December 2010

CAB evidence briefing:

Uncivil recovery

Major retailers' use of threatened civil recovery against those accused of shoplifting or employee theft

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Executive summary

In each of the past three years, some 100,000 people have received one or more letters demanding a substantial sum of money as 'compensation' for their alleged shoplifting or employee theft, and threatening civil court action (and associated extra costs) if the sum demanded is not paid promptly. Since 2000, a total of more than 600,000 people have received such a 'civil recovery' demand, issued by one of a handful of agents acting for high street retailers such as Asda, Boots, Debenhams, Tesco and TK Maxx.

In the great majority of CAB-reported shoplifting-related cases, the value of the goods or cash allegedly stolen is relatively low – sometimes just a few pounds – and in four out of five cases the goods were recovered intact for resale. In employee theft-related cases, the sum demanded is usually somewhat greater, sometimes in excess of £5,000.

Among CAB-reported cases, one in four of the recipients are teenagers, of whom most are aged 14, 15 or 16. Many others have serious mental health problems, or are otherwise especially vulnerable. And, in many of the CAB-reported cases, the alleged theft is strongly denied. In some cases, the alleged offence appears to have been no more than an innocent mistake, or the result of confusion or genuine error when using a self-service checkout.

But among the more than 10,000 such cases dealt with by Citizens Advice Bureaux since 2007, including more than 300 cases examined in detail by Citizens Advice, there is one common feature: if the sum demanded is not paid, the threatened county court action does not materialise. And the most prolific civil recovery agent – Retail Loss Prevention – has confirmed that it has *never* successfully litigated a fully contested county court claim in respect of an unpaid demand. This – together with formal legal advice that there is in fact no obvious legal authority for most such demands – suggests that the practice of *threatened* civil recovery relies on fear and/or shame, and ignorance of the law, for its effectiveness.

In December 2009, a Citizens Advice report, *Unreasonable demands*, concluded that such civil recovery demands, and their seemingly hollow threat of court action and associated escalating costs and interest, constitute unfair business practice (as defined by the Office of Fair Trading).

Citizens Advice does not condone crime of any kind or level, and does not underestimate the cost of retail crime, which as the British Retail Consortium notes is "met by honest customers who end up paying more." However, the ends of deterring crime or recovering its cost do not justify any means. If retailers, dissatisfied with the level of governmental action against retail crime, are to take matters into their own hands, they must do so using means that are legitimate and *transparently* fair. *Unreasonable demands* set out recommendations to the Ministry of Justice, the Home Office and others that civil recovery be limited to cases involving serious, determined and/or persistent offences for which there has been a criminal conviction.

Since the publication of *Unreasonable demands* in December 2009, Citizens Advice has obtained both a considerable amount of new information on the practice of the civil recovery agents, and a formal Counsel's opinion on the relevant case law. And Citizens Advice Bureaux have reported dealing with demands issued by two *new* civil recovery agents, including a US-based law firm. It would appear that threatening civil recovery in cases of low-value alleged theft is a lucrative and growing business.

This report – *Uncivil recovery* – therefore sets out 30 detailed, longitudinal case studies drawn from the more than 300 CAB-reported cases examined in detail by Citizens Advice to date, together with the key findings of a quantitative analysis of these cases. And it draws on the key elements of the above-mentioned Counsel's opinion on the relevant case law. In doing so, *Uncivil recovery* aims to assist those who have received such a civil recovery demand to come to their own decision on how – if at all – to respond.

Uncivil recovery – which is endorsed by the Law Centres Federation, the Legal Action Group, and Justice – also re-iterates the key policy recommendations set out in *Unreasonable demands*:

- The Ministry of Justice should ask the Law Commission to undertake an urgent review of the law relating to civil recovery, with a view to eventually ensuring – by legislative means if necessary – that civil recovery is limited to cases involving serious, determined and/or persistent criminal activity *for which there has been a criminal trial and conviction*.
- The Government should work with retailers, the Police and others to identify and develop a range of legitimate and fair alternatives to civil recovery aimed at reducing the incidence and cost of retail crime, and in particular that committed by criminal gangs and other determined and/or persistent offenders.
- The Solicitors Regulation Authority should consider whether it needs to take further action to ensure that the civil recovery practice of solicitors is consistent with the Solicitors Code of Conduct.
- The Office of Fair Trading should consider whether any of the practices highlighted in this report constitute breaches of the Consumer Protection from Unfair Trading Regulations 2008.

However, the implementation of these recommendations would be obviated if the retailers who practise threatened civil recovery decided to cease such practice, and instead limited *actual* civil recovery to those cases involving serious, determined and/or persistent criminal activity for which there has been a criminal trial and conviction.

This would not cause significant detriment to the retail sector *as a whole*. For the total amount 'recovered' by the agents for their retailer clients each year, after deducting the agents' fees or share of the money 'recovered', seems unlikely to be more than £16 million – that is, less than 0.4 per cent of the "over £4 billion" that one of the agents says crime costs the retail sector each year. Furthermore, among CAB-reported cases, four out of five demands (80 per cent) were issued on behalf of just *eight* major retailers: Boots, TK Maxx, Asda, Tesco, Debenhams, Wilkinson, B&Q, and Superdrug.

In short, the practice of threatened civil recovery, as described in this report, is not only unfair (and arguably illegitimate), but provides no panacea for the (undoubtedly substantial) cost of retail crime. It does not target those responsible for most retail crime – criminal gangs and other *persistent* offenders – and it 'recovers' less than two per cent of the £977 million annual cost of the "security and loss prevention" measures reportedly taken by retailers. Indeed, the principal beneficiaries of the practice would appear to be the civil recovery agents, who collectively profit by millions of pounds and have no obvious interest in seeing the *reduction* in retail crime sought by public policy.

Introduction: *heavy* demands

Opening his post one day in April 2009, William (not his real name) was surprised to find a legalistically worded letter from a Nottingham-based company called Retail Loss Prevention (RLP), accusing him of having committed "a wrongful act" – the theft of unspecified goods worth £12.00 from Shell – and demanding payment of £149.50 as "damages to cover losses from this incident." As well as £12.00 for the "value" of the goods, this sum included a total of £137.50 for "staff/management time investigating and/or dealing with [the] incident", "administration costs resulting from your wrongful actions", and "apportioned security & surveillance costs." The letter concluded by warning that "failure to respond within 21 days will result in further action being taken against you."

Knowing that he had not committed any 'wrongful act' against Shell, William ignored the letter. Three weeks later, he received a second letter from RLP, stating that "our client [Shell] is determined to make full use of civil law remedies including Court action if necessary, to recover their costs caused by your wrongful actions. To avoid this action and further increased costs, you must deal with this claim within 14 days."

Suspecting the letters to be some sort of scam, William took them to the local police station, where an officer advised him to simply ignore them. He also complained in writing to Nottingham Trading Standards. Two weeks later, he received a third letter from RLP, warning that "you have a final 7 days to make payment of £149.50. Failure to do so will result in your case file being passed for further action without further notice." This letter also stated that "all personal information regarding your wrongful act is now held on a national database of incidents of dishonesty", and that "whilst this debt remains unpaid it is accruing interest on a daily basis at the rate of 8% per annum."

William followed the police officer's advice and ignored this letter too. He has since not heard further from RLP or Shell and, 19 months on, no county court claim has been issued against him. The police force in question has confirmed to Citizens Advice that its investigation of this alleged incident concluded that "no crime had been committed".

Over the past ten years, more than 600,000 people have received such a 'civil recovery' demand from RLP or one of four other civil recovery agents (see section 5, below), acting on behalf of high-street retailers such as Asda, Boots, B&Q, Debenhams, H&M, Morrisons, Primark, Superdrug, Tesco and TK Maxx. In most cases the demand has related to alleged shoplifting, but in others it has related to alleged theft by a (by now dismissed) employee. Citizens Advice estimates that, since 2007, Citizens Advice Bureaux in England and Wales have dealt with more than 10,000 such cases.

In the great majority of CAB-reported cases, the value of the goods or cash allegedly stolen is relatively low – often just a few pounds, and as little as 49 pence – but as in William's case the letters demand significant sums as compensation for "damages caused by your wrongful actions" or "security costs", and threaten county court proceedings if prompt payment is not made. In shoplifting-related cases, the sum demanded is usually a pre-determined, 'fixed sum' such as £87.50, £137.50 or £150, plus the value of any goods or cash not recovered intact for resale (often given as 'nil'). In employee theft-related cases, the sum demanded is usually somewhat greater – sometimes in excess of £2,000 and occasionally in excess of £5,000.

Among CAB-reported *shoplifting*-related cases, for example, the total value of the goods allegedly stolen was less than £20 in two out of three cases (67 per cent). Furthermore, in four

out of five of cases (79 per cent) the goods were recovered intact and fit for re-sale. And, among the other 21 per cent of shoplifting-related cases, the median value of unrecovered goods was £11.98. Yet the median sum demanded among all shoplifting-related cases was £137.50, and the average sum demanded was £147.69.

Among CAB-reported *employee theft*-related cases, the median sum demanded was £584.25, and the average sum demanded was £1,692.77. The sum demanded was more than £2,000 in 20 per cent of these cases, and more than £5,000 in nine per cent of cases.

Case of 'Sheena'

Sheena, a woman in her 40s with serious mental health problems, received a 'fixed sum' demand for £87.50 from Retail Loss Prevention in December 2009, in relation to the alleged – but strongly denied – attempted theft of an eye-liner worth £2.92 from Tesco. Sheena contends that the alleged 'offence' was simply the result of a genuine misunderstanding between herself and her friend when packing and paying for her shopping at the checkout. The police were not called to the incident (or, at least, did not attend) and, after being issued with a six-month store ban, Sheena was allowed to leave the store.

After receiving the template demand (TL1) from RLP, which gives the "value of unrecovered goods" as 'nil', Sheena sought advice from her local CAB. She then wrote to RLP, denying liability for the claim. RLP replied, stating:

"Our client [Tesco] will rely on eye witness evidence from store and security personnel, any further witness statements plus additional information from CCTV to prove this claim. This evidence will be prepared at the appropriate time and subsequently confirmed in Court.

The costs applied in your particular case are fixed costs. This is calculated as an average cost per incident. As such this average includes the time taken to watch, apprehend, interview and complete documentation, the associated administration costs for phone calls, stationery, printing and a proportion of the security measures to try and reduce thefts. Because of the frequency that incidents such as this occur, [Tesco] have little option but to take preventative measures and thereby mitigate these losses wherever possible. These costs have subsequently been tested through the civil Courts, which have established the figures to be fair and reasonable."[1]

In extensive correspondence with Citizens Advice since June 2009, RLP has repeatedly declined to provide details of any cases in which the 'fixed' sums it demands in most if not all shoplifting-related cases (and *some* employee theft cases) have been "tested through" and found to be "fair and reasonable" by the civil courts. And Citizens Advice has been unable to find any independent evidence of these alleged 'test cases' (see also page 18).

The letter from RLP concluded by warning that:

"If you fail to resolve this matter … within 21 days from the date of this letter [that is, by 22 December 2009], we will assume you have no desire to reach an amicable settlement and will refer this matter to a collection agency [*sic*] to recover the amount claimed."

Sheena did not respond to this letter and, as of 15 November 2010, she has not heard further from RLP or Tesco; furthermore, 11 months on, no county court claim has been issued against her.

Case of 'Tess'

Tess, a young single mother with serious mental health problems, received a demand for £103.93 from the Nottingham-based Civil Recovery Solutions in June 2010, in relation to the alleged – but strongly denied – attempted theft of a pack of nail files worth 79 pence from B&M. The pack of nail files

1. Letter, dated 22 December 2009, from Sonia Johnson, Legal Department, RLP.

was found on the hood of Tess's young child's buggy after Tess had paid for her shopping. Strongly denying any intent to steal, Tess contends that the pack of nail files must have fallen through her shopping basket when she placed it on the hood of the buggy after her child became upset.

The police were not called (or, at least, did not attend), the pack of nail files was recovered intact, and – after being issued with a B&M store ban – Tess was allowed to leave the store. A few days later, however, she received the demand from Civil Recovery Solutions (CRS). This states:

"The demand value [£103.93] is a calculated amount and includes, but is not limited to: losses, investigation costs, security costs, administration costs and civil recovery costs.

B&M Retail Ltd is prepared to offer a reduced settlement figure of £83.14 if this demand is settled within 21 days of this notice, in accordance with the Ministry of Justice pre-action protocol."[2]

In fact, there is no such "Ministry of Justice pre-action protocol" applicable to a 'claim' such as that made by CRS in this and other cases. Under the Civil Procedure Rules 1998 (CPR), there are ten pre-action protocols, but each of these applies *only* to a specific type of legal claim, such as for personal injury, defamation, professional negligence, and housing disrepair. There *is* a CPR Practice Direction on pre-action conduct, but it is at least questionable whether the template demand letters issued by CRS (and the other agents) comply fully with this Practice Direction.[3] The letter from CRS continues:

"If the civil demand is not settled within 21 days of this notice we will make full use of civil law to recover our client's losses which may include court proceedings. Where court proceedings are issued, the court will consider any failure to respond to correspondence when they make orders for costs and interest."

Tess sought advice from her local CAB, which wrote to CRS on her behalf, setting out her contention that the alleged 'offence' was in fact "entirely accidental" and noting that Tess suffers from "serious depression and anxiety which are exacerbated by the spurious claims being made in this instance". The CAB did not receive any response, but one week later CRS wrote to Tess, indicating that the demand had now been dropped.

Case of 'Martha'

Martha, a woman in her 60s with serious mental health problems, was accused of shoplifting in Wilkinson in June 2009. When Martha denied the alleged offence, the police were called and Martha was arrested. However, after the police had established that Martha was an inpatient of a local psychiatric hospital, she was released without charge or caution.

A few weeks later, on a visit home from the hospital, Martha found two template demands (TL1 and TSL2) from Retail Loss Prevention. These demanded a total of £89.15, including £1.65 for the goods allegedly stolen and RLP's standard sum of £87.50 for staff and management time, administration costs, and apportioned security and surveillance costs (see page 17). With the assistance of her carer, Martha sought advice from the local CAB, which telephoned RLP and explained Martha's position, including that she suffers from "memory problems, clinical depression and anxiety".

However, a few days later RLP sent Martha a further template demand (TSL3), stating that "our records indicate that you have still failed to make payment or provide a written defence" and threatening court action if payment was not made within "a final 14 days". Martha's carer took this further demand to the CAB, which then wrote to RLP, enclosing a letter from Martha's consultant psychiatrist. RLP replied, stating:

"Under the civil law, if liability is established,

2. Letter, dated 15 June 2010, from John Burton, Civil Recovery Solutions.
3. In November 2010, after being sent a draft of this report, CRS stated to Citizens Advice that it has now removed the term "Ministry of Justice pre-action protocol" from its demand letters.

damages will be awarded. These damages will be assessed in accordance with established civil law principles, and will not be reduced because of any 'mitigating circumstances'. Following a review of the case file, we have advised [Wilkinson] that they have sufficient evidence to proceed with this civil claim against [Martha]. However, after consideration of the information submitted by your client, [Wilkinson] wishes to be lenient on this occasion by using the civil claim as a deterrent and as such is prepared to suspend this case indefinitely. This is providing [Martha] is not involved, or suspected to be involved, in any further incidents on [Wilkinson's] premises, or the premises of our client members of the National Civil Recovery Programme.

Should [Martha] become involved, or are suspected to have been involved in any further incidents, [Wilkinson] reserves the right to re-call and re-activate this civil claim for compensation against them. Please be aware that subsequent incidents may then form part of the Court proceedings and further leniency will not apply. Unless the above terms are breached, we now consider this civil claim to be inactive. No further correspondence will be entered into regarding this matter."[4]

Two months later, however, Martha received a letter from a Glasgow-based and OFT-licenced debt collection agency, JB Debt Recovery, to which RLP sometimes passes an unpaid demand. Headed "Retail Loss Prevention v [Martha]", this letter (dated 6 November 2009) demands £89.15 and states:

"Our clients [Retail Loss Prevention] have instructed us to collect the above outstanding debt [*sic*] as you have ignored all previous correspondence. Should we not hear from you within 7 days of receipt of this letter, then our client will have no alternative than to consider legal action. A successful legal action could result in all legal costs being added to the amount due plus interest. We therefore require the immediate settlement in full of this debt."

The CAB then wrote to JB Debt Recovery, drawing attention to the above letter from RLP, and Martha did not hear further from JB Debt Recovery.

