

The recent exposure of rogue bailiffs who have no regard to the legislation, codes of conduct or customer care skills is nothing new. We know that there are rotten apples on every tree – if you want to go looking for them. This approach does little for the work that is essential in continuing to maintain high levels of collection for Council Tax and Business Rates. It does, however, raise the question of proper training and regulation of those involved in the industry. The IRRV fully supports the comments of the firms involved which indicate that full investigations will be undertaken into what was reported by the BBC.

The IRRV has had several discussions in the past with the ESA about the prospect of a qualification for bailiffs. We understand that this needs to be wide enough to deal with the collection of the range of debts that bailiffs enforce. The time is right in the Institute's view to re-open the dialogue. Local authorities will undoubtedly be concerned about the image of external bailiffs and will be looking for greater

safeguards that appropriate behaviour and procedures are in place. Debtors who fit into the "won't pay" category will cease upon the recent publicity to thwart the recovery processes. Jointly we must avoid this situation from destroying the industry and affecting the ability of local authorities to collect local taxes and revenues. Never has it been more important to demonstrate that local taxation is sound. The review of local government finance, including local taxation, which Sir Michael Lyons is conducting is looking at local taxation and revenues as one issue. The IRRV has stressed that maintaining a local property tax is the right approach. One of the salient facts being that we achieve 100% coverage with the taxbase and 99% collection overall. This is far more impressive than the taxes that are collected centrally. This is only achieved by the co-operation and professionalism of all involved from those who undertake the valuations that give rise to liability, those who administer the collection, to those who deal with the debtors when they fail to pay their dues. It is

a partnership approach with co-operation and appropriate codes of conduct that deliver high levels of collection.

As a provider of examination based qualifications or as an awarding body for Vocational Qualifications, the IRRV is well placed to work with the ESA to develop a suitable qualification with a Continuing Professional Development follow on, that will ensure that bailiffs are well trained, professional and law abiding. The imposition of strict regulation is not the solution to the problem. The key is to train enforcement professionals and give them a framework which they can use to demonstrate their integrity and competence. The IRRV does see this as a serious issue. We have total commitment to training, development and education across the profession and look forward to extending this into the enforcement profession in the near future.

Suzanne Jones  
National President, IRRV

## Case Law - Updated

### LB Barnet V Moses

There has recently been a spate of publicity regarding PCN's and an adjudicator's decision concerning the information to be provided on a PCN. The adjudicator deemed that the PCN was defective as it did not include a date of issue. A similar decision was made in 2003 (LB Wandsworth v Al's Bar).

*The High Court has now upheld the adjudicator's decision and the Association of London Government have recommended the following:*

- 1 To stop issuing non compliant PCN's
- 2 To revise the format of PCN's to ensure compliance
- 3 To stop processing non compliant PCN's

# Enforcement news



## The President's View Onwards and Upwards

Much has happened in the 3 months since I had the honour of having been elected as President of the association at the AGM in May. We have seen the publication of the disappointing Courts and Tribunals Bill, the decision of your Executive Council not to proceed with merger talks with ACEA and in recent days the broadcast of the shocking Whistleblower television programme on bailiffs.

The culmination of nearly 10 years work, various reports and a White Paper, the disappointing nature of the Bill is well documented elsewhere in this publication. But perhaps the most frustrating aspect of the resulting poor piece of legislation is that it appears to satisfy no one, not bailiffs or advisory groups alike. With the profession the subject of sustained media scrutiny it will be conveniently overlooked that the profession is eager for change and a more robust licensing regime, not as many would have you believe fearful of it. Lobbying by this association and ACEA will continue in an attempt to get this message across. However the damage done to our profession by programmes like the recent one will be hard to overcome.

As most of you will be aware the Executive Council recently made the decision not to proceed any further with merger talks with ACEA. This decision was taken following a series of exploratory joint meetings and was taken after much deliberation. It was apparent from our discussions that whilst merger would have its benefits, it was unanimously the opinion of the Executive Council that members of the

association would be better served by us remaining as a separate organisation focused on representing our membership. It is and will remain in all of our interests to continue to work jointly with ACEA but I and my fellow members of the Council are committed to driving a reinvigorated association in representing all of our members in what is likely to be a challenging time.

Finally I hope you all enjoy the latest edition of Enforcement News produced by its new editor Mike Shang and I am sure that you will all join me in congratulating him on a splendid job (much better than the previous chap)!!!



Article by Paul Sharpe  
President of the  
Enforcement Services  
Association

### 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.

Editor - **Mike Shang**  
Production Team: Vernon Phillips  
Paul Sharpe



ENFORCEMENT SERVICES  
ASSOCIATION

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ESA Executive Council Member David Cornes recently addressed the Yorkshire Association of the Institute of Revenues Rating & Valuation (IRRV).

David spoke about the huge advances the Bailiff Profession in general have experienced in the last 10 years in technology along with identifying current and future initiatives.

