Tribunals, Courts and Enforcement Act 2007-

Report of an independent review

April 2017

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Preface

This reports results from an idea of Rob Carver's, that there should be a review of the reformed bailiff law after the passage of three years since its introduction and in the absence of anything issued officially by Ministry of Justice.

Initially a discussion document was circulated though Bailiff Studies Centre, using its established mailing list of subscribers and interested parties. The document was based upon the pooled ideas of three contributors: Rob Carver, John Kruse and Syd Thompson.

Rob Carver in the enforcement sector for well over three decades, in that time rising to senior management in every company he has worked for and running bailiff teams nationwide. In recent years he was closely involved in the formation of CEAA, the Certificated Enforcement Agents Association, of which he was the first Honorary Secretary. He is committed to ethical collection excellence.

John Kruse founded *Bailiff Studies Centre* in 2010 and is editor of *Bailiff Studies Bulletin*. He is author of a large number of books and articles on enforcement law and legal history, including most recently *Sources of bailiff law* (2012) and *Taking control of goods* (2014). The *Bailiff Studies Centre*'s aim is to promote the best practice and the best interpretations of the law in the enforcement sector, which it aims to achieve through the periodical *Bulletin*, through *Practice Notes* and by issuing occasional *Briefing Notes* and *Discussion Documents*.

Syd Thompson has held a Bailiffs Certificate for over 25 years, is a founder member of the Certificated Enforcement Agents Association and is a member of CIVEA. He is probably one of the most experienced commercial Enforcement Agents in the industry and specialises in matters related to commercial property.

The discussion document was circulated in December 2016 and responses closed in February 2017. Comments were received from a range of stakeholders, including enforcement agents and agencies, debt advisers, local authority officers and the Local Government Ombudsman.

Introduction

Before the 2007 Act came into force in April 2014, Ministry of Justice (MoJ) reassured all parties that reviews of its workings would be conducted after the first year and (probably) after the third as well as the fifth. The first review has never been completed. We are approaching the time for a three year review with very low expectations on the part of most interested in the sector that anything will be done.

Over the last two and a half years *Bailiff Studies Centre* has actively monitored and critiqued the operation of the new law. It seemed worthwhile, therefore, to conduct an independent review of the Act- to draw together the observations published in the *Bulletin*, along with additional comment from stakeholders, and to produce a statement on the main faults and ambiguities in the reformed law. Accordingly a discussion document was circulated in December 2016 amongst subscribers and readers of the *Bulletin,* as well as to other interested parties. Their responses have been collated with the existing materials to produce this final report.

The purpose of the 2007 Act were to modernise, clarify and harmonise the law, to raise professional standards and conduct within the sector, to encourage early engagement and payment by the debtor, to deal with disputes over fees by the simplification and unification of the fee scales and to ensure that debtors were better informed about their rights and duties.

Broadly, the Act has met these goals, but it is not perfect and requires some amendment and clarification. Practitioners had hoped that this would be attended to within a short time scale after implementation, but this has not happened and we continue to work with a new system which is improved but has features that can cause hardship, resentment and annoyance.

Finally, we must acknowledge the separate review of the new law circulated by *Stepchange* and its partners. We believe that the report, *Taking control- the fundamental need for reform* (March 2017) provides a valuable discussion of various broad principles of debt recovery and enforcement. Given that it has been produced by advice agencies and is more concerned with matters of policy and good practice, we do not believe that there is any duplication with the present report, emanating as it does from the enforcement sector (in the main) and dealing as it does with the detail of the new law. There is overlap between the two reports, which will be discussed, but we believe them to complement each other rather than to conflict or contradict.

Part One- Certification of enforcement agents

Agents or agencies?

The new regulations are clear in saying that the instruction should be issued to a named CEA or to his/her office. The Act makes no reference to limited companies acting as an enforcement agent, only an individual acting personally can perform the duties of an enforcement agent, and it will make no difference whether the agents are employed by an agency or are sub-contractors: the agency itself still seems to lack the capacity to act lawfully. The question over the status of limited companies to act as agents will apply similarly to statutory bodies such as local authorities, who likewise have no apparent standing to enforce in their own names.

Some commentators argued that MoJ must be assumed to have framed the new law in full knowledge of the present structure of the sector and cannot have intended to introduce provisions that were so radically at odds with the current position. This is a reasonable position; nonetheless, we are confronted with the clear statement in para.2(1) of Schedule 12 of the 2007 Act that only individuals can act under the statute. This means that none but individuals can perform any of the enforcement powers set out in Sch.12- these cover the entire process, from the issuing of initial notices through taking control of goods to their disposal and the recovery of fees.

There seems to be severe tension between what happens and what the law requires.The strong opinion in the enforcement sector appeared to be that the MoJ needs to act quickly to clarify who can actually undertake enforcement. The wording of the legislation was described as ‘very poor,’ although it was conceded that it does at least refer to ‘enforcement agents’ which goes some way to showing who they thought should be doing the work. By way of contrast, there is no mention of local authorities, which could be construed as indicating that it was never intended that local authorities should take on the role of enforcement agent. Respondees were extremely concerned over this point and agreed that clarification is need sooner rather than later.

One respondee argued that if a creditor contracts with a limited company to enforce, they would have acted in an unlawful manner by passing work onto a company that cannot enforce and in turn uses a certificated agent to do so.

Certification

The whole area of licencing and testing enforcement agents was handled very poorly. In part this was because the Coalition had decided to reduce the role of the SIA, which was expected to take over the regulation of the sector. Without a single body to oversee the process of appointment and monitoring conduct, the entire new regime was diminished. The least that is required is a system of continuing professional development for agents. One examination and subsequent biannual renewals are not acceptable.

The changes made to extend the scope and to improve the robustness of the certification process have been welcome. Improving access for complainants has

also been a sensible improvement in the procedure. Nonetheless, there are still a number of areas for improvement.

