

ENFORCEMENT^{NEWS}

The quarterly magazine from CIVEA, the Civil Enforcement Association

AUTUMN 2021

Introducing the Enforcement Conduct Authority



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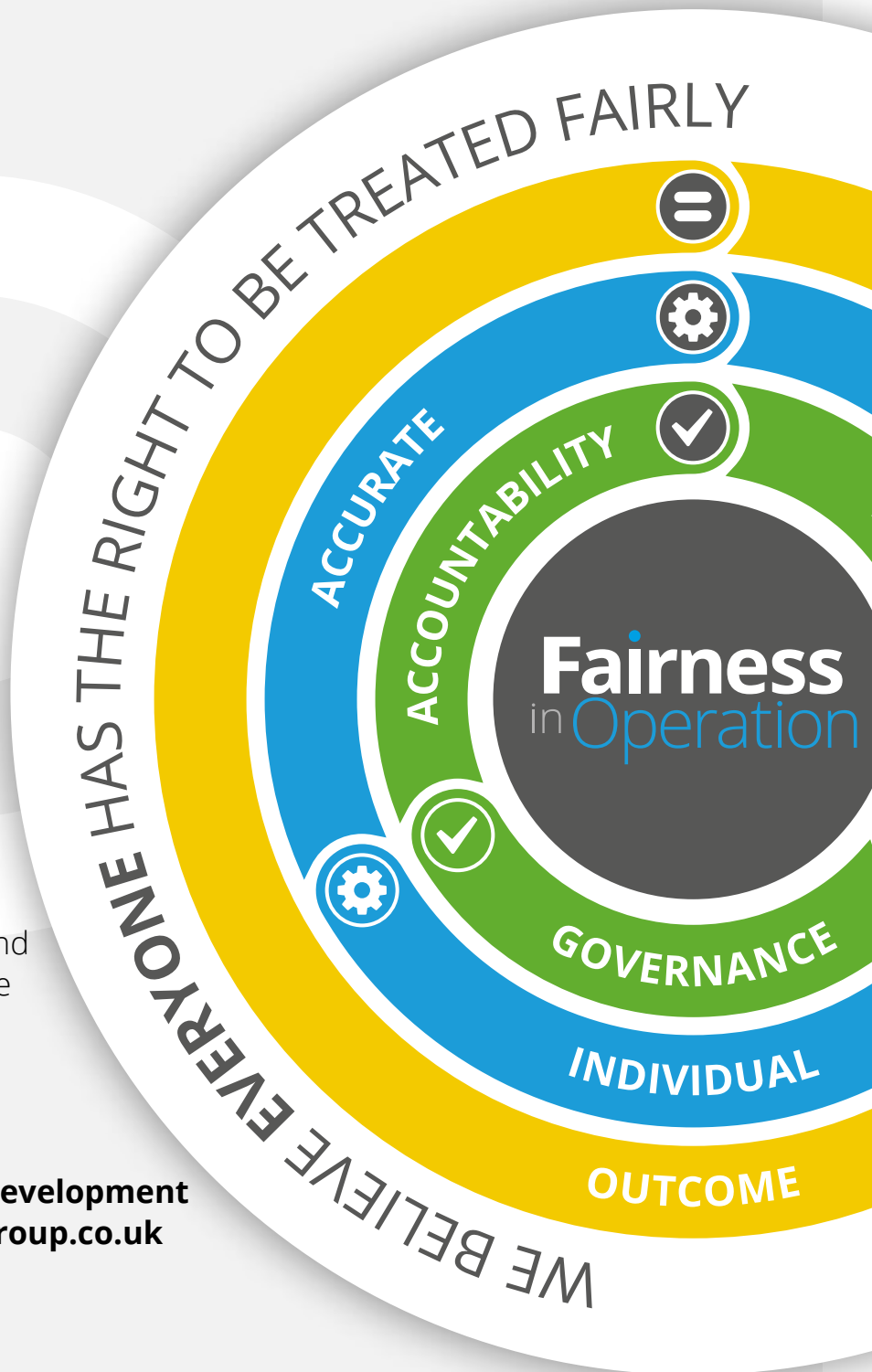
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Unanimous support for the Enforcement Conduct Authority

Welcome to the Autumn edition of Enforcement News. I hope you enjoy our round-up of topical issues and commentary on matters of interest.

It cannot be overstated how the past 18 months have changed our lives. It seems an age since we published our revised code of practice and established the associated independent supervision. Before the pandemic struck, the CIVEA Council was in the early stages of discussing the next evolution, which had the working title of an enforcement commission.

Many of you will know that the concept of a supervisory body for the industry has been considered in various forums, including the Enforcement Law Review Group. Some organisations have spent years demanding a government regulator to be imposed on the industry, while some firms have advocated a light touch self-regulation model.

It has been this fundamental difference of views that has meant the prospect of any form of industry oversight was never realistic.

"This is a milestone in the history of the enforcement industry and marks key moment where the industry responds proactively to a post-pandemic world."

However, with the pandemic came a fresh impetus and an opportunity for CIVEA to float its plans for a commission. Thankfully, the Centre for Social Justice (CSJ) spotted a unique opportunity to broker an agreement to set up a working party to develop the plans in consultation with the debt advice sector.

By the time of writing the CSJ will have published its report, *Taking Control for Good*. The report identifies the potential for a significant increase in problem debt, including to public bodies. It predicts an increase in the use of enforcement agents, which requires closer scrutiny of enforcement practice. Its proposal is for an oversight body that is independent of the industry and the debt advice sector but uses their combined expertise to bring it to fruition.

The second part of the report details the work that has been completed to design the Enforcement Conduct Authority (ECA). A full explanation is provided in an article on page 8.

CIVEA and other members of the working group have briefed

a wide range of stakeholders in the industry, local government, in Parliament, the media and voluntary sector. There has been unanimous support for the ECA and CIVEA members have been applauded for their support.

The next step will be to appoint a board to oversee operations and a small executive team. CIVEA will continue to work with the ECA for a short time until it is able to operate independently. The plan is to make the appointments and have the organisation set up by the end of the year.

This is a milestone in the history of the enforcement industry and marks a key moment where the industry responds proactively to a post-pandemic world.

Over the past few years, CIVEA-led reforms have made huge progress in demonstrating that enforcement is responsible and effective. But we cannot be complacent about the impact of COVID on many people's lives and it may require adjustment to the way government debt is recovered.

Revenue teams looking to return to business as usual may face political pressure to be more measured and work harder to support people to repay their outstanding charges in different ways. The imperative may be given to the political priority of protecting vulnerable people.

Having worked hard to drive up standards and communicate these improvements to our critics, the next objective is to explain the value of enforcement and the fiscal case that makes it a necessity.

There have been some positives to take from the gloom of the crisis. CIVEA's Post-lockdown Support Plan and successful lobbying efforts has led to an increase in CIVEA membership. Although two firms were unable to renew their subscriptions, we continue to attract new members. In the last edition of Enforcement News we welcomed two firms. In this edition, we are pleased to welcome two more. Court Enforcement Services Limited and Empira Limited joined CIVEA in June as corporate members. Both firms provide High Court and civil enforcement and I am sure we will hear more from them in the future.

