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A NEW SHERIFF IN TOWN: CENTRALISED ENFORCEMENT OF JUDGMENT – THE ANSWER TO IRELAND'S SHERIFF PROBLEMS?

DANIEL MOONEY*

Introduction

Ireland's system for the enforcement of civil judgments is an oft-forgotten and deeply archaic aspect of the justice system. It has remained almost entirely unaltered since the creation of the modern office of the sheriff in the Irish Free State almost a century ago. In the current system, the office of the sheriff is envisaged as the primary way in which money judgments are to be enforced, yet the law governing the various procedures and the overall operation of the system has remained virtually untouched for several decades.[1] This is despite two Law Reform Commission (LRC) reports proposing multiple recommendations for widespread reform,[2] and substantial legislative changes to the bankruptcy, summary judgment and personal insolvency frameworks that currently operate in Ireland.[3] Furthermore, evident across the legal framework are a number of anachronisms that trace their history to pre-Norman England.[4] Indeed, much of the relevant case law dates from the 19th and 20th centuries. This situation is somewhat untenable, given the profound changes that have occurred in relation to the availability of credit. While the sheriff system dates from an era in which credit was, generally speaking, difficult to obtain and overwhelmingly secured on assets, the modern credit landscape is one

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[1] Sam Collins, *Enforcement of Judgments* (2nd edn, Round Hall 2019) 95.

[2] See Law Reform Commission, *Report on Debt Collection (1) the law relating to sheriffs* (LRC 27-1988) (1988 Report); Law Reform Commission, *Report on Personal Debt Management and Debt Enforcement* (LRC 100-2010) (2010 Report).

[3] For example, see the major legislative reforms undertaken with regard to Personal Insolvency in the Personal Insolvency Act 2012, 2015 and the recently implemented Civil Debt (Procedure) Act 2015.

[4] Richard Clarke Sewell, *A Treatise on the Law of The Sheriff: With Practical Forms and Precedents* (H Butterworth 1842) 29.

that is awash with cheap and widespread credit. As will be explored in detail below, this disconnect makes the current system unsuitable.

In the aftermath of the global economic crisis, as the number of insolvencies and arrears soared in Ireland,[5] the question of how to improve the system of civil judgment, accounting for more contemporary concerns around debtors' rights, should have been a key priority for policy-makers. Despite this, no action has been taken to implement any of the extensive suggestions for reform made by the LRC. While the global financial crisis occurred over a decade ago, its devastating effects and their potential to cause problems are still to be seen in the credit ecosystem today.[6] For instance, in spite of Ireland's macro-economic recovery in recent years, the level of debt enforcement actions in the legal system remains high, and thousands of residential mortgages are over 90 days in arrears.[7] This is not to mention the fact that Irish households are some of the most indebted in the European Union, making them more exposed to over-indebtedness and possible default.[8] The number of precarious debts[9] remains high as a consequence of the crisis.; With the possibility of similar economic effects post-pandemic coupled with soaring inflation and the spiralling cost of living,[10] it is vital that the questions surrounding proportionate debt enforcement be considered. Unfortunately, academic commentary and research in this area is somewhat outdated and, since 2010, the reform of Ireland's civil enforcement system has remained a largely unexplored domain.[11]

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[5] Central Bank of Ireland, *Residential Mortgage Arrears & Repossessions Statistics: Q3* (CBI 2019*)* 2.

[6] Brian Finn, 'Mortgage arrears - is this the calm before another storm?' *RTÉ News* (21 March 2021) <www.rte.ie/news/business/2021/0320/1205194-mortgage-arrears-the-calm-before-another-storm/> accessed 3 December 2021.

[7] Central Bank of Ireland, *Residential Mortgage Arrears & Repossessions Statistics: Q4* (CBI 2020) 1. Of note here is the fact that the majority of the accounts in arrears have been in the legal system for two years.

[8] Department of Finance, *Analysis of Private Sector Debt in Ireland* (Department of Finance, March 2019) <https://assets.gov.ie/7079/dc2b93dbcf1d40af9e01c2920c90acd3.pdf> accessed 11 March 2022.

[9] Precarious debts are defined in this context as debts that are not yet in default but are at a high risk of default in the event of economic downturn.

[10] Paul Cunningham, 'Cost of living crisis sees people 'choose heat or food' - Catherine Murphy' *RTÉ News* (20 January 2022) <www.rte.ie/news/politics/2022/0120/1274847-cost-of-living-crisis/> accessed 21 January 2022.

[11] Donal Keating and Mary Donnelly, 'The Sheriff's Office: An Effective Model for Debt Enforcement?' (2009) 16(7) Commercial Law Practitioner 135 (Sherriff's Office); Donal Keating and Mary Donnelly, 'Reforming the law on debt enforcement and the role of the Sheriff' (2009) 16(8) Commercial Law Practitioner 163-166 (Reforming Debt Enforcement).

This article aims to evaluate the current legal regime concerning the sheriff system and enforcement of civil judgments in Ireland, with a view to highlighting the imminent need for fundamental reform. The article will be divided into six parts, which will provide a systemic critique and offer a cohesive vision for the future of Ireland's enforcement of civil judgments attuned to the changed needs of modern society. Part I will begin by setting out the historical origins of the sheriff system, examining its development within common law from feudal times to the present-day. Part II will detail the process by which a creditor can seek enforcement of a judgment through the sheriff system, highlighting the inefficiencies and antiquated nature of the process. Part III will examine the various avenues for reform proposed by the Law Reform Commission across its Report in 1988, Consultation Paper in 2009 and its subsequent Report in 2010.[12] It will critically analyse these varied recommendations, arguing that a more ambitious and radical approach is direly needed. Part IV will detail the centralised system in place in Northern Ireland, exploring its background and procedural elements while emphasising its divergences with its Southern counterpart. Following consideration of this judgment enforcement procedure, Part V will explore the advantages of the centralised model of enforcement for both debtors and creditors. Finally, Part VI will conclude by arguing for a fundamental overhaul in the system of civil enforcement in Ireland modelled on the centralised system of Northern Ireland. While this article will primarily focus on the sheriff system, conversations concerning systemic overhaul will naturally require a broader discussion of the overall system of enforcing civil judgment. Thus, this article will consider a wide range of enforcement actions that are carried out both North and South. It aims to consider the current system for enforcement of judgment, through the prism of the sheriff system, with a view to proposing a bold and ambitious reform based on a centralised model that strikes a balance between creditors' and debtors' rights.

[12] 1988 Report (n 2); Law Reform Commission, *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC CP 56-2009) (2009 Paper); 2010 Report (n 2).

I. The Historical Origins of the Sheriff

The aforementioned office of the sheriff can be traced back to pre-Norman England,[13] with the word 'sheriff' deriving from the Anglo-Saxon words *shire*, being an administrative division of a kingdom, and *reve*, meaning a bailiff or officer.[14] Traditionally, a sheriff had authority over a small local holding known as a 'shire', with that authority usually involving the enforcement of the King's writs and laws in a given area. As noted by Sewell, the sheriff had many historical law enforcement responsibilities.[15] For instance, when a person suspected of a crime was not apprehended by civilians, the sheriff had the ability to form a group of men referred to as a *posse comitatus* with the aim of arresting the suspect.[16] The sheriff was also required to tend generally to the administration of justice within his shire, including convening grand juries and carrying out rudimentary policing.[17] The Sheriff of Nottingham from the stories of Robin Hood, for instance, is a familiar example of the historical and primarily law enforcement-based role of the sheriff.