- *Education*- Firstly, we must look at the closely related issue of education in the CEA industry. The whole process of training and certification requires further consideration. We must seek to improve standards and to introduce ethical collection practices. In other European nations, it requires a law degree or its equivalent to become a bailiff, something that arguably ought to be the aspiration of any high quality and balanced system. Currently an agent has to achieve an NVQ level 2 on taking control of goods under the Act. This qualification is ignored by some companies who have internal training schemes which are presented as being equivalent to the NVQ to the court when the prospective agent seeks their first certificate. This cannot be acceptable where in-house qualifications are not recognised by the Act and, in many cases, are deficient.
- *Bond level*- There are questions about the current structure by which many bonds are provided for enforcement agents- whether it is adequately regulated and whether it is sufficiently robust to meet substantial demands upon its funds. These concerns would be exacerbated if the Ministry of Justice were to uprate the bond in line with inflation. It still stands at the 1988 figure of £10,000; in late 2016 this is actually equivalent to about £25,000.[1] The figures indicate an serious diminution on the possible protection offered to complainants and argue for some degree of uprating. Professionals commenting upon the review did not feel able to dispute that there should be an increase in the level of bond;
- *Indemnity insurance*-One respondee called for the insurance policies taken out by self-employed agents to be amongst the documents that must be lodged in court when applying for a certificate. He felt confident that employed agents could lodge a copy of their employer's insurance documents, as they are covered by them, but he doubted that this would be true for companies that use self-employed agents;
- *Inconsistencies within the court processes* were reported as a major problem by one large enforcement agency with numerous agents working for it. Particular issues identified between courts were:
    - *Clarification on the level of CRB required for certification***-** the regulations state a requirement of an enhanced CRB to support an enforcement agent application, however it is not possible to apply for enhanced CRBs as the Disclosures & Barring Service claim an enhanced CRB for the role of an enforcement agent is an excessive check. The agency has been getting by running a standard CRB (which the judge shouldn't allow but has) as there isn't an alternative. There needs to be some clarity on this and a decision on whether an enhanced is mandatory or a basic/standard is acceptable.
    - *Change of bonds in court*- there are currently three or four different processes used by individual courts and there is no a consistent approach adopted by all. Some require the bond to just be posted to the court and the file is updated and bond lodged, others require you to submit it in writing and you need to schedule an appointment with the

[1] See www.thisismoney.co.uk.

office and others require you to schedule an appearance in front of the judge. Each court works very differently which is a challenge for agencies to manage.
    - *Inconsistency with court date allocation*- most courts work to the standard 30 days during which an application must be advertised on the MoJ website, giving a court date around thirty eight days after the application has been received by the bulk centre. Unfortunately a few have devised their own formula, for example, Birmingham sets a 40 *working* day minimum. This delays a certification application by approximately one month.
    - *Mandatory Level 2 qualification*- a level 2 certificate in Taking Control of Goods is required according to the regulations in order to be granted a certificate. We have encountered a court which does not require this and will grant a certificate without one, suggesting that it is for the employers benefit only'. This undermines the reform's aim of making this industry a more professional, skilled, qualified one.
- *Modular courses*-the next problem is the level 2 NVQ qualification required for certification. In comparison with other NVQs of that level and the narrow curriculum covered, it should be 'a walk in a park' yet it was alleged that thirty per cent of CEAs that take the examination fail it on their first attempt. Many simply retake it until they pass, a worrying fact that suggests defects in the training they receive as well as poor standards of gatekeeping within the sector. Enhanced qualifications at a higher level are required; specialised individual modules are also highly desirable, covering such areas as CRAR (see Part Five later), fines enforcement, identifying the vulnerable, insolvency and valuation. These could build up in combination to a qualification equivalent to a degree. During this initial training process, CEAs should be limited to working on areas covered by the modules that they have successfully completed;
- *Form of certificates*- one respondent suggested that the agent's address on the copy certificates that they carry with them should be concealed to avoid any risk of reprisals;
- *Continuing professional development*- expanded and enhanced professional training should be supplemented by mandatory CPD. It seems essential for professional or trade bodies to lead on creating and sustaining an environment of on-going professional development;
- *Judicial training*-despite the MoJ's promises, the training of an expert panel of county court judges specially to deal with certification and complaints made against CEAs do not seem to have been followed through, thereby seriously weakening the sole form of judicial regulation of the sector.

Professionals in the sector strongly agreed that the process for the certification of enforcement agents needs to be looked at and tightened up as there are currently too many agents with very little knowledge of the job at hand. Reports are received of more experienced agents of coming across EA's who have received their certificate without any field experience and who have very little understanding of the process. There was also strong sector support for a constant professional development (CPD) document that must be kept and produced to the court every time an enforcement agent applies for a new certificate. It should show that the agent has a firm understanding of the law and has transferred this into practice in the

field which should be continued throughout an individual's professional practice to show learning and understanding of the legislation. It could contain copies of any relevant changes in legislation, *Bailiff Studies Centre* documents issued, and proof of personal membership of a professional association such as the CEAA or LACEF. An expanded curriculum and improved training for county court judges were also endorsed.

Part Two- Taking control of goods

Compliance stage & notices

Notices

Dissatisfaction with the form and use of the mandatory notices has been repeatedly expressed by the sector. The criticisms and concerns relate to general issues as well as specific forms. Although the consultation document argued for more prescribed notices, it was the view of many professionals that the current paperwork is already over-prescriptive, with too many forms, some being duplicated and none having been road-tested before being published; yet there is no prescribed form for attending premises.

A variety of concerns about notices were highlighted:

- *Missing notices*- for first visits, for re-attendances, for disposing of securities and connected with valuations;
- *Required notices that aren't prescribed*- there are quite a few forms mentioned in the Act which the agent has to supply (for example, connected to third party goods claims) which are not set out in the 2014 Certification Regulations. If a layout is going to be mandated for some, why not for all? It guarantees that the information provided is complete and standard across the sector;' One respondee recommended that templates for all the mandatory documents required in the process enforcement should be created and should be used universally by all agents;
- *Service of notices*- no allowance is made in the notice periods for postal service nor is any made for failed service. There is no specification that service ought to be by first class post, even though this would be mandatory for enforcement documents issued by a county court. Some concern was also expressed over the exact interpretation of the debtor's 'usual address' for service and it was suggested that clarification or guidance would assist in an area which is proving to be contentious;
- *Service of enforcement notices*- there is no requirement for proof of service of notices of enforcement and there were unsubstantiated allegations from a few agents that some firms are not actually sending these out. Use of second class post is not acceptable. One group of respondents recommended that the proof of service required (balance of probability) must be something that every local authority and enforcement agency can demonstrate for every enforcement document issued. The system used by local authorities to prove postage in magistrates' courts should be used by all agencies to prove postage if challenged: when producing any enforcement document a computer printout is produced for say 500 documents, any cases not issued (say 20) are marked on the list accordingly, and the remaining 480 cases are signed for by the Royal Mail. Confirmation documents are produced and signed, and can be produced at any time, hence under the balance of probability, service was made. Another respondee recommended that the initial compliance should be hand delivered as this ensures that the debtor is definitely aware of the action being taken against them.