With councils facing financial pressures to support their local communities, it is unsurprising that they are encouraging firms to offer increasing levels of social value in their tender applications. Social value is an important feature of government contracts and can contribute significant social, economic, or environmental benefits. On page 18, there are details of new guidance for local authorities, which are being developed by CIVEA in partnership with procurement framework providers.

As members will be aware, the Justice Minister wrote to CIVEA recently advising that the government was considering a response to our calls for enforcement fees to be upgraded. On page 9, an article explores the issue of the statutory fee structure and the unintended consequences that ministers need to consider.

Enforcement News is your magazine. We try to cover topical issues of interest to our members and the wider readership that receives the publication. We are always pleased to receive ideas about articles and would welcome contributions from members and others who have opinions or comments on industry matters.



Russell Hamblin-Boone
CEO, CIVEA



Yvonne Fovargue Labour, Makerfield The effect of the COVID-19 outbreak on household debt 8 July 2021:

I have spoken on a number of occasions about the need to regulate the bailiff industry. With debt to both national and local government increasing during the pandemic, now is the time to tackle this issue. The government should lead by example by reforming the way in which they recover debt such as council tax arrears, so that local authorities put a clear focus on affordability and fair treatment. We need nothing less than a new debt management Bill to write off historic tax credit debts, embed fairness principles in statute, and establish a bailiff regulator with statutory powers to protect financially vulnerable individuals. I hope the Minister agrees with that.

There are some measures that could be taken to reduce the amount and impact of debt. Enforcement action should be halted for debts built up as a result of coronavirus; non-priority benefit deductions from Universal Credit should cease; and plans should be brought forward to extend repayments over a longer period, as well as making the £20 uplift to Universal Credit permanent in order to give people the certainty and security of having enough to live on. Does the Minister agree that removing any money from those on the lowest incomes would inevitably create more debt and hardship?

Andrew Selous MP (The Second Church Estates Commissioner), 8 July 2021 The effect of the COVID-19 outbreak on household debt 8 July 2021:

"When money is owed to local authorities, it is especially important that a reasonable and compassionate approach is taken. Some people can afford to pay and I have no problem with the full panoply of the law being used against those who can pay their bills but choose not to. Other people simply cannot pay, and local authorities have a particular duty to behave well in those circumstances. I welcome the proposal for an enforcement conduct authority to make sure that bailiffs behave reasonably as well. It is overdue and I look forward to its establishment."

Siobhain McDonagh Labour, Mitcham and Morden, 15th June 2021 Catch up premium:

There are legions of hard-working parents who cannot afford tuition, but who can see their child slipping behind. A lady came to see me because the bailiffs were coming. Instead of paying her council tax, she paid for a tutor so that her son would catch up and achieve the 11-plus. Of course, I do not support her council tax decision, but I absolutely recognise that she is desperately trying to plug the support gap that the Government are failing to fill.

Barry Sheerman Labour/Co-operative, Huddersfield, 11 June 2021:

To ask the Secretary of State for Justice, how many people were handed down a prison sentence due to non-payment of council tax in (a) 2019 and (b) 2020.

Chris Philp, The Parliamentary Under-Secretary of State for the Home Department:

"Non-payment of council tax is not a criminal offence and cannot attract a custodial sentence. However, as a last resort, a magistrates' court has the option to commit an individual to prison for non-payment."

Before a magistrates' court commits someone to prison for failure to pay their council tax, it must have issued a "liability order" and the local authority must have (at least) tried and failed to take control of the debtor's goods and sell them to recover the debt. Councils have additional powers of enforcement under a liability order, including deduction from earnings, deduction from benefit, charging orders on the property, and bankruptcy."

Florence Eshalomi Labour/Co-operative, Vauxhall, 14 June 2021:

What assessment he has made of the potential effect of ending the moratorium on evictions on levels of (a) evictions and (b) homelessness.

Eddie Hughes, The Parliamentary Under-Secretary (Housing, Communities and Local Government):

"The measures that the Government have introduced mean that fewer cases are progressing to eviction."

Vicky Foxcroft Shadow Minister (Work and Pensions), 14 June 2021:

To ask the Secretary of State for Housing, Communities and Local Government, what estimate his department has made of the number of people in (a) Lewisham Deptford, (b) London and (c) the UK in rent arrears after the end of the ban on bailiff-forced evictions on 31 May 2021.

Eddie Hughes, The Parliamentary Under-Secretary (Housing, Communities and Local Government):

"The English Housing Survey (EHS) Household Resilience Study suggested that approximately 9% of private renters were in arrears in November."

Ian Lavery Labour, Wansbeck, 14 June 2021:

To ask the Secretary of State for Housing, Communities and Local Government, what plans his department has to provide additional support to tenants facing eviction following the end of the ban on bailiff-forced evictions came to an end on 31 May 2021.

Eddie Hughes, The Parliamentary Under-Secretary (Housing, Communities and Local Government):

"the Government has to balance supporting tenants with landlords' ability to exercise their right to justice where needed... Evictions must be scheduled with a minimum of 14 days notice and will not be carried out if bailiffs are made aware that a member of the household has COVID-19 symptoms or is self-isolating. In certain circumstances, tenants are able to apply to suspend an eviction."

Ian Byrne Labour, Liverpool, West Derby, 9 June 2021:

To ask the Secretary of State for Housing, Communities and Local Government, what impact assessment his department has made of the potential effect of the reintroduction of bailiff enforcement from 1 June 2021 on homelessness.

Eddie Hughes, The Parliamentary Under-Secretary (Housing, Communities and Local Government):

"Bailiffs are now able to enforce an eviction if a landlord has a valid warrant of possession. This reflects the gradual easing of national restrictions and ensures that landlords are able to exercise their right to justice. The bailiff measures were appropriate at the height of the pandemic to help control the spread of infection but these restrictions could only ever be temporary. They prevent landlords from repossessing properties when they have valid grounds to proceed. The latest statistics for the first quarter of 2021 show that the volume of possession claims by landlords is down by 74% compared to the same quarter in 2020. This suggests that landlords are bringing significantly fewer claims for possession than before the pandemic. The reduction in claims means that fewer cases will proceed to the stage at which someone could be evicted, compared to before the COVID-19 pandemic."

Ian Byrne Labour, Liverpool, West Derby, 9 June 2021:

To ask the Secretary of State for Housing, Communities and Local Government, how many households were at risk of bailiff enforcement in (a) Liverpool West Derby constituency and (b) England as of 1 June 2021.

Eddie Hughes, The Parliamentary Under-Secretary (Housing, Communities and Local Government):

"The Department does not hold information on the total number of households which were at risk of bailiff enforcement on 1 June 2021. However, the latest published figures on warrants issued show that there were 2,480 warrants of possession issued to landlords and 43 warrants of possession issued to mortgagors in England and Wales in January to March 2021."

Ian Byrne Labour, Liverpool, West Derby, 9 June 2021:

To ask the Secretary of State for Housing, Communities and Local Government, what impact assessment his department has made of the effect of reintroduction of bailiff enforcement from 1 June 2021 on the risk of COVID-19 transmission.

