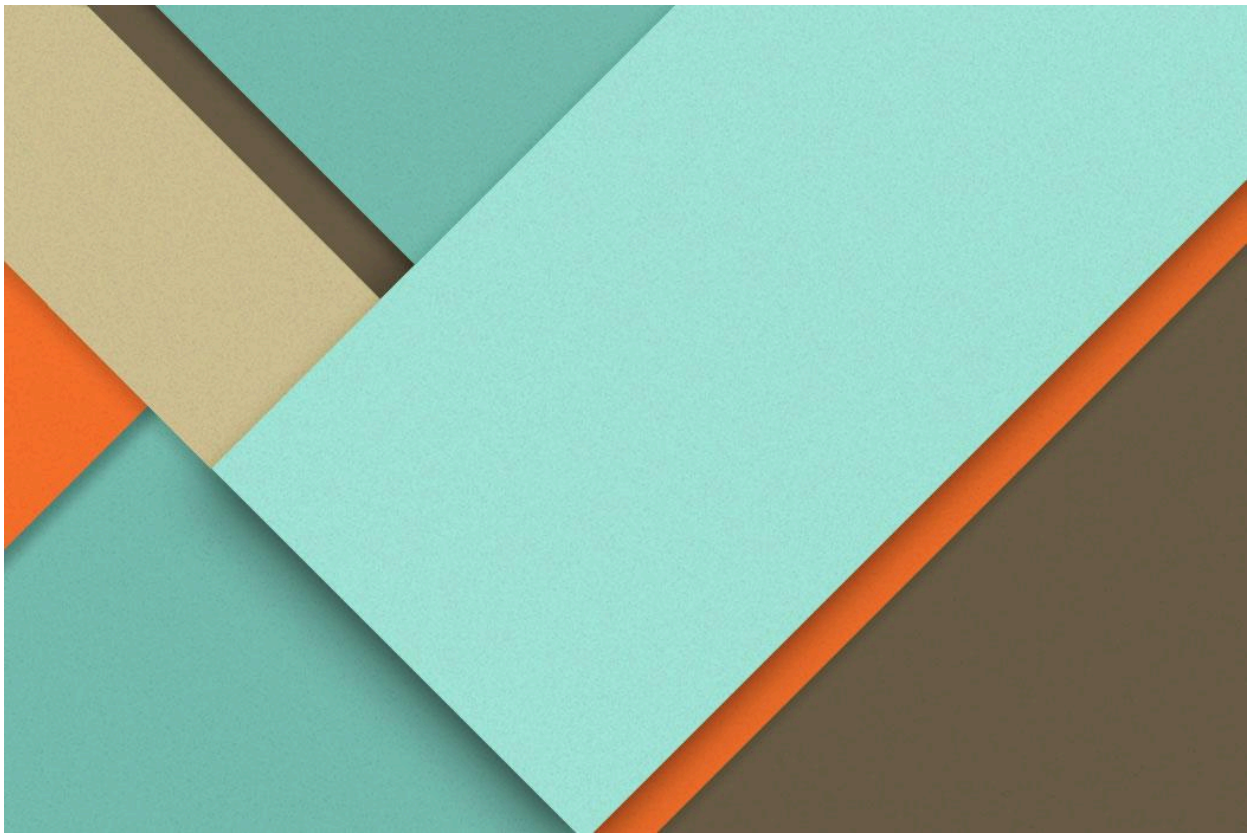

Driving Fairness: Proposals for Enhancing the Civil Enforcement Framework

25 June 2024

Jason Bennison
Jay Carpenter Consulting Ltd
22 Wenlock Road,
London, N1 7GU

Overview

This document outlines my proposals to reform bailiff the Schedule 12 enforcement provisions and the underlying regulations and to reshape the landscape of enforcement practices, ensuring greater accountability and fairness in the process.

Goals of These Proposals

1. Develop and propose amendments and extensions to Schedule 12 enforcement provisions and underlying regulations.
2. Enhance the overall system of civil enforcement better to safeguard the rights of debtors and third parties.
3. Reshape the landscape of enforcement practices to ensure greater accountability and fairness.
4. Address critical gaps in the UK legal system regarding civil enforcement law.
5. Ensure fair treatment for disadvantaged groups in enforcement proceedings.
6. Advocate for the proper application of Schedule 12 enforcement provisions, particularly in complex cases.
7. Combat prejudice and misconceptions in the court system against debtors and third parties affected by enforcement breaches.
8. Clarify the responsibilities of High Court Enforcement Officers (HCEOs) and enforcement agents involved in enforcement actions.
9. Proactively identify and address systemic issues in the current regulatory scheme for enforcement actions.

Goals of National Bailiff Advice

1. Continue to provide expert guidance and representation in complex enforcement cases.
2. Raise awareness about the rights of debtors and third parties in enforcement proceedings.
3. Expand the reach and impact of National Bailiff Advice services across England and Wales.

Introduction to National Bailiff Advice

I am Jason Bennison, founder and lead case examiner for National Bailiff Advice, a pioneering and indispensable service. We are the only provider in the UK offering free, comprehensive online advice to debtors facing bailiffs who breach enforcement provisions. Since the Tribunals, Courts and Enforcement Act 2007 (TCE) came into effect in 2014, I've personally overseen more than 7,300 unique cases involving enforcement breaches, providing remedies, including engaging solicitors and counsel for litigation.

Addressing remedies for civil enforcement breaches is an underserved area of law with unique challenges. I've observed that clients - both debtors and third parties affected by enforcement breaches - often face prejudice in court simply because they owe money or due to a misguided belief that the court must support the bailiff as a representative of a public authority. This perception is fundamentally flawed. I founded National Bailiff Advice to give this disadvantaged group a voice and ensure they receive fair treatment, making a significant difference in their lives.

In 2024 alone, I've achieved several legal milestones. For example, in January, after taking on a client in 2022 named Trevor Bone, who was facing enforcement of a High Court writ, I discovered a discrepancy with the bailiff's fees. I referred Mr Bone to a solicitor and initiated an application against the High Court Enforcement Officer (HCEO), Simon Williamson, named on the Writ of Control, for a fee assessment. However, the application initially failed because the court found that as HCEO, Mr Williamson was the incorrect respondent. As the decision was inconsistent with the prescribed parties in Paragraph 66(6) of Schedule 12 to the Tribunals Courts and Enforcement Act 2007, my client appealed. The Court of Appeal ruled that Mr Williamson, as HCEO, is responsible for bailiffs acting under his authority. The case, *Trevor Bone v Simon Williamson [2024] EWCA Civ 4*, set a significant precedent.

In another case, a client named Michael Burton contacted me via my helpline in 2021, reporting that bailiffs recovering an unpaid magistrates court fine had clamped his hire purchase car. Despite the clear relationship between Schedule 12 enforcement provisions and goods on hire purchase, my client sued the Ministry of Justice (MOJ) as the department responsible for the creditor, HM Courts and Tribunals Service. The appeal court found that the MOJ is liable for bailiffs acting on its behalf, reiterating the prescribed parties in Paragraph 66(6) of Schedule 12 of the TCE. This case, *Burton v Ministry of Justice [2024] EWCA Civ 681*, was another significant victory.

At National Bailiff Advice, we're not just advocates for debtors facing enforcement breaches but also proactive in suggesting solutions. During my tenure as an independent case examiner, I've not only addressed breaches and provided remedies but also identified systemic issues in the current regulatory scheme. As a result, I've compiled a comprehensive list of proposed amendments and extensions to Schedule 12 enforcement

provisions and underlying regulations, aiming to enhance the system and safeguard the rights of debtors and third parties.

My work represents a significant contribution to the field of civil enforcement law. By providing a voice to an often overlooked group and actively working to improve the regulatory framework, I'm addressing a critical gap in the UK legal system. The precedents set through cases I've been involved with have the potential to reshape the landscape of enforcement practices, ensuring greater accountability and fairness in the process.

Index of Proposals

I. Secure Recording: Bodyworn Video Camera Retention for Enforcement Agents

Mandating the use of body-worn cameras by enforcement agents, supported by clear legislation on data retention and access, is essential for ensuring accountability, protecting rights, and modernising enforcement practices.

II. Documenting Notification: Evidence of Delivery of the Notice of Enforcement.

Update Paragraph 7 of Schedule 12 to the Tribunals Courts and Enforcement Act 2007 for giving the Notice of Enforcement (NOE) under the Tribunals, Courts and Enforcement Act 2007 and the 2013 regulations to enhance transparency, accountability, and fairness, proposing a scheme akin to the Form N215 to provide verifiable and legally robust certification of NOE delivery.

III. Identifying Your Enforcement Agent: Empowering Debtors

Amend regulations to require enforcement agents to use their full legal names on enforcement documents to ensure transparency, accountability, and trust in the enforcement process.

IV. Tackling the Issue of Underreporting Auction Sale Values.

The Schedule 12 provisions and underlying regulations mandate a detailed statement of account following the sale of controlled goods to ensure transparency, deter misconduct, and protect debtors from potential exploitation by enforcement agencies.

V. Streamlining Payments: Simplifying Third-Party Claimant Requirements.

Amend Regulation 4(1)(a) of the Taking Control of Goods Regulations 2013 to remove the £1,350 value cap on exempt items is crucial for ensuring fairness,

preventing arbitrary valuations by enforcement agents, and protecting debtors' essential goods.

VI. Extending Deadlines: Enhancing Access to Controlled and Exempt Goods Claims.

Extend the deadline for third-party claims on controlled goods from seven days to thirty days by amending Civil Procedure Rule 85.4(1) and 85.8(1) to ensure fair access to justice and allow sufficient time for claimants to engage legal representation and prepare substantive claims.