- *Content of enforcement notices*- It was suggested too that the form of the notice should be amended to alert recipients to the provisions on 'vulnerability' and to encourage them to obtain and supply evidence of such status where appropriate to the agent and creditor. It was suggested by some respondents that mention of the 'binding effect' should also be included in the notice of enforcement, which would seem sensible if this provision is to have any meaning or effect. A few agents challenged the need for an enforcement notice at all, although this was not an idea with great support;
- *Contact addresses- o*ne respondee criticised the use of PO boxes as office addresses, especially in the issuing of notices of enforcement on the basis that there should be an address that can physically attended if so required as well as its hours and days of its opening (reg.7(g) of the 2013 Regulations). He argued that a PO Box doesn't fulfil these requirements and therefore cannot be regarded as lawful. For limited companies, their registered office is likewise problematic. The same respondee also criticised the use of premium rate contact numbers, arguing that companies were using them to profit from the need for debtors to communicate with them. The revenue from such a number is not permissible as fee income and therefore the practice may be unlawful.

Compliance stage

This initial stage is the process was welcomed by advice agencies for introducing a delay before enforcement and an opportunity, recognised in statute, to try to make a repayment arrangement. From the enforcement agent's perspective, the compliance fee was an overdue acknowledgement of the other costs and overheads incurred by agencies. There are however problems:

- There needs to be better guidance as to affordable and acceptable offers. As many agents seem only to receive their commission when full payment has been made, they will tend to impose higher payments on individuals to shorten the time scale, regardless of debtors' circumstances;
- If an offer is made and refused, time should be allowed for a revised offer. Often, instead, the bailiff proceeds straight to the enforcement visit and adds the fee without further notice;
- Some agents expressed concern that the notice of enforcement gives debtors an impression that they are entitled to repayment arrangements, rather than these still being very much subject to the criteria laid down by creditors.

Attendance & entry

A variety of issues of concern or uncertainty were raised at this stage of the process.

Right of entry

Despite the 2007 Act setting out the rights of entry of agents, there is still some uncertainty as to their exact scope and nature. Further clarification as to whether or to what extent a debtor still has the right to refuse entry would be beneficial for all parties;

Forcible expulsion

In the (fairly rare) cases where a debtor ejects a bailiff from premises, there are no clear provisions in the new Act as to how the agent regains entry;

Internal doors

The former law was that all internal doors could be forced if necessary. This allowed bailiffs access to cupboards, rooms, attics, chests and cellars to search for assets. The new law grants a right of entry "to search for and take control of goods." The limited rights to use force to enter are linked in Sch.12 with the rights "to do anything for which the entry is authorised" so that it would appear that a bailiff collecting a fine may force entry both to the front door and then to an internal door, whereas a bailiff collecting local taxes may not. This is certainly inequitable and difficult to justify and possibly is a retrograde step.

Repeat visits

Agents now have a right to return as often as they deem necessary to a property to inspect or to search for goods. A requirement for the agent to alert debtors to the possible need to return and add to a levy should be introduced.

Taking control

The new Act created a wholly new statutory procedure for 'taking control of goods.' This is welcome for its clarity, but the new process is not exhaustive and it has yet to mature through case law. Accordingly, additional regulation may be required, such as a clarification of the nature of securing goods and whether it resembles the former 'legal custody' would be a useful clarification to the process;

Controlled goods agreements

The plan was, of course, for controlled goods agreements (CGAs) to be identical to walking possession in their nature and impact. The expectation would therefore have been that they would be used with comparable frequency and be the main form of taking control employed by agents. There is increasing evidence that this has not proved in practice to be the case.

Whilst leaving the general idea of the agreement undisturbed, the government was prescriptive about the form and signatories of CGAs. As we know, a desire to be prescriptive runs through the entire reform programme; generally it has been beneficial to the process but in this case it may have had harmful results. By stipulating the exact contents of CGAs (especially the requirement to record the exact payment terms) and who may enter into such an agreement, it appears that agents may have been discouraged from using the procedure at all. It is now more time consuming and it may, in a number of cases, no longer be possible to make an agreement. The result is that many agents seem to be using CGAs only on a very short term basis or to have abandoned them altogether, instead merely negotiating unsecured instalment arrangements with debtors.

This has practical advantages to hard pressed agents, but may leave creditors exposed if payments breakdown or if insolvency supervenes. Equally, it may also expose those facing the enforcement of writs of control to higher fees. If the practice is indeed no longer to enter into CGAs, judgment debtors will regularly now be charged the very much higher second enforcement fee because a CGA was never made by the HCEO. It is to be assumed that none of this was anticipated by MoJ.

Highways

It appears that some unintended aspects of the working of the new law arise from innovations made by those drafting the Act rather than anything consciously demanded by MoJ. Two examples are evident at present. The first is the stipulation that goods may only be taken into control at specified locations, including the 'highway.' Restrictions on levies on highways are very old indeed,[2] but enshrining the limitation in the new statute obliges us to apply to it the statutory definition of highway from the Highways Act. This in turn significantly inhibits enforcement agents as to the places they may enter and take control without a prior court order. For example, roadways on private industrial estates and housing developments are not highways and seizures there will be illegal without the proper preliminaries. This was not discussed in advance by MoJ and it seems to have arisen as a result of a reflexive drafting decision by the government lawyers.

The term is not defined in the Act or regulations, an omission presumably due to the Ministry's assumption that users would simply rely upon the existing statutory definition found in the Highways Act 1985. Regrettably, some agents appear to be unaware of this and seem to be adopting the approach that, in the apparent absence of a definition, a highway is 'whatever you want it to mean.' Disputes are therefore arising between agents, creditors and debtors which ought not to exist and could simply be avoided by clearer direction to the 1985 Act or by inclusion of a definition on the 2007 Act.

Enforcement professionals agreed strongly that a definition of highway is needed and it was argued that it should include public places and anywhere a vehicle can be driven uninvited, such as shared parking or supermarket car park. It was further suggested that the two-hour maximum clamping period on highways should be amended so as to exclude highway immediately adjacent to a debtor's relevant premises, on the basis that the road here is being used as an extension of those premises for regular parking. It was observed too that the restrictions on where a debtor's goods can be taken into control are too restrictive and that the law should revert to the former situation and allow goods to be taken anywhere in England & Wales.

Hire purchase assets

The former (common law) rule was that equitable interests in goods could not be seized. The rights of individuals in goods owned legally by third parties were not therefore accessible to the bailiff. A county court decision on the status of HP under the new law suggests that this position may now have been changed by the new Act.

[2] See *Law of seizure of goods,* 7.3.4.

Equally, views may have changed within the wider sector; at least one respondent from the advice sector was sympathetic to the idea that debtors holding potentially valuable assets subject to third party ownership should not be entirely protected from enforcement against them.

