In 2002/03 the total value of all financial penalties (which include prosecution costs and compensation awards) was £425 million.

Of this £236 million was recovered; £82 million was cancelled by the judiciary because of changes in the offender's circumstances and £67 million was written off, in most cases because the offender could not be traced.

## A fine is not a punishment until it has been paid

The enforcement of criminal fines and penalties was brought into the Enforcement Review mid-way. Perhaps as a result, there has been no adequate consideration of whether adjustments to sentences are really purely administrative matters and no discussion of the legislation that governs magistrates' courts, liability orders for council tax and non-domestic rate.

The provision in the Courts Bill for contracting out of magistrates' court fines officers, and their payment by results, will make them their own 'judge, jury and executioner'. Enforcement will become highly subjective and the heightened incentive to recover money negates the greater protection intended for people genuinely unable to pay. Moreover, treating the payment of fines and criminal penalties as no different and on the same basis as consumer debt is seen as a dangerous erosion of British justice.

## October 2003

"If you are unable to comply with the bailiffs request for payment, and you do not want to run the risk of having your goods removed; you should normally refuse the bailiff voluntary entry, and not sign any Walking Possession agreement s/he may leave".

*Information provided on an unnamed local authority web site!*



**Certificated  
Bailiffs  
and  
Enforcement  
Officers**

Head Office Merthyr Tydfil  
Branch Office Milton Keynes  
Tel: 0870 006222  
Fax: 0870 006210  
E mail: [swift@swiftcredit.co.uk](mailto:swift@swiftcredit.co.uk)  
Website: [www.swiftcredit.co.uk](http://www.swiftcredit.co.uk)

# Up Front Fees

The Government has stated, with some clarity, that it will introduce an up-front fee to be paid by creditors to initiate enforcement.

The principles behind the overall fee structure that the Government would like to see in place include fair reward for the enforcement agent and ensuring debtors that do pay don't subsidise enforcement against those who don't.

The bailiff industry broadly welcomed this concept at the onset but held some reservation on the detail. DeCAff, some while ago, stated a preference for a negotiable fee within a bandwidth and that the lower 'fixed floor' would not be zero.

It recognised that in-house operations would obviously not negotiate with themselves and that, therefore, there would need to be a minimum fee to ensure fairness and transparency.

The Government also recognised that some creditor sectors would not welcome an up-front-fee (recoverable from the debtor) and that a reduction in warrant issue might follow.

Feedback from many local authorities reveal genuine concerns over the issue. Bear in mind that local taxation accounts for a large proportion of the enforcement market.

Most local authorities have become used to no cost bailiff services and will clearly be reluctant to start paying for them.

Even with a will to pay, many may find it difficult to raise the necessary funding. A recent Audit Commission report stated that 30% of Councils overspent their budget last year and practitioners argue there is no money available for the "up-front" fee.

Others believe this can be overcome by making application to the Magistrates' for an increase in summons / liability order costs or they may make further adjustments to the projected losses on collection at budget time to cover the fees.

Many question the principle of imposing a fee which in a free trade society should be a matter for the service provider / enforcement agent.

In terms of market contraction in the private sector, there are fears that not only will case numbers dwindle but that some local authorities will introduce in-house bailiff teams.

These fears are compounded by talk of exemptions from licensing criteria for the public sector.

Where local authorities retain their private contractors there will undoubtedly be cost related side effects as issues of work are delayed while scrupulous checks are made to minimise issues. Such delays will no doubt have a direct impact on the potential to collect the debt.

Additional checks will require additional resources adding to the local authorities financial burden.

While the enforcement industry broadly welcomes an up-front fee, it realistically recognises it may well be totally impracticable and entirely detrimental commercially.

The bottom line is that the vast majority of work in the private sector is issued by public bodies; local authorities (taxation and parking) and magistrates' courts in the main.

If these organisations cannot fund the up-front fee how serious an impact will that have on the private sector and enforcement generally?

The state enforcement regime does not have the capacity to deal with the volume of work even if it were to evolve as the in-house option.

The principle of creditors paying for the enforcement of their debts is a fine one. The principle that debtors who do pay should not be burdened with the cost of enforcement against those who don't is equally good.

The reality is that enforcement is a costly matter and not getting any cheaper. The proposed regulatory regime to improve the professionalism of enforcement will add to that cost and someone has to pay.

The Government insists there is no option - all creditors must pay an up-front fee.

At the IRRV Conference in May, however, DeCAff's official Mr John Tanner indicated that the lower bandwidth floor for the up-front fee may be set at zero.