David stated *"To recall in Poll Tax days how difficult it was to get a report from a bailiff when a debtor queried their actions and compare to today's situation it really does show the commitment in our profession to continuous development."*

He went onto explain the current climate where clients can view and update case history on line and in doing so sends the bailiff a SMS text message at the same time. Other advances include –

- Mobile Phone for doorstep enquiries
- Bailiff being issued full case notes with his initial paperwork
- Electronic interfaces with Council allowing instant uploading of cases, case amendment files, case reconciliation and payment files. These interfaces saving the Council considerable resource in inputting data.
- Electronic payments available including internet, plastic swipe cards and debit / credit card facilities.
- Facility for the debtor to go on line and view his account, make payments, send a query and make an offer of repayment.
- Use of technology to trace debtors, record contact telephone numbers and review resources necessary for staffing purposes.

David continued *"The largest single advancement has to be the immediate update of the bailiff visits and costs. This can be via a "Magic Pen" which*

*acts as a camera reading from a form that the bailiff completes at the time of visit or via a "Handheld" gadget. The result is that the Council is better informed when a debtor rings straight after a visit – hopefully this will ensure the bailiff can continue with action rather than placing a case on hold whilst further investigations are taken."*

He also covered the ESA's viewpoint on the recent Consultation exercises for both the Draft Tribunal and Courts Bill and the proposal to increase fees in line with inflation.

The address no doubt enhanced ESA's credibility as a professional association and shows that we are willing to work with other associations to promote awareness of how bailiff firms re-invest their returns for more effective working practices.



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as soon as it is granted. Furthermore, there has been a long-held view that it is unfair that the charge for second visits should be less than for the first one, especially as there is often just as much work involved. The ESA intends pointing this out to the DCLG and asking it to consider an appropriate change to the fee structure.

The DCLG paper only relates to England as the Welsh Assembly is responsible for fees in Wales. I wrote to the minister responsible at the Welsh Assembly (Sue Essex) pointing out that bailiffs operating in Wales would be disadvantaged if the DCLG proposal went through. The minister was reluctant to give any commitment

until after the Welsh Assembly elections next May (when she is not standing for re-election). She also felt that as the Welsh fees had been increased in 2004 it was too early to consider another increase. I replied stating, as tactfully as possible, that if the Welsh Assembly had not dragged its feet last time, the increase could have occurred in 2003 at the same time as that in England. I clearly touched a raw Welsh nerve because in her reply she said:

*"...the Assembly [makes] decisions based on the interests of the people of Wales. Simply replicating what takes place in England would negate the intended effect of devolution."*

I consider myself suitably chastised but would still ask, rhetorically, how denying the Welsh bailiffs the same fee increase as their English colleagues can be in "the interests of the people [bailiffs] of Wales"?

As ever, my advice to you is, watch this space.

Vernon Phillips  
Executive Director

## Success "built on a careful mix of lack of knowledge and a lack of experience" .....

So said a couple of friends of mine recently, when I asked them how they had become so successful from such a modest start at their own kitchen table.

As with so many successful husband and wife teams, he is good at figures and she is good with the paperwork (her early legal training no doubt helped a lot). Of course, what they both possess in abundance is drive, determination and a penchant for hard work which has, over the last 20 years, provided them with an envious lifestyle; a beautiful house in the U.K. ; one in Florida and one in Mallorca – not to mention a fantastic Yacht moored in Palma harbour!

*"Yes, but no knowledge or experience?" I said.  
"For us that proved to be a good thing. Had we known beforehand of all the pitfalls and obstacles that lay before us, we would probably never have taken the plunge and started our own business," he said.*

*"Would you do it all again, knowing what you know now?" I asked.*

*"Yes" he said. "No" she said. "I've got two boys at University who still bring home their dirty laundry for me to deal with, plus 3 houses to manage, not to mention hosting his business parties on both land and sea"!!*

I sipped my drink and quietly and thoughtfully reflected on my own business career of managing a Bailiff Company for which I was well prepared and fully qualified right from the beginning. It hasn't made me that rich and successful and it's been hard work, even tough at times.

Oh well, at least I haven't had to check if there were sufficient sheets and towels and loo rolls in three different homes in three different countries! Housekeeping is something I've never been keen on anyway!!!!

Ann Julious FESA

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## Northern Ireland

You may recall that I am presently in discussion with the Northern Ireland Enforcement Office who are carrying out a review of their enforcement procedures. An ongoing project is to modernise their existing rules in respect of evictions as they presently have severe difficulties in operating the existing legislative framework.

The crux of the problem appears to be that when our counterparts in Northern Ireland carry out an eviction they are required to completely empty the property and thereafter remove the Debtor's goods to a secure warehouse location. This is contrary to the procedure in Scotland where it is sufficient to secure the subject address and if need be, leave the Debtor's moveable property within, with a view to allowing access at some later date.

It is anticipated that proposals will be made to the appropriate legislative body with a view to amending the existing regulations, hopefully in the not too distant future.

