

# It's Just.<sup>TM</sup> to do it right

Our plan for a more compliant industry that protects the reputation of the creditor and makes High Court Enforcement a more accessible and safe form of justice.

The Just Manifesto 2019/2020

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*Jamie B. Waller*  
Chairman



# FOREWORD

It has been five years since the introduction of the Taking Control of Goods Regulations 2013, and while the industry has benefited from improvement it is clear that there are still areas of regulation open to interpretation. In some cases, the interpretation is used for commercial gain and is not in the best interests of the creditor.

In 1998, when I started my career as a certified bailiff, the industry was relatively unknown. Over the past 21 years the requirements for enforcement have increased as the needs of Local and Central Governments have changed due to greater decriminalisation and the implementation of traffic offences, like tolls and congestion charges. The smaller part of the industry, the High Court Enforcement sector, has also increased in size. The ease of issuing County Court proceedings with the introduction of [moneyclaimonline.co.uk](http://moneyclaimonline.co.uk) has played a pivotal role.

Throughout my career I have seen many changes, most of them for the better. However, what has not been for the greater good is the growing number of ex-bailiffs who claim to be High Court Enforcement Officers. Now it seems that all you need is a stab vest, a body-worn video camera and access to an Authorised High Court Enforcement Officer who charges a fee for their authority to act and you're in business. The explosion of companies offering this type of service has led to a reduction in quality and compliance. In other cases, these organisations are trading under the authority of an Authorised High Court Enforcement Officer who no longer operates a company or, in some cases, doesn't even reside in the UK. I'm not surprised that in an industry with a limited number of Authorised High Court Enforcement Officers, someone can retire or move to another country and continue to benefit from receiving fees in return for someone else using their authorisation. This has created a kind of 'renting authority,' economy. Not all of these new 'High Court Enforcement' businesses are non-compliant, but many are, and that's the issue.

Although I'm not surprised, it's obvious that Master Davison of the Royal Courts of Justice was startled upon hearing the 2018 case for 'Rooftops South West Limited, James Reuben Slocombe, Paul Howell and Marcus Davis Vs Ash Interiors (UK) Limited, Direct Collection Bailiffs Limited and Claire Louise Sandbrook' the Master showed concern detailing in his judgment that the oversight exercised with respect to Direct Collection Bailiffs Limited, apparently rendered from Florida, were grounds to consider terminating the Authorised High Court Enforcement Officer's authorisation to act.

It is obvious to me that the power and responsibility of the Office of an Authorised High Court Enforcement Officer should not be abused. That simply allowing someone to use your authority to act in return for a fee cannot be considered in the spirit of the Regulations, or what was intended by Government when the High Court Enforcement Officer Regulations came into force in 2004.

Along with this matter, I have other concerns. Complaints, according to the debt advice charities, are on the rise. In 2018, the House of Commons Justice Committee chose to investigate this increase. Their report, published in April 2019, made a number of recommendations for industry improvements including: an enhanced complaints process (with few navigation levels) that is easier to understand; establishing an industry regulator to review fees and ensure they are appropriate and the mandatory use of body-worn, video to reduce conduct complaints. <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1836/report-summary.html>

It is my intention with the launch of Just to address some of these concerns. We aim to design and deliver the solution that the Ministry of Justice originally intended rather than what the regulations will allow. We'll do this by addressing the parts of the regulations which are vague, have been criticised or have received strong recommendations for change.

I believe the industry can implement the 2013 Regulations based on what was intended, rather than what it can get away with, and emerge from this period of criticism a stronger and more respected sector of professionals. The industry of High Court Enforcement dates back to early Saxon times, the Office of the Sheriff is the oldest secular office in the Country other than that of the Crown. As a result of this the current Office of the Authorised High Court Enforcement Officer has been granted an unprecedented amount of power and authority through the years. It is now time to respect the history and the level of authority that has been granted.

I believe we can, indeed must, take this opportunity to build an industry that people respect and, in that process increase the number of people which use High Court Enforcement as an accessible and safe means of getting justice.

I will do this by committing Just to take on five giant challenges. Once implemented, we will build a better industry. A stronger industry, wherein more people feel they can trust the sector as a viable means of justice when they are owed money.

