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AND THE OFFICE OF THE REVENUE
COMMISSIONERS JOINT REVIEW GROUP

EXAMINING THE ROLE OF SHERIFFS IN RESPECT OF STATE WORK

March 2023

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1. Introduction

The Council of The Bar of Ireland ("**the Council**") is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,159 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

2. Scope of Submission

The Department of Justice and the Office of the Revenue Commissioners have established a Joint Review Group (the "**Review Group**") to examine the role of Sheriffs in State work. The Council has been invited to prepare the present submission for consideration by the Review Group.

First, the historical background of the Sheriff will be considered. Second, the Sheriff's current role in debt enforcement will be analysed.¹ Third, the Law Reform Commission's suggestions for reform will be outlined. Fourth, academic commentary will be discussed. Fifth, conclusions and recommendations will be set out.

3. Historical Background²

The office of the Sheriff appears to date in England from Norman times and the term Sheriff derives from two Saxon words, "*reeve*", meaning bailiff or officer, and "*shire*", which was a local holding within which the King's writs and laws were enforced.³

Traditionally, Sheriffs could be elected in the cities of Dublin, Cork, Limerick, Waterford, Kilkenny, and the town of Drogheda, while a Sheriff could be appointed to the other towns and counties of Ireland upon nomination by the Lord Lieutenant.⁴

¹ Revenue Sheriffs are a discrete topic and will not be considered in this submission.

² See generally, Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), pp.3–4 and 7–8; Law Reform Commission, *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC CP 56-2009), paras. 3.243–3.245; Keating and Donnelly, "*The Sheriff's Office: An Effective Model for Debt Enforcement?*" (2009) 16(7) C.L.P. 135 at 135–136.

³ Impey, *The office of the Sheriff: showing its history, antiquity, powers and duties* (London, 1800) Eighteenth Century Collections Online, p.8.

⁴ Dixon and Gilliland, *The law relating to Sheriffs in Ireland* (Dublin: University Press 1888), p.1.

As the Sheriff's role evolved during the nineteenth century, the responsibility for enforcing debts moved from the Sheriff to the under-Sheriff, who in turn employed bailiffs to carry out executions. Keating and Donnelly⁵ observe that the rationale behind the employment of a Sheriff was to avoid social disorder, but that this rationale was undermined by execution by private bailiffs (employed by judgment creditors), who executed civil bill decrees and could claim legal authority for their actions, without accountability.⁶ In Northern Ireland's Anderson Report,⁷ Sheriffs were described as "*generally speaking men of poor standing and intelligence. They did not enjoy a good reputation and had neither the good nor confidence of the parties or of the general public.*"

The modern role of Sheriff in Ireland was first established by the Court Officers Act 1926 which abolished the office of high Sheriff,⁸ provided that no new under-Sheriffs be appointed,⁹ and transferred the powers, duties, authorities, rights and obligations of that office to the appropriate County Registrars where the office of under-Sheriff was vacant in a given county or county borough.¹⁰ However, when the office of under-Sheriff in Dublin fell vacant in 1945, it was apparent that it would be impractical to impose the obligations of Sheriff on the Dublin County Registrar,¹¹ and detailed provisions were made for the office of Sheriff,¹² including that the Minister for Justice could, by order, with the consent of the Minister for Finance, declare that section 54 of the Court Officers Act 1926 was not to apply in respect of a given county or county borough¹³ (with the result that the office of under-Sheriff, on becoming vacant, could be filled) or that certain of the powers of the Sheriff would cease to vest in the County Registrar.¹⁴ The power in section 12(1) of the Court Officers Act 1945 was exercised in respect of Dublin City and County and Cork City and County, with the result that Sheriffs continue to operate in those areas. This same power has been used more recently to appoint tax Sheriffs exclusively assigned to the collection of revenue debts.¹⁵ Section 12(5) of the Court Officers Act 1945 provides that only barristers or solicitors (having practised for not less than five years), or persons who have acted for not less than five years as managing clerk or principal assistant to an under-Sheriff or Sheriff, can be appointed as Sheriff.

⁵ "The Sheriff's Office: An Effective Model for Debt Enforcement?" (2009) 16(7) C.L.P. 135.

⁶ Trimble, "Judgments (Enforcements) Act (N.I.) 1969" (1970) 21 Northern Ireland Legal Quarterly 360.