Quite where this leaves the principle of every creditor paying for enforcement no one yet knows.

*According to CIPFA, of 253 local authorities that provided statistics for 2000/1 there were 1,175,147 liability orders issued, nearly 400,000 more than stated in the PRIA and not accounting for the missing authorities' data.*

**3RDEYETECHNOLOGIES**  
SATELLITE & NAVIGATION SYSTEMS



44 West Sunniside, Sunderland, SR1 1BA

Suppliers and Installers of:

- Vehicle tracking management systems.
- Satellite navigation systems.
- Short or long term fits available.
- All types of vehicle and machinery catered for.
- Outright purchase or lease/finance available.

For further information contact Robert Neil, Director  
Tel: 0191 5140999 Fax: 0191 5109170  
E-mail: robert.neil@3rd-eye.info www.3rd-eye.info

## France, June 2002

*An angry resident of Brittany has become the second Frenchman this month to chop off a part of his anatomy as a protest statement.*

*The man sent a piece of his ear to the French Justice Ministry to express his outrage at the repossession of his house by bailiffs.*

# White Paper Review

Since the publication of the White Paper, Effective Enforcement, there have been countless comments from various organisations representing one part or another of the stakeholder group.

Such views, no doubt, largely reflect the concerns and aspirations of each organisation in isolation of each other and, mainly, with consideration only for their own interests.

Conversely, the Enforcement Law Reform Group (ELRG), formed in January 1999 by Keele University with funding from the Nuffield Foundation, represents a more consensual view, reached by comprehensive and reasoned debate by all concerned.

The organisations represented on the ELRG are: Advice UK, the Association of Civil Enforcement Agencies, the British Institute of Comparative Law, the Centre for Criminological Research (Oxford University), Citizens Advice, the Civil Court Users' Association, the Credit Services Association, the Enforcement Services Association, the High Court Enforcement Officers Association, the Local Authority Civil Enforcement Forum, the Money Advice Association, the Sheriff Lodgment Centre and Union Internationale des Huissiers de Justice et Officiers Judiciaires.

Membership also includes several personal members such as Philip Evans (Chair) and John Kruse (Hon. Secretary).

Following earlier meetings and discussions on the White Paper, the Group met again on 23 July for a final meeting on its Review of the White Paper.

In general, the Group welcomed the guiding principles of the White Paper, including the balance of rights of creditors and debtors, a unified law for the seizure of personal property, the statutory regulation of enforcement agents and a fairer fee structure so that enforcement agents are remunerated for work done, but harboured serious concerns about various aspects of the proposals.

On the Paper's Partial Regulatory Impact Assessment (PRIA) the Group was concerned at the number of statistical inaccuracies regarding the volume of work falling to enforcement agents.

The Group believed enforcement activity in reality was far higher than stated in the PRIA and felt it demonstrated an unfortunate lack of

attention to detail in drafting the White Paper which could seriously undermine transitional arrangements.

It also believed that the latest available statistics indicate growth in some areas of enforcement and shrinkage in others but that it was reasonable to distinguish a steady overall increase pointing to a likely market volume by April 2004 of some 3.8 million [warrants]. The PRIA indicates a current figure of 2.3 million.

The proposed transitional arrangements caused the Group much concern.

It agreed that extensive reform is necessary to harmonise and modernise enforcement law, to provide a reliable structure to the profession and to exclude undesirable practitioners.

However, the Group felt that little thought has been given to transitional arrangements or to setting new standards towards which enforcement agents can work in the meantime. In respect of professional associations, the Group agreed they would experience fundamental change.

Professional associations would take on statutory functions and hugely increased costs, which they must recover from their members. Practitioners will also have to support the new regulator, the Security Industry Authority (SIA).

The Group felt that while it is understandable that DeCAff does not want to introduce revised fee scales until the regulator can ensure that proper regulation is in place, agents will have to fund the regulator before new fee scales can be considered.

It was estimated, in a worked example based on an average business that, assuming the enforcement industry was a single commercial entity with around 12% net profit (pre-tax), that the transition would result in the collapse of the 'business' with losses of almost £6.7 million.

In any event, the Group questioned the DCA's ability to predict costs based on the inaccurate and contradictory data in the White Paper.

The greatest impact of the changes for enforcement agents, according to the Group, will be on the commercial viability of their businesses. It is expected that competent practitioners will easily accommodate much of the technical detail of the reforms.

