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## The Enforcement Services Association

Formed in 1906 to provide a central organisation for certificated bailiffs and civil law enforcement agents and to promote ethical and professional conduct among members.

The Association represents its members and the profession in consultation with UK central Government and organisations such as the Institute of Rating Revenues & Valuation (IRRV), Money Advice Liaison Group (MALG).

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# Enforcement news



## The President's View Onwards and Upwards

The second edition of Enforcement News under Mike Shang's excellent editorship, marks the completion of the first 12 months of my Presidency and what a 12 months it has been. Little did I know when accepting the badge of office from Islwyn in May last year at the centenary dinner, that my first 12 months would see a damning television programme, publication of the Tribunals Courts and Enforcement Bill, its progress through the legislature and the prospect of a completely new licensing regime. I must admit that the phrase Jonah leaps to mind and I am beginning to wonder if I am cursed. What will the next 12 months bring the abolition of Council Tax, free parking in every city centre and the abolition of enforcement agents in England!!!! Hang on there must be some good news, of course how can I forget the increase in Council Tax and NNDR fees introduced in April of this year, all is not lost!!!!

would fulfil this role and it is hoped that the government will realise this is an opportunity not to be missed.

My first 12 months in office has also seen the abandonment of merger talks with ACEA and a renewed commitment to positively promoting the role of the ESA in representing its members. Attendance at the Executive Council meetings has been generally very good and in particular it is important to acknowledge the commitment shown by past President's and officers of the association who are often the main stay of the meetings.



I am sure that the next 12 months will prove to be equally challenging and will once again require the full commitment of all involved. However I look forward to the challenge and the second 12 months of my Presidency.

Article by **Paul Sharpe**  
President of the Enforcement Services Association

The progress of the Courts and Tribunals Bill continues apace and not unexpectedly continues to attract a mixture of criticism and support. Most involved in the industry support the principle of a simplification of the law governing the enforcement process and a genuine attempt to create a single piece of bailiff law. However the absence of an independent licensing structure and the exclusion of some state controlled enforcement staff from the process has attracted much criticism. The recent open meeting for enforcement professionals hosted by the BPA saw almost unanimous support for the principle of a robust independent licensing regime. The proposed Bailiff and Enforcement Agent Council (BEAC) produced by the BPA, ACEA and ESA is a model that

### ENFORCEMENT NEWS

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Editor - **Mike Shang**  
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# New box of tricks for bailiffs

A radical new approach to training bailiffs has been adopted in Brighton & Hove.

Bailiffs deserve a more cerebral and sophisticated style of training, argues Brighton & Hove City Council's senior bailiff Barrie Minney. And he believes he has devised just the package. It is certainly a departure from what has gone before, encompassing seemingly new age concepts such as emotional intelligence and neuro linguistic programming (NLP). The course will also give Brighton's team of bailiffs an insight into body language, verbal communication skills and basic negotiation skills.

*"In the past the training of bailiffs concentrated on legal issues,"* says Minney. *"Bailiffs have been recruited on the strength of their characters with training in law given later. On-the-job*

*training with an experienced bailiff is often hit and miss, with 'cloned' bailiffs being handed down bad habits."*

Minney thinks his new package will allow the bailiff to handle any situation with confidence, regardless of how the debtor behaves.

*"Having these skills also means that he has a choice in deciding how to deal with the situation,"* he says. *"The end result will be better collection, less complaints and improved customer service."*

Using the new skills will also have considerable benefits for employees, making them happier and less stressed, insists Minney. *"It could also lead to a reduction in sickness, although days off sick is not a problem on my team."*

*"I hope that the individuals will use these new skills to their advantage, not just in the workplace but also to achieve a better work/home balance."*

The toolbox involves six or seven half days of practical training, with reviews after three days. It has been designed to be very adaptable with a future module being developed for call centre staff, says Minney.

*"Much of the coaching will be done in live situations, out on the streets,"* he says. *"Bailiffs have a built-in fear of role playing and I'm not convinced that such training methods would work here."*

One example would be working in pairs, one staff member will follow

the other around the city centre *"to see how they view the world"*, explains Minney. *"The bailiff following will be asked to copy the other's body language and look where they are looking. The results can be very interesting."*

*"We may also get the bailiffs to learn how to play poker, so they can recognize if someone is lying."*

Every bailiff requires four major qualities to do their job well, asserts Minney. These are: common sense; being able to work alone; knowing how to observe, assess and make good decisions; and the ability to talk to anyone.

One element of the package involves NLP training. *"This can be best described as the 'so obvious now you've pointed it out' theory,"* explains Minney.

NLP was developed in the USA about 30 years ago as a means of studying and modelling human performance. NLP teaches that if someone excels in an activity, their skill sets can be learned by others.

*"NLP can be used to overcome fears, change habits and influence people,"* says Minney. *"Current experts include Paul McKenna and Derren Brown."*

*"There are various strands to NLP but initially we will be looking at developing rapport skills. This is a very powerful technique that you have to experience to understand, which is effective in changing someone's point of view."*

Brighton & Hove's bailiffs will also be shown how to understand body language. They will learn to identify the telltale signs that reveal that a debtor is stressed, anxious, lying or about to lose their temper. *"We will show the bailiff eye contact techniques that will put him in charge,"* says Minney.

Another facet of the package is verbal communication, with bailiffs taught

Of course there is an argument that suggests if further quality checks are undertaken prior to accounts being referred to bailiffs this will ensure that only "collectible" accounts are passed to bailiffs and this will ensure that better collection rates will be achieved, better collection rates will in turn ensure that the "real cost" of upfront fees will be kept to a minimum, this is no doubt correct but then each Local Authority will need to consider the resource implication and cost of undertaking those checks.

If the existing fee structure remains then will the introduction of the upfront fee, reduce the costs to the debtor. I believe that if introduced in isolation, the answer is no, the only way in which costs to individual debtors can be controlled is via the introduction of a more prescribed fee structure. Such a structure should clearly state the costs chargeable for each action or series of actions taken and such fees should be identical irrespective of the debt type. Such a methodology could include fixed fees being applied for undertaking initial visits, for attending to remove (without removing) with evidenced fees for actual removal and sale. In this way fees would be totally transparent, free from obscurity and most importantly measurable by all parties.