⁷ Report of the Joint Working Party on the Enforcement of Judgements, Orders and Decrees of the Courts in Northern Ireland (the "**Anderson Report**") (HMSO, Belfast 1965).

⁸ Section 52, Court Officers Act 1926.

⁹ Section 54(1), Court Officers Act 1926.

¹⁰ Section 54(2), Court Officers Act 1926. Section 54(3) provided that, where the office was not vacant, such transfer was to occur when the office became vacant.

¹¹ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), pp.7-8. See Senator M. J. Ryan, 30 *Seanad Debates* Col.232.

¹² Section 12, Court Officers Act 1945.

¹³ Section 12(1), Court Officers Act 1945.

¹⁴ Section 12(2), Court Officers Act 1945.

¹⁵ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), p.8.

4. The Sheriff's Current Role

A judgment creditor who wishes to execute a judgment through the Sheriff needs to follow different procedures depending on whether judgment has been obtained in the District Court, Circuit Court or High Court. As will be seen below, the Law Reform Commission has recommended that the High Court procedure be streamlined and simplified.

If judgment is awarded in the High Court, the order directed to the Sheriff is an order of *fieri facias*, which is an order of execution directing the Sheriff to levy from the goods and chattels of the debtor a sum equal to the amount of the judgment debt, interest, and costs of execution. In the Circuit Court, an execution order against goods may be sought, which is regulated by Order 36 rules 12 to 22 of the Circuit Court Rules. In the District Court, the decree of the court is itself sent to the Sheriff for execution, following the procedure in Order 51 rules 9 to 15 of the District Court Rules.

Section 26 of the Sale of Goods Act 1893 provides that a writ of *fieri facias* or other writ of execution against goods shall bind the property in the goods of the judgment debtor from the time when the writ is delivered to the Sheriff. Such "*binding*" does not interfere with the proprietary interests of the judgment debtor, who remains free to deal with the property, subject to the rights of the judgment creditor.

If the writ is regular, the Sheriff is obliged to execute it as soon as reasonably practicable after receiving it. In *Hodgson v Lynch*¹⁶ where bankruptcy proceedings had been instituted by another creditor during the five days which had elapsed between service of the writ on the Sheriff and the seizure, Lawson J. said:

"It would be unjust and against public policy to hold that a public officer is bound at his peril to use what may be termed railway speed in the discharge of the duties of his office. It is enough if he acts with reasonable diligence and without wilful or unnecessary delay."

The Sheriff does not have a discretion to avoid or delay execution, even to avoid hardship to the judgment debtor or to other creditors.¹⁷

¹⁶ (1870 -71) IR 5 CL 353 at 355.

¹⁷ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), p.19; Keating and Donnelly, "*The Sheriff's Office: An Effective Model for Debt Enforcement?*" (2009) 16 (7) C.L.P. 135 at 137. In *Re Fereday* [1895] 2 Ch. 437 at 440, North J. held: "*The writ was perfectly regular, and the Sheriff was bound to execute it. He did, in fact, at his own risk abstain for a time from doing so. The risk was perhaps not very great, as he acted upon the request of the creditors. But, if the Sheriff was bound to execute the writ, nothing which the creditors did could relieve him from the obligation to do so.*"

A Sheriff is bound to execute orders in the sequence in which they are delivered to him, on a "first come, first served basis". A judgment creditor will lose priority if he instructs the Sheriff to stay execution of his order.¹⁸

The Sheriff may seize any goods, chattels, growing crops and any money, bank notes, cheques, bills of exchange, promissory notes, bonds or securities for money belonging to the debtor. However, certain goods are exempt from seizure, such as necessary clothes, bedding and tools of trade, if the total value of such items is less than €19.

The Sheriff cannot seize property belonging to third parties, for example on hire purchase.¹⁹

A Sheriff is not required to inform a judgment debtor of his intention to levy execution, and it has been observed that "it would often be extremely unwise" to do so.²⁰

Section 12 of the Enforcement of Court Orders Act 1926 provides that no action will lie against a Sheriff for having entered or broken into any lands, house, close or other premises (including for any damage occasioned thereto) to take in execution any goods, animals or other chattels which were or might have been on the property if the following conditions are met:

- (a) that before breaking into any dwellinghouse or other building, the Sheriff shall make reasonable efforts to enter peaceably and without violence; and
- (b) where the Sheriff breaks and enters the premises of a person other than the person against whom he has been called upon to enforce an execution order, he shall either have had reasonable grounds for believing that there were some goods, animals, or chattels of such last-mentioned person in such premises or he shall actually find some such goods, animals, or chattels in such premises.