In Ireland, the office of sheriff was brought by the process of English colonisation which prohibited and supplanted the indigenous Brehon legal system. Following the Norman invasion, the process of 'shiring' the territories of Ireland began with sheriffs being responsible for basic county administration, which included tax collection and enforcement.[18] The office of the sheriff became gradually more formalised within the developing structure of the State over time, with the sheriff being appointed by Ireland's Lord Lieutenant.[19] The role of the sheriff eventually shifted to a more ceremonial and civil administration role, with the County/High Sheriff appointing local landowners and wealthy persons to sit on Grand Juries, which were a sort of precursor to local government structures.[20] In the 19th

[13] William A Morris, 'The Office of Sheriff in the Anglo-Saxon Period' (1916) 31(121) The English Historical Review 20-40.
[14] Clarke Sewell (n 4) [28].
[15] ibid 30-31.
[16] ibid.
[17] William Blackstone, *Commentaries on the Laws of England* (6th edn, Clarendon Press 1765). Hardiman J quoted Blackstone in *Eastern Health Board v Brian Farrell* [2001] IESC 96 [2], remarking that the sheriff was, in essence, the keeper of peace when the Earl gave up wardship of his county.
[18] David Browne, *The Law of Local Government* (2nd edn, Round Hall 2020) [1.09].
[19] ibid [1.06]. This trend is more broadly observable within the Sheriffs Act 1729, Chapter IX (10 Anne Recital 4).
[20] Grand Juries (Ireland) Act 1836, s 31.

century, the High Sheriff transitioned into a fully ceremonial position, with the actual enforcement of civil judgments passing to his appointed Under-Sheriff, who in turn employed bailiffs to carry out physical enforcement of judgments within their respective bailiwicks.[21]
Correspondingly, by the dawn of the 20th century, the Sheriff was effectively an office dedicated to the civil enforcement system, with the office now serving as the primary method of enforcing money judgments.[22] Upon gaining independence from the United Kingdom, the Irish Free State sought to effectively establish its own justice system and enforcement of civil judgment saw significant reform, with the office itself defined by the Oireachtas in the Court Officers Act 1926. The 1926 Act abolished the ceremonial position of High Sheriff,[23] and transferred the duties of the Under-Sheriff to the newly created County Registrars, with all vacant positions being immediately transferred.[24] Any of the positions of Under-Sheriff that were not vacant were then to be transferred once their occupiers retired.[25] Again, the Act envisaged that 'Court Messengers' would fulfil a similar function to bailiffs and would be appointed by the Minister for Justice to be supervised by the County Registrar.[26] As such, the provisions in the 1926 Act effectively brought about the end of the Sheriff's office in Ireland although due to legacy positions, Under-Sheriffs continued to exist in Ireland well into the first half of the 20th century.

This merging of offices invariably increased the workload of the County Registrars, whose position involved the organisation of the Circuit Court in their county. Thus, in 1945 when the position of Under-Sheriff became vacant in Dublin, it was decided that a new position would be created.[27] The office of Sheriff, separate from the County Registrar, was created to execute judgments in the city and county boroughs of Dublin and Cork respectively.[28] Aside from minor changes mostly concerning fees and

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[21] Donal Keating and Mary Donnelly, 'The Sheriff's Office: An Effective Model for Debt Enforcement?' (2009) 16(7) Commercial Law Practitioner 136.
[22] Law Reform Commission, *Report on Debt Collection (1) the law relating to sheriffs (*LRC-27-1988) 3.
[23] ibid s 52. The High Sheriff was, generally speaking, a ceremonial position. The Under-Sheriff and Bailiffs tended to do much of the practical enforcement work.
[24] Court Officers Act 1926, s 54(2).
[25] ibid s 54(3).
[26] Keating and Donnelly, 'Sheriff's Office' (n 11).
[27] Courts Officers Act 1945 s 12(1).
[28] ibid s 12(4); Court Officers Act, 1945 (Section 12) (County Borough of Cork) Order, 1964, SI 1964/304.

expenses,[29] Sheriff law has remained virtually unaltered since then leaving in place a system that is derived almost entirely from the 19th century.

Another noteworthy feature of the modern enforcement system is the existence of the Revenue Sheriff. Revenue Sheriffs are solicitors appointed in accordance with the 1945 Act,[30] and act exclusively in the collection of tax-related money judgments on behalf of the Revenue Collector-General. The Revenue Sheriff system operates alongside that of the court sheriff system - however, as the name suggests, Revenue Sheriffs deal with action by the Collector-General on foot of judgments obtained for outstanding tax liabilities as well as on the basis of liability certificates issued by the Collector-General.[31] Revenue Sheriffs are private actors, whose activities are centrally managed by the Revenue with decisions on enforcement also being made centrally. While it is not proposed to explore the law pertaining to Revenue Sheriffs in any great detail, it is important to note that this enforcement mechanism has generally been regarded as more efficient than that of the court sheriffs.[32]

The office of the sheriff, therefore, is very much a creature of its time, with its processes and design retaining many features of that era. As a result, the system is in many ways left over from a time when enforcement focused on seizure and 'punishing' debtors who were viewed as being morally in the wrong.[33] The office of the sheriff has lagged behind other offices concerned with debt and enforcement like the Official Assignee in Bankruptcy and the Insolvency Service of Ireland, both of which benefit from relatively recent legislative frameworks.[34] Indeed, in this sense, it can also be posited that the sheriff system reflects the socio-legal context of its time period. The modern office arguably came into being at a time when our understanding of debtors' rights was more rudimentary, and when over-indebtedness was viewed as a moral failing. As a result, and indeed as will be further observed below, the system fails to consider the new social reality that surrounds debt in the modern economy. In summary, it can clearly be observed that although the overall system has shifted, the office of the sheriff remains very much rooted in the historical origins of the office itself. Its antiquated nature

[29] Most recently the Sheriffs' Fees and Expenses Order 2005, SI 2005/644.
[30] Court Officers Act 1926, s 12(3).
[31] 2009 Paper (n 12) para 3.245.
[32] ibid para 6.55.
[33] This is evidenced, for instance, through the provisions that existed for the imprisonment of debtors, something that was not abolished until the Civil Debt (Procedure) Act 2015.
[34] Bankruptcy (Amendment) Act 2015; Personal Insolvency (Amendment) Act 2012-2021.

is also present in the procedure and practice of the office, to which this article now turns.

II. Enforcement by Sheriff Referral – Process and Procedure

It is helpful when considering reform of the sheriff system to set out the process of execution by way of a referral to the sheriff. In its Report on the issue of debt enforcement, the Law Reform Commission described sheriff referral as 'the primary method of enforcement' in respect of money judgments obtained by a judgment creditor.[35] While the procedural steps involved are relatively straightforward, the antiquated and somewhat sluggish nature of the process quickly becomes apparent. Once a judgment is obtained in respect of unpaid monies owed by a judgment debtor, a judgment creditor may use the services of the sheriff in the recovery of the money or assets owed as specified in the judgment. This is done using an order of *fieri facias* (*fi fa*) in the High Court, an 'Execution Order Against Goods' in the Circuit Court or a District Court judgment.[36] The order is sent to the sheriff or County Registrar in whose county the debtor resides.[37] It is endorsed and then executed by the sheriff, who is statutorily obliged to do so.[38] The specific provisions of the statute essentially bind the debtor's property to the sheriff, requiring the sheriff to act upon them. What this means is that the property is legally attached to the sheriff, allowing them to hold a legally fictitious ownership of the debtor's property. This creates an obligation upon the sheriff to initiate enforcement to fulfil their statutory duty. It should be noted, however, that this does not actually affect the judgment debtor's proprietary interest: they remain free to deal with the property in any way they so choose, subject to the judgment creditor's rights. Any third party who acquires any of the debtor's property or goods, in good faith and without notice, gains full title free of any potential writ of execution.[39]