VII. Show Your Valid Certificate: Ensuring Enforcement Agent Certification on Demand.

Amend Paragraph 26, Schedule 12 of the Tribunals Courts and Enforcement Act 2007 to require enforcement agents to produce their valid enforcement certificate upon request, replacing unofficial identification materials to enhance transparency and prevent public confusion.

VIII. Sticky Situation: Enforcement Agents Required to Use Removable Adhesive for Vehicle Notices.

The practice of attaching immobilisation warning notices to vehicles, as required by Regulation 31 of the Taking Control of Goods Regulations 2013, raises significant concerns about vehicle safety and property damage from using non-removable glue, necessitating a review to adopt methods that notify vehicle owners effectively without compromising safety or causing damage.

IX. Clearing the Confusion: Parliament's Role in Third-Party Claims under the Torts Act 1977 After the Deadline

The intersection of Civil Procedure Rule 85 and the Torts (Interference with Goods) Act 1977 has created legal ambiguity regarding the extinguishment of claimants' rights after the seven days, as highlighted by a recent court case, emphasising the urgent need for clear legislative guidance to protect third-party interests.

X. Expanding Protections: Enhancing Paragraph 66 of Schedule 12 to Include Third Parties.

Extend Paragraph 66 of the Schedule to the Tribunals Courts and Enforcement Act 2007 to include third-party claimants, thereby empowering them to legally challenge

enforcement agents who breach paragraphs 10 or 60 of the Schedule, safeguarding their property rights and ensuring accountability to non-debtors.

XI. Snapshot Requirement: Enforcement Agents Must Create and Keep Vehicle Condition Photos Upon Removal.

Extend Paragraph 34 of Schedule 12 to the TCEA to mandate enforcement agents to create and maintain comprehensive video and photographic documentation of a vehicle's condition before taking control of it, aiming to enhance accountability, preserve evidence, and protect property rights in vehicle damage claims.

XII. Empowering Vulnerable Debtors: Applying for Return of Controlled Goods Following a Breach of Regulation 12.

Extend Paragraph 10 of Schedule 12 to the TCEA and its regulations to enhance protections for vulnerable debtors by clarifying vulnerability disclosure requirements and expanding remedies for breaches of Regulation 12 to include the return of controlled goods following a breach.

XIII. Expert Guidance Inclusion: Adding National Bailiff Advice to Notice of Enforcement Advisory Groups.

Adding National Bailiff Advice to the Notice of Enforcement to improve advice quality, raise awareness of rights, and enhance the availability of remedies to people in debt.

XIV. Deterrents for High Court Writ Enforcement Agents Regarding Controlled Goods Agreements.

Amend Regulations 6(1)(b)-(c) of the Taking Control of Goods (Fees) Regulations 2014 to rectify inconsistencies in fee recovery for High Court Writs of Control enforcement, aiming to align fee structures with the goal of encouraging the use of Controlled Goods Agreements.

XV. Ensuring Ownership Verification: Enforcement Agents' Responsibilities Before Highway Removals.

Amend Paragraph 14 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 to require enforcement agents using ANPR technology to seek vehicles to make enquiries about vehicle ownership and confirm address details against the Warrant before removing vehicles linked to unpaid traffic contravention debts.

XVI. Setting Limits: Implementing a Maximum Cap on Vehicle Storage Charges.

Amend Regulation 8 of the Taking Control of Goods (Fees) Regulations 2014 to cap vehicle storage fees at £5 per day and limit the chargeable period to 30 days, addressing concerns over fairness, regulatory compliance, and potential abuse in enforcement practices by enforcement agencies monetising vehicle storage for profit.

XVII. Taxing Enforcement: Exposing VAT on Debt Recovery Charges.

Extend Regulation 12 of the Taking Control of Goods (Fees) Regulations 2014 to rectify unintended consequences stemming from the 2021 amendment, specifically addressing improper VAT recovery practices by enforcement agencies.

XVIII. The Ministry of Justice to Maintain an Official Online Public Register of High Court Enforcement Officers.

The Ministry of Justice should create and maintain an official Public Register of High Court Enforcement Officers, including verified contact information, to enhance accountability, accessibility, and reliability, as underscored by recent legal developments and expert analysis.

XIX. CIVEA And HCEOA To Share Their Members' Communications With The Enforcement Conduct Board

The Enforcement Conduct Board (ECB) to acquire full transparency from CIVEA and the High Court Enforcement Officers Association (HCEOA) by disclosure of all past and future members-only communications for independent scrutiny of guidance provided to Enforcement Agents.

XX. The Enforcement Conduct Board To Independently Review The Training Materials And Practices Of Enforcement Companies.

The ECB must have authority to inspect the training materials and training practices of enforcement companies to new enforcement agents, as evidence has surfaced being taught dubious methodologies, including coercive tactics and illegal activities.

The Recommendations in Full

Enforcement Agents To Retain Bodyworn Video Camera Recordings

The use of body-worn cameras by enforcement agents is a critical aspect of modern enforcement practices, serving to protect both the enforcement agent and debtors. The requirement for continuous recording from the moment the enforcement agent exits their vehicle until they return is a crucial deterrent against misconduct and may be used to resolve disputes.

The current standard set by the Data Protection Act 2018 for retaining recordings for six years is ideal, as it aligns with the typical statute of limitations for many civil actions. This extended retention period ensures that evidence is available should legal proceedings arise well after the enforcement action.

However, recognising the practical challenges of long-term data storage, the alternative 12-month retention period is a reasonable compromise. This shorter timeframe still provides debtors with a sufficient window to access recordings for immediate legal purposes under Civil Procedure Rule 31.16 while balancing the data management needs of enforcement agencies.

I suggest modelling new legislation on Sections 49-53 of the Regulation of Investigatory Powers Act 2000 because it provides a robust framework for handling sensitive digital information, which is directly applicable to body camera recordings. Specifically:

Sections 49-51, which require the disclosure of encryption keys, could be adapted to require enforcement agencies to provide unobstructed access to body camera recordings upon legitimate request.

Section 53, which criminalises the failure to disclose such information, could serve as a model for creating a similar offence for the deliberate destruction, concealment, or failure to produce body camera footage.

Implementing such legislation would significantly enhance accountability in the enforcement process. It would ensure the preservation of crucial evidence, making it accessible, deterring potential misconduct and providing a clear recourse for debtors who believe enforcement agents have treated them unfairly.

Moreover, this approach would strike a balance between the need for transparency in enforcement actions and the privacy concerns inherent in recording interactions. By clearly defining the retention periods and access protocols, we can ensure that this valuable evidence is available when needed while also protecting the privacy rights of all parties involved.

Creating legislation into the Schedule 12 provisions of the Tribunals Courts and Enforcement Act 2007 would represent a significant step forward in modernising and improving the fairness and transparency of enforcement procedures. It would provide much-needed clarity and structure to the use of body-worn cameras in this context, ultimately serving the interests of justice and protecting the rights of both debtors and enforcement agents.

Evidence Of Giving A Notice Of Enforcement To The Debtor.

The existing framework, outlined in Paragraph 7 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (TCEA) and the associated 2013 regulations, needs to be revised in addressing disputes over whether the enforcement agent or his office has given the Notice of Enforcement (NOE). This inadequacy stems from the vague language in Paragraph 7.3, which merely requires Enforcement Agents to "make a record of the time" when the enforcement agent or his office gave the debtor the NOE.

In practice, this has led to a situation where enforcement agencies often provide debtors with computer-generated printouts that are frequently redacted and lack conclusive evidence of proper NOE delivery. This approach needs to provide more transparency and certainty that our legal system should demand in such critical matters.

To address these shortcomings, I propose amending Paragraph 7 of Schedule 12 to the TCEA and the underlying 2013 regulations to introduce a more robust and verifiable process. Specifically, we should require enforcement agents, upon the debtor's request, to complete and submit a Form N215 certificate of service for the NOE, which can be given to Royal Mail to investigate and decide whether, when and where the NOE was given to the debtor using a bar-coded Royal Mail stamp or franked mail.

Form N215 is already well-established in civil procedure and provides a standardised and legally recognised method of certifying the service of a document. By extending its use to NOE delivery, we would:

Enhance transparency: The form requires detailed information about the method, date, and time of service, leaving less room for ambiguity.

Increase accountability: As a formal court document, the N215 carries legal weight, potentially deterring false claims of service.

Streamline dispute resolution: In cases of contention, courts would have a familiar, standardised document to review, facilitating quicker and more consistent judgments.

Protect debtors' rights: By providing a clear mechanism to challenge questionable NOE deliveries and safeguard debtors against potentially unlawful enforcement actions.

Benefit enforcement agents: Proper documentation protects agents from unfounded accusations of improper service.

This proposed amendment would strike a balance between the operational needs of enforcement agencies and the rights of debtors. It would replace the current system of often inadequate computer printouts with a legally robust certification process.

Moreover, this change would align NOE delivery more closely with other areas of civil procedure where proper service is crucial. It would elevate the importance of this step in the enforcement process, recognising that without proper notice, subsequent enforcement actions may be fundamentally flawed.

Implementing this amendment would significantly enhance the fairness and transparency of this element of the enforcement process and provide much-needed clarity in an area that has been prone to disputes, ultimately serving the interests of justice and improving public confidence in the enforcement process.

Debtor To Be Able To Identify The Enforcement Agent.