Section 12 accordingly modified the common law position that a Sheriff could not forcibly enter a judgment debtor's premises,²¹ though he was free to effect entry without force.²²

¹⁸ *Hunt v Hooper* (1844) 12 M. & W. 664 (a verbal request to stay execution was treated as equivalent to withdrawal of the writ); *Kempland v MacAuley* (1791) Peake 95 (priority lost on a written request to neither seize nor sell the judgment debtor's property until a future date); *Kirwan v Jennings* (1853) 8 I.C.L.R. 48 (priority lost on a written request not to sell unless "forced by some other execution creditor").

¹⁹ Section 26(1), Sale of Goods Act 1893.

²⁰ *Wymes v Tehan* [1988] IR 717 at 722-723.

²¹ *Semayne's Case* (1604) 5 Co. Rep. 91. See also *Broughton v Wilkerson* (1880) 44 J.P. 781 D.C.: "The officer had no right to force his way into the respondent's house, which was the respondent's castle" (per Cockburn C.J.); "Every man's house is his castle" (per Lush J.).

²² *Vaughan v McKenzie* [1969] 1 Q.B. 557.

The Sheriff has a duty to cause an itemised inventory of chattels seized to be made out, and, within 24 hours of seizure—and, if practicable, before any removal—to cause to be furnished to the judgment debtor (or the person in apparent possession of such chattels) a duplicate of such inventory, signed by the Sheriff or by a court messenger acting on his behalf.²³

A Sheriff may sell seized goods at public auction after 48 hours have elapsed since the goods were seized, but shall not allow unreasonable delay to occur.²⁴ The Law Reform Commission has observed that, in practice, the Sheriff will include a warning of the impending sale within 48 hours in the inventory notice provided to the judgment debtor.²⁵

If the Sheriff has seized but not sold the judgment debtor's goods, an order of *venditioni exponas* may be obtained directing the Sheriff to sell the seized goods,²⁶ subject to the Sheriff's fees.

The Oireachtas has made particular provision for execution in insolvency, both in respect of individuals (section 50 of the Bankruptcy Act 1988) and companies (sections 606 and 607 of the Companies Act 2014).

Having completed a seizure of goods, a Sheriff must file a return to the court (and not to the judgment creditor, who has no right to information on the results of the execution, though he may apply to court to direct a return from the Sheriff).²⁷ If the Sheriff has seized and realised sufficient goods to satisfy the debt (including interest, costs, and costs of execution) he will file a *feri feci*.²⁸ If he has not found any goods of the judgment debtor available for seizure, he will make a *nulla bona* return.

The Sheriff's Fees and Expenses Order 2005²⁹ sets out the fees that a Sheriff may charge in respect of property seized and sold, commonly referred to as a "*poundage*" fee, of 5 per cent of the first €5,500, and 2.5 per cent of the balance.³⁰

The fee payable at the time of lodgment of an execution order with the Sheriff varies according to the contents of the execution order:

- €19 in the case of an order directing or authorising execution by the seizure and sale of a person's property;³¹

²³ Section 6, Enforcement of Court Orders Act 1926.

²⁴ Section 8, Enforcement of Court Orders Act 1926.

²⁵ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), p.47; Law Reform Commission, *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC CP 56-2009), para.3.256.

²⁶ Order 43 rule 1 of the Rules of the Superior Courts.

²⁷ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), para.28.

²⁸ Mitchell, Macaulay and MacCann, "*Methods of Enforcement of Revenue Debts: Part I*" (2008) 21(5) I.T.R. 45 at 51.

²⁹ Sheriff's Fees and Expenses Order 2005 (S.I. No. 644 of 2005).

³⁰ *Ibid.* Schedule, reference no.2.

³¹ *Ibid.* Schedule, reference no.1.

- €56 in the case of an order directing or authorising execution by delivery of specific property to a person;³²
- €175 in the case of an order directing or authorising execution by putting a person into possession of land or premises.³³

5. Recommendations of the Law Reform Commission

The Law Reform Commission, which describes execution through the Sheriff as "*the primary method of enforcement*"³⁴ of money judgments, has considered the law relating to Sheriffs in its 1988 *Report on Debt Collection (1): The Law Relating to Sheriffs*³⁵ (the "**1988 Report**"), its 2009 *Consultation Paper on Personal Debt Management and Debt Enforcement*³⁶ (the "**2009 Consultation Paper**") and its 2010 *Report on Personal Debt Management and Debt Enforcement*³⁷ (the "**2010 Report**").

