

Enforcement news



The President's View

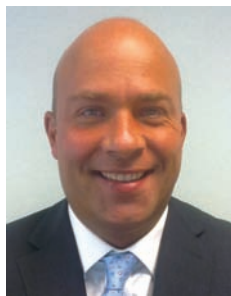
This is the first edition of Enforcement News since I had the honour to be elected as President. You have my assurances that I will serve the Association to the best of my ability through the challenging times ahead.

Without question the role of President is a demanding one but also a rewarding and fulfilling one. I would like to thank Julie Green Jones (my predecessor) for the hard work and commitment she put in over the last 2 years. I am fortunate to benefit from her efforts and achievements and her continued assistance. Whilst Vice President I did attend meetings with the MOJ concerning new fees and Regulations and I am able, therefore, to hit the ground running.

It is well documented that most bailiffs act ethically and professionally and that everyone accepts we have a genuine and crucial role to play in the collection of debts. There is a perceived bad press out there and we must ensure that the voice of well managed, good performing bailiffs is heard. Most firms, therefore, welcome the potential to revise the Law so long as we are able to go about our business in a professional, firm but fair manner. All reputable firms welcome any reform that will stop any "bad apples" from remaining in the profession.

Although there has been a change of Government we are now clear that the review of Bailiff Law Reform will continue. The Regulation Working Party has been reconvened, the MoJ and the profession now believe that they are close to achieving robust regulations that will allow effective enforcement whilst giving protection to the vulnerable. We anticipate public consultation later this year.

Whilst this has taken a long time to produce the Civil Servants have been adamant throughout that it is important to Ministers that they get any reform right.



Bailiff Law, in its current form, has been around a long time and I doubt if the new Regulations will be reviewed in the same depth again for many years to come.

This leads me to re-iterate to Bailiffs, Local Authorities and other interested parties the importance of responding to any consultation paper that comes from Government.

The final regulations will have an impact on how we do the job and also, potentially, the level of collection rates achievable for Councils. We need to try to ensure that our current powers of re-entry for local taxation are kept. If this is listed as a potential change then we need to give a balanced argument as to why this is so important. If we do not make representations then we cannot complain if this power is taken away from us. In turn Councils cannot then bemoan the fact that collection rates would reduce unless they, too, have made their feelings known in writing.

It may seem that I am stating the obvious but Government has previously made it very clear that it will only consider the opinions of those that make comments. We have seen this before in Consultation Papers where, for example, 100 Councils make representations but the other 200 do not. The Government assumes that the 200 who do not make any comment have no objection to any proposals made and then introduce them. The fact that the 100 that have voiced their concerns may reflect the feelings of the vast majority of their counterparts cannot be taken into account. The message therefore is **MAKE TIME TO GET INVOLVED AND VOICE YOUR OPINION.**

There are many aspects to the role of President and many issues are covered in this publication which I trust you will find an enjoyable read. Although it is hard work there is some social reward and I was pleased to attend the recent IRRV

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ENFORCEMENT NEWS

This special ESA newsletter has been produced on behalf of the Enforcement Services Association. Statements made and opinions expressed do not necessarily reflect the official views of the Association nor does placement of advertising imply endorsement of any service or product.

Editor - **Mike Shang**
Production Team: Mervyn Pilley
Simon Jacobs



ENFORCEMENT SERVICES ASSOCIATION

Annual Reception on HMS Belfast. The IRRV are working closely with the ESA with the development of our examination and also the training aide that will accompany it.

All in all it has been an interesting first few months and I look forward to the remainder of my term as President.

Simon Jacobs
ESA President



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All Change with the Courts?



A change of government, a change of strategy?

We have all seen the recent news concerning the savings the government wish to make.

Our members are now faced with proposals for courts closure across the country. The government intends to computerise much of the work and work from business centres.

The plans have not been formally published and we hope to hear further information at the Association conference on 28th September when we have senior officials from Her Majesty's Courts Service in attendance.

We have also been in discussion with the Ministry of Justice over the enforcement of judgments. District Judge Monty Trent, President of the Association of District Judges has made it his aim to see more opportunities for creditors to recover funds and the Association supports him fully in this endeavour.

A meeting was held at the end of July with MOJ officials and a small number of members were present when ideas were mooted. This was so successful that the theme has been carried forward to the conference and members present will be able to give

further views on the future of enforcement.

However hanging over all this is the continuing concern of funding; the government are in a difficult position

Recent figures show the volumes of claims and warrants of execution are down on last year. This may be surprising when we are in a recession but on the warrant position this can be clearly identified with the massive increase in court fees. As for claims it is a mixture of less work, more ability of debtors to seek methods of avoiding payment and claimants' general reluctance to use the courts to seek recovery.

However if fees are increased it may only further reduce the volume of work as creditors look at the cost and the effectiveness.

We all wait with bated breath for the next stage of the changes and the Association will look to ensure the interests of members are protected.

Brian Havercroft F Inst L Ex
Chairman,
Civil Court Users Association
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“The Coalition & Bailiffs - is there a difference of opinion?”

It is known that the new Minister at the Ministry of Justice whose responsibility includes the Bailiff sector- Jonathan Djanogly MP, the Parliamentary Under-Secretary of State for Justice- appears to have a low opinion of bailiffs and is committed to bailiff law reform. However this is combined with a strong understanding of the role that bailiffs play in revenue collection.

I think we could safely say hurrah to the commitment to bailiff law reform and also the understanding of bailiff work in revenue collections, but it is this apparent dislike of bailiffs that concerns me. Is there a difference of opinion as suggested in the title of my article or is it based on ignorance?

