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One Step Too Far

Going back to the early nineties when I first started as a bailiff, I can still remember the time when clients used to pay our company at least £12.50 for returned liability orders. I know some other companies were enjoying a far better rate. Unfortunately, with competition as it was, the suggestion that Bailiff Companies did the work at no charge was grabbed, not surprisingly, by our clients. Sadly, as a result, a few well known companies, for whatever reasons, found things difficult and went out of business at the time. I'm sure a few of us can remember their names.

Bailiff companies have had to adjust to the situation. Some may say those that have survived are now better managed. The fact is however, companies are there to make money and now the only way possible is from the fees charged. This has of course, left us vulnerable to the odd rogue company who will work outside the box in regards of the charging of fees, but as within any industry, you will always get a few who will push their luck!

In the last few years we have had to consider the further eroding of our monies with local authorities requiring that their debt be cleared first before our charges are paid. Initially it started with the collection of RTA 91 debts but it is now being requested by Revenue Sections for Council Tax and Business Rates. Some local authorities are also requiring all monies collected by bailiff companies to be paid into their own bank account, where the fees are then redistributed back to us in due course.

More recently local authorities are now requiring in tenders for either, a percentage of our fees collected, or a lump sum per annum to be paid back to them for the length of the contract. It is appreciated that local authorities are strapped for cash, but surely this is not the way forward. In some ways this request could be described as a bribe and tenders could be won, not for quality of service, but on financial rewards.

For a number of reasons I feel all of the above is damaging for the bailiff industry, disastrous for the debtor and also detrimental to the collection rates for local authorities. It is also in contrast to the way the government are thinking in the recent Bill by suggesting an up front charge payable by the local authority. I am not suggesting that this payment is right, quite the contrary, but surely central government is indicating the complete opposite to local authorities.

I feel local authorities are acting with pound signs clouding their judgements. Yes they will tell you they want both a quality service and financial reward, but I think they are acting naively. By requiring their charge to be paid first, it will mean a sub-standard service in the long run. As a result, it will not make commercial sense for a company to hold on to a case for long, and will result in a greater emphasis on letter dropping, minimal visits and only the acceptance of full payment. Payment arrangements will become a thing of the past. We must remember however, that there are some debtors out there who cannot afford to pay rather than just refuse.

Added to this, it will increase the pressure for some, to raise large or

fictitious fees and do bogus calls. Something the bailiff industry as a whole is trying to eradicate and also by the government suggesting up front fees payable by the local authority. The whistleblower programme showed us that things within the industry were not too well and I believe it gave us all a good wake up call. Nine months down the road, things are looking much better, but if we allow further harsh financial restrictions by our clients, I can see it being utterly disastrous for the bailiff industry and in ten years time who knows whether many of us will be left.

My suggestion is to call on both ACEA and ESA to join together and write to local authorities and explain that where tenders have certain financial restrictions they will be advising that members should not apply. Are there any other contracts where the contractor actually pays the client money to provide the service? Probably not! So why are bailiff companies being singled out? Some of it may be brought on by ourselves with the continuous competition for business, but I think it is time that all bailiff companies stick together for the benefit and future of the whole industry.

Steve Roberts
Managing Director Ross & Roberts



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“How Long is the Legal Life of a Civil Debt, Yesterday, Today and Tomorrow?”

May 2007

The answer to the title of this short article is yesterday and today – 6 years -but tomorrow- well please read on.

I hope, readers, you will forgive me in this issue for concentrating on just one subject. This is, in my view, a subject that is so important to our creditor sector that I really think it warrants an article all to itself.

In 1998, The Law Commission chose to examine the various limitation time periods operating under the Limitation Act 1980. It is perfectly true that there are a variety of time limits depending on the particular action involved- personal injury, defamation etc. In our world of civil debt, the legal life span is 6 years for unsecured debts and interest on secured debts and 12 years for a secured debt - the capital

element. Common practice and case law over the years has shown that this period should start from the date of the date of default for all debts not regulated by The Consumer Credit Act 1974 as amended by The Consumer Credit Act 2006.

The Law Commission reported in 2001 and recommended replacement of the Limitation Act 1980. The report did confirm that the current law on limitation contained different provisions for different causes of action. It was not always clear which category a cause of action fell into and thus how it should be treated for limitation purposes.

The date on which the limitation period started to run did not always take account of the claimant's knowledge of the relevant facts, which in some cases led to unfairness. The new Act, would make all limitation periods 3 years for unsecured debts and interest on secured debts and 10 years as a long stop period and also the time limit for secured debts - the capital element. They also proposed that the 3 year period should run from the date on which a claimant knows (or ought reasonably to know) the facts giving rise to the cause of action, the identity of the defendant, and that any injury, loss or damage (or benefit received by the defendant) was significant. No claim

however could be brought after the expiry of a 10-year long-stop limitation period, which normally would run from the date on which the cause of action arose.

The Law Commission's recommendation was nothing more than a 'clearing up, housekeeping exercise'. You know when we wish to change the position of certain ornaments and photographs in our living room, sometimes we realise that it is better to leave them as they are as the proposed changes don't suit!

Well, all went quiet, very few people had heard of the Law Commission's report and even fewer probably had read it. However, The Department for Constitutional Affairs (DCA), now the Ministry of Justice, had read, marked, learned and inwardly digested it all. Email correspondence between Joanne Quinlan and Kevin Westall of HMCS surfaced into the public arena in May last year to show that HMCS was steaming ahead and considering a draft Bill. Kevin, with whom The Civil Court Users Association (CCUA) works closely, enquired whether anyone had consulted the industry and considered the implications for the commercial world. No one had, but they have now and boy, what a hornet's nest has been stirred up.

The CCUA are leading the industry fight over this matter and being joined by most trade organisations within the industry including the Enforcement Services Association* and the three credit reference agencies. I am also delighted to say that, The Institute of Revenues, Ratings and Valuations (IRRV) and the utilities are causing more than a little stir in Government corridors as well.

Chris Bell from the enforcement team at MoJ just before the consultation process is about to begin. Whilst I am sure we all wish Chris the very best for the future, and I am sure his successor will, in time, obtain a good grasp of the complexities, will it be too late to have any positive effect on the regulations?

