



# A brave new world?

Gareth Hughes of the Marston Group details the significant strides made to date in the Enforcement Agents Fee Structure Review, which aims to bring transparency, simplicity and fairness to this previously complex and contentious area.

**T**he *Tribunals, Courts and Enforcement Act 2007* ("TCE") received Royal Assent on 19 July 2007, incorporating disparate legislation and common law into a single piece of statute. The Act also contained provisions for determination of enforcement fee schedules that would replace the various statutory and contractual fee schedules currently in force. The TCE Implementation Team set up by the Ministry of Justice has since initiated an ongoing Enforcement Agents Fee Structure Review, and is consulting with all stakeholders, including the Association of Civil Enforcement Agencies and the Enforcement Services Association, as part of that process.

## The challenge

Private sector enforcement of distress warrants and liability orders is a public service that delivers important, tangible benefits to society. In the 2007/08 fiscal year, for example, an estimated £635m was recovered by private contractors on behalf of central or local government bodies – at no cost to the taxpayer. Given the public service benefits obtained at minimal cost by use of private enforcement agencies, it is important that service providers are remunerated fairly for properly executing distress warrants and liability orders. The question, then, is how to structure a return that remunerates recovery on behalf of taxpayers – but does so in a transparent manner that promotes ethical behaviour, reduces potential for dispute, incentivises conclusion of enforcement at the earliest possible stage, and that passes only a proportionate cost on to debtors that do make payment.

The current fee schedules are spread across several pieces of statute, and have the following weaknesses:

### Insufficient reward for early-stage payments

Distress warrants command enforcement agencies to make immediate distraint upon a person's goods, and the current fee schedules are structured in anticipation of immediate distraint. In reality, however, central and local government agencies are increasingly issuing contracts that require enforcement companies to adopt a more varied approach – for example, by increased correspondence, operation of contact centres, maintenance of payment plans and offering of paperless direct debit solutions. Development of this two-stage enforcement approach benefits debtors, as it allows further opportunities to make payment, prior to physical attendance by an Enforcement Agent – and without the resultant costs of physical attendance.

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The current fee schedules do not provide appropriate scope to charge for these services and the true cost is therefore hidden from public view. The council tax regulations do not allow any fees at all to be added prior to attendance at a debtor's property. The unpaid parking penalty regulations allow only an £11.20 letter fee to be added and the Child Support regulations allow only a £10 letter fee. The losses contractors currently incur from any payments received without physical attendance by an Enforcement Agent must be recovered from fees charged to other debtors at the direct enforcement stage.

### Inherent potential for dispute

Fee schedules based on charging per action undertaken allow scope for dispute, as actions undertaken are not always easy to evidence. Contractors and clients incur significant costs in auditing and monitoring actions. No system is foolproof, however, meaning that contractors and clients are both put in a position whereby claims cannot be completely rebutted due to a lack of

independent evidence. Removing potential for dispute is particularly important in a politically sensitive area such as distress warrant and liability order enforcement.

The charging of fees per enforcement action also means that there is an inherent economic incentive to proceed to the end of the enforcement process, rather than to conclude at the earliest possible stage.

### Subject to varying interpretation

Current statute is worded in a way that creates ambiguity in relation to the application of reasonable costs and charges. This results in varying interpretations, the consequence of which is that different companies charge different amounts for the same actions. The varying interpretation and application of reasonable costs can result in variations in final amounts charged to the debtor. Debtors therefore have no certainty as to the costs they will incur at the enforcement stage.

### Complex calculation

Current fees are complex to calculate and difficult for debtors to understand. Unpaid parking penalty visit fees, for example, are based on a sliding percentage of the total sum demanded, ie including fine and fees (28 per cent up to £200 and 5.5 per cent over £200). In practice, this can be a challenging calculation. This complexity can result in debtors not understanding how charges have arisen, and in Enforcement Agents unwittingly charging incorrect amounts – both of which have reputational risks for clients, contractors and Enforcement Agents.