Do we need an upfront fee; I would suggest that the contractual arrangements currently in place work, and they work because Local Government has embraced

benchmarking and best practice. If a fee needs to be introduced then such a fee should be negotiable between contractor and supplier based on the work to be undertaken and the service to be provided. This is the basis upon which commercial law within the UK operates and means that any commercial agreement is ultimately driven by market forces.


If the goal of the DCA is to either reduce the burden on debtors or to reduce the burden on those who subsidise the process i.e. those people who pay or even both, then the upfront fee would appear to have serious flaws, indeed it may well have the opposite effect and increase that burden, escalating costs to Local Authorities and reducing collection rates.

In summary, I believe that the upfront fee will do nothing to improve the enforcement process, nor will it reduce the financial burden on debtors or

those subsidising the process, introduced in isolation it only has the potential to increase the financial burden on Local Authorities and in turn those who subsidise the process, taxpayers.

It is unclear if this figure is cast "in stone" or even if, as implied, it is to be a fixed fee, however, I would suggest now is the time for all interested parties to lobby, and let Central Government know that either that no such fee is required or that if such a fee must be in place, then in the true "best value" ethos, there should be scope to negotiate the rate appropriate to each contract.

**Mike Shang, IRRV MESA**  
Business Development Director  
Rossendale



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# Once again it is the courts that are in the dock . . .

Once again it is the courts that are in the dock, accused of providing a shoddy service and being on the verge of a meltdown.

It all sounds so very familiar, but what is truly new and shocking is that it is a senior county court judge who is on the offensive.

Judge Paul Collins told BBC Radio 4's *Law in Action* programme not long ago that serious errors are commonplace. He added that low pay and staff shortages meant there was a genuine chance of a "real collapse in the service".

He explained there was a "common problem" that occurred when someone who is being sued files a defence, but the papers are not

passed on to the judge by court staff. The judge will automatically award damages to the person who brought the claim, assuming that the person being sued does not want to defend it.

He signed off in ominous style: "Staff in the court service are among the poorest paid of all government departments. We are operating on the margins of effectiveness, and with further cuts looming we run the risk of bringing about a real collapse in the service."

The uncomfortable fact though, is that this will not really come as news to any creditor who has spent time chasing debts through a civil court. Creditors, who are some of the biggest issuers in the country have grown used to poor service and a system that seems to care little for the companies who are paying the most to support it.

Brian Havercroft, vice chairman of the Court Court Users Association was left to reflect in *CCR* that "members face delays and errors throughout the civil courts system despite the efforts of the hard pressed staff and judiciary". Although the county court area dealing with civil business made a large profit last year the problems continue.

He added wistfully: "Money is being spent on computerisation to assist the issue of

*proceedings: however it is disputes and the enforcement of judgments which require additional resource. Members of the association would wish to see their fees used to improve the service."*

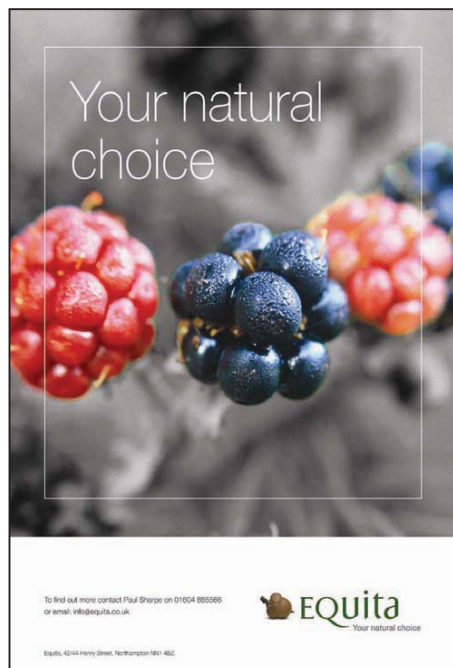
In other words: "Can we have a bit of value for money please?"

I have commented before on the semi-serious questions raised about whether the industry should take matters into its own hands and take the enforcement of debts out of the civil courts' remit and into a privately-funded debt court. At first glance the plan has several points to recommend it, not least the fact that precious judge's time is currently wasted giving the nod to thousands of uncontested judgments a year – a farcical situation memorably compared to Gordon Ramsey being paid his five-star wage to flip burgers at McDonald's.

The winning counter-argument has always been put simply that justice is what governments do. They have the responsibility and privilege of dispensing justice to their people in a fair and impartial way.

From a philosophical point of view it the case is convincing, but the credit industry has to live in the real world and is entitled to wonder that, if the government intends to keep its position of primacy of justice, should it not set about doing a better job if it?

**Stephen Kiely, editor,**  
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All of this begs the question as to exactly what the body will be required to do. I believe that the Government is not really interested in creating a proper regulatory body as this will be too expensive. Instead if it can set up a licensing authority it can then turn round to its critics and claim that it has listened to the enforcement industry, other interested parties and the public and has responded. To say that the SIA would be the regulatory body is simply untrue, a fact with which the SIA would agree. In a recent announcement from its Contact Centre it made the following statement:

*"The SIA is a licensing authority and not [my italics] a regulatory body."*

I therefore ask, how can the SIA regulate the enforcement industry when, by its own admission, it is not a regulatory body? Don't hold your breath waiting for a reply.


At a meeting with the Minister, Baroness Ashton, she did agree with me that the SIA, as presently constituted was 'not fit for purpose'. However, she told me that the Home Office would be 're-building' the SIA to ensure it was capable of carrying out its role. I would just remind you that it was the Home Office which was originally described as being 'not fit for purpose' by its own Minister. Whether we should have any faith in that department's ability to reconstruct the SIA, even after it loses many of its functions to the new Ministry of Justice, remains to be seen.

The consultation exercise has now concluded. On the basis of the proposals contained in that paper the profession as a whole is not confident that any of the proposed options is really suitable. A number of Associations, including the ESA, ACEA, BPA and LACEF have produced their own draft proposal for a regulatory body which will not only be capable

of carrying out all the functions originally proposed in the White Paper, but will be able to do so at limited cost. The working title of this organisation is the Bailiffs and Enforcement Agents Council. We have forwarded the draft to DCA for its consideration and look forward (even if more in hope than expectation) to discussions with officials as to how this proposal can be taken forward.

I seem to end most of my articles for this magazine with the same piece of advice and this occasion is no different. Accordingly, watch this space!

**Vernon Phillips**  
Executive Director

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# New Insolvency Standards Needed?