Just is not a High Court Enforcement business. Just is an extension of the creditor, a digital marketplace that represents its client's interest and sits between the client and enforcement provider. Just has its own Authorised High Court Enforcement Officer and instructs enforcement agencies under our own authority to act. This gives the creditor a service that is an extension of themselves, representing the creditor's interests first, managing the enforcement provider's compliance and ensuring that maximum monies are collected in the quickest possible time, whilst always protecting the creditors reputation and treating debtors fairly and with compassion. Debt resolution can sometimes be more effective than debt collection. Something we recognise and place at the forefront of our processes and procedures.

*Jamie B. Waller*

Chairman



## OUR FIVE GIANT CHALLENGES

This Manifesto is our vision for Just for the next two years, and for decades beyond. It is not only a programme for us, it is a declaration of what we intend to achieve. What few private organisations attempt, we will master and take the big, sometimes difficult, long term decisions that are right for our industry's future.

### THE FIVE GIANT CHALLENGES WE SET OUT TO TACKLE ARE:

- The renting of authority to act economy
- Value Added Tax and the correct application of fees
- Notice of Enforcement and proof of delivery
- Vulnerability, data science and protecting reputations
- Cameras and surveillance (the things not considered)

If we don't make decisions now, and address these challenges, the industry risks becoming weaker, less respected, and even obsolete. But, if we act now, show leadership and grasp the opportunities presented by these challenges, High Court Enforcement can emerge from these times and look to a greater future with complete confidence.

Rather than pursue an agenda of what is good for profit, we will move forward and restore trust in what we do. We will build stronger relations with the advice sector, reduce complaints and improve public perception. We will also stand up to those in positions of authority who abuse their privilege.

If we really want to overcome this time of distrust in the sector then we need to take on long-ignored problems, for instance the lack of control over the actions of enforcement agents, overly complex complaint procedures, the application of VAT and the lack of a professional relationship with the advice sector.

Just alone can't solve every challenge that the industry faces. For the industry to remain stable, strong and healthy we need a leading organisation that drives change and encourages others to follow closely behind. And that's exactly, what we intend to do.



## THE RENTING OF AUTHORITY ECONOMY

Sparsity is considered a great economic power. So, in an industry in which there are only 46 Authorised High Court Enforcement Officers, and 32 of that those represent just a few organisations, it is easy to see that some companies have a lot of power. In fact, one of the largest organisations in the sector employs 16 of the 46 Authorised High Court Enforcement Officers. The last time that a new High Court Enforcement Officer was appointed was 2017, and only six have been appointed in the past 15 years. They are literally a dying breed. The industry, in its drive for economic power, is killing itself.

Those Authorised High Court Enforcement Officers (AHCEOs) however, have enormous economic power and, thanks to that power, the 'renting authority' economy has developed.

Regular Enforcement Agents - 'bailiffs' - have started to advertise themselves as High Court Enforcement Officers on the basis that they can borrow or rent authority from an AHCEO whenever needed.

It's absurd to think that it's okay to 'rent your name' to another organisation, giving them the authority to act in such serious matters. Can you imagine Police Officers selling their authority and private Police forces popping up all over the place offering to arrest people for you? Nor could I, it would be insane to allow someone granted so much power and authority the right to just rent that authority out in a sort of 'right to exploit' contract arrangement. It simply cannot be acceptable.

But this is what's happening across the High Court Enforcement industry, and, in my opinion, must stop.

The AHCEO's which put their name to a Writ should be held accountable for the enforcement of that Writ. Additionally, the AHCEO's should be responsible for the protection of the data, the distribution of notices and the step by step enforcement processes that follow. While 'renting authority' is not technically in breach of any regulation, it is, in my opinion, not what was intended by the Lord Chancellor when authorising the delegation of power.

This is where Just will come in and create a marketplace that allows creditors access to every square inch of England and Wales through one AHCEO. That one AHCEO will be responsible for the actions of enforcement agents and will function as a Director and significant shareholder of the organisation that the creditor instructs.

The small enforcement organisations that operates on behalf of most of the larger High Court Enforcement Agencies but also operate their own businesses on the side renting the authority from other AHCEO's, will have access to the Just marketplace, and will supply their clients with the details of Just who will take control of the Writ, manage the process and procedures and place it back into the marketplace should enforcement be required. No longer will these enforcement organisations need to 'rent authority' as they will simply point the creditor to Just upon the understanding that if the Writ requires an enforcement visit, and ONLY if it requires an enforcement visit, the enforcement organisation will receive the file back under the instruction and guidance of Just to complete the final tasks.

Our authorised enforcement companies (panel members) will carry a partner badge on their websites and advertising material, allowing creditors free market choice and the certainty of legal, professional and compliant service offerings that protects their reputation and brand.