I sincerely hope that you have found this short article to be of some interest. I am presently digesting the contents of the Draft Tribunals Courts and Enforcements Bill and it is apparent that Enforcement Officers throughout the length and breadth of the British Isles are facing unprecedented reforms. From our experience in Scotland we have found that it is far better to engage positively with the legislators with a view to focussing on the practical issues, at all times remaining mindful of what is best for all parties concerned. In effect, taking a balanced approach and not simply focussing on a self preservation agenda, whilst at the same time

highlighting the benefits of utilising the services of motivated professional and highly trained Officers of Court.

In conclusion, I sincerely hope that the proposed reforms ultimately benefit your profession regardless of how many months or years it takes for the Bill to progress through the Westminster Parliament procedures.

*Sincere best wishes.*

**David Walker**  
 Messenger-at-Arms/Sheriff Officer  
 Reporter General UIHJ

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## Exam Corner

If you operate within the enforcement profession or you utilise the services of the profession then you need to ensure that standards are maintained.

The Enforcement Services Association and its membership recognise that one of the key elements in maintaining standards is our examination process.

Initially our examination process was reviewed to compliment the introduction of a licensing regime, clearly this has now been placed on hold due to the Hampton Review, however the ESA recognise the need to continually improve standards and accordingly have undertaken a review of it's current examination. What format will this new examination take?

The proposal put forward is to set a paper that would consist of compulsory modules and optional modules chosen by the candidate. The introduction of the optional modules is to allow candidates the opportunity to select appropriate material relevant to the work they undertake.

The compulsory modules would be generic section and comprise common areas of work such as the National Standards, Data Protection, Health & Safety and also contain the basis of the current legislative framework which is based on rent.

The remaining questions would be at the discretion of the candidate who would choose two from specific areas of operation such as Local Taxation, Road Traffic Enforcement, CSA, HMRC and HMCS.

The new format will be introduced shortly and should be your first step to Continuing Professional Development, so if you are not a member of the ESA or utilising a member of the ESA, ask yourself

**WHY!**

Mike Shang IRRV MESA  
 Editor

between organisation and service providers. Customers may mistakenly believe they have already spoken to a particular organisation or believe they are being hounded by one organisation.

- Being vulnerable to aggressive selling techniques or buying products or services that do not suit their needs.
- Difficulty remembering personal identification numbers.
- Difficulties in communication, such as opening and responding to post, and answering telephone calls.
- Difficulty using call centres and systems where they have to choose different options.
- Being vulnerable to financial fraud being committed against them.
- Problems explaining their experiences.
- Lenders not understanding or being aware of their condition.
- People who have some kinds of mental health difficulties can spend money in very irregular patterns or severely over-spend.

The Guidance Notes also include a list of currently recognised professionals qualified to provide supporting evidence on behalf of debtors with mental health problems (see notes to editors).

*"We have a responsibility to provide Best Practice to our members in all areas of debt collection," Mr Lancashire concludes, "and that includes all members of our society, especially the most vulnerable. These Guidance Notes are intended literally as a 'guide' to our members, and as a prompt for them to review their existing procedures and consult the professionals who will be able to give them more detailed support."*

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Following my most recent article in your excellent publication I have again been asked by Vernon Phillips to put pen to paper with a view to highlighting some of the big issues affecting Officers of Court in Scotland and further afield.

You may recall that the Scottish Executives Bill to modernise Bankruptcy and Enforcement is presently being scrutinised by the Scottish Parliament. I should mention that our parliamentary procedure is somewhat different from Westminster in that we have a Stage I debate where the general principles of the Bill are proposed and debated in full parliamentary session. Thereafter we move to Stage II which occurs behind the scenes and when the majority of actual amendments are activated. Thereafter we have Stage III which is the final reading of the Bill before it receives Royal Assent.

I am therefore pleased to report that the said Bill has passed the first hurdle and is now at Stage II, I further understand that there are in excess of 100 amendments to be actioned in respect of the enforcement reforms. The Bill Managers remain hopeful that the Bill will receive Royal Assent before the end of 2006 although it is envisaged that the actual enactment will not occur until much later in 2007.

Unlike the most recent legislation which was introduced to replace the much maligned procedure of Poinding and Warrant Sale, the provisions of the new legislation are, by and large more creditor friendly, although further debtor protection has been introduced in respect of Summary Warrants which are used by the Government to recover Tax, Council Tax and Non Domestic Rates.

The general policy thrust is that if the Debtor is a can pay, wont pay then there should be an enforcement procedure which can attach any and every type of asset which a Debtor may possess.

Perhaps the most innovative measure is the introduction of residual attachment which would be used to attach assets which cannot be realised by existing enforcement procedures which would typically include the attachment and auction of moveable goods in a Debtor's hands or alternatively the arrestment of funds held in a bank account or controlled by another third party. In the policy memorandum it is suggested that intellectual property rights and the benefit of life rents or other Leases might be attached under this new diligence. Perhaps a better example would be the flash Debtor who owns a private numberplate, however, the motor vehicle is on HP or owned by another party. Utilising this new enforcement procedure the private numberplate itself can be attached and thereafter sold utilising a satisfaction order which I assume will be an Interlocutor authorising the sale of the attached article.

