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Historical Background

The term "bailiff" was used by the Normans for the officer responsible for executing the decisions of a court. The Saxons had called this officer a "reeve". The duties of the bailiff included serving summonses, orders and warrants. The district within which the bailiff operated was called his "bailiwick"; this term has continued to the present day.

During the Norman period in England, the Saxon and Norman populations became mixed and the use of the term "reeve" came to be limited to "shire-level courts" and this led to the use of the name "sheriff"; the term bailiff tended to be used in relation to lower courts.

Courts were not always concerned with legal matters and often handled administrative matters for the area within their jurisdiction. A bailiff of a manor might oversee the manor's lands and buildings, collecting its rents, managing its accounts, and running its farms.

In the 20th century, the court system was restructured with the "assize courts"¹ taking some of the powers of the shire courts and became the high court; the remaining elements of the shire court took over the

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The courts of assize were periodic courts held around England and Wales until 1972, when together with the quarter sessions (local county courts held four times per year), they were abolished by the Courts Act 1971 and replaced by a single permanent Crown Court. The assizes exercised both civil and criminal jurisdiction, though most of their work was on the criminal side.

powers of the “hundred courts”², to form County Courts. The High Court acquired the sheriffs and the county court the bailiffs. “Sheriffs” in 2003 acquired the title “High Court Enforcement Officers” with the passing of the Courts Act 2003.

With the introduction of the Tribunals, Courts and Enforcement Act 2007 (“TCE Act 2007”), the term “Enforcement Agent” was introduced as the general term to refer to bailiffs (both of the High Court and County Court). A High Court Enforcement Officer is an individual who has been authorised by the Ministry of Justice to enforce High Court judgments; they are not employed by the Ministry of Justice whereas County Court bailiffs are employed civil servants and paid a salary.

² Under the Saxons, each shire or county in England was divided into a number of hundreds” which were made up of ten tithings each. The tithings were groups of ten families of freeholders. The hundred was governed by a high constable and had its own local court called the “Hundred Court”.

Introduction

This book is not designed to be a technical manual on the various intricate legal issues concerning bailiff law but instead it will provide an examination of the basic principles that now govern this area following the changes introduced by the Tribunals, Courts and Enforcement Act 2007 ("TCE") and subsequently by statutory instruments. The provisions that implement the changes are contained in the Taking Control of Goods Regulations 2013 (the "Regulations") and the Civil Procedure Rules ("CPR").

What will be apparent throughout this book is that the term "bailiff" is used when in fact following recent legislation the correct terminology in most situations is "enforcement agent". What will also become apparent is that there are several types of enforcement agent. However, the term "bailiff" has been used for so long and is still the term commonly used, that I will for the most part continue to use the word "bailiff". This was the same when the Woolf reforms of 1999 brought in new terminology in civil court proceedings; it introduced, among other things, the use of the phrase "statements of case" instead of "pleadings" and the name "claimant" instead of "plaintiff". Lawyers after the Woolf reforms continued to use the term "pleadings".

As with many things in law, it is one thing to be told what the law is in a particular area but it is something different to be able to recognise what is the right thing to do in a set of circumstances. In the age of the internet there is always easy access to what the law is, but the value of

a lawyer is not simply to recite statutes and cases but to be able to assess how the principles will normally be applied in a given set of facts. In some ways, the advent of the internet has changed the focus of what an individual uses a lawyer for; it has not made them redundant but they are (or should be) adapting to a different world. In the area of bailiff law, there are many websites and forums where people (who might not be legally qualified) are giving out advice. The internet forum is the modern day equivalent of the "barrack room" lawyer who you would find holding court in your local pub. That is not to say that all people who post comments and advice have to be qualified lawyers. However what tends to occur with increased communications arising from the growth of the internet is that advice gets circulated and it quickly becomes accepted as "the law", when in reality it is a myth. A good example was that of a bailiff who ignores a "Notice of Removal of Implied Right of Access" and the claim that it would be a trespass. This is not the case. The warrant of control allows a bailiff to attend the debtors premises and to 'take control of goods'. The new Regulations go further and state that any breach or defect of the warrant does not make the enforcement agent, or the person for who he is acting, a trespasser.

The ordinary person, if there is a such a thing, wants to be given a fairly definitive answer as to what to do in a particular situation. In law, the giving of a definitive answer is rare. Most legal opinions these days contain warnings that decisions in courts do not always go as predicted. There is sometimes a marked difference between what in theory the law is and what in practice

actually happens. Being able to spot these types of situations is where the experience of a practising lawyer becomes valuable. A debtor may often look at a situation with a view to escaping from what the bailiff is attempting to do and so search for any possible legal loopholes, however tenuous and fanciful the argument might be. A litigant in person (a person not legally represented) is likely to be given more latitude than a lawyer presenting a weak argument. A lawyer is under a professional duty to not mislead the court and to have credible material to support a case being put forward; it should not simply be a case of following instructions without question. A debtor might think that he might as well try an argument to attempt to extricate himself from the clutches of the bailiff because the alternative is the bailiff taking control of his goods. Such an attitude is understandable.

A bailiff is someone authorised (usually by a court) to collect a debt on behalf of a creditor. They are not the same as ordinary debt collectors who do not have any official powers to seize goods.

There are different types of bailiffs:

County Court bailiffs:

These are employed by Her Majesty's Courts and Tribunal Service (HMCTS) and are responsible for enforcing orders by recovering money owed under a county court judgment. They can seize and sell your goods to recover the amount of the debt. They can also effect entry, supervise the possession of the property and

the return of goods under hire purchase agreements, and serve court documents.

Magistrates' Court bailiffs:

They work for the magistrates' court and collect money owed in criminal cases, including fines and money owed in certain non-criminal cases, for example, road traffic penalties. They can seize and sell your goods to recover the amount owed under a fine and community penalty notice. They can also execute warrants of arrest, committal, detention and distress issued by a magistrates' court.

High Court Enforcement officers (HCEO):

They work for the High Court and recover money owed under a High Court judgment or a county court judgment transferred to the High Court. They can seize and sell your goods to cover the amount of the debt. They can also enforce and supervise the possession of property and the return of goods. To become a HCEO, an application has to be made to the Lord Chancellor at the Ministry of Justice. The authorisation is given by a Senior Master of the Queens Bench Division of the High Court on behalf of the Lord Chancellor.

Certificated bailiffs (private bailiffs)

They enforce a variety of debts on behalf of organisations such as local authorities for council tax arrears, Child Support and Child Maintenance Service to collect child maintenance, and HMRC to collect unpaid income tax or VAT. They are often used by magistrates' courts to collect money as above. They can seize and sell your goods to cover the amount of the debt you owe.

They also hold a certificate, granted by a county court judge, which enables them, and them alone, to levy distress for rent, road traffic debts, council tax and non-domestic rates.