Perhaps I am maligning him by my comments, but this belief is coming from public statements he has made. It is far too easy to condemn a sector of any industry by simply watching sensational TV programmes, listening to colleagues who have an axe to grind and not bothering to find out exactly the situation for oneself. A proper balance must be struck. Hopefully in this case this Minister will have an opportunity to see the other side of the picture this autumn when he meets members of The Enforcement Law Reform Group (ELRG), which is helpfully by his own request. The ELRG, as many readers know, is a cross industry Group that attempts to influence Government in their thinking about bailiff law reform. All trade associations relating to bailiffs and enforcement officers are represented on this Group.

There are rotten apples in any basket and that is the same for any part of our industry whether it is

creditors, debt collection agencies, advisers or bailiffs. However they are and always will be in the minority. They make excellent copy for the media but do not give a proper view of the particular sector which they represent.

So we have legislation on the Statute Book for some sort of reform of bailiff law under the Tribunals, Courts and Enforcement Act 2007. We know that it has not yet been implemented and it is possible that the Minister will consider its implementation sooner than later. What we do believe is the case is that he wants a further consultation on the issue this autumn. This of course may be a good thing; do we actually believe that this could remove the Security Industry Authority (SIA) from the radar as a potential licensing authority- I doubt it frankly, particularly as it was only originally proposed to save money and Government is involved in a serious cost cutting exercise now. Perhaps a further glance in the direction of The Office of Fair Trading may be worthwhile, bearing in mind that they are highly likely to be losing their role as a regulator of consumer credit in the near future.

There will be only certain room for manoeuvre as the Statute Law is written down and has been passed and I don't suppose that changes to the Act through primary legislation are really on the cards or even altogether desirable. Personally I believe we should start again from scratch as I really do not think the last Government had their heart in the matter. However, I think to that suggestion I would say – dream on Sharp!

As an industry and in particular the bailiff sector of that industry really does need to convince the Coalition Government of the enormous benefits

of a professional and well regulated bailiff service. This is not impossible and maybe the ELRG can take the first step in the autumn. A day out in the field with the Minister so that he can really see what happens would be an interesting idea. Sadly so many Members of Parliament are firstly not commercially minded individuals and secondly they tend to believe everything either their constituents or their civil servants say. The only way to really get a true and comprehensive picture of this complex side of the industry is to get up close and observe.

There does not have to be a difference of opinion between Government and the bailiff sector of the industry as we should all be working for the same cause- good strong and flexible statute law and regulation that works.

Those of us in any way connected to the bailiff and enforcement world, let us be positive and work towards convincing Ministers and civil servants alike that here is an opportunity- maybe even the last- to sort out bailiff law now. We don't want to tinker with it; we want proper reform and regulation. As far as I can see those of us in the practical side of the business are all of one mind over this, so somehow, sometime- ie now- we have to convince Government that although the poker is red hot, it will only burn the person who handles it in a half hearted- I must please the masses-type of way. If the approach is professional and honest, the red hot poker will do what it is meant to- it will burn through bad practice and archaic law like a knife through butter.

Anthony M.G.Sharp
FICM Consultant,
Anthony Sharp Associates

Comment

Is it possible to be surprised by something that has been going on longer than most of us can remember?

I think it must be because I was certainly surprised last month that bailiff reform was back on the agenda, with reports of a new start with all options open. This, despite the fact that in the 10 years that I have been writing on this industry, consultations towards bailiff reform have been ongoing; indeed that latest round of consultations had started at least a decade before.

So here we are again, consulting on the future, going over old ground and I have only one word for it: good.

The reality of the situation is that the proposals for bailiff reform last put on the table were not satisfactory. They had good and progressive elements, but all sides of this debate had something to complain about and it is no good coming to a conclusion merely because you are too tired to argue any more, not on an issue this serious. Attrition does not make good legislation.

I now feel that the industry has an opportunity to take this bull by the horns and to drive home the kind of reform that is required. And I think it can do so, recently we have seen

excellent proposals put forward on fees and it has been noticeable over the past few months how the various trade bodies that represent the enforcement profession have made an effort to cooperate and to speak with one voice. These are positive steps indeed.

In CCR this month, Martin Leyshon, new chairman of the High Court Enforcement Officers Association, speaks about the fact that his members have recently won the right to enforce employment tribunal judgments, to the benefit of everyone. So progress can be made.

On the creditor's side, our sister publication CCR-PublicSector has often remarked on how the public sector is becoming more professional in the way it deals with debt. Of course the picture is extremely patchy but, amongst the more forward-looking public bodies, there is an understanding that if you want a quality service then you need to pay for it. In an age when we are fully aware of the rights of the debtor and the need to treat them with the dignity they

deserve, it cannot be right for government to oblige bailiffs to work for nothing and to collect all their costs from the debtor. The most advanced public bodies have started to realise this.

So we must work towards a quick, focused consultation, with understanding from the creditors and unity from the enforcement industry. This is an opportunity for real change that must not be missed. The alternative is 20 more years of regulatory stagnation.

Steve Kiely

Editor,

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Bailiff News from Around the World

- **Azerbaijan** Leaders of groups of bailiffs of several regions were seriously punished in Azerbaijan.

Gabala region group of bailiffs head Yusif Hasanov was dismissed for gross violations of law and serious shortcomings in his work. Khachmaz and Hajigabul regions executive groups heads Beybala Agayev and Ramil Shiraliyev were severely reprimanded. A serious warning was made to the leaders of several other local executive bodies. Minister of Justice Fikret Mammadov told about purposeful measures undertaken within ongoing activities to enhance the efficiency of justice, improve the enforcement of judicial decisions. He noted the strengthening of logistics service and its complement

by highly qualified staff. He stressed the critical importance of presidential decree in organizing activities meeting modern requirements.