Execution of goods is completed by the sheriff on a 'first come, first served' basis,[40] and the sheriff has a duty to execute with 'reasonable

[35] 1988 Report (n 2) 3.
[36] Sam Collins, *Enforcement of Judgments* (2nd edition, Round Hall 2019) 96.
[37] ibid.
[38] Sale of Goods Act 1893, s 26 (1).
[39] ibid.
[40] *Kirwan v Jennings (*1853) 8 ICLR 48.

diligence, without wilful or unnecessary delay'.[41] It should be noted that the sheriff does not necessarily need to seize goods and may delay execution for a period of time in order to facilitate a repayment.[42] However, while this is possible, without the express consent of the judgment creditor the sheriff is legally vulnerable and can frustrate bone fide efforts by debtors to pay what they can.[43] This is an unfortunate element of the system - rooted in the more traditional debtor scenario from the system's inception, it is unsuited to modern debt enforcement that generally opts for more sustainable and long-term solutions over harsher, seizure-based enforcement. The sheriff can, however, now proceed to affect execution by searching the judgment debtor's property and seizing property.[44] The sheriff's right to seize the debtor's property is subject to certain exemptions; specifically, the sheriff may not seize apparel and bedding of the debtor nor their family as well as the debtor's tools of trade not exceeding a value of '£15'.[45] Such archaic provisions are confusing and can complicate enforcement; moreover, they also fall far short of the more generous and humane provisions currently in place under the personal insolvency regime.[46]

If enough goods are found, they can then be sold to satisfy the debt and associated administrative costs. The sheriff may sell the goods at public auction once forty eight hours have elapsed since the seizure,[47] and an inventory of any goods seized is always provided to the judgment debtor within 24 hours of the seizure having taken place.[48] Caution however must be exercised as the sheriff is absolutely liable for wrongful seizures, something which introduces uncertainty, delay, and legal risk into the process.[49] A creditor can also oblige a sale of seized goods on the basis of a court order of *venditioni expones*.[50]Again, this odd power of the creditor - although necessary to compel the sheriff - in effect allows the creditor to exercise a certain degree of control over the sheriff which undermines the office's independence. If, on the other hand, there are insufficient goods for execution, the sheriff then returns what is known as a *nulla bona* return, literally meaning 'no goods'. In the case of *a nulla bona* return, the sheriff's

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[41] *Hodgson v Lynch* (1870-1871) IR 5 CL 353 [355].
[42] Keating and Donnelly, 'Sheriff's Office' (n 11).
[43] Mary Donnelly, *The Law of Credit and Security*, (3rd edn, Round Hall 2021) [19.51].
[44] Enforcement of Court Orders Act 1926, s 12.
[45] ibid s 7.
[46] The Personal Insolvency Act 2012, s 99,
[47] Enforcement of Court Orders Act 1926, s 8.
[48] ibid s 6.
[49] *Jones Bros (Holloway) Ltd v Woodhouse* [1923] 2 KB 117.
[50] RSC Ord 43, r 1.

role in the process ends, leaving the creditor with the option of seeking alternative enforcement, such as registering judgment mortgages. Another option would be to pursue bankruptcy against the debtor, as a *nulla bona* return constitutes an 'act of bankruptcy' which a bankruptcy petition can be grounded upon.[51] Once execution has been carried out, the sheriff is obliged to provide the return to the Court, although curiously not to the judgment creditor.[52] The sheriff is remunerated on the basis of the poundage system,[53] which in essence works as a commission-based remuneration, meaning that the sheriff charges a 'poundage' percentage fee on the overall value of goods seized. The most current legislation, the Sheriff Fees and Expenses order, sets out a poundage fee of 5 percent of the first €5,500, and 2.5 percent of the remaining balance.[54] While this system has been praised for providing a strong incentive for effective enforcement,[55] it can equally be argued that introducing a financial incentive for seizure into the sheriff's role is at odds with ensuring debtors rights and sustainable enforcement as the key priority.

It can be clearly seen that the current sheriff system is deeply archaic and suffers from a number of inefficiencies. In practice, the use of the sheriff is often unsatisfactory and often entails long delays regarding enforcement, to the consternation of both debtor and creditor.[56] From a practical perspective, for instance, the presence of a large number of archaic and legalistic documents - for instance, the wording of the *fi fa* order - can be confusing to debtors who would not be familiar with the process. Furthermore, outcomes can be unsatisfactory for creditors, who can be left waiting for months for effective enforcement only to be presented with a *nulla bona* return, meaning that alternate enforcement must be pursued. This is not helped by the lack of information-gathering present in this system, which means that both creditors and enforcing sheriffs are blind as to the debtor's means. Another key issue is the disparate nature of the legislation underpinning the sheriff's office: while the office's creation is covered by the 1926 and 1945 Acts, the actual powers of seizure are contained elsewhere. Again, this can confuse debtors and generally makes the system more convoluted for practitioners and sheriffs alike. As will be seen, many

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[51] The Bankruptcy Act 1988, s 7(1)(f).

[52] 1988 Report (n 2) 13.

[53] Sam Collins, *Enforcement of Judgments* (2nd edition, Round Hall 2019) paras 9-56.

[54] Sheriff's Fees and Expenses Order 2005 (SI No 644 of 2005), Schedule Reference Number 2.

[55] 1988 Report (n 2) 11.

[56] Jane Marshall and Patrick Wall, 'Summary Procedure and Enforcement of Judgments' in Collete Reid (eds) *Civil Litigation* (2nd edn, OUP 2009) 343-345.

of the procedural and practical issues were identified by the LRC in its reports and research.

III. The Law Reform Commission's Reports

Across its multiple efforts scrutinising the sheriff system, the LRC broadly identified the afore-outlined issues, including in its initial examination of the area in 1988.[57] Generally, the Commission broadly considered these matters but remained absolutely unequivocal in stating the need for reform in the area, identifying that these various issues effectively made the sheriff system unfit for purpose.[58]

Within its 1988 report, the Commission found that, due to the burden already placed on County Registrars in the organising of Circuit Court business in their respective areas, it was impractical to expect them to also carry out their sheriff duties.[59] The Commission therefore recommended that the Minister for Justice's powers under the 1945 Act be used to grant the powers to a new office of sheriff in each county.[60] This would replicate the office of sheriff across all of the county divisions, mirroring the system in Dublin and Cork. The Commission further considered a number of specific elements pertaining to the operation of the sheriff system. Regarding returns, the Commission recommended legislating for a specific duty obliging the sheriff to provide a return to the judgment creditor, remedying the puzzling situation whereby creditors were not entitled to know the outcome of their own enforcement action.[61] It did not recommend any change to the 'first come, first served' system,[62] nor any change to the poundage system. The poundage system was viewed by the Commission to encourage effective enforcement by sheriffs and it praised this aspect in particular.[63] While the Commission viewed this form of remuneration as efficient, it unfortunately did not consider the problematic ramifications of putting a financial incentive into seizure. The Commission also did not embark on any broader analysis of the policy rationale underpinning such a system, although it is acknowledged that debtors' rights concepts were not

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[57] 1988 Report (n 2).
[58] ibid 23.
[59] ibid.
[60] Courts Officers Act 1945, s 12(2); 1988 Report (n 2) 11.
[61] ibid 13.
[62] ibid 18.
[63] ibid 26.

as developed at that time and debt default was still viewed as something to be punished, even criminally.[64]