This is, of course, a rather specialised procedure which will be used only where the Creditor has specific intelligence to identify such assets, however, it does reinforce the policy that any form of asset should be attachable in some fashion.

Another innovation is the proposed introduction of Land Attachment. At present should you wish to seize the Debtor's land which, for the purpose of the Bill, includes any form of heritable property, then one must use an adjudication of debt, however, in effect this process is rarely used

because it takes 10 years to transfer the title from the Debtor to the Creditor. The only other way to realise the Debtor's heritable property is to sequester him (make bankrupt). Typically this will result in the ordinary Creditor being last in the queue and therefore receiving a negligible or zero dividend.

Under the circumstances the Executive are intending to introduce a new diligence called Land Attachment which has two distinct phases. Phase 1 prevents the Debtor from selling the land or using it as security to borrow further money. Thereafter the Creditor must wait six months before returning to Court and making an application for a Warrant of Sale (Phase 2). It is anticipated that this process will be managed by a firm of Solicitors acting on behalf of the Creditor and in the application they must nominate a further independent party who will ultimately be responsible for selling the land. The whole process will be scrutinised by a Sheriff who will be mindful of the Debtor's interests throughout the procedure.

This is perhaps the most politically contentious of the proposed new enforcement procedures as at present the Debtor's home may be subject to this new diligence and there has been a lot of lobbying to exclude the Debtor's home. This is of course a political issue and as Officers of Court we are simply awaiting direction from the legislators.

In addition to the aforementioned new procedures, it is intended to introduce another new diligence called Money Attachment which will authorise Officers of Court to go into a Debtor's premises and seize money which includes cash and negotiable instruments such as cheques.

recommended the availability of COs in cases not in arrears "to close a loophole which allows debtors with large debts, paying small instalments, to benefit from the sale of a property without paying off the debt." Orders for sale were also examined, and DCA recommended they should remain, although the fact that details of these secondary repossessions is not recorded – either in the Report or elsewhere – has encouraged debt advisers to exaggerate claims of abuse.

I am delighted to see that despite alleged behind the scenes skirmishing by the advice industry, the availability of charging orders without debtor default remains intact.

Last year's speculation about the unification of enforcement has now turned into reality, with the appointment of Mike Hems as National Enforcement Director. I dearly hoped this would provide the catalyst to persuade DCA - a Department which remains resolutely divided into separate silos - to liaise both internally and with its customers across the criminal/civil/family spectrum, but there is no sign of this. Priorities remain to be discussed, but civil creditors are under few illusions as to their place in the pecking order, compared with criminal and family debts, when decisions are finally taken.

## Litigation

The statistics are clear and need little embellishment. Debt collection is the most important element of defended County Court business, with 77% of Small claim trials and 61% of all trials comprising debt-based cases. The former have recovered from last year's 'significant' 10% reduction, and an additional 1,500 of the more complicated disputes ended up in the Fast and Multi Tracks in 2005, no doubt reflecting district judge concerns about the realistic limits of the Small Claims procedure. In terms of time to trial from issue and length of hearing, all is consistent.

Time will tell if the new ramped-up Civil Procedure Rules on the necessity of parties considering ADR will make inroads in the trial figures, but don't hold your breath!

## Insolvency

Winding up and bankruptcy petitions issued by **creditors** rose 21% and 19% respectively in comparison with

2004 - roughly in line with the increase in claims and the financial climate. They are strategic remedies to encourage the won't pays, as is amply demonstrated by the fact that only 44% of bankruptcy orders and 38% of winding up orders were actually made in 2005. The majority were no doubt dismissed following payment or compromise.

Debtors presenting petitions for their own bankruptcy present a very different story, although an increasing number of creditors feel their use is equally strategic. I dealt with this in my May 2006 CM article *It's time for a change*, and some of you may have seen my letter to the Editor in the July issue, following statistics for the first quarter of 2006.

Since then, riveting second quarter bankruptcy and IVA statistics have been published. Since Peter Mandelson's misguided *protection-of-entrepreneurship* tinkering, enshrined in the Enterprise Act, the insolvency industry has been enthusiastically predicting 100,000 total bankruptcies in 2006. This unholy interest would be more understandable if it was accompanied by any ideas and enthusiasm to reform the present unsatisfactory system. In the second quarter, however, debtor bankruptcies have **reduced** 20%, compared with the previous quarter, and even though numbers are 49% higher than the first half of the previous year, the peak may finally have passed.