Unreasonable demands

Among the more than 300 CAB-reported civil recovery cases examined in detail by Citizens Advice to date, almost one in four (23 per cent) of the recipients are teenagers, and 60 per cent of these teenagers were aged 14, 15 or 16 at the time of the incident. Many other recipients have serious mental health problems, or are otherwise especially vulnerable. And, in many of these and other cases, the alleged theft is strongly denied. In some cases, the supposed 'attempted theft' appears to be no more than an innocent mistake, or the result of confusion or genuine error when using a self-service checkout. In others – especially those involving young teenagers – the recipient of the demand was present in the store at the time of the alleged offence, having entered as part of a group including the subsequently accused person, but was not themselves accused of any offence.

Case of 'Charlie'

Charlie, a single man in his 40s with Asperger's Syndrome and Attention Deficit and Hyperactivity Disorder (ADHD), received a 'fixed sum' demand for £150 from Bradford-based law firm Drydens Lawyers in May 2010, in relation to the alleged – but strongly denied – offence of failing to pay for his shopping after using a self-service checkout in Asda. The police were not called to the incident (or, at least, did not attend), and Charlie contends that the store manager eventually accepted that his failure to pay was simply a genuine error. Charlie contends

4. Letter, dated 4 September 2009, from Colleen Williams, Legal Department, RLP.

that, as a result of his conditions, he is "forgetful and loses concentration easily".

Charlie further contends that he was then allowed to pay for his shopping, and that by the time he left the store he understood this to be the end of the matter. A few days later, however, he received the template demand from Drydens. This gives the "costs of goods stolen or damaged" as "£0.00". Charlie then sought advice from his local CAB, which wrote to Drydens on his behalf, challenging the demand. A few days later, Drydens replied to the CAB, indicating that the demand had now been dropped.

Case of 'Jane'

Jane, a cancer patient in her 30s undergoing chemotherapy treatment, received a 'fixed sum' demand for £137.50 from Retail Loss Prevention in December 2009, in relation to the alleged – but strongly denied – attempted theft of (recovered) goods worth £10.00. Jane had been shopping in Tesco with her two young children, having undergone aggressive chemotherapy treatment earlier that day, and had used a self-service checkout to pay for her shopping. She had then been stopped by security staff, and accused of failing to pay for two identical items worth £5.00 each. The police were called, and issued Jane with an £80 Fixed Penalty Notice (FPN). However, Jane contends that the alleged failure to pay for the items was simply a genuine mistake on her part, and that she accepted the FPN from the police out of fear and confusion.

After receiving the initial template demand (TL1) – which gives the "value of unrecovered (or unfit for resale) goods" as 'nil' – and, two weeks later, a second template demand (TSL2), Jane wrote to RLP, simply requesting a "breakdown of how you have come to the totals outstanding, e.g. staff management costs, admin costs and surveillance costs. I am unsure how these figures have been calculated". One week later, RLP replied, stating:

"Irrespective of the fact you received a fixed penalty fine it is still [Tesco's] right to bring this civil claim against you for financial compensation. It is not negated by the outcome of any criminal investigation.

Where a business is subjected to wrongful acts, they are entitled to claim the value of the loss caused, plus the costs involved in investigation or mitigating the attempted wrongful act. Decided case-law [*sic*] provides authority for claiming the costs of investigating or mitigating a wrongful act without the need to prove loss of profit or revenue."[5]

The letter did not give any further information on, or even any citations for, the "decided case-law". Nor did it give the more detailed breakdown of the sums demanded in the template letter, as requested by Jane and required by the CPR Practice Direction on pre-action conduct, instead stating simply: "please refer to our initial letter sent to you, which details a breakdown of the sums claimed". The letter continued:

"In cases of low value it is simply not economical for our clients to spend further time and expense recording every action that they take. It is therefore reasonable and proportionate for our clients to claim an average cost based on the time taken to conduct all necessary elements of their investigation, which includes but is not limited to the following: surveillance; apprehension; interview; report and witness statement preparation, recording of the incident for company records, reviewing CCTV where appropriate, reporting incident, preparing goods for re-sale if applicable, retagging/pricing, concluding with senior management.

We have only addressed the issues raised which have a legal basis, any other points not answered are not relevant to this case. If you fail to resolve this matter … within 21 days, we will assume you have no desire to reach an amicable settlement and will take [Tesco's]

5. Letter, dated 3 February 2010, from Colleen Williams, Legal Department, RLP.

instructions on next action against you."

In fact, as noted above, Jane's letter had simply asked for a more detailed breakdown of the sums set out in the initial template demand (TL1). After seeking advice from her local CAB, Jane wrote again to RLP, enclosing documentary evidence of her cancer and the treatment she had received in hospital on the day of the alleged theft from Tesco, and asking that the demand be dropped. A few weeks later, Jane received a letter from RLP, indicating that the demand had now been dropped.

Case of 'Faye'

Faye, a 17 year old school student, received a fixed-sum demand for £150 from the Wigan-based law firm Goddard Smith (acting as 'agent' for Palmer, Reifler & Associates) for the alleged – but strongly denied – attempted theft of unspecified goods from H&M in March 2010.

Faye contends that, when shopping in H&M with two girl friends, one of the friends was apprehended and accused of theft; Faye and the second friend were then also detained by security staff. The police were called, but quickly allowed Faye and the second friend to leave after concluding that they were not involved in the attempted theft; the friend (aged 15) who *was* accused of the offence was later allowed to leave after accepting a police reprimand.

Four months later, in July 2010, Faye received the template demand from Goddard Smith. This states:

"We are instructed to act as agent for Palmer, Reifler & Associates PA which is a firm of United States attorneys based in Orlando, Florida. Palmer, Reifler & Associates represent H&M Hennes & Mauritz. As you are aware, you were previously written to in relation to damages arising from an incident at H&M [in March 2010]. In compliance with the general Pre-action Protocol, we write this letter before action [*sic*] to demand payment of the above mentioned damages arising out of the incident referred to above, when you admitted or it is alleged that you unlawfully stole property of H&M."[6]

Faye contends that she had not received any previous demand letter from Palmer, Reifler & Associates, or Goddard Smith. And, as already noted in the case of 'Tess', above, there is no "general Pre-action Protocol" applicable to a 'claim' such as this, and it is at least questionable whether the demand letters issued by Goddard Smith comply fully with the CPR Practice Direction on pre-action conduct. The letter from Goddard Smith continues:

"The above figure [£150] includes expenses accrued by H&M as a result of your actions. The damages represent loss suffered by H&M as a result of the aforementioned incident.

Payment of the damages claimed should be made in accordance with the instructions set out below. Part payments will only be accepted on account of the total sum claimed even if you state that they are in full and final settlement.

If you do not pay the amount claimed within 14 days proceedings may be issued against you in the County Court. If H&M issue proceedings against you they will likely claim any other relief the court deems fair and just against you, in addition to the above mentioned sum.

At the moment we have no instructions to discuss this claim with you or to agree to any reduction of the amount claimed or any instalment plan so you should not contact us. Neither should you contact H&M. Any query should be addressed to Palmer, Reifler & Associates."

After seeking advice from their local CAB, Faye and her parents decided not to respond to this demand. Faye's parents told the CAB that the friend who, with Faye, was quickly released by the police without charge or

6. Letter, dated 14 July 2010, from Goddard Smith, solicitors.

caution had also received a civil recovery demand for £150 from Goddard Smith, but the friend who had been directly accused of the attempted theft (and reprimanded by the police) had *not* received a civil recovery demand. Three weeks later, in early August, Faye received a second demand letter from Goddard Smith. Headed "Final Demand", this states:

"We are disappointed to note that the Offices of Palmer, Reifler & Associates has not yet received full payment or timely partial payment(s) regarding this matter. Our clients [H&M] may now consider the issue of legal proceedings against you. **This is your final opportunity to avoid potential court proceedings.** If legal proceedings are issued you may be responsible for additional amounts associated with this claim. The requested balance is £150.

Please note that if we do not receive payment within 7 days of the date of this letter proceedings may be issued against you without further notice.

We look forward to receiving confirmation from Palmer, Reifler & Associates that payment has been made, thereby avoiding the need for legal proceedings."[7]

Armed with information and advice from their local CAB, Faye and her parents decided to ignore this and any further letters from Goddard Smith, and the family did not hear again from Goddard Smith, Palmer Reifler, or H&M. On 8 November 2010, shortly after Citizens Advice sent Palmer Reifler, Goddard Smith and H&M a final draft of this report, H&M notified Citizens Advice that it had now "instructed Palmer Reifler to cancel the civil recovery action against [Faye]" as she "did not actually commit a crime".[8]

Case of 'Paula'

Paula, a woman in her 40s, received a fixed-sum demand for £87.50 from Retail Loss Prevention in June 2010, in relation to the alleged – but strongly denied – attempted theft of cosmetics items worth £9.99 from TK Maxx. Paula contends that, whilst shopping in TK Maxx, she selected two items from a shelf of damaged (shop-soiled) cosmetics, advertised as such and at specially reduced prices. As the first item that Paula selected was in a (broken) box clearly designed to contain two items, Paula selected another item of the same brand and put this into the box. Paula then took the box to the checkout, where she presented it to the assistant with the rest of her shopping. Paula contends that the assistant then consulted with a supervisor about how much to charge for the box of damaged cosmetics, and that – after examining both the box and its contents – the supervisor stated that Paula could purchase the box of cosmetics for £9.99.

Paula then paid for the cosmetics and the rest of her shopping. However, on leaving the store Paula was apprehended by a security guard and – after being led to a small room at the back of the store, where a second security guard was waiting – was accused of stealing the two items of cosmetics. Paula contends that the two security guards made no attempt to investigate her 'side of the story' by, for example, consulting the checkout assistant and supervisor. She contends that the guards presented her with two options: having the police called and getting "a criminal record", or providing her name and address to the guards and accepting a store ban.

Paula further contends that, after providing evidence of her name and address – her photocard driving licence – the security guards told her that they would also levy a "fine" of between £100 and £200. She contends that they then began to ask her what she does for a living, where she works, whether she has a National Insurance number, whether she is on the electoral roll, and which political party she voted for in the May 2010 General Election. She contends that, laughing at her driving licence photo,

7. Letter, dated 4 August 2010, from Goddard Smith, solicitors.
8. Email, dated 8 November 2010, from Tim Hazelden, Risk Manager UK & Eire, H&M.

one of the guards then stated "you look like a Conservative".

After being issued with an indefinite store ban, and a 'notice of intended civil recovery' which (falsely) states that RLP's data-screening scheme has been "approved by the Office of the Information Commissioner", Paula was eventually allowed to leave. (See also the case of 'Peter' and 'James', on pp 25-27, below).

The following day, Paula telephoned TK Maxx to complain about her treatment in the store, setting out the above account. A few days later, she received the template demand (TL1) from RLP, which gives the value of the allegedly stolen (but recovered) box of cosmetics as £9.99 – i.e. the very amount that Paula had in fact paid for them. Two weeks later, Paula received a letter from TK Maxx, stating:

"Whilst we have security procedures in place we expect them to be carried [out] in a pleasant and professional manner at all times. It is not at all appropriate for our associates to ask questions regarding a member of the public's voting preferences. This is something our District Loss Prevention Manager will be taking up with the two people concerned and I hope you accept my sincere apologies for the obvious upset this caused you.

That said … we are satisfied that despite the matter not being handled as well as we would expect, the correct decision was made in regards to your detention. In view of that the [indefinite store] ban will remain in place as we must be consistent with our policies, however we will stop the Civil Recovery action on this occasion."[9]

One month later, Paula received a brief letter from RLP, stating:

"Our client [TK Maxx] has advised that they no longer wish to pursue this civil claim for compensation against you. You are further notified that your details will not be held on [our] national database [of civil recovery incidents] as your case was closed and exempted from the database."[10]

Case of 'Jim'

Jim received a 'fixed sum' demand for £137.50 from Retail Loss Prevention in May 2010, in relation to the alleged – but strongly denied – offence of switching the packaging on a TV cable he had purchased in B&Q, so as to obtain a price saving of less than £2. Jim – who was shopping with his three children – contends that he had taken two similar but slightly differently priced cables out of their packaging in order to decide which to purchase, and that – distracted by his children – he must have inadvertently put the two cables back in each other's packaging before taking the cable he had selected – the lower priced of the two, according to the packaging it was now in – to the checkout. Jim is adamant that this was a genuine mistake on his part, and that he had no intention to obtain the resultant price saving of £1.82.

The police were called to the store, but – having viewed the CCTV tape of the incident – decided to take no action after accepting Jim's version of events and his assertion that the mix-up of the two cables and their packaging was a genuine mistake. However, when the police officer then realised that the B&Q security staff were nonetheless proceeding with taking Jim's name and address, she demanded an explanation from the security staff. When the security staff explained that this was for civil recovery purposes, the officer promptly arrested Jim but – as soon as she and Jim had left the store – 'street bailed' him. Jim contends that the police officer indicated to him that she was concerned about the proposed civil recovery action, and had arrested him with a view to stopping that process, as she would now have to submit a crime investigation report to B&Q (which would conclude that the alleged 'offence' was no more than a genuine mistake). The officer asked Jim to attend the police station the following day, and when he did so he was told that

9. Letter, dated 14 July 2010, from Carly Tobin, Customer Service, TJX Europe.
10. Letter, dated 20 August 2010, from Hannah Smith, Legal Department, RLP.

the police investigation of the incident had concluded 'no further action'.[11]

A few days later, however, Jim received the 'fixed sum' demand for £137.50 from RLP. In this template demand (TL1), the 'value of goods' allegedly stolen (and recovered intact) is given as £19.98, i.e. the price of the more expensive of the two cables, rather than the actual 'value' to Jim of his alleged offence (the price differential of £1.82). This is significant as, if RLP had taken the 'value of goods' to be just £1.82, rather than £19.98, the 'fixed sum' demand would have been for £87.50, rather than £137.50 (see Section 5, below, and in particular the table on page 17). And, whilst it is not easy to see how the cost to B&Q of 'dealing with' the incident would have been any different, the amount retained by RLP – which retains some 40 per cent of all monies paid – would have been just £35, instead of £55.

After seeking advice from his local CAB, Jim did not respond to the demand from RLP. However, he did write to B&Q, to request an apology for his treatment; as of 15 November 2010, he has not received any response. In early June, Jim received a second template demand (TSL2) from RLP, and two weeks later he received a third template demand (TSL3); the latter warned that "it is in your best interests to settle our client's claim now, before any additional action, such as Court proceedings, incurs further costs. You have a final 14 days to make payment of £137.50."[12]

Jim did not respond to these further template demands and, as of 15 November 2010, he has not heard further from RLP or B&Q; five months on, no county court claim has been issued against him. However, on 11 November, two weeks after Citizens Advice sent a draft of this report to RLP and B&Q, Jim received a letter (dated 4 November) from the Glasgow-based and OFT-licenced debt collection agency, JB Debt Recovery, to which RLP sometimes passes an unpaid demand (see also the case of 'Martha', above). Headed "Retail Loss Prevention v [Jim]", this letter states:

"Our clients [RLP] have instructed us to collect the above outstanding debt [*sic*] as you have ignored all previous correspondence. Should we not hear from you within 7 days of receipt of this letter, then our client [RLP] will have no alternative than to consider legal action. A successful legal action could result in all legal costs being added to the amount due [£137.50] plus interest. We therefore require the immediate settlement in full of this debt [*sic*]."

Armed with information and advice from his local CAB, Jim will not be responding to this and any further letters from JB Debt Recovery.

Hollow demands

Indeed, among the more than 10,000 civil recovery cases dealt with by Citizens Advice Bureaux since 2007, including the more than 300 cases examined in detail by Citizens Advice, there is one common feature: if the sum demanded is not paid, the threatened county court proceedings do not materialise. And, of the more than 600,000 demands seemingly issued since 2000, as far as Citizens Advice can establish only *four* unpaid demands (less than 0.0007 per cent) have ever been successfully pursued in the county court by means of a contested trial – and none of these four cases involved a 'fixed sum' demand relating to alleged low-value shoplifting.[13]

In extensive correspondence with Citizens Advice since June 2009, the agents and their retailer clients have repeatedly declined to provide evidence of any more successfully litigated court claims in respect of an unpaid civil recovery demand. Yet, clearly, it would be very much in

11. The police officer in question has verbally confirmed this account to Citizens Advice.
12. Template demand letters, dated 8 June and 23 June 2010, from J Moorhouse, RLP.
13. All four cases involved an unpaid demand issued by Drydens Lawyers, and in two (decided in November 2005 and December 2008 respectively) the claim was for more than £4,000 plus costs. Such county court judgments do not set any legal precedent. For further information on these four cases, see pp 12-14 of *Unreasonable demands*.

their financial and other interests to provide such evidence, should it exist.

