

A single system together with a single set of fees and licensed enforcement agents: that should happen tomorrow - Andy Rose

Collected thoughts

Delays in implementing reforms of the bailiff sector are not welcomed by **Andy Rose**

Demand for bailiffs is on the increase as the nature of policing and public order enforcement sees an increasing dependency on the issuing of monetary penalties, be they for driving with a mobile phone, running a red light, parking illegally or failing to pay London's congestion charge.

The enforcement sector in England and Wales is on the verge of becoming subject to a new system of regulation following several years of government consultation. Or, at least, that is the theory, for some leading bailiff companies are concerned that the much discussed proposals may be held up for several years.

"My personal view is that there is a need for external regulation of the profession of enforcement," says Andy Rose, managing director of civil enforcement specialist Bristow & Sutor, a company which has been in business for 27 years, carrying out enforcement of debts on behalf of for magistrates courts and local authorities, for whom it also recovers unpaid parking penalties.

"Bailiff companies have in the past faced negative publicity and we recognise the need for comprehensive training, examination, competence and credibility within the profession," he says. Rose says he personally finds the current set up, with different types of bailiff and High Court Enforcement Officers (formally known as sheriffs) working under different rules and fee structures, to be indefensible.

Government proposals for a unified piece of bailiff law and licensing of operatives would bring together the different strands of enforcement into a single system and will create an opportunity to improve the image of enforcement agents, says Rose. "A single system together with a single set of fees and licensed enforcement agents — that should happen tomorrow, not three or four years from now," he says. "The situation needs to be treated with more gusto than appears to be the case."

During 2000, Rose was president of the Certificated Bailiffs Association — (now the Enforcement Services Association (ESA)).

"I was involved in the Lord Chancellors' Department Advisory Group, which sat on and off for two years to come up with recommendations to government on the future shape of enforcement, such as licensing and regulation."

Discussions and consultations on the future shape of the enforcement profession have been on-going for several years. Earlier reviews included 1998's Lord Chancellor's Department review of civil enforcement and 2000's *Towards Effective Enforcement*, a report by Professor Jack Beatson which informed the Lord Chancellor's Department published national standards in April 2002. Then came the White Paper, *Effective Enforcement*, last



Vehicles removed by bailiffs end up being auctioned, usually for far less than they are worth

March. This suggested: creating a single piece of bailiff law based on common fee principals; giving bailiffs (to be known as enforcement agents) more powers while giving debtors more protection; and for the first time regulating agents via a single body, the Security Industry Authority (SIA).

"The reason for using the SIA is purely economic," suggests Rose. "With the SIA already being funded it has obviously been felt to be easier to build an additional branch rather than create a new body. While there are areas in which the administration of the security and debt recovery can be mirrored — for example, examinations and certification — there are some distinct areas of difference in that the realms of security staff and bailiffs/enforcement agents are covered by dramatically different legal processes."

A major problem with the current process for Rose, and other heads of debt recovery companies, is that delay is inevitable. The recent Department of Constitutional Affairs report *The Move to a regulated enforcement industry: transitional issues* indicates that it would take 42 months from Royal Assent for primary legislation through the point that SIA licences become compulsory. If Royal Assent were granted this year, it would be 2008 before licenses were implemented. However, bailiff reform would appear to be on hold for quite some time yet, as the proposed legislation has entered limbo, with no parliamentary slot scheduled.

"Until the White Paper on enforcement is adopted there can be little real progress," he says, "but it did not appear in the last Queen's Speech. When Molly Meacher [former head of the SIA] spoke to the profession, she said the authority would not get to the licensing of



Bristow & Sutor's Andrew Rose

enforcement agents until 2006 or 2007. This is because of the other licences and controls, for manned guards and security consultants, that have to be implemented by the SIA before then."

The prospect of SIA regulation and licensing not being fully implemented until perhaps 2008 does not impress Rose.

"I want to see licensing and regulation of the profession tackled with a great deal more urgency. This current review is the third of four attempts to bring in reforms — we cannot wait for another," he says. "The demand for enforcement is growing. Debt recovery is on the increase. Then there are new offences, such as those for driving while using mobile phones and congestion charging. All require effective enforcement."

A standard structure supported by transparent

fee scales would be beneficial, says Rose. "As long as debt recovery remains an unregulated area, citizens advice and social reform groups can continue to argue that the whole sector is archaic," he argues. "There is a need for more clarity and an end to ambiguity."

Some areas of law do attempt to set out prescribed fee scales: council tax, business rates, rent and parking. "This is wholly different to the enforcement of fines through magistrates' courts, where there is no prescribed fee scale," says Rose. "Although guidance from central government is given to magistrates' court committees concerning the appointment and control of bailiffs, it is silent with regard to the imposition of a singular fee scale. The effect is that different scales are adopted throughout the country, sometimes even within the same court area. Government has repeatedly failed to act in respect of standardisation and it appears that this issue will remain unaddressed until the implementation of the White Paper."

Rose suggests that the fees that bailiffs or enforcement agents can charge should also be made clear either at the time penalties are issued, or at least printed on the back of the first letter sent to offenders.

"Council Tax recovery fees are set out in a reasonably clear, unabusable structure. That should be the norm," he says.

The parking sector is actually a seat of good practice in the area of transparent and clear fees. "The recovery fees for parking penalties issued under the Road Traffic Act 1991 are nationally agreed and could be publicised so people understand the debt recovery process is an integral part of the penalty system, and not an afterthought," he says. □

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