A. The 1988 Report

In its 1988 Report, the Law Reform Commission noted that the law relating to Sheriffs had not been the subject of any significant change for over 60 years.³⁸

The Law Reform Commission noted that until 1926, the enforcement of court orders in civil proceedings (including money judgments) was the responsibility of officers known as Sheriffs, who were either appointed by the executive, or elected by local authorities.³⁹ As noted above, in 1926 legislation provided for the transfer of these functions to County Registrars, except in Dublin and Cork.⁴⁰

Since 1926, except in Dublin and Cork, the enforcement of money judgments has been the responsibility of County Registrars who are salaried civil servants.⁴¹ Sheriffs in Dublin and Cork are not salaried civil servants and are remunerated on a commission basis known as "*poundage*". In addition to this remuneration, they were usually paid a small retainer by the State, the object of which was to enable them to provide an office and office staff, and any other services which were deemed necessary.⁴²

³² Ibid. Schedule, reference no.5.

³³ Ibid. Schedule, reference no.3.

³⁴ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), p.3.

³⁵ LRC 27-1988.

³⁶ LRC CP 56-2009.

³⁷ LRC 100-2010.

³⁸ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), p.2.

³⁹ Ibid., p.3.

⁴⁰ Ibid., p.3.

⁴¹ Ibid., p.3.

⁴² Ibid., p.3.

The Law Reform Commission observed that Sheriff law in Ireland had developed in a "*somewhat piecemeal fashion*" and had not until the provision of the report been the subject of any considered independent review.⁴³

In the Commission's view, useful practical reforms could be achieved in several areas, particularly the following:⁴⁴

1. The division of responsibility for the enforcement of judgments between county registrars and Sheriffs.
2. The charges payable to Sheriffs.
3. Whether the present "*first come, first served*" system of enforcing execution orders should be modified.
4. The possible exemption from seizure under the present law of freehold land.
5. The provisions common in leases and hire purchase agreements under which the lease or agreement is terminated on seizure of the subject matter in execution of a judgment debt.
6. Making legitimate so called "*walking possession*" arrangements under which the debtor is left in possession of the goods seized for a limited period.
7. Modifications of the "*interpleader*" procedure which requires the institution of fresh proceedings by the Sheriff where a third-party claims to be entitled to goods which he has seized.
8. Exonerating Sheriffs from liability for the seizure in good faith of goods in the possession of a judgment debtor which are subsequently established to belong to a third party.
9. Difficulties in the seizure and sale of diseased animals arising from the relevant bovine TB and brucellosis legislation.

In Chapter 15 of its 1988 Report, the Law Reform Commission made thirty four recommendations, the most significant of which are summarised below.

Ending County Registrars' responsibilities for debt enforcement

The Law Reform Commission expressed the view that it was clear that enforcement agents, especially County Registrars, were unable to cope with the volume of work and that the operation of the system left a "*great deal to be desired*".⁴⁵ The 1988 Report attributed this mischief to the fact that outside of Dublin and Cork, the responsibility for the enforcement of judgments is the responsibility of the County Registrars who are essentially court officials whose primary duties is the organisation and administration of the Circuit Court's business. The Law Reform Commission expressed the view that there was no reason why County

⁴³ Ibid., p.5, para.13.

⁴⁴ Ibid., p.5, para.13.

⁴⁵ Ibid., p.7.

Registrars should also be *"called upon to ensure the execution of court orders in civil proceedings at every level"*.⁴⁶

The Law Reform Commission noted that the justification given by the Minister for Justice in 1945 for maintaining the responsibility of County Registrars in this area outside Dublin and Cork was that they did not have much work to do.⁴⁷ However, while this might have been the case in 1945, by 1988 it was evident that the workload had increased substantially for most County Registrars. Accordingly the Law Reform Commission concluded that the case had been *"overwhelmingly established"* for ending the responsibility of the County Registrars in the enforcement of judgments and for extending the system of Sheriffs in Dublin and Cork to the rest of the country.⁴⁸ The Law Reform Commission observed that this could be achieved by exercising powers under section 12(2) and (3) of the Court Officers Act 1945.

