

VIRTUAL ENFORCEMENT – FROM COURT RULING TO REALITY



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If you follow Just's LinkedIn activity on a regular basis you will be familiar with the term 'virtual enforcement'. This was a concept that was born out of the Coronavirus Pandemic when Just's senior Management team took a step back and considered the impact that COVID-19 was likely to have on the enforcement section way back in March 2019. The impact has been far greater and lasted far longer than many commentators would have predicted.

The Virtual Enforcement [VE] solution at its conception was to explore whether or not it was necessary for an Enforcement Agent to be physically present in a Debtor's premises in order for him/her to enforce a Writ by formally taking control of goods. My first reaction when the question was posed to me was that it was necessary for the agent to be physically present but this was largely founded upon the historic approach to enforcement and much of the now arguably outdated rules and precedents that govern the enforcement process.

Legal advice Just received was that it was in fact not necessary for the agent to be present inside a Debtor's home which paved the way for the concept to be developed out and for the seizure of goods using video technology such as Microsoft Teams or Zoom to be developed.

In order to launch our virtual enforcement concept in a manner that provided our Clients and indeed members of the public confidence we recognized that we needed the support of our regulators which in my case is the Ministry of Justice. While it is fair to say that VE had a good level of support from stakeholders (including the Debt advice sector) the Ministry of Justice were reluctant to endorse it and were unable to set out a clear view regarding whether the proposal was fully compliant with the enforcement rules and legislation.

In view of this and armed with legal advice from our in house Counsel Just launched a Part 8 Claim which was

heard before Master McCloud in the Queens Bench Division of the Royal Courts of Justice. The purpose of our part 8 claim was to invite the Court to scrutinize our proposal and to determine whether or not it was compliant with the rules that govern the enforcement process.

The proceedings were lengthy as the Master invited interested parties from the Enforcement and Debt advice sectors to play an active part in the legal process.

The Judgment of Master McCloud was finally handed down early in 2021. In her Judgment the Master made a series of key findings in relation to whether or not Just's VE concept could be used or whether the traditional approach to enforcement needed to continue in all circumstances. I think one area that was perhaps lost on those that opposed this new approach to enforcement was that it is a consensual one and that both the Judgment Creditor and the Judgment Debtor would need to consent to an enforcement visit being undertaken virtually before one would be offered. In my view VE was a new approach to enforcement that the parties could chose to opt in or out of depending on their circumstances.

Since the court ruling, we have gone on to implement Virtual Enforcement for several of our clients.

The learnings so far have been revealing:

We are seeing increased levels of engagement:

During the Compliance stage we are sending additional communications, above and beyond the standard Notice of Enforcement. This includes additional letter, email and outbound call. These are all designed to encourage the customer to get in touch with us, with the lead message being that even if you can't afford to pay in full, we don't have to send an enforcement agent to your door. As a result of this we have seen an increase in contact and compliance. More interestingly.....

We are having much more detailed conversations with customers:

Once we have engaged with the customer, we have detailed conversations with them to ascertain the suitability of virtual enforcement. The training we have given our staff has been heavily focused on trust – great levels of rapport and empathy to encourage the customer to talk more freely about their circumstances. The incentive of them being able to avoid a visit to their door from an enforcement agent and a minimum of £190 enforcement fee.

What we are seeing is that these conversations are longer than standard compliance conversations and the level of detail about the customers circumstances are far greater. Not only are we completing a full affordability assessment we are also completing a draft controlled goods agreement. It's no surprise then that....

Payment arrangements agreed following a Virtual Enforcement interaction with a customer are performing better than standard arrangements:

Once we have understood the customers circumstances we can make a call on if we think it is necessary to meet the customer virtually with an enforcement agent. We will also engage with our client if we think the payment arrangement proposal is risky, and indeed, further security could be taken by way of an enforcement agent meeting with the customer virtually to agree the formal controlled goods agreement. Much of the time, the client is happy to proceed without the Virtual Visit, either way, we are seeing greater sustainability of payment arrangement as a result. In turn, it's no surprise them that..

Our clients are really happy with the service:

With the reduction in fees being charged, more of the principle balance owed to them is being paid, quicker.

Equally, they have a great case study of how they have gone above and beyond many other creditors in their sector to find fair, ethical and proportionate ways of recovering problem debt.

Conclusions

Virtual Enforcement is not a replacement for traditional physical enforcement activity but should be seen as a complimentary approach. In an age where one size fits all approaches to customer treatment are rightfully no longer the norm a more nuanced approach to the sensitive area of enforcement where customer treatment is matched to customer circumstance and/or preference can only benefit the consumer, the industry and the creditor.

Natalie Tate is Director of Operations of Just and has over 15 years' experience in key roles at Egg Bank, Citi Bank and TDX Group where she was Head of Supplier Delivery, Quality and Performance for the debt management function.

Just are the UK's first integrator for litigation and enforcement. Driven by data and analytics we provide our customers with a safe, accessible and intelligent way to enforce debts across the UK responsibly.