The taking that was challenged was founded upon the definition in Sch.12 para.3(1) of an interest in goods as being a 'beneficial interest.' If this is combined with the power of agents to take control of such goods as if they were legally owned by the debtor (Sch.12 para.3(2)(a)) then there is the basis upon which agents may take control and dispose of goods on hire purchase.

The 'beneficial interest' in question would seem to be the potential share in the value of the goods that the debtor had accrued. This is probably only likely to be of significance to the bailiff where, either, a substantial deposit had been paid in advance (perhaps the part exchange value of a previous car) or where the agreement is within a couple of payments of being paid off.

If this county court interpretation is confirmed, it would represent a major statutory change to bailiffs' powers. Certainly, there was no consultation upon such an alteration by MoJ in advance of the new law and its importance to all parties, not least finance houses, might have led us to anticipate this. The only reference to HP during the entire review process was by Professor Beatson in 2000: his recommendation was that HP goods should *only* become liable to levy after the debtor had acquired full title to them.[3]

Secondly, and probably more importantly, there is the fact that definition in Sch.12 para.3 stands alone; it is unsupported by any other measures. The legal rights of co-owners of goods are clearly protected by a series of provisions to ensure that they are kept informed and involved in the process. There are no equivalent provisions for the realisation of beneficial interests. There are no notice requirements, no procedures for the valuation and sale of the goods or for challenges to the distribution of proceeds. This lack of statutory mechanism suggests that there was no deliberate intention to make the radical change that may have been effected. Of course, incompleteness is a feature of the new law and may not be conclusive; equally, it is possible for an agency to construct an adequate procedure following the rules for dealing with joint owners, although it is clearly far from satisfactory to have to make it up as you go along.

Aside from these speculations over the nature and intention of the new Act, there are still more profound problems for enforcement agents arising from the nature of hire purchase agreements themselves.

We have used the term 'equity' and this gives rise naturally to analogies with mortgages and houses. There are, however, very significant differences between the two sorts of credit agreement. HP is, of course, secured upon an asset that is continually depreciating; there can be no expectation that the debtor's 'investment' will be preserved. Secondly, the 'equity' under an HP agreement is subjective, or conditional; it is a notional sum which can only be realised upon complete payment

[3] *Review of bailiff law,* recommendation 19(b).

of the agreement. If the agreement is ended prematurely by the creditor, the workings of the consumer credit rules mean that any theoretical value due to the debtor is lost completely. Creditor repossession always results in a substantially increased debt for the borrower.

Furthermore, many HP agreements, as a matter of course, incorporate a clause terminating the agreement as soon as there is any taking in distress or execution. The consequence therefore is that the exercise of the new powers to take control of the goods so as to realise the debtor's 'equity' will have the instant effect of destroying that asset. As soon as the goods have been taken into control, the rights of the borrower will have been ended and the finance company will be entitled to assert their absolute legal ownership of the goods by recovering possession of them. Thus, before the bailiff may realise that an asset subject to a hire purchase agreement is involved, and before s/he has had an opportunity to obtain any information from the finance provider as to balance, equity etc., it will already be too late. The goods would by then be purely third party property and would potentially the subject of a court claim if control was not released.

The issues just discussed would tend to indicate that there may be little to be gained by trying to take HP goods into control. Nonetheless, clarification as to whether or not this was even the intention of MoJ in drafting the Act would be helpful. If this was the *intention*, it would appear that additional regulations covering the interaction between enforcement agent and finance house are a minimum addition that we should demand. If it was *not* the intention of the government to permit HP assets to be taken and disposed of, it would arguably be helpful for them to tell us what exactly they were referring to when they made mention of 'beneficial interests.' Some commentators have suggested that this term relates to certain trade assets that might be encountered on business premises, especially in CRAR, which is plausible, but so far unsubstantiated.

Instalment agreements made after taking into control

Do these have the same effect of postponing the deadline for sale as do agreements made before goods have been seized? Detailed rules are given as to the effect of pre-taking instalment agreements; none are provided for those subject to a controlled goods agreement. It would be extremely helpful for the 2013 Regulations to be amended to clarify the effect of such an agreement on the duration of the warrant.

Body worn video

Technology regularly overtakes statute and it has happened very quickly with the enforcement sector. Under the old law, clamping was unimagined and hence totally unregulated; this was addressed in the TCEA. However, a similar situation has arisen again and sooner than many might have predicted. When the Act was passed in 2007 no-one had heard of body worn cameras. Now they are very widespread and with their proliferation has come a variety of practices and policies.

Concerns were expressed that there are huge issues of data protection and storage. These could very obviously do with some regulation, whether it is in statute or by means of the *National Standard*. The profession was keen that there should be a

statement on the issue from MoJ but also that input and help from the DPR would be appreciated by giving constructive help and guidance on the interpretation. At present they are seen, rightly or wrongly, more interested in threatening to prosecute than in developing good practice in this new field.

In the context of complaint resolution, it is worth stating that recording technology is vital for health and safety reasons, protecting all parties- the agent, the defaulter and the company- the latter having regulatory responsibility to supply unedited copies of their evidence in any litigation rather than editing them and only supplying transcripts. The belief in the enforcement sector is that body work cameras have been a great boon, as they eliminated ninety nine per cent of complaints- for example by providing proof of an attendance at premises.

Inventories

Most CEAs carry limited paperwork due to the common practice of working on a tablet. This is not in itself a problem, but a few agents alleged that the majority of defaulters never receive an actual inventory listing and accurately describing the goods that had been taken into control or removed. If correct and common, this would be a violation of the fundamental spirit of the Act and would need attention. The Act sets priorities for inventories that are unrealistic in many areas; further it creates many health and safety concerns. It can be extremely dangerous for a CEA to have to find every serial number on mainly electrical and industrial machinery; labelling and photographs of such items would be sufficient proof of taking into control. Certainly, one group of enforcement professionals agreed that the current provisions on inventories are far too detailed (particularly with regard to commercial properties) and are thereby off-putting and discourage use of controlled goods agreements. It was suggested that MoJ should allow video or photographic evidence to support listing of goods.

Third party claims procedure

Two particular concerns were expressed about the new ‘interpleader’ process applicable to takings into control. These were:

- *Time limit*- the seven days allowed in CPR Part 85 to make a claim after removal is proving to be too short for many individuals (and often for many hire purchase companies). It should be extended or it should at least be restricted to removals for the purpose of sale.
- *Deposits*- the fate of these at the end of the case could helpfully be spelled out in the Rules. The money is paid into court- presumably a judge then releases the asset to which the deposit relates- presumably too the deposit is refunded of the claim succeeds. But we’re not told, it’s all part of the ‘any other order that may be necessary’ aspect of the court’s powers;

Sale & removal

This final stage will probably rarely be reached under the new law; this may be fortunate as it is perhaps the least well defined and delimited stage of the new procedure.

