



Neutral Citation Number: [2024] EWCA Civ 4

Case No: CA-2023-000075

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**(KING’S BENCH DIVISION)**  
**The Honourable Mrs Justice Lambert**  
**QA-2021-000057**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11 January 2024

**Before:**

**LORD JUSTICE PHILLIPS**  
**LADY JUSTICE ANDREWS**  
and  
**LADY JUSTICE ELISABETH LAING**

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**Between:**

<b>TREVOR BONE</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>SIMON WILLIAMSON</b>	<b><u>Respondent</u></b>
<b>-and-</b>	
<b>HIGH COURT ENFORCEMENT ASSOCIATION</b>	<b><u>Intervenor</u></b>

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**Daniel Kessler** (instructed by **Law Office of Sarah Hougie**) for the **Appellant**  
**Raghav Trivedi** (instructed by **Bevan Brittan LLP**) for the **Respondent**

Hearing date: 28 November 2023  
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**Approved Judgment**

This judgment was handed down remotely at 2pm on 11 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## **Lady Justice Elisabeth Laing:**

### *Introduction*

1. This is an appeal from an order made by Lambert J ('the Judge') after hearing an appeal from Master Sullivan ('the Master'). The Judge and the Master both held that the High Court Enforcement Officer ('HCEO') in this case (Mr Williamson) was not legally responsible for the fees charged by a High Court Enforcement Agent ('HCEA') (Mr Brown) when Mr Brown was acting under a writ of control ('the writ') directed to Mr Williamson. In the relevant legislation, the HCEO is also referred to as 'the enforcement officer' and the HCEA as 'the enforcement agent'. I will use those terms, and the relevant acronyms, interchangeably.
2. On this appeal Mr Bone was represented by Mr Kessler. Mr Trivedi represented the respondent, Mr Williamson. Both counsel appeared below. I thank them for their written and oral submissions. Paragraph references in this judgment are to the Judge's judgment, or if I am referring to an authority, to that judgment, unless I say otherwise.
3. Permission to appeal was given by Warby LJ. He ordered the High Court Enforcement Officers' Association ('the Association') to be joined as intervenors. The Association did not take part in the oral argument, but submitted a witness statement, which, in short, supports Mr Bone's position. I describe the Association's position more fully in paragraph 22, below.
4. For the reasons given in this judgment, I have reached eight conclusions.
  - i. Schedule 12 to the Tribunals Courts and Enforcement Act 2007 ('the TCEA') is not a self-contained scheme.
  - ii. Under the legislative scheme, the HCEO is responsible for keeping the proceeds of enforcement.
  - iii. The HCEO is also entitled to enforcement fees.
  - iv. I describe the relevant liabilities of HCEOs and HCEAs in paragraph 84, below.
  - v. An HCEO and an HCEA can be a defendant to a claim for damages under paragraph 66 of Schedule 12 when it is alleged that an HCEA has breached a provision of Schedule 12.
  - vi. An HCEO and an HCEA can be a defendant to a dispute under regulation 16 of the Taking Control of Goods (Fees) Regulations 2014 SI No 1 ('the Fees Regulations').
  - vii. Section 63(2)(c) of the TCEA does not apply to an enforcement officer.
  - viii. Mr Bone should not have been held liable for any costs incurred by Mr Brown or by DCBL, whether in the fees dispute or in the damages claim. Nor should he be liable for any of the costs incurred by Mr Williamson the fees dispute.

### *The facts*

5. I take the facts from the Judge's judgment.

### *The claim against Mr Bone and the issue of the writ*

6. Two claimants brought a claim against Mr Bone. Judgment for £24,000 was given in their favour. On 17 September 2019, they obtained a writ of control from the Yeovil District Registry. The writ was directed to Mr Williamson. Mr Williamson is an HCEO authorised to enforce writs from the High Court. The language of the writ is important. The writ commanded Mr Williamson to ‘seize in execution the goods, chattels and other property’ of Mr Bone ‘authorised by law and raise therefrom the sums detailed in the Schedule (together with fees and charges to which you are entitled)’.

*Mr Brown’s engagement and the first enforcement visit*

7. Mr Williamson engaged Mr Brown, who, it appears, is an employee of Direct Collection Bailiffs Limited (‘DCBL’), to enforce the writ by taking control of Mr Bone’s goods. I note that in paragraph 3 of her judgment, Master Sullivan said that, in his witness statement, Mr Brown described himself as self-employed. He went to Mr Bone’s home on 3 October 2019. The fees claimed for this visit were £5,703.60. That sum was described in the statement of fees as ‘[DCBL] Fees Subtotal’. Mr Bone’s solicitors wrote to DCBL challenging those fees. Mr Kessler points out that, while this was not a finding made by the Judge, it is a matter of public record from Companies House, and was in evidence before the Master and the Judge, that Mr Williamson has been a director of DCBL since 20 March 2019.

*The stay of execution and the second enforcement visit*

8. Mr Bone then applied for, and was given, a stay of execution of enforcement. Master Davison made an order on 19 December 2019 which required Mr Bone to discharge the debt at a rate of £200 per month. Despite that order, Mr Brown and others went to Mr Bone’s home on 10 January 2020. When they were told about Master Davison’s order, they went away. Mr Kessler’s skeleton argument suggests (paragraph 11) that Mr Brown’s evidence was that he was aware of the stay, but, despite that, went to Mr Bone’s house. That is supported by paragraph 3 the judgment of Master Sullivan. She recorded that Mr Williamson’s witness statement said that he had been told of the stay on 20 December, and, in short, had gone to Mr Bone’s home on 10 January 2020 as the result of ‘a complete oversight’ on his part.

*Mr Bone’s application*

9. On 18 September 2020, Mr Bone made an application under regulation 16 of the Fees Regulations and CPR Part 84.16 against Mr Williamson. Mr Bone asked for a stay of the enforcement of the fees and a detailed assessment of the fees for the execution of the writ, on the grounds that the fees were ‘inaccurate’. He argued that the fees were not consistent with the scheme in Schedule 12 of the Tribunals Courts and Enforcement Act 2007 (‘the TCEA’) and the Fees Regulations. Mr Bone also asked for damages and costs for the breach of Master Davison’s order. In his supporting witness statement Mr Bone made only two criticisms of the fees: that no credit had been given for £500 which he had already paid, and that the charge for VAT was wrong. He did not explain why the application was issued against Mr Williamson, rather than against Mr Brown or DCBL.

*Mr Williamson’s position*

10. Mr Williamson has consistently said that he was not the correct defendant. He said in correspondence that the HCEO had no entitlement to, and does not recover fees from,

the debtor. Either Mr Brown and/or DCBL was the correct defendant. I note that his stance is directly contrary to that taken by the Association (see paragraph 22, below). As will become clear, one of the matters which is relevant to the Lord Chancellor's consideration of any application to be an HCEO is whether the applicant is a current member of the Association (see paragraphs 33 and 34, below), and an HCEO must keep the Lord Chancellor informed of any changes to the information in the application. If the Lord Chancellor wished to know whether or not an HCEO is still a member of the Association, that also would be a condition of his continuing authorisation as an HCEO (see paragraph 35, below).

#### *Further developments*

11. After a directions hearing on 4 November Mr Bone was ordered to add Mr Brown and DCBL as defendants to his application. He nevertheless maintained the application against Mr Williamson. Mr Williamson's solicitors continued in correspondence to try to persuade Mr Bone that Mr Williamson was the wrong defendant. They made various offers to Mr Bone, but to no avail. On 6 January 2021, Mr Brown agreed to return the enforcement fees and VAT to Mr Bone. He said that it was not worthwhile for him to continue to oppose the application, given the small amount of fees at issue and the risk of irrecoverable costs. The difficulty for Mr Bone was that by that date, Mr Williamson had incurred a significant amount of costs.

#### *The hearing on 10 February 2021*

12. The Master heard Mr Bone's claim (against Mr Brown and DCBL) for damages for breach of the order of Master Davison on 10 February 2021. Those defendants were separately represented. She dismissed the claim. She held that they had breached Master Davison's order, but that the breach caused Mr Bone no loss. Mr Bone did not appeal against that part of the Master's order. She awarded the defendants their costs of the hearing, which, by that stage, were the only costs in dispute.
13. She awarded Mr Williamson his costs of the damages claim. She also awarded him all the costs of the assessment of fees on the ground that Mr Williamson, as an HCEO, was not the right defendant. In her brief reasons she relied on language of regulation 4 of the Regulations. Regulation 4 is said to refer to the fees of an HCEA, and not to the fees of a HCEO. She held that the HCEA and HCEO were different entities. Under the scheme of the Regulations, the fees were those of the HCEA, not of the HCEO.

