

Best of intentions

With the cost of regulation for DCAs likely to run into millions of pounds, are we heading towards over-regulation?

Regulation is not new. It first emerged in medieval England in the late 13th Century and was used to manage the inherent power of judges, to control the admission of lawyers and sanction misconduct within the legal profession. However, some within the industry are now starting to feel uneasy at the stock of rules and ambiguous regulations that have developed across the sea of regulatory bodies. Do the current frameworks contain too many complex ambiguities? Is the industry in rule-book overkill?

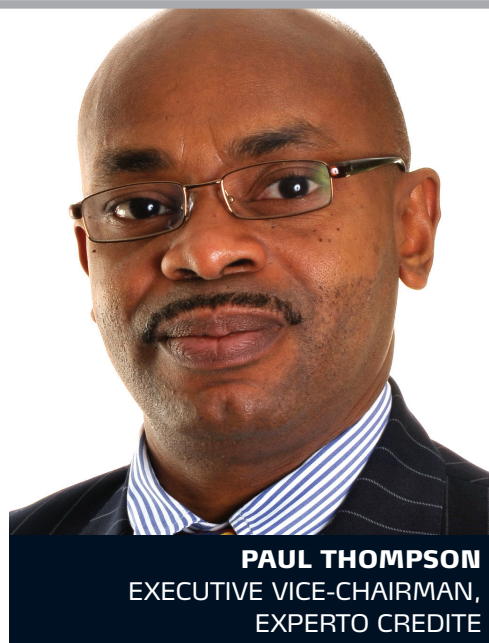
With the Office of Fair Trading's draft guidance on debt collection published, compliance is high up on the agenda of many of the UK's debt collection agencies (DCAs). Whether we like it or not, regulation has its tentacles around our fair island. We have no option but to adjust to it, but not blindly.

Rules for regulation

Some rules should be kept in mind when considering regulation. Rule number one – if there are no rational grounds for regulation, there should be no regulation. Policy makers should guard against making rules to meet their objectives by adding more regulation. For example, many in the industry will agree debtors should not be contacted at work, and constraints on contact times are necessary. But should debtors be able to choose whether they're contacted via letter or telephone? Factors such as these might be worth considering before regulations are rushed into.

Secondly, if empirical analysis confirms there are systemic failures, is regulatory intervention the most efficient and cost effective method of correction? Market failures can also be addressed using other mechanisms such as competition policy, and it is policy makers' responsibility to consider what is the most effective tool to address a particular situation, taking into account the need to secure specific outcomes, and recognising the increase in costs to business and its customers. But even here, the blunt instrument of regulation does not have to be the regulator's only option.

Thirdly, regulators must be wary of the damaging effects the restrictions of regulation can have on creativity, innovation, pricing and competition. The current regulator appears to advocate principle-based regulation – for clarity, its focus is on the outcomes rather than the prescription of detailed processes. Targeting outcomes – such as debtors being treated fairly or firms having robust processes – manages risk, and enables DCAs to focus on what is good for their business, debtors and the environment around them. However, it has



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to be acknowledged that this approach is not easy – there are always tensions between standards and the objective of profitability.

Many are concerned that current legal approaches, which can lead to significant fines, have limited innovation within the marketplace, and have also created barriers to entry. Herein lies the dichotomy – is the industry moving towards a rigid FSA rule-driven model with high set-up and ongoing maintenance costs? This could result in the exclusion of small players, which in the past have provided great value to medium-sized clients requiring a unique, tailored service.

It appears that both the regulator and the regulated must be bold enough to accept a degree of uncertainty around the ability to manage any consequential or legal risk for the good of the debt recovery market.

Crisis response

It is often said that too much regulation is a knee-jerk response to an 'assumed' crisis, where legislators, regulators and policy makers must be seen to be working to prevent the same kind of crisis reoccurring. This is understandable, given the high-profile political arsenal that engulfs debt in the UK. However debt recovery agencies, while being sensitive to the current £1.5trn in UK personal debt, are merely acting as custodians to their clients. The problem was not created by the industry. DCAs are just experienced facilitators operating in a tense, emotive social arena.

Regulatory action should address the real causes of failures, not just the symptoms. It cannot be ignored that there were serious poor practices in the past. However the industry has raised standards – not only as a result of regulation, but to remain in business because of client reputation and brand protection. Debt recovery is probably safer now than it has ever been since the first recorded debt collection in the Babylonian Empire in 3000 BC.

So sensible, fit-for-purpose regulation can benefit a modern industry that is sleek and professional, attracting high-profile investors and high-calibre staff. The challenge we face is working out where to set the limits of wise regulation. **CT**



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