### Low and decreasing returns to contractors

The specified statutory fee amounts are not generous. Furthermore, average fees charged have fallen by 30 per cent over the last three years. This is because:

- increased investment has been made in compliance initiatives, as noted above. The more successful a company is at generating payments without physical attendance by an officer, the more its profits reduce – as these are payments that are collected at very low (or no) fees. The increased cost base associated with implementing the compliance initiatives also further decreases margins.
- clients have increasingly been imposing limitations on the application of reasonable costs and charges, without fully understanding that the statutory fees currently in force are not sufficient to generate a return on investment for contractors.
- significant investment in technology has meant that visits and actions undertaken by Enforcement Agents can be better evidenced and verified. Prior to this investment, companies had no option but to rely on the integrity of the certificated Enforcement Agents engaged to undertake the doorstep visits. The cost of this investment had already depressed margins, but better evidenced actions also had the effect of reducing the margins of companies prepared to make that investment yet further. Companies without access to capital were unable to make similar investment in audit and compliance functions – and may have risked going out of business if they had done so, from a resultant combination of increased costs and decreased income. Eight enforcement agencies have ceased trading in the last three years.
- the regulations make no provision for inflationary increases. The Child Maintenance Enforcement Commission letter fee, for example, has not changed since the regulations were first introduced in 1992.

### Proposed fee schedule

The key desired outcomes of a new fee schedule are:

- **Simplicity** Easy to calculate and for debtors to understand;
- **Consistency** Applicable across all types of public debt;
- **Transparency** No scope for different contractors to charge different amounts for identical actions;
- **Certainty** Fees applied per enforcement stage, not per action;
- **Proportionality** Debtors charged a proportionate cost in respect of enforcement;
- **Fairness** Contractors appropriately remunerated for providing the service to taxpayers; and Contractors and debtors incentivised to conclude enforcement at the earliest possible stage.

### Compliance Stage – single fixed fee

This fee should be set at a level that allows proper recovery of costs already incurred at this stage of the process (warrant input, letter despatch and postage, inbound call centre staff,

training, rent and insurance, customer correspondence, client liaison, ISO-standard systems and procedures) and would also cover a much wider range of actions than is currently applied (outbound call centres, tracing, investigation, implementation and operation of payment plans, electronic and text-based reminders).

### Enforcement Stage – single fixed fee

This fixed fee should include Enforcement Agent remuneration, training, licensing, insurance, back office agent support, handheld computers, van, phone and GPS tracking costs. A fixed and uniform fee at this stage should prompt also greater compliance at the earlier fee stage – as the escalation costs would be known and certain at that point.

### Removal Stage – single fixed fee

This fee should reflect the costs of removal of goods, where removal takes place.

This fee structure would mean that:

- the ambiguity inherent in determination of reasonable costs and charges is eliminated, ensuring greater transparency;
- the proportion of debtors receiving doorstep visits decreases, as contractors are incentivised to further develop the two-stage approach being demanded by public sector clients;
- fees are no longer calculated by the Enforcement Agent at the doorstep, but applied by contractors' head offices. This reduces the capacity for dispute between officer and debtor, reduces the risk of calculation error, and eliminates the capacity for overcharging allegations against Enforcement Agents;
- debtors incur only proportionate and widely understood fees.

The Association of Civil Enforcement Agencies, the Enforcement Services Association and the British Parking Association all formally support this proposed fee structure, and it has also been endorsed by Rockpools, the ethical audit firm. The underlying principles have also attracted widespread support within the debt advice sector.

By engineering out the reputational risks inherent in the current fee schedules, the scope for allegations of unethical behaviour against Enforcement Agents and contractors is significantly diminished. This benefits all stakeholders (government, clients, contractors, debtors, debtor advice agencies and Enforcement Agents), and would quickly change the way in which the service is perceived by the wider public. The public perception would then come to reflect the day-to-day reality of committed professionals performing an important public service as appointed officers of the court.



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