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**INSTITUTE OF CREDIT MANAGEMENT RESPONSE TO THE MINISTRY OF JUSTICE
CONSULTATION: TRANSFORMING BAILIFF ACTION**

The Institute of Credit Management is the largest professional credit management organisation in Europe. Its members hold important, credit-related appointments throughout industry and commerce, and we feel it appropriate to comment on this consultation.

We are concerned that the consultation is headlined as providing more protection against aggressive bailiffs when paragraph ten of the introduction freely acknowledges that this premise is based on “anecdotal evidence that some bailiffs may veer towards aggression”. It is surprising that no quantitative or qualitative research has been carried out in order to quantify the extent or nature of the perceived problem.

Should you have any queries, please do not hesitate to contact me.

Yours faithfully

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Chair of Technical Committee

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Response of the Institute of Credit Management to the Consultation: Transforming Bailiff Action

Q1. Do you agree with the contents of the National Standards? (para 33).

Yes.

Q2. Do you consider the existing law and the revised National Standards for Enforcement agents is sufficient to address the problems we have identified or do you consider there is still a need for further Government intervention as set out in the remainder of paper? (para 34).

No.

Q3. Do you consider there are any gaps in the range of information available on DirectGov? (para 35).

Yes, we have indicated our wiliness to join the working party being set-up by Anne-Marie Goddard at the Ministry of Justice as discussed at the Enforcement Law Reform Group on 23 March.

Q4. Do you agree enforcement agents should not be able to use force against a person? (paras 36-38).

Yes

Q5. Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain entry to premises and that the conditions should be prescribed in regulations? (paras 39-45).

Yes

Q6. Do you agree with the prescribed conditions set? (Regulation 26, pages 103-104).

Yes

Q7. Do you consider an enforcement agent executing a High Court or county court debt should (paras 46-47):

- a) have to apply to the court to use reasonable force if necessary on entry to any business premises; or
- b) should they have a general power?

B, applying for a court order is unnecessary and the application process would create delays during which the opportunity to remove goods and avoid payment would be increased.

Q8. Do you agree there is a need for the court to be satisfied of certain conditions before they authorise the use of reasonable force to gain re-entry to premises and that the conditions should be prescribed in regulations? (paras 45-48).

No, see question 7.

Q9. Do you agree with the prescribed conditions set? (Regulation 26, pages 103-104).

No, see question 7.

Q10. Do you consider an enforcement agent should:

- a) have to apply to the court to use reasonable force, if necessary, on re-entry in certain circumstances, OR
- b) have a general power?

B.

Q11. Do you agree with the 12 month time limit for taking control of goods? (paras 57-58).

Yes

Q12. Do you agree with the term (normally 7 days) for the minimum period of notice prior to taking control of goods? (paras 59-64).

Yes

Q13. Do you agree with the modes of entry and re-entry? (paras 65-67)

Yes

Q14. Do you agree that the enforcement agent should be able to enter premises any day? (paras 68-72).

Yes

Q15. Do you agree with the time limits of 6.00am and 9.00pm for entry in wholly residential premises? (paras 70-72).

Yes

Q16. Do you agree that the enforcement agent should be able to take control of goods any day? (paras 73-74).

Yes

Q17. Do you agree with the time limits of 6.00am and 9.00pm for taking control of goods? (paras 73-74).

Yes

Q18. Do you agree with allowing the enforcement agent to proceed outside the hours limit where the process has already commenced? (para 71).

Yes

Q19. Do you agree with the range of exempt goods? (paras 76-77, Regulations 4/5 on pages 94-95).

Yes

Q20. Do you agree that the debtor should be able to authorise another person to enter into a controlled goods agreement? (paras 79-84).

Yes

Q21. Do you agree that a person in apparent authority should be able to enter onto a controlled goods agreement? (paras 79-84).

Yes

Q22. Can you provide any recent evidence which supports or challenges the approach to empower enforcement agents to secure entire premises? (para 87).

No comment.

Q23. Do you agree with the time limit that a vehicle must remain immobilised before being removed to storage? (paras 90-93).

Yes

Q24. Do you agree with the term set for the minimum period before a sale may proceed? (paras 94-101).

Yes

Q25. Are there any methods of sale other than private contract, sealed bids or advertisement that should be included in the regulations? (paras 102-103).

Yes, the regulations should embrace all possible methods including, for example, online auction sites.