Head of the bailiffs of the Justice Ministry Khanlar Zeynalov made a presentation on the work carried out in the first half in this area. He said that during the period about 76.8 percent documents were executed. About 650 people were subject to administrative liability. Criminal charges were filed against 141 people. The instructions were given to increase the training of bailiffs, study the responsibilities deriving from the new legislation and implement their correct execution in conjunction with the Justice Academy, strengthen management

and supervision of local structures, a serious discipline in this area.

This story is from
<http://en.trend.az>

Dr Ramesh Bandeducche however managed to escape embarrassment by issuing a cheque of due amount in the name of the court immediately. Zim Laboratories Ltd, Nagpur, had supplied medicines worth Rs 23,000 to the hospital in 2005. The supplier raised the bill but the CS office failed to make payment. Shamin Sheikh, proprietor of Zim Laboratories, moved the civil court. Sheikh informed that while the case was still being tried, the CS office issued a cheque of Rs 23,000 in July. Since the interest amount over the actual bill was not included in the payment, he brought the point to the notice of the court. The case was transferred to Chandrapur civil court. Civil judge, senior division, Chandrapur, issued orders to confiscate CS Dr Bandeducche's car and furniture in his office.

This story is from
<http://timesofindia.indiatimes.com>

- **Chandrapur, India** High drama was witnessed at the civil surgeon's (CS) office at the civil hospital here on Tuesday after a bailiff from the court arrived with a decree to confiscate the car and furniture at the office.

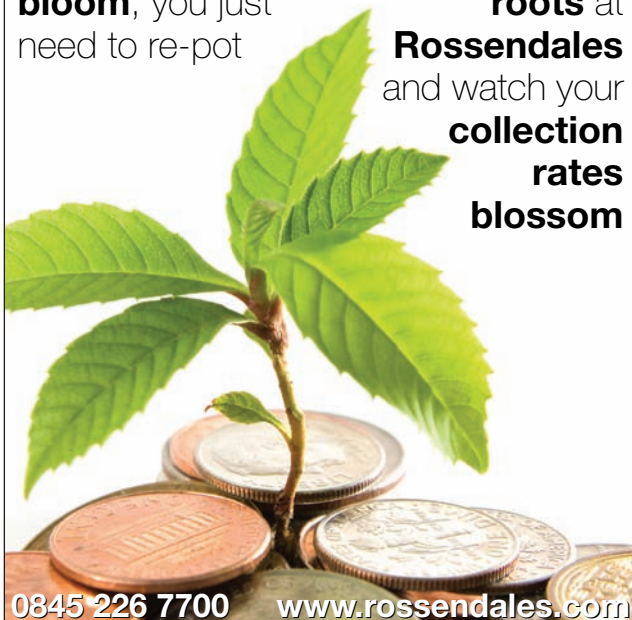
The attachment order came following failure of the hospital to pay Rs 66,000 due to a plaintiff. Civil surgeon

- **Russia** Russian bailiffs apply unique martial art. If somebody breaks the law, there will be always someone else to defend it. As RT's Robert Vardanyan found out, Russian bailiffs choose the so-called complete fighting system to guarantee their operational efficiency. First, a short warm-up, muscle flexing, then skills and drills – all that looks like a professional fighter's regular training session. However, the ones here are Russian bailiffs learning the complete fighting system. *"This is one of the most suitable training systems for bailiffs, as it includes both boxing*


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and wrestling techniques. Physical impact, arrests – this is part of our job, and we may need various skills in such cases,” says Vasily Krylov, head coach of the Russian federal bailiff service team. “It seems hard to put them together. But I myself practiced both boxing and wrestling for years. And I know that complete fighting skills bring you some extra confidence,” he adds. Krylov says that most of their team “have vast martial art experience, in combat sambo and boxing.” “My main task is to help wrestlers with their boxing skills while, say, kick-boxers need to learn or improve their knowledge of ground fighting. We need to work very hard, and we really do, as the team has two training sessions a day,” he explains.

For some of these bailiffs, applying their combat skills at work is quite a rare thing. For Veronika Sharypova it is nearly impossible. “I’m a woman and most of my colleagues are men. And in any extreme cases they always keep me behind their backs. I have ever had to protect any of them as they always protected me,” she says smiling. Instead, Veronika and her teammates meet up with their counterparts from other Federal Services and CIS countries at a specially-arranged tournament. Each bout there consists of two rounds, fighters are only allowed to kick and punch in the first, and wrestle in the second.

At this year’s event, the Russian bailiffs were unmatched. “I feel quite comfortable, both when it comes to wrestling and hand-to-hand

fighting. In some fights I knocked my opponents out, in others I claimed victories via submissions. Although I still focus on submissions, as wrestling is the first martial art I learned,” Moscow bailiff Rasul Mirzaev shares. So those who choose to break the law have to think twice, as these bailiffs may be right there to defend it.

This story is from <http://rt.com>

- **Moscow** Fed up with repeated failure to pay up, Russia’s official repo men are planning to take a potshot at intransigent debtors. Amid plans to toughen up their approach to persistent non-payers, the federal bailiff service is planning to take away hunting and fishing licenses. Permits needed to pilot a boat could also be confiscated as the authorities look for alternative ways to persuade people to pay up. The news comes as statistics show close to 250,000 people are banned from leaving Russia due to their unpaid debts, Noviy Izvestiya reports.

Human rights groups were quick to protest, however, fearing that instead of targeting genuine non-payers the authorities were simply scurrying to fill a quota. Noting

that numbers had risen sharply in some regions – Oryol region, for example, saw a four-fold hike in travel restrictions – Pavel Chikov of the Agora organization asked: “The question arises, what do they really want: to stop as many Russian citizens as possible from travelling or to quickly recover the money?” “In fact it is about the development of another power structure which does not benefit society.” However, he had some sympathy with the bailiffs in the face of the “creative” way people tried to duck their debts. “Many times I’ve seen seminars about how to get another loan in the event of a claim for failure to pay,” he added.