#### *Mr Bone's appeal*

14. Mr Bone appealed the Master's order on two grounds. Only the first ground is relevant: the Master was wrong to hold that Mr Williamson was not the correct defendant. His argument, shortly, was that the HCEA acts under the authority of the HCEO when he charges fees. The HCEA is therefore the HCEO's agent and the HCEO is therefore the correct defendant. The debtor can add the HCEA as a further party, but is not required to do so.

#### *The Judge's reasoning*

15. The Judge considered the first (relevant) ground of appeal in paragraphs 23-29. Mr Kessler accepted that only an HCEA could recover and sell goods. She quoted a judgment of Senior Master Fontaine to that effect: '...legally the HCEO (unless he or

she is also a certificated enforcement agent) must make use of a certificated enforcement agent to actually carry out the enforcement steps (s. 63 TCEA 2007). Those agents are specialists in the process of enforcement steps “on the ground” acting on instruction from the HCEO’ (*Just Digital Marketplace v High Court Enforcement Officers Association* [2021] EWHC 15 (QB), paragraph 29).

16. Mr Kessler added that HCEAs can only take enforcement steps on the authority of the HCEO (paragraph 2(2) of Schedule 12 to the TCEA). The debtor’s possessions are retained and the fees are recovered under that authority. It followed that if the HCEA acts under the authority of the HCEO when levying fees, a judgment debtor must be able to dispute the fees with the HCEO, who is the HCEA’s principal.
17. There were good reasons for making the HCEO the defendant in a dispute about fees. HCEAs ‘come and go’. There is a lower bar to employment as an HCEA than as an HCEO. HCEOs must be trained. Their professional standards are high, as they are officers of the court. Debtors are often vulnerable and lack legal advice. There is ‘good sense’ in making the HCEO responsible both for recovering the goods and the fees.
18. The Judge accepted the parties’ agreed position that HCEAs and HCEOs are different entities. The HCEO has the power to enforce the debt, but (unless he or she is ‘dual-qualified’) the HCEO must instruct or authorise an HCEA to take steps to enforce the writ by taking control of the goods and by selling them under the enforcement power (paragraph 25).
19. The Fees Regulations, which are made under the power conferred by paragraph 62 of Schedule 12 to the TCEA, refer throughout to the HCEA, and not to the HCEO, as the person who is entitled to recover the fees for enforcement-related services from the debtor. The statutory definition of ‘HCEA’ does not include the HCEO. Regulation 16 of the Regulations refers to ‘the fees recoverable under these Regulations’ (emphasis as in the judgment). Any dispute about them is to be determined by the court. The Regulations are ‘a self-contained scheme for the charging of fees, and mechanism for dealing with disputes as to those fees’. The correct respondent to an application under regulation 16 and CPR 84.16 was the HCEA and not the HCEO (paragraph 26).
20. In paragraph 27 she considered an argument that in enforcing the writ and by charging the fees, the HCEA was acting as agent for his principal, the HCEO. Mr Kessler did not develop that argument. Its difficulty was that when the HCEA enforced the writ and charged fees, he was doing things which the HCEO has no power to do under the Regulations. She therefore found it difficult to see how Mr Brown could be acting as Mr Williamson’s agent. The fees charged by Mr Brown were for work which he had done in enforcing the writ. The bill was sent by him or by ‘his employer’, DCBL, to Mr Bone (but see paragraph 7, above). There was no evidence that Mr Williamson was entitled to any part of the fees. The evidence before the Master was to the contrary effect (see the witness statement of Mr Williamson). So even if, in some respects there was a relationship of agency between the two, the fees claimed by Mr Brown were for work he personally had done.
21. Mr Kessler submitted that paragraph 66 of Schedule 12 helped his argument. It provides that where an HCEA breaches any provision of Schedule 12, the court may order him

or ‘any related party’ to pay damages. A ‘related party’ includes the person on whom the enforcement power is conferred, that is, the HCEO. This provision expressly imposed liability on the HCEO for some acts. It is consistent with the requirement that the HCEO should have insurance cover. But the submission of an incorrect bill for fees is not a breach of Schedule 12, and would not make an HCEA or an HCEO liable to pay damages. The Judge’s conclusion was that paragraph 66 did not help Mr Bone.

### *The position of the Association*

22. This is a convenient point at which to describe the Association’s view, which is put forward in a witness statement dated 22 May 2023 from the Association’s current chair, Mr Smith. It is that the effect of the legislative framework is that ‘an HCEO is personally responsible and personally liable for any acts taken by an [HCEA] acting under his authority under a Writ of Control issued in the HCEO’s name and that any fees recovered under the power of the writ are the entitlement of the HCEO and not the [HCEA]’. He refers to the Association’s Best Practice document, published on the Association’s website. Paragraph 1.2 states that HCEOs are responsible for actions of staff, ‘including appropriate oversight of certificated [HCEAs]’. Paragraphs 12.1-12.6 deal with fees. HCEOs are told to ‘keep appropriate notes and other records (including as to timing of events) to justify fees charged, and, in particular, the escalation from one fee stage to a higher fee stage’. The reference to HCEOs includes ‘all persons and businesses assisting in the enforcement of a writ on behalf of an HCEO’ (paragraph 1.3).

### *The legislative framework*

#### *The Courts Act 2003*

23. Section 1(1) of the Courts Act 2003 (‘the 2003 Act’) is headed ‘The general duty’. It imposes a duty on the Lord Chancellor to ensure that there is ‘an efficient and effective system to support the carrying on of the business of’ the courts listed in that provision. The list includes ‘the Senior Courts’. Section 2 is headed ‘Court staff and accommodation’. Section 2(1) gives the Lord Chancellor power to ‘appoint such officers and other staff as appear to him appropriate for the purpose of discharging his general duty in relation to the courts’. By section 1(2), ‘the civil service pension arrangements for the time being in force apply (with any necessary adaptations) to persons appointed under subsection (1) as they apply to other persons employed in the civil service of the State’. Those arrangements are defined in section 2(3). He may, subject to exceptions in section 2(5) and 2(6), make such contracts for the provision of officers, staff or services by other people, or by their subcontractors, ‘as appear appropriate to him for the purpose of discharging his general duty in relation to the courts’.
24. Section 99 is headed ‘High Court writs of execution’. Section 99(1) enacts Schedule 7 which ‘contains provisions about High Court writs of execution...’ Section 99(2) abolishes ‘[a]ny rule of law requiring a writ of execution issued from the High Court to be directed to a sheriff’.
25. Paragraph 2(1) of Schedule 7 defines an ‘enforcement officer’ as ‘an individual who is *authorised* to act as such by the Lord Chancellor or a person acting on his behalf’. I

have italicised the word ‘authorised’ whenever it appears in the relevant parts of the legislative scheme, as it is relevant to one of Mr Kessler’s arguments, which I consider in paragraph 87, below. The Lord Chancellor or someone acting on his behalf must assign an enforcement officer to each district specified in regulations made under paragraph 12 (paragraphs 1 and 2(2)). Paragraph 3 provides for the identification of the officer from among the available enforcement officers to whom a writ of execution from the High Court may be directed.