Meanwhile, no such attention has been drawn to the stratospheric progress of Individual Voluntary Arrangements, up 35% over the previous quarter's 8,235 (itself a record) to 11,105, and up 152% for the half year compared with the first half of 2005! A quick multiplication of the most recent figure by the likely average fees of £6,000 to £8,000 per IVA will demonstrate why they are being sold so strongly!

## Tribunals, Courts & Enforcement Bill

Parts 4 and 5 are the relevant bit for the purposes of Judicial Statistics, entitled respectively *Enforcement of judgments and orders and Debt Management and Relief*. Part 4 contains mostly good news, and I have touched on attachments and charging orders already.

In addition, Part 4 contains practical-looking details about the provision of useful objective information, allowing a

creditor with a judgment debt to apply to the court "for information about what kind of action it would be appropriate to take in court to recover that particular debt". The creditor can apply for either a general Information Order (the phrase Data Disclosure Order has been dropped), or a more targeted Department Information Request, which will come from DWP, HMRC or other Government departments and/or prescribed parties, including Banks and credit reference agencies, where the judgment debtor fails to respond to the judgment or comply with enforcement.

There is nothing about the cost to the creditor, however - previous hints suggested it would be steep - and the information will thus only be available where the debtor **fails** to engage. Otherwise, the creditor will presumably be stuck with the present unsatisfactory sources. As a bare minimum the court must be able to check details given by the debtor, particularly as a greater proportion of them are likely to cooperate, if for no other reason than to defeat this rule.

The other bad news is that the over-indebtedness provisions - Administration Orders, Enforcement Restriction Orders and Debt Relief Orders - all appear in the Bill exactly as originally envisaged. If you decide to read no other part of the Bill, **please** read Part 5 and the corresponding Schedules. It will demonstrate to you just how difficult and confusing they are - very much in line with the rest of insolvency, in fact!

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Jeremy Sutcliffe  
In house lawyer, National Australia Group Europe and  
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# ESA Dinner

## Enforcement Services Association Celebrates 100 years not out

Friday 19th May saw the Enforcement Services Association celebrate 100 years at a lavish dinner held at the Museum of London. With 120 members and guests accommodated in the magnificent Lord Mayor's coach gallery the evening was a fitting celebration of the efforts of those involved in the association continuing to flourish in 2006.



*"For an Association representing Bailiffs to survive for this long is I believe a credit to those throughout the last 100 years who have been involved in the profession" states Paul Sharpe the newly inaugurated President of the Association*

*"To have an opportunity to celebrate such longevity and recognise the efforts of those involved is an honour for all of us involved today"*

The DCA *Judicial Statistics* (the Report) for 2005 appeared on 25th May, including insolvency information now published quarterly in the same way as the Insolvency Service, but a week behind. The framework remains as last year, but I have knocked out the QB trial figures, for two good reasons. First they have arguably little to do with debt litigation and recovery, but second the relevant details are now missing from the Report!

The Tribunals Service joined the unified DCA on 3rd April 2006, helping to boost its public spending by £750m, and its budget 23% to £3.9bn in 2005/6. At the same time the civil justice budget has been slashed by 8%, which will supposedly result in 1,000 HMCS redundancies, and the loss of 300 DCA posts.

Tentative steps are being made to revisit the idea of pushing all default litigation into the Claims Production Centre/Bulk Centre (which in 2005 dealt with 938,571 default claims - almost 60% of the total), and DCA has

floated ideas of a creditor self-certification payments order system, which would move most undefended default litigation out of the courts altogether, assuredly saving some staff!

Meanwhile, the continuing lack of a legislative slot for the Tribunals, Courts and Enforcement Bill (the Bill) has led to rising speculation, up to and including bets as to its ultimate abandonment. Suspicion has only been temporarily assuaged by publication of the draft Bill on the day Parliament adjourned for its summer break!

## Enforcement

Last year I referred to DCA's analysis in their 2004 - 9 Strategy (the Strategy). To recap, their analysis was that *"The number of debt cases brought to court in E&W are likely to continue falling ..."*, and their optimistic reasoning was that *"This has been driven by the relative affordability of credit and creditors increasing propensity to resolve smaller debt claims directly with customers without recourse to the courts"*.

The fact that the statistics immediately after publication of the Strategy in 2004 were in the opposite direction was mildly amusing. A modest 1.5% increase in claims seemed unlikely to signal the start of a revival, but the 2005 figures suggest that this might actually have been the case! County Court Claims have increased by almost 245,000 (17%) to 1,580,511 - back to 2000 level - and warrants, attachments and charging orders have picked up by nearly 10%, 22% and 44% respectively. Although this sounds like a better result for warrants, it isn't, since they have actually reduced as a percentage of claims,

and now comprise only one enforcement attempt per 4.66 Claims.

High Court warrants - writs of fi fa - are surprisingly down, too - by a full 12,000 - and in the absence of any success statistics (for both HC and CC bailiffs, let alone any comparison - perish the thought) I am left to conclude that the High Court Enforcement Officer firms which have successfully adapted to the new regime and their customers may have worked together to separate the wheat from the chaff.

