

CCR

ENFORCEMENT: TIME TO CHANGE

Round-table debate: ♦
enforcement in the UK
Manufacturing a recovery ♦
Compliance to performance ♦
Boost your collections ♦



Enforcement in the UK is amongst the most important issues for the industry, with recent regulation and changes to the courts having an impact, so CCR brought together some of the leaders in the field to a round-table debate sponsored by Burlington Group. They were: Adam Wonnacott, sales director, Burlington Group (AW); John Ingram, managing director, Burlington Group (JI); Alessia Frisina, chief legal and compliance counsel, De Lage Landen Leasing (AF); Dennis Schulman, legal officer, Bradford City Council (DS); Henry Mehta, head of business customers and collections, Dwr Cymru Customer Services (HM); Brian Lewis, credit manager, Hanson UK (BL); John Mournie, debt litigation manager, TfL Property (Management) (JM); Daniel Evans, head of collections, Hitachi Capital Business Finance (DE); Andrew Aspell, European credit programme manager, Office Depot (AA); Deborah Greenwood, income manager, Colchester Borough Council (DG); Emma Foy, head of financial services, Maldon District Council (EF); Nick Smith, third party manager – collections, United Utilities (NS); Jerome Heap, litigation and commercial collections manager, Southern Water Services (JH); Duncan Grubb, head of credit control, Hammerson (DUG); and Phil Walker, collections consultant, Affinity Water (PW)

Is outsourced collections moving beyond the simple question of cash collection?

AA: In the world of commercial credit that I see, I have an increasing number of debtors coming back to me saying 'I want a repayment plan' and they want it at some peppercorn value.

They will say that their personal lender, utility, or the council has given them an arrangement and I should do the same, but that is in their consumer world. We have a commercial debt and if their business is not making money then they should shut it down and do something else.

The boundary between business debt and consumer debt is being blurred,

increasing the time and money wasted in commercial credit control.

EF: Councils need to be more commercial and should not, necessarily, be offering generous payment plans to huge firms.

We have cases where a customer-services representative made an arrangement with a large national retailer, so it is about having the right people making arrangements.

BL: We use solicitors and tend to go down the litigation route. However, the issue of defendants putting in fictitious defences to slow the system down is simply one that the courts do not relate

to. They say that there is a defence and we have to deal with it. Since the recession, people are not even thinking twice about going bankrupt or insolvent, thinking they can start again tomorrow.

JM: The government is encouraging members of the public to be more capable of managing their own affairs. For example the payments from local authorities to cover rent and other charges, which previously were made directly to landlords, are not, in many instances, reaching their intended destination. So this practice is not working, as many of the people involved are proving they are unable to control their own finances. >>



L-R: Henry Mehta, Dwr Cymru Customer Services; Emma Foy, Maldon District Council; John Ingram, Burlington Group; John Mournie, TfL Property (Management); Andrew Aspell, Office Depot



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>> AF: You have regulators like the Financial Conduct Authority (FCA) telling you that you have to be fair to your customer and consider several aspects, and, by reading CONC, I would not say that you can go straight to court, you have to do something before that to tell your customer and give evidence that you are treating your customers fairly.

JM: As a public body, we have a duty to ensure that all outstanding money is recovered, but we also weigh up the expense of taking steps to recover these sums against the costs involved and make a commercial decision based upon all known factors and try to apply this principle throughout.

Are the courts a successful way to collect debt in the UK?

NS: It comes back to the segmentation techniques. We have just started sharing data with one of the credit reference agencies so that, on our domestic side, we can get a better idea of what our customers' payment behaviour is like, both positive and negative.

We now know which customers we should be taking down the litigation route, whereas, in the past, when we used propensity data, it may have been a case that they 'might pay on the back of a judgment or they might not'. Going forward we should be getting judgments on those who can pay.

HM: It is a case of making sure that you are taking the route that is most effective for a particular group of people, and sometimes the courts are not going to be effective because you can get a judgment, but you have nothing to enforce on and they have

no intention of paying, so it is just throwing good money after bad. However, with other customers, there is no point in going to a collections agency because they will just string them along, and they have assets.

We use an external data source which will tell us if they are, or if they might be, a homeowner. If they are, then we will go with the plan to enforce. If they come back and say 'we think they are a homeowner, but we are not sure' we will go to the Land Registry and get the details.

BL: The other aspect is dialogue from the debtor – have they spoken to you? Have they tried to come to an arrangement? Are you aware that they have problems? If they just ignore every attempt to collect your money, then you have no option but to litigate, just to get their attention and to show that you are serious about being paid.

DG: Segmentation is difficult for us because we do not just deal with one core debt, we have council tax and various others that have their own legislation to follow. We do go through the courts *en masse*, but, for sundry debts, we have a wider range of options.