The Commission did recommend a number of other changes, although it restricted these to updating the law as opposed to completely overhauling it. The Commission recommended, for example, that the exemptions for goods liable for seizure be updated to reflect more generous provisions in the Bankruptcy Act 1988.[65] Modern concepts of reasonable means set out in personal insolvency legislation throw this outdated exemption to seizure into far sharper relief.[66] The Commission also recommended the incorporation of the concept of 'walking possession' into Irish law from English jurisprudence.[67] In brief, a walking possession arrangement allows the sheriff to seize goods but leave them in the debtor's possession for a period of time without forfeiting the legal title to them.[68] The benefit of 'walking possession' arrangements is that they allow a sheriff to ascertain which goods may be available for seizure while also allowing the sheriff to leave the goods in the debtor's possession before deciding how to proceed.[69] Such arrangements essentially freeze the assets while the sheriff considers the position, and would constitute a welcome import into the Republic's legal system.[70]

Overall, in this initial Report, the Commission favoured using the existing legal mechanisms as a means of reform based mostly on increasing collection efficiency rather than on pursuing any broader systemic changes. It identified many of the problems outlined in the preceding section and sought to remedy them. However, this Report was based on the debt landscape that existed in 1988 which had a far lower level of available consumer and household credit in the market. It is argued that these reforms from a Report published over three decades ago are insufficient. More radical change is needed to bring the enforcement system in line with

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[64] For further information, see: Oireachtas Library and Research Service, *Debt Part 3: The imprisonment of civil debtors* (Tithe an Oireachtais, 26 May 2010) <https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2010/2010-05-26_spotlight-debt-part-3-the-imprisonment-of-civil-debtors_en.pdf> accessed 17 March 2022.

[65] ibid para 60.

[66] For example, under s 99(2)(e) of the Personal Insolvency Act 2012, terms of PIAs requiring debtors to make payments which would deprive them of a reasonable income are prohibited.

[67] 1988 Report (n 2) 41.

[68] ibid.

[69] ibid.

[70] Such arrangements already exist under Northern Irish law, see Judgments Enforcement (Northern Ireland) Order 1981, s 35.

international best practice. Indeed, it is submitted that some of the recommendations do little to address the underlying problems. For instance, the retaining of the poundage system continues the potential conflict between a sheriff's need for revenue and the desire to facilitate more proportionate debt enforcement with longer term arrangements. Furthermore, academic commentary has criticised the Report as failing to engage with the broader public policy question of whether a more radical reform approach would have been more beneficial.[71] In any case, unfortunately, none of the Commission's recommendations were implemented, and the office of the sheriff, along with the civil enforcement system, remained practically unaltered.

Subsequently, in the context of the global financial crisis, the LRC returned to the issue of debt enforcement in its Consultation Paper,[72] and later Report on the debt enforcement system in Ireland.[73] In that Report, the Commission acknowledged that change was necessary and proposed a number of alternative systematic changes - all of which involved some form of a centralised office. Indeed, the Consultation Paper released in 2009 was explicitly in favour of the introduction of centralised enforcement in Ireland.[74] The Commission at that time, however, did not specify any particular form that such a centralised system should take. Instead, it offered three types of centralised enforcement which included full centralisation,[75] and other less centralised forms.[76]

The 2010 Report dealt with the broader issues concerning the debt enforcement system in general, including personal insolvency law reform.[77] However, it also dealt with the sheriff system and the enforcement of judgment generally. The Report once again identified the afore-outlined issues inherent in the system, including inefficiency, lack of information-gathering at crucial stages of enforcement, and the unsuitability of the system to deal with the modern reality of household debt. It called for the establishment of a small, centralised 'Debt Enforcement Office' which would act primarily as an oversight body for licensed but otherwise essentially private operators, with the overall idea being to keep the system

[71] Keating and Donnelly, 'Reforming Debt Enforcement' (n 11) 165.
[72] 2009 Paper (n 12).
[73] 2010 Report (n 2).
[74] 2009 Paper (n 12) [6.45].
[75] In this context, full centralisation should be thought of as the creation of a single public agency with responsibility for enforcement, similar to that in Northern Ireland which is outlined below.
[76] 2009 Paper (n 12) [6.45], [6.53-6.58] and [6.70].
[77] ibid 111-127.

small unlike the disparate system currently in place.[78] Their preference was to model the new office on the small unit within the Revenue Collector-General's office.[79] Such an office would publish a code of conduct for these private operators, and would operate a high-level complaints process.[80] Further, the proposed office would have the ability to gain information as to the debtor's means.[81] This would constitute a hugely beneficial step in reforming the current system. Currently, a lack of information as to a debtor's means can hamstring the overall enforcement process, leading to disproportionate enforcement and a variety of other problems.[82] In practice, this leads to delays and high costs for creditors with little in the way of results, all the while debtors are left with enforcement that takes years and prevents them from returning to solvency. By shifting to a focus on information-gathering, the Commission hoped to improve the debt enforcement system's effectiveness. It is argued that a clear agenda for economic efficiency can be parsed from the Commission's suggestions, aligned with its economic context. The Commission's recommendation was that a new office, acting in a supervisory role very similar to that of the Revenue Sheriffs, would be the most efficient and appropriate solution. Another recommendation involved the introduction of a licensing regime for private debt collection to help bring greater regulatory oversight to the area of private collection agencies in general.[83] The idea was that the use of licensing would help to provide some form of regulation to private collection.

Overall, the 2010 Report saw the Commission adopt a positive, although arguably conservative, approach that utilised existing models with minimal systemic overhaul, mirroring the overarching outlook of the 1988 Report.[84] While the Commission recognised the problems with the archaic and disjointed system that is currently in place, it opted to prioritise models based on economic efficiency and market-based cost-effectiveness considerations. It is clear from reading the Report that the Commission was most keen to avoid the cost of setting up a new public agency. This is further evidenced by the prominent role that private collection agencies play in its

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[78] 2010 Report (n 2) 320.
[79] 2009 Paper (n 12).
[80] 2010 Report (n 2).
[81] ibid.
[82] This idea is arguably clearly borrowed from the Northern Irish model and its benefits are discussed below.
[83] 2010 Report (n 2) 271. See Chapter 6 generally.
[84] In this case, the Commission wished to utilise existing concepts like the Revenue Sheriffs and their enforcement management structure.

proposed system, with judgment creditor fees being used to partly fund the office itself. While the addition of information and means-assessing mechanisms in the new office's toolkit are to be commended, the reliance on private enforcement complicates this, meaning that general data privacy concerns arise alongside other concerns about the inefficiency arising from the dispersal of knowledge and expertise among a multitude of private operators.