Eddie Hughes, The Parliamentary Under-Secretary (Housing, Communities and Local Government):

"When carrying out an eviction, the bailiff will follow the latest Public Health England and government guidance. They will conduct the eviction wearing Personal Protective Equipment (PPE) and maintain social distancing. They must ask if anybody in the household has symptoms, is self-isolating or shielding. If that is the case, or if the bailiff observes any visible symptoms of COVID-19, then they must withdraw from the property immediately. Bailiffs also will not evict if the household is quarantining in-line with government guidelines on return from an amber list country, and the eviction will be rescheduled. Bailiffs have also been asked to undertake regular COVID-19 tests and not to attend work if they or anyone they live with has tested positive for COVID-19."

Barry Sheerman Labour/Co-operative, Huddersfield 7 June 2021:

To ask the Secretary of State for Justice, how many (a) prosecutions and (b) convictions there were for the non-payment of TV licence fees (i) in total and (ii) of women in 2020.

To ask the Secretary of State for Justice, how much his department handed down in fines to people sentenced for TV Licence fee non-payment in each year since 2012.

To ask the Secretary of State for Justice, how many committal orders were made by Magistrates' Courts in England and Wales against women for default of payment of fines (a) in total and (b) in relation to a conviction for the non-payment of (i) a TV licence fee fine and (ii) council tax in 2020.

To ask the Secretary of State for Justice, in how many prosecutions for TV Licence fee non-payment charges were withdrawn (a) after a Single Justice Procedure was sent to the defendant and (b) after a plea was entered by the defendant.

Chris Philp, The Parliamentary Under-Secretary of State for the Home Department:

"The Ministry of Justice has published the number of prosecutions, convictions and sentencing outcomes (including fine amounts) for the non-payment of TV licence fees up to December 2020. It is not possible to distinguish at which stage the charge was withdrawn, whether the offence was dealt with under a Single Justice Procedure or information regarding plea at magistrates' court."

At the time of writing, the Ministry of Justice has just announced updated guidance for enforcement agents to work safely during the on-going pandemic. This follows the move to stage 4 of the lifting of the recovery roadmap, with Wales due to follow on 7th August.

We know that many enforcement agents have reservations about entering residential property where there may be hygiene risks. This is an indicator of the caution with which our industry is moving closer to business as usual, which is reflected in the revised CIVEA guidance circulated before the government update but entirely aligned.

Aside from agents' reservations, there are many council revenue teams still dealing with grant applications and financial support for local communities. For some, recovery of overdue Council Tax is not a priority and it could be some time before we are able to assess the full impact on council budgets. According to the National Audit Office, the pandemic's cost to councils stood at £6.9bn last year, and it forecasts further losses of £2.8bn in lost income in the 2020-21 financial year¹. Even with Council Tax collection rates averaging 97%, around £3bn of tax remains uncollected. When you add to this unpaid penalty charge notices and commercial rent and non-domestic rates arrears, it is clear that responsible enforcement will be essential to prevent budget cuts to local services.

However, there are many households struggling with problem debt as a result of the pandemic. Some have been affected by job loss and others by ill health. Income shocks have led to a new demographic of debtors who have not incurred debt previously and are not familiar with the debt support system. We can expect some of these people to struggle to cope with their debts who find themselves subject to enforcement procedures. Just as agents have adapted to the increased incidence of vulnerable people, they will need to be equally aware and helpful to this new cohort of first-time debtors.

The COVID pandemic has added to growing concerns about the treatment of people in debt by public authorities. It is no longer appropriate to stigmatise someone for getting into debt and we have become uncomfortable with the punitive consequences of debt. There is a fair expectation that people in debt will be treated correctly and supported as they repay what is owed. So, we cannot ignore the shift in society's attitude to debt and the implications that could have on enforcement in the future.

There is also likely to be a backlog of aged debt, which has been held up by delays in the courts process. Debt that was incurred before the pandemic could still be in the system and prove hard to recover. We will need to work to trace people who may have moved house or used their parents' address and after over 12 months living at home, have now moved out. There is evidence of a lot of movement in the housing market at the end of the second lockdown.

Most importantly, we will need to manage increased volumes of enforcement cases with extreme care. We cannot sacrifice quality for quantity, and it is right that we face close scrutiny on this. There should be no corner cutting to meet demands for high collection rates. As a sector we have worked hard to successfully implement and enhance new standards. We must uphold those standards across all our clients.

We are supported in this by the advent of the new oversight body. The Enforcement Conduct Authority is a timely development that can help ensure that we apply the standards and regulations consistently to meet our obligations to our clients and the public.

1. National Audit Office, [Local government finance in the pandemic](#), 2021



Carole Kenney
President –
CIVEA



Introducing the Enforcement Conduct Authority

Even before the pandemic, the years of austerity imposed on Local Authorities (LAs) by the post-credit crunch recession had already pushed debt owed to government to the top of the table of problem household debt. This led to a greater reliance on enforcement firms who recover difficult to collect debt for public bodies.

Recovery of unpaid Council Tax bills has become particularly hard on families who have suffered financially in the pandemic and have prioritised paying other bills. Civil enforcement agents are often the first to identify vulnerable people who have been unable to face their debts.

However, councils have a statutory obligation to collect overdue monies owed to the public purse. This is vital to ensure frontline services can continue through councils that face a devastating drop in revenue due to the pandemic. The National Audit Office has calculated the pandemic's cost to councils stood at £6.9bn last year and it forecasts further losses of £2.8bn lost income in the next financial year. In 2019/20, enforcement agents recovered over £500m in outstanding debt for authorities, which all pays for important services such as adult social care and children's services.

The fiscal case for enforcement is as strong as ever, and there is still clear public support for enforcement agents. According to a YouGov survey conducted for CIVEA in 2020, over half (56%) of adults believe councils should use bailiffs to try and collect unpaid Council Tax from people who can but will not pay, compared to just 28% who disagreed.

Increased household debt means that, whereas for many years enforcement agents pursued those flouting the law, they are now just as likely to encounter people in vulnerable situations. According to government figures, councils are facing an estimated shortfall of £509m in their Council Tax collections for last year, which they have only been given until 2023-24 to pay off.

So, there is a fine balance to be struck between supporting local services and creditors rights and identifying and supporting the financially vulnerable.

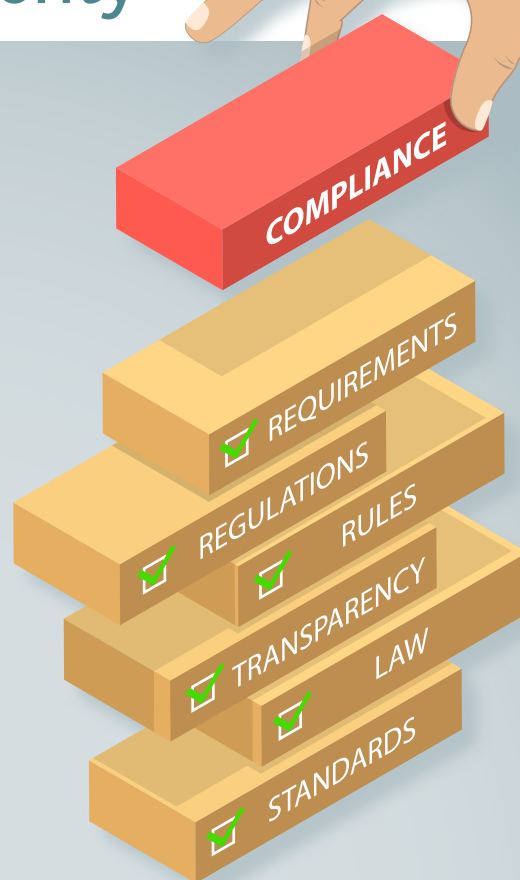
Against this background the Centre for Social Justice, a centre-right think tank, convened a round table event in October 2020 to explore the challenges of government debt collection. The outcome was a call for evidence on a voluntary enforcement regulator. CIVEA responded with a proposal for self-regulation.