26. Paragraph 4 applies in relation to writs directed to one or more enforcement officers under paragraph 3, and to warrants issued to them under paragraph 3A (paragraph 4(1)). But paragraph 4 is ‘subject to Schedule 12 of [the TCEA] in the case of a writ conferring power to use the procedure in that Schedule’. By paragraph 4(2), the relevant officer ‘has, in relation to the writ, the duties, powers, rights, privileges and liabilities that a sheriff of a county would have had at common law if – (a) the writ had been directed to him, and (b) the district in which it is to be executed had been within his county’. Paragraph (2A) makes similar provision about warrants. The ‘relevant officer’ is the officer, or if more than one, the officers, to whom the writ is directed (paragraph 4(3)). By paragraph 4(4), paragraphs 4(2) and 4(2A) apply to ‘a person acting under the authority of the relevant officer as they apply to the officer’.
27. Every constable, if asked by an enforcement officer, or by a person acting under the authority of an enforcement officer, must help the officer or that person in the execution of the writ or warrant (paragraph 5).
28. Paragraph 6 is headed ‘Application of paragraphs 7-11’. By paragraph 6(1), paragraph 7 applies to ‘any writ of execution issued from the High Court’. Paragraphs 8-11 ‘do not apply to any writ that confers power to use the procedure in Schedule 12 to [the TCEA]’, but apply to any other writ of execution against goods which is issued from the High Court (paragraph 6(2)). Before it was amended by the TCEA, paragraph 6 simply provided that ‘Paragraphs 7-11 apply to any writ of execution against goods which is issued from the High Court’.
29. Paragraph 7 makes formal provision about the endorsement of the writ, and for who is responsible for endorsing it. No fee may be charged for endorsing a writ (paragraph 7(5)).
30. Paragraph 8 is headed ‘Effect of writ’. Paragraph 8 deals, in short, with the property in the goods of the execution debtor. The writ binds that property from the time it is received by the person who is under a duty to endorse it. Paragraph 9 is headed ‘Seizure of the goods’. It applies where an enforcement officer or other person who is under duty to execute it is executing the writ. It describes the power of the enforcement officer or other person to seize the debtor’s goods. Paragraph 10 is headed ‘Sale of goods seized’. It provides for the way in which any goods seized under paragraph 9 are to be sold, if they are to be sold for more than £20. Paragraph 11 is headed ‘Protection of officers selling seized goods’. When it applies, the purchaser of the goods acquires good title to them and no person can recover against the officer or any person acting under him for selling the goods or for paying over the proceeds of that sale, other than in the circumstances described in paragraph 11(2). It is without prejudice to the rights of a ‘lawful claimant’ (as defined in paragraph 11(4)).

31. Paragraph 12(1) gives the Lord Chancellor power to make regulations ‘for the purpose of giving effect to the provisions of this Schedule that relate to enforcement officers’. Those regulations may ‘in particular’ make provision about ‘the conditions to be met by individuals seeking to be *authorised* as enforcement officers’ (paragraph 12(2)). They may also make provision, among other things, and subject to paragraph 7(5), about ‘the determination of fees that may be sought by enforcement officers’ (paragraph 12(3)).

*The High Court Enforcement Officers Regulations*

32. The regulations made under paragraph 12(1) are the High Court Enforcement Officers Regulations 2004 SI No 400 (‘the HCEO Regulations’). ‘Enforcement officer’ is defined in regulation 2(1)(c) as ‘an individual *authorised* by the Lord Chancellor under Schedule 7 to act as such’. A ‘writ of execution’ does not include a writ of sequestration or a writ relating to ecclesiastical property (paragraph 2(2)(b)).
33. Paragraph 4 makes provision for the conditions to be satisfied if a person is to be *authorised* to act as an enforcement officer: such a person will not be so *authorised* unless he fulfils those conditions. They include various disqualifications for reprehensible conduct such as having a conviction resulting in a custodial sentence or for any offence of dishonesty or violence, a liability for unpaid fines, and being an undischarged bankrupt. They must not carry on or be involved in any business relating to the purchase or sale of debts. Paragraph 5 makes intricate provision for the application procedure. The applicant must provide detailed information on a wide range of topics, including ‘any current membership... of a professional body which is listed in Schedule 2 as a professional body recognised by the Lord Chancellor’, ‘the bank account or accounts held by the applicant through which it is proposed that the monies recovered on behalf of judgment debtors are to be paid’ (regulation 5(3)(v)), and details of relevant insurance policies (as defined in regulation 5(6) (regulation 5(3)(b)(i)). Schedule 2 to the HCEO Regulations says that the Lord Chancellor recognises one professional body, that is, the Association.
34. Regulation 6 permits the Lord Chancellor to take into account, when deciding whether to *authorise* an individual to act as an enforcement officer, the information in and with the application form, and any other relevant information. Once *authorised* as an enforcement officer, an individual is assigned to a district or districts. Once the enforcement officer has been assigned to a district or districts, he must ‘undertake enforcement action for all writs of execution which are to be executed at addresses in his assigned district (regulation 7).
35. Once *authorised*, the enforcement officer must satisfy the conditions listed in regulation 8. They are: the successful completion of any required training, complying with any of the Lord Chancellor’s requirements for continuous professional development, holding current relevant insurance policies, holding ‘a bank account through which monies recovered on behalf of judgment debtors are to be collected and paid’ (regulation 8(d)) and producing to the Lord Chancellor annual audited or certified accounts, performance statistics when requested, and any other relevant information ‘relevant to his work as an enforcement officer as may be required’ giving the Lord Chancellor ‘such other information or documentation relevant to his work as an enforcement officer as may be required’, which could include, if the Lord Chancellor wishes to know, whether he is



still a member of the Association. Regulation 9 requires an HCEO immediately to notify the Lord Chancellor in writing of any change in ‘the bank account or accounts held by him through which monies recovered on behalf of judgment debtor as collected and paid’ and any other ‘information or documentation’ contained in his application.

36. Regulation 12(1) permits the Lord Chancellor to terminate the *authorisation* of an individual to act as an enforcement officer, or his assignment, on the grounds listed in regulation 12(2). The grounds are that it is in the public interest to do so, that any of the information in or with the application has been found to be incomplete or untrue, that ‘the enforcement officer or any person acting on his behalf who assists in his work as an enforcement officer has behaved in a manner which the Lord Chancellor reasonably considers to be unprofessional or unacceptable’, or he has failed to satisfy one or more of the conditions in regulation 8.
37. Regulation 13 is headed ‘Fees’. Regulation 13(1) introduces Schedule 3 which sets out the fees which may be charged by enforcement officers. Paragraph 13(3A) provides that ‘where an enforcement officer uses the Schedule 12 procedure and the proceeds, if any are insufficient to enable the enforcement officer to recover the compliance fee, that fee (or the balance of it which remains outstanding) must be paid by the person on whose application the writ was issued’. ‘Schedule 12 procedure’ and ‘compliance fee’ have the same meanings as they have in the Fees Regulations (paragraph 3(3A)). Paragraph 3(4) provides that an enforcement officer or a party liable to pay the fees under Schedule 3 to the HCEO Regulations may apply to a costs judge or to a district judge for an assessment of the amount payable by the detailed assessment procedure in accordance with the Civil Procedure Rules 1998. Schedule 3 is headed ‘Fees chargeable by Enforcement Officers’. When first enacted, Schedule 3.A. was a detailed scheme for the fees which were ‘chargeable on execution of writs of fieri facias’, including percentages of the amount recovered. Part A was repealed on the commencement of Schedule 12 to the TCEA. Part B deals with ‘fees chargeable on executing writs of possession or delivery’ and Part C with ‘General Fees’. Fees are chargeable for a copy of any return endorsed by the HCEO and, under the heading ‘Miscellaneous’, for ‘any matter not otherwise provided for, such sum as a Master, district judge or costs judge may allow upon application’.

### *The TCEA*

#### *Chapter 1 of Part 3*

38. The long title of the TCEA describes it as ‘An Act...to amend the law relating to the enforcement of judgments and debts...’. Part 3 is headed ‘Enforcement by taking control of goods’. Chapter 1 (sections 62-70) is headed ‘Procedure’.
39. Section 62 is headed ‘Enforcement by taking control of goods’. Schedule 12 applies when an enactment, writ or warrant confers a power to use the procedure in the Schedule ‘(taking control of goods and selling them to recover a sum of money)’ (section 62(1)). The power conferred by a writ to take control of goods and sell them to recover a sum of money ‘is exercisable only by using that procedure’ (section 62(2)). Writs of fieri facias, except writs of fieri facias de bonis ecclesiasticis, are renamed ‘writs of control’ (section 62(4)(a)). Section 62(3) introduces Schedule 13 which, among other things, makes amendments ‘relating to Schedule 12 and to distress and execution.’