One of the key issues with the 2010 proposal is that its suggestion to use private operators undermines one of the core policy rationales of the office of the sheriff.[85] This rationale involves the creation of a neutral enforcer between creditor and debtor in order to keep the peace and prevent the chaos that occurred due to unregulated private enforcement in the 19th and early 20th century.[86] While such activity would be within the regulatory oversight of the proposed Debt Enforcement Office, it would still involve private actors who would in many ways appear as agents of the creditor. This could possibly even encourage the growth of dubious 'debt advocacy' groups such as the 'Freemen on the Land', whose conduct can lead to worse outcomes for both debtors and creditors.[87] Ranging from trademarking one's own name and suing banks for its use on correspondence, to rejecting the jurisdiction of the courts, these pseudo-legal groups claim to advocate for debtors by charging them for pseudo-legal 'get-out-of-jail' remedies to debt problems.[88] With private sector enforcement, these groups could potentially see more growth, as the legitimacy of state enforcement is undermined by these actors' profit motivation in the enforcement process. It is also argued that relying on private agencies for all enforcement overly-complicates the system, creating unnecessary levels of bureaucracy. Comparatively, a single public sector entity would be able to streamline the process and keep enforcement contained, potentially benefiting from knowledge-concentration and economy of scale. Finally, a further problem with this proposal is that it fails to embed a robust rights-based framework into the system, ensuring that debtors' rights can be safeguarded in all enforcement actions. While there is mention of enforcement guidelines,[89] it is submitted

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[85] 1988 Report (n 2) 8.
[86] David Trimble, 'Judgments (Enforcements) Act (NI) 1969' (1970) 21 Northern Ireland Legal Quarterly 360.
[87] For further, see: Tomás Keys, 'Freeman on the Land and Other Organised Lay Litigant Groups - Part 1' (2014) 21(10) Commercial Law Practitioner 230; 'Freeman on the Land and Other Organised Lay Litigant Groups-Part 2' (2014) 21(11) Commercial Law Practitioner 256.
[88] ibid.
[89] 2010 Report (n 2) 187.

that these are not enough to ensure that debtors and their dependents can have their rights and dignity protected.

It is contended that both reports need to be placed within their contexts. While it is not possible to divine the reasoning of the Commission's recommendations aside from those expressly stated, considering the socio-economic context helps to more accurately speculate as to why centralisation was discounted in both reports. The 1988 and 2010 Reports were produced in times when debt enforcement was not as widespread and critical as it became in the mid-2010s. As a result, setting up a new, entirely public agency may have seemed wasteful or unnecessary. On the other hand, private sector enforcement with minimal state oversight could have been seen as preferable in order to minimise costs associated with enforcement. Indeed, this explanation would seem to provide some reason as to why the Commission essentially abandoned its desire for a centralised system between the 2009 Paper and the final Report in 2010.[90] Similarly, utilising existing legislation and enforcement models was seen to be more efficient than creating a new organisation requiring a new statutory framework. Unfortunately, it is submitted that this context may have led the Commission to dismiss a public agency where, in fact, one might be preferable to achieving the overall goals of the debt enforcement system.

One proposal for reform that the Commission considered in several places throughout its 1988 Report was the system in place in Northern Ireland. There, the execution of judgment is managed by a centralised agency, the Enforcement of Judgment Office ('EJO'). As mentioned above, the Commission expressed its preference to maintain the current sheriff system for a variety of reasons, stating that the system in place was not any more efficient than the one currently in place in the South[91]. It is submitted that the Commission did not fully consider the benefits of this centralised approach. This appeared to shift in 2009, with the Commission clearly expressing support for a move to a centralised system of debt enforcement, citing the model in Northern Ireland as a key example of an effective and internationally-commended system that could prove useful in changing the model in the Republic. However, in its 2010 Report, the Commission backtracked considerably, instead recommending a model based off of an existing system with heavy involvement of private sector actors.[92] While the Commission ultimately shied away from recommending full centralised

[90] ibid 188.
[91] ibid 55-58.
[92] ibid 321.

enforcement, it borrowed heavily from the systems in place in Northern Ireland, in particular in respect of the use of means-assessment methods.

Hence, while all of the final reports and publications have dismissed the fully-centralised Northern Irish model, it is submitted that these rejections may have been based on factors that are not contemporarily relevant. A more in-depth analysis and consideration of this system is therefore warranted.

IV. The Enforcement of Judgment Office – Civil Judgment Enforcement in Northern Ireland

The EJO in Northern Ireland was created in 1971 and is administered by the Northern Ireland Courts' and Tribunal Service.[93] The Judgments Enforcement (Northern Ireland) Order 1981 sets out the procedure and statutory basis upon which the office operates under the purview of the Department of Justice of Northern Ireland.[94] It is further governed by the Judgment Enforcement Rules (Northern Ireland) 1981, which supplements the principal order and sets out the rules.[95] The impetus for the establishment of the EJO came from the substantial criticisms of the previous system of enforcement in Northern Ireland.[96] The Anderson Report cited numerous issues including an over-reliance on the largely ineffective execution against goods by sheriffs as well as mistaken, costly enforcement taken against debtors by virtue of a lack of information.[97] As a result, the Report recommended an overhaul of the entire system with a focus on ascertaining means and choosing the most proportionate and appropriate enforcement option.[98] The legacy of this Report is seen with the EJO structure's orientation toward first establishing the financial situation of a debtor before initiating enforcement.

The Northern Irish model of judgment enforcement differs markedly from that of the Republic, or indeed from that of jurisdiction of England and Wales. It has been praised as 'pioneering' and has been lauded by numerous law reform initiatives around the world, including more recently in the

[93] Judgments (Enforcement) Act (Northern Ireland) 1969.
[94] Judgments Enforcement (Northern Ireland) Order 1981, s 7.
[95] Judgment Enforcement Rules (Northern Ireland) 1981, no 1981/147.
[96] Law Reform Commission, *Consultation Paper on Personal Debt Management and Debt Enforcement* (LRC CP 56-2009).
[97] Report of the Joint Working Party on the Enforcement of Judgments, Orders and Decrees of the Courts inNorthern Ireland (1965).
[98] ibid [41].

Republic.[99] In Northern Ireland, once a judgment has been obtained, a judgment creditor looking to enforce the judgment must turn to the EJO. A creditor begins the process by lodging a notice of intent to enforce with the EJO, who then takes over the general process of enforcement by issuing a copy of the notice to the judgment debtor, giving them ten days to pay the debt or reach an agreement with the creditor.[100] If no agreement is reached and the debt remains outstanding, the creditor can then proceed to make an application for enforcement.[101] Once an application is accepted, the EJO then assumes total control of the process of enforcement; while the creditor can express preference via petition and may be consulted, the decision as to which type of enforcement remains at the absolute discretion of the EJO.[102] Initially, a Custody Order which places all of the debtor's goods which are not exempt in the ownership of the EJO, is issued. The EJO will then set about identifying the debtor's means and has extensive powers under the 1981 Order to do so, including in the case of debtor evasion, the power to have the non-compliant debtor arrested.[103] The EJO can also visit debtors in their homes and understand their lifestyle before making a decision regarding enforcement.[104]

Once the debtor's means are ascertained, the EJO can use a number of various enforcement methods to try and realise the debt including, inter alia, Attachment of Earnings Orders,[105] Orders appointing a receiver,[106] Garnishee Orders,[107] and Orders for the Seizure of Goods.[108] One of the key differences between the Republic's model of enforcement and the EJO model is that these orders and enforcement actions are taken by the EJO in its absolute discretion and without requiring the court to issue them. Under s 13 of the Enforcement of Judgment Order 1981, the ability to make enforcement orders of any kind rests with the Chief Enforcement Officer. The Law Reform Commission noted that where enforcement was possible, the most common orders issued by the EJO were Orders charging land (similar to a judgment mortgage in the Republic) and attachment of earnings

[99] David Capper, 'Taking Enforcement Seriously – Lessons from Northern Ireland' (2006) CJQ 485; seealso 2009 Paper (n 12)
[100] ibid s 6.
[101] ibid s 7.
[102] Judgments Enforcement (Northern Ireland) Order 1981, s 16(2).
[103] ibid s 27(2).
[104] Capper (n 99), 489.
[105] Judgments Enforcement (Northern Ireland) Order 1981, s 73.
[106] ibid s 67.
[107] ibid s 69.
[108] ibid s 31.

orders.[109] Where a debt cannot be recovered, the EJO can issue a notice and a certificate of unenforceability which bars further enforcement on that judgment and any subsequent enforcement of judgments against that debtor.[110] However, this certificate also acts as an act of bankruptcy, similar to a *nulla bona* return in the Republic, allowing the creditor to pursue that avenue of recovery should they so choose.[111] Bankruptcy is an area that does not fall within the purview of the EJO, and is instead subject to the jurisdiction of the Northern Irish High Court with its enforcement being the responsibility of the Official Receiver and the appointed trustees in bankruptcy.[112]

As is clear, the EJO and the centralised system is quite different to that which is currently in operation in the Republic, particularly as discretion regarding enforcement lies completely with the EJO and not with the creditor. The model in Northern Ireland provides an interesting alternative when considering avenues for reform, as it takes the narrow function of the sheriff's office and creates an independent public body capable of enforcing all manners of judgments. This article will now elucidate the manners in which a centralised model could help remedy persistent issues within the Republic's current system.