Valuations

One requirement of the Act that was criticised as impractical- and apparently very widely disregarded by the industry- is the requirement to issue a valuation of all goods removed. Firstly, it was argued that an agent is not a qualified valuer and it is unrealistic for a valuer to be present at the removal stage as there is no provision to cover the costs of such attendance. Nonetheless, it was felt essential for agents to be aware of the prices that items actually go for at auction so as to allow them to be equipped to carry out their daily task of evaluating goods and items eligible for removal.

An enforcement agent will be required to place a valuation upon goods at two points in the enforcement process. Detailed complaints and concerns were raised about each:

- *Valuations prior to taking control*- there were calls for there to be tighter and clearer regulation over the form and content of these, which are made when the bailiff is valuing goods that might potentially be exempt. Evidence was presented of consistently higher valuations which took vehicles and tools over the £1350 ceiling contained in reg.4 of the 2013 Regulations.
- *Valuation at sale stage*- it is far from clear what the reason for conducting the valuation is intended to be. There needs to be a much clearer link between the valuation and the 'best price' at auction- and perhaps also with questions of excessive taking. Worse still, whilst the debtors are told that they may obtain their own valuations, no procedure is provided for dealing with cases where they are contradictory, or the bailiffs valuation is disputed in itself. This needs urgently to be corrected to avoid confusion and controversy.

Sales of goods

There are no clear rules for starting the sale process in cases where goods were removed for storage at an earlier point. It is assumed by the new rules that the goods will have been left on the premises and that the timetable for sale is triggered by a subsequent removal. This is not always the case;

Damage to goods

Complaints were made of frequent damage to vehicles by agents, either when removing them or when seeking to enter them. Bailiffs' liability should be emphasised and enhanced. There is a duty to ensure that stored goods are secure and safe from damage or deterioration; otherwise, however, the agent's duty is to take 'reasonable care' and there were allegations that this is regularly neglected.

Final accounts

It was alleged by one or two agents that very few companies actually supply the defaulter and their client with a final breakdown of accounts, as is required by the new law. One adviser commented on the need for such statements, indicating that these may not be supplied consistently. This obligation needs to be reinforced as there must be total transparency to protect all parties and ensure public confidence.

Part Three- Fees for enforcement

The aim of the new law was to eradicate many of the disputes and abuses that used to arise in connection with the fee scales. By a radical simplification of the fee structure, this by and large appears to have been achieved. However, the evidence is that the reforms have not been wholly successful. Complaints are still received and it seems that these now largely relate to the High Court fee scale. There are six particular areas for concern based upon the evidence submitted:

- *Second enforcement fee*- a substantially higher fee can be charged to debtors by HCEOs in cases where a controlled goods agreement 'has not be made.' The fees regulations fail to specify the situations in which it would be appropriate to make this higher charge. The writer supposed that it would be incurred in a situation where a debtor refused to engage with the enforcement officer; however, it appears that it is often being added to accounts where an initial visit made no contact at all (possibly for entirely legitimate reasons) or where the debtor offers to make immediate payment. Application of the fee in these cases does not appear to be what MoJ intended nor does it seem to fall within the principles of transparency of the Act as a whole;
- *Repeat fees*- it was felt unlikely that it was envisaged that the reworking of cases where part payments had been made by debtors would result in fresh fees being added every time a case is issued to another enforcement agent. Measures to prevent or at least clarify this situation were felt to be desirable;
- *Sale fees*- under the old law, it was a not unheard of for some bailiff firms to add on several or all of the fees possible under the fee scales then applicable, in order, it was said, to 'indicate to the debtor how the debt might escalate.' From the evidence of respondees, these practices regrettably continue. I have received reports of several cases where HCEOs have added the two enforcement fees as well the sale stage fee to accounts where no goods had yet been taken into control. In one case described, the HCEO had accepted that no goods belonging to a judgment debtor were present on the premises, yet a sale stage fee was still added. The enforcement fees have been discussed already. Given that only controlled goods may be removed and sold,[4] if no goods are subject to any form of lawful control there cannot be any legitimate reason for charging for activities associated with a putative sale. In the absence of a recognised and properly documented form of control, the sale stage fees in these cases seem wholly impermissible and can only be regarded as a deliberate exploitation of the debtor (and the creditor). Amendment of the scale would eradicate these abuses.
- *Removal expenses*- one respondent pointed out that the current fee scale does not allow for the incidental expenses of removing goods from premises for the purposes of secure storage (i.e., as a form of taking control of the items). Whilst sale stage fee must be expected to make allowance for the costs of removal (although the level of fee is low), the seems to be no recognition of the extra expenses that might be incurred at the enforcement stage if it is felt that the only safe means of securing the goods is by immediate removal. It was also noted that it is frequently the auctioneer that

[4]see Sch.12 paras 37-49.

provides removal services; auctioneer's fees are only recoverable as such if a sale takes place- otherwise the disbursement is not recognised.

- *VAT*- despite long standing policy on this and express guidance on the matter from MoJ/ HMRC, HCEOs continue to charge VAT to judgment debtors rather than to judgment creditors. This appears to be inexcusable and requires clearer action from government.
- *Local authority 'appropriation' of fees*- a growing area of concern within the enforcement sector is that local authorities who are now switching to in-house recovery teams as a means of revenue raising. The whole foundation of the new fee structure was formulated on information provided by agents and agencies, with the new fee structure set at levels intended to allow reasonable profits to be made to cover the ongoing training of agents, the latest technology investment, arrangement facilities prior to enforcement visit and general transparency on fees. One respondent believed that it was increasingly the experience that many local authorities are not complying with the legislation or indeed the fee structure on larger debts when pro rata should be applied. Their interest is in being able to receive the compliance fee primarily, with accounts subsequently being passed on to commercial agencies to pick up from the enforcement visit stage, but those agencies are deprived of the core infrastructure income allocated to them by the legislation. There is also less control over councils' actions as they are not members of any representative body and the only form of complaints procedure is through the council undertaking the work. There is no requirement for their agents to be members of a representative body such as CEAA; the same respondent alleged that the larger councils do not want their bailiff employees to become members as they would then receive full information on what is required of them and the procedures to follow. Whether local authorities would deliberately discourage staff from acting in line with statute and best practice, given the supervision of the Local Government Ombudsman, may be open to question. Nonetheless this suspicion apparently exists;
- *Withdrawal of instructions*- reg.17(1) of the 2014 Fees regulations states that "the enforcement agent may not recover fees or disbursements from the debtor in relation to any stage of enforcement undertaken at a time when the relevant enforcement power has ceased to be exercisable." One respondent argued that this provision only affects fees which relate to a stage of enforcement which was undertaken at a time when the enforcement power had ceased to be exercisable. This means that 17(1) does not affect fees properly incurred before the enforcement power ceased to be exercisable. This interpretation highlights the fact that the current regulation is written ambiguously and that it is being read differently. It may be understood to mean that fees are cancelled for any stage of enforcement that 'had been' undertaken or that 'was being' undertaken at the point at which the enforcement power ceased. Both are currently legitimate readings; it seems clear that clarification is required from Ministry of Justice or from the courts.