Consequently, a working group led by the Centre for Social Justice and comprising CIVEA members and debt advice sector representatives was formed. It was set the task of designing a model of self-regulation that does not restrict innovation in a market, and that responds rapidly to the needs of central and local government departments. At the same time, it needs to recognise its responsibility to people who are struggling to manage their priority debts.

The solution is set out in a detailed framework document for a new ambitious, industry-funded oversight body – the Enforcement Conduct Authority (ECA).

The ECA will be launched later in 2021 and will bring an unprecedented degree of independent scrutiny of enforcement firms and their agents. Its core mission is to drive improvements in the enforcement industry and protect the public against poor practices. Its core functions are supervising conduct, maintaining standards and handling escalated complaints.

The framework document published in July provides a blueprint for the board of directors that will establish the ECA. An advisory group will be formed to appoint a chairperson and board members. The board will then operate independently to deliver the ECA objectives. There will be no direct or indirect control from enforcement agencies, agents, advice organisations or trade



bodies. The ECA Board will have the autonomy to impose sanctions on agents and agencies for non-compliance with the minimum conditions, standards, and competencies it has set out.

However, the ECA will work to the principle that any burden or restriction it imposes on individual agents, agencies and their activities should be proportionate. The authority will conduct supervisory activities over all enforcement agencies and agents under its remit. We have kept non-CIVEA members informed of developments and the ambition is for all enforcement agents, including High Court, to sign up to supervision.

As a priority, the ECA will review and propose amendments to the official National Standards and consult on new guidance on vulnerability, with a focus on fair and affordable repayment. This will reflect more closely the reforms that have become standard practice in enforcement since 2014.

The industry has responded proactively to changing social, economic and environmental conditions and received strong support for the proposals from CIVEA members and in debates in both Houses of Parliament. The Ministry of Justice has welcomed the plans for the industry to self-regulate and will review its operations in two years' time when it will decide whether the government needs to intervene to strengthen regulation.

In the meantime, enforcement firms and their agents have a unique opportunity to show how our industry has evolved and adapted to meet the demands of its clients in a post-pandemic world with ethical conduct and responsible enforcement.



Russell Hamblin-Boone
CEO, CIVEA



Enforcement Fees – Learning from the past

With news that the Ministry of Justice is considering whether enforcement fees should be uplifted, it is timely to reflect on an abridged article published by a former CIVEA President in 2014 when the current fee structure was under consideration. There are some important lessons to draw to ensure that the government policy intentions are not undermined when a new public debt collection policy is developed.

Bailiff Reform – Fees

I am sure that all readers of this publication are well aware that after 20 years of reports and consultations, that far reaching reform of bailiff law is due to be implemented on the 6th April this year (2014).

We accept that the reforms had to balance the rights of creditors, debtors and enforcement agents and as a consequence we were unlikely to find every provision to our liking. Inevitably, as with any legal provisions, there will be areas that are not certain and will remain capable of different valid interpretations, until settled by a decision of a Court of Law.

“The new fee structure will introduce greater flexibility to the collection process and will incentivise both debtors and enforcement agents to conclude the process at the earliest possible stage.”

One area where I had hoped that the reforms would have the support of all stakeholders is the new fee regime, which introduces certainty and transparency, which must be welcomed. It appears that I may have been overly optimistic in the respect, as it is rumoured that numerous clients are intent on undermining a fundamental objective of the reforms, “ensuring that any new Fee Structure adequately and fairly rewards agents in public and private sectors for the work they actually do”¹.

The attempts to undermine this objective take on numerous forms, including demanding that Enforcement Agents (EA's) undertake additional 'free' activities and asking EA's to either discount or rebate their fees. The proposals are further undermined by comments that misrepresent the new fees as excessive, disproportionate or that they represent a significant increase over the current levels.

The new fees will impose a 'cap' on the fees that can be charged, which will eliminate the potential for overcharging, will address allegations of 'phantom' visits and will reduce disputes, as fees will be based on fixed, readily identifiable stages, rather than the current myriad of ambiguous schedules. In future, debtors will know with certainty what they will be charged if they fail to comply, whereas currently it is almost impossible for a debtor to ascertain in advance what fees will be applied.

The new fee structure will introduce greater flexibility to the collection process and will incentivise both debtors and enforcement agents to conclude the process at the earliest possible stage. In future, due to the introduction of a properly funded compliance stage, a significant proportion of debtors will no longer be subject to a door step visit and will be supported to manage their debt at the compliance stage and will only pay the £75 fixed fee.

The only debtors who will be the subject of the enforcement stage fee are those debtors who 'won't pay', who have failed to comply during the earlier stage and who have also failed to engage with

the creditor prior to the case being issued for enforcement. The regulations build in protection for those who are vulnerable and cap the fees that can be applied.

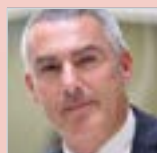
Undermining the legitimate fees that an enforcement business can generate risks pushing businesses into aggressive enforcement strategies in order to remain commercially viable; exactly what the reforms are intended to address.

I would question why any well-informed client would think that it was appropriate to encourage or demand that the legislative fees are reduced, when those fees have been established at a level to achieve a sustainable enforcement profession, one that is able to properly invest and provide the quality service that clients should demand. Any dilution of the legislative fees can only result in a reduction in service levels, as suppliers are forced to cut corners and pushed to find creative strategies to generate a sustainable return, which will place the vulnerable members of the community at greatest risk.

One further method that is apparently being suggested to undermine the legitimate fee charging of EAs is the proposal that a client could undertake the compliance stage and 'hive off' the £75 fee, then passing any cases that are not paid in full to an EA. This suggestion is flawed on a number of grounds. The Notice of Enforcement contains a warning that, “If you do not pay by the above date, an enforcement agent will visit you and may seize your belongings – this is called taking control” and accordingly, if a client had no intention of completing the process by visiting to undertake enforcement action, then any payment made has arguably been obtained fraudulently.

The CIVEA rules, which all members are required to adhere to, have, following an Extraordinary General Meeting of the Association, been changed to reflect the new regulatory procedure. This rule change demonstrates the commitment of all CIVEA members to adhere to the spirit of the new regulations. I hope that clients will respect the spirit and letter of the law and will allow their enforcement providers to compete on quality of service, as is the intention of the reforms.

1. *Effective Enforcement White Paper*, March 2003



Paul Caddy
was President of CIVEA
on 21st February 2014



A Brave New World

July saw the government remove COVID restrictions leaving us with the advice such decision making is now down to individual good judgement.

It is a concern that good judgement does seem to be lacking in some people. I recently stood in King's Cross Station, prior to the relaxation, and counted many individuals who wore no mask at all or if they were had it drooped uselessly under their chin or nose.

Individual good judgement is perhaps not a quality we can rely on. That being said, it is with some comfort I have seen many UK firms and indeed CIVEA's own guidance recommend for the moment that procedures remain in place.