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Artur Parfenchikov, the figures speak for themselves. In 2009 215,000 travel restrictions were imposed and 2 billion roubles (\$6.5 million) was collected. This year, he told *Noviye Izvestiya*, 100,000 travel orders had been dished out and the annual tally was set to top quarter of a million.

This story is from www.mn.ru

- **Israel** Men who refuse to pay child support will be banned from public office, denied benefits from state institutions and forbidden from having mobile phones, if a new government bill is passed. The bill, formulated by the Justice Ministry's Enforcement and Collection Authority with Minister Yaakov Neeman's backing, is expected to revolutionize child-support debt collection. However, some of the sanctions it proposes for child-support evaders may raise hackles. About 116,000 cases are pending in the Bailiff's Office, most of them against men who do not pay child support after leaving or divorcing their wives, Enforcement and Collection Authority Director David Madioni told Neeman last week.

The debts accumulated in these cases total about NIS 12 billion, according to the Enforcement and Collection Authority figures. Each case consists of an average debt of NIS 11,000 each and takes the Bailiff's Office 14-18 years to handle, Madioni said. He said child-support cases are more complicated than others. Many women are not familiar with debt collection laws and find it difficult to

handle the cases. Consequently many of them give up to avoid submitting requests and paying expenses involved in managing the case.

The government bill, which will soon be released to judiciary officials and the public, stipulates setting up a child support department in four Bailiff's Office branches nationwide. Clerks specializing in collecting child-support will act for the women who open a file and collect the debt for them. Women will be able to open a file themselves and leave the debt collection work to the Bailiff's clerks, who will trace the husband or former husband's financial sources and collect the debt. The bill introduces sanctions that can be imposed on husbands who owe child support without prior warning. Such warning is presently required before the collection process could be started. The bill says Bailiff's registrars who receive the child support cases will be able to keep deadbeat dads from owning a cell phone, ban their employment by a state institution or their appointment or election to public office.

Deadbeat dads may also be denied benefits received from state institutions. The Bailiff's clerks will have access to the debtors' tax and VAT reports and business transactions in the Tax Authority's data banks. They will also be authorized to obtain information about any inheritance the deadbeat dad has received or is expected to receive. They will have access to the Custodian General and databanks

with information on the debtors' property, monthly income and expense reports.

Enforcement and Collection officials said in other countries authorities may arrest deadbeat dads, revoke their driver's license and passport, suspend their flying, sailing, hunting or fishing licenses and sometimes even revoke professional licenses. The National Insurance Institute, which pays child support to families of deadbeat dads up to a certain sum of money, charges the debtors for the payments, but usually collects less than half the sum it pays the families. The bill says the Bailiff's child-support clerks will also be authorized to collect the husbands' debts owed the NII.

This story is from www.phaaretz.com

- **Zambia** BAILIFFS from the Sheriff's office yesterday pounced on Lusaka-based freelance journalist Chanda Chimba III and grabbed an assortment of household goods over the K15 million he owes a Lusaka businessman Kaluba Maybin Chanshi. The bailiffs arrived at about 08:16 hours aboard a white Nissan Diesel truck registration number GRZ 584 CA, and later proceeded to Chimba's flat number 24, Baluvala Court in Lusaka's Northmead area. At the time, only Chimba's wife and two children were home.

When the bailiffs introduced themselves and showed Chimba's wife the seizure warrant, she told them that her husband was out



attending to some business somewhere. The bailiffs then started taking out household goods, which included a black four-plate cooker, a white two-plate cooker, four sofas, a home theatre and two printers. About 20 minutes after his wife called him to inform him about the development, Chimba arrived driving a grey Toyota Caldina registration number ABT 1897.

Despite his presence, the bailiffs went on hauling more property: a video editing suite, a television set and a home theatre, among others. And when they tried to take away a TV stand, Chimba pleaded with the bailiffs not to take it away, saying the glasses could break. *"Please don't take away the glasses, just take the furniture. I know how the Sheriff's office is, all these glasses will break. Please sendeni ifipuna (just take away the sofas),"* Chimba pleaded.

Later the bailiffs took away the sofas and other household goods. And when one of Chimba's male dependants tried to film the bailiffs in action, they got incensed and grabbed the video camera he was using. One of the officers was heard complaining: *"Atikopa uyu mwamuona. So apa tatenga camera, tizaenda nayo. (Have you seen this person, he is shooting a video. Right now we are confiscating the camera and we are taking it away.)* Angered by the move to have them filmed, the bailiffs threatened to break a door to one of the rooms so that they could get more property. However, they were later restrained by someone who phoned. However, they still

grabbed the small video camera and went away with it.

This story is from
www.postzambia.com

- **Vietnam** HCM CITY — Five pilot bailiff offices were opened in HCM City last Friday following a decision by Prime Minister Nguyen Tan Dung last September. The Prime Minister issued a decision in February in 2009 to approve the establishment of the private bailiff system in an aim to cut the workload of the state's agencies that issue judgments. Under the decision, the five newly established offices will act as private enterprises and the power to execute court judgments.

Speaking at the opening ceremony, Deputy Minister of Justice Nguyen Duc Chinh said the opening of the offices was a sign of the Government's willingness to allow private sectors to participate in some judicial agencies' activities. The offices, whose authority is

endorsed by the state, must act legally and protect the people's legitimate interests. HCM City is the first locality in the country allowed by the Government to open bailiff offices before 2012. The Government is currently drafting legislation to guide the operation of the private bailiff system.