Case of 'Kate'

Kate, a disabled, full-time carer (for her elderly mother) in her 50s living on disability benefits and suffering from long-term clinical depression, received a letter from Retail Loss Prevention demanding £165.48 in early May 2010. This followed an incident in Boots a few days previously, when Kate was apprehended by security staff for the attempted theft of one packet of Nicorette chewing gum, worth £13.99 and recovered intact. The police were called, and Kate was arrested and taken to the police station, but was released without charge after accepting a caution.

Feeling "guilty and wicked" about the attempted theft, which Kate puts down to her depression and the additional trauma of her mother having recently had a stroke, Kate sought advice from her local CAB with a view to offering to pay the sum demanded in small instalments. The CAB telephoned RLP on Kate's behalf, to clarify the minimum monthly amount that RLP would accept, given Kate's financial circumstances, and also to point out that – in addition to the standard 'fixed sum' of £137.50 for staff and management time, administration costs, and apportioned security and surveillance costs – the sum demanded included £27.98 (i.e. two times £13.99) for "unrecovered (or unfit for resale) goods/monies/services". The CAB was told that this error would be "looked into", and that RLP would not accept less than £10 per month from Kate.

After considering this information, as well as advice provided by the CAB, Kate decided not to pay any money to RLP. Three weeks later, she received a further template demand (TSL2) from RLP, warning that "our client [Boots] is determined to make full use of civil law remedies including Court action if necessary, to recover their costs caused by your wrongful actions. Where proceedings are issued then the court will be asked to consider any failure to respond to letters where they make orders for costs and interest. To avoid this action and further increased costs, you must deal with this claim within 14 days from the date of this letter".

Kate did not respond to the demand. Two weeks later, in early June 2010, she received a further template demand (TSL3) from RLP, warning that "it is in your interests to settle our client's claim now, before any additional action, such as Court proceedings, incurs further costs. You have a final 14 days to make payment of £165.48."[14] Then, on 17 June 2010, Kate received an unsolicited telephone call from RLP, but quickly put the phone down. Yet, in correspondence with Citizens Advice in late 2009, RLP was insistent that it "does not telephone individuals regarding civil recovery claims, unless returning a call". [15]

As of 15 November 2010, Kate has not heard further from RLP or Boots, and no county court claim has been issued against her. However, on 4 November 2010, one week after Citizens Advice sent a draft of this report to RLP and Boots, Kate received a telephone call from the OFT-licenced debt collection agency, JB Debt Recovery, to which RLP sometimes passes an unpaid demand (see the cases of 'Martha' and 'Jim', above). Again, Kate quickly put the phone down, so the purpose of the telephone call is not clear, but it seems reasonable to assume that RLP has now passed the unpaid demand to JB Debt Recovery.

Case of 'Neisha'

Neisha, a 14-year-old schoolgirl, received a 'fixed sum' demand for £87.50 from Retail Loss Prevention in December 2009, in relation to the attempted theft of an eye pencil worth £2.93 from Boots. The police had been called to the store, and Neisha had accepted a police reprimand; the eye pencil had been

14. Template demand letter (TSL3), dated 11 June 2010, from J Moorhouse, RLP.
15. Letter, dated 27 November 2009, from Julia Jolley, then Company Solicitor, RLP.

recovered intact. Headed 'without prejudice', the template demand (U16LIE) stated:

"Under civil law, from the age of 14, a person is considered to be legally responsible for their actions. Civil proceedings are entirely separate from any action taken criminally regarding this incident.

Our client [Boots] has instructed us that as a result of your wrongful actions they have incurred costs in administration, security and surveillance measures to investigate and deal with the incident. These costs are legally claimable, since if there were no wrongdoers then [Boots] would not incur these costs in the first instance.

The legal basis for your liability in this regard is that by attempting to, or by taking goods without intending to pay for them, you wrongfully interfered with our client's rights in the goods. Although our client's claim is for £87.50, on an entirely 'without prejudice' basis, our client [Boots] is prepared to be reasonable and seeks to use Civil Recovery as a deterrent against further incidents. As a result, they are prepared to contribute a large proportion of the costs incurred themselves in consideration of your age. Our client will accept a substantial reduction in the total claim, in full and final settlement of this matter provided the following is received within 21 days from the date of this letter:

- Payment in the sum of £35.00 AND

- Proof of age – A photocopy of your birth certificate, passport or any other official document clearly showing your age to be under 16 at the time of the offence.

By law we are obliged to write directly to you. We do, however, strongly advise you to show this letter to your parents/guardians."[16]

Neisha showed the demand to her father. He then wrote to both RLP and Boots, noting that he was "furious with my daughter for making what was the mistake of a young, easily influenced and foolish person", but that RLP's "interpretation of the law is at best questionable and possibly downright deceitful". Making clear that he and Neisha had no intention of paying £35.00, let alone £87.50, he further stated that he would be "more than happy to meet Boots in court over every, or any, aspect of this matter".

Two weeks later, RLP replied to Neisha's father, once again demanding prompt payment of £35.00 and warning that "we shall not hesitate to commence defamation proceedings against you" should "you repeat your statements [about RLP's interpretation of the law] to the wider public".[17]

Once again, Neisha's father wrote to both RLP and Boots, indicating that he would not be paying any money to RLP and would defend any court claim. One month later, in February 2010, Boots replied, stating that "a full review is currently underway and in light of that we at Boots have decided that no further action should be taken against [your daughter]".[18] And, a few days later, RLP wrote to confirm that it had now dropped its demand and "archived" its file on Neisha.[19]

Case of 'Randall'

Randall, a married man in his 40s, was dismissed from his job as a cashier at a BP petrol station in September 2009. The dismissal was for 'gross misconduct', namely a "serious breach of till procedure" in respect of goods worth approximately £7.00 in total, but in the BP manager's detailed notes of the disciplinary hearing there is no suggestion of any dishonesty on Randall's part, let alone any allegation of theft(s).

Two weeks later, however, Randall received a template letter (ST1) from Retail Loss Prevention, demanding a total of £1,207.02, made up of: £990.60 for "the value of unrecovered goods, monies or services"; £207.02 for "staff/management time spent investigating and/or dealing with the incident"; £9.40 for "administration costs"; and 'nil' for "apportioned security and surveillance costs". The demand did not

16. Template demand letter, dated 18 December 2009, from J Moorhouse, RLP.
17. Letter, dated 8 January 2010, from Izabell Winter, Legal Department, RLP.
18. Letter, dated 12 February 2010, from Heather Rayner, Alliance Boots.
19. Letter, dated 16 February 2010, from Vanessa Willett, Legal Department, RLP.

specify the nature of the 'goods, monies or services' in question, and did not give any dates or other information about the unspecified alleged offence(s).

Randall did not respond to the demand. Three weeks later, in early November 2009, he received a second template demand (TSL2) from RLP, warning that "our client [BP] is determined to make full use of civil law remedies including Court action if necessary, to recover their costs caused by your wrongful actions. Where proceedings are issued then the court will be asked to consider any failure to respond to letters where they make orders for costs and interest. To avoid this action and further increased costs, you must deal with this claim within 14 days from the date of this letter."

After seeking advice from his local CAB, Randall did not respond to these demands. Two months later, in early January 2010, he received a further letter from RLP, stating:

"It has now been 4 months since you committed a wrongful act at our client BP's premises. Our client [BP] is not prepared to forego this claim against you. You have failed to settle this case. The amount stated [£1,207.02] remains outstanding. We now require your proposals for settlement.

Further our Legal Department would be willing to discuss this case with you, in order to avoid litigation. You can discuss this case by telephoning 0870 167 2181 and asking to speak to a member of the Legal Department. We strongly urge you to reply within 14 days. Failure to do so will result in our Legal Department preparing your case for court action. Do not ignore this letter."[20]

Randall did not respond to this letter and, as of 15 November 2010, he has not received any more demands from RLP; ten months on, and 14 months after the initial demand, no county court claim has been issued against him.

In December 2009, a Citizens Advice social policy report, *Unreasonable demands*, concluded that – in the absence of any evidence that the county courts have explicitly and consistently supported the recoverability of the sums routinely demanded in such low-value, alleged shoplifting or employee theft cases – such civil recovery demands, and their seemingly hollow threat of court action and associated escalating costs and interest, constitute unfair business practice (as defined by the Office of Fair Trading).

Citizens Advice does not condone crime of any kind or level, and does not underestimate the cost of retail crime, which as the British Retail Consortium has noted is "met by honest customers who end up paying more".[21] However, the ends of deterring crime or recovering its cost do not justify any means. If retailers, dissatisfied with the level of governmental action against retail crime, are to take matters into their own hands, they must do so using means that are legitimate and *transparently* fair. *Unreasonable demands* set out recommendations to the Ministry of Justice, the Home Office and others that civil recovery be limited to cases involving serious, determined and/or persistent offences for which there has been a criminal trial and conviction.

In response to the publication of *Unreasonable demands*, the Solicitors Regulation Authority issued new 'ethical' guidance to solicitors. This provides that, before taking any civil recovery action on behalf of a retailer, a solicitor "should consider whether the action being proposed is proportionate, having regard to the circumstances of the 'offence' and of the proposed defendant."[22] And, noting the "influence and financial interests" of the civil recovery agents, the Home Office stated to Citizens Advice that "it is important that the use of civil recovery in response to crime is both appropriate and proportionate."[23]

Since the publication of *Unreasonable demands*, Citizens Advice has obtained both a considerable

20 Letter, dated 11 January, from Sonia Johnson, Legal Department, RLP.
21. British Retail Consortium news release, 7 January 2010.
22. See: www.sra.org.uk/solicitors/code-of-conduct/guidance/questionofethics/December-2009.page and also: www.sra.org.uk/sra/news/sra-update/issue-12-civil-recovery.page
23. Letter, dated 2 February 2010, from the then Home Office minister for crime reduction, Alan Campbell MP; and letter, dated 15 February 2010, from Stephen Rimmer, Director General, Crime and Policing Group, Home Office.

amount of new information on the practice of the civil recovery agents, and a formal Counsel's opinion on the relevant case law.[24] This concludes that the case law – including the High Court and Court of Appeal cases cited by Retail Loss Prevention on its website and in many of its demand letters – does not provide any obvious legal authority for the 'fixed sum' demands routinely issued by the agents in low-value shoplifting cases (and some employee theft cases), and little if any legal authority for many of the agents' employee theft-related demands. And, of course, this legal advice suggests one possible explanation for the apparent dearth of successfully litigated court claims in respect of an unpaid civil recovery demand: the agents know that they would most likely not succeed with any contested court claim, so do not even risk defeat.

Furthermore, since December 2009, Citizens Advice Bureaux have reported dealing with demands issued by two *new* civil recovery agents: Civil Recovery Solutions; and the US-based law firm Palmer, Reifler & Associates. It would appear that threatening civil recovery in cases of low-value alleged theft is a lucrative and growing business. This report therefore sets out 30 detailed, longitudinal case studies drawn from the more than 300 CAB-reported cases examined in detail by Citizens Advice to date, together with the key findings of a quantitative analysis of these cases. And it draws on the key elements of the above-mentioned formal Counsel's opinion on the relevant case law. In doing so, Uncivil recovery aims to assist those who have received such a civil recovery demand to make their own decision on how – if at all – to respond.[25]

Threatened civil recovery: the agents

Retail Loss Prevention

In eight out of ten CAB-reported civil recovery cases, the demand was issued by the Nottingham-based Retail Loss Prevention (RLP), which since 1999 has issued more than 550,000 demands on behalf of dozens of retailers including Argos, EH Booths, Debenhams, Harrods, Iceland, Lidl, Matalan, Morrisons, Mothercare, Netto, Primark, and Waitrose. The company retains some 40 per cent of any money it 'recovers', the remainder going to the retailer client. Its owner and managing director, Jackie Lambert, has been quoted as saying that RLP is "passionate in our belief that we are helping the community by going after the 'soft' criminals who are often seen as lower priority by the police".[26] In seven out of ten of the CAB-reported cases involving a demand issued by RLP, the demand was issued on behalf of one of just six retailers: Boots, TK Maxx, Tesco, Wilkinson, B&Q, and Superdrug.

The pre-determined, 'fixed' sum demanded by RLP in most if not all shoplifting-related cases (in addition to the claimed value of any unrecovered goods or cash) varies according to, and is determined by, the total claimed value of the goods or cash involved, as follows:

Value of goods	Sum demanded	21-day 'settlement offer'
£0- £9.99	£87.50	£70.00
£10 - 99.99	£137.50	£110.00
£100 - £299.99	£187.50	£150.00
Over £300	£250.00	£200.00

24. Kindly provided *pro bono* by Edmund Townsend and Matthew Hodson of Farrar's Building Chambers, Temple, London EC4Y 7BD.
25. However, anyone in any doubt as to how – if at all – to respond to a civil recovery demand, and anyone who has had a county court claim issued against them in relation to an *unpaid* civil recovery demand, should seek advice from their local CAB.
26. See page 5 and endnote 7 of *Unreasonable demands*.

Among the shoplifting-related cases involving a demand issued by RLP and examined in detail by Citizens Advice to date, the fixed sum demanded (not including the value of any unrecovered goods) by RLP was £87.50 in 31 per cent of cases, £137.50 in 56 per cent of cases, and £187.50 in six per cent of cases.

As noted in the case of 'Sheena', above, RLP has repeatedly claimed that the pre-determined, 'fixed' sums in the table above have been "tested through the civil courts, which have established the figures to be fair and reasonable". However, in extensive correspondence with Citizens Advice since June 2009, RLP and its retailer clients have repeatedly declined to provide details of any cases in which these 'fixed' sums have been "tested through" and found to be "fair and reasonable" by the civil courts. And Citizens Advice has been unable to find any independent evidence of these alleged 'test cases'.

In extensive correspondence with Citizens Advice since June 2009, RLP has also repeatedly declined to evidence its claims to have "regularly" and "successfully" pursued unpaid demands by means of county court proceedings. Citizens Advice understands that RLP has *never* successfully litigated a fully contested county court claim. But, in any case, county court judgments set no legal precedent, so cannot be cited as 'legal authority'.

Many demand letters from RLP have stated that "the personal information that we hold [on you]" will now be "held on a national database of civil recovery incidents" that "may be used in the prevention of crime and detection of offenders including verifying details on financial and employment application forms". In correspondence with Citizens Advice, RLP has stated that it does "not operate the database to obtain payment of [demands]". However, it is clear from some CAB-reported cases that fear of being included on the database was a key factor in a decision to pay the sum demanded, especially where the recipient was a young teenager. In fact, such money was paid in vain, as RLP has recently confirmed that a person's name is added to its database even if the sum demanded is paid.

As noted in the case of 'Paula', above, some of the RLP 'notices of intended civil recovery' handed out by retailers have falsely stated that the above data-screening scheme has been "approved by the Office of the Information Commissioner". (See also the case of 'Peter' and 'James', on pp 25-27).

Until about 10 November 2010, RLP's website stated that "we have established operating procedures for Civil Recovery and agreed guidelines with the Association of Chief Police Officers (ACPO) and Association of Chief Police Officers Scotland (ACPOS)". However, on 26 October 2010, Assistant Chief Constable Allyn Thomas of Kent Police, who leads on retail crime for ACPO, wrote to Jackie Lambert at RLP, stating:

> "Whilst there may have been agreements in the past about exchanging data and operating civil recovery with ACPO (and ACPOS), there are no such agreements in place now and indeed on several occasions over the last few years I and my colleagues have asked that such references be deleted.
>
> Please remove from your website any and all references which state or imply that RLP operates its civil recovery in agreement or cooperation with the Police Service. Clearly if you have an agreement with an individual force you could make reference to that, but I know of none."

And, in November 2010, ACPOS stated to Citizens Advice:

> "At no time have ACPOS entered into any formal agreement with RLP, or assisted them in any civil recovery, and this non-cooperation will continue."[27]

Drydens Lawyers

In a further 17 per cent of all CAB-reported civil recovery cases, the demand was issued by the Bradford-based law firm Drydens Lawyers, which since 2002 has issued tens of thousands of demands on behalf of Asda, Debenhams, Marks & Spencer, Sainsbury's and others.[28] In most if

27. Letter, dated 16 November 2010, from Assistant Chief Constable Cliff Anderson, General Secretary, Association of Chief Police Officers in Scotland.
28. In extensive correspondence with Citizens Advice since late 2009, Drydens Lawyers has repeatedly declined to confirm the total number of demands issued by the firm.

not all low-value shoplifting-related cases, it issues a 'fixed-sum' demand for £100 or £150 (plus the value of any goods not recovered/unfit for resale). In four out of five of the CAB-reported cases involving a demand from Drydens, the demand was issued on behalf of Asda.

As of October 2009, Drydens had issued a county court claim in 687 cases of an unpaid demand, but only four of these (none involving a £150 'fixed-sum' demand) had resulted in a judgment in favour of the retailer *following a contested trial*; the remainder had all been settled or withdrawn, or had (it seems) resulted in a *default* judgment only.[29] In August 2010, Drydens declined to provide Citizens Advice with updated figures for the *number* of county court claims it has issued in pursuit of an unpaid demand to date, and the outcome of those court claims.