The MOJ has just issued further guidance into their expectation of how enforcement should be operating at this time and is much aligned to CIVEA's own guidance to members.

Civil enforcement agents have, at face value, a hazardous task. Calling and meeting a number of people each day in the course of their duties. As varied as large businesses to small council flats. In areas of some wealth to others suffering much deprivation.

The job contains uncertainties at the best of times, not knowing what lies behind the door of each visit. Not knowing what the attitude and reaction of an individual may be behind that door.

Would it be fair to say throwing COVID into the mix perhaps adds to this uncertainty?

I would take a moment to dispel that concern. Following the MOJ and our associations' own guidance and using good judgement does make in-the-field enforcement a safe environment to operate in.

PPE should still be utilised and entry to unventilated areas should be avoided. Regular sanitisation of hands and equipment should be maintained. Entry into domestic dwellings, although a legal right now, should be carefully considered and at the moment my advice would

be this is best avoided.

I don't spin this advice from the comfort of an office; the other day I took some cases and knocked on some doors. Not a bad routine to keep your hand in and appreciate some of the issues faced on the road, in particular working under COVID restrictions. Amidst the usual No Answers and Gone Always I did meet several people and had constructive conversations towards resolving their debts, without the need of compromising anyone's safety.

I am perhaps a little concerned that some may take the new relaxation as a sign that all is well with the world when it most certainly is not.

In the last week I have had a few Teams meetings with colleagues and suppliers to find many have been suffering with this disease. Far more than I ever encountered during the earlier lockdowns of last year. Fortunately, although poorly, none have required hospitalisation and have recovered. A most definite improved prognosis on where we were a year ago.

As we move forward and out of this pandemic, I would just remind all to keep their guard and just because we have all been told to relax not to take it too literally.



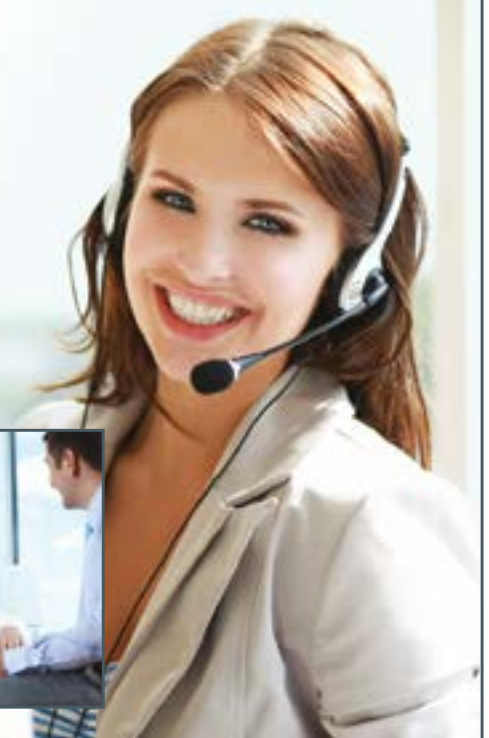
Paul Whyte
Partner at Whyte & Co

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How Alternative Dispute Resolution can adapt to meet the needs of an online society

It's often overlooked, but one of the most important benefits of Alternative Dispute Resolution (ADR) is that it encourages consumer confidence in every business sector where a scheme exists. For most people, the ability to seek redress in an independent manner when communications break down with a company, or when there is disagreement with a company's decision or proposed resolution, is vital. Yet across the various ombudsman and ADR schemes, there's a considerable amount of variance in approach – and a surprising reliance on rather complicated, bureaucratic processes in some instances.

Resolver's evidence within our own database of more than 6.5 million complaints is that people are more satisfied within sectors that have a known ADR process – typically those that are subject to heavier regulation. This can lead to surprising results for the sector and ADR scheme. While a certain percentage of people will never be happy with how their dispute is handled, there is evidence suggesting that even when a consumer doesn't 'win', they may be satisfied with a decision if they feel that the process has meant they have been fairly 'heard'. This is most likely to occur where the ADR scheme demonstrably listens to the consumer's argument and addresses the points raised in a timely and efficient manner.

At its core, ADR, where available, becomes the process for redress should a consumer and business fail to resolve a dispute between themselves – and as such an independent third party is required to step in and review the particulars of a case. There are currently around 60 ADR providers across many sectors, including 'elevated' providers known largely as ombudsman schemes. These can take a more involved role in directly investigating a dispute and come to a decision that is often binding for one or both parties – known as arbitration. Other ADR providers practice mediation, where their role is to help disputing parties come to a mutually acceptable outcome. Ombudsman schemes will often also seek to work directly with the industry they are serving to improve or guide on best practice in issue resolution. An ombudsman's 'view' on a general topic can help



"With an effective ADR provision sectors also have the bandwidth to ensure a broader scope and remit to cover fair treatment of consumers – and can recommend alternative options to resolve a dispute – before the influence of courts."

ADR is a process of dispute resolution that can bypass court action. With an effective ADR provision sectors also have the bandwidth to ensure a broader scope and remit to cover fair treatment of consumers – and can recommend alternative options to resolve a dispute – before the influence of courts.

There will always be a segment of consumers that will move straight to court action if they feel there is a deadlock or a breakdown of communications between themselves and a business. As such there will also be cases where a court rules in favour of a consumer, which will then make the ruling enforceable (currently not the case on decisions made by an ADR provider, though courts can theoretically choose to enforce those made by an ombudsman scheme). For the majority of consumers, the sheer cost – and time – of court action can mean it is untenable and with an ADR provider in the breach there is a process to mediate or ultimately recommend a resolution before it gets that far by way of necessity. If a court case is ruled in favour of the consumer, it sets a precedent for how a certain type of issue or complaint is handled. If an ADR provider is effectively overseeing this process, there is more flexibility in resolution options for future similar disputes.

a sector adapt and change its processes to avoid 'mass claims' issues arising in the future.

It's important to note that a sector in itself cannot just decide to 'offer' ADR. There has to be a 'competent authority' to oversee the activities of an ADR provider. Within more regulated sectors this is already apparent but for those with little to no regulatory activity it historically has been trickier to engage a process. But the benefits of ADR are apparent, and the government encourages ADR as a means of a sector publicly ensuring its commitment to give consumers the best service possible.



Alex Neill
CEO
Resolver Group

Defining social value

In the last few years there has been an increased importance placed on social value commitments in tender applications for local government enforcement contracts. As a consequence, the definition of social value has been expanded and it no longer represents its original intention. For example, a recent tender document placed particular focus on volunteering and providing donations to local charities and organisations. This puts undue pressure on enforcement firms to balance social value commitments, especially financial, against other areas of the bid which also request added value.

Social value is an important part of the contracts that enforcement firms deliver to Local Authorities (LAs). These could contribute relevant social, economic, or environmental benefits to local communities, as agreed between the council and the contracted company. However, increasingly tender applications are requesting a monetary value and up to 25% of the tender is being attributed to the total application.

In 2015 Lord Young said in his Review of the Social Value Act that social value outcomes should be relevant to the service being procured and that it is best described as *"something that would benefit from being thought about in a wider way (as an element in the optimum design of a service), rather than buying something completely unrelated"*.