The offices are located in 104 Dien Bien Phu Street in District 1; 40 Huynh Man Dat Street in District 5; 809B-811 Ta Quang Buu in District 8; 19R Nguyen Huu Canh Street in Binh Thanh District; and 717 Cach Mang Thang Tam Street in Tan Binh District.

This story is from
<http://vietnamnews.vnagency.com.vn>

- **Israel** The state may allow the Bailiff's Office to seize the National Insurance Institute payments of those who are not paying their debts even though they can. A committee, headed by Judge Oded Maor, is examining the proposal.

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The panel's job is to examine ways to improve enforcement and debt collection in Israel. During the course of its inquiry, panel has found that the Bailiff's Office needs urgent efficiency measures for collecting debts. There are about 3.5 million cases in the system, of which about 26 percent (916,00 cases) have been shelved for lack of activity - debtors lack the wherewithal to pay up or creditors encounter difficulties in trying to find the debtors so as to collect the debts.

The proposal under discussion would enable seizure of pensions, stipends and allowances *"in cases in which a person who has been investigated as to his ability [to pay]*

and found able to pay but has nevertheless not been paying his debts under order for six consecutive months." In such cases the Bailiff's Office registrar may order seizure of a stipend or allowance from the NII, the Defense Ministry or any other source. The order would apply to the debtor's state assistance in accordance with the sum he or she is required to pay monthly to the creditor, as though the Bailiff's Office registrar had ordered its confiscation.

Social advocacy groups are critical of the proposal before the Maor panel and warn that such a step could result in an increase in crime and poverty. Yedid - the Association for Community

Empowerment, which acts to strengthen the weaker social strata - submitted an opinion from its legal department to the panel, saying that if the proposal is accepted, *"it would entail a real and palpable risk of direct harm to people's basic ability to exist and we will do everything possible to fight it and prevent its acceptance."* Yedid stated: *"It is inconceivable that because of a debt to a mobile phone company, cable company or any other consumer body entire families and individuals*

will be left without any possibility of purchasing food or medications."

This story is from www.haaretz.com

- **Tunisia** Minister of Public Properties and Land Affairs Zouheir M'dhaffer received, on Thursday morning in Tunis, a delegation of the International Bailiffs Union. The minister emphasised the development of the profession of bailiff in Tunisia as part of a comprehensive reform approach initiated since the advent of the Change. For their part, members of the delegation hailed the privileged position held by Tunisia in this area, expressing hope that Tunisia will shortly become member of the International Bailiff Union.

This story is from www.tap.info.tn

- **KIGALI, RWANDA.** The Social Security Fund of Rwanda (SSFR) has recruited court bailiffs and tasked them with confiscating and auctioning property of contributors who default. Social Security Fund of Rwanda targets to collect about \$45.7m (Rwf26.2 billion) as contributions and already \$22.8 m (Rwf13.3 billion) has been realised in first semester. This was collected from 190,996 workers declared to SSFR of which the public sector employs 100,632, 53% compared to 90,344, in the private sector.

To maintain the momentum, the pension body has increased the number of bailiffs after the initial number got overwhelmed by the work load as they could not reach the entire country. SSFR's director of human resource & administration,



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Mr. Innocent Rurangwa said the pensions body has now increased the number of bailiffs from five to 103. With a standby enforcement team, SSFR has also tasked employees of the fund to complement the efforts of the bailiffs. *"We want every CSR worker to become a bailiff in order to solve the non-compliance problems we are currently faced with,"* Rurangwa said. They were recently sworn in by Jacqueline Bakamurera, the Deputy Attorney General. The new bailiffs were cautioned to be honest and efficient while executing their responsibilities.

This story is from
www.busiweek.com

- **Russia** Claims against court bailiffs. The liability of state authorities for damage caused to businesses is a controversial issue in Russia. In numerous cases state agencies have inflicted substantial damage on companies through their unlawful actions, with no intention of paying compensation. However, unprecedented decisions of the arbitrazh (ie, commercial) courts have recently demonstrated that material liability of state institutions is not merely an abstract notion, but allows for the recovery of damages in practice.

One of the most recent examples of the new judicial approach is the Supreme Arbitrazh Court decision in favour of Irbis, a construction company that sought to recover damages from the Federal Court Bailiffs Service. Irbis won a case against a contracting party for the

repayment of a debt, as a result of which the debtor was required to pay Irbis over Rb1 million. Irbis obtained a writ of execution and asked the bailiffs service to initiate enforcement proceedings and recover the debt. The bailiffs arrested the debtor's liquid property, but then lifted the arrest for an unknown reason and arrested the debtor's promissory notes. However, it transpired that there was no security for the notes. It subsequently became clear that the debtor had no remaining liquid property - Irbis had won its case in court, but could not recover from the debtor.

The creditor filed suit against the bailiffs service before the state arbitrazh court, claiming that it had incurred losses as a result of the bailiffs' actions. Irbis lost the case at three instances, but persisted with its claim. The case was ultimately referred to the presidium of the Supreme Arbitrazh Court. The lower courts appear to have rejected Irbis's claims simply because this was the first time that a company had sought to recover losses inflicted on its business by the unlawful actions of the bailiffs service. In

practice, such a claim was considered legal nonsense and no judge was prepared to assume responsibility for upholding it. However, justice was ultimately served. The Supreme Arbitrazh Court eventually satisfied Irbis's claims for the recovery of damages from the bailiffs service and quashed the lower courts' decisions. The decision establishes a precedent that may radically alter arbitrazh court practice in respect of similar claims.

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Examination Update

Pending new legislation and clear information regarding potential licensing qualification criteria the ESA has revamped its' current examination. The revised examination is designed to more realistically test the candidates all round knowledge of the job rather than just concentrating on the 2 areas of Distress for Rent and Local Taxation.