40. Section 63 makes provision about ‘Enforcement agents’. Section 63 and section 64 apply ‘for the purposes of Schedule 12’ (section 63(1)). An individual may act as an enforcement agent only if (a) he acts under a certificate under section 64, (b) he is exempt, or (c) he acts in the presence of and under the direction of a person to whom (a) or (b) applies (section 63(2)). The only potentially relevant exemption, relied on by Mr Kessler in his submissions, is someone who is acting in the course of his duty as ‘a person appointed under section 2(1) of the [2003 Act]’ (section 63(3)(c)). A person is guilty of an offence if he knowingly or recklessly purports to act as an enforcement agent if he is not authorised by section 63(2) (section 63(6)). The phrase ‘an individual’, referring to an enforcement agent, is used four times in section 63.
41. Section 64 makes provision for certificates to act as an enforcement agent. A certificate to act as an enforcement agent may be issued by a county court judge (section 64(1)). The Lord Chancellor must make regulations about certificates under section 64 (section 64(2)) (see further, paragraphs 61-63, below). Those regulations may, in particular, make provision for, among other things, certificates to be issued subject to conditions, including the giving of security, for the suspension and cancellation of certificates, and requiring courts to make information available about certificates (section 64(3)).
42. Section 65(1) provides that ‘This Chapter replaces the common law rules about the exercise of powers which under it become powers to use the procedure in Schedule 12’ (section 65(1)). Section 65(2) is a non-exhaustive list of the rules which are replaced. They ‘include’, so far as is relevant to this appeal, ‘rules distinguishing between an illegal, an irregular and an excessive exercise of a power’, and ‘rules that would entitle a person to bring proceedings of a kind for which paragraph 66 of Schedule 12 provides (remedies available to debtor)’.
43. Section 70(1) gives the High Court a wide power, if at any time it is satisfied that a party to proceedings is unable to pay a sum recovered against him, to stay execution of a writ of control ‘for whatever period and on whatever terms it thinks fit’. The court may act from time to time until it appears that the cause of the inability to pay has ceased (section 70(2)).
44. Section 90 in Chapter 3 (‘Regulations’) confers a power on the Lord Chancellor to make regulations.

### *Schedule 12*

45. Paragraph 1 of Schedule 12 defines some terms. Using the procedure in Schedule 12 to recover a sum means ‘taking control of goods and selling them to recover that sum in accordance with this Schedule and regulations made under it’ (paragraph 1(1)). In Schedule 12, a power to use the procedure to recover a particular sum is called ‘an enforcement power’ (paragraph 1(2)). Paragraph 1(4)-(6) defines ‘debt’, ‘debtor’ and ‘creditor’ in relation to ‘an enforcement power’.
46. Paragraph 2(1) defines an ‘enforcement agent’ in Schedule 12 as ‘a person authorised by section 63(2) to act as an enforcement agent’. Only an enforcement agent may take control of goods and sell them under an enforcement power (paragraph 2(2)). If an enforcement agent is not ‘the person on whom an enforcement power is conferred’ he

may only act ‘if authorised by that person’ (paragraph 2(2)). Paragraph 3 provides a list of more definitions for Schedule 12.

47. An enforcement agent may not take control of goods unless the debtor has been given notice (paragraph 7(1)). Paragraph 7(2) provides that regulations must make certain stipulations about such notices.
48. Paragraph 12(1) provides that, unless paragraph 12(2) applies, an enforcement agent may not take control of goods the aggregate value of which is more than ‘the amount outstanding’ and ‘an amount in respect of future costs, calculated in accordance with regulations’. Paragraph 12(2) permits an enforcement agent to take control of goods of a higher value on premises or on a highway, ‘only to the extent necessary’, if there are not enough goods of lower value within a reasonable distance, either on the highway, or in premises which he has power to enter. Goods are only above a given value if ‘it is or ought to be clear’ to the enforcement agent that they are (paragraph 12(3)).
49. Proceeds from the exercise of an enforcement power must be used to pay the amount outstanding (paragraph 50(1)). ‘Proceeds’ is defined in paragraph 50(2) as the proceeds of sale or disposal of controlled goods, and money taken in exercise of the power, and ‘the amount outstanding’ as the sum of the amount of the debt which is unpaid (or which the creditor agrees to accept) and of ‘any amounts recoverable out of the proceeds in accordance with regulations under paragraph 62(2)’ (regulation 50(3)). If the debtor pays the amounts outstanding in full after the enforcement agent has taken control of the goods, and before they are sold or abandoned, the enforcement agent must make the goods available for collection if he has removed them, and no further steps may be taken ‘under the enforcement power concerned’ (paragraph 58). Paragraph 59 applies if a further step is taken despite paragraph 58(3) (paragraph 59(1)). The enforcement agent is not liable unless he had notice, when the step was taken, that the amount had been paid in full (paragraph 59(2)). Paragraph 59(2) applies ‘to any related party to the enforcement agent (paragraph 59(3)). If the step is the sale of the goods, the purchaser nevertheless gets good title unless he or the enforcement agent had notice that the amount had been paid in full (paragraph 59(4)).
50. Paragraph 62(1) provides that regulations may make provision for the recovery ‘by any person’ from the debtor of ‘amounts in respect of costs of enforcement-related services’. The regulations may provide for recovery to be from the proceeds of enforcement or otherwise (paragraph 62(2)). The amount which can be recovered is to be decided by or under the regulations (paragraph 62(3)). Regulations may further provide for any amount which is disputed to be assessed in accordance with Rules of Court (paragraph 62(4)). ‘Enforcement-related services’ means ‘anything done under or in connection with an enforcement power, or in connection with obtaining an enforcement power, or any services for the purposes of a provision in this Schedule, or regulations under it’ (paragraph 62(5)). At the end of paragraph 12, the Judge accurately stated the effect of this consistently with that provision.
51. The liability of an enforcement agent or of ‘any related party to a lawful claimant for the sale of controlled goods is excluded, except in two cases (paragraph 63(1)).
  - i. Liability is not excluded if at the time of sale the enforcement agent had notice that the goods were not the debtor’s, or not his alone.

- ii. It is also excluded if before the sale the lawful claimant had made an application to court claiming an interest in the goods.  
'Lawful claimant' is defined in paragraph 63(4). 'Related party' is defined in paragraph 66(6) (see the next paragraph).
52. Paragraph 66 applies when an enforcement agent 'breaches a provision' of Schedule 12, or acts under a writ which is defective (paragraph 66(1)). That breach or defect does not make the enforcement agent, 'or the person he is acting for' a trespasser (paragraph 66(2)). The debtor may, however, bring proceedings under paragraph 66 (paragraph 66(3)). In the proceedings, the court may order goods to be returned to the debtor, order the enforcement agent or a related party to pay damages in respect of loss suffered as a result of the breach or of anything done under the defective instrument (paragraph 66(5)). Paragraph 66(6) defines 'a related party' as 'either of the following (if different from the enforcement agent)... the person on whom the enforcement power is conferred...or the creditor'. There is no power to award damages if the enforcement agent acted in the reasonable belief that he was not breaching a provision of Schedule 12 or that the instrument was not defective (paragraph 66(8)). Paragraph 66 is subject to paragraph 59 if there is a breach of paragraph 58(3) (paragraph 66(9)).
53. A person who intentionally obstructs a person 'lawfully acting as an enforcement agent' or who intentionally interferes with controlled goods without a lawful excuse is guilty of an offence (paragraph 68(1) and (2)).
54. Paragraphs 148-151 of Schedule 13 make the amendments to the 2003 Act which are signalled by section 62(3).

### *The Fees Regulations*

55. The Fees Regulations are the regulations made under paragraph 62(1) of Schedule 12. Paragraph 2(1) defines 'the amount outstanding' by reference to paragraph 50(3) of Schedule 12 (see paragraph 49, above). 'Enforcement agent' means 'an individual entitled to act as an enforcement agent by virtue of section 63(2) of the [TCEA] but it does not include an individual who may so act by virtue of section 63(2)(c)' (see paragraph 40, above). 'Enforcement power' has the meaning given by paragraph 1(2) of Schedule 12 (see paragraph 45, above), and 'enforcement-related services' the meaning given by paragraph 62(5) of Schedule 12 (see paragraph 50, above). 'Proceeds' has the meaning given by paragraph 50(2) of Schedule 12 (see paragraph 49, above). The Fees Regulations apply when an enforcement agent uses the Schedule 12 procedure (regulation 3).
56. Regulation 4 is headed 'Recovery of fees for enforcement-related services from the debtor'. Regulation 4(1) provides that the HCEA may recover, from the debtor, the fees indicated in the Schedule in accordance with regulations 11, 12, 13, 15 and 17 'by reference to the stage or stages of enforcement for which enforcement-related services have been provided'. Those stages are described, if a High Court writ is being enforced, in regulation 6. If the creditor is not registered for VAT, the enforcement agent may also recover 'the sum equivalent to VAT on those fees'. The fees referred to in paragraph 4(1) (and the equivalent of VAT) may be recovered out of the proceeds (regulation 4(2)). The enforcement agent may recover, under regulation 4, the whole fee provided for in

the Schedule for a stage (and the sum equivalent to VAT) where the amount outstanding is paid after the commencement, but before the completion, of that stage (regulation 4(4)).