Attachments are the enforcement method of choice for discerning creditors, where circumstances allow. Despite making a good start on long-overdue reform, including the introduction of fixed deductions and tracking debtors to new jobs (which remain in the Bill), the DCA attachments working group on which I sit has been frustratingly left in limbo for the past eighteen months. We are presumably scheduled to emerge from mothballs to meet the Strategy's 2007/8 delivery date, but although the pause could have provided a valuable opportunity to test deduction rates and other ideas, I am sorry to say this has not happened.

Charging orders have reached a new high of 65,676 in 2005, with an increase of 44% over 2004. As with attachments, this reflects the fact that creditors are increasingly seeking to target relevant assets, but this is an area where creditors and debtors, and their respective advisers, have diametrically opposite views of the remedy. A legal remedy which Targets the debtor's main (often only) asset makes perfect sense for the creditor. In the vast majority of cases the charging order will simply result in instalments appropriate to the debtor's circumstances, leaving the balance to be paid when the property is sold. The majority of debt advisers, however, insist that charging orders give one creditor an unfair advantage over the others, unbalance their debt management plans, and lead ultimately to secondary repossession actions.

DCA's July 2000 Report of the First Phase of the Enforcement Review concluded that COs were fair, and

account and business or trading accounts are not affected.

The good news regarding bank arrestments is that new rules will be introduced which will require banks to immediately advise both the Creditor and the Debtor if funds have been caught. At present several banks fail to co-operate citing data protection restrictions. More importantly, unless the Debtor attempts to have the arrestment recalled, then the monies will be released automatically within 14 weeks. These amendments are very good news indeed.

The other area where debtor protection has been significantly strengthened relates to the operation of Summary Warrants. Summary Warrants are a fast track procedure used by various government departments. A senior government officer will endorse a certificate stating that the numerous individuals on the attached listing have not paid their debts to society. This document is subsequently endorsed by a Sheriff thereby granting a Summary Warrant, which provides the same authority as if a Judgment had been obtained against the individual Debtors. This document can then be immediately enforced by an Officer of Court.

Also specifically relating to Summary Warrants, it is now the Executives intention to provide the Debtor with an opportunity to pay by instalments and on the assumption that a suitable arrangement is adhered to, then it will not be possible for Officers of Court

to enforce until such times as the Debtor is in default. In addition going forward it will be necessary for a formal intimation to be hand served by an Officer of Court and Witness detailing the outstanding debt and requiring the Debtor to make settlement within 14 days. In effect this brings Summary Warrants into line with all other types of Warrants for Execution in Scotland.

On the basis that all the aforementioned enforcement procedures have now received the general approval of the Scottish Parliament at Stage I, as a profession we are now eagerly waiting to discover which sections have been amended at Stage II, however I would anticipate that this information will not be available until towards the end of November. Regardless, on balance I do believe that the new enforcement procedures should be welcomed by most Creditors whilst satisfying the Money Advice Agencies by introducing further debtor protection in respect of Summary Warrant debts.



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# Supporting Debtors with Mental Health Problems

The issue of mental health is one that needs to be treated with great sensitivity at the best of times, but perhaps none moreso than when collecting debt. The fall-out of getting it wrong is untold distress to the debtor and a potential media backlash of epic proportions. Getting it right, however, means all such complications can be avoided, the more vulnerable in our society are protected and – the bottom line – your chances of recovering monies owed are greatly increased.

It is for these reasons that The Credit Services Association (CSA), the body that represents the UK debt collection industry, has become the first of the major associations to issue clear Guidance Notes on Best Practice within the area of mental health to its 250-strong membership as an addition to its existing Code of Conduct.

*“The CSA has been involved with a mental health working party that includes Citizens Advice Bureau and various money advice groups looking to establish a commonality of approach from creditors, collectors and advisors in respect of dealing with individuals identified as having a*

*mental health problem,” explains CSA President Godfrey Lancashire.*

*“There is no verifiable data on the volume of mental health cases within our industry but both the regulators and the advice sector have a view that not enough is being done currently to deal with the issue appropriately, and clearly this is an area where we must take the lead,” he adds.*

*“We have therefore decided to issue Guidance Notes to our members, and recommend an internal review of their existing procedures to satisfy themselves that they are managing these sensitive cases in a fashion that reflects the spirit of the CSA’s Code of Conduct and which is acceptable to their clients.”*

The new Guidance Notes state: Members should ensure they establish policies on how to deal with individuals with mental health problems. It is recommended that these policies include the following:

- Details on how to identify individuals with mental health problems
- A list of recognised authorities / individuals qualified to identify

mental health problems

- Agreed procedures on actions that should be taken that should include hold parameters while requesting evidence, return of accounts to creditors in the case of contingency and write off/recourse agreements in the case of debt purchase.
- Reference to the clients’ industry codes as there may well be laid down policies that they will expect members to adhere to.