You have to look at the quarterly personal insolvency statistics of both DTI and DCA to calculate how many debtors have declared themselves insolvent, which is gratuitously unhelpful. DCA doesn't mention IVAs, and DTI doesn't split creditor and debtor Bankruptcies.

In the third quarter of 2006 the combined figure rose to 25,151. The two 'remedies' are running neck and neck for the quarter – 12,923 debtor bankruptcies and 12,228 IVAs, respectively 16% and 9.8% up since the previous quarter – giving a combined figure of 25,151. But it is the annual position which shows the true trend. Debtor bankruptcies are up 37% year on year, but IVAs are nearly **118%** up in the same period.

It's undoubtedly a good thing that both the '100,000 bankruptcies' and 'IVA factory' sagas have moved beyond the credit press, but there is little sign of

the Government discussing a better way forward for personal debt.

Two contributors to the first Research Conference organised by the Insolvency Service in September arrive at a common and telling point. **First** In his 200+ page *Final Report on the Bankruptcy Courts Survey 2005 – A pilot Study*, John Tribe says *"If one takes the totality of the new insolvency provisions ..... one can see that the new provisions are about much more than just discharge. Unfortunately the vehicle used to bring them onto the statute book appears to have given the public (and bankrupts) the impression that the discharge provisions, intended for entrepreneurial recovery, are open to use (and abuse) by all."*

**Second**, in their paper *Consumer Bankruptcy Law Reform in Scotland, England and Wales*, Donna McKenzie Skene and Adrian Walters point out that *"both jurisdictions have*

*committed to reforms that seek to customise bankruptcy and sequestration as 'fresh start' regimes for failed entrepreneurs. Given that the main users of these regimes are consumer debtors, the emphasis on business seems thoroughly misplaced."*

According to a short statement doing the rounds at present a new body called the *Debt Resolution Forum* is about to be created by 27 (as yet unnamed) debt management companies, in order to 'establish a new set of standards', and apparently to be assisted by the Insolvency Practitioners Association. I predict some creditor scepticism.

**First published in Credit Collections & Risk Magazine**  
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*"This present administration as part of the judicial reform especially in the civil justice system, will ensure that creditors who have established a legitimate claim are able to pursue such claims through an accessible system. It is no longer business as usual. Lawyers no longer have direct dealings with the sheriff corps in relation to service of process"* he added. The new sheriffs, who looked smart in their black peaked caps, grey shirts with arm badges, and black trousers and boots, are said to be graduates of various discipline who have been trained in computer knowledge, martial arts and communications skills. They were sworn to an oath of office by Pedro, with handshakes to boot.

- Courts get tough to collect £6m in missing fines - By Mark Hookham of The Belfast Telegraph  
 Bailiffs could be used for the first time to collect outstanding court fines in **Ulster**, the Belfast Telegraph can reveal. Court chiefs are drawing up plans to crack down on defaulters in a bid to claw back almost £6m in outstanding fines. The Telegraph has learnt this could include using bailiffs to enter fine dodgers' homes to seize goods, docking pay and benefits or ordering defaulters to carry out community work. New government figures reveal the total of fines imposed by magistrate's courts in Northern Ireland increased from £5.9m in 2003/4 to £7.9m in 2005/6. But the total amount of outstanding fines has also risen. Three years

ago, fine-dodgers owed £4.5m to the magistrate's courts. By last year that figure had jumped to £5.9m. Under the current system PSNI officers are charged with tracking down defaulters. Defaulters who are caught are forced to pay the original fine and a warrant fee, or face jail if they are unable to stump up the cash. But now a multi-agency team, led by the Northern Ireland Court Service, will be established within weeks to consider dramatically overhauling the way outstanding fines are collected.

One option is to mirror the system in England and Wales, where uniformed bailiffs track down defaulters using the Police National Computer. Court officials in England and Wales also have the power to dock the pay and benefits of those who refuse to pay, or even clamp their cars. The court service is alternatively considering adopting the Scottish system of Supervised Attendance Orders (SAOs). Fine dodgers issued with a SAO can substitute the unpaid portion of the fine for a period of work in the community. Defaulters are ordered to carry

out *"constructive activity"* involving social education, financial management or community service. A spokesman for the court service said: *"A multi-agency project team, led by NI Court Service will be established in the autumn of 2006 to take this work forward and consider alternatives to the current arrangements."*

**Barrie Minney, Brighton & Hove**

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# CSA Publishes Definitive Figures and Trends from UK Debt Industry

- Amount referred for collection has trebled in six years to £21 billion
- Amount of debt purchased doubles in two years to £6 billion
- Agencies now handle more than 20 million individual cases
- Agency revenues have increased and staffing levels have increased
- M&A activity continues

The amount of debt passed to debt collection agencies for recovery has more than trebled in the last six years to £21 billion according to a report conducted by the collections' industry body, the Credit Services Association (CSA).

The figure comprises £15 billion of 'traditional' debt (ie commission debt) with the balance coming from the fastest growing sector within the collections industry - debt sale and purchase - that last year (2006) accounted for some £6 billion.

The number of cases has also risen; CSA members now handle more than 20 million cases, up from 17 million cases two years ago. Nearly one million (885,063) of those cases involved tracing, highlighting the increasing problem of 'gone aways'.

In terms of trends, the majority of CSA members believe that the market will continue to grow, prompting further M&A activity, and that lenders are contacting debtors at a much earlier stage in their delinquency in order to resolve issues more speedily.

The CSA currently has 291 member companies accounting for 95% of the debt collection industry. It also has 52 member companies (buyers and sellers alike) within its dedicated Debt Buyers and Sellers Group (DBSG).

*"There is increased recognition by creditors and by government departments and regulators of the*

*value of the debt service industry, in that it provides a safety net for the recovery of large sums of money which would otherwise be lost to the economy,"* explains Godfrey Lancashire, President of the CSA.