So what about the Security Industry Authority (who said “so what about it”)? The few of you who are still with me will maybe have a dim recollection that this was the favoured body of the MoJ to licence (sorry, 'regulate') the enforcement industry.

On the assumption that the MoJ continues with its preferred option of the SIA as the regulatory body it has indicated its intention of publishing a consultation paper either in the late autumn of this year or early spring of next. Someone recently asked me where in the Tribunals Courts and Enforcement Act there is any mention of the proposed regulatory body. There isn't. Furthermore, the Act has nothing to do with the regulatory body which will actually be a 'child' of the Private Security Industry Act 2001 (headache tablets are available for any that need them). The SIA is a creation of the 2001 Act and it simply requires an extension of its powers to enable it to become the regulatory body for the enforcement industry. Furthermore, and on the assumption that the SIA becomes the regulatory body, at least some sections of the Tribunals Courts and Enforcement Act will have to be

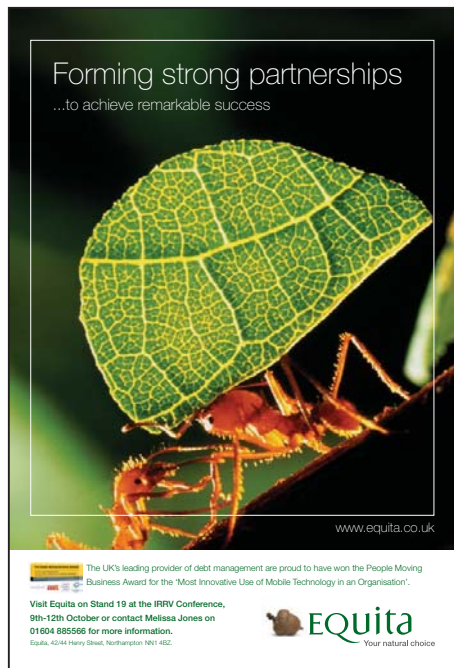
repealed (as will most if not all of the regulations following on from the Act) as the licensing body will make them obsolete. You might therefore ask, why didn't the government simply proceed with the SIA option instead of bothering with an Act, many of whose provisions will become redundant within a few years. Answers on a postcard please.

I believe it has more than a little to do with the BBC 'Whistleblower' programme and a belief in Government that “something had to be done”. Governments have come unstuck following that belief in the past. We only have to remember the infamous Dangerous Dogs Act to recall what happens when Government has a knee-jerk reaction to events.

As we move into autumn there remain more questions than answers as to the way forward for the enforcement industry. There are clear signs that MoJ is already backtracking on some of its initial proposals and there is little confidence that any regulations will meet the concerns, not only of the industry itself, but

those whose interests are mainly with debtors as well as the creditors. The ultimate aim of passing responsibility for regulation to the SIA seems to be governed solely by the need to regulate 'on the cheap' without any thought as to whether that organisation is 'fit for purpose'. My direct experience of the SIA up to now is that it is not. Baroness Ashton promised Steve Everson of ACEA and myself that there would be a new and better SIA. We will wait to see if that promise is fulfilled.

Vernon Phillips
Executive Director
Enforcement Services Association



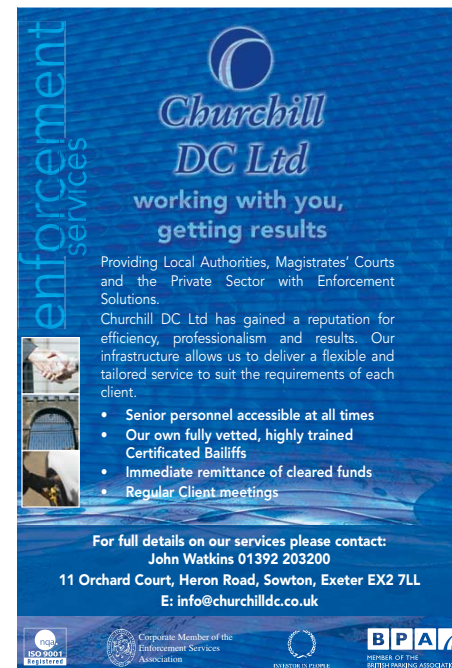
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Industry Body Launches First Ever Debt Manifesto To Tackle Issues Around Over Indebtedness

Personal debt now increasing by £1 million every four minutes.

[September 19th 2007] The Credit Services Association (CSA) - the official body representing the UK debt collection industry - is launching a Manifesto today calling for a radical review of legislation and regulation that concentrates too much on the rights of the consumer, and not enough on their duties to fulfil their financial obligations.

It is also challenging the government to tackle the issue of 'information sharing' - the biggest problem impacting the recovery of debt being the lack of rightful access to information about debtors who have wilfully absconded or disappeared so as to evade their debt obligations.

Specifically it believes there should be a legal requirement for individuals to register an address with their creditors, and inform creditors if they move. This would, practically overnight, protect the innocent from the incidences of 'mistraces' that have been allowed to overshadow the real issue of certain debtors committing deliberate fraud or evasion.

The Debt Manifesto, the first of its kind, is being launched by the CSA at its annual conference at Carden Park. Officially its aims are 'to enlighten, raise awareness, express concern and suggest proposals to alleviate problems caused by excessive debt.' Perhaps unofficially it is a timely reminder to government that they need to take some brave steps if they are serious about tackling the ever-mounting debt crisis, which is now seeing consumer debt rising by £1 million every four minutes.

As Godfrey Lancashire, President of the CSA explains: "Our Manifesto sets out to demonstrate that there is a clear, demonstrable relationship

between a regulatory culture that enables consumers to avoid their debts, and the growing problem of over-indebtedness. Our members know better than anyone else the extent of the problem, and how current legislation isn't working."

"For as long as it is considered acceptable to mount up huge debts, without ever having any intention to pay, and then deliberately disappearing off the radar screen without any chance of subsequently being found, then the problem will only get worse."

"We need to stop seeing all debtors as victims, and the collections agencies as the bad guys, when clearly neither should be described as such. Yes there are of course debtors who find themselves unable to cope and they need to be helped, but the 'one-size-fits-all' approach to regulation does not work. It does not allow different strategies to be delivered to address the very different problems of those who 'can't pay' their debts as distinct from those who 'won't pay'."