The group noted that the White Paper expresses ideals for a regulatory body not yet in place and as the DCA has rescinded so many policy aspirations during the life of the Enforcement Review, it felt it would be impossible for agents to prepare with confidence for future developments.

According to the Group's review report, 'In the early days of the Enforcement Review, the creation of a level playing field for all enforcement agents and the end of jurisdictional monopolies were seen as priorities; furthermore, there was serious criticism of sheriffs and the need for radical reform.

'Now sheriffs are seen as the model on which to build, the idea of a level playing field has been shelved, and the end of jurisdictional

## Attention: Recovery Officers! Want to Increase Your Collection Rates?

At Dukes we specialise in growing Local Authority Collection Rates in the Midlands and North West.

- 10 years experience in improving collection rates
- Dedicated and experienced account management
- Regular campaign reports keep you fully informed
- State of the Art IT giving you full project control
- 24 hour Client Internet access to your cases
- Employed Bailiffs ensure highly professional service

We can improve your success rates on all types of debt.

- Council Tax
- Non-domestic rates
- Road Traffic Debt - 1984 & 1991
- Sundry Debt Collection

Call Wendy Now on 01785 810108  
Or E-mail: [wendy@dukes-bailiffs.co.uk](mailto:wendy@dukes-bailiffs.co.uk)  
and arrange a Free Review



**DUKES**  
BAILIFFS LIMITED

[www.dukes-bailiffs.co.uk](http://www.dukes-bailiffs.co.uk)

monopolies is described as having been intended as no more than the ending of sheriffs' bailiwicks.

'While the White Paper proposes the common regulation of all enforcement agents, the Group notes that departure from this position has seemingly commenced: High Court Enforcement Officers will be subject to different appointment procedures under the Courts Bill and one journal, Parking Review, has reported the expectation that employees of local authorities will be exempt.

'Many in the enforcement industry expect county court bailiffs to be exempt also.

'Enforcement agents in the private sector who deal with the vast majority of warrants, are understandably critical of this apparent policy drift and the corresponding increased burden upon them of financing the new regulatory regime'.

The Group had given much thought to the issue of vulnerable people as the White Paper placed great emphasis on the importance of their plight. Its report on this issue states 'The White Paper proposals are largely based on the false assumption that debtors have only single debts rather than multiple debts.

'The latter situation is much more common. (When people say they have only one debt they usually mean that they have only one creditor among many chasing payment.)

'To inform their reform proposals, the DCA commissioned Professor Elaine Kempson of the Personal Finance Research Centre at Bristol University to review creditor and debtor approaches to the non-payment of bills: the research was published as Can't Pay or Won't Pay?.

'The Group considers this a good report in terms of mapping the can't-won't pay divide

## **CER (UK) LIMITED,**

UNDERSTANDING AND WORKING IN A PARTNERSHIP ENVIRONMENT WITH ITS CLIENTS TO IMPROVE COLLECTION LEVELS AND QUALITY OF SERVICES.

CERTIFICATED BAILIFFS, DEBT COLLECTORS AND ENFORCEMENT OFFICERS TO LOCAL AUTHORITIES, MAGISTRATES COURTS, COMMERCIAL LANDLORDS AND THE BUSINESS COMMUNITY.



**CER (UK) LIMITED**

Bourne House  
475 Godstone Road  
Whyteleafe  
Surrey CR3 0BL

dx: 36815 Caterham

t: +44 (0)1883 621077  
f: +44 (0)1883 621079  
e: [admin@ceruk.co.uk](mailto:admin@ceruk.co.uk)  
[www.bailiffs.net](http://www.bailiffs.net)

but regrets that it does not inform enforcement proposals.

'The White Paper promises greater protection for vulnerable people but makes no additional proposals to those protections intended for all debtors. Furthermore, it doesn't promote understanding of the term 'vulnerable people'.

'The power to force entry is expected to aggravate the plight of vulnerable people in debt. Although District Judges will carefully filter applications, threats are likely to be made more vigorously than at present when no power at all exists'.

In view of this potential for the frequent use of threat, the Group believes that legal aid should be available to oppose applications for forced entry.

The Group felt that the simplification and clarification of enforcement law should benefit the advice sector in that it would be better informed to provide more accurate advice to its

clients to more quickly and effectively resolve disputes.

This should improve outcomes for advice agency clients and avoid lengthy litigation for enforcement agents.

The belief expressed in the White Paper about the availability of funding for the advice sector and the resources available for training was, according to the Group, incorrect at the time of publication, inaccurate in detail and hence misleading.