From this analysis arose the primary and, arguably, most important recommendations of the 1988 Report:

"The Minister for Justice should avail of his powers under the Court Officers Act 1945 to declare that the powers and duties of County Registrars relating to the enforcement of judgments in civil proceedings in any court, should cease to be imposed on or vested in such County Registrars.

*The Government should appoint persons to be Sheriffs in each of the counties and county boroughs in the State other than just the county boroughs of Dublin and Cork and the counties of Dublin and Cork.*⁴⁹

Orders of fieri facias

The 1988 Report also considered orders of *fieri facias*. The 1988 Report took the view that the procedure for obtaining an order of *fieri facias* in the High Court could be made simpler and cheaper, and recommended:

*"The relevant statutory provision be repealed, and the Rules of the Superior Courts be amended so as to provide for the obtaining of a fi fa order in the same manner as an execution order against goods is obtained in the Circuit Court."*⁵⁰

⁴⁶ Ibid., p.8.

⁴⁷ Ibid., p.8.

⁴⁸ Ibid., p.10.

⁴⁹ Ibid., p.11, para. 24.

⁵⁰ Ibid., p.13, para. 27.

The Sheriff's return

As outlined above, the Sheriff is required to make a return to the court, not to the judgment creditor. The 1988 Report noted that the lack of information available to judgment creditors as to the progress of executions was a source of complaint, and recommended:

*"There should be an express obligation on the Sheriff to report to both the court and the judgment creditor within a prescribed time on the progress of the execution."*⁵¹

Duration and territorial scope of execution orders

The 1988 Report also reviewed the duration and territorial scope of execution orders.

In relation to duration, it was observed that an order of *fieri facias* remains in force for one year from its date of issue. The order may be renewed at any time before its expiration by application to the Master of the High Court. An execution order in the Circuit Court, similarly, remains in force for one year. However, a District Court decree remains in force for six years.⁵²

Uniform duration is preferable and the Law Reform Commission recommended:

*"The legal life of an execution order should be the same irrespective of the court form which it is obtained. Fi fa execution orders and District Court decrees should remain in force for six years. This primary period should be capable of being extended for a further period of six years."*⁵³

Regarding territorial scope, it was observed that the Sheriff of one county could be held liable for an excessive execution on account of the proceeds of an execution in another county.⁵⁴ This was compared with the position in England, where a party who issues more than two writs of *fieri facias* directed to the Sheriffs of different counties to enforce the same judgment or order is required to inform each Sheriff of the issuing of the other writ(s).⁵⁵

The Law Reform Commission considered that co-ordination in this jurisdiction would be preferable and would serve to prevent excessive executions. Accordingly it recommended:

"The RSC be amended to provide that where a party issues two or more execution orders directed to the Sheriffs of different counties to enforce the same judgment

⁵¹ Ibid., p.13.

⁵² Ibid., p.14.

⁵³ Ibid., p.14, para. 30.

⁵⁴ Ibid., p.14.

⁵⁵ Ibid., p.14.

*or order, the party must inform each Sheriff of the issue of the other execution orders."*⁵⁶

Other selected recommendations

As noted above, the Sheriff has a duty to execute execution orders as soon as is reasonably practicable and in the sequence in which they are delivered to him. A Sheriff may be potentially vulnerable to an action by a judgment creditor who suffers loss as a consequence if they desist from executing an execution order.⁵⁷ The Law Reform Commission did not recommend any change from the "*first come, first served*" basis of execution, although it observed that the practice was not universal in common law jurisdictions.⁵⁸

The Law Reform Commission discussed at length the classes of property liable to seizure, noting that the Sheriff's power of seizure in respect of real property is both limited (to leasehold interests) and rarely invoked.

The Law Reform Commission also considered the methods whereby a judgment creditor could examine a judgment debtor as to their assets (particularly by means of discovery in aid of execution under Order 42 rules 36 to 39 of the Rules of the Superior Courts),⁵⁹ and recommended:

*"It should remain a matter for the judgment creditor to make an application to the court to conduct an examination to discover the assets of the judgment debtor. It was the recommendation of the Committee on Court Practice and Procedure that this jurisdiction should be extended to the Circuit and District Court. Further it was recommended that this extension should be given a statutory basis."*⁶⁰

B. The 2009 Consultation Paper

Having considered Sheriff law in its 1988 Report, the Law Reform Commission subsequently considered debt enforcement more broadly in its 2009 Consultation Paper.⁶¹

⁵⁶ Ibid., p.14, para.32.