57. I note that regulation 4(5) refers to a case in which ‘the enforcement agent is acting under an enforcement power conferred by a High Court writ’, and regulation 6(1) also refers to ‘enforcement under an enforcement power conferred by a High Court writ’. The heading of regulation 5 contains the phrase ‘enforcement other than under High Court writs’ and regulation 5(1), the phrase ‘under an enforcement power which is not conferred by a High Court writ’. Paragraph 7(b) provides that where ‘enforcement takes place under a High Court writ’, the percentage fee is to be calculated by multiplying the amount of the sum to be recovered which exceeds £1000 by the percentage in the relevant column of table 2 in the Schedule to the Fees Regulations. Regulation 7(a) refers to enforcement ‘other than under a High Court writ’.
58. Regulation 8 provides that the enforcement agent may recover other ‘fees and disbursements’ from the debtor. Those are the fees and disbursements set out in regulations 8, 9, 10, 11 and 18. Regulation 12 provides that where the debtor is a vulnerable person, the fees are not recoverable unless the enforcement agent has, before removing any goods which have been taken into control, given the debtor an adequate opportunity to get assistance and advice in relation to the enforcement power. Regulation 14 obliges the enforcement agent, as soon as possible after the sale or disposal of the goods, to provide the debtor and any co-owner of the goods with a statement containing the information listed in regulation 14(1)(b) and with any receipts, and where it applies, with the information listed in regulation 14(3).
59. Regulation 16 is headed ‘Disputes about the amount of fees and disbursements recoverable under regulations’. On an application ‘in accordance with rules of court, any dispute regarding the amount recoverable under these Regulations is to be determined by the court’.
60. Mr Kessler points out that it is clear from regulation 17(1) that fees and disbursements may not be recovered from the debtor ‘in relation to any stage of enforcement undertaken at a time when the relevant enforcement power has ceased to be exercisable’. Regulation 17(2) and (3) deals with two particular situations in which a power ceases to be exercisable.

*The regulations made under sections 64 and 90 (‘the Certification Regulations’)*

61. The Certification of Enforcement Agents Regulations (‘the Certification Regulations’) 2014 SI No 421 are the regulations made under sections 64 and 90. A certificate under section 64 may only be issued on the application of the person to whom it is to be issued, and if the judge is satisfied that he is a fit and proper person, has sufficient knowledge of the relevant law and procedure to be competent to exercise powers of enforcement, that the forms he intends to use conform with the design and layout prescribed in the Schedule to the Certification Regulations, that he has lodged the security required by regulation 6(1) and that he does not carry on, and will not be employed in, a business which includes buying debts (regulation 3). The court must compile and maintain a list of all the persons who have a current certificate (regulation 4(1)), which contains the information described in regulation 4(2). The list must be published on a website

(regulation 4(3)). The court must also publish a list of everyone who has applied for a certificate, in part so that a person who has any reason to think that the applicant may not be a fit and proper person can object to the application (regulation 4(5)).

62. Before a certificate is issued, the application must lodge, by way of bond, security totalling £10,000 in court, or satisfy the judge that such security exists (regulation 6(1)). That bond must be retained once the certificate is issued 'for the purpose of securing the certificated person's duties as an enforcement agent, and the payment of any reasonable costs, fees and expenses incurred in the investigation of any complaint made to the court against the certificated person in the capacity of an enforcement agent (regulation 6(2)). He must maintain that security as long as the certificate subsists (regulation 6(3)). If there is any deficiency in the security, the enforcement agent must provide fresh security to the satisfaction of the court (regulation 6(4)). A certificate generally lasts for two years (regulation 7(1)).
63. Anyone who considers that a certified person is unfit to hold a certificate may complain to the court (regulation 9(1)) (and see regulation 10). If there has been a hearing of the complaint and the judge considers that the complaint is well founded, he may order that the security be forfeited in whole or in part and that the forfeited amount should be paid, in such proportions as the court considers appropriate, to the complainant as compensation for any failure in due performance of the duties of the certificated person, and if costs have been incurred by the court, to His Majesty's Paymaster General.

#### *Submissions on the appeal*

64. Mr Bone submits that although the appeal concerns a technical question about who is the correct respondent to an application under regulation 16 of the Fees Regulations, it raises an important question of principle, which is whether it is the HCEO, or the HCEA, who is legally responsible for charging of fees under a writ of control. Mr Kessler accepts that, under Schedule 12, only the HCEA can actually enforce the writ, but submits that all the HCEA's powers ultimately derive from the writ, which is directed to the HCEO, and that those powers only arise because the HCEO has authorised that HCEA to take enforcement action under Schedule 12. He made a number of detailed submissions referring to the legislative scheme.
65. The HCEO, who authorises the HCEA to take enforcement action, is under ordinary principles, vicariously liable for the acts of the HCEA. The fact that the HCEO cannot do those acts himself is irrelevant. Mr Kessler refers, by analogy, to a solicitors' firm which delegates work to a solicitor-advocate who has higher rights of audience, for whose performance that firm is vicariously liable to the client, and qualified gas engineer, who alone is qualified to do gas fitting works, but for whose work his employer, who is not so qualified, is nevertheless vicariously liable. That liability flows from the legal relationship between principal and agent. The principal's liability does not depend on whether or not he is permitted to do the task which he has engaged his agent to do. That position is supported by the Association, he points out.
66. Mr Trivedi submits that the fees belong to the HCEA and that he alone is responsible for 'charging' for them. Mr Williamson was not, and could not, be a respondent to an application under regulation 16. The Fees Regulations are a self-contained scheme. Only the HCEA can exercise the Schedule 12 powers to take control of goods. If

necessary, the Respondent's notice contended that the Judge was wrong to hold that Mr Williamson was a 'related party' within the meaning of paragraph 66(6) of Schedule 12 (see paragraph 52, above). He contends that it is clear from paragraphs 66(6), paragraphs 1(1), 1(2) and 2(2) of Schedule 12 to the TCEA that HCEOs do not hold the defined Schedule 12 enforcement powers. Only HCEAs hold them. He further submits that Mr Bone's argument, based on the common law before the enactment of the TCEA, that the HCEO is vicariously liable for the acts of an HCEA, is a new argument which Mr Bone should not be allowed to run, but that, if he is, the argument is wrong, because the TCEA replaces the common law and/or the common law has no bearing on who is the correct defendant to a dispute about the HCEA's fees.