Members should take care not to pursue legal action in cases where mental health has already been identified as an issue as this could subsequently be used as a form of defence.

In terms of relevant legislation, members are advised to consult with the advisors to ensure they are compliant with ALL relevant legislation, and especially: the Mental Health Act 1983, the Data Protection Act 1998 (for sensitive personal data), and Mental Capacity Act 2005 (this is particularly important in relation to the enforceability of the contract and the subsequent right to collect). Agencies must, of course, also be compliant with relevant OFT guidelines in this area.

The Guidance Notes provide an overview of Best Practice in working with professionals to identify debtors with mental health problems, and particular difficulties they may experience/encounter, for example:

- Understanding the severity of the difficulty and its effects changing from time to time
- Difficulty with tasks such as filling in forms
- Difficulty maintaining an income, either through losing their job or through difficulties with benefits. They can often lose benefits due to difficulties filling in forms or delays in processing claims.
- Difficulty telling the difference

# “Sleeping with the Enemy”

Firstly may I congratulate The Enforcement Services Association (ESA) on reaching their ‘ton’. A hundred years is a very good score. If any of us were around in the year 2106, I have no doubt the ESA would still be flying the flag for professionalism in a vital industry with a difficult reputation; perhaps wearing different clothes and communicating in a different way.

This rather conveniently brings me to my theme for this edition of the Enforcement News- communication and liaison.

I was delighted to learn of the recent liaison group that The ESA had been instrumental in setting up with Citizens Advice. I believe the first meeting has been held and although I am unaware of its outcome, I trust it will be the first of many and prove of benefit both to enforcers and representatives of those enforced against. I would add a recommendation of my own by suggesting that as soon as possible this group widens its coverage to include The Institute of Money Advisers( formerly the Money Advice Association) and adviceUK, the other main player in the free debt advice field.

Let us be realistic for an Enforcement agent it is not exactly a thrill to come across a debtor against whom you wish to enforce, who has just been to a Citizens Advice Bureau for advice because they are in serious financial difficulties. It is a time to pull the blinds down and use a polite word like ‘damn’! However, let us equally remember that these cases are on the increase and as enforcers; care is needed as to how to handle such cases. Strong arm tactics have never and will never work. Assertiveness is surely the key. But tinged with understanding and empathy.

The free debt advice organisations have a social policy duty to report breaches of Guidances or Standards of Practice to the Regulators. Their members come across these apparent breaches through their clients, your debtors. Surely, therefore, it behoves us to be careful in out treatment of such individuals. This may not be pleasing news, but it is true.

It is of little assistance if such organisations simply report such matters up the line to the Office of Fair Trading. Would it not be preferable if they informed the OFT for noting purposes, as they have to, but they were then able to liaise with the ESA so that individual issues could be investigated by your own Association in a self- regulatory manner. Self regulation is something I wonder sometimes whether this present Government has ever heard of or knows how to spell.

The attitude and behaviour of some free debt advisers leaves a great deal to be desired. These issues need to be addressed in similar vein.

To many of you the Liaison group that the ESA and Citizens Advice have set up is indeed like *“sleeping with the enemy”*. As Chair of the Money Advice Liaison Group of which the ESA are important members, may I assure you, it is not. It is a very worthwhile venture to mutually understanding each other’s problems and to improve good practice from both sides. You would be foolish in the extreme to allow such liaison to be one-sided and I do not believe the free debt advice organisations would want that either. There are practices that need to be improved from the advice side also. It is not very helpful is it, if free debt advisers continuously tell their clients to close the door on bailiffs as they are

unable to force entry! One of the most important parts of such liaison is to approach the exercise as equals wishing to improve practice on both sides.

It will take patience, understanding, empathy and resolve. I believe if given time it will prove invaluable for the Industry. The Credit Services Association, the trade body for the debt collecting industry has recently set up a very similar liaison grouping including the other free debt advice organisations as mentioned at the beginning of this article. I am totally committed to professional enforcement and professional debt advice and I am totally uncommitted to the opposite of each.

Good luck to The Association in all that it does for the next 100 years in the furtherance of bringing professionalism into a very important industry. It needs support, it deserves support and I am certain it will get that support.

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# Another Long Hot Summer

Throughout the long, hot days of summer, while the majority of you having been sunning yourselves on foreign shores, your humble servant (well if I don't say it nobody else will) has been hard at work trying to keep the well-oiled machine that is the ESA operating smoothly.

People always say that during the summer nothing ever happens. Well, if that's the case I would hate to be around when a lot happens. Two matters of particular interest have been occupying my time during this period.