*"The Credit Services Industry has seen a number of years of sustained growth, with feedback from the member's survey demonstrating that a number of members have significantly increased their income over the previous period, with a record number of transactions in 2006.*

*"Consumer lending has increased substantially in recent years, and now stands at an all time high, reaching £1.1 trillion of secured and unsecured debt. Levels of arrears have risen correspondingly, reflected by a 66% reported increase in business from 2005 to 2006 from members. Levels of personal insolvencies are similarly at an all time high, perhaps prompting lenders to contact their debtors at an earlier stage in their delinquency in order to resolve any problems quickly.*

*"Large companies are tacking commercial debt in a similar manner, with a greater shift to concentrate on debt prevention. However there is evidence to suggest that the country's small and medium sized businesses are threatened by debt, leaving it too late before taking measures to collect their debts through third party expertise and unaware of the services DCAs provide to small businesses and people with lower volume debts than larger organisations.*

*"Meanwhile there is a growing readiness by many lenders to sell non-performing debt,"* explains Godfrey: *"This has led to the tremendous growth in debt sale and purchase, which shows no signs of slowing. Additionally, the buoyancy of the debt sale and purchase sector is drawing more investors to the industry, with 2006 seeing a number of significant Merger and Acquisition deals taking place."*

Debt sale and purchase only started in the UK in the mid 1990s, yet by 2005 an estimated £3.5 billion (facevalue) was traded. This figure has almost doubled, with DBSG members suggesting that 2007 will see a further rise in sales volumes.

Legislation is playing an increasing role in the industry, with a number of new bodies coming into focus. *"Compliance with the many guidelines and regulations has become a key element for agencies handling large debt volumes, as has the growing trend of complaints, stirred by the many websites offering advice to disgruntled debtors.*

*"The CSA and the DBSG will need to continue with its extensive dialogue with regulators to ensure that the industry's views and needs are taken into account. The association will also need to remain vigilant to ensure that the highest standards of professionalism and ethical trading are maintained by members,"* says Godfrey.

Looking to the future, many members of the association see their growth not just in the UK but in other EU member states, and are actively seeking tie-ups, acquisitions and mergers there. Similarly, a number of the larger European players are looking to the UK for opportunities, as are US companies.

*"While true and unhindered pan-European trading may still be some way off, Europe appears to have good growing prospects for well structured and well funded operators,"* Godfrey concludes.

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debtors property. She said seizing peoples property was illegal as it was only the deputy sheriffs and court bailiffs who have the authority to impound debtors property. Ms Tshireletso said her motion would benefit both debt collectors and their customers. She added that most people preferred debt collectors to deputy sheriffs, messengers of court and court bailiffs because they are relatively cheap and expeditious. Mr Boyce Sebetela, the MP for Palapye, urged debt collectors to form a self-regulatory association that would set minimum qualification standards and a code of conduct for its members.

Mr Sebetela urged debt collectors to set high professional and ethical standards. He also urged his colleagues to warn their constituents to avoid living beyond their means and consequently incurring debt. He criticised people who ignore their debts until they receive letters from debt collectors summoning them to pay. People should know that they invite the wrath of the law if they borrow money but fail to pay, he said. Mr Duke Lefhoko, the MP for Shoshong concurred that the lack of laws to regulate debt collectors opened doors for unscrupulous crooks to cheat people. The Specially Elected MP, Mr Botsalo Ntuane, said debt collection was a major and growing industry that needed a comprehensive regulation framework. Debt collectors should also educate the public about their activities.

Mr Keletso Rakhudu of Gaborone North suggested that debt collectors should be examined before registration with the proposed suitable department. He said debt collector should be

citizens to ensure that peoples rights are not infringed upon.

- YUZHNO-SAKHALINSK, **Russia** - Sakhalin bailiffs have for the first time ever seized private property for electricity debts. The seized TV-set and music box will be returned if the debt is paid within ten days, the Sakhalinenergo press service said. Otherwise, the seized property will be sold and the profits will be transferred in payment of the debt. Over 17,000 residents of the Yuzhno-Sakhalinsk area are bad debtors of the electricity company. Their debts vary from 7,000 to 15,000 rubles. The debtors explain their situation with low incomes, but this is not confirmed officially. Some debtors have been disconnected from the power network, but they are taking electricity again without permission.

The total electricity debt of Sakhalin residents exceeds 130 million rubles. About 2,000 lawsuits have been filed at local courts for the collection of ten million rubles. Another 5,000 Sakhalin residents have been notified about possible prosecution.

- Just days after the office of a private bailiff in **Bulgaria** was torched (see below) the news broke of another woman exercising the same profession being threatened. Elena Dobrinova worked on some cases together with Nadya Kovatcheva,

who was beaten up recently, Darik News revealed. Dobrinova told her colleagues of the threats at the first national meeting of the private bailiffs held in Pamporovo on Saturday.

We will break your head if you don't stop working, are the words Dobrinova said she heard over the phone lately. The anonymous callers also told her that they knew she had a family. Dobrinova has already asked to meet Vice Justice Minister Sabrie Sapundzhieva, but an appointment still hasn't been made. The private bailiff explained that some of the cases she worked on with Kovatcheva were for millions of levs. The Private Bailiffs' Chamber has decided to send a protest letter to the Parliament Chairman, the Chief Prosecutor and the Interior Minister. Date added 12 November 2006.



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# Bailiff News from around the World

• Unserved warrants piling up, shows report. Half of all judicial summons and seven of eight warrants remain unexecuted in **Delhi**. According to a report of the Delhi Judicial Committee, courts in the Capital issued 8,364 warrants to be served across the city in 2005 to 2006. However, of these only 1,360 warrants were finally executed, while the rest are still pending. The courts also issued 2,51,971 summons and notices, out of which only 1,78,950 were executed, the report shows. The Civil Nazarat office, which handles summons and warrants, has 43 bailiffs to cover the 35 "judicial beats". These beats are administrative subdivisions of the nine judicial districts of the city.

Interestingly, the judicial districts were increased from three to nine and the Judicial Beats from 12 to 35 last year, "to distribute work equally and reduce the workload in the existing beats," according to Delhi Judicial Service officials. But the report shows the only difference was an increase in issuing of summons and warrants, not in their execution.

As a result, admit officials, witnesses have not been brought forward during the time specified by the court in the notices and warrants. This directly affects the duration of arguments, examination and cross-examination, and accumulates into pendency periods which stretch over the years. "In such situations, the only option for the prosecutor is to proceed with the witnesses, or even the accused, who do turn up. The outcome of the case then hinges largely on how vital the missing witnesses are. If they are not, the case can still be salvaged," says Public Prosecutor YK Saxena, who is prosecuting several cases of long pendency, including the Uphaar fire trial and a custodial disappearance case against Punjab DGP SS Saini. One of the reasons for the "poor performance", the report says, is that

warrants are often not executed because bailiffs sometimes find premises locked. They have to leave "since they are not authorized to break or open the locks. In such a case, the bailiff has no option but to revert to the court seeking permission to enter the premises," says the report.