Other agents

In the remaining CAB-reported civil recovery cases, the demand was issued by one of the following agents:

- The Nottingham-based Civil Recovery Solutions, which began operations in late 2009 or early 2010. Its more than 20 retailer clients include B&M and Travis Perkins. Until mid-2010, its non-executive chairman was Professor Joshua Bamfield, who founded Retail Loss Prevention in 1998, but sold the company in 2003. In August 2010, CRS stated to Citizens Advice that it has not even *issued* any county court claims in respect of an unpaid demand.[30]
- The Florida-based law firm Palmer, Reifler & Associates, which is a major player on the US civil recovery scene.[31] As the firm is not actually regulated to practise law in the UK, it could not itself pursue an unpaid demand in the courts. It uses a Wigan-based law firm, Goddard Smith, to act as its 'agent' in pursuing unpaid demands with further demand letters. Its retailer clients include H&M and Wilkinson.
- The London-based Civil Recovery Limited, which acted only for Tesco and which was closely related to a security guarding company – Total Security Services (TSS) – that supplies security guards to Tesco, Boots and other retailers. In July 2010, TSS employees stated to Citizens Advice that Civil Recovery Ltd. ceased trading on 11 June 2010.

Civil recovery: the law

As well as being a criminal offence, theft is a tort (i.e. a civil wrong) of 'trespass against goods' and/or 'conversion'. In the case of employee theft, it is also a breach of contract (namely, of the employee's duty of good faith). And there is no question that, in general, a party can use the civil courts to try and recover losses resulting *directly* from the commission of such a tort.[32] So, in the current context of alleged shoplifting or employee theft, it is clear that, *in principle*, a retailer (or its agent) could use the civil courts to try and recover both the value of any goods or cash stolen (where not recovered intact), *and* any 'consequential losses' directly attributable to commission of the tort. However, where an alleged theft is denied, it would be a matter of evidence (on the balance of probabilities) as to whether the tort was actually committed. If the retailer cannot prove this, then any claim for losses will be defeated.

In terms of the value of the goods or cash involved, there is no question that, where commission of a tort is made out, the value of *unrecovered* goods or cash stolen would be recoverable in court. However, where the goods or cash are recovered undamaged and fit for re-sale, the retailer would not be able to recover anything under this 'head of loss', for the simple reason that they will have suffered no loss. As already noted above, in 79 per cent of CAB-reported shoplifting-related cases, the demand gave the value of unrecovered goods as 'nil', the

29. Of these 687 court claims, 212 related to alleged shoplifting, and 475 to alleged employee theft. Only 29 of the 687 court claims were defended. For further information, see pp 12-14 of *Unreasonable demands*.
30. Letter, dated 6 August 2010, from Jon O'Malley, Managing Director, CRS.
31. See: http://online.wsj.com/article/NA_WSJ_PUB:SB120347031996578719.html
32. The practice of threatened 'civil recovery' described in this report should not be confused with the unconnected, statutory 'civil recovery' regime provided for by the Proceeds of Crime Act 2002, which permits the State to pursue a civil procedure to effectively sue, in the High Court, for the proceeds of crime of not less than £10,000. Currently, these powers are only available to the Serious Organised Crime Agency and main prosecution agencies, such as the Crown Prosecution Service.

goods having been recovered intact by the retailer. And in two out of three of the other 21 per cent of shoplifting cases, the value of unrecovered goods was less than £20; it would not be economic for a retailer (or agent) to pay to issue a court claim for such a modest sum.

In terms of 'consequential losses', in any one case the retailer/agent would need to evidence the amount of losses suffered, *and* prove that these claimed losses were *directly* caused by the defendant's commission of the tort. In short, whether or not a loss has been caused by the tort would be assessed by the court by reference to the 'but for' test. For each 'head of loss', the retailer/agent would have to show that, but for the commission of the tort, the retailer would not have sustained the loss claimed. So 'apportioned security and surveillance costs', for example, would not be recoverable in court.

As for e.g. 'staff/management time investigating and/or dealing with [the] incident', it is clear from relevant case law that the cost of staff time spent investigating and mitigating a tort is recoverable *in principle*.[33] However, the matter is not self proving. It would be for the agent/retailer to prove, first, that staff time was diverted by the commission of the tort (and *how much* time was diverted) and, second, *that this diversion caused a significant disruption to the retailer's business*. In short, the agent/retailer would need to show that the staff members involved were *significantly* diverted from their normal duties. Clearly, the amount of staff time (if any) diverted and the *value* of that time will vary greatly from one case to another. For this reason, it would be entirely inappropriate for an agent or retailer to advance a court claim on the basis of a pre-determined, *fixed* sum such as £87.50, £137.50 or £150.00.

In short, a civil recovery agent (or its retailer client) would be most unlikely to succeed with the principal 'heads of loss' of a county court claim in respect of an unpaid civil recovery demand of the sort described in this report. And, of course, this may well explain the apparent dearth of successfully litigated county court claims in respect of an unpaid civil recovery demand.[34]

Civil recovery: the practice

As already noted, in many of the more than 300 CAB-reported cases examined in detail by Citizens Advice to date, the recipient of the demand robustly denies having committed the alleged offence. In some of these cases, the supposed 'attempted theft' appears to have been no more than an innocent mistake or misunderstanding, or the result of confusion or genuine error when using a self-service checkout. In others the allegation appears to be no more than overzealousness on the part of store security staff. And in some cases – especially those involving young teenagers – the recipient of the demand was present in the store at the time of the alleged offence, having entered as part of a group that included the subsequently accused person, but was not themselves accused of committing any offence.

In such cases, the civil recovery agent/retailer would most likely face great difficulty in proving, to the satisfaction of a civil court, that any tort had been committed. And, if unable to prove that the defendant had committed the alleged tort, the agent/retailer would simply not be able to claim in court for any 'losses' or 'damages' arising from the alleged incident.

Case of 'Matt'

Matt, an employee of a small building firm, visited his local B&Q store to buy some plasterboard in September 2009. Matt contends that he asked permission from a cashier to borrow their tape measure to measure his van to ensure that the plasterboards he had chosen would fit inside. However, having done so, and having then purchased the plasterboards, Matt was stopped by a security guard and accused of attempting to steal the tape measure. Matt contends that the security guard refused

33. *British Motor Trade Association v Salvadori* [1949] Ch 556 [2006]; *R + V Versicherung AG v Risk Insurance and Reinsurance Solutions SA* [2006] EWHC 42; *Aerospace Publishing Ltd v Thames Water Utilities Ltd* [2007] EWCA Civ 3; and *Bridge UK.com Ltd v Abbey Pynford Plc* [2007] EWHC 728.
34. For a more detailed discussion of the case law applicable to the practice of threatened civil recovery as described in this report, see: Dunstan, R. & Skipwith, G. '(Un)civil recovery', *Adviser* 142, November/December 2010.

to consult with the cashier who had lent him the tape measure, and ignored Matt's repeated requests that the police be called. Eventually, after being issued with both a 'notice of intended civil recovery' and an indefinite ban on entering B&Q stores, Matt was allowed to leave.

A few days later, however, Matt received a demand from Retail Loss Prevention for £88.40, including 90 pence for the value of the tape measure and the standard 'fixed sum' of £87.50 for staff and management time, administration costs, and apportioned security and surveillance costs. With the support of his employer, Matt wrote to RLP, denying the alleged 'offence', setting out his version of events, and requesting an apology from B&Q.

A few weeks later, RLP replied, stating that Matt had been "observed by security personnel" selecting and removing the packaging from a tape measure worth £8.98 [*sic*], and leaving the store without making payment. The letter from RLP continued: "our client [B&Q] will rely on eye witness evidence from store and security personnel, any further witness statements plus additional information from CCTV, data mining and other system reports to prove this [civil recovery] claim. This evidence will be prepared at the appropriate time and subsequently confirmed in Court." And the letter concluded by warning that, should the full amount demanded – still £88.40, despite the (unexplained) increase in the value of the tape measure from 90 pence to £8.98 – not be paid within 21 days, RLP would "take our client's instructions on next action against you".[35]

Once again, Matt wrote to RLP, vigorously denying the alleged 'offence', contesting RLP's stated version of events, and expressing his concern that the entire incident had been handled in "an unprofessional and cavalier way". And, in late November 2009, after receiving a further template demand (TSL2) from RLP stating that "our records show that you have failed to make payment or dispute liability", Matt wrote to RLP once more, enclosing a copy of his previous letter.

Finally, two months after the incident in B&Q, Matt received a brief letter from RLP, stating that "we have taken into consideration the points raised and, following a review of your case file, we have advised our client to no longer pursue this civil claim for compensation against you. As we now consider this civil claim to be concluded, no further correspondence will be entered into regarding the matter."[36] However, Matt has not received any apology from B&Q, or RLP, and the ban on him entering B&Q stores remains in place.

Case of 'Sam'

Sam had just paid for about £100 of shopping in Asda on Christmas Eve 2009, when he was stopped by Asda security staff and accused of attempting to steal two pasties – worth £4.00 – that he had selected from a kiosk sited beyond the main tills and placed on the top of his trolley of (paid for) shopping. After Sam strongly denied the accusation, the police were called but decided to take no action after accepting Sam's explanation that it was an honest mistake with no intent to steal. After being issued with a store ban, Sam was then allowed to leave, and understood this to be the end of the matter.

A few days later, however, Sam received a 'fixed sum' demand for £154.00 from Drydens Lawyers, made up of £4.00 for the "costs of goods stolen or damaged" and £150 for "security costs". Sam then wrote to Drydens, stating:

"I am disgusted that this has been taken so far by Asda for something that on my part was a very honest mistake. I have never in my life been in any trouble with any authorities … I have tried to converse with the manager at the Asda store, have left several messages

35. Letter, dated 19 October 2009, from Colleen Williams, Legal Department, RLP.
36. Letter, dated 25 November 2009, from Alisha Reed, Legal Department, RLP.

for him to phone me back, but he does not return my calls. I am left with no alternative but to seek legal advice on this matter, as I feel I was treated very unfairly for something that was an honest mistake."

Sam then sought advice from his local CAB, which wrote to Drydens on his behalf asking for the demand to be dropped and the store ban to be lifted. Drydens replied, stating simply: "we are currently obtaining [Asda's] instructions and will revert back to you as soon as possible."[37]

In the event, Drydens did not 'revert back' to the CAB and, as of 15 November 2010, Sam has not received any further demands from Drydens; ten months on, no county court claim has been issued against him.

Case of 'Bella'

Bella, a single woman in her 20s, received a 'fixed sum' demand for £137.50 from Retail Loss Prevention in March 2010, in relation to the alleged – but strongly denied – attempted theft of a coat worth £20.00 from Tesco. Bella contends that the alleged 'offence' was simply a genuine mistake on her part, due to her being distracted by a friend calling her on her mobile while she was at the checkout paying for her shopping. The police were called and attended the store but, after viewing the CCTV tape, decided to take no action against Bella.

After receiving the template demand (TL1) from RLP, which gives the "value of unrecovered (or unfit for resale) goods" as 'nil', Bella sought advice from her local CAB. She then wrote to RLP, denying liability for the "unreasonable and excessive" claim and asking for it to be dropped. RLP replied, warning that "if you fail to resolve this matter within 21 days, we will assume you have no desire to reach an amicable settlement and will take [Tesco's] instructions on next action against you."[38] Once again, Bella wrote to RLP, denying liability for the claim. One month later, RLP replied:

"As your correspondence failed to set out a valid defence or raise an answerable legal dispute we are unable to respond. Our client [Tesco] is determined to make full use of civil law remedies including Court action if necessary, to recover their costs caused by your wrongful actions. To avoid this action and further increased costs, you must deal with this claim within 14 days from the date of this letter."[39]

Once again, Bella wrote to RLP, denying liability for the claim. One month later, in May 2010, RLP replied:

"We are in receipt of your letter and acknowledge its contents therein. However, as your correspondence failed to set out a valid defence or raise an answerable legal dispute we are unable to respond. As such, further correspondence is being sent to you requiring you to settle this valid claim or provide a valid defence with a legal basis or advise of mitigating circumstances you wish [Tesco] to consider. You have a final 14 days to make payment. Failure to do so will result in your case file being passed for further action without further notice."[40]

After seeking further advice from her local CAB, Bella did not respond to this letter and, as of 15 November 2010, she has not heard further from RLP or Tesco; and, six months on, no county court claim has been issued against her. However, Bella reports that, since late September 2010, she has received 25-30 telephone calls and texts from the OFT-licenced debt collection agency, JB Debt Recovery, to which RLP sometimes passes an unpaid demand (see the cases of 'Martha', 'Jim' and 'Kate', above).

Case of 'Marion'

Marion, a physically disabled woman in her 30s, received a 'fixed sum' demand for £143.91 from Civil Recovery Limited in November 2009, in relation to the alleged – but strongly denied – theft of one item of make-up worth £3.91 from Tesco. Marion

37. Letter, dated 25 January 2010, from Julie Lunn, Drydens Lawyers.
38. Letter, dated 24 March 2010, from Colleen Williams, Legal Department, RLP.
39. Letter, dated 21 April 2010, from Danielle Smith, Legal Department, RLP.
40. Letter, dated 19 May 2010, from Danielle Smith, Legal Department, RLP.

had used a self-service checkout in Tesco to purchase her shopping, and when stopped by security staff was found to have underpaid for four weighed items of fruit and one weighed item of sweets. Marion was then accused of *deliberately* underpaying for these items, and when she insisted that the underpayment was a genuine mistake on her part, she was taken to a back room.

Marion contends that, when she continued to profess her innocence of any intent to steal or underpay for the items, the security staff proceeded to search her handbag and then – stating "this is ours" – seized an item of her make-up. When Marion continued to protest both her innocence and concern about her treatment, the police were called and Marion was arrested. Marion contends that the arresting officer offered her the option of accepting an £80 Fixed Penalty Notice, but that she refused this as she would have to admit to the alleged offence and "I had not stolen anything."

After being issued with a life-time store ban by Tesco staff, Marion was taken to the police station, where she was detained for six hours and 42 minutes before being released without charge or caution. Marion contends that, during this time in custody, she "had three panic attacks and was sick twice", and that police officers repeatedly pressurised her to admit to the theft of the make-up. The police force has confirmed to Citizens Advice that "in interview [Marion] denied theft of the make-up, and in relation to the fruit claimed an honest mistake." The CCTV tape did not show any theft by Marion and "Tesco's were unable to confirm through stock checks whether the item [of make-up] found in her [handbag] was of a type that was missing from the shelf that day. The details were passed to a case director, who decided that in this case the correct course of action was No Further Action." The police force further notes that Marion's "explanation in relation to her mistake at the self pay till was credible" and that "she was of previous good character."

Upon her release from custody, a police officer handed Marion a 'notice of intended civil recovery' from Civil Recovery Limited (CRL). And, two days later, she received the template demand from CRL; this gives the value of "unrecovered (or unfit for resale) goods/monies/services" as £3.91, with the remainder of the 'fixed sum' demanded (£140.00) being made of up of: £82.50 for "staff/management time investigating and/or dealing with the incident; £15.25 for "administration costs resulting from your wrongful actions"; and £30.25 for "apportioned security and surveillance costs". Marion contends that, as the officer handed her the 'notice', he stated that the entire incident had been "a complete waste of everybody's time".

Marion immediately wrote both to CRL and to Sir Terry Leahy, Chief Executive of Tesco, disputing the civil recovery demand, protesting her innocence of all the allegations against her, and requesting return of both the £2.00 that she had paid for the underpaid items of fruit (which had been retained by the store) and her make-up. In her letter to Sir Terry Leahy, Marion stated:

"I have been treated absolutely terribly. I was accused of theft, of which the police found no evidence. I am now scared to go into a shop and have a panic attack at the thought of it. As I deny stealing any item from Tesco and the police cleared me on this matter, I repeat I am disputing your claim for £143.91. I have spent thousands of pounds over the years as a Tesco customer. With regards to the Tesco store banning me for life I can confirm I will never step one foot in a Tesco store again, so you have no worries on that score."

Marion did not receive any response from CRL, but one month later she received a letter from Sir Terry Leahy, stating:

"I was very concerned to learn that you had been accused of shoplifting at our store. This matter has been discussed with our Store Manager, who has advised that the action taken by the store was correct. We will vigorously pursue any costs incurred through incidents of this nature. I would like to formally advise you that we will not enter into any further correspondence or discussions relating to this incident."[41]

However, despite Sir Terry Leahy's statement that Tesco will "vigorously pursue any costs incurred through incidents of this nature", as of 15 November 2010, Marion has not received any more demands from CRL and – 11 months on – no county court claim has been issued against her. Citizens Advice has been informed that CRL ceased trading in June 2010.