## Draft Tribunals Courts and Enforcement Bill

On 26<sup>th</sup> July the government published the draft Tribunals Courts and Enforcement Bill. Unusually for a draft Bill we were given an opportunity to comment. The ESA has been a strong and consistent supporter of the government's intention to reform the enforcement industry and there was a keen sense of anticipation when the draft of what has for long been trumpeted by government as 'a single piece of bailiff law' was published. The result is disappointing. I know of no one within the enforcement sector, whether bailiffs or debt advisors, who is happy with the Bill as presently drafted. Maybe that is what the government expects and will use that as an excuse for quietly shelving it. If that is so then a great opportunity has been missed. We know that government is getting tired of the Bill and there are rumours that it has no intention of reforming bailiff law. The DCA has made it clear that it does not intend re-opening discussions about the fundamental issues and proposals contained in the draft Bill. That will be a great pity, not only for the industry, but also for all those affected by it, whether debtors, creditors or those operating in allied spheres.

So what is it that has caused such consternation? I am sure that all of those involved in enforcement are

disappointed by the omission of a statutory licensing/ regulatory regime. The recent BBC Whistleblower programme would seem to confirm the need for it. Throughout the period of the Enforcement Review this has been one of the major planks to the proposals and everything else has been subordinate to it. Whilst there are very real concerns within the industry about the capability of the Security Industry Authority (the DCA's preferred regulatory body) to fulfil the role of licensing authority, we would urge government to take urgent steps to reintroduce the proposals for regulation and licensing as soon as possible.

The Bill requires an enforcement officer to 'secure' goods before leaving them on the premises. In most cases this will result in them either being made the subject of a controlled goods agreement (the successor to the walking possession agreement) or being removed by the bailiff with the inevitable increase in costs.

The use of forced entry and 'reasonable force' as described in the Bill requires clarification. There is no definition for this term and it is likely to result in a considerable number of disputes, legal challenges and consequential costs to the industry and debtors.

The Bill also seems to propose that enforcement agents may only recover their charges after all the debt owed to the creditor has been paid. The consequences are that in many instances bailiffs will do a substantial amount of work for no pay as, where the enforcement is only partially successful, no funds will be received. Having said that, the Bill also suggests that where the amount recovered is less than the amount outstanding, regulations (that dreaded word!) will determine how much of the amount recovered is to go to paying the debt and how much to paying the enforcement agent. There is clearly a need for clarification.

One area where absolutely no clarification is required concerns the Bill's provisions for excluding some of those who levy distress from having to obtain a certificate. In particular court officers (county court bailiffs) and officers of Revenue & Customs. In the Enforcement White Paper the government made the following statement (para. 105 page 29):

*"It is our intention that the regulatory regime will embrace all enforcement agents, since exempting parts of the public sector [my italics] would put at risk the stated policy aims and objectives."*

When the DCA said that it was not proceeding with the regulatory regime, it indicated that it would instead extend the requirement for certification to those who were currently not required to hold such a certificate. To exclude 'parts of the public sector' seems totally contrary to the spirit of the Government's previously expressed intentions.

The future of the Bill is in grave doubt. Up to now there has been no indication of any parliamentary time being made available for it and government business managers have not exactly been enthusiastic about its inclusion in the Queen's Speech. The changes in the Labour Party leadership expected next year may have a bearing on the contents in the next Queen's Speech but we will have to wait until 15<sup>th</sup> November to find out.

## Uplifting Enforcement Agents' Fees

The Department for Communities and Local Government (DCLG) has recently published a Consultation Paper proposing increases to enforcement agents' fees for the recovery of council tax and non-domestic rates. The ESA will be responding; supporting the proposal in principle but pointing out that if the increase is based on the rate of inflation, it becomes out of date almost

# BBC Whistleblower Programme

## 26th September 2006

Anyone with any interest in the enforcement industry will be aware of the BBC Whistleblower programme on 26th September 2006. This involved a journalist going undercover with two bailiff firms for a total of nine months, working with bailiffs to reveal their methods of operation.

There can be few people who were not appalled by the tactics and statements of the bailiffs appearing on the programme. The ESA condemns the behaviour of these individuals which does not represent the actions and views of the overwhelming majority of those employed within the industry. Neither of the firms involved is a member of the ESA.

The majority of certificated bailiffs/enforcement officers are doing a very good job in often difficult circumstances. Bailiffs do not expect to be popular with the public. However, they are performing an essential service in trying to ensure that people face up to their responsibilities in paying their dues; whether they be parking fines, council tax, child support or any of the other responsibilities imposed upon us by the various statutory bodies.

Throughout its 100 year history, the ESA has sought to uphold and improve the standards of enforcement and it continues to do so today. The Association's complaints procedure imposes penalties on members who fall below the standards required. The ESA also endeavours to find practical ways of resolving disputes between debtors and bailiffs.



The Association has been a strong supporter of the Government's Enforcement Review and has given clear and consistent support to the proposals for a regulatory/licensing regime. It deeply regrets the

Government's decision to exclude such a regime from the draft Tribunals Courts and Enforcement Bill and hopes it will reconsider.

The entire enforcement profession should not be condemned by the actions of a minority. The Association and its membership continues to work for higher standards within the industry and it will not allow the actions of a mindless few to undo the good work which has already been done.

Vernon Phillips  
Executive Director



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