Specific concerns about the fees for CRAR were also raised, which are discussed in Part Five. As mentioned earlier, one respondee also criticised some firms' provision of premium rate contact numbers as a means of contacting them, arguing that companies revenue from such numbers is not permissible as fee income and therefore the practice may be unlawful.

There appears to be ongoing commercial tension between certificated agents and HCEOs over the higher fees received by the latter and their perceived efforts to bring more work within the exclusive scope of High Court enforcement rather than making it available to competitive tendering by all qualified agencies. Not only was there an issue over the higher fees that would be incurred by debtors (a matter bound to concern the advice sector), there was also a question of principle. There seemed to be within the non-High Court sector a clear sentiment that the distinction between High Court and other enforcement procedures (and the different fee scales attached thereto) was increasingly less justifiable and ought to be abolished. This is discussed in more detail in Part Six.

Many of the points made above were repeated and endorsed in the recent report *Taking control,* issued by *Stepchange* and its partners in the advice sector. Their recommendations on fees were as follows:

- That there should be a clear, common fee structure that covers both High Court and other forms of enforcement;
- That this should encourage early resolution of the debt problem with as little cost to the person in debt, creditor and bailiff as possible;
- That there should be statutory requirements on bailiff firms that set out exactly what is expected of bailiffs at each stage of the enforcement process. This should set out a list of activities that would be expected to be covered before moving to the next stage;
- That the structure should guarantee protection to those who are vulnerable and/or on low incomes and Council Tax Support; and,
- That there should be clarity on when VAT can be charged by bailiff firms. VAT should not be added to the fees that people in debt have to pay.

We endorse these recommendations as compatible with our own thoughts on the question of fees.

Part Four- Remedies

Debtors' litigation

The new Act deliberately incorporated within it all remedies for challenges to breaches and unlawful acts by agents. This has advantages of uniformity and consolidation, but there is a less apparent downside for aggrieved individuals.

Applications for a remedy under Sch.12 para.66 will be on N244. A fee of £185 is payable for this- unless the applicant is entitled to fee remission because of hardship and low income. This is not new. However, the real problem for complainants comes at the hearing. These matters will not be dealt with by the courts as 'small claims' with the protection from legal costs which this implies for the unsuccessful applicant. In other words, the debtor applying to court for a remedy must consider the possibility that failure to achieve their aim may lead to the imposition of a liability greater than the debt originally being enforced (for example, the *Bailiff Studies Bulletin* reported a case relating to hire purchase. The debtor in this case failed in his request to the court and, apparently, was ordered to pay the local authority's costs of £3500 or more).

Most debtors cannot afford to take the risk of increasing their indebtedness. This is very likely to lead to a steep decline in litigation over bailiff action. Of course, enforcement agents are scarcely likely to be sad about this- nor are MoJ likely to be unhappy that the pressure upon courts is not increased- but a number of unintended consequences may be suggested:

- There may be less claims against agencies and against their clients, the creditors, who were the usual defendants in the past; however, there may be an increase in complaints against individual agents. As the EAC2 complaints procedure against a person's certificate now *does* offer the complainant protection against liability for legal costs, the focus of litigation may switch from companies to employees and there may be a rise in losses or suspensions of certificates;
- A drop in litigation may, arguably, be deleterious to the sector for the simple reason that the courts will no longer have the same opportunities to examine the new legislation and provide us with definitive guidance as to its interpretation. Grey areas still exist, especially with fees, and clarity on the correct application of the new rules is desirable. This may become harder to obtain, however.

Thirty months into the new regime, we are as yet without any significant reported decisions on the new law from the higher courts. Case guidance as to practice will still emerge from the LGO and others but perhaps not with the frequency and authority known in the past.

Certification complaints

Some agents complained at the reluctance of courts under the new CPR to award costs against complaints who bring failed challenges to individual agents' certificates. This concern is noted here, albeit with the observation that it was

probably the intent of MoJ to reduce such costs orders. A complainant can only now face a legal bill if his/her complaint can be shown to be an abuse of the court procedure, which is likely to be a very rare. Many of these complaints may be ill-advised, but they are not necessarily launched vindictively or maliciously. Given what was discussed in the previous section, this grievance certainly appears likely to persist and may conceivably be exacerbated.

A unified complaints procedure?

In its recent report, *Taking control, Stepchange* and its partners have called for the creation of a free, clear, transparent and accessible complaints procedure for the enforcement sector. The complaints procedure should enable people in debt to complain about individual bailiffs or bailiff firms or both. There would be two stages to the complaints procedure, with complaints made first to the firm concerned and then to an independent body if the complaint is not resolved at the first stage. The procedure should include complaints to HM Revenue & Customs (HMRC), local authorities, and other creditors using bailiffs to recover debt on their behalf. It should include effective remedies against bad practice and provide for individual redress where appropriate. Bailiffs and bailiff firms should be required to provide details of the complaints procedure to people in debt. Lastly they recommend that complaints should be monitored and a summary of complaints received publicised in a similar way to that in which the Financial Ombudsman Service publishes details of complaints that it has received.

The report also recommends a single regulator for the sector (see later). In this context, and given the fragmented and rather neglected nature of the current complaints procedures, there is certainly something to be said for a unified scheme applicable to all debts and all creditors.

Part Five- Commercial Rent Arrears Recovery

The new enforcement regime for commercial rent (CRAR) has had a number of consequences, both good and bad.