67. Both counsel referred to *Court Enforcement Services Limited v Marston Legal Services Limited* [2020] EWCA Civ 588; [2021] QB 129. In that case, an enforcement agent, acting under writ 1, took control of a debtor's goods and made a controlled goods agreement with him. A second enforcement agent, acting under a writ 2, and despite being aware of the writ 1, demanded from the debtor payment of the amount outstanding under writ 2, threatening to remove the goods if the debtor did not pay. The debtor then paid the amount outstanding under writ 2. The question was whether the writ 1 took priority over the writ 2. This court held that, pursuant to paragraph 4(2) of Schedule 12, writs take priority in the order of their receipt. This court also held that an enforcement agent acting under Schedule 12 did not have sufficient title in the controlled goods to found a claim for their conversion, and that while money in a bank account could not be 'controlled goods', it could nevertheless be taken in the exercise of an enforcement power. This court observed that an enforcement agent acting under a writ of control is an officer of the court, exercising authority conferred by the court's writ.
68. Lord Leggatt referred to the enforcement agents acting under the writs (paragraphs 7 and 8) and in paragraph 15 assumed that it is the enforcement officer (not the enforcement agent) who is able to pay the proceeds of one writ to another enforcement officer (paragraph 15). See also reasoning at paragraph 68: this also assumes that it is the enforcement officer who has the power to take control of the goods using the procedure in Schedule 12.
69. In paragraph 80 he rejected an argument that an enforcement officer is the agent of the debtor at whose instigation the writ in question has been issued. He '(and any agent to whom the officer delegates the exercise of the power)', rather, acts or act 'on the court's behalf', and the court acts on behalf of the sovereign. That was reflected in the prescribed forms of writs of control 'which command the enforcement officer in the Queen's name to take control of the debtor's goods and raise therefrom the sums detailed in the schedule to the writ'. He repeated that conclusion at paragraph 122; 'an enforcement officer (and any other enforcement agent acting under an enforcement power) is for relevant purposes an officer of the court'. The essential reason is that...the enforcement agent is acting at the direction of the court to enforce a judgment or order, exercising authority conferred by the court's writ'.
70. In paragraphs 90-114 he considered whether a cash payment and a credit card payment made by the debtor to fend off enforcement action were 'proceeds from the exercise of an enforcement power' within the meaning of paragraph 50(2) of Schedule 12. He concluded that they were, and that there are powerful reasons for interpreting 'money

taken' as in including not only cash but 'bank money' such as a bank transfer from a credit in a bank account, or a credit card payment. His reasoning also assumes that it is the enforcement officer, and not the enforcement agent, who has control over any cash or 'bank money'.

*Discussion*

71. There are seven issues.
- i. Is Schedule 12 to the TCEA a self-contained scheme?
  - ii. Who is responsible for keeping the proceeds of enforcement?
  - iii. Who is entitled to enforcement fees?
  - iv. What are the relevant liabilities of HCEOs and HCEAs?
  - v. Who is the correct defendant to a claim for damages under paragraph 66 of Schedule 12 when it is alleged that an HCEA has breached a provision of Schedule 12?
  - vi. Who can be a defendant to a dispute under regulation 16 of the Fees Regulations?
  - vii. Does section 63(2)(c) of the TCEA apply to an enforcement officer?

*Is Schedule 12 to the TCEA a self-contained scheme?*

72. I reject Mr Trivedi's submission that Schedule 12 and the regulations made under it are a self-contained statutory scheme. There are two main points. First, when Parliament enacted the TCEA, it was aware of the 2003 Act, and made the amendments to the 2003 Act which were necessitated, in particular, by the enactment of Schedule 12 to the TCEA (see paragraphs 148-151 of Schedule 13 to the TCEA). Parliament therefore saw the 2003 Act and the TCEA as a scheme, and so should I.
73. Second, several points of detail in the drafting of Schedule 7 to the 2003 Act and in Schedule 12, and in the Fees Regulations, show that Schedule 12 is not a self-contained scheme, but sits alongside, relies on, and is consistent with, the legal position created by Schedule 7. That, in turn, derives from the existence of the writ of control, and the power conferred by the writ of control, mediated by Schedule 7, on the HCEO. I refer to two examples only.
74. The first drafting point is that the relevant provisions of Schedule 7 to the 2003 Act show that it is the enforcement officer who is authorised to act as such by the Lord Chancellor and to whom the writ of control is directed. Subject to Schedule 12 to the TCEA, he has all the duties, powers, rights and privileges and liabilities which a sheriff would have had at common law. Nevertheless, paragraph 4(4) of Schedule 7 is also clear that any person acting under 'the authority of' the enforcement officer also derives his duties, powers etc indirectly from the writ, because he is authorised by the enforcement officer. The Fees Regulations (made under the TCEA) also assume that an enforcement power derives from the writ (see paragraph 57, above). The effect of Schedule 12 is not to change that basic legal structure, but to provide that only an HCEA may use the Schedule 12 procedure (an HCEO may do so, but only if he also happens to have a certificate to act as an HCEA: see section 63(2) of the TCEA; paragraph 39, above, and see also paragraph 2(2) of Schedule 12; paragraph 46, above). But even a HCEA may not use the procedure in Schedule 12 unless he is authorised by the HCEO, who in turn derives his authority from the writ (see, again, paragraph 2(2) of Schedule 12). The Fees Regulations make the same assumption: regulation 6(1) defines the start



of ‘the compliance stage’ as ‘the receipt by the enforcement agent of the instructions to use that [ie the Schedule 12] procedure’.

75. The second drafting point concerns the destination of proceeds of enforcement which are recovered by the HCEA when he acts under Schedule 12. I accept Mr Kessler’s submission that this is a significant feature of the scheme. In accordance with the reasoning of Lord Leggatt in the *CES* case (see paragraph 70, above) those proceeds include cash and what he referred to as ‘bank money’. In order to be authorised to act as an enforcement officer, an individual must satisfy the Lord Chancellor of a significant number of relevant matters, and in order to continue to be authorised, that person must meet several related conditions (see the HCEO Regulations, and, in particular, paragraphs 33-36, above). Those include having a specific bank account or accounts ‘held by the applicant [or once authorised, the enforcement officer] through which it is proposed that the monies recovered on behalf of judgment debtors are to be paid’, and keeping annual audited accounts. The individual can be removed as an HCEO if he does not satisfy those conditions.
76. By contrast, while an enforcement agent is required to lodge and maintain a £10,000 bond at court as security, the conditions he has to satisfy are considerably less onerous, and provide considerably less protection for the public. In particular, neither Schedule 12 nor the HCEA Regulations require him to have a bank account, nor to keep accounts.
77. Thus, the scheme as a whole provides where money recovered on behalf of judgment debtors is to be held, and for the keeping of annual audited accounts (that is, in the HCEO Regulations, which impose the relevant obligations on HCEOs). Tellingly, however, Schedule 12 is silent on these important points. In particular, Schedule 12 imposes no duties on enforcement agents in those regards. It does not do so because the HCEO regulations have already filled that gap by imposing those duties on enforcement officers.
78. It is also significant that the scheme gives the HCEO a powerful incentive to supervise the behaviour of the HCEAs whom he authorises; the HCEO’s continuing authorisation depends on the good conduct of those HCEAs (see regulation 12(2) of the HCEO regulations: paragraph 36, above).

*Who is responsible for keeping the proceeds of enforcement?*

79. The points in paragraphs 75-77, above, are also relevant, as between HCEOs and HCEAs, to the division of responsibility for keeping and accounting for the proceeds of enforcement. The scheme provides expressly for the HCEO to bear those responsibilities, and also imposes an obligation on him to have relevant insurance policies. There is no equivalent provision as respects HCEAs.

*Who is entitled to enforcement fees?*

80. Paragraph 12(3) of Schedule 7 to the 2003 Act refers to ‘the determination of the fees which may be sought by enforcement officers’ (paragraph 31, above). Regulation 13(1) of the HCEO Regulations refers to the fees which may be ‘charged’ by enforcement officers. The heading of Schedule 3 to the HCEO Regulations (paragraph 37, above) reflects the same point. By contrast, paragraph 62(1) of Schedule 12 (paragraph 50, above) is a power to make regulations for ‘the recovery by any person’ from the debtor

of amounts due in respect of the costs of enforcement services, and regulation 4(1) of the Fees Regulations provides for the ‘recovery’ from the debtor by the HCEA of the fees indicated in the Schedule, and regulation 8 for the recovery of other fees and disbursements (paragraphs 56 and 58, above). Whereas, before the commencement of Schedule 12, the enforcement officer charged fees, the position now, when the Schedule 12 procedure is used, is that the enforcement agent may ‘recover’, from the proceeds of enforcement, sums in respect of fees and other disbursements.