V. Analysing Centralised and Public Enforcement

The criticisms of the sheriff system, as well as its procedural oddities, have been set out throughout this work, with the critiques relating to its inefficiency and unsuitability for the contemporary needs of debt enforcement repeatedly echoed by the Law Reform Commission and academics alike.[113] The crux of this article is the argument that a centralised model of enforcement would constitute a marked improvement on the current system, or arguably lack thereof, that is currently operational in Ireland. Furthermore, it is argued that a public mode of centralised enforcement is highly preferable to the predominantly private sector-orientated approaches that have been recommended by the Law Reform Commission.[114] The EJO in Northern Ireland embodies this proposed direction for reform, and its key benefits will now be distilled to illustrate

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[109] 2009 Paper (n 12) para 6.36.
[110] Judgments Enforcement (Northern Ireland) Order 1981, s 19.
[111] Bankruptcy Act 1988, s 7(1)*(f)*.
[112] See generally: Insolvency (NI) Order 1989, Part IX.
[113] Mary Donnelly, *The Law of Credit and Security* (3rd edn, Round Hall 2021) [19.66].
[114] 2010 Report (n 2) 321-329.

the core contention of this work - that Ireland ought to adopt a parallel regime.

A. Information Gathering

As has been examined above, one of the major issues that currently affects the enforcement model in place in the South is the lack of information gathering.[115] For creditors in the South, the process of ascertaining a debtor's means can be burdensome and convoluted. In the Republic, a judgment creditor can seek to remedy an informational deficit, which could otherwise result in costly and occasionally pointless enforcement action against the debtor, by applying to the court for discovery in aid of execution.[116] In the High Court, this may be done via application to the court under the Rules of the Superior Courts, specifically under Order 42, Rules 36-39.[117] This enables the court to order that a person be examined, either before the Court or by an appointed officer of the court, in order to ascertain their financial situation. This procedure might be used in cases where some difficulty has arisen in the execution of judgment. For example, if a creditor was seeking more information on any debts owed to a debtor in order to consider the viability of a Garnishee Order. The bar for such an application is relatively low,[118] and applications of this sort ordinarily appear before the Master of the High Court.[119] Outside of the High Court, applications for discovery in aid of execution of money judgments are curiously not available in the Circuit Court, although the procedure is available for non-money judgments.[120] In the District Court, the examination of a debtor's means is possible although it is provided for in legislation as opposed to the rules of court.[121] What is immediately evident from looking at this process is that, in order for a creditor to obtain as much information as possible about a debtor's means, they need to initiate further court proceedings, which invariably involves further costs and delays in enforcement. This can be made all the worse by obstructive debtors who seek to delay court processes

[115] For example in its hampering the effective use of attachment orders in the Republic, as noted in the 2009 Paper (n 12) 151.
[116] Sam Collins, *Enforcement of Judgments* (2nd edition, Round Hall 2019) [5-01].
[117] For money judgments, see: RSC Od 42, r 36.
[118] *Foley v Bowden* [2003] 2 IR 607. A creditor merely has to demonstrate that there is a possibility the debtor may be owed money or have property. They also do not need to be subsequently correct.
[119] Collins (n 116) [5-01].
[120] RCC Ord 36, r 7.
[121] Enforcement of Court Orders Act 1926, s 15(1).

for as long as possible. This has the problematic effect of disincentivising creditors from seeking information, with the resulting consequence being that creditors will often opt to undertake enforcement on limited information. For debtors, the current system is also undesirable as it requires them to take part in further proceedings, adding to their personal stress. Overall, this process of information-gathering is undesirable and costly from the perspective of both debtors and creditors, leading to inefficiency and acrimony.

In contrast, a centralised agency such as the EJO can be granted the ability to effectively and efficiently investigate a debtor's current means and, more importantly, on their broader financial state of affairs. As set out above, the EJO's enforcement process begins with a comprehensive review of the debtor's means, with powers to ensure cooperation.[122] The process of information-gathering in the EJO model is non-adversarial and can take place in the debtor's home or in the EJO's office. Another key element is that the creditor is not involved in this process, with any prior information on the debtors' means held by the creditor already in the possession of the EJO as part of the application for enforcement. By gathering the information at the outset, the EJO can also evaluate whether any enforcement is possible at a much earlier stage. This is in stark contrast to the Republic, where the sheriff may have arrived at a debtor's home to seize goods only to conclude that there is nothing legally possible to seize. Without doubt, the EJO's process of information-gathering is preferable to the system currently in place in the South. While the Law Reform Commission's proposal for a system involving private-sector actors did make provision for means-assessment, through standard financial assessment documents, the system is less efficient than a centralised model as it requires the dispersal of information to private-sector actors as opposed to maintaining the means-assessment infrastructure within a single entity. Furthermore, the report advocated for judgment creditors to play a key role in questioning debtors during the means-assessment interviews,[123] something it is submitted is inappropriate in the context of safeguarding a debtor's privacy and dignity.

Hence, it is argued that a centralised system intuitively possesses many immediate advantages over the disparate and dysfunctional system of information collection currently in place south of the border. The centralised agency can focus on ascertaining a debtor's means prior to issuing any enforcement action, thus avoiding the need to initiate further court actions to proceed with enforcement effectively. In short, through the benefit of a

[122] Judgments Enforcement (Northern Ireland) Order 1981, s 27(2).

[123] 2010 Report (n 2) 200.

full and accurate picture of a debtor's means, a centralised enforcement agency is enabled to begin effective enforcement much more expediently. In this regard, considerable court time and money is saved for both debtor and creditor alike, as it avoids the need for a creditor to essentially drag a debtor before the court to have their means extensively analysed. An additional benefit of this approach is the potential to reduce acrimony between debtor and creditor by removing adversarial courtroom processes, instead having a state agency serve as a powerful but independent intermediary between the two. This power of information gathering, vested in a centralised agency bypassing inefficient court procedure, is conducive to the second core benefit of the EJO model: the ability to obtain more appropriate and proportionate means of debt enforcement.