- *Rent arrears*- the overall level of rent debt and therefore the number of instructions received from clients has risen since 2014 as tenants have become aware that they can withhold payment of rent until receipt of the enforcement notice. There is some evidence that a number of tenants are beginning to use this as their normal method of payment and that the reforms have created a 'cheap overdraft' for the unscrupulous. The fee of £75 incurred by this stage is not a sufficient deterrent to delaying rent payments, as it can be disproportionately small compared to the sums being withheld; an additional compliance fee representing a percentage of the rent debt over a certain threshold could be advisable. If tenants start habitually to withhold rent until a notice is received, it may also be necessary to introduce a limit on the number of notices that can be issued before proceeding immediately to enforcement stage.
- *Service charges*- the level of individual indebtedness has increased because it is no longer possible to collect service charges or insurance by taking goods, even when such charges were expressly reserved as rent in the lease. This is causing considerable confusion and difficulty for landlord clients. They may incur their own liabilities and may be more inclined by the delays and restrictions in the new process to use more aggressive forms of recovery.
- *Mixed use premises*- the restriction on the ability to use CRAR at a demise that is residential in part is not logical: agents have always in these circumstances restricted their enforcement action to the commercial part of the property. One of the unintended consequences of the abolition of this right is that landlords, especially those of licensed premises, automatically seek possession, therefore leaving the tenant homeless as well as unemployed. This was surely not the intention of this legislation.
- *Warrants of control*- the requirement that the instruction to the enforcement agent be signed by the landlord should be amended to include his agent or his solicitor.
- *Certification & training*- the level 2 NVQ may not be a reasonable benchmark for agents involved in CRAR work as it requires no knowledge of the insolvency act, company law or even a working knowledge of landlord and tenant legislation. It may be advisable for a new qualification to be developed at level 3 or 4 for enforcement agents who collect commercial rents, as this is undoubtedly a far more complicated area of enforcement than for some debts. Generally, the new certification process is unnecessarily complex especially where the agent is applying for the renewal of a certificate.
- *Prescribed notices*- it is noticeable that there are a significant number of complaints by tenants about the interpretation of the wording of the notice of enforcement. This document offers the debtor the possibility of entering into a repayment schedule exceeding the twelve-month time scale allowed by the compliance stage. However, many landlords want much shorter repayment periods and this can lead to friction. The 'binding effect' of the enforcement notice is largely illusory as it relies on the honesty and goodwill of the defaulting tenant and in commercial situations it may be sensible to permit an

early inventory of goods to be made to protect landlords. Generally, the prescribed forms are overly complicated and repetitive; it would not be difficult to simplify them without detracting from their effectiveness.

- *Sale stage*- the requirement at sale stage that the agents give a valuation of the goods removed seems unnecessary: it must be remembered that the agent is not qualified to give a valuation and that the auctioneer is hardly independent. Previously a debtor could seek a valuation if s/he wished to and this seemed an adequate protection.
- *Fees*- the main benefit of the reforms is the new fee structure. However, there are still problems. Banking and administrative costs have increased, especially due to the compliance stage, and the £75 fee is still inadequate. The 2014 Fees Regulations allow for court fees for applications, but not solicitors' costs or any compensation for the agent's time in making these applications. Given the greater technical complexity of the work, it is difficult to see why CRAR fees are not treated as comparable to High Court enforcement. The 7.5% additional fee that is allowed for debts exceeding £1500 can prove disproportionate.

Part Six- General principles & reforms

Proportionality

Greater fairness and flexibility could be introduced into the legislation by applying the ECHR principle of proportionality throughout, but with particular attention to the following points:

- the *National Standard* should be recognised and given definitive status in the 2007 Act. This would operate not only to give it clear authority but also to tie its observance to certification and to the authorisation of HCEOs; thereby it could form a clearer foundation for complaints against misbehaving individuals (see later);
- '*vulnerability*' should be given a firm statutory definition to make its status more definite. It is not a term that should ever be subject to absolute definition, but nonetheless the original intention was to define it in the Regulations and this ought still to be done, once again to emphasise its importance within the new procedures. Respondents strongly supported definitive progress in this area;
- *Remedies*- there should be better and more accessible remedies for debtors. I have argued elsewhere that the current process under the Act discourages litigation and so limits the exposure of bad practice and bad behaviour. The new Act has made litigation too risky for all but the very wealthy- and this in an era of withering legal aid. Defended complaints of breach of the Act should be referred by district judge to the appropriate track for trial rather than being treated as mere applications to the court with the attendant costs risks applicable to all cases;
- *Proportionality* should be enshrined in the fabric of the Act. We have a statutory recognition of 'excessive' takings, which is very welcome, but we need more:
    - in contrast to the penalisation of taking too much, there is no comparable condemnation of 'no goods' levies. It should be made clear that taking control where there are '*nulla bona*' is as unacceptable as the other extreme;
    - creditors should be required by the Act to consider proportionality (especially the relationship between the fees and the debt) before an instruction is issued; and,
    - there should be a mechanism to reduce fees in cases of very small debts, where the sum owed is equal to or less than the (first) enforcement fee and compliance fee.

  The latter proposal did not attract great support from the enforcement sector. It was remarked that “because a debt is less does not mean that it costs any less to collect and reduced fees may discourage some enforcement agents from carrying out their duties properly especially if a case is in a payment plan and the initial costs have been paid and they know that taking the case to the enforcement stage would increase the collection overhead with very little chance of further payment due to the debtor’s situation.If they then return the case, which may then result in it being issued to another agency and hence another compliance fee will be added, so for this reason alone we would not support a reduced fee structure for smaller debts;

- *the enforcement notice procedure* needs to be improved. There should be clear remedies where a person claims that a notice was never served or received and clear penalties for an agent who neglects the correct conduct at this key initial stage of the entire procedure.

The matter of identifying and responding appropriately to vulnerability is a particular concern for the advice sector. In its report on the new law, *Stepchange* had a series of recommendations to make on this issue:

- Creditors should be required to have a vulnerability strategy or code and make these public;
- Creditors should identify vulnerable households and amend the collections process appropriately;
- Creditors should not pass anyone for enforcement who has been assessed as in vulnerable circumstances;
- There should be a clear and efficient mechanism to refer cases back to creditors where enforcement action is not appropriate;
- In cases of vulnerability the courts, local authorities and creditors should have the opportunity to remit debts and fines owed to them in law;
- The Taking Control of Goods National Standards should be given statutory force; and,
- The Department for Communities and Local Government (DCLG) guidance to local councils on good practice in the collection of council tax arrears should be made binding upon local authorities.

These proposals fit well with our own in this area and we are happy to endorse what has been suggested by *Stepchange* and its partners.

