

## **Presentation to the Sheriff Review Group by the Association of County Registrars**

At the outset, on behalf of my colleagues, I want to thank the review group for this invitation and opportunity for us, as County Registrars (and by virtue of our office, as Sheriffs), to express our views on the work of the Sheriff in Ireland. At the outset, it might be useful to remind the Review Group that we are often referred to as Sheriffs or County Sheriffs, whilst the officers engaged to collect taxes on behalf of the State are referred to as Revenue Sheriffs.

### **Introduction**

The word “Sheriff” in Ireland (and in other jurisdictions) conjures up images of a court official acting on behalf of the court forcing in the door of a house and ejecting the occupants for non-payment of a debt. In Ireland, in particular, given our history of rebellion against the British Empire, the word holds a deep seated cultural and political meaning.

With that in mind, it is interesting to note that the office of the Sheriff has existed in Ireland since the late 12<sup>th</sup> century and continues to exist in the Irish legal system, although it may have survived Irish independence by chance as it does not appear to have been developed significantly as an office since, nor has it been reformed in any significant way (in the same way that our courts system and other state apparatus have been subject to reform and revision over the years). As a recently appointed County Registrar and Sheriff for the County of Tipperary, I was surprised to note the dearth of authorities on the powers, duties and scope of the office of Sheriff. The current textbook on the office is “The Law Relating to Sheriffs in Ireland” by George Dixon & W. Gilliland was published in 1888!

The original purpose of the Sheriff was to represent the King’s power in Ireland and to enforce English rule. This role evolved over the centuries from the King’s representative in each county to an office tasked with the organisation of the county court sittings, organisation of jury panels, organisation and conduct of elections, and enforcement of court orders.

Following independence, the role has changed in a piece-meal fashion in that it is mentioned from time to time in the legislative process and it’s powers and duties have been revised by accident through the enactment of various pieces of legislation whose primary purpose was to deal with some other area of law or the legal system and the change to the sheriff was ancillary to that primary purpose. For example, Section 53 of the Court Officers Act, 1926 provided that henceforth it would not be the duty of the Sheriff to carry in to effect the sentence of death imposed by the Court. The same Act in effect transferred most of the duties of Sheriff to the County Registrar.

### **The County Registrar**

All County Registrars are the Sheriffs for their respective county or counties with the exception of Dublin and Cork who have stand-alone Sheriffs for both city and county.

As Sheriffs, our duty is to execute and enforce Orders of the Courts, nothing more and nothing less. There are two main categories of Orders which come to us, (i) Orders for possession of

lands/dwellings or for the eviction from lands/dwellings and (ii) Orders for the seizure of goods in satisfaction of a Judgment.

The Sheriff in each county is assisted by a Court Messenger who is an employee of the Courts Service. The Court Messenger carries out the day-to-day duties of liaising with creditors and debtors, organising the logistics of performing an eviction or possession, and collecting payments from debtors on behalf of creditors.

- (i) Orders for possession/eviction – As with all Court Orders that are sent to the Sheriff for enforcement, a Judge has heard the application by the Plaintiff to seek such an order and after having satisfied himself/herself that the borrowers or tenants have been put on full notice of the application and have either failed to attend at court or have been unsuccessful in their defence at hearing, the Judge has made an order that the Plaintiff is entitled to recover the lands/dwelling. The Sheriff and his/her Court Messenger are very mindful of the consequences of such an order for a borrower or tenant and always endeavour to afford the borrower or tenant every opportunity to explore their options including an application for a Personal Insolvency Arrangement or Mortgage to Rent.

No Court will make an order for eviction/possession without affording the borrowers or tenants every opportunity to come to a settlement with the Plaintiff and the Courts have been and continue to be, sympathetic to families facing eviction especially in the current climate. An order for possession/eviction is not made lightly and we, as Sheriffs, make every effort to enforce such orders voluntarily and by agreement with the tenants/ borrowers. However, there are circumstances where the enforcement of such orders is met with forceful resistance and violence and in those cases, the Plaintiff has recourse to the Courts to seek orders for committal as an alternative.

Sheriffs are appointed to each county and have locally appointed staff who have local knowledge and can meet with and liaise with borrowers and tenants. This local knowledge cannot be understated as a valuable asset in the enforcement of Court Orders.