This does not explain why the bailiffs do not try to locate the person instead. The report also points out that the persons on whom the summons and warrants are served get local residents and gang up against the bailiff. The official has to revert to the court on this as well, to seek police assistance. "Under the existing system, the bailiff can do little on his own to ensure compliance," says Saxena. With such a backlog, a case involving hundreds of witnesses and scores of accused gets stretched inordinately. Source: Delhi Newsline.

• Bailiffs sent by the **Uganda** Revenue Authority (URA) struggled with guards to evict employees of Uganda Grain Traders (UGTL) from their Nakawa offices over unpaid rent arrears worth sh1b, a source has revealed. "Bailiffs stormed UGTL's premises in Nakawa, threatening to evict them. There was a scuffle between the security guards and the bailiffs," the source explained. The source said URA rented the premises to UGTL in 2002, but the arrears had accumulated between September 2005 up to date. UGTL reportedly rushed to make a partial payment of

sh250m last week, but this did not stop the bailiffs from trying to evict them. URA's spokesperson Patrick Mukibi said he was not at liberty to disclose information about their customer. But John Magnay, UGTL's chief executive, said: "I am not sure about that matter." The bailiffs blocked access to the place to get more details and were reportedly still there by Monday evening. Source NewVision Online.

• The Spirit of Christmas is dead. Oh there will be jingle bells, giving, receiving and plenty of overindulgence come December, but there's unlikely to be any such celebration at the Spirit of Christmas store at the corner of Government and Fort streets, Victoria, **Canada**. The lights are off, the doors are locked and real estate firm Pemberton Holmes is looking for a new tenant for the landmark heritage building after the owners of the store shut it down some time in January. The store, one of the biggest and most famous on Government Street, has failed to pay its rent for January or February, putting it more than \$70,000 in arrears. And other creditors are now calling. "It seems they got themselves in trouble," said Dan Bjur of Victoria Bailiffs, who is sifting through boxes of inventory to see what can be recovered to pay creditors. That the bailiffs have any sellable items to go through may be something of a Christmas miracle as Bjur said a truck had been loaded on site with boxes of inventory, although it hadn't been driven away. The items are now back inside the building, but on first blush the receiver doubts there will be enough to cover the debts owed.

The whole situation has been rather mysterious, as the building's owner and management company didn't know the business was shutting down until they saw the closed doors. At this point, the owners of the store, Will Veretonik and Marina Plasman, who took over the store in early 2005, have not declared the business bankrupt. They could not be reached for comment, and Bjur said it was understood they are in Africa on vacation. Despite the absence of bankruptcy proceedings, creditors are lining up at Bjur's front door. Bjur said it's too early to know when or how any kind of liquidation of assets will be handled. The Spirit of Christmas was opened at 1022 Government St. in 1989 by Connie Kowalewich and her husband Bob, who started the original store in Banff in 1987. Source: www.canada.com.

• **Russia** -Head of the St. Petersburg department of the court bailiff's service Artur Parfenchikov announced yesterday intentions to prevent those with excessive debts from leaving the country. They will include those who owe alimony and interest on bank loans. That includes tens of thousands of St. Petersburg residents, according to Parfenchikov, who have had court orders issued against them. It is assumed that the debtors will be turned back at passport control

points, where the bailiff's service will send its blacklist in the next few days. The names of 177 debtors were posted on the St. Petersburg bailiff' service website on Monday for whom the bailiff has already issued orders limiting their rights to leave Russia, under article 15 of the federal law "On the Procedure for Leaving and Entering the Russian Federation." Debtors were urged on the website to visit the bailiff's office immediately to settle the problem. It also made clear that the bailiff's office had reached an agreement with the Federal Border Service to confiscate debtors' international passports on the spot. The measure has caused a mixed reaction. Ella Pamfilova, chairman of the president's council on the development of institutions of civil society and human rights, said, "I'm deeply convinced that the bailiffs have exceeded their authority. They

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have no right to limit people's travel abroad. That is a violation of the Constitution of the Russian Federation. A separate court decision is needed to limit someone's right to travel abroad." "It's an ordinary process that is foreseen under article 15 of Federal Law 114," deputy director of the Federal Court Bailiff's Service Vladimir Golovin said.

The Federal Border Service was somewhat perplexed by the announced measure. Marina Poddernova, head of the press service of the northwestern division of the border service, told Kommersant that the measure "was not conciliated" with the border service, although she

acknowledged that such orders were received on rare occasion. She said that the service was unaware of any blacklist, "never mind confiscation of passports." The St. Petersburg bailiff's service was, until recently, the least effective in Russia. Source [www.kommersant.com](http://www.kommersant.com)

- **Russia** - The Federal Bailiff Service has launched a large-scale operation to clamp down on traffic fine dodgers. Bailiffs are now on duty at road police stations, making the drivers pay off debts threatening with seizing their cars. The operation is covering Ryazan, Altay, Yaroslavl, Leningrad and Moscow Regions. Bailiffs are now on duty at road police stations. Cars are stopped for road police to check the driver's license. Drivers are asked to go to the station.

Afterwards, the driver is checked against the fine payment database. A police officer writes out a fine – if there are outstanding debts – and hands it over to a bailiff who offers the driver to pay the fine at the station, Alexander Gara from the Federal Bailiff Service told Kommersant on Thursday. "If the driver declines to pay the fine, bailiffs have a right to seize their property if its value matches the sum

of the fine – a radio player or a spare wheel, for example."

Legal experts doubt that bailiffs' actions on Russian roads can always be lawful. "The only thing that bailiffs are entitled to do is temporarily withdrawing the driver's license," Viktor Travin, head of the Moscow Motorists Legal Assistance Board, says. "Besides, there can be no information on the fine payment – the receipt can be on the way to the police. A driver has presumption of innocence after all," the lawyer insists. Source [www.kommersant.com](http://www.kommersant.com).