Procurement Hub and YPO are working with CIVEA to draft guidance on the appropriate use and definition of social value criteria. The guidance explains the importance of clear outcomes in social value contributions and gives some criteria for social value. For example:

- Is the social value requirement tailored specifically to the local authority's priorities?
- Does it cover economic, social and environmental components?

- Does the tender request details of how the commitments will be achieved and request evidence of delivery elsewhere to ensure commitments are realistic?
- Does the request incorporate the monitoring/reporting/KPI element which ensures a degree of accountability?

For the enforcement sector to function effectively, it is essential that social value requirements do not become so costly for firms that some are unable to compete for contracts. CIVEA rules state that *"no CIVEA member shall rebate any fees to the creditor, however that is expressed"*.

The rules are critical to the fair functioning of the enforcement market and any member that contravenes the rules faces expulsion from the association. As many council clients specify membership of CIVEA as a condition of their tender applications, expulsion from the association is a credible sanction.

The regulations introduced in 2014 have been transformative and standards have continued to rise as a result. Enforcement firms' fees are fixed by statute under the Taking Control of Goods (Fees) Regulations 2014 under a framework designed to ensure that excessive costs are not raised and passed on to debtors. This policy has ensured a level playing field for firms of all sizes and promoted responsible debt recovery.

The new guidance on social value will be published and circulated to members later this year.



Russell Hamblin-Boone
CEO, CIVEA





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It's not all about debt – why mental and financial wellbeing matter

Our day jobs – whether we're a debt adviser, enforcement agent or creditor – is to work with a customer to resolve their debt. Yet, we also know the importance of keeping an eye on the bigger picture too – why did that debt originate? Are there vulnerabilities in play?

CAP's latest report, 'Shipshape or sinking ship?', suggests another wide lens that can help us think critically about interventions aimed at reducing debt – financial and mental wellbeing.

Real lives

When Robert's marriage broke down, he became homeless, was diagnosed with a tumor and lost his job, all in quick succession. He found himself sinking fast and unable to plug the holes that were letting water in before a new one appeared.

Debt advice threw him a lifeline which pulled him back above the water, but not for long.

"I felt like I was in a sinking ship and I was putting plywood in different places but the water was still coming in. I was still sinking.

Without the debt, there has definitely been a respite. It has taken some of the load away from me and given me the ability to start thinking straight.

But I'm stuck. It's really difficult as I can't work with my health issues. I'm not asking even to be able to live comfortably, it's just about surviving. Even that's too difficult." – CAP client, Robert

Financial and mental wellbeing are both essential to allow us to feel secure, in control and connected to others. Without these central planks it is impossible to leave problem debt behind and stay afloat in any storms the future will bring.

Setting sail: why financial wellbeing matters

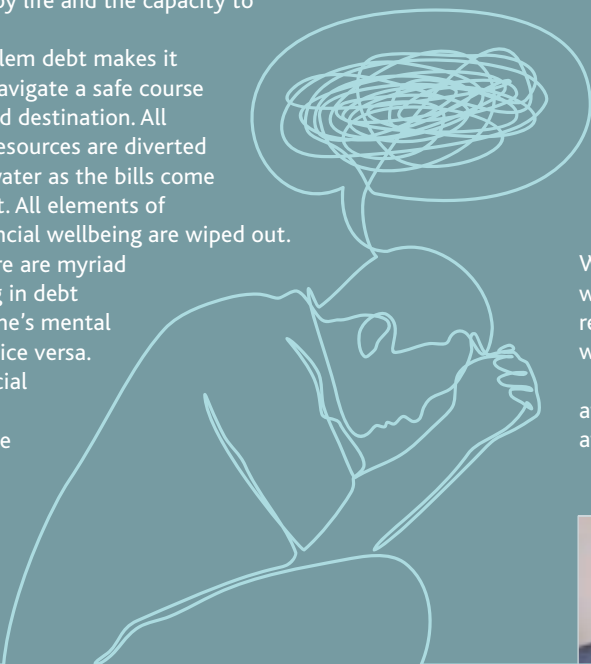
Financial inclusion – having access to financial products and basic financial knowledge – is like having a boat. You can set sail with a small boat, but it's not going to stop you from being shipwrecked if you face any storms.

Financial wellbeing is concerned with the structural integrity of the boat, with making sure you can sail high enough in the water to make it safely to your destination.

It's our financial wellbeing that allows us to have control over our day-to-day finances, meet future goals, and have both the financial freedom to enjoy life and the capacity to absorb shocks.

Being in problem debt makes it impossible to navigate a safe course to your intended destination. All attention and resources are diverted to bailing out water as the bills come in thick and fast. All elements of someone's financial wellbeing are wiped out.

Likewise, there are myriad ways that being in debt impacts someone's mental wellbeing and vice versa. Debt causes social isolation and is known to reduce productivity at work, reducing how optimistic and useful people feel.



Shipshape or sinking ship? CAP client's financial wellbeing

Becoming debt free is not an automatic switch between poor and good wellbeing. There are substantial social and economic constraints that stop people from achieving high levels of wellbeing, which prolong feelings of stress, not being useful or not being close to others.

In the worst-case scenarios low levels of mental and financial wellbeing make it impossible to move on from financial difficulty. The chance that problem debt will reoccur becomes almost inevitable.

We surveyed nearly 900 people who were either beginning to address their debts with advice from CAP or were currently in a Debt Management Plan.

The results showed that debt advice helps people increase financial wellbeing, especially 'present security' and 'future freedom'. 30% rarely or never felt like they were now struggling financially or that they would never have the things they wanted in life because of their money situation.

However, the majority still answered negatively to indicators of financial wellbeing. 51% always or often felt their finances control their life, 47% rarely or never had money left over at the end of the month, and 42% always or often felt concerned that the money they had saved will not last.

The average mental wellbeing score of CAP clients was also five points lower than the average for the UK population, at 21 out of a maximum of 35. The biggest contributors to this were rarely or never feeling relaxed (30%), not feeling close to other people (23%), and rarely or never feeling useful (23%).

Setting a course: maximising financial wellbeing

A focus on wellbeing brings to the surface other outcomes beyond bringing debts under control that are important to help someone set a course and sail higher in the water.

The debt advice sector and creditors have a key opportunity to improve people's financial health as well as helping them deal with debts. In our interactions with consumers about debt repayments, what would it look like for us to help someone feel confident in managing their day-to-day finances? Or to consider what they need to do to be ready to face unexpected financial challenges in the future?

However, this alone cannot set people up to sail safely ahead. All forms of wellbeing are compromised by a lack of income and social security, which are essential to underpin health and set a course for positive futures.

"It's very difficult. If a bill is higher one month it completely throws you off and has a knock-on effect for the next month. I don't know what else I could sacrifice. There is nothing else. I don't know what I should do." – CAP client, Robert

We need action to better understand the links between poor wellbeing and the social and economic landscape, and tackle the reasons some people continue to take on water despite continually working to plug the holes up as best they can.

You can read more and see our recommendations at capuk.org/shipshape or get in touch with the team at externalaffairs@capuk.org



Gareth McNab

Director of External Affairs,
CAP

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Back to basics

It is still important to remind customers, the public and each other why enforcement is an integral part of the collections process.