Persistent demands

Even more disturbingly, in some of the CAB-reported cases examined in detail by Citizens Advice, the circumstances suggest possibly *deliberate* malpractice on the part of retail security staff. A striking feature of some such cases is that the police were not called to (or, at least, did not attend) the 'incident'. Yet in some of these and other cases the civil recovery agent – and especially Retail Loss Prevention – has subsequently gone to great length to try and induce payment of the sum demanded. The following section sets out some of these case studies in detail, so as to illustrate the intimidatory tone and false and/or misleading content of some of these persistent demands.

Case of 'Vanessa'

Vanessa, a 19-year-old university student, received a 'fixed sum' demand for £137.50 from Retail Loss Prevention in March 2010, in relation to the alleged – but strongly denied – theft of unspecified goods worth £17.00 from Boots. Vanessa contends that she was apprehended by a Boots security guard a few minutes after leaving Boots, where she had purchased some goods; she was then asked to return to the store, where she was accused of the theft of unspecified goods. Vanessa contends that, strongly denying any theft, she offered the security guard an opportunity to search her and her bag, but he declined. The police were not called (or, at least, did not attend), no goods were 'recovered' from Vanessa and, after being issued with a 'notice of intended civil recovery' from Civil Recovery Limited [*sic*], Vanessa was allowed to leave the store.

Vanessa immediately took the 'notice of intended civil recovery' to her mother, who telephoned Civil Recovery Limited the next day, only to be told that they "do not work for Boots". The following day, Vanessa received the template demand (TL1) from Retail Loss Prevention. This indicated that the allegedly stolen (but unspecified) goods worth £17.00 had been recovered intact; demanded payment of the standard RLP 'fixed sum' of £137.50 for staff and management time, administration costs, and apportioned security and surveillance costs; and stated:

"We hereby serve formal notice that, due to your wrongful actions [Boots] has withdrawn their permission, with immediate effect, for you to enter any of their stores for the rest of your life. Unless granted express authorisation any future entry will amount to trespass and be unlawful. Failure to comply will result in police action."

Vanessa's mother then telephoned RLP, intending to challenge the demand on the basis that her daughter had not committed any offence. However, Vanessa's mother contends that she was so intimidated by RLP's oral statements that they would take Vanessa to court, and that this would prejudice Vanessa's future chances of obtaining both employment and credit, that she reluctantly agreed to pay the (reduced) sum of £110 by debit card.

41. Letter, dated 22 December 2009, from Sir Terry Leahy, Chief Executive, Tesco.

Quickly coming to the view that she had been duped, and feeling outraged both by the original demand, and by what RLP had said to her when she telephoned them, Vanessa's mother then sought advice from her local CAB.

Armed with information and advice from the CAB, Vanessa's mother then repeatedly telephoned Boots, challenging both the allegation of theft and the legal basis for RLP's demand. After a number of telephone conversations with different Boots managers, she was eventually told that, as Vanessa had not committed any offence, the demand would be cancelled and the £110 repaid; furthermore, Boots would pay £90 compensation to Vanessa.

A few days later, in May 2010, Vanessa's mother received a letter from the Senior Customer Manager at Boots, enclosing a payment advice for £200 and apologising for "the way this whole saga has been managed."[42]

Case of 'Peter' and 'James'

Peter and James – brothers aged 16 and 17 – each received a 'fixed sum' demand for £137.50 (i.e. a total of £275) from Retail Loss Prevention in May 2010, in relation to the alleged – but strongly denied – offence of switching the price labels on two wallets in TK Maxx, so as to "make payment for less than the offered price." Peter and James contend that they were in fact simply attempting to buy one wallet each that – for reasons unknown to them – turned out to carry a different price (£12.98) to that on the cardboard boxes in which they were housed (£11.00), and which the boys had selected from a large 'sale' bin of wallets of various designs and prices. The police were not called (or, at least, did not attend) and, after being issued with life-time bans from all TK Maxx stores, Peter and James were allowed to leave.

One week later, Peter and James received the demand letters from RLP; these give the price of the (recovered) wallets as £14.99. The brothers showed the letters to their father who, after seeking legal advice from a law firm, wrote to RLP noting that "at no time did my sons commit any unlawful actions in TK Maxx", and that "had TK Maxx staff carried out an investigation correctly they would have found that no offence had been committed".

RLP did not reply to the boys' father, but ten days later, in early June 2010, sent a further letter to each of Peter and James. These letters opened by stating that "due to the provisions of the Data Protection Act 1998 we cannot discuss this case with [your parent/guardian] without your specific consent. If you wish them to represent your interests in this matter, we require a letter of authority from you."[43] The letters then continued:

"You were observed removing the item from its packaging and placing it into another box which had a clearance label attached so as to make payment for less than the offered price of [the] goods. Your co-defendant was also observed doing the same. Our client [TK Maxx] states that the price of the item was clearly displayed on the box before you tampered with it. Your actions and those of your co-defendant were an attempt to deprive [TK Maxx] of £29.98 … If you fail to resolve this matter within 21 days from the date of this letter, we will assume that you have no desire to reach an amicable settlement and will take our client's instructions on next action against you."

After seeking advice from their local CAB, the family decided not to respond to these letters from RLP. One month later, the boys each received a further letter from RLP, stating:

"Our client [TK Maxx] is determined to make full use of civil law remedies including Court action if necessary, to recover their costs caused by your wrongful actions. Where proceedings are issued then the court will be asked to consider any failure to respond to letters where they make orders for costs

42. Letter, dated 14 May 2010, from Alan Green, Alliance Boots.
43. Letters, dated 7 June 2010, from Colleen Williams, Legal Department, RLP.

and interest. To avoid this action and further increased costs, you must deal with this claim within 14 days from the date of this letter." [44]

Peter and James continue to contend that they are entirely innocent of any crime against TK Maxx. After seeking further advice from their local CAB, the family decided not to respond to the above letter from RLP.

However, the boys' father did write to the Information Commissioner, expressing concern about the warning – set out in the RLP 'notice of intended civil recovery' that was handed to Peter and James by TK Maxx staff at the time of the incident – that the boys' "personal data" will be stored by RLP to "make employment decisions, decisions regarding the provision of credit and for the purposes of crime prevention and detection including verifying details on application forms and protection of the rights of [RLP] and other companies as appropriate". The 'notice' concludes by stating that "the use of this data will at all times be in compliance with the Data Protection Act 1998 and the scheme has been approved by the Office of the Information Commissioner".

In correspondence with Citizens Advice, the Office of the Information Commissioner (OIC) has confirmed that it has *not* at any stage approved RLP's data-screening scheme. Furthermore, in November 2009 the OIC informed Citizens Advice that it had "contacted RLP requiring them to remove the wording regarding [OIC] approval of their scheme – according to RLP [this false statement] appeared due to an error and was removed in March 2009". And, in June 2010, after Citizens Advice had supplied the OIC with further examples of RLP's 'notice' containing this false statement – issued by Mothercare in December 2009 and Wilkinson in March 2010 – the OIC stated to Citizens Advice: "we will certainly raise this with RLP as we have been very clear that the OIC does not 'approve' the scheme, and that we required the reference to approval to be removed".

The boys' father also contacted his Member of Parliament, who in turn wrote to RLP. A few weeks later, Peter and James each received a further letter from RLP, noting that RLP had received a letter from the MP, and stating:

"Our client [TK Maxx] is within their legal right to pursue this claim for compensation.

Our client reserves the right to determine who they allow into their premises, irrespective of whether or not there is a formal banning order in existence. Whilst you may have felt pressured into signing a lifetime banning order, it was done in the presence of your father [*sic*].

With respect, I would like to inform you that [TK Maxx] states that you were made aware of their intention to pursue a civil claim against you by the fact that they provided you with a Civil Recovery notice. Your father was called and he attended the incident and had the civil recovery notice explained to him [*sic*]. There is no legal requirement for our clients to provide you with this document, but they do so as a matter of courtesy."

The boys' father contends that, contrary to these statements by RLP, he did *not* attend the incident (as he was on a train journey at the time). The letters from RLP continue:

"We clarify that both you and your co-defendant are jointly and severally liable for this incident. This means that you shall each remain liable until the full amount of the claim has been paid. Conversely, if either you or your co-defendant is prepared to pay the full amount of this claim, then the liability of each defendant shall be extinguished.

Put simply our client requires a payment of £220.00 [*sic*] in total. Your joint *connection* means that it is irrelevant who pays it. As long as £220.00 is paid the case against each of you will then be fully settled."

The letters do not give any explanation for the £55 difference between the sum now demanded, £220.00, and the total sum demanded in the initial template demands

44. Letters, dated 5 July 2010, from Danielle Smith, Legal Department, RLP.

and subsequent letters (£275.00). They conclude:

"If you fail to resolve this matter by any of the above options within 21 days from the date of this letter, we will assume you have no desire to reach an amicable settlement and will take our client's instruction on next action against you."[45]

One month later, the boys each received a further letter from RLP, once again demanding a total of £275 [*sic*] and warning:

"Our client [TK Maxx] is prepared to issue court proceedings in this matter to recover the full amount of their claim plus court fees, other allowable legal costs and all interest which has been accruing on a daily basis at a rate of 8% per annum. The total amount claimed in Court will significantly exceed the amount outstanding. Your options are now to:

- Pay the amount outstanding [£137.50 each]
- Set up an instalment plan [by telephone]
- Write asking for the matter to be tried by a civil court judge. This will enable you to defend your case, submit appropriate evidence and attend court to confirm your own evidence and hear the evidence of [TK Maxx].

Failure to settle the claim or respond, within 21 days from the date of this letter will result in next stage action being taken against you without further notice."[46]

Armed with information and advice from their local CAB, the family have not responded to these letters and, as of 15 November 2010, no county court claim has been issued against Peter and/or James.

Case of 'Lucy' and 'Gerald'

Lucy and Gerald – a married couple in their 40s – each received a 'fixed sum' demand for £137.50 (i.e. a total of £275) from Retail Loss Prevention in January 2010, in relation to the alleged – but strongly denied – offence of switching the price label on a wallet in TK Maxx, so as to "obtain the item at a lesser price". Lucy and Gerald contend that they were in fact attempting to buy a wallet that they had selected from a large 'sale' bin of wallets of various designs and prices. They contend that, as the wallet of the colour they had selected from the bin did not have any price label on it, they had taken the price label off a differently coloured but otherwise identical wallet, placed this on the wallet they had selected, and taken the wallet to the checkout.

At the checkout, Lucy had paid £6.84 for the wallet (by card), only for the couple to be apprehended by security staff and accused of switching the price label. They contend that, at their insistence, the police were called and attended, but after investigating the alleged incident decided to take no action. (Lucy and Gerald further contend that, a few days after the incident, the police officer who had conducted the investigation came to their house, to return – in cash – the £6.84 that Lucy had paid by card to TK Maxx). TK Maxx security staff then attempted to serve Lucy and Gerald with notices of their life-time ban from all TK Maxx stores, but they refused to accept these.

One week later, Lucy and Gerald received the two template demands from RLP; these give the value of the (recovered) wallet as £14.99. This is significant as, had the value of the allegedly stolen goods been given as £8.15 – that is, the difference between the stated value of the wallet (£14.99) and the price paid by Lucy (£6.84) – then the sums demanded by RLP would have been £87.50 (i.e. a total of £175), not £137.50 (and a total of £275). And, whilst it is not easy to see how the cost to TK Maxx of 'dealing with' the incident would have been any different, the amount retained by RLP – which retains some 40 per cent of all monies paid – would have been just £70, instead of £110.

Lucy and Gerald took the demands to a

45. Letters, dated 13 August 2010, from Bill Reagan, Legal Department, RLP.
46. Letters, dated 10 September 2010, from Danielle Smith, Legal Department, RLP.

firm of solicitors, which over the following weeks corresponded repeatedly with RLP on Lucy and Gerald's behalf. In a letter sent in January 2010, RLP cited – as legal authority for its demands – the High Court cases of *Versicherung* and *British Motor Trade Association*, but did not mention the (superior) case of *Aerospace Publishing Limited*.[47] And, in a letter sent in March 2010, RLP stated that "your clients [Lucy and Gerald] admit that they switched a price label from one item to another as there was no price indicated on the item. [TK Maxx] states that the price was clearly identifiable and your clients therefore switched the label to deliberately obtain the item at a lower price. It is our client's prerogative to label items as they see fit. Prices vary due to style, shape, size, colour and length of time displayed as stock. [TK Maxx] is not prepared to forego this valid civil claim against your clients."[48]

In response, Lucy and Gerald's solicitors stated to RLP:

"We feel obliged to express our concerns at the contents of your letters. [Lucy and Gerald] have always denied that they committed any wrongful act and your recitation of case law of no logical relevance causes us real concern."

The solicitors then advised the couple to ignore any further letters from RLP. A few weeks later, in April 2010, Gerald received a letter from RLP, stating:

"Our client [TK Maxx] is not prepared to forego this claim against you and believe they will be successful if this matter proceeds to court. As you have set out your dispute to the claim and this has not been accepted by [TK Maxx] your options are now to:

- Pay the amount outstanding
- Set up an instalment plan [by telephone]
- Write asking for the matter to be tried by a civil court judge.

In the absence of payment or written confirmation from you advising that you are prepared to defend this in court, our client will have no alternative but to commence County Court Recovery Proceedings for this sum and advise you to take legal advice on this claim.

Accordingly, please treat this letter as formal notice of our client's intention to commence recovery proceedings if full payment is not received by RLP on or before 12.00 noon on Friday 30 April 2010."[49]

Lucy and Gerald took this and other letters from RLP to their local CAB, which on 27 April wrote to RLP on their behalf, noting that "the police investigated the incident at the time and decided that [Lucy and Gerald] had not committed [any offence]". In early May 2010, RLP replied to the CAB, stating:

"Irrespective of the fact that the police discontinued the matter it is still our client's right to bring this civil claim against you [*sic*] for financial compensation. It is not negated by the outcome of any criminal investigation. As this claim is still in dispute and we have previously corresponded at length with [Lucy and Gerald's] solicitors answering all claims, we have now advised our client to pursue this matter to court. Please advise whether you are instructed to accept service of proceedings."[50]

On 27 May 2010, the CAB wrote again to RLP, noting that "as stated in our letter of 27 April, [Lucy and Gerald] do not accept any liability in this matter", that "whether or not you pursue your demand by means of county court proceedings is a matter for you", and that "should you decide to issue a county court claim, [Lucy and Gerald] will, with our assistance, defend the claim in court". As of 15 November 2010, neither Lucy and Gerald nor the CAB have heard further from RLP or TK Maxx, and – some ten months after the initial demands – no county court claim has been issued against them.

47. Letter, dated 26 January 2010, from Colleen Williams, Legal Department, RLP.
48. Letter, dated 11 March 2010, from Colleen Williams, Legal Department, RLP.
49. Letter, dated 9 April 2010, from Colleen Williams, Legal Department, RLP.
50. Letter, dated 4 May 2010, from Colleen Williams, Legal Department, RLP.

Case of 'Russell'

Russell, a man in his late 50s with long-term mental health problems, received a demand for £509.35 from Civil Recovery Solutions in April 2010, in relation to the alleged theft of goods from his former employer, Travis Perkins. Russell had worked as a yard foreman for Travis Perkins for 30 years, but in 2009 had been dismissed for his alleged part in a series of alleged offences by Russell's then manager, involving the unauthorised disposal of damaged stock to builders. At the time of the police investigation of these alleged offences, Russell had been arrested, but had been released without charge after accepting, on the advice of a duty solicitor, a police caution. However, Russell contends that he did not understand the full implications of accepting a police caution.

The demand from Civil Recovery Solutions states:

"Civil Recovery Solutions has been instructed by Travis Perkins to recover compensation for damages and expenses in relation to incidents that took place in [a Travis Perkins store] during March 2009. These incidents involved a number of goods thefts to the value of £96.35. The costs incurred by Travis Perkins to investigate this matter total £413.00.

Travis Perkins are prepared to offer an early settlement figure of £407.48 if this demand is settled within 21 days of this notice, in accordance with the Ministry of Justice pre-action protocol."

As already noted above, there is no such "Ministry of Justice pre-action protocol" applicable to a 'claim' such as that made by CRS in this and other cases. The letter from CRS continues:

"If the settlement figure is not received within 21 days of this notice we are entitled to instruct our solicitors to seek compensation via the County Courts for the demand value.[51] Should the litigation process be instigated we would also seek additional costs in relation to the case, including interest, additional administrative costs and legal fees.