- (ii) Orders for the seizure of goods on foot of a Judgment – A judgment creditor has many options open to him/her including seizure of goods by the Sheriff. Such an enforcement option is particularly useful where the debtor is a limited liability company and has assets as other options would not be suitable. In the vast majority of cases, the Sheriff (and his/her Court Messenger) negotiate a repayment plan between the creditor and debtor and then collect the payments on behalf of the creditor. This is a very effective solution for many creditors who are small businesses, consumers or credit unions.

## **The Review Group's Terms of Reference**

As an Association, we would like make a submission on each element of the terms of reference of the Review Group:

***“a. examine the future role of Sheriffs, as currently constituted, in respect of State work, with a view to establishing if the nature of the role is currently in line with best international practice, or if there is a more efficient and cost effective system of debt collection. The review will dissect the nature and volume of work available to Sheriffs both now, and into the future.”***

The recovery of judgment debt in Ireland on behalf of creditors can be very difficult and over the years, multiple options for the enforcement of judgments and collection of judgment debt have developed including instalment orders for the payment of periodical sums, garnishee orders where the creditor is paid by another party who owes the debtor money and the enforcement of the judgment by the Sheriff.

It is fair and equitable that a creditor, (especially where a small business or consumer), should have a range of options available to it in order to collect monies owed on foot of an Order of the Court. Those options should continue to include enforcement by a Sheriff. In practice, the first letter (or first visit) to the debtor by the Sheriff, usually results in an agreed payment plan to satisfy the debt.

In many cases, the Sheriff, using his/her local knowledge, and using the information gathered during the first visit to the debtor, can often appraise the creditor of the debtor's personal and financial circumstances, and this often may result in the creditor withdrawing their application to the Sheriff who will return the application marked with the words “Nulla Bonna” (“no goods”).

There are however many cases where enforcement by the Sheriff is the only option as the debtor has assets but refuses in any event to pay the debt as ordered by a Court.

Accordingly, the option of enforcement by the Sheriff in respect of the collection of judgment debt should remain an option, among many others.

***“b. review all aspects of the role of Sheriff and services provided in light of the Covid Pandemic, including implications for:-tax enforcement and debt collection on behalf of the Office of the Revenue Commissioners;-civil debt enforcement and fines collection on behalf of the Department of Justice;-Electoral/Returning Officer role on behalf of the Department of Housing, Local Government and Heritage; and -any other services or functions undertaken by Sheriffs on behalf of the State.”***

As County Registrars and Sheriffs, we don't collect taxes or debts on behalf of the State (save very rarely for those on foot of a Court Order) as that is the function of the Revenue Sheriff. Under the Electoral Act 1992, the County Registrar is the Returning Officer for his/her

respective county, save again for Dublin and Cork. The Returning Officer is a role which is ideally placed as a function of an independent court officer such as the Sheriff or County Registrar, given their pre-existing independence and impartiality, their local knowledge and access to local resources in terms of staffing and facilities.

Historically the empanelling of jurors for jury service was part of the role of the Sheriff, but that function is now within the remit of the County Registrar and the Courts Service have done excellent work in streamlining and centralising the issue of jury summonses over the last few years.

As Sheriffs, we were also under a moratorium in respect of possessions and evictions during the pandemic but this moratorium did allow for money collections to continue and for the banks and borrowers to explore alternative arrangements such as Mortgage to Rent and Insolvency Arrangements.

***c. provide a report on the volume and scale of business conducted by Sheriffs in each bailiwick; the amount of income generated for the State; the cost of maintaining operations, and fees charged; and consider whether value for money is obtained.***

The volume and scale of business conducted by the Sheriffs varies from county to county and the Courts Service is responsible for the preparation and filing of monthly accounts with the Department of Justice. These monthly accounts set out the amount of monies collected by the Sheriff and the fees returnable to the State. We have set out a proposal below in respect of this process for your consideration. In addition, it is fair to say that the duties of Sheriff are only part of our overall duties as County Registrars in that we are heavily involved in the conduct of civil and family law cases in the Circuit Court, and we also have other statutory functions to perform. Accordingly County Registrars acting as Sheriffs is cost neutral in that we are already in place to perform other duties.

***d. consider the future viability of the role of Sheriff in relation to services provided for and on behalf of the State, and to identify any issues to be addressed including:***

***a. the nature of services to be delivered, and how they are delivered;***

As the County Sheriff is rarely engaged in providing services to the State, it's viability should be examined in respect of the services it provides to the general public. The County Sheriff provides a local and cost effective option of enforcement of court orders for creditors comprising businesses, companies and individuals. It should also be noted that a significant volume of our work involves the enforcement of judgments in the Small Claims Court as the Sheriff is often the only option really available to Small Claim creditors.