There is no doubt that vulnerability and social value are high on the agenda for many this year, including ourselves. This is an important topic that requires ongoing focus from enforcement firms, but it is equally important that we do not lose sight of enforcement in the process. Bristow & Sutor enforcement agents (EAs) regularly help Local Authorities (LAs) and clients such as Transport for London (TfL) recover millions of pounds of lost revenue in unpaid taxes and fines each year. This can include outstanding Council Tax, parking and traffic offences and more. We all continue to face common misconceptions around how and why we provide the services we do, but it is more important than ever that we communicate that we are not debt collectors and only get in contact after clients have tried and failed to engage themselves.

It is common for EAs to be the first to identify those who are vulnerable when they visit their homes. If our agents encounter vulnerable people, enforcement action is suspended and we refer that person for additional support to dedicated welfare teams. In many cases, it is engagement with a Bristow & Sutor EA that has resulted in people getting the support they have needed. This has been brought even further into the spotlight since the introduction of the Debt Respite Scheme, aka Breathing Space, earlier this year.

"Recovering funds has always been important for the aforementioned reasons, but this is even more integral now post COVID-19, when budgets are stretched and more people than ever need support from local councils."

Commitment to this approach is essential, but it should not be forgotten that enforcement is an essential deterrent and directly affects local communities, providing funding for essential frontline services such as adult social care, refuse collections, police and fire services. It is all too easy to object to the concept of EAs paying visits, but when somebody is not vulnerable and simply chooses not to pay their council owed debts, the people they are impacting most are their own neighbours. Uncollected tax means less money for services and higher bills for the majority of the community who do pay on time, which is unfair and potentially damaging.

Recovering funds has always been important for the aforementioned reasons, but this is even more integral now post COVID-19, when budgets are stretched and more people than ever need support from local councils. Despite efforts to share the best ways to resolve cases of debt by many industry members, some myths still get shared via channels that people trust, such as social media, public forums and even in national press and broadcast media. We must continue to re-iterate when these incidents occur that the enforcement process is completely legal and enforced on behalf of LAs and the government. The easiest way to resolve debt is to make contact and discuss circumstances and by following the CIVEA code of practice, we ensure that a fair approach will be taken to finding the most appropriate solution.

It is an unfortunate reality that some people still believe that enforcement firms apply charges at random and do not realise the

fee structure is regulated and set out in the law.

Understanding that fees are designed to encourage contact at an early stage, to cover the resources required when a debt continues to be left unpaid such as sending EAs to conduct visits, is sometimes key to improving how the enforcement process is perceived. All Bristow & Sutor agents wear body-worn cameras and video footage is constantly reviewed to monitor conduct and performance. Communicating measures like this and explaining that an EA certificate is granted by a Judge from the County Court and must be renewed every two years, all provides independent credibility behind the processes we undertake.

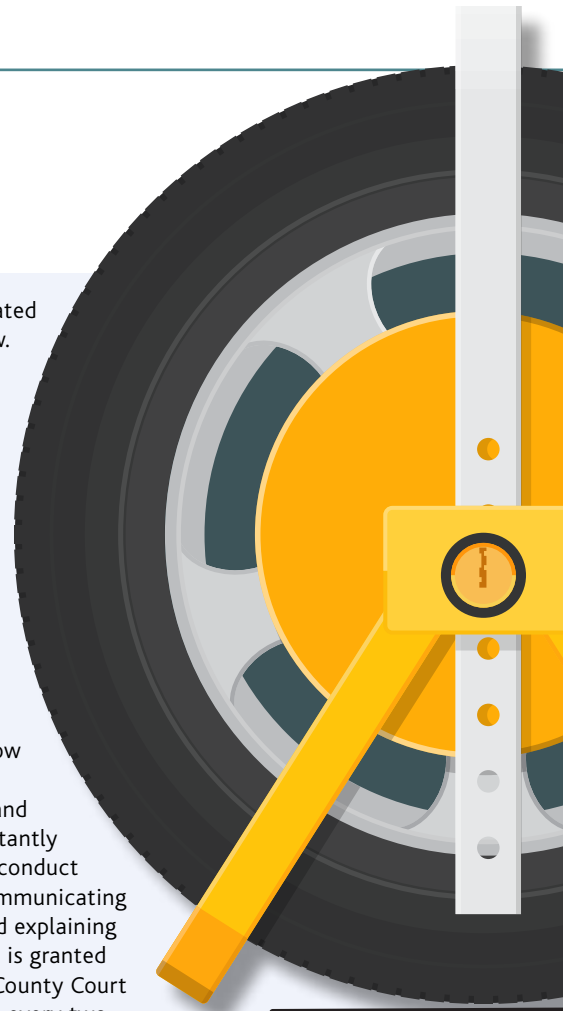
We can all agree that one of the most unhelpful narratives is that by ignoring the problem, or deliberately trying to avoid speaking with enforcement firms, the problem will go away on its own. Of course, in actuality, this will only see the debt owed increase and make the situation worse. We recently saw an example of this, where a debtor had no understanding that fixing an immobilisation device as a method of taking control of a car is in accordance with Section 11(1)(a) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 and Regulation 16 of the Taking Control of Goods Regulations 2013. It was clearly apparent that some members of the public do not realise it is against the law for immobilisation devices to be removed from vehicles after an EA has fitted it and when a vehicle that remains controlled goods is moved from where it was clamped, this is committing an offence and interfering with controlled goods under section 68(2) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007. If found guilty of this offence, a person is liable on summary conviction to imprisonment, a fine or both. The fees charged are set by a scale in the Taking Control of Goods (Fees) Regulations 2014.

We recognise the importance of transparent conversations to avoid misconceptions escalating. We aim to broaden knowledge and increase understanding by working closely with the debt advice sector and regularly offer training on our methods and approach. Vulnerability and social value are rightly an ongoing focus but the more we can all do to consistently ensure the basics of enforcement and its role in collections is also prevalent and understood, the better the outcomes we can all expect to see.



Emma Watson

Head of External Communications,
Bristow & Sutor





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The new 'normal'

The last 15 months have seen a significant change in the way enforcement agents work – including a five-month period when we were unable, through legislation, to work at all. For those of us with salaried enforcement agents, the Coronavirus Job Retention Scheme (furlough) enabled us to maintain a comprehensive workforce on standby, ready to resume duties once legislation permitted.

Naturally, the industry has had to adopt new procedures to ensure the safety of staff, the individuals we deal with and members of the public generally. Throughout the various lockdowns, we developed specific routines and policies and initiated several new innovations for improved communications and engagement, the aim being to further reduce the need to attend.

We developed and delivered bespoke training for enforcement agents to safely resume visits. All staff, front line and back office, undertook vulnerability and mental health awareness refresher training and, working closely with clients, we adjusted various thresholds to take account of the likely financial impacts on those we deal with.

When, in August last year, we resumed doorstep activity, having issued reminders on all of the many thousands of accounts, we were pleasantly surprised at how we were received. We did not receive a single complaint from all the correspondence and were able, through this engagement, to identify genuine cases of hardship and provide appropriate assistance.

Enforcement agents reported being offered full payment in many instances when they were only seeking a resumption of a prior [failed] arrangement or to establish one. It seemed that due to the restrictions, there was general increase in disposable income. From the data we collected in the past nine months, less than 0.5% of those we dealt with reported a financial impact from the pandemic and less



than one tenth of 1% of attendances resulted in a complaint about the attendance.