Action points within the document are grouped under three principal headings, which form the tenets of the Manifesto: to establish a level playing field between Debtors and Creditors; to improve access to information about people and their whereabouts; to work more closely with Legislators and Regulators. The Manifesto also aims to reinforce the positive role of the debt service industry in providing a safety net for the recovery of large sums of money that would otherwise be lost to the economy.

"The Government's approach to regulation of the industry should recognise the positive aspects of the industry," Mr Lancashire continues. "It needs to maintain the right balance between enabling debt collectors to

recover monies owed to UK Industry and the Public Sector without being hampered by excessively burdensome regulation, and providing the regulatory framework to protect consumers from bad practice."

The CSA, and the existence of the new Manifesto, will mean that it is well placed to advise on these matters and assist Legislators and Regulators with the complex task of alleviating over indebtedness.

"The CSA is keen to pave the way for the industry to maintain and improve its relationship with Legislators and Regulators for the betterment of the economy, our industry and to help provide solutions to the current problems of over indebtedness," Mr Lancashire adds.

Support for the Manifesto has already been received from other major players within the credit community, notably the Institute of Credit Management (ICM). Philip King, Director General of the ICM commented: "I applaud the manifesto and its aims. Members of the ICM know all too well the impact of deliberate absconders and welcome this initiative. As the people often instructing the CSA's member organisations, they share a common interest."

"Whilst consultation by legislators and regulators with organisations like the CSA and the ICM has improved over recent years, there is still room for more dialogue and debate at a much earlier stage in the drafting process."

A full copy of the Manifesto can be downloaded by logging on to www.csa-uk.com

For further press information please contact: **Sean Feast** or **Victoria Gravett** The AGA Group 020 7330 88888 sfeast@aga.co.uk

ONE STEP FORWARD, TWO STEPS BACK?

I AM delighted that the creditor's right to obtain a charging order without any default in 'agreed' payments has survived into the final version of the Tribunals, Courts & Enforcement Bill, but as one problem is settled at least two others emerge from the woodwork.

Firstly, the Lord Chancellor can now impose minimum financial thresholds below which a creditor may not issue a charging order, or apply for an order for sale. What does this add? Judges can already react to the circumstances of each case, and the limit will mean that non-business creditors pursuing a single debt will often be left remediless.

Secondly, at a recent DCA workshop it was clear that charging orders could be considered as qualifying debts within Part 5 of the bill. This revolves around Section 112AB (1)(a), reciting that "all debts are qualifying debts except... any debt secured against an asset". DCA lawyers have concluded that it is the order that is secured, rather than the debt, amounting to semantics, particularly bearing in mind the prime intention of a charging order is to secure the debt. DCA's *Report of the First Phase of the Enforcement Review* in 2000 concluded charging orders were fair, and recommended their availability in cases not in arrears. The effect will be that the balance protected by the charging order beyond the agreed payments will be

snipped off, whereas the Insolvency Service views a charging order as a secured debt. DCA points out that there may be room for discussion, and that the judge will have discretion not to include the charging order in the list of qualifying debts, or decide that the balance should be retained. That is not the point: it will remove certainty and will discourage creditors from using the remedy.

DCA has not even had the courtesy to accompany these proposals with up-to-date data. DCA's Judicial Statistics appear annually in arrears - and several months after the end of the year - so we have no idea how many applications were made in 2006. Nor do they include the number of repossessions based on charging orders, and despite my representations to the DCA I have heard nothing to suggest this statistic will be included in future. Creditors are sure the numbers are tiny, but the lack

of clear fact has enabled debt advisers to magnify alleged abuses. Malcolm Hurlston, chairman of Registry Trust, has promised me he will look to provide quarterly statistics.



By **Jeremy Sutcliffe**, chair of the Civil Court Users' Association jeremy.sutcliffe@eu.nabgroup.com

Both articles taken from the May 2007 edition of CCR



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The Up-Front Fee - fact or fiction?



Many clients over the last couple of months have been eager to discuss the implications of the new Tribunals Courts and Enforcement Act, which received Royal Assent on 19th July 2007 and more particularly the possibility of an *Up Front Fee*?

It is difficult to identify exactly where the rumours all started about this notion and indeed where at all it is documented, however, readers may be interested to note the following extract from Hansard:

The Parliamentary Under-Secretary of State for Constitutional Affairs (Vera Baird) (27 Mar 2007 : Column 1475) statement in the House:

My Department is responsible for the bailiff certification process. The Tribunals, Courts and Enforcement Bill, which finished its Committee stage in the House of Commons today,

includes important changes to enforcement agent law. Enforcement agent law is mixed up in a myriad of legislative fragments and in the common law. The role of bailiffs has evolved piecemeal over centuries. There is a need for the law to be clear, as well as a need to regulate the individuals and businesses responsible for the activities. What we are doing is to legislate and to regulate.

The Bill consolidates enforcement agent law and puts it all in one place, which is going to make it a lot easier for enforcement agents, creditors, the advice sector and debtors to understand it. Schedule 12 sets out a new procedure that must be followed when enforcing debts by taking goods. It is a framework, and further detail will be provided in the regulations to follow. A detailed policy statement has been laid before the House that sets out what we intend to include in regulations.

There are different fees depending on the type of debt. The Bill provides for one fee structure and puts all fees in one place, which should empower people to resist abuse. Importantly, there will be an up-front fee element, payable to bailiffs so that they do not act entirely in pursuit of a cut of the cash recovered—we hope that that will help. It will be necessary, through the consultation on the detail, to ensure we get the level and nature of the fees right to avoid possible abuses such as grabbing goods and

phantom visits of the kind discussed by my hon. Friend.

The Minister referred to the Tribunals Courts and Enforcement Bill - Detailed policy statement on delegated powers issued by the Ministry Of Justice (May 2007), which in respect of fees states:

.....In the absence of draft regulations, this paper provides a comprehensive description of how the Government intends to use the delegated powers in the Bill. Paragraph 62 provides for the recovery of any costs associated with the process of seizure and sale of goods. The details as to what costs may be recovered, how they are to be recovered, and how disputes as to the validity and accuracy of costs charged are to be resolved, will all be contained in regulations.