⁵⁷ Ibid., p.19; Keating and Donnelly, "*The Sheriff's Office: An Effective Model for Debt Enforcement?*" (2009) 16(7) C.L.P. 135 at 137.

⁵⁸ Law Reform Commission, *Report on Debt Collection (1): The Law Relating to Sheriffs* (LRC 27-1988), Ch.5.

⁵⁹ Ibid., p.21.

⁶⁰ Ibid., p.21, para.42.

⁶¹ Law Reform Commission, *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC CP 56-2009).

It recommended a centralised enforcement system operating from a central debt enforcement office,⁶² considering three different models spanning full centralisation to less centralised forms.⁶³

C. The 2010 Report

In its 2010 Report the Law Reform Commission considered several alternative systems of debt enforcement, based around a centralised office. It identified and reiterated the issues inherent in the current system, namely its inefficiency and unsuitability in dealing with debt enforcement. It recommended that a small-scale centralised "*Debt Enforcement Office*" be established to act as an oversight body for licensed and private debt enforcement operators. This office would publish a code of conduct for operators and would also operate a complaints process. In turn, this office would also have the capacity to acquire information on a debtor's means, which would substantially improve upon the current system where a lack of information as to a debtor's means results in disproportionate, delayed, and costly enforcement. It was suggested in this report to model this new office on the Revenue Sheriffs unit in the Revenue Collector-General's office.⁶⁴

The 2010 Report further reflected that a widespread shift to information-gathering would improve the effectiveness of debt enforcement. Further the 2010 Report recommended that a licensing regime should be introduced for private debt collection. The Law Reform Commission expressed that view that this type of regime would bring much needed regulatory oversight to private debt collection as a whole.⁶⁵

6. Academic commentary

Having regard to the 1988 Report and the 2009 Consultation Paper, Keating and Donnelly⁶⁶ considered the role of the Sheriff in debt enforcement. The authors observed that debt enforcement raised difficult policy questions and expressed the view that there could be no excuse for:

"Irish legislators to allow outdated debt enforcement models to subsist if more effective, fair and humane options can be taken".

The article considered seizure of goods by the Sheriff. Under current legislation the Sheriff is bound to execute court orders by entering the debtor's residence or their place of business

⁶² Ibid., para.6.45.

⁶³ Ibid., paras. 6.45, 6.53-6.58 and 6.70.

⁶⁴ Ibid., p.320.

⁶⁵ Ibid., p.271.

⁶⁶ Keating and Donnelly, "*The Sheriff's Office: An Effective Model for Debt Enforcement?*" (2009) 16(7) C.L.P. 135-141.

and seizing the debtor's chattels. Keating and Donnelly observed that many commentators⁶⁷ viewed the exercise of these orders to be an *"unnecessary and unproductive intrusion into the debtor's life"* and commented that it was a clear source of stress for both the debtor and their family.⁶⁸ The authors also commented on relatively low enforcement rates, as apparent from Courts Service statistics for 2008 and 2009.

In a subsequent article,⁶⁹ the authors observed that none of the recommendations in the 1988 Report had been implemented.⁷⁰ In respect of the Law Reform Commission's primary recommendation to end the role of County Registrars in debt enforcement (thereby extending the Sheriff system which operates in Dublin and Cork to the entire country), the authors stated:

"The statistics on the effectiveness of debt enforcement which were outlined in detail in our earlier article would appear to support the view that County Registrars are not especially effective in terms of the enforcement of execution orders. However, in the absence of statistics on the Office of the Sheriff, it is not clear whether this alternative is in reality, any more effective. Further, an important policy question also arises as to whether the fact that the enforcement agency has a personal monetary interest is, in fact, a better way of approaching the sensitive issue of debt enforcement. As the County Registrar interviewed noted, it may be the case that the needs of the creditor and debtor are better balanced when the party charged with enforcement has no monetary interest in the proceedings."

The authors engaged in a comparative review of the position in Northern Ireland and Scotland, concluding that the Law Reform Commission's recommendations in its 1988 Report were *"too limited"* and *"failed to address in appropriate depth the broader policy issues to which debt enforcement gives rise"*, which broader considerations were the subject of the 2009 Consultation Paper.