Now, with the lifting of remaining restrictions, despite what appears to be a third wave of infections, we intend to carry on as normal – the new normal – whereby we will continue to use PPE, observe social distancing, undertake dynamic risk assessments and carry out extensive hygiene measures, only entering domestic premises where it is both necessary and safe. We will continue to be ultra-vigilant in identifying vulnerability and providing assistance through our welfare team. And we will continue to develop innovative solutions to improve early engagement and recovery in what are still challenging times for everyone.



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SMS Text Messaging is retiring. Welcome RCS and what it can do for you!

How text messaging is used in enforcement processes will change from basic text reminders to interactive experiences, with customers using a new format called 'Rich Communication Services' or 'RCS'.

When SMS text messages became common from 1998, it didn't take long for businesses to use it for customer notifications and reminders. It was a simple process to create messages and send to customers and their chunky Nokia mobiles.

The benefit was the immediate response from customers who received the message on something physical in their hand. They did not need to log into an email, then to read the message or open a paper envelope when they got home. For commercial businesses, the savings and benefits were huge, shortening timescales and admin.

Limitations to SMS text messages were around the message length and reporting. Not a lot has changed in 20 years! Other newer instant messaging tools like WhatsApp have made SMS text messages start to feel like fax and telex, outdated and unloved museum exhibits.

Whilst instant messaging is controlled by tech giants like Facebook, customers must sign up. SMS remains independent of access and content control, so messages can be sent to anyone if you know their number! So, what is happening to SMS and enforcement service applications?

For those with Android handsets*, which is basically anything but Apple mobile phones, users will start to see **RCS or Rich Communication Services** messages sent by banks and retailers. This is the evolution of messaging. **(Android handsets make up most of the UK mobile phone market)*

RCS has been around for a few years on Android handsets but is only now, with the widespread roll out of the 5G mobile network and other mobile networks heavily backing this technology in 2021, that it will become familiar.

Besides the boring technical details of RCS, basic SMS text messages will jump from a plain text message with URL links, to an interactive experience for customers. What you see below is an example of a familiar SMS message on the left-hand side, and on the right is an RCS message as it is delivered, completely different and fully interactive!



Why has this Rich Communication Service come about?

Organisations have known for a long time that getting customers to install 'Apps' or applications on their smart phones may look nice on tender documents but has proved disappointing for many and a forlorn hope for most.

The goal is to give the customer the experience of an App without the need for them to install anything or visit a website to complete a transaction. Allow an integral bot to converse so staff do not need to.

What businesses want for customers is a way for them to interact or complete a transaction with the simplicity of an App, but without the hassle of installing anything or logging in via a portal website. RCS messages do exactly this, with a secure interactive user

experience and workflow options designed for each enforcement process. RCS messages could coach customers through processes.

The most important aspect is security and that RCS messages cannot be copied by fraudsters attempting to represent an organisation or company!

Why not stick with SMS messaging?

SMS is not dying off, but finally evolving from a basic message that we are all familiar with, to a rich interactive experience.

Recent evidence shows that basic SMS text messages on their own are now less effective, and the recent rise in fraudulent fake messages is making some customers sceptical of messages asking for payments.

SMS text messaging linked to case management services sending basic SMS texts, have severe limitations. Reporting on message delivery is hopeless to non-existent. Nothing is learnt or gained about the customer or their propensity to pay. *Shot gun blasting of simple SMS messages with truncated content, to lists of customers asking them to pay never worked well and never will.*

RCS is not about colourful messages and buttons to payment engines; it is all about messages that incorporate workflow process automation and intelligent reporting.

When a customer cannot find what they want on the website, they will almost always call, creating higher call volumes. RCS Messages are designed with automations to keep the transaction within the message and not always require a link to a website.

Physical letter deficiencies

SMS text messages were the early digital alternative to postage, but their simplicity lacked nearly as much as mailed letters. Neither method indicates any customer interaction, readership or give any indication of propensity to pay or vulnerability.

RCS messages bring a new level of reporting that guide all these areas. They will directly give insight for enforcement teams on next action decisioning.



2020 saw a seismic shift in everyone's habits and how we all complete transactions.

Physical lettering, like SMS, is no longer as effective as it was. Postage costs are climbing. Unless processes adapt to how the customers behave, recovery rates will not improve. Incorporating RCS digital elements is game changing.

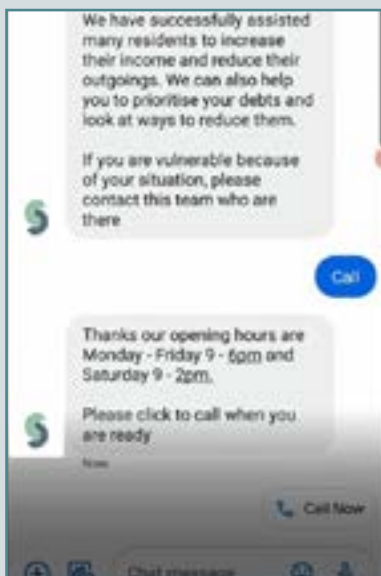
Over 50% of consumers today say they prefer a self-service approach to dealing with debt, where they are in control of their own interactions, at their own pace and at a time that best suits them and using whatever method they choose (evenings and weekends).

These same customers however, still want easy and instant access to documentation or to information and help 24/7. Only RCS can really guide a customer through this process.

To summarise the benefits of RCS.

RCS is a game changer with higher customer interaction rates than existing service delivery tools such as SMS. It is making services easy to access and you will see more and more RCS come into use this year, as services are migrated over to this format. With the expected avalanche of debt cases expected this year, this could be a technology worth exploring for a new long-term approach.

If your business is still dwelling on how to gain an edge in enforcement, then it may be the time to leapfrog from the 90's technology into the 21st century, with a service that will help the customer and not just inform them of an outstanding matter.



Daniel Pearce

Director of Business Development,
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Rich Communication Services

The next format for messaging customers directly

2021 sees the introduction of **Rich Communication Services** or **RCS** for enforcement applications. With integrated workflow & automation it turns basic reminders into messages that help customers to self service and reach better outcomes.

RCS is the game changing technology to reduce enforcement overheads and results.

For more information from the experts in conversational commerce Telsolutions, contact Daniel Pearce.

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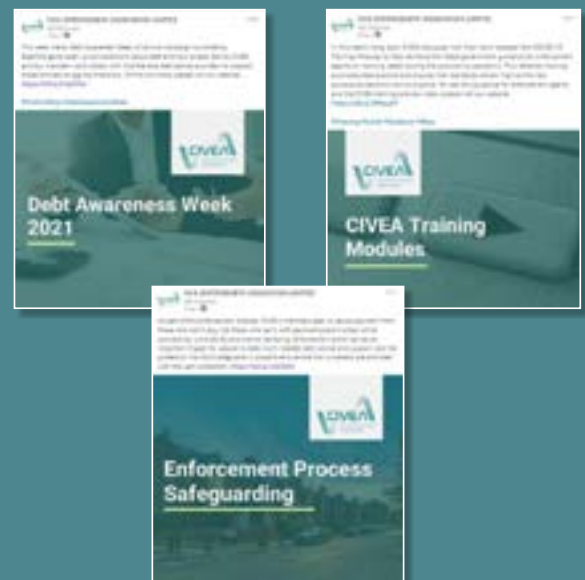
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