When giving a prescribed enforcement document to a debtor or fixing it to a vehicle, parliament should update the regulations to enable the debtor or other person to identify the enforcement agent unambiguously. The document must identify the name of the enforcement agent. Still, the current practice of using generic or partial names such as "Tony" or "Mr Smith" on these notices is not just inadequate - it's a serious breach of transparency and accountability in the enforcement process. Such vague identifications can lead to confusion and potential misidentification, as multiple individuals with similar names may appear on the public register of certificated enforcement agents maintained by the Ministry of Justice.

This ambiguity undermines the very purpose of having a public register and identification requirements. It's essential to understand that these measures aren't mere bureaucratic formalities; they are crucial safeguards designed to protect both debtors and the integrity of the enforcement process. From my extensive experience in this field, I can attest that clear identification serves several vital functions:

Accountability: It allows debtors to verify the authority of the enforcement agent, ensuring they are dealing with a legitimate, certificated professional.

Dispute Resolution: In cases of misconduct or breaches of the Schedule 12 enforcement provisions, clear identification is crucial for filing accurate complaints or legal challenges.

Transparency: It builds trust in the enforcement process, demonstrating that enforcement agents are operating openly and within the bounds of their authority.

Legal Compliance: Proper identification aligns with the spirit and letter of regulations governing enforcement procedures.

The use of full, clearly legible names or an official verifiable identification mark with instructions on cross-checking their identity on Warning of Immobilisation notices should be considered a non-negotiable standard in regulated enforcement practices. Anything less erodes public confidence in the system.

The provisions of Schedule 12 and their underlying regulations need to be updated to require enforcement agents to use their full legal names on all official enforcement documents, including the Warning of Immobilisation notices. This simple yet crucial step would significantly enhance the transparency and accountability of enforcement actions, ultimately serving the interests of justice and fairness for all parties involved.

Failure to adhere to such clear identification standards should become a breach of the Schedule 12 provisions, potentially invalidating the enforcement action by the debtor upon an application under Civil Procedure Rule 84.13.

Removal Of The £1350 Exempt Goods Limit.

I propose that an amendment to Regulation 4(1)(a) of the Taking Control of Goods Regulations 2013 is not only necessary but crucial for maintaining fairness and consistency in the enforcement process because the current wording of Regulation 4(1)(a), which limits the aggregate value of exempt items to £1,350, creates a problematic inconsistency when considered alongside Regulation 35 of the Taking Control of Goods Regulations 2013 where sub-paragraph 35(2) enables bailiffs to create his valuation of controlled goods arbitrarily.

This inconsistency has significant implications for debtors and the enforcement process as a whole because Regulation 35 grants enforcement agents the power to appraise controlled goods. This appraisal can potentially value items above the £1,350 threshold, effectively nullifying the protection intended by the exemption in Regulation 4(1)(a), which creates a situation where an enforcement agent can place items protected as exempt goods for the debtor's basic needs or livelihood at risk due to an arbitrary valuation.

The proposed deletion of the phrase "except that in any case, the aggregate value of the items or equipment to which this exemption is applied shall not exceed £1,350" would resolve this inconsistency and strengthen debtor protections in several key ways:

It would ensure that essential items for work, study, or basic living standards remain exempt regardless of their appraised value and align with the fundamental principle of allowing debtors to maintain their ability to work and live with dignity.

It would eliminate the potential for enforcement agents to manipulate valuations to circumvent exemptions, ensuring a more equitable and consistent application of the regulations.

It would simplify the enforcement process by removing the need for potentially contentious valuations of exempt items, focusing instead on their essential nature for the debtor.

It would better align with the spirit of debtor protection regulations and the Ministry of Justice guidelines, which aim to balance the rights of creditors with the need to prevent undue hardship for debtors.

From my experience, I can attest that the current wording has led to numerous disputes and challenges in enforcement proceedings. Removing the value cap would significantly reduce these issues, streamlining the process and reducing the burden on the court system.

Moreover, this amendment would bring the regulations more in line with modern realities. The £1,350 limit, set in 2013, does not adequately reflect the current value of many essential items, particularly in the realm of technology necessary for work or study.

In conclusion, amending Regulation 4(1)(a) by removing the value limit is not just a technical adjustment; it represents a significant step towards a more just and effective enforcement system. It would protect debtors from potentially losing essential items due to arbitrary valuations while maintaining the overall integrity of the enforcement process. This change is long overdue and would be a welcome improvement to the current regulatory framework.

The Notice Of Enforcement, Warning Of Immobilisation And Notice After Entry Must Contain Sufficient Information To Enable The Debtor To Identify The Creditor.

In the case of High Court Writs, the Schedule 12 provisions and the regulations must state that the NOE must include the original county court judgment claim number, judgment date, and amount adjudged. This information is not merely a bureaucratic formality; it is a fundamental safeguard that allows debtors to verify the legitimacy and origin of the debt the enforcement agent is enforcing. The absence of this crucial information in many NOEs, Warnings of Immobilisations and Notice After Entry or taking Control of Goods on a Highway issued by companies engaged in High Court enforcement business is not just an oversight - the Schedule 12 provisions need an amendment to make this oversight a breach of the Schedule 12 provisions enabling debtors to apply to the court under Civil Procedure Rule 84.13 to stop the enforcement until the enforcement agent or his office has given a compliant Notice of Enforcement to the debtor and allow the debtor the current prescribed time limit before the enforcement agent may take control of goods.

Similarly, in the enforcement of traffic contravention debts, the failure to clearly state the name of the issuing authority and the Penalty Charge Notice (PCN) number on the NOE, Warnings of Immobilisations and Notice After Entry or taking Control of Goods on a Highway, is a significant issue. This omission effectively blindsides debtors, rendering them unable to promptly recognise or authenticate the source of the debt the enforcement agent is pursuing and for and the name of the issuing council or authority.

These practices are not just ethically questionable, but enforcement companies conceal the PCN number under the belief it is regulated data under the Data Protection Act 2018. This action potentially undermines the very foundations of fair enforcement because, without

the PCN number, a debtor is unable to apply to the Traffic Enforcement Centre for a suspension of the Warrant of Control under Civil Procedure Rule 75.8, leaving the enforcement agent to continue with enforcement for a traffic contravention debt that is in dispute or the debtor has no previous knowledge.

Based on my professional experience, this lack of transparency often results in unnecessary disputes, legal battles, and a general erosion of trust in the enforcement system. It can impose significant stress and hardship on debtors who may be unable to respond effectively due to a lack of information. To tackle these issues, I strongly advocate for stricter regulations governing the content of NOEs. Specifically:

For the enforcement of High Court Writs, the Schedule 12 provisions must require NOEs to show the original county court judgment claim number.

For the enforcement of Traffic Contravention Debts, the Schedule 12 provisions must require NOEs, Warnings of Immobilisations and Notice After Entry or taking Control of Goods on a Highway to specify the name of the issuing authority and PCN number.

The current practices of some enforcement companies in issuing inadequately detailed NOEs, Warnings of Immobilisations and Notice After Entry or taking Control of Goods on a Highway are not just a matter of concern but are unacceptable, and the Schedule 12 provisions must address this urgently. These practices can lead to serious consequences, including unnecessary disputes, legal challenges, and erosion of trust in the enforcement system.

I propose an extension to the Schedule 12 enforcement provisions and the underlying regulations that non-compliant NOE, Warnings of Immobilisation or a Notice After Entry or taking Control of Goods on a Highway to become a breach of the Schedule 12 enforcement provisions, enabling debtors to apply to the court to stop the enforcement by making an application under Civil Procedure Rule 84.13 until the debtor is given the information following the statutory wait time for the NOE before the enforcement agent may take control of goods. I propose a further extension to require enforcement agencies to provide third-party claimants with the PCN number on request and apply the Civil Procedure Rule 84.13 application process in the event of a breach.

Dealing With The Underreporting Of The Auction Price Of Goods Sold.

Upon the sale of controlled goods, the Schedule 12 provisions and underlying regulations mandate a detailed statement of account following the sale of the debtor's goods.

The current system, which lacks this requirement, is abused and leaves debtors vulnerable to potential misconduct by enforcement agencies. The practice of understating sale prices is a serious concern that undermines the fairness and transparency of the entire process.

From my professional experience, I can attest to numerous cases where debtors have uncovered discrepancies between the reported sale price and the actual amount paid by

the new owner, which is particularly prevalent in vehicle sales, where the DVLA form V888 has become an accidental tool for exposing such discrepancies.

The implications of this practice are far-reaching:

Financial Impact: Debtors may be left with artificially inflated outstanding debts due to understated sale proceeds.

Trust Erosion: Such practices severely undermine public confidence in the enforcement system.

Legal Complications: Discrepancies can lead to complex legal challenges, burdening both the debtors and the court system.

Potential for Fraud: In extreme cases, this could be a form of fraud with serious legal implications for enforcement agencies.

To address these issues, I propose the following mandatory requirements for the statement of account:

As per Regulation 39 of the Taking Control of Goods Regulations 2013:

Detailed Itemisation: the enforcement agent or his office must give the debtor a comprehensive list of all goods sold, including specific identifiers (e.g., vehicle registration numbers and serial numbers for electronics).

Sale Prices: Individual and total sale prices are clearly stated and itemised.

Fees and Costs: A breakdown of all fees and costs deducted from the sale proceeds.

Allocation of Funds: Clear indication of how the proceeds were allocated (e.g., to the original debt, interest, enforcement costs).

Remaining Balance: If applicable, a statement of any remaining balance on the debt.
Buyer Information: While respecting privacy laws, provide verifiable information about the sale transaction.

I propose that the Schedule 12 provisions be amended to include the above, enabling the debtor to apply to the court for damages for the breach under Civil Procedure Rule 84.13 and to include a debtor's right to a:

Right to Audit: A clear statement of the debtor's right to request an audit or further information about the sale.