Shop crime costs UK retailers over £4bn every year. Retailers are determined to make use of all legal avenues to recover the costs of crime. If you wish to dispute your case you will need to do so in writing within 14 days or see our website for answers to frequently asked questions."

After receiving the demand from Civil Recovery Solutions (CRS), Russell sought advice from his local CAB, which had previously assisted him in relation to his dismissal by Travis Perkins. In June 2010, the CAB wrote to CRS, requesting a more detailed breakdown of the sum demanded. CRS replied, stating that this sum included: £96.35 for the value of the goods; £250.00 for "investigation and interviewing costs"; £100.00 for "security cost contribution (0.0002 of budget)"; and £63.00 for "administration costs (travel, CCTV tapes, etc)". The response from CRS continues:

"Further detail and evidence is available including CCTV. This will however incur further costs which will be added to the case value as it will form part of the civil claim evidence for the court.

Travis Perkins plc has expressed a desire to proceed with this civil case. As a gesture of goodwill we have agreed with Travis Perkins plc to place your case on hold until 5 July in order to give you the opportunity to contact us and discuss any defence or mitigating circumstances. After this time if you have failed to make contact, the case will continue down the civil law process."[52]

The reference by CRS to the addition of "further costs" is highly misleading, as in the county court small claims jurisdiction (where this case would most likely be heard, should CRS and/or Travis Perkins issue a court claim) the scope for claiming costs is very limited, unless there are exceptional circumstances. In fact, in a case such as this, it is most unlikely that a (successful) claimant could

51. In August 2010, CRS stated to Citizens Advice that it instructs the Nottingham-based law firm MacLaren Britton "in relation to these matters"; however, CRS also stated that it has "currently not issued any claims in the courts". Letter, dated 6 August 2010, from Jon O'Malley, Managing Director, Civil Recovery Solutions.
52. Letter, dated 18 June 2010, from John Burton, Civil Recovery Solutions.

successfully claim more than the £30 court fee as costs.

The CAB then wrote again to CRS, stating simply that Russell's "final position in the matter is that he accepts no liability for the sums claimed". CRS replied:

"We will be advising [Travis Perkins] to commence the civil litigation process. Should the case proceed to Court we would also seek the appropriate courts costs, legal fees, statutory interest and any other disbursements in relation to the court hearing in accordance with the then published rates.

As a final gesture of goodwill we have agreed with Travis Perkins plc to place the case on hold for a further 21 days. This is to give [Russell] the opportunity to contact us and discuss any defence or mitigating circumstances in line with the Ministry of Justice pre-action protocol [*sic*] before proceeding with court action."[53]

Once again, the CAB wrote to CRS, stating: "whether or not you (or Travis Perkins) issue a county court claim is a matter for you and Travis Perkins. However, should such a claim be issued, [Russell] will, with our assistance, defend the claim in court". In early September, CRS replied:

"We would be grateful to receive either [Russell's] proposals for payment or a detailed letter of response within 21 days. If we do not hear from [Russell] our client [Travis Perkins] will have no option but to issue proceedings." [54]

The CAB wrote once more to CRS, indicating that Russell will defend any court claim. As of 15 November 2010, Russell has not heard further from CRS, and no county court claim has been issued against him.

Case of 'Martin'

Martin, in his 30s, received a 'fixed sum' demand for £187.50 from Retail Loss Prevention in April 2009, some three months after being dismissed by Morrisons for the alleged – but denied – theft of goods worth £40.98. In the template demand, the value of the 'unrecovered goods' is given as 'nil'.

After writing to RLP to deny liability for the sum demanded, in early May 2009 Martin received a further letter from RLP, warning that "failure to settle [this] claim or respond within 21 days will result in next stage action being taken against you without further notice". Martin did not respond. Six months later, in early November 2009, he received a further letter from RLP, stating:

"Should this case proceed to the civil Court and we have to issue an application for Summary {Judgment}{Decree}, based on the fact that your defence has no legal basis and therefore no likelihood of success, we shall add the costs incurred onto the amount claimed from you which will increase the amount outstanding considerably [*sic*]."[55]

In fact, as noted above, in the county court small claims jurisdiction, where any court claim in respect of this demand would most likely have been heard, the scope for claiming costs is very limited, unless there are exceptional circumstances. Indeed, in late 2009 RLP itself noted that "legal costs are not usually recoverable in claims allocated to the small claims track of the County Court (claims of less than £5,000) so the retailer will not recover their legal costs even if successful."[56] And, as of November 2010, RLP's website states that "the vast majority of the claims we deal with are small claims track matters, that is a claim with a value of less than £5,000" and "costs are not recoverable in a claim of a value of less than £5,000 in the County Court".

Martin wrote to RLP, once again denying liability "for Morrison's alleged losses or consequential costs associated with an investigation that they elected to conduct and over which I had no control", and challenging the legal basis for RLP's civil recovery demand. In December 2009, RLP replied:

53. Letter, dated 20 July 2010, from John Burton, Civil Recovery Solutions.
54. Letter, dated 9 September, from John Burton, Civil Recovery Solutions.
55. Letter, dated 30 October 2009, from Colleen Williams, Legal Department, RLP.
56. RLP briefing paper, *Civil recovery as practised by the The National Civil Recovery Programme*, undated but provided to journalists by RLP in December 2009.

"Our client [Morrisons] is prepared to issue court proceedings in this matter to recover the full amount of their claim plus court fees, other allowable legal costs and all interest which has been accruing on a daily basis at a rate of 8% per annum. The total amount claimed in Court will significantly exceed [*sic*] the amount outstanding [£187.50]. Failure to settle [this] claim or respond within 21 days will result in next stage action being taken against you without further notice."[57]

The reference by RLP to "interest which has been accruing on a daily basis at a rate of 8% per annum" is inaccurate and therefore misleading. In fact, in the county court small claims jurisdiction, statutory interest can be claimed (at the rate of 8 per cent) only where the judgment is for £5,000 or more, and only from the date of the court judgment/order until the sum is paid. Whilst there is nothing to stop a successful claimant from *applying* to the court for *pre-judgment* interest, this is at the judge's discretion. And Citizens Advice understands that RLP has *never* successfully applied for such pre-judgment interest after successfully litigating a fully contested county court claim.

Martin then sought advice from his local CAB, which wrote to Morrisons on his behalf, noting that "the letters sent by RLP are intimidating and contain spurious legal precedent to support their claims on your behalf. The use of such letters is harassment". Morrisons did not respond to the CAB, but in late January 2010 the CAB received a letter from RLP, noting that "[Morrisons] have passed us your letter … and as we are acting on their behalf we request that all further communication in respect of this claim is addressed to us". Enclosing a two-page 'Defence to Civil Claim' form, seemingly devised by RLP, the letter from RLP noted that "we have followed the general pre-action protocol applicable to this case" and asked that Martin complete the form and return it to RLP "within 28 days". [58]

As already noted above, there is no such "general pre-action protocol" applicable to a 'claim' such as that made by RLP in this and other cases, and it is at least questionable whether the above letters from RLP fully comply with the CPR Practice Direction on pre-action conduct.

In early February 2010, the CAB wrote briefly to RLP, noting that Martin "does not accept any liability for the costs which you allege have been incurred by [Morrisons]", and that Martin "regards your correspondence as intimidating and requests no further contact from you on this matter". One week later, the CAB received a further letter from RLP, once again enclosing its two-page 'Defence to Civil Claim' form and stating:

"We note that [Martin] does not accept any liability, however he has failed to provide a defence. Our correspondence is in accordance with the pre-action protocols to the Civil Procedure Rules. In particular, we have sent an initial letter of claim …. The Defendant's full response should as appropriate:

i. accept the claim in whole or in part and make proposals for settlement, or

ii. state that the claim is not accepted.

If the Defendant does not accept the claim or part of it, the response should:

i. give detailed reasons why the claim is not accepted, identifying which of the Claimant's contentions are accepted and which are in dispute;

ii. enclose copies of the essential documents which the defendant relies on;

iii. identify and ask for copies of any further essential documents, not in their possession, which the defendant wishes to see;

iv. state whether the Defendant is prepared to enter into an alternative method of dispute resolution.

This failure will be highlighted to the court. We have previously provided a Defence

57. Letter, dated 3 December 2009, from Colleen Williams, Legal Department, RLP.
58. Letter, dated 20 January 2010, from Colleen Williams, Legal Department, RLP.

to Civil Claim Form to assist your client in providing a defence and [enclose] another for your reference … failure to settle the claim or respond within 21 days will result in next stage action being taken against [Martin]. Please confirm within this period that you are instructed to defend civil proceedings on behalf of [Martin]. If we do not receive this confirmation we will assume you are not instructed and correspond with [Martin] direct."[59]

The CAB did not respond to this letter and, as of 15 November 2010, neither Martin nor the CAB has heard further from RLP; furthermore, nine months on, and some 19 months after the initial template demand, no county court claim has been issued against Martin.

Case of 'Jonathan'

Jonathan, a 17-year-old school student in receipt of means-tested Education Maintenance Allowance, received a 'fixed sum' demand for £156.47 from Retail Loss Prevention in August 2009, in relation to the theft of a pair of headphones worth £18.97 from Tesco. The police attended, and issued Jonathan with an £80 Fixed Penalty Notice. Two days later, RLP issued its template demand, with the sum demanded made up of £18.97 for the value of the headphones, and the standard 'fixed sum' of £137.50.

Jonathan's mother then contacted RLP by phone, to ask about paying the sum demanded in instalments. In October 2009, RLP wrote to Jonathan, enclosing a Settlement Agreement form, setting out RLP's terms and conditions for the payment of a total of £181.97, including £25.50 of administration charges, over 17 monthly instalments. The Settlement Agreement form is headed "Consumer Credit Licence Number 0628437."

In fact, RLP did not at that time (and does not now) hold a Consumer Credit Licence; the number '0628437' is that of RLP's May 2009 *application* to the Office of Fair Trading for such a licence, which RLP withdrew in early 2010.

The covering letter from RLP to Jonathan stated:

"You need to read through the Settlement Agreement and agree to be bound by the terms and conditions. If you agree to make payment this way, you need to sign the Settlement Agreement and return the top copy to our offices within 14 days. If you are under 18 you will need someone to act as guarantor for you. This person will also have to read through the Settlement Agreement and agree to be bound by the terms and conditions. You will both then have to sign the Agreement before you return it to us.

Alternatively, you can reject the Settlement Agreement terms and conditions by paying the full amount of the claim outstanding. If the Settlement Agreement is not rejected within the above timescale, whereby full payment would have to be made, we will consider this conduct as acceptance of the terms and conditions regardless."

Feeling intimidated and (understandably) confused by this letter, Jonathan and his mother then sought advice from their local CAB. In early November 2009, the CAB wrote to RLP on their behalf, noting that the sums demanded "for investigation, administration and security appear to be vastly disproportionate to the original wrong", and that Jonathan is "paying his mother back in instalments from his Education Maintenance Allowance for the £80 [fixed penalty notice]". The CAB also challenged the "tenuous" legal basis for the "high and unjustified" demand, and asked that it be dropped.

Two weeks later, RLP replied to the CAB, stating:

"We are satisfied that claims are properly maintainable for the costs of investigating [Jonathan's] wrongful actions together with a contribution towards the cost incurred by [Tesco] for maintaining their loss prevention

59. Letter, dated 18 February 2010, from Colleen Williams, Legal Department, RLP.

department. We would, in particular, refer you to paragraph 72-77 of the Judgment of Mrs Justice Gloster, DBE in the case of *R & V Versicherung AG v Risk Insurance & Reinsurance Solutions SA and others [2006] EWHC 42 (Comm)*. It is clear from these paragraphs that time spent by employees investigating actual torts against the claimant can be recovered. This is a general principle, which is not restricted to conspiracy cases. As this case further confirms, it is also not necessary to establish 'significant disruption to the business' or indeed any loss of revenue or profit."[60]

In fact, the High Court case of *Versicherung* cited by RLP confirms the very opposite of what RLP states, namely that it is necessary for a claimant to establish 'significant disruption to the business'. In *Versicherung*, Justice Gloster's actual words were:

"… to be able to recover [the cost of staff time investigating or mitigating the tort] one has to show some significant disruption to the business, in other words that staff have been significantly diverted from their usual activities. Otherwise the alleged wasted expenditure on wages cannot be said to be 'directly attributable' to the tort."

Moreover, two years before the date of RLP's letter, the reasoning of *Versicherung* had been confirmed in the Court of Appeal case of *Aerospace Publishing*.[61] Yet the letter from RLP makes no mention of this superior case.

The letter from RLP continued:

"We would also ask you to note that such costs have been allowed in County Court cases (for example *Littlewoods Stores Limited v Ishfaq* see copy Judgment attached). It will be seen that the Court also allowed 'security and surveillance' costs to be recovered in this case."

As with many similar letters containing this particular statement sent to Citizens Advice Bureaux by RLP over the years, the letter from RLP did not enclose a copy of the judgment/order in the county court case of *Littlewoods Stores Limited v Ishaq*, which concluded in 1999 and involved a claim in respect of no fewer than 30 counts of theft, totalling more than £3,000, by Ishaq over a period of six months. *Littlewoods v Ishaq* is one of three county court cases, seemingly litigated by retailer clients of RLP in 1999 or 2000, that RLP has in the past often cited in demand letters and on its website as 'legal authority' for its demands.[62] However, in extensive correspondence with Citizens Advice since June 2009, RLP has repeatedly declined to provide a copy of the judgments/orders in these three county court cases. In any event, such county court judgments do *not* set any legal precedent.

The CAB did not respond to this letter and, armed with information and advice from the CAB, Jonathan and his mother decided not to pay any money to RLP, so did not return the Settlement Agreement. Jonathan did not hear any more from RLP until late May 2010, when he received a letter headed "Default & Termination Notice" and stating:

"You contracted to pay your civil recovery debt by way of a Settlement Agreement which allowed you to make payment by instalments. You have not responded to our missed payment warning letter, or our two previous notices (of default and of Arrears). As a result, the facility of paying this civil recovery debt by instalments has been withdrawn and payment in full including all charges is now required.

As per the terms and conditions of your Settlement Agreement you have incurred a further charge making a total of £36 in default and final demand charges. You must send payment of £166.97 to clear the final balance including charges due … within 21 days.

If you do not make payment, your case will be passed without further notice, to our debt recovery department who will arrange for a debt collector to attend your home to discuss how full payment can be obtained from you.

60. Letter, dated 16 November 2009, from Sonia Johnson, Legal Department, RLP.
61. *Aerospace Publishing Ltd v Thames Water Utilities Ltd* [2007] EWCA Civ 3.
62. See also pp 11-12 of *Unreasonable demands*.

As per the terms of your agreement each doorstep visit incurs a further charge of £50."[63]

In fact, there is no 'debt' that can be collected by a licensed debt collection agency in this situation, as there have been no court proceedings resulting in a judgment/order in the claimant's favour, and in law there is no contract or 'credit' agreement between Jonathan and RLP. Apart from anything else, neither Jonathan nor his mother have ever signed and returned the Settlement Agreement sent to Jonathan by RLP in October 2009. And, in discussion with the Office of Fair Trading about RLP's (later withdrawn) application for a consumer credit licence, RLP has itself argued that its Settlement Agreements are *not* contracts.

Armed with information and advice from the CAB, Jonathan and his mother do not intend to respond to this or any further letters from RLP. As of 15 November 2010, they have not heard further from RLP or Tesco, and – six months on, and some 15 months after the initial template demand – no county court claim has been issued against Jonathan and he has not received any of the threatened 'door step' visits.

Case of 'Maia'

Maia, a 17 year old college student, received a fixed-sum, template demand for £137.50 from Retail Loss Prevention in February 2010. This followed an incident in Boots two weeks earlier, when Maia and several friends were apprehended by security staff for the attempted theft of goods worth £28.44, which were recovered intact. The police were called, and Maia and her friends were arrested and taken to the police station, but Maia was released without charge after accepting a caution.

Maia did not respond to the demand. Three weeks later, she received a second template demand (TSL2). She then sought advice from her local CAB, which wrote to RLP to challenge the demand. RLP replied, stating:

"Our correspondence is in accordance with the pre-action protocols to the Civil Procedure Rules.

Failure to settle the claim or respond, within 21 days from the date of this letter, will result in next stage action being taken against [Maia] without further notice. Please confirm within this period that you are instructed to defend civil proceedings on behalf of your client. If we do not receive this information we will assume you are not instructed and correspond with them direct."[64]

One month later, RLP sent a further letter to Maia, stating:

"Our client [Boots] is determined to make full use of civil law remedies including Court action if necessary, to recover their costs caused by your wrongful actions. Where proceedings are issued the court will be asked to consider any failure to respond to letters where they make orders for costs and interest. To avoid this action and further increased costs, you must deal with this claim within 14 days."[65]

The CAB wrote to RLP once more, challenging the basis for the demand and requesting "a full breakdown of and evidence for each element of the claim". RLP replied, stating:

"We would like to draw attention to our letter of 8 March 2010 which detailed how to properly respond to this claim.