- Debt collectors in **Botswana** should be brought under the supervision, direction and oversight of the Registrar and Master of the High Court as is the case with deputy sheriffs, court bailiffs and messengers of court, says Mahalapye East MP, Ms Botlogile Tshireletso. Presenting a motion to regulate debt collectors last week, Ms Tshireletso said debt collection is a sensitive undertaking that needs to be regulated. She said some debt collectors have swindled Batswana of their cash. She said some debt collectors were expatriated and have disappeared after cheating their unsuspecting customers. The Mahalapye East MP said some debt collectors have failed to give their customers their money after they were engaged. Ms Tshireletso said it was difficult to deal with debt collectors because there is no law governing their operations, adding that some have even gone to the extent of seizing

## Newspapers – the Story and the Truth

Following the "Whistleblower" TV programme not only have CAB launched a campaign against bailiffs but so too has other parts of the media including the Sunday Mirror Newspaper.

In recent months several firms have had "stories" written about them almost always without any substance or evidence. My firm was subject to such an article and we felt it appropriate to complain to the Press Complaints Commission due to our belief that it contained several inaccuracies

The short article alleged that a Grandmother had been forced to flee her home after our bailiffs hounded her for money she didn't owe. The article implied that we were to remove and sell her goods and concluded that we were investigating the complaint.

Our investigation revealed that the article was totally inaccurate.

It was disappointing that the newspaper felt that this routine scenario was worthy of printing. In respect of our complaint The Press Complaints Commission initially asked

if we wanted to write an "open letter" for publication in the newspaper the following week but we declined. Subsequently the newspaper has acknowledged our denial regarding the allegations and this means that any journalist accessing the paper's archives will be made aware of the points we raised. A short statement is also on the Commission's website and appears in the bi-annual report of complaints published at the end of April 2007.

Article by **Dave Cornes, Jacobs**

## A Mystery – Who are Uncertificated Bailiffs

The Tribunals, Courts and Enforcement Bill clearly states that Enforcement Agents include a person who acts under a Certificate issued by a judge assigned to a County Court district or, in prescribed circumstances, by a district judge.

Naturally the above definition includes all private certificated bailiffs who predominantly deal with local taxation and road traffic debts on behalf of local authorities. Many of these bailiffs work for firms who are members of ESA and subject to strict code of guidance and specifications from clients.

In March 2007 The House of Commons published a "Research Paper" for the benefit of Members of Parliament and their personal staff in respect of the bill.

In the section "Enforcement by Taking Control of Goods (Bailiffs)" it estimates

that there are 5,200 enforcement agents operating within England and Wales – made up of about 600 County Court bailiffs, 1600 other state employed agents (such as tax collectors, customs officials etc), 200 local authority employed enforcement agents, 1600 certificated private bailiffs and 1200 NON Certificated private bailiffs. Also that there are approximately 150 firms operating within the industry – many of which operate without any formal or statutory regulation.

The non certificated bailiffs do not appear to be subject to the new legislation which does nothing to the goal of improving the public perception of bailiffs by having one piece of bailiff law.

The Executive Council of the ESA would like to know who these non

certificated bailiffs and non regulated firms are? It is true that you do not need a Certificate to work on Magistrates Fines cases although the HM Courts Service tender clearly states that those working in the area should be certificated.

Irrespective of this it is hard to believe that there are nearly as many NON certificated bailiffs as there is certificated ones. The ESA has asked the Government for clarification on this point and

Either - have not received any response. Can you help? Please send you answers to our Executive Director (include email address)

Or – Whatever response we receive clarifying who they are.

Article by **Dave Cornes, Jacobs**

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• The office of a **Bulgarian** private bailiff was set on fire with two Molotov cocktails in the north town of Pleven on Tuesday night, 8 November. The cocktails crashed through the window into Tatyana Kirilova's empty office at around 2 in the morning. The alarm started and police and fire brigades swiftly arrived at the spot. Fire fighters put out the fire soon after their arrival. No case files and documents have been damaged in the blazes. Material damages on the furnishing are reported to cost BGN 2,000 (EUR 1,022) pThis is the first case of attack over a private bailiff in Pleven, local police reported. Kirilova had opened her office three weeks ago. She has worked on 40 lawsuits, some of them ending with claims of BGN 70,000 (EUR 35,790). "*Such actions will not impede my work and I will continue doing my job*", Kirilova told Darik News. Kirilova's husband, Dimitar, said she had not received any threats and

considered the office was set on fire by some of her debtors. Police are now investigating the incident.

• Rauni Hagman, the head of **Finland's** Communications Regulatory Authority (Ficora) told the Finnish News Agency (STT) on Wednesday that information on television licences was not secret. Ficora added that when releasing information from the TV licence database it applied the 1999 Act on the Openness of Government Activities while also taking into account the protection of privacy. The authority is currently in the process of establishing which bits of information are to be considered public. Ficora's practice has been to release TV licence information only to the police, courts, **bailiffs** and the licence holder.

• **Nigeria:** Lagos State Judiciary yesterday swore in 30 new members of the Sheriff Corps, to

replace previous court bailiffs, in a bid to curb corruption within the judicial system and provide efficient service delivery in justice administration. Speaking at the well-attended event which took place yesterday at the premises of Ikeja High Court (Judiciary Headquarters), Pedro said the new Sheriffs have been extensively trained in the skills of communication and professionalism, in addition to an in-depth knowledge of the law and regulations governing seizures and serving of processes.

Also, Justice Alabi, who decried the various corrupt practices of the previous bailiffs due to their inability to cope with the required standards of operation, claimed employment of the sheriffs became necessary to ensure integrity and capability for the increasingly complex nature of effecting service of court processes in the Judiciary and State in general. "*Over the years, the executions of court judgments have been enforced by the agents of the Sheriff known as the court bailiff. But professionalism was absent in the conduct and operations of the bailiffs of yesterday. These bailiffs reflected the corruption and decay evident in the larger society, and their conduct resulted in the loss of faith in the justice system. Judgments of court were not promptly enforced in line with procedure, attached goods were not handled with care, integrity was missing, and threat and aggression were the code of conduct*", Pedro lamented.

## A Time For Creditors' Own Debt Remedies?

The 2006 personal insolvency picture is now fully revealed, following publication of DTI and DCA fourth quarter statistics on 2nd and 9th February. The number of those making themselves insolvent have risen relatively little beyond the third quarter – IVAs up 482 to 12,741, and debtor bankruptcies a mere 129, to 13,074. Of course in *annual* terms the combined figure has shot up 70%, from 57,172 in calendar year 2005 to 97,048 in 2006.