Further consultation and research will be needed to determine the exact costs and fees that enforcement agents will be allowed to charge, and how disputes as to the validity and accuracy of these costs and fees will be resolved. We will consult with the enforcement industry, the advice sector, court user groups and the judiciary to ensure a balanced and fair fee structure, which adequately rewards enforcement agents for work done, without unduly oppressing genuinely vulnerable debtors.....

Perhaps this gives clarification as to the source of the rumours surrounding a new fee structure to include up front fees, and it is reassuring to hope that a full and open consultation exercise will follow??

Dave Chapman IRRV
Director
Rossendales Ltd.

Breakfast meeting at the Hilton yesterday. He said citizens had complained that they had suffered great injustice at the hands of bailiffs, who seemed to be unaware of their functions, and the manner in which these functions should be performed. Jeremie noted that in response to public concern, a reform process was initiated and the Bailiffs Act, 2000 was enacted. He said under the Act, a bailiff must attend the training programmes for bailiffs organised and conducted by the Ministry of the Attorney General which are to be held at least once a year. *"The Registrar may therefore suspend the licence of a bailiff who fails to attend the training programmes until such time as he (the bailiff) attends,"* Jeremie said. He said the Act, among other things, provided for a new system of licensing to regularise the duties of bailiffs. It requires bailiffs to undergo comprehensive training, write a qualifying examination, and make provision for a code of conduct, he said. He said the Code of Conduct stipulated that bailiffs shall exemplify high standards of integrity and honesty in the performance of his duties. Also, he shall be courteous, co-operative and respectful at all times. Jeremie who explained in detail the provisions of the Act, said it imposed numerous duties on the private bailiff. For instance, he said, a bailiff could not serve any process, or levy any execution on a public holiday, except in cases of

emergency, and then only with the leave of the court. The Act also stated that no person shall engage in business as a bailiff while being an employee of, or is engaging in the business of a debt collection agency. He said all immunities, privileges and protection accorded to the public service bailiffs under the Petty Civil Courts Act also applied to the private bailiffs registered and licensed under the Bailiff Act. Jeremie said he hoped that the legislation clarified the functions and responsibilities of the private bailiff for benefit of both members of public, including you the members of the business sector who often interact with the bailiff, as well as the bailiff himself

- Some 2% of **Dutch** households have serious problems paying their bills, according to research by bailiffs firm GGN. Some 25% blame a reduction in household income, 20% blame something unexpected, 14% blame the economy and 9% personal spending patterns. Source www.dutchnews.nl
- Five cars were seized and almost \$20,000 collected during a crackdown on fines defaulters in Nelson, **New Zealand**. During the two-week blitz this month, bailiffs seized the five cars from owners who owed \$24,494 in fines. Ministry of Justice district collections manager Joanna Lamborn said \$7670 of that amount had now been paid so three of the cars were

released back to their owners. The remaining two cars would be sold. Ms Lamborn said that during the blitz the collections team gathered \$19,118 from full payments and deposits on time payment arrangements from fine defaulters. A total of \$57,497 would be paid off under those time payment arrangements, which Ms Lamborn said was a significant amount. Ms Lamborn said some people who owed large fines had been summoned to appear before a District Court judge to resolve the debt. She said she was pleased about the amount collected during the two-week period as it would make a dent in the amount of fines owed in the region, which was just over \$8 million before the blitz started. Fines \crackdowns would continue and every day bailiffs were seizing cars and trying to collect money owed by fines defaulters in the region, Ms Lamborn said. Letters had been sent to people with unpaid fines warning them that if they did not pay the fines the Ministry of Justice would take action, which could include seizing property, and docking wages, salaries and benefits. The crackdown was part of a national campaign continuing for several months to recover the \$736 million owed in fines. Story from The Nelson mail.



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- Anna Vissi, the Greek star who has represented both Cyprus and **Greece** in the Eurovision Song Contest, is going through a very rough time as she saw her possessions being taken by bailiffs and her assets frozen as a result of a 2.3 million euro compensation she has to pay to the Polyvideo Production company. Clothes, accessories, furniture, paintings and electronic gadgets were taken from Anna Vissi's home last Friday as a result of the popular singer's debate with the Polyvideo Production company who have been adjudicated the astronomical sum of 2.3 million euros as compensation for a TV project that did not go through.

Anna Vissi's belongings will be auctioned on October 31st at very low starting prices.

Apart from the artist's possessions, Anna's own as well as her family's (ex husband Nikos Karvelas included) assets were frozen. Also she is being accused by Polyvideo that she transferred possessions, such as her Porche, to a third party so as to avoid having it taken away as well. Anna Vissi is currently in Los Angeles. Source; Eurovision Today.

- The car of a private bailiff was blown up in the centre of the town of Dobrich, **Bulgaria** late on the night of July 31 2007. The car was parked in front of the bailiff's office.

At the time of the blast, he was in his office writing a report, the Bulgarian news agency BTA reported. Police said that the car was blown up by a home-made device planted near the vehicle. No one was injured and no property, apart from the car, was damaged. The car owner said that he did not see who had placed the bomb. The blast could have been related to cases he was working on, he said.

He has been a private bailiff since November 2006. To date he has worked on more than 270 cases, including

some for debts of up to 600 000 leva, BTA said. It was the second such incident. Two months ago, an attempt was made to set his car on fire, but neighbours prevented the attempt. Source The Sofia Echo

- The Acting Head of the Administration of the Federal Bailiff Service in the Primorsky Territory, Alexander SHEPEL said that the ban for debtors to go abroad has become an *"efficient instrument in the fight with tax-dodgers."*

According to Mr. SHEPEL, highly disobedient violators are detained right at the border. 363 people have been banned to leave country in the 6 months, 14 of them were detained during customs and migration procedures. Most of them had failed to pay alimony. When the debtors were not allowed to leave the country, most of them paid the debts shortly. In the first 6 months of 2007, the debtors paid 1,495 million Rubles through the Savings Bank of Russia by virtue of this efficient *"stimulus."*

This mechanism was enacted on the agreement between the bailiffs and the Federal Migration Service, which allows to stop debtors as early as during passport application procedures. According to the agreement, the bailiffs send documents that ban a person to cross the border to the Federal Migration Service, who stops issuing passports or changing it, or detains a person when they attempt to cross the border.