On Data Disclosure Orders, the Group believes that the proposals for data disclosure orders are unrealistic in that a £150 fee would represent a high percentage increase to most debts; information held by credit reference agencies is supplied by the credit industry in the first instance; the Inland Revenue acknowledge that the private sector usually holds better information; courts will retain the information gained and suggest a course of action, depriving creditors of the opportunity to evaluate the information for themselves and weighing the risk of further expenditure.

It also felt the proposals for partial data disclosure orders are flawed, as creditors are unlikely to pay the expected fee of £75 for information about an address that can already be obtained at a fraction of this cost through tracing agents.

The stated conclusion of the Enforcement Law Reform Group was that 'the early promise of the Enforcement Review has not been fulfilled by the White Paper proposals.

'The essential principles expounded are welcomed but the detail is seriously flawed. In particular, the Group has serious concerns regarding the commercial viability of the proposals for enforcement agents and deems that insufficient attention has been paid to the need to protect vulnerable debtors'.



**DKB | COLLECTIONS LTD**

Independent bailiffs dedicated to serving the needs of local authorities.

Committed to helping Councils maximise their collection rates, minimise historic debt and achieve their overall recovery objectives.

For assistance with all aspects of revenue services and a personal service second to none, contact DKB's head office.

**CERTIFICATED BAILIFFS · REVENUE SERVICES**

Webb House, 6 Burnell Road, Sutton, Surrey SM1 4BW  
Tel: 020 8770 1237 Fax: 020 8642 6056  
E-Mail: [info@dkbcollections.co.uk](mailto:info@dkbcollections.co.uk)

# Guardian Bailiff

A few months ago a freelance journalist by the name of Christopher Millerton approached the ESA requesting assistance with an article, which was to be one of a series published in the "Society Section" of the Guardian newspaper.

It is customary for most bailiffs and bailiff companies to adopt a very low profile when journalists are about, having been on the receiving end of some grossly inaccurate and prejudiced articles appearing in both the local and national press in the past.

Admittedly, the initial response to this request from the members of the Executive Council (EC) was very mixed. However, after some discussion it was decided that it would be in the interest of both the ESA membership and their clients if a well-balanced article, accurately portraying the day-to-day activities of a bailiff was published in one of the quality newspapers.

Having been one of the more vocal members of the EC in favour of the proposition and in the absence of any eager volunteers, the task of providing the assistance duly fell to Trevor Harvey.

Following a two-hour interview, arrangements were made for Mr. Middleton to accompany him on a day in East Lancashire on a variety of both council tax and non-domestic rate cases in order for him observe bailiff activity first hand. The decision to allow Mr Middleton to accompany Trevor was only taken ensuring that his presence would not compromise either the authority's client's or the agency's position in any way and a number of "ground rules" were agreed before any calls were made.

The day's work was pretty much routine from a bailiff's prospective, but a real eye opener from where he was standing.

After all this time the perception that people (even educated, well read people) have of Bailiffs should not come as any surprise but unfortunately it does. Trevor, however, confidently states that it was Mr. Middleton that was surprised (pleasantly) not only by the strict rules and regulations that are in place but also the codes of practice and procedures that are observed by modern bailiffs to ensure that where distress is used it is both appropriate and proportionate.

Following the appearance of the article Trevor received a significant number of telephone calls from various sectors, including local authorities, the Inland Revenue,

magistrates' courts and one or two advice agencies including some Citizens Advice offices. Without exception all made very positive comments regarding its content.

Since its appearance Trevor has also received enquiries from other newspapers, a television company and BBC Radio all expressing a wish "to do something very similar".

Unfortunately, when questioned further it became apparent that all three of the newspapers had no intention of producing a responsible article, but were looking only for sensationalism. Needless to say all three have been turned down.

One of the television companies was known for its production of the recent BBC

series on bailiffs and it is believed it is still making what has become to be known as a "documentary drama".

The ESA does not believe that distress is an appropriate subject for prime time entertainment and this was also turned down.

The prejudiced, inaccurate journalism that the enforcement industry we have been subject to in the past has adversely affected both the bailiff profession and creditors alike.

Only positive, accurate and well-researched articles such as Mr. Middleton's can redress this situation.

The Guardian should be congratulated for its professionalism and the courtesy they have shown the enforcement profession.

nwcs advert to go here  
still having problems!!!!!!

## Regional Collection Services

44 West Sunnyside, Sunderland SR1 1BA

Tel: 0191 514 0842 & 0191 567 6749 Fax: 0191 510 9170 E-mail: robert.neil@rcs.org.uk

A comprehensive listing of services available to Local Authorities, Magistrates' Courts, the Legal Profession, Insurance Companies, Financial Institutions, Commerce and Industry.

