



Standard measure

The European standards on enforcement say bailiffs should have greater powers but it is unclear if they will be adopted here, says Ashley Armstrong

The European Commission for the Efficiency of Justice (CEPEJ) has launched a set of standards to help its member states deliver justice fairly and rapidly through effective enforcement.

CEPEJ argues that without an effective system of enforcement, other forms of "private justice" may flourish and adversely affect the public's confidence in the legal system.

The UK government is currently looking at the system of enforcement and is due to consult on fees and regulations. However, while some EU countries are expected to base their systems on the standards, it is not clear how much influence they will have here.

In order to ensure its standards are upheld across the industry CEPEJ supports state intervention, including the concept of one professional body representing enforcement agents. Currently the UK has several trade bodies, including the High Court Enforcement Officers Association (HCEOA), the Association of Civil Enforcement Agencies (ACEA) and the Enforcement Services Association (ESA).

CEPEJ also recommends the introduction of a state-wide qualification for enforcement agents, alongside ongoing training for bailiffs. While many debt enforcement firms impose their own guidelines for best practice, the lack of standardisation across the industry has been a cause for concern. To bring as much certainty and transparency to the enforcement process as possible, CEPEJ states that agents who are accused of abusing their position should be subject to disciplinary, civil or criminal proceedings.

But although the standards seem to encourage a clampdown on enforcers, they also champion a far wider provision of information on debtors for bailiffs.

In addition to plans for criminal checks and the creation of an online register of bailiffs, the standards also call for an "information exchange". They advocate that states give enforcement agents speedy and preferably direct access to information on defendants' assets to produce an estimate of costs. And, to prevent the defendants from avoiding enforcement by relocating their assets, CEPEJ states that a multi-source restricted access database should be created. The database would include details of ownership rights over vehicles, real estate rights, payable debts and tax returns.

John Stacey, Ministry of Justice head of international development for court administration and vice president of CEPEJ, says: "We want enforcement to be effective, affordable and quick."

Expanding powers

The commission's radical recommendations for free data access for bailiffs are in stark contrast to the levels enforcement agents currently enjoy in the UK.

John Marston, chairman of the Marston Group

and Council of Europe expert on enforcement, says: "The government so far has refused to give us any special access to information. While on the one hand it says judgment must be enforced, it prevents us from accessing the information we need to be able to enforce the justice quickly."

As well as giving bailiffs greater access to debtor information, the standards advocate enhancing their remit, including giving them a monopoly over enforcement. The standards say that bailiffs may also be given other authorised powers, including general debt recovery, serving as court ushers and drawing up private deeds and documents.

Marston says: "Currently in the UK bailiffs are only able to seize moveable goods; whereas in Europe they can seize houses and money in bank accounts, draw up court proceedings and represent people in court."

If bailiffs conducted these other services, some say the legal cost of the enforcement procedure would be significantly reduced. Marston adds: "It would reduce the costs for creditors and debtors, and while people and the government may be against adopting this principle, the standards mean that Europe grants them the power to do so, and doesn't find anything wrong ethically with this suggestion." However, lawyers and other parties within the process may be resistant to the idea of the enforcement role expanding.

In a bid to improve transparency within the industry, the guidelines also recommend the use of standard documents to notify defendants of the consequences of enforcement and the cost of failure to comply, and also keep claimants fully informed of the stages reached by the enforcement procedure. The standards also say bailiffs should present their fees and costs in advance so creditors can know the level of service they should expect and manage costs. This would also legitimise the contentious fee process.

Stacey says that the standards have already gained clout in many European countries, some of which are now using them as a basic framework for their enforcement and legal systems. But how much the CEPEJ standards affect UK policy remains to be seen.

The contentious issue of fees has been a cause of concern for many in the industry, largely due to the dark cloud of uncertainty that continues to linger over it. As *Credit Today* went to press experts said that the long-planned and oft-delayed MoJ consultation on UK enforcement fees and regulations will now not take place before the general election, though it is still expected some time in 2010. Industry advisers and those working on the consultation are optimistic and have said they expect a consensus over a fee structure to be reached. **CI**



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