Will these figures be seen as a significant peak when we look back? It seemed unlikely in view of the progress of so-called simple IVAs (SIVAs) within the Tribunals, Courts & Enforcement Bill (the Bill) which has been veritably zooming through its legislative journey. And yet cracks are beginning to appear in the smooth progress of the IVA rocket. Specialist companies have given profit warnings, doubtless connected to recent action by some creditors who are demanding a larger payment percentage before they will support IVA proposals, or are rejecting them altogether. Further, chief executives of financial institutions are naming and blaming them for unexpected losses and increased debt provisions.

It is hardly surprising that, given a free choice of the options, those advising debtors are plumping as often as they can for the one for which will net them an average £8K of creditor money. What is surprising is the time taken by creditors to notice what has been going on, and the result may be a savage backlash. A much better result would be for creditors collectively to step back from their IVA myopia, in order to examine this remedy within the context of the *whole personal insolvency picture*.

There is little discussion about bankruptcy, yet the fees charged by Government are swingeing, haphazard and archaic, to which insolvency practitioners add substantial additional costs for dealing with them, largely unseen and unchallenged. And the position is about to be made substantially more confusing by the Bill's mass introduction of 'new'

County Court administration orders, debt relief orders, enforcement restriction orders and regulated debt management schemes in the Bill, in addition to SIVAs which I have already mentioned.

I am convinced once they do look at the bigger picture, creditors will inevitably rise up and demand a much simpler, fairer and cohesive system than the present sprawling mess. Perhaps in the meantime the time is right for creditors to come up with their own remedies.

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# Regulation or Licensing: They are not the same!

Since the publication of the last Enforcement News much has occurred which has the potential to change the enforcement profession permanently. The obvious change has been the Tribunals Courts and Enforcement Bill which, at the time of writing, is approaching the end of its passage through Parliament prior to receiving Royal Assent. The expectation is that this will occur some time during May.

My last article for this magazine referred to what was then the draft Bill and pointed out a number of shortcomings. At the time I believed my article would be of purely academic interest as no one (including officials in the DCA) seriously believed the Bill would ever see the light of day. However, the BBC Whistleblower programme changed all that and with the government needing to be seen to be 'doing something' about the 'terrible' people working as bailiffs, the Bill suddenly became important and appeared in the Queen's Speech.

The Bill began its passage through Parliament in the House of Lords and, at first sight, seemed almost identical to the draft Bill published back in July 2006. The numerous doubts which I and others had previously raised, such as references to securing goods, the need to clarify the term 'reasonable force', the continued lack of proper regulation and the contentious decision to exclude Crown employees from the provisions of the Bill, were not addressed and the government seemed to be in a state of denial adopting a 'we know best' attitude. It was, therefore, not surprising when the Bill received a hostile reception from members of the House of Lords. In particular, Lord Lucas, a Conservative, hereditary but elected peer, was a strong critic of the Government's position and produced his own Bill (the Bailiffs (Licensing) Bill) which proposed a regulatory body along the lines set out in the previous government Green and White Papers.

It appears the government was taken aback by the strength of the opposition to its proposals and, during the Christmas parliamentary recess, gave further thought to what action it should take. The result was the publication of the Consultation Paper: *Regulation of Enforcement Agents*, setting out three options for regulating the profession. The first of these was for there to be no change from the present situation. This was not a real option and neither the Government, the profession or any of the other interested parties consider this worth pursuing. The second option was to create a new regulator called the Enforcement Services Commission. This would have the power and duties as broadly set out in the Green and White Papers (and repeated in Lord Lucas' Bill) and, so far as any of the options found favour, this was the one preferred by the profession. The third option was for there to be regulation by the Security Industry Authority (SIA). The government made it clear that this was its preferred option, primarily due to its cost.

Previous experience of the SIA does not give either the industry, or anyone else for that matter, any real confidence that it will be capable of carrying out the functions necessary for an efficient regulator. The Consultation Paper states that the regulatory body (and I assume that would include the Enforcement Services Commission although it is not clear) would:

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# How To Reach Data Enlightenment

A down-to-earth discussion concerning information presently available to creditors/lenders is long overdue. This is highly relevant at credit-granting stage, but though the information-sharing intentions of Egg, Abbey, Barclaycard and Co-op Bank provide a new approach, these organisations will be equally hamstrung by the lack of objective information *before* the event as *after*, when repayment problems occur, leading to litigation and enforcement.

The present information debate began in earnest with the arrival of Human Rights and Data Protection legislation (the Legislation), and since then the quality of information and the ability to produce it have increased exponentially, and the cost has reduced equally fast. I recall LCD lawyers presenting to the CJC Enforcement Committee (probably) more than 10 years ago, to the effect that providing Government information to assist post-judgment enforcement was most unlikely to fall foul of the Legislation. Yet all these years later, this information is still not available to creditors, who are forced to rely on second rate, conflicting and confusing data.

Finally, Part 4 of the draft *Tribunals, Courts & Enforcement Bill* offers a little hope. A judgment creditor will be able to apply to the court "*for information about what kind of action it would be appropriate to take in court to recover that particular debt*". This can be either a general *Information Order* ('Data Disclosure Order' has been dropped), or a more targeted *Department Information Request*, from a single Government department and/or prescribed parties, including Banks and CRAs.

Candidly, this is hardly revolutionary. The debtor has had the opportunity to discuss before litigation begins, again after receipt of the claim, including the right to raise any defence, plus (a highly practical point) the creditor has paid a fee, and it is surely appropriate that the courts should be able to ask other Government departments for information which allows them to do their job properly. Even then, this is only where the judgment debtor fails to respond to the judgment or comply with enforcement, and the court's right to check information offered by the debtor must be added. Previous brick hints have suggested the cost will be steep; probably to limit application numbers, but this would be counterproductive.

Good Information can equally come from debtors themselves. I have gone blue in the face pointing out that creditors will accept bad news gracefully, and move on, if they can trust what they are told. The over-protective approach of human rights lawyers and debt advisers towards the Legislation has persuaded some debtors that they are justified in keeping vital information to themselves, despite their contractual and moral duties to creditors.

Canny debtors have always known that speaking to creditors at an early stage

invariably leads to resolution. Who knows: a practical approach to information at judgment stage could lead to enlightenment further up the river, so creditors will not be simply left to accept whatever unverified calculations the debtor provides.