By removing goods or monies or denying payment for services from [Boots], your client has engaged in a wrongful act. Where a business is subjected to wrongful acts then they are entitled to claim the value of the goods, monies or services in question, plus the costs involved in investigating or mitigating the attempted wrongful act. Decided case-law provides authority for claiming the costs of investigating or mitigating a wrongful act without the need to prove loss of profit or revenue *(R&V Versicherung AG v Risk Insurance and Re-Insurance Solutions SA and others [2006]*

63. Letter, dated 27 May 2010, from James Wilson, Collections Department, RLP.
64. Letter, dated 8 March 2010, from Michele Taylor, Legal Department, RLP.
65. Letter, dated 1 April 2010, from Danielle Smith, Legal Department, RLP.

EWHC 42 (Comm)), British Motor Trade Association v Salvadori [1949] Ch556.

The costs applied in your client's particular case are fixed costs. The compilation of detailed time and other records is not considered to be proportionate in a case of this type *Bridge UK Com Ltd (t/a Bridge Communications) v Abbey Pynford plc [2007]* EWHC 728 (TCC). It is therefore reasonable and proportionate for our clients to claim an average cost based on the time taken to conduct all necessary elements of their investigation, which includes but is not limited to the following: surveillance, apprehension, interview, report and witness statement preparation, recording of the incident for company records, reviewing CCTV where appropriate, reporting incident, preparing goods for re-sale if applicable, retagging/pricing, concluding with senior management."[66]

As noted in Section 6, and in the case of 'Martin', above, a claim for staff time spent investigating and mitigating a tort such as trespass to goods is recoverable *in principle*. However, the matter is not self proving. Following the High Court case of *Versicherung* cited by RLP, as well as the subsequent (and superior) Court of Appeal case of *Aerospace Publishing*, it would be for the retailer to prove, first, that the staff member(s) in question were significantly diverted from their normal duties (and to evidence *how much* of their time was diverted) and, secondly, *that this diversion caused a significant disruption to the retailer's business*.[67] Clearly, the amount of staff time (if any) diverted, and the value of that time will vary greatly from one case to another. For this reason, it would be entirely inappropriate for a retailer (or its agent) to advance a county court claim on the basis of *pre-determined*, fixed costs.

Furthermore, in the *Bridge* case cited by RLP, the High Court had clear evidence of the actual amount of diverted time and the value of that time to the business. So, contrary to what RLP states, above, the *Bridge* case does not in any way support a prior assessment of fixed costs to be attributed to an alleged tortious act.

One month later, the CAB received a further letter from RLP, stating:

"Having considered all the information provided by your client, we would inform you it has no legal basis as a defence to our client's claim and does not extinguish your client's liability, nor does it negate the fact that [Boots] has suffered loss as a result of their actions. Should this case proceed to the civil court and we have to issue a claim for Summary Judgment, based on the fact your client's defence has no legal basis and therefore no likelihood of success, we shall add the costs incurred onto the amount claimed.

Since all attempts to reach settlement have failed, [Boots] has no other option than to seek redress through the Court to recover the full amount of their claim plus all interest which has been accruing on a daily basis at a rate of 8% per annum, and court fees. The total amount then due will be in excess of the current amount due."

What the above paragraph fails to point out, of course, is that money would only become "due" if and when any county court claim that is made by Boots (or RLP on behalf of Boots) is successful in court. And, as noted already, Citizens Advice can find no evidence of RLP or its retailer clients having ever successfully litigated a contested county court claim in respect of such a 'fixed-sum' demand. Certainly, in extensive correspondence with Citizens Advice since June 2009, RLP and its retailer clients (including Boots) have repeatedly declined to provide any such evidence.

Furthermore, as already noted in the case of 'Martin', above, the reference to "interest which has been accruing on a daily basis at a rate of 8% per annum" is inaccurate and therefore misleading.

The letter from RLP continued:

"Please be aware that a civil Court Judgment will affect your client's credit rating and

66. Letter, dated 24 June 2010, from Izabell Winter, Legal Department, RLP.
67. *Aerospace Publishing Ltd v Thames Water Utilities Ltd* [2007] EWCA Civ 3.

ability to obtain credit cards, bank loans and mortgages. It may also affect your client's future employment prospects. Upon Judgment our Legal Department are entitled to instruct Bailiffs to attend at your client's property to recoup the full value of the debt owed, plus any costs associated with this action.

Enforcement of a Judgment against your client can also include attaching any future earnings, taking action against any property your client might own including their home, making application for an order that the debtor attend Court for questioning, or in some cases, bankruptcy.

Failure to contact us within 14 days with your client's proposals for settlement will result in next stage action being taken against your client, without further notice."[68]

The reference in this letter to 'bankruptcy' is wholly inappropriate, as in England and Wales bankruptcy proceedings can only be instigated in relation to a debt of £750 or more.

The CAB then wrote to RLP once more, noting that Maia denies any liability for the 'claim' and that, should any court claim be issued against her, Maia would defend the claim in court. RLP replied, stating:

"We would like to once again draw your attention to our letter of 8 March 2010 which detailed how to properly respond to this claim. To merely state that your client 'denies any liability for the above claim' is not acceptable. Our first correspondence sent to [Maia] gives sufficient detail for [Maia] to be aware as to what the matter relates to.

You have therefore indicated a refusal to engage in pre-action correspondence. If an agreement cannot be reached with regard to our client's losses, your client [*sic*] has the right to ask the Court to make a decision on liability and quantum. Your client should be aware however that before a matter can be heard by a Court, parties are obliged to comply with the Pre-Action Protocol and the Civil Procedure Rules 1998."[69]

As already noted above, there is no such "Pre-Action Protocol" applicable to a 'claim' such as that made by RLP in this case. The letter from RLP continues:

"The Protocol [*sic*] provides that where a Claimant writes to a Defendant, setting out the basis of its claim, the Defendant is obliged within 14 days to respond, either admitting the claim, denying the claim, or requesting more time to respond to the claim. If your client wishes to deny the claim, she is obliged to write to us, or instruct you to do so, setting out the basis of her Defence. If your client fails to comply with this requirement, and proceedings are subsequently issued, your client may be penalised by the court for her failure to engage in the Pre-Action Protocol [*sic*]. The usual sanction of the Court is an adverse costs order."

In fact, in the county court small claims jurisdiction an adverse costs order is rare, as such sanctions are only applied where the court deems a party's conduct to be unreasonable or improper. But in any case, a 'defendant' is perfectly entitled to decide to run the risk of such sanctions being applied by the judge. For, unless and until a court claim is issued and *successfully* pursued at a court hearing before a judge, there is no such risk at all. And, as already noted above, Citizens Advice can find no evidence of RLP having successfully pursued any unpaid 'fixed sum' demands such as that issued to Maia by means of a contested court hearing. In extensive correspondence with Citizens Advice since June 2009, RLP and dozens of its retailer clients (including Boots) have all repeatedly declined to provide such evidence.

This refusal by RLP to evidence its claims to have successfully pursued unpaid demands by means of civil court action is surprising, given that it would be strongly in the financial interest of both RLP and its retailer clients to publicise such evidence, should it exist. In RLP's own words, such court action is "necessary … to strengthen the civil recovery process by maintaining the deterrent value of taking the last resort where

68. Letter, dated 22 July 2010, from Danielle Smith, Legal Department, RLP.
69. Letter, dated 2 September 2010, from Sally Jones, Legal Department, RLP.

necessary".[70] In fact, as already noted above, Citizens Advice understands that Retail Loss Prevention has never successfully litigated a fully contested county court claim in respect of an unpaid civil recovery demand.

The CAB did not respond to this letter from RLP. Three weeks later, in late September, RLP wrote directly to Maia, stating:

"Our client [Boots] is prepared to issue court proceedings in this matter to recover the full amount of their claim [£137.50] plus court fees, other allowable legal costs and all interest which has been accruing on a daily basis at a rate of 8% per annum. … Failure to settle the claim or respond, within 21 days from the date of this letter will result in next stage action being taken against you without further notice.[71]

Armed with information and advice from her local CAB, Maia intends not to respond to this or any further demands from RLP; as of 15 November 2010, no county court claim has been issued against her. Citizens Advice has submitted a formal complaint on behalf of 'Maia' to the Solicitors Regulation Authority about the content of the above letters from RLP; the outcome of this complaint is awaited.[72] (In correspondence with Citizens Advice, RLP has stated that: "There is no requirement for us to have any complaints procedure for third parties who are not our clients. We have no duty of care to those third parties. The correct procedure, should you wish to make a complaint, is for you to write to the Solicitors Regulatory [*sic*] Authority. Should they contact us, we will respond accordingly.")[73]

Case of 'Scarlett'

Scarlett, a 16-year-old school student, received a 'fixed sum' demand for £137.50 from Retail Loss Prevention in April 2010, in relation to the attempted theft of cosmetics worth £15.97 from Superdrug. The police attended, and Scarlett accepted a police reprimand. The cosmetics were recovered intact and, after being issued with a life-time store ban, Scarlett was allowed to leave the store.

Three weeks later, Scarlett received the template demand (TL1) from RLP. Scarlett showed this to her father, who wrote to RLP, enclosing a letter of authority from Scarlett, noting that he had read Citizens Advice's December 2009 report *Unreasonable demands*, and stating:

"My contention is that this theft, the whole regrettable incident, is a relatively minor, low value and one-off offence, an event we as a family want to put behind us. I suggest you join us in this quest and drop this civil claim. Lest you think I have an aura of disregard, then be aware that [due to Scarlett's attempted theft] as parents we've had our share of anguish, disgust, anxiety and introspection not to mention sleepless nights and increased blood pressure to contend with."

In late April 2010, RLP replied:

"The [Citizens Advice] report has been reviewed at ministerial level along with the core principles for civil recovery and information provided from the British Retail Consortium (BRC). No issue has been taken and Civil Recovery will continue as a legitimate means to contribute towards compensating retailers, and indeed a number of other businesses, for their losses arising out of theft and fraud.

[Citizens Advice has] erred in its findings that cases have not succeeded in courts. We regularly issue claims in court, which are successful."[74]

As already noted, in extensive correspondence with Citizens Advice since June 2009, RLP has *repeatedly* declined to provide details of any cases of an unpaid civil recovery demand that it has successfully pursued by means of county

70. *Statement of Operating Principles for the National Civil Recovery Programme conducted by RLP*, undated but provided to Citizens Advice by RLP in September 2010.
71. Unsigned letter, dated 23 September 2010, from Legal Department, RLP.
72. SRA reference: POL/18529-2010
73. Letter, dated 28 June 2010, from Vanessa Willett, Company Solicitor, RLP.
74. Letter, dated 23 April 2010, from Caroline Temple, Legal Department, RLP.

court proceedings. Indeed, throughout this correspondence, RLP has declined even to provide figures for the number of cases in which it has *issued* a county court claim. In recent months, Citizens Advice has repeatedly invited RLP to evidence its above claim to have 'regularly' and 'successfully' issued claims in court, but RLP has declined to provide any such evidence.

Scarlett's father then wrote again to RLP, stating:

"You state that you 'regularly issue claims in court, which are successful' but at no time indicate a case where a client of yours such as Superdrug has done so successfully in a case typical to this one. Instead you cite [the Court of Appeal case of] *Aerospace Publishing v Thames Water Utilities* [2007]. Do you not have a *Superdrug* (or similar) v *Seriously Misguided Child* [2009] case? Or have you invented a smokescreen for me to be distracted by?"

Two weeks later, RLP replied:

"We again confirm that we regularly issue claims in court which are successful. We note that you refer to a 2009 case. However, we are unawares as to the case you are referring to, and are therefore unable to comment in this regard.

Should you wish to challenge this case, you will need to do so through the courts. However, we would urge you to seek your own independent legal advice. We would also refer you to the Pre-Action Protocol for civil proceedings and the Civil Procedure Rules, as failure to comply may result in an adverse costs order against you."[75]

As already noted above, there is no such "Pre-Action Protocol" applicable to a 'claim' such as that made by RLP in this and other cases, so it is not clear how this ostensibly helpful reference was supposed to assist an unrepresented 'defendant' such as Scarlett and/or her father.

By now very worried about possible county court action against his daughter, Scarlett's father wrote again to RLP, stating:

"The easy option – which I'm convinced you prey upon – is to negotiate a settlement, but I've been uneasy about this civil claim from the start. In trying to clarify [on] what grounds the claim is justified, you have [cited] the example of *Aerospace* which does not deal with the specifics of Superdrug and my daughter (for example the issue of diversion of time and disruption to the business), neither have you set out how the amounts in the claim are arrived at. Without concrete answers to these points I need to seek further advice."

Scarlett's father then sought advice from his local CAB. In late May 2010, he wrote to RLP once more, stating:

"It's a hard thing to prejudge, the outcome of a court case, and I would not have pursued this case for as long as I have done if I did not think there was a reasonable chance of a successful conclusion. My visit to the CAB resulted in a two and a half hour wait followed by a 30 minute chat. It was good I must say, but I've been unable to take the final hurdle just yet. [So] what I will do is offer £60.00 'without prejudice' as a final settlement of your claim."

RLP then replied:

"We are prepared to accept your offer of £60.00 in full and final settlement of our client's claim, provided payment is received at this office within 14 days in accordance with Part 36.11 of the Civil Procedure Rules. If we do not receive payment within 14 days, [Superdrug] will be in a position to enter judgment against your daughter for this amount under Civil Procedure Rule 36.11(7)."[76]

The references in this letter to rule 36.11 of the Civil Procedure Rules (CPR), and in particular rule 36.11(7), are wholly inappropriate and unjustified, as rule 36.11 would only apply to a 'Part 36' offer (that is, an offer to settle a court

75. Letter, dated 11 May 2010, from Legal Department, RLP.
76. Letter, dated 4 June 2010, from Caroline Temple, Legal Department, RLP.

claim that is made specifically and *explicitly* under Part 36 of the CPR), and Scarlett's father's offer was clearly *not* a 'Part 36' offer. Citizens Advice has submitted a formal complaint about the contents of this letter to the Solicitors Regulation Authority; the outcome of this complaint is awaited. [77]

Scarlett's father then sent a cheque for £60.00 to RLP. However, two weeks later, having come to regret this decision, he (successfully) cancelled this cheque. RLP then wrote to him again, stating:

"You may or may not be aware of [the Citizens Advice] campaign against civil recovery, and companies such as RLP who are instructed by the organisations that have suffered the loss. Indeed, as a result of [the Citizens Advice report *Unreasonable demands*], RLP and civil recovery have been reviewed by the Association of Chief Police Officers (ACPO), the Association of Chief Police Officers Scotland (ACPOS), Police Service of Northern Ireland (PSNI), the Information Commissioner's Office (ICO), the Home Office, and the Office of Fair Trading. No issue has been taken by any of these organisations.

We therefore look forward to receiving confirmation from you as to:

1. Whether you and your daughter still wish to settle the matter in the sum of £60.
2. Whether you are in a position to settle payment within 14 days.
3. Whether you wish to make another counter offer.
4. Whether you wish to opt for the matter to go to Court for a District Judge to make a determination. Please note, due to your daughter accepting the Police reprimand, liability is not in question, only quantum."[78]

Scarlett's father then wrote again to RLP, stating "whether or not you initiate court proceedings in this case is a matter for you [but] if you do we will defend the claim in court". RLP then replied, by means of a five page letter, stating:

"We have already advised you at length on how our client's claim can be quantified. We have further advised you on the case law which is authority for claiming the costs of disruption to its business, as a result of your daughter's wrongdoing.

We have advised you on proportionality. It is disproportionate in a claim of this value to provide detailed schedule of loss, as would be expected in a claim of a large value. This again is supported in case law and is the approach adopted by the Courts. Indeed proportionality and costs were two of the main issues considered in the Wolfe [*sic*] reforms which resulted in the Civil Procedure Rules 1998."

This appears to be a reference to the civil justice reforms introduced in 1999, following the review of the civil justice system conducted by Lord Woolf [*sic*], then Master of the Rolls.[79] The letter from RLP continued:

"Given that you appear to have great difficulty understanding the legal concept, we set out below in further detail a schedule of time incurred, resulting in the losses to [Superdrug], which were incurred by your daughter."[80]

This schedule set out a number of activities totalling two hours and 35 minutes on the part of the store manager, three hours and 27 minutes on the part of a security guard, and five minutes on the part of a sales assistant, at a total cost of £120.71. With the addition of £24.74 for "administrative costs including self-carbonated paperwork, internal paperwork, envelopes, special delivery postage, photocopying [and] telephone calls", and £30.25 for "cost of security equipment, maintenance and upgrading (calculated on an average per incident)", this brings the total claimed costs to £175.70.