The banning documents are distributed to all check-points, and the debtor may not be allowed in the plane, or if they are travelling by train or by car, they can be returned home from the border. It is also important to note that going to CIS countries is also considered going abroad. The bailiffs have also reached an agreement with one mobile operator from whom bailiffs will receive phone numbers of debtors. Tourism companies have also been warned about bailiffs' plans. Source: **Vladivostok** Times

- The **Russian** Federal Court Bailiffs Service (FCBS) and Federal Financial Monitoring Service (FFMS) or Rosfinmonitoring have signed an agreement of the exchange of information on the property of debtors. The FCBS told Itar-Tass on Monday, *"The agreement will allow the FCBS to get information on the property of debtors, including of those staying outside the Russian Federation, as well as on financial transactions of debtors."* *"This information is necessary for effective execution of judgements in the event of concealment of liable to seizure property by debtors,"* the FBS officials said.

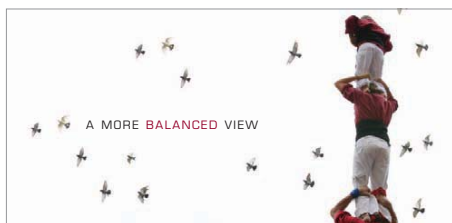
The FCBS will provide to Rosfinmonitoring information on persons and organisations making transactions with monetary funds or other property and that have been recognised by court debtors that conceal funds or other equipment that is liable to search, arrest or

confiscation for the benefit of the state. The FCBS noted that the agreement has been concluded in accordance with the Russian Constitution and laws *"On combating money laundering and financing of terrorism," "On Court Bailiffs," "On enforcement proceedings,"* as well as a number of other laws and bylaws regulating cooperation in this sphere. Source Itar-Tass.

- **Kazakhstan:** *"Economic War"* To Crush Christians. Homes, cars, washing machines and even pigs have all been confiscated or subject to bailiff's orders as Council of Churches Baptists refuse to pay fines imposed in retaliation for conducting worship services without registration. Now courts are ordering the money to be automatically deducted from wages. Source - <http://religion.netscape.com/>. Date added 17 July 2007

- **PORT ANTONIO,** Portland, **Jamaica** - Ian Smith, a 37-year-old bailiff employed to the Port Antonio Resident Magistrate's Court was shot and injured about eight o'clock Saturday night while leaving a guest house here. Smith, according to the police, was leaving the guest house on Queen Street when he was attacked by a man who shot him three times. He was hit in the arm, shoulder and abdomen and was taken to a hospital where he was admitted in stable condition. Smith was not robbed and the police were unable to say what was the cause of the attack. Source; The Jamaica Observer.

- It took six months for Krasnoyarsk bailiffs in **Russia** to find a ship owned by a debtor. The ship was to have been arrested in December 2006, when a writ of execution was brought against "Progress" farm, the ship owner, in Uzhursky District.



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The farm owed more than \$25,000 to its business partners, and after long expectation creditors had to appeal to court. Bailiffs got to know in the course of execution of the writ that the farm owned the Slavutich ship. However, they did not manage to find the ship at first.

The department of criminal search for debtors and their property of the Krasnoyarsk Territory Directorate for Federal Bailiffs Service were involved in the work of Uzhursky District Bailiffs Service. All the possible berths of the ship were checked up near the village of Peschanka. It emerged that the ship had been anchored for half a year at one of them. During that period the ship had not been used and was

out of work. At the moment of bringing the writ of execution the dry cargo ship was towed by unknown people in unknown destination. The bailiffs had to visit all berths in Krasnoyarsk and interrogate everyone who might know anything about the ship whereabouts.

After continuous search the ship was found in Leninsky district of Krasnoyarsk at the private berth. When the ship was discovered, bailiffs arrested it, under the law. Source Permanent news address: <http://english.newslab.ru/news/225760>.

- **Prague**, - An extensive amendment to the distraint code should simplify and accelerate distraints and reinforce and tighten supervision over them, Justice Minister Jiri Pospisil said on Czech Television's discussion programme Questions of Vaclav Moravec today. He added he wanted to propose that bailiffs not be able to take part in distraints performed by other bailiffs. Work on the amendment started in January and the document should be completed in the autumn. Pospisil's statement came in reaction to the case of

Czech bailiffs chamber president Juraj Podkonicky who bought allegedly below the market price a villa in a distraint led by his colleague Vladimir Plasil. Experts described such behaviour as unethical, but Podkonicky rejects it. Pospisil said today that Czech legislation enables bailiffs to purchase things in distraints performed by their colleagues, so there is not reason for disciplinary proceedings in Podkonicky's case. *"But for me, it is a kind of an ethical problem,"* Pospisil said, adding the new amendment should remedy the situation. This story is from the Czech News Agency (CTK).

- **KABAROLE, Uganda** - A woman was beaten to death by a mob for instructing court bailiffs to destroy her former husband's home. Evace tumwebaze of Kibito trading centre in Bunyagabu county was lynched on Sunday. She had separated with David Mugabirwe with whom she has five children. The officer-in-charge of crime, Enock ndyomugenyi, said the bailiffs also slashed Mugabirwe's two acres of banana plantations. This angered the neighbours who later lynched her. Three people have been arrested in connection to the murder. Date added 27 May 2007

- **Trinidad and Tobago** Attorney General John Jeremie noted that there were many instances in which citizens had to go to court to challenge the illegal action of bailiffs. Jeremie was speaking at a Bailiffs

Architect's Car – Exempt or Not?

A local authority recently received representations from an architect claiming her vehicle was exempt from seizure as it was a **tool / vehicle necessary for use personally in her business employment**. The lady claimed she needed the vehicle to get to her office and to carry out site visits.