More recently, Mooney has considered the system of debt enforcement in Ireland,⁷¹ observing that Ireland's system of debt enforcement has remained *"almost entirely unaltered"* since the creation of the office of the Sheriff, despite the Law Reform Commission recommendations referenced above. Mooney stressed that despite the number of increasing insolvencies and arrears, no action has been taken to implement any of the Law Reform Commission's proposals and recommendations for reform.⁷²

⁶⁷ Joyce, *An End Based on Means?* (Dublin: Free Legal Advice Centre, May 2003) at 112.

⁶⁸ Keating and Donnelly, *"The Sheriff's Office: An Effective Model for Debt Enforcement?"* (2009) 16(7) C.L.P. 135-141 at 135.

⁶⁹ Keating and Donnelly, *"Reforming the Law on Debt Enforcement and the Role of the Sheriff"* (2009) 16(8) C.L.P. 163.

⁷⁰ As noted above, the Law Reform Commission's recommendation in respect of fees was implemented, at least in part.

⁷¹ Mooney, *"A New Sheriff in Town: Centralised Enforcement of Judgment – The Answer to Ireland's Sheriff Problems?"* (2022) 25(1) T.C.L.R. 9-36.

⁷² As noted above, this observation must be caveated in respect of fees.

Mooney also addressed the issue of remuneration, noting that the Sheriff is still remunerated based on the poundage system. As outlined above, the poundage system is a commission-based remuneration which allows the Sheriff to charge a percentage fee on the overall value of the goods which are seized from the debtor and sold. Mooney expressed the view that the poundage system creates a conflict between the Sheriff's need for revenue and the ideal of facilitating "*proportionate debt enforcement with longer arrangements*".⁷³

Mooney considered the 2010 Report and observed that the current system leads to severe delays and high costs for the creditors with poor results, whilst debtors are faced with a lengthy enforcement which ultimately prevents a return to solvency.⁷⁴ Mooney agreed with Keating and Donnelly that the current system of debt enforcement is inefficient and went on to comment that at this juncture the 1988 Report recommendations would be too limited in scope,⁷⁵ concluding that the ideal solution would be to follow the Enforcement of Judgment Office approach taken in other jurisdictions such as Northern Ireland.

7. Concluding Remarks and Recommendations

In its 1988 Report, the Law Reform Commission observed that the law relating to Sheriffs had not been the subject of any significant reform for 60 years. Since the majority of its recommendations have not been implemented since 1988, it could now be said that no significant reform has been implemented for 95 years. Sheriff law was not part of the Review of the Administration of Civil Justice Report (published in October 2020 under Mr. Justice Kelly's chairmanship) and reform in this area does not appear to have been included in the Minister's Civil Justice Efficiencies and Reform Measures (published in May 2022)

Sheriff law forms part of a broader system of debt enforcement and, as appears from the foregoing, some commentators (and the Law Reform Commission) have argued in favour of broader reforms, including adopting versions of systems in place in other jurisdictions.

In respect of the narrower issue of Sheriff law which forms the gravamen of the Review Group's terms of reference, the Council endorses the Law Reform Commission's recommendation to end the responsibilities of County Registrars in the business of debt collection. As noted above, no legislative reform is required in this respect, having regard to section 12(1) of the Court Officers Act 1945.

The Law Reform Commission's other recommendations in its 1988 Report ought to be carefully considered by the Review Group, representing an informed view (often with the benefit of a comparative and consultative analysis) on many of its terms of reference. In particular, the Law Reform Commission's recommendations as to:

⁷³ Mooney, "*A New Sheriff in Town: Centralised Enforcement of Judgment – The Answer to Ireland's Sheriff Problems?*" (2022) 25(1) T.C.L.R. 9-36 at 20.

⁷⁴ *Ibid.*, at 21.

⁷⁵ *Ibid.*, at 35.

- (a) Simplifying the procedure for obtaining an order of *feri facias*;
- (b) Specifying a uniform period within which execution orders might be executed;
- (c) Requiring a judgment creditor to inform each relevant Sheriff when execution orders have been sent to more than one Sheriff; and
- (d) Requiring a copy of the Sheriff's return to be provided to a judgment creditor,

appear to remain valid and practical, notwithstanding the passage of time since the 1988 Report.

The Council thanks the Review Group for the opportunity to contribute to this consultation process and remains available to discuss and answer any questions members of the Review Group might have in respect of any of the above.



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