81. I consider that that change of language is significant. The HCEA does not charge fees, but ‘recovers’ fees from the proceeds of enforcement. Schedule 12 and the Fees Regulations do not provide that fees ‘belong’ to the HCEA. The legislative scheme does not give the HCEA any entitlement to the fees: he is responsible for their recovery, but for no more. The scheme is silent about the ownership of the fees. I consider that that silence is consistent with an assumption by Parliament and by the draftsmen of the relevant regulations that any entitlement to fees is a matter for negotiation and agreement between the HCEO and the HCEA when the HCEO decides to authorise a particular HCEA to use the procedure under Schedule 12 in relation to a particular writ of control. The legal analysis in the witness statement of Mr Smith is not detailed, but my analysis is consistent with the overall position taken in that witness statement.
82. Finally, as Mr Kessler also submits, paragraph 13(3A) of the HCEO Regulations is significant. First, it refers to use of the Schedule 12 procedure by ‘an enforcement officer’. Second, it provides that where the proceeds are insufficient to pay the compliance fee, that fee (or the outstanding balance) must be paid by the person who applied for the issue of the writ. The clear implication is that it must be paid to the enforcement officer. Finally, despite the amendments to the 2003 Act necessitated by the enactment of the TCEA, an enforcement officer may apply to a costs judge for an assessment (see regulation 13(4) of HCEO Regulations) (see paragraph 37, above).
83. I therefore reject Mr Trivedi’s submission that the fees collected by an enforcement agent are ‘his fees’ or in some way ‘belong to him’. Nothing in the language of the legislative scheme supports that submission. Further, the scheme as a whole shows that the only available destination for the sums recovered in the exercise of the Schedule 12 procedure, including any sums recovered in respect of fees, is the HCEO’s nominated account. That, in turn, would mean that the HCEO would be the legal owner of credits representing those proceeds while they were in the account, pending their distribution to those entitled to receive them, or part of them, as the case might be.

*The relevant liabilities of HCEOs and HCEAs*

84. The effect of paragraphs 4(2) and 4(4) of Schedule 7 to the 2003 Act (see paragraph 26, above) is that both the HCEO, and an HCEA acting under the authority of that HCEO, have, in relation to the writ, the duties etc (and liabilities) which a sheriff would have had at common law. Subject to Schedule 12, they are therefore jointly and severally liable as respects things done by the HCEA acting under Schedule 12. That is confirmed by the provisions of Schedule 12 which refer to the liability of ‘any related party’ (as defined in paragraph 66(6) of Schedule 12: see paragraph 52, above). Those provisions are paragraphs 59(2), 63(1) and 66(5) of Schedule 12 (see paragraphs 49, 51, and 52,

above). It is also supported by paragraph 12(1) of the HCEO Regulations (see paragraph 36, above).

*Who is the correct defendant to a claim for damages under paragraph 66 of Schedule 12 when it is alleged that an HCEA has breached a provision of Schedule 12?*

85. 'Related party' is defined in paragraph 66(6) of Schedule 12 (see paragraph 52, above). It is clear that in this case, Mr Williamson was a related party, because he was a person who was different from Mr Brown, the HCEA, and Mr Williamson was the person on whom the enforcement power was conferred (by the writ). The enforcement power was not 'conferred' on Mr Brown; he was, instead, authorised by Mr Williamson to exercise that power. I do not understand Mr Trivedi's argument to the contrary, and I reject it. Paragraph 59 of Schedule 12 (see paragraph 49, above) shows that each of the HCEO and the HCEA may be liable to a debtor if the prohibition in paragraph 58(3) is breached. Paragraph 63(1) (see paragraph 51, above) shows that each of the HCEA and the HCEO may be liable to a lawful claimant for the sale of controlled goods in some circumstances. Paragraph 66(2) (see paragraph 52, above) again assimilates the liability of HCEO and HCEA. It is as clear as it could be that paragraph 66(5) gives a debtor a choice, when he claims that an HCEA has breached a provision of Schedule 12, of bringing that claim against the HCEO or the HCEA. If he decides to make that claim against the HCEO, while he may also claim against the HCEA, he might make himself liable for the HCEA's costs unless the HCEA was also necessary party to the dispute.

*Who can be a defendant to a dispute under regulation 16 of the Fees Regulations?*

86. My starting point is that, for the scheme to work fairly and effectively, all those who might be interested in, or affected by, a dispute about fees are potentially capable of being parties to a dispute under regulation 16 of the Fees Regulations. There is nothing in the language of regulation 16 (see paragraph 59, above) which changes that starting point. Regulation 16 does not prescribe who may bring a fees dispute to court, or against whom he may bring it. This may be both because there is more than one potential claimant (the debtor and creditor) and because there is more than one potential defendant. Regulation 16 does not limit the identity of the parties in any way. Three parts of my analysis of the scheme are then relevant. First, the HCEA has no independent entitlement to fees, as his entitlement to any fees depends on what he has agreed with the HCEO when the HCEO authorised him to use the Schedule 12 procedure under a particular writ. Second, the proceeds, from which any fees must come, are held in the HCEO's bank account. Third, the HCEO is required to hold relevant insurance policies. Those factors all point to the conclusion that a debtor is entitled to bring, and, indeed, would be wise to bring, a fees dispute against the HCEO rather than against the HCEA. Again, while there is nothing to stop him bringing the dispute against the HCEA as well, he might make himself liable for the HCEA's costs unless the HCEA was also necessary party to the dispute.

*Does section 63(2)(c) of the TCEA apply to an enforcement officer?*

87. I will briefly consider Mr Kessler's alternative argument. He submitted that an enforcement officer can use the procedure in Schedule 12 without the need to authorise an enforcement agent because, in the words of section 63(2)(c), an enforcement officer is a 'person appointed by the Lord Chancellor'. I reject that submission for two reasons. It is clear from the heading of section 2 of the 2003 Act, and from its language, that it

refers to court staff: see in particular section 2(1), which for pension purposes, in effect puts court staff in a similar position to that of civil servants. By contrast, the provisions in the legislative scheme which refer to enforcement officers, and which I have italicised, all refer to ‘authorisation’ by the Lord Chancellor to act as such. I therefore conclude that an enforcement officer is not ‘appointed’ by the Lord Chancellor. An HCEO, rather, is authorised by the Lord Chancellor. It follows that he cannot, *ex officio*, use the procedure in Schedule 12. He must, instead, authorise an enforcement agent to use that procedure (unless he also happens to be a certificated HCEA himself).

*Two further points*

88. Mr Trivedi argued that Mr Williamson could not in any way be liable as respects the actions of Mr Brown under Schedule 12 because Mr Williamson could not, himself, use the Schedule 12 procedure. It is true that Mr Williamson could not use the Schedule 12 procedure, but that is irrelevant, because he had the power, which he used, to authorise Mr Brown to use it. Mr Brown had no independent power to use the Schedule 12 procedure. That is a straightforward consequence of the statutory scheme, and does not depend on any appeals to general principles of the law of agency.
89. Finally, Mr Trivedi hinted at an argument that by some route or another, DCBL held or could exercise the relevant enforcement power. If it is necessary to do so, I would also reject this submission. The term ‘individual’ is used throughout the legislative scheme, both in relation to HCEOs and to HCEAs. Both are required to meet various conditions, which, of their nature, can only be met by a human being. In the light of that consideration, a limited company cannot be authorised as an HCEO, and a limited company cannot be certificated as an HCEA. DCBL could not, therefore, hold or exercise an enforcement power.

*The consequences of my conclusions*

90. It was open to Mr Bone to bring his fees dispute under regulation 16 against either Mr Williamson or Mr Brown, or both. He was entitled, and, it might be thought, wise, to sue only Mr Williamson, since, under the statutory scheme, it was Mr Williamson who was required to keep the proceeds of enforcement in a nominated bank account, and because he was also required, as a condition of his continuing authorisation by the Lord Chancellor, to have relevant insurance policies. Having chosen, as was his right, to bring the dispute against Mr Williamson, he should not be liable for any of the costs of Mr Brown (or DCBL) in that dispute, because Mr Bone did not bring the dispute against Mr Brown (or DCBL). Mr Brown was added to the proceedings at Mr Williamson’s instigation. Nor should he be liable to Mr Williamson for any of the costs of the fees dispute before the date when all the fees were returned to him by Mr Brown. The question whether he should be liable for Williamson the costs of the fees dispute after Mr Brown refunded the fees is somewhat more difficult. It is true that, after that date, there was no longer a dispute between Mr Brown (or Mr Williamson) and Mr Bone about the fees. We have been shown a schedule of offers made to Mr Bone’s solicitors. The first two were made by ‘DCB Legal’, who were said to be acting for DCBL. The second of those offers included a contribution towards Mr Bone’s costs. All the later offers were made by Bevan Brittan (‘BB’), who said they were acting for ‘Simon John Williams’ [sic] and DCBL. None of the later offers by BB solicitors involved any offer to pay or to contribute towards Mr Bone’s costs. In the light of that conduct, I consider that Mr Williamson is also liable to pay the rest of Mr Bone’s costs of the fees dispute.