Although this revised examination may get superceded in the future it is ESA's desire that those who pass this examination will get full or partial exemption for any new licensing examination requirements.

Students will have to answer a total of 100 questions each carrying 3 marks with a total score of 300 available. The pass mark is currently set at 66% and a minimum of 50% must be scored in each of the candidates 5 preferred modules answered in the examination.

70 questions will be asked from the Compulsory Modules of *"Generic"*, *"Conflict Safety & Security"* and *"Rent"*. A further 30 questions (15 in each) will be asked from 2 Optional Modules in relation to Distress of

"Local Taxation", *"Road Traffic"*, *"HMCS"*, *"HM Revenues & Customs"* and *"Child Support Agency"*.

The examination papers have been devised and candidates are able to sit the revised examination now if they wish. However there is a need to assist candidates with training material and the development of this is ongoing with an anticipated "roll out"

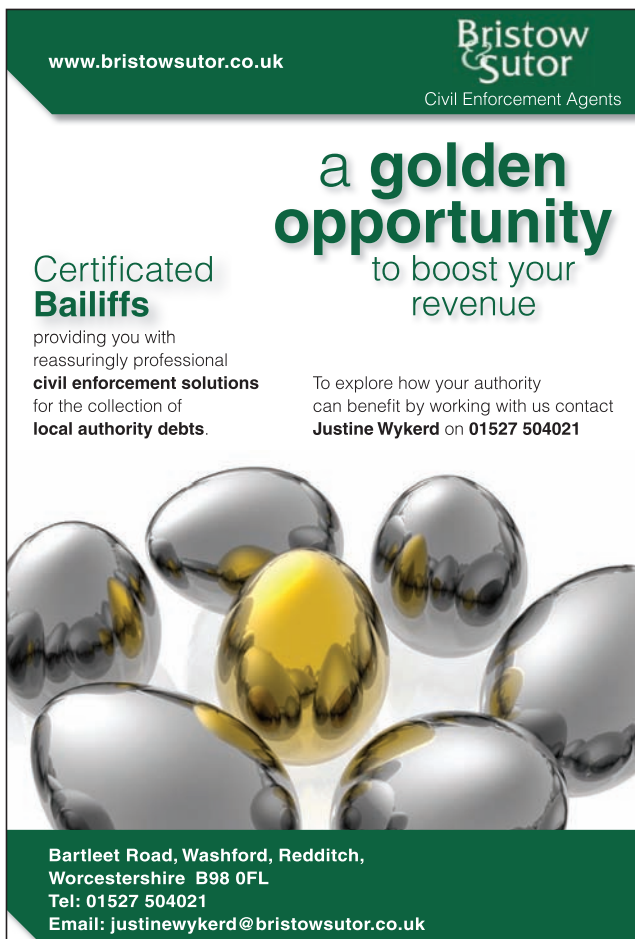
date by the end of the year. The training material builds on the IRRV current on-line training aide and will focus the student's learning curve in the specific areas in which they will be tested at the examination. The aide will include self test questions with immediate response in terms of correctness. The development of the training aide will be most beneficial to students as they prepare for the examination which they will still, for the foreseeable future, need to sit in person at a Member Organisations premises at a mutually convenient time.

As an option and as part of the transitional arrangements anyone wishing to sit the "old" examination is still able to do so until the revised examination training aide is available.

Should you need further clarification regarding our examination structure please contact Mervyn Pilley (Executive Director).

Dave Cornes

ESA Examinations Sub Committee



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An Interview With Colin Naylor

Following the Government's announcement to review over-aggressive behaviour by bailiffs, Colin Naylor, Chairman of ACEA, the Association of Civic Enforcement Agencies, gave the following comments at an interview with editors from the sector press.

Is this a good idea from the government or is it a political move to appease downtrodden consumers?

I don't think it's overtly political at all. I generally welcome any move that encourages bailiffs to act ethically and professionally, especially if it is accompanied by an understanding that we do have a genuine role to play in debt recovery.

Neither local authority nor private sector owners of debt have any interest in 'aggressive' collection tactics and a good bailiff is taught to defuse rather than inflame any potential confrontation.

Much of this is a matter of perception. Obviously many debtors feel vulnerable and we need to be aware of that.

As Chairman of ACEA I support any initiative that leads to better understanding of what we do.

What effect will this have i.e. will it alienate the industry, will it make life tougher for legitimate bailiffs?

Unfortunately as an industry we tend to be reported only when consumers

are upset and are judged accordingly, so there is always the danger that bailiffs will just accept their fate and resign themselves to being seen as the villains of the piece.

Personally I believe we should present our role more positively, and be more inclined to state our case.

Most bailiff companies are well managed, employing people which are able to identify basically honest debtors who want to resolve their problems.

Has the Government missed a trick? Are there other areas of the debt industry where they could or should be cracking down further?

I suspect that previous governments have missed a trick, because of the overly liberal environment in which the financial services industry has operated.

Burgeoning debt has not come about by accident, much of it is down to irresponsible lending. Unfortunately it's the owners of consumer debt, local authorities, private landlords and the like and not those who have advanced the credit, who find themselves having to recover the money.