Implementing these requirements would:

Enhance Transparency: Debtors would have a clear understanding of how their goods were disposed of and how the proceeds were applied.

Deter Misconduct: The knowledge that the enforcement agent or his office must give the debtor and any co-owner detailed accounts would discourage the underreporting of sale prices.

Facilitate Dispute Resolution: In cases of discrepancies, the detailed statement would provide a solid basis for investigation and resolution.

Improve System Integrity: Overall, this would significantly boost the credibility and fairness of the enforcement process.

Moreover, I strongly recommend that this mandate be coupled with strict penalties for non-compliance or falsification of information, which may include fines, suspension of enforcement rights, or, in severe cases, criminal charges in line with the sentencing guidelines for offences under the Fraud Act 2006.

In conclusion, mandating a comprehensive statement of account after the sale of goods is more than just a procedural improvement. It protects debtors from potential exploitation and enhances the transparency of enforcement actions.

Remove Third-Party Claimant Requirements To Lodge Funds Into Court.

I advocate for the proposed amendments to deleting CPR 85.5(6) to (8)(e) and paragraph 60(4)(a) of Schedule 12 of the Tribunals Courts and Enforcement Act 2007, which places on third-party claimants in enforcement proceedings a requirement to lodge money into court to the value of the controlled goods being claimed.

The current provisions in CPR 85.5(6) to (8)(e) and paragraph 60(4)(a) of Schedule 12 of the TCEA create a significant and unjust barrier for legitimate third-party claims. This requirement to deposit funds equivalent to the value of disputed goods within a mere seven days is not only impractical but also fundamentally unfair.

The disparity between the value of goods often in dispute (typically high-value vehicles worth tens of thousands of pounds) and the relatively minor debts being pursued (such as £65 for traffic contravention debts) is stark and troubling. This mismatch creates a system ripe for abuse and exploitation by enforcement agencies and their solicitors using these provisions to frustrate a legitimate claim and convert the controlled goods.

From my professional experience, I can attest to the frequency with which solicitors representing Enforcement Agents exploit this provision. By demanding exorbitant sums from third-party claimants within an unreasonably short timeframe, they effectively set these claimants up for failure. The knowledge that most individuals cannot access such substantial funds so quickly turns this requirement into a de facto barrier to justice.

The consequences of this provision are severe and far-reaching:

Legitimate Claims Fail: Genuine third-party owners of goods are often unable to protect their property due to this financial barrier.

Unjust Enrichment: Enforcement agencies and their solicitors benefit from the conversion of goods, securing costs against the proceeds of the sale that far exceed the original debt.

Disproportionate Outcomes: The loss of high-value assets over relatively minor debts creates outcomes that are grossly disproportionate and unjust.

Erosion of Public Trust: Such practices significantly undermine confidence in the fairness of the legal system.

By removing these provisions, we would:

Level the Playing Field: Third-party claimants would have a fair opportunity to assert their rights without facing insurmountable financial barriers.

Promote Proportionality: The focus would return to the merits of the claim rather than the claimant's immediate financial capacity.

Reduce Exploitation: It would eliminate a tool often used to intimidate or discourage legitimate claims.

Enhance Justice: Courts would be better positioned to consider the substance of claims on their merits.

Furthermore, I propose that any replacement provisions should focus on:

Reasonable Timelines: Allow claimants sufficient time to gather evidence and present their case, as the present seven days fall far short for third-party claimants to find legal representation to prepare and file the claim.

Judicial Discretion: Empowering courts to assess the necessity and amount of any security on a case-by-case basis akin to Civil Procedure Rule 85.5(6).

Conclusion:

The removal of these provisions is not just a technical amendment; it's a crucial step towards a more equitable and just enforcement system. It would protect the rights of legitimate third-party owners, prevent disproportionate outcomes, and restore faith in the fairness of our legal processes.

Extend The Statutory Deadline To Make A Third-Party Claim To Controlled Goods And Exempt Goods.

I advocate extending the deadline for third-party claims on controlled goods from seven days to thirty days by amending Civil Procedure Rule 85.4(1) and 85.8(1) for claiming Exempt goods.

The current 7-day window needs to be revised, and significant barriers to justice for legitimate third-party claimants need to be created. This unreasonably short timeframe needs to account for the practical realities of engaging legal representation and preparing a substantive third-party claim under the present Civil Procedure Rule 85.

I can attest to the numerous challenges faced by third-party claimants within this constricted timeframe:

Locating and Engaging Legal Counsel: The process of finding a suitable solicitor, especially one experienced in enforcement law, often takes several days in itself.

Client Onboarding: Law firms typically require time for conflict checks, initial consultations, and formal engagement procedures.

Legal Research and Case Preparation: Solicitors do not specialise in enforcement breaches, let alone represent debtors and people of limited means. Solicitors need adequate time to review the case, conduct necessary research, and prepare a well-founded claim.

Drafting and Serving Claims: The actual preparation and service of legal documents is a process that demands careful attention and time.

The current 7-day limit not only disadvantages legitimate claimants but also creates opportunities for abuse within the system. I've observed two particularly troubling practices:

Conversion of Goods: Solicitors, one in particular. representing enforcement agencies, exploit claims made outside the 7-day window as grounds for converting controlled goods, effectively punishing claimants for failing to meet an unrealistic deadline.

Contradictory Legal Strategies: Paradoxically, some solicitors draft orders compelling third-party claimants to file claims after the 7-day limit has passed, creating a catch-22 situation that invariably works against the claimant.

The reports of complainants losing their goods and being ordered to pay solicitors' fees due to the inability of legal professionals to initiate consultations within the current timeframe are deeply concerning. This situation not only results in unjust outcomes but also erodes public trust in the legal system.

Extending the deadline to 30 days would bring several significant benefits:

Enhanced Access to Justice: Claimants would have a realistic opportunity to secure legal representation and prepare substantive claims.

Improved Quality of Claims: With more time, solicitors can prepare more thorough and well-researched claims, potentially reducing subsequent litigation.

Reduction in Abusive Practices: A longer timeframe would minimise opportunities for enforcement agencies to exploit procedural technicalities.

Alignment with Legal Realities: A 30-day window better reflects the actual time required for legal processes and preparation.

Increased Fairness: This extension would level the playing field between enforcement agencies and third-party claimants.

Moreover, I recommend that this amendment be coupled with additional safeguards:

Clear Notification: Enforcement agents should be required to provide clear, written notice of this 30-day deadline to potential third-party claimants.

Judicial Discretion: Courts should retain the ability to extend this deadline further in cases of genuine hardship or extenuating circumstances.

Penalties for Abuse: Introduce sanctions for enforcement agencies or solicitors who attempt to circumvent or misrepresent this extended deadline.

In conclusion, extending the deadline for third-party claims to 30 days is not merely a procedural tweak; it's a fundamental enhancement of access to justice. This change would significantly improve the fairness and effectiveness of our enforcement system, ensuring that legitimate third-party claims are heard and that procedural rules serve the interests of justice rather than becoming barriers to it.

Enforcement Agents Are To Show A Valid Enforcement Certificate Upon Request.

I propose an amendment to Paragraph 26, Schedule 12 of the Tribunals Courts and Enforcement Act 2007, which addresses a critical issue in enforcement agent identification to require enforcement agents to produce their valid enforcement certificate upon request and allow the debtor or other person to make independent enquiries.

The valid certificate must replace the current problematic practice of enforcement agents using unofficial identification materials.

At present, the use of homemade identification materials by enforcement agencies is a matter of grave concern. These materials, often in the form of warrant cards or badges resembling those of police officers, can easily mislead the public about the agent's authority and affiliation, posing a significant risk to public safety and trust.

The proposed amendment introduces a uniform, official method of identification in the form of the enforcement certificate issued under section 63 of the Tribunals Courts and Enforcement Act 2007. The certificate is a white, laminated card measuring 2 inches by 6

inches. It features the agent's photograph, the name of the issuing court, the agent's agency name, and a judge's signature, ensuring its authenticity and legal standing.

The current use of police-like identification by enforcement agents is not merely a procedural concern but a serious legal issue. Photographic evidence suggests that this practice could easily lead individuals to believe they are interacting with a police officer mistakenly. Such misrepresentation commits an offence under Section 90 of the Police Act 1996, which prohibits impersonation of police officers.

The legal implications of this issue underscore the urgency of implementing the proposed amendment. Standardising identification procedures would not only enhance transparency and accountability in enforcement actions but also help prevent potential criminal offences and public confusion.

I recommend that the Ministry of Justice publish a sample enforcement certificate on the register of certificated enforcement agents' online page to educate debtors on the appearance of an official enforcement agent's identity, akin to how the DVLA provides a sample driving licence on their website.

Enforcement agents flashing police-like identification at a debtor.

Genuine police warrant card and badge.

Enforcement Agents Must Use Removable Glue When Affixing Notices To Controlled Vehicles.

When an enforcement agent takes control of a vehicle, regulation 31 Taking Control of Goods Regulations 2013 states an additional notice called a 'written warning on immobilisation' giving rise to the practice of attaching immobilisation warning notices to vehicles, has raised significant concerns regarding vehicle safety and potential property damage. While the intent is to notify vehicle owners of the immobilisation, many Enforcement Agents, with the noted exception of Bristow and Sutor, have become problematic.

The prevalent use of non-removable adhesives to affix these warnings to driver's door windows presents a twofold issue. Firstly, it renders the vehicle unsafe for operation due to obstructed visibility, which is a direct safety concern. Secondly, attempts by vehicle owners to remove these notices without professional assistance often result in damage to the glass surface, which is a clear risk of property damage.