B. Proportionate Enforcement

In Part II, this article set out the in-depth the procedural issues present in the current system. Overall, what emerges from such analysis is that the sheriff system is deeply archaic and tends toward ineffective and disproportionate enforcement. By being solely devoted to the seizure of goods, the sheriff system is inflexible and lacks alternate methods of sustainable enforcement. It goes without saying that this is a problematic and undesirable state of affairs, in particular given the high levels of problem debt in Ireland.[124]

Again, standing in contrast to the sheriff system is the EJO and a centralised model. Illustratively, the core aims of the EJO in ascertaining a debtor's means are to arrive at the most proportionate and effective recovery option, something which allows debtors who have the ability to pay to do so sustainably, while also ensuring that the creditor's judgment is acted upon appropriately. The EJO, and similar centralised bodies, acting on the basis of full knowledge of a debtor's means and financial circumstances, can adapt their enforcement strategies to ensure they maximise the efficacy of debt recovery for the creditor while safeguarding the debtor from disproportionate recovery. This is evident in the EJO's procedure for obtaining an Order for Seizure of Goods - one of the few enforcement orders in which the Chief Enforcement Officer must apply to the Master in order to effect execution, where the EJO will need to make arguments in favour

[124] Amie Lajoie, *Exploring Household Debt in Ireland: The Burden of Non-Mortgage Debt & Opportunities to Support Low-Income Households* (TASC, 2020) <www.tasc.ie/assets/files/pdf/household_dept_report_final_3320.pdf > accessed 18 March 2022.

of this form of execution.[125] The Order, once granted, enables the EJO's enforcement officers to negotiate with the debtor, make use of walking possession arrangements and of course seize goods subject to the Order. Often a seizure order is one of the least commonly used enforcement mechanisms by the EJO.[126] This points to the more proportionate system, whereby the seizure of a person's personal property is more of a last resort than the first port of call. Rather, the office will prioritise payment arrangements, structured in light of their information-gathering, and has the capacity to manage them effectively, due to its centralised structure.

This is beneficial for the debtor and indeed society more broadly, as it ensures that the most appropriate and proportionate method of collection can be selected. By guaranteeing the selection of the most appropriate method of enforcement, the system produces more effective enforcement for creditors while protecting debtors' interests. Moreover, the broader socio-economic aim of a proportionate debt enforcement system is served by facilitating the debt cycle and avoiding more serious outcomes like bankruptcy or repossession which cause further issues for creditors and society. This aim, which would be properly facilitated in the proposed centralised system, stands in contrast to the Republic where the sheriff system exists with the sole rationale of seizing property, which is often ineffective unless the debtor happens to have particularly valuable chattels. The centralised system of the EJO also proves better than the 2010 proposals of the LRC. While the Debt Enforcement Office model was more flexible in its approach to enforcement, the bedrock of the system remained a seizure-based system operated by private actors. Ultimately, it is submitted that proportionate enforcement is difficult to guarantee when those carrying out the enforcement have a direct financial incentive in the outcome via the poundage system.

Overall, a centralised system offers the most concrete way to ensure proportionate, information-led enforcement. For this system to succeed, like the EJO, the ability to ascertain accurate information on the debtor's means within a reasonable timeframe is essential. The current sheriff system is in this regard hamstrung, resulting in both inefficient and wildly disproportionate enforcement measures. A centralised agency vested with similar powers to the EJO could remedy this dynamic, and align debt recovery in Ireland with the proper functioning of a system for debt recovery.

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[125] Judgment Enforcement Rules (Northern Ireland) 1981, no 1981/147.

[126] 2009 Paper (n 12).

C. Independence and Neutrality

As illustrated above, information-gathering and proportionate enforcement are amongst the benefits that a centralised public body could bring. However, as will now be argued, it is the discretion and independence of this centralised public body that enables the full realisation of these benefits. It is unrealistic to presume that the introduction of information-gathering procedures will subsequently result in proportionate enforcement within either the Republic's current sheriff system or through the proposed network of private enforcers. The independence of a centralised public body, such as the EJO, comparatively strengthens the likelihood of proportionate enforcement in light of information-gathering. Demonstratively, creditors have no power to compel the EJO - the selection of arrangements and indeed decision to proceed with enforcement is entirely within the EJO's discretion. This is in sharp contrast the current and prospective systems in the Republic, wherein the enforcer is indirectly answerable to the creditor, by being legally vulnerable to them where permission is not sought for payment arrangements for example,[127] and by being obliged to fully execute the order once it is obtained.

Through centralising discretion for enforcement and selection of execution with an independent centralised public body, no undue pressure from creditors can be applied, or indeed be seen to be applied, to dictate the enforcement process in accordance with their interests. Further, through centralising the decision-making process for selecting the recovery option with a public body, it can be seen by both debtors and creditors to be truly neutral. This is important from a public policy perspective, as it helps to reduce acrimony between debtors and creditors as well as according legitimacy to the enforcement process. It is also submitted that, although the Commission report praised the system of sheriff's poundage for its touted efficiency,[128] it may be more appropriate that a state agency with no financial interest in the process is more suitable in dealing with contentious issues like execution of goods.[129] This is especially the case in areas with County Registrars who themselves might make orders for enforcement and also then carry these orders out, essentially conflating their judicial and administrative functions.

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[127] Mary Donnelly, *The Law of Credit and Security* (3rd edn, Round Hall 2021) [19.51].

[128] 1988 Report (n 2) 25-26; 2010 Report (n 2) 200.

[129] Keating and Donnelly, 'Reforming Debt Enforcement' (n 11) 163-166.

D. Debtors' Rights and Dignity

Reform of the sheriff system would provide the opportunity to update the currently outdated legislation and make provisions for recent concepts concerning 'reasonable living standards' and integrating debtor's human rights into the enforcement framework.[130] The proposed centralised public body model, it is submitted, would constitute the strongest institutional architecture for the full and effective protection of these considerations. The current legal framework underpinning the sheriff system is archaic and disparate, with much of it dating from the early 20th century. This means that there is an absence of any modern conception of human rights or debtors' rights present in the system at all. Indeed, this is readily apparent from the outdated and meagre provisions for goods exempt from seizure, currently set at its 1926 valuation of £15.[131] The incorporation of modern debtors' rights concepts could be achieved through a well-designed statutory scheme which obliges the central enforcement entity to take into account the debtor's living standards, the potential impact of enforcement on the debtor's family, the debtor's future ability to earn and return to liquidity, etc. Institutionalising these considerations and mandating their consideration into the system of debt enforcement is desirable, and more readily achievable through a singular independent agency.

Comparatively, the 2010 proposal included a code-of-conduct, which would have relied on implementation by private-sector agents with a profit motive in seizure enforcement through the poundage system.[132] Free Legal Advice Centre, in the course of their 2010 conference on debt enforcement reform, has noted the extensive concerns surrounding the involvement of private enforcement in the system.[133] It is submitted that prioritising debtors' human rights and safeguarding their dignity is more challenging in a system that is run by private sector actors oriented toward 'for-profit' enforcement. A debt recovery system that aims to be effective financially in this manner will inevitably grate against, and struggle to ensure sustainable and rights-based debt enforcement. A centralised system on the other hand, involving a state agency with no financial interest in the enforcement means that safeguarding debtors' dignity and rights can be ensured without any competing pecuniary interests. Furthermore, the imposition of a strong duty

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[130] See, for example: The Personal Insolvency Act 2012, s 99.
[131] Enforcement of Court Orders Act 1926, s 7.
[132] 2010 Report (n 2) 200.
[133] Paul Joyce, The Future of Debt Enforcement in Ireland (FLAC, 2010) <www.flac.ie/assets/files/pdf/futureofdebtenforcment.pdf> accessed 31 December 2021.

in public law upon a single entity, is far more readily manageable than one across a diffuse network of actors in the private sphere. These rights-based dimensions, it is argued, represent the most compelling reason for reform of the current system from a societal perspective and ensuring there is a centralised public agency with clear responsibility for its furtherance is the appropriate path forward.[134] Neither a sheriff system with a vested interest in the maximisation of profit for their own interest, and effectively the creditor's interest, nor a network of private enforcers can compare in this regard.