Creditors will contract with us directly, and we will take responsibility for our actions and the actions of our panel members. Instructing Just gives creditors access to a significant part of the market across the entire region of England and Wales, but under a 'one throat to choke' rule. This brings an end to the postcode lottery where the quality of service delivered differs from one location to the next.

**OUR PANEL MEMBERS ARE CHOSEN BASED ON FOUR KEY CRITERIA:**

1. The quality of their consumer focus and enforcement practices
2. Their accreditation/qualifications to act
3. Their location within the UK, and
4. Their specialisation

Once selected, panel members enter into long term contracts and are required to operate and adhere to strict ISO quality accredited procedures and meet strict performance guidelines. They are audited weekly and monthly with a physical visit to their offices. Penalties for breaches, suspension and break clauses are vigorously managed. Just provides training, including specialist emotional intelligence modules to ensure a consistent approach to enforcement and a greater protection of client and industry reputation.





# VALUE ADDED TAX AND THE CORRECT APPLICATION OF FEES

In 2014 the Taking Control of Goods (fees) Regulations were released and the right to apply VAT on top of fees and pass this onto the debtor was removed. This resulted in a high level of uncertainty in relation to how VAT should be collected on the fees charged. The civil enforcement industry came to the conclusion that VAT was no longer collectable from the debtor and, in fact, must be recovered from the creditor, the employer of the service and the person that receives the benefit. The High Court Enforcement industry, however, came to a different conclusion. They concluded that the VAT should still be collected from the debtor regardless of what the new Regulations seemed to allow.

In June 2014, just two months after the release of the new Regulations, the High Court Enforcement Officers Association, on behalf of the industry, were so concerned that they instructed leading Counsel to give an opinion. For the record, the High Court Enforcement Officers Association is recognised in the High Court Enforcement Officers Regulations 2004 as a professional body recognised by the Lord Chancellor. The advice that was given to the High Court Enforcement Officers Association by Christopher Wilson of Counsel was that the liability for payment of the VAT on fees was unclear; he strongly suggested that further advice be obtained from a tax specialist

We have asked the HCEOA what their position is on the application of VAT and they say that the Ministry of Justice have been made aware of the issues and that they informed the HCEOA that taking further advice would not help or change anything. For this reason, they failed to take further advice from a tax specialist.

In researching for Just, we took it upon ourselves to follow the recommendations of Christopher Wilson and seek advice from a tax specialist in the area of VAT. We located and appointed Melanie Hall, QC of Monkton Chambers <https://www.monckton.com/barrister/melanie-hall-qc/>

Melanie's advice was unequivocally clear. VAT should be applied to the creditor and not the debtor. The creditor in most cases is a business, and in-turn will have the right to reclaim this VAT, as a cost of business.

Melanie states, "My opinion in summary, is as follows:"

- a. VAT is chargeable by the Company to the creditor and not to the debtor.
- b. VAT is only chargeable on fees paid in exchange for enforcement services supplied to the creditor, not on sums which, the VAT system classifies as disbursements.
- c. The question whether VAT paid by a creditor to the Company is recoverable from HMRC as the creditor's input tax, will depend upon whether the creditor can establish that the VAT cost was a cost burden of making his taxable outputs.

Upon receiving this advice, the team at Just met with a Master of the Queen's Bench and wrote to Her Majesty's Revenues & Customs and to the Ministry of Justice and presented our findings.

We are proud to have taken this difficult topic, head-on and now hope to bring the matter to a successful conclusion before the end of September 2019 with either an amendment to the 2014 Regulations to allow VAT to be charged to debtors or clear guidance that VAT should be charged to the creditor and not the debtor as the legal opinion suggests.

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# VULNERABILITY, DATA SCIENCE AND PROTECTING REPUTATIONS

In my past position as a Chief Executive of one of the largest enforcement organisations in the country, it became very clear to me that using a single digital infrastructure driven by data science and behavioural insights, whilst also applying common sense and thinking as a creditor would, enables vulnerability to be detected earlier and without the use of enforcement visits.

Of course, some vulnerabilities like pregnancy and mental health are tough to establish remotely unless the debtor volunteers this information. However, other potential vulnerabilities like age, the recent death of a loved one or extreme hardship can be detected immediately by using the advanced technology available and without the need for a visit.