- *Certificated Bailiffs*
- *Enforcement Agents*
- *Parking Enforcement*
- *Process Serving*
- *Trace & Status Enquiries*
- *Repossessions*
- *Commercial Rent Recovery*
- *Civil & Criminal Investigations*
- *Debt Recovery*
- *Credit Health Checks*
- *Company Reports*
- *Credit Referencing*
- *Professional Witnesses*
- *Accident Enquiries*
- *Witness Statements*
- *Personnel Vetting*
- *Card/Cheque Book Collections*



Specialists in providing a comprehensive, cost effective, expeditious, professional quality assured service to all of our clients, throughout the north of England.

Member of The Enforcement Services Association  
and

The Institute of Revenues Rating and Valuation



# Fee Uplift

## ENGLAND

- The Office of the Deputy Prime Minister concluded its consultation of the uplift of fees in respect of council tax and non-domestic rate.

The consultation began in March, was concluded in May, with legislation made in August and laid before Parliament in September. The new fees came into force on 1 October.

As expected the fees were increased very moderately by the proposed 11.5%, resulting in a maximum rise of just £2.50 but not for all aspects of the fee scale.

Also, as expected, and despite concerns raised by the ESA, there was no provision made or assurance given by ODPM for regular fee uplift in the [long] period before the new proposed regulatory body is established to deal with fees on an ongoing and more reasonable basis.

The enforcement industry expects, therefore, that the affect of this increase will soon be lost to continuing rises in costs.

## WALES

- Even though it was made perfectly clear by ODPM in March that the Welsh Assembly could deal with the uplift of fees for council tax and

non-domestic rate under devolved powers, the Assembly only issued its consultation document, an almost carbon copy of the ODPM's, in August.

The Paper noted that 'a similar consultation is being undertaken in England' - not quite. At the time the Welsh Paper was issued the English had long since concluded consultation.

Strangely, the Welsh consultation document was issued [directly] to a vast number of consultees, many with no obvious link to local taxation in Wales - like the Scottish Executive!

The Welsh consultation closed on the day bailiffs and local authorities in England received their uplift.

In response to obvious claims that that bailiffs and authorities in Wales will suffer a delay in obtaining the same fee level as in England, an Assembly spokesperson stated, 'The amendment to uplift Bailiffs fees will come into force on 1 April 2004. This is the

## ENFORCEMENT SERVICES

We are a firm of highly experienced and professional bailiffs, who undertake recovery revenue for Local Authorities, Magistrates Courts and the Private Sector.

### Working Together

Our professional approach ensures that our clients can be confident that their reputation is upheld scrupulously.

We offer nothing less than:

- Senior personnel accessible at all times
- We only employ our own highly trained professionals
- Immediate remittance of cleared funds
- Regular Client meetings
- Swift recovery procedure
- We achieve RESULTS!

For further details on our services please contact David Miller on:

**01392 203200**

11 ORCHARD COURT, HERON RD  
SOWTON, EXETER EX2 7UL  
info@churchilldc.co.uk

**Churchill  
DC Ltd**



earliest date possible allowing for the legislative process to be completed within Wales'.

It is very unlikely that the Welsh consultation will result in a different outcome to that in England and it is estimated that the 'loss' of fees which the Welsh bailiffs and authorities would suffer during the six month delay could amount to some £150,000.



Phoenix Commercial Collections Limited

**COVERING ALL ASPECTS OF DISTRAINT AND DEBT RECOVERY WORK**

Corporate Members of:  
The Association of Civil Enforcement Agencies,  
The Credit Services Association, and  
The British Parking Association.

Contact:  
**Howard Jones or Fred Ternent**  
Tel: 0800 731 0101  
E-mail: info@phoenixcommercial.co.uk

## Bailiffs

*I ..... being in possession of my faculties, declare that I am free born and of mature age. I follow no calling that oppresses my fellow-man. I will never act as a bailiff, a bailiff's follower, or be a tipstaff or marshallman.  
(the initiation Oath of the Patriotic Oddfellows Society c 1830)*

# Fee Uplift

In an exercise which was intended to run concurrently with the ODPM's consultation on the uplift of bailiff fees, the Department for Constitutional Affairs (DCA) launched its consultation regarding Rent and Road Traffic Debts in February and concluded on 16 May.