In the words of Court of Criminal Appeal in DPP -v- Isenborger, “the courts depended for their effectiveness on their ability to have their orders enforced. If court orders were flouted, or worse, as here, met with violent resistance, then the rule of law died too”.

***b. the extent to which debt collection can be modernised;***

Debt collection has in effect adapted to changes in the manner in which business is conducted. An example here is the use of the garnishee enforcement option where an order can be sought by a creditor to have his debt discharged by a third party who is a debtor of the original debtor. Practical options are the continued roll out by the Courts Service of credit card/debit card payment facilities in local court offices as well as the development of modern health & safety and risk assessment procedures and training by the Court Services. A significant portion of Court Messenger and Sheriff work is conducted via email and mobile which allows for greater flexibility and reduction in clerical workloads.

***c. examine the potential for consolidating the Sheriff bailiwicks;***

Significant consolidation of County Registrars bailiwicks has been ongoing for the last decade (or more) and the number of County Registrars has been reduced from 26 to 17, which is accepted as being the minimum number of County Registrars required to ensure continuity of service to all stakeholders.

***d. implications for other ancillary services.***

As County Registrars (and County Sheriffs), we do not see any implications for ancillary services at this time but would ask the Review Group for further clarification.

***e. make recommendations, and to identify the specific steps to be taken short, medium and long term to implement the proposed recommendations; and***

***f. identify any legislative amendments required to implement such recommendations.***

## **Proposals for Reform**

### **Short Term**

1. The Association believes that the health and safety of the Sheriff, County Registrar, Court Messenger, Bailiff and support personnel is often overlooked by the various review groups over the years and that better legislative protections and training should be provided. It is now nearly three decades since one of our colleagues, Mr Thomas Owens, the Sheriff for Cavan, was shot and seriously wounded (along with two bailiffs) when they were sent to enforce a Court Order.

We are heartened to note that the Government in it's Courts and Civil Law (Miscellaneous) Bill 2022 have made it an offence to obstruct or interfere with a Sheriff. Furthermore, the Association is working with the Courts Service to establish a comprehensive safety and risk assessment training program for all Court Messengers which hopefully will be in operation later this year.

### **Medium to Long Term**

2. Re-establishment of a memorandum of understanding between the Department of Justice, the Courts Service, County Registrars and An Garda Siochana in respect of the attendance of Gardai at evictions and possessions. While we, as Sheriffs, greatly appreciate the ongoing co-operation of An Garda Siochana, the level of co-operation varies from county to county and a high level memorandum of understanding needs to be established again.
3. Collection of family law maintenance arrears – this is an area of great concern to our members (who as you are aware, have extensive duties as County Registrars in the Family Law Courts system). Where a Court has ordered a party to pay maintenance for his/her spouse and children, and that party fails to discharge same, the onus and burden of collecting those payments falls back to the other party. Where such an order for maintenance has been made by a Court, the other party should be entitled to send same to the Sheriff where it has not been complied with.
4. The courts fees payable for an execution by the Sheriff is currently €19.00 and this should be examined.
5. The collection of monthly payments by the Sheriff in satisfaction of a judgment debt creates a clerical burden for the Courts Service as it's resources have to be used to prepare and file accounts, and process payments, etc on a monthly basis. We suggest that at the very least, a nationwide procedure could be implemented where the debtor has agreed to make monthly payments to the creditor (on foot of the intervention of the Sheriff), that that instalment agreement could be made an order of court thus divesting the Sheriff of any further involvement and reducing the clerical workload on the Courts Service.
6. We, as an Association, understand that the Department of Justice did operate a central fund prior to the establishment of the Courts Service to pay for security personnel, locksmiths, etc at evictions involving small creditors. We recommend that this fund be re-established.

## **Conclusion**

Again we would like to thank the Review Group for this opportunity to make this submission. The message we wish to leave with you today is that we are a group of qualified lawyers with many years of practical experience. The office of Sheriff is essential to the ability of the Courts to have their orders enforced, and is an effective enforcement option for hard pressed businesses and consumers seeking to have their judgments complied with.

James Seymour, Chairperson, County Registrars Association.