In order to satisfy our client that the seizure was valid we undertook some research and came up with the following interesting facts -

- It has been held (*Sheriff of Bedford & Toseland Building Supplies Ltd v Bishop 1993*) that if a tool was occasionally used by another person then it is not protected. (Therefore if anyone else ever drives the debtor's vehicle then it is not exempt).
- Furthermore Motor Vehicles are only treated as a necessity in exceptional cases. The vehicle will be needed by the debtor to continue a job or business or to get to work and there will be no reasonable alternative.
- In *Burns v Christianson 1921* a chauffeur claimed that the car he used for his business was exempt from seizure. The court held against him by strictly interpreting the words of the legislation trade is not synonymous with business, occupation or employment and includes only the occupation of one who is a mechanic and works at manual labour with the aid of tools, and is not one who conducts the business of contractor, manufacturer or merchant. Thus in the case of the claimant the occupation of chauffeur was not a trade and a car was not a tool. The court also added that the aim of the exemption was **not** to protect expensive chattels.

- A motor vehicle will NOT be regarded as exempt from seizure where the debtor's contract of employment neither requires the employee to have a car nor defines the person's duties as involving the use of one. In *Goldsmith v Harris* the claimant was a manager in a house building firm and used his car to travel from site to site within the area where he supervised the construction work. The vehicle was claimed as a necessity but it was not required by the terms of his contract nor was it essential because of the nature of his occupation. The Judge held.. "The mere statement that a person is a manager of a building company does not import that a private motor car is necessary. It is only after special evidence is given to show special circumstances relating to a particular position, which involves special duties, that one may say that the work cannot be done without a motor car." The debtor may suffer inconvenience, but that was a matter for arrangement between him and his employer and was not a concern of the judgement creditors.


In Summary - it is quite common claim for debtors to believe that there car is essential for their work. In reality a vehicle is usually more a convenient (rather than a essential) mode of transport. If a copy of the debtor's contract of employment and job

description could be produced clearly stating that s/he must use her own vehicle to perform the duties then the levy would need to be withdrawn. If, however, the documents merely state she must make site visits then the levy is good and valid.

When given the above facts it is quite clear that the vehicle was not exempt in law. The lady's primary task of work is to produce drawings at her head office and she had alternatives that would enable her to undertake site visits as required. I hope other practitioners and Local Authorities find the information in this article useful when faced with similar claims in the future.

Dave Cornes
IRRV- Partner - Jacobs

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Working With Deductions

Customers refusing to pay part of their bill can be a headache, but here are some ways to deal with deductions By Michael Dennis

MANAGING customer deductions is becoming a bigger problem than ever for many credit professionals. Some customers' attitude seems to be 'when in doubt, take a deduction'. The worst thing that will happen is we will have to pay it back in a few weeks or months. When addressing customer deductions, your primary goals should be to:

- Determine the root cause of the problem. Statistically, customers are right or at least partially right at least 50% of the time they take a deduction according to recent studies.
- If your company is making mistakes that result in deductions being taken, make the necessary corrections so that the problem does not continue.

- When sending documentation to a customer relating to a deduction, find out what information they need to resolve the problem.
- Try to send documentation only once. Make sure it is going to the correct person. Address it by name, title and department.
- Follow up to be sure that all the required documentation was received by the customer – eliminating an excuse for delayed payment.
- Fax rather than post supporting documentation. Your goal is to resolve deductions quickly.
- Be sure to keep copies of all files sent to customers. This way, if you follow up and are told that the customer never received the supporting information it can be re-sent quickly and easily.
- Make careful and detailed notes of all discussions and commitments concerning outstanding deductions.

- When necessary, go up the chain of command at your customer to secure repayment of deductions taken in error.
- Follow up on customer commitments to repay deductions made and broken – just as you would with a broken commitment to pay a past-due invoice.
- Make sure that the customer makes a payment commitment upon receipt of relevant supporting documentation. If they need more information, provide it as quickly as possible. If necessary, and after appropriate notice, hold orders to force a reluctant customer to repay a deduction that you have proven is due and payable.

One final thought: Arguably the only party that cares about an open deduction is the credit department, so if you or your collectors do not systematically address outstanding deductions and either credit them off, or demand repayment then deductions are likely to grow into an even bigger problem.

Michael Dennis is an instructor for CMA Business Credit Services, a business credit consultant, and the author of *Credit and Collection Handbook*.



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Philips Collection Services firmly believes that training should be a priority

The enforcement sector is a challenging one at the best of times. In recent years however, the challenges and the pressures have increased, due to both legislative and regulatory changes and debate, and to media reporting. As a result, the industry is under a much brighter spotlight, and concern with being able to demonstrate professionalism and best practice is consequently high on everyone's agenda.

However well run an organisation is, it cannot attain and sustain a high level of efficiency and professionalism without paying close attention to top quality, ongoing training for its staff. As well as equipping people at every level to carry out their role effectively, training gives people more confidence and greater pride in their work, which in turn means better performance, increased productivity, better staff retention and improved morale.

Although the UK boasts a profusion of training organisations, to date there have been little, if any, training programmes developed specifically for the enforcement sector. This is a situation that clearly needs to be remedied, and we believe that if the industry wants to strengthen its credibility and ensure a positive future, each company must proactively source and provide sector-specific training for its entire staff.

Training is not simply about issuing a one off certificate of competence in a specific area - such as IT or administration. For it to be truly effective and result in higher and more professional standards, it needs to comprise three key elements: It must be ongoing, across the board and expertly targeted.

A key area, for example, that is long overdue thorough and professional training is bailiff work - the repercussions of which were painfully evident in last year's Whistleblower documentary on the BBC. In this case, a formal bailiff accreditation followed by ongoing training and development will turn the tide in terms of public confidence and assure services that are accountable and reputable.

Equally, training should apply from top to bottom, to include all administrative

and support functions within the industry as well as management and senior staff. Our own experience has proved that well planned, sector-specific training makes a significant positive difference. As an example, in the six weeks following professional training for all our call centre staff, complaints fell by 60%.

We firmly believe that for the industry to thrive, it must make a long-term commitment to achieving the highest professional standards through specialist training. By actively developing a training culture ourselves, we hope that it will encourage others to follow suit. Which for the industry can only result in improved public image, more respect, greater profitability and a work force that is proud of its role.



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The Rough Guide To Enforcement Regulation

Now that the Tribunals Courts and Enforcement Act 2007 has finally received Royal Assent many people have been asking, what happens next?

There seems to be some confusion as to exactly what difference this has made to the enforcement profession, post the passing of the Act. The short answer is that, for the moment at least, there is no difference whatsoever. So what, some people have asked, has all the fuss been about? Can we carry on as before, regarding the passage of the Bill through Parliament as a mere diversion to keep under-employed civil servants off the streets during last autumn and winter? Well, not exactly.