The ESA welcomed the general proposals for an uplift to the fees. As with ODPM, the ESA pointed out that the proposed increases were merely catching up with inflation and that the cost of business continued to rise. Unless a regular review of fees were to take place, enforcement agents will soon find themselves in the same position as before.

As an interim measure the increase in the fees was essential to maintain the status quo but the ESA pointed out that the proposed level of increase did not fully account for the increase in costs since 1998 as, at that time, the fees for preparing and sending a letter were not increased.

Furthermore some costs, in particular insurance post-September 11, had substantially increased.

When the Statutory Instruments were published in July, to come into force on 1 October there was concern within the ESA regarding the detail.

In the Road Traffic Debt Statutory Instrument the increase of 11.9% is applied across the board to all the fees. However, the increase of 73% for Distress for Rent only applies to the first £100 and there is no increase for the higher amounts.

The DCA's argument that this was because rent arrears have increased with RPI surely applies just as much to the Road Traffic Debts. Furthermore, the Consultation Paper setting out the proposals for fee uplifts referred to an increase of 73% for distress for rent across the board and provided an example of the proposed amended Appendix to the Rules.

It was on that basis the ESA agreed to the 73% increase, not on the provisions included in the published SI.

The ESA immediately wrote to DCA who responded, 'We are looking into this as a matter of urgency'.

Just a few days before the SI came into force DCA wrote, 'Thank you for your helpful comments regarding the recent fees uplift. As a result of further analysis we have identified potential for confusion over the fee chargeable for the first £100 of a debt greater than £100.

'It was certainly not our intention that the fee for the first £100 of a debt greater than £100 should be less than the fee for a debt worth less than £100.

'We have therefore made a further amendment to the Distress for Rent Rules, through a new SI 2003 No. 2141 (L.34). This states that on any debt which exceeds £100, a fee of £21.65 will apply on the first £100 of that debt. This amendment came into force on the same day as the original amending SI (i.e. 15th August 2003).

PROVIDING ENFORCEMENT SERVICES IN PARTNERSHIP WITH LOCAL AUTHORITIES,  
HM CUSTOMS & EXCISE AND COURT SERVICES.



## ROSSENDALES

Operating throughout England and Wales, Rossendales lead the field in providing clients with a professional doorstep collection service.

### Services include:

- Enforcement of Liability Orders
- Magistrates' Court Fines
- HM Customs VAT
- Road Traffic Debt
- Sundry Debt
- Execution of Warrants of Arrest & Commitment
- Tracing

For further information contact  
David Morris or Mike Shang on  
01706 830323  
Fax 01706 831126  
Email  
info@rossendales.com

Rossendales Limited | Hardman Mill | New Hall Hey Road | Rawtenstall | Rossendale | Lancashire | BB4 6HH  
T: 01706 830323 | F: 01706 831126 | E: info@rossendales.com | W: www.rossendales.com

### Do I Have To Let the Bailiffs Into My House?

No, but you cannot assault a bailiff to stop him coming in

### Could I Hide Or Give Away My Belongings Before The Bailiff Arrives?

There is nothing to stop you hiding goods. If you gave something away before the warrant was issued the bailiffs couldn't seize it.

However, if you gave something away after the warrant was issued, they could.

If you give something away on condition that it must be given back to you after the bailiffs have gone, you could be held in contempt of court.

If you acquire or buy something after the warrant is issued the bailiffs cannot seize it but you will need proof of when you got it.

Advice currently available on an unnamed but well known advice agency site

**Birchalls**  
Limited  
CIVIL ENFORCEMENT AGENCY

The Globe Centre, St. James' Square,  
Accrington, Lancashire, BB5 0RE.

Tel: 01254 398044  
Fax: 01254 386109  
DX 23770 Accrington 1

office@birchalls.co.uk  
www.birchalls.co.uk

*Full Enforcement Services with  
Quality Assured throughout the North*

*Disappointed by the rest?  
Why not try the best?*

*Contact Paul Birchall Tech. IRRV, FESA*



## June 2003

The Historical & Records Division of the Cabinet Office processed a number of files selected for destruction. Among these were a file dealing with honours awarded in 1927. In this file were the biographical details of Sir Edwin Evans, knighted shortly before his death the following year.

Sir Edwin was a JP, President of the Battersea Conservative Association, Chairman of the Battersea War Savings Committee, President of the London Property Owners Protection Association, Hon President of the 14th County of London Volunteer Corps, Governor of hospitals and schools and President of the Certificated Bailiffs Association (now the Enforcement Services Association) from 1914 to 1915.