Let's not forget that it's not unethical to try and

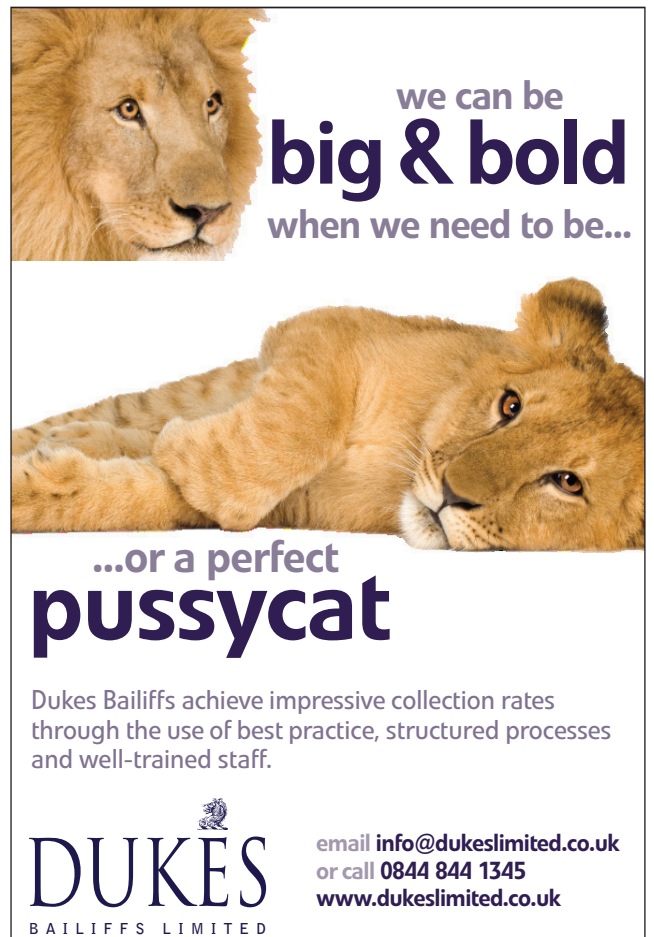
recover debt, in fact local authorities have a statutory duty to do so.

I believe that part of the way forward is for government to try and promote a better understanding among consumers about their rights and responsibilities. Greater communication and awareness will help us all.

So, I hope that government will apply greater control over the financial services sector and for our part we will ensure that the good bailiff companies embrace a new legislative framework in a positive way.

Colin Naylor

Chairman of the Association of Civil Enforcement Agencies (ACEA).



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The Work of a County Court Bailiff in the 1960s

CHARLES HULME-JONES (1916-1991)

Born in Baildon, West Yorkshire, Charles Hulme-Jones was educated at The Salt Grammar School in Sir Titus Salt's model village of Saltaire. Shortly after he left school his family moved to Clacton-on-Sea in Essex and for a time he worked for an estate agent in Frinton-on-Sea. The call of his native Yorkshire proved too strong, however, and he joined the City of Bradford police in the 1930s. His police career was interrupted by service in the RAF during the second world war, and he eventually retired as a sergeant in 1957.

After running his own newsagent's shop for two years, he became a bailiff at Bradford County Court in 1959 and remained there until he retired eighteen years later. Boundaries changed over the years, and his work eventually took him to parts of the West Riding of Yorkshire, including the Yorkshire Dales, that were far from the city of Bradford. He was a skilled cabinet-maker, and furniture in the family home provided evidence of his talent.

After retirement he moved to Fife in Scotland in order to be closer to his only child, Philip, and occupied himself by documenting stories about his working life as a bailiff. Many years later Philip came across a bundle of typewritten sheets, and decided that the stories they told were too good to languish in a drawer any longer.

Chapter Two – The Road to Prison

When I first met Mrs Holmes, and told her that unless she paid a certain sum of money I must execute a warrant by arresting her and taking her to prison, she made it clear that she did not believe me and said women were not sent to prison for debt. Letting her see the warrant made no difference in her view, and clearly she thought that I was trying to trick her.

This lady was a widow with children, and a sympathetic judge had reduced the amount of her instalments several times to encourage her to pay. Finally her instalments stood at half-a-crown a month, but still she refused to pay. Half-a-crown a month was a trifling sum considering the total amount of her debts, and it would have been accepted in smaller weekly sums if this was more convenient to her. After several visits I could not change her mind about paying, or convince her that she really would be taken to prison as an alternative. I was conscious of the fact that if she was taken to prison the local authority might have to take the children into care, and I wanted to avoid this happening if at all possible.

As a last resort I took another bailiff with me, got hold of her arm, and threatened to take her to prison there and then. She realised that I meant business, but her first comment was, "What will the neighbours think?" When asked if she had friends who would take the children, she replied "I can arrange that if only you will wait

until morning, and then I'll meet you somewhere away from the neighbours." It seemed a reasonable request under the circumstances and, true to her word, she did meet us at an appointed place about a mile from her home.

The sight of her clothing was an eye-opener. She wore new clothes with a white hat, white handbag and white shoes, and her outfit would have been admired at any garden party. I smiled as I said, "What's all this in aid of?" and her calm reply was "I've told the neighbours that I'm going on holiday." She was no trouble on the way to



the prison, but on arrival there she was obviously hurt when the wardress demanded that she empty the contents of her pockets and her handbag on to the counter. It was then seen that she had sufficient money with her with which to pay the debt and cause her immediate release, but she strongly objected to this procedure and served her sentence. Mrs Holmes paid her debts thereafter.

An elderly lady who had been in business as the owner of a sweetshop found herself in financial difficulties to such an extent that it had affected her health. She managed to sell the business, which was a fact known to some of the creditors, and they were determined to obtain their share of the proceeds. They had obviously satisfied the court about their claims, and the court had issued a warrant committing her to prison unless she paid a stated sum.

This lady had declined to attend

the court hearing to plead her case, but told me that all of the proceeds of the sale had been utilised to pay other debts. When asked why she had not elected to file her petition in bankruptcy, she replied that she had a horror of appearing in any court and would go to prison rather than face a public examination. Further visits did not alter the position, and finally I took her to prison.

When I met this lady some weeks later, she thanked me for all I had done for her – a fact that surprised me – and she went on to say that her stay in prison had been the best holiday she had had for years. Because of her poor health the prison authorities had put her in hospital, supplied her with library books, and she had never been so well looked after. She looked better too, and it was nice to have a satisfied ‘customer’ for a change.