As has been outlined, there are a number of issues present across the current system that are remedied effectively by the EJO-style system. While the 2010 proposals go some way toward addressing issues in the current model, they also fall short in creating a balanced and proportionate enforcement system. Thus, it is argued, any reform initiatives should follow a centralised model as it has many advantages in comparison to other models.

V. Potential Criticisms of Centralised Public Enforcement

One primary of the centralised model is that, by granting discretion to a centralised body, it removes creditor autonomy from the enforcement process. This is the simple reality of a centralised model and arguably, while a creditor does lose the ability to choose which enforcement action to pursue, it gains other benefits, such as more effective enforcement and cost savings made by eliminating unnecessary or pointless enforcement. Furthermore, it is submitted that creditors are unlikely to choose the most appropriate and proportionate enforcement method as they naturally will seek to recover most effectively for themselves. An independent enforcement agency can ascertain the debtor's means and use its expertise to select the most appropriate option, balancing the needs of both creditor and debtor. This results in not only the most balanced outcome but, if performed correctly, the one that will be most beneficial to achieving the key social goals of the debt recovery system - namely, allowing creditors to recover while debtors can move back into solvency and move on with their lives.

There are also legitimate concerns regarding the simple costs and time associated with the establishment of an entirely new public agency. This

[134] For further on debtors' rights arguments, see: Chrystin Ondersma, 'A Human Rights Approach to Consumer Credit' (2015) 90(2) Tullane Law Review 373, 373-437.

concern is well-borne out in practice in Ireland, evidenced for example in the Decision Support Service's protracted process of establishment since 2015.[135] Looking at the total inactivity in reforming the judgment enforcement system in Ireland, one would perhaps be wise to be sceptical that a new enforcement agency could be set up in an efficient manner. However, the pressing social need behind this fundamental reform requires immediate attention, cost and time are appropriate concerns but on the balance; the benefits of providing a fair, equitable and proportionate debt enforcement system far outweigh the temporary investment of creating such an agency.

Moreover, there is significant empirical research from other jurisdictions indicating that centralisation is a far more effective method of recovery in economic terms as it benefits from a type of 'economy-of-scale', the concentration of expertise and access to a complete picture of each debtor's situation.[136] The Department of Public Expenditure and Reform has recently recommended that public bodies themselves move to a more centralised method of debt collection and enforcement, citing numerous benefits.[137] Specifically they evidence the desirability of public enforcement as opposed to the involvement of private sector actors. They echo a number of the concerns and inefficiencies outlined in the course of this article, particularly that private enforcement lacks the benefits of a central entity with a bank of knowledge, expertise and resources to carry out, which in our present discussion inhibits effective enforcement.

Hence, a centralised and public model of enforcement offers an avenue for the reform of the current sheriff system in Ireland. Moving to this system would allow for a proposed state enforcement agency with greater powers than those currently available and maximise their efficacy in practice. Furthermore, such a system would constitute a truly neutral enforcer of judgment, ensuring that enforcement is both proportionate as well as efficient. A public model, it is argued, is overall a better choice from a human rights perspective, in particular as it allows for debtors' rights to be embedded in the enforcement framework. In short, the adoption of a centralised system of enforcement would not only remedy the predominant

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[135] Assisted Decision Making (Capacity) Act 2015, Part IX.

[136] CGI Group, *The Case for Centralised Collections* (CGI 2016) <www.cgi.com/sites/default/files/white-papers/centralized-collections-management.pdf> accessed 21 January 2022.

[137] Bearing Point Ireland, *Debt Management Review for the Department of Public Expenditure and Reform* (Department of Public Expenditure and Reform, 2021) <www.ops.gov.ie/app/uploads/2021/04/Debt-Management-Final-Report-17jul2014.pdf> accessed 21 January 2021.

ailments of the current system, but also offers extensive benefits to debtors, creditors and society at large.

Conclusion

It is clear that reform is needed in regard to the law of the sheriff and in the enforcement of civil judgments in Ireland, on this there is a virtual consensus. As noted by Keating and Donnelly, the current sheriff system is inefficient and the scope of reform set out by the Commission in its 1988 Report is too limited.[138] Indeed, even sheriffs themselves have previously called for the introduction of a better system of debt enforcement.[139] It is submitted that change, even that of a limited nature, is certainly needed although the author argues that any reform should be ambitious and should seek to address the problems of the debt enforcement system as a whole rather than merely tinkering around the edges.

By examining the system - or arguably lack thereof - with a broader lens, the inadequacy of a piecemeal approach to reform is clearly discernible. Much of the issues with debt enforcement in Northern Ireland that were identified by the Anderson Report in 1965 are still issues that currently plague enforcement in the Republic.[140] While the Law Reform Commissions' 2010 Report does call for the establishment of a more meaningful new enforcement office, it stops short of calling for the creation of a completely centralised system.[141] Indeed, the 2010 Report significantly tempers its preference for public enforcement as set out in its 2009 Consultation Paper. As has been argued above, the context of the economic crisis and the cost of such a new entity may very well have steered the Commission toward favouring a model with a significantly smaller overall organisation, one which would rely heavily on the involvement of private sector actors carrying out the actual enforcement.

It is recognised that this proposal would be a welcome change to the current lack of system – but ultimately an insufficient one. It is proffered, then, that a better solution would be to follow the EJO-approach in Northern Ireland. The Commission's solution, while an improvement, merely introduces a co-ordinating oversight body, rather than embracing a more balanced enforcement system such as that in place in Northern Ireland. It is

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[138] Keating and Donnelly, 'Reforming Debt Enforcement' (n 11) 166.

[139] Juno McEnroe, 'When Bailiffs Come Knocking', *The Irish Examiner* (Cork, 16 November 2010).

[140] 2009 Paper (n 12).

[141] 2010 Report (n 2).

submitted that, on balance, the role of private enforcement action should be reduced as much as possible in order to guarantee a truly neutral and independent system that is based fundamentally on the principles of proportionate enforcement. The system in place in Northern Ireland is, in this sense, arguably more efficient and convenient. It allows for an experienced public agency to gather as much information as possible in order to select the most appropriate enforcement option in the circumstances, while also benefiting from the independence that allows it to act in the best interests of society, balancing the rights of creditors and debtors. Perhaps, even more importantly, it allows for the intrinsic inclusion of core debtor and human rights concepts in the enforcement system, embedding them within the centralised enforcement body; a far cry from the creditor-weighted system in place in the Republic, or the prospect of a coordinating body over a diffuse network of private enforcers.

The current system, which places its emphasis on creditors and the adversarial court process, is the detritus of an archaic and outdated system which views debt as a moral wrong. It is argued that such a mindset is unhelpful to both creditor and debtor alike, prioritising sanction over effective recovery. Debt recovery should be viewed as a natural part of the lending landscape, with the debt recovery process being envisaged as a core part of the social order as opposed to an afterthought. Furthermore, it is posited that more research and debate is needed in this area; otherwise, the lack of systemic analysis means that the debate between public and private enforcement's efficiency cannot be easily settled. Perhaps, engaging in a comparative law-economics analysis would help to settle many of the unknowns and may even provide further support for public enforcement.
In conclusion, it is submitted that Ireland is in need of a new sheriff, one that is public, centralised and able to deliver fair, proportionate enforcement of judgment that adequately balances the rights of both debtor and creditor. As the effects of surging inflation, the continued crisis in housing and other events place the economy at risk, it is essential that policy-makers return to the issue of debt enforcement and put in place a new system that can safeguard debtors' rights while allowing creditors to recover effectively. Ireland needs a new sheriff in town, one - it is hoped - who can bring a new centralised order to the veritable wild west of judgment enforcement.