However, Scarlett strongly disputes both the

77. SRA reference: CDT/64508-2010
78. Letter, dated 30 June 2010, from Legal Department, RLP.
79. *Access to Justice Report* 1996, Lord Woolf.
80. Unsigned letter, dated 22 July 2010, from Legal Department, RLP.

accuracy and the veracity of much of this schedule, contending that – for example – the store manager did *not*, as claimed, sit with her and the security guard for one hour awaiting the arrival of the police, and was *not*, as claimed, present during the police interview (another 25 minutes). The schedule also includes ten minutes for a telephone call to Scarlett's father by the store manager that Scarlett's father contends he did not receive. The letter from RLP continues:

"We now refer to your further comments regarding our without prejudice correspondence regarding settlement. There is nothing sinister in negotiating a settlement of damages in any civil claim. Indeed, settlement, particularly, pre-action, is encouraged by the Courts and was again in Lord Wolfe's [*sic*] mind when drafting the Civil Procedure Rules and the Pre-Action Protocols.

You have not raised any Defence regarding liability. It has never been denied that your daughter committed a wrongful act, and indeed she admitted her wrongful act, when she accepted a Reprimand from the Police. There is therefore no Defence to liability."

This statement is highly misleading, since it conflates innocence or guilt in relation to the criminal offence (and civil tort) of theft with the separate matter of liability for the 'consequential losses' claimed by RLP on behalf of Superdrug. The letter from RLP continued:

"You have not raised any valid Defence regarding quantum. Whilst you dispute the case law our client seeks to rely upon, you have not set out any legal reasoning for such dispute …. Even if you were to formulate a legal argument on quantum, there remains no question that Judgment will be entered on liability, given the admission and reprimand.

We have gone over and above what is required of our client to comply with the Pre-Action Protocol. It is unfortunate that the matter has not been resolved. You have left [Superdrug] with no option other than to issue proceedings. Could you please therefore confirm whether you propose to act as your daughter's Litigation Friend in the proceedings.

If you do not wish to take on this responsibility, there are two options:

1. The Court would appoint a Litigation Friend. This would incur further unnecessary costs, which is again disproportionate to the value of the claim.
2. Our client can wait until your daughter turns 18, whereupon she will be in a position to represent her own interests in the proceedings."

Scarlett's father then wrote again to RLP, noting that "among several inaccuracies" the above letter had been sent to the wrong address, and repeating that "if [Superdrug] does wish to initiate court proceedings, we will defend the case in court". As of 15 November 2010, Scarlett and her father have not heard further from RLP or Superdrug, and – seven months on from the initial demand – no county court claim has been issued against Scarlett.

Conclusions

The more than 10,000 cases of a civil recovery demand handled by Citizens Advice Bureaux since 2007 – including the more than 300 cases studied in detail by Citizens Advice, of which 30 are set out in this report – strongly suggest that very few, if any, unpaid civil recovery demands are ever successfully pursued by means of the threatened county court proceedings, at least where the claim is fully contested. And this dearth of successfully litigated, contested court claims in respect of an unpaid demand may well be explained by the key conclusion of the formal Counsel's opinion obtained by Citizens Advice: that the relevant case law provides no obvious legal authority for most if not all such civil recovery demands.

This in turn suggests that the practice of threatened civil recovery relies on fear and/or shame, and ignorance of the law, for its effectiveness. As is clear from the case studies in this report, many recipients are especially vulnerable on account of their age, mental illness or other factors. Yet it is clear that a significant number of recipients of a demand have been sufficiently intimidated by the threat of civil court action and escalating costs to pay the sum demanded, without effective challenge.

Case of 'Debbie'

Debbie, a woman in her 30s, received a 'fixed sum' demand for £137.50 from Retail Loss Prevention in May 2010, in relation to the alleged – but strongly denied – attempted theft of one item of make-up worth £11.50, found on the hood of her young child's buggy after she had paid for her shopping in Superdrug. Strongly denying any intent to steal, Debbie contends that the failure to pay for the make-up was a genuine mistake on her part, due to her child having become upset whilst at the checkout. The police were called to the store, but decided to take no action after accepting Debbie's explanation.

Feeling intimidated by the threat of possible court action and escalating costs, Debbie decided to pay the reduced sum of £110.00 offered by RLP. Not having the money to pay this sum herself, Debbie borrowed the money from her mother.

Case of 'Roger' and 'Chris'

Roger and Chris, brothers aged 14 and 15, each received a 'fixed sum' demand for £137.50 (i.e. a total of £275) from Retail Loss Prevention in March 2010, in relation to the attempted theft of trainers worth £39.98 from TK Maxx. The police did not attend the incident, and the trainers were recovered intact.

Headed, 'without prejudice', the template demands (U16LIE) from RLP state:

"Although [TK Maxx's] claim is for £137.50, they seek to use Civil Recovery as a deterrent against further incidents and are prepared to cover a large proportion of the costs incurred themselves in consideration of your age. They would, however, wish you to understand the impact of your actions and accept responsibility for them. [TK Maxx] therefore will accept a substantially reduced payment of £35.00, in full and final settlement of this matter."

Fearful of possible court action and escalating costs, the boys' father decided to pay the reduced sums of £35 each offered by RLP (i.e. a total of £70).

Case of 'Kelly'

Kelly, a 16-year-old school student, received a 'fixed sum' demand for £87.50 from Retail Loss Prevention in December 2009, in relation to the attempted theft of chocolate worth approximately £5.00 from Superdrug. The police were called, and Kelly was arrested and taken to the police station, where she was interviewed in the presence of her parents. Kelly was then released without charge, after being issued with a police reprimand. Kelly and her parents thought this was the end of the matter.

A few days later, however, Kelly received the template demand (TL1) from RLP. Without telling her parents, Kelly then telephoned RLP, to offer to pay the sum demanded in monthly instalments of £10.00. However, shortly after this a second template demand (TSL2) arrived from RLP, and this was opened by Kelly's father. Kelly's mother then telephoned RLP, intending to challenge the demand, but was so intimidated by RLP's insistence that Superdrug would take Kelly to court that she agreed to pay £70.00.

The evidence from the advice work of Citizens Advice Bureaux, together with the formal Counsel's opinion on the relevant case law provided to Citizens Advice (see section 6, above),

suggests that those who receive such a civil recovery demand have the following options:

- Ignore the demand (and subsequent follow-up demand letters). No one can *guarantee* that no county court claim will follow, but many recipients of a demand will feel able to take this option based on the likely strength of any such court claim in their particular case – which will be very weak indeed where, for example, the alleged theft is denied – and the (statistically) very good chance that no court claim will ever be issued (or, even if issued, will not be pursued to a contested trial).
- Write to the civil recovery agent, denying liability for the sum demanded, and indicating that any county court claim will be robustly defended. However, as is clear from some of the above case studies, this will not necessarily prevent further, sometimes lengthy and misleading letters from the agent. And, again, no one can *guarantee* that no county court claim will follow.
- To be *certain* of no further letters or county court action, pay the sum demanded in full, or (after first denying liability for the sum demanded) offer a part payment. For example, among the CAB-reported cases, Retail Loss Prevention has often accepted payment of less than 50 per cent of the sum originally demanded. The agents are also willing to accept payment by instalments, though this usually involves the addition of significant 'administration' charges.

A growing number of CAB clients (and others) are now choosing the first of the above options. To date, as is clear from many of the above case studies, this has not led to the issuing of any county court claims. For example:

Case of 'Alison'

Alison – a young single mother – was in Asda with her two-year-old daughter in June 2010, and had just paid for some £60 worth of shopping, when she was accused of failing to pay for about £7.00 worth of goods, including a small packet of grapes which she had given to her daughter to eat as they were going around the store. The police were not called (or, at least, did not attend), and Alison contends that her failure to pay for the goods in question was a genuine mistake on her part after being distracted by her daughter, with no intent to steal.

Two days later, Alison received a 'fixed sum' demand for £150 from Drydens Lawyers. This gives the 'costs of goods stolen or damaged' as "£0.00". Alison then sought advice from her local CAB. Armed with advice and information from the CAB, Alison decided not to respond to the demand. Two weeks later, in early July 2010, she received a second template demand from Drydens, but again did not respond. As of 15 November 2010, Alison has not received any further demands from Drydens, and – four months on – no county court claim has been issued against her.

Case of 'Brian'

Brian, an illiterate man suffering from (and on medication for) depression, received a 'fixed sum' demand for £137.50 from Retail Loss Prevention in January 2010, in relation to the alleged – but strongly denied – attempted theft of goods worth £17.96 from B&Q. Brian contends that the B&Q security staff offered him the options of signing a 'civil recovery' form, or the police being called. Although unable to read it, Brian decided to sign the form on the understanding that this would then be the end of the matter.

After seeking advice from his local CAB, Brian did not respond to the demand from RLP. Three weeks later, he received a further template demand (TSL2) from RLP, warning that "our client [B&Q] is determined to make full use of civil law remedies including Court action if necessary, to recover their costs caused by your wrongful actions. Where proceedings are issued then the court will be asked to consider any failure to respond

to letters where they make orders for costs and interest. To avoid this action and further increased costs, you must deal with this claim within 14 days from the date of this letter".

Brian did not respond to this letter. Two weeks later, in early March 2010, he received a third template demand (TSL3) from RLP, informing him that his name would now be held on RLP's "database of civil recovery incidents" and warning that "it is in your interests to settle our client's claim now, before any additional action, such as Court proceedings, incurs further costs. You have a final 14 days to make payment of £137.50".

Brian did not respond to this letter and, as of 15 November 2010, he has not received any further demands from RLP; eight months on, no county court claim has been issued against him.

Case of 'Amanda'

Amanda, a 17-year-old schoolgirl, and her friend Louise each received a 'fixed sum' demand for £150 (i.e. a total of £300) from Drydens Lawyers in May 2010 after being apprehended by security staff in Debenhams for (according to Drydens) the attempted theft of "jewellery worth £33.00". The police were not called (or, at least, did not attend), and the jewellery was recovered intact.

Too ashamed to tell her parents about the incident and the civil recovery demand, Louise paid £150 to Drydens. Amanda, however, told her mother, who sought advice from her local CAB. Amanda then wrote to Drydens, denying liability for the claim. One week later, Drydens replied, warning that the sum demanded (£150) "remains due and payable and your payment proposals are required within the next 7 days".[81] Once again, Amanda wrote to Drydens, repeating the contents of her earlier letter but also noting that "this is now the second unsubstantiated demand for payment; harassment is a criminal offence".

Armed with information and advice from her local CAB, Amanda and her mother decided not to pay any money to Drydens, and to ignore any further letters from the law firm. As of 15 November 2010, the family has not received any further demands from Drydens and – six months on – no county court claim has been issued against Amanda.

Of course, the agents may at some stage respond to growing public awareness of their practice by issuing a county court claim in some cases (it would simply not be economic to do so in all), not with any intention of pursuing the claim to a contested trial, but in the hope that the mere issuing of a court claim will intimidate some into making payment. Indeed, it would seem that some of the agents may already have adopted this tactic.

Anyone who finds themselves faced with this situation should seek advice from their local CAB.[82] For, with a view to ensuring that the law is thoroughly tested and clarified, Citizens Advice will ensure that any such defendant is legally (and professionally) represented in court.

81. Letter, dated 18 May 2010, from Julie Lunn, Drydens Lawyers.
82. For the contact details of your local CAB, see: www.citizensadvice.org.uk

Recommendations

Given the civil recovery agents' apparent aversion to pursuing unpaid demands by means of *contested* county court trials, it may be some time before the law as it applies to the agents' demands can be thoroughly tested in the civil courts. In the meantime, therefore, Citizens Advice re-iterates the key recommendations set out in *Unreasonable demands*:

- The Ministry of Justice should ask the Law Commission to undertake an urgent review of the law relating to civil recovery, with a view to eventually ensuring – by legislative means if necessary – that civil recovery is limited to cases involving serious, determined and/or persistent criminal activity *for which there has been a criminal trial and conviction*.
- The Home Office, the Ministry of Justice and the Department for Business, Innovation and Skills should work with retailers, the Police, Business Crime Reduction Partnerships, Retailers Against Crime, the British Retail Consortium and others to identify and develop a range of legitimate and transparently fair alternatives to the practice of civil recovery (as described in this report) aimed at reducing the incidence and cost of retail crime, and in particular that committed by determined and persistent offenders and criminal gangs.

As these recommendations are likely to take some time to implement, we further recommend that, in the interim:

- The Ministry of Justice should, as a matter of urgency, prepare and disseminate public information and advice on threatened civil recovery and, in particular, the options available to those who might receive a civil recovery demand from Retail Loss Prevention, Drydens Lawyers or other civil recovery agent. Such information should be disseminated through the Government's public information website, Directgov, and through Citizens Advice Bureaux and other advice outlets.
- The Solicitors Regulation Authority should, as a matter of urgency, consider whether it needs to take further action to ensure that the civil recovery practice of solicitors (including employed solicitors) is consistent with the Solicitors Code of Conduct, and in particular with Rules 1.02, 1.06 and 10.01, which respectively provide that solicitors must "act with integrity", must not "behave in a way that is likely to diminish the trust the public places in you or the legal profession", and "must not use your position to take unfair advantage of anyone either for your own benefit or for another person's benefit".
- The Office of Fair Trading should, as a matter of urgency, consider whether any of the practices highlighted in this report constitute breaches of the Consumer Protection from Unfair Trading Regulations 2008, which make it an offence – punishable by up to two years' imprisonment – for traders to engage in unfair commercial practices. [83]

Of course, the implementation of the above recommendations would be obviated if the retailers who practise threatened civil recovery decided to cease such practice, and instead limited actual civil recovery to those cases involving serious, determined and/or persistent criminal activity for which there has been a criminal trial and conviction.

This would not cause significant detriment to the retail sector as a whole. For the total amount 'recovered' by the civil recovery agents for their retailer clients each year, after deducting the agents' fees or share of the money 'recovered', seems unlikely to be more than £16 million[84] – that is, less than 0.4 per cent of the "over £4 billion" that Civil Recovery Solutions says crime costs the retail sector each year.[85] Furthermore, among the more than 300 CAB-reported cases examined in detail by Citizens Advice, four out of every five demands (80 per cent) were issued on behalf of just eight major retailers: Boots (19 per cent), TK Maxx (17 per cent), Asda (15 per cent), Tesco (8 per cent), Debenhams (7 per cent),

Wilkinson (5 per cent), B&Q (5 per cent), and Superdrug (4 per cent).

In short, the practice of *threatened* civil recovery, as described in this report, is not only unfair (and arguably illegitimate), but provides no panacea for the (undoubtedly substantial) cost of retail crime. It does not target those responsible for most retail crime – criminal gangs and other *persistent* offenders – and it 'recovers' less than two per cent of the £977 million annual cost of the "security and loss prevention" measures taken by retailers.[86]

Indeed, the principal beneficiaries of the practice would appear to be the civil recovery agents, who collectively profit by millions of pounds and have no obvious interest in seeing the *reduction* in retail crime sought by public policy.

83. The Regulations came into effect in May 2008, and implemented the EU Directive on Unfair Commercial Practices (Directive 2005/29/EC) into UK law. They prohibit aggressive practices and misleading actions by traders. The Regulations are enforced by the Office of Fair Trading and Trading Standards departments (of local authorities), which have the power to bring both criminal proceedings and civil enforcement actions. Breach of the Regulations is an offence, punishable by up to two years' imprisonment on conviction on indictment. For further information, see: www.oft.gov.uk/shared_oft/business_leaflets/cpregs/oft1008.pdf and also: www.lawcom.gov.uk/docs/misrep_summary_evidence_web.pdf

84. Assumes: (i) 75,000 shoplifting-related demands and 25,000 employee theft-related demands issued each year; (ii) 50% of these demands paid, at an average of £150 in shoplifting cases and £1,500 in employee theft cases; and (iii) one-third of the total amount thus 'recovered' (approximately £24 million) retained by the agents.

85. Wilkinson, a major retailer client of RLP, also says that "retail losses (through theft) amount to approximately £4.4 billion a year" (letter, dated 12 November 2010). See also, for example: www.guardian.co.uk/business/2010/oct/19/shoplifting-costs-retailers-consumers and www.bbc.co.uk/news/uk-11571022

86. RLP, which as noted above issued 80% of the demands in the CAB-reported cases examined by Citizens Advice, has reported that, in the 12-month period to April 2010, fewer than 2% of those to whom it issued a demand were "repeat wrongdoers". Source for £977m figure: Centre for Retail Research, November 2010.

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