The current remedy for this situation, the removal of these non-removable adhesives, typically requires the services of a specialised mobile car valet service. This professional service, equipped with appropriate solvents (Preptone) and tools, comes at a considerable expense, averaging around £75 per incident and placing an additional financial burden on vehicle owners, further underscoring the need for a balanced review of current practices.

From a legal and procedural standpoint, the debtor or owner may recover the cost of remedying this damage from the creditor as this is a breach of paragraph 35 of Schedule 12 of the TCEA, giving rise to an application under Civil Procedure Rule 84.13 because the

adhesive's application and subsequent removal could be classified as damage to controlled goods. This category includes vehicles under enforcement action.

This situation underscores the need for a balanced review of current practices in attaching immobilisation notices. It's not about eliminating these warnings but about finding a method that effectively notifies vehicle owners without compromising the vehicle's safety or risking property damage. Enforcement agencies should consider adopting methods that achieve the regulatory requirements without these potential drawbacks—therefore, amending Regulation 31 of the Taking Control of Goods Regulations 2013 to involve the use of easily removable materials or alternative notification methods that do not interfere with the vehicle's operation or structure.

Parliament Needs To Clarify Whether Third-Party Claimants Who Miss The Deadline May Still Claim Under The Torts (Interference With Goods) Act 1977.

The intersection of Civil Procedure Rule 85, which governs the process of claiming controlled or exempt goods, and Sections 3 and 4 of the Torts (Interference with Goods) Act 1977, which provides similar rights to claimants, has created a specific legal ambiguity. This ambiguity relates to the question of whether a claimant's right to pursue a claim under the 1977 Act is extinguished after the seven days stipulated by Civil Procedure Rule 85 for claiming controlled or exempt goods has elapsed.

A recent court case in which Peter Felton Gerber, a solicitor representing an Enforcement Agency, played a significant role has brought this matter to the forefront. The case involved a dispute over controlled goods valued at £117,000. Mr Felton Gerber successfully argued that a third-party claimant who fails to meet the 7-day deadline loses their right to claim under sections 3 and 4 of the Torts (Interference with Goods) Act 1977. As a result of this interpretation, the goods were converted, and the auction proceeds were used to settle a debt owed by the claimant's employee. Notably, Mr Felton Gerber directed these proceeds towards his own fees.

Furthermore, Mr Felton Gerber posited that ownership of controlled goods transfers to the party deemed to be the debtor by the enforcement agent or their solicitor if a third-party claim is not filed within the prescribed 7-day period from the date of control.

However, it is crucial to note that there is no explicit legislative provision that bars claims under the 1977 Torts Act after seven days. This lack of clear statutory language is the root cause of the legal ambiguity, as it leaves room for different interpretations and creates a significant legal grey area, underscoring the need for parliamentary intervention to provide unambiguous rules that protect the rights of all parties involved.

The implications of this interpretation are far-reaching and demand immediate attention. It allows for the rapid transfer of ownership of high-value goods without adequate safeguards for third-party interests. This situation underscores the pressing need for

parliamentary intervention to provide clarity on the interplay between Civil Procedure Rule 85 and the Torts (Interference with Goods) Act 1977 and to do so without delay.

The legislation must address several key questions:

Does the 7-day limit in Civil Procedure Rule 85 indeed supersede the rights provided under the 1977 Act?

If so, what safeguards are in place to protect legitimate third-party interests?

Is the current timeframe sufficient for third parties to assert their rights?

Create a mechanism to extend this period in cases of genuine hardship or oversight. For instance, if a third-party claimant is unable to file a claim within seven days due to a serious illness or a sudden death in the family, should there be provisions to allow for an extension of the deadline? I recommend introducing a process for applying for an extension, with the decision to grant it based on the circumstances and the merits of the case, which would ensure that the 7-day period is not an arbitrary deadline that can lead to unjust outcomes but a reasonable timeframe that allows for the efficient execution of enforcement actions while also protecting third-party interests.

Resolution of these issues is crucial to ensure a fair balance between the efficient execution of enforcement actions and the protection of property rights. Only when such clarification is provided will there remain a risk of inconsistent judicial interpretations and, in some cases, abuse by legal representatives for enforcement agents demanding strict adherence to this very short deadline when it suits their client's agenda, creating the potential for abuse underscores the need for immediate action.

Extend Paragraph 66 Of Schedule 12 Of The Tribunals Courts And Enforcement Act 2007 To Include Third Parties.

I propose an extension to the application of Paragraph 66 of the Schedule to the Tribunals Courts and Enforcement Act 2007 to include third-party claimants. This provision is crucial in providing necessary legal recourse for third parties whose property rights may be infringed upon during enforcement actions. The extension of this paragraph to third-party claimants would serve two primary purposes:

By extending the application of Paragraph 66 to third-party claimants, we would empower them to initiate legal proceedings against individuals vested with enforcement powers who breach paragraphs 10 or 60 of the Schedule and provide a strong legal safeguard against the unauthorised seizure or sale of their goods, thereby protecting their legitimate property interests that may be inadvertently caught up in enforcement actions.

It would provide a legal safeguard against the unauthorised removal or sale of third-party goods, thereby protecting legitimate property interests that may be inadvertently caught up in enforcement actions.

The proposed extension of Paragraph 66 is of utmost importance in the context of enforcement law. It serves as a critical check on the powers of enforcement agents, ensuring that they operate within the bounds of their authority and respect the property rights of all parties involved, not just the primary debtor, which is a fundamental aspect of a just and equitable enforcement system.

By empowering third-party claimants to take legal action in cases of overreach or misconduct, this provision would:

Enhance accountability in the enforcement process.

Deter potential abuses of power by enforcement agents.

Provide a clear legal pathway for redress when third-party rights are breached.

Strengthen the overall integrity of the enforcement system.

The application of Paragraph 66 to third-party claimants would fill a crucial gap in the current legal framework. It would address situations where goods are wrongfully seized or sold, even after a third party has asserted their claim through the proper legal channels (i.e., filing a CPR 85 claim).

This expansion of legal protection is not just a necessary development in enforcement law, but it also aligns with fundamental principles of justice and property rights. It recognises that enforcement actions, while necessary, must be conducted with due regard for the rights of all affected parties, not just those directly named in the enforcement power.

In conclusion, the extension of Paragraph 66 to third-party claimants represents a necessary and prudent development in enforcement law. It would not only provide a robust mechanism for protecting third-party interests but also enhance the fairness and effectiveness of the enforcement process.

Enforcement Agents Are To Make And Retain A Photographic Vehicle Condition Report When Taking Control Of A Vehicle.

I propose an extension to paragraph 34 of Schedule 12 to the TCEA to address a critical gap in the current process of vehicle seizure and removal. This amendment, rooted in extensive field observations and legal expertise, seeks to mandate that enforcement agents create and maintain comprehensive video and photographic documentation of a vehicle's condition prior to assuming control.

The rationale behind this proposal is multifaceted and addresses several key issues:

Evidence Preservation: The amendment would require enforcement agents to create a detailed visual record of a vehicle's condition before taking control. This documentation would serve as crucial evidence in potential disputes.

Accountability: By mandating the retention of these records for a specified period and ensuring their accessibility upon statutory request under Schedule 12, the amendment enhances accountability in the enforcement process.

Protection of Property Rights: The proposal aims to address the recurring issue of vehicles being returned to third-party claimants in a state of disrepair, sometimes showing signs of forced entry and theft.

Compliance with Existing Regulations: The amendment aligns with Paragraph 35 of Schedule 12 of the Tribunals, Courts and Enforcement Act (TCEA), which stipulates that enforcement agents are responsible for the care of controlled goods.

Clarification of Legal Obligations: The proposal seeks to resolve the current ambiguity surrounding requests for condition reports. When a debtor makes a request under Civil Procedure Rule 31.16 for evidence of the vehicle's condition before the enforcement agent removed it, enforcement agencies misconstrue these requests as Data Subject Access Requests (DSARs) under section 45 of the Data Protection Act 2018, which leads to refusals based on the absence of personal data in vehicle photographs,

Prevention of Loss of Evidence: The amendment addresses instances where enforcement agencies claim that video and photographic evidence has been destroyed or lost, leading to disputes over pre-existing versus post-control damage.

The legal implications of this amendment are significant because they would create a clear statutory obligation for enforcement agents to document vehicle conditions, eliminating ambiguity in their responsibilities and providing a solid legal basis for claimants or debtors to access condition reports, distinct from DSAR provisions.

It would likely reduce litigation by providing clear evidence in disputes over vehicle conditions. The proposal could lead to improved practices in the handling and storage of controlled vehicles, potentially reducing instances of damage or theft.

From a practical standpoint, implementing this amendment would require:

Establish a standardised procedure for creating and storing video and photographic vehicle condition reports.

Defining the specific period for which enforcement agencies must retain these records.

Creating a clear process for statutory requests to access these records.

Updating training for enforcement agents to ensure compliance with the new requirements.

In conclusion, this proposed amendment represents a significant step towards enhancing transparency, accountability, and fairness in the enforcement process. It addresses longstanding issues in the current system and aligns with principles of property protection and due process. The implementation of this amendment would likely lead to a more equitable and efficient enforcement process, benefiting all parties involved and reducing unnecessary legal disputes.

Allow Vulnerable Debtors To Apply For The Return Of Controlled Goods If The Enforcement Agent Breaches Regulation 12 Of The Taking Control Of Goods (Fees) Regulations 2014.