91. Mr Bone lost his claim for damages for the breach of Master Davison's order, so he is liable for Mr Williamson's costs of defending those proceedings, but only for Mr Williamson's costs. He should not be liable for Mr Brown's costs of defending that claim, as he did not choose to make Mr Brown a party, but was ordered to do so at the instigation of Mr Williamson. Mr Bone was, again, entitled to sue Mr Williamson alone, as it was Mr Williamson who authorised Mr Brown to use the Schedule 12 procedure, and who was answerable to the Lord Chancellor for Mr Brown's good conduct (see paragraph 36, above).
92. If the other members of the court agree with my conclusions, I would welcome counsel's written submissions about how my conclusions should be reflected in the terms of this court's order.

### **Lady Justice Andrews**

93. I am very grateful to Elisabeth Laing LJ for her clear exposition of the relevant statutory and regulatory framework, which despite its professed aim of simplification of the enforcement process, is far from straightforward. As she has pointed out in paragraph 80 above, the relevant provisions include specific references to fees being sought or charged by HCEOs, whereas they are *recovered* by HCEAs. That is consistent with the language of the writ of control.
94. The clue to the correct analysis seems to me to lie in the titles conferred on the two individuals. The primary obligation for enforcement lies on the HCEO, to whom the writ of control is addressed. The HCEA is an agent, not a principal. They act as agent for the HCEO when using the Schedule 12 procedure to effect the enforcement. The agent derives their powers from the authority conferred upon them by the HCEO.
95. The fact that the regulations contemplate that in practical terms, the fees will be recovered in the first instance by the agent who uses the Schedule 12 enforcement process (a sensible practical arrangement) does not mean that the agent, and only the agent, should be the respondent to a dispute regarding the amount of those fees under regulation 16 of the Fees Regulations. I also agree that the statutory scheme requires that all money recovered from the debtor in the course of the enforcement process, whether directly or in consequence of the sale of seized assets, must be paid into the designated bank account held by the HCEO. The practice adopted in the present case, whereby it appears that DCBL held the moneys in an account to the order of Mr Brown, appears to me to have been quite irregular.
96. If the submissions made by Mr Trivedi on behalf of Mr Williamson were correct, a HCEO would not be able to do what he or she is expressly commanded to do by the writ of control. In effect, all the legal responsibilities for enforcement, and the corresponding rights and liabilities would be passed to the HCEA, to whom the writ is not addressed. Notwithstanding the clear language of Paragraph 4(2) of Schedule 7 to the 2003 Act (see paragraph 36 above) the position which previously existed at common law, whereby a sheriff was responsible for the acts and omissions of bailiffs acting under his instruction, would have been done away with by the introduction of the Schedule 12 procedure, without any explanation having been given by Parliament for the decision to remove that important protection for the debtor. Much of the Association's Best

Practice document would be inaccurate or otiose. There would be little point in requiring the HCEO to have insurance, keep a bank account or maintain high professional standards.

97. I therefore needed little persuasion that the decisions of the judges in the lower courts were wrong. In my judgment, the conclusions reached by my Lady in paragraphs 85 and 86 are correct, for the reasons that she gives. Since Mr Williamson was responsible for Mr Brown and DCBL being joined unnecessarily to the proceedings, I agree that the costs consequences should be as set out in paragraph 91 above.
98. The most difficult question which has arisen (though it is unnecessary to decide it for the purposes of determining this appeal) is whether, should they wish to act in person, a HCEO can use the Schedule 12 enforcement procedure without first being certified as an enforcement agent. It would be a curious state of affairs if an individual authorised by the Lord Chancellor to act as an enforcement officer, and liable for every aspect of enforcement, were unable to utilise the compulsory statutory process for exercising the duties he is expressly authorised and mandated to carry out, unless he does so through the medium of a certified agent. In general, you cannot authorise an agent to do something you cannot do yourself, though there are exceptions, for example, where the agent has a necessary qualification that the principal does not possess (the reverse of this situation). I acknowledge, however, that Parliament might have enacted a statutory scheme that creates that state of affairs.
99. Given the very strict regulation which applies to HCEOs, the intricate application process and the stringent requirements they must satisfy before they are authorised, I cannot conceive of any good reason why an HCEO should also be required to get a certificate from the County Court under the Certification of Enforcement Agents Regulations 2014 before exercising the powers under Schedule 12. This is a situation in which the principal might well be regarded as better qualified and better regulated than the agent. Despite these misgivings, I find myself reluctantly compelled to reject Mr Kessler's argument based on Section 2(3) of the Courts Act 2003.
100. Section 62(2) of the TCEA makes it clear that the power conferred on the HCEO by the writ of control can only be exercised by utilising the Schedule 12 procedure. That schedule only refers to "enforcement agents", defined in paragraph 2 as an individual "authorised by section 63(2) to act as an enforcement agent". Paragraph 66(6) envisages that the person on whom the enforcement power is conferred may be a different individual from the enforcement agent, in which case they are a "related party". The converse of that, of course, is that they may be the same individual. But only someone who is certified or exempt from certification falls within the definition of "enforcement agent" and can use the mandatory Schedule 12 procedure. The key issue is whether a HCEO is exempt from certification.
101. Mr Trivedi pointed to the fact that the practice direction to CPR 84 specifies the documents which must accompany an application for a certificate under the Certification Regulations. This includes, at paragraph 2(1)(e), either proof that the applicant has been authorised to act as an enforcement officer in accordance with the

HCEO Regulations 2004 or that they have achieved a Level 2 qualification in Taking Control of Goods. All that indicates is that the Rules Committee has envisaged that an HCEO *may* seek certification as an HCEA. The question whether he is obliged to do so if he wishes to use the Schedule 12 procedure himself, must depend on the interpretation of Section 63 of the primary statute, not a practice direction. The commentary in Volume 1 of the 2023 White Book at paragraph 83.0.5 to the effect that enforcement officers will only be able to enforce writs of control if they are certificated as an enforcement agent under Schedule 12 likewise begs the question.

102. Section 63(3) sets out the list of exempt individuals, who include a constable and an officer of Revenue and Customs. As my Lady has noted in paragraph 27, a constable must help an enforcement officer in the execution of a writ of control if asked to do so (as well as helping a person authorised by the HCEO). That suggests that an enforcement officer might be personally involved in the enforcement process. Section 63(3)(c) refers to “a person appointed under section 2(1) of the Courts Act 2003 (court officers and staff).” The power of the Lord Chancellor under section 2(1) is a wide one, to appoint “such officers...as appear to him appropriate for the purpose of discharging his general duty in relation to the courts.” The drafter of section 63(3) must have had a particular category of individuals in mind who (a) are officers of the court and (b) might get involved in the enforcement process. At the hearing of this appeal, no-one was able to identify an individual who would fall within this specific exemption, were it not to apply to an enforcement officer. As Lord Leggatt explained in *CES Ltd v Marston*, the HCEO acts at the direction of the court to enforce a judgment or order, exercising authority conferred by the court’s writ. On the face of it, the exemption would appear apposite.
103. However, as Elisabeth Laing LJ has pointed out, section 2 requires pension arrangements to be made for such appointees. The 2003 Act also refers to HCEOs being “authorised” rather than “appointed” by the Lord Chancellor (though speaking for myself, I find that argument rather less persuasive than the pensions point, given that in this context the word “authorised” is being used in the sense of conferring a particular status upon the individual concerned.) Ultimately it seems to me that the language of section 2 of the 2003 Act is not clear enough to bring about the sensible result for which Mr Kessler contends.
104. The writ of control therefore confers specific powers on the HCEO which, because of the restrictive language of Schedule 12, he can only exercise through a certified HCEA to whom he delegates those powers. Nevertheless the HCEO remains the person to whom the enforcement fees are due and who is legally responsible for charging them. He is, of course, free to enter into such contractual arrangements as he chooses for the HCEA’s remuneration from the fees which the latter is responsible for recovering from the debtor. If there is a dispute about the level of fees charged, the HCEO is a proper respondent to an application under Regulation 16 for the resolution of that dispute. For those reasons, as well as those given by my Lady, I too would allow this appeal.

### **Lord Justice Phillips**

105. I agree with both judgments.