Further extension

The above list of points would improve and elucidate the structure of the law as it now stands, but we still seem to be a long way from the far-reaching restructuring of enforcement envisaged by Prof. Beatson sixteen years ago and to which some of us still aspire. We have created an unsatisfactory transitional process which still embodies many of the aspects of the old system. Reform is still needed to:

- *Bring all debt enforcement within one modern system*, so that maritime distraints and others are abolished. There appeared to be strong support for further increased uniformity amongst certificated agents;
- *A single system of appointing enforcement agents*- powers have been harmonised but the distinction between bailiffs and HCEOs has been retained with little real justification. Reform of this would get rid of the duplicated fee scales, an amendment which was supported by some certificated enforcement agents;
- *An extension of certification*- it was noted that, when carrying out duties under 2007 Act, a person needs to be an authorised enforcement agent, yet when carrying out duties under the Courts Act 2003 (namely repossessions) it is possible to simply act under the delegated powers of the HCEO and there is no need hold a certificate, meaning there is no requirement to vet a person when coming into contact with the most vulnerable people, those being evicted

from their homes. It was recommended that, to maintain uniform standards within the profession, anyone undertaking civil enforcement must hold a certificate;

- *Better qualifications* for enforcement agents to truly raise professional standards;
- *A single regulator for the entire sector*- agents alone are still given personal licences rather than companies and firms being regulated. The loss of the planned role for the SIA was a profound mistake on the part of government and an overall ombudsman or similar is still needed, which supervises the activities of all stakeholders within the system. It seems bizarre not to have provided any mechanism for the monitoring or control of enforcement agencies, but this is what we have.

The process of reform has been commenced, but it has not yet been completed. We have a better enforcement system, but not a model system. Much work remains to be done.

Regulator

As long as the companies do not have an independent regulator, such as the FCA or an ombudsman, the industry will remain open to abuse and the risk will continue that the poorest in our society may be targeted by CEAs who will always tend to gravitate towards enforcing the smallest balances.

Whatever the solution, ombudsman, statutory regulator or otherwise, companies as well as sole traders must be covered. We believe that there is evidence to indicate that it is the smallest companies that tend to be the most legally compliant and which achieve the best practice. They tend to specialise in areas such as CRAR and the loss of their expertise would be detrimental to the whole industry as their CEAs are trained to a higher standard; many move on into the main industry, thereby raising the quality of the CEAs around them.

The position of CEEA was that it would be hard for any industry to argue not having an independent regulator, and an ombudsman would seem the most sensible way forward. The courts can deal with complaints against the individual agent, so the ombudsman dealing with maladministration would seem to be a sensible approach, and they can see no reason why the industry (for costs and speed) cannot be placed under the Local Government Ombudsman who already looks at cases regarding enforcement.

The Local Government Ombudsman made a number of helpful comments upon the issue of regulation of the sector, which are reproduced in full here:

“We note the comments about the need for a single regulator or Ombudsman for the enforcement sector. We would make the point that an effective regulator need not be a complaint handler; for example the Local Government Ombudsman investigates complaints about adult social care in private homes, a sector which is regulated by the Care Quality Commission.

The Government has issued a draft bill to create a single Public Service Ombudsman, which would cover both enforcement agents operating for local authorities and those operating for the courts. Any enforcement activities which are not controlled by the court or local authorities may be able to be brought into jurisdiction as the draft bill has a mechanism to bring other bodies into jurisdiction. At present there is no time scale when this bill may be enacted. But there is also the opportunity to amend the draft if necessary to create a body that can consider complaints about all aspects of enforcement agent's actions. We would suggest is a way forward to provide more effective regulation of the enforcement sector.

Whilst we welcome additional public protection in this area, it would be undesirable in our view to create additional new schemes to deal with sectors that already overlap with the work of existing complaints handlers. This will only add to public confusion and go against the Government's stated intent to make the landscape simpler for the public through the consolidation of existing schemes."

The primary recommendation of the *Stepchange* report on the reformed law is that the bailiff industry should be independently regulated by statutory body which will provide a credible deterrent to aggressive behaviour and excessive enforcement by bailiffs. They envisage that regulation would provide control and oversight of both individual bailiffs and of bailiff firms so as to tackle both individual and systemic bad practice. They recommend that the regulator should have the power to monitor business practices, including supervision of individual bailiffs and bailiff firms and that the body should set standards of practice, training requirements, and monitor compliance with these, taking enforcement action where these are not met. Given that some form of independent regulator was one of the three key elements of the original plan for the reformed enforcement system, we believe that there are extremely strong arguments in favour of this recommendation.

National Standard for Enforcement Agents

The NSEA needs to be given more definitive status and should be far more widely distributed. It is a document that can provide protection for all stakeholders. Sadly, there is a basic flaw in Act in failing to provide a definition of vulnerability; recognition of those potentially vulnerable must become a fundamental element of agents' training.

There is still much of value in the National Standard that supplements what is in the statute. There may even be an argument to transfer even more guidance over into law- for example, the provisions upon misrepresentation of powers and authority. HCEO staff representing themselves as entitled to collect council taxes (or the reverse) should be clearly illegal as well as unacceptable.

Part Seven- Recommendations

Based upon the responses received to the consultation document, it is clear that changes ought to be made to various aspects of the 2007 Act. These include:

- The primary concern for many in the sector was the issue of whether companies could lawfully be instructed. The government urgently needs to clarify whether indeed only individual agents are empowered to exercise any of the statutory functions of taking control of goods. His is a profound issue that strikes potentially at the very basis of much of the work carried out at present;
- Inclusion of a definition of 'highway';
- Better and more detailed treatment of agents' powers to take into control and sell goods subject to hire purchase and conditional sale agreements;
- Clarification of rights of entry;
- Clarification of the status of HP goods;
- A review of the Commercial Rent Arrears Recovery (CRAR) procedure, with the aim of producing a system that is fair to both tenant and landlord. This review would focus in particular upon the issues of the minimum level of rent arrears and the recoverability of service charges;
- Clarification of the details of the process for removal and sale; and,
- A consideration of further extension of these reforms.

It is recognised that it will be a potentially lengthy process amending the statute. As a short-term measure (and as a supplement to any changes to the Act) guidance on some of these matters could be added to the *National Standard.*

Some amendments may also be required to the various statutory instruments. These of course may be effected considerably sooner that changes to the Act, and could include:

- Better treatment of the meaning and implications of 'vulnerability';
- Improvements to the form and service of notices;
- A review of fee levels (as promised annually) as well as possible modifications to the structure of the fee scales;
- Amendments to the prescribed form of controlled goods agreements; and,
- Amendment or adjustment to the form of inventories.

Inclusion of agents with long-term field experience in any review is vital. The MoJ must respect and respond to the practical experience of stakeholders and act promptly to refine the reformed law.