I recommend an extension to Paragraph 10 of Schedule 12 to the Tribunals, Courts and Enforcement Act (TCEA) and its underlying regulations, addressing a critical gap in the protection of vulnerable debtors within the current enforcement framework. This amendment is essential to ensure that the rights of vulnerable individuals are adequately safeguarded throughout the enforcement process.

The current Regulation 12 of the Taking Control of Goods (Fees) Regulations 2014 prohibits enforcement agents from recovering Enforcement Stage fees and charges from vulnerable debtors if sufficient opportunity to seek advice is not provided before taking control of goods. However, the existing framework lacks clarity and comprehensive protection for vulnerable debtors in several key areas:

Disclosure of Vulnerability: The current regulations do not specify whether debtors are required to inform enforcement agents of their vulnerability, nor do they provide clear instructions in the Notice of Enforcement on how to disclose such vulnerability before the enforcement agent's attendance or goods seizure.

Limited Recourse: While vulnerable debtors have a statutory right under Civil Procedure Rule 84.16 to apply for the return of Enforcement Stage Fees, Schedule 12 does not extend this right to seek the return of controlled goods following a breach of Regulation 12.

The proposed extension aims to address these shortcomings by:

Providing Statutory Protection: Extending Paragraph 10 of Schedule 12 would grant vulnerable debtors explicit statutory protection, ensuring their rights are clearly defined and enforceable.

Expanding Remedies: The amendment would allow vulnerable debtors to apply to the court for the return of controlled goods if an enforcement agent fails to comply with Regulation 12 and expands the available remedies beyond the current limitation on the return of Enforcement Stage fees and charges.

Enhancing Procedural Fairness: By clarifying the process for vulnerability disclosure and the consequences of non-compliance, the amendment would promote fairness and consistency in enforcement actions.

Aligning with Existing Protections: This extension would bring the rights regarding controlled goods in line with the existing protections for Enforcement Stage Fees, creating a more coherent and comprehensive framework for vulnerable debtor protection.

The legal implications of this proposed extension are significant and create a clear statutory basis for vulnerable debtors to question the taking control of goods in cases where enforcement agents do not follow proper procedures.

The amendment likely leads to more careful adherence to Regulation 12 by enforcement agents, potentially reducing instances of improper enforcement.

It could result in increased court applications for the return of goods, necessitating judicial interpretation and potentially leading to the development of case law in this area. The extension should require enforcement agencies to implement more robust procedures for identifying and accommodating vulnerable debtors.

From a practical standpoint, implementing this amendment would require:

Updating the Notice of Enforcement to include clear instructions on how debtors can disclose vulnerability.

Developing guidelines for enforcement agents on assessing and responding to vulnerability claims.

Establishing the procedure into Civil Procedure Rule 84.13 for courts to handle applications for the return of goods under this new provision.

Revising training programs for enforcement agents to ensure compliance with the expanded protections.

In conclusion, this proposed extension represents a crucial step towards enhancing the protection of vulnerable debtors in the enforcement process. It addresses significant gaps in the current regulatory framework and aligns with principles of fairness and social responsibility.

Include National Bailiff Advice In The List Of Advice Groups On The Notice Of Enforcement And The Notice After Entry Or Takijhg Control Of Goods On A Highway.

Incorporating National Bailiff Advice on the Notice of Enforcement and other enforcement-related documents that provide a list of help and advice centres is a highly commendable proposal. This recommendation is grounded in extensive field experience and a thorough evaluation of the existing advisory framework for individuals confronted with enforcement actions.

National Bailiff Advice stands out in several crucial ways:

Independence: It operates without affiliations to the enforcement industry or its government department beneficiaries, ensuring unbiased advice.

Financial Autonomy: The organisation does not rely on government funding or hold charity status, allowing for more freedom in its operations and advice.

Specialisation: National Bailiff Advice focuses exclusively on identifying and addressing enforcement breaches, unlike many general debt advice services.

The current landscape of official advice groups listed on the Notice of Enforcement poses several significant challenges:

Limited Scope: Many listed organisations need to investigate enforcement breaches or provide appropriate remedies thoroughly.

Referral Issues: Some groups merely refer individuals to solicitors who may need more specialised knowledge in enforcement breaches.

Financial Barriers: Certain referred solicitors require substantial upfront fees before even reviewing a case, potentially deterring those most in need of assistance.

Misaligned Focus: Several advice groups on the current list primarily promote debt management plans and products, which may be unsuitable for the specific types of debt typically pursued by enforcement agents.

The inclusion of National Bailiff Advice on the Notice of Enforcement has the potential to significantly improve the quality and relevance of support available to individuals facing enforcement actions:

Specialised Expertise: It would provide access to an organisation with a dedicated focus on enforcement issues, potentially leading to more accurate and helpful advice.

Increased Awareness: Including National Bailiff Advice would inform more individuals about this specialised resource, potentially leading to better outcomes in enforcement situations.

Balanced Perspective: The addition of an independent organisation could provide a counterbalance to advise that may be influenced by industry or government interests.

Improved Outcomes: With its focus on identifying and addressing enforcement breaches, National Bailiff Advice could help more individuals effectively challenge improper enforcement actions.

Legal and Practical Implications:

Regulatory Compliance: The inclusion should align with any existing regulations governing the content of Notices of Enforcement.

Vetting Process: A formal process may be necessary to evaluate and approve the inclusion of new organisations on official notices.

Regular Review: A system for periodically reviewing and updating the list of advice services may be needed to ensure ongoing relevance and effectiveness.

Potential Pushback: It's important to acknowledge that there may be resistance from existing listed organisations or from within the enforcement industry. However, a clear justification for the inclusion can help address these concerns.

In conclusion, the addition of National Bailiff Advice to the Notice of Enforcement holds the promise of a significant improvement in the support available to individuals facing enforcement actions. Its specialised focus, independence, and dedication to addressing enforcement breaches could fill a crucial gap in the current advisory landscape. This change could lead to more informed decisions by debtors, potentially reducing instances of improper enforcement and improving overall outcomes in debt resolution processes. Implementation of this proposal would require careful consideration of regulatory requirements and potential impacts on existing stakeholders. However, the potential benefits in terms of enhanced debtor protection and more effective enforcement practices are substantial and should not be overlooked.

Enforcement Agents Executing A High Court Writ Are Disincentivised From Entering Into A Controlled Goods Agreement.

I propose an amendment to Regulations 6(1)(b)-(c) of the Taking Control of Goods (Fees) Regulations 2014 to address a significant issue in the current fee structure for enforcement actions for the enforcement of High Court Writs of Control. This proposal, rooted in practical experience and legal expertise, aims to rectify an inconsistency in the recovery of enforcement fees.

Current Regulatory Framework:

Under the existing regulations, the fee structure for the enforcement of High Court Writs of Control combines the First and Second Enforcement Stage fees when enforcement agents attend the premises specified in the Writ of Control. However, a critical caveat exists: if the enforcement agent successfully establishes a valid Controlled Goods Agreement with the

debtor, they are prohibited from recovering the Second Enforcement Stage fee unless the debtor breaches this agreement.

Key Issues with the Current Structure:

Inconsistent Fee Recovery: The current structure creates a situation where enforcement agents may be incentivised to avoid Controlled Goods Agreements, as these agreements potentially limit their fee recovery.

Misalignment of Incentives: The existing framework may inadvertently discourage the use of Controlled Goods Agreements, which are often a more amicable and less disruptive method of debt recovery.

Potential for Unfair Practices: There is a risk that some enforcement agents might be tempted to provoke breaches of Controlled Goods Agreements to justify recovering the Second Enforcement Stage fee.

Proposed Amendment:

The amendment seeks to restructure the fee recovery process to address these issues. While I have not given the specific details of the proposed changes, the amendment should aim to:

Decouple the First and Second Enforcement Stage fees, allowing for more transparent and fair fee recovery.

Provide a mechanism for enforcement agents to recover reasonable fees for their work, even when a Controlled Goods Agreement is successfully established.

Align the fee structure with the desired outcome of encouraging amicable resolutions through Controlled Goods Agreements.

Legal and Practical Implications:

Enhanced Fairness: The amendment likely leads to a more equitable fee structure that reflects the actual work done by enforcement agents.

Improved Incentives: By addressing the current disincentive to establish Controlled Goods Agreements, the amendment could promote more constructive interactions between enforcement agents and debtors.

Reduced Potential for Abuse: A clearer fee structure could minimise the risk of enforcement agents manipulating situations to maximise fee recovery.

Potential for Increased Use of Controlled Goods Agreements: The amendment might lead to a higher frequency of these agreements, potentially resulting in more manageable debt repayment plans for debtors.

Regulatory Clarity: The proposed changes would provide clearer guidelines for enforcement agents, potentially reducing disputes and misinterpretations of the regulations.

Implementation Considerations:

Transitional Period: A grace period may be necessary to allow enforcement agencies to adjust their practices and fee structures.

Training and Education: Enforcement agents and relevant stakeholders would need to be educated about the new fee structure and its implications.

Monitoring and Evaluation: A system to monitor the effects of the amendment and evaluate its success in addressing the current issues would be crucial.

Conclusion:

The proposed amendment to Regulations 6(1)(b)-(c) of the Taking Control of Goods (Fees) Regulations 2014 represents a significant step towards a more balanced and effective enforcement fee structure. By addressing the current inconsistencies in fee recovery related to Controlled Goods Agreements, this amendment has the potential to improve the fairness and efficiency of the enforcement process. It aligns the financial incentives of enforcement agents with the broader goals of debt recovery, potentially leading to more constructive outcomes for both debtors and creditors.