The purpose of the new Act has been to serve as enabling legislation for the regulations that will follow.

In order for the Government to create regulations (known as secondary legislation) there has to be An Act of Parliament to authorise them (primary legislation). That Act is the Tribunals Courts and Enforcement Act 2007. The Act is known as an enabling Act as it 'enables' the Government to make Regulations. Following me so far? Pay attention there will be questions at the end!

During the long summer parliamentary recess the civil servants have been preparing the consultation paper on

the proposed regulations. Parliamentary rules prohibit them from publishing the consultation paper when Parliament is not sitting so they must wait until the autumn when the MPs return from their summer holidays. The paper will then be published and we will be given twelve weeks to respond. The cynics among you will say "...and then *Government will do what it intended to do all along and take*

absolutely no notice of anything contained in the responses to the paper". You may very well think that. I couldn't possibly comment!

Two areas of particular interest to the profession are the proposals for an up-front fee and a three-month time limit on taking control of goods. I do not propose taking up the majority of this article with a detailed analysis of the pros and cons of these two proposals. They have already been argued ad nauseam elsewhere (not least by me) and you will all be aware of their potential consequences, not only for the enforcement profession, but for creditors and debtors as well. What I can say is that, on the basis of what we have learnt so far, the Ministry of Justice appears to be guilty of creating legislation "on the hoof" without giving any proper thought to the consequences of its proposals. We can but hope they will listen, not only to the responses to the consultation paper, but also to the voices which have already been expressing concern. The real fear is not so much that they will not listen but that, quite frankly, they do not understand. With the civil service practice of moving staff around every so often this creates a vacuum within the system which tends to be filled by those who, whilst undoubtedly well meaning, simply do not have the knowledge and experience necessary to enable them to make sound judgments. A classic example of this is the recent transfer of

So what is all the fuss about, you may ask? Let me list some of the implications that the Industry believes will result and see if you like them!

- County Court Claims would rocket at the time when Government want to restrict claims going to court.
- Tracing debtors would be severely affected. The Utilities would gravely suffer in this area.
- Interest rates would inevitably rise to cover losses creditors would be making because of the shorter time span. Would it be fair to suggest that non criminal fines might also increase as a result?
- Creditors and debt collecting agents would be likely to be less sympathetic to cases of financial difficulty.
- It is believed that no consideration whatsoever has been given to the implications for commercial debtors. The Institute of Credit Management (ICM) has sent a strongly worded representation to HMCS, but this implication should in no way be forgotten.
- The Government's own department- The Students Loan Company- would be severely hampered from collecting their Government debts from what is a very transient population of debtors. As it is they are experiencing an increasing number of students claiming the debt to be statute barred. Could I suggest the expression 'shooting oneself in the foot' springs to mind?
- The Limitation periods for The Financial Ombudsman Service

(FOS) (currently 6yrs as a rule) might have to be reformed if the period within which debt can be recovered is reduced.

- In addition but not immediately connected by statute, is the matter of the intense lobbying that would result from the consumer sector to change the time Credit Reference Agencies held credit related data on their records from 6 to 3 years. This is a data protection issue, but the pressure for change would be considerable. The 6 years that data is held on CRA files on consumers apparently is not connected to the Limitation Act time scales.

The latest information from Her Majesty's Court Service is that we were expecting a Consultation Paper, firstly in the Spring, then July/August and now further slippage has occurred but no date for its publication has been given!

It is yet another brilliant example of senior civil servants having no knowledge or feel for the commercial

world in which they live and work. Naivety personified; let alone the matter of responsible lending that Government is so concerned about!

I believe it is imperative that the Industry stand firmly together over this matter and attempt to kill the idea stone dead.

* The Enforcement Services Association are members of The Credit Industry Working Group on Recovery Matters (CIWGRM). The CQUA act as the secretariat for CIWGRM and it is this Group that is the main facilitator for lobbying Government.

This article first appeared in the Score in April 2007.

**Anthony M.G.Sharp FICM Consultant,
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Know your Bailiff!

How many Local Authorities put their trust in their bailiff provider, in the hope that the personnel who will be collecting their debts are as professional as the Company they work for?

Does the debtor really understand the process and the person who is knocking on their door?

How many bailiff firms employ the services of smart, presentable, certificated, well trained bailiffs who they THINK are doing their work and their work only?

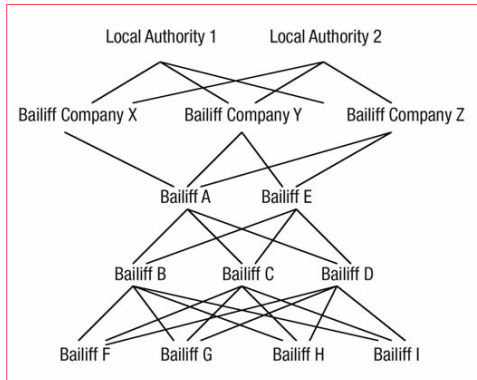
We all think that we are getting a professional service, don't we?

The truth is that there is a new bailiff culture developing out there that could quite easily bring the whole industry into disrepute! We've all heard of pyramid selling, but how about pyramid bailiffing? It works like this:-

Bailiff A is certificated, well trained and presentable and he works as a sole provider to Bailiff Company X. However, unbeknown to Bailiff Company X he is also selling his 'sole services' to companies Y & Z.

Now Bailiff A is receiving so much work that he cannot possibly deal with it himself so he furtively subcontracts his work to Bailiffs B, C & D. Now cunningly, Bailiffs B, C & D also get work sent to them from Bailiff E, (we haven't met him yet, but he works for Company Y & Company Z). Overloaded with work, Bailiffs B, C & D forward their work on to Bailiffs F, G, H & I. Confused?

Let me make it clearer. (see diagram opposite)



If the work gets done and money is collected, should we be worried?

Yes we should be worried!

Who is controlling bailiffs F, G, H and I? The fact is that F, G, H and I are not actually bailiffs at all. It's highly possible that neither are B, C & D! They are just collectors – uncertificated, unbonded, untrained, unreferenced and a totally uncontrolled disaster waiting to happen.