I knew the reputation of Brian Green before I met him, mainly because of having seen his name in the local paper in reports of criminal cases heard at the magistrates’ court. When a warrant for his arrest was handed to me, a colleague told me another story. When my colleague’s daughter had married, the reception was held at a local hotel. Green had appeared amongst the guests, offering to take photographs of them for a fee. His offer was accepted by many, until someone who knew something about cameras decided that the snaps Green had taken were far too many for the film in his camera. An argument ensued, in the course of which the camera was examined and found to be empty. There was no film, and Green had made a hasty retreat.

I called at Green’s home several times, when his bad-tempered wife maintained that her husband was not at home. Lots of abuse was hurled at me, and I decided that some other

approach was needed. I was sure she was shielding him. Enquiries revealed that Green came home at regular times, and I learned the stop at which he alighted from the bus. One day I waited for his bus, and as Green got off I arrested him. He claimed that he had no money, and cursed me for expecting him to have money on a day that was not pay-day. I told him that he had had plenty of opportunity in the past for paying the money I required, and that I would take him to prison there and then. Green then pleaded with me to let him tell his wife that he was going to prison, and that is where I made a big mistake.

Upon arriving at his home, he immediately became aggressive, and his wife worked herself into a towering rage. Nothing logical was said by either, and they fired insults and foul language at me with machine-gun rapidity. If there were people in the street, it is certain that they could have heard the commotion. I maintained my position until they simmered down, when the wife remarked, “I’ll suppose he’ll fetch the police if you don’t go.” It was a remark with which I heartily agreed.

Green then resigned himself to the inevitable, and went with me to the door. His departure, however, was the signal for his wife to fly into a rage once again and, with abominable epithets bombarding me, she followed us

not only through the garden but into the street as well. The commotion brought many neighbours to their doors, but I got Green into my car and drove away. The district in which Green lived was one with very mixed inhabitants, and Green’s behaviour brought an unexpected bonus to me later in the week. As I called on his neighbours who were also debtors, they had money waiting for me and I had never been paid so promptly before. The Green family remained on my list for years and, apart from minor disagreements from time to time, I think we progressed fairly well.

***the stories will continue
in the next edition...***

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Branta Canadensis
Canada Goose

It is likely that birds use magnetic, east
and west compasses for navigation as
well as orientation, guiding them on
journeys of thousands of miles.

As the May edition of Enforcement News was being put together we were in the middle of an election campaign. It was clear to just about everyone that the election was going to be a very close run thing, but few could have imagined the end result. Personally I was rather annoyed with Gordon Brown as he chose my 10th wedding anniversary as the day to hold the election. I made sure that political events didn't detract from my personal celebrations, but as a result missed out on the exciting events as they unfolded throughout the night.

So we ended up with a coalition government – a new Government and indeed a new style of Government, albeit not the first ever coalition Government in the UK. As I write this, we have just passed the first 100 days of this Government. Without a doubt one single word has featured more than any other in all of the coverage of, and announcements from, the Government – 'Cuts'

The budget deficit had clearly got out of control, and we can't blame the Government for tackling it. Having said that there have been a vast number of announcements about cuts, and one has to remember that once the announcements are over and the reality kicks in, someone has to actually deal with the 'nitty gritty' that creating legislation is actually about. I don't often sympathise with Civil Servants, but at the moment I do have sympathy for them. A new start for a Government, especially after thirteen years of a previous Government, can cause problems of their own. Add in 'cuts', coupled with the fact that decisions have to be effectively agreed by two parties rather than one, and you can see the problem. Civil

Servants have to deal with overlapping legislation and unfinished regulations. As a sector we are suffering as a direct result of falling within the 'overlapping' category. Having said that, we will be keeping up the pressure on everyone at all levels of Government to give the sector the regulations that we need for effective enforcement.

On ESA matters, having experienced my first ESA AGM in May I would like to welcome Simon to the Presidents role and also to thank Julie personally for her support and guidance freely offered to me in my first year in post. Unlike some organisations I have been involved with, our President serves two years. This can be great for the organisation as it gives the President time to develop and implement his or her ideas for the Association. It can of course also be a negative thing for the President as it can mean a great deal of time away from their business over a two year period. I will be doing everything I can to support Simon in the post.

On the subject of new faces, I would also like to welcome Andy Coates and Ian McDonald to the ESA Executive Committee. Just as being President involves a time commitment, the same applies to Executive members. In addition to attending quarterly committee meetings, being an Executive member can also involve other voluntary work representing the members and the Association at a large number of events and on a wide variety of topics.

Since the last edition of Enforcement News things have been very busy particularly with regard to candidates applying to sit the ESA

examination. I would like to thank Islwyn Lewis-Jones who since agreeing to take over as Examinations Secretary from Michael Sullivan has done a sterling job under difficult circumstances to deal with a rush of applications from candidates keen to take the old syllabus examination prior to the changes being made as highlighted in the May edition.

Finally another climb onto the old soapbox. Journalists again I'm afraid are the target of my anger. Members will be aware that we were recently quoted in a Mail on Sunday story as saying that the work for our members from their clients had reduced by 10% from the previous year. Well the problem is that we didn't say that and the journalist who was given our contact details proved to be far too lazy to actually call us for a quote. It would appear that his source, who not surprisingly he wouldn't name, is pretending to be a Trade Association. Somewhat unusual yes, but the concern is that he or she doesn't say something else totally incorrect and unjustified to a journalist on our behalf. Our reputation is 104 years old. Why can't journalists do their job professionally instead of taking shortcuts?

As always please don't forget where I am if you have any queries relating to your membership or ESA issues in general.

Mervyn Pilley
Executive Director