Enforcement Agents Verify Vehicle Ownership And Keepers' Addresses Before Removing Them.

The practice of employing individuals with ANPR cameras to identify vehicles linked to unpaid traffic contravention debts has not only raised significant legal and ethical concerns within the enforcement advice sector but also demands immediate legislative attention due to the numerous issues it has led to.

Current Situation:

Enforcement agencies are utilising ANPR technology to locate vehicles associated with unpaid debts. Upon identification, enforcement agents are taking control of these vehicles

without adequate verification of ownership or address. This practice is problematic for several reasons:

Lack of Verification: Agents often fail to confirm whether the vehicle belongs to the debtor or if the keeper's address matches the address on the Warrant of Control.

Potential Liability for Creditors: This approach may expose creditor councils to liability for not applying for new warrants when debtors' addresses change, as required by Civil Procedure Rule 75.7(7).

Increased Legal Challenges: The practice has resulted in a surge of claims under various Civil Procedure Rules, including Rule 84.13 for breaches of Schedule 12 provisions, Rule 85.4 for third-party claims, and Rule 85.8 for claims to exempt goods.

Historical Context:

In 2012, the Local Government Ombudsman recommended that enforcement agents make reasonable enquiries to confirm goods ownership before removal from a highway. However, the enforcement industry, led by CIVEA or its predecessor, still needs to implement this guideline fully among its member agencies.

Proposed Amendment:

The suggested extension to Paragraph 14 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 aims to address these issues by introducing two critical conditions:

Ownership Verification: Establishing that the goods (vehicles) belong to the debtor.

Address Confirmation: Verifying that DVLA records show the keeper's address matches the enforcement address on the Warrant of Control.

Legal and Practical Implications:

Enhanced Due Diligence: This amendment would require enforcement agencies to implement more robust verification processes before taking control of vehicles.

Reduced Erroneous removals: The amendment could significantly reduce instances of wrongful vehicle seizures by mandating ownership and address verification.

Protection for Creditors: The proposed changes would help shield creditor councils from liability related to addressing discrepancies.

Alignment with Ombudsman Recommendations: The proposed amendment is not just a standalone solution, but a direct alignment with the 2012 Local Government Ombudsman's guidance, potentially raising industry standards and reinforcing its credibility.

Potential Operational Challenges: Enforcement agencies may need to revise their procedures and invest in additional resources to meet these new requirements.

Impact on Enforcement Efficiency: While potentially reducing the speed of enforcement actions, the amendment would likely improve accuracy and fairness.

Legal Clarity: The amendment would provide a clearer legal framework for enforcement actions, potentially reducing the number of legal challenges.

Implementation Considerations:

Technology Integration: Enforcement agencies may need to integrate DVLA database access into their ANPR systems for real-time address verification.

Training Programs: Comprehensive training for enforcement agents on the new verification requirements would be essential.

Procedural Updates: Agencies would need to revise their operational procedures to incorporate these additional checks.

Monitoring and Compliance: A system to monitor compliance with these new requirements would be necessary to ensure effective implementation.

Conclusion:

The proposed amendment to Paragraph 14 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 is not just a step but a significant and necessary leap towards improving the fairness and accuracy of vehicle seizures in debt enforcement. By mandating ownership verification and address confirmation, this amendment tackles critical issues in the current enforcement practice. It aligns with previous recommendations and has the potential to significantly reduce erroneous seizures, protect creditor interests, and enhance public trust in the enforcement process. While implementation may present some operational challenges, the long-term benefits in terms of legal compliance, reduced disputes, and improved enforcement practices are likely to be substantial. This amendment, if enacted, would mark a crucial evolution in the regulation of enforcement practices, balancing efficiency with fairness and due diligence.

Introduce A Prescribed Cap On Charges For Storing Controlled Goods.

The current practice of enforcement agencies charging debtors up to £48 per day for vehicle storage raises significant concerns regarding fairness, compliance with existing regulations, and the potential for abuse within the enforcement process. This analysis, based on extensive experience and legal expertise, highlights the need for regulatory reform in this area.

Current Situation:

Enforcement agencies are charging excessive daily rates for vehicle storage, often amounting to £48 per day. This practice is problematic for several reasons:

Disproportionate Costs: The daily rate is equivalent to renting a flat, which appears excessive for simple vehicle storage.

Regulatory Non-Compliance: These charges may not meet the two-part test prescribed in Regulation 8(2) of the Taking Control of Goods (Fees) Regulations 2014, which requires fees to be both "reasonably" and "actually" incurred.

Lack of Transparency: Enforcement agents often need to provide evidence of actual payments made for vehicle storage during detailed assessments.

Profit Motivation: There are indications that some agencies use prolonged vehicle storage as a profit-generating mechanism, which is not sanctioned by the regulations.

Regulatory Misapplication: The language used in the 2014 fee regulations expressly reserves them for enforcement agents, who are prescribed individuals under section 63 of the Tribunals Courts and Enforcement Act 2007. Enforcement agencies are limited companies (except for Simon Jacobs and Bristow and Sutor) trading in the enforcement business, which raises questions about the legitimacy of agency practices that profit from vehicle storage.

Legal Analysis:

The current practices appear to contradict the spirit and possibly the letter of Regulation 8(2) of the Taking Control of Goods (Fees) Regulations 2014:

"Reasonably Incurred": While the regulation allows for recovery of storage costs, the current rates seem to exceed reasonable limits.

"Actually Incurred": The inability of enforcement agents to provide evidence of payments to storage providers in detailed assessments suggests a failure to meet this criterion.

Regulatory Intent: The regulations need to provide for enforcement agencies to profit from vehicle storage, indicating a misalignment between current practices and regulatory intent.

Proposed Amendment:

I suggest an extension to Regulation 8 of the Taking Control of Goods (Fees) Regulations 2014, which aims to address these issues by:

Setting a Maximum Daily Rate: Capping the daily storage fee at £5.

Limiting Duration: Restricting the chargeable period to a maximum of 30 days per vehicle.

Legal and Practical Implications:

Financial Relief for Debtors: The proposed amendment would significantly reduce the financial burden on debtors, bringing vehicle storage costs more in line with actual market rates and providing much-needed relief.

Enhanced Transparency: The introduction of a fixed rate and duration would not only make costs more predictable but also make them easier to verify, addressing the current lack of transparency in vehicle storage charges.

Alignment with Regulatory Intent: The proposed cap would better reflect the "reasonably incurred" requirement of the current regulations.

Ethical Considerations: The proposed amendment would discourage the practice of unnecessarily prolonging vehicle storage for profit, thereby addressing potential profit-driven malpractices and promoting fairer enforcement practices.

Potential Industry Pushback: Enforcement agencies may resist this change due to its impact on their revenue streams.

Need for Enforcement Mechanism: Ensuring compliance with the new caps would require robust monitoring and enforcement measures.

Implementation Considerations:

Transitional Period: A grace period may be necessary to allow enforcement agencies to adjust their practices and contracts with storage providers.

Audit Procedures: Developing clear audit procedures to verify compliance with the new caps would be crucial.

Industry Education: The proposed amendment necessitates comprehensive guidance for the enforcement industry on the new regulations and their implications, which would not only ensure compliance but also equip the industry with the necessary knowledge to adapt to the changes.

Review Mechanism: The proposed amendment includes a robust process for periodic review of the caps to ensure they remain appropriate over time to demonstrate our commitment to maintaining a fair and balanced system, instilling confidence in the audience about the sustainability of the proposed changes.

Conclusion:

The proposed extension to Regulation 8 of the Taking Control of Goods (Fees) Regulations 2014 represents a necessary and significant step towards fairer and more transparent vehicle storage practices in debt enforcement. By capping daily rates and limiting the chargeable period, this amendment addresses critical issues in the current system, including excessive charges, lack of transparency, and potential profit-driven malpractices. While implementation may face resistance from some quarters of the enforcement industry, the long-term benefits in terms of fairness, regulatory compliance, and public trust in the enforcement process are likely to be substantial. This amendment, if enacted,

would mark an important evolution in the regulation of enforcement practices, balancing the legitimate needs of enforcement agencies with the protection of debtors from excessive and potentially exploitative charges.

Charging Debtors Vat On Enforcement Fees.

The proposed extension to Regulation 12 of the Taking Control of Goods (Fees) Regulations 2014, a product of our extensive experience and legal expertise, addresses a critical oversight in the current regulatory framework governing enforcement agent practices, particularly concerning the recovery of VAT on fees. This proposal aims to rectify a significant exploitation that has emerged following the 2021 amendment to these regulations, which I understand were hurriedly passed through parliament at the behest of the then chairman of the High Court Enforcement Officers Association to benefit its members.

Current Situation:

The Taking Control of Goods (Fees) (Amendment) Regulations 2021 introduced language that has inadvertently created a problematic scenario. This amendment was intended to streamline the VAT recovery process for enforcement agents, but its broad interpretation has led to unintended consequences.

Misapplication of VAT Recovery: The amendment allows enforcement agents to recover VAT from debtors as input tax, but enforcement agencies are misusing this provision by applying their VAT to be recovered from debtors despite not being individually authorised under paragraph 63 of Schedule 12 of the Tribunals Courts and Enforcement Act 2007. This misapplication of VAT recovery has led to a significant loophole in the current regulatory framework.

Corporate vs. Individual Discrepancy: Enforcement agencies, as limited companies, are applying their VAT to be recovered from debtors as input tax despite not being individually authorised under paragraph 63 of Schedule 12 of the Tribunals Courts and Enforcement Act 2007.