Q26. Do you agree with the method of dealing with the proceeds of sale? (para 104).

Yes

Q27. Are there any other circumstances where goods may be deemed as abandoned? (paras 105-108).

No

Q28. Do you consider there is a need to define vulnerability in the regulations? (paras 110-116).

Yes, we do not however, believe a strict definition is practical or appropriate. The Institute would favour the approach put forward by Andrew Holey from the Local Government Ombudsman's office. He suggests that, instead of a strict definition, the concept of 'vulnerability' when applied to a debtor should be determined by answering some simple questions about the individual concerned. Firstly, one should ask whether the debtor has a disability or other vulnerability – which could be mental or physical – which means that they are incapable of understanding the situation they are faced with or would be incapable of defending themselves properly in any proceedings that may arise as a result of the issue facing them? Secondly, one should ask whether, even if the debtor could understand such proceedings, does the debtor suffer from a vulnerability that would make that course of action wholly inappropriate anyway.

Q29. Do you agree with the information required from a landlord for the authorisation of an enforcement agent to take control of goods? (paras 117-119, Regulation 50, pages 115-116).

Yes

Q30. Do you agree with the minimum rent period of seven days in arrears? (para 120).

Yes

Q31. Do you agree with the content of the notice to the sub-tenant? (para 121, Regulation 53, page 116).

Yes

Q32. Do you agree with the content of the notices and warnings? (paras 122-123, Documents 1-7 on pages 121-136).

Yes

Q33. Do you agree that the set of core activities in the costs structure cover all of the enforcement activity undertaken regardless of debt type? (paras 125-134, Annex G, pages 137-140).

Yes

Q34. Do you agree with the grouping, into stages, of these activities? (paras 135-138, pages 137-140).

Yes

Q35. Do you agree the activities are grouped correctly? (paras 135-138, pages 137-140).

Yes

Q36. Do you consider there is a need for remission? (para 138).

Yes, evidence completed and signed by a suitably qualified mental health professional should be provided immediately at point of initial contact.

Q37. Do you agree that the fixed amounts attributed to each stage are appropriate? (para 134, page 140).

Yes

Q38. Do you agree the percentage costs attributed to the relevant stages are appropriate and the threshold is correctly placed? (para 140, page 140).

Yes

Q39. Is there a need for an exceptional costs process? (para 141).

Yes, exceptional costs should be independently assessed at court.

Q40. Do you agree with the differences in the costs structure between High Court and non High Court debt? (paras 142-144, page 140).

Yes

Q41. Do you consider the costs structure will have an adverse effect on recovery of Non Domestic Rates cases? (para 145).

No

Q42. Do you agree with the order for payment of monies on partial payments? (para 146).

Yes

Q43. Should the costs structure be updated to take account of inflation prior to implementation? (para 147).

Yes

Q44. Should the costs structure be updated annually by indexing to a measure of inflation? (para 147).

Yes

Q45. Is three years a suitable timeframe for the costs structure to be comprehensively reviewed and potentially recalibrated? (para 148).

Yes

Q46. Do you consider there are alternative or less regulatory options that would be suitable for enforcement agents? (paras 151-159).

No

Q47. Do you agree that the application for a certificate should be made by the enforcement agent at the court local to the area where they will be carrying out the main part of their business? (para 159).

Yes

Q48. Do you agree that the application for a certificate should be dealt with by specialised District Judges? (para 159).

Yes

Q49. Do you have any comments on either of the proposals submitted by the British Parking Association? (paras 160-165, Annexes H/I, pages 141-146).

No

Q50. Do you agree the competence criteria is an acceptable level for entry into the profession? (paras 166-168, Annex J, pages 147-150).

Yes

Q51. Do you consider that mandatory training is necessary to ensure an enforcement agent is fit and proper to hold a certificate? (para 170).

Yes

Q52. Do you consider an enforcement agent should undertake any further training or development after the granting of the certificate? (paras 166-171).

Yes

Q53. Do you agree with our proposals on the complaints handling strategy? (paras 172-189).

Yes

Q54. Do you consider that the jurisdiction order should be amended? (paras 190-198).

Yes, we believe creditors should have complete freedom of choice on where to enforce their judgment debt.

Q55. Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper?

Yes

Q56. Do you agree that we have correctly identified the extent of impacts under these proposals?

Yes

Q57. Do you have any evidence of equality impacts that have not been identified within the equality impact assessment?

No