

CAN THIEVES COMPENSATE BUSINESSES? >>

The Centre for Retail Research helped to introduce civil recovery to UK retailers, producing a series of reports from 1993 onwards, including *Can Shoplifters Compensate Retailers?* (published by the Social Market Foundation). Retailer interest in civil recovery led to a Conference of retailers being held. This was followed by the creation of the industry-wide National Civil Recovery Programme, run by the Centre for Retail Research via a new company on behalf of the industry.



What is Civil Recovery?

Civil recovery is the name of a process allowing retailers and other businesses to obtain compensation using the civil law from wrongdoers who cause loss by theft, fraud, damage, trespass, or similar offences. Recovery can be used against staff thieves as well as customer thieves.



How does Civil Recovery work?

Any criminal act that causes loss normally also gives rise to a tort or 'wrong' under civil law. Civil recovery is a method of collecting the damages needed to compensate the retailer by administrative action. The retailer or his agent sends a civil demand to the shop thief a few days after apprehending the offender. This demand sets out the circumstances of the theft, the legal position, the damages claimed, and how these are to be paid. Follow-up letters are used against non-payers.

Rationale for adopting Civil Recovery in Britain

- The heavy costs of retail crime which are paid by retailers, and which are largely uncompensated.
- The inability of the police and criminal justice system to deal with the vast numbers of shop thieves. Every year around 550,000 thieves are apprehended and less than 65,000 appear before the courts
- The need for society to penalise criminal behaviour rather than decriminalising it. By ensuring that retailers obtain recompense from people who are caught stealing, the wider interests of society will be recognised.
- Retail theft carries low risks - and low costs - for the shop thief. Civil recovery increases the anticipated costs of crime for criminals and will help to deter people from stealing from shops which use civil recovery.
- Civil recovery will help the retailer to defray some costs of loss prevention.

Does this de-criminalise shop theft?

Civil recovery should never be used to avoid involving the Police. Under the system, thieves will not be given



the option of either paying a civil demand or being referred to the police.

The UK National Civil Recovery Programme

The National Civil Recovery Programme is a set of procedures and good practice developed by Joshua Bamfield and the major retailers in the late 1990s/early 2000s on behalf of the retail industry.

A pilot scheme in Wolverhampton tested the applicability of the programme, following which it was expanded to all the UK. Three court cases such as Tesco v Kular and HMV v Plummer were used to check the appropriateness of the programme and the claims that were being made. They were all successful.

Retail Loss Prevention (RLP Ltd) was sold in 2003.

As part of the National Programme, procedures were agreed with the Association of Chief Police Officers (ACPO), ACPOS, and the Crown Prosecution Service.

Current use of the criminal law against shop thieves

Only about 10% of persons apprehended for shop theft are ever charged and appear in court. Little happens to the others, although many are cautioned. The Penalty Notices for Disorder (PND) involve the criminal in receiving no criminal record. Stealing from shops is therefore a low-risk, low-cost crime which generally receives little if any criminal penalty. This provides little deterrent to curb shop theft.

Working with the Police

Retailers need to work with the police in operating civil recovery, taking their advice on the best way to proceed. It is important that retailers continue referring shop thieves to the police as they do at present as laid out in the National Programme.

How quickly can civil recovery occur?

It is speedy and efficient because the offender will receive a civil demand within a few days of being apprehended, whilst the criminal justice system can take three to six months to process the same person.

Where is civil recovery used?

It is widely used in the USA and Canada. In the USA, 49 out of 51 states have passed civil recovery legislation. Around 45% of customer thieves are given a civil demand and 13% of staff thieves. Up to 50% pay against the demand. Canada has no specific legislation but one retailer obtains more than \$1 million pa from sending out civil demands in a legal environment which is much like Britain's.

Informal civil recovery occurs in a number of other European countries, such as Spain, Italy and Switzerland, where retailers frequently require shoplifters they apprehend to pay double the price of the goods they were attempting to steal. They are able to do this operating under Roman civil law with the consent of the Police.

What about juveniles?

Many offenders are children. Under English civil law parents or guardians cannot normally be held responsible for the civil wrongs of their offspring. However it can be assumed that for many juveniles (and younger children) the parents will pay in the first instance and later recover the amount from their children, eg by odd jobs or birthday money. In the

USA most states make parents responsible for civil recovery monies. Parental responsibility of this kind could well be a worthwhile principle to incorporate into English law.

The need for civil recovery laws and a Code of Practice

It is important that these civil recovery processes are only used against actual thieves, not innocent parties.

It is also important that civil recovery is used equitably and does NOT become a means by which the better-off can buy themselves off a police charge (we already have PNDs for that). The habitual offender and the 'professional' thief need to be dealt with by the police, irrespective of what happens about civil recovery.

A Code of Practice was developed for ACPO and the National Programme. It probably needs a revamp by now to cover:

- What categories of offenders should ALWAYS be reported to the police including juveniles.
- What is best practice to be followed by retailers in administering civil recovery (eg the use of warning notices near shop entrances, the phrasing of the civil demand letter, how to handle disputes, etc).
- Policy about access by police to information held by retailers about shop thieves.

A civil recovery law is needed to provide a proper framework for the process that would be fair to all parties. This would give retailers the right to levy a civil demand against any shop thief, and lay down a framework of penalties covering large and small thefts, juvenile and adult offenders, first-time offenders and habitual offenders.

For further information about civil recovery [contact the Centre for Retail Research](#).

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