VAT Registration Issues: Some enforcement agents are attempting to recover VAT despite not being registered for VAT

Legal Analysis:

The current situation reveals several legal and regulatory inconsistencies:

Statutory Interpretation: The 2021 amendment's language has been interpreted more broadly than intended, allowing for potential misuse.

Conflict with Existing Regulations: The practice of enforcement agencies recovering VAT conflicts with the individual authorisation requirements set out in the Tribunals Courts and Enforcement Act 2007.

VAT Compliance Issues: The recovery of VAT by non-VAT registered entities raises significant legal and tax compliance concerns.

Proposed Extension:

The suggested extension to Regulation 12 aims to address these issues by:

Incorporating Dispute Resolution Procedures: Introducing the dispute resolution mechanisms provided in Regulation 16 of the 2014 Regulations and Civil Procedure Rule 84.16.

Enabling Debtor Challenges: Allowing debtors to dispute an enforcement agent's right to recover VAT when the enforcement agent is not VAT-registered.

Legal and Practical Implications:

Enhanced Regulatory Clarity: This extension would provide a clear mechanism for challenging inappropriate VAT recovery attempts. This clarity will not only protect debtors but also guide enforcement agencies in their VAT recovery practices, enhancing overall regulatory compliance.

Improved Compliance: This will likely lead to better adherence to VAT regulations within the enforcement industry. For instance, enforcement agencies will be more cautious in applying their VAT to be recovered from debtors, ensuring they are individually authorised under paragraph 63 of Schedule 12 of the Tribunals Courts and Enforcement Act 2007.

Debtor Protection: The amendment would offer debtors a formal route to contest potentially unlawful VAT charges, which is crucial as it protects debtors from being unfairly burdened with VAT charges that enforcement agencies are not authorised to recover.

Potential for Reduced Misuse: The ability to challenge VAT recovery could deter enforcement agencies from attempting to recover VAT inappropriately.

Increased Scrutiny: This change might lead to greater scrutiny of enforcement agencies' VAT practices and compliance.

Possible Industry Pushback: Some enforcement agencies may resist this change due to its potential impact on their revenue.

Implementation Considerations:

Procedural Guidelines: Clear guidelines would need to be established for the dispute resolution process specific to VAT recovery challenges. These guidelines should outline the

steps for debtors to dispute VAT recovery, the evidence required, and the role of the enforcement agency in the process.

Training and Education: Enforcement agents would need to be educated about the new dispute resolution mechanism and how it's used.

Regulatory Oversight: Enhanced oversight may be necessary to ensure compliance with the new provisions and to monitor the effectiveness of the dispute resolution process.

VAT Registration Verification: A system for easily verifying the VAT registration status of enforcement agents might need to be implemented or improved.

Review Mechanism: A process for periodically reviewing the effectiveness of this extension and its impact on enforcement practices would be beneficial.

Conclusion:

The proposed extension to Regulation 12 of the Taking Control of Goods (Fees) Regulations 2014, a necessary and timely response to the unintended consequences of the 2021 amendment, introduces a clear dispute resolution mechanism for VAT recovery issues. This extension, by addressing a significant gap in the current regulatory framework, promises to enhance the fairness and transparency of enforcement practices, protect debtors from potentially unlawful charges, and promote better compliance with VAT regulations within the enforcement industry.

While implementation may present some challenges and face resistance from certain quarters of the enforcement industry, the long-term benefits in terms of regulatory clarity, fairness, and compliance are likely substantial. This amendment, if enacted, would mark an important step in refining the regulation of enforcement practices, ensuring that the recovery of VAT aligns with both the letter and spirit of the law. It underscores the crucial need for ongoing vigilance and adaptation in regulatory frameworks to address emerging issues and maintain the integrity of the enforcement process.

Recommendation:

Delete the Taking Control of Goods (Fees) (Amendment) Regulations 2021

Ministry Of Justice To Maintain Official Online Public Register Of High Court Enforcement Officers.

The Ministry of Justice should establish and maintain an official Public Register of High Court Enforcement Officers (HCEOs), including their verified contact information. This proposal is not just a suggestion but a result of our extensive experience with the current system's shortcomings and expert analysis of recent legal developments. Our expertise in this field ensures the credibility of this proposal.

Currently, the responsibility for identifying High Court Enforcement Officers (HCEOs) lies with the private entity, High Court Enforcement Officers Association Limited. Their online register frequently includes proxy addresses due to the erroneous belief that liabilities can be transferred to or shielded by a limited company or that such companies can shelter HCEOs from claims related to enforcement breaches under their supervision. Nevertheless, Regulation 6 of the High Court Enforcement Officers Regulations 2006 clearly defines an HCEO as an "individual," emphasising the critical need for precise personal information, which is a fundamental requirement that must not be neglected.

The landmark case of Trevor Bone v Simon Williamson [2024] EWCA Civ 4 has had a profound and significant impact on HCEO liability. This authoritative ruling establishes that the HCEO named on a writ is personally liable for their agent's actions. This legal precedent underscores the critical need for debtors and affected third parties to access precise, up-to-date information about the HCEO named on a Writ of Control and their official contact details.

Legal professionals can utilise government and financial records to pinpoint the exact location of an HCEO when online searches yield multiple addresses or proxies for serving a claim or application. However, this resource is generally out of reach for individuals who cannot afford legal representation or lack the technical expertise to trace individuals.

For the system to be truly trustworthy and efficient, the proposed public register should include official email addresses. The public register would not only provide a direct line of communication for debtors and third-party claimants to submit breach-related applications but also foster transparency and confidence in the enforcement process.

By implementing these recommended changes, the Ministry of Justice would significantly improve the accountability, accessibility, and reliability of the HCEO register. The proposed public register, with its accurate and up-to-date information, would align with best practices in legal administration, such as those followed in the register of certificated enforcement agents, ensuring a more transparent and efficient enforcement process.

CIVEA And HCEOA To Share Their Members' Newsletters With The Enforcement Conduct Board

The Enforcement Conduct Board (ECB) must require full transparency from key industry associations, namely CIVEA, the Civil Enforcement Agents Association, and the High Court Enforcement Officers Association (HCEOA). These organisations must now disclose all past and future members-only communications, including newsletters and exclusive publications, to the ECB for comprehensive review.

This mandate serves a dual purpose: it enables rigorous, independent scrutiny of guidance provided to Enforcement Agents and fosters an environment of mutual learning and continuous improvement within the sector. The necessity for such oversight has been underscored by recent incidents where excerpts from these private communications,

shared on social media platforms, revealed potentially misleading or non-compliant advice regarding enforcement practices, posing significant risks to the industry's integrity and public trust.

By subjecting these internal publications to the ECB's expert review, the industry can work towards ensuring that all guidance aligns with legal standards and ethical practices. This proactive approach not only aims to enhance the overall integrity of enforcement procedures but also instills confidence in both practitioners and the public they serve.

This measure represents a significant step towards greater accountability and transparency in the enforcement industry, reinforcing the ECB's crucial role as a vigilant overseer committed to maintaining high standards of conduct across the sector.

The Enforcement Conduct Board (ECB) must demand full transparency from CIVEA and the High Court Enforcement Officers Association (HCEOA) by requiring disclosure of all past and future members-only communications for independent scrutiny of guidance provided to Enforcement Agents.

The Enforcement Conduct Board To Independently Review The Training Materials And Practices Of Enforcement Companies.

The Enforcement Conduct Board (ECB) must mandate stringent oversight of enforcement companies' training protocols, practices, and materials to ensure adherence to enforcement provisions. This requirement arises from reports of unofficial training methods circulating on social media, purportedly shared by former enforcement agents. These seem to advocate questionable enforcement tactics, breaching Schedule 12 enforcement provisions and associated regulations, exploiting the lack of debtor awareness. Additionally, concerning practices are reportedly being taught during field training.

One reported incident involves a trainee being instructed to verbally claim assault while engaging in physical confrontations, specifically to create a favourable audio record on their body-worn camera.

Another instance revealed an enforcement agent being instructed to coerce money from third parties by threatening to take control of their goods. Once the third party concedes to the transfer, the agent was taught to document or issue a receipt stating that the money was given voluntarily, thereby undermining any third-party claims.

A troubling case documented an enforcement agent, executing a High Court Writ against a limited company, targetted a director's personal residence. This agent reportedly entered the property unlawfully in the occupants' absence and proceeded to search for and remove valuable personal items, including family jewellery, passports and travel documents. The agent's actions were reportedly encouraged by a perceived institutional policy within police forces that treats bailiff crime as a 'civil matter'. When confronted by the returning

homeowner coming up the stairs,, their home CCTV recorded the enforcement agent being startled by the victims unexpected arrival and struck her to the ground then called the police on 999 from his mobile saying he is an enforcmeent agent and that he is being assaulted. Responding police officers purportedly failed to properly verify the authenticity of the presented High Court Writ of Control, which was later determined to be fraudulent. The officers did not detect discrepancies, such as an incorrect court seal and the name of the enforcement debtor and address did not match the address the enforcement agent had entered. Neither police oifficer conducted any investigation or search the suspect and his vehicle despite the homeowner's report of stolen personal belongings.

These cases underscore the urgent need for a comprehensive review of unofficial training practices among enforcement agents and a reassessment of police protocols when responding to incidents involving bailiffs. If left unchecked, these practices could lead to increased violence, exploitation of debtors, and a breakdown of trust in the enforcement system.

A comprehensive and meticulous examination, along with a list of recommendations for police procedures and conduct when called to the scene of bailiffs, is expected to be published in a separate briefing paper in the latter half of 2024.

By email to:

EnforcementReform.TCE@justice.gsi.gov.uk
contact@enforcementconductboard.org