Of course we should be very worried!

The Solution

The immediate answer that springs to mind is to only use employed bailiffs. Well that does not and will not stop 'pyramid bailiffing.' There is a whole new breed out there that believes they can short cut the complex tender and vetting processes by setting themselves up as mini bailiff companies on the back of reputable firms. These people will go to any lengths to get work whether that means becoming an employee of a reputable firm or not.

Good audit procedures and the monitoring of personnel will help to ensure standards and professionalism within the industry is maintained, however, the only true solution is a 'National Register of Bailiffs'. Such a register could be controlled by a professional body such as the Enforcement Services Association which would require every individual bailiff to be registered by the Company they work for or provide services to. The register must be accessible by the general public, making it easy to verify and check who is doing the Local Authority's work and collecting from those debtors. Such a register would also ensure that the Local Authority and the Bailiff Company could check the credentials and tenability of all bailiffs collecting on their behalf.

We have to stop this growth in pyramid bailiffing before the pyramid undermines the whole process, leaving reputable firms and Local Authorities to pick up the pieces and ultimately destroying the profession altogether.

Do you know who **your** bailiffs are?

Julie Green-Jones
Managing Director Rossendales Ltd

Servicing The Western Isles

Bearing in mind that Sheriff Officers are reimbursed for travel expenses, time away from the Office and sustenance, David Walker, Managing Partner of George Walker recounts a recent experience of how circumstances, outwith one's control, can get in the way!

Recently, we were required to serve a Matrimonial Interdict on the Isle of Tiree, which is of course a very small Island off the West Coast of Scotland. Fortunately there were several other instructions to be attended to, which made my trip all the more worthwhile.

I nominated one of our older witnesses, Lindsay (male) and advised him to pack a bag as he would be staying overnight. Being an obliging soul, he immediately agreed without complaint, despite the fact this would be the first time he spent the night apart from his wife of 34 years!

We got to Tiree and having picked up our hire car, quickly found the address of the Defender. No-one was home so in true stakeout style, we parked up and waited. Hours later, we detected a motor vehicle. Quick as a flash, we approached the unsuspecting gentleman, Writ in hand. In effect the service was a complete non event, the gentleman accepted the document and thanked us for the comprehensive explanation and practical advice offered.

After an evening of Lindsay's National Service stories, it was time to "hit the sack". The next morning we quickly attended to the several other jobs, before heading off to the airport to catch the return flight. However by the time we arrived, fog had completely closed in, so we were going nowhere. Another 24 hours in paradise!!

To kill time, we drove off to the only part of the Island we hadn't plundered with Writs in the previous 24 hours, and then it was back to the B & B for another night of Lindsay's war stories. Needless to say, I was relieved when we finally left the Island at lunch time the following day.

The story does not finish there. As is the norm, the client wished to arrange for the service of a Warrant for Civil Imprisonment, which meant a return trip and as there was no other instructions to be attended to, I put my thinking cap on to work out a way to get the document served... without another extended visit to Tiree.

Fortunately, I made a point of obtaining the Defender's telephone number. I duly called and asked if he would be good enough to co-operate, by making himself available at Tiree Airport. The plan was, I would fly out, jump off the plane, meet him in the Airport building and discreetly serve the document on him. To my tremendous relief he agreed!

The following day, the plane duly touched down and on exiting, I said to the Pilot that I hoped to go back to Glasgow on the return flight and if possible could he wait for me? He looked at me with a strange expression but nodded in agreement.

I walked through the Airport building and there was no sight of

my Defender. Unperturbed, I proceeded to the car park and much to my relief, there was my man standing next to his car. I duly explained the terms of the Warrant and the consequences of breaching same. Having achieved personal service I then briskly walked through security just in the nick of time to get the flight back to Glasgow, in effect having been away from the Office for some five hours as opposed to three days!!

The foregoing is an example of the practical difficulties Officers of Court can face when servicing remote locations. If any Agent requires such service, then I would always recommend you contact your Sheriff Officer in advance to discuss the practicalities and possible costs.

David Walker

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The President's View Onwards and Upwards

As summer fades away (what summer you may ask) and autumn arrives the bailiff profession (sorry enforcement profession), continues to operate against a backdrop of uncertainty and likely change.

Since the last edition of Enforcement News, the Tribunals Courts and Enforcement Bill has received royal assent. Endless articles have been written, and seminars held all discussing the potential impact of the regulations. However as a practitioner and President of ESA I continue to be alarmed at the lack of awareness of many creditors to the potential impact the long awaited regulations may have on the profession and the creditor's choices. Whilst some local authorities have a good understanding of the possible changes many remain ignorant to the possible impact of the regulations.

With this in mind the ESA has produced a briefing paper for all local authorities setting out a number of questions that need answering, and urging all local authorities to seek clarification in key areas of the Bill and future regulation.

I would urge all ESA members and local authority officers to help raise awareness of the potential impact of the regulations if they are not fair and workable. As noted in the Executive Director's article once the consultation document is produced it may already be too late. Copies of the briefing paper may be obtained from me at president@ensas.org.uk or paul.sharpe@equita.co.uk

As I enter the final 6 months of my 2 year tenure as President I am proud to say that despite what has seemed like a never ending torrent of criticism, the profession continues to thrive with many hundreds of bailiffs carrying out a difficult yet essential job. Whilst those who wish to attack every aspect of the role do so through web sites and articles often produced by those riddled with self interest or a pathological need to challenge the rights of

a creditor to seek payment of a lawfully levied charge, little mention is heard of the daily abuse and threats that the certificated bailiff is subjected to.

It remains an interesting dichotomy that whilst abuse of those seeking to enforce a penalty, whether Bailiff, Parking Attendant or Traffic Warden grows apace, the right of the creditor to seek payment seems to be ignored. With the move to decriminalise a range of offences seemingly set to continue the need for effective enforcement would seem destined to grow.

As we consider this dilemma I am sure that all who read this excellent publication will see it as clear evidence that the professionalism shown in its production is an example of the professionalism members of ESA, often charged with collecting the ever growing list of penalties in new areas, display every day in their day jobs.

It only remains for me to once again thank Mike Shang for his hard work in putting together this edition and thank all contributors for their continuing support.

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**
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Paul Sharpe



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