

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). This led to a Conference of retailers and setting up the National Civil Recovery Programme and Retail Loss Prevention Ltd.



What is Civil Recovery?

Civil recovery is the name of a process for 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. In the UK, theft and other crime against shops cost more than £3 billion and a further £979 million was spent by retailers on security. This cost each household £174.14 every year.
- The inability of the police and criminal justice system to deal with the vast numbers of shop thieves (450,000 were

apprehended in 2005). Every year, less than 65,000 appear before the courts. Only 4,000 receive a prison sentence.

- The need for society to penalise criminal behaviour rather than decriminalising it as may be happening at present. 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 is NOT used to avoid involving the Police. It should not act as a replacement for referral of thieves to the police or criminal prosecution. Under the system, thieves will not be given the option of either paying a civil demand or being referred to the police.



Current use of the criminal law against shop thieves

Because civil recovery is low-cost and only rarely involves court action it can be used against ALL apprehended offenders. 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 new Penalty Notices for Disturbance (PND) involve 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. A major argument in favour of retail civil recovery is that it provides some form of sanction against people who steal from shops, thus reinforcing the fact that shop theft is morally wrong.

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.

The UK National Civil Recovery Programme has been administered by Retail Loss Prevention Ltd (www.lossprevention.co.uk) since 1998. It handles more than 65,000 cases every year and represents the great majority of retailers. It is able to carry out civil recovery in England, Wales, Scotland, Northern Ireland and the Irish Republic.

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 levels of demand can be made by retailers?

Damages can include: the cost of goods (if unsaleable), investigation costs and a proportion of security costs relating to this apprehension, and the costs of the civil demand process including any court fees. The USA and Canada make additional charges of \$100+ to act as a deterrent for the offender.

Although all offenders have committed a tort the retailer is not obliged to pursue every case, particularly where it is unlikely the individual will pay.

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.

Who can implement civil recovery?

Civil recovery can be implemented by the retailer itself or by an outside agency which services several companies.

The need for civil recovery laws and a Code of Practice

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. It is important that the habitual offender and the 'professional' are dealt with by the police. A Code of Practice has been agreed between retailers and the police which:

- Lays down what categories of offenders should ALWAYS be reported to the police including juveniles.
- States 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).
- Agrees policy about access by police to information held by retailers about shop thieves.

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

CIVIL RECOVERY IN THE UK >>

The Assets Recovery Agency was a Government body set up to recover substantial assets from major criminals and money launderers. The Government announced in January 2007 that this agency was to close as the miserably small asset recoveries it made did not justify its massive costs. This just goes to show (a) civil recovery is tough, and (b) do pick the low-hanging fruit first before you try to change the world.

The UK National Civil Recovery Programme

The National Programme consists of a group of major retailers under the umbrella of the British Retail Consortium, who have been working in partnership to develop a successful British civil recovery programme. Starting in 1998 with a pilot scheme in the area around Wolverhampton, the programme extended to include all England

and Wales, Scotland, Northern Ireland and Eire. Court successes such as Tesco v Kular and HMV v Plummer gave a fresh impetus to the development of the programme.

There are 75 major retailers in the National Programme including Tesco, Sainsbury, HMV, Bhs, Debenhams, B&Q and Boots the Chemist. Any company can join the programme as long as they can meet its quality requirements.

The most likely amount demanded from a customer thief is between £85 and £150. Wrongdoers are also reported to the police for criminal action. Civil recovery is also used against staff offenders, which involves 'duty of care' law as well as tort/delict law.

Procedures or standards have been agreed with the Association of Chief Police Officers (ACPO), ACPOS (www.lossprevention.co.uk/civilrecover.htm), and the Crown Prosecution Service.

Future Prospects

Any business can take action against a member of the public or an employee or third-party that intentionally and wilfully causes them loss through a criminal act. Thus businesses in logistics, catering, and telecommunications have joined the National Civil Recovery Programme to make use of civil recovery.