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# Upfront Fees for Bailiff Cases – The Possible Burden on Local Government

Since the introduction of the white paper “Towards Effective Enforcement” was introduced in 2003, we have had much debate around the introduction of an upfront fee. Much discussion centred on the concept that creditors should have to pay for the services provided, which in turn would reduce the overall cost to the debtor and also reduce the burden on those who subsidise the enforcement process. Indications were that such a fee would be compulsory and recoverable from the debtor. The question was not one of; will there be an upfront fee but more of how much will it be. The two basic options that were available were, either, a fixed non negotiable fee or a fee based on a band width with a fee negotiated in a range that would have a minimum (early indications were provided by the DCA that the minimum would be greater than zero) and a maximum limit, although a third option of a combined matrix was also included in the consultation.

## So Where Are We Now?

Whilst no specific mention of the fee is outlined in the Tribunals, Court and Enforcement Bill, Central Government would appear to be ‘floating’ the idea of a fixed fee of £42 per case, although no formal consultation has taken place, this figure has formed the basis for discussion, reference has also been made that such a fee would not be applicable to in-house bailiffs. The impact of such a fee would have repercussions on both Local

Authorities and the profession as a whole and raises only further questions in respect of its viability:

- Can Local Authorities bear such a cost in the current economic climate?
- What is the fee to cover?
- Is it recoverable from the debtor?
- Will it improve enforcement?
- Will it reduce costs to the debtor?
- Should the fee be fixed and non negotiable?

You must draw your own conclusions but consider the example of a Local Authority who refers one thousand Council Tax cases a year to external bailiffs, on the basis of a £42 fee this will be at an initial cost of £42,000, if the bailiffs collect half of these cases then the true cost is £21,000 providing the fee is recoverable from the debtor. Then also consider the Car Parking Manager with an average debt of £90, excluding the appropriate Traffic Enforcement Centre fee of £5, who sends one thousand cases a year obtaining the same collection rate (which is unexpected and unlikely), they will have received £45,000 in recovered fines for their outlay of £42,000, this is without considering the administrative costs and the £5,000 they will have spent obtaining the warrants. When you scale these costs upwards for the Cities, London Boroughs, Metropolitan and Unitary Authorities, or schemes such as

congestion charging, then the sums concerned have the potential to escalate at an alarming rate.

According to central government statistics it is estimated that almost four and a half million cases “hit” the bailiff profession each year, when you consider that over twenty five percent of the cases referred are in respect of Council Tax, this means over a million cases at £42 per case, the possible impact of these proposals can only place a further financial burden on Local Authorities already under budgetary constraints. Of course one option is not to utilise bailiffs, thereby not incurring the upfront fee, this would no doubt impact on collections, it will be interesting to see the view of the National Audit Commission should such an approach be taken, as it may lead to increased write off provisions. Some will consider or re-visit the feasibility of using internal bailiffs over external bailiffs, it is not my intention to explore this aspect of the debate but would ask you to note that the changes proposed will have an impact on the bailiff profession, which in turn may restrict the options open to Local Authorities in the future. There may also be the scenario where a Local Authority has budgeted for the upfront fee and due to circumstances beyond their control more accounts than expected need to be referred to the bailiff, such a scenario may occur if interest rates continue to rise, then the double whammy of increased costs and reduced collections is a distinct possibility.

how to match the words they use with their physiology. “We often pore over letters and reports before sending them but people rarely think before they speak!” observes Minney. “How many times has a bailiff entered a business to be told, unprompted that ‘the boss is out’, ‘uncontactable’ or ‘I haven’t got a cheque book or credit card’. The bailiff instinctively knows that such statements are lies. Part of the toolbox will explain why such statements are untruths and how to spot them. I think all bailiffs will be suspicious at times and wonder if they are being lied to. It’s a question of listening out for certain phrases with tell-tale body language signs.”

Minney sees emotional intelligence or EQ (emotional intelligence quotient) as possibly the key component of the toolbox, with its focus on empathy skills. “Being able to understand a debtor’s position gives you a great negotiating advantage,” he says. “As soon as the debtor thinks you are working on their behalf they are on your side. The aim is to get a small verbal commitment from someone, which then leads to a bigger commitment. You have to get people to convince themselves that they made a good decision.”

Employee surveys in the UK have consistently shown that staff with higher emotional intelligence performed better, were healthier, and reported a better work/home balance, according to Minney. He points out that police officers who received emotional intelligence training experienced lower stress levels and higher success rates among police officers, while housing staff learned to function better as a team.

Emotional intelligence can be divided into two halves, explains Minney. On the one side the person being trained learns how to recognise changes in their emotions and response. An example of this is their reaction to being cut up by another vehicle when driving.

“There is a six second rule,” explains

Minney. “So, say someone cuts you up, you should count to six before you act.”

The other side involves understanding other peoples’ emotions.

The Toolbox will teach a range of EQ skills such as: how to overcome the “emotional hijacking of fight or flight”; learning why it is bad to act on impulse; assessing whether ‘gut instinct’ should ever be trusted; and debunking the myth that it is good to let off steam.

“These are basic skills that can be applied in any negotiation whether it’s a debtor or your partner,” believes Minney.

The course will get bailiffs to challenge whether it is always possible or desirable to achieve a win/win scenario. “Is it acceptable to go for a we win/you lose outcome?” asks Minney. “Bailiffs will be shown how to set outcomes before a call and how to use levers using past experience.

“Some of these subjects that we have researched deserve even greater study and the bailiffs will be encouraged to look into these further. In addition we will also throw in some basic stress handling techniques — the idea of putting everything into perspective — and some work management control tips.”

Tactics used by salesmen will also be incorporated into the toolbox. This will include the use of symbols to imply authority. “People generally have a deference to authority figures,” says Minney. “The trick is to give an air of authority. This can be to do with the way you carry yourself, dress

or even the type of car you drive.”

Training of Brighton & Hove’s team is due to start later this month. Minney acknowledges that he is entering uncharted territory, and plans to keep a close eye on how the course develops. In the past the team has received ‘off the peg’ training, which has not always been appropriate, says Minney. “This time we are looking at what they require to perform to the best of their abilities and putting the resultant package together. Whilst the training is in progress, I will be looking at constant feedback to see what is working and what isn’t.”

Minney points out that he makes a point of regularly honing his own people skills. “I recently learnt some rapport techniques and have used them when dealing with irate debtors and staff,” he says. “It was also beneficial to learn what is bad rapport and obvious examples can often be seen when two people argue — local supermarkets are good place to see this when people are already under stress.



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