DUG: We find that, when you look into it, businesses or individuals with a clean record are often the ones servicing their other debts, so these can be the most productive to follow up. Someone with a litany of judgments against them may simply not be worth spending much time on.

AW: We brought in a partner to help us to develop our multi-channel communications strategy. It works very

successfully, especially when coupled with other methods of debt collection and enforcement.

Is enforcement a reputationally safe way to collect?

JL: What is to say that just getting a judgment in place and securing your debt in this way is aggressive behaviour on the part of the creditor? Surely, the way in which you enforce that judgment is where the regulator might take an interest. Just sanctioning a debt by way of obtaining judgment is not something a creditor should be expected to be criticised for.

AA: There are protocols in place before you issue that, if you follow them, nobody should criticise you.

AF: I think that the FCA comes a step before that; their objective is to say that we must treat our customers fairly. So more than saying that 'I can go to court, it is my right and I am only following the process', the thought should be 'do I, internally, have a process in place that will decide that this is when I go to court and ensure that I am treating my customers fairly?' So after you have taken all the necessary steps, then you prepare to go to court.

DE: The challenge is how you distinguish between your 'can't pay's' and 'won't pay's' because that will determine how quickly you take the next step. So you have a policy built upon those two distinctions.

If the customer will not talk to you by telephone, e-mail, or letter then you would hope that the FCA will not criticise you for taking the next step in reducing or securing your debt. In



L-R: Deborah Greenwood, Colchester Borough Council; Jerome Heap, Southern Water Services; Nick Smith, United Utilities; Phil Walker, Affinity Water; Duncan Grubb, Hammerson

terms of asset finance, speed is of the essence, you cannot afford to sit around for weeks or months waiting for someone to get in touch.

DG: We find, in local authorities, that people will not self-serve their debts, you have to actively pursue them; so we hold a weekly debt clinic. A lot of our customers are being forced down the route of having their benefits paid into an account and they are not able to be responsible with money and budget. So they use the money to pay for things that it is not meant for and so get into arrears.

DS: The latest thing is the carriage of order, which you draw up yourself and pass to the court to seal, rather than court officials doing it. That is more work for the creditor and more opportunity for the uninitiated to get it wrong.

What role do doorstep agents play in engagement?

NS: It is an essential part of our strategy, not just in terms of collecting cash, but the information that we get back is invaluable. An issue that we may face is that a lot of the financial institutions have already pulled back from it, which may have a long-term knock-on effect for the collections agencies that we use and, potentially, the field forces that we are using are diminished because the volume of work they were receiving from the financial institutions is no longer there.

DE: Agents that we instruct are no longer just collectors, they have to be debt counsellors. They have to be able to identify a potentially 'vulnerable' customer – it can even be the body

language of the customer that puts them into the vulnerable category.

AW: The regulations place an obligation on the enforcement officer to ensure that they give vulnerable persons the opportunity to take advice before proceeding to enforce, if they are aware,

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or ought to have been aware, that the defendant was vulnerable. This places a big obligation on the enforcement agent.

What are you looking for from your enforcement agents?

EF: Clearly being able to reconcile the money that has come in with the particular debtors. In the past we have had some very random payments coming in that are hard for us to reconcile and it takes a time to sort out, particularly when you are dealing in small amounts. The amounts just sit in suspense.

JL: Processing client funds competently and effectively should be the minimum expectation and something that should be a given. I hope that creditors would be looking for a modern understanding of the collections environment, an understanding of what the creditor is seeking to achieve and of the creditor's attitude towards their customer. The collections environment has changed dramatically; the creditor should be able to expect that a service provider can provide 'cradle to grave' services, with early stage soft collections, the capacity

to manage a litigation process and effective enforcement processes.

DS: I think it is partly due to a lack of education in schools of how people should manage money. They come out of university thousands of pounds in debt and they do not know what to do.

DUG: We have to remember that the 'can't pay' as opposed to the 'won't pay' are people or businesses living beyond their means, and there is nothing prejudicial in making that statement – efficient cash management needs to be actively promoted by anyone providing credit.

Are collections and enforcement agents willing to adapt to evolving requirements from their clients?

PW: I think it is variable. There are some agencies where, frankly, the tail is wagging the dog: they want a certain kind of customer and a certain kind of debt. Others are very flexible. So you need to have a matrix of agencies and there are some very good specialist ones out there. For us, it is then about being able to cut and slice our data – and data quality is certainly a big issue, which means that it is not unreasonable that some agencies will want certain kinds of debt.

HM: I think they respond to what you are asking them to do. You pay for the different services that you get. **CCR**