Just has employed one of the best data and behavioural experts available and has implemented a single digital infrastructure allowing panel members, creditors and debtors access to the same information. Before sending any Notice of Enforcement, Just will use its data and behavioural models to look for signs of vulnerability and adjust its strategy accordingly. Successful strategies that I have implemented in the past will be implemented here, for example, sending follow-up notices, sending notices in the main language spoken by the debtor, calling by phone before sending the notice and sending a female enforcement agent to a female debtor or an older agent to a pensioner.

During this process we will also focus efforts on closing the gender gap for enforcement agents. The register for certified, enforcement agents (<https://certificatedbailiffs.justice.gov.uk/>) indicated as of August 2019, that there were only 236 female enforcement agents compared to 2,390 male agents (9% Vs 91%). We will deliberately target our panel members to recruit more female agents and increase our average female to male ratio by 100% of the industry average. We recognise the wider social impact of the gender gap and also the value that female enforcement agents add, especially when dealing with female debtors.

Data science and behavioural insights will be at the forefront of everything we do. Minimising the impact on the vulnerable and protecting the creditor's reputation will be at the top of our agenda. Our single digital infrastructure and past expertise will enable this.

The enforcement agencies that operate within our marketplace will use a single instance of the Just technology and telephony systems.

# NOTICE OF ENFORCEMENT AND PROOF OF DELIVERY

The industry receives heavy criticism about the Notice of Enforcement.

Referring back to my Foreword, in the case held in the Royal Courts of Justice Master Davison found, and set out in his Judgment that, due to the lack of evidence the Notice of Enforcement in that case was not sent. This is a constant issue, raised time and time again.

The 2013 Regulations do not require this notice to be sent by any form of secure post, but they do require the High Court Enforcement Officer to keep accurate records of when and how it was sent. At Just we commit to sending every Notice of Enforcement by Royal Mail's Recorded Post.

We strongly believe that with improved and early compliance, the additional information that is gathered and the reduction in cases passing through the expensive process of enforcement will easily pay for itself within the existing authorised fees. We will not charge any additional fees for providing this service to the debtor or creditor.

Only when we are sure that the debtor has received the Notice of Enforcement and had the opportunity to pay, will we process the case to the more expensive stage of enforcement.



# CAMERAS AND SURVEILLANCE

## THE THINGS NOT CONSIDERED

There's no doubt that it's useful for enforcement agents who visit people's homes to have body-worn video equipment. It protects both themselves and the debtor. Having access to evidence of actions taken during enforcement visits is invaluable. We must, however, be very aware of the sensitivity of the data we collect.

One of the things which is not considered, but is difficult to avoid, is the filming of people who are not part of the enforcement process, e.g. bystanders, guests in people's homes or other members of the family. Having visited debtors myself, I can say with absolute conviction that 3 out of 10 properties I entered would have young children, and that about 50% of them would be in a state of undress. It is vital that data which is not of direct relevance is removed immediately. Relying on the enforcement agent to stop filming is not acceptable, as it contradicts one of the main reasons for having the surveillance - to protect the debtor from bad enforcement tactics. Giving the enforcement agent a reason to say that they don't have the surveillance due to the risk of filming someone in a state of undress also is not practicable as agents could turn off the recording prior to instigating bad behaviour themselves.

Just is following in the footsteps of some of the largest technology companies in the world. Earlier this year both Skype and YouTube developed background blur technology which focuses on the person you are in dialogue with but blurs the image of others. This is exactly the sort of development that is required for industries that have unprecedented power, for example ones that have the ability to enter someone's property without their consent.

To undertake the task set out in the House of Commons Justice committee report for the mandatory use of body-worn video to reduce complaints of conduct, we must first ensure that the use of body-worn video is not creating further reasons for complaint. For this to happen it is vital that blur technology be used.

Our team of engineers have begun the requisite research writing of the specification and will soon develop this technology and deploy it across all panel members. We are changing the way enforcement agents film their activity, protecting the public's civil rights and managing the reputation of creditors.

# CONCLUSION



## CONCLUSION

This is our plan for a stronger, more transparent and well-respected industry.

In taking on these big challenges, we will drive change for the better, we will compel others to follow, and in the process, make the government's work easier when looking and planning for future regulation. We will reduce complaints, we will deliver consistency and will protect the creditor from employing the services of organisations that care more about the short-term gain, than the long-term reputation of those employing them.

Debt is a sensitive subject, but we believe that everyone has the right to be paid what they are owed, and we plan to make High Court Enforcement a more